THE ERITREAN EMPLOYMENT ACT OF 1958: ITS PRESENT STATUS

*by Robert C. Means**

One of the important pieces of legislation enacted by the Eritrean Assembly during the Federation[1] was the Employment Act of 1958.[2] This act, superseding a miscellany of Eritrean legislation going back into the Italian colonial period,[3] established a broad range of minimum labour conditions and a system of labour inspection to enforce them and provided for the registration of employers' associations and labour unions.

The Employment Act was several years in advance of similar legislation in the rest of the Empire. Outside of Eritrea the first Ethiopian legislation establishing minimum labour conditions was the Civil Code of 1960,[4] and it was probably not until promulgation of Legal Notice No. 302 of 1964[5] that minimum conditions were established for the Empire as a whole that were generally as favourable to employees as those of the Employment Act for Eritrea.[6] The first statutory reference to labour unions outside of Eritrea appears also to have been in the Civil Code,[7] and the first Empire-wide system of labour inspection[8] was established by the Lab-

* *Former Assistant Professor, Faculty of Law, Haile Sellassie I University.*

1. From 1952 to 1962, from the end of British military administration of Eritrea to the incorporation of Eritrea into a unified Empire, Eritrea was federated with Ethiopia as an autonomous unit under the sovereignty of the Emperor. For a discussion of Eritrea's legal status during and after the Federation, see Zaerabruk Aberra, "The Legal Status of Eritrea, *Materials for Public Law II* 1964-65 (K. Redden, ed., unpublished, Faculty of Law Library, 1965).
2. *Eritrean Gaz.*, vol. 20, no. 5 (supp.).
3. See Schedule II of the Act, listing the legislation repealed wholly or in part.
4. The Factories Proclamation, 1944, Proc. No. 58, *Neg. Gaz.*, year 3, no. 8, empowered the Minister of Commerce and Industry to issue regulations with respect to labour conditions in factories, but this power never was exercised. G. von Baudissin, "An Introduction to Labour Developments in Ethiopia," *J. Eth. L.*, vol. 2, p. 101, 103 (1965). When in 1964 the Minister did promulgate regulations of this kind to supplement and improve on those contained in the Civil Code, he did so under the Labour Relations Proclamation of 1963, Proc. No. 210, *Neg. Gaz.*, year 23, no. 3, rather than under the Factories Proclamation. See L. Not. No. 302, 1964, *Neg. Gaz.*, year 24, no. 5.
5. *Neg. Gaz.*, year 24, no. 5.
6. Certain Civil Code provisions were more favourable to employees than corresponding provisions of the Employment Act, for example, the provisions for paid annual leave. *Compare* Civ. C., Art. 2562, *with* Employment Act, Art. 22. But taking each law as a whole, the Employment Act appears to have been the more generous of the two, if only because it is more detailed and deals with matters not touched on by the Code.
7. See Civ. C., Arts. 406(2) (registration of labour unions) and 2516 (negotiation of collective agreements between employers and labour unions).
8. The Factories Proclamation, cited above at note 4, provided for the appointment of factory inspectors, but it does not appear that a factory inspection system was in fact put into effect under that law.

our Inspection Service Order of 1964[9] and the Labour Standards Proclamation of 1966.[10]

At least by 1966, however, there did exist general Ethiopian legislation covering substantially the same ground as the Eritrean Employment Act. The purpose of this note is to consider the legal effect of this Ethiopian legislation, and of the termination of Federation, on the Employment Act: whether the Act still has legal force in Eritrea and, if so, to what extent. This question raises issues that are of general importance to Ethiopian public law. It also has importance in its own right for its bearing on the rights and duties of Eritrean employers and employees. To take only one example, the Ethiopian Civil Code and the Eritrean Employment Act differ in their provisions concerning paid sick leave. The Civil Code allows employees up to one month of sick leave at half pay,[11] while the Employment Act allows virtually no paid sick leave at all.[12] In the case of an Eritrean employee absent from work by reason of sickness, the obligation of the employer to pay the employee wages during his absence may be defined by the Civil Code or the Employment Act, but not by both.

