“The formation of the labour contract in Ninenteenth-Century South of Europe”

Apud Blanpain R. and Hendrickx F. (eds.), *Labour Law between change and tradition*. *Liber Amicorum Antoine Jacobs*, Kluwer Law International, The Netherlands 2011, pp. 117-141

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"Just when the gods had ceased to be, and the Christ had not yet come, there was a unique moment in history, between Cicero and Marcus Aurelius, when man stood alone".

Flaubert

1. There was a moment when the worker stood alone. State abstentionism and the creation of a paracontractual balance, 1789-1889.

The corporate power on control on the payroll has such subtle distinctions nowadays that Wedderburn has even gone as far as comparing the contract of employment to an elephant: nobody knows how to define it, but everybody can recognise it. Labour legislation and collective agreements have brought about a *democratisation* of corporate power, but it would be a good idea to enquire into the antecedents of the contract to find out what contracts were like before the advent of such counterbalances, to see how they worked without these, in order to be able to explain some of the debates that have continued up to the present day.

The starting point can be dated at the end of the 18th century with the Le Chapelier Law, when professional associations and guilds were prohibited and freedom of contract and the liberal principle of *laissez faire* were applied with enthusiasm. The state refused to intervene in economic relations, which resulted in production taking place in autocratic situations, in a relationship that was either manorial (*signorile*) or quasi imprisonment (*carceraria*), as Castelvetri comments[1]. We can conventionally date the end of state abstentionism towards the end of the 19th century, when the first laws protecting workers started to appear and the legal prohibitions on the freedom of association were removed[2]. By this time contracts of employment were already being discussed in the more advanced countries and the *probiviri* or committees of good men had been legally recognised in Italy in 1893, as had the industrial tribunals in Prussia in 1890[3], while the French *conseils de prud'hommes* had been in existence since 1806, although they were only legalised much later by the law of 1910. In the United Kingdom, meanwhile, the solution of conflicts was entrusted to the county courts from 1875 onwards[4], and this was to enable the early study of industrial relations in this country, unlike in other European countries where, as a rule, the courts did not intervene and we can only know what happened from the minutes of those informal bodies created by workers and employers. A concept of the wage-earning worker subject to the direction, authority and control of the employer would arise from all these interventions (the Dutch law of 1907 and the Belgian law of 1900), or at the orders of the employer (the German Code of 1896), or subject to another's will as in the United Kingdom[5]. And at this time, doctrine, especially Italian, would propose two corollaries that would gradually prevail over the hubbub of fin-de-siècle opinions: the first, valid, that the contract of employment has a different nature to the civil contract for services; and the second, debatable, that despite everything the contract of employment derives from the

[1] L. CASTELVETRI, *Il diritto del lavoro dalle origini*, Giuffrè, Milan 1994, p. 340.
[2] In Spain, the Associations Law of 1887. As is well known, there was a long period of freedom of association before the recognition of the right to association. P.S. ATIYAH, *The Rise and Fall of Freedom of Contract*, Clarendon Press, Oxford 1979, sets the period of freedom of contract between 1770 and 1870 in Part II, *The Age of freedom of contract: 1770-1870*, p. 210 ff.
[3] Although the name seems to imply some kind of judicial body, the industrial tribunals that had to be constituted in towns or cities of more than 20,000 inhabitants were comprised of an impartial president (usually a civil servant), a representative of the employers, and a representative of the workers. Lawyers were not allowed to intervene in the defence.
[4] The Employers and Workmen Act of 1875 conferred these ordinary civil courts jurisdiction over employment disputes (DEAKIN and MORRIS, *Labour Law*, p. 134).
[5] VENEZIANI, "Freedom of Contract", p. 65.

civil contract for services or, as Alonso Olea said, that dependence modifies the civil category of the contract of services to convert it into a contract of employment[6].

Modern French and British studies cast doubt on the second affirmation mentioned above, and deserve our greatest attention[7]. In short, they point out how the modern version of the contract of employment emerged in the factories and not in the fields, as it was not the farmhands, day labourers or servants mentioned in the Civil Code who were in the factories, but rather employees and industrial workers. If we wanted to find a *worthy* precedent, maybe we would find it in the "contract to serve" of the British Master and Servant laws of the 18th century, but the "contract for the provision of services" referred to in Spanish bills of the mid-19th century[8], or the "services contract" of some ancient Civil specialist[9] probably emerged outside the law, that is to say, outside the state legal system, in the large-scale work environments of the factories and the industrial cities, with a multiplicity of names related to the concept of *industrial contract or industrial service contract*[10]. The 19th century factory owner did not waste time negotiating working conditions with a job applicant, but rather in the best of cases he would inform the candidate of the few rules stipulated in the workshop regulations. The industrial service contract was executed simply by accepting the candidate with a brief instruction to start work the following day, as can be seen in the archives of large companies such as Riotinto, Tabacalera or others mentioned below,

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[6] *La materia contenciosa laboral*, p. 34. Among Spanish commentators at the start of the 20th century, perhaps due to the influence of Barassi and other Italian authors, contractual genealogy also predominated, even when they also defended its nature of sale, agency, or partnership: J. MARTIN BLANCO, *El contrato de trabajo,* Revista de Derecho Privado, Madrid 1957, 17 ff; D. CAIRÓS BARRETO, "El origen y desarrollo del contrato de trabajo en España: antecedentes históricos y configuración jurídica actual", *Revista Española de Derecho del Trabajo* 141 (2009), 151-152. Although the rejection of the type of contract for services gave rise to an autonomous model of contract of employment (T. SOSA MANCHA, *La emergencia del contrato de trabajo*, Civitas, Madrid 2002, p. 63 ff., J.L. MONEREO PÉREZ, "La crítica del contato de trabajo en los orígenes del Derecho del Trabajo", *Revista Española de Derecho del Trabajo* 96 (1999), 499 ff.

