ETHIOPIAN LABOUR RELATIONS:

ATTITUDES, PRACTICE AND LAW

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This article is the result of a research project on labour relations in Ethiopia.[1] The purpose of the research was to discover current employment practices and how these practices compared with legal requirements; to analyze the machinery provided by the government for the resolution of labour-management conflicts and attitudes toward it; and to discover the attitudes of the two principal participants, employees and employers, toward each other and toward their institutions. In order to accomplish these goals while keeping the project to a manageable size, primary focus was upon two industries, their companies and their employees. The two industries chosen were the beverage industry, manufacturing and bottling soft drinks, mineral water, beers, wines and liquors; and the garage industry, devoted primarily to servicing motor vehicles.

Before discussing the results of the research, a brief overview of the development of organized labour in Ethiopia is in order.

GENERAL BACKGROUND

The Restoration of the Emperor in 1941 brought a political stability to Ethiopia theretofore unknown. With it came increasing industrialization and the resulting increase in wage employment. In 1965 there were around 300,000 workers in the modern sector of the economy.[2]

As a result of this growth of wage employment, workers began to recognize their opportunity for mutual benefit through group action. However, associations for mutual benefit were not new to Ethiopia. As persons began moving to urban areas they sought institutions that would replace certain functions of the traditional rural society. Mutual assistance organizations like *idir*, *equb*, and *maredaja* replaced the

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1. The author was a member of the HSIU-Northwestern University Research Project in Ethiopia, 1969, and this article is the third published as a result of the project. See *J.Eth.L.*, Vol. 6 No. 1.

2. Seyoum Gebre Egziabher, *The development of some institutions concerned with labour relations in Ethiopia* (1969, unpublished HSIU, Library), and *Labour Law and practice in Ethiopia*, BLS Report No. 298 (U.S. Department of Labour, Nov. 1966.) The paper by Dr. Seyoum contains an excellent discussion of the development of labour law in Ethiopia by a first-hand observer and participant.

broad kinship groups in the cities and aided their members in times of need.[3] Although these organizations had no direct dealings with employers, some were formed among co-workers rather than along geographic lines. Even those organized among fellow employees, rather than on "community" lines, had no relation with the employer. These mutual assistance organizations helped to correct the imbalances caused by employer favoritism, uncompensated accidents, dismissals and illness.

At first wage labour was content with its wages and benefits, feeling it was better off than its non-wage brethren. But, rising expectations of the "good life" led the workers to demand more from their employers.[4] This attitude created a climate receptive to unionization.

During the British military presence following the Restoration, formation of a trade union movement was fostered, which eventually resulted in the formation of the Franco-Ethiopian Railway Workers' Union.[5] Further encouragement of trade unionism may have been provided by the Factories Proclamation of 1944,[6] which established a committee to direct and control factory inspection and gave the Ministry of Commerce and Industry power to make rules governing health, safety, and conditions of work. Unfortunately, the law was largely ineffectual and seldom used and was repealed in 1966.[7]

The first real support for the formation of labour unions was provided by the Revised Constitution of 1955.[8] Although many work-oriented self-help organizations were encouraged, the lack of enabling legislation and guidelines created hesitancy, caution and suspicion on the part of both workers and government.[9] In the absence of any forum for resolution of disputes, the employees had no alternative but to march to the Palace to present petitions.[10]

The Civil Code of 1960 with its minimum conditions of employment[11] and provisions for the registration of unions as "associations", provided a breakthrough for the workers.[12] The workers began flexing their dormant muscles, forming new

3. In an *idir*, members make monthly contributions to a common fund, portions of which are paid out to members on the basis of need arising from death, illness, loss of job, imprisonment, etc. The *maredaja* has the same purpose, but the funds are collected as the particular need arises. The equb is a forced savings association where periodic contributions are made, the whole sum being immediately payable to one member chosen by lot. That person continues to pay, but is no longer eligible to receive. D.N. Levine, *Wax and Gold* (Chicago, The University of Chicago Press, 1965), pp. 278-279; and A. Zack, *The New Labor Legislation in Ethiopia* (1964, unpublished, Library, Haile Selassie I University), pp. 1-2.
4. Complementing this motivation may have been the exaggeration of profits of Ethiopian companies which exist in the minds of even educated Ethiopians. J.A. Lee, "Developing Managers in Developing Countries", *Harvard Business Rev.* (Nov.-Dec. 1968), pp. 58-60.
5. Zack, cited above at note 3, p. 2.
6. Factories Proclamation, 1944, Proc. No. 58, *Neg, Gaz.*, year 3, no. 8.
7. Seyoum Gebregziabeher, cited above at note 2, pp. 10-12. Repealed by the Labour Standards Proclamation, 1966, Art. Proc. No. 232, *Neg. Gaz.*, year 25, no. 13. All future reference to the Labour Standards Proclamation will not be footnoted unless to note a particular provision, in which case, only the name will be used.
8. See Rev. Const., Art. 47.
9. Seyoum Gebregziabher, cited above at note 2, pp. 13-16.
10. Yilma Hailu, *Unfair Labour Practice in Ethiopia* (1968, Unpubilished, Archives, Faculty of Law, Haile Selassie I University), p. 1. The author is a member of the Labour Relations Board.
11. Civ. C., Arts. 2512-2609.
12. See Civ. C., Arts. 404-482, and especially Art. 406.

self-help associations and beginning a reorientation of the existing ones. In order to channel this release of energy, the Ministry of Commerce and Industry established a mediation committee, which was able to settle a number of disputes during its existence.[13]

As labour activity increased, primarily in Addis Ababa, classical union activities began to emerge. The advent of wild-cat strikes served to broaden the awareness of this new activity. Many groups thought that organization and protection of labour would not only benefit the workers but promote national economic development as well.[14] In March 1961 leaders from unrecognized workers' organizations representing eleven companies met secretly in Addis Ababa to discuss a unified front. A series of strikes and demonstrations followed at the larger companies and later that year an open mass meeting was held.[15]

In October 1962 the Labour Relations Decree was promulgated by the Emperor during a parliamentary recess.[16] Its main functions were to establish a new procedure for the legalization and registration of employers' associations and labour unions, to define their rights and obligations, to set up conflict-resolving machinery, and to grant the Minister of National Community Development power to establish, by regulation, minimum standards for labour conditions. The next year Parliament passed a slightly amended version as the Labour Relations Proclamation.[16] Then the following year, the Minister promulgated the Minimum Labour Conditons Regulations, adding to and modifying some of the minimum standards set by the Civil Code.[18]

Pressure from the workers was only one factor that moved the government to enact the Proclamation. Although a member of the International Labour Organization (ILO) since 1923, Ethiopia had never been able to participate as a delegate owing to the absence of organized employers and labour.[19] Her existence as the only African state without labour legislation and the conspicuous absence of labour leaders to meet with their counterparts visiting from other countries

13. *Labour Cooperatives, Social Welfare and Community Development in Ethiopia*, 1957-1964. (Ministry of National Community Development, Imperial Ethiopian Government, 1964), p.9.
14. Seyoum Gebregziabher, cited above at note 2, p. 28.
15. Zack, cited above at note 16, p. 4.
16. Labour Relations Decree, 1962, Decree No. 49, *Neg. Gaz.*, year 21, no. 18.
17. Labour Relations Proclamation, 1963, proc. No. 210, *Neg. Gaz.*, year 23, no 3. This reference contains only the amendments to the Decree. All future reference will be to the Proclamation and will be footnoted only to note a particular provision, in which case, only the name will be used.
18. Minimum Labour Condition Regulations, 1964, Legal Notice No. 302, *Neg. Gaz.*, year 24, no. 5. In Ethiopia, regulations promulgated by a minister can apparently amend or repeal parliamentary proclamations, the Civil Code being one of the latter. All future reference to these regulations will be footnoted only to note a particular provision, in which case, only the name will be used.
19. Article 3 of the Constitution of The International Labour Organization requires delegates from employers and labour in addition to government delegates for a member to have proper representation at the annual General Conference. For the first time in her forty years as a member, Ethiopia was represented by a full tripartite delegation in June 1963. There Ethiopia announced her ratification of four ILO Conventions, her first: Nos. 11, 87, 88 and 89. George Graf Von Baudissin, "An Introduction to Labour Development" *J. Eth. L.* Vol. II (1965), p. 109.

was a continual embarrassment.[20] Pressure from the International Confederation of Free Trade Unions[21] and the need to promote foreign investment[22] provided added incentive.

The Civil Code, the Labour Relations Proclamation, the Minimum Labour Conditions Regulations, and a series of closely related proclamations and orders came quickly in succession in the 1960s.[23] Together they established the principal part of the national labour law for both public and private employees. This article will be primarily concerned only with those laws which regulate the private sector of the economy.

PART I:

MINIMUM LABOUR CONDITIONS AND PRACTICE

Introduction

In order to study employment conditions in Ethiopian business, twenty-four firms were chosen from the garage and beverage industries.[24] These particular industries were chosen, after consultation with the staffs of the Confederation of Ethiopian Labour Unions and the Federation of Employers of Ethiopia, because the companies in these industries ranged in sizes fairly representative of Ethiopian firms, and they ranged fairly evenly within each of the variables listed below. All businesses were located in Addis Ababa and its vicinity.[25]

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20. Seyoum Gebregziabher, cited above at note 2, pp. 31-32. It has been suggested that Ethiopia also wanted to make an impression on African leaders meeting in Addis Ababa in May 1963 for the African Summit Conference. Berhane Gebre Negus, *The Labour Relations Decree* (1964, unpublished, Department of Public Administration, Haile Sellassie I University), p. 8.
21. Berhane Gebre Negus, cited above at note 33, p. 8.
22. *Labour Cooperatives, Social Welfare and Community Development*, 1957-1964, cited above at note 26, p. 9.
23. Central Presonnel Agency and Public Service Order, 1961, Order No. 23, *Neg. Gaz.*, year 21, no. 3; Public Employment Administration Order, 1962, Order No. 26, *Neg. Gaz.*, year 21, no. 18. Public Employment Administration Regulations, (No. 1). 1962, Legal Notice No. 267, *Neg. Gaz* year 22, no. 5 (No. 2), 1966, Legal Notice No. 320, *Neg. Gaz.*, year 25, no. 24; Labour Relations Proclamation, 1963; Minimum Labour Conditions Regulations, 1964; Labour Inspection Service Order, 1964, Order No. 37, *Neg. Gaz.*, year 24, no, 4; Labour Standards Proclamation, 1966. For a short summary of each of these, see *Report to the Government of Ethiopia on Labour Administration*, Report No. ILO-TAP-Ethiopia- R.9.(Geneva, Int'l Labour Office, 1968), pp. 6-8.
24. The idea of a random sample of businesses was discarded since there was only one list of businesses and it was found to be both incomplete and limited to one province, albeit the most industrialized one. *List of* 1798 *Business Establishments in Shoa Province* (Manpower, Research and Statistics Section, Ministry of National Community Development, Imp. Eth. Government, October 1967). These difficulties would not have been insurmountable, but it was realized that a proper random sample would have been too large for the present project. Concentration on two industries was decided as an alternative, with the selection of businesses so as to obtain a range of characteristics along each of the variables listed in the text following note 25.
25. Although the Province of Eritrea, like Shoa, has a well developed, small industrial complex, it was decided to eliminate Eritrea from the scope of this study, because it has had a somewhat different evolution of organized labour and the present laws relating to employment conditions are somewhat uncertain.

The companies were categorized and their practices[26] compared to one another in respect to each of the following variables:

(1) **Industry.** The labour conditions provided by the companies in the garage industry were compared with those provided by the beverage companies.[27]
(2) **Nationality of Control.** Each firm was placed into a category reflecting the nationality of the person or persons exercising controlling interest.[28] The categories were labeled "Ethiopian"; "resident foreign", those foreigners who had resided in Ethiopia most of their lives; and "foreign."[29] The perfor-

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The Eritrean Employment Act of 1958, *Eritrean Gaz.*, vol. 20, no. 5 (Supp.), established minimum labour conditions, a system of labour inspection, and provisions for the registration of employers, associations and labour unions. The Civil Code, 1960, and the Labour Relations Decree, 1962, both enacted during the Federation, while Eritrea was on autonomous unit federated with the rest of present day Ethiopia, fell into the class of purely Ethiopian legislation; therefore, their broad repeal provisions did not affect the Employment Act. the effect of the Imperial Order of Unification, 1962, Order No. 27, *Neg. Gaz.*, year 22, no. 3, coming five weeks after the Labour Relations Decree, essentially preserved the status quo of legislation in Eritrea. Latter legislation, the Labour Relations Proclamation, the Labour Standards Proclamation, and the Minimum Labour Conditions Regulations, applied to Eritrea but contained provisions saving legislation and other legal arrangements that had created conditions more favourable to employees, and they did not cover all points dealt with by the Employment Act. R. Means "The Eritrean Employment Act of 1958," *J. Eth. L.*, vol. 5 (1968), p. 139.

This confusing state of affairs was supposedly settled in November 1967 when the Supreme Imperial Court ruled that the Employment Act was completely inoperative. *Report to the Government of Ethiopia on Labour Administration*, cited above at note 23, pp. 8-9. However, this writer has been informed by an official of the Federation of Employers of Ethiopia that many Eritrean employers simply apply the Employment Act to employees hired before the national legislation and apply the latter to employees hired after that time.

26. Most of the data concerning the employment practices in each of the sampled companies can be found in L. Morehous, *Data on Conditions of Employment in Twenty-four Companies in Ethiopia* (1969, unpublished, Archives, Faculty of Law, Haile Sellassie I University). Copies may also be found at the offices of the Confederation of Ethiopian Labour Unions and the Federation of Employers of Ethiopia.

Except for the information contained in three collective agreements all information was obtained through personal interviews. In a number of cases employees of the company were also interviewed. In many cases the information obtained from these two sources differed; however, not being able to vouch for the veracity of one any more than the other and realizing that "splitting the difference" was no solution a decision to use one or the other in the analysis of the data had to be made. Since employees of all sampled firms had not been interviewed and all questions had not been asked to all employees interviewed, and since many employees may have only a limited view of the overall policy, it was deemed best to use only the employers' responses, unless their responses could be clarified with an employee.

27. This comparison was used to determine whether there might be any difference between a service industry and a manufacturing industry.
28. This variable was chosen since it was hypothesized that the foreigner, resident foreigner, and Ethiopian, having different backgrounds and personalities, would handle their labour-management relations differently. See Seyoum Gebregziabher, cited above at note 6, pp. 68-70, who classifies employers into four groups with respect to their attitudes toward labour unions. Nationality differences can be seen in this classification.
29. Nine of the firms were Ethiopian controlled, ten were controlled by resident foreigners, and five were foreign controlled.

mances of the companies in each of these categories were compared with each other to determine the effect of nationality of control on employment practices.

(3) **Size.** To determine whether the size of a company has any relationship to employment conditions, each of the twenty-four companies was labeled either large or small, depending on whether it had one hundred employees or less. The labour conditions in the large companies were compared with those in the small firms.[30]

(4) **Employee Organization.** Each firm could also be placed into one of three categories reflecting varying degrees of potential employee influence on the firm's policies. A presently active union reflects the greatest degree of potential influence. Three of the firms that fell into this group had collective agreements. The former existence of a union, a "defunct" union, represents at least some degree of union influence. Together, these make up "union experience." Never having had a union reflects the lowest degree of potential influence.[31] Labour conditions in each of these categories were compared to determine the effects of employee organization on such conditions.