The Employment Act during the Federation: 1958–1962

Before the end of the Federation, two pieces of Ethiopian legislation partly matching the coverage of the Employment Act were enacted, the Civil Code of 1960 and the Labour Relations Decree of 1962.[13] Both laws included broad repeals provisions. The Code repealed "all rules whether written or customary previously in force concerning matters provided for in this Code."[14] In similar terms the Labour Relations Decree repealed "all legislation, regulations or orders previously in force concerning matters provided for herein."[15] By these provisions all earlier legislation on matters dealt with in the Code or the decree was repealed *wherever the Code and decree applied.* Neither Code nor decree applied in Eritrea, however.

During the Federation, legislation in the Empire fell into three classes with respect to territorial application. There was federal legislation, which applied to both Ethiopia and Eritrea; such legislation was limited by Article 3 of the Federal

9. Order No. 37, *Neg. Gaz.*, year 24, no. 4.
10. Proc. No. 232, *Neg. Gaz.*, year 25, no. 13.
11. Civ. C., Art. 2542.
12. Article 24(3) of the Employment Act entitles an employee to a full day's pay when he misses *part* of that day by reason of accident or sickness, but there is no provision in the Act for paid sick leave where the employee misses one or more full days or work. See Employment Act, Art. 25.
    Such general provisions for paid sick leave are to be distinguished from those making the employer liable in the special case where accident or sickness arises out of the employee's work. Under both the Civil Code and the Employment Act, the employer's liability in such a case includes some compensation for lost earnings; the provisions of the two laws differ, and which is the more favourable to an employee depends on the facts of the particular case. *Compare* Civ. C., Arts. 2556-58, *with* Employment Art, Arts, 44-46.
13. Dec. No. 49, *Neg Gaz.*, year 21, no. 18.
14. Art. 3347. Subsequent articles modify this general repeals provision, but the modifications are not relevant to this discussion.
15. Art. 36.

Act[16] to certain designated fields, such as defense, foreign affairs, and commerce with foreign countries and between Ethiopia and Eritrea. There was also Ethiopian legislation, which applied only to Ethiopia and not to Eritrea, and Eritrean legislation, which applied only to Eritrea.

The Labour Relations Decree fell within the category of purely Ethiopian legislation; the Decree was not applicable as a matter of law in Eritrea. Nor was there anything in the legislation that *was* federal in application that could be construed to repeal or modify the Employment Act. At least to the end of the Federation, therefore, the Employment Act remained in full force in Eritrea.

The End of the Federation: 1962

Five weeks after the Labour Relations Decree became effective, the Federation was ended by Imperial order,[17] and Eritrea became part of a unified Ethiopian Empire. The legislative jurisdiction of the Emperor and Ethiopian Parliament was extended to all parts of the Empire; their future enactments would apply to Eritrea as elsewhere. But what of existing legislation—legislation that had been applicable previously to only one part of the former Federation?

The Imperial order dissolving the Federation dealt explicitly with this problem. As interpreted, the order essentially preserved the status quo. Existing Eritrean legislation was to continue to apply in Eritrea, and, as a necessary corollary although not stated in the order, existing Ethiopian legislation dealing with the same subject matter was not to be extended to Eritrea, This result followed principally from the broad interpretation given to Articles 4 and 6 of the order,[18] which provided as follows:

> "4. All rights, including the right to own and dispose of real property, exemptions, concessions and privileges of whatsoever nature heretofore granted, conferred or acquired within Eritrea, whether by law, order, contract or otherwise, and whether granted or conferred upon or acquired by Ethiopian or foreign persons, whether natural or legal, shall remain in force and effect. . . .