[7] A. COTTEREAU, "Industrial Tribunals and the Establishment of a Kind of Common Law of Labour in Nineteenth-Century France", in W. Steinmetz (ed.), *Private Law and Social Inequality in the Industrial Age. Comparing legal cultures in Britain, France, Germany and the United States*, Oxford University Press, Oxford 2000, 223 ff.; J. STEINFELD, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870*, University of North Carolina Press, Chapel Hill, 1991; by the same author, *Coercion, Contract and Free Labor in the Nineteenth Century*, Cambridge University Press, Cambridge 2001; S. DEAKIN, "The Contract of Employment: a study in legal evolution", Working Paper 203, ESRC Centre for Business Research, University of Cambridge 2001, in Internet.

[8] Bill on the Manufacturing Industry, presented to Cortes (Spanish parliament) by Alonso Martínez on 8 October 1855, articles 2 and 3.

[9] Q. MUCIUS SCAEVOLA, *Código Civil*, Ed. Rojas, Madrid 1915, vol. XXIV, 2nd Part, p. 22, citing Menger.

[10] G. SALVIOLI, *I difetti sociali del Codice Civile*, 1890, p. 109 of the Spanish translation, *El Derecho Civil y el proletariado*, University of Seville, Seville 1979.

which at that time were adding thousands to their workforces[11]. In many cases these agreements were effectively a prolongation of the guild system, since workers entered as apprentices at the age of six or seven and gradually consolidated their position without any express agreement with the employer, but just with a tacit understanding that they would continue in the job[12].

The large textile factories, the mines and the railways, where tens of thousands of workers laboured in a rhythmic and disciplined fashion to the orders of the foremen, remained outside the law and the jurisdiction of the state with regard to compliance with industrial relations, in a fascinating phenomenon which has led STEINMETZ to talk of a "de-juridification" of employment relations[13]. And, at least in Spain and in other countries, judges applied the Civil Code and regulations on hiring to farmhands and day labourers, but not to industrial workers, as Cottereau indicates[14], and the very few judgements available show this to be the case[15].

Trade unions, joint committees and industrial tribunals appeared to fill this vacuum, but maybe even more important than the non-intervention of the state and its *laissez faire* was the legislators' ignorance of industrial reality. Thus, the draft of the Spanish Civil Code of 1821, in articles 455 and following, referred to "agreements between superior and dependent", and agricultural labourers and domestic servants were mentioned time and time again in its articles, in an idyllic panorama of a "tacit work partnership" where the legislator's main concern consisted in determining the working day. This would be from sunrise to sunset for agricultural labourers, while for domestic servants it would be determined by a tripartite committee, as would the value of a

[11] Río Tinto Minera, in Huelva, 18,000 employees in 1920; Tabacalera, in Sevilla, 6,000 employees in 1870; etc.

[12] Even children of four of five years of age were hired to carry out basic functions such as "blowers" or "teasers" (weft separators) or bobbin carriers, as indicated in Dr. Villermé's famous report on textile workers in the Rouen region in 1840. In the Barcelona textile industry, a fifth of those workers twisting the cotton into balls ("sliverers" or "twisters") were girls between 7 and 15, and among the weavers and spinners there were 9,330 girls beween 10 and 16: JUNTA DE COMERCIO DE CATALUNYA, *Datos estadisticos* y observaciones de una Comisión mixta de individuos de la Junta de Comercio de Catalunya y de la Comisión de Fábricas, Imprenta de Tomás Gaspar, Barcelona 1839, pp. 22-25. In this section, I continue with this theme and develop some aspects of a previous article of mine entitled "La genealogía del contrato de trabajo", *Revista Española de Derecho del Trabajo* no. 135 (2007), pp. 533-557.

[13] W. STEINMETZ, "Was there a De-juridification of Individual Employment Relations in Britain?" in W. Steinmetz (ed.), *Private Law*, op cit., p. 265 ff. In Spain, M. ALONSO OLEA, ·"La abstención normativa en los orígenes del Derecho del Trabajo", *Estudios en homenaje al profesor Gaspar Bayón Chacón*, Tecnos, Madrid 1980.

[14] A. COTTEREAU "Industrial Tribunals", op cit., p. 219.

[15] J. MONTALVO CORREA, *Fundamentos de Derecho del Trabajo*, Civitas, Madrid 1975, pp. 198-199, carries out a historical survey and finds two judgements of the Spanish Supreme Court, of 21 January 1873 and 4 January 1882, rejecting the appeals of a warehouse employee and a factory worker, as they were a daughter and a partner of the employer, respectively.

working day. Later, the Civil Code of 1889 spoke of the contracting for services of farmhands and paid workers, but in its articles 1586 and 1587 it defined the latter as "farmhands, agricultural labourers, artisans and other paid workers", undoubtedly referring to the professions traditionally considered vile until that time, such as pedlars, tinkers, knife-sharpeners, blacksmiths, sheep shearers, butchers, slaughtermen, innkeepers or tanners.[16]. Manresa y Navarro shows categorically that both articles only referred to domestic servants, but not even to all of these: not to governesses, secretaries, etc., but exclusively to "manual servants"[17]. If, at the end of the day, any extension of the Civil Code's contract for services were to be considered, it would possibly have to be considered for the trades described above, which had become dispersed and disunited with the disappearance of the guilds.

