The Settlement of Labour Disputes in Chile [1]

The general state of labour relations

Labour legislation

THE FOUNDATIONS of the Chilean system of labour relations as we know it today were laid about fifty years ago. Before the First World War labour legislation hardly existed. But the situation was to change radically in the post-war years as industrialisation proceeded apace, accompanied by heightened social tensions that had been building up since the end of the nineteenth century.

An extensive body of labour legislation was promulgated in 1924. These laws were marked by the difficult social and political climate in which they were enacted, and they were subsequently added to and amended until they were almost completely recast in the new Labour Code of 1931.[2] This Code, considerably amended and supplemented, is still in force. Separate sections regulate the employment contracts of wage and salary earners [3]; and rules are laid down governing trade unions, collective agreements and the settlement of disputes. In 1967, however, a major Act was passed [4] which, as far as agriculture was concerned, departed in various respects from the trends established in the Code.

The Ministry of Labour and Social Welfare is responsible for the application of this labour legislation. It has two main branches: the Under-Secretariat for Labour and the Under-Secretariat for Social

[1] This is the first of three national monographs (the others will deal with Mexico and Argentina) to be published in the *International Labour Review* on the settlement of labour disputes in Latin America. They have been prepared, as part of a general comparative study of this question, by ILO officials Efrén Córdova and Geraldo von Potobsky, assisted by Antonio Vázquez Vialard, Assistant Professor of Law and Social Sciences at the University of Buenos Aires, and Jorge Acuña Estay, Professor of Labour Law at the University of Concepción, Chile. The final stage of revision and co-ordination of the three studies was undertaken by Francisco Walker Errázuriz of the ILO. The present article describes the situation as at 31 August 1970.

[2] ILO: *Legislative Series*, 1931—Chile 1.

[3] Chilean legislation distinguishes between wage and salary earners, although there is a strong tendency these days to blur the distinction.

[4] Act No. 16625 of 26 April 1967, respecting trade union arrangements in agriculture (*Legislative Series*, 1967—Chile 1).

Insurance. The first includes a Directorate of Labour which is responsible for ensuring compliance with labour legislation, for supervising trade union activity and for assisting in the prevention and settlement of labour disputes. The Directorate of Labour has a Collective Bargaining Department of which more will be said later.

Trade union organisations

The principle of freedom of association is enshrined in the Constitution. Trade unionism in its turn enjoys legal recognition, the right to organise being guaranteed to " persons . . . employed in one and the same undertaking or works or [who] are engaged in the same employment or occupation or in similar or allied employments or occupations, whether intellectual or manual ".[1] Whence the distinction made between industrial unions (in fact, works unions) and craft unions.

The industrial unions are formed at the level of the undertaking and group all the blue-collar workers employed there, irrespective of their trade. The craft unions, on the other hand, are organised by trade and are not necessarily limited to a particular undertaking. Both types of union have similar aims and functions. Membership of an industrial union is compulsory (once the principle has been decided on by a majority of the workers in an undertaking). A craft union is not entitled to share in the profits of an undertaking. In 1967 there were 632 industrial unions and 1,207 craft ones [2], but because of the advantages conferred on members of the former, membership of industrial unions was in fact greater than that of the craft unions. That same year there were an average of 219 members per industrial union and 99 per craft one; the average agricultural union had 66 members.

In addition to these types of trade unionism, particularly common in industry and mining [3], another kind, not recognised by law, has sprung up; this takes the form of organisations which have been set up by persons in state employment invoking their constitutional right to freedom of association.[4] There are, too, although they have little influence, occupational unions of self-employed workers, as well as employers' associations. A point which should not be overlooked is the emergence, side by side with the employers' associations properly so-called, of various societies or associations of businessmen, manufacturers and rural landowners; these sometimes act, although informally, in the field of labour relations.

[1] Labour Code, section 365.

[2] Jorge Barría Serón: *Breve historia del sindicalismo chileno* (Santiago, INSORA, Instituto de Administración, University of Chile, 1967), p. 45.

[3] Agricultural trade unionism, which up to 1967 had a most precarious foothold, has expanded very considerably in the past three years.

[4] Section 368 of the Labour Code lays down that wage and salary earners employed by the State or municipal authorities or working in state undertakings do not have the right to form or belong to a union.

Collective bargaining

Collective bargaining in Chile is usually resorted to only as a means of settling a dispute, and the conclusion of collective agreements is in reality no more than a secondary form of bargaining. Collective agreements are governed by the Labour Code, being dealt with separately from individual contracts of employment. They may be entered into only when the workers have a properly constituted trade union. Because of the restrictions imposed on the bargaining rights of certain federations and confederations and because, too, of the way the country is organised economically, most agreements are concluded at the level of the individual undertaking. In a few industries only (chiefly in the leather and footwear industry and in milling) are there examples of industry-wide collective agreements.

