The work leading to this report was supported by funds provided by the National Council for Soviet and East European Research. The analysis and interpretations contained in the report are those of the author.
NCSEER NOTE

This paper is #16 in the series listed on the following page. The series is the product of a major conference entitled, In Search of the Law-Governed State: Political and Societal Reform Under Gorbachev, which was summarized in a Council Report by that title authored by Donald D. Barry, and distributed by the Council in October, 1991. The remaining papers will be distributed seriatim. This paper was written prior to the attempted coup of August 19, 1991.
The Conference Papers

1. GIANMARIA AJANI, "The Rise and Fall of the Law-Governed State in the Experience of Russian Legal Scholarship."

2. EUGENE HUSKEY, "From Legal Nihilism to Pravovoe Gosudarstvo: Soviet Legal Development, 1917-1990."

3. LOUISE SHELLEY, "Legal Consciousness and the Pravovoe Gosudarstvo."

4. DIETRICH ANDRE LOEBER, "Regional and National Variations: The Baltic Factor."

5. JOHN HAZARD, "The Evolution of the Soviet Constitution."

6. FRANCES FOSTER-SIMONS, "The Soviet Legislature: Gorbachev's School of Democracy."

7. GER VAN DEN BERG, "Executive Power and the Concept of Pravovoe Gosudarstvo."

8. HIROSHI ODA, "The Law-Based State and the CPSU."


10. ROBERT SHARLET, "The Fate of Individual Rights in the Age of Perestroika."

11. NICOLAI PETRO, "Informal Politics and the Rule of Law."


15. WILLIAM B. SIMONS, "Soviet Civil Law and the Emergence of a Pravovoe Gosudarstvo: Do Foreigners Figure in the Grant Scheme?"

16. KATHRYN HENDLEY, "The Ideals of the Pravovoe Gosudarstvo and the Soviet Workplace: A Case Study of Layoffs."

17. Commentary: The printed versions of conference remarks by participants BERMAN, SCHMIDT, MISHIN, EN'TIN, E. KURIS, P. KURIS, SAVITSKY, FEOFANOV, and MOZOLIN
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Executive Summary

This paper explores the extent to which the ideals of the pravovoe gosudarstvo are present in the Soviet workplace. The methodology employed is that of a case study of the law governing layoffs. A comparison is made of the law in theory and in practice which reveals that, while the formal requirements of the law are being observed, the spirit of the law is consistently ignored. This tendency to value form over substance cannot help but have a negative impact on efforts to create a pravovoe gosudarstvo in the Soviet Union.

More important than the fact that a gap exists between the law in theory and in practice are the reasons therefor. The paper identifies two principal factors. The first is management’s manipulation of the law (both in the enterprise and in the courts) in order to serve its policy interests. The second is workers’ contempt for the law and legal institutions. They regard the law as irrelevant and legal institutions as incapable of protecting their interests. The two explanations are not mutually exclusive, but are closely interrelated. Yet workers’ reluctance to mobilize the law on their own behalf will not only be more difficult to overcome, but poses more of an obstacle to the creation of a pravovoe gosudarstvo. One cannot speak of a pravovoe gosudarstvo existing in a society in which a majority of its citizens refuse to participate in the legal process.

Overcoming this and other related obstacles will require both structural and cultural changes. The structural changes will have to be such that they inspire the confidence of workers.
The attitude of workers towards Soviet law and legal institutions must be fundamentally transformed. This cannot be accomplished quickly. The contempt exhibited by workers took generations to develop and will not be overcome in a few years. Instead, we must wait for the institutional changes already introduced and those in the planning stages to be fully implemented and take root in society. Finally, efforts to create a pravovoe gosudarstvo should not focus exclusively on Soviet courts and legislature, but must also concentrate on establishing its ideals in the workplace.
Introduction

Standing at the center of Gorbachev’s efforts to reshape the Soviet Union is his endeavor to create a state based on the rule of law or a pravovoe gosudarstvo. Much of the discussion of this in Soviet legal journals and even in mass media publications has focused on concepts such as the rule of law, constitutionalism, supremacy of law and separation of powers. Just what these traditionally Western institutions might mean in the Soviet context has been the subject of considerable debate among specialists. Behind these issues of definition, however, there is an important theoretical question: to what extent and under what conditions can a pravovoe gosudarstvo develop and become institutionalized under a Leninist regime?

Leninism has given rise to a legal system under which the powerful are able to manipulate the law to advance their own interests. Law is not an autonomous force, but merely an instrument of the regime. Over the past seventy-four years, this attitude towards law has become well-entrenched, both institutionally and culturally. Creating a pravovoe gosudarstvo under such conditions is a daunting prospect. It will require not only profound changes in law, but also in legal institutions. Legal consciousness must be reshaped. Indeed, it may require a fundamental realignment of societal interests.

The progress (or lack thereof) towards the goal of creating a pravovoe gosudarstvo can best be assessed by studying what is actually going on in Soviet society. Examining practice will allow us to identify certain obstacles to the development of a pravovoe gosudarstvo which must
be addressed if the effort is to enjoy success in the long run.

The workplace represents one of the most important battlefields in the struggle for a pravovoe gosudarstvo. The extent to which workers can rely on rights ostensibly provided under the law profoundly affects their daily lives and, in a more general sense, influences their attitudes toward the legal system. Consequently, the workplace provides an appropriate and intriguing laboratory for a study of the emergence of a pravovoe gosudarstvo.

There are, of course, a myriad of laws relevant to the workplace. They range from statutes governing workplace safety, to housing and childcare laws, to the recently enacted legislation on pensions. Attempting to deal with all of these would require a scattershot approach that, due to space limitations, would inevitably be rather superficial. More suitable is a case-study approach, in which attention is focused on one particular statute, its implementation and the implications thereof for systemic change.

The subject of my case study is the law governing dismissals of workers for redundancy. The ongoing political and economic crises in the Soviet Union combine to make this statute a particularly appropriate subject for in-depth study. The success of the economic reforms depends largely on an increase in labor productivity. The Gorbachev regime plans to achieve this increase by cutting down on the feather-bedding endemic to Soviet industry. This rationalization of the Soviet labor force is to be accomplished through dismissals of redundant workers. Estimates of the number of workers to be affected over the next ten years have ranged as high as 40 million. Massive unemployment has been predicted. Under these conditions, management is likely to be tempted and perhaps pressured from above to ignore those legal provisions designed to protect workers' rights in order to meet Moscow's goal of increased labor productivity. On the other
hand, the move towards a legal system in which workers' rights are protected may help legitimate the push for greater efficiency and facilitate the kind of attitudinal change that is essential to the development of a pravovoe gosudarstvo.

