

1994

### Legal Problems of Vocational and Professional Training during the Soviet Period of Stagnation

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#### Recommended Citation

Yuri I. Luryi, *Legal Problems of Vocational and Professional Training during the Soviet Period of Stagnation*, 42 Clev. St. L. Rev. 607 (1994)  
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# LEGAL PROBLEMS OF VOCATIONAL AND PROFESSIONAL TRAINING DURING THE SOVIET PERIOD OF STAGNATION

YURI I. LURYI<sup>1</sup>

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"Die Weltgeschichte ist das Weltgericht." (The world's history is the world's judgment.)

Johann Christoph Friedrich von Schiller (1759-1805)

## I. INTRODUCTION: THE TWO WHYS

### A. *Why Vocational and Professional Training?*

First, the Philadelphia Declaration reminds us of the answer. It was fifty-one years ago (1944) that the International Labor Organization defined its most

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important tasks and programs. Assurance of equality of vocational and educational opportunity was declared to be one out of ten essential programs to be "furthered among the nations of the world."<sup>2</sup> One can add, however, that legal problems of professional training affect not only the interests of the many millions in the workforce. There are, in addition, millions of school graduates who get their first professional training each year. They enter various training institutions with neither experience in representing their interests, nor protection from the trade-unions which they have not yet joined.

### *B. Why "Stagnation"?*

This is how the period when Leonid Brezhnev, the fourth communist leader to hold power in the Soviet Union, is now officially dubbed. Among the five post-Stalin communist leaders, Brezhnev ruled the USSR the longest— for eighteen years. It is interesting that he who labelled this the period of "stagnation" was none other than the last President of the USSR, Mikhail Sergeevich Gorbachev!

Since the death of Stalin in 1953 a peculiar tradition has been established in the Communist Party of the Soviet Union. Each subsequent Soviet leader began his job with harsh criticism aimed at the previous leader, by then overthrown or dead. This always included a cliché characterizing the period of power of the former leader. So Khrushchev dubbed Stalin's period that of the "Cult of Personality" and the "Perversion of Socialist Legality". Brezhnev called Khrushchev's time "A Period of Voluntarism," while he defined his own time as "A Period of Mature Socialism". Gorbachev, upon coming to power, quickly dispelled the illusion and it was known henceforth as the "Period of Stagnation". Will Gorbachev's time also be dubbed in the future? Most probably. But one must await the outcome of the power struggle between more than two rivals in present day Russia.

The peculiar side of the tradition described above is that each new leader, who criticized his predecessor, not only belonged to the same Communist party, but was also a member of the old leadership, and was chosen to be a new leader by that same older leadership. Why did such an unscrupulous tradition develop? Two purposes underlay it: First, criticism helped the new leader get rid of those highly placed party and state bureaucrats who were loyal to the old leader, and to replace them with people loyal to him. Second, by criticizing personally the old leadership, each new leader inculcated in the public, time and again, the notion that all the troubles in the country were rooted not in its political and economic system, but simply in the personality of the previous ruler.

Advancement of the world's scientific-technical revolution has stimulated, through the implementation of sophisticated devices, the development of

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<sup>2</sup>See Annex to the Constitution of the International Labor Organization: "Declaration Concerning the Aims and Purposes of the International Labor Organization," reprinted in *BASIC DOCUMENTS IN INTERNATIONAL LAW* 73 (Ian Brownlie ed., 1983).

complex new industries and the restructuring of existing ones. Inevitably, this has aggravated the need for adequately trained manpower. To meet this need, Soviet industry trained workers for positions in complex new branches of industry, often training each worker to perform more than one function. In this way the volume of work performed by each worker could be increased, and wage expense decreased.

The implementation of this policy caused some difficulties in industry. There were indications that some workers were reluctant to accept a policy requiring them to work harder for the same amount of money. Soviet specialists in labor law have been unable to agree on the status that skills training should have in labor relations law. They left unanswered the question whether skills training was a duty, or merely a right, and therefore optional. Tendencies to centralize the systems of training, and to combine stick and carrot approaches to compel Soviet workers to undertake professional training or retraining, were readily observable.

This article investigates the legal methods used to regulate professional training under Soviet labor law. It will examine relevant norms of labor legislation, the views of Soviet labor law specialists, and existing practice.

## II. LEGAL METHODS USED TO REGULATE PROFESSIONAL TRAINING UNDER SOVIET LABOR LAW

### *A. Legal Problems with Vocational Training*

Vocational training problems have been present throughout the history of mankind. They have, however, varied in form and significance during different time periods. Using the terms of Marxist political economy, one can affirm that the nature of the productive forces and productive relations, as well as the political systems in these different time periods, have determined the essence of these problems. This reasoning applies completely to the *legal* problems of vocational training. Thus, the legal problems of vocational training in the Soviet Union occasioned by urgent requirements of the scientific-technical revolution were unique; and the political and economic systems of the state have influenced not only the nature of these problems but also their solutions.

Several problems which have arisen may serve as examples:

1. A person receiving vocational training in the USSR in many cases was obliged to work for several years at jobs to which he was sent after finishing a training school or institute, without regard to his own choice. Until 1956, the enforcement of this obligation was ensured by criminal punishment.<sup>3</sup> But, after 1956 what legal actions could the state take if the obligation to work where

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<sup>3</sup>Edict of the Presidium of the Supreme Soviet of the USSR, June 26, 1940, repealed in 1955. In abolishing the law of criminal responsibility, the legislature cited only the growing consciousness of the workers but not the inhumane nature of that law. On the application of this Edict, see Yuri Luryi, *The Scientific-Technical Revolution and Soviet Labor Law*, in *SOVIET AND EAST EUROPEAN LAW AND THE SCIENTIFIC-TECHNICAL REVOLUTION* 213-39 (1981).

assigned was not fulfilled? What area of Soviet law should be applied, civil law, administrative law, or labor law?

2. The generally prevailing opinion among Soviet lawyers was that vocational training (including the acquisition of a work skill) was a constitutional right of every Soviet citizen. In this connection, Article 40 of the Constitution of the USSR, which proclaimed the "right to work" (including the "right to chose jobs, type of occupation, and work") was usually cited. It also provided that the right to work was guaranteed, among other things, by "free vocational training, the improvement of work qualifications, and training in a new specialty." But what is the legal nature of the improvement of qualifications and training in a new specialty? This question is far from academic. As is widely known, labor in the USSR was an obligation rather than a right. Avoidance of work was therefore punishable. Was the improvement of skills only a worker's right or was it his obligation? Did learning a new *specialty* mean learning a "second one," a "related one," or a "generally necessary" one? Could a worker be punished, indeed, be fired, for failing to meet this obligation? The answers to these and other questions will be considered below. Here we note only that Soviet lawyers did not agree on the answers.

3. Improvement of production technology during a period of economic modernization often required workers to learn new methods of work. Sometimes these new methods were simpler than the old ones. Teaching them was not complex, required little time, and thereafter the work of the worker became easier, less dangerous, and more productive. Sometimes, however, improving production conditions created conflicts with the personal interests of the workers.

At a factory in Kazan, as a result of significant technological improvements, *harmful* production operations were shut down in a number of shops. Labor legislation provided certain privileges for those working under harmful conditions of labor including a shorter working day, supplementary paid leave, free food, more advantageous pension provisions, and sometimes also a higher rate of pay. According to Article 44 of the RSFSR Labor Code, designation of those production operations having harmful conditions of labor were subject to special approval. As a rule, lists of such operations were approved by the State Committee of the USSR on Labor and Social Matters (*Goskomtrud*) together with the All-Union Council of Trade Unions (*VTsSPS*). So, after harmful conditions of labor disappeared in several factory shops in Kazan, benefits for harmful conditions were curtailed for the shop workers. However, some workers refused to work under the new conditions, seeking transfers to shops where harmful conditions, and the privileges associated with them, remained.

This was not a solitary instance. For example, Yuri Udovichenko, the head of the Far Eastern Ship Repair Plant reported: "Workers respond negatively to the elimination of heavy labor if it means losing extra benefits. Instead, they switch to jobs at enterprises that still pay extra for difficult and dangerous

work."<sup>4</sup> Management of the factory in Kazan could not accomplish such a transfer and proposed that those who were dissatisfied with the new conditions of work ask for discharge "at their own request."<sup>5</sup> However, workers refused to ask for discharge. Instead, they stopped coming to work.

The possibility of their discharge at the initiative of management was considered. But this turned out to be a very complicated legal problem. Labor law limited the discharge of a worker at the initiative of management to those strictly defined cases set forth in Article 17 of the USSR Fundamentals of Labor Legislation. Its text was also reproduced almost verbatim in the labor codes of all union republics. However, labor legislation did not provide for a case like the one just described. At first glance it would seem possible to fire the workers for their *unexcused absences*. But the failure of a worker to show up for work was not an "absence without valid reasons"<sup>6</sup>, since management was no longer providing workers with the work for which they had been hired under the labor contract. In addition, workers could not be required to do qualitatively new work since to do so was "not provided by the labor contract."<sup>7</sup> A.K. Bezina, who described this labor conflict in her work "Questions of the Theory of Labor Law and Judicial Practice,"<sup>8</sup> concluded that the labor legislation in force was not drafted to regulate conflicts arising between workers and management in connection with steadily improving conditions of production.

#### B. Worker Training in the U.S.S.R.

Two basic systems have been used to train workers in the U.S.S.R. The first system included enrolling young people in the many vocational and technical training schools to learn a job specialty. The second system included training or retraining workers directly through practical training.

The vocational-technical training schools of the first system provided industry with about one-third of its entire number of workers, 2.2 million persons a year.<sup>9</sup> Of the 6,800 jobs officially registered in the "Uniform Wage and

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<sup>4</sup>Yuri Udovichenko, *Sotsiologicheskii Lokator Rukovoditelia [Sociological Locator of the Executive]*, in EKO [ECONOMICS AND ORGANIZATION OF THE INDUSTRIAL PRODUCTION] 31-37 (1980), translated in THE CURRENT DIGEST OF THE SOVIET PRESS (1981).