16. Under the treaty of peace between the Four Powers (the United States, Great Britain, the Soviet Union and France) and Italy, the disposition of Eritrea, as a former Italian colony, was to be governed by recommendation of the United Nations General Assembly. Treaty of Peace, Annex XI, Para. 3, quoted in N. Marein, *The Ethiopian Empire Federation and Laws* (Rotterdam 1964), p. 354. The Federal Act consisted of the first seven articles of the General Assembly resolution of December 10, 1950, relating to the then proposed federation of Eritrea with Ethiopia. Ratification of these provisions by Ethiopia was a condition for United Nations approval of the Federation. *Ibid.*, p. 356. Neither the Federal Act nor its ratification was published in the *Negarit Gazeta*, but its ratification was referred to in Order No. 6, 1952, *Neg. Gaz.*, year 12, no. 1, and the text of the Federal Act may be found in Appendix II of the Marein book.

17. Order No. 27, 1962, *Neg. Gaz.*, year 22, no. 3.

18. It is possible that Article 5 of the order might be construed to save some kinds of Eritrean legislation not saved by Articles 4 and 6. Article 5 provides that "all rights, powers, duties and obligations of the former Administration of Eritrea become . . . the rights, powers, duties and obligations of the Imperial Ethiopian Government."

6. All enactments, laws and regulations or parts thereof which are presently in force within Eritrea or which are denominated to be of federal application, to the extent that the application thereof is necessary to the continued operation of existing administrations, until such time as the same shall be expressly replaced by subsequently enacted legislation, remain in full force and effect and existing administrations shall continue to implement and administer the same under the authority of the Imperial Ethiopian Government."

Article 4 and 6 preserved Eritrean legislation to the extent that it conferred rights on any person or was "necessary to the continued operation of the existing administration." Both articles are susceptible to widely varying interpretations. Article 4, for example, might be limited to the preservation of rights already immediately possessed by particular individuals[19] or extended to the less definite and more general right to take advantage of legal provisions at some future time. Applied to the Employment Act, the first interpretation might at most preserve the Act's minimum labour condition provisions for persons subject to the provisions as of the end of the Federation; the latter interpretation would preserve them in full force for the benefit of anyone wishing to take advantage of them in the future. In practice, the order has been construed broadly to include all or virtually all existing Eritrean legislation. The Employment Act and other Eritrean legislation in force immediately before the end of the Federation still remained in force immediately after the Federation's end.

The Employment Act since the Federation

We have now to consider the effect of post-1962 Ethiopian legislation on the Employment Act. The Imperial order terminating the Federation has been interpreted to save most or all Eritrean laws then in force from being repealed as an automatic consequence of the end of Eritrea's autonomous status. But the Order did not—and, indeed, constitutionally could not—protect Eritrean laws from repeal or modification by Ethiopian legislation enacted after the end of the Federation.

Since the Federation there have been four important labour law enactments apart from those dealing with government employees: the Labour Relations Proclamation of 1963,[20] the Labour Inspection Service Order of 1964, the Labour Standards Proclamation of 1966, and Legal Notice No. 302 of 1964. Their combined effect appears to have been to repeal much but not all of the Eritrean Employment Act.

The Labour Relations Decree had been proclaimed by the Emperor while Parliament was not in session, pursuant to His powers under Article 92 of the Revised Constitution.[21] As required by Article 92, the decree was submitted to the next session of Parliament, which approved it with minor amendments. The law then was reissued as the Labour Relations Proclamation of 1963.

19. Cf. Civ. C., Arts. 3348-49, distinguishing, for purposes of the Code's repeals provisions, between legal situations finally created at the time of enactment of the Code and those not then finally created.

20. Proc. No. 210, *Neg. Gaz.*, year 23, no. 3.

21. Article 92 allows the Emperor to proclaim decrees "in cases of emergency that arise when the Chambers (of Parliament) are not sitting."

Reissuance of the former decree as a proclamation was in legal effect a re-enactment of the law; what had previously been a 1962 decree became a 1963 proclamation. The significance of this change goes beyond a mere change in the title of the law and the minor amendments that were made. As we have seen, when the decree was enacted in 1962 it did not extend to Eritrea, and, as a result, the repeals provision did not apply to the Eritrean Employment Act. Before it was reenacted as a proclamation, however, the Federation had ended, and the proclamation, unlike the decree, therefore extended to the entire Empire. The repeals provision that had not applied to the Employment Act in 1962 did apply to it in 1963, and the provisions of the Employment Act that concern matters dealt with in the Labour Relations Proclamation – in particular, the Act's provisions concerning labor unions and employers' associations[22] – were thereby repealed.