Since the sample is quite small, it has been considered essential to subject all cases in which employment practices appear to be correlated with one of the above variables to a test of statistical significance before a conclusion can legitimately be drawn.[32] The result in many cases has been that no significant difference appears, whereas, if a larger sample had been used, more of these differences might have been significant.

What is an Employee ?

One of the most important elements in any study of labour legislation is the definition of "employee," inasmuch as only persons who fit within this category are entitled to the benefits, and subject to the obligations, provided by the law.

The word "employee" has at least three different definitions in Ethipian labour legislation. Although most of the workers in the present study were "employees" by all three definitions, the differences cause difficulties in deciding which piece of

30. The number of employees in each company ranged from six to approximately 245, the mean and median being 97 and 96, respectively. The average number of employees in the Ethiopian and foreign firms were about the same, 126 and 114, respectively; however, the average for the resident foreign companies, at 53, was less than half the average for the other two. Also, the average in the garages was half of that in the beverage companies.

    The above shows that the variables of industry and nationality are not totally independent of size. This dependence should be considered when analyzing the data.

31. Six firms had active unions, only one of which was in the beverage industry. The membership of each union was limited to the employees in that one company. Nine firms never had unions. All of the defunct unions resulted from unsuccessful experience with a general trade union, or horizontal union.

32. Chi Square (X^2), a distribution-free statistic, *i.e.* the use of which does not rest on assumptions concerning the form of population distribution, has been used in all cases where a test of significance was needed. Owing to the small size of the sample, all data was reduced to two-by-two tables before chi square was applied, and *Yate's correction for continuity* was used. From chi square is obtained the probability (p) that the frequencies in the data occurred by chance. See J. P. Guilford, *Fundamental Statistics in Psychology and Education* (New York, McGraw-Hill 3rd ed., 1956), chap. 11.

legislation governs the case of any particular employee. The definition in the Civil Code is the most inclusive of all.

> A contract of employment is a contract whereby one party, the employee, undertakes to render to the other party, the employer, under the latter's direction, for a determined or undetermined time, services of a physical or intellectual nature, in consideration of wages which the employer undertakes to pay him.[33]

Public servants and state employees, except those engaged in commercial or industrial undertakings, are excluded from this definition.[34]

The next definition is found in the Labour Relations Proclamation and the Minimum Labour Conditions Regulations. They begin with the Civil Code definition and exclude not only public servants not in profit-making enterprises, but also managers, directors, superintendents and other agents of an employer; domestic servants; and agricultural workers on a farm having less than ten permanent employees.[35] The exclusion of management personnel was appropriate for the basic purpose of the Labour Relations Proclamation, to provide a framework for the promotion of methods of protecting the non-management workers' interests and resolving worker-management conflicts. But, when the same exception was applied to the Regulations something peculiar occurred. The worker is now entitled to be paid on public holidays; the management is not. He is entitled to a maximum work week and established overtime rates; the management is not. The worker is also entitled to more generous annual leave than is the management.[36]

This discrepancy would seem to result from an oversight during the drafting of the Labour Relations Proclamation (Decree). The one sub-article granting the Minister of National Community Development the power to fix minimum labour conditions[37] is totally out of keeping with the purpose of the rest of the Proclamation, *i.e.* establishment of conflict-resolving machinery and guidelines for the registration of labour unions and employers' associations. Although it would seem the drafters included this provision in order to bypass Parliament in the event of future changes being made in minimum labour conditions, they would appear to have overlooked the limitation on the Minister's power created by the more narrow definition of employee found in the Proclamation. Therefore, labour conditions fixed by the Minister must always have a more restrictive application than those fixed by the Code.

The third definition of employee is found in the Labour Standards Proclamation. It is the same as that in the Labour Relations Proclamation, except that it does not exclude management.[38] Considering the purpose of the Labour Standards

33. Civ. C., Art. 2512. For an interpretation of this article see Haile Waqgira v. Girma Gegere (Sup. Imp. Ct., 1965), *J.Eth. L.*, vol. 4, p. 77.

34. Civ. C., Art. 2513.

35. Labour Relations Proclamation, Art. 2(f). Minimum Labour Conditions Regulations, Art.3(1).

36. Since both domestic servants and certain agricultural workers were excluded from the category of "employees" as defined in the Regulations, they too have only the rights given them by the Code.

37. See Labour Relations Proclamation, Art. 3(i).

38. Labour Standards Proclamation, Art. 3(4).

Proclamation, to provide for the safety and health of all those persons in industrial enterprises, the definition is reasonable, because it excludes only persons who do not work in industry.[39]

The courts have had occasion to interpret these legislative definitions. In a recent case, the High Court refused a dismissed houseboy's demand for dismissal compensation, dismissal notice and payment in lieu of annual leave under either the Minimum Labour Conditions Regulations or the Civil Code on the grounds that these provisions were inapplicable to domestic servants.[40] This decision would seem to be wrong. The court applied the definition of employee in the Regulations to the Civil Code, ignoring the caveat restricting the definitions to the Regulations.[41] Although the Civil Code contains a special section for domestic servants, those articles impose additional obligations on the employer, and do not exclude domestic servants from the benefits of the general provisions.[42]

There was some feeling among a number of the employers interviewed that a daily worker, *i.e.* one who is paid after each day's work and customarily does not receive wages for days not worked, is not entitled to the same benefits as regular employees. The High Court, however, has determined that a daily worker is entitled to at least some of the benefits of ordinary employees. In affirming the decision of an awradja court awarding a daily worker compensation for dismissal without cause under Article 2573 of the Code, the court said that the contract exchanging services for wages exists independently of the time for which wages are fixed. It also said that even if the contract was considered as being renewed each day, Article 2573, penalizing the employer for dismissal without cause, makes no distinction between failure to renew and termination.[43] The thrust of the decision would seem to entitle a daily worker not only to dismissal compensation, but also to benefits for which there is a prerequisite of a particular length of service. Many provisions base eligibility for benefits only on "length of service" and not upon the length of any "contract period." A daily worker who has had ninety successive "contract periods" would have been in the "service" of his employer for three months.

Some of the employers interviewed also felt that apprentices are not entitled to the same benefits as regular employees. Even though Article 2597 of the Code expressly applies the other articles to apprentices, there has appeared to be enough doubt on the matter to warrant employers arguing the contrary before the Labour Relations Board.[44] Four of the garages either did not make any regular wage payments to apprentices or paid them only minimal amounts. In this situation, the

39. Article 4 of the Labour Standards Proclamation excludes from its scope certain enterprises whose workers are "employees" by the definition in Article 3(4).

40. 53. Tefera Mekitie v. Lewis (High Ct., 1968, Civil App. No. 164-60) (unpublished). The plaintiff had brought suit in the Awradja Court under Civil Code Articles 2561, 2571, 2573 and 2574.

41. "As used in these Regulations ....(1) 'employee' shall mean..." Minimum Labour Conditions Regulations, Art. 3.

42. See Civ. C., Arts. 2601 through 2603.

43. Kidane Temelso v. Shebiru Gegnie (High Ct., 1963), *J.Eth. L.*, vol. 3, p. 411.

44. Printers Workers Union V. Printing Press Owner (Labour Relations Board, December 30,1965), *A Sample Collection of Labour Disputes and the Rulings of the Labour Board* (Addis Ababa, The Federation of Employers of Ethiopia, *circa* 1968), Case No. IV. As the title shows, the

Code provisions which are based on a worker's wage, *e.g.* wage continuance during annual leave, become inapplicable.

Obligations of an Employee

The Civil Code establishes certain obligations that an employee owes his employer in addition to any established by contract. One such obligation is the liability for any damage an employee negligently or intentionally causes his employer, having regard to the nature of the work, his training and ability.[45]

Half of the companies interviewed charged their workers repair or replacement costs for negligent damage to tools and equipment, while two-thirds of them charged for intentional damage. Two firms provided for punishment in the nature of fines rather than charges. Another added the caveat that no charge would be made if the equipment was so expensive as to impose a large debt on the worker. Only one company offered that their charges for replacement were always based on something other than full cost of replacement. It used the depreciated (straight line) value of the equipment. The difference between the policies of Ethiopian and foreign firms and those of resident foreign firms is interesting. All of the former charge or punish for negligently caused damage, while less than half of the latter do.[46]

Another employee obligation is to carry out all work ordered by the employer where such orders are not contrary to law or morals and do not entail danger.[47] This apparently means that an employee must accept not only orders within his normal range of duties, but also transfers to different duties on either a temporary or permanent basis. The Labour Board has held that refusal to accept a "lateral transfer", *i.e.* one involving no change in rank or salary, is good cause for dismissal.[48]

Conversely, employers also have certain limitations placed upon their right to transfer employees from one job to another. On its face, the Code is clear enough: an employee cannot be assigned to different work that involves a reduction in rank or salary, and if assigned to work carrying a higher wage, he should get that

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book is a collection of summaries of a sampling of decisions by the Labour Relations Board and does not include all cases decided by the Board. The sample was chosen from all cases decided by the Board to be representative of its rulings and reasoning on a variety of issues. Where more than one case presented the same issue(s), only one was included in the sample. The Federation of Employers of Ethiopia (FEE) has eliminated the names of the parties in the case names, since many employers are not accustomed to having their legal disputes a matter of public record. The complete decisions (in Amharic) may be obtained at the FEE office.

This is the only publication of Board decisions. To date FEE has received a copy of every Board decision, but this practice may cease because of certain disgruntlement in the Labour Department over the publication of this collection.

All future reference to cases contained in this collection will give only the case name as it appears in the collection, the forum, date of decision, *Labour Disputes*, and the case number in the collection.

45. Civ. C., Art. 2524.

46. The difference is statistically significant. $x^2 = 6.505$, $p < 02$, *i.e.* the probability of this difference occurring by chance is less than two times in one hundred.

47. Civ. C., Arts. 2523 and 2525.

48. Laundry Workers Union v. A Laundry Owner (Labour Relations Board August 3, 1967).

wage.[49] One result of a literal interpretation of this provision seems to be that if the employer has decided that a newly hired senior mechanic is not qualified for the job,[50] he can dismiss him — the lack of qualification being a good cause — but he cannot transfer him to the job of assistant mechanic, with its resultant decrease in pay.

Nevertheless, an employer can demote such an employee if he uses a circuitous method. As just mentioned, if the worker is not qualified for his job, the employer may dismiss him with good cause. The employer's only obligation will be termination notice,[51] which he can plan to give the requisite time in advance. The employer might then rehire the same worker at the lower job. Therefore, the prohibition against assigning an employee to a different job paying less salary may not be absolute, but may only make the employer fulfill two prerequisites, both reasonable: be able to show that the employee was not qualified for the work he was doing and give the employee the necessary notice so that he may look for another job if he wishes.

Another result of a literal interpretation of the Code provision is that if an assistant mechanic does the work of a senior mechanic for only one hour, he should see the increase in his pay packet.

In practice, this literal interpretation would be absurd. It takes no account of the lack of precise job descriptions in all but a very few companies, of the horrendous accounting problems that would be involved, nor of the very big difference between a temporary transfer and a permanent transfer. It may very well be that the worker should be protected against loss of salary for temporary transfers to a lower job and against refusal by the employer to grant a wage increase when transferred to a higher job, but the present law exceeds the present level of sophistication in employment.

Of the sixteen firms that responded to a question concerning their policy, one stated that salary adjustments would be made only in its annual salary review. Thirteen would not decrease a worker's wages if he were demoted but would increase them upon his moving to a job with a higher wage rate, but only after a probation period ranging from fifteen days to one year. Only one company appeared to make wage increases for temporary work, thus following the literal application of the law.[52]

Dismissal

Dismissal from work without good cause is the most frequent complaint filed with the Labour Department.[53] This is not surprising considering the position of

49. *Labour Disputes*, Case No. XXIV.
Civ. C., Art. 2527.

50. Dismissal is for good cause when the employee does not show sufficient technical knowledge or reliability. Civ. C., Art. 2575(2).

51. Civ. C., Arts. 2570 and 2571.

52. This company also provided that if an employee remained in the higher position for thirty days, the wage became permanent, and his wage could not be reduced to its former level.

53. There are no statistics prepared on this matter, and to prepare them from the present records would be a phenomenal task. The consensus among Department officials is that the majority of cases -- most estimate around ninety percent are dismissal cases.

an employee. If he is employed, he may think twice before complaining to the Labour Department about his employer's failure to give him annual leave or sick leave, fearful, and not without cause,[54] that he will be fired and thrown into the large pool of unemployed.[55] The few days' salary such complaints represent is not worth the possible consequences. But, the person who has already been dismissed from a job has nothing to lose. Unless he is lucky and quickly finds new employment, he can well afford the few days spent prosecuting his claim and may gain something by it.

For purposes of termination of employment, the Code divides employment contracts into two categories: Contracts of fixed duration, *i.e.* for a definite period of time or piece of work, and contracts of indefinite duration.[56] When an employer terminates a contract of indefinite duration, he may have two major obligations: Under Article 2570 he generally must give notice of a stated period; furthermore if he lacks "good cause" for termination, Article 2573 requires that he give the employee severance pay or "compensation". The notice requirement is also imposed on an employee who terminates a contract of indefinite duration. When an employer, without "good cause", refuses to renew a contract of definite duration, he is also liable to pay compensation under Article 2573. Finally, Article 2583 provides that a party who terminates a contract of employment unfairly must make good any loss suffered by the other party. However, under Article 2578 a party shall be relieved of all the above obligations if he can present "justifying reasons" for his termination of the contract.

The requirement of compensation is imposed by Article 2573 in the following language:

> The employee shall be entitled to fair compensation where the employer terminates a contract or refuses to renew it without good cause justifying fully this decision.

While some persons have argued that compensation shall not be required of an employer who simply refuses to renew a contract of definite duration which has expired, the phrase "refuses to renew it" seems to make clear that contracts of definite duration are included in the term "contract" in this Article. A contract of indefinite duration, unless terminated, simply continues without necessity for "renewal". Some have suggested also that the "refuses to renew" phrase is intended to apply

54. Apart from prohibiting dismissal for union activities the law does not force an employer to continue to employ a person. It only sets out an amount of money the employer must pay for dismissal without good cause. Getachew Berhane v. Commercial Bank of Ethiopia (Sup. Imp. Ct., 1968, Civil App. No. 256-60) Union v. Air Lines Company (Labour Relation Board, July 19, 1966), *Labour Disputes*, Case No. VIII. This is true even when employees are dismissed for claiming their rights under the minimum conditions legislation. *Id.*, Addis Ababa Tailor's Union v. A Tailor Shop Owner (Labour Relations Board, July 7, 1967), Case No. XXIII.

