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## A Draft Labor Code for Minsk: From Byelorussia With Love?

Lucas G. Paglia

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# NOTES

## A Draft Labor Code for Minsk: From Byelorussia\* With Love?

### ABSTRACT

*Belarus, a former Eastern bloc country located between Russia and Poland, has drafted a comprehensive labor code to govern employment relations. This Note presents the historical underpinnings of the legislation, its major provisions, and its prospects for successfully handling labor disputes as well as encouraging foreign investment. The author first explores the current labor environment in Belarus, especially focusing on the recent privatization of industry, and its amenability to such regulation. The Note then analyzes specific provisions of the labor code and compares them to the National Labor Relations Act in the United States, as well as the conditions under which the NLRA was adopted, and the Belgian Labor Inspection Act. Finally, the author proposes improvements for this legislation, emphasizing in particular the need for effective enforcement. The author concludes that, while not perfect, the Draft Labor Code represents a serious step toward labor reform in this Republic.*

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\* When used in this Note, the terms "Byelorussia" and "Byelorussian" refer to the former Soviet state. "Belarus" and "Belarussian" refer to the present independent nation.

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In March of 1992, potassium miners in Soligorsk, Belarus renewed a year-old vow to strike in protest of a government refusal to raise wage rates.<sup>1</sup> In addition to the work stoppage, miners picketed warehouses, demanded new and more favorable tariffs, sought a share of profits, and called for the transfer of government-distributed social insurance to the miners'

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1. *Soligorsk Miners Resume Strike*, BBC Summary of World Broadcasts, Mar. 14, 1992, available in LEXIS, News Library, BCSWB File.

independent trade union.<sup>2</sup> At odds with the state, which ran the mines through the Administration of Belarus Potassium Mines, the strikers had little choice but to await the ruling of a state judge reviewing legal action brought by the Administration against the independent trade union committee that was spearheading the strike effort.<sup>3</sup> The government agreed to compromise with repeated pledges to raise wages in the mines, but the strikers balked at the state's modest proposals.<sup>4</sup> With no formal mechanism to mediate the dispute, the miners faced a likely finding that the strike was unlawful and the inevitable influx of strike-breakers resuming work at the mines.

Less than three years later, Belarus is on the verge of adopting a comprehensive labor code that would address many of the issues that moved the Soligorsk miners to strike. The new Draft Labor Code (hereinafter the Code), was prepared by the Belarussian Parliament with the help and guidance of the American Bar Association's Central and East European Law Initiative (CEELI).<sup>5</sup> The Code covers a wide range of topics on labor law in the new Republic, including extensive provisions on wages and profit sharing. This Note will examine the Code in light of the economic developments taking shape in the Republic and the labor market as it stands today. The Note will analyze specific sections of the Code and compare them to well-established statutes governing labor relations in the United States and in selected European Community nations.

Part I begins by examining the present labor environment in Belarus and will attempt to determine if it is conducive to

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2. Larisa Sayenko, *Belarus: No Walesa Yet?*, MOSCOW NEWS, Apr. 19, 1992, available in LEXIS, News Library, Mosnws File. At the time, two trade unions operated at the Belarussian potassium mines, one official and the other independent. The latter union called the strike, which took effect on March 12, 1992.

3. *Id.*

4. *Id.* The independent trade union leaders conducted a political hunger strike to protest what they termed the government's "anti-popular" policies. Appealing to the world community and the trade union movement, the leaders' efforts nonetheless proved largely fruitless. *Id.*

5. The CEELI was started by the ABA in early 1991. Its purpose is to foster democratic development in the emerging former Soviet Republics through the technical aid and advice of legal professionals. U.S. lawyers, judges, and law professors typically spend six months to a year in any of 18 Eastern and Central European countries helping in the drafting of legislation, the reform of court systems, and the development of law schools, to name but a few of their many endeavors. CEELI has been participating in Belarus since 1992, focusing mainly on bar association reform, constitution drafting, individual rights, press freedom, and labor law. See generally Janet Key, *Old Countries, New Rights*, A.B.A. J., May 1994, at 68 (describing the creation and function of CEELI).

adoption of the Code. This portion of the Note goes on to look at the privatization of industry and its effect on the labor market as a whole and, more specifically, the changing nature of labor-management relations. This section will also examine the state of labor organization vis-à-vis the history and current status of the various trade unions throughout Belarus.

Part II will attempt to compare the present conditions in Belarus politically, economically, and socially with the conditions existing in the United States at the time of the adoption of the National Labor Relations Act.<sup>6</sup> While markedly different political systems created each country's respective labor code, both countries suffered from harsh economic conditions at the time the codes were proposed: in the United States, the Great Depression was causing widespread unemployment and financial ruin, while in pre-Code Belarus, the economy was still recovering from decades of Soviet rationing. Before the Soviet breakup, the state served as the employer as well as the lawmaker in Belarus; thus, any labor legislation that may have been promulgated was almost assuredly pro-employer. Likewise, the state-employer ran the judicial system, which handed down pro-employer decisions with great regularity.

Finally, Part III will propose ways in which the comprehensive Code might be improved. Following CEELI's analysis of the Code,<sup>7</sup> this Note will compare aspects of the Code to labor relations statutes in the United States and Belgium in order to assess the relative strengths and weaknesses of the Code in terms of employee rights and labor stability in general.

## I. IS THE BELARUS LABOR STRUCTURE READY FOR THE CODE, AND VICE VERSA?

### A. *The Trade Unions*

Prior to the disintegration of the Soviet Union (U.S.S.R.) in the late 1980s, the Republic of Byelorussia was a major industrial center of the U.S.S.R. Located between Russia and Poland, northwest of the Ukraine, Belarus occupies an area of 80,154 square miles and has a population of over ten million

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6. 29 U.S.C. §§ 151-69 (1988). The NLRA was adopted in 1935.

7. CENTRAL AND EAST EUROPEAN LAW INITIATIVE, AMERICAN BAR ASSOCIATION, ANALYSIS OF THE DRAFT LABOR CODE FOR THE REPUBLIC OF BELARUS (1994) [hereinafter CEELI].

inhabitants,<sup>8</sup> 5.1 million of whom comprise the Belarussian workforce.<sup>9</sup> Belarus is rich in natural resources,<sup>10</sup> and industrial activity accounts for roughly seventy percent of the gross national product.<sup>11</sup> The principle industries that still predominate in Belarus are power engineering, metalworks, machine building, petrochemicals, timber and woodworking, and construction.<sup>12</sup>

The constitution of Soviet Byelorussia guaranteed citizens of the Republic the right to work and, more importantly, the right to unite into mass labor organizations or trade unions.<sup>13</sup> Laborers and office workers typically joined the trade unions on a voluntary basis from region to region and industry to industry.<sup>14</sup> Participation in trade unions often led to active involvement in Byelorussian factional politics at local, regional, and sometimes national levels.<sup>15</sup> At the local level, however, the trade unions focused on workers' rights and actively *attempted* to safeguard and promote the laborers' cause.

It has been said that the trade unions "play[ed] a leading role in a system of socialist democracy, in all spheres of the life of Soviet society."<sup>16</sup> The unions played an important part in the industrial and social activities of workers at factories, offices, and construction sites; in so doing, they "[drew] the [opinions of the] masses of the people into the management of state and public affairs," and played a significant role in the socioeconomic development of industrial Byelorussia.<sup>17</sup> While it is clear that the independent trade unions aimed to improve labor and social conditions for workers, it is equally clear that, even up through

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8. JAN ZAPRUDNIK, *BELARUS: AT A CROSSROADS IN HISTORY* at xix (Alexander J. Motyl ed., 1993). The Soviet census of 1989 showed a population of 10,128,000. *Id.*

9. *Id.* at xx.

10. *Id.* For example, potash salt, rock salt, peat, oil, lignite, coal, iron ores, slates, bituminous shale, construction materials, mineral water, arable land, and forests are all plentiful.

11. *Id.*

12. NOVOSTI PRESS AGENCY PUBLISHING HOUSE, *BYELORUSSIAN SOVIET SOCIALIST REPUBLIC 37-44* (1972) [hereinafter *NOVOSTI*].

13. *Id.* at 12.

14. *Id.* at 13.

15. MICHAEL C. URBAN, *AN ALGEBRA OF SOVIET POWER: ELITE CIRCULATION IN THE BELORUSSIAN REPUBLIC, 1966-1986*, at 98-99 (1989).

16. *NOVOSTI*, *supra* note 12, at 13.

17. *Id.* The trade unions, it is noted, concerned themselves primarily with the working people's desire for cultural facilities and everyday amenities. The unions also sought to protect workers' health and ensure safe conditions in the workplace. *Id.* The trade unions, even in their earliest days, created organizations and programs for the social and cultural benefit of Belarussian workers. See NICHOLAS P. VAKAR, *BELORUSSIA, THE MAKING OF A NATION* 125 (1956).

the Soligorsk strikes of 1992, the avenues through which they could achieve such changes were extremely limited. Since the state itself was the employer and owner-manager of industry in socialist Byelorussia,<sup>18</sup> labor protests, whether from the Byelorussian Council of Trade Unions<sup>19</sup> or any other independent trade union, would inevitably be answered by the very same entity against whom the unions were protesting.<sup>20</sup>

It was difficult enough for the trade unions to accomplish labor reform as a united front. During the potassium mine strikes of 1992, however, it became apparent that the workers movement was no longer unified.<sup>21</sup> The two emerging wings of the movement—the Belarus Free Trade Unions and the Labour Confederation—adopted divergent views on strike and protest strategies. This division considerably weakened the labor movement.<sup>22</sup> Political apathy rendered the influence of both factions relatively anemic: less heed was taken of the official trade unions than of the local, industry-specific union leaders.<sup>23</sup> Thus, in addition to the formidable odds of having to appeal to the government as employer without a labor code or any real mechanism of dispute resolution, the trade unions lacked popular support as well.

In early 1994, a group of united free trade unions, comprised of independent unions surviving from the days of Soviet rule, again called for a strike by the nation's workers. This time the broad-based coalition sought a general strike in protest of the ouster of reformist leader Stanislav Shushevich.<sup>24</sup> Shushevich had been replaced as speaker of the Supreme Council, and thus

18. NOVOSTI, *supra* note 12, at 6.

19. *Id.* at 13. This organization is the central and leading body of the Belarussian trade unions, subdivided regionally into union councils and town and district trade unions on an industry-to-industry basis. *Id.*

20. This is not to imply that the state as employer would always flatly rule against the unions. Yet, in a labor conflict where the union cannot appeal to a neutral third party such as the state for resolution, because the employer and the state are one and the same, the conflict will likely be resolved in favor of the employer. This inference is inescapable since the state's interest in a socialist regime will always be paramount. See, e.g., *Soligorsk Miners Resume Strike*, BBC Summary of World Broadcasts, Mar. 14, 1992, available in LEXIS, News Library, BCSWB File (showing the results of the strike).

21. Sayenko, *supra* note 2.

22. *Id.* While the Belarus Free Trade Unions are more radical in nature and tend to emulate Poland's Solidarity movement, the Labour Confederation flatly rejects the general strike as a means of political struggle, limiting the strike weapon to specific conflicts at individual workplaces. Peaceful means of resistance, such as sit-ins and nonarmed conflicts, have been advocated by the Confederation. *Id.*

23. *Id.*

24. Kirill Koktysh, *Political Protest Strike Planned in Belarus*, UPI, Feb. 2, 1994, available in LEXIS, News Library, Curnws File.

head of state,<sup>25</sup> by an old-line conservative, Mechislav Grib—a move that the trade unions felt did not bode well for economic and labor reforms. The strikers called for widespread government resignations and a new election in the hope that reformers would introduce an independent, market-oriented economic policy and spur privatization of industry.<sup>26</sup> Unfortunately, there was very little public support for the work stoppage, and the reformers conceded defeat after only one day.<sup>27</sup> The trade unions acknowledged that the strike was a failure in that it did not gain support or participation at a national level. Yet, trade union leaders claimed that the failure resulted because many state firms had closed for “temporary holidays” in an effort to undermine the strike.<sup>28</sup>

Hampered by a lack of popular support, division among the ranks, the pervasive dilemma of the state’s role as employer, and the absence of a labor code to govern disputes, the trade unions had little remedy for labor disputes and little hope for improvement. Another factor working against the labor movement in Belarus was and still is the judicial system. Although the court system in Belarus is presently undergoing many changes with the aid of CEELI representatives,<sup>29</sup> the existing system is based entirely on Soviet justice<sup>30</sup> and is severely limited in sophistication and scope of review. State political officials closely monitor and often directly control the

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25. ZAPRUDNIK, *supra* note 8, at xix. Belarus declared its independence from the U.S.S.R. on August 25, 1991, over a year after declaring its state sovereignty within the Soviet Union. The government of the Republic is democratic and parliamentary in nature, with the unicameral Supreme Council (formerly the Supreme Soviet) appointing the prime minister and confirming all ministers. As noted, the speaker of the Supreme Council acts as head of state. *Id.* at xix, xx.