<sup>5</sup>Soviet labor law establishes in certain cases different consequences for discharge at one's own request and discharge at the initiative of the administration. On legal questions relating to discharge, see Zigurds Zile, *Soviet Law of Job Security Since Stalin*, in SOVIET LAW AFTER STALIN 259 (Donald D. Barry et al. eds., 1977).

<sup>6</sup>RSFSR LABOR CODE art. 33, pt. 4.

<sup>7</sup>RSFSR LABOR CODE art. 24.

<sup>8</sup>A.K. BEZINA, VOPROSY TEORII TRUDOVOGO PRAVA I SUDEBNAIA PRAKTIKA [THEORETICAL PROBLEMS OF THE LABOR LAW AND JUDICIAL PRACTICE] 105-07 (Kazan University ed., 1976).

<sup>9</sup>See Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, "On Measures for the Further Improvement

Qualification Rate Handbook" (*ETKS*), more than three-quarters were obtained directly through practical training rather than in production and technical training schools. The schools trained workers in only 1,408 vocational categories.<sup>10</sup> In addition to the six million persons who obtained their first job skills directly through practical training, more than twenty million persons were involved annually in training to improve their skills, to obtain a higher vocational classification, to learn methods of working with new equipment or new technology, or to learn *supplementary related* or *generally useful* job skills. Related skills are those necessarily connected to the process of production through participation in the manufacture of the products either simultaneously or sequentially. Generally useful skills are those necessary in all production operations, such as driving or loading a truck. This article is devoted to the legal problems of both systems of vocational training.

The primary activity of students in vocational and technical training schools was basically *study* rather than work. This activity was regulated mainly by the principles and norms of Soviet administrative law, not labor law. However, it cannot be said that students of vocational and technical training schools never encountered violations of their labor law rights.

### *C. Preparation of Workers in Vocational and Technical Education Institutions*

The leadership of the Soviet state did not hide its dissatisfaction with the level of training of workers in vocational and technical training schools. The slow growth of those technical schools that admitted persons who had finished secondary general education schools was noted. The educational programs lagged behind the requirements of scientific and technical progress. Much attention was given to the preparation of workers in narrow specialties. The training of persons who were to be employed in several *related* vocations was not adequate. The social and political upbringing of the students lagged behind their vocational training. One should take into account that the list of problems cited here was contained in the widely publicized decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR "On the Further Improvement of the Process for Educating and Training Students of the System of Vocational and Technical Training of 1977."<sup>11</sup> The actual situation was more serious but it was openly criticized only in departmental orders not intended for publication. One of the noted shortcomings deserves more attention.

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of the Training and Improvement of Job-Skills of Workers at Production", SP SSSR [COLLECTION OF DECREES OF THE USSR], Issue No. 17, Item No. 113 (1979).

<sup>10</sup>L. KOSTIN, KONKRETNAYA PROGRAMMA DEISTVIA [CONCRETE PROGRAM OF ACTION], SOTSIALISTICHESKII TRUD [SOCIALIST LABOR] 8 (1979); see also OBSHCHEE POLOZHENIE O EDINOM TARIFNO-KVALIFIKATSIONNOM SPRAVOCHNIKE [GENERAL RULES FOR THE UNIFIED WAGE RATES AND SKILLS HANDBOOK], SBORNIK ZAKONODATEL'NYKH AKTOV O TRUDE [COLLECTION OF THE LEGISLATIVE ACTS ON LABOR], (Iuridicheskaiia Literatura [Legal Literature] 1977).

<sup>11</sup>That Decree was published in SP SSSR, Issue No. 24, Item No. 151 (1977).

*D. The Slow Growth of Technical Training Schools*

Three types of technical training schools existed in the USSR: (1) schools training students, after their graduation from eight-year general education schools (term of study was one to two years), to become workers in the mass specialties; (2) secondary schools for students in the same group but providing work skills of a higher level, while also giving a secondary education formally equal to that of the ten-year secondary general education school (term of study was three to four years); (3) technical training schools which trained the graduates of secondary general education schools to become skilled workers (term of study was one to one and a half years).

As early as 1972, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR recognized the need "to develop technical training schools providing a work skill for young people who have completed a secondary general education school, to expand their role in the system of vocational and technical education in training as a worthy addition to the working class, to popularize more extensively this important form of vocational training for young people."<sup>12</sup> It was noted that workers with a secondary education work more productively and learn more quickly than their fellow workers with an incomplete secondary education.<sup>13</sup> However, the interests of state industry did not necessarily coincide with the personal interests of young individuals with a secondary education certificate.

The problem was that the overwhelming majority of school children who had finished the eight-year school had already reached a decision about their future. Those who planned to enter universities or institutes remained in secondary school to finish the ninth and tenth grades. Their goal was to obtain a secondary education certificate and then to try their luck on the entrance examinations at the chosen university, institute, or (as a last resort) technical college where persons are admitted only after completing secondary education. Those who decided to become workers, even at the highest skill

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<sup>12</sup>SP SSSR, Issue No. 12, Item No. 67 (1972) (emphasis added) (that decree was also devoted to "the further improvement of the system of vocational and technical training"). To those interested in the earlier history of vocational and technical training, one may recommend the earliest decrees of the same institutions on the same subject, as: Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, "On Measures for the Further Improvement of the Preparation of Skilled Workers in Educational Institutions of the Systems for Vocational and Technical Training", SP SSSR, Issue No. 9, Item No. 54 (1969); Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, "On Measures for Broadening Training and Placement at Work in the National Economy of Young People Finishing General Education Schools in 1966", SP SSSR, Issue No. 26 (1966); Decree of the Council of Ministers of the USSR, "On Measures for Improving Preparation of Skilled Workers and Provision for Them by Enterprises and Construction Sites", SP SSSR, Issue No. 21, Item No. 181 (1962).

<sup>13</sup>M.A. KOVRIGIN, PODGOTOVKA RABOCHIKH KADROV V USLOVILAKH NAUCHNO-TEKHNICHESKOI REVOLIUTSII [PREPARATION OF THE MANPOWER IN CONDITIONS OF THE SCIENTIFIC-TECHNICAL REVOLUTION] 6 (Moscow, Profizdat 1981).



levels, preferred, as a general rule, not to complete the ninth and tenth grades. Instead, upon finishing the eight-year school, they entered one of the two types of above-mentioned training schools or went straight to an enterprise to learn their work skills directly in practical training.

But what was the situation of those who could not get into a higher educational institution, either because they did not pass the entrance examinations or failed to achieve a high enough score to gain admission? These "failures" did not eagerly change their plans to seek entry to technical training schools. In many cases they considered the more effective use of their time to prepare for a second attempt at entry into a higher educational institution the next year. Some did not work at all until the following entrance exams, studying hard for the examinations. Others, with the same goal in mind, took up temporary light work. This work, while it might be significantly less challenging than what their ability could potentially enable them to accomplish, minimally obstructed their main purpose—preparation for entry into a higher educational institution.

Personal observation led this writer to conclude that the causes of such persistence were far from explicable merely in terms of a strong desire to enter a long since chosen profession or to study only at a long since selected university. In many, if not in most cases, the adolescent entered the ninth grade of secondary school because he (or she) had decided, with the parents' participation, not so much on a future profession as on his future *social position*. The adolescent did not want to be just a factory worker, preferring a career as an office worker, engineer, or an employee involved in intellectual labor. The educational choice was the first step in attaching the growing young person to his future social stratum thereby providing him the possibility of joining the social stratum of his parents and relatives and the one in which he himself grew up.<sup>14</sup> If he did not succeed in getting into one higher educational institution, by moving horizontally to another the adolescent could stay in the same social stratum rather than transfer to another milieu.

However, the state, which centrally planned the formation, distribution, and use of working cadres throughout the whole country, could not accept the fact that a significant number of young people escaped its control, even for a time, and thus were not subject to state planning—the main imperative of the Soviet economy. While Article 40 of the Constitution of the USSR granted citizens of the USSR the right to choose their job skills and occupation in conformity with their desires and abilities, this right was given "*taking into account the social needs*". An intensified campaign was conducted to bring young people into technical training schools or directly into industry through active encouragement of students in secondary general education to enter a technical training school (rather than a higher educational institution) or to go directly to work in industry. In addition to creating a conducive moral and political

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<sup>14</sup>It has already been noted that the universities primarily taught persons from well-off Soviet families. See example in Victor Zaslavsky & Yuri Luryi, *The Passport System in the USSR and Changes in Soviet Society*, 6 SOVIET UNION/UNION SOVIETIQUE 137 (1979).

climate in the schools, the means employed to achieve the appropriate "job orientation" among young people included providing practical training directly in secondary general education schools. In this connection, each school was provided with the list of jobs for which the schools were required to teach the skills to school pupils.<sup>15</sup>

The third way to assign young people finishing school to productive labor in fulfilling *Komsomol* (Russian abbreviation of the "Communist Union of Youth") tasks was via so-called "*Komsomol passes*". It must be noted that this campaign involved not only its leaders, but also individuals *bearing personal responsibility* for its results. These responsible persons included, in particular, workers in education, from cabinet ministers to directors of schools, as well as the leadership of the *Komsomol*, from the Secretary of the Central Committee to the secretaries of the local organizations of the *Komsomol*. In earlier years, the ten-year schools were evaluated according to the number of students who entered higher educational institutions after successfully passing the examinations. Now, "the number of graduates assigned to productive labor and to secondary vocational and technical training schools in accordance with the selected vocation" was proposed as a new essential criterion in this evaluation.<sup>16</sup> Criticism was aimed at the "past tendency of teachers, collectives, and parents to direct the graduates of secondary general educational schools only toward entry into higher educational institutions."<sup>17</sup> This campaign, in which the personal interests, inclinations, and desires of young people in planning their own future were sacrificed to social interests, grew stronger each year. Moreover, the objects of this mass pressure were those who, by virtue of their age, were less capable of resistance and independent decision.