That all this should follow from reenactment of the law after the end of the Federation seems plain enough. What perhaps does not appear quite so plain is why Parliament's approval of an Imperial decree with minor amendments should be regarded as a reenactment of the entire law, and not merely as amendment of an existing law. The reason lies in the relationship between the Imperial decree power on one hand and the power to enact proclamations shared by the Emperor and Parliament on the other hand. We have already said that Article 92 requires that Imperial decrees be submitted to the next session of Parliament. Article 92 itself contemplates only two courses of action on the part of Parliament. Parliament may disapprove the decree, in which case the decree ceases to be law,[23] or it may approve the decree, in which case the decree continues in force *as a decree*.[24] Whether Parliament's unqualified approval of a decree should be treated as reenactment of the law is not entirely clear,[25] but it seems that it probably should not.

But what if Parliament's action is not merely to approve the decree as it stands but rather to approve it with amendments? Parliament then is no longer acting pursuant to Article 92. Rather, it necessarily is acting pursuant to its power to enact proclamations (subject to Imperial veto) under Articles 88-90. No matter how minor the amendments, Parliament's action constitutes enactment of a new proclamation to replace the old decree.[26]

This distinction between approval of a decree with amendments and unqualified approval of a decree is reflected in the form given to each as published in the

22. Employment Act, Arts. 82-85 and 100-01. It appears that Articles 77-781, relating to the resolution of labour disputes, also were repealed wholly or in part by the Labour Relations Proclamation,.

23. See Not. of Disapproval No. 1, 1963, *Neg. Gaz.*, year 22, no. 10, disapproving Dec. No. 41, 1960, *Neg. Gaz.*, year 19, no. 11. This apparently is the only instance in which a decree has been disapproved.

24. See, e.g., Not. of Approval No. 1, 1960, *Neg. Gaz.*, year 19, no. 4, approving Dec. No. 23, 1957, *Neg. Gaz.*, year 17, no. 1. The notice of approval is quoted in the text accompanying note 28, below.

25. The language of Article 92 points both ways. It states that, when Parliament approves a decree, (1) the decree "shall continue in force" and (2) the decree "shall become law upon publication, in the Negarit Gazeta, of said approval."

26. One consequence of this distinction is that Parliament's approval of a decree with amendments is subject to Imperial veto under Article 88 of the Revised Constitution, while a simple parliamentary approval or disapproval of a decree under Article 92 is not.

Negarit Gazeta. The preamble and first two articles of the Labour Relations Proclamation read as follows:

> "Whereas on September 5, 1962, the Labour Relations Decree was promulgated as Decree No. 49 of 1962; and
>
> *Whereas Parliament has introduced certain amendments into said Decree, and approved a revised text of the law;*
>
> Now, therefore, *in accordance with Article* 34 *and* 88 *of Our Revised Constitution*, We approve the resolutions of Our Senate and Chamber of Deputies, and We hereby proclaim as follows:
>
> 1. This Proclamation may be cited as the Labour Relations Proclamation, 1963.
> 2. The Labour Relations Decree (Decree No. 49 of 1962) is hereby renumbered as Proclamation No. 210 of 1963, *and incorporated herein, subject to the changes set forth below.*" (Emphasis added.)

As indicated by the reference of the preamble to Article 88 of the Revised Constitution and by the title given to the law by Article 1, the law constitutes a new proclamation and not merely a continuation of the old decree. And, as indicated by Article 2, the proclamation enacts the entire text of the old decree except those provisions amended in Parliament.

This form may be contrasted with the one used to announce Parliament's unqualified approval of a decree, for example, its approval of Decree No. 23 of 1957:[27]

> "Decree No. 23 of 1957 having been duly transmitted to Parliament for consideration pursuant to Article 92 of the Revised Constitution, and due notice having been given by Parliament of the approval of said Decree, "The Annual Highway Renovation Expenditure (Amendment) Decree, 1957", pursuant to said Article 92, continues in force in law."