Conditions of work are usually determined by means of what in Spanish are called *actas de avenimiento*. This is, quite simply, an agreement reached between the parties under the procedure laid down for the settlement of collective disputes. Although it can be entered into independently of the existence of a trade union, its effects are very much the same as those of a collective agreement.

In practice, *actas de avenimiento* are a good deal more common than collective agreements. The reason for this is to be found partly in the fact that the regulations governing collective agreements are defective and antiquated, and partly in the fact that when a collective dispute breaks out, a provision of the Labour Code [1] comes into effect which makes it illegal to suspend a worker from his employment. The protection thus afforded has clearly contributed to the growing preference given by the workers' side to this procedure for dispute settlement.

In recent years, however, there has been a trend in big undertakings and major industries towards the conclusion of collective agreements, which in certain cases has led to the establishment of special machinery for the settlement of disputes. Thus an agreement reached in the leather, boot and shoe industry provides for the setting up of a mediation committee and an arbitration tribunal for the settlement of whatever disputes may arise during the life of the agreement.[2] Generally speaking, bodies of this kind deal with controversies over the interpretation of the agreement, and handle individual disputes arising out of staff grievances. Nevertheless, they are also competent to settle collective disputes. This is a state of affairs rather different from the system provided for by law, under which the institutions involved and the procedure used vary according to the nature of the dispute.

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[1] Section 596.

[2] Jorge Barría Serón: *El convenio colectivo en la industria del cuero y del calzado* (Santiago, INSORA, Instituto de Administración, University of Chile, 1967), pp. 14-16.

Individual labour disputes

Although the Code does not specifically deal with the classification of disputes, it is clear that the distinction between individual and collective disputes was borne very much in mind from the beginning. Book IV, Part I, dealing with labour courts and the judiciary, conceives of them exclusively in connection with individual disputes; Part II of this same Book specifically deals with collective disputes. Furthermore, a jurisprudence has grown up to the effect that disputes regarding the interpretation or application of a contract or of labour legislation should be settled by the labour courts, while collective disputes arising out of demands for the improvement of working conditions in a particular industry or undertaking should be dealt with by the bodies responsible for conciliation and arbitration.[1] The labour courts and labour appeal courts form an integral part of the judicial system in Chile under the responsibility of the Supreme Court of Justice.

The judges of both the labour courts and the labour appeal courts must have legal qualifications. The appeal courts are collegiate bodies, comprising one employers' and one salaried employees' or wage-earning employees' member in addition to the three judges. The labour courts deal, as courts of sole instance, with cases involving sums below a certain figure, and as courts of first instance when considering cases in which larger sums are at stake. In principle, proceedings are simple and expedious, although in practice the provisions of the Code are not always complied with [2]; an attempt is made to conciliate the parties before a verdict is pronounced, and agreements reached in this way have the force of a court judgment. The labour court or the labour appeal court is free to assess the arguments adduced as it sees fit, but the verdict must be based on law or equity. One point of interest is that although there is no provision for appeal against judgments rendered by the labour appeal courts, the Supreme Court, under the principle of recourse set out in the Chilean Constitution, can in fact have the final word on all such judgments. Furthermore, in localities where there is no labour court the civil courts are competent to hear labour cases, and in certain provinces where no labour appeal courts exist, the ordinary appeal courts can act in their stead. Similarly, alleged breaches of the legislation on the termination of employment contracts are considered by the local police magistrates when there is no local labour court.

The existence of labour courts with wide powers to deal with individual disputes helps to explain why the establishment of internal griev-

[1] See A. Gaete Berríos: *Derecho colectivo del trabajo* (Santiago, Editorial Jurídica de Chile, 1963), p. 191.

[2] Francisco Walker Linares: *Esquema del derecho del trabajo y de la seguridad social en Chile*, Colección de estudios jurídicos y sociales, Vol. LII (Santiago, Editorial Jurídica de Chile, 1965), Ch. VIII.

ance machinery through collective agreements has made so little headway. In fact, undertakings are required by law to make provision in their internal regulations for grievance procedures to handle cases relating to the termination of employment contracts, but so far this has had little practical effect. The net result is that when an individual dispute arises, the aggrieved party can go straight to the courts without prior recourse to any internal settlement procedure.

Preliminary remarks on collective disputes and official conciliation procedures

While there is only one procedure for the settlement of individual disputes, collective disputes may be settled in various ways. It should be noted first of all that the system laid down in the Labour Code covers private enterprise workers only, although these include workers employed by non-public undertakings in which the State is associated.

