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[Special feature series by Sukran Ketenci: "New Labor Union Regime"]

[11 May 83 pp 11,12]

[Text] Laws No. 2821 and 2822, which shape the "New Labor Union Regime", were approved on 5 May 1983 and went into effect after being published in the Official Gazette on 7 May 1983. Labor unions, workers and employers will from now on organize and operate within the provisions of these laws.

Where do the boundaries of rights and union organization begin in the "New Labor Union Regime"? Where do they end? What will the workers, employers and unions do--or not be able to do--during the transition period? Our goal in this series is to present the provisions of these laws as briefly and as comprehensively as possible.

Before looking at the provisions of and the principles introduced by these laws, let us first dwell on their provisional articles and let us list the work branches in which labor and employer unions can be formed according to Article 60 of Law No. 2821:

1) Farming and forestry, hunting and fishing; 2) Mining; 3) The oil and rubber industries; 4) The food industry; 5) The sugar industry; 6) The textile industry; 7) The leather industry; 8) The lumber industry; 9) The paper industry; 10) The press and publishing industry; 11) The chemical industry; 12) The cement, earth and glass industries; 13) The metallurgy industry; 14) The shipbuilding industry; 15) The construction industry; 16) The energy industry; 17) Commerce, agencies, education, banking and insurance, fine arts; 18) Highway transportation; 19) Railway transportation; 20) Marine transportation; 21) Air transportation; 22) The warehousing and entrepot industries; 23) The communications industry; 24) The health industry; 25) Hotels and entertainment places; 26) National defense; 27) Journalism; 28) General work.

Types of work that are auxiliary to the main line of work in a work place are considered as part of the work branch which covers the main line of work. The types of work to be included in a work branch is decided by regulation, after

consultations with employer and labor union confederations and in accordance with international norms. The number of unionized and nonunion workers employed in each work branch and their distribution among labor unions is to be shown in statistical abstracts to be published by the Ministry of Labor every January and July.

Unions that were active at the time this law went into effect will convene special general assembly meetings and will reform their rules, regulations and organization to conform with the provisions of this law between the time the work branch regulations go into effect next month and 1 January 1984. These unions will also convene their first regular general assembly meeting [within the said time period] and will form their required organs. Unions which have not drafted new rules and regulations conforming with this law, which have not convened their first regular general assembly meeting and which have not formed their mandatory organs before 1 January 1984 will automatically be considered dissolved. The movable and immovable property transfer formalities of unions that will be merged or dissolved or that will change their names or rules and regulations to conform with this law will be exempt from all taxes.

In order to have a record of the members of the unions that were active at the time the law was published, each such union will disclose the identities of its members in the form of lists in pertinent work places and will send two copies of these lists to the pertinent Regional Labor Directorate within 8 months after the date of publication of the law. Workers and employers who want to change unions or who are not members of any union or who are members in more than one union will complete their registration or withdrawal formalities in not more than 6 months in accordance with the provisions of articles 22 and 25 of the law.

According to Article 22 of the law, membership in a union is voluntary; no one can be forced to be a union member. Workers and employers cannot hold concurrent memberships in more than one union in the same work branch. In such cases all memberships are considered invalid. Workers employed in a work place can only be members of unions of the work branch with which that work place is affiliated, even if they are employed in an auxiliary line of work. A worker can become a union member only after he fills out a membership registration card in five copies, has them endorsed by a notary public, turns them over to the union and the pertinent union organ approves his membership. Unions cannot reject membership applications without justified grounds. The rejection notice must be given within at most a month after the application. The worker is entitled to appeal the union's rejection decision in a Labor Court. After the membership of a worker in a union is finalized, the union must send copies of the worker's membership registration card to the Ministry of Labor, the Regional Labor Directorate with which the union is affiliated and the worker's employer within at most 15 days after the worker's membership is approved. A copy of the membership registration card is given to the worker.

According to Article 25, which codifies termination of membership in unions, workers or employers cannot be forced to continue or to withdraw their membership in or from unions. Withdrawal from membership in a union takes effect with an identity check and the signature of the person who is resigning in the presence of a notary public. The notary public must send copies of the withdrawal notice

to the employer, the union, the Regional Labor Directorate with which the employer is affiliated and the Ministry of Labor in at most 3 work days after the notice is signed. Withdrawal from membership in a union becomes effective 3 months after the notice is filed with the notary public. Meanwhile, the worker is entitled to appeal in court the membership termination decision of his union or confederation.

All clerical work performed by the notary public within the framework of functions the law assigns to him are exempt from all taxes and fees, and a 50 percent discount will be applied to notary public fees.

Workers who retire or leave work and collect retirement or disability benefits or a lump sum compensation from lawfully established institutions or funds and workers who change work branches will have their memberships and responsibilities in unions, union branches and/or confederation organs terminated.

Employers will report all the workers in their employ to the Ministry of Labor, the Regional Labor Directorate with which the employer is affiliated and the unions, if any, in which workers hold membership, in accordance with the principles and procedures set by the code of regulations to be issued by the Ministry of Labor in one month and within at most 6 months after the code is published.

[12 May 83 pp 1,11]

[Text] When the proper and provisional clauses of Law No. 2821 on Unions are evaluated together with the provisions of Law No. 2822 on Collective Agreements, the conclusion that emerges is that members of unions that were suspended after 12 September 1980 will not be able to benefit from agreements renewed by the Supreme Arbiters Council [SAC] after the new National Assembly takes office.

According to the provisions of these laws, the activity ban on these unions will remain in effect until the lawsuits brought against all their leaders end in their acquittal. Furthermore, these unions are barred from collecting membership fees and donations. Thus, the workers have no alternative other than withdrawing from these unions in order to benefit from their union and collective agreement rights.

In addition to these provisions, Provisional Article 5 [of Law No. 2821] contains a special clause for unions whose activity was suspended by the National Security Council or the martial law commands following the 12 September operation. The clause, which affects primarily DISK [Confederation of Revolutionary Worker Unions] and to a certain extent MISK [Confederation of Nationalist Labor Unions] and a number of independent labor unions, reads as follows:

"Among the unions whose activities have been suspended and the federations and confederations composed of them, those who face lawsuits--whether they are corporate bodies or members of the administrative or auditing councils of these organizations--for any crime committed against the State as specified in Chapter 1 of Volume 2 of the Turkish Penal Code cannot benefit from the union rights specified by this law and cannot undertake any union activities until they are acquitted.

"No fees can be collected from the members of these unions. Registered members are free to withdraw from these unions by notifying the union caretakers and their work places in writing to that effect. Similarly, the requirement to pay solidarity fees to these unions is abolished."

The issue of what will happen to the collective agreement rights of workers who are members of these unions and who choose not to withdraw their membership is quite debatable. Firstly, there is no relation between the situation of these unions and articles 56 and 57 of Law No. 2821 which specify the procedures for suspension of activities and for assigning caretakers (with respect to the causes of suspension of activities and the fact that there is a 6-month limit on the suspension). Furthermore, the SAC is not going to renew collective agreements that were in effect at the time these unions were suspended. Similarly, Article 52 of Law No. 2822, which specifies procedures for petitioning the SAC, contains no clauses on whether the suspended unions can petition the SAC. Meanwhile, Law No. 2364, which is still in effect, envisions the renewal by the SAC of collective agreements signed by the unions that have been suspended. However, Article 82 of Law No. 2822 states that Law No. 2364 will expire when the Grand National Assembly starts working. When all these law provisions are put together, the conclusion is that for work places under the jurisdiction of DISK and its affiliated unions, some unions affiliated with MISK and some independent unions the SAC will renew collective agreements [signed before the suspension of activities] until the assembly starts working. Furthermore, the agreements renewed by the SAC will be valid until their expiration time. However, the agreements remain in the air after that period. It appears that they will not be renewed by the new SAC. Considering that the lawsuits brought against these unions are still in their initial stages and that they may last for years, members of these unions are virtually forced to withdraw from them and join other unions in order to benefit from their union as well as collective agreement rights. Furthermore, cutting off the unions from membership fees makes the status of the members legally debatable.