The success achieved in this campaign was reported by three ministries and the Secretariat of the Central Committee of the *Komsomol* in a joint resolution: "On the Results of the Labor Placement of Graduates of Secondary General Education Schools in 1979 and the Tasks of Agencies for Labor, Job-Skills and Technical and Public Education, Committees of the Communist Union of Youth for the Direction of Young People into the National Economy and the Filling of Job-Skill and Technical Schools in 1980":<sup>18</sup> In 1979, over 656,000 (22.8%) of 2,879,000 persons finishing general education secondary schools entered

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<sup>15</sup>See, e.g., Decree of the Council of Ministers of the USSR, "On the Organization of InterSchool Educational Production Combines for Labor Training and Vocational Orientation", SP SSSR, Issue No. 18, Item No. 105 (1974); Decrees of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, "On the Partial Abolition of the Labor Preparation in the Secondary Education School", SP SSSR, Issue No. 4, Item No. 37 (1966).

<sup>16</sup>KOVRIGIN, *supra* note 13, at 40-41.

<sup>17</sup>*Id.*

<sup>18</sup>Joint Resolution of the State Committee of the USSR on Labor and Social Matters, of the State Committee of the USSR on Vocational and Technical Training of the Ministry of Education of the USSR, and of the Secretariat of the Central Committee of the *Komsomol*, 6 BULLETEN' GOSKOMTRUDA 14-22 (1980).

technical schools. One-fifth of these people were sent on a "Komsomol pass". Of all the graduates, 1,136,000 (39.5%) went to work in various branches of the Soviet economy. The rest were sent "on a Komsomol pass." Whole classes and even whole schools sometimes expressed the "desire" to go (as a group) to technical training schools, to industry, or to agriculture. Nevertheless, the plan for filling technical training schools was not fulfilled. "A particularly alarming situation occurred in the RSFSR, where the shortfall in the schools constituted forty thousand persons, in the Ukrainian Soviet Socialist Republic—seven thousand persons, and in the Belorussian—four thousand persons."<sup>19</sup>

It had been decreed, incidentally, that there must be inculcated in senior pupils "the desire to fill the ranks of the working class and the collective farm peasantry," and also that "the practice of sending" graduates of schools to technical training schools "on Komsomol passes" be improved. As for higher education, in order to create "the broadest possibilities for students," the pedagogical councils of technical training schools were given the right to permit students graduating with excellent and good average grades (four to five on a five-point scale where five is excellent, one is very bad, and the lowest passing grade is three) to enter day divisions of higher educational institutions after finishing training school.<sup>20</sup> However, no more than 10% of the graduates of the school were permitted this opportunity.

To fully evaluate the significance of the problem presented to graduates of the training schools, it is not inappropriate to note the words of the International Covenant on Economic, Social and Cultural Rights on the right to work "which includes the right of each person to earn a living by labor which he *freely* selects or to which he *freely* agrees."<sup>21</sup>

The long term development of the system of vocational and technical training showed two tendencies: first, a further centralization of the system; second, a preference for the creation of *secondary* vocational and technical training schools, i.e., those admitting workers who had already completed secondary education. The retention of vocational and technical schools to train workers without a secondary education depended upon the success of such workers' scientific and technical progress. These schools (with a term of study from one to two years) were training workers for those branches of industry where the amount of auxiliary and subsidiary work was high and the level of mechanization of labor was low. The higher the level of mechanization and automation of both production processes and auxiliary jobs, the greater the quality requirement for working cadres. And then, according to M.A. Kovrigin, a leading specialist in vocational and technical training, training workers in

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<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>Emphasis to the excerpt from Article 6.1 added.

vocational and technical training schools that do not provide a secondary education would no longer be sufficient.<sup>22</sup>

On January 1, 1979, the number of these schools constituted 22.6% of the total number of training schools in the vocational and technical educational system. They produced 21.3% of the graduates of the system of State professional education. Were M.A. Kovrigin right, then changing the number of vocational and technical training schools teaching workers mass auxiliary skills could make it possible to evaluate the successes of mechanization and automation in production processes and auxiliary jobs. It is interesting, however, to juxtapose Kovrigin's opinion with that of the above-mentioned plant director, Yuri Udovichenko on related subject:

Let's look at the workers' educational level as it affects their attitudes at the plant. Two sociological studies found that workers with five to seven years of schooling expressed the greatest job satisfaction. They are more accepting of less than ideal working conditions, and they rarely come into conflict with management. When the shop superintendents, their assistants, the senior foremen, and the foremen first learned this, many of them said, in so many words: "Why should a ship repairman have a tenth-grade education if he doesn't need one since he's easier to work with without one?"<sup>23</sup>

In 1980, a new "Statute on Vocational and Technical Educational Institutions in the USSR" was approved. This Statute provided that study in vocational and technical training schools was free. Free vocational and technical education had been already proclaimed in Article 40 of the Constitution of the USSR and in Article 2 of the USSR Fundamentals of Labor Legislation. However, the consistency with which this principle was applied elicited some doubts.

Education was free in the sense that students were not required to pay tuition. But during the course of their study, the students produced finished products. As their training continued, more and more of this work product was ready for sale. This applied equally to products produced in workshops and to those prepared by students of the vocational and technical training schools directly at enterprises during the time of their practical training there. Who received the income from the sale of these products? The students were paid one third of the earnings received from the sale of these products; the remaining two thirds remained at the disposition of the vocational and technical training schools. Forty-five percent of the net income from the schools' production was returned to the State as a tax, while the remainder was spent for the operating needs of the school.<sup>24</sup> Such a practice could be economically justified, but it

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<sup>22</sup>KOVRIGIN, *supra* note 13, at 54.

<sup>23</sup>Udovichenko, *supra* note 4, at 53.

<sup>24</sup>*See, e.g.*, Decree of the Council of Ministers of the RSFSR, "On the Procedure for Distribution of Income Received from Production Activity of Professional and Technical Training Schools", SP RSFSR, Issue No. 28, Item No. 179 (1967); SOVETSKOE TRUDOVOE

provided a clear impression of the qualified nature of the principle of free job-skills training in the schools.

In addition to the vocational and technical training schools of the system of the State Committee of the USSR for Vocational and Technical Training (hereinafter *Glavprofobr*), many ministries, departments, and organizations had their own vocational and technical training schools. However, the procedure for admission to these schools, their programs and study plans, periods of study, and lists of skills studied, as well as all aspects concerning the award to graduates of a specific skill rating (rank or class), were established in a centralized procedure by the *Glavprofobr* (Articles 3 and 9 of the above mentioned Statute). The vocational and technical training schools were given the task of preparing well-rounded technically trained workers for the national economy who "satisfy the needs of modern production and scientific and technical progress and also have perspectives for their development." One of the "main tasks," according to Article 4 of the Statute, was:

[T]he inculcation in the students of a Marxist-Leninist world-view, instilling in them high moral qualities, Soviet patriotism, socialist internationalism, a communist attitude toward labor and social property, readiness to guard and multiply the revolutionary and labor traditions of the working class.

Among these main tasks was also "preparation for defense of the socialist Motherland." Thus, the educational process in a vocational and technical training school also included compulsory ideological indoctrination as well as military training, thereby excluding the right to freedom of thought, religion, and independence of beliefs, which, according to the Universal Declaration of Human Rights, "every person" must have.

Practical training, as a rule, had to be conducted at those enterprises and in those localities where the student would work after he finished school. The working day of the student during practical training was determined by the educational plan. However, it could not exceed the length established by labor legislation for the respective category of employees, which could depend upon age, conditions of production, etc. For those who were to study one year or longer, holidays were established. The time and length of the holidays was determined by the study plan.

The rule granting pedagogical councils of technical training schools the right to permit graduates with excellent and good marks in all subjects to enter higher educational institutions, universities and the like, immediately after finishing the training school, has been extended to secondary vocational and technical training schools with the same quota applied: up to 10% of the graduating class. However, graduates who obtained a diploma "with excellence" were given an unconditional right to enter a higher educational institution immediately after finishing the school. They did not need

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PRAVO [SOVIET LABOR LAW] 446 (Moscow 1976); see also *supra* note 7, art. 13 of the mentioned Decree which concerns payments to students of technical training schools.

permission of the pedagogical council, nor were they affected by the 10 percent limit. These graduates, in addition, had a "preferential right in assignment to work." This meant that they were the first to select a place of work from the list of enterprises received by the educational institution for job assignment. To obtain a diploma with excellence one must have the highest grade of "five" in practical training. In addition, he must have "five" in no less than 75% of all other subjects. In the remaining 25% he could not have a grade lower than "four."

The applicant for vocational and technical training schools must have an eight-year or complete secondary school education, and not be over thirty years old. (In the evening schools, where study was without a break from productive labor, there was no age limit.) Students were obliged also to undergo a medical checkup. The medical requirements depended upon the nature of the future job.

Among the obligations of the student of the vocational and technical training school listed in the Statute was the obligation to improve one's ideological level and to be intolerant of all "antisocial phenomena," including of course, political dissent. Articles in the Statute relating to students' financial support and their right to receive money earned through the sale of their products were vaguely and imprecisely drafted. The rules for social insurance were to be those approved by the Council of Ministers. With respect to payment for products made during the process of production, Article 38 of the Statute provided that students be paid monetary amounts according to the norms and valuations in effect, but "payment to students for work done is made by the established procedure and in the established amounts." The procedure, the amount, and who established them, was nowhere stated.

Upon finishing school, the graduates were obligated to work no fewer than two years at those enterprises to which they were sent. As a rule the assignment of graduates was made before the start of practical training. Students who were sent to the school by the enterprises where they had worked previously returned to those enterprises. Enterprises were obligated to provide graduates of the schools with work in accordance with the vocational and skill level obtained, and also to provide housing. Incidentally, this obligation was mentioned in Article 80 of the USSR Fundamentals of Labor Legislation as well as in the Statute. Before starting work, graduates were given a vacation of a length established by the Labor Code for the enterprises where they were sent to work. This leave was paid for by the enterprise on the basis of the wage rate for the skill category which the graduate was awarded upon finishing the school. The study time in the school was registered as general work in the work record, counted in the award of pensions, and also as uninterrupted work time, considered with respect to a whole series of privileges and also in the award of benefits for temporary disability (*obshchii i nepreryvnyi trudovoi stazh*).