Even under this general system, applicable in principle to all disputes involving workers employed in private enterprise, there are two special sectors in which disputes are handled differently: these are agriculture and large-scale copper mining. We shall have more to say on this point a little later.

The general system and the special systems applicable in agriculture and large-scale copper mining were evolved in an endeavour to avoid sudden stoppages of work that would be damaging to the interests of the employers, the workers and society alike. Thus although the freedom of the parties concerned to put forward and support their demands is not contested, even should they go so far as to call a strike or declare a lock-out, an effort is made to harmonise their right to take such action with the interests of the nation at large by imposing certain restrictions on its exercise.

Provision has accordingly been made for a disputes procedure consisting of various stages which is designed to lead to an agreement or *avenimiento*, or a solution of some other kind. First of all the dispute is dealt with between the parties themselves, then argued out before a conciliation board or committee; if this produces no result, the parties may agree to submit the dispute to arbitration. If one or both refuse to do so, then the union is legally entitled to call a strike. In certain prescribed cases the Government, as guardian of the public interest and acting through the Ministry of Labour and Social Welfare, may decree the resumption of work, specifying the terms on which this is to be done.

The procedure outlined above and applicable to the workers employed in private enterprises under the general and special systems has

[1] The term " conciliation " is used in this article synonymously with mediation.

recently been supplemented by an official conciliation [1] procedure, which can be used in any dispute breaking out in the private sector. As mentioned earlier, there is within the Directorate of Labour a Collective Bargaining Department, formerly known as the Collective Disputes Department. This was originally an advisory body with a rather limited range of activities; for example, it investigated the background of collective disputes, considered methods for resolving them, and made suggestions to improve the working of the conciliation boards and arbitration tribunals. Little by little, however, the Department extended its range until it was intervening directly in the settlement of labour disputes. With the reorganisation of the Ministry of Labour and Social Welfare in 1967, this new initiative was given official recognition and encouragement. Of course, the Department still gives advice, but its terms of reference now specifically state that it is empowered to mediate in collective disputes when requested to do so by either party, or on its own initiative, both before conciliation proceedings have been begun by the appropriate board and after they have been exhausted.[1]

The general system for the settlement of collective disputes

The first stage: direct contacts between the parties

The part of the Labour Code dealing with collective disputes begins by laying down that the conciliation procedures provided for must be exhausted before any stoppage of work may take place.[2] This is a general obligation binding on any undertaking with more than ten employees. Conciliation procedures are also applied to undertakings with ten or fewer employees if the dispute affects a number of establishments in the same branch of industry or similar industries within the same commune. The conciliation procedures referred to in this provision comprise not merely the official ones defined in the Code but such private (internal) ones as have been agreed upon by the parties. The law requires that an attempt shall first of all be made by the parties concerned to reach agreement, even when private conciliation procedures or bodies do not exist. In this connection the Code lays down that when a difference arises which might lead to a collective dispute affecting all or part of the staff, or when such a dispute has actually broken out, the workers are to form a delegation of five persons (if there is a union, then the executive committee will constitute this delegation), which will approach the employer or his representative with a view to settling the difference in question.[3]

[1] Legislative Decree No. 2, dated 30 May 1967, section 9 *(f)*.

[2] Section 589.

[3] Section 590.

There is thus a general obligation to attempt a settlement of the dispute by peaceful means, even though the onus is laid on the workers. It should be noted that before the above approaches are made to the employer there must be a general meeting of the workers to secure approval of the demands presented in their name; these must be set out in writing in what is known as a " demands file ". The general meeting must likewise appoint its representatives (unless there is a works union). One copy of the demands file is lodged with the conciliation board of the department in which the undertaking is located so that this body may take note of the details of the case with a view to subsequent intervention in a conciliatory capacity, or merely have them registered and placed on record. Another copy of the file is sent to the appropriate labour inspection office.

The demands file having been duly lodged, the first duty of the employer is to receive the workers' delegation and discuss their demands. He must provide a written answer either at once or within five days, unless a longer period is fixed by agreement with the delegates. A copy of this answer must be sent to the conciliation board and another to the labour inspection office.

It may of course happen that these direct talks suffice to produce agreement, in which case the dispute no longer exists. The resulting situation will be very similar to that obtaining after the signature of a collective agreement. The agreement reached is recorded in the form of a registered document binding on all the workers in the undertaking or the particular branch affected. It is not necessary that those submitting the demands file be themselves trade unionists; apart from this, the only thing which distinguishes this agreement *(avenimiento)* from a collective agreement is that when a collective dispute breaks out and a demands file is submitted the employees cannot be dismissed. However, this immunity is waived if a worker commits an offence against the property of the undertaking and in certain other cases provided for by law.