55. Again, no statistics were available, but a very high rate of unemployment is the consensus of everyone interviewed. In response to the question, "If a substantial portion of your labour force were to be replaced, how long do you think it would take to recruit and/or train replacements," the median time given by employers (N=21) was thirty days. One third gave answers under two weeks. The Addis Ababa employment office, run by the Employment Services Section of the Labour Department, managed to place only twenty-six percent of its applicants in 1969 E.C., a considerable improvement over former years. *Annual Report to the Minister* (Labour Department, Ministry of National Community Developmen, Imp. Eth. Government, 1960 E.C.), and other unpublished figures obtained from the Secttion.

only to contracts of definite duration which contains an express option allowing the employee to renew or extend the contract, but the Code contains no language at all to support this argument. Thus, Article 2573 requires the employer to compensate the employer whenever he terminates or refuses to renew a contract of either definite or indefinite duration.

The guidelines established by Article 2574 for determining the amount of compensation due an employee entitled to it under Article 2573 are vague, making it difficult for even the honest employer to calculate what his employee is owed.[57] In fact, the Code assumes a court will decide the matter.[58] Although no information was obtained on this, such a cumbersome method must have led to many inequities and unnecessary lawsuits. In any case, the Minimum Labour Conditions Regulations simplify the calculation: after one year of service, an employee is entitled to one month's salary increased by twenty-five percent for every additional year of service.[59] Although this Article purports to supersede the Code provisions,[60] it neglects to state what should happen in the case of termination with less than one year's service, nor does it include the case where the contract has not been renewed rather than simple termination, matters which were both dealt with by the Code. Since the Regulations are effective only so long as they create conditions more favourable to employees, the Code provisions would appear still to govern these matters.[61]

The Labour Board and the Supreme Imperial Court have handled dismissals with less than a year's service in different ways. The latter used the same reasoning as above and allowed recovery. The Board ignored the Code and awarded the pro rata portion of one month's salary.[62] It is important to note that in neither case were the Regulations considered to have removed the right to severance pay for service of less than one year.

Calculation of the length of service has been held to begin at the time of the most recent hiring where the employee has been hired several times,[63] and the notice period should be included as a part of the service if the worker remains employed during that time.[64]

What is and is not good cause under Article 2573 is a major problem besetting the courts and the Labour Relations Board. The Civil Code makes a slight effort at defining what is good cause. Thus, Article 2575 states that good cause is present

56. Civ. C., Art. 2567.

57. See Civ. C., Art. 2574:

58. *Id.*, Art. 2574(1). "In fixing the amount..., the court shall take into consideration...."

59. Minimum Labour Conditions Regulations, Art. 9 The sum is subject to a maximum of 180 times the average daily wage.

60. See note 18 and Minimum Labour Conditions Regulations, Art. 9(3).

61. *Ib.*, Art. 10. Of course, the Civil Code still governs those employees not covered by the Regulations., See text accompanying note 38.

62. Compare Yesurbvara Jesopie v. Gashaw Bezza Zerfu (Sup. Imp. Ct., 1965), *J. Eth.* L., vol. 3, p. 32, with Tailors' Union v. A Tailor Shop Owner (Labour Relations Board, April 13, 1965). *Labour Disputes*, Case No. II.

63. Union v. A Manager (Labour Relations Board, May 6, 1966), Case No. V, but see Union v. A Contractor (Labour Relations Board, July 5, 1967), Case No. XXII, *Labour Disputes*.

64. *Id.*, An Employee v. A Pharmacy Owner (Labour Relations Board. December 11, 1967), Case No. XXVII.

where it would not be reasonable to expect the contract to be extended or renewed, having regard to the nature of the work.[65] Good cause also exists where the employee cannot sufficiently handle his work because of a lack of knowledge, speed, reliability or conscientiousness.[66] However, the Labour Board has said that this does not include situations where the employee is merely on bad terms personally with his employer.[67] The poor quality of the employee must be in his work, not in his person. The Code further allows good cause whenever the employee's job is abolished in good faith.[68]

There are also certain "justifying reasons" listed in Articles 2579 through 2582 that must also be good cause, for they would seem to be quite serious breaches of the employment relation and thus certainly seem to come within the general terms of Article 2575. These will be covered more completely in the discussion of liability under Article 2583 for "unfair termination."

Beyond this, the courts and the Labour Board must decide in each case, with only the few legislative guidelines, what is good cause. Following is a discussion of some of the areas in which this decision has been made.

One of the most surprising situations which has been deemed good cause has been in the area of work-connected diseases and injuries. Where a work-connected illness had rendered an employee unable to continue his previous job, although still employable by the same company in a different capacity, the Supreme Imperial Court regarded his reduced capacity to work as good cause for dismissal.[69] Such a result could be justified by deciding that in such a case it would not be reasonable to expect the contract to be extended.[70] Indeed, although Article 2580 specifies that illness is not one of the "justifying reasons" earlier mentioned, it might be read to carry a negative implication that sickness could be regarded as good cause. However, since the worker was still employable, it would seem that the good cause should have been considered sufficient only to assign him to a new job, even if it carried a lower salary.[71]

Chronic absenteeism, on the other hand, would seem to be one case where there is clearly good cause for dismissal. However, the High Court, in affirming a decision of an awradja court, has condoned the view that non-payment of wages on the absent days is sufficient punishment, and, hence, the punished absenteeism is not good cause.[72]

Refusal to obey employer's orders would also appear to be good cause given the mandate of Article 2525 that an employer follow those orders. Where an employee refused a lateral transfer of work, good cause has been held to exist.[73] It has

65. Civ. C., Art. 2575(1).
66. *Id.*, Art. 2575(2).
67. Union v. A Manager, cited above at note 63.
68. Civ. C., Art. 2575(3).
69. Yetbarek Negash v. Assab Refinery (Sup. Imp. Ct., 1967, Civil App. No. 593-59) (unpublished).
70. See Civ. C., Art. 2575(1).
71. See text accompanying note 51.
72. Tenagne W. Kiros v. Manager of the Ethiopian Fibre Plant (High Ct., 1968, Civil App. No. 533-60) (unpublished).
73. Laundry Workers Union v. A Laundry Owner, cited above at note 48.

also been held, however, that a twenty minute argument with the employer should not be deemed such a refusal.[74] Since the employer has an absolute right to re-arrange his staff in this manner, such a transfer is not a "manoeuver," proscribed by the Code, compelling the employee to quit.[75] But, the Supreme Imperial Court has held that refusal *per se* is not sufficient ground for dismissal if the refusal is justified.[76] That determination is apparently for a court.

Where the work is of a relatively temporary nature, *e.g.* in the construction trade,[77] and where the employees were hired with this knowledge, the Labour Board has held that severance pay is not necessary since the completion of the work itself is sufficient notice and good cause for failure to renew the contract.[78] This decision is consistent with the absence of any legal notice requirement regarding the end of a contract for a definite piece of work and with the Code provision allowing good cause where it would not be reasonable to expect the contract to be renewed.[79]

However, the Board has said that it will look to all circumstances surrounding the employment, *e.g.* length of service, re-hiring from project to project, to determine whether a construction employee should be considered as a permanent employee, entitled to notice and severance pay.[80] This approach goes beyond what the Code requires. If length of service, frequency of re-hire, etc., are regarded as making it reasonable for the contract to be renewed, then good cause does not exist. In such a case the Code requires severance pay but still does not require notice, since a contract for a definite piece of work does not require it. Even so, where the employer, a contractor, does not have any new work at the time of the completion of one project, it may be said the job was abolished in good faith or that it would be unreasonable for the contract to be renewed, both good causes.

Since twenty-six percent of the employers stated that during a business slow-down they would dismiss employees,[81] the question of whether this reason is good cause becomes important to a fair number of employees. It might be argued that lay-offs during a business slow-down are really equivalent to jobs being abolished in good faith, or if slow-downs are periodic occurrences in the industry, that it would be unreasonable for the contract to be extended. Without expressing its rationale, the Labour Board has, nevertheless, awarded payment in lieu of notice and severance pay to an employee who was dismissed for this reason.[82] Even if the employer is facing bankruptcy he must give notice and severance pay unless he can

74. Union v. A Contractor, cited above at note 63.

75. Union v. A Transport Company (Labour Relations Board, June 21, 1967), *Labour Disputes*, Case No. XXI, interpreting Civ. C., Art. 2576.

76. Ras Hotel v. Tefera Mekonnen (Sup. Imp. Ct., 1967, Civil APP. No. 461-59) (unpublished).

77. Union v. Building Construction (Labour Relations Board, January 27, 1967), Case No. XV; Union v A Contractor Company (Labour Board, May 12, 1967), Case No. XVI, *Labour Disputes*.

78. Civ. C., Art. 2567.

79. *Ib.*, Art. 2575(1).

80. Union v. A Contractor, cited above at note 76.

81. $N=23$. Often percentages will not be based on all twenty-four companies due to missing information, etc. When the number being considered are less than twenty-four and this is not apparent in the text. The number that equals 100% will be given.

82. Taliors' Union v. A Tailor Shop Owner, cited above at note 75.

show why he is unable to do so.[83] These decisions seem to be designed to insulate the employee rather than the employer from unpredictable forces or those beyond control.

On first glance the provisions of Articles 2578 and 2583 are only a little different from those regarding Article 2573 liability. The English version of Article 2578 itself states that either the employee or employer may "cancel" the contract without prior notice where there exists "good cause" for cancellation. Upon further analysis this apparent similarity is found to be misleading. One of the major differences is that Article 2583 allows *either* the employer or employee to recover for termination without "good cause" as defined in Article 2578. Another major difference is that "good cause" under Article 2578 is much more narrowly defined, and probaly the most important difference is that when there is not "good cause" for cancellation Article 2583 makes the cancelling party liable for *all* losses suffered by the other party.

The English translation of the Code makes no clear distinction between "good cause" referred to in Article 2573 and "good cause" referred to in Article 2578. However, both the French version, the language in which the Code was originally drafted, and the Amharic translation, the official version, help in this matter.[84] With respect to "good cause" both the Amharic and the French versions use different terms in Article 2578 from those used in Article 2573. The "good cause" in Article 2573 refers to the circumstances set out in Article 2575. The "good cause" mentioned in Article 2578 (hereinafter called "justifying reasons" in order to distinguish the two) refer to the circumstances, outlined in Articles 2579 to 2582, in the event of which a contract may justifiably be "cancelled" under Article 2578.

From the language used elsewhere in this area of the Civil Code, "justifying reasons" would seem to be limited to those circumstances contained in Articles 2579-2582. The only reasons which justify either party in cancelling a contract are "sufficiently serious" non-performances by the other party.[85] Cancellation by an employer is justified when the employee is prevented from working due to his own fault;[86] and where the employee participates in a strike either declared to be unawful or instituted with the sole intent of injuring the employer.[87]

On the employee's side, failure by a bankrupt or insolvent employer to provide security guaranteeing an employee's wages gives the employee justified reason for cancellation.[88]

Both the French and Amharic versions of the Civil Code also provide additional insight into the distinction between "termination", used in Article 2573, and the "cancellation" in Article 2578 and 2583. In each, the terms used for cancellation connote an actual breaking of a relation, while the terms used for termination

83. Union v. A Shipping Company (Labour Relations Board, February 21, 1966), *Labour Disputes*, Case No. XII.

84. For a discussion concerning the use of the French version of the Code as an aid to interpretation see G. Krzeczunowicz, "Statutory Interpretation in Ethiopia," *J. Eth. L.*, vol. 1 (1964) p. 315.

85. Civ. C. Art. 2579.

86. *Id.*, Art 2580.

87. *Id.*, Art 2581.

88. *Id.*, Art 2582.

under Article 2573 connote the mere ending of a relationship. The significance of this difference will be seen shortly.

A contract of indefinite duration is essentially a contract at will. But the provisions requiring that prior notice be given in order to terminate such a contract mean, as a legal matter, that the contract does not come to an immediate termination upon the expression of the desire to terminate. Rather, it ends only after the requisite notice period beginning with such an expression.

With respect to contracts of indefinite duration, Article 2583 liability seems to be dealing with the situation where one party ends the employment relationship without giving the necessary notice. Such a situation is a "breaking" of an existing relationship and not a mere ending.

Where one of the justifying reasons is present, the contract of indefinite duration can be "broken" without notice, and where the employer is the actor, also without severance pay.[89] But, where no such justifying reason is present, the "breaking" party is liable under Article 2583 for all resultant losses incurred by the other. It is interesting to note that this apparently means that, if an employee terminates a contract of indefinite duration without giving his employer the requisite notice, he is liable for all losses suffered by the employer on account of his failure.

It should also be noted that Article 2583 will apply to contracts of indefinite duration only where the contract was terminated before the end of the notice period. If the employer is the one who terminates in this manner and has "good cause" but not "justifying reason", wages in lieu of the required termination notice, the employee's only loss, would be recoverable under Article 2583. Where the employer does not have even "good cause", the employee apparently can recover under both Article 2573 and Article 2583, but his damages under Article 2583 will probably be reduced by any recovery under Article 2573.

In the case of employment contracts for a definite duration, there are no provisions fixed by law that allow terminating the contract before the agreed time by simply giving prior notice. Presumably then, if no provisions allowing early termination are put in the contract, both parties are obliged to continue their relationship until the agreed time. In the event that one party breaks the contract, the other may claim damages under Article 2583, if there was no justifying reason. However, if there was such reason, the contract could be broken immediately, without liability and without giving effect to any contract provision requiring notice for early termination. Even if such a provision purportedly requires prior notice in the event of termination with justifiying reason, it would not have to be followed by an employee, since Article 2522 voids all contract provisions less favourable to employees.

In addition to the right to notice and severance pay in accord with the rules noted above, upon termination an employee is always entitled to accrued annual leave[90] plus a certificate showing the nature of his work, the length of service, the name of the employer, and if requested, a testimonial.[91]

89. Since a "justifying reason" is also a "good cause", the employer would not be liable for severance pay under Article 2573. See text following note 68.

90. Textile Mills Union v. The Management (Labour Relations Board, October 24, 1964), *Labour Disputes*, Case No. I. There seems to be some doubt in the Labour Board Decisions as to when annual leave accrues. It has awarded a proportional part of annual leave for less than one year's service, Tailors' Union v. A Tailor Shop Owner, cited above at note 75, and yet has said elsewhere that annual leave does not become due until the full year of service is complete, *Id.*, Union v. A Textile Mill (Labour Relations Board, June 7, 1967), Case No. XX.

91. Civ. C., Art. 2588.

An employee who is engaged in union activity and is dismissed without good cause is entitled to wages from the date of dismissal to present and to reinstatement,[92] this requirement being the only restriction on an employer's absolute right to dismiss.

With the complexity and sometimes vagueness in the provisions dealing with dismissal, it is not surprising to find a tremendous lack of understanding in this area. The Ministry's regulations themselves omit any mention as to the effect of either failure to renew a contract or dismissal after less than a year's service The Labour Board either seems confused as to the necessity of notice to terminate a contract of indefinite duration when there is good cause,[93] or simply chooses to amend the Code provisions judicially. With such confusion in the bodies that are supposedly knowledgeable in this area, it is not surprising that employers, too, are confused.