[13 May 83 p 11]

[Text] Provisional Article 4 of Law No. 2821 divides the unionists currently serving with Turk-Is [Turkish Confederation of Labor] into two. While higher-level administrators are assured of staying in office--almost as if the individual circumstances of each one has been carefully taken into account--another group is required by the law to take their unions to the new general assembly while knowing full well that they will be removed from office by the general assembly that will be formed in accordance with the new law.

According to Provisional Article 4, officers serving in the mandatory organs of labor organizations that were active at the time the law went into effect will be able to remain in office until the first regular general assembly meeting of the organization. According to a limitation brought by Article 9 of the law, those who have served a full term of office, that is those who have served through four regular general assembly sessions, will be able to get elected for two more sessions. Also, those who were collecting old-age, retirement or disability benefits at the time the law went into effect will be eligible to serve through four regular general assembly sessions and to get elected for two more sessions.

Thus, Article 9, Paragraph 5, of this law brings the following limitation on those who will serve on union organs: "An individual can be elected to successive terms in union organs other than the general assembly by four regular general assembly sessions. At the end of this period, the same individuals cannot be elected to serve in the organs until a period necessary for the convening of one regular general assembly session has elapsed. However, in the calculation of these terms of office, four regular general assembly sessions are considered in the case of unions and union branches and four additional regular general assembly sessions are considered in the case of confederations." This limitation thus prolongs the terms of office of the administrators of Turk-Is and affiliated unions for two more sessions, that is 6 years after the general assembly meeting.

The last paragraph of Article 25 says that "workers who retire or leave work and collect retirement, old-age or disability benefits or a lump sum compensation from lawfully established institutions or unions with which they are affiliated and who want to change their work branch after the law went into effect will have their memberships and responsibilities in unions and/or union branch and confederation organs terminated." However, administrators who were in the same situation before the law went into effect have the right to remain in office for four more sessions and to be elected to office for two additional sessions.

While the provisional articles of the law leave the door open for the higher-level administrators of Turk-Is in particular to remain in office, they contain no provisions to counteract the 10-year active work requirement which, in effect, means the liquidation of the mostly social-democratic young unionists. Thus, according to the last paragraph of Article 14 of the law, at least 1 year of active work is required for election to office in union branch administrative organs and at least 10 years of active work is required for election to office in union organs. Registration with social security organizations is taken as the basis of length of employment. At most 5 years of work abroad can be counted toward the required length of employment.

Article 3 of the Unions Law envisions the establishment of unions by workers employed in a given work branch for activities in that work branch and across Turkey. This article bars the formation of unions on the basis of profession or work place. Only public sector employers are exempted from the requirement that all employers [in a union] must be from the same work branch.

The pertinent article in the law says nothing about banning federations. But through the use of the term "unions and confederations" throughout the text of the law federation-type organizations are indirectly not recognized.

Article 4 of the law says that the Ministry of Labor will determine the work branch in which a given work place will be included.

In view of the fact that Article 12 of the law on Collective Labor Agreements, Strikes and Lockouts stipulates that a union in a given work branch must represent at least 10 percent of the workers employed in that work branch in order to negotiate collective labor agreements and the fact that Article 60 of the Unions Law sets the number of work branches as 28, the highest theoretical number of unions that can be established in Turkey has been reduced to 280.

Since a major portion of workers in any work branch generally do not unionize and since many unions attract more than 10 percent of the workers in any work branch as members, in practice there will be at most two or three unions in any work branch. This, in turn, means that the provisions of the law reduce the number of unions from their current level of over 800 to the range 56-84 in a single stroke. (The reduction in the number of unions from around 800 to the range 56-84 through mergers and shutdowns will take place in the period ending on 1 January 1984, by which time the unions must convene their general assemblies to change their rules and regulations to comply with the provisions of the new laws and hold their first general assembly under their new rules and regulations.)

[14 May 83 pp 11,12]

[Text] According to Article 21 of the new Unions Law, students and teachers working for private schools will not be able to hold union membership. The ban on union membership also covers "military personnel; inspectors, controllers, directors and other equivalent higher-level administrators working in administrations, organizations, institutions, banks and insurance companies operating on a rotating capital or public institution basis; and individuals employed in religious or worship affairs."

Union members who fell within this category at the time the law went into effect --that is, those who are both workers and students or those working in any of the positions mentioned above--are required to withdraw from their unions immediately. Because Paragraph 2 of Article 59--which deals with penalties--says: "Those who are not in the categories specified by paragraphs 1 and 2 of Article 2, those who register as members without having the permission specified in Article Article 20 and those who register as members individuals unqualified to be members in accordance with Article 21 are liable to pay fines ranging between 10,000 and 30,000 Turkish liras."

At this point, let us note that Article 2 of the law defines workers as "those working under a service contract." Paragraph 2 of the same article says that the fact that an individual working under a service contract is subject to the Retirement Fund Law will not bar him from being considered a worker. Paragraph 1 finds the concept of "working under service contracts" insufficient and says: "Those who have assumed as their profession the performance of physical services in accordance with a transportation contract--except those who own the vehicle-- or the publication of a work in accordance with a publication contract as well as those who work in an organization providing physical or mental services as their partnership capital in accordance with a common partnership agreement--on condition that this agreement is permanently open to everyone in the same circumstances--are also considered workers for the purposes of this law."

Meanwhile, Article 20 says that the union membership of individuals who are younger than 16 years of age and who are employed as workers is tied to the permission of their legal guardians.

According to Article 5 of the law, in order to form a union, an individual must have worked for at least 1 year in the work branch in which the union will be

established, must not have been deprived of public services, must not have been sentenced to prison at any time and must not have committed any shameful crimes. Also, those who have been convicted in accordance with the political-crime-related articles of the Turkish Penal Code and various provisions of the Collective Labor Agreement, Strikes and Lockouts Law cannot form unions. The law does not prospective founders of employer unions to have worked for at least 1 year in the same work branch.

According to Article 6 of the law, unions and confederations win the status of corporate bodies when their founders apply to the governors of the provinces in which the unions will have their headquarters by submitting their rules and regulations and other necessary information and documents (of course all the required documents and information must be complete). The governors' offices send copies of the rules and regulations and the other documents to the ministries of Labor, Interior and Finance. In the event illegalities are found in the rules and regulations and in the information submitted in connection with the founders, legal action will be taken to halt the activities of the union or confederation involved or to shut it down.

Article 9 of the law lists the mandatory organs of a union as: "The general assembly, the administrative council, the auditing council and the disciplinary council." The law also says that other organs can also be established depending on needs, but that none of these organs can be assigned the functions, authority and responsibilities of the mandatory organs. The law envisions the election to mandatory organs of as many substitute members as proper members.