Thus the first stage is taken up with interviews and talks between the parties. No third party intervenes, the idea being to encourage settlement of disputes by the simplest possible means. To reinforce the system and improve its chances of success, there is now a tendency to institutionalise it by setting up permanent delegations whose job it is, among other things, to prevent disputes from breaking out.

In fact, however, the results achieved have been somewhat disappointing. Fluctuations in standards of living, the fall in the value of money, the rise in prices, the financial problems confronting businessmen—all consequences of severe inflation—are causing considerable anxiety and tend to blind both sides to the realities of the situation. This is reflected, for example, in a tendency for the workers to present exaggerated demands and for the employers to pitch their counter-offers very low, the object of both parties being to surrender as little ground as

possible before the conciliation procedure gets under way. Only in exceptional cases do these direct contacts serve any purpose other than that of preparing the way for the next stage.

The second stage: conciliation

If the dispute has not been entirely resolved during the first stage, the official conciliation machinery swings into action. Recourse to it is compulsory, as the Code makes clear, but the act of submitting a dispute to a permanent conciliation board does not mean that the parties are bound to accept a settlement or even that an agreement will necessarily be reached at all.

There are two kinds of conciliation boards: the so-called general, ordinary ones and the " special " ones active in certain industries only. The former operate throughout the country in each department or administrative unit, and are empowered to intervene in any collective dispute arising in their particular area unless it has been referred to a " special " board. The general boards consist of three employers' members and three workers' members (two blue-collar and one white-collar), with a government representative (the senior labour inspector in the department) as chairman. For the purpose of appointing the employers' and workers' members of the board, the trade unions and employers' associations submit lists of names and each year lots are drawn in the presence of the Governor of the department.

The members of the boards hold office for one year, but are eligible for reappointment. To safeguard the independence of the workers' members vis-à-vis the undertakings employing them, they enjoy an immunity against dismissal that can be waived only by a reasoned decision of the competent labour judge.

The special boards have to consider collective disputes arising in particular industries or sectors, or in certain occupations. Their establishment, composition and jurisdiction are regulated on the general lines described above but by a government decree instead of by the Code. The employers' and workers' members have to be representative of their constituents in the particular industry or sector concerned.

Boards of both kinds must meet whenever convened by their chairman, and whenever a strike or lock-out occurs within their jurisdiction. The Code lays down that for a board's deliberations to be valid, all its members must be present, but should a member fail to attend he can be temporarily or permanently replaced. Lastly, the chairman is empowered to take over the functions of the board.

Until 1968 the chairman's role was merely to convene the board, direct its debates and if necessary propose that a dispute be sent to arbitration; since 1968, he has been entitled to vote on the report the board has to issue on the causes of the dispute and the obligations of the

parties involved in it.[1] The point of the change was to make the chairman an effective member of the board and thus increase its usefulness.

These boards take cognisance of a dispute, as mentioned above, when the first stage of the settlement procedure has been tried in vain. Should partial agreement have been reached, they limit themselves to such outstanding demands as the plaintiffs have not withdrawn.

The initiative now lies with the boards, and to strengthen their position they are invested with considerable authority: a refusal by either party to submit a dispute to the conciliation board is punishable by a fine; should a union refuse, it can be wound up.

When the proceedings begin, the board's first duty is to ascertain whether any laws, rules or regulations have been broken. It distinguishes between demands of a pecuniary or social nature and those alleging that individual contracts, collective agreements, laws or regulations have not been complied with. If it finds that there have been such infringements, or when acquired rights are at stake, it at once informs the labour inspectorate, which takes the necessary action. Once these cases have been disposed of, the board can deal with the substance of the remaining matters before it.

After hearing each party put its case separately, the board does its best to effect a reconciliation, for this purpose holding meetings attended by both parties or their representatives. The proceedings are conducted orally, with a minimum of formality, members of the board being free to make suggestions for a settlement. If they wish, they can visit places of work, obtain expert advice, and request the labour inspectorate to brief them on the background of the case. The board may also ask two or more of its members to investigate and verify the circumstances which gave rise to the dispute, though it should be added that this is not very often done.

This process of conciliation should not last more than a fortnight. Should an agreement be forthcoming, it must be recorded in a document which is signed by the parties and the members of the board. If the parties fail to reach agreement, the chairman must propose that they submit to arbitration. If this suggestion falls on deaf ears, the board has to produce a full final report on the case, setting out the arguments adduced on both sides.