Frequent instances have been observed of an unsatisfactory attitude toward young workers and of the bad use to which the graduates of the schools were

pt.<sup>25</sup> In the overall group of those discharged at their own request, half were young workers who had worked at the enterprise less than a year. On June 9, 1980, the Council of Ministers of the USSR issued a decree "On Measures for the Further Improvement of the Use of Graduates of Vocational and Technical Educational Institutions at Industrial Enterprises, Construction Sites, and in Agriculture."<sup>26</sup> In this decree, the importance of raising the skill levels of young workers, taking into account modern requirements of scientific and technical progress, was noted once again. All organizations, from ministries to enterprises, were ordered to take a series of measures to improve the use of graduates of the schools and to provide the necessary housing and living conditions for them. It was established that a young worker could not be discharged without careful preliminary consideration of the motives of the request for discharge.

Measures to eliminate the reasons for young workers leaving production were also required. The issuance of the "Statute on the Assignment of Graduates of Vocational and Technical Training Schools" was proposed to provide "the broadening of the practice of personal assignment of graduates of these educational institutions," a basic departure from the earlier practice of job assignment of graduates by teams, in impersonal groups. As a supplemental guarantee of the correct use of graduates of the schools, the local job-skill and technical training agencies obtained the right to reassign graduates of the schools to other enterprises if it turned out that the enterprise to which a graduate was sent was not ready for his reception and use. These were the legal problems of vocational and technical training in the schools of the system of the *Glavprofobr*.

### III. NORMS OF LABOR LEGISLATION

#### *A. Some Problems of the Preparation of Working Cadres Through Practical Training*

It would be hard to say whether the state of practical training for working cadres pleased the leaders of the USSR more than the state of affairs in the *Glavprofobr* system. For scientific and technical progress to have a positive impact on the tempo of development of modern production, "an uninterrupted growth of the level of education and the vocational skills of the working people [is required]. In connection with this, the training, retraining, and improvement of workers' skills directly at the place of production is becoming ever more significant." The above quoted Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR "On Measures for the Further Improvement of the Training and Improvement of Job Skills of Workers in Production" stated that the level of this work "still

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<sup>25</sup>Zaslavsky & Luryi, *supra* note 14, at 14-22.

<sup>26</sup>Decree of the Council of Ministers of the USSR, "On Measures for the Further Improvement of the Use of Graduates of Vocational and Technical Educational Institutions at Industrial Enterprises, Construction Sites and in Agriculture", SP SSSR, Issue No. 18, Item No. 106 (1980).

does not correspond fully to the requirement of the Twenty-Fifth Party Congress."<sup>27</sup> The decree contained many recommendations on how to improve this state of affairs. One may note the instruction that not only the job-skills training of workers, but also their upbringing and general education and economic training must be the focus of attention of Party, Trade Union, and *Komsomol* organizations. To improve the planning of vocational training, it was decreed that five-year tasks be established in a centralized manner for all ministries for the preparation of skilled workers in production. In turn, the ministries were required to give their subordinate enterprises annual tasks.

Moreover, tasks must be given individually in order to improve the skills of women. The decree stated: "Giving great significance to further improving the vocational training of women, it is provided that women workers having children up to eight years old undergo retraining and improving [their] skills with a break [from productive labor] retaining [their] average monthly earnings during the time of study." The importance of this measure becomes clear when it is taken into account that women constituted 51 percent of the workers and office workers in the country's economy. In a number of branches of industry, the productivity of labor among women was higher than among men.

However, the actual situation required that a woman often choose between improving her job-skills and raising her children. A woman with a child cannot readily spend her time improving her qualifications at the end of the working day. The low standard of living, the insufficient earnings plus the difficulty of obtaining food and consumer goods for the family, taken together with the absence or low quality of home appliances, forced a woman in the Soviet Union to spend an excessive amount of time housekeeping. And this took excessive physical and emotional energy. In addition, there was a notorious shortage of kindergartens. Those available were often of such a quality that many parents, if their wages permitted, preferred to be less well off financially rather than to send their children to kindergartens and child care centers, at least during their first three years. As in the past, housework in the Soviet family was considered to be women's work.

The extraordinarily low level of medical and hygienic service for women and children must also be mentioned. Secretary of the Bashkir Province Party Committee Akhunzianov reported that in Bashkiria only now was it being planned to bring "in the near future the development of obstetric, gynecological and children's hospitals and outpatients' clinics up to the level of Soviet (very low by the Western standard-Yu.L.) sanitary-hygienic norms."<sup>28</sup> And Bashkiria was one of the industrially developed Soviet regions.

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<sup>27</sup>Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, *supra* note 9.

<sup>28</sup>T. Akhunzianov, *Aktivnaia Demograficheskaia Politika Velenie Vremeni [Active Demographic Policy—An Imperative of the Time]*, 6 SOTSIALISTICHESKII TRUD [SOCIALIST LABOR] 75-76 (1980); see also Christopher David & Murray Feshback, *Infant Mortality in*



As A.M. Kovrigin cautiously formulated the problem: "The difficulties of combining work in production with raising children sometimes place before women a problem of choice: either to leave work in production or to refuse to have a second child." He reported that, although the level of education of working women was somewhat higher than that of the men, the level of their skills was nevertheless significantly lower. The causes of this are rooted in the greater distraction of women from work due to their performance of maternal functions and housework. "In this connection," M.A. Kovrigin concludes, "it is necessary to ensure expansion of possibilities for women not only to receive a secondary education BEFORE marriage but also to receive a specific skill in a vocational rather than in a technical training school."<sup>29</sup> However, this proposal was a half measure and could not solve the problem.

The fact is that under conditions of scientific and technical modernization, improvement of qualifications must be repeated periodically. And if, as the data indicate, in 1979 each worker underwent retraining each sixth or seventh year, then retraining under influence of the same modernization would have to be repeated more often. The decision to send women for retraining, freeing them from work while permitting them to retain their average wage, was meant to help solve this aspect of the problem of improving the skills of women.

The leadership evidently developed a systematic approach to the problem of women's role in production work. The 1977 Constitution of the USSR proclaimed the "gradual reduction of the working day for women having young children." However, the only realization of this promise was seen in the introduction of a half or quarter working day to attract supplementary cadres—nonworking pensioners and women with children. Of course, the earnings provided were only proportional to the working time. In addition, a new list of heavy or harmful jobs which women would be forbidden to hold was approved. It was established that during the time spent learning a new specialty, women freed from hard or harmful work would continue to have the right to receive their former average wage for six months.

The freeing of women from this work was taking place, it must be said, very slowly. The new list did not appear by itself as soon as the harmfulness of the jobs eventually included in the list became known. The level of industrial hygiene and of sanitary science was sufficiently high to reveal much earlier the harmfulness of many jobs where women were used most intensively. But the threat of serious negative demographic changes was required to go from loud words about "the concern of the Party for Soviet women" to action. The growing interest of the State in lightening the labor of women and the conditions of study was based on a sober economic calculation: "A woman occupied in machine building, light industry, or the food industry, according to the calculation of economists, repays expenditures for learning a job-skill,

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*the USSR in the 1970's* (United States Bureau of the Census, Series No. I-95, No. 74, 1980); Nick Eberstadt, *The Health Crisis in the USSR*, NEW YORK REVIEW OF BOOKS, Feb. 19, 1981.

<sup>29</sup>KOVRIGIN, *supra* note 13, at 15.

improving that skill, and also the expenditure for care of a child in children's institutions, in less than three years."<sup>30</sup>

The practical training of working cadres was regulated in the USSR basically by two legislative acts. First, the USSR Fundamentals of Labor Legislation and labor codes of the union republics which referred to the privileges and rights of those involved in job-skills training. Second, the Model Statute on the Procedure for Training Workers in production regulated the types and forms of vocational training. In the USSR Fundamental Principles and the republican codes which preceded them, questions involving vocational training were hardly touched upon, although the codes contained a chapter entitled "On Apprenticeship". In fact, all questions were decided by departmental instructions or by directives of the Government. The Model Statute, approved March 4, 1980, replaced the old one of 1968.<sup>31</sup> E. Kamashev, an official of the USSR *Goskomtrud*, responsible for the preparation of cadres in production, stated that the appearance of the new statute was preceded by an All-Union "scholarly and practical conference" on the theme "Basic Directions for Improving the Effectiveness of the Use of Labor Resources in the Light of the Decisions of the Twenty-Fifth Congress of the Communist Party of the Soviet Union."<sup>32</sup> Many of the conference's recommendations were adopted by the country's leadership and were reflected in the Model Statute. This Statute was approved by three organizations: the USSR *Goskomtrud*, the *Glavprofobr*, and the Secretariat of the *Komsomol*. On the basis of this Statute, taking into account the particular features of different branches of industry, separate branch statutes were to be issued.

The discussion below deals with the norms of the Model Statute which bore directly on the labor rights and duties of workers.

Article 1 of the Model Statute provided:

The following types of vocational training through practical training are established: (a) training of new workers; (b) retraining, and training of workers in a *second* job skill; (c) raising the skill level of workers.

The definitions given for each of these types of training entailed certain legal consequences.

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<sup>30</sup>KOSTIN, *supra* note 10, at 12; KOVRIGIN, *supra* note 13, at 103, 115.

<sup>31</sup>The old Model Statute of October 18, 1961, is in almost all Soviet collections of laws on labor. For the new Model Statute see The Model Statute on the Procedure for Training Workers in Production, *Biulleten' Gosudarstvennogo Komiteta SSSR po Trudu i Sotsial'nim Voprosam* [Bulletin of the USSR State Committee for Labor and Social Problems], Issue No. 5, at 3-14 (1980).

<sup>32</sup>E. Kamashev, *Novoe v Professional 'nom Obuchenii Rabochikh na Proizvodstve* [News on Professional Training of Workers in the Production], 5 SOTSIALISTICHESKII TRUD 63-67 (1980).