I begin by outlining the law as it exists on the books and as it would appear to be implemented if one relies on published materials. I then expand the inquiry by examining to what extent the procedural and substantive protections seemingly afforded to workers by this law are reflected in actual practice. This section is based on my field research in Moscow from 1989-90, during which time I gained access to various officials and records in eight state enterprises and to the archives of two trial courts. This comparison of the law in theory and in practice reveals a gap between the two. Yet merely proving the existence of such a gap is not my goal. Discrepancies between theory and practice are present in virtually all legal systems and have long been assumed to exist in the Soviet Union. Instead, the final section of the paper is an analysis of the reasons why a gap exists in the context of the law governing layoffs, why it has taken on the form it has and what it portends for the ability of a pravovoe gosudarstvo to develop and flourish in the Soviet Union.

The Law in Theory

Labor relations in the Soviet Union are governed by the Fundamental Labor Legislation of the USSR and the Union Republics (the "Fundamentals"), adopted in 1970, and the labor codes of the union republics, most of which were adopted in 1971. My research was based in Moscow and so I have relied on the Russian labor code (the "RSFSR Labor Code"). An
exhaustive list of reasons why management may dismiss a worker is set forth in both the Fundamentals and the RSFSR Labor Code. One of these reasons is a "reduction in staff" or sokrashenie shtata.

A worker who is laid-off (or dismissed on other grounds) has the right to challenge this action in court if he believes that management has acted illegally. The remedy is reinstatement. However, when discussing this remedy, we must bear in mind that this is not a self-enforcing remedy, but requires the worker to mobilize the law on his own behalf.

When dismissing a worker on grounds of redundancy, management must follow the procedures outlined in the statute. The worker must be given at least two months prior notice of his pending layoff (vysvobozhdenie) and, during that period, must be offered other jobs at the enterprise, if appropriate positions are vacant. In addition, the enterprise trade union committee or profkom must review management's decision and give its consent to the layoff.

Until 1988, both the Fundamentals and the RSFSR Labor Code provided that such consent had to be preliminary (predvaritel'no). In practice, this meant that management had to have received the consent of the profkom before the order (prikaz) relating to the layoff was issued. If management failed to comply (either by not requesting profkom consent or by doing so in a non-timely fashion), the laid-off worker would be automatically reinstated by the courts, assuming that he chose to challenge his dismissal.

This statute was amended in February 1988 as part of a wide-ranging package of reforms to the Fundamentals and the RSFSR Labor Code. While profkom consent is still required, it no longer has to be preliminary, but may be ex post facto. In other words, management is now permitted to act unilaterally with regard to layoffs; there is no longer any pretense that the trade
union committee participates in the decision-making process. The profkom retains veto power, but the political costs of exercising it are greatly increased, given that it comes along so late in the process.20

Under the February 1988 law, the court no longer automatically reinstates a worker whose layoff was not sanctioned by the profkom. Instead, when confronting such a situation, the court is supposed to refer the matter back to the enterprise for profkom consideration.21 If consent is not forthcoming, the worker will be reinstated. If it is, the case is to go back to the trial court, where a review of the evidence begins. Management’s initial failure to obtain consent is not viewed as prejudicial to its case.

This question of profkom consent must be addressed by the court in all petitions for reinstatement, regardless of the grounds for dismissal. However, when facing a claim by a laid-off worker, three additional questions become relevant. First, did the claimed layoff actually take place? Second, did management take all legally required measures to find the worker another job? Third, did management respect the worker’s preferential rights, if any, to remain on the job?22 If the answer to any one of these questions is "no," then the court must reinstate the petitioner.23

Proving a Layoff Occurred

Whether there really was a layoff (sokrashenie shtata) is a threshold question. The purpose is to verify that management is not carrying out a personal vendetta against a particular worker.24 In pursuing this line of inquiry, the court does not have the right to question the
advicability or business sense of the layoff. 25

Management has the burden of proving that a layoff took place; the dismissed worker is not required to prove that it did not take place. The Kommentarii k zakonodatel'stve o trude contains a list of the sorts of evidence considered probative. This list has not changed materially over time and is comprised solely of documentary evidence. 26

The published cases indicate that this requirement that a layoff be proved by physical evidence has been strictly enforced by the courts. Oral representations by management have consistently been held to be insufficient. 27 This is well-illustrated by a 1985 case in which the RSFSR Supreme Court held that a worker must be reinstated because the date of his dismissal preceded the date on which the personnel schedule (shtatnoe raspisanie) that put the overall layoff into effect was ratified. The fact that management, both in dismissing this worker and preparing the new personnel schedule, was acting on oral instructions from its ministry was deemed irrelevant. 28

Likewise, the courts have consistently held that only the sort of documentary evidence listed in the Kommentarii is acceptable. In a 1983 case, management proved that it had been charged by the ministry with the task of reducing personnel expenditures. It then argued that this demonstrated that a layoff had been authorized. The oblast level court disagreed, basing its decision on management's failure to use the right sort of evidence. 29

Once management has convinced the court that a layoff took place, the burden of proof shifts to the worker. In order to prevail, the worker must be able to rebut this evidence. The most common rebuttal technique is to allege that after the petitioner's ("Worker A") departure, another person ("Worker B") was hired to perform the same duties Worker A had previously
carried out, and that the only the job titles differed. This sort of underhanded maneuver is forbidden by the Kommentarii.\textsuperscript{30}

The courts tend to be sympathetic to workers in such cases. For example, in a 1975 case, an "inspector" (the Worker A of this case) was allegedly laid-off. Thereafter, another worker was hired as an "engineer" (the Worker B of this case). Worker A claimed that, despite the different titles, Worker B was actually doing his old job. Although management proved that Worker B performed additional duties that Worker A never had, the RSFSR Supreme Court held that management had to go further; that it had to prove that Worker A was incapable of performing these additional duties.\textsuperscript{31}

This case illustrates the difference in the burden of proof placed on management and workers. When a worker petitions for reinstatement, he is not expected to prove that the layoff did not take place. Yet management is required to prove this conclusively by introducing specific types of documentary evidence. However, in order to rebut management’s prima facie case, a worker need only allege, with no supporting evidence, that another worker is doing the same job under a new name. At that point, the burden shifts back to management and, once again, it is required to prove definitively that these unsubstantiated allegations are unfounded.\textsuperscript{32} Thus, it would appear that the process favors workers over management.