When the State abandoned its abstentionist stance and decided to intervene through legislation in order to moderate the social conflict, it made a great effort to recognise the pacifying institutions that had emerged *extra moenia,* such as the committees of good men or the *probiviri*, as within the legal system. However, it did not pay attention to the contractual formula used under diverse variations of industrial contracts, perhaps because at that time the most important thing was to improve working conditions, without the need to enter into the nominalist dispute. Maybe for this reason the characteristics of the contract of employment remained anchored in the same contractual type as that which is precisely what is purported to be the opposite, free contract for services, as if at some time a proletarianization of this concept had taken place: a multitude of jurists set to work to legally "dignify" the contractual *fiction* that Giugni talked about, and while some assigned it to commercial contracts and others to public contracts, perhaps the majority classified it as special contract for services[18].

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[16] A Royal Decree of 18 March 1783, that had been incorporated into the *Novísima Recopilación* of 1806 (a new recompilation of law code), tried to overcome the consideration of such trades as vile: "I declare that not only the occupation of tanner, but also the other trades and occupations of blacksmith, tailor and cobbler, carpenter and others of this ilk, are honest and honourable, that the practice of them does not vilify the family or the person that exercises them, nor does it disqualify them from obtaining the municipal employments of the republic in which the artisans or craftsmen who practise them are settled, and neither should these trades and occupations prejudice them from the enjoyment and prerogatives of the nobility".

[17] J.M. MANRESA Y NAVARRO, *Comentarios al Código Civil español*, Editorial Reus, Madrid 1987 [1890], p. 689.

[18] The confusion reached such extremes that still in 1931 the great Carnelutti classified the contract of employment as a form of sale (cited by G. VARDARO and B. VENEZIANI, "La Rivista di Diritto Commerciale e la dottrina iuslavoristica delle origini", *Quaderni Fiorentini* 16 (1987), p. 481. In Italy, meanwhile, at the end of the 19th century, some were proposing a special regulatory law (Cavagnari, Tartufari, Jannaccone, Modica, Gianturco), while others defended its inclusion in the Civil Code

Once again the nuance can appear to be insignificant, although it allows us to affirm that labour law, including the contract which serves as its basis, emerges outside the state, and it is incorporated into the state legal system very belatedly, when the first laws start to validate what has been accomplished through collective agreements.

Between the industrial service contract and the contract of employment there was, therefore, a considerable lapse of time, during which the vertical, authoritarian and despotic relationship between master and worker or, as the draft of the 1821 Civil Code put it, between superior and dependent, gradually acquired a greater sense of horizontality and equality. I have just alluded to the main source of such a change, collective agreements, but there is still one more detail that needs pointing out: before collective agreements there was a source, which was neither negotiated nor agreed, that started the democratising spiral, and which was usually mentioned by the generic name of "professional custom and practice". Decisions of the French *conseils de prud'hommes*, initially composed of employers and masters; decisions of the chambers of commerce of the industrial cities; decisions of the arbitration boards formed here and there by the municipalities, when it was not the mediating interventions of the town or city councils themselves or of the government authorities, comprised a dense network of labour standards and good labour practices as the immediate precedent of collective bargaining between trade unions and employers.

The above-mentioned professional custom and practice –coutûme ouvrière- of those times has very little in common with the classical notion of custom as habitual or customary use, and for this reason I prefer to refer to the body of collective decisions emanating from boards, councils, courts and arbitrators by using the term *labour standards*, very similar to what would later come out of collective agreements.

There is a premise that is common to the agreements, awards and decisions of the authoritarian century. To some extent it has been expounded by K. Sisson, and in Spain it has been defended by M. Sánchez Reinón[19]: the impetus of the labour movement placed the pacific maintenance of control by employers in a very special position within company strategy, but such a strategy took shape within two spheres of action. On the

(Salvioli, Vadalà-Papale and Cogliolo): CASTELVETRI, *Il diritto del lavoro dalle origini*, op cit., 240-241.

[19] K. SISSON, *The Management of Collective Bargaining: An International Perspective*, Blackwell, Oxford 1987 (Spanish translation: Los empresarios y la negociación colectiva, Ministerio de Trabajo y Seguridad Social, Madrid 1990); M. SÁNCHEZ REINÓN, "El conflictivo y problemático proceso histórico de institucionalización de la negociación colectiva en España (1873-1936), *Cuadernos de Relaciones Laborales* 9 (1996), 209 ff.

one hand was the social sphere, where employers accepted sharing the management of personnel with the trade unions by means of collective agreements, and on the other hand the economic sphere, where the management of the production process and the economic performance of each company remained exclusively in the hands of the employers. The distinction between two spheres helps us to try to work out the nature of collective relations that gradually achieved a balance between the individual parties thanks to the regulation of standards of working conditions.

In my view, an employer's total dedication to profit (economic sphere) leads him or her, in the last analysis, to fail to optimise the organisational control over the staff (social sphere), control which may go on to be contested by the trade union, and blocked in key moments. Employers, either individually or collectively, have to accept a joint regulation of working conditions and labour relations in order to maintain ultimate control, economic control, over the company. Of course the trade union power we are talking about will exist either in cases with high affiliation (1), in which case the compromise of employers will tend to be permanent, or in cases with relative affiliation during situations of high tension (2), in which case the will to reach collective agreements with the union will only exist at these times, and they will be a kind of peace treaty which will be broken by the employer at the first opportunity[20]. The countries whose trade unions are not capable of controlling their human resources will not be able to achieve a stable negotiation process of one kind or the other. We find ourselves, in short, before a problem of conflicting controls in two different but connected spheres, whose pacific solution essentially consists in a joint regulation of individual working conditions.