As stated in previous installments, the same article bars union administrators from being elected to the same office for more than four [general assembly] sessions. The article also says that those serving on the administrative or auditing bodies of public organizations or institutions must resign from their administrative posts in unions. Those convicted of the crimes mentioned in Article 5 above will lose their posts automatically.

According to Article 10 of the law, general assemblies in union branches will convene on the basis of a delegate system if the number of members in a given union branch exceeds 500. This article limits the number of delegates in a union branch by the range 100-250 and envisions the election of the delegates directly by the members. In labor unions, the delegate system is required if membership exceeds 1,000. The delegates to the union general assembly will be elected by the branch general assemblies. Union rules and regulations are barred from containing provisions which may prevent an individual from getting elected as a delegate. Members of administrative and auditing councils will be able to attend their own general assembly meetings as holders of those offices. Thus, the law gives weight to the delegate system for unions and union branches with large memberships and restricts the status of lawful natural delegation to members of the administrative and auditing councils.

Article 14 of the law envisions the holding of general assemblies under judicial oversight. The article says: "Lists identifying the members or delegates who will attend general assembly meetings where elections will be held, the agenda, the location, the day and the hour of the meeting and a letter addressing the

the issue of a second meeting in case there is no quorum in the first meeting will be submitted to the pertinent electoral council at least 15 days before such meetings. The time of such meetings must be arranged such that the discussions end on a Saturday night and the elections are held between 9:00 am and 5:00 pm the next day, which is a Sunday. After being approved by a judge, the list of members or delegates who will attend the general assembly meeting will be posted in union, branch or confederation buildings 7 days before the date of the meeting. Any objections filed during the 3-day posting period will be studied by the judge; subsequently, the general assembly lists may become final. The judge will also select a ballot box council consisting of a chairman who must be a government official and two members who must not be candidates as well as substitutes.

"The first general assembly meeting of unions and confederations will be held within 6 months after they have gained corporate body status, and their regular general assemblies will convene every 3 years. At least one-fifth of the votes of the members or delegates elected to a general assembly is required for the convening of an emergency general assembly meeting. A simple majority is needed to convene a general assembly meeting. A general assembly that cannot convene a majority must be held with at least one-third the number of members or delegates and within at most 15 days after the original date of the meeting. A simple majority of the votes of those attending the meeting, on condition that that number is not less than one-fourth the number of all the members or delegates elected to the assembly, is sufficient to pass resolutions."

[15 May 83 p 12]

[Text] Every stage of the general assembly meetings of unions, union branches and confederations, starting from the finalization of the list of members or delegates who will attend the general assembly, is envisioned to be supervised by a judge. Even the resolutions of a general assembly, whether they are objected to or not, need the approval of a judge.

According Article 14, Paragraph 2, of the Unions Law, objections to election results must be filed within 2 days after the election results have been endorsed by the three members of the ballot box council and posted at the location of the election. The judge will study the objections the same day and will post the results of the objections--or the final results of the elections at the end of the said period if there are no objections--and will notify the pertinent union branches and the confederation.

The fees of the judge who is appointed to head the regional election council to oversee the union general assembly and the chairman and the members of the ballot box council are paid by the union branch, the union or the confederation. Crimes committed against the chairman or the members of the ballot box council will be penalized as if they were committed against government officials. Union members who are younger than 16 years of age are not permitted to vote or to be elected delegates to general assemblies.

Article 15 of the law abolishes the executive councils which were leading union organs until now. The law gives primary authority and responsibility in unions

to the administrative councils which should have 3 to 9 members in unions and union branches and 5 to 29 members in confederations. Administrative councils will be able to assign authority or functions to one or more of their members if they find it necessary. In other words, the responsibility to govern the unions is given to the administrative councils with the approval of the general assemblies. Leaders, secretaries general, treasury secretaries and other executives of unions appointed and controlled by the administrative council will have certain powers on behalf of the council and within the bounds set by the council. Because Article 9 of the law specifies the mandatory organs of a union as the general assembly, the administrative council, the auditing council and the disciplinary council. While permitting the formation of other organs if that is found necessary by the rules and regulations, the law states that the functions, responsibilities and powers of the mandatory organs cannot be transferred to other organs. In conclusion, unions, union branches and confederation confederations will be governed by the administrative councils within the bounds of the laws, the rules and regulations of the unions and the decisions of the general assemblies.

According to Article 17, general assemblies will need the majority of their members or delegates to convene and will be able to pass resolutions with a simple majority of the votes of those attending the meeting. In the event an administrative council loses a majority of its members, including the substitutes, a general assembly meeting must be held within 1 month.

According to Article 18, the disciplinary council, which is responsible for investigating and penalizing union members in accordance with the rules and regulations, is to be composed of 3 to 5 members. On the other hand, the auditing council, which is responsible for overseeing the compliance of the union's activities with the laws, the rules and regulations and the decisions of union organs, is to be composed of--according to Article 19--three members in unions and one member in union branches.

A major novelty in the Unions Law is Article 23 which significantly restricts union income. Although deciding the amount of membership fees has been left to the unions' rules and regulations, Paragraph 2 of the article says: "The monthly membership fee a worker pays to his union cannot exceed his gross daily wage." The last paragraph of the article imposes the following restriction: "Union rules and regulations cannot contain any clauses providing for the collection of fees other than membership fees."

Article 40 of the law restricts the revenues of unions and confederations as follows: "[Union and confederation income] will consist of membership and solidarity fees to be collected from their members; revenues obtained from activities that can be held in accordance with this law as well as activities such as parties and concerts; endowments; income from property; and earnings resulting from transfers, assignments or sales of property."

According to Article 9, Paragraph 2, of the Collective Labor Agreements, Strikes and Lockouts Law, the solidarity fee that nonmember workers must pay a union in order to benefit from a collective labor agreement it has signed cannot exceed two-thirds the union membership fee.

Article 61 of the Unions Law permits employers to deduct from paychecks the union membership fees of workers affiliated with the unions which have signed the collective labor agreements at their work places and the solidarity fees of workers who want to benefit from the agreement. This procedure is commonly known as the "checkoff" system. The article bars additional deductions for the union. The conclusion that emerges is that while unions are barred from creating additional income through rules and general assembly decisions--such as "collective agreement differentials" and "strike funds"--revenues collected from the members are also significantly restricted. Since the deduction of membership fees from paychecks is limited by labor agreements, the issue of collecting the revenue envisioned by union rules and regulations emerges as a new and weighty problem. It can be said that, taken as a whole, the law has imposed very major restrictions on union income.

[16 May 83 p 12]

[Text] Taken as a whole, those articles of Unions Law which regulate union activities mold unions into institutions whose primary function is to sign collective labor agreements. The law places the responsibility of training, which should be a major union function, within the bounds of "vocational training", which is primarily reserved for employers.

Article 32 of the Unions Law limits permissible union activities to "negotiating collective agreements, consulting with the pertinent organs in the event of disputes in collective agreements, filing lawsuits in order to protect the rights of its members and inheritors and making decisions in connection with strikes and lockouts."

Article 37 of the law specifies political bans within the framework of basic bans as follows:

"Unions and confederations cannot act in violation of the bans specified by Article 14 of the Constitution of the Turkish Republic, and, furthermore, their administration and functioning cannot violate the characteristics of the Republic and democratic principles specified by the Constitution.