The third stage: voluntary arbitration

As just mentioned, if the attempts at conciliation should fail, the chairman must suggest that the dispute be submitted to arbitration, unless of course both parties have already agreed to do this on their own initiative. In either case arbitration may be entrusted to one person or to

[1] Act No. 16617 of 1967, amending the wording of section 601 of the Labour Code.

a tribunal of three persons appointed by agreement between the parties (or, if the latter disagree, by the Ministry of Labour and Social Welfare). The arbitrator or tribunal is empowered to consider all the matters dealt with but not settled by the conciliation board, or all those which the parties have freely submitted to him or it.

The arbitration procedure governed by the Code is—as already pointed out—voluntary. The parties are not obliged to accept the chairman's suggestion of arbitration, and should even one party object, then nothing can be done.

There have been in the past, however, and in fact still are today, provisions making arbitration compulsory in certain circumstances. Act No. 8987 of 1948 [1]—promulgated at a time when political and labour turmoil was at its peak—made arbitration mandatory in disputes affecting public services (electricity, gas, telephones, and so forth), but was replaced in 1958 by the Internal Security Act, to which we shall revert when discussing strikes. At present, arbitration is compulsory when the Government orders a resumption of work at the request of the workers affected, or when a stoppage of work would " imperil public health or the economic and social life of the population ". We shall consider this system when we deal with the decrees ordering a resumption of work.

As regards the general regulations laid down in the Code, once the parties have agreed to the arbitration procedure they are bound to comply with the arbitrators' award. This is just the opposite of the earlier conciliation procedure, under which the parties have no option but to submit their case to the conciliation board but are not bound to accept its conclusions or recommendations.

Further, the Code lays down certain important rules with regard to what happens if the proposal to submit the dispute to arbitration is rejected. If it is the employer who rejects the proposal, any improvements which might eventually be agreed on (by an *avenimiento*) or result from the arbitrators' award will be retroactive from the date on which the proposal was made. If on the other hand it is the workers who refuse, such improvements will take effect only from the date of the *avenimiento* or the arbitration award, or as may be decided by the tribunal. This of course presupposes that, either before or during a strike, the dispute is finally settled by agreement between the parties or that, despite their initial refusal, circumstances have led the parties to change their minds and accept arbitration after all. It should be added, however, that although both sides are thus given an incentive to agree to arbitration, they very rarely do so. Arbitration is usually rejected by workers and employers alike.

There is not a great deal in the Code about the workings of the arbitration tribunal. In the initial stages, the powers enjoyed by the

[1] *Legislative Series*, 1948—Chile 3.

tribunal and the procedure it follows differ little from those of the conciliation board. The arbitrators have to study the questions in dispute, carry out any necessary investigations and get advice from experts or labour inspectors. Furthermore, the Code specifically lays down that the tribunal shall hear the members of the conciliation board which deals with the dispute. It must give its award within a period of thirty days, which can be extended for another thirty days, provided the Ministry of Labour and Social Welfare is duly informed. The award is adopted by a majority vote and is binding on the parties to the dispute for the period specified therein (which cannot be less than six months). It is likewise specified that the award is to be given the fullest possible publicity.

An important final point is that, to ensure the efficient working of the arbitration system, the Code lays down that in cases where work has been interrupted by a strike or lock-out, the tribunal can consider a dispute only after work has been resumed.

Resumption of work orders and compulsory arbitration

Under the Labour Code, as we have seen, the Government is empowered, through the Ministry of Labour and Social Welfare, to decree the resumption of work in the event of a strike or lock-out in an undertaking or service the closure of which would directly imperil the health or economic and social life of the community. The fact that the report of the conciliation board which dealt with the dispute has to be considered first would seem to show that the strike in question must be a legal one.

Later this provision [1] was amplified and it was laid down that should work stoppages take place in public services or industries vital for the national economy or in transport undertakings or undertakings supplying essential national defence needs or producing other essential goods, then the President of the Republic may step in and decree that such work should be resumed; if necessary he may call in the civil and military authorities.[2] More recently still, provision has been made for the President to decree a resumption of work if requested to do so by the workers concerned; the request for resumption must be decided on by an absolute majority of the workers attending a meeting called for this purpose and voting by secret ballot in the presence of a labour inspector.[3]

The procedure is for the Government to issue a decree through the Ministry of Labour and Social Welfare, setting out the reasons for ordering a resumption of work, laying down the terms on which it is to

[1] Section 626.

[2] Internal Security Act (No. 12927) of 15 August 1958, section 38.