Examples of the first situation can be found in what we could call first generation summit agreements, when the maximum employers' and trade union organisations solemnly agreed on a *status quo* in the United Kingdom (agreement of the engineering industry sector of 1897[21]), Denmark (September Compromise of 1899[22]) and Sweden

[20] In a similar sense SÁNCHEZ REINÓN, *op. cit.*, p. 212, summarising K. SISSON.

[21] "The greatest struggle between Labour and Capital that this country has ever seen", as it was described at the time, as R.O. CLARKE comments, in "The Dispute in the British Engineering Industry 1897-1898: An Evaluation", Economica 94 (1957), p. 128. The main protagonist of the conflict was the Amalgamated Society of Engineers, ASE, in confrontation with the employers of the engineering industry.

[22] Septemberforlig (September Compromise) between the Employers' Organisation (DA) and the Confederation of Trade Unions (LO).

(December Compromise of 1906[23]), by virtue of which the employers' power of direction was definitely established in exchange for the recognition of the trade unions and of their representative activity. In all three cases there was a general strike in the country's most strategic sector, or in the whole country, accompanied by a massive lock-out, whose long duration put the trade union organisation against the ropes. The cause can be resumed in the words of Sidney and Beatrice Webb describing the great British conflict of 1897: the insistence of the employers on being the bosses of their own workshops, understanding by that, among other things, the right to introduce the new working methods that they consider to be more convenient and any new system of remuneration related to performance[24].

Examples of the second situation can be found in what we could call second generation summit agreements, when employers and unions, in conjunction with the government of the country, solemnly agreed to end the conflict, for instance in France (Matignon Agreements of 1936[25]).

In this way the individual employment relationship acquired a balance which allows us to speak of something more than the mere authority of an employer over his subordinates, and at the end of the 19th century a situation could already be envisaged which pointed the way towards a minimally "civil" contract, maybe not between equal parties, but at least not between an autocratic master and his serf. This was the moment when the legislator also decided to intervene in order to limit the excessive power of employers, in a long progression of rules and regulations which was to last until the complete development of the system, at the end of the Second World War[26].

In Spain the first mention of the contract of employment had very little to do with the concept we are studying, and then it gradually approximated. A quick look at PARES, the Spanish archives portal of the Ministry of Culture, to search for this term from 1850 onwards, offers the following information:

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[23] Between the employers' federation SAF (today SN) and the trade union LO. For more on the basic Nordic agreements, see O. HASSELBACH, "The Roots: The History of Nordic Labour Law", in P. Wahlgren (ed.), *Stability and Change in Nordic Labour Law*, Stockholm 2002, 16 ff.

[24] S. and B. WEBB, *Historia del sindicalismo, 1666-1920*, Ministerio de Trabajo y Seguridad Social, Madrid 1990 [from the fourth British edition of *History of Trade Unionism* in 1920], pp. 460-461.

[25] Following the triumph of the Popular Front in June 1936, the working masses paralysed the country's industries and the Confederation of Employers, the General Confederation of Labour (CGT) and the socialist government signed an agreement which raised wages by 15 per cent, introduced the 40-hour working week, extended holidays to 15 days and recognised collective bargaining. A million strikers went back to work.

[26] The situation of Great Britain, which starting from 1793 had begun to legislate in favour of the workers in certain specific aspects, stands out as different in the given panorama.

-Contract of employment between the trade union "Sindicato Metalúrgico Montañés" and the employers of the iron and steel and metallurgical sectors of Santander and its province and 'Las Forjas' of Los Corrales de Buelna[27].

-Diverse "contracts of employment" between Madrid's Teatro Real and various opera singers, including arrangements in Paris, Rome and Madrid, starting with that of the soprano Helena Theodorini in 1888[28], and followed by that of the tenor Emilio di Marchi in 1891[29], the mezzo-soprano Maria Giudici in 1892[30], the soprano Josefina Huguet in 1893[31], etc.

-Already in the XXth Century, Supreme Court, Appeal no. 8/1913, Raimundo Torres Grau versus "La Cosmopolita", association of cart drivers of the Barcelona City Council, on compliance with the contract of employment[32].

Even before this appeal, in 1902, a Royal Order of the Ministry of Grace and Justice contemplated the reform of the Civil Code in order to introduce up to eight types of employment contracts in the part of contracts for services[33], and the same year a Royal Decree obliged the contractors of public works to stipulate the duration, working hours and pay of the workers' contracts of employment[34]. In 1908, the Law of Industrial Tribunals confusingly mentioned the contract of employment, together with those of contract for services and contract of apprenticeship, as within their jurisdiction[35]. Diverse bills of that time attempted to validate the category of the contract of employment, in 1904, 1906, 1908, 1910, 1914, 1916, and 1919, until it finally appeared in the Labour Code of 1926. In the Spanish archives, the first documented reference to the *nomen* "contract of employment" applied to a contract with a typical present-day content is the one signed on 30 August 1924 and which has the archival reference of "Contract of employment as machinist of Bravo, Emilio"[36], along with another "Contract of employment of Daniel Gantes" of 1 October 1924[37].