"Unions and confederations cannot pursue political goals, cannot be involved in political activities, cannot establish links, collaborate or act jointly in any way with political parties, cannot seek support from or provide support to poltical parties and cannot accept assistance or gifts from or give assistance or gifts to political parties. Unions and confederations cannot act jointly with associations, foundations or professional organizations which have a public character for political motives and cannot use the name, the emblem or the logo of any political party.

"Union and confederation administrators who accept office in the administrative organs of a political party automatically lose their posts in their union or confederation at the moment they take office in the party.

"Those who stand election in local or general elections will have their posts in union or confederation organs suspended. If they are elected their functions in the union or confederation will be terminated."

Article 39 specifies the other activities the unions are barred from as follows:

"Unions and confederations cannot field their own candidates in elections held by professional organizations which have a public character and by their higher level organs and cannot promote activities or propaganda in favor of or against certain candidates.

"Unions and confederations cannot deal in commerce."

"Unions, confederations and their branches cannot organize meetings or demonstrations that are irrelevant to their issues and purposes."

According to Article 28 of the law, Turkish unions and confederations can only be members of those international labor organizations which approve the regime in Turkey in principle, and they can do that if the Ministry of Labor grants permission after studying the constitution of the international organization concerned.

In conclusion, it can be said that the pertinent clauses of the law, together with Law No. 274 which has been in effect for 17 years, impose very major restrictions on the activities of the unions, make even the issue of training of members --which is a legal requirement for unions--a matter of dispute and shut the doors on union participation in government which is thought to be one of the elements of social peace. Unions are supposed to embody the organization of workers to protect and foster their "economic, social and cultural" rights and interests. Does the fact that Article 1 of the law (on purposes of unions) omits the term "cultural" mean that unions are no longer supposed to protect workers' cultural rights and interests? In the debates that began while the law was still being drafted, the employers claimed that this arrangement meant that unions could not get involved in cultural work or in organizing union training.

[17 May 83 pp 11,12]

[Text] Article 47 of the Unions Law gives the ministries of Finance and Labor broad regulating powers which may influence the administration of unions.

The law's provisions in connection with administrative and financial regulation by the government are as follows:

"The government has the authority to exercise administrative and financial oversight over unions and confederations. The ministries of Labor and Finance will conduct *in situ* audits of worker and employer unions and confederations --on a summary or individual basis--once a year. If warranted more than one audit per year may be conducted.

"The audit consists of an examination to see if the administration and the functioning of unions and confederations, their revenues and expenses and decisions taken by authorized organs in connection with revenues and expenses are in compliance with the law, the rules and regulations and the goals of the organizations and if the said expenditures are in conformity with the said decisions."

Although Paragraph 3 of the article states that auditing guidelines will be specified by a code and that the code will be prepared through consultations with the parties concerned, in view of the fact that the decisions of the authorized union organs have been included within the scope of audits--in addition to the fact that the compliance of expenditures with these decisions will be audited--the activities of unions will be severely restricted depending on the interpretation of a particular auditor. In the simplest cases, it will be up to the auditor to say if expenditures authorized by pertinent organs for sending a flower to the general assembly of another union, inviting a foreign unionist, organizing a seminar or a meeting or publishing a magazine or a brochure are in conformity with the goals of a union. Thus, the political regime will have a word in the simplest and most natural activities of the unions.

The law embodies some very extensive penalty provisions. The most important of these are the provisions of Article 58 which specifies conditions for shutting down unions. Paragraph 1 of the article states that courts dealing with labor matters will, at the request of the Prosecutor of the Republic, shut down unions and confederations which are involved in activities directed against the integrity of the state. According to Paragraph 2, unions may be shut down in connection with the activities of their administrators. This paragraph says: "In the event union and confederation administrators are convicted of crimes in accordance with articles 125, 141, 142, 144, 155, 163, 168, 171, 172, 313 and 499/2 of the Turkish Penal Code during or as a result of their activities and functions in their union or confederation, the criminal court handling the case will order the union or confederation they are affiliated with shut down."

According to the law, unions will not be closed only in connection with the criminal convictions of their administrators. Paragraph 3 of the same article envisions the shutdown of unions which establish links with international organizations without the permission of the Council of Ministers, which violate the political activity bans and which declare strikes with the purpose of influencing the decisions of the government's legislative, executive and judiciary organs. The article also says that courts handling cases related to shutting down unions and confederations can, at any stage of the trial, suspend the activities of the union or confederation concerned and remove administrators from office.

According to Article 56 of the law, in the event a union or confederation accepts assistance or gifts from international labor organizations, employers, professional organizations which have a public character, associations and foundations without the permission of the Council of Ministers and outside the revenues specified in Article 40, which we covered previously, a labor court will suspend the activities of the union or confederation concerned for 3 to 6 months. If an individual who has been convicted of a crime that bars him from becoming an administrator or a union founder under Article 5 of the law is elected to office in a union administrative organ, the pertinent governor's office or the Ministry of Labor will demand the dismissal of the said individual from office. If the said individual has not been dismissed within 5 days, the activities of the union or confederation concerned will be suspended for 6 months to 1 year, and all the administrators of the union or confederation will be removed from office. According to Article 57, caretakers conforming with the provisions of the Civil

Code will be appointed to look afterthe property administration and interests of the union or confederation concerned and to prepare for the general assembly meeting after the suspension period.

[18 May 83 pp 11,12]

[Text] The law's provisions on guarantees for the activities of union administrators, work place representatives and workers make unionism a risky line of work which will encounter far more many difficulties than before.

Article 29 of the Unions Law gives workers who have left their jobs to serve in administrative positions in unions the right to return to their jobs in the event their union work ends for reasons such as "not being endorsed as a candidate, not being reelected or voluntary withdrawal." When a worker returns to his old job or to a job that is comparable to his old job, his seniority rights and wages remain unaffected by his absence. However, workers who have been convicted of any crime as a result of their union work are barred from benefiting from these rights. In order to have their insurance rights continued during the time they are working in unions, these workers must pay their social security premiums and fees themselves including the portion that would be paid by their employers.

Article 30 abolishes the previous arrangement whereby the employer could not terminate the labor contract of the union representative and gives the employer the right to terminate the labor contract [of the union representative] on condition that he can demonstrate valid grounds for the action. The representative and the union will be able to appeal this action within 1 month and the court will rule on the case within 2 months. If the court rules that the representative should have his job back, he will continue to benefit from all his rights beginning from the time he was dismissed and as long as he remains the union representative.

Article 31 states that a worker cannot be dismissed because of his union activities and requires that employers violating this provision pay the affected workers an amount not less than 1 year's wages of the affected workers in damages.

The law's provisions on security of union work--which are more inadequate compared to the pertinent provisions of the old law--gain added significance in the light of the fact that the Labor Law contains none of the provisions expected in connection with job security. Meanwhile, the clause in Article 22 of the law requiring workers joining unions to notify their employers about their union membership within 15 days contains very serious drawbacks in the case of individual membership in view of possible pressure by employers who do not want unions in their work places or who do not approve the union a particular worker has chosen. The reaction shown by employers against unionization and the fact that large numbers of workers lost their jobs as a result in the old arrangement led to keeping unionization secret from the employers; workers would tell their employers about their union membership as a group and when it was necessary to negotiate collective agreements. Even this arrangement was not adequate; thousands of workers lost their jobs as a result, and unionization could not take place in many work places.