Management’s Duty to Transfer

The second question that a judge must resolve when considering the merits of a laid-off worker’s petition for reinstatement is whether management complied with its statutory duty to
transfer the worker to another job. This duty has two components. The first concerns the sort of job that the redundant worker must be offered. The second concerns the scope of the job search that management must undertake on the worker's behalf.

The statutory language provides little guidance as to the sort of job the laid-off worker should be offered. Consequently, the courts have taken the initiative in fleshing out the statute. The rule is well-accepted that the worker should be offered a job with duties comparable to those of his prior job. If this is not possible, then other available jobs for which the worker is qualified should be offered.\(^3^3\) This rule has not changed in any material respect over the past twenty years.

The courts have tended to define "comparable" rather narrowly. For example, the RSFSR Supreme Court held that offering a plasterer a job as an insulator was not acceptable.\(^3^4\) In a more extreme case, the USSR Supreme Court found that, despite having offered a shoe salesman a job as a coat salesman, management had not fulfilled its duty. The court reasoned that the shoe salesman had expertise that was not transferrable to the new position.\(^3^5\) In these two cases, management was unable to convince the court that "comparable" jobs were unavailable and so the petitioners were reinstated.

If there are no comparable jobs, the court cannot require that they be created. It can, however, inquire into whether there are any other jobs available for which the worker is qualified. In this regard, it is not sufficient for management to show that, according to the list of available positions, none are within the petitioner's area of expertise. Instead, management must provide the court with evidence regarding the required duties and demonstrate that the laid-off worker would be unable to perform them.\(^3^6\) The continued validity of this rule was recently confirmed by the RSFSR Supreme Court. In a 1987 case, this Court held that management had
to prove that the laid-off worker was incapable of doing the jobs that were vacant according to
the personnel schedule. The fact that the job titles were different was deemed insufficient,
standing alone.\textsuperscript{37}

As between the two parties, the petitioner would seem, once again, to be in an enviable
position in terms of burden of proof. The worker need only allege that a vacancy exists for
which he is suitable. Management must then prove that he is unqualified.\textsuperscript{38}

Initially, management's duty to search for alternative positions was broadly construed.
In a 1973 "guiding explanation" (rukovodjashchee razjasnenie), the RSFSR Supreme Court
instructed the lower courts that layoffs were permitted "only if it is impossible to transfer the
worker, with his consent, to other work." The Court went on to define impossibility as being
the absence of the sort of work previously done by the petitioner "in the given enterprise or in
another enterprise."\textsuperscript{39} Thus, management's duty extended beyond its own walls. Published case
decisions demonstrate that the courts did hold management to this very high standard of
conduct.\textsuperscript{40} For example, the dismissal of a school teacher was held to be invalid and the teacher
reinstated because the school administrators had made no effort to find her a job at another
school. In its opinion, the court explicitly referred to the 1973 "guiding explanation" as the basis
for its decision.\textsuperscript{41}

The USSR Supreme Court addressed this issue in a 1980 "guiding explanation" and, in
effect, overruled the earlier instruction of the RSFSR Supreme Court. The lower court was
directed that,

When considering cases involving the reinstatement of persons whose labor contracts
were dissolved . . . [on grounds of redundancy], the court has an obligation to request
and obtain from management evidence that demonstrates that the worker has refused a transfer to a different job or that management did not have the opportunity to transfer the worker, with his consent, to other work in the same enterprise . . . 42

Thus, management’s duty to find laid-off worker other jobs was curtailed to its own premises. Yet its job placement function was not eliminated entirely. As recently as 1987, the RSFSR Supreme Court confirmed that management must still use its best efforts to find redundant workers "comparable" jobs within the enterprise.43

Preferential Rights

The third and final issue that the trial court must consider when deciding whether to reinstate a laid-off worker is whether management properly took into account his preferential rights (as compared to other workers) to remain on the job. The criteria to be used in making such decisions are spelled out in the RSFSR Labor Code and have not been changed since the adoption of the Code in 1970. Not surprisingly, the threshold criteria are productivity and level of qualifications. If a distinction cannot be made on these grounds, the statute provides an exhaustive list of other factors that must be considered. These include both work-related, e.g., length of uninterrupted work service, as well as non-work-related factors, e.g., family size and military service.

The court does not consider the question of preferential rights unless the worker alleges that management has violated the law in this regard. If such a claim is made, management is required to prove conclusively that the petitioner was the most appropriate person to have been
laid off. If management cannot sustain this burden of proof, the worker will be reinstated.

This issue was raised relatively infrequently in the published court decisions. Furthermore, when it was raised, management was able to convince the court that it had acted properly.45

Summary

The implications of this survey of the law on layoffs would seem to be generally positive for the development of a pravovoe gosudarstvo. The published case decisions indicate that the courts are rigorous in their enforcement of workers' procedural and substantive rights. Indeed, the courts appear to be bending over backwards to accommodate workers; consistently placing a greater burden of proof on management and holding management to a higher standard in meeting its burden. From this, we might conclude that, at least in this admittedly limited context, the legal system is relatively impartial and hypothesize that workers trust it to enforce their rights and believe that their rights are meaningful. Both the systemic and attitudinal qualities inferred from the evidence thus far presented are critical to the emergence of a pravovoe gosudarstvo.

The question now becomes whether these qualities are actually present. Taking this next step requires us to shift our attention from statutes and "guiding explanations" to the level of enterprises and trial courts. My analysis relies on observations made and data collected during the year I spent doing field research in Moscow.
The Law in Practice

Having read all the dire predictions in the Soviet press of massive unemployment as a result of the rationalization of the workforce or *vysvobozhdenie rabochikh sil*, I was somewhat nonplussed to discover upon my arrival in Moscow in September 1989 that no such rationalization was underway. When I queried enterprise officials, they were unfamiliar with the policy. Although layoffs had taken place in the enterprises I studied, they lacked the character I had been led to expect. Nowhere did they impact on workers involved in the production process. Instead, the low-level white-collar workers or *inzhenerskie tekhnicheskie rabochie* were vulnerable. Furthermore, the scale of the reductions was far from massive. Typical were the layoffs experienced by two medium-sized (approximately 4500 workers) industrial plants in Moscow, which involved 100-120 of these white-collar workers.

For my purposes, the critical question is not how many layoffs occurred, but to what extent management complied with the procedural and substantive safeguards afforded workers under the law when they did occur.