Regarding termination notice,[94] fifty-eight percent of the employers responded that they gave whatever the law required. However, in most cases the respondent did not cite the law, but simply stated that the law was followed. This response could reflect a sincere effort to abide by the legal provisions, not necessarily out of benevolence, but because this is the principal area in which employers confront the law on labour conditions. Indeed, a pamphlet on minimum labour conditions published by the government was visible in many offices. This response, however, might also be a cloak for a lack of real knowledge in what the respondents know to be an important area.

Seventeen percent of the firms stated they gave two months' termination notice. Assuming that most dismissed employees have had over one year's service, or, at least, that most suits (often the law's principal teaching process) in the past involved such employees, this response seems to reflect an attempt to follow the law.

Two firms mentioned that their policy was to give three warnings rather than termination notice. Although not prescribed by law as a substitute for or the equivalent of notice, if the first warning is given the required period before dismissal, it could be argued that an equivalence exists. Aside from the fact that there is nothing to insure that these firms do not dismiss until the required time after the first notice, warnings do not fulfill the major purpose of notice. The notice period functions to give an employee some time to find new work before he is actually dismissed. A warning is intended to coerce the employee to change some behaviour, and rests on the assumption that some change is possible . An employee is likely to begin looking for a new job after the first warning only if he is determined not to change his behaviour.

Only one company had an official policy of allowing employees some time off from work during the notice period in order to look for a new job. But, in fact, this firm followed the prevailing practice: immediate payment of wages

92. Addis Ababa Tailors Union v. A Tailor Shop Owner, (Labour Relations Board, April 13, 1965), *Labour Disputes*, Case No. III.

93. Implied in Union v. A Manager, cited above at note 63 and in Textile Mills' Union v. The Management, cited above at note 90.

94. It would seem that most of the employees in the sample worked under contracts of indefinite duration; therefore, termination notice would be proper.

in lieu of the notice period, giving avoidance of sabotage by a disgruntled worker as its reason.[95]

There appears to be a considerable divergence of practice regarding severance pay. Some of this is no doubt due to confusion similar to that regarding termination notice.[96] Many probably try to follow the law, at least to avoid being called into court. In fact, one firm has the policy of always giving full severance pay, regardless of cause, to avoid going to court. On the other hand, others take what might be the economically rational position of never giving severance pay, calculating that the expenses of litigation in some cases would be more than offset by the severance pay saved in cases where the employer does not bother to sue or where the court decides in favour of the employer and deciding they will be better off in the long run to withhold the pay.

Probation

Although its implementation is left entirely to private arrangement between employer and employee, the Civil Code lays down certain guidelines for periods of trial employment, or probation periods.[97] Unfortunately, it is ambiguous concerning its most important provision. Article 2598 states that "unless otherwise provide in writing, the employee engaged on trial shall be regarded as having been employed for an indefinite period." Does this mean that a written contract is prerequisite for a probation period or does it mean that a probation period has been established in an oral contract, it will extend indefinitely? A probation period is primarily a benefit to the employer, who during this time may dismiss the employee without notice or severance pay. If the latter interpretation is proper, then it would be to the employer's advantage not to have written employment contracts, since he could always dismiss any of his employees at will without incurring any liability. The fact that the vast number of employment contracts, such as they are, are probably oral would negate most employers' liability. On the other hand, the first interpretation would compel the employer to place the terms of the probation in writing, presumaby including its length, as a prerequisite to restricting the employee's right to dismissal notice and severance pay. This view would seem more consistent with the primary policy of this portion of the Code, to establish and protect rights of employees. No judicial interpretation of the language of Article 2598 has been found.

The length of probation periods in the sample of companies ranged from three days to one year. Four had none at all. For the purpose of analysis the seventeen firms with established probation periods were divided into those with long perods (three months or more) and those with short (less than three months).[98] Twelve firms had long periods and five had short. Small companies show a significant preference for short periods or none at all.[99] Ninety-one percent of the large firms had long periods while only twenty percent of the small firms did. This difference may simply be due to the somewhat more formalized conditions found in the larger companies, or may be due to their greater awareness of an advantageous law. No

95. Eighty-eight percent (N=17) of the firms had a practice of giving payment in lieu of notice.
96. Thirty-five percent (N=23) of the firms responded by saying "according to the law."
97. Civ. C., Arts. 2598-2600.
98. Two firms hired only apprentices; another said only that its length varied, giving indication of the range. These were not used in this analysis.
99. $x^2 = 6.685$, $P < .01$.

differences in practice were found between garages and beverage companies, among nationalities, or among companies with varying degrees of union experience.

Of all the firms having a probation period for new employees, only one-third gave any prior notice of dismissal during the period.[100] Even this number may be remarkable, for there is no legal obligation to do this. None of the variables used in the analysis showed any correlation with this practice. Sixty percent of the firms mentioned they gave paid public holidays during this period; two included sick leave, while two other specifically excluded it. Only one firm said that all benefits were available during probation.

Period of Payment

Article 2539(1) of the Civil Code requires that employees who do manual work be paid every two weeks or more often. The majority of the employees in the sampled firms do work of a physical nature. However, only two-thirds of the firms followed the law. Firms with some union experience show a significantly greater tendency to adhere to the law in this matter than do the firms who have never been unionized.[101]

Public Holidays

The Public Holidays and Sunday Observance Proclamation of 1956[102] not only granted most persons the right not to work on Sundays and on fourteen listed holidays,[103] but actually forbade them to. Only persons engaged in "essential services", such as food, agriculture, medical services, transport, and entertainment, were excepted.[104] Although employees were free from working, there was no obligation for their employers to pay them for the absent days until the Minimum Labour Conditions Regulations granted employees covered by that regulation, who have worked for their present employers for at least two months, a minimum of six paid public holidays, excluding Sundays, of the fourteen listed.[105] The particular six were left to negotiation between the employer and employees. In order to avoid an increased number of absences around a public holiday, with the consequent harm to production, Article 6(i) allows an employer to refuse payment for the holiday if the employee is absent without a valid reason on the working day either before or after a paid holiday.

For work performed on any public holiday, including Sunday, within the regular hours of work, an employee whose pay period is shorter than one month is entitled

100. The two firms hiring apprentices were included in this analysis.

101. Eighty-seven percent of the firms with union experience followed the law versus only thirty-eight percent of those without $x^2 = 3.860$, $P < .05$, $N=23$.

102. Proclamation 151 of 1956, *Neg. Gaz.*, year 15, no. 9.

103. New Year's Day and Eritrean Reunion Day (September 11), The Feast of the Finding of the True Cross (September 27), The Coronation Day of His Majesty the Emperor (November 2), Christmas Day (January 7), The Feast of the Epiphany (January 19), The Feast of Saint Michael the Archangel (Januray 20), Ethiopian Martyrs' Day (February 20), Commemoration of the Battle of Adua (March 1), Good Friday, Easter, Easter Monday, Return of His Majesty the Emperor to Addis Ababa (May 5) The Birthday of His Majesty the Emperor (July 23 The Feast of the Assumption (August 22).

104. *Id.*, Arts. 3 and 4.

105. Minimum Labour Conditions Regulations, Art. 6.

to one and one-half times his ordinary hourly rate for every hour worked, with a minimum amount for the day equal to three times his hourly rate.[106] Presumably, if he works on a paid public holiday, he should, in addition, get his ordinary daily rate; otherwise a person who works on a paid public holiday would only be one-half his daily pay better off than his fellow employee who did not work that day. This benefit does not extend to those who are paid monthly or less often.[107] They are not entitled to additional pay whether they work or not.[108] The requirement of the Code that manual workers be paid at least fortnightly,[109] however, insures they will be entitled to this extra pay.

Two-thirds of the sample gave all fourteen holidays with pay; only four firms gave the minimum. One firm admitted it did not give any public holidays off with pay. Employees of another said that their employer had told them the law had been repealed, although he had claimed he gave six holidays with pay. All but nine firms would pay employees who had been absent without a good reason either the working day before or after the holiday for a holiday that was otherwise paid. No relationships were found between labour practices with respect to public holidays and the variables being considered.

Hours of Work and Overtime

Until 1965[110] legislation regarding overtime pay was vague and, practically speaking, unenforceable by the majority of employees. The Civil Code allowed an employer to compel his employees to work more hours than had been agreed in the contract of employment, the difference being defined as overtime and requiring additional pay.[111] The difficulty in obtaining this extra pay was two-fold for most employees: first, seldom would any specific number of hours have been agreed upon in the contract, and, second, even if a specific number of hours had been established, the usual oral agreement would have been hard to prove in court. In practice, then, an employee worked whatever hours he was requested to, additional compensation coming only from the generosity of his employer. Even when the employer wished to pay for overtime work, the law provided only vague guidelines to calculate the additional amount.[112]

The Minimum Labour Conditions Regulations sought to create a more enforceable standard for overtime pay. They established a maximum work week of forty-eight hours[113] and provided that additional hours, or overtime, were to be compensated for by extra pay calculated as a percentage of the employee's ordinary

106. *Id.*, Art. 6(4) and (5).
107. As a general practice, it would seem from the sample that where there are both office and manual employees, all are paid in the same manner.
108. Minimum Labour Conditions Regulations, Art. 6(3).
109. Civ. C., Art. 2539(1).
110. The effective date of the Minimum Labour Conditions Regulations was December 30, 1964.
111. Civ. C., Art. 2528.
112. *Id.*, Art. 2528(3) "... Additional remuneration ... shall be fixed having regard to the agreed wage and to all circumstances of the case."
113. Minimum Labour Conditions Regulation, Art. 7 Legal Notice 302, *Neg. Gaz.* 24th year, No. 5 1964.

hourly rate of salary; before ten o'clock P.M., one and one-quarter times the rate; and from ten o'clock P.M. to six o'clock A.M., one and one-half times the rate.[114]

Overtime work performed on a paid public holiday entitles the worker to two and one-half times his ordinary rate.[115] However, since overtime is defined as work in excess of forty-eight hours per week, to work more than forty-eight hours in a week containing a public holiday other than Sunday, one would have to work either all day Sunday or more than nine and one-half hours per day for the other five days, one and one-half hours each day also being overtime. Because such a combination of hours is not likely to occur in many cases, this rate will seldom be used.

Over half of the sample had work weeks of forty-eight hours, the balance with forty-five hours or less. The primary difference between these two groups of firms is whether the employees work all day or only half a day Saturday. Only thirty-six percent of the garages worked all day Saturday while eighty percent of the beverage firms did. Although this difference is not statistically significant, it does reveal a tendency for work hours in garages to be slightly fewer. When garages alone are compared by size, large garages show a much greater propensity to have shorter work weeks than the small garages. None of the large ones worked all day Saturday, while almost two-thirds of the small ones did.[116]

The nationality of control also seems to make a difference in Saturday work hours. Employees in only one-third of the Ethiopian and resident foreign firms had Saturday afternoon off; all of the foreign firms did,[117] the managements of which are probably not used to working on Saturday afternoons.

The presence of an active union also seems to be a force influencing the length of the work week. Only one of the unionized companies worked all day Saturday, while two-thirds of the firms presently without unions did.[118]

Only three companies claimed overtime work was never done, although fourteen said only a very small amount was. The most overtime was from one bottling company, who reported its practice to be, for most of the year, to employ only two shifts of workers to keep production going twenty-four hours a day. This amounts to a phenomenal four hours of overtime per employee each day! Only two companies place a limit on the amount of overtime that could be put in. In neither case was this maximum often reached.

There seems to be no standard practice with respect to compensation for overtime work, with rates ranging from no extra compensation to three times the ordinary hourly rate. Of the firms for which there is data, thirty-five percent gave higher overtime pay than was required by law.[119] Comparing the firms that follow the law with those that pay more than the law, there are striking differences in

114. *Id.*, Art. 8(1) and (2).
115. *Id.*, Art. 8(3).
116. $x^2 = 3.491$, $p < .10$.
117. $x^2 = 5.390$, $p < .05$.
118. $x^2 = 2.741$, $p < .10$.
119. $N=20$. Two companies who did not pay overtime in limited circumstances were considered to be following the law.

both size and nationalities. Large firms have less propensity to give a higher rate than small firms. Only one of the large firms in the sample had a practice of paying more than the law. An even greater difference exists with respect to Ethiopian and foreign firms compared with resident foreign firms. The latter have a much greater propensity to give high overtime pay than do the others.[120] Only ten percent of the former did better than the law, while eighty six percent of the resident foreign firms did.[121]

Annual Leave

Annual leave with pay became a legislative right of employees with the Civil Code. It becomes the obligation of the employer to grant such leave after one year of service whenever the employer uses the "main or whole time of the employee."[122] The Minimum Labour Conditions Regulations increased the amount due a worker each year to fourteen consecutive days for one to three years of service, sixteen consecutive days for three to five years of service, twenty consecutive days for five to ten years of service and twenty-five consecutive days for more than ten years of service.[123] Where employment is terminated, the worker is entitled to his proportional annual leave for the time he has worked that year.[124]

Article 5(3) of the Regulations forbids the division or accumulation of annual leave except in "exceptional" and limited circumstances by mutual agreement. But, Article 2564 of the Code allows an employee, on his initiative only, to take his leave a few days at a time. This article seems to protect the employee against his employer's forcing him to take his leave only a few days at a time. Article 5(3), then, appears only to restrict an employee's rights, directly contrary to the provison of Article 10 which says that nothing in the Regulations should be deemed to restrict any other legislation more favourable to employees.[125] Since the Code protects the employee and the Regulations are not effective when they restrict an employee's rights regarding division of leave, Article 5(3) seems to serve no purpose other than confusion.

There is nothing in the legislation to suggest what happens when an employee does not use his annual leave, except an implication from Article 5(3) that it will eventually be forfeited. The Labour Relations Board, on the other hand, has decided that not only is annual leave not forfeited if the employees do not ask for it,[126]

120. $x^2 = 3.133$, $p < .10$, $N=17$.

121. $x^2 = 6.869$, $p < .10$.

122. Civ. C., Art. 2561. No judicial interpretation of "main or whole time" has been discovered.

123. Minimum Labour Conditions Regulations, Art. 5(1). The amounts established by the Civil Code still apply to employees included under the Code and excluded by the Regulations. These are ten days for one to five years of service, fifteen days for five to fifteen years of service, and twenty days for more than fifteen years of service. Civ. C., Art 2562. All periods are for consecutive days.

124. Civ. C., Art. 2563.

125. In its grant of power to the Minister of National Community Development to fix labour conditions, the Labour Relations Proclamation also provides that no such conditions should be less favourable to the employees than is provided under the Civil Code. Labour Relations Proclamation, Art. 3(i).

126. Union v. A Textile Mill, cited above at note 93. Even though the Labour Board said that annual leave does not mature until the completion of each year, one firm interviewed gives a pro rata portion to employees who are dismissed with less than one year's service.

but that the employer is under an obligation to set up a plan to distribute the leave among his workers.[127] The minimum labour conditions would appear to be inalienable rights, a view consistent with the Board's interpretation of Article 2522 of the Code,[128] that a person cannot contract for less than that given him under the minimum standards of the law.