Article 34 of the law requires for union representatives the same qualifications specified by Article 5 for union founders and administrators, but imposes limits on the numbers of representatives. According to this article, there will be one representative in work places employing up to 50 workers; at most two representatives in work places employing 50 to 100 workers; at most four in work places employing 100 to 500 workers; at most six in work places employing 1,000 to 2,000 workers; and at most eight in work places employing more than 2,000 workers.

Article 35 says that the union representative is entrusted with the following functions: "To listen to the wishes of the workers; to resolve their complaints; to insure the continuation of the cooperation and labor peace and harmony between the workers and the employers; to pursue the rights and interests of the workers; and to help the implementation of the labor terms specified by the labor laws and the collective labor agreements." The article adds that the representative should perform these functions without staying behind in his own work and without upsetting the labor discipline in his work place.

Article 43 of the Unions Law requires that unions deposit their revenues in banks which are more than 50 percent government financed not more than 30 days after they have been collected. Article 41 states that unions may acquire movable or immovable property as needed by their goals and functions. Furthermore, according to the provisions of Article 39, which we covered previously, unions may lend money, within certain bounds, to cooperatives and trust funds. Unions can also invest in industrial and economic organizations on condition that their investments do not exceed 20 percent of their net cash worth. Meanwhile, Article 44 requires that unions use at least 5 percent of their revenues for vocational training of their members and for advancing their knowledge and experience.

Article 52 gives the judge the right to cancel union elections in the event there are violations of the provisions of Article 14 during general assembly meetings which must be held under the supervision of the judge. The judge must decide on a new general assembly meeting date within 2 to 7 days after canceling the elections.

Article 53 states that an administrative council that does not present itself to the general assembly for endorsement within the time periods specified in Article 12 will be dismissed by judicial decree and that caretakers will be appointed until new elections are held.

Article 54 states that the activities of a union will be suspended if there are irregularities in its rules and regulations and required documents, that there will be a period of not more than 60 days during which these irregularities can be corrected and that if the irregularities are not corrected in the specified amount of time the union will be shut down. Article 55 states that the provisions of Article 54 will be implemented if illegalities are found in amendments made to the rules and regulations.

Article 59 contains penalty provisions against violations of various clauses of the law. For example, union administrators who do not submit their accounting

and balance sheets to the ministries of Labor and Finance within the time period specified by the law will be liable to pay fines of 10,000 to 50,000 Turkish liras. Those who do not comply with the posting and notification requirements specified in various articles of the law will be liable to pay fines of 5,000 to 15,000 Turkish liras; those who do not comply with the accounting procedures specified by the law will be liable to pay fines of 15,000 to 60,000 Turkish liras; those who refuse to submit records requested by the auditors of the ministries of Labor and Finance will be sentenced to prison terms of 1 to 6 months; those who violate the bans on political and other activities will be sentenced to prison terms of 6 months to 1 year; those who do not comply with the decisions the ballot box council makes for fair elections will be sentenced to prison terms of 3 to 6 months; and those who cheat in elections will be sentenced to prison terms of 1 to 3 years.

[19 May 83 pp 11,12]

[Text] Law No. 2822 introduces significant changes into the collective labor agreement system. In the first place, Article 3 of the law says that collective labor agreements may cover one or more work places in the same work branch or that they can be negotiated at the company level.

Thus, though not explicitly forbidden, work branch collective labor agreements which could be negotiated under the name of work branch but which in practice had a group character in the old arrangement are excluded from the law. In connection with company-level collective agreements, the new law says: "If a company which is owned by a corporate body or a public organization or institution and which operates more than one work place in the same work branch has to transfer workers from one work place to another as required by its operations, then only one collective labor agreement can be negotiated for all these work places. For the purposes of this law, such agreements are called company collective labor agreements." By allowing the signing of a single collective agreement in more than one work place through the mutual exchange of negotiating authority, the law recognizes the type of agreement that has so far been known as "group agreement." The main clause of the same article says that not more than one collective labor agreement can be signed in a work place during a given period. Thus, in practice, if a company or group collective labor agreement is in effect in a work place, even if a new union assumes negotiating authority for that work place a new agreement cannot be negotiated until the old one expires.

According to Article 4 of the law, collective labor agreements will not be considered as valid unless they are in writing. Article 5 lists the provisions that cannot be included in a collective labor agreement as follows:

"Provisions which are against the indivisible integrity of the State with its country and nation, national sovereignty, the Republic, national security, public order, public security, public morality and public health, which encourage, incite or support acts that are considered crimes by law and which contravene the imperative provisions of the law or rules and regulations cannot be included [in collective labor agreements]."

Article 6 states that labor contracts cannot violate the provisions of collective labor agreements, that provisions in favor of the worker will always have precedence and that if a collective labor agreement expires its provisions will remain in effect as labor contract provisions until a new agreement is signed.

According to Article 7, collective labor agreements cannot have terms of less than 1 year and more than 3 years, and new negotiating authority procedures must begin 120 days before a collective agreement expires. According to Article 8, if a union that has signed a collective labor agreement is shut down or suspended or loses its authority to negotiate agreements, then there will be changes in the status of the signatories of the agreement. Article 9 states that only the members of the union which negotiated a collective labor agreement will benefit from the agreement. Those who join the union after the agreemet has been signed will benefit from the agreement from the date they join the union and those who are not members or who have withdrawn their membership and who want to benefit from the agreement will have to pay a solidarity fee which should not be more than two-thirds the membership fee.

Having one more than half the workers in a work place, a group of work places or a company as members is not sufficient for a union to negotiate a collective labor agreement. According to Article 12 of the law, a union must have at least 10 percent of the workers in the work branch with which it is affiliated as members (except the work branch of agriculture and forestry and hunting and fishing) in order to have the authority (license) to negotiate a collective labor agreeement. In order to determine the number of workers constituting 10 percent of the workers in a given work branch, the Ministry of Labor will publish statistics every January and July. These statistics will show the total number of workers employed in each work branch and the number of members each union has in each work branch, and these figures will be effective until the next publication of statistics. The status of unions which have obtained licenses to negotiate agreements will not be affected by subsequent statistics. Objections to the statistics can be raised at Ankara's Labor Court in not more than 15 days after the statistics have been published, and the court will rule on the objections in 15 days the latest.

According to the arrangement envisioned by Article 13, in the event a union which has applied for a negotiating license has the majority of members in a work branch according to Ministry of Labor records, the ministry will, within 6 workdays, notify the pertinent employer and other unions in the same work branch of the said union's intentions and supply them the number of members the union has in the entire work branch and the number of members it has in the work place or places where it intends to negotiate an agreement. According to Article 15, if unions which receive this information dispute the authority of the said union to negotiate or if they claim that they have the majority of members in that work branch, they can appeal to a labor court within 6 days after they have been notified. The court must make a final ruling, without holding hearings, on allegations of errors in the determination of the number of workers and members in 6 workdays. Hearings must be held in other types of objections. The Supreme Court of Appeals rules on objections to the decisions of the labor courts within 15 days after appeals have been filed. According to Article 16, the Ministry of Labor will grant the applicant union the negotiating license within 6 workdays

after the application has been filed if no objections have been raised within that period of time or, if there are objections, when the court rules against them. If a collective agreement is signed without a negotiating license, a lawsuit can be filed within 45 days after the agreement has been posted at the work place with the charge that one or both of the signatories of the agreement were unauthorized.