Profkom Consent in Practice

As I noted above, the law mandates that management seek and obtain the consent of the enterprise trade union committee to dismissals. My interviews with management officials who are involved with labor policy, such as the chiefs of the personnel department, the wage department and the legal department, indicate that these individuals are well aware of this duty.
Over and over again, I was told that no one would be dismissed without the profkom's stamp of approval. My review of the minutes of profkom meetings in three Moscow enterprises for 1988-89 lends credence to these claims. All dismissals were brought before the trade union committee in a timely fashion.

Furthermore, the February 1988 amendment to the Fundamentals and the RSFSR Labor Code, pursuant to which profkom consent no longer has to be preliminary, appears to have had little practical effect. Enterprise lawyers (who typically prepare the formal request for profkom consent on behalf of management) told me that they continued to seek such consent preliminarily. One juriskonsul' framed her explanation in terms of concern for workers' rights, but the others were more pragmatic. They said that this was how they had always done it and that it was easier to continue in the same fashion than to retrain their staffs and risk mistakes.

Thus, my research indicates that management consistently seeks and obtains profkom consent to proposed layoffs. Yet the conclusion that workers' rights are being protected does not necessarily follow. The consent requirement was originally put into place in order to ensure that management did not have free rein in labor matters. A closer examination reveals that, in the enterprises I studied, the trade union committees were impotent. I observed no instances where consent was denied. More disturbing was the pro forma nature of the approval. The minutes reflect that management's requests were consistently granted with no discussion.

When I confronted the profkom chairmen with my skepticism about the spurious nature of these proceedings, they were steadfast in their defense of the existing system. The near one hundred percent consent rate was explained away as a reflection of the fact that dismissals were carried out with rigorous attention to the statutory requirements. Even assuming this to be true,
it is far from a satisfactory response. Given that in the Soviet context dismissal is supposed to be a last resort, the duty of the profkom should extend beyond a check of legal niceties to an evaluation of the fundamental fairness of the dismissal. Yet the profkom chairmen were visibly uncomfortable with any suggestion that they go behind management’s decision to lay off workers to question it on either economic or humanistic grounds.

Not surprisingly, this perfidiousness on the part of the profkom has had its impact on workers. When I visited an auto plant in Kaluga, the plant sociologist organized meetings for me with groups of workers. My question as to whether they would go to their trade union representative if they had a dispute with management was consistently greeted with gales of laughter. This disdainful reaction to the profkom was repeated time and again in factories in Moscow and in individual conversations with workers. It became clear that workers regard profkom consent not as a bulwark against arbitrary dismissal, but rather as a meaningless formality. Trade union committees are widely viewed as being "in the pocket" of management.

Conversations with Soviet labor law specialists and my review of records in the archives of two Moscow trial courts convince me that the situations I encountered were typical. The "rubber stamp" justice meted out by the trade union committees has done nothing to build respect among workers for the law and legal institutions.
Trial Courts in Practice

A worker who has been laid off with the blessing of the profkom and who believes that his rights have been violated has only one option under the law if he wants his old job back. He must appeal to the court for reinstatement. My observations of judicial proceedings and review of trial records of reinstatement cases brought between 1982 and 1990 in one region of Moscow suggest that the courts' handling of these cases only serves to reinforce workers' disdain for law and legal institutions. Like the trade union committees, the courts tend to go through the motions of following the law, but when these actions are examined closely, their emptiness and rote nature becomes clear. This tendency to value form over substance cannot help but breed contempt among workers for the judicial system itself.

This is not to say that all reinstatement cases take on charade-like qualities. The court can be jolted into diligence by an activist petitioner. However, that is the exception, not the rule. In less than five percent of the cases I examined were workers represented by counsel at the hearing. Upon reading the transcripts, it became painfully apparent that the vast majority of petitioners did not grasp the legal significance of certain types of testimony and documentary evidence and so failed to speak up and challenge them when they had the opportunity.

As a result, the fact that management carries a heavier burden of proof in reinstatement cases becomes largely meaningless. While courts pay lip service to the requirement that management prove that a layoff has actually occurred and that it was impossible to transfer the petitioner to another job, the sort of rigorous protection of workers' interests found in the
published case decisions was consistently absent in the case records I examined. Management’s evidence was accepted without question. The courts seemed to discount its partisan nature, i.e., that management had a powerful incentive to skew the evidence in its favor and perhaps even manufacture evidence.

This tendency on the part of the courts can be illustrated by looking at how management typically meets its burden of proving that a layoff actually took place. As I noted above, the Komentarii sets forth the types of evidence considered probative. Of these, the personnel schedule (shtatnoe raspisanie) is the most critical. This document sets forth the labor demands of the enterprise. Proving the existence of a layoff is generally a matter of comparing the pre- and post-layoff personnel schedules in order to determine whether the petitioner’s job is included in the post-layoff document.

In the pre-perestroika era, the weight given to this evidence by courts was completely understandable. Enterprises did not have the right to amend their personnel schedules unilaterally. The ministry had to approve all such changes. This requirement of dual authorization helped to ensure the reliability of the document. As a result, in many cases, this piece of evidence was dispositive of the issue of whether a layoff had occurred.

However, as enterprises have gained greater autonomy, management has gained the right to change the personnel schedule at its own discretion. The ministry’s role has been eliminated. Consequently, with very little effort, any dismissal can now be given the appearance of a layoff. The reliability of the personnel schedule has been shaken. At the very least, a court interested in fruitful enforcement of workers’ statutory rights should question those involved in the preparation of the post-layoff document in order to ensure that the underlying motivation was
aboveboard. Yet I found that courts are continuing to regard personnel schedules as conclusive evidence of a layoff.

This tendency not to probe documentary evidence submitted by management in reinstatement cases is not confined to personnel schedules. It is pervasive. As a result, management is able to satisfy its burden of proof quite easily, thus shifting the burden to the petitioner.

As I noted above, the most common rebuttal technique in the published case decisions is to allege that only the petitioner’s job title has been eliminated; that someone else has been hired to perform the same function under a new name. My research confirms that this strategy is, in fact, commonplace. But the courts’ reaction to it does not match that seen in the published materials. Rather than requiring management to demonstrate that the new position is qualitatively different from the old, the courts tend to be satisfied with the change in terminology. I found no case in which the court required management to prove affirmatively that the petitioner was incapable of performing the duties of his alleged replacement. In contrast to the impression conveyed by the published case decisions, my data indicate that workers rarely prevail on this issue.

As a result of my examination of trial records, a pattern emerges quite different from that found in published sources. Rather than bending over backwards to protect workers’ interests, the trial courts I studied were doing just the opposite. They were invariably in management’s corner. Their preference was manifested not by open declaration, but by an acceptance of management evidence at face value and ignoring management’s obligation to prove in various other ways that it acted legally. Just as the courts lowered the standards of proof placed on
management, so they raised the standards for the petitioner. Given that workers are rarely legally literate and even more rarely represented by counsel, it should come as no surprise that they often come up short.