To return now to the other post-1962 legislation referred to above. This legislation, taken together, raised the minimum labour conditions established by the Civil Code,[28] established minimum conditions with respect to matters not dealt with by the Code,[29] created a system of labour inspectors,[30] and took steps to ensure that the inspectors were able to carry out their work effectively.[31] In all these respects it parallelled provisions of the Eritrean Employment Act. Not all the corresponding provisions of the Employment Act were repealed, however.

---

27. Not. of Approval No. 1, 1960, *Neg. Gaz.*, year 19, no. 4, approving Dec. No. 23, 1957, *Neg. Gaz*, year 17, no. 2.
28. With respect to annual leave, for example, under Civil Code Article 2562 an employee with four years of service had been entitled to ten consecutive days of paid annual leave; under Article 5(1) (b) of Legal Notice No. 302 he is entitled to sixteen days.
29. For example, the Civil Code placed no limitations on the employment of young persons apart from the few special provisions governing contracts of apprenticeship (Arts. 2594-97). Article 13 of the Labour Standards Proclamation now in general prohibits the employment of persons under the age of fourteen in industrial enterprises and allows the employment of persons of age fourteen up to eighteen only under specified conditions.
30. Art. 5, Labour Inspection Service Order.
31. Arts. 7 and 8, Labour Standards Proclamation.

It appears that this legislation did have the effect of repealing the provisions of the Employment Act regarding labour inspection, both those establishing a system of labour inspectors for Eritrea and those intended to facilitate the inspectors' work.[32] The laws establishing a system of labour inspection for Ethiopia repealed all earlier legislation on the same subject,[33] and there is nothing, in these laws that would save the Eritrean labour inspection provisions from the general repeal. The law applicable in Eritrea in this respect appears now to be the Labour Inspection Service Order of 1964 and the Labour Standards Proclamation of 1966, not the Eritrean Employment Act.

So far as minimum labour conditions are concerned, however, it appears that important parts of the Employment Act remain in force. There are two reasons for this. First, Legal Notice No. 302 and the Labour Standards Proclamation both contain provisions saving any statute or other legal arrangement that creates labour conditions more favourable to employees than those of the legal notice and proclamation.[34] Some provisions of the Employment Act are more favourable to employees than the corresponding provisions of the Ethiopian legislation, and those provisions of the Act have been saved from repeal.[35]

Defining exactly which of the Act's provisions meet this "more favourable" standard is not without its difficulties, however. First, there is the problem of what to do with related provisions. To illustrate this problem, we will take a hypothetical case that presents the problem in more extreme form than do the actual provisions of the Act. Suppose that the Employment Act provided for a nine-hour work day and a five-day work week, but that Legal Notice No. 302 provided for an eight-hour work day and a six-day work week. A literal application of the "more favourable" standard would allow employees in Eritrea the best of each set of provisions: an eight-hour work day from Legal Notice No. 302 and a five-day work week from the Employment Act. In consequence, they would have a forty-hour work week – shorter than that provided by *either* law.

One strongly suspects that such a result would not reflect the intention of the draftsmen or legislature. Presumably, where provisions are as closely related as those fixing the number of hours to be worked each day and the number of days to be worked each week, the related provisions must be taken together — either the nine-hour day *and* the five-day week or the eight-hour day *and* the six-day week. Yet, this principle cannot be taken too far. Extended to the limits of its logic, it would leave the saving provisions of Legal Notice No. 302 and the Labour Standards Proclamation with virtually no legal effect as they apply to the Employment Act. In one important sense every minimum labour condition provision within each of the two systems of law — Ethiopian and Eritrean — is related to every other. Virtually any improvement in working conditions increases employers' costs at least in the