### B. Training of New Workers

"Training of new workers" was defined as the "vocational training of persons who previously did not have skills, as listed and approved by the *Glavprofobr* USSR through the procedure established by law." Previously, workers, who were transferred to a new enterprise and were taught a new skill there, were included in the accounts as "new workers, trained in production." This made job-changing beneficial for the employees in charge of technical training. Now only those workers who did not previously have a skill listed in the State approved list could be included in the account as "new workers".

In contrast with students at vocational and technical schools, persons accepted for training directly in production entered into *labor* relations with enterprises and not into *trainee* relations. It was just for this reason that the Model Statute introduced the obligatory rule that "persons sent for training must have been previously acquainted with the requirements of work by trade, with the conditions and payment of labor, with the rules of internal labor order and safety technology, with hygiene norms and rule production (job) instruction and possibilities of improving skills and promotion." These conditions, taken altogether, constituted, in essence, according to Article 8 of the USSR Fundamentals of Labor Legislation, the content of the labor contract.

New workers were trained in any of three ways: through individual, group, or course instruction. For group and course instruction, training groups of ten to thirty persons were created. The term of instruction could not be more than six months. In individual cases, when six months was insufficient, the period could be increased but only with the permission of the *Glavprofobr* of the USSR. The preparation for vocations connected with the servicing of boilers, cranes and certain other complex and dangerous jobs was required to be done through formal coursework. Individual instruction in these vocations was not permitted.

### C. Retraining and Training in a Second Skill

Retraining was organized for workers released from enterprises as the result of technical progress, increased labor productivity and other changes, and also for those workers who had shown a desire to change their present skill "in connection with the needs of production." Training workers in a *second* skill was designed to "broaden their skill profiles, prepare them for work in brigades or other collective forms of organized labor, and also to provide them with multiple skill jobs."

Analysis of this provision, particularly the part italicized, leads to the following legal conclusions:

1. The term "second skill" did not signify a quantitative limitation; rather it related equally to any number of additional skills necessary to work under conditions of collective forms of labor, such as a brigade system which completes an entire system of tasks, sometimes from the beginning to the end of a production cycle. The term "second skill" also applies to any number of *related* jobs.

2. In the statute previously in force, training in multiple skills was considered to be a form of *improving* skills. But it was not merely a matter of emphasizing

the greater importance of this type of training or of changing the rubric of statistical reporting. This change entailed serious legal consequences.

3. Training in *related* skills, despite its desirability, was no longer a labor obligation of workers. The concrete labor obligations of each worker were provided in the labor contract. The general obligations of all workers were set forth in the USSR Fundamentals of Labor legislation, in Union Republic Labor Codes and in the Model Rules of Internal Labor Order. The latter were published by the USSR *Goscomtrud*, as agreed to by the All-Union Council of Trade Unions, and adopted on September 29, 1972.<sup>33</sup> According to Article 11(1) of these Rules, factory workers and office workers were required "to systematically improve their operational (production) skills." So long as training in multiple skills was now a type of improving skills, to improve skills became a labor *obligation* of workers. Accordingly, management had the right to demand that workers accept such training.

The essence of *combining* jobs in Soviet labor law consisted in requiring the worker, in addition to his regular obligations, to do work previously done by another worker. Compensation for this second job was determined by management. However, it was not permitted to exceed 50% of the worker's base wage rate.<sup>34</sup> Earlier, this supplementary payment for combining jobs

TABLE A

METHOD OF IMPROVING SKILL	1966-70 million persons	%	1971-75 million persons	%
Production - technical course	14,025	33.3	18,363	29.3
Course of training in second and combined skills	7,019	16.7	8,580.7	13.7
Special purpose courses	7,900	18.8	9,757	15.5
Schools of advanced methods of work	6,303	15.0	7,466	11.9
Schools for highly skilled workers	—	—	55	0.09
People's universities	—	—	1,264	2.0
Schools of economic knowledge and other typing of economic training	—	—	26,360	42.0
TOTAL	42,960	100	62,748	100

<sup>33</sup>MODEL RULES OF INTERNAL LABOR ORDER in *Bulleten' Gosudarstvennogo Komiteta SSSR po Trudu i Zarobotnoi Plate* [Bulletin of the USSR State Committee for Labor and Wages], Issue No. 12 (1972).

<sup>34</sup>Decree of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, "On the Improvement of Planning and Strengthening the Influence of the Economic Mechanism Upon Improving the Effectiveness of Production and the Quality of Work", SP SSSR, Issue No. 18, Item No. 695, at 118 art. 53(b) (1979).

could not exceed 30 percent of the base rate of the replaced employee.<sup>35</sup> It should be noted that the earnings of a worker in the USSR were based on the wage rate (which depended upon the level of skill of the worker, on the one hand, and the degree of complexity of the work, on the other) together with any supplementary payments. Although the relation between these two components was not constant, it was clear that neither of these components alone was sufficient to maintain a minimum standard of living.<sup>36</sup>

Judging from statistical data, combining jobs proved more satisfactory to management than to workers in the Soviet Union. Table A appears to demonstrate that, among various forms of improving skills, training in combined skills occupied one of the last places. Although in the table taken from the above mentioned work of M.A. Kovrigin, the percentage of those involved dropped during a twelve year period from 16.7% to 8.8%, that percentage was in fact significantly lower. This is because the same rubric included training not only in joint skills, but also in second skills acquired when the worker left his or her speciality for a new one. This practice was particularly popular among young people seeking a new position by broadening their experience. Thus, according to the previous method of accounting, the percentage of those involved in training in a joint skill, using the most optimistic estimate, seems to constitute no more than 4.4 percent of the total number of persons involved in improving skills. Apparently workers could not be forced to train for a combined specialty, due to an existing shortage of manpower, particularly in distant districts of the country.

#### *D. Improving Workers' Skills*

"Improving workers' skills" was vocational training "directed at the consistent improvement of vocational knowledge, habits, and skills in an *existing* vocation." As noted above, improving skills was a labor obligation on the part of factory workers and office workers. Thus, theoretically, an employee could be discharged for refusing to improve his skills. Such a possibility existed not only in the USSR, but also in all East European countries of the Soviet bloc. For instance, judicial practice and labor law doctrine in Poland recognized a refusal to improve skills as a valid cause for employee discharge.<sup>37</sup> In the USSR, this problem was not uniformly dealt with in practice.

The Labor Code of the RSFSR included, at first glance, two grounds for discharging a worker for a refusal to improve his skills. Article 33, which was

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<sup>35</sup> *Kommentarii k Zakonodatel'stvo o Trude [Annotated Legislation on Labor]*, art. 38 of the USSR Fundamentals of Labor Legislation cmt., RSFSR LABOR CODE art. 87, cmt. 251-55 (1976).

<sup>36</sup> On the systems of wages for workers in the USSR, see RSFSR LABOR CODE art. 80, cmt. 204-14.

<sup>37</sup> See N.G. Gladkov, *Osobennosti Prekrashcheniia Trudovogo Dogovora v. PNR [Specifics of Terminating a Labor Contract in the PNR]* in 5 SOVETSKOE GOSUDARSTVO I PRAVO [SOVIET STATE AND LAW] 106 (1980).

an exhaustive list of the causes permitting management to terminate a labor contract on its own initiative, refers, first, to the failure of a worker to be fit for the work done as the result of insufficient skills, and second, to the systematic failure, without compelling reasons, of the factory worker or office worker to fulfill the obligations placed upon him by the labor contract or the Model Rules of Internal Labor Order.

In the first instance, discharge due to insufficient skills did not affect the obligation to improve skills, although it indirectly encouraged the process. Fault on the part of the employee was not required for discharge on this basis. It was entirely possible that education, age, or other individual characteristics would not permit the employee to improve his skills. In such a case, it was required that the worker be offered work for which his skills were adequate. But those employees who had the possibility of improving their skills also could have been required to choose between study or threatened discharge, or accept transfer to less skilled work at lower pay. Transfer rather than discharge is mentioned here because discharge in connection with insufficient skill was allowed only when it was "impossible to transfer the worker or other employee, with his consent, to other work."

The second instance involved two or three refusals to improve skills, refusals leading to two or three disciplinary or social (e.g., imposed by a comrades' court) sanctions for the worker discharged for systematic nonfulfillment of his labor obligations. According to Article 8 of the USSR Fundamentals of Labor Legislation, a working person who concluded a labor contract was required to do his work "obeying the internal labor order." This provision, by itself, was hardly objectionable. What was doubtful was the legality of certain demands upon workers contained in the Model Rules of Internal Labor Order. Such demands included obligations of workers not only to carefully and timely fulfill the work norms, but also "to strive for overfulfillment of these norms"; not only to work observing the quality norm established by technical standards, but also to "improve the quality of production"; not only to guard the property of the enterprise at which they worked, but also "to strengthen socialist ownership"; finally, not only to have the skills and knowledge as defined in *ETKS*, the "Unified Wage Rate and Vocational Handbook", for each job necessary for the fulfillment of the work provided by the labor contract, but also "to systematically raise their working (production) skill."

It must be said that none of these obligations (with the exception of strengthening of socialist ownership) were set forth either in the Labor Contract or in the Constitution of the USSR. Chapter VII, "Basic Rights, Freedoms, and Duties of Citizens of the USSR" listed the obligations of Soviet citizens in Articles 59-69. The obligations to guard nature, to care for the preservation of monuments, to strengthen ownership (not one's own, but socialist ownership) could be found there. But Article 60, devoted directly to the labor obligations of Soviet citizens, contained no indication of the obligations which the USSR *Goskomtrud*, the author of the Model Rules, additionally imposed upon factory workers and office workers in the Soviet Union. Thus, it seems that the Model Rules were, in this respect, unconstitutional. An interesting evolution is observable. In the old Labor Code of 1922, when private enterprises were permitted temporarily, Article 52 stated that the Rules of Internal Labor Order could not contravene the laws on labor or collective contracts. Later the

reference to collective contracts was removed. The Commentary on the Labor Code published in 1966 explained the removal simply: Now, "on the contrary, the collective contract cannot contradict the Rules of Internal Labor Order."<sup>38</sup> The next labor legislation contained neither the text nor the principle of Article 52 of the 1922 Code. This is hardly surprising: It was drafted by the Employer itself, that is by the state, while private businesses and employers no longer existed.