Implications for the Emergence of a Pravovoe Gosudarstvo

The comparison of the theory and practice of the law governing layoffs reveals that in both enterprises and courts the letter of the law is followed but the spirit is absent. The question thus becomes why this gap between the ideals and the implementation of the law persists and what it might mean for the development of a pravovoe gosudarstvo in the Soviet Union.

The key to explaining the gap lies in an analysis of the interests of those parties involved in layoffs, namely, management, unions, courts and workers. Each plays a role, whether active or passive, in the continued disparity between the law in theory and practice. Consequently, responsibility for this perversion of the legal system cannot be assigned to any single actor, but is shared among all of them. This suggests that the transition to a legal order that enforces not merely the letter of the law but also its spirit will be difficult, requiring profound institutional and cultural changes.

Management

When discussing the behavior of management, we must distinguish between what goes on within the enterprise and what happens once a dismissal is appealed to the courts. There can
be no doubt that management is all-powerful within the enterprise. The six weeks that I recently spent in a Moscow enterprise convince me that reports of the death of edinonachalie or one-man rule are greatly exaggerated. Attempts to democratize the workplace through the introduction of workers' councils (sovet trudovogo kollektiva) have generally been acknowledged as failures. The reality continues to be rigidly hierarchical, with little room for input by workers (or their designated representatives) and with the general director serving as the ultimate arbiter. This is true in all aspects of the life of the enterprise, but particularly with respect to labor policy. After all, who would challenge management? The requirement of profkom consent is a formality; the profkom lacks sufficient political will and power to defy management.

Whether this rigid hierarchy can persist in the long run remains open to question. After all, the ongoing economic reforms are designed, in large part, to change the rules of the game. Management has thus far been relatively successful in resisting changes that contradict its interests, but perhaps the tide is turning.

This nascent trend can be illustrated by a series of incidents I observed at a Moscow enterprise in February 1991. The workers' council (which at this enterprise was dominated by mid-level management) had put together a plan to transform the factory from a state enterprise to an employee-owned joint-stock company. They submitted their plan to the general director. He strongly opposed it, which was not surprising given that the plan called for him to be subordinated to the workers' council. He did not reject it out of hand, but permitted it to be put on the agenda of an upcoming conference of the workers' council. At this conference, however, the discussion quickly degenerated into a verbal slugfest, in which the general director and the chairman of the workers' council attacked one another on a very personal level. The scope of
these attacks went far beyond the plan ostensibly under discussion. Indeed, the general director found himself on the defense about such unrelated issues as his car and the size of his apartment. Ultimately, the old guard prevailed and the plan was defeated, but the very fact that his subordinates felt free to attack the general director so vehemently indicates that something important has changed. When we asked people later about their reaction to the meeting, we were consistently told that nothing of this sort had ever happened before at the enterprise. Some thought it was a good development, while others were profoundly embarrassed by it. What this all means in terms of legal culture remains unclear, but it might lead to a realignment of interests in a way more conducive to the emergence of a pravovoe gosudarstvo.

On a more general level, we can question whether management's instrumental approach to law can persist. Perestroika has given rise to fundamental changes in the relationships of enterprises with one another and with industrial ministries. The old supply network, driven by ministerial fiat, has been destroyed. Enterprises are being forced to deal with one another on a quasi-contractual basis. This may well give rise to a desire on the part of management to be able to rely on the law. The development of the rule of law in the West was integrally connected with the rise of market forces, particularly contract law, and the same may well prove to be true in the Soviet Union.  

Whether management's interest in having law serve as a stabilizing force would spill over into the realm of labor law is unclear. We might speculate that the current shortage of blue-collar workers (at least in Moscow) would prompt management to be more rigorous vis-a-vis workers' rights in an effort to attract new blood. However, unlike their counterparts in Western Europe and the United States, Soviet workers pay little attention to a firm's record for protecting
workers’ employment rights when making the decision about whether to accept a job. Instead, they tend to be motivated by the bread-and-butter issues of wages and working conditions. Thus, management is unlikely to change its attitude toward legal norms and the resulting behavior as part of an effort to attract and retain workers.

At the present time, management has an iron grip on the reins of power within the enterprise. The result is that management can get rid of any worker without regard to the language or the spirit of the law. The effect on the legal system is profound and insidious. Most workers have little knowledge or experience of the law. For many, a dispute with management over a layoff (or another internal matter) may be their only brush with the law. In this encounter, they see a system that is result-oriented; one in which the law plays second-fiddle to management’s policy concerns.

The Judiciary

Furthermore, should it wish to manipulate the outcome in court, management has both the opportunity and the motive to do so. The evidence necessary to prove or disprove the petitioner’s claim comes from the records of the enterprise. Yet my review of trial records convinces me that the courts’ review of dismissals was generally free from overt interference by management. Telephone calls from enterprise directors or other types of ex parte communication were not needed. Because the process itself favors management, overt manipulation was not necessary.

Management interests are served by a judiciary that values form over substance. In
contrast to the petitioner, management can muster reams of documentary evidence to support the lawfulness of its actions, secure in the knowledge that the court will not go behind these documents. The result of the courts' hands-off attitude is clear: the parties are not equal before the law. On the one hand, management has access to the necessary evidence and can use it to good advantage thanks to in-house legal assistance (iuriskonsul'ty). On the other hand, workers have access neither to enterprise records nor to meaningful legal assistance. Although the courts could act as an equalizer, they have chosen not to.

The tendency of Soviet judges merely to go through the motions stands as an obstacle to the creation of a pravovoe gosudarstvo. An in-depth discussion of why this is so is beyond the scope of this paper. Several possible reasons can, however, be suggested.

The first is the very process of becoming a judge. In the Soviet Union (as in other countries with civil law traditions), becoming a judge is merely one of several career patterns open to graduates of law faculties.\textsuperscript{56} Ideally, the process is governed by objective criteria such as academic merit. Under Leninism, however, these objective criteria consistently gave way to considerations of political loyalty.\textsuperscript{57} In practice, this meant that, for the most part, only members of the Communist Party became judges in the Soviet Union.\textsuperscript{58} How often judges were ordered to render particular decisions as a matter of Party discipline is a matter of some debate. Clearly it happened not infrequently in cases with political implications, but the potential was there in all cases.\textsuperscript{59} Emigre memoirs indicate that this lurking threat of Party interference led judges to search for the safe route.\textsuperscript{60} In the context of layoffs, this would mean that judges would tend to side with management, as the representatives of the status quo.