32. Arts. 66-67, Employment Act.

33. The Labour Inspection Service Order contained no explicit repeals provision, but it presumably did implicitly repeal any earlier legislation establishing a labour inspection service. In any event, the repeals provision of the Labour Standards Proclamation did explicitly repeal "all... laws previously in force concerning matters provided for in the Proclamation." (Art. 2)

34. Art. 10., L. Not No. 302, and Art. 15, Labour Standards Proclamation.

35. One of the few provisions that seem clearly to fall into this category is Article 21 of the Employment Act, allowing employees to take religious holidays without pay in addition to the six national holidays with pay.

short run. This is true not only of higher wages but also of longer paid vacations, shorter working hours, or increased employer's liability for accidents and sickness. The minimum labour conditions provisions as a whole are, or at least should be, the outcome of balancing this increased cost against the need to protect the interests of workers. A substitution of a "more favourable" provision for *any* existing provision shifts that balance, giving greater total benefits to workers and imposing greater total costs on employers. The shift is not usually so obvious as in the above hypothetical case of the number of hours of work per day and days of work per week, but it is not any the less real for that.

There appear to be three possible solutions. One is to allow the substitution of any provision that taken by itself is more favourable to employees, without regard to its relationship to other provisions. The hypothetical case of daily and and weekly work hours suggests the kind of result that this solution may produce in some instances. A second solution is to recognize that all of the minimum labour condition provisions of each legal system – Ethiopian and Eritrean – are related to one another and therefore to choose between the Ethiopian provisions as a whole and the Eritrean provisions as a whole. The logic of this solution cannot be faulted, but it cannot easily be squared with the saving provisions of the Labour Standards Proclamation and Legal Notice No. 302, which seem to contemplate that at least *some* more favourable provisions could be applied in preference to particular provisions of those laws.[36] Finally, a more or less arbitrary distinction can be drawn between provisions that are very closely related and those that are less so. This, it appears, is what has to be done if reasonable effect is to be given to the saving clauses.

The complexity of this process can be understood by viewing a concrete problem likely to arise – a problem requiring the analyst to answer also the questions, more favourable to *whom* and *under what circumstances?* The saving provisions refer to labour conditions more favourable "to employees." But employees are not a homogeneous group; what may be more favourable for one employee may be less favourable for another. Also, even for a single employee, which of two provisions is the more favourable may vary according to the circumstances.

This problem is illustrated in both of its aspects by the severance pay provisions, Article 36 of the Employment Act and Article 9 of Legal Notice No. 302. Article 36 divides employees into two classes: those earning more than one hundred dollars per month, and those earning one hundred dollars per month or less. Severance pay for the first group of employees who have been employed for five years or more is three months' pay plus an additional half month's pay for each year of service over five; for those who have worked less than five years, it is reduced proportionately. For the second group of employees, severance pay is one quarter of a month's pay for each year of employment.

Article 9 of Legal Notice No. 302 makes no distinction between employees on the basis of the amount of their wage. For any employee who has been employed for one year or more, severance pay is thirty times the employee's average daily wage, with a twenty-five per cent increment for each year of employment after

36. They certainly contemplated this where more favourable conditions were provided by agreements between employers and employees, and such private agreements are classed together with legislation as "legal arrangements" by the saving provisions.

the first one. Regardless of the length of service, however, an employee is not entitled to more than 180 times his average daily wage.

In comparing these two provisions, there is an initial problem as to the meaning of "average daily wage" in Legal Notice No. 302 – whether it means the employee's wages during a period of time divided by the *total number of days* in the period or his wages during the period divided only by the *number of work days*. It seems that it probably was intended to mean the former, but on either interpretation the general conclusion is the same: Legal Notice No. 302 provides greater severance pay for employees earning one hundred dollars per month or less and also for employees earning more than one hundred dollars per month who have been employed for less than a certain number of years – on the interpretation of average daily wage suggested here, that number is approximately two.[37] For employees earning more than one hundred dollars per month who have been employed for longer than this, the Employment Act provides the greater amount of severance pay. Thus, whether Article 36 of the Employment Act or Article 9 of Legal Notice No. 302 is the more favourable to employees depends on which employees one means.