[3] Act No. 17074 of 1968, section 4.

be resumed, and appointing somebody to take over the management of the undertaking. Work is resumed on the conditions decided by the competent conciliation board, which may not be inferior to those obtaining when the dispute broke out or when the stoppage began.

The person appointed to run or supervise the undertaking takes what action is necessary to resolve the dispute. When it is the workers themselves who have asked for a resumption, or when the latter has been ordered under the original provision of the Labour Code, the 1968 Act cited above requires that an arbitration tribunal be set up composed of two representatives of the undertaking, two workers' representatives appointed by the union or strike committee, and a representative of the Ministry of Labour and Social Welfare who acts as chairman. This body is empowered to study the background of the dispute and the undertaking's finances; it can ask for expert advice and the information it needs to ascertain the costs, profits and wage bill of the undertaking in question. The arbitration award must be announced within thirty days; it takes effect from the date when the file was submitted or the strike or lock-out began and remains in force for one year from the date on which it was issued.

The special systems

There are three exceptions to the general system of dispute settlement, namely disputes occurring in *(a)* agriculture, *(b)* large-scale copper mining, and *(c)* the public sector. Taking account of the special circumstances existing in these sectors, the law makes provision for the establishment of bodies other than those normally competent in these matters and even for the application of a special procedure.

Collective disputes in agriculture

Even if it is true that Chile imports a high proportion of its foodstuffs, agriculture remains of vital importance to the country's economy both by the volume of its produce and by the employment it provides. Furthermore, Chilean agriculture is in many respects typical of the agriculture of the less developed countries. Whence the increasingly urgent need to adopt specific policies and legislation for the agricultural sector.

After protracted differences of opinion and much uncertainty concerning the applicability to agriculture of the general regulations governing trade union organisations and collective disputes, an Act was promulgated in 1947 establishing a special system. This system, which provided for compulsory arbitration and forbade all strikes, was much criticised and not widely applied; many people felt that it put the clock back as far as the trade union rights of agricultural workers were concerned. In 1967 these provisions were replaced by those contained in Chapter III of the Act respecting trade union arrangements in agriculture,

to which reference was made earlier. These provisions, together with the relevant regulations, are still in force.

The new system is an attempt to lay down simple, flexible regulations in keeping with the encouragement given to trade unionism and collective bargaining. If collective dispute proceedings are begun by a majority of the workers on a given farm, estate or agricultural undertaking, the law provides that the dispute shall be deemed to apply to all the workers on the farm, estate or agricultural undertaking concerned, and that the collective agreement which is finally concluded shall apply to all. A mediating role in such disputes may be played by the special permanent agricultural conciliation boards or the conciliation bodies specially set up by the parties concerned. The special permanent boards may be established by presidential decree for specified regions or ecological zones. Their composition, and the way their members are appointed, are regulated in accordance with the general provisions of the Labour Code. The Ministry of Labour and Social Welfare, for its part, may recognise as a special agricultural conciliation board any body having similar purposes which is set up jointly by the most representative employers' and workers' organisations. In the absence of both the above-mentioned types of board, an agricultural dispute may be considered by one of the general conciliation boards.

The first action of the agricultural conciliation board is to consider whether it is competent to hear the case. This point has to be settled at the outset; in the event of disagreement the chairman gives a ruling against which there can be no appeal. Once the board has declared itself competent, it is the duty of the chairman to act as mediator or provide for mediation during the period following the conciliation procedure for as long as the dispute continues or no mediation officer has been appointed for the purpose. He also has to issue the requisite reports and appoint one or more delegates to attend meetings at which strike votes are taken. The labour inspector may prolong the conciliation period once only, for not more than a fortnight, and the parties can always agree between themselves to extend this period for a like duration.

Should all attempts at conciliation break down, the workers may declare a strike, provided they observe the general conditions laid down for such action. Once a strike has been declared, all work on the estate or in the undertaking must come to a stop, except such work as is essential for the conservation of fruit, the upkeep of plantations and the care of livestock. Emergency staff are assigned to these jobs and the labour inspector has to see to it that they are not employed on any other kind of work.

Collective disputes in large-scale copper mining

Like agriculture, large-scale copper mining is one of the principal sectors of the national economy. Chile is of course one of the largest

producers of copper in the world, and copper is its most important export and chief earner of the foreign exchange needed to pay for imports. Large-scale copper mining also gives work to an army of people who are (by comparison with persons engaged in similar occupations in Chile) well paid, and is a major source of tax revenue.

The industry is remarkable, too, by reason of its concentration in just a few areas, whereas agriculture and the greater part of manufacturing industry are scattered all over the country. This probably explains why the trade union movement in the copper industry is well organised and relatively strong, and why collective disputes in this industry have always had serious effects on the national economy.