As is seen, the new law shuts the door on the holding of referendums in connection with the determination authorized unions, which was one of the major problems in the implementation of Law No. 275. The system is based on the requirements that the worker, the union and the notary public report union membership to the Ministry of Labor through three different channels, that the employer report the number of workers he is employing and that a worker can hold membership in only one union and the information the Ministry of Labor can compile on the basis of these notifications. Thus, the functioning of the system will depend on the efficient utilization of a computer system at the Ministry of Labor--which is currently inadequately staffed for efficient operation--by knowledgable personnel. Of course, the determination of the number of workers in a work branch and the number of members the unions have will also depend on honest record keeping and reporting by the parties concerned.

Apart from severe budgetary restrictions on furnishing the Ministry of Labor with a computer center, if there is no honest and true reporting of figures achieving sound results will be difficult and the issue of authorization will continue to be a major problem.

[20 May 83 p 12]

[Text] The new law's provisions on collective labor agreements introduce severe time restrictions on the exercise of rights in every stage of the collective labor talks starting with the application for a negotiating license. Also, the Reconciliation Council has been replaced by a mediator.

According to Article 17 of the law, labor unions which obtain the authorization document or the employers or employer unions which obtain the confirmation document must call the other side to collective talks within 15 days after they receive the said documents. The side that makes the call must include in its call the entire set of proposals it will bring to the talks. The sides must agree on the place, day and time of the meeting within 6 days after a call has been issued by any one of the sides in accordance with the procedures specified in Article 19 and must convey their decision, according to Article 18, to the pertinent Regional Labor Directorate if the talks are to be held at the work place level or to the pertinent authority at the Ministry of Labor if a group or company collective labor agreement covering more than one region is at issue. If the sides cannot agree on the location and time of the meeting, the authority with jurisdiction over the case sets a location and time for the meeting at the request of one of the sides within 6 workdays after the request has been made. If the side that issued the call for talks does not show up at the talks within 30 days after the call was issued, it loses its authority to negotiate.

According to Article 20, if the sides reach an accord and sign an agreement, they each keep a copy of the agreement. The side that issued the call for talks also sends three copies of the agreement to the authority with jurisdiction over the case within 6 days after the agreement has been signed. One copy of the agreement is kept at the Regional Labor Directorate, one copy is kept at the Ministry of Labor and one copy is kept at the State Statistical Institute.

According to Article 21, if one of the sides does not show up at the talks or drops out of the talks after they have begun, the side that has showed up at the talks must report the situation in writing to the pertinent authority within 6 workdays. If the sides state in the minutes of the talks that they have not reached an agreement 60 days after the start of the talks, or if the sides have not reached an agreement within 60 days after the start of the talks, one of the sides must report the situation in writing to the pertinent authority.

According to Article 22, if an agreement has not been reached within 30 days after the start of talks, any one of the sides may request from the pertinent authority that a special mediator join the talks. The pertinent authority will invite the sides to talks within 6 workdays after the request to decide on a mediator. If the sides do not show up at the talks or if they do not agree on a mediator, the pertinent authority will appoint a mediator by drawing lots from a list of mediators in the presence of any one of the sides. If an agreement has not been been reached in the collective labor talks within 60 days after the start of talks, the authority in charge will apply to the pertinent labor court within 6 workdays and ask for the appointment of a mediator from the official list of mediators. If a mediator was appointed previously, he continues his services provided that both sides express their consent in writing.

Article 59 of the law envisions the establishment of an official mediation organization under the aegis of the Ministry of Labor. The principles governing the establishment and operation of this organization and the fees to be paid will be specified by a separate code of regulations.

According to Article 23 of the law, the mediator appointed by a labor court decision following the lack of an agreement within 60 days after the start of the talks will serve for 15 days. This period can be extended by not more than 6 days if the sides wish so. The mediator has been assigned the task of making every effort and putting forth proposals in order to insure an agreement between the sides. If an agreement is not reached within the specified period, the mediator must prepare a report which explains the causes of the dispute and which contains proposals that the mediator believes are necessary to resolve the dispute and must submit the report to the authority in charge within 3 workdays. The pertinent authority must transmit this report to the sides in not more than 6 workdays. According to Article 24, a copy of the report must also be sent to the Ministry of Labor. The Ministry of Labor will maintain a register of the collective labor agreements that have been concluded. If any disputes arise over the text of a collective labor agreement, the copy kept in this register will be considered as the valid text. A code of regulations to be issued will specify the manner in which this register will be maintained.

Article 11 specifies how the Council of Ministers can extend collective labor agreements at the request of the labor or employer union concerned and the Ministry of Labor and with the approval of the SAC. A collective labor agreement that has been signed by the union with the largest number of members in a given work branch will be extended in its entirety or in part or after necessary changes have been made to cover all or part of the work places in the same work branch which do not have collective agreements of their own.

It is not known how extensively the Council of Ministers will implement this provision, which did not exist in the past. However, according to the last paragraph of the article the union whose collective agreement is extended to cover other work places will not have any links with the work place or places where the agreement will be in effect. Furthermore, the fact that a collective agreement can be extended only in part and the fact that the majority union is selected for the extension of any agreement may, in practice, mean that the extension procedure, which is a practice favorable to the worker, can also be used to prevent the development of certain union rights.

[21 May 83 p 12]

[Text] The pertinent clauses of the Collective Labor Agreement, Strikes and Lockouts Law impose multifarious and severe restrictions on every facet of the right to strike.

Article 25 of the law says in connection with the definition of strikes: "A strike declared in accordance with the provisions of this law and with the aim of protecting or improving the economic, social or working conditions of workers in the event a dispute arises during collective labor talks is defined as a legal strike. Strikes which do not meet the conditions sought for legal strikes are defined as illegal strikes. Politically motivated strikes, general strikes and solidarity strikes are illegal strikes. Sanctions specified for illegal strikes will be implemented against work place occupations, work slowdowns, productivity cuts and other similar acts of resistance." Thus, strikes are made to depend on disputes in collective labor talks and forced into a framework of numerous restrictions, postponements and bans specified by the law.

According to Article 27, a strike decision cannot be made before 6 workdays have passed after a dispute has been registered in collective labor talks and has been reported to the authority in charge. The labor union must make its decision about striking within 6 workdays after that. If a strike decision has not been made within that period or if a recourse has not been made to the SAC for work branches and work places where strikes are banned, the negotiating license of the labor union will be invalidated. The employer union or the employer will be able to take a lockout decision for the work places where strikes have been declared or for all the work places affected by the dispute in the collective labor talks within 6 workdays after a strike has been declared. According to Article 28, the sides must convey their strike and lockout decisions to the other side and the authority in charge through the notary public within 6 workdays after these decisions have been taken. After being notified of the other side's decision, each side must announce it in the work place concerned.

Article 29 lists the work areas where strikes and lockouts cannot be declared as follows: "Life and property rescue services; funeral and interment services; water, electricity, gas, coal, natural gas and petroleum exploration, production, refining and distribution services; banking and notary public services; and fire, sanitary and metropolitan maritime, land and railway mass transit services."

Article 30 lists the locations where the ban on strikes applies as follows:

"Health-related work places such as hospitals, clinics, sanitariums, preventive centers, dispensaries and pharmacies as well as factories where vaccine and serum are manufactured, except work places where drugs are manufactured; institutions of learning and training, child care centers and retirement homes; cemeteries; and work places directly operated by the Ministry of National Defense, the Gendarmerie General Command and the Coastal Security Command."