The two provisions also present the question of under what circumstances. The amount of severance pay fixed by law is of no concern to an employee whose employment is terminated under circumstances that do not meet the requirements of the severance pay provision. Although Legal Notice No. 302 provides for the greater amount of severance pay for what is probably the majority of employees, the Employment Act entitles employees to severance pay under a broader range of circumstances.

The Employment Act provides for severance pay in all circumstances with two exceptions. The exceptions are (1) where the employee is dismissed for certain kinds of misconduct, which are enumerated in Article 33 and (2) where the employee himself terminates the employment contract. The first exception applies to all employees. The second, however, does not apply to employees earning more than one hundred dollars per month with at least five years of service or to other employees with at least two years of service; these employees are entitled to severance pay even when they, rather than the employer, terminate the employment contract.

Legal Notice No. 302 in effect works from the opposite direction; rather than specifying the cases in which an employee is *not* entitled to severance pay, it specifies the one case in which he *is* entitled to it, which is where the employer dismisses the employee without good cause. Comparing this case with the circumstances under which an employee would be entitled to severance pay under the Employment Act, Legal Notice No. 302 appears to be less favourable to employees in two respects. First, under the legal notice an employee is never entitled to severance pay if he terminates his employment himself. Second, good cause for dis-

37. Under the Employment Act, an employee earning more than one hundred dollars per month with less than five years of service is entitled to severance pay equal to three fifths of a month's pay for each year of service. For an employee with only one year of service, this is clearly less than the amount provided by Legal Notice No. 302 (three-fifths of a month's pay versus a full month's pay); for an employee with two years' service the two amounts are nearly equal (one and a fifth months' pay versus one and a quarter months' pay); and a few months after completion of the second year of service the amount provided by the Employment Act becomes the greater.

missal exists in at least two instances in which the employee is guilty of no misconduct. These are where, "in the circumstances, it would not be reasonable to expect the contract to be extended or renewed," and where "the situation filled by the employee is abolished in good faith."[38] In both of these instances, it appears, an employee would be entitled to severance pay under the Employment Act.

Now, how does one apply the more favourable standard to this mixture of advantages and disadvantages on each side? One alternative is to take the best of each: the Employment Act to control on the question whether any severance pay is due and also on the amount of severance pay where it is the more generous in that respect; Legal Notice No. 302 to control on the amount of severance pay where it is the more generous. This alternative requires, however, not merely the separation of one related provision from another, but the selection of only the most favourable parts of single provisions and their combination to form a hybrid provision that is like no provision in either law. That this is what this alternative requires does not make the alternative clearly wrong – the questions of eligibility for severance pay and of the amount of severance pay for each group of employees *could* have been dealt with in separate provisions, and the fact that they were not may be regarded as merely a problem of form. But the same sort of doubts about the intent of the draftsmen and legislature that would arise in the hypothetical case of daily and weekly work hours arises here in the actual case of eligibility for and the amount of severance pay.

A second alternative is somehow to weigh the advantages and disadvantages of each provision and declare one or the other the more favourable on the whole. The difficulty with this alternative is that a standard of measurement is lacking. It is not difficult to compare an eight-hour day and six-day week with a nine-hour day and five-day week, because there is an obvious standard against which each can be measured – the total number of hours per week. But there is no very obvious standard against which to measure a greater amount of severance pay for some employees on one hand against a greater amount for others and a greater number of cases in which severance pay will be due on the other; and such standards as do suggest themselves – such as the average amount of severance pay for all employees discounted by the likelihood that no severance pay will be due – are neither possible of application with the data available nor, probably, suitable for judicial application in any event.