Seventy-seven percent of the firms either followed the law with respect to the amount of annual leave or had more generous benefits.[129] Of the firms that gave less than required, three gave set amounts, one gave variable amounts at the discretion of the owner, and the other had a schedule based on service that gave fewer days than required by law. There seems to be a tendency for the larger firms to adhere more closely to the law than the smaller ones.[130] There were no apparent differences in the practices of the two industries nor among the types of ownership. However, experience with a union does have some effect: ninety-three percent of the firms unionized either presently or in the past followed the law, while only fifty percent of the firms having no union experience did.[131]

Thirty-two percent of the firms required that the days be taken consecutively.[132] Although there are no consistent differences between firms that required consecutivity and those that did not, it is interesting to note that three of the seven firms which required consecutivity have collective agreements. These companies, while attaining a high state of structural development in labour relations, adhere to a practice that restricts the freedom of the workers.[133]

About half of the companies allow some accumulation of annual leave.[134] Nationality of control is the only variable showing correlation to this practice, there being a greater tendency for foreign firms to allow accumulation than Ethiopian and resident foreign firms.[135]

Almost half of the firms gave payment in lieu of annual leave, two of which said that this was the most common method of relieving this liability. Over one-third would pay only if the company needed the employee to work, while three firms gave an outright "no."[136] From the standpoint of noting the benefits to which an employee is entitled by law or practice, payment only when the company needs him to work is tantamount to "no."

Smaller companies are significantly more willing to give payment than larger ones.[137] Eighty percent of the small firms gave payment, while only eighteen

127. Addis Ababa Tailor's Union v. A Tailor Shop Owner cited above at note 63.

128. Union v. Building Construction, cited above at note 77.

129. $N=22$.

130. Ninety-one percent of the large firms followed the law, whereas only sixty-four percent of the small ones did. The difference is not statistically significant.

131. $x^2 = 3.16$, $p < .10$.

132. $N=22$.

133. The personnel officer of one of these companies said that the employees actually received greater benefits before the minimum conditions were established. The company changed its policy in conformity to the conditions set by law, thus reducing total benefits.

134. $N=19$. Included is one company that allows accumulation only when the leave cannot be taken because the company needs the employee to work. With respect to the employees' volition, this is the same as not allowing accumulation.

135. $x^2 = 3.046$, $p < .10$.

136. $N=21$.

137. $x^2 = 5.737$, $p < .02$.

percent of the larger ones did. This may be explained by the potentially greater depletion of the work force due to annual leavetaking at any point in time that could be experienced by the smaller companies. Seventy-eight percent of the resident foreign firms offer payment, whereas, only about one-third each of the Ethiopian and foreign firms do so.[138] Likelihood of payment in lieu of annual leave appears to be a function of size of the firm and nationality of control.[139]

As mentioned above, the Civil Code provides that no days are to be deducted by the initiative of the employee.[140] Three-quarters of the sample followed the law,[141] the garages showing a slightly greater propensity of adherence. There where no correlations with any of the other variables.

Marriage Leave

The Minimum Labour Conditions Regulations forbid an employer to consider an employee's absence resulting from the marriage of a family member, presumably including the employee himself, as an interruption of service.[142] In effect, this would appear to give unpaid marriage leave to workers covered by the Regulations. Although no limitation is placed on the number of days which an employee may use for this purpose, surely it was not intended for this leave to be unlimited.

A rule of "reasonableness" might be applied here, the actual length being determined by such factors as the distance of the wedding from the place of employment, the role of the employee in the marriage ceremony, and other factors determined by custom.

In spite of the lack of legal obligation to continue an employee's salary during such absences, two-thirds of the firms gave some type of paid leave. Two of these firms gave leave only at the discretion of the company, and three allowed days off without pay in addition to the paid leave. Two firms had the policy of giving only leave without pay. Ethiopian and resident foreign firms show a greater propensity to give marriage leave with pay than do foreign firms.[143] This may partly be due to many of the latter's policies being generated in countries where marriage leave is less common. Eighty-nine percent of the Ethiopian and resident foreign firms gave some form of marriage leave, but only forty percent of the foreign firms did.

Maternity Leave

The Civil Code provides for one month's leave with half pay to employees during their confinement.[144] Nine firms in the sample either had no female employees or had no reason to give this leave, primarily due to age factors. Seven of the remaining firms gave what the law required, the others giving more. The comments of employees of two companies are significant here. One said that the

138. $x^2 = 3.821$, $p < .05$.
139. See note 30.
140. See text following note 124.
141. $N=18$.
142. Minimum Labour Conditions Regulations, Art. 5(4).
143. $x^2 = 3.258$, $p < .10$.
144. Civ. C., Art. 2566.

maternity leave in her company was without pay, although the management had said it was with pay, and that rather than lose the wages, most women returned to work after a little more than one week. While not denying the stated policy of the firm, the employee of the other company said that a woman has to argue and beg too much to receive payment, so it is usually forfeited.

Mourning Leave

As in the case of marriage leave, the Minimum Labour Conditions Regulations in effect guarantee only a "reasonable" amount of unpaid leave for absences due to the death of a "family" member.[145] In practice, a "family" member is regarded as one from the employee's immediate family. There are no legal provisions with respect to deaths of friends or other relatives.

Mourning leave shows by far the greatest difference between the law and practice, in this case the difference serving to benefit employees. In spite of the lack of legal compulsion, the vast majority of the sample, eighty-eight percent,[146] gave three or more days with pay for death of an immediate family member. Half of the firms gave between one and three days with pay for the death of other relatives, with five companies granting leave without pay in such cases. Only five companies gave paid leave for the death of friends, usually one day or time for the funeral; four gave leave without pay; and three stated that no leave was given.

Only one firm did not give any leave for deaths of immediate family members. The company's representative said they had had too much past experience with employee abuse so they now denied mourning leave altogether. Two firms denied any such leave for friends, one of these also denied it for other relatives. The average mourning leave, with or without pay, given by companies which so specified (including those which give none) was 3.2 days for immediate family, 1.9 days for other relatives, and 1.1 days for friends.

Educational Leave

There is no mention of leave for educational purposes in any of the laws setting minimum labour conditions. Two-thirds of the firms sampled either do not provide for educational leave or have no policy in this matter. "No leave and no policy" answers probably reflect essentially the same policy. The firm gives none because it has never had the the occasion, *i.e.*, it has no policy. A quarter of the firms are currently giving or have recently a limited amount of leave for some employees participating in training programs. Five of these firms are large garages. In fact, when large garages are compared with the balance of the sample, they have a significantly greater propensity either to have an established policy for allowing educational leave or actually to give[147] it. This is not surprising, considering the necessity for highly skilled employees in these companies and their relatively large financial resources. Only three companies, however, seemed to have an established policy for educational leave, one having that policy written into its collective agreement.

145. Minimum Labour Conditions Regulations, Art. 5(4).
146. $N=22$.
147. $x^2 = 4.261$, $p < .05$.

Work-Connected Injury and Disease

The Civil Code instituted a system of workmen's compensation whereby an employer is absolutely liable for certain specified damages if an employee either suffers an injury or contracts a disease arising from his work.[148] The only defences to which the employer is entitled are that the injury or disease did not arise from the work, that the injury or disease is due to the intentional act of the employee, or that the cause of the injury or disease was the employee's contravention of a (known) written regulation.[149]

Under this system of liability (hereinafter called Article 2549 liability) the employee is covered for all his medical and related expenses and funeral costs. While the employee is unable to work, his employer is obligated to continue his salary at a rate of 75% plus 5% for each year of service to the employer with a maximum of 100% or E. $ 500.00 per month, whichever is the smaller. This salary continuance lasts during the period of temporary complete disability, with a maximum of one year. At the end of this time an assessment of the employee's permanent capacity to work is made. If his capacity has been reduced by less than fifty percent, then, the employer's obligations cease; if fifty percent or more, the employer is obligated to provide maintenance[150] for his former employee and his children, unless members of the employee's family can assume the burden.[151]

Apart from funeral expenses, Article 2549 liability makes no express provision as to the employer's liability for the employee's death. Since Article 2558(1) creates an obligation to support the children in the case of permanent disability, this provision should be taken to include the case of death, which deprives the children of parental support as effectively as a permanent total disability with respect to them.

There is no limit set on the the duration for which the employer is liable for maintenance payments. Since specific time limits are not used, it is reasonable to conclude that the employer is liable for maintenance until there is a change in status, *e.g.*, the children attain majority, the injured former employee dies, or family support becomes possible at which time the maintenance payments would either be reduced or eliminated, accordingly. The insurance companies who write policies to cover obligations arising from work-connected diseases and injuries are not willing to follow this open-ended approach. Policies of three of the major insurance companies cover only up to a maximum of five years and a maximum of E. $ 30,000 (E. $ 500 per month). A fourth company sets a maximum benefit of only a little more than three years.

This interest in the provisions of insurance policies is more than academic. When asked what provisions were made for an employee who was injured while working, all but three employers interviewed said they had insurance to cover that. Few could remember any of the provisions of their policies. It appears that employers purchase the standard policies,[152] then proceed to put all their possible liabilities

148. Civ. C., Art. 2549.

149. *Id.*, Arts. 2553 and 2554.

150. Maintenance is defined by Civ. C., Art. 807.

151. *Id.*, Arts. 2556 through 2558. The order of liability among the family is fixed by Art. 821.

152. Riders covering, up to certain dollar limits, all of an employer's liability for work-connected disease and injury are available, but the extent to which they are purchased is not known.

out of mind, confident that "my insurance covers that." With this attitude prevalent among employers, it would be hard for an injured employee to convince his employer that he had greater rights than the insurance would pay him. The only recourse in this case is to go to court or to the Labour Department, a costly and time consuming process.

Under Article 2558(1) the obligation of maintenance does not arise unless the employee has suffered fifty percent disability or more, when, an obligation apparently arises to provide total maintenance. In cases where the disability is about fifty precent this all-or-nothing approach can be unjust to either employer or employee, depending on whether the disability is above or below that crucial line. On the other hand, the four insurance policies base maintenance payments on the percentage of permanent disability resulting from the accident. Each policy contains a schedule of disabilities with a rate established for each.[153] An official of one insurance company, which, incidentally, had the most comprehensive schedule, stated that if medical authorities establish that an individual employee's disability is greater than the schedule reads, the company will pay benefits based on the medical advice.

Three of the policies covered the employer to the limit of his liability for wages during the period of temporary total disablement. The fourth paid only one-half wages during this time. Although the law releases the employer from his obligation only where the employee has contravened a written regulation or has intentionally inflicted the injury, two of the policies will not pay benefits where the employee has merely been reckless.

The existence of wide-scale insurance coverage no doubt makes it easier for the injured employee to receive some compensation. The use of a scale of disabilities by the insurance companies serves to benefit a greater number of employees than the all-or-nothing approach of the law, since more employees are likely to sustain less than fifty percent permanent disability than are likely to exceed that amount. However, for those who fall into the latter category, not only do they not receive the one hundred percent maintenance the Code perhaps unfairly entitles them to, but also their maintenance from the insurance company lasts only five years, whereas the disability will last a lifetime.

Where the injury to the employee has been caused by the employer's intention or recklessness, the Civil Code provides for compensation under the rules governing extra-contractual liability.[154] Under this theory of liability, the employer has a myriad of defences other than those from Article 2549 liability, including comparative negligence.[155] Article 2559(1) implies that these two theories of liability are not

153. The rates varied somewhat among the four policies, *e.g.* loss of a right hand varied from 42½% disablity to 60% disability, and complete loss of hearing due to disease from no coverage , to 50% disability, to 100% disability.

154. Civ. C., Art. 2559. Two of the policies do not cover injuries resulting from the employer's recklessness. A third one probably does not include this case.

155. *Id.*, Art 2098. "(1) Where the damage is due partly to the fault of the victim, the latter shall be entitled to partial compensation only. (2) In fixing the extent to which the damage shall be made good, all the circumstances of the case shall be taken into consideration, in particular the extent to which the faults committed have contributed to causing the damage and the respective gravity of these faults."

only mutually exclusive, but that whenever the injury has been caused by the recklessness of the employer, extra-contractual liability is the employee's only remedy.[156]

Under ordinary circumstances this view does not restrict the rights of the employee since the limitations on monetary recovery under Article 2549 liability do not apply to extra-contractual liability. A diminution of the amount or recovery may occur, however, when both the employee's and the employer's negligence have contributed to the injury. The result of reduction of damages by comparative negligence may lower the final award based on extra-contractual liability to an amount below that which would be obtained under Article 2549 liability. Faced with this situation, the Supreme Imperial Court has interpreted the law to allow the injured employee to take his choice between Article 2549 liability and extra-contractual liability, on the grounds that the law could not have intended an injured employee to receive less where the employer is reckless than under the absolute viability of Article 2549.[157] A more recent case throws some doubt on the continued viability of this interpretation. Where a truck driver, sixty percent disabled, appealed a High Court award of maintenance on the grounds that it was erroneously based on Article 2549 liability rather than on extra-contractual liability which would have allowed him damages in addition to maintenance, the Supreme Imperial Court, finding both the driver and his employer at fault, reduced the award of the High Court.[158] This decision implies that whenever the employer is reckless, extra-contractual liability is the only proper remedy, regardless of its effect on the injured person.

The essential element, "arising from work," appears to have caused little problem in cases of physical injuries arising from accidents. In most cases there is little doubt as to what the accident "arose from." Most occur at the work place of the employee, whether that is a factory or a truck. The Code also includes accidents arising during rest periods and while the employee is engaged in any activity in the interests of the business, whether or not the employer ordered that activity.[159] In all those cases, however, it might be said that the employer could have foreseen that such accidents were possible. In an action by a deceased's survivors claiming compensation under Article 2549 for deceased's murder by *shiftas* (highwaymen) while making a trip for the benefit of his employer, the High Court held that foreseeability was a prerequisite to liability. The Supreme Imperial Court reversed, saying that foreseeablility of the occurrence is irrelevant to Article 2549 liability since employers are strictly liable.[160] The court said that all acts surrounding and promoting the activity "arise from the work".

On the other hand, liability for *diseases* "arising from the work" is almost a dead letter. To prove the nexus in court takes the testimony of medical doctors. The paucity of doctors in Ethiopia and the relative poverty of most plaintiffs

156. *Id.*, Art. 2559(1). "Where the accident or disease of the employee is caused by an intentional act or the recklessness of the employer, the provisions of Art. 2557 and 2558 shall not apply."

157. Hajoglou v. The Imperial Highway Authority (Sup. Imp. Ct., 1961), *J.Eth. L.*, vol. 1, p. 155.

158. Mesfin Derso v. Enterprise Razel Freres (Sup. Imp. Ct., 1967, Civil App. No. 530-59) (unpublished)

159. Civ. C., Arts. 2550 and 2551.

160. Mamalingas v. Messrs. Zapula and Comussa Company (Sup. Imp. Ct., 1966), *J. Eth. L.*, vol. 4, p. 45. High Court opinion at *J. Eth. L.*, vol. 1, p. 204.

make the problem of proof almost insurmountable. The Civil Code, recognizing this problem, provides for authorizing administrative regulations that would set forth diseases irrebuttably presumed to have arisen from particular kinds of work.[161] The Labour Standards Proclamation mandates the Minister of National Community Development and Social Affairs to "establish lists of professional diseases ..within the meaning of Article 2552 of the Civil Code."[162] To date no such list has been made.