Article 31 defines provisional bans as follows: "Strikes or lockouts cannot be declared at times of war and in periods of total or partial mobilization. In the event of paralyzing disasters caused by fire, floods, landslides, avalanches or earthquakes, the Council of Ministers may decide to ban strikes and lockouts in work places and work branches it finds necessary with the provision that the ban apply to the areas where the disaster has occurred and for the period the state of disaster continues." The article also states that the government reserves the right to resort to martial law provisions in emergency situations. Furthermore, the law stipulates that strikes or lockouts cannot be declared on marine, air or land transportation vehicles which have not yet reached their destinations inside Turkey.

At times of war, mobilization or emergency measures when strikes and lockouts may be banned, union activity may be halted or strike authority may be withdrawn or suspended, the SAC will renew the collective labor agreements that expire after making the changes that it finds necessary. According to Article 32, recourse to the SAC will be necessary in the event of labor disputes in places where strikes and lockouts are banned and when the provisional ban on strikes and lockouts lasts for more than 6 months.

According to Article 33, the Council of Ministers can postpone for 60 days strikes for which a decision has been made or which are already in progress if they are seen to be harmful to public order or national security. No appeals can be made to the Council of State against the government's decision to postpone a strike in areas where a state of emergency has been declared. According to Article 34, after a strike has been postponed, the Minister of Labor will personally make efforts to resolve the dispute with the aid of an official mediator. If the sides wish, they will be able to take their case before a special arbiter. If an accord has not been reached by the end of the postponement period (in 60 days), the Minister of Labor will ask the SAC to resolve the dispute.

Taken as a whole, the article mentioned above forces the right to strike into a form whereby its exercise is severely restricted within a framework where all strikes are banned except those declared as a result of disputes during collective labor talks. Put more simply, in practice only about half of the nearly 1.5 million currently unionized workers will be able to exercise their right to

strike in the event of disputes in collective labor talks. Even for these workers, it is not clear how far the effective bans brought about by strike postponements--which are in effect bans on strikes since the SAC intervenes at the end of the postponement--will go. The provisions in connection with the implementation of strikes, which we will present in our tomorrow's issue, raise a separate problem concerning to what extent a group which is entitled to benefit from the right to strike can exercise that right.

[22 May 83 p 12]

[Text] The provisions of Law No. 2822 prescribing the procedures for the implementation of strikes impose a series of restrictions on the exercise of the right to strike.

According to Article 37 of the law, a strike can get under way 6 days after the other side has been notified of the strike decision and within 60 days after that. A strike decision that has not been submitted to the notary public and the pertinent authority for transmittal to the other side cannot be implemented. A strike that does not begin on the day announced will be invalidated.

If the strike decision is not implemented within the specified period, the labor union's negotiating license will be invalidated. These provisions also apply to lockouts.

According to Article 35, a vote must be taken on the decision to strike if a quarter or more of the workers employed in a work place request a vote in writing within 6 workdays after the strike decision has been announced at the work place. The strike cannot get under way if a simple majority votes against it. According to Article 36, if a majority votes against the strike and if the labor union involved in the dispute does not reach an accord with the other side or does not make a recourse to the SAC within 15 days, the labor union concerned will lose its negotiating license.

In disputes where strikes and lockouts are provisionally banned, if the ban or martial law is ended or, in the case of postponements, if the postponement decision is rescinded before the 60-day period ends, the procedures prescribed by Article 37, Paragraph 1, will be implemented for declaring strikes and lockouts.

Article 38 requires that workers vacate a work place as soon as a strike or lockout gets under way in that work place. Anyone who does not want to join the strike or who walks out of a strike cannot be barred in any way from working in that work place. Workers who participate in a strike or who are affected by a lockout are prohibited from impeding entrance and exit to and from the work place and from gathering in front of or around the work place. The employer will be free to employ or not to employ the workers who do not participate in a strike or who walk out of a strike. The transportation out of the work place of goods manufactured by workers who have stayed on their jobs or any other products, their sale and the entrance into the work place of necessary materials, tools and equipment cannot be obstructed in any way.

Article 42 states that the nonpayment of wages and fringe benefits to workers during strikes and lockouts cannot be used as a factor in the calculation of retirement benefits and that clauses violating this rule cannot be included in collective labor agreements.

Article 48 turns the strike warden into a union observer. The article says:

"A labor union that has declared a strike at a workplace is authorized to place a maximum of two strike wardens each from among its members at the entrance and the exit of the workplace on condition that no force or pressure is used and no threats are made and in order to check the compliance of the union members with a legal decision to strike. All workers reserve their freedom to work under all circumstances. Strike wardens cannot prevent entries and exits to and from the work place and cannot stop anybody entering or exiting the work place even for checking. Displaying posters or placards--other than the notice 'A strike is under way at this work place'--or writing graffiti in or around the work place or places where a strike is in progress are prohibited. Huts, sentry-boxes or other types of habitation units cannot be built in the work place for the strike wardens by the workers or the union."

Article 45 prescribes the consequences of illegal strikes: "In the event an illegal strike is declared, the employer concerned can terminate the labor contracts of workers who have participated in the decision for such a strike, who have encouraged such a strike and who participate or encourage the participation of others in such a strike without having to notify the pertinent authorities of their termination and without having to pay compensation. In the event an illegal strike is held, the labor union which made the decision for the strike will pay the employer concerned all the damages the employer suffered as a result of the strike or the administration and execution of the strike; if the strike decision was not taken by a labor organization, the workers participating in such a strike will pay for the employer's damages."

According to Article 47 of the law, if the right to strike is exercised in violation of the principles of good will or in a manner that is harmful to society or national wealth, then Minister of Labor will ask the pertinent labor court to end the strike. According to the last paragraph of the same article, the labor union which has declared a strike at a work place will be responsible for the material damages caused to the work place by the deliberate or improper acts of the workers participating in the strike.

As is seen, the law's articles governing the implementation of strikes contain a series of detailed provisions which impede strikes--such as the practical impossibility of two strike wardens standing out in the open in the heat of the summer or in the cold of the winter simply to act as observers, or the responsibility of the union for damages in a work place during a strike over which the union virtually has no control--and which discourage workers from exercising their right to strike. The right to strike--which the law restricts to only half the unionized workers as a result of the bans already mentioned--thus loses much of its function. Hence, the path to signing effective collective labor agreements which protect workers' rights is also effectively blocked.

[23 May 83 pp 7,12]

[Text] The SAC, which was set up to renew collective labor agreements during the transition period when labor union activities were suspended, has undergone a structural change and has been turned into an institution which will be permanently responsible for renewing a major portion of collective labor agreements when the unions resume their activities.

According to Article 52 of Law No. 2822, the SAC should be consulted by any of the sides involved in a labor dispute in a work branch or work place where strikes and lockouts are banned and by the Minister of Labor in the event a strike or lockout is postponed and the postponement period expires. The provisions of Article 32, which we explained previously, will apply in such cases. In other words, in the event labor talks in a work branch or work place where strikes and lockouts are banned end in disagreement and in work places where a strike or lockout has been temporarily postponed, the sides must make a recourse to the SAC 6 months after the disagreement has been formally registered or the postponement period has expired.