26. *Belarus: Labor Disputes*, Reuter Textline, Lloyd’s List, Feb. 16, 1994, available in LEXIS, News Library, Txtnews File.

27. *Belarus: Labor Disputes*, Reuter Textline, Lloyd’s List, Feb. 17, 1994, available in LEXIS, News Library, Txtnews File.

28. *Id.* The trade unions implied that many state firms scheduled the “temporary holidays” in advance of the stoppage in order to preclude as many workers as possible from participating in the strike. *Id.* Again, it is not surprising that when the state is the employer, it will do what it can to frustrate the labor movement, which has nowhere to turn for support or regulation.

29. Key, *supra* note 5, at 70.

30. NOVOSTI, *supra* note 12, at 10. An elected judge as well as two elected “people’s assessors” examine cases. Although theoretically independent, these judges may be summarily recalled by their electors—the Supreme Council of the Republic, not the people—at any time before the end of their term. *Id.* at 11.



judges who hear cases.<sup>31</sup> Hence, trade unions' claims against the state-employer are heard before *state-employed* judges who, one can safely assume, will rule with the *state's* best interests at heart.<sup>32</sup>

## B. *The Effect of Privatization on Economic Development and Labor Reform*

### 1. The Need for Labor Reform

Shifting focus from the trade union movement to the individual worker, the need for a comprehensive labor code becomes even more apparent. As economic reforms take shape in Belarus, wages and salaries must be adjusted accordingly to correspond to the shift to a market economy and its accompanying price changes.<sup>33</sup> Prior to the Soviet breakup, Byelorussia featured minimal wage and salary increases by the state and correspondingly minimal benefits packages afforded to employees.<sup>34</sup> There was some semblance of workers' compensation and an effort to secure pensions for all laborers.<sup>35</sup> These benefits were relatively small, however, and subject to the whim of the government that provided them, since no labor code protected distribution or receipt of such benefits.<sup>36</sup>

Even with the privatization of state-owned properties and businesses, there remains a manifest need for regulation of the bargaining process and terms and conditions of employment in

31. *Id.* See also Key, *supra* note 5, at 71 (noting remnants of "Soviet 'telephone justice,' in which local party officials routinely phoned the state-employed judges to tell them how to decide cases").

32. The Novosti volume outlines the strict surveillance to which Soviet judges are subjected and notes the "strictly centralized" nature of judicial oversight in Soviet states. NOVOSTI, *supra* note 12, at 11. Until extensive judicial reform is realized in Belarus, the lack of an independent judiciary, coupled with the lack of a formal labor code to govern disputes, will continue to have a deleterious effect on trade union claims.

33. *Belarus Reforming Economy to Overcome Difficulties*, Xinhua General Overseas News Service, Aug. 17, 1992, available in LEXIS, News Library, Arcnws File [hereinafter Xinhua]. Acting Prime Minister Mikhail Mianikovich announced the goals of introducing a market economy to the country by privatizing state-owned properties and breaking monopolies in Belarus to foster competition. *Id.*

34. See NOVOSTI, *supra* note 12, at 62-64. The slanted discussion of "Growth of Incomes" here belies the stark poverty in which most Byelorussian laborers lived—only 252 roubles annually per head of household for medical costs, pension grants, and all other "benefits" bestowed by the state-employer. *Id.*

35. *Id.* at 63, 64.

36. See DAVID A. DYKER, *THE PROCESS OF INVESTMENT IN THE SOVIET UNION* (1983). Moreover, the trade unions had relatively little power to monitor or influence government investment policies.

Belarus. While privatization will no doubt alleviate the state-as-employer burden, which the labor movement has borne for so long, accompanying modernization and mechanization may well lead to higher unemployment.<sup>37</sup> On the other hand, with the growth of private industry and the influx of new technologies, production may in fact increase and lead to the creation of new job opportunities.<sup>38</sup> In either case, labor unions will continue to seek protection of workers' interests against the actions of both public and private employers.<sup>39</sup> While Belarus' burgeoning market economy is in its turbulent nascent stages, a basic body of labor law would further stabilization.<sup>40</sup>

## 2. Government Action and Worker Response

In response to privatization needs and the inception of a market-based economy, the reformist Belarussian government in 1992 vowed to introduce price mechanisms suited to a market economy; to improve banking, budget, and taxation; and to institute land and housing reforms.<sup>41</sup> The Belarussian Parliament has since adopted various statutes and regulations concerning private enterprise, business ownership, leasing, investment, and employment; moreover, it has established diplomatic relations with fifty-eight countries in an attempt to broaden its trading base.<sup>42</sup> Concomitant with this expansion of privately-owned businesses, however, has been a troubling fall in production and a corresponding rise in unemployment throughout Belarus.<sup>43</sup> While the absolute figures for unemployment in 1992,<sup>44</sup> and even today,<sup>45</sup> are extremely low, the hidden forces of unemployment loom large: "many

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37. See *Belarussian Developments*, BBC Summary of World Broadcasts, Feb. 16, 1979, available in LEXIS, News Library, Arcnws File (showing how automation and mechanization resulted in job loss in Belarussian industry as early as 1979).

38. See Xinhua, *supra* note 33.

39. The Belarussian Federation of Trade Unions seeks higher minimum wages, lower price increases, increased pension rates, scholarships, and other benefits of employment.

40. See generally ZAPRUDNIK, *supra* note 8.

41. Xinhua, *supra* note 33.

42. *Id.*

43. "Covert Unemployment" as Unions Oppose Government Policy, BBC Summary of World Broadcasts, Sept. 12, 1992, available in LEXIS, News Library, Arcnws File [hereinafter BCC Summary].

44. *Id.* Ten thousand workers were unemployed, for a 0.5% rate. *Id.*

45. *The Unemployment Story*, The Financial Times Ltd., East European Markets, Sept. 30, 1994, available in LEXIS, News Library, Curnws File. The unemployment rate in Belarus as of March 1994 was 1.7%. *Id.*

collectives<sup>46</sup> work [only] three or four days a week. Thousands of people are on leave without pay. So there is covert unemployment."<sup>47</sup> The Federation of Trade Unions cited the large gap between price increases and the rise in incomes, as well as low minimum wages, as the main factors causing the continued unemployment.<sup>48</sup>

In response, many unemployed Belarussian laborers have migrated to the west and south in search of work in countries such as Poland, Hungary, and Greece.<sup>49</sup> Hundreds of thousands of Belarussian and Ukrainian workers have fled the dire economic circumstances in their former Soviet states and taken jobs paying up to \$150 (U.S. equivalent) per month in Eastern European countries where employment opportunities are more plentiful.<sup>50</sup> While these wages seem low, the relative wealth available abroad<sup>51</sup> serves not only to provide thousands of Belarussians with gainful employment manageably close to the homeland, but also to combat the growing unemployment problem within the Republic itself. As an added bonus to the economy, laborers working temporarily in other countries have brought back to Belarus more than one billion dollars to reinvigorate local economies.<sup>52</sup>

Short-term solutions such as working abroad, however, do not adequately address the pressing need for labor reform within the boundaries of Belarus. Indeed, by escaping to neighboring countries that do have jobs available, Belarussian workers may secure temporary employment, but the problems of low wages, poor working conditions, and lack of benefits still exist in their

46. Cooperative-collective farm workers are employed by ownership groups, which are quasi-public entities that own the means of production and the goods produced. NOVOSTI, *supra* note 12, at 6.

47. BBC Summary, *supra* note 43 (quoting Vladimir Goncharik).

48. *Id.*

49. *Over One Hundred Thousand Foreigners Work Illegally in Poland*, PAP Polish Press Agency, Dec. 26, 1994, available in LEXIS, News Library, Curnws File. Nearly 1.5 million Belarussians emigrated to Poland by the end of September, 1994, several thousand of whom remained and worked without visas.

50. Larisa Sayenko, *Belarus, Ukraine Welcome Migration of Workers*, Reuters World Service, Aug. 19, 1994, available in LEXIS, News Library, Curnws File.

51. The average monthly wages for professionals—e.g., doctors and engineers—currently amounts to about \$25 in Belarus and \$100 in Russia. *Id.* Certainly the monthly income for migrant farm workers and potassium miners is considerably lower.

52. *Id.* According to Belarussian Deputy Prime Minister Sergei Ling, workers temporarily abroad have pumped in excess of one billion dollars back into the suffering Belarus economy. *Id.*

new-found jobs.<sup>53</sup> Thus, while they have succeeded in finding work, at least for a while, the laborers still have not found *better* work, which is the ultimate goal of the trade unions and individual workers alike.<sup>54</sup>

### 3. Privatization Arrives

Along with adopting job creation and retraining policies, Belarus must continue to promulgate specific legislation aimed at encouraging and increasing privatization. Until very recently, the Belarussians lagged behind Russia and the Baltic states in this respect.<sup>55</sup> Then in 1992, acting Belarussian Prime Minister Mikhail Miasnikovich announced plans to privatize state-owned properties and industries as part of a vigorous economic reform program.<sup>56</sup> Nearly a year later, the Belarussian government followed the Russian lead by issuing privatization vouchers to individual citizens.<sup>57</sup> The number of vouchers received by each person depended upon, among other factors, the individual's labor record.<sup>58</sup> While the implementation of this program progressed slowly, it represented a clear effort to reward grossly undercompensated Belarussian labor by providing some semblance of employment benefits.

Efforts at privatization have not gone without opposition, however. For example, the recently formed Belarussian Research and Production Party (BRPC) considered the privatization of land and industries in Belarus to be "unwarranted" and pushed for economic reform, but toward a more socially-oriented market economy.<sup>59</sup> Other ex-communist strongholds similarly voiced opposition to the privatization-based economic reform underway in Belarus.<sup>60</sup> Despite such resistance, however, the Supreme

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53. *Id.* Ukrainian officials, for example, have approached the German government to ensure that migrant workers are being treated fairly. Germany responded with a cold shoulder, noting that "they had their own problems. They don't need Ukrainians." *Id.* (quoting the Labour Ministry official).

54. BBC Summary, *supra* note 43.

55. *Id.* at 101.

56. Xinhua, *supra* note 33.

57. *Belarus to Issue Privatization Vouchers*, Russian Information Agency ITAR-TASS, July 10, 1993, available in LEXIS, News Library, Arcnws File.

58. *Id.*

59. *Industrialists Now Have Their Own Party*, Current Digest of the Soviet Press, Nov. 11, 1992, available in LEXIS, News Library, Arcnws File.

60. *Id.* It was noted that the ex-communists in Belarus had formed a new party (BRPC) through which they could retain power and perhaps even win the first democratic elections held early the next year. *Id.*

Council, beginning in 1993, passed concrete legislation enabling privatization.