For these reasons employer's insurance coverage remains the most practical alternative for most employees. However, of the four policies examined, one did not insure against disease. One of the other three simply insured "personal injury by disease arising from work." The other two defined occupational disease and industrial disease, respectively, as diseases which are both peculiar to the nature of the work in which the employee is engaged and are contracted in the course of employment. Since the Code makes no mention of the requirement of "peculiarity" of the disease, these policies are more restrictive than the Code, unless "arising from" is said to imply "peculiarity." The latter two policies also placed an obligation on the employer to specify what diseases shall be deemed to apply to his business. Officials of the two companies explained that an employer's failure to fulfill this obligation would not prevent an employee from collecting his benefits given the proper medical evidence.

The frequency of work-connected injuries and disease in a particular enterprise is a function of the average tendency to accidents by the work force, the safety precautions taken in the establishment, and some constant factor determined by the nature of the work. The latter can be changed only through new technology and is not relevant here. Regarding the first factor, in general, the Ethiopian workers are probably no more or less prone to accidents than any other nationality, although relative unfamiliarity with moving machines might make them especially vulnerable in their early days of employment.[163]

Safety precautions, on the other hand, are a factor which effective legislation and enforcement can promote. The Civil Code establishes only a vague standard of maintaining the conditions of the premises "in accordance with the general practice and technical requirements" to safeguard the life, health and moral standards of the employees.[164] The Labour Standards Proclamation did little to enlarge upon this duty or make it more explicit.[165] The lack of clear standards makes it difficult not only for many employers to know what is expected of them, but also for anyone but highly sophisticated and trained labour inspectors to assess the conditions properly. Although the Labour Department is making efforts to upgrade their inspectors, they do not have persons of such skill now.[166] In light of these problems

161. Civ. C., Art. 2552.

162. Labour Standards Proclamation, Art. 5(2).

163. *The Human Factors of Productivity in Africa* (London, Inter-Africa Labour Inst., Commission for Technical Cooperation in Africa, South of the Sahara, 2nd ed., 1960), pp. 101-103.

164. Civ. C., Art. 2548.

165. The only additions were in requiring the employer to provide "special care and protection" to minors, women, and the disabled, to ensure regular instruction in safety and health practices, and to post clear warning notices. Labour Standards Proclamation, Art. 10.

166. *Report to the Government of Ethiopia on Labour Adminstration*, cited above note 23, p. 36.

it is unfortunate that the Minister of National Community Development and Social Affairs has never issued regulations establishing more precise safety standards, at least in the more accident prone industries.[167]

Sick Leave

An employee with at least three months' service is entitled to half pay for up to fourteen days of absence due to illness not intentionally contracted and up to one month if he has served for one or more years.[168] The Code leaves in doubt, however, whether the durations mentioned in the provision are the number of days for each year or the number of days for each illness. No judicial decision has been found that clarifies this ambiguity, and employers are divided on which view to take.

After the period of paid sick leave ends, the Code makes no mention of the amount of unpaid sick leave to which an employee is entitled before termination of his employment. But the Minimum Labour Conditions Regulations do prohibit an employer from regarding absence due to illness as an interruption of employment or from subtracting those days from the worker's annual leave.[169] In a case already mentioned, the Supreme Imperial Court, faced with a request for severance pay for dismissal without good cause, denied relief on the grounds that since the disease (work-connected) had rendered the employee unable to continue his previous job, although he was still employable in another capacity in the same company, there existed good cause for dismissal.[170] Although the court's decision may be intended to be limited only to the case in which the employee's illness renders him unfit for future service, and not intended to include dismissals during the time in which the employee is recuperating, the fact that the plaintiff was employable tends to indicate a philosophy that would allow dismissal whenever the employee's unavailability for work inconveniences the employer.

Surprisingly, half of the sample reported they offered more generous sick leave than required by law; although among these were two firms requiring service of one and two years in order to receive any leave. Almost one-third of the firms gave less sick leave than required. Included in this group is one company which grants it only at the discretion of the management. Small companies have a greater propensity to give less sick leave than the law requires, while large companies demonstrate a tendency to give more than required.[171]

Unionization has an important effect on sick leave benefits; firms with active unions showing a significantly greater propensity to do better than the law, although they do not show any greater likelihood merely to adhere to it.[172] Firms which

167. The Minister has power to issue these regulations both under the Labour Standards Proclamation, Art. 5(3), and under the Labour Relations Proclamation, Art. 3(i).

168. Civ. C., Art. 2542.

169. Minimum Labour Conditions Regulations, Art. 5(4).

170. Yitbarek Negash v. Assab Refinery, cited above at note 69. Also see the text following the note.

171. $N=22$, For small companies, $x^2 = 3.352$, $p < .10$; the difference is not statistically significant for large companies.

172. $x^2 = 5.854$, $p < .02$.

have never had unions, on the other hand, show considerably less propensity to offer more than required.[173]

In keeping with the apparent uncertainty of the law with respect to the length of additional leave without pay before termination, the practices of the sampled firms varied from unlimited leave to no extra leave. They were fairly widely distributed, four offering one month or less, four from one to three months, three from three to six months, and four offering unlimited leave. Four companies, on the other hand, left the amount to be determined by the quality of the worker at the discretion of management. This approach can be used, as indeed it seems to be intended, as an easy method of dismissing without liability an employee who has incurred the dislike of management.

In almost all cases where paid sick leave is available, a prerequisite is a note by a doctor confirming the fact of the employee's illness. A number of employers complained that they had a difficult time ascertaining which were valid excuses since they believed it was quite easy to obtain false certificates, mentioning one hospital as a particular offender. Some companies retain their own doctor to examine employees. Although this gives the employer the assurance of a known appraiser, it may subject the doctor to pressures from the employer to be overly conservative about diagnoses and the amount of leave necessary. However, if company-sponsored medical service is not available, an illness which lasts only one or two days, might cost the employee more to obtain a doctor's certificate than to suffer the two days' loss of salary.[174]

To determine the validity of the complaints of false medical certificates, a research assistant went to three hospitals heavily patronized by workers in Addis Ababa, posing as a garage mechanic who had been ill at home for the past five days with a bad headache. One was the hospital that a number of employers had pointed to as freely giving illness certificates. In each case, the "mechanic" sought out a hospital employee other than a doctor. In none of them was a doctor actually seen.

In the first hospital, a staff member would not let the "mechanic" see the doctor at an appointed time, saying that the doctor was busy and that he was not sick. A small sum of money obtained a statement on a hospital form, signed by the staff member as a physician, that the "mechanic" had been under treatment for a chronic headache for the past seven days as an out patient.

In the second hospital, the "mechanic" was informed by both a nurse and a male employee that he would first have to see the doctor, but was assured that if the doctor felt he was ill, he would probably get an excuse for the full five days.

In the third hospital, the one notorious in the eyes of the employers, the "mechanic" met a male employee who translated between patients and the foreign doctors who only speak their native language. Even after much pleading, the "mechanic" was unable to get the doctor's aide to give him an excuse for past illness. However, he was told that if he would register (E. $ 2.00) at the hospital, the

173. $x^2 = 4.911$, $p < .05$.

174. Most hospitals in Addis Ababa have a small registration and examination fee, usually two dollars.

aide would help him in the future to obtain advance excuses, *i.e.* statements that the patient is sick and should be allowed so many days to stay home and recover. The research assistant felt the aide had a great deal of influence over the doctor, due in a large part to the language problem. While freely giving advance excuses does not necessarily reflect a lax procedure, it was the research assistant's impression that, for a payment, the aide might communicate to the doctor more suffering than was the case.

From this small, and not necessarily representative, sample of Addis Ababa hospitals, it would appear that the complaints of the employers are not without justification. A novice was able to obtain an excuse at one hospital and might have at another, if he had followed it up. At a third hospital he learned the method of obtaining advance excuses. Surely, an experienced worker could do as well.

Other Benefits

Employers give many benefits apart from those required by statute. Although not a benefit most employees look forward to, the funeral expenses of employees were paid for by sixty-three percent of the sample. One-half gave an annual bonus. Many allowed discounts on purchases of items produced or sold by the company and furnished working clothes for employees. Two-thirds of the sample allowed employees time off with pay to go to court or police stations as witnesses; another twenty-five percent allowed leave without pay for this purpose.[175]

Summary of Practices

Probably the most surprising result of this survey was that even with the small sample and appropriate correction in the statistical test,[176] significant differences were noted in behaviour based upon the four variables chosen. No single variable showed itself to be a better basis for predicting behaviour than the others, with differences between the two industries being considerably less either than expected or than the differences within any of the other variables. Indeed, of the three instances in which there was some noticeable difference between the behaviour of garages and beverage companies, two centered on large garages alone, one of those, educational leave, resulting from the peculiar nature of the work.

The larger firms appeared to have more established policies than smaller ones. This appeared not only with respect to a tendency to adhere to the law more closely, even when it means diminution of benefits to employees, but also in the lesser frequency of responses indicating management discretion and in the readiness with which the questions were answered during the interviews. All in all, it would seem that the labour policies of the larger firms are much more standardized and less subject to the whim of the manager.

The extent of employee organization created less difference than expected. The relative newness and weakness of unions and the existence of a relatively large schedule of legislatively created minimum labour conditions may contribute to this lack of distinction by providing a compelling influence other than a union. Even so,

175. For the variety of extra benefits offered, see L. Morehous, cited above at note 26, pp.28-30.
176. See note 32.

the presence of an active union in the company tends to produce a shorter work week and more generous sick leave than required by law, although the former is also related to the industry and the latter is also related to the size of the firm. Furthermore, union experience, *i.e*, experience with an active or now defunct union, is more likely to produce closer adherence to the annual leave provisions and the legal requirements for pay periods, although again the former is related to the size of the firm. There is a possibility that, since this data is taken only from the employers' responses, a greater difference does exist between practices in unionized firms and those in non-unionized firms owing to a greater propensity for truth from the former, suspecting their response may be checked with union officials.

Like the larger firms, the foreign firms demonstrated a slightly greater tendency to follow the legislative employment conditions. Although accumulation of an annual leave seems to be forbidden by Article 5(3) of the Minimum Labour Conditions Regulations, the foreign firms show a greater tendency to allow it. While foreign firms generally have a shorter work week, they are also less likely to give marriage leave. Resident foreign firms show distinctions by their greater tendency to offer payment in lieu of annual leave and to pay a greater overtime rate.

Of all benefits covered, the practices with respect to mourning leave show the greatest difference between law and practice since almost all firms offer leave with pay whereas the law requires only unpaid leave. This behaviour probably results from the importance of mourning in the Ethiopian culture. While the other benefits may make wage employment more tolerable, none of them touchs upon such a salient feature of the society.

Employees with work-connected disease or injuries are almost entirely at the mercy of the insurance companies. Although insurance may often make compensation more available than a tight-fisted employer would, the standard policies do not fully cover the employer's legal liability. Furthermore, it has been reported that it is a practice of the Labour Relations Board to relieve an employer of all liability beyond that covered by insurance. A problem placing an unnecessary burden on employees, the courts, and the Labour Board alike is the absence of a schedule of work-connected diseases or even a good definition of what it means for a disease to "arise from work."

The area of dismissal remains the most litigated, the most important in the eyes of employees, and yet the most confusing both legislatively and judicially. Some guidelines are absolutely necessary to insure greater predictability, to protect employees, and to protect union formation.

PART II

LABOUR-MANAGEMENT RELATIONS

Introduction

This part is divided into two sections. The first considers the present conflict-resolving machinery available outside any private arrangements between workers and employers, attitudes toward it, and possible future changes. The second section deals with attitudes of employers toward labour, and of workers toward their own organizations and toward employers.

The data for this part was obtained from interviews with the employers sampled in the previous part, with union leaders and employees in those companies, with other present and past union leaders, and with staff members of the Confederation of Ethiopian Labour Unions (CELU), the Federation of Employers of Ethiopia (FEE) and relevant government bodies. Altogether over fifty intervews were conducted. In order to assure the anonymity of the individuals who were kind enough to share not only their time but their confidence with the writer, the sources are not identified.

Conflict Solving Machinery

Whenever an employee has a complaint against his employer, four courses are open to him: ignore it, go to the employer, sue his employer in court, or take his complaint to the Ministry of National Community Development and Social Affairs. A worker who is still employed will often be unwilling to file a court action or a complaint with the Ministry, for fear of dismissal;[177] if his employer is quick to take offence, he may be afraid even to complain to him. An employee who has already been dismissed, however, will have to go to the courts or the Ministry to obtain any satisfaction, since effective personal contact with employer will probably have ceased to exist. Here the concern is with conflict resolving machinery other than that established between the parties; therefore, only the alternatives of court and Ministry will be considered.

An employee who chooses to take his case first to the courts may find this route blocked when he tries to file his complaint. Employees have complained, and the basis of the complaint has been verified by an official of the Addis Ababa Awradja Court, that it is the practice of that court to refuse to accept employees' complaints until after they have been to the Ministry of National Community Development.[178] Reportedly, some judges in the lower courts also feel this way. This view seems to be based on the belief that because the Labour Relations Proclamation established dispute settling machinery within the Ministry, an employee must first pursue his remedies there. If true, it is interesting that this belief has been achieved without so much as a hint in the Labour Relations Proclamation or any other legislation. There is nothing in any legislation restricting an employee from pursuing his ordinary contractual rights. In fact, the High Court has confirmed this view, saying that the Proclamation was enacted to deal with general difficulties arising between employees and employers, such as progress of work, advancement and settlement of misunderstandings, and does not restrict an employee's choice of remedies.[179]

An employee who brings a complaint to the Ministry of National Community Development will file it in the Labour Relations Section of the Labour Department, a division of the Ministry. There seems to be much confusion among employers, and even more among employees, as to the distinction between the Labour Relations Section and the Labour Relations Board, an autonomous body within the Ministry. All disputes brought by unions will first be heard in the Section. Its powers are

177. See text accompanying note 34.

178. The main reason given for this practice is that in the Ministry of National Community Development the parties may be able to reach a peaceful settlement and thus save themselves the trouble and expense of litigation.

179. Mammo Yinberberu v. Yirgu Abebe (High Ct., 1963), *J. Eth. L.*, vol. 1, p. 36.

strictly conciliatory. After a complaint is filed, the Section notifies the other party of the action and requests that he appear at the Section on a certain date. In keeping with the Section's conciliatory powers, this notice has no power of compulsion. Section personnel state that the notice alone is often sufficient to obtain a settlement.[180] If there is no response, another notice will be sent setting another date. If a meeting occurs, the conciliator will hear the evidence and attempt to induce a settlement. If no settlement is forthcoming, he will suggest the terms of a settlement, primarily based on his interpretation of the law as it applies to the case at hand.[181]

The functions of the Labour Relations Section come to an end when it fails to bring the parties to agreement. At this point an individual worker not represeented by a union must pursue his remedies in court. A letter from the Section explaining what has taken place may be obtained. A union action on the other hand, may proceed to the Labour Relations Board, where it is subject to being sent back to the Section if the Board feels the conciliation attempts were insufficient.

How is the conciliation procedure of the Labour Relations Section regarded by those intended to benefit from it, employer and employees?