In December 1988, the method of selecting judges was changed.\textsuperscript{61} The purpose was to
ameliorate the influence (and the appearance of influence) of the Communist Party in this realm. Judges are no longer chosen through uncontested popular election, with candidates being hand-picked by the Party apparat, but are now selected by the legislature. While perhaps important in the long run, this institutional change has been slow to bear fruit in the short run. There had been no turnover of judges in the courts I studied. Indeed, these changes in selection procedure seemed quite remote to the trial judges with whom I spoke. Similarly, workers were generally unaware of these changes and, when informed of them, consistently told me that they would not make any difference.

A second reason why Soviet judges tend to adopt a pro forma attitude towards dismissal cases is the lack of any deterrent to act otherwise. As with other countries with civil law traditions, Soviet judges are viewed as bureaucrats and not sages. Consequently, they are evaluated and promoted based primarily on their ability to dispose of cases efficiently and to avoid being reversed on appeal. Neither provides any incentive for careful consideration of the equities or substantive justice of the case at hand. Going through the motions allows the courts to process cases quickly and also satisfies the appellate courts which tend to rely on the written record in making their decisions.

The conditions under which Soviet judges work no doubt also contribute to their legalistic approach. Not only are they expected to process a large number of cases quickly, but they are expected to do so with very little help. They have no law clerks to assist them in the researching and writing of their opinions. Indeed, judging by the case records I reviewed, many do not even have a typewriter on which to write their decisions; approximately thirty-five percent of the labor-related decisions were handwritten. Keeping up with the rapidly changing law is a constant
uphill battle. The trial court buildings contain no law library--each judge is on his own. One judge showed me a battered copy of the Kommentarii, in which the many changes of the past few years had been pasted and paper-clipped. This was her labor law library. Under such conditions, a rote mentality to justice should, perhaps, be expected.

The attitude of judges towards their responsibilities must be transformed fundamentally before we can expect any real progress towards a pravovoe gosudarstvo in the Soviet Union. The institutional changes already introduced represent an important first step, but need to be reinforced with changes in the incentive structure and the complete elimination of outside interference in the judicial process. In time, such structural changes may give rise to the attitudinal changes within the judiciary and the citizenry at large which are equally critical to the development of a pravovoe gosudarstvo.

Unions

One of the principle reasons why the gap between law in theory and in practice persists is the inequality of management and workers before the law in terms of resources and knowledge. Under ideal circumstances, the trade unions might be expected to step in to equalize the situation. In the United States, for example, a similar disparity between the parties is ameliorated, to some extent, by the unions' duty of fair representation.64 For unions to fulfill this role, they must, at the very least, be independent of management and be regarded by workers as their legitimate representative. Neither of these minimal conditions is present in the Soviet Union.
Indeed, the very nature of Soviet trade unions forecloses any possibility of their being the champion of laid-off workers in a judicial proceeding. In any given enterprise, there is one trade union to which everyone, from the general director to the charwomen, belongs. The divergence of the interests of workers and management, a concept which underlies Western trade unions, is not accepted in the Soviet Union. Consequently, workers do not look to unions to represent their interests in disputes with management.

The trade unions’ lack of legitimacy is further reinforced by the widespread perception that the enterprise-level trade union organization (the profkom) is a handmaiden of management. Indeed, for most of its history, the profkom had two functions: increasing production and protecting workers’ interests. Union officials now concede that, when the two came into conflict, the profkom usually gave precedence to its production-related duties. The result was a constant seeping away of the profkom’s authority such that the majority of workers now regard it as irrelevant. The announcement by the All-Union Central Council of Trade Unions (Vsesoiuznyi Tsentral’nyi Sovet Profsoiuzov), the official trade union organization, in September 1989 that profkomy would henceforth focus exclusively on protecting workers’ rights has thus far done little to enhance their standing in workers’ eyes.

Workers do not look to unions to help them through the legal process, either in the enterprise or the courts, when laid off. Yet it is equally clear that workers need some kind of assistance at both points in time in order to bring them up to the level of management in terms of knowledge and resources. I am doubtful that the official union will take on this function. Union officials do not regard it as within their purview and workers, accustomed to a sweetheart union, do not trust the profkom to challenge management. A more likely scenario would find
this function being taken up by the fledgling independent trade unions or by private lawyers (advokaty).

Workers

Because neither management, courts nor unions take workers’ legal rights seriously, workers tend not to mobilize the law and that most compellingly explains the gap between theory and practice in Soviet labor law. The underlying theme of many of my conversations was that workers do not regard law as a relevant to their day-to-day lives. When questioned about what they would do if they became embroiled in a dispute with management, almost no one said they would take legal action. When I suggested this option, it was usually rejected as unrealistic. These impressionistic data are buttressed by the limited statistical data available. Nor does this seem to be changing. In one of the trial courts I studied, the number of labor cases filed remained basically static between 1983 and 1990.

The willingness of all sectors of society to participate in the legal system is critical to becoming a pravovoe gosudarstvo. In the realm of labor law, workers are particularly important because they must put the legal machinery into motion. Their passivity facilitates similar behavior on the part of management, unions and courts. Although not sufficient taken alone to create a pravovoe gosudarstvo, were workers to take a more activist stance, the legal system might well become more responsive to their interests. The question thus becomes: why have workers opted out?

Markovits contends that workers in Leninist systems make little effort to enforce their
job rights because the available remedies are not apropos. While her argument is convincing in the East German context, it is less so in the Soviet context. Soviet workers who prevail in court are reinstated to their old jobs. While it is true that workers who are laid off can generally find other jobs in short order, i.e., they do not fear unemployment, reinstatement has appealing qualities. After all, many workers receive their apartments, cars and major appliances through the enterprise. These perquisites are distributed based on seniority. People stay on waiting lists for years. Likewise, food and clothing is distributed by the enterprise through the zakaz system. The current shortages of basic foodstuffs have made zakaz ever more important. Consequently, workers have a powerful incentive to try to retain their jobs. Buttressing this is the preference of Soviet workers for the familiar. In theory, reinstatement should serve as a sufficient incentive to bring laid-off workers into the legal system.

Thus, the question of why laid-off workers do not resort to the legal system remains. Another possibility is that workers do not know how to appeal to the courts; that the very process is intimidating. This is difficult for an outsider to judge.

On the one hand, the courts are lenient about the procedural requirements. When reviewing court records, I came across many one-sentence petitions, stating only that the plaintiff had been dismissed and believed the dismissal to be illegal. Many were even handwritten. I found no case in which a petition for reinstatement was dismissed for failure to state a cause of action.