In court practice, cases concerning the discharge of workers for refusal to improve skills or for insufficient skills were seldom encountered. Since enterprises always needed unskilled workers rather than highly skilled workers, the most significant numbers of these cases involved the discharge of office workers. Thus, work could always be found for a worker who did not want to study but who performed his job in good faith.

Improving skills resulted in raising the skill classifications of the worker and, in turn, increasing his wage. However, in many cases this created problems for the brigade or the shop which was given a set wages fund. Since this fund would already have been distributed in what was viewed as the most just or expedient manner, an increase in the earnings of a worker who had improved his skills would therefore have to be made at the expense of this same, already allocated, fund. In a number of instances improving skills was therefore contrary to the interests of the employees of the enterprise.

The decision of the Supreme Court of the RSFSR in the case of the operator G. is interesting. G. was enrolled in a two-week course pertaining to advanced methods of work during which time his earnings were maintained. G., without compelling reasons, failed to attend the classes and was therefore fired. The judicial bodies of Bashkiria rejected G.'s suit for reinstatement. The RSFSR Supreme Court reinstated G. on the ground that he was freed from fulfilling labor obligations during these two weeks.

Criticizing the position of the Supreme Court, Kharkov law Professor M.I. Baru wrote: "This position is based on the incorrect idea that improving skills is a moral and not a legal obligation. This position does not correspond to today's demands and should be rejected." Professor Baru criticized the views of a number of other labor law specialists who did not consider the improvement of skills to be an obligation. He forgot to note that both the decision of the Supreme Court and the positions of his colleagues which he criticized were published BEFORE publication of the latest Model Rules of Internal Labor in 1972. The previous Rules, published in 1957, did not consider improving skills to be a labor obligation for workers. Professor Baru published his article in 1978.<sup>39</sup>

However, some labor law specialists, new Model Rules notwithstanding, continued to consider raising one's skill to be a moral duty rather than a legal

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<sup>38</sup> *Kommentarii k Zakonodatel'stvu o Trude [Annotated Legislation on Labor]* 110 (A.N. Mishutin ed., 1966); see RSFSR LABOR CODE, art. 33, § 2.

<sup>39</sup> M.I. Baru, *Kriterii Pravovogo Regulirovaniia Vysokoproizvoditel'nogo Truda* ["Criteria of Legal Controls of the Highly Productive Labor"], 8 PRAVO [THE LAW] 57 (1978).

obligation. V.N. Artem'eva wrote: "The question of the legal nature of relations for raising skills is disputed . . . We consider raising qualifications to be a right and simultaneously a moral obligation of the working person."<sup>40</sup>

It seems, however, that Professor Baru was also wrong with respect to the merits of his criticism. Although operator G. did not attend the courses to which he was directed, and although the improvement of qualifications has been an obligation of workers since 1972, nevertheless, failure to attend courses could not be equated with absence from production work, according to the decision of the case, because of the lack of proportionality of the disciplinary sanction to the offence. Operator G. was freed from his labor duties during his enrollment in the classes. Therefore it was not necessary to apply such an extreme measure of disciplinary sanction to his act, however reprehensible.

It should be noted that the laws regulating the procedure for consideration of labor cases by the courts permitted consideration not only of the fact of commission of the act, but also of the proportionality of the punishment imposed for the act. It is the view of two well-known Soviet labor law specialists, E. Gershanov and V. Nikitinskii, that,

[D]ischarge from work under paragraph 3 of Article 17 of the Fundamentals of Labor Legislation [analogous to Paragraph 3 of Article 33 of the RSFSR Labor Code-Yu.L.] should be considered an extreme measure. Therefore, even when formal grounds for discharge are present, the court may order reinstatement if the violations of labor discipline committed by the employee are not so serious that his retention is incompatible with the interests of production.<sup>41</sup>

However, another question arises in the case of operator G. This question involves the problem of monetary liability for nonfulfillment or improper fulfillment of the obligation to study for improving skills. If the courses to which an employee is sent are in another city, the employee, in addition to retaining his earnings, is granted supplementary funds for travel and living expenses during the time of study. Can the repayment of these expenditures be required if, instead of attending courses, the employee has taken a holiday? V.N. Artem'eva reported that since this question is not answered in labor legislation it has been resolved differently in different branches of industry. In some branches only the expenditures for training have been recovered through the compensation procedure while in others all amounts received by the

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<sup>40</sup>See V.N. ARTEM'EVA, PRAVO SOVETSKIKH GRAZHDAN NA PROFESSIONAL'NIU I PODGOTOVKU I POVYSHENIE KVALIFIKATSII [THE RIGHT OF SOVIET CITIZENS FOR VOCATIONAL TRAINING AND FOR RAISING OF SKILLS] 81 (Minsk 1981).

<sup>41</sup>E. Gershanov & V. Nikitinskii, *Uvol'nenie za'sistematicheskoe Neispolnenie Trudovykh Obiazannostei* [Dismissal Due to Systematic Non-Fulfilment of Labor Duties], SOTSIALISTICHESKAIA ZAKONNOST 33 (1971).



employee have been recovered.<sup>42</sup> Agreeing with the opinion of A.S. Pashkov,<sup>43</sup> V.N. Artem'eva considered such recoveries to be illegal since vocational and technical training in the USSR were free. She recommended early dissolution of the contract for improving skills. But this did not solve the problem, at least in those cases where it became known that the worker had failed to attend the course only after the course was over, as was the case with Operator G.

Czechoslovak labor legislation did not approve such recoveries.<sup>44</sup> Hungary looked at the problem differently. A worker who was absent from a course after receiving benefits was held responsible by the director of the enterprise. In addition, he or she lost those wages corresponding to the period of absence. In general, however, there was a "principle holding persons studying responsible for misuse of benefits provided in connection with study"<sup>45</sup> in the labor legislation of a number of East European countries.

The new Model Statute established the following ways of improving skills of workers through practical training:

1. *Production and technical courses.* These courses were created to deepen and broaden knowledge, habits, and skills of workers in vocations already held, and to raise them to the level corresponding to the needs of production. The length of training was up to six months if there was no break from work and up to three months with a break. Instruction groups consisted of ten to thirty persons. If it was not possible to organize courses, individual instruction was permitted as an exception. Training courses were concluded with an examination or test.

2. *Special purpose courses.* These courses were created for the study of new equipment, materials, and technology put into use in production and also of the rules for their use. Questions concerning the economics of production and improving the quality of production could also be studied in such courses. Training ended with an integrative assignment.

3. *Schools for the study of advanced ways and methods of work.* These schools were created for mass mastery of methods of work employed by the most experienced and successful workers. The Statute calls them "leaders and innovators of production who have achieved a significant growth in the productivity of labor, a raising of the quality of production," and also improvement of all other technical and economic indicators. The new Model

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<sup>42</sup>V.N. ARTEM'EVA, POVYSHENIE KVALIFIKATSII RABOCHIKH I SLUHASHCHIH. PRAVOVYE VOPROSY. [LEGAL PROBLEMS OF RAISING QUALIFICATION OF WORKERS AND OFFICE WORKERS] 104-05 (Minsk 1972).

<sup>43</sup>A.S. PASHKOV, PRAVOVYE VOPROSY REGULIROVANIJA PODGOTOVKI RASPREDELENIIA KADROV [LEGAL PROBLEMS OF REGULATING THE PREPARATION AND DISTRIBUTION OF MANPOWER] 74 (Leningrad 1966).

<sup>44</sup>Ia. Tyts & Ia. Palashek, 9 *Commentary on the Labor Code of the Czechoslovak Socialist Republic, Czechoslovak Trade Unions* 66 (1966) (quoting from ARTEM'EVA, *supra* note 42).

<sup>45</sup>ARTEM'EVA, *supra* note 42, at 104 (citing as an example, Labor Codes of GDR, of Czechoslovakia and views of Hungarian lawyer Valtner Andor).

Statute broadened the scales of activity of these schools. Shop, factory, branch, and all-union schools were created in the industry. All-union schools were organized by ministries of the USSR jointly with the Head Committee of the Exhibition of Achievements of the National Economy of the USSR. This committee was responsible for the distribution (or popularization) of the most successful methods of work in all areas of the Soviet economy. Branch schools were organized by republican or all-union ministries of the respective branch. In all cases trade unions have taken part in the organization of the school on an equal basis. The length of training was from thirty to one hundred classroom hours. When necessary, leave from work could be provided. Training in the schools concluded with an integrative assignment. In many branches of industry it has been the custom to send those workers who are not fulfilling their production tasks or are producing defective output to these schools.

4. *Brigade leaders' courses.* These courses provided a new way to improve qualifications. Before passage of the new Model Statute, three-year schools for master workers provided a secondary education. Later they were abolished. But they could still be provided through classes in evening (or shift) secondary general education schools. According to E. Kamashev, the reason for their abolition was that the position of master worker (a foreman), in connection with the task of increasing its importance, would be replaced by specialists with higher and secondary education.<sup>46</sup> The issuance of secondary education diplomas, when the quality of education was very far from secondary level, would be stopped.

The introduction of brigade leaders courses was caused by the need to create a permanent reserve of brigade leaders with knowledge of the level of the requirements for scientific and technical progress. This reserve became necessary because in the eleventh five-year plan "the brigade form of organization of work and of the incentive for work must become basic."<sup>47</sup> The goal of the courses as set forth in the Statute was to "raise the level of knowledge of brigade leaders in the fundamentals of scientific organization of labor, production, and administration; of legislation on labor, leadership of labor collectives, and also labor protection and safety technology." This form of improving qualifications was not to be open to all, but to enter it a special "assignment" was required. "Assignment to brigade leaders' courses was to be made on the recommendation of the heads of the respective subdivisions of enterprises and organizations taking into account the opinions of the brigade leader and the council of the brigade or the council of brigade leaders." Training at the courses concluded with a test or defense of a graduation project.