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[27] Archive: Centro Documental de la Memoria Histórica. Catalogue number: PS SANTANDER_L,C.425,EXP.2.

[28] Archive: Sección Nobleza del Archivo Histórico Nacional. Catalogue number: MICHELENA,C.5,D.124-134

[29] Sección Nobleza del Archivo Histórico Nacional, Catalogue number MICHELENA,C.5,D.50-88.

[30] Sección Nobleza del Archivo Histórico Nacional, Catalogue number MICHELENA,C.5,D.116-123.

[31] Sección Nobleza del Archivo Histórico Nacional, Catalogue number: MICHELENA,C.5,D.184-199

[32] Archivo Histórico Nacional, Catalogue number FC-TRIBUNAL_SUPREMO_CIVIL,602,EXP.

[33] S. PÉREZ AGULLA, *El trabajo autónomo. Un estudio jurídico*, unpublished thesis, in Internet, Madrid 2009, p. 27 ff.

[34] Royal Decree of 20 June 1902.

[35] Article 5.1, Law of 19 May 1908.

[36] Archive: Centro Documental de la Memoria Histórica. Catalogue number: PS-MADRID,954.

[37] Archive: Centro Documental de Memoria Histórica, Catalogue number: PS-MADRID,874,85.

2. Geography of subdevelopment in the emergence of the contract of employment. Andalusia during the Industrial Revolution.

The south of Europe, especially Sicily and Andalusia, was left behind by the Industrial Revolution to such an extent that it appeared to be another country and another time. The degree of illiteracy in Andalusia was around 80 per cent in 1860, far above that existing today in the countries with the highest rate of illiteracy in the world, Mali or Afghanistan[38]. There was practically no possibility of emigrating, as the great maritime routes to America departed from the north of the country (La Coruña, Santander), and workers, with their meagre wages, could not afford the journey to those ports and the passage to the other continent.

The working population was mainly divided between agricultural day workers and domestic servants, in such an overwhelmimg majority that this may possibly explain the references made to them in the Civil Code. There were very few industrial workers and artisans, in spite of this being the period of the development of the Industrial Revolution, and in any case these were spread out among isolated small and medium-sized companies of which no trace remains in the archives. Neverthless, some large factories not related to the textile industry or machinism in its purest sense started to appear in the region, mainly from the second half of the 19th century onwards: in Seville, related to the cultivation of tobacco, the ceramics industry, the production of electrical energy or the manufacture of armaments[39], without overlooking the great business zone of the river port, which the customs had occupied during centuries for the trade with America[40]; in Huelva, the extraction of minerals – copper and pyrites – in its

[38] 83.4 per cent in the province of Seville, in A. M. BERNAL, *La lucha por la tierra en la crisis del Antiguo Régimen*, Taurus, Madrid 1979, p. 395. In the south of Italy, four fifths of the population was illiterate at the end of the 19th century, as indicated by D.M. SMITH, *Modern Italy; A Political History*. The University of Michigan Press, Ann Arbor 1997. In Mali it is currently 73.8 per cent, and in Afghanistan 72 per cent, according to UNDP - *Statistics for Human Development Report 2009*.

[39] Real Fábrica de Tabacos, Cerámica Marqués de Pickman, Compañía Sevillana de Electricidad, Real Fábrica de Artillería, Cervezas La Cruz del Campo, etc. For an overall vision, see C. ARENAS POSADAS, *Sevilla y el Estado. Una perspectiva local de la formación del capitalismo en España (1892-1923),* University of Seville, Seville 1995, p. 131 ff. The Spanish Industrial Revolution had started in Barcelona and Seville, according to M.C. PALOMEQUE and R. GOMEZ RIVERO, "Los inicios de la Revolución Industrial en España: la fábrica de algodón de Sevilla (1833-1836)", *Revista del Ministerio de Trabajo e Inmigración* 46 (2003), 185 ff.

[40] Junta de Obras de la Ría del Guadalquivir y Puerto de Sevilla.

extensive mining area, led by the powerful mines of Riotinto[41]; and in Cadiz, the large wine cellars of the Sherry producers of Jerez[42].

The contractual starting point in all cases, of industrial workers, farmhands or agricultural day labourers, was common to what we see in the rest of Europe: during all this time, workers agreed their incorporation into the company without conditions, as these were laid down by the employer. In 1901 the reports of the Institute of Social Reforms showed that this situation still existed for agricultural labourers ("gañanes"), while in other occupations collective bargaining was already beginning. Agricultural labourers contracted their services for a specific year and season, without specifying pay or working conditions, which were stipulated by the landowner, and slept in the farm outbuildings, visiting their family once or twice a month[43].

The form of contracting was pure hierarchy, labourers accepted the working conditions imposed unilaterally by the employer or "master", and lasted throughout the 19th century, even to the extent of reaching the large urban factories, despite the first strikes that started to appear. Workers were simply admitted into the organisation or not, and fitted in with existing rules and regulations[44]. Thus, for example, the Port of Seville

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[41] C. ARENAS POSADAS, *Empresa, mercados, mina y mineros. Riotinto, 1873-1936*, Universidad de Huelva-Fundación Riotinto, Huelva 1999; D. AVERY, *Nunca en el cumpleaños de la Reina Victoria. Historia de las minas de Riotinto*, Labor, Barcelona 1985 (first edition, London 1974); a fictionalised story about Riotinto in 1888, in J. COBOS WILKINS, *El corazón de la tierra*, Random House-Mondadori, Barcelona 2007.