On the other hand, workers repeatedly told me that appealing to court was too difficult and time-consuming. Although anecdotal in nature, such comments ring true. Lacking experience and information, going to court can be a daunting prospect. No one helps workers through the
system. The trade unions or the private bar (advokatura), which would be the logical facilitators, are not real options. In most instances, the profkom is tainted by its having already blessed the dismissal, thereby weighing in on the side of management. Reinstatement cases are not appealing to private lawyers because they are not very lucrative and can be time-consuming due to the typical management strategy of trying to wear down the other side through endless continuances. Although trial judges make an effort to help workers understand the judicial process once it is underway, their efforts are not terribly satisfactory from the worker's perspective. Thus, for the most part, workers are left on their own to make their way through a legal system that can be intimidating to the uninitiated. This inaccessibility must be overcome if a pravovoe gosudarstvo is to develop in the Soviet Union.

Another factor contributing to workers' reluctance to mobilize the law is their contempt for the legal system. Their attitudes about law are deep-seated, having developed over years of watching law being used instrumentally on every level of society. For them, law has become not a shield that protects them from arbitrary action by management, but rather a sword to be used against them at the discretion of management. Law has become irrelevant to their lives. As we have seen, these feelings have some basis in fact. While the language of the law appears to protect workers' interests, the law is consistently implemented in such a way as to thwart this purpose. Thus, we should not be surprised that workers have lost faith in the law and the legal system.

Workers' contempt for the legal system poses a real dilemma for those interested in creating a pravovoe gosudarstvo in the Soviet Union. Obviously, these attitudes must be transformed; workers must begin to view law as a positive and autonomous force in society. In
essence, they have to come to believe that the ideals of justice are realizable in the Soviet context.

Conclusions

The analysis of the interests of management, courts, unions and workers gives us little reason for optimism. The obstacles to the creation of a pravovoe gosudarstvo in the Soviet Union are formidable. The formalistic approach to law observed in practice is well-entrenched as is the resulting cynicism on the part of workers towards the legal system. The realignment of interests necessary in order to create a legal culture that would support the development of a pravovoe gosudarstvo does not appear to be in the offing. The institutional changes to the legal system already introduced may prove to be a positive force, but are not sufficient. The underlying attitudinal transformation necessary for the creation of a pravovoe gosudarstvo cannot be imposed on society from above, but must evolve gradually through a reciprocal process.
NOTES

The author wishes to acknowledge with gratitude the International Research and Exchanges Board and the Department of Education for their support of the field research on which this paper is partially based. She would also like to thank George Breslauer, Michael Burawoy, Jeffrey Hahn, Ken Jowitt, Robert Kagan and Gail Lapidus for their comments on earlier versions of the paper.


5. My field research was concentrated in factories and trial courts. During my year in Moscow, I visited eight different industrial enterprises. All but one had more than 1000 employees and some had as many as 6000 employees. The nature of production varied from textiles to plastics to electronics. I was also invited to an auto-related enterprise in Kaluga with approximately 8000 workers. The scope of inquiry permitted varied. In all cases, I was able to interview management officials involved in internal labor policy. In three enterprises I was able to go beyond interviewing, to examining trade union records, attending relevant meetings and talking with workers.

My research at trial courts included attending labor-related hearings, interviewing judges and other court personnel and examining the files of prior cases. Most of my time was spent studying these records. I worked in the archives of two Moscow trial courts, the Proletarskii region people's court and the Oktiabr'skii region people's court, and looked at the files of labor-related cases from 1982 through 1990.

7. 2 Svod Zak. SSSR 184-213.

8. After I had completed my field research, the USSR Supreme Soviet passed a number of amendments to the Fundamentals. "O vnesenii izmenenii i dopolnenii v zakonodatel'nye akty Soiuza SSR o trude [On the Introduction of Changes and Additions to the Legislative Acts of the USSR on Labor]," Trud 21 May 1991, 1,3. Although the article directly governing layoffs was not changed, other articles that effect layoffs (including the article on the need for preliminary consent of the trade union) were amended. A number of other laws have been passed in recent months which may have an impact on how layoffs are carried out. These include the Fundamental of Legislation of the USSR on Employment, Ekonomika i zhizn' 1991 No. 6, pp. 22-24; and the Draft Fundamentals of Legislation of the USSR on Destatization of Property and Privatization of Enterprises, Ekonomika i zhizn' 1991 No. 7, pp. 18-19.

9. 2 Svod Zak. RSFSR 123-189.

10. Article 17, Fundamentals; Article 33, RSFSR Labor Code.

11. Article 17, part 1, Fundamentals; Article 33, part 1, RSFSR Labor Code.


14. This requirement to offer the affected worker another comparable job distinguishes the concept of vysvobozhdenie or uvol'nenie po sokrasheniiu shhtata from the familiar American notion of being laid off. Soviet economists usually translate these Russian terms into English as "layoff." Although not entirely comfortable with this translation, I have used it, but do so in its Soviet context.

15. In enterprises with more than one thousand workers, the right to consent to dismissals at the initiative of management may be delegated by the enterprise profkom to the shop-level trade union organization (tsekhovyi profsoiuznyi komitet). "O poriadke predostavleniia fabrichnym, zavodskim, mestnym komitetam krupnykh profsoiuznykh organizatsii prav raionnogo komiteta profsoiuza," Postanovlenie Prezidiuma VTsSPS, 26

16. Articles 18, 87-88, Fundamentals; Articles 35, 201-204, RSFSR Labor Code. The May 1991 amendments to the Fundamentals change this provision such that preliminary consent of the profkom is once again required in cases of layoffs. Interestingly, the law also contemplates situations where there is more than one trade union in an enterprise and/or where the worker is not a member of the trade union. *Trud* 21 May 1991, 1.

   The Soviet procedure bears certain similarities to that found in The Netherlands. Both require *ex ante* preventative testing of dismissals. However, under Dutch law, they are reviewed by an administrative agency, whereas the enterprise-level trade union committees perform this function under Soviet law. Robert Knegt, "Regulating Dismissal from Employment: Administrative and Judicial Procedures in The Netherlands," *Law & Policy* 1989 No. 2, 175-178.

17. Article 35, RSFSR Labor Code. The RSFSR Supreme Court has also invalidated profkom consent when the management official who requested it was not authorized to do so. *BVS RSFSR* 1985 No. 9, 2-3.