Among the laws regulating privatization in Belarus at the present time are: (1) the law "On Privatization of State Property in the Republic of Belarus" (passed January 19, 1993), (2) the law "On Registered Privatization Vouchers" (July 7, 1993), (3) the "State Privatization Programme" (June 16, 1993), and (4) the "Programme for the Privatization of State-Owned Property" (August 20, 1993).<sup>61</sup> The latter two statutes represent the workhorses of the privatization process in Belarus. The "State Privatization Programme" sets forth the strategy, objectives, priorities, and procedures for privatization; the "Programme for the Privatization of State-Owned Property" outlines the privatization procedures for state-owned enterprises as well as for municipal properties.<sup>62</sup> Governmental regulations and supporting statutes<sup>63</sup> have supplemented these privatization laws and have helped to overcome the initial resistance to privatization.<sup>64</sup> Presently, the timber and wood processing industries, as well as the service sector, are experiencing the most dynamic privatization.<sup>65</sup> By the beginning of 1994, 191 state and 333 municipal enterprises had been privatized,<sup>66</sup> and government projections for 1994 pointed to continued substantial increases in both areas.<sup>67</sup>

#### 4. Privatization and Foreign Investment

Increased foreign investment in the nation's natural resources has also resulted from the privatization effort in Belarus. Under the socialist regime, foreign capital was rarely

61. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, INVESTMENT GUIDE FOR BELARUS 102 (1994) [hereinafter OECD].

62. *Id.*

63. *Id.* For example, "On the Holding Companies Set Up in the Process of Privatization" (Apr. 20, 1993, No. 250), "On the Procedures for Transforming State-Owned and Leased Enterprises into Open Joint-Stock Companies" (Aug. 16, 1993, No. 552), "On Securities and Stock Exchanges" (Apr. 1992), and "On Foreign Investment" (Nov. 1991), among other legislative acts, have all been instrumental in guiding privatization in Belarus. *Id.*

64. *Id.* The OECD notes that a temporary moratorium on all privatization was effected by the Supreme Council in November 1992 as a result of growing public concern about negative trends in privatization. *Id.* More recent developments helped to overcome the early apprehension that pervaded the Belarussian population. See generally ZAPRUDNIK, *supra* note 8, at 193-201.

65. OECD, *supra* note 61, at 102.

66. *Id.*

67. *Belarussian Official Criticizes Privatization Lag*, The British Broadcasting Corp., BBC Summary of World Broadcasts, Oct. 7, 1994, available in LEXIS, News Library, Curnws File.

invested in the Byelorussian market. The unique features of the Soviet investment policy,<sup>68</sup> coupled with the pervasive general restraint on the influx of foreign capital that characterized the Cold War era, severely hampered Western investment. With the fall of the Soviet Union, however, and the opening of Eastern bloc markets, many Western companies have aggressively invested in former Soviet economies. For example, German businesses are becoming increasingly attracted to the developing Belarussian textile industry.<sup>69</sup> Relatively low labor costs and growing consumer purchasing power will draw more investment interest in the future.<sup>70</sup> Another example, announced in May of 1992, is the joint venture of Pepsi-Cola International and Eastman Chemical Company along with two Republic of Belarus companies to produce plastic beverage bottles in Belarus for the Commonwealth of Independent States.<sup>71</sup> Such endeavors have the dual effect of creating new jobs and producing more income to bolster the Belarussian economy.<sup>72</sup>

## 5. Effect of Privatization on Labor

The creation of new jobs represents not the end, however, but rather the beginning of labor reform in Belarus. Along with privatization and investment must come job creation policies and training programs, which will enhance the modernization of the Belarussian labor force.<sup>73</sup> Also, Belarus must continue to invest

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68. See generally DYKER, *supra* note 36, at 1-17.

69. *Poland: No German Investments in the Polish Textile Industry for the Moment*, Reuters Textline, Pzeczpospolita, Nov. 25, 1992, available in LEXIS, News Library, Txtnws File.

70. *Id.*

71. *Historic Joint Venture Will Produce First Plastic Soft Drink Bottles in Belarus*, Business Wire, Inc., May 28, 1992, available in LEXIS, News Library, Arcnws File.

72. *Id.* Pepsi-Cola International president Christopher A. Sinclair pointed out that development of the plastic bottle production facility will generate new sales opportunities in Eastern and Western Europe. Additionally, the Belarussian partners who joined Pepsi and Eastman noted that the joint venture

is an important investment in new technology designed to serve the consumers of Belarus, Russia, and the other Commonwealth states. . . . It is a concrete, creative matching of international technology and capital investment with local manufacturing capability and resources. At the same time, the . . . joint venture will be a significant generator of new hard currencies . . . since one half of the resin produced in Belarus will be sold for hard currency in Eastern and Western Europe.

*Id.*

73. *The Unemployment Story*, *supra* note 45. While it is noted that the absence of job creation policies and the weakness of retraining efforts will result

in domestic industries attractive to foreign interests by both broadening the range of assets to be privatized<sup>74</sup> and simplifying the methods of privatization.<sup>75</sup> Privatization, both small- and large-scale,<sup>76</sup> will channel more domestic and foreign capital into both new and traditional industries, thereby increasing the likelihood of a reinvigorated wage and employee benefits system.<sup>77</sup> Finally, privatization of Belarussian industry, especially on a larger scale, may result in a significant shift of labor from the traditional mining and agricultural jobs to higher-paying industrial and manufacturing positions.<sup>78</sup> Once again, such a shift will necessitate retraining programs.

Concern for the welfare of the labor force has grown, due, as well, to the privatization of industry. Early on, the government of the newly-formed Republic passed a series of legislative acts dealing with social insurance and employment matters as part of the economic reforms ushering capitalism into Belarus.<sup>79</sup> Worries about labor-management relations and their effect on production led to these legislative changes.<sup>80</sup> More recently, the development of employee benefits systems has come to the forefront. In August of 1994, a delegation of workers' compensation specialists visited Belarus to examine its health and retirement systems and to explore a range of employee benefits policies.<sup>81</sup> Such concerns no doubt provided part of the impetus for the promulgation of the Draft Labor Code, which addresses health and retirement plans as well as a host of other employee benefit programs.

Although privatization experienced a sluggish start in Belarus, marked by public skepticism<sup>82</sup> and political bickering,<sup>83</sup>

in soaring unemployment "when privatization is moved into top gear," efforts at formulating such policies and training programs have in fact been a major accomplishment of the Belarussian Parliament since privatization began in late 1992. OECD, *supra* note 61.

74. *Id.* at 103.

75. *Id.* at 105.

76. *Id.* Small-scale privatization is essentially the privatization of services and small industrial and construction enterprises. Such privatization is usually effectuated via auctions or tender sales. Large-scale privatization, on the other hand, encompasses the privatization of large industrial enterprises and is characterized by the transformation of such enterprises into open joint-stock companies. *Id.*

77. *Specialists Visit Russia and Belarus*, Reuter Textline, Insurance Research Letter, Aug. 8, 1994, available in LEXIS, News Library, Txtnews File.

78. *See, e.g.*, OECD, *supra* note 61, at 26.

79. Xinhua, *supra* note 33.

80. *Id.*

81. *Specialists Visit Russia and Belarus*, *supra* note 77. "The trip was organized by the Citizens Ambassador Program of People to People International at the invitation of the Insurance Department of Belarus." *Id.*

82. ZAPRUDNIK, *supra* note 8, at 200. Nearly half of the collective and state farm peasants indicated "total satisfaction with the present [socialist] system,"

the process of privatization has thus begun to accelerate. Problems being addressed include: the scarcity of housing in urban Belarus, which restricts the mobility of labor;<sup>84</sup> the shortage of job creation and retraining programs; and the need for employee benefits programs and improved labor-management relations. With the possibility of a historic partnership between the European Economic Union, Russia, Ukraine, and Belarus on the horizon,<sup>85</sup> finally economic development seems to be in high gear and employment opportunities on the rise in Belarus. It is against this backdrop that the Draft Labor Code is pending approval.

## II. THE PRE-WAGNER UNITED STATES AND CONTEMPORARY BELARUS: SIMILARITIES, DIFFERENCES, THE ACT, AND THE CODE

### A. *Comparing the pre-Wagner United States and Contemporary Belarus*

It would be far too simplistic, though by no means inaccurate, to merely say that labor problems existed in both the United States and Belarus on the eve of the adoption of their respective labor codes. This comparative analysis will focus on two basic themes: (1) the emerging presence of labor as a key factor in the national economy and (2) the inability of the judiciary to adequately regulate labor-management relations. By analyzing the countries in these two respects, striking similarities as well as sharp differences will arise in the context of legislative labor reform.

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and many more workers simply stated that they saw no need to change: "[We] have been brought up in the spirit of socialism." *Id.* at 193, 200. Also, many Belarussians expressed legitimate fears of "cheating" by the various public and private entities involved in the privatization process. *Id.* at 193.

83. *Id.* By playing political games, local officials have hampered land reform, and implementation of the privatization laws on the books has been virtually nonexistent in some areas. See also the political tension on both sides of the privatization debate, as documented in *Industrialists Now Have Their Own Party*, CURRENT DIGEST OF THE POST-SOVIET PRESS, Nov. 11, 1992, available in LEXIS, News Library, Arcnws File.

84. OECD, *supra* note 61, at 27.

85. *Reuter EC Report Weekly Diary*, Reuter European Community Report, Jan. 20, 1995, available in LEXIS, News Library, Curnws File.



## 1. The Emerging Presence of Organized Labor as a Force in the National Economy

By the time the National Labor Relations Act (the Wagner Act) was adopted, organized labor had been a fixture in U.S. society for quite some time.<sup>86</sup> Likewise in Belarus, the trade unions have historically played a significant role in society, albeit on more of a political than economic level.<sup>87</sup> Although the industrial revolution occurred in the United States a century ago, the "industrial revolution" in Belarus is just getting underway.<sup>88</sup> The recent wave of privatization, which has created thousands of new jobs,<sup>89</sup> can be loosely analogized to the industrial revolution in the United States, but the pre-existence of the trade unions in Belarus weakens the analogy considerably. The principal difference between the pre-Wagner United States and pre-Code Belarus is that, while organized labor in the United States, up to the early 1930s, exerted a significant economic influence,<sup>90</sup> it was in the political arena that organized labor in Belarus exercised what little influence it could muster.<sup>91</sup>

In Soviet Byelorussia, the socialist regime did not offer the same opportunities for effective striking and other concerted activities as did the emerging capitalist economy in the turn-of-the-century United States. For example, as early as 1894, the United States Strike Commission (hereinafter the Strike Commission) was beginning to formulate U.S. labor policy.<sup>92</sup> By contrast, in Belarus, as late as 1994, attempts at striking in the name of union solidarity floundered pathetically,<sup>93</sup> and organized labor was still not being taken seriously by either management or

86. THE DEVELOPING LABOR LAW 3 (Charles J. Morris et al. eds., 1971).

87. See, e.g., DYKER, *supra* note 36, at 48.

88. ZAPRUDNIK, *supra* note 8, at 192.

89. *Id.* at 193.

90. THE DEVELOPING LABOR LAW, *supra* note 86, at 7.

91. DYKER, *supra* note 36, at 48.

92. THE DEVELOPING LABOR LAW, *supra* note 86, at 13. President Grover Cleveland appointed the Strike Commission to investigate disruptive union activities, such as the infamous Pullman Strike in Chicago in which certain officers of the renegade American Railway Union organized a boycott of the Pullman Palace Car Company that evolved into a full-scale strike by hundreds of railway employees. The result of the strike was massive delay in the running of the Pullman sleeping car fleet, causing travel inconvenience and loss of revenue to Pullman. The U.S. Supreme Court sustained an injunction against the strikers, but the militant activity gave rise to dissident labor activity throughout the United States. See generally *In re Debs*, 158 U.S. 564 (1895).

93. *Belarus: Labour Disputes*, *supra* note 27. See also Sayenko, *supra* note 2 (outlining the relative impotence of the Soligorsk miners in their three-week strike of the potassium pits).

the government.<sup>94</sup> In the United States, the Strike Commission concluded that employers needed to recognize and deal with labor organizations;<sup>95</sup> in Belarus, trade unions continue to jockey for position to gain the support of the working masses.<sup>96</sup> The Strike Commission forcefully recommended federal mediation and resolution of labor disputes;<sup>97</sup> the Belarussian trade unions worked on social goals.<sup>98</sup> In short, the economic power of unions in the United States was readily apparent, while the economic power of trade unions in Belarus was, and still is, largely nonexistent.