[42] In the period from 1823 to 1844 there were already forty-one wine-producing companies in Jerez de la Frontera. A list of them and their characteristics is set out in J. MALDONADO ROSSO, *La formación del capitalismo en el marco de Jerez. De la vitivinicultura tradicional a la agroindustria vinatera (siglos XVIII y XIX)*, Huerga y Fierro Editores, Madrid 1999, p. 213.

[43] INSTITUTO DE REFORMAS SOCIALES, *Resumen de la información de los obreros agrícolas en Andalucía y Extremadura*, Madrid 1902. At the end of the 19th century, the food of an Andalusian agricultural labourer was just "gazpacho" (a cold tomato soup) for a 16-hour working day and a daily wage of about 2.5 reales, insufficient to maintain the family; likewise, the food of an agricultural labourer in the centre of Spain was soup. Only in the damp north did the food provided by the employer contain any meat: J. HIDALGO DE TABLADA, *Tratado de administración y contabilidad rural arreglada a las condiciones de la labranza española*, Librería de Cuesta, Madrid 1875, pp. 216-217. During the same period, the revolutionary committee of harvesters of the Jerez de la Frontera region defended the following demands: 1st. The time to agree on a day's work would be from 6 to 7 in the morning, they would set off for work at 7, and return to the town or village at 7 in the evening; 2nd. Work according to outside custom would be from sunrise to sunset including going to work and coming back; 3º. Harvesting would be paid by the day, and piecework would be abolished (J. HIDALGO DE TABLADA, *op. cit.*, pp. 218-219).

[44] Around the end of the century the royal factories, such as the tobacco factory in Seville, established regulations and trials for admission, first for the technical staff, and then for the labourers. The system for allocating posts was by lottery. In the Seville tobacco factory, furthermore, due to the fact that there was a shortage of men after the war of independence and women were hired, a system of priority of hiring was established for the daughters of women tobacco workers: F. COMIN COMIN and P. MARTIN ACEÑA, *Tabacalera y el estanco del tabaco en España 1636-1998*, Fundación Tabacalera, Madrid 1999, p. 241 ff. In this analysis I deliberately omit the background of Andalusian peasant revolts, of which there were many and of great importance, sparked off by the critical situation which the sale of the property of the

recruited personnel by means of public recruitment and selection procedures[45], while in order to admit applicants the Tabacco Factory required them to be aged between 14 and 30, show themselves to be strong and willing and present certification from their parish priest vouching for their good lifestyle and customs[46]. Río Tinto Minera started to label the incorporation of personnel as contracts of employment or commitment as late as 1931[47], that is, when the Contract of Employment Law of the same year had typified the *nomen iuris*.

It was difficult for the contractual model to flourish, in any case, due to the existence of at least three institutions that hindered it, specifically:

a) The habitual practice of the "internal market", where the worker entered as a child and spent the whole of his professional career in the same company, rising to higher posts at the suggestion of the employer.

b) The practice of "authorisation" in the admission of workers by companies, by virtue of which the employer *permitted* a worker to start work in his organisation.

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town halls and the Church had left them in, paradoxically with the intention of sharing out the land among the landless (as Giolitti would do in the south of Italy decades later), but in practice with the result of accumulating more property among the rich and powerful, especially after the Law of 1 May 1855. As regards the trade union movement, it was anarchist from the outset, and spoke about revolution and the redistribution of land. It is my understanding that there are many, and very good, studies on these topics, and what is being dealt with here are the attempts to make working conditions more uniform which, by pacific means, put an end to the despotism of the owners in order to convert them into employers and one of the parties to the contract of employment. The main focus of this analysis, therefore, will be collective bargaining, and once again we will overlook the mechanisms of labour pressure, still illegal at that time, that would be required: so, for example, the first strike of Andalusian agriculture, in the summer of 1883, of the harvesters of Jerez, which saw scuffles, police and the use of the armed forces as strikebreakers: P. CARRIÓN, *Los latifundios en España*, Ariel, Madrid 1975 [1932], p. 60.

[45] The historical archive of the Junta de Obras de la Ría del Guadalquivir y Puerto de Sevilla contains a personnel section broken down into the following subsections: 3.3. Personnel 3.3.1. Records of modification of staff 3.3.2. Records of job announcements and filling of posts 3.3.3. Personal records 3.3.4. Disciplinary records 3.3.5. Records of industrial accidents 3.3.6. Records of personal remuneration 3.3.7. Records of "montepío" (similar to friendly societies) and social action 3.3.8. Trade unions.

[46] J.M. RODRIGUEZ GORDILLO, *Historia de la Real Fábrica de Tabacos de Sevilla*, Universidad de Sevilla-Focus, Sevilla 2005, p. 145.

[47] J.M. PÉREZ LÓPEZ, "El Archivo Histórico Minero de Fundación Río Tinto como ejemplo de archivo del mundo del trabajo", Arch-e.Revista Andaluza de Archivos 2 (2009), in Internet. The data of personnel are grouped in the following folders: record of service (A), job application (B), personal reports for access to work (C), transfers (D), alternate hiring and firing (E), notifications of alteration of wages (F), declaration of having had holidays (G), diverse information and personal background (H), medical reports (I), declaration of physical condition (J), industrial accidents (K), permit to inhabit a Company house (L), contract of employment or commitment (M), from 1931 onwards, receipts (N) and years of service (O). At the same time they were divided into numerous groups such as B1a (Retired), B1b (Military service), B1c (Temporarily off work), B2a (Special aid to leave the job), B2b (Indemnified), B2c (Deceased), Fixed daily wages, Women off work, Sandal shop women, Apprentices, Huelva Men, Huelva Women, Widows, San Miguel mines and La Ratera, Zumajo, Rejected men, Rejected women, and Timekeepers.

c) The practice of work gangs, consisting in contracting groups of workers with a total remuneration for the gang, to be shared out among them afterwards[48].