Considering the legal and practical problems raised by both of these alternatives, there may be an understandable temptation to meet the problem by a kind of local option – allow the workers of each enterprise to decide which provision *they* think is more favourable. Despite the practical advantages of this course, however, it seems of doubtful legality. From the combination of Article 36 of the Employment Act and Article 9 and the saving provision of Legal Notice No. 302, certain severance pay rights are conferred on Eritrean employees. As the preceding discussion has shown, it is not easy to determine what those rights are, but difficulties of interpretation do not relieve a court of law of its obligation to make the interpretation and decide the case accordingly. Let us suppose, then, that in an enterprise it is decided by the employees that Article 9 of Legal Notice No. 302 should control. However, a minority of employees—presumably those with higher monthly

38. Civ. C., Art. 2575.

wages and long service—disagree. If one of this minority of employees is dismissed and goes to court to obtain the severance pay that would be due to him under the Employment Act, would the court be justified in dismissing his case simply on the ground that a majority of his employees had chosen Legal Notice No. 302? It seems that it would not. Rather, the court would be obligated to determine whether, under the court's interpretation of the relevant provisions, the Employment Act does govern as the employee claims. If the court determines that it does, the employee would be entitled to judgment accordingly, the decision of a majority of his fellow employees notwithstanding.[39]

The second reason for concluding that not all of the Employment Act's labour condition provisions were repealed is that some establish minimum standards on points not dealt with at all by either Legal Notice No. 302 or the Labour Standards Proclamation. [40] Such provisions may be regarded as being of necessity "more favourable" to employees than the corresponding provisions of Legal Notice No. 302 and the Labour Standards Proclamation—since there are no such corresponding provisions—or as simply not being within the ambit of the Ethiopian laws' repeals provisions in the first place. On either view, such provisions have not been repealed.

Summary

In considering the present legal status of the Eritrean Employment Act of 1958, the history of the act falls into three parts. The first is the period from enactment of the law to the end of the Federation. During this period, the law could have been repealed or modified only by subsequent Federal or Eritrean legislation. Since there appears not to have been any such legislation dealing with the subject matter of the Employment Act, the act apparently remained in full force to the end of the Federation.

The end of the Federation constitutes the second part of the act's history. The Federation's end could have had the effect of repealing all Eritrean legislation, and even the provisions of the Imperial order ending the Federation probably would not have saved more than a part of such legislation if those provisions had been interpreted narrowly. In any event, however, the provisions have been broadly interpreted to save all or nearly all Eritrean legislation from repeal, and the Employment Act continued in force after the end of Federation.

Since the end of Federation, there have been four pieces of Ethiopian legislation dealing with the subject matter of the Employment Act.

The effect of this legislation on the Employment Act appears to have been as follows:

39. It may or may not follow that, on this hypothetical court's interpretation of the law, judgment should go against one of the majority of employees who sought to enforce his alleged rights under Legal Notice No. 302 against the employer. Two questions would be presented: First, again the question of the interrelationships between provisions and, in this case, within a single provision: Can provisions be divided up so that some employees enjoy the advantages of one part of Article 36 of the Employment Act while other employees enjoy the advantages (to them) of one part of Article 9 of Legal Notice No. 302? Second, if the provisions can be divided up, does the court agree with the apparent judgment of the majority of employees that for them Legal Notice No. 302 is the more favourable?

40. E.g., neither the legal notice nor the proclamation deals with the liability of the employer for work-connected sickness and accidents.

1. Three kinds of provisions appear to have been repealed:
   a. Provisions relating to labour unions and employers' associations, which appear to have been repealed when the Labour Relations Decree was reenacted as the Labour Relations Proclamation in 1963;
   b. Provisions relating to labour inspection, which appear to have been repealed in part by the Labour Inspection Service Order of 1964 and in part by the Labour Standards Proclamation of 1966; and
   c. Minimum labour condition provisions that are not as favourable to employees as corresponding provisions of Legal Notice No. 302 or of the Labour Standards Proclamation, which appear to have been repealed respectively, by the promulgation of the legal notice in 1964 by the enactment of the proclamation in 1966.
2. Two kinds of provisions appear *not* to have been repealed:
   a. Minimum labour condition provisions more favourable to employees than corresponding provisions of either Legal Notice No. 302 or the Labour Standards proclamation; and
   b. Minimum labour condition provisions for which there are no corresponding provisions in either Legal Notice No. 302 or the Labour Standards Proclamation.