Nevertheless, the political presence of organized labor in Belarus cannot be dismissed as entirely irrelevant in the context of labor-management relations. While trade unions have not spurred the adoption of extensive labor legislation there as in the pre-Wagner United States,<sup>99</sup> their persistent activity has at least made the democratic government aware of the need to directly address the state of organized labor and the condition of the working masses.<sup>100</sup> Still, until very recently, the trade unions did not constitute a separate third party to be aided by legislative action from the national government, as was the case in the United States leading up to the adoption of the Wagner Act. Rather, the trade unions were themselves political players.<sup>101</sup>

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94. *Id.*

95. THE DEVELOPING LABOR LAW, *supra* note 86, at 13. The Strike Commission noted that if employers "take labor into consultation at proper times, much of the severity of strikes can be tempered and their number reduced." *Id.* (quoting U.S. STRIKE COMM'N, REPORT ON THE CHICAGO STRIKE OF JUNE-JULY 1894 XLVII (1894)).

96. Sayenko, *supra* note 2.

97. THE DEVELOPING LABOR LAW, *supra* note 86, at 13. "In response to the railway strike that had occasioned its inquiry, the commission recommended a permanent federal commission to investigate, conciliate, and if necessary decide railway labor disputes, with judicial enforcement power." *Id.*

98. NOVOSTI, *supra* note 12, at 13. The trade unions "play an important role in the . . . social activities of the staffs of factories, construction sites, and offices. [They] concern themselves with the satisfaction . . . of the working people for cultural facilities and everyday amenities, and with their health." *Id.*

99. For example, the Erdman Act, 30 Stat. 424 (1898), the Clayton Act, 38 Stat. 730 (1914), the Railway Labor Act, 44 Stat. 577 (1926), 45 U.S.C. §§ 161-63 (1964), and the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101-15 (1964). These federal statutes expressly dealing with organized labor were all enacted prior to the adoption of the NLRA in 1935.

100. Obviously, since the Code has been drafted in Belarus, the need for national regulation of organized labor has been recognized. The absence of any pre-existing labor legislation, such as that cited *supra* note 99, begs the question, "Why now?" Answering that question is well beyond the narrow confines of this Note.

101. See, e.g., DYKER, *supra* note 36, at 48. The trade unions were largely subsidiaries of the Communist Party, and as such were often "sharply effective in

Their political counterparts—first the Communist Party and later, under the new democracy, the State's various labor administrations<sup>102</sup>—served as their employers. Thus, unlike in the United States where the federal government was required to step in to resolve the economic problems created by the friction between organized labor and management,<sup>103</sup> in Belarus the national government was not a disinterested third party but rather management itself, all-powerful and unlikely to promulgate any sort of pro-labor legislation. The dawn of privatization, however, has left the government disinterested, so to speak, and the growing capitalist economy has necessitated the present Code to govern burgeoning labor-management relations. The Belarussian Parliament, as neither employer nor trade union puppet, is now free to adopt the Code as the first step toward labor relations reform in the new Republic.

## 2. The Inability of the Judiciary to Adequately Regulate Labor-Management Relations

While organized labor in the pre-Wagner United States and the trade unions in Belarus differed in their economic influence and activity, with respect to judicial regulation of labor-management relations, several similarities can be noted. In modern Belarus, as well as in the turn-of-the-century United

criticiz[ing] and changing patterns which emerge[d] from the middle level of the planning bureaucracy." *Id.*

102. See Sayenko, *supra* note 2.

103. THE DEVELOPING LABOR LAW, *supra* note 86, at 25. The growing focus on economic conditions and the need for legislative protection of labor interests in the United States became manifestly evident:

The Great Depression and the advent of the New Deal spawned a political climate that was favorable to—or at least tolerant of—the major federal legislation thought necessary at the time to promote the growth of organized labor. This growth was considered by many to be essential if employees in [U.S.] industry were to acquire sufficient economic leverage to bargain effectively with management. It was hoped that the end result of these concurrent developments would be an equitable division between labor and management of the spoils of private enterprise and, coincidentally, an important impetus to the revitalization of the economy. The economic conditions prevailing during the early 1930s focused attention on the plight of . . . working [people], and economists were quick to point out that low spending power among the employees of [U.S.] business would prolong the Depression. The infallibility of industry management was disproved by post-1929 events, and the political influence that management could marshal against pro-union legislation was considerably diminished by the abrupt change from a boom to a bust economy.

States, courts were loathe to aid striking unions, choosing instead to halt such activities, order laborers to return to work, and permit industry to continue without disruption.<sup>104</sup> While the policies behind such court decisions differed in the respective countries,<sup>105</sup> the results were the same. Also, early on, neither judicial system had adequate legislative guidance to rule upon matters of employment relations.<sup>106</sup> Finally, the remedies available in court were limited in both contexts: in Belarus, the courts *would* not aid labor; in the United States, the courts *could* not aid management.<sup>107</sup>

In response to the earliest strikes by organized labor in the United States, the courts repeatedly employed the injunction as a means of resolving the conflict, almost always in favor of management.<sup>108</sup> This tactic was rationalized as a way to promote industrialization without the potentially injurious interference of militant labor groups.<sup>109</sup> The courts essentially responded as best they could in the absence of any statutory guidance on the matter. To "maintain order," it made sense to simply enjoin those who disrupted the order from continuing to do so. This crude approach was excusable, since at that point no legislation existed "to formulate a rational basis for discriminating between tolerable

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104. In the United States, the method of choice for courts was the injunction, which ordered striking workers to cease their concerted activity and return to work. Even temporary injunctions served management purposes well, as crucial union momentum was lost and rarely regained. See THE DEVELOPING LABOR LAW, *supra* note 86, at 7. In Belarus, reviewing judges simply found strikes unlawful, and the state-employer readily dismissed the strikers who refused to return to work and hired strikebreakers. See Sayenko, *supra* note 2.

105. In Belarus, the courts frowned upon strikers because they threatened the socialist regime. In the United States, on the other hand, courts disfavored strike activity because it stymied the already staggering capitalist economy.

106. The legislative acts cited, *supra* note 99, did eventually provide some guidance to the reviewing courts in the United States. No such groundbreaking labor law existed to assist Belarussian judges.

107. As noted above, the Belarussian courts run by the Belarus government, in essence the strikers' employer, simply had no motivation nor desire to aid dissident laborers. The U.S. judicial system had no statutory guidance or standards with which to formally quash strike activities. Thus, even though the reigning public policy was to aid management and boost the foundering national economy, the legislative tools available to the courts to carry out this policy were severely limited.

108. THE DEVELOPING LABOR LAW, *supra* note 86, at 7. "The injunction was used in the labor field almost exclusively at the behest of employers to prevent injury by restraining concerted labor activity." *Id.* Rarely would a union successfully obtain injunctive or other equitable relief. *Id.* at 7 n.19.

109. *Id.* at 7. "The law has intervened only where it was necessary to maintain order or to prevent injurious or fraudulent actions." NAT'L LAW. COMMITTEE OF THE AM. LIBERTY LEAGUE, REPORT ON THE CONSTITUTIONALITY OF THE NATIONAL LABOR RELATIONS ACT 19 (1935).

and intolerable concerted employee activity.”<sup>110</sup> Likewise in Belarus, until the very recent past, courts invariably found strike activity unlawful, since it was inherently at odds with the goals of the state-employer,<sup>111</sup> and—by no means a coincidence—no statutory guidance in this area existed.

Once legislative guidance did become available for the courts in the pre-Wagner United States, enforcement of these acts<sup>112</sup> and judicial regulation of labor-management disputes still suffered from a remedial problem. Often the only remedy a court could offer beleaguered employers was judicial proclamation of the illegality of union activity if, in fact, it was not protected by the new acts.<sup>113</sup> Thus, ironically, once the courts obtained statutory guidance in the area of labor relations law, they suddenly became constrained by the very terms of the new legislation; remedies were limited in the *ex post* setting of adjudication, at which point economic and industrial damage had already been done.<sup>114</sup> In Belarus, on the other hand, it was not the case that the courts could not fashion adequate remedies for either labor or management. Instead, the courts simply refused to aid labor and consistently sided with management—the state, their employer.<sup>115</sup> Remedies in the context of strike litigation generally were limited to a declaration that the strike was unlawful and an order to return to work<sup>116</sup>—a scenario remarkably similar to the early “injunction” days of U.S. labor relations adjudication.

Thus, in both the pre-Wagner United States and in contemporary Belarus, the inadequacy of judicial protection of labor interests manifested itself almost immediately. In the United States, this situation led to the enactment of various

110. THE DEVELOPING LABOR LAW, *supra* note 86, at 7.

111. See discussion *supra* pp. 862-66.

112. For example, in 1890 Congress promulgated the Sherman Act, 15 U.S.C. §§ 1-7, which rendered illegal “every contract combination in the form of trust or otherwise, or conspiracy . . . in restraint of trade or commerce among the several states.” See THE DEVELOPING LABOR LAW, *supra* note 86, at 9 (quoting 15 U.S.C. § 1). In 1914, Congress passed the Clayton Act, 15 U.S.C. §§ 12-27, which courts interpreted narrowly in order to suppress concerted labor activity in the 1920s and early 1930s. See generally THE DEVELOPING LABOR LAW, *supra* note 86, at 10-12.

113. THE DEVELOPING LABOR LAW, *supra* note 86, at 8. The author observes that “by the time a controversy reached the courts, industrial strife usually already had occurred, and the remedies available limited the range of judicial decision to the question whether the union activity in question should be punished or suppressed, and if so, by what sanction.” *Id.*

114. *Id.*

115. See *supra* notes 30-32.

116. See, e.g., Sayenko, *supra* note 2.

statutes governing organized labor<sup>117</sup> and ultimately to the adoption of the National Labor Relations Act (NLRA). In Belarus, even after independence was declared and communism rejected, national policy encouraged judicial subordination to employer (state) interests.<sup>118</sup> Yet, with privatization on the rise and organized labor as strong as ever, the prospective Draft Labor Code may represent the first step toward equitable labor relations law in Belarus.

B. *The Code Arrives: Introduction and Overview Vis-à-Vis the National Labor Relations Act*

Before analyzing the Belarussian Draft Labor Code and comparing it to the labor laws of other nations, it is necessary to examine the motivating factors behind the drafting of the Code. As the CEELI experts who assessed the Code noted, the proposed Code "represents an enthusiastic attempt to regulate the totality of employment relationships between workers and employers in Belarus."<sup>119</sup> Rooted in the prior laws of the Byelorussian Republic,<sup>120</sup> the Code features provisions designed to regulate both the individual rights of workers and the collective rights to organize trade unions and bargain with management. The Code addresses additional concerns that include, but are not limited to, the following: economic security for workers; protection of the disabled, women, and children; the normalization of wages and working conditions; the creation of labor dispute commissions; and unemployment benefits.<sup>121</sup> Such a comprehensive approach to labor reform will undoubtedly help Belarus to attract foreign investment capital,<sup>122</sup> another factor that may have spurred its drafting.

The Belarus Code, unlike its U.S. counterpart, the Wagner Act,<sup>123</sup> contains no introductory statement of policies or findings.

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117. See *supra* note 99.

118. See *supra* notes 30-32 for details of the persistent problems inherent in the Belarussian court system even after the fall of the Communist regime.

119. CEELI, *supra* note 7, at 1.

120. *Id.*

121. *Id.*

122. *Id.* The experts note that the ambitious Code addresses labor relations, vocational training, trade unions, employers associations, collective bargaining, employment rules, public works programs, unemployment benefits, social insurance, and the settlement of labor disputes, all of which affect foreign investment. Legislative supervision of these matters may well encourage foreign capital to invest in a country with a stable, well-regulated labor force.