However, something was starting to change, and it was in agriculture, where the big landowners of the Guadalquivir valley discussed the wages of the day labourers in the towns' casinos and they made them all the same to avoid conflicts, thereby establishing the first standards. In the 1830s a fiscal event led to a profound change in the habits of these landowners: the legislation on municipal councils passed in this decade created a board of important contributors in each town. This board was given the responsibility of making a register of the area of rural properties and keeping a record book evaluating the wealth of the municipality. When the provincial councils took responsibility for distributing the tax burden between the towns and villages of the province, setting the wages necessary for the cultivation of the land became a crucial element of their calculations, and the struggles inherent in such a hotly disputed and problematic distribution honed to the limit what had to be paid for the human labour involved in farming the different types of crops[49]. These record books of municipal wealth reached limits difficult to imagine in their delimitation of taxable income, taking into account the type of land, crops, required tasks, wages of men, women and children, yield of the land, etc.

There was little opportunity for the intervention of the workers in setting wages, but at least the working conditions were determined in an objective manner and it was not permitted to pay either less or more than what was established in the record books. Meanwhile, at the other end of the country, in Barcelona, the committee of factories and the joint committee of factory owners and operators, which was to last for seven years, appeared[50], and the textile sector witnessed the first collective agreement.

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[48] Its current regulation, in article 10.2 of the Workers' Statute.

[49] HIDALGO TABLADA, *Tratado de administración y contabilidad rural arreglada a las condiciones de labranza española*, Madrid 1875; A. M. BERNAL, *La propiedad de la tierra y las luchas agrarias andaluzas*, Ariel, Barcelona 1974, 25 ff. I am grateful to this author for the long and detailed conversations and astute and pertinent advice on the treatment of this topic that he was kind enough to share with me during the preparation of this article.

[50] MALUQUER ROSES and GODAY PRATS, "Primeras manifestaciones del arbitraje y la paridad en Barcelona (1835-1842)", *Revista Social* 4 (1928), p. 337 ff.; M.J. SPUNY, "La comisión mixta del trabajo en el comercio de Barcelona", in S. CASTILLO and J.M. ORTIZ DE ORRUÑO (eds.), *Estado, protesta y movimientos sociales*, University of the Basque Country, Bilbao 1998, p. 167 ff.; J. MONTERO AROCA, "Notas sobre la historia de la jurisdicción del trabajo: comités paritarios y jurados mixtos", *Revista de Trabajo* 54-55 (1976), p. 41 ff.

I think that this first employers' movement of collectively setting wages, although unilateral in its adoption, should not be underestimated. The situation of the working class, the social issue, was starting to make an impression on citizens, and the progressive parties, together with the first trade unions, made their voices heard in the parliaments and other representative bodies[51]. The debates among the employers themselves about how the workers should be treated began to tone down the severity of class feelings towards the opposing party. When, after decades of a corporate vacuum, the Chambers of Commerce, Industry and Navegation were established by the Decree of 1886, one of the first debates in Seville's Chamber dealt with the creation of an auxiliary fund to provide aid for sick, disabled and retired dock workers, which an overwhelming majority voted in favour of despite the opinion of one of the directors, Mr Santaolalla, who initially was not in favour of the retirement pensions[52].

We know that the Italian chambers of commerce played an important role in establishing unilateral labour standards, exercising their influence over members by means of establishing "custom and practice" for wages and other working conditions in different economic sectors. These were then accepted and observed by the parties and complied with, or argued by private arbitrators in diverse conflicts between employers, and between employers and their workers. This has been commented on by authors of the stature of Carnelutti, Vardaro or Veneziani, when they affirm that such uses of the chambers of commerce constituted an effective corrective to the assymetry of social power in the employment relationship. This relationship was now disciplined not only by the volition of the individuals involved, but also by this typical partial regulation which, even though it did not have the characteristics of a legislative act, could and did exercise an important influence over the contracting parties[53].

The Spanish chambers of commerce do not seem to have had the special importance that is attributed to their Italian namesakes, even thought they did intervene in some way in the conflicts between employers and workers. Thus, the historical

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[51] See C. ROBLES MUÑOZ, "La Condición moral de los obreros en los informes de la Comisión de Reformas Sociales, 1884-1886", *Revista de Política Social* 142 (1984), 79 ff.; COMISION DE REFORMAS SOCIALES; *Información escrita practicada en virtud de la R.O. de 5 de diciembre de 1883*, Minuesa de los Ríos, Madrid 1890, two volumes.

[52] Minutes of the meeting of the board of directors of the Seville Chamber of Commerce, Industry and Navegation of 2 May 1906. Chamber archives, minute book.