20. The new law has raised the political stakes for the profkom. No longer is its denial of consent merely part of the dismissal process. Instead, the profkom must now take responsibility for an affirmative decision to reinstate the worker; a decision that may well raise the ire of management. Some labor law scholars argue that this change has had an undesired deterrent effect on profkomy. Interview with A.I. Stavtseva, Institute for State Construction and Legislation, February 1991.


22. Article 34 of the RSFSR Labor Code sets forth certain criteria to be used by management when deciding the order in which workers are to be let go.


25. *Kommentarii k zakonodatel'stvu o trude*, Moscow 1986, 64; Postanovlenie No. 12
Plenuma Verkhovnogo Suda SSSR, "O primenenii sudami zakonodatel'stva o trudovom
dogovore i povishenii ikh v ukreplении trudovoi distsiplinii," BVS SSSR 1986 No. 6, 9.

26. This list includes the annual labor plan, the personnel schedule (shhatnoe raspisanie),
materials regarding an upcoming reduction in the wage fund and documents showing that,
due to a change in the character or volume of work, fewer workers will be needed. Kommentarii, op.cit. note 25, 56.

27. E.g., BVS RSFSR 1977 No. 9, 8-9.


29. BVS RSFSR 1983 No. 5, 8.

30. Kommentarii, op.cit. note 25, 56; Kommentarii k zakonodatel'stve o trude, Moscow
1976, 73.

31. BVS RSFSR 1975 No. 6, 8-9. See also BVS SSSR 1961 No. 5, 13-14. [The USSR
Supreme Court imposed a duty on management to prove the dismissed worker was
unable to perform the duties of his replacement even where the replacement was
performing different duties and was paid at a different rate.]

32. Merely hiring other workers of any type has been sufficient to shift the burden back to
management. In these cases, the courts want to be convinced that management could not
have transferred the dismissed worker to the position occupied by the replacement and
thereby avoided having to dismiss anyone. BVS SSSR 1984 No. 6, 12-14.

33. "Nekotorie voprosy sudebnoi praktiki po grazhdanskim delam (obzor sudebnoi praktiki),"
BVS RSFSR 1978 No. 7, 10; Kommentarii, op.cit. note 25, 65.

34. "O nekotorikh voprosakh sudebnoi praktiki po rassmotreniiu grazhdanskikh trudovikh del

35. BVS SSSR 1984 No. 6, 12-13 [heard as a case of first instance by the USSR Supreme
Court].

36. "Obzor sudebnoi praktiki verkhovnogo suda RSFSR po nekotorim voprosam, voznikshim
pri rassmotrenii grazhdanskikh del v kassatsionnom poriadke i v poriadke nadzora," BVS
RSFSR 1987 No. 2, 12. See also BVS RSFSR 1982 No. 11, 12.

37. Ibid.

38. E.g., BVS RSFSR 1979 No. 4, 1.


41. BVS RSFSR 1975 No. 2, 1.

42. BVS SSSR 1980 No. 3, 12.


44. Article 34, RSFSR Labor Code.

45. E.g., BVS RSFSR 1983 No. 6, 9-10; BVS RSFSR 1985 No. 1, 3.


47. Why a fundamental rationalization of the workforce has not taken place (at least in Moscow) is an intriguing question with important policy implications, but is not within the scope of this paper.


49. Looking beyond compliance with legal norms to the fairness of dismissals is common to other European legal systems. E.g., Knegt, op. cit, note 15, 176; Erhard Blankenburg and Ralf Rogowski, "German Labour Courts and British Industrial Tribunals," Journal of Law and Society, 1986 No. 1, 72.

50. This suggests that the reinstitution of the requirement of preliminary profkom consent pursuant to the May 1991 amendments to the Fundamentals is not likely to have much impact in practice. See Trud 21 May 1991, 1,3.

51. During January and February of 1991, Michael Burawoy and I carried out field research at a factory in Moscow. We had virtually unlimited access to all aspects of the factory. We conducted interviews with management personnel of all levels, sat in on production and other meetings and talked with workers. Michael Burawoy and Kathryn Hendley, "Strategies of Adaptation: A Soviet Enterprise Under Perestroika and Privatization,"

52. Councils of the work collective (soviet trudovogo kollektiva or STK) were introduced in 1987 pursuant to the Law on State Enterprises. Ved.SSSR 1987 No. 26, item 385. Their legal powers were broad-ranging but amorphous and, in certain cases, overlapped those of management. See generally Anders Aslund, Gorbachev's Struggle for Economic Reform, Ithaca, NY 1989, 104-105. The 1990 restatement of the Law on Enterprises abandons the STK and creates a council of the enterprise (soviet predpriiatiiia), which differs from the STK in that it requires membership to be divided equally among representatives of workers and management. Ved.SSSR 1990 No. 25, item 460. The analogous Russian Republic law, in contrast, retains the STK. "Zakon RSFSR o predpriiatiiakh i predprinimatel'skoj deiatel'nosti," Sovetskaia Rossiia 12 January 1991, 1, 4.


54. Somewhat ironically, management has very little discretion to raise wages or improve working conditions. Wage policy continues to be set centrally. In an effort to curb inflation, the enterprise wage fund has been tied to productivity. As a result, management cannot unilaterally order a wage increase, but must be able to prove to the banking authorities that it is warranted by an increase in productivity. Furthermore, improving working conditions typically calls for major capital investment which is beyond the financial capabilities of the enterprise. The situation is further complicated when the new technology or machinery can only be purchased from abroad, since most enterprises have limited access to hard currency.


65. Both the amendments to the Fundamentals, Trud 21 May 1991, 1,3, and the new USSR Law on Resolving Individual Labor Disputes, Trud, 17 May 1991, pp. 1,3, envision the possibility of more than one trade union, speaking of the "appropriate" trade union committee. Whether the newly formed independent trade unions will take hold in Soviet enterprises remains to be seen.


68. See Trud 6-9 September 1989.

69. The question of why Soviet workers are so disillusioned with the official trade union is complex and cannot be fully explored in this paper.


The following data are for the Proletarskii raionyi narodnyi sud in Moscow. In 1983, there were 52 labor cases of 3625 civil cases. In 1984, there were 54 labor cases of 3728 civil cases. In 1985, there were 76 labor cases of 3862 civil cases. In 1986, there were 46 labor cases of 3476 civil cases. In 1987, there were 55 labor cases of 3183 civil cases. In 1988, there were 50 labor cases of 3440 civil cases. In 1989, there were 54 labor cases of 2877 civil cases. In 1990, there were 58 labor cases of 2579 civil cases.


Markovits, *op.cit.*, note 12.