According to Article 53 of the law, the SAC will have the following composition:

"One member who is to be appointed by the Council of Ministers, who will be from outside the ministerial body, who will not have any ties with labor or employer organizations, who will not be serving in any political party organs and who will be knowledgable and experienced in economics, management, social policy and labor law; the Labor Director General of the Ministry of Labor; the head of the Social Planning Department of the State Planning Organization; two members representing the labor confederation with the largest number of members; one member representing the employer union confederation with the largest number of members; and one member to be appointed by the Council of Ministers to represent public sector employers, with the chairmanship of the labor affairs department of the Supreme Court of Appeals." Thus if the chairman, who represents the judicial branch, and the faculty member to be appointed by the Higher Education Council are considered independent, the SAC will consist of two labor representatives, one employer representative and four members representing the government.

Article 54 states that the SAC will reach its decisions--which, according to Article 55 are final and have the force of collective labor agreements--by studying the disputes on documents, by consulting with pertinent parties in writing or orally on aspects which it does not find sufficiently clear and by the votes of the majority of its members.

According to Article 57, a secretariat general affiliated with the chairmanship will be set up to handle the SAC's correspondence and consulting services. The Prime Minister's office will appoint as many consultants and experts as necessary if asked by the SAC. However, individuals serving in employer or labor unions cannot be appointed as consultants or experts. According to Article 82, the SAC which was set up in accordance with Law No. 2364 will continue to

serve until the assembly takes office. However, collective agreements signed during this period will not have terms of more than 1 year.

Article 58 provides for a special arbiter in addition to the office of official mediator which we explained previously during the discussion of the new collective labor agreement system. The parties involved in a labor dispute will be able to make a recourse to the special arbiter at any stage of the dispute. The special arbiter can intervene in a dispute at the request of even only one of the parties. However, if the sides agree to a special arbiter in writing, then the law's provisions about official mediators and legal arbiters will not apply. In such cases, the decisions of the special arbiter will have the force of collective agreement. The decisions of the special arbiter on disputes over rights are evaluated in more general provisions. The parties will be able to agree to appoint the SAC as special arbiter at any stage of the dispute.

Since strikes over rights are banned by the Constitution, in disputes arising from the interpretation of a collective labor agreement in effect, one or both of the sides to the dispute will be able to file lawsuits in an authorized labor court. The court will reach a decision over disputes arising from interpretation of labor agreements within at most 2 months. If the court's ruling is appealed, the pertinent department of the Supreme Court of Appeals will rule on the issue within at most 2 months.

According to Article 80, any party which does not comply with the final ruling on interpretation will be liable to pay a fine of not less than 30,000 Turkish liras.

According to Article 61, in lawsuits involving payments on the basis of collective labor agreements, the party who is ordered to make payments will pay the creditor an additional sum computed on the basis of the highest business loan interest rate charged by banks since the creditor was born. The party that does not meet its commitments, fully or partly, will immediately be ordered by the court to do so. All parties have the right for reparations.

The failure of the employers to meet their labor agreement commitments despite the possibility of strikes over rights during the past 17 years will presumably become more widespread now that strikes over rights are banned and monetary reparations are to be made at the current bank interest rate through lawsuits. Not surprisingly, under the system implemented since 12 September, the nonpayment of workers' rights as required by collective agreements forged by the SAC has become commonplace despite the authority of Regional Labor Directorates and martial law commands to order reparations. It is arguable whether penalties at the current bank interest rate can be effective in an implementation where martial law commands have not been successful.

[24 May 83 p 11]

[Text] The last section of the Law on Collective Labor Agreements, Strikes and Lockouts covers penalty provisions against the violation of strike bans in particular.

As explained earlier, according to Article 45, those participating in or inciting an illegal strike can have their labor contracts terminated without notice and indemnity payments, and, furthermore, damages resulting from such a strike will be paid for by the union if the decision came from the union or by the workers if otherwise. Other additional penalty provisions can be listed as follows:

"In work branches or work places where strikes are banned or where a temporary strike ban is in effect, those who order a strike or who do not rescind such an order or who incite or force a strike or who wage propaganda for such a strike will be sentenced to prison terms of 2 to 6 months and fines of 50,000 to 100,000 Turkish liras. If the strike is implemented, those participating in the strike will be sentenced to prison terms of not less than 9 months and fines of 100,000 to 200,000 Turkish liras. The same provisions will apply to strikes with political motives, general strikes, solidarity strikes, work place occupations, work slowdowns and acts of resistance which may cut productivity and output. The penalties will be doubled for politically motivated strikes, general strikes and solidarity strikes.

"Acts specified above in strikes declared with the goal of influencing the decisions of the legislative, executive and judicial organs or those of local governments will be subject to prison terms of 3 to 9 months and fines of 75,000 to 100,000 Turkish liras. If such strikes are implemented prison terms of not less than 1 year and fines of 150,000 to 300,000 Turkish liras will be imposed. Participants in such strikes will be sentenced to prison terms of not less than 6 months and fines of not less than 10,000 Turkish liras.

"If strikes are declared and implemented threatening the territorial and national integrity of the State, national sovereignty, the essence of the Republic and the security of the State, the acts mentioned above will be subject to the penalty provisions specified above even if they also constitute other crimes.

"In cases of noncompliance with strike postponement decisions, prison sentences of not less than 6 months and fines of not less than 30,000 Turkish liras will be imposed.

"Those who cheat or use force to influence the voting on strikes will be sentenced to prison terms of 3 months to 1 year.

"Those who do not vacate the work place where a strike or lockout has been declared and those who gather in front of the work place despite warnings and who force or incite workers to demonstrate or wage propaganda to that end will be sentenced to fines of 10,000 to 30,000 Turkish liras.

"Those who are obliged to work during a strike or lockout and who do not work without a valid excuse will be sentenced to prison terms of 3 months to 1 year and fines of not less than 5,000 Turkish liras.

"Those who overstep the authority of a strike warden, those who serve as strike wardens without such authority and those who overstep the limits of authority of a strike observer will be sentenced to prison terms of 2 months to 1 year."

The law prescribes fines of 20,000 to 60,000 Turkish liras for those who do not comply with the law's provisions about posting notices. In the event acts considered criminal by this law are repeated, the penalties will be increased by one-third or one-half.

According to Article 82, among the last in the Law on Collective Labor Agreements, Strikes and Lockouts, the collective labor agreement system to be handled by labor unions will go into effect when the Grand National Assembly takes office. According to Provisional Article 1 of the law, the SAC set up by this law will take office when the assembly opens, until which time the SAC operating in accordance with Law No. 2364 will remain in office. However, collective agreements renewed by the SAC after this law has gone into effect will not have terms of more than 1 year. Agreements renewed under Law No. 2364 will remain in effect until their terms expire. The missing provisions of such agreements will be filled in by the SAC set up by this law after the assembly takes office.

In this series, we tried to convey to you the provisions of Law No. 2821 on Unions and Law No. 2822 on Collective Labor Agreements, Strikes and Lockouts, particularly from a perspective of novelties they introduce. The provisions of these laws, which were approved on 5 May and went into effect on 7 May after being published in the Official Gazette, shape with their new principles the new union system by which workers, unions and employers must abide in their relations with each other. A country's worker-employer relations and true union system undoubtedly depend upon that country's socioeconomic structure, the organizational power of its workers and unions and the consciousness level of its employers. Even so, laws have a guiding effect on such developments. Perhaps, laws cannot insure powerful unionism and labor peace in an unstable socioeconomic structure. But if the provisions of the laws, with which one must comply, put up limits which hamper development, they will have an effect on the speed with which steps are taken toward union development.

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