123. Wagner Act, Pub. L. No. 198, 49 Stat. 449 (codified as amended at 29 U.S.C. § 151 (1988)). The motivations behind enactment of the Wagner Act are

The objectives of the Code are spelled out clearly, although briefly, at the commencement of the prospective legislation as: (1) the fixing and protection of mutual rights and obligations of workers and employers and (2) the development of social partnerships between employers (and their associations), workers (and their associations), and public authorities.<sup>124</sup> The scope of the Code is likewise very broad, in that it will apply to "all the workers and employers pursuing their activity in the territory of the Republic of Belarus."<sup>125</sup> From this introductory language it is clear that the Belarussian lawmakers intended to broadly regulate all forms of labor-management relationships in the new Republic.<sup>126</sup>

In specific areas, the Code is indeed quite ambitious and comprehensive. The dissident miners of Soligorsk,<sup>127</sup> for example, would be pleased by the protection and expansion of social insurance for workers,<sup>128</sup> as well as by the extensive provisions for the settlement of labor disputes.<sup>129</sup> This latter portion of the Code establishes procedures for considering individual labor disputes,<sup>130</sup> creates a labor disputes commission,<sup>131</sup> and provides for consideration of labor disputes in courts of law.<sup>132</sup> Obviously, contemporaneous improvements in

found in Section 1 of the Act, entitled "Findings and Policies." The purpose of the Act was and is to effectuate the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 29 U.S.C. § 151 (1988).

124. Draft Labor Code of the Republic of Belarus, ch. 1.2, art. 1.2.0-1 [hereinafter Code].

125. *Id.* ch. 1.3, art. 1.3.0-1.

126. *Id.* Article 1.3.0-2, entitled "Relations governed by the Labour Code," states that the Code shall govern labor relations based on contracts of employment as well as relations arising from the following: in-plant vocational training of workers; trade union and employers association activities; collective bargaining; personnel relations at the enterprise level; the provisions of employment; the control and supervision of the observance of labor legislation; public social insurance matters; and the settlement of labor disputes. This section further notes that the Code provisions effectively preempt pre-existing statutes and local acts governing cooperatives, enterprises, and partnerships of collective forms of ownership, with regard to social insurance, pensions, promotion schemes, and other conditions of employment.

127. See generally Sayenko, *supra* note 2.

128. Code, *supra* note 124, ch. 5.1, art. 5.1.0-1.

129. *Id.* at ch. 2.18, art. 2.18.0-1 to art. 2.18.0-19.

130. *Id.* at ch. 2.18, art. 2.18.0-2.

131. *Id.* at ch. 2.18, art. 2.18.0-3.

132. *Id.* at ch. 2.18, art. 2.18.0-9.

the Belarussian court system are mandated,<sup>133</sup> but the mechanisms created by the Code to deal with labor disputes represent a step in the right direction. Also, the Code deals with work-related health<sup>134</sup> and safety<sup>135</sup> concerns in detail, perhaps reflecting the influence of a group of workers' compensation specialists who visited the Republic at the behest of the Insurance Department of Belarus.<sup>136</sup> Finally, the dearth of job creation and retraining programs discussed above<sup>137</sup> is alleviated significantly by several Code provisions.<sup>138</sup> These areas are but a few of the many aspects of the employment relationships governed by the Draft Labor Code.

The extensive provisions for collective bargaining within the Code<sup>139</sup> preserve the right of employees to self-organize and form labor organizations, much the same as the NLRA does in the United States. The Code additionally provides for lawful employee strikes, picketing, and other concerted activities,<sup>140</sup> which are all part of a comprehensive effort to establish and monitor the "democratic" rights of workers in the new Republic.<sup>141</sup> With the establishment of a formalized Code governing labor-management relations, Belarus has created a further inducement (in addition to favorable privatization laws) for foreign investment capital. With a mechanism of collective bargaining already in place, the Republic provides a hospitable climate for further industrialization and investment without the extremes of labor apathy or unrest. Indeed, foreign capital interests will inevitably be attracted to the stable structure of the Belarussian labor market engendered by the Code.

Having briefly considered many of the salient aspects of the Code, it is appropriate at this point to examine in greater detail specific provisions of this historic document and to compare them with corresponding sections of the NLRA and the Belgian Labor

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133. See generally Key, *supra* note 5, at 69, 71.

134. Code, *supra* note 124, at ch. 7.4, art. 7.4.0-1 to art. 7.4.0-52.

135. *Id.* ch. 2.16, art. 2.16.0-1 to art. 2.16.0-20.

136. *Specialists Visit Russia and Belarus*, *supra* note 77.

137. See *supra* note 43.

138. For example, chapter 2.14, Article 2.14.0-1, "Skill improvement and retraining," requires employers to retrain employees at least once a year. Code, *supra* note 124, at ch. 2.14, art. 2.14.0-1. Additionally, Chapter 4.7, Article 4.7.0-1, et seq., provides for vocational training, skill improvement, and retraining of unemployed individuals. *Id.* at ch. 4.7, art. 4.7.0-1.

139. *Id.* at ch. 6.6, art. 6.6.0-1, et seq.

140. *Id.* at ch. 6.9, art. 6.9.0-1, et seq.

141. See, e.g., CEELI, *supra* note 7, at 7. The experts note that the provisions governing collective employee rights "are fundamental to a democratic labor law and . . . essential to establish a balance of bargaining power between employers and employees." *Id.*



Inspection Act.<sup>142</sup> From these comparisons this Note will suggest improvements to the Code focusing on the economic and political factors discussed above.

### III. IMPROVING THE CODE: COMPARISONS WITH THE NATIONAL LABOR RELATIONS ACT AND THE BELGIAN LABOR INSPECTION ACT

#### A. *The NLRA and the Belgian Labor Inspection Act as Points of Comparison*

Given the similarities outlined above between the pre-NLRA United States and pre-Code Belarus, in terms of the need for legislative guidance on the subject of labor relations, the NLRA provides a good basis for evaluating the legislative response in Belarus. Before comparing the Belarussian Code to the NLRA, it is necessary to briefly discuss the structure of the U.S. law. The NLRA begins with a statement of findings and policies,<sup>143</sup> in which the drafters outline the primary reasons for its adoption. This section of the NLRA is followed by a comprehensive set of definitions,<sup>144</sup> which the Belarussian Draft Labor Code essentially lacks.

The next four sections of the NLRA detail the creation of the National Labor Relations Board (NLRB or the Board) as the agency of the federal government of the United States authorized to deal with labor-management disputes.<sup>145</sup> Delegation of adjudicative power under these sections creates a regional system of dispute resolution in which regional directors hear cases in over thirty offices set up throughout the United States. Such a system allows uniform national labor legislation to govern at even the

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142. The NLRA has been in effect in the United States since 1935. And, the Belgian Labor Inspection Act, which has been in effect for nearly 25 years now, is viewed as a model of labor law enforcement by European Community peers and commentators. See, e.g., *id.* at 14.

143. See 29 U.S.C. § 151 (1988).

144. See 29 U.S.C. § 152 (1988). While every term is concededly not defined as narrowly and precisely as might be desired—"the term 'employee' shall include any employee," *id.* § 152(3). The detail and depth that permeate the definitions section of the Act serve to guide reading of the Act and greatly simplify interpretation.

145. 29 U.S.C. §§ 153-56 (1988). A 1947 amendment to the NLRA, fashioned as the Labor Management Relations Act, 29 U.S.C. Sections 141-67, 171-97, increased the number of Board members from three to five and made many other substantial additions to the original NLRA sections creating and governing the NLRB. Each year the NLRB hears thousands of cases nationwide.

most local levels.<sup>146</sup> The final section in the NLRB portion of the Act provides: "The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act."<sup>147</sup> Given both adjudicatory<sup>148</sup> and rulemaking powers by the NLRA, the Board serves as the principal enforcer of national labor relations law in the United States.

The Belgian Labor Inspection Act (hereinafter the Belgian Act), on the other hand, offers an instructive perspective into methods of enforcing labor legislation. Promulgated in 1972 and amended as late as 1989, the Belgian Act features substantial enforcement provisions that are lacking in the Belarussian Code. Comparing the latter with this modern piece of European legislation will help to magnify some of the Code's more glaring deficiencies and also shed light on some key ways in which it can be improved.

The Belgian Act states that officials under the control of the ministers are vested "with responsibility for employment and labour, social welfare, [and] health and economic affairs. . . ." <sup>149</sup> These "social inspectors," are charged with the enforcement of Belgian legislation concerning the social protection of workers, working conditions, labor regulations, industrial health and safety standards, social security, and social assistance.<sup>150</sup> The Belgian Act provides detailed mechanisms for investigations and enforcement, and includes both civil and criminal penalties to reinforce the power vested in the inspectors.<sup>151</sup>

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146. For example, wood cutters in rural Washington are protected by the same rules and regulations governing representation in elections under the NLRA as are computer software specialists in southern California, and the regional directors in Seattle and Los Angeles respectively ensure such equal protection. The regional directors must keep abreast of any and all changes in the rules and regulations that emanate from the General Counsel's office in Washington, D.C. They are also required to apply the governing labor law uniformly throughout the United States. See 29 U.S.C. § 153(d) (1988).

147. 29 U.S.C. § 153 (1988).

148. Adjudicative power is actually vested in the Board under Sections 9-11 of the Act, 29 U.S.C. §§ 159-61. These sections outline the Board's duties in overseeing elections (Section 159) and enjoining or remedying unfair labor practices (Section 160). Section 161 delineates the investigatory powers of the Board that are "necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title." 29 U.S.C. § 161.

149. Labour Inspection Act, No. 12 (1972), § 1 (Belg.) [hereinafter Belgian Act].

150. *Id.*

151. *Id.* §§ 4, 16.

As does the NLRA, the Belgian Act begins with a section of definitions, laying the groundwork for the terms and phrases included in the subsequent provisions.<sup>152</sup> The next several sections of the Belgian Act outline in great detail the investigatory and remedial powers vested in the social inspectors. Unlike the NLRB, which operates as an independent agency separate from the federal and state courts of the United States, the social inspectors in Belgium work in tandem with local magistrates and judges in carrying out the nation's labor laws.<sup>153</sup> Upon investigation and a finding of some violation, the inspectors have the authority to levy administrative fines on guilty employers,<sup>154</sup> issue warnings, set time limits for improving conditions,<sup>155</sup> and in all cases, document the violations in official reports.<sup>156</sup> Thus the Belgian Act includes effective enforcement mechanisms and remedies to carry out the labor legislation in that country.

### B. *The Draft Labor Code: Specific Provisions*

The foregoing discussion of the present economic conditions in Belarus and the problems facing the labor market in the new Republic point to six major areas that the Code must address: (1) collective bargaining, (2) labor disputes, (3) strikes, (4) health and safety in the workplace, (5) social insurance, and (6) job training and retraining. The next section discusses these major areas of concern, along with an introductory comment on the importance of definitions, in the context of the proposed Labor Code.

#### 1. Definitions

While both its U.S. and Belgian counterparts feature comprehensive "definitions" sections, the Belarussian Code

152. *Id.* § 2. While there are not quite as many definitions in the Belgian Act as in the NLRA, the usefulness of this section is readily apparent, and its presence serves to further magnify the lack of such a section in the Belarussian Code.

153. For example, § 1 explicitly provides: "Without prejudice to the duties of the officers of the judicial police, social inspectors shall be responsible for the enforcement of this Act and its implementing orders." Belgian Act § 1. Also, the section that governs access to workplaces and initial investigations warns that social inspectors "shall have access to inhabited premises only with the prior permission of a police court magistrate." *Id.* § 4. Finally, in § 10: "The social inspectors may request the assistance of the municipal and state police in the performance of their duties." *Id.* § 10.

154. *Id.* § 14. The Belgian Act provides for rather stiff fines in the event of a violation—eight to 30 days in jail and a fine of up to 50,000 francs for each violation and up to 200,000 francs in a given workplace. *Id.* §§ 16-17.

155. *Id.* § 9(1).