The Section's lack of adjudicative and enforcement powers brought objections from almost all employees and employers interviewed. It has been accused of not knowing the law and of being lax in the enforcement of its decisions. This latter accusation seems to be engendered by both the mistaken belief that the Section has adjudicative power and by the strong desire of both employees and employers for an early, straightforward and final adjudication of these matters. Although a draft law, currently under discussion in the Ministry would make some changes in the conflict resolving machinery, the conciliation portion will probably be retained. A high Labour Department official has informed the writer that the overriding philosophy of the Ministry is to promote conciliation first, then non-compulsory arbitration prior to litigation.

Delay[182] and the lack of finality in the Section encourage some employers to ignore the conference notices; they prefer to wait until they are sued in court. Their feeling is that if the conciliator decides in their favour, they will be faced with a lawsuit anyway, so they might as well avoid having to present their case twice? While this is a rational decision and not necessarily one designed simply to avoid liabilities, the increased delay simply adds to an employee's problems. One change the draft law may bring about is to provide for compulsory attendance, to be used only as a last resort, at conciliation conferences. This would, at least, assure the presence of the recalcitrant employer who hopes his dismissed employee will give up trying.

180. No records have been maintained regarding the number of disputes settled privately between the parties after one notice has been sent. Although they must be, obtained with a phenomenal amount of effort, there are no data concerning the frequency and nature of agreements reached at various stages. A slightly different procedure of record keeping would make this information readily available.

181. If the labour dispute involves a major issue, an assistant minister will handle the conciliation. *Report to the Government of Ethiopia on Labour Administration*, cited above at note 33, p. 29.

182. No data was available on the actual length of time a dispute took in the Labour Section, but it was said by the personnel to be a considerable amount of time.

Prevented from first suing in court, the dismissed employee must suffer the delays of conciliation before even hoping to have a decision. The unemployed worker may find the time spent sitting around the Labour Department annoying and frustrating, but he can probably afford it. The employee who has been fortunate enough to have found work, however, is unlikely to be able to find the free time and is therefore likely to have to give up his rights. In the analogous situation where an employer has used delaying tactics before the Labour Board, the Board has awarded an employee his salary for the interim;[183] however, this solution does not help alleviate the much greater problem in the Labour Section, or compensate for ordinary administrative delays.

The lack of legal training on the part of the conciliators no doubt serves to add to the frustrations. One employer reported that the conciliators seem always to take the side of the last party they have seen, switching positions with each interview. Although giving each party a sympathetic ear may promote conciliation, when a party learns that the conciliator has been "convinced" by each side in turn, he may develop a certain sense of insecurity and distrust. The conciliators may be trying their best, but both employers and employees are left with the feeling that they either do not know the law or, for some unknown reason, do not wish to follow it. This negative attitude is compounded by what both sides perceive to be rudeness and arrogance on the part of the officials. However inaccurate these perceptions may be, the Labour Section has left an unpleasant taste in the mouths of many of those it is trying to help.

While acknowledging that neither employers nor employees like the present procedure and that employees may suffer economically thereby, a high Ministry official has stated that voluntary settlement of disputes is a primary tenet of the Ministry and that it will be continued so that parties will be forced to learn its advantages. The Ministry may continue to push for a voluntary approach to conflict resolution, but conciliation in the Labour Section appears to have failed as a teaching device.

As mentioned above, while a union which cannot obtain satisfaction in the Labour Relations Section may proceed to the Labour Relation Board, the individual workers only recourse at that stage is the courts. This conclusion certainly does not follow inexorably from the written laws. Article 12(a)(i) of the Labour Relations Proclamation grants the Board power "to consider, conciliate, and arbitrate labour disputes" and "to issue decisions and awards." Article 2(j) and (k) of the same proclamation defines "labour dispute" as any controversy concerning the terms of the entire field of relations between employers and employees. From these provisions it would seem that the Board has the power to adjudicate any individual employee's complaint concerning labour conditions. Although because of the lack of personnel, it has been the official policy of the staffs of the Labour Department and the Labour Board to discourage complaints brought by individuals, nevertheless, the Labour Board felt it had the power to handle these cases and occasionally did so.

While the Supreme Imperial Court has not gone so far as to hold that the Labour Board has jurisdiction over all disputes between an employee and his

183. Addis Ababa Tailor's Union v. The Owner of a Tailor Shop (Labour Relations Board, September 1966?), Case No. XIII, and Union v. A Brick Making Firm (Labour Relations Board. July 12, 1966), Case No. XVIII, *Labour Disputes.*

employer, it has held that the Labour Board does have jurisdiction over individual cases where there is a union among the employees.[184] The Court reasoned that since dismissal of individual union members could have a weakening effect on the union as a whole, in order to foster the establishment and growth of labour unions, the Labor Board should have jurisdiction of individual cases where the employee is a union member. This reasoning might be easily extended to include cases where the complaining employee is not a union member, but where the employer may be using him as an example to either weaken an existing union or to frighten employees from forming a union.

Four years later, the Supreme Court, having before it issue of the Board's jurisdiction over an individual case where the employee was not a union member and the dispute would not effect the union's welfare, held that the Board had no jurisdiction.[185] Although consistent with the prior holding allowing the Board to hear individual cases where the employee is a union member, the court placed a limit on the Board's jurisdiction. Sources in the Ministry have informed the writer that the Supreme Court sees its decision as an absolute prohibition of the Board's handling cases of unrepresented individuals and that this interpretation is currently under discussion between members of the court and the Minister of National Community Development.

Although union matters usually pass through the conciliation procedures of the Labour Section, the Labour Board has occasionally taken a dispute without preliminaries, but then subjected the parties to its own conciliation procedures.

The powers of the Labour Relations Board are broad.[186] In keeping with the philosophy of the Ministry, before rendering any decision it first encourages the parties to reach a voluntary settlement. Not only are such conciliation attempts made with the parties before the Board, but the parties may be sent away for some period of time to try to iron out their differences.[187] During conciliation or thereafter, the Board has the power to issue an injunction when dealing with complaints of unfair labour practices, enabling it "to prohibit any such practice and, in connection therewith, to direct named persons, groups, or organizations to abstain therefrom." When conciliation fails, the Board has the power to render a decision or award concerning a labour dispute.

It is within this last power that most of the Board's authority lies. For, by this power, the Board may not only interpret provisions of an existing collective

184. Sera Mikael Brick Factory v. The Association of Demissie Eshete (Sup. Imp. Ct., 1963), *J.Eth. L.*, vol. 3, p. 13.

185. A. Besse and Company v. Petratos (Sup. Imp. Ct., 1967, Civil App. No. 1341-59) (unpublished). The Labour Board had apparently accepted jurisdiction over the case of Mrs. Petratos, not a union member, on the basis of her determination that her work did not place her in management and, therefore, was an "employee" under the Labour Relations Proclamation, Art. 2(f). her position was in contrast to that of her husband, a co-party, who was found to be in management and not within the Board's jurisdiction.

The Supreme Court based its jurisdiction on Article 33 of the Proclamation, providing that the existence of the Labour Board does not restrict an employee's right to sue in court (see text accompanying note 192), and on Article 34, mandating the Minister of Justice to establish labour courts.

186. See Labour Relations Proclamation, Art. 12.

187. Union v. A Textile Mill (Labour Relations Board, November 22, 1967), *Labour Disputes*, Case No. XXV.

agreement, but also establish the terms of a disputed provision in a draft collective agreement undergoing negotiation. One Labour Department official cites this power as the principal rationale behind the strict limitation placed on strikes.[188] He feels that, if no other means were available for employees to improve their conditions the right to strike would be essential, but the Labour Board's power to establish the terms of contractual rights between union and management greatly reduces the need for the right to strike. Indeed, by this view the method of resolution by private coercion (strike or lockout) should be curtailed as much as possible. If the parties by themselves cannot agree on wages, for example, then either may present this dispute before the Board. If the Board feels it does not have enough financial and economic facts before it, it can subpoena the employer's financial records.[189] The mere possibility of having his books delved into by a government agency may be sufficient inducement for a recalcitrant employer to settle the matter privately. Most important, the Board's decision, ideally based on a reasoned financial analysis, would be better than an endless strike and the closing of a company resulting from the excessive demands of a stubborn union or the recalcitrance of an equally stubborn employer.

In addition to the powers noted above, the Supreme Imperial Court has recognized that the Board has all those powers inherent in a judicial body.[190] The Board enforces its decisions by the same means as are available to the courts. Although the Proclamation clearly provides for this manner of enforcement,[191] in the early days of the Board a decision of the Supreme Court was necessary before enforcement authorities would obey these provisions.[192]

Although the staff of the Labour Board claims an interest in the publication of Board decisions, to date the Ministry of National Community Development has made no attempt in this endeavor. There is some feeling in the Labour Department that not all of the decisions should be published, since they have not been written by legally trained persons. However, it would be helpful for potential litigants to know the reasoning of the persons in authority, from the writer's own observations, it would appear that such publication will be a long time in coming. In the meantime, litigants must rely on private publications.[193]

Both employers and employees have complained that the Labour Board does not know the law. This criticism may not be groundless, but the present members of the Board are probably as well versed in the law as anyone who could presently replace them, given the dearth of trained lawyers in Ethiopia. On an individual basis, there has been some attempt to gain formal legal training.[194]

188. See Labour Relations Proclamation, Art. 2(s)(i)(2).

189. The Labour Board has broad powers of subpoena and investigation under the Labour Relations Proclamation, Art. 13(c), (d) and (f).

190. Fogstad Woodworks Labour Union v. Fogstad (Sup. Imp. Ct., 1963), *J. Eth. L.*, vol. 1, p. 185.

191. Labour Relations Proclamation, Art. 12(b).

192. Sera Mikael Brick Factory v. The Association of Demissie Eshete, cited above at note 184.

193. See above, note 44. It should be noted that selective reporting is followed by the *Journal of Ethiopian Law*, whose editorial board comprises law professors and high officials from the courts and the ministries.

194. One member of the Labour Board has received an LL.B degree from the Haile Sellassie I University.

Union leaders, whose opinions may be far from objective, frequently criticize the Board as anti-employee and anti-union. The most serious complaint raised is the lack of security given to union leaders. The Board's reported tendency to allow dismissal whenever some behaviour can be considered good cause, whether or not it was the behaviour that actually motivated the dismissal, has given present and potential union leaders a deep sense of insecurity. Here, the Board's actual practice is not important, for it is its perceived practice which affects the employees' sense of security. By insuring that no one hides behind the cloak of union protection to avoid dismissal for justified cause, the Board's decisions have, no doubt, frightened away some potentially capable leaders. A number of employers agreed with the union leaders' complaints that the Board tends to favour employers' positions.

Several persons interviewed, from both labour and management, felt that governmental control of decisions through its three representatives on the five-man Board was not desirable. It has been hinted that the draft law in the Ministry may provide for elimination of two of the government representatives.

Some union leaders and enployees have also accused the Board of being influenced by certain powerful men, who reportedly own stock in interested companies. Although this allegation has not been substantiated by evidence, the existence such of a belief tends to taint all Labour Board decisions in the eyes of those who hold it.

Some Ministry decisions, however, do appear to be subject to certain kinds of influence. One official of the Ministry informed the writer that after the employees of a certain government-run, profit-making enterprise had gone through all the formalities to become a registered labour union, representatives of the enterprise encouraged the Minister of National Community Development to deny registration. Subsequently, registration appears to have been withheld on legal grounds, although the prevailing view in the Ministry was said to have been that these employees did have the right to form a labour union.[195]

The provisions of the draft law are intended to modify and clarify the whole field of labour law. The conflict-resolving machinery may well be modified as a result of these discussions. One suggestion has been the establishment of specialized labour courts to handle adjudication of minor labour problems.[196] Although one employer mentioned this as a preferred alternative to the Labour Section, a crucial issue would be whether these courts would have jurisdiction before conciliation was attempted. Another suggestion has been to have the Labour Board operate full-time, rather than the present two half-days per week, enabling it to handle all labour cases. This approach could place the principal burden on a group of already experienced persons. However, the right to appeal to the Supreme Court[197] might have to be altered to avoid swamping that Court with petty cases.

195. For a discussion of the right of such workers to organize, see W. Ewing, "Public Servants' Right to Organize," *J. Eth. L.*, vol. V (1969), p.573.

196. The Labour Relations Proclamation has already mandated the Minister of Justice to establish labour courts (Art. 34) but the only step in this direction has been that one division of the Supreme Imperial Court hears all appeals from the Labour Relations Board.

197. *Id.*, Art. 19.

Attitudes

Employers' Attitudes Toward Workers and Unions

The employers sampled were, for the most part, against the formation of unions in their businesses, although in some cases they either tolerated what was perceived to be an unfortunate situation or looked upon the eventual formation of a union as inevitable. This is not surprising considering the tradition of master-servant relations that still predominates in Ethiopian labour-management relations together with those in other areas of the world. Employees either avoid asking for their legally entitled benefits or higher pay, or, if they do approach their employers they do it with the utmost humility. In many cases the presence of a union does cause many more labour problems, and thereby more difficulty for the company. An organized body has somewhat more self-confidence than individuals. It is more likely to demand that the employer follow the law, to request higher wages and better working conditions, and to resist employee dismissals. Since these are all infringements of the employer's absolute sovereignty and, at the very least, are troublesome and timeconsuming, objection to unionization is an understandable position.

Some companies, usually the ones with unions, see the union as at least a partial benefit. Several report that discipline of the workers has become easier, since it is channelled through the union leaders. They note that, when a dismissal occurs, the union, knowing of the transgressions of the worker, is much more likely to support management. Others see a union as a means of promoting a particular policy they would like to initiate, such as employee education. The most frequent reason offered in favour of unions was having only one body to deal with. Many companies seem willing to give up part of their sovereignty to gain this one advantage.

Interestingly, nationality differences do appear to make differences in the employers' attitudes toward organized labour. Although their local general managers do not necessarily agree with it, the official policy of all sampled foreign-owned companies is to support organized labour. This policy may be due in part the official government support of organized labour, or to a reluctance to deal with individual workers in an unfamiliar country. Primarily, though, this policy seems to result more from the existence of managements experienced in a tradition of organized labour.

Firms under Ethiopian control present an anomaly. While some of the most vicious anti-unionism has come from these firms, management personnel from many of them see the role of unions as protecting the employees from management abuses. They seem to perceive management as the natural enemy of the worker, the latter needing some protection from the arbitrariness and domination of the former. However, some of these same people, placed in their role as managers, have actively prevented unions from forming in their enterprises. They express a strong antagonism to strikes, which they seem to see as an inevitable result of unionization.

Attitudes toward labour unions also seem to be determined by the degree of ego involvement of the manager in his business. The greater the involvement, the greater is the threat to the manager's ego of the union's inevitable interference with his will. Several of the foreign firms are simply branches of much larger corporations. While their local general managers, all foreigners, are interested in

making a profit, which will determine their real measure of success, *i.e.* their possibility of advancement in the larger corporation, they were not raised in a culture where position alone created authority, nor are their egos bound up in their control of the firm, although they may be in its success. In contrast, many of the firms owned by resident foreigners and some Ethiopian firms are one-man creations. Their creator's egos are part of the business. A limitation on the will of the business becomes a personal attack on the owner. These managers seem to perceive a union not only as a sometimes inconvenient force with which to deal, but also as a direct attack on the ownership itself.