Such was the structure of state organization of vocational training of workers in production. Training was conducted either by professional instructors or by specialized workers who demonstrated their practical work knowledge. Specialized workers, however, were required to be taught the basics of

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<sup>46</sup>Kamashev, *supra* note 32, at 67.

<sup>47</sup>*Id.*

pedagogy according to the program of the *Glavprofobr*. Both professional instructors and specialized workers received compensation for this work. For some that was their basic earnings; for others it supplemented their earnings in their basic profession.

The Model Statute spoke of other non-state forms of improving skills in production. These were the so-called "social forms of improving the cultural and technical, economic and political level of workers." They included "Schools of communist labor and fundamentals of economic knowledge", "People's universities" and various "schools," "universities," and "circles" of a similar nature. They were created "jointly by the administration and social organizations of the enterprise or the superior organization." As a rule, training in them was conducted on the basis of a social-assignment (Party, *Komsomol*, or Trade Union), which meant that there was no monetary compensation. In addition, the Model Statute listed many other types of activity to aid the growth of workers' skills. These included training in the evening without a break from work, and extramural general education schools; secondary specialized and higher educational institutions; evening (or shift) vocational and technical schools, "independent work for the improving of one's own cultural and technical level, and participation in the movement of innovators and inventors in scientific and technical creativity."

Two types of improving the skill of workers in the state system through practical training ended with examinations. This did not ensure that lawsuits would not be filed. For example, as the result of examinations for the establishment of a skill classification (a so-called reclassification), store sales clerk R. was discharged on the basis of Article 33, Paragraph 2, of the RSFSR Labor Code for inadequate skills. At the trial of her case in court, it appeared that the Skills Commission asked her questions about all sorts of things, but none concerning the work of a sales clerk. She was asked to name the Minister of Trade of the RSFSR, to name the basic directions of the scientific organization of labor in trade, to recite the motto of the trade organization, etc. The court reinstated R. to her job.<sup>48</sup>

In an appeal, rejected by the Supreme Court of the RSFSR, the defendant-trade organization argued that the questions of the Commission "did not go outside the limits of the knowledge which she [the sales clerk] should have in accordance with the Wage Rate and Skill Guide." It should be noted that formally the appellant was right. The Model Statute stated that the Skills Commission must act "in accordance with the requirements of the general provisions of the Unified Wages and Skill Rate Handbook for jobs and vocations of employees." The same was mentioned in Article 5 of the "Statute on the Procedure for the Certification and Award of Skill Classifications to

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<sup>48</sup>BIULLETEN' VERKHOVNOGO SUDA RSFSR [BULLETIN OF THE RSFSR SUPREME COURT], Issue No. 5, at 12 (1980).

Persons who have Mastered Working Vocations in Various Types of Training."<sup>49</sup>

A.A. Myasnikov, an employee of the Central Scientific Research Institute for Labor Reserves of the USSR State Committee on Labor called attention to a contradiction between the above mentioned *ETKS Handbook*<sup>50</sup> on the one hand and the RSFSR Labor Code on the other. While Article 86 of the Code, developing the provision of Article 83 of the USSR Fundamentals of Labor Legislation, declared that workers have the right after finishing training to obtain work in accordance with the *skill* attained and the *skill* classification awarded, the *ETKS Handbook* proceeded from the opposite principle. According to Article 12 of the General Provisions of the Handbook, the worker is awarded a skill classification or raises it "taking into account the complexity of the work." In other words, work was not provided in accordance with skill, but skill classifications were approved depending upon the nature of the work available in the shop. A.A. Myasnikov, a sociologist and Doctor of Philosophy, maintained that such a provision artificially slows the skill improvement of workers and at the same time contradicts the law. Although classifications were awarded in accordance with the provisions of the *ETKS Handbook*, almost everywhere the average skill grade of workers in enterprises was below the classification for the jobs. Myasnikov stated: "[T]he skill of a worker must be higher than the classification of the work—this is one of the chief conditions of quality of labor."<sup>51</sup> The Chief Employer (which is the State) did not like these unsanctioned independent statements which could lead to higher workers' wages. Myashikov was arrested in August, 1980, and sentenced on January 30, 1981, to three years of imprisonment under a clearly false and trumped up accusation. His case is ably described in *Chronicle of Current Events* published in English by Amnesty International.<sup>52</sup>

A systematic sociological study of Gorki and the Gorki province (as to the representativeness of the object of study, it may be said that the Gorki region is among the most developed regions and therefore the overall picture in the country must actually be worse) gave interesting supplementary information. M.N. Rutkevich wrote:

If one supposes that workers of classifications degrees I and II (and also without a classification) are engaged in low skill work, workers

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<sup>49</sup>BIULLETEN' GOSUDARSTVENNOGO KOMITETA SSSR PO TRUDU I SOTSIAL'NYM VOPROSAM [BULLETIN OF THE USSR STATE COMMITTEE FOR LABOR AND SOCIAL PROBLEMS], Issue No. 2, at 23-26 (1979).

<sup>50</sup>See *supra* at Part II.B.

<sup>51</sup>A.A. Miasnikov, *Raboचाia Sila i Rabochee Vremia: Rezervy Ispol'zuiutsia Slabo* [Labor Force and Working Time: Resources Are Used Insufficiently], in EKO 77, 78 (1980).

<sup>52</sup>60-61 CHRONICLE OF CURRENT EVENTS 33-35, 141-144 (Amnesty International Publications 1982); see also Yuri I. Luryi, *The Use of Criminal Law by the CPSU in the Struggle for the Reinforcement of its Power and in the Inner Party Struggle*, in RULING COMMUNIST PARTIES AND THEIR STATUS UNDER LAW 91-113 (1986).

of III and IV degrees are engaged in average skill work, workers of V and VI degree are engaged in high skill work, then the share of the above-mentioned stratum [workers of low skill work] in the industry of the USSR constitutes approximately 26.3 percent. In many branches and at many enterprises this percent is still higher.<sup>53</sup>

At the same time, it was established that work of the fifth and sixth degree was performed by only 15.8 percent of the workers studied, but 28 percent [of the workers] were paid according to these classifications. And, on the contrary, in fact 34.8 percent of the workers worked under the first and second degrees, but only 20 percent had these classifications.<sup>54</sup> In other words,

[T]here are 1.5 times more jobs of the first and second degree than workers of the first and second degree, while places where high skills are required are approximately twice less than the number of highly skilled workers. As a result, a so-called shortage of employees of low skill arises and the enterprise either artificially raises the pay of workers of the first and second degree or replaces them with workers of the third and fourth category, causing the latter to be dissatisfied with their work.<sup>55</sup>

Here we encounter a situation with the overall structure of jobs in a country, where the proportion of unskilled labor is high. It slows and restrains the development of the skill structure of workers. Under such circumstances it was entirely unrealistic to compel workers to improve their skills on a mass basis. Industry did not need this!

But if the State did not in fact need a general increase in skills qualifications, and correspondingly in pay, then what could each individual, who wanted all this, expect? He might want to exercise his right to vocational training, to improve his skills and raise his job classification, and, of course, his earnings. Formally, such a right was provided by Article 40 of the Constitution of the USSR and by labor legislation. But, how can one obtain one's rights if one is denied them? For instance, what if one is not admitted to a course for skills improvement, or if after finishing the course one's classification or earnings was not raised? Was there really a way legally to enforce this right of the Soviet citizen, assuming of course this was really his *right* rather than a duty?

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<sup>53</sup>M.N. Rutkevich, *Sblizhenie Rabocheho Klassa i Inzhenerno-technicheskoi Intelligentsii* [*Rapprochement of the Working Class and Engineering and Technical Intelligencials*], 4 SOTSIOLOGICHESKIE ISSLEDOVANIA [SOCIOLOGICAL RESEARCH] 30 (1980).

<sup>54</sup>P.N. Fedoseev, *Sovetskaia Sotsiologiia XXVI S'ezd u KPSS; Rabochii Klass v Usloviakh Razvitiia Sotsializma* [*Soviet Sociology in the XXVI Congress of CPSU; The Working Class under Conditions of Mature Socialism*], 4 SOTSIOLOGICHESKIE ISSLEDOVANIA [SOCIOLOGICAL RESEARCHES] 17 (1980).

<sup>55</sup>T.V. Riabushkin, *Pokazateli Sotsial'nogo Razvitiia Rabocheho Klassa* [*The Indicators of Social Development of the Working Class*], 4 SOTSIOLOGICHESKIE ISSLEDOVANIA [SOCIOLOGICAL RESEARCHES] 21 (1980).

Various proposals for establishment of a right to appeal are mentioned in legal literature. But in Soviet legislation, there was no defined procedure according to which a citizen could enforce his right to vocational training or his right to work if it was denied him. Similarly, a right of judicial enforcement did not exist. Nor was there any specially established institution for the consideration of appeals with respect to such violations. There was not, in essence, any guarantee of the right to vocational training, the right to improve one's skills, or, for that matter, the right to work. "In any event, the absence in the legislation of clear guarantees for the protection of the given legal right (*sub'ektivnoe pravo*), as for any other," V.N. Artem'eva tells us, "should not be considered to be an argument against its existence."<sup>56</sup> After this reverence, natural under conditions of censorship, she of course called for the issuance of "uniform all-union legislation" to regulate these questions:

The fullest and most precise legislative regulation of legal facts relating to the origin of the given right, the extent and limits of the rights and duties included in it; the finding and reinforcing of the simplest and most effective means for realizing it; the determination and improvement of guarantees for obtaining, achieving and protecting it, are particularly timely and promising [questions].<sup>57</sup>

#### *E. Payment and Other Privileges of Vocational Training*

The Model Statute did not define the conditions of payment for the labor of trainees and workers during vocational training. It merely stated that such conditions "shall be established in accordance with legislation in force." Special chapters in the USSR Fundamentals of Labor Legislation and the Republican Labor Codes established privileges for factory workers and office workers combining work and study. Enterprises were to organize practical training for professional preparation and skills improvement at their own expense. This pertained to all types of practical training including at the individual level.