156. *Id.* § 9(2)-(3).

contains a very limited glossary. Chapter One of the massive, 639-article Code provides definitions of only nine "basic terms" used throughout the Code.<sup>157</sup> Roughly twenty-five pages long,<sup>158</sup> the NLRA contains a glossary with thirteen definitions.<sup>159</sup> The Belgian Act covers a mere eleven pages, yet provides ten definitions.<sup>160</sup> By contrast, the Code comprises approximately 262 pages of text<sup>161</sup> and includes a myriad of complex articles on specific topics, yet it provides only *nine* definitions. Logic would dictate that the more comprehensive the Code, the more comprehensive the definitions section ought to be. Failure to clearly define key terms referred to repeatedly throughout Code sections<sup>162</sup> may lead to confusion and hamper enforcement efforts.

The CEELI commentators reviewing the Code note in particular the problems that may arise from the dearth of defined terms in the collective bargaining chapters.<sup>163</sup> Presently undefined are terms such as "gross violation of worker's [sic] labor obligations,"<sup>164</sup> "reserved job," and "public employment service."<sup>165</sup> The CEELI experts recommend subsections that would provide definitions of terms used in each chapter and topic area,<sup>166</sup> thus eliminating any potential ambiguity. The failure to define these and other terms in the Code may not only retard the development of labor-management relations in Belarus, but may

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157. Code, ch. 1.1, art. 1.1.0-1.

158. This page approximation is based on the reprint of the NLRA in Appendix A of THE DEVELOPING LABOR LAW, *supra* note 86, at 895.

159. 29 U.S.C. § 152.

160. This page approximation is based on the reprint of the Belgian Labor Inspection Act contained in Appendix B of CEELI, *supra* note 7.

161. This page approximation is based on the reprint of the Code in Appendix H of CEELI, *supra* note 7.

162. *Id.* at 3. The CEELI experts recommend an expansion of the limited glossary of definitions in order to include frequently used terms that occur throughout the body of the Code. *Id.* The commentators note the use, without definition, of terms such as "consultations" and "participation" between union representatives and employers: "The Code does not make clear what these consultations or participation entail and whether or not there is a difference between the two." *Id.* Other potentially confusing terms used at various points throughout the Code include "penalties," "social partnership," "guilty acts," and "harm to property," to name just a few.

163. *Id.* See also Code, *supra* note 124, chs. 6.6, 6.7.

164. *Id.* at ch. 2.4, art. 2.4.0-10, discussing additional reasons for terminating an employment contract.

165. *Id.* at ch. 2.2, art. 2.2.0-1, which prohibits the withholding of an employment contract in the case of certain citizens.

166. CEELI, *supra* note 7, at 2.

also lead to unnecessary and costly litigation to achieve definition through the judiciary.<sup>167</sup>

In short, numerous specialized terms are employed throughout the Code, most of which are undefined. The glossary of terms found in Article One of Chapter One of the Code contains only the most basic vocabulary used in the Code.<sup>168</sup> This glossary states that "[o]ther terms shall be defined in the relevant chapters of this Code."<sup>169</sup> However well-intentioned the drafters may have been, they failed to carry out this mandate. None of the seventy-two chapters succeeding the glossary contains even one explicit definition of any of the terms found therein, and gleaning definitions from context is no easy task in the massive, dense Code. Although ambitious and comprehensive in its coverage of labor law, the Code suffers from potential ambiguities that could be remedied by including more definitions either in the glossary or at the beginnings of selected chapters.<sup>170</sup>

## 2. Collective Bargaining

The Belarussian Code devotes a considerable amount of space to the topic of collective bargaining. This is appropriate for a nation still in the process of converting its economy to a capitalist format, as "[t]he process of collective bargaining is the standard method of organizing workers and employer groups within the capitalist economic structure."<sup>171</sup> Since the collective bargaining process is the backbone of the NLRA and not a central focus of the Belgian Act, this Note will compare the Belarussian Code with the NLRA in the substantive areas of collective bargaining and employment agreements.

The NLRA guarantees all employees the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of

167. *Id.* at 3.

168. Article 1.1.0-1(1) defines "labour legislation," "legislative acts," "local standard acts," "a contract of employment," "an employer," "a worker," "the parties," "a trade union," and "an employer's authorized official." Code, *supra* note 124, at ch. 1.1, art. 1.1.0-1(1).

169. *Id.* at ch. 1.1, art. 1.1.0-1(2).

170. The CEELI commentators note that, "The present construction of the Code may give rise to some ambiguities . . . because of the limited use of adequately defined terms." CEELI, *supra* note 7, at 2. The experts emphasize that the "otherwise excellent draft" would greatly benefit from the inclusion of additional definitions for terms commonly found in the draft. *Id.* See also *supra* note 162.

171. *Id.* at 7.

collective bargaining or other mutual aid or protection . . . .”<sup>172</sup> The Code provides: “To engage in collective bargaining, the parties shall, on equal terms, set up a commission made up of authorized representatives. Its composition and the time and place of negotiations shall be determined by the parties.”<sup>173</sup> Thus, under the Code, as under the NLRA, authorized representatives negotiate on behalf of the Belarussian workers on equal terms with the employers’ representatives. Although the Code does not spell out employees’ rights as specifically as does Section 7 of the NLRA, it implicitly assures fair representation and fair bargaining for all employees working in Belarus.<sup>174</sup>

One important difference, however, between the two nations’ labor codes is illustrated by Article 6.7.0-5 of the Belarussian Code. The system of collective bargaining under the NLRA is premised on “exclusive representation,” under which one union or representative selected by a majority of workers represents all the workers of a given employer.<sup>175</sup> The Code, on the other hand, explicitly authorizes multiple representation and thus ensures that each worker may choose his or her own spokesperson.<sup>176</sup> The U.S. method of exclusive representation assures all employees of representation in collective bargaining with the employer; the Code’s proposed method of multiple representation will guarantee all employees their preferred representative in collective bargaining with the employer. While the latter method may initially seem more attractive to workers, such a system may

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172. 29 U.S.C. § 157 (1988).

173. Code, *supra* note 124, ch. 6.6, art. 6.6.0-1.

174. The many detailed sections of the Code dealing with representation, bargaining, and the handling of grievances, discussed at length below, evince a general policy of fair representation and fair bargaining for laborers in Belarus.

175. See, e.g., Section 9 of the NLRA, 29 U.S.C. § 159. See also CEELI, *supra* note 7, at 8.

176. Article 6.7.0-5 of the Code discusses multiple representation and the many potential parties to a collective bargaining agreement: “Union[s] or *any other authority representing workers’ interests* and employer or its duly authorized representative shall be the parties to a collective bargaining agreement.” Code, *supra* note 124, at ch. 6.7, art. 6.7.0-5(1) (emphasis added); “Where *several unions represent the interests of workers employed by the employer*, a party to a collective bargaining agreement may be . . . .” *Id.* at ch. 6.7, art. 6.7.0-5(2) (emphasis added).

result in a more complicated bargaining process involving too many interested parties.<sup>177</sup>

The NLRA imposes upon both employer and employee representatives an affirmative duty to bargain in good faith.<sup>178</sup> It further requires the parties to adhere to strict timing requirements and to resort to mediation prior to a strike or lockout should any dispute arise concerning the terms and conditions of a new contract.<sup>179</sup> These provisions discourage any unnecessary strategic halting of the bargaining process.<sup>180</sup> The Belarussian Code specifically provides that the parties to a collective bargaining agreement "shall have no right to discontinue negotiations unilaterally."<sup>181</sup> This provision appears to impose a duty to bargain in good faith upon all representatives in the bargaining process. Specific guidelines governing impasse, such as those contained in Section 158(d) of the NLRA,<sup>182</sup> however, are lacking in the Code, and Article 6.6.0-1 is distressingly vague on the topic: "Other issues pertaining to the conduct of negotiations shall be defined by the parties."<sup>183</sup> This general, hands-off approach to the bargaining process is quite ironic, given the exhausting detail of Chapter 6.7, which governs collective bargaining agreements and employment contracts.<sup>184</sup>

177. The proposed draft's inevitable result of multiple representation will insure representation for employees who want it but will create a cumbersome administration. The Code (sic) may wish to address rules aimed at orderly bargaining when two or more unions or worker representatives are involved. The provisions in Article 6.7.0-5 do not adequately address this issue.

CEELI, *supra* note 7, at 8.

178. 29 U.S.C. § 158(d). This section requires employer and employee representatives to "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . ." *Id.*

179. *Id.*

180. CEELI, *supra* note 7, at 3. The CEELI experts note that "[b]oth parties to the collective bargaining process . . . should be obligated to bargain in good faith and be prohibited from halting the bargaining process and declaring an impasse without utilizing all services available[,] including mediation and arbitration." CEELI, *supra* note 7, at 8.

181. Code, *supra* note 124, ch. 6.6, art. 6.6.0-1(4).

182. 29 U.S.C. § 158(d).

183. Code, *supra* note 124, ch. 6.6, art. 6.6.0-1(7).

184. According to CEELI, the "highly detailed nature of the Code" is an illustration of the tradition of centralized control that the Code unnecessarily perpetuates: "the first 185 pages of [the Code] covers (sic) many of the working conditions normally found in collective bargaining agreements negotiated between independent unions and employers in other nations." CEELI, *supra* note 7, at 8.

The experts note that such comprehensiveness in the Code may initially harm the labor market in Belarus. Recognizing that a less exhaustive regulation of the collective bargaining process and agreements thereunder would help develop a more responsive domestic economy, the commentators add that "[less regulation] would allow small and medium sized enterprises greater freedom in

Thus, although the proposed Code heavily regulates the content of collective bargaining in Belarus, the method of bargaining itself is not as tightly controlled; consequently, the duty to bargain in good faith is much more hollow than it first appears.

### 3. Labor Disputes

Once again, since little in the Belgian Act touches upon labor disputes, this discussion will compare such Code provisions to those in the NLRA. The Belarussian Code is quite comprehensive in its treatment of this topic. The Code contemplates a multi-level system for resolution of labor disputes, providing for consideration of individual disputes regarding collective bargaining agreements, labor legislation, and other employment agreements by labor dispute commissions or by the courts of law.<sup>185</sup> In fact, in many respects the Code compares favorably with its U.S. counterpart on the subject of labor dispute resolution. One major difference, however, is the absence of a national agency, such as the NLRB, to ensure uniform regulation of labor disputes throughout Belarus.

The Code enables workers and employers to create labor dispute commissions to settle specific disputes at specific worksites.<sup>186</sup> Article 2.18.0-3 provides that the labor dispute commission be "made up of an equal number of trade union's and employer's representatives whose term of office shall be one year." The article goes on to define the authority of the representatives on the commissions and to establish guidelines for the organization and conduct of the commissions. Subsequent articles outline the procedures that the commissions should follow in receiving claims and adjudicating labor disputes.<sup>187</sup> Unlike the NLRB, which receives claims regarding alleged unfair labor practices and applies the provisions of the NLRA to all decisions, the dispute commissions under the Code will apply the terms of individual collective bargaining agreements to each

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hiring new employees[,] thus adding to the general growth of the economy." On the other hand, the heavy regulation early on will protect the Belarussian labor force until the newly established democratic unions gain prominence in the labor system and garner enough strength to adequately protect member workers. *Id.* at 9.

185. Code, *supra* note 124, at ch. 2.18, art. 2.18.0-1(1). This article further provides that, "Individual labor disputes of certain categories of workers shall be considered in accordance with the specific regulations" of Chapter 3.16 (dealing with higher-level government employees, for example judges). *Id.* at ch. 2.18, art. 2.18.0-1(2).

186. *Id.* at ch. 2.18, art. 2.18.0-3(2).

187. *Id.* at ch. 2.18, art. 2.18.0-(4-6).



individual claim heard.<sup>188</sup> While labor regulation throughout Belarus will lack uniformity as a result, each individual dispute will be settled according to the tailor-made guidelines of the particular collective bargaining agreement under which it arises. Since the labor dispute commission system in Belarus closely resembles the arbitration system in the United States,<sup>189</sup> it may achieve similarly satisfactory dispute resolution at the local level. The Code's failure to establish a national agency akin to the NLRB, specifically ordained to deal with labor-management disputes at the national level, however, leaves a glaring void in the system.