It is understandable, therefore, that a special procedure has been devised for the settlement of disputes in large-scale copper mining.[1] The demands file has to be brought to the notice of the employer well in advance of the date on which the life of the agreement or arbitration award which it is desired to modify expires. The file is prepared by the union, which submits it for discussion and approval by the workers at a meeting called for this purpose. The employer has to give a written answer within the ten days following receipt of the file. His answer may challenge the legality of the demands but must refer to each of the points raised. It must be accompanied by a copy of the company's balance sheet for the previous year and by an estimate of the cost that would be entailed in meeting each of the demands presented. Armed with this documentation, the parties must then start direct talks with a view to reaching a settlement.

Should these talks break down, conciliation proceedings begin. The dispute is now referred to the Permanent Conciliation Board for the Large-Scale Copper Mining Industry, whose members are the Minister of Labour and Social Welfare, the Minister of Mines and the Vice-President of the Copper Corporation (or their deputies). At the first audience given by the Board, the parties must report on any agreement reached by direct negotiation, the subjects or points in dispute, and their position regarding them. The Board can spend a reasonable time trying to get the parties to agree. During this period proposals may be made for various forms of mediation; should they be rejected, then arbitration will be proposed at the Board's last audience. Acceptance of arbitration must be unconditional; should either party fail to reply to this offer or hedge its acceptance with conditions, it is considered to have rejected the proposal.

If the conciliation proceedings fail and arbitration has been refused, the Board issues a report containing a statement of the causes of the dispute, a summary account of the direct talks between the parties and the efforts at conciliation, and the final formula proposed by the Board for a settlement. This formula has to be accepted or rejected, in writing,

[1] Decree No. 313 of 30 April 1956, as amended.

before the life of the agreement or arbitration award expires: the workers have to vote on it in a secret ballot conducted simultaneously at all the places of work involved in the dispute.

Should both parties accept the Board's proposal, an *acta de avenimiento* is signed which remains in force for at least fifteen months. If the proposal is accepted by the workers and rejected by the undertaking, no strike may be called for another ten days. Rejection by the workers is tantamount to approval of strike action, which must then begin the day after the agreement or arbitration award expires.

Disputes involving state employees

As already mentioned, the great majority of blue- and white-collar workers in the service of the State or the municipal authorities or working in state undertakings are prohibited, under section 368 of the Labour Code, from joining or forming a union, nor may they call a strike or stop work.

So what happens when state employees demand—sometimes most insistently—an improvement in their working conditions? For although they are not allowed to form trade unions, they do have their own associations, or set up ad hoc forms of organisation to pursue particular ends, and obviously they voice their grievances. This is what gives rise to illegal strikes and stoppages.[1]

How these demands are dealt with by the competent authorities depends very much on whether they are obviously justified or not, the strength of the association putting them forward, the seriousness of the situation that would result from a stoppage of work, the economic resources available to meet them, and what sort of political or other pressures are brought to bear.

In any event, there is usually less freedom of manoeuvre than in the field of private enterprise, since conditions of work in public undertakings are generally laid down by statutes which can only be amended by the legislative authorities. In the last resort, disputes in the public sector are often settled by the introduction of Bills, by the modification of Bills already in the pipeline, or by undertakings entered into by the government authorities with regard to specific improvements or benefits. Whether action of this kind is approved by the legislature depends of course on the balance of power in parliament and very largely on the degree of patronage and support the Government sees fit to give it. It should be noted, finally, that such disputes are often settled by the appointment of a neutral mediator, usually some nationally known figure.

[1] Strikes and stoppages of this kind have, for example, occurred in services run by the Ministry of Education, the National Health Service, the Tax and Excise Department, Posts and Telegraphs, and other state-run institutions.

Strikes and lock-outs

Conditions on which a strike may be declared

Chilean law requires that certain conditions be satisfied before there can be a legal stoppage of work. First, a strike can be declared only after all conciliation proceedings have failed and arbitration has been refused. Second, the period of notice required for the termination of the collective agreement (if there is one) must have expired. Third, an absolute majority of those voting in a secret ballot (in which at least two-thirds of the members of the union took part) must have declared in favour of strike action. And lastly, it is expressly laid down that a representative of the conciliation board dealing with the dispute must have ascertained that the above requirements have been duly complied with.

The fact that some of these requirements refer specifically or tacitly to trade unions at first gave rise to some doubt as to whether unorganised workers were legally entitled to strike. The Supreme Court has ruled that they are. The Court reasoned that collective labour disputes, with all their consequences, may arise even though the workers involved are not members of a union. Since a strike is one of the consequences that may flow from the dispute, it would be improper to consider a strike called in such circumstances illegal; on the other hand, it is subject to the same conditions as are applicable to other strikes, with such adjustments as may be called for.