The responses of a good number of employers that do not have unions reflected a belief that the employees have nothing about which to complain, since they are given everything they want. These self-serving claims are not often borne out by the admitted employment conditions, much less by the responses of their employees. One respondent pointed out that, although a union had begun in the company, it dissolved primarily because the workers were no better off after paying dues than they had been before. This would seem to be the case in many instances where unions have formed, then fallen into inactivity. The unions' lack of gain, no doubt, has been partly due to an inability to bargain successfully rather than only demand. However, inflated claims by the leaders or other factors often lead the members of a new union to expect immediate results. If a company is intransigent, the union may go on strike to enforce its demands. Usually this reaction leads management to resort immedeately to the Labour Board. Since any declaration of illegality will entitle the management to dismiss all the strikers,[198] the employees have usually resumed work immediately in those instances. In a number of cases subjection to the imminent risk of dismissal has made the workers lose faith in their leaders, resulting in the dissolution of the union. If, instead of striking, the union chooses the legal route of the Labour Board, the administrative delays may surpass the impatience of the membership. As much as they may believe they deserve more from the company, many employees are not willing to sacrifice very much to attain it. This impatience plays directly into the hands of the employer, who often finds it a rational policy to be stubborn.

The extent to which some companies have gone to thwart a union can be seen in the following examples. One bottling company refused to recognize the right of its workers to form a union until a short strike was staged coinciding with a visit to the company by officials of the Ministry of National Community Development. Following a tactic frequently used by other companies, the same company later flatly refused to negotiate toward a collective agreement, until the matter was taken before the Labour Board.

Declaring that the only reason his employees formed a union was that it was fashionable, the managing director of another company freely admitted that if the union pushes too much, i.e., demands to negotiate a collective agreement, he will simply dismiss its leaders.

One garage had an interesting and sophisticated method of avoiding unionization. Fearing the formation of a union, the owner brought in three men to whom he

198. *Id.*, Art. 2(s)(ii)(2), Civ. C., Art. 2581, Workers of Ethiopian Transport v. General Ethiopian Transport (Sup, Imp. Ct., 1968, Civil App. No. 311-60) (unpublished).

sub-contracted all his work. The former employees were divided among the three. The workers were told that since they were now working for different employers, they could not mix, the one objecting employee was summarily dismissed. The manoeuver successfully nipped unionization in the bud.

The manager of one foreign-owned firm gave some insight into the motivation behind this kind of behaviour, saying that when he suddenly received a draft collective agreement from the union, he was surprised and resentful, feeling there was no justification for this manifestation of his employees' unhappiness. Fortunately for this union, the manager soon changed his opinion and began looking forward to the opportunity of clarifying the rules between management and labour. It would also appear that in this company, in the event of any unsettled disagreements, both union and management intend to put their positions before the Labour Board, and not be governed by intransigency or strike.

When asked how they felt about a union in their company, a number of firms responded that the reason they did not favour unions was that unions did nothing but make unreasonably high demands and cause trouble. While it is probably true that many of the unions surveyed have made high demands based simply upon mere desire of the workers, without any consideration of the financial circumstances of the companies it is also true that many employers have not given and do not intend to give the benefits to which their employees are legally entitled. In this respect, the unions have "caused trouble," i.e. encroachment on management's prerogative, but this is only the proper role of unions. If the Labour Inspection Service functioned more efficiently and enforced the minimum labour conditions in these businesses,[199] it too would be "causing trouble," but only the trouble that is its duty to cause.

The four firms volunteering their criteria of a good union, all had taken strong anti-union positions. In all cases they stressed the duties the employees owed the firm, feeling that the union should be an organ to promote such behaviour. The view that a union should exist only to aid management was carried to an extreme by two companies, one looking upon a union as a useful device to help relieve his burden of compensation for work-connected injuries by a union contribution to the victim. The other saw a good union as one which will relieve him of the burden of disciplining workers. The other two were more moderate in their views, seeing a good union as one with which a good grievance procedure could be established to both weed out trivial complaints and to settle other complaints mutually, thereby avoiding waste of time with the Labour Department.

Much of management's dislike of unions may result in part from what seems to be a general distrust of employees, particularly among the resident foreigners. Many managers feel that once an employee is given some special status, be it the union presidency, a place on the company football team, or merely a degree from a local technical school, he no longer feels he should do manual labour. Allowing for certain bias and lack of objectivity, this complaint does have some ring of truth when considered in light of the cultural dislike for manual labour.[200] The

199. To the effect that it does not, see *Report to the Government of Ethiopia on Labour Administration*, cited above at note 23, pp. 25-27.

200. See note 2.

distrust also manifests itself in the employers' frequent refusal to believe employees' excuses claiming illness or death in the family.

Not all employers have this negative attitude. One manager of a foreign company is trying hard to Ethiopianize the company, finding one of his biggest problems to be conflicts between resident foreign supervisors and the workers. Another reportedly gives in to most of his employees' requests simply to avoid trouble with his staff. It may be noted that a union lasted only one month at this latter company, apparently not because of the employer's opposition, but rather because not enough workers were interested.

Workers' Attitudes Toward Employers

Fear of dismissal is probably the dominant characteristic of employment relations in Ethiopia. Its influence is all-pervasive, governing almost all of the employee's behaviour. This fear permeated the interviews with many union leaders, and every employee. Indeed, although the union leaders seemed to have little hesitancy speaking their minds, interviews with employees were difficult to obtain as most were frightened not only that what they said would somehow get back to their employer, but that the mere fact of discussing employment conditions would result in dismissal. One employer was reported not even to have allowed discussion among employees at work. From interviews with the employers, it would seem that the workers' fear is often well-founded, several employers openly admitting that an employee who complains too much will be dismissed.

Dismissal is a particularly horrifying threat because of the lack of employment opportunities and the vast number of unemployed workers.[201] Most of the beverage companies claim they could replace and train the majority of their production staff in less than a week. It would seem slightly more difficult to replace a garage mechanic. But, many small garages report they receive about one job request each day from an experienced mechanic, so there would not appear to be any scarcity of replacements. Many jobs in Ethiopia remain relatively unskilled, and replacement appears to be quite easy, thus affording most employers the luxury of dismissals at will.

The threat of dismissal seems to be a most effective defence against employees demanding their legal rights or attempting to form unions. Every employee interviewed from a non-unionized firm cited this fear as the principal reason for the lack of a union. The laws give little help to employees on this matter. Unless the employee can prove that his dismissal resulted from his union activities, he cannot gain reinstatement. In other cases, as the Labour Board has said, employers have the absolute right to dismiss arbitrarily anyone they wish, subject only to proper severance pay if good cause is lacking.[202] If what the employees report is true, many employers refuse to make these payments at the time of dismissal, forcing the worker to go to the Labour Department. However, even if the employee obtains dismissal compensation, it appears that this is less than enough to cover the time he will probably be out of work.

Even if a union is formed, the workers still feel the employers obstruct their attempts to gain their legal rights. While this feeling is often accurate even with

201. See note 55.

202. Union v. Air Lines Company, cited above at note 54.

respect to minimum labour conditions, it is most accurate with respect to efforts toward a collective agreement or any other request beyond the legal minimum. Many firms proclaim their desire to have all rules laid out clearly, but most are reluctant to put them in writing in the form of a collective agreement. Some have to be forced by the Labour Board to negotiate; others delay beginning negotiations for as long as two years. The strength of the employers' desire to have rules in writing can be seen by the existence of only eighteen collective agreements out of 113 unions.[203] Since many of the collective agreements offer little more than the law requires or what the employees had previously been receiving, the aversion of employers is seen primarily as a reluctance to have their freedom of arbitrary action restricted.

Of course, not all of the workers' attitudes toward their employers are well-founded. Unwillingness to give a wage increase is viewed only as an attempt by the employer to squeeze more of an already outrageous profit from the workers' toil. The unions studied appeared to have made little or no attempt to secure comprehensive financial analyses of their firms in order to decide what the company could afford to pay. Where one firm offered its books to the union, the union president chose simply to disbelieve the loss that was registered. Although this method of formulating a union position is expensive if the union must hire an accountant, it is hard to see any other means by which a union can ensure that its request will be reasonable.

Partly due to frustrations resulting from management refusal to meet and discuss problems, partly from the misconception of profits and how they are ascertained, and partly as a stop to the militancy of the mass of union members, union leaders often use strikes to press their demands at an early stage rather than first sitting down to negotiate. This bludgeon approach has in the past often caused more harm than good, alienating management and giving good cause for dismissal of workers.

Workers' Attitudes Toward Unions

The attitudes of workers toward labour unions vary considerably. At one end of the spectrum, it can probably be said that many workers have not given any thought to the possibility of a labour union. Although the degree of this is not known, a number of employees interviewed stated that there was no union in their firm because no one had ever thought of it. A former leader of a horizontal, or general, union cited the lack of knowledge of the functions and achievements of unions as one of the major reasons for the failure of his union. On the other hand, other employees interviewed, the majority, were well aware that a labour union could be useful to them. Where not enough employees are even interested in learning about the usefulness of a union, however, a union would appear doomed to failure, since union education cannot be carried on without workers' willingness to attend.

Even where an effective union has been formed other employee attitudes work toward its destruction. Often almost as soon as they elect a leader, a substantial number of union members begin to distrust him. This distrust is often engendered by a fear

203. CELU has 113 member unions; however, the Ministry of National Community Development lists only some 63 registered unions.

that anyone handling money must be dishonest, especially because the average worker probably has no conception of how the money must be spent. The lack of trust occasionally may be for good reason, but the frequency of its occurrence does little to encourage a cohesive union. Rather, it discourages honest persons from becoming union leaders.

Often this lack of trust is also based upon a belief that the leader is becoming too friendly with the management. Whenever a leader opposes the demands of the majority, even on some reasonable ground, the workers accuse him of selling out to the company. After seeing the previous leaders removed from office for this reason, one union leader refused to compromise an outrageous wage demand with which he disagreed, but rather waited for the Labour Relations Board to rule against the union, thus preserving his image in the eyes of the members. One manager complained that this lack of trust considerably delayed his collective agreement negotiations, because the union officers had to obtain membership approval at every step.

To overcome these problems, a union must have not only an enlightened membership, but also a leader who can cope with this seemingly instinctive distrust and yet preserve a reasonable attitude in negotiations.

The more successful unions report a certain sense of community engendered by belonging to the organization. The members appear to have a feeling of mutual help, possibly resulting from the *edir* tradition.[204] But this approach can be carried too far in practice. Many union members consider mutual financial help to be one of the main functions of a union, and this philosophy has caused such heavy drains on the resources of several unions that the more classical union activities were curtailed. Then the members wondered why their unions were unable to improve their employment conditions.

Union Leaders' Attitudes Toward CELU

The Confederation of Ethiopan Labour Unions is the only association of labour unions in Ethiopia. It includes registered unions. It draws a great deal of criticism from union leaders and employees; some seemingly justified, some not. Since the scope of this research did not include a study of the unions in the very large enterprises, the following may not reflect the attitudes of all union leaders, but only those of the smaller unions. The importance of these, however, should not be discounted, for the firms these unions represent are probably fairly typical of Ethiopian industry.

All union leaders seemed to agree on one point: support from CELU or somewhere else was essential to the welfare and progress of their unions. The continuing master-servant attitude on the part of many employers often makes it difficult for a union leader to meet with management. If a meeting does occur, he may have difficulty reasoning with management; and if a compromise is reached, his view of the settlement may not be believed when a dispute arises concerning it. In spite of his title, the union leader remains an employee, and, consequently, the subordinate in an authoritarian culture. The garage workers, particularly, complained of difficulties their leaders had in attempting to talk with management as

204. See note 3.

equals. With more education and experience and a higher social status, the CELU official can more easily overcome these barriers. Even the Labour Department reportedly is more willing to accept the word of a CELU official than that of a union leader.

However, this function of CELU as an intermediary has earned it some of its most bitter criticism. A number of complaints have been leveled that CELU does not really help a union in its dealings with the employers, that it gives in and sides with the employer too soon. In addition, a major reason for the demise of one union has been attributed to CELU's failure to attend union-management bargaining sessions. CELU was, and still is, short of manpower to do all that it would like. Much of its time and resources is taken up by the larger and more militant unions,[205] and rational economics would dictate that a large portion of resources be devoted to them, but some lack of concern has been noted with respect to the smaller unions. Not all union leaders interviewed believed that CELU had failed them. Many cited instances of CELU's assistance at the bargaining table,[206] in other negotiations, and in union formation.

CELU's concern with organized labour extends beyond helping individual unions, and deals with problems affecting organized labour as a whole. The existence of a largely uneducated membership without a union tradition makes it difficult to operate a labour union effectively. The members must be educated and drilled in the history of organized labour, in the knowledge of what a union can do to help them, in proper bargaining procedures, and in the discipline necessary to function effectively. Since the union leaders ordinarily do not have sufficient background or training to undertake this task, it falls to CELU. In this regard, CELU has conducted more than ten two-week daytime seminars for union leaders and fourteen evening courses in various parts of the country.[207] All union leaders feel this help is necessary and many even would like to have CELU representatives attend union meetings, both to make its presence felt and to imbue in the workers a sense of being a part of a larger movement. This may tax the manpower in this fledgling organization, but it is something which the unions and their leaders are demanding.

CELU also functions to study labour legislation and practice, making suggestions for change. By its own admission, however, it has generally gone along with the government, and since the threatened general strike was crushed, it has not pushed the case of labour *vis à vis* the government. Although such a policy has earned some of the CELU officials the name of government agents, this position of watchful waiting will probably pay off in the long run. An official in the Ministry has informed the writer that there remains a considerable amount of opposition to organized labour in the government, and that if CELU had been more active, it might well have been dissolved. He added that CELU's moderate and judicious approach has won for it far more support than it otherwise would have had, support that will eventually aid the cause of organized labour.[208]

205. Seyoum Gebregziabher, cited above at note 2, p. 60.

206. One employer remarked that better progress was made in his collective bargaining without the presence of either CELU or the Federation of Employers of Ethiopia, although most employers would probably prefer the moderating presence of CELU.

207. Seyoum Gebregziabher, cited above at note 2, p. 65.

208. CELU has a large headquarters on land donated by the Emperor.

Maybe the primary reason for such widespread criticism of CELU is a lack of communication. It does have a monthly newsletter, but until recently at least, this apparently failed to deal with the problems perceived by the unions. The latter are impatient, partly to better themselves economically and partly just to flex their muscles; partly because of their lack of educated members the unions tend to subordinate long term goals to the immediate benefits they expect action to bring. CELU, on the other hand, is more concerned with long term goals, primarily because it sees their ultimate achievement as yielding greater benefits. Communicating and understanding these differences is essential, for CELU needs the support of the unions as much as the latter need CELU. Already CELU has had difficulty in collecting dues from members,[209] apparently for the same reason the unions themselves have this difficulty—no perceived return. Although if it is to achieve success, CELU must someday take a stronger stand on issues facing organized labour, it must have the backing of the workers, a support it can lose now unless there is proper communication.

209. Seyoum Gebregziabher, cited above at note 2., p. 60.