Parties dissatisfied with a labor dispute commission decision may appeal to a court of law within ten days of the commission's decision,<sup>190</sup> and if no commission exists in a particular workplace, claimants may institute actions directly in the courts.<sup>191</sup> The NLRA, on the other hand, grants exclusive jurisdiction over claims arising under it to the NLRB.<sup>192</sup> Appeals may be taken in any court of appeals in the United States,<sup>193</sup> but all claims under the NLRA must be originally filed with the Board (unless state law specifically provides otherwise).

The CEELI commentators would modify the Code to "provide [a] central 'Labor Disputes Commission' with the authority to enforce the substantive rights given employees and unions by the Code provisions governing collective bargaining."<sup>194</sup> Such power in a commission would liken it considerably to the NLRB<sup>195</sup> and would normalize labor dispute resolution across all industries

188. *Id.* at ch. 2.18, art. 2.18.0-4(2).

189. The Belarussian labor dispute commissions will consist of equal numbers of employer and employee representatives. The arbitration process in the United States typically features one employer representative and one employee representative (both attorneys) and a neutral arbitrator. Labor dispute commissions will evaluate disputes arising under collective bargaining agreements. Arbitrators decide cases originating in grievances based on competing interpretations of collective bargaining agreements. Thus, while labor dispute commissions would adequately serve the role otherwise performed by arbitrators, the Code does not provide for any sort of national agency or association, such as the American Arbitration Association in the United States, from which parties in dispute could choose a neutral arbitrator to further aid in the dispute resolution process.

190. Code, *supra* note 124, at ch. 2.18, art. 2.18.0-7.

191. *Id.* at ch. 2.18, art. 2.18.0-9.

192. 29 U.S.C. § 160(a).

193. *Id.* at § 160(e).

194. CEELI, *supra* note 7, at 8.

195. The commentators go on to suggest that the revamped Commission "should be independent and be granted exclusive jurisdiction over questions of representation, appropriate bargaining units, elections, and unfair labor practices." *Id.* The resemblance of the CEELI-envisioned Commission to the NLRB is unmistakable.

throughout Belarus. Having finally established a specialized body of law to govern labor relations, the next logical step for Belarus is to create a specialized government agency the sole function of which would be the administration of that new body of law.

Finally, the Belarussian legislation and the NLRA appear strikingly similar in their treatment of remedies. The Code specifically considers both reinstatement<sup>196</sup> and back pay<sup>197</sup> awards, as well as penalties for failure to honor a commission or judicial decision.<sup>198</sup> The NLRA likewise provides for reinstatement and back pay,<sup>199</sup> in addition to standard cease and desist orders and other declaratory and injunctive relief. The commissions under the Code are permitted broad discretion in determining the amount of monetary awards to grant prevailing parties in labor disputes.<sup>200</sup> The NLRB has similar discretion to determine whether or not to award back pay and what amount is appropriate to effectuate the policies behind the NLRA.<sup>201</sup>

#### 4. Strikes

Chapter 6.9 of the Code deals with the subject of worker strikes in great detail. The Code outlines three specific events that may trigger a lawful strike: (1) rejection of proposals made by a conciliation committee, (2) rejection of a mediator's proposals, or (3) nonconcurrence with an arbitration award binding on both employer and employees.<sup>202</sup> Strikes are valid if adopted by at least a two-thirds majority of the workers at a given worksite.<sup>203</sup> The NLRA, by contrast, merely contains a general statement of employees' collective right to "engage in other concerted activities for the purpose of . . . mutual aid or protection."<sup>204</sup> While it is universally accepted that this section guarantees workers the right to strike when appropriate, the NLRA contains none of the detail governing strike activity featured in the proposed Code. Through eighteen articles the Code discusses various aspects of striking, limitations and prohibitions thereon, and the effects of striking on both participating and nonparticipating workers. Such detail will guide workers, inform

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196. Code, *supra* note 124, at ch. 2.18, art. 2.18.0-11.

197. *Id.* at ch. 2.18, art. 2.18.0-12.

198. *Id.* at ch. 2.18, art. 2.18.0-14.

199. 29 U.S.C. § 160(c).

200. Code, *supra* note 124, at ch. 2.18, art. 2.18.0-(17-18).

201. 29 U.S.C. § 160(c).

202. Code, *supra* note 124, at ch. 6.9, art. 6.9.0-1(2).

203. *Id.* at ch. 6.9, art. 6.9.0-2(1).

204. 29 U.S.C. § 157.

unions of their rights, and give notice to employers of the potentialities involved in lawful labor strikes.

Such exhaustive regulation of strikes may, however, ultimately hamper workers' ability to unite in concerted action against a recalcitrant employer. The provisions of Article 6.9.0-1(2) appear to require the use of conciliation and mediation before a resort to arbitration,<sup>205</sup> thus allowing employers more time to subject disgruntled workers to unsatisfactory terms before the dispute ripens into a strike situation. This protracted treatment of collective bargaining disputes substantially diminishes the apparent power the Code gives to workers. Furthermore, the stringent attendance and voting requirements for calling a strike<sup>206</sup> weaken the rights guaranteed under the Code.<sup>207</sup> Finally, the strong penalties imposed upon workers and unions engaged in unlawful strikes<sup>208</sup> may serve to further shunt workers' rights, since the potential *ex post* determination of unlawfulness by a court of law now looms as a serious risk, with serious ramifications.

Despite the more comprehensive and arguably disadvantageous attention given the issue of strikes in the Code, certain similarities with the NLRA on this topic undeniably benefit both individual workers and employers. For example, just as Section 7 of the NLRA protects the workers' right to refuse to participate in strike activity,<sup>209</sup> Article 6.9.0-4 of the Code prohibits the coercion of workers into striking or foregoing such

205. See generally CEELI, *supra* note 7, at 9. The commentators note specifically that "[p]erhaps one, but not both, of these procedures should be required before the use of arbitrators. Most labor statutes in democratic nations require that only one of these procedures be utilized as a form of alternative dispute resolution" (citation omitted). The commentary goes on to warn that the mandatory conciliation provisions may well be used by employers as a tactic to delay the effective settlement of a dispute that they feel they probably will not win. *Id.*

206. Code, *supra* note 124, at ch. 6.9, art. 6.9.0-2.

207. See generally CEELI, *supra* note 7, at 9.

208. The Code states that workers engaging in an unlawful strike "may be subject to disciplinary or other liability pursuant to legislation." Code, *supra* note 124, at ch. 6.9, art. 6.9.0-16. Likewise, "[a] trade union staging an unlawful strike shall be assessed a fine in the amount fixed by a court." *Id.* at ch. 6.9, art. 6.9.0-18. The Code also provides that anyone (worker or union) who, "by force or by a threat of force, compel[s] workers to take part or to refuse to take part in a strike, as well as persons preventing workers who do not wish to take part in a strike from continuing their work[,] shall be *criminally liable* under legislation." *Id.* at ch. 6.9, art. 6.9.0-17 (emphasis added)

209. 29 U.S.C. § 157. This section reserves employees' "right to refrain from any or all of such [concerted] activities . . ." *Id.*

action.<sup>210</sup> The Code further protects those workers who do not wish to engage in strikes by prohibiting strikers from preventing such nonstriking workers from continuing their work<sup>211</sup> and by threatening serious punishment for those who do not comply with this rule.<sup>212</sup> While no criminal penalties attach under the NLRA, it does similarly prohibit lawful strikers from coercing nonstrikers into joining the cause.<sup>213</sup> Commensurate with this statutory obligation to refrain from coercion of nonstriking workers, the Code requires strikers, during the course of a lawful strike, to "ensure lawfulness, to keep public and other property intact and to preserve public order."<sup>214</sup> Thus the Code does at least provide adequate protection of the rights of those employees who choose not to engage in strike activity.

Through detailed regulation of the strike-calling process and with the caveat of severe sanctions in the event of an unlawful strike, the Code does succeed in protecting, to some extent, the right of workers to strike in Belarus. Coupled with the extensive coverage of labor dispute settlement in the Code,<sup>215</sup> these provisions will ensure a more orderly and more equitable handling of employee grievances in the future. The price that Belarussian laborers, such as the Soligorsk miners, must pay for statutory protection of the right to strike, however, is considerable indeed.<sup>216</sup> Moreover, effective enforcement of these statutory

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210. Code, *supra* note 124, at ch. 6.9, art. 6.9.0-4. Those persons attempting to coerce nonconforming workers are subject to criminal liability under separate legislation. *See supra* note 208.

211. Code, *supra* note 124, at ch. 6.9, art. 6.9.0-13.

212. *Id.* at ch. 6.9, art. 6.9.0-17.

213. 29 U.S.C. § 158(b)(4)(i). This subsection provides specifically that lawful strikers cannot encourage other workers to strike, nor can the strikers threaten other workers with the intent of coercing them into joining the strikers' cause. A conspicuous proviso to this noncoercion provision reinforces the legality of primary striking and primary picketing, 29 U.S.C. § 158(b)(4)(ii)(B), but the subsection makes it clear that this right to primary striking cannot infringe upon every employee's equal right to refrain from strike activity, a right guaranteed under § 7 of the Act. 29 U.S.C. § 157.

214. Code, *supra* note 124, at ch. 6.9, art. 6.9.0-5. This provision serves the same basic function, though in much less detail, as does § 8(b)(4) of the NLRA, 29 U.S.C. § 158(b)(4).

215. *See supra* text accompanying notes 186-202.

216. Considering the severe penalties imposed on unlawful strikers and the real potential for courts to find strikes unlawful, *see supra* note 208, striking even under the Code may well be a gamble some workers are not willing to take, especially in the face of a favorable arbitration award. Also, although employees have less reason to fear employers, in terms of losing jobs as a result of strike activity, they now have potentially more reason to fear the courts, should a strike be determined unlawful.

protections necessitates corresponding reform in the Belarussian court system.<sup>217</sup>

## 5. Health and Safety in the Workplace

The Code thoroughly and commendably addresses health and safety in the workplace. Chapter 2.16, entitled "Industrial Safety" and Chapter 2.17, "Investigation and Registration of Occupational Accidents," devote thirty-five articles to the issue of occupational health and safety. Under the Code, all employers are statutorily required to "provide healthy and safe working conditions and to introduce facilities and technologies in order to comply with sanitary standards and industrial safety standard requirements."<sup>218</sup> The articles under Chapter 2.16 deal with such topics as employer and employee responsibilities regarding industrial safety regulations,<sup>219</sup> protective clothing,<sup>220</sup> periodic worker breaks during working hours,<sup>221</sup> medical examinations,<sup>222</sup> transfers to less arduous work,<sup>223</sup> and transportation to medical facilities of workers taken ill on the job.<sup>224</sup> Finally, Article 20 of the chapter imposes material liability upon employers for damages incurred by workers as a result of job-related injury or health impairment.<sup>225</sup>

Chapter 2.17 addresses the investigation and registration of occupational accidents and creates special investigative commissions for serious and fatal work-related accidents.<sup>226</sup> This chapter must be read in tandem with Chapter 7.6, which creates a public labor inspectorate<sup>227</sup> similar to the body of social

217. Undeniably, the Code improves upon the previous state of affairs with regard to strikes. Now, however, judicial reform must accompany the statutory labor reform, since almost all labor disputes culminating in strikes will be adjudicated before the courts of law, not before the labor dispute commission. Granted, the courts will have the Code as a guideline for adjudication. Good instruments, however, do not necessarily make good musicians. If employees are to fully realize the potential that lies within the Code's protection of their rights, corresponding court reform, which places more emphasis on equitable resolution of employer-employee disputes, is the indispensable other half of labor reform in Belarus.

218. Code, *supra* note 124, at ch. 2.16, art. 2.16.0-1.

219. *Id.* at ch. 2.16, arts. 2.16.0-5, 2.16.0-7.

220. *Id.* at ch. 2.16, art. 2.16.0-11.

221. *Id.* at ch. 2.16, art. 2.16.0-15.

222. *Id.* at ch. 2.16, art. 2.16.0-16.

223. *Id.* at ch. 2.16, art. 2.16.0-17.

224. *Id.* at ch. 2.16, art. 2.16.0-19.