Restrictions on the right to strike

If the proposed strike satisfies all the above conditions and is therefore legal, its execution cannot remain indefinitely delayed; the strike must begin within twenty days of the decision being taken (although this period may be prolonged by agreement between the parties). If there is no stoppage during this period, the dispute is considered as settled and any later stoppage becomes illegal. To keep the door open for a settlement, the Code lays down that once a strike has been called a five-man committee must be set up to keep the workers informed of developments, see to their needs, and act as an intermediary between the workers and the employer. This committee is also responsible for eventually convening a general meeting to call off the strike.

There is a general ban on all strikes in public services, and in production, transport or trade (public or private) where stoppages might endanger law and order, disrupt public services, or damage any vital industry. This prohibition is contained in the Internal Security Act, which declares such strikes to be offences and prescribes terms of imprisonment for those guilty of taking part in or promoting them. The way in which

the ban has been applied has varied according to the political or social circumstances of the moment.

Other restrictions laid down in the Code relate more especially to trade union confederations and are designed to prevent a general strike. Lastly, there are restrictions of a more specific nature in the form of the resumption of work orders described earlier.

Effects of a state of strike

A stoppage undertaken in accordance with the Code has certain consequences for employment contracts. In the first place, the workers' immunity to dismissal, to which we have already referred, remains intact. Apart from this, the most important effects are that work has to come to a halt and the undertaking is forbidden to engage other staff in order to carry on its activities. Generally speaking, the only work that may be done is that which is essential to avoid damage to plant or equipment such that normal resumption of work might be jeopardised. Individual contracts of employment remain in force, but the obligations deriving therefrom—to work in accordance with instructions and to pay the appropriate wages—are temporarily suspended.

These effects continue until the strike is over, although any agreement reached by the parties may, as far as benefits are concerned, be retroactive. A strike usually ends when the men go back to work and activities return to normal. This can happen *(a)* as a result of a direct settlement between the parties, which will be in the nature of a collective agreement and in which the strike committee or trade union leaders will have played a major part; *(b)* by acceptance of arbitration; or *(c)* by governmental decree ordering a resumption of work.

Illegal strikes

Strikes also take place which do not comply with the provisions of the Code and related legislation on the settlement of labour disputes, as when tools are suddenly downed without regard to the rules in force. Workers taking part in such strikes are no longer covered by the guarantees and safeguards provided by the law and their employer is entitled to terminate their contracts.

Nevertheless, illegal strikes have been very frequent, indeed more numerous than those complying with the law. The following table shows how many legal and illegal strikes took place in the period 1966-69 and how many workers were involved in them.

Unofficial strikers are not always punished with the full rigour of the law. Various factors have to be taken into account in the search for a suitable settlement: for example, the justness of the workers' demands, the importance or numbers of those involved in the dispute, the " temperature " of the labour movement and of society in general, the pressure

Year	Legal strikes		Illegal strikes	
	Number	Workers involved	Number	Workers involved
1966	137	32 115	936	163 330
1967	253	60 110	861	168 380
1968	223	59 755	901	223 039
1969	206	54 214	771	221 192

Source: President's Message to Congress, 21 May 1970.

of public opinion and the effectiveness of the bodies seeking a settlement. This explains why, when illegal strikes have broken out, there has been intervention by mediators from the Collective Bargaining Department and other officials (including, even, depending on the nature and significance of the situation, the Minister of Labour and Social Welfare and senior officials from the Ministry of the Interior). Another point to be borne in mind is that in Chile a strike is not always a trial of strength between employers and workers; sometimes it is just a means of prodding the authorities into intervening, or of getting them to issue a resumption of work order embodying new working conditions.

Lock-outs

The Labour Code defines a lock-out as any period of involuntary unemployment of the wage-earning or salaried employees of an undertaking, establishment or works which is caused by suspension of operations by order of the master or employer (section 615).

In public services and in activities which could have a bearing on vital industries, the right to declare a lock-out is limited by the Internal Security Act. The same prison sentences as are applicable in the case of strikes can be passed on employers who abusively declare a lock-out. Indeed, it has even been argued on the basis of this Act and of more recent provisions contained in the Termination of Employment Contracts Act [1] that all lock-outs are in fact illegal.

Be that as it may, few lock-outs occur in any industry, and no serious problems have so far arisen as a result.

[1] Act No. 16455 of 5 April 1966 (*Legislative Series*, 1966—Chile 1).