As a rule, management concluded labor agreements with all specialized skilled workers and other persons to conduct production training before starting the training of workers. Workers freed from their basic work retained their average earnings but were not given additional compensation. Practical training as well as theoretical classes were conducted during regular working hours as established by labor legislation for the given category of workers. Neither the USSR Fundamentals of Labor Legislation nor the Republican Labor Codes regulated workers' earnings during job-skills training.

The norms for payment of trainees were printed in the annotated editions of the Labor Codes. The general principle for such payment was that trainees were paid 75 percent of the wage rate of the first (lowest) classification at the beginning of training. In the course of time this percentage was gradually

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<sup>56</sup>ARTEM'eva, *supra* note 40, at 27-28, 35.

<sup>57</sup>*Id.*

reduced, reaching 20 percent at the end of the instruction period. Moreover, from the moment when students began to contribute to the preparation of finished products they were also paid a wage according to the norms and the valuations in effect at the enterprise.

Approximately the same method of payment was used with respect to the labor of workers during their retraining or training for a second vocation. If "young persons" were sent to workers' practical training courses directly by enterprises, with a break from work, they were paid 50 percent of their future wage rate in the occupation in which they were studying.<sup>58</sup> In the other cases, the procedure for payment of labor during job-skills training with a break from work was set for each branch of industry by the respective ministries.

Article 187 of the RSFSR Labor Code required management to provide workers undergoing practical training or studying in educational institutions without a break from work "the conditions necessary for combining work and study." This meant it was forbidden to assign workers to overtime and those jobs which could hinder their studies. Instead, they were to be given work as closely related to the new specialty and skill to be acquired as possible.

According to Article 84 of the USSR Fundamentals of Labor Legislation, workers studying without a break from work in general education schools and vocational and technical educational institutions "shall be granted a reduced work week or a reduction in the length of daily work while retaining earnings by the established procedure." The work week was reduced by one to two days or by the appropriate number of working hours for working students of the ninth through eleventh grades of general education schools. Reduction of the working time for workers studying in the fifth through eighth grades was regulated by special all-union or republican law and not by the Labor Code. The rules established for students of the ninth through eleventh grades were temporarily applied to these persons. In sum, during the course of the academic year, workers could not be freed from work for more than thirty-six working days, which obviously was connected with the fact that the length of the academic year in night schools was thirty-six weeks. Workers studying in schools received 50 percent of their average earnings, but "not less than the established minimum wage" for those days when they were freed from work. At their request, those workers studying while in the ninth through eleventh grades could be granted up to two additional days free from work. In that case wages were not paid. For taking examinations, workers could be granted a leave of four to twenty working days depending upon the grade they were in. This leave was paid "based upon the wage rate or salary." At the request of workers, their annual leave could be combined with the leave received in connection with the training or the examination. Benefits of approximately the same nature were provided to those workers who studied without a break from work in the evening vocational and technical schools or in the evening or extramural higher and secondary specialized educational institutions.

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<sup>58</sup> *Kommentarii, supra* note 35, at 597-99.

Moreover, if the extramural secondary specialized institution (technical school) or higher educational institution (institute or university) was not located near his place of work, once a year the worker was paid half the cost of travel to go there to take examinations or to do laboratory work. In addition, he would be paid for travel once to take his examinations for graduation.<sup>59</sup>

To conclude the statement of benefits and privileges provided to workers in connection with study without a break from work, the provisions of Article 34 of the RSFSR Labor Code must be recalled. This article lists those persons who have a priority right to remain at work when the number of staff employees is reduced. In cases of equal productivity and skill, the law stated that those "workers who are raising their qualifications through part-time study in higher and secondary specialized schools" enjoy a preference in being kept on at work. Given the situation in the 1970s and in the first half of the 1980s with respect to manpower, this rule was not very often applied. From Table B below it appears that while factory workers constituted 98.33 percent of the overall number of factory and office workers taught new professions and specialties, factory workers constituted (according to the data for 1979) only 70.79 percent of those who underwent training for improving their skills.<sup>60</sup>

TABLE B

METHOD OF IMPROVING SKILL	1976		1977		1978	
	million persons	%	million persons	%	million persons	%
Production - technical course	3,898	22.5	3,915	19.6	4,137	19.2
Course of training in second and combined skills	1,844	12.2	1,901	9.4	1,906	8.8
Special purpose courses	2,168	10.4	2,202	11.0	3,168	14.6
Schools of advanced methods of work	1,642	9.2	1,736	8.7	1,844	8.2
Schools for highly skilled workers	—	—	—	—	77	0.4
People's universities	—	—	—	—	944	4.3
Schools of economic knowledge and other types of economic training	10,888	61.0	12,333	61.3	14,471	61.1
TOTAL	17,741		19,940		21,579	

## IV. CONCLUSION

The time has come to answer the question posed at the very beginning of this paper: What legal means were used to sanction those workers who, upon

<sup>59</sup>*Id.* at 490-622.

<sup>60</sup>NARODNOE KHOZYAISTVO [NATIONAL ECONOMY] 402 (1979).



finishing a vocational and technical school, refused to fulfill their obligation to work for several years where they were assigned by state agencies? The generally accepted method was to forbid hiring elsewhere those who were obliged to work at a place determined by the State manpower planning agencies. But what was to be done if such a prohibition was evaded and an employee was hired where he preferred to work? The opinion of lawyers was divided on this point.<sup>61</sup> Some supposed a subsidiary application of civil law, i.e., recognition of the contract concluded as invalid on the basis of Article 48, 49 or 50 of RSFSR Civil Code, those being the articles closest to the given situation.<sup>62</sup> Others considered Article 254 of the Labor Code of the RSFSR, which provides for "supplementary grounds for terminating the labor contract of certain categories of workers and office workers under certain conditions" to be more appreciate than recognizing the contract to be invalid. They cite the penultimate part of this Article which states:

The legislation of the USSR and, within the limits defined by it, the legislation of the RSFSR may establish additional grounds for cancelling the labor contract of certain categories of workers and other employees for breach of the established rules for hiring and in other cases.

Obviously the last words of this article concern cases of deprivation of access to work connected with secrecy and also cases involving the discharge of persons with an independent frame of mind. This explains the formulation of a law in which clarity is sacrificed for ambiguity.

Taking the liberty of intervening in this discussion, it may be argued that neither method was legal. The labor contract was not a civil law transaction. Therefore, the norms of the civil codes were not applicable to it. Article 254 of the Labor Code could be applied until a statute were issued which would not simply forbid the hiring of graduates of vocational and technical schools assigned to work in another place, but would establish that such hiring, as an illegal labor contract, must be cancelled on the basis of Article 254 of the RSFSR Labor Code. Then the "supplementary basis for cancellation of the labor contract" required by this Article would be created.

This question, however, was not one of practical interest. On the one hand, if the leadership considered it necessary to fire everyone who refused the obligatory assignment, a statute could be promulgated or yet another secret instruction "not for publication" could have been issued. On the other hand, young workers have found their own way to solve that legal problem and avoid legal obstacles erected by the Government. According to Iu. N. Novichenko:

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<sup>61</sup> BEZINA, *supra* note 8, at 19-38.

<sup>62</sup> Article 48: "The Invalidity of a Transaction which Does Not Meet the Requirements of the Law"; Article 49: "The Invalidity of a Transaction Concluded in Conflict with the Interests of the State and Society"; Article 50: "The Invalidity of a Transaction Concluded by a Juridical Person in Violation of its Charter".

For instance, state vocational-technical school graduates who find they dislike the trade they have learned are still obligated to practice that trade for at least three years after graduation. Since they are not permitted to resign, many decide to become absentees so as to force the enterprise to dismiss them. They quit working and stay with relatives or friends. Eventually the plant has no choice but to fire them. Depending on the year, fully 40 to 70 percent of state vocational-technical school graduates are dismissed from their jobs for violations of labor discipline, largely for absenteeism. We need to face the facts and consider changing this regulation.<sup>57</sup>

In fact, the leadership preferred to permit choice, at least in some cases. This approach rested in part on the understanding that the planned assignment was by no means a clearly correct and rational assignment. In many cases the refusal of an obligatory assignment corrects awkward blunders made by centralized planning in the assignment of graduates. A sad story published in the newspaper *Komsomol'skaia Pravda* provides an illustration:<sup>58</sup>

The parents of a vocational-technical school graduate wrote to the editors complaining that their daughter was unable to find a job that made use of what she had learned. The editors interviewed the head of an enterprise who complained that schools were disregarding the enterprise's indication of its needs and were enrolling too many people in some specialties and too few in others. The editors found that the schools report enrollment only in total numbers, not by specialties, to superior agencies.

The editors then talked to school directors who replied that many of the plant requests are for semi-skilled labor and that the school is a three-year course for skilled labor. They also pointed out that sometimes additional students are admitted to schools in order to avoid taking an uneconomically small group. The result was that some persons who were highly skilled were then assigned to relatively unskilled jobs. The editors concluded that the primary problem was a lack of detailed information with respect to personnel needs which would enable planners better to chart the course of development of technical training.

This article dealt at length not with random occurrences, but with something which was not only typical but also innate with respect to all areas of the Soviet economy. Many beginnings were thereby condemned to failure. Thus, on the one hand, the "Scientific-Technical Revolution" was proclaimed by the Soviet leadership, and has become "an official catch word."<sup>59</sup> On the other hand, at

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<sup>57</sup> See 33 THE CURRENT DIGEST OF THE SOVIET PRESS 15, 24 (No. 13, 1981).

<sup>58</sup> 32 THE CURRENT DIGEST OF THE SOVIET PRESS 32, 24 (No. 49, 1980).

<sup>59</sup> Gordon B. Smith, *Socialist Law and the Scientific and Technical Revolution*, in SOVIET AND EAST EUROPEAN LAW AND THE SCIENTIFIC-TECHNICAL REVOLUTION 6 (1981).

least 50 million workers (out of 112 million manpower) were still involved in the hard manual labor.<sup>66</sup>

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<sup>66</sup>A. Shokhin & E. Feoktistova, *Rúchnoi Trud ... [Manual Labor ...]*, LITERATURNIAIA GAZETKA [LITERARY GAZETTE], Mar. 10, 1984, at 11.