225. *Id.* at ch. 2.16, art. 2.16.0-20.

226. *Id.* at ch. 2.17, art. 2.17.0-11.

227. *Id.* at ch. 7.6, art. 7.6.0-1. The public labor inspectorate is, according to the Code, "a public authority exercising control and supervision of compliance with labour legislation, labour protection and safety regulations, and labour

inspectors created under the Belgian Labor Inspection Act.<sup>228</sup> Chapter 7.6 outlines the basic functions and rights of the public labor inspectors<sup>229</sup> and effectively creates national, regional, and local mechanisms of inspection to ensure compliance with the rigorous health and safety standards established in Chapters 2.16 and 2.17. Upon inspection and evaluation of a given worksite, the decision of the public labor inspectorate is binding on all employers, officials, and workers.<sup>230</sup> This final chapter of the Code offers an exhaustive list of remedial steps that may be taken by labor inspectors to enforce compliance with health and safety standards in the workplace.<sup>231</sup> Similar to the Belgian Act in this sense, the Code exhibits its potential to effectively ensure safe, healthy working conditions in Belarus.

While the structure of the public labor inspectorate under the Code resembles that of the social inspectors under the Belgian Act, certain dissimilarities clearly distinguish the two laws in terms of actual inspection and enforcement. The inspectors' right to enter the workplace at any time and commence investigations is similar under both statutes,<sup>232</sup> but the depth of information and materials attainable by the Belgian inspectors greatly exceeds that permitted under the Belarussian Code.<sup>233</sup> Clearly, enforcement under the Belgian Act, as well as under the U.S.

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safety and industrial sanitation standards and norms." *Id.* at ch. 7.6, art. 7.6.0-1(1).

228. Belgian Act, *supra* note 149, § 1.

229. Code, *supra* note 124, at ch. 7.6, art. 7.6.0-2, 7.6.0-3.

230. *Id.* at ch. 7.6, art. 7.6.0-1(2).

231. The Code authorizes the labor inspectors to: (1) issue fines; (2) suspend production if continued violations would threaten workers' lives or health; (3) demand modifications that conform to labor protection regulations and standards; and (4) issue directions of immediate executory force to violating employers to make appropriate improvements ensuring compliance with health and safety standards. *Id.* at ch. 7.6, art. 7.6.0-7.

232. Compare Belgian Act, *supra* note 149, § 4(1) with Code, *supra* note 124, at ch. 7.6, art. 7.6.0-71(1) (authorizing social inspectors and public labor inspectors, respectively, to enter work places to conduct an inspection at any time without prior notice to employers).

233. Under the Belgian Act, inspectors can question employees, check identities of any and all employees at the worksite, demand production of books, registers, documents, and other data sources charting compliance (or lack thereof) with health and safety standards legislation, take samples of all processed and finished goods for close inspection, take possession of inspected goods, order documents to be displayed, and retain these documents as proof of compliance or noncompliance with the health and safety standards. Belgian Act, *supra* note 149, § 4(2)(a)-(g). By contrast, the Code merely authorizes inspectors to "request and obtain from managers and other workers statements and documents which are relevant to the subject of inspection." Code, *supra* note 124, at ch. 7.6, art. 7.6.0-7(2).

counterpart, the Occupational Health and Safety Act of 1970,<sup>234</sup> is more comprehensive and more effective than under the Code. Furthermore, the fines permitted in the event of violations of industrial health and safety standards in Belarus are relatively negligible<sup>235</sup> when compared with the civil and criminal penalties imposed under the Belgian Act.<sup>236</sup> Thus, the motivation for employers to strictly abide by industrial health and safety legislation is not as strong under the present draft of the Code as it might be under a more stringent, Belgian-style Code. On the whole, then, enforcement of health and safety standards under the Code is commendable as compared to pre-Code conditions, but relatively ineffective when compared to the provisions of the exemplary Belgian Labor Inspection Act.<sup>237</sup>

## 6. Social Insurance

One key issue around which the Soligorsk miners rallied was the protection and enhancement of social insurance. Unfortunately, the Code does not go very far in achieving this goal. Only one of the 639 articles in the Code addresses the topic of social insurance, and sparingly at that: "Public social insurance of workers shall be implemented in accordance with legislation."<sup>238</sup> This provision can mean only one thing: workers will be treated no differently than any other citizen with respect to the benefits provided by social insurance. Thus, the Code adds nothing to the status of social insurance for laborers in Belarus, unless new legislation is pending on the subject.<sup>239</sup> More importantly, the Code fails even to protect employee benefits through social insurance, a function served well by the Belgian Act.<sup>240</sup> Since social assistance is principally disbursed through

234. 29 U.S.C. §§ 651-78.

235. Belarussian labor inspectors can fine employers who violate labor and industrial safety legislation only up to 50 minimum wages, a standard that, once again, is not defined in the Code but that we can assume is rather low. Code, *supra* note 124, at ch. 7.6, art. 7.60-7(5).

236. Belgian social inspectors can fine violating employers up to 200,000 francs. Belgian Act, *supra* note 149, § 17.

237. See generally CEELI, *supra* note 7, at 14.

238. Code, *supra* note 124, at ch. 5.1, art. 5.1.0-1.

239. As of the time of printing, no such legislation was pending before the Supreme Council.

240. By entrusting the social inspectors with enforcement of legislation concerning social security and social assistance, the Belgian Act ensures that employers will carefully tend to the needs of workers receiving aid under social insurance. Belgian Act, *supra* note 149, § 1.

the employer,<sup>241</sup> the lack of social insurance legislation leaves workers no better off now than before the Code was drafted.

The Code also makes no mention of workers' compensation, which is surprising for such a comprehensive and detailed piece of legislation. To their credit, the drafters devoted several articles to specific compensation schemes regarding hours of work in general, overtime, vacation days, and holidays.<sup>242</sup> In addition, many articles are dedicated to workers' labor and social leaves and compensation details enforceable thereunder.<sup>243</sup> Finally, the Code does provide for unemployment benefits, but with several noteworthy limitations.<sup>244</sup> Even with these extensive provisions governing wage compensation, leave time, and unemployment benefits, the Code suffers greatly from its gaping lack of guidance on both workers' compensation and social insurance.

## 7. Job Training and Retraining

The Code treats the subject of retraining in two different contexts: (1) skill improvement and retraining of current employees and (2) vocational training, skill improvement, and retraining of unemployed persons. Chapter 2.14, which addresses the former, provides that employers shall bear the cost of improving the skills of and retraining their employees at least once a year.<sup>245</sup> Special training facilities will house the improvement and retraining activities on a full-time basis,<sup>246</sup> although it is unclear from the Code exactly who will run these facilities and how long the periods of improvement and retraining will last. Proper documentation of successful retraining is also mandated.<sup>247</sup>

The multiple positive effects of this retraining requirement are readily apparent. For example, continued employment is more efficient since employees are constantly keeping up with the latest technology and methods. Also, released employees are

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241. See generally ZAPRUDNIK, *supra* note 8, at 115 (stating that the Belarus government neglected the social needs of its workers when attempting to achieve economic growth).

242. See generally Code, *supra* note 124, at ch. 2.10 ("Working Time").

243. See generally *id.* at ch. 2.12 ("Labour and Social Leaves").

244. *Id.* at ch. 4.6. This chapter outlines how unemployment benefits are granted through the public employment service and also discusses denial of unemployment benefits, at Article 4.6.0-2, restrictions on the level of unemployment benefits, at Article 4.6.0-3, and the period of unemployment benefits payments, at Article 4.6.0-4.

245. *Id.* at ch. 2.14, art. 2.14.0-1(1) to (3).

246. *Id.* at ch. 2.14, art. 2.14.0-1(4).

247. *Id.* at ch. 2.14, art. 2.14.0-1(5).



more attractive to potential employers as a result of their continued retraining and consistent skill improvements. On the negative side, the retraining requirement may impose a financial strain on employers due to the annual funding of the skill improvement activities. The resulting increased efficiency of their workforces, however, will likely offset this additional business expenditure.

Employees who have been terminated and have since joined the ranks of the unemployed are not simply forgotten. The Code establishes procedures by which unemployed persons can receive vocational training (or retraining) and skill improvement as well.<sup>248</sup> Such training and improvement of existing skills will be carried out at the same training centers established under Chapter 2.14, and funding for this retraining will come from a "[p]ublic employment promotion fund."<sup>249</sup> While the Code does not reveal the source of this funding, it does require some contribution from the employer who released the unemployed worker.<sup>250</sup> Furthermore, the Code authorizes grants for unemployed persons to support dependents during periods of retraining and skill improvement.<sup>251</sup> These efforts at establishing and maintaining job training and retraining are commendable, and perhaps such legislative attempts to bolster the labor market will gain the attention of lawmakers in the United States.<sup>252</sup> In any event, the Code's treatment of this issue is more than adequate in light of the potential unemployment problems facing Belarus as its new market economy develops.<sup>253</sup>

#### IV. CONCLUSION

The Draft Labor Code pending approval in Belarus is indeed an enthusiastic, ambitious attempt at regulating the employment relationship in the new Republic. Despite a lack of clearly defined

248. *Id.* at ch. 4.7, art. 4.7.0-1.

249. *Id.* at ch. 4.7, art. 4.7.0-1(2).

250. *Id.* at ch. 4.7, art. 4.7.0-1. Article 4.7.0-1(3) and (4) appear to place some financial responsibility for the skill improvement and retraining of unemployed persons on the employer who fired or laid off the worker. The use of the phrase "made redundant" is unclear but assumed to mean rendered unemployed.

251. *Id.* at ch. 4.7, art. 4.7.0-2.

252. Former New York Governor Mario Cuomo, in a recent speech at Vanderbilt University, called for programs in skills training and an establishment of training vouchers to enable those presently unemployed to become more employable. Mario Cuomo, Address at Vanderbilt University (Feb. 14, 1995). The Belarussian Code goes a long way toward achieving this goal.

253. *See supra* text accompanying note 61.

terms, the Code is organized in an orderly and easily understandable fashion. Dense as it is with over 600 articles covering 262 pages, in places the Code may seem too general in its language and regulation. Broad, sweeping rules in the areas of collective bargaining and health and safety in the workplace are contrasted, however, with the sparse attention given to such seemingly important topics as workers' social insurance and actual enforcement provisions. The Code does not suffer from a lack of detail by any means, as is illustrated by the articles governing employees' right to strike. Quite broad in scope and yet very detailed in content, the Code attempts to achieve a balanced administration of labor-management relations and the advancement of labor stability in Belarus.

An important consideration with respect to labor stability is the effect that the proposed Code will have on foreign capital investment in Belarus. As the country's privatization laws entice more foreign entrepreneurs, will the Code and its numerous requirements have a chilling effect on private business investment and development? Some commentators would answer in the affirmative,<sup>254</sup> but the very requirements imposed on the employment relationship may in fact serve as a further enticement to foreign business enterprises seeking to invest in Belarus. A stable, well-organized labor force provides a hospitable, if not ideal, climate for significant industrialization and investment without serious concern for labor apathy or unrest. The prospective foreign employers may view the numerous requirements under the Code as a price worth paying for the resulting increased efficiency in their respective workplaces.

The Code is not the end of labor relations law in Belarus, but only the beginning. An early draft, it undoubtedly needs significant fine-tuning and polishing. However, its codification of employee rights and detailed focus on the collective bargaining process are promising signs that the new Belarussian government is serious about labor reform in the context of a developing capitalist economy.<sup>255</sup> What it lacks in terms of internal definition and enforcement capacity, the Code makes up for in its exhausting efforts to create a body of law that can adequately provide guidance for all aspects of the employment relationship. Once the Code is adopted, Belarus should create a specialized government agency existing solely to enforce this new body of law.

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254. See generally CEELI, *supra* note 7, at 15.

255. See *supra* text accompanying notes 140-43 (explaining the importance of the collective bargaining process in the capitalist economy).

Legislators must immediately focus their attention on further refining the Code language itself and creating more concrete and more effective methods of enforcing the many new rights guaranteed to both employers and employees under this historic document.

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