[53] G. VARDARO and B. VENEZIANI, "La Rivista di Diritto Commerciale e la dottrina iuslavoristica delle origini", *Quaderni Fiorentini* 16 (1987), p. 465, using F. Carnelutti's words from his article "Un surrogato della legge sul contratto di impiego", Rivista di Diritto Commerciale I (1909), p. 274. The Italian Chambers of Commerce had been created by the Law of 1862.

archive of the Seville Chamber of Commerce contains references to some important conflicts, such as the demands of shop assistants and the conflict of the workers and seamen of the city's ria and port, where we see that the corporate institution played an active role through mediation, although with somewhat inconsistent results. The city's fluvial port still preserved remains of its prior importance in the substantial import and export activity maintained by its shipping agents and shipowners, and the Chamber of Commerce set itself up as the mouthpiece of the important export business, of the shipowners and of the national interests of the Sevillian bourgeoisie, as Arenas Posadas comments, with the opposition of the associations of traders and manufacturers who fought against losing their precious isolation, as the same author affirms, or whose local activity was not affected by international competition[54].

3. The Seville Chamber of Commerce and the creation of labour standards.

The mediation of the Sevillian Chamber of Commerce started belatedly and in an uncertain fashion in 1908, when the guild union of food and drink retailers approached it to request its support in relation to the change to the Law of Sunday Rest of 1904, as the obligation of resting on Sundays was extremely detrimental to their interests. The union president declared that, although they were in favour of a weekly day of rest for workers, he considered the law to be prejudicial and unjust and a violation of the freedom to work[55].

In view of the negotiations which took place and which lasted for a year, greater importance was given to mediation in the conflict over the duration of the working day of shop assistants of the city's textile guild. The employees were exerting pressure to try to end their working day at 7 pm, and the Chamber of Commerce agreed to contact the "bosses" of the fabric and textile shops in order to hear their opinion. The Chamber did not seem to have much authority, given that they sent various "circulars" to the employers communicating their employees demands and requesting their opinion, without success. For this reason the shop assistants had to reiterate their demands,

[54] C. ARENAS POSADAS, *Sevilla y el Estado, 1892-1923: una perspectiva local de la formación del capitalismo en España (1892-1923)*, cit., p. 43.
[55] Minutes of the meeting of the Board of Directors of 4 November 1908, Historical archive of the Seville Chamber of Commerce, Industry and Navegation.

which were put off by the Chamber on various occasions[56], until it was finally agreed to arrange a meeting with the representatives of the Seville Shop Assistants' Association in order to examine the responses obtained and note down whatever they considered to be appropriate[57]. During the appearance of the trade union leaders, they asked the Chamber to summon the “bosses” of the textile warehouses to a meeting to discuss the matter. This meeting with the employers did actually take place – but without the presence of the trade union – and at this meeting it was agreed that it was inappropriate to close at the requested time while other traders did not do likewise[58].

The mediation capacity of the Sevillian Chamber had not really got anywhere until suddenly, in 1911, a conflict erupted between sailors and dockers and the shipping companies and shipping agents of the port of Seville, over increases in the wages to be received. There already existed a wage “rate” agreed thirty-eight years before and which, greatly modified through time by “partial agreements”[59], was preserved by the seamen’s and dock workers’ trade union, as proof of the need for a new agreement[60]. The Chamber first intervened after receiving a long letter from the seamen’s and dock workers’ trade union urging it to intervene so that their negotiations with the shipowners and shipping agents could reach a successful conclusion. The Chamber’s first reaction was to reply that the wage rates expressed in the letter had been signed by different people, and that it would be convenient to unify the trade union’s

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[56] Minutes of the meeting of the Board of Directors of 1 December 1909 and 29 January 1910, ibid. In the latter the president comments that only 20 companies had answered, with diverse and contradictory replies.

[57] Minutes of the board meeting of 29 January 1910.

[58] Minutes of the board meeting of 1 June 1910.

[59] Mr Gregorio Santaolalla’s participation in the board meeting of 7 June 1911, p. 42 of the Minute Book of the Seville Chamber of Commerce, Industry and Navegation of 1905 and following: there are very few copies of it, and it must be said that it cannot serve as a guide because it had been completely reformed by partial agreements that were not written and not all of them are known.

[60] I have not found any record of such wage rates in the historical archive of the *Junta de Obras del Puerto* (Port Works Authority), partly destroyed by a fire in the 1970s and in a poor state of preservation. The rates were drawn up when the Port Works Authority was starting up, and for this reason it is quite probable that they were unilateral wage rates set down by the port authority. In the *Censo-Guía de Archivos de España e Iberoamérica* (Ministry of Culture), Reference code ES.41091.2043/1, the following is recorded: the creation of the “juntas de obras del Puerto” was authorised by a decree of 25 November 1870, and was charged with the responsibility of executing the works and funded by arbitrary municipal taxes and special resources with which to satisfactorily carry out its mission. From 1871 to 1879, when Jaime Font was in charge of the work, the political turmoil and the poor economic situation put a brake on the activities undertaken, which were limited to maintaining the state of the river just as it had been inherited. In 1902, Luis Molini, director of the Port Works Authority), drew up a general project of improvement work of the navigation of the estuary of the Guadalquivir river and its mouth, and of the port itself. The work, which in the beginning was expected to be completed in a short period of time, suffered a series of interruptions due to the poor financial situation of the Port Authority, and above all as a result of the great European war which caused an important slowdown of commercial activity from 1913 to 1919.

representation[61], to which the union responded that each rate had been signed by two workers of each company, and that in a meeting held subsequently a single committee had been named to represent the union in the negotiations. The next step consisted in a meeting of the union with the board of directors of the Chamber's shipping section[62], in which an agreement was reached over a list of rates for the different tasks to be carried out on the ships anchored in the port[63]. The minutes of the session show that "the shipowners and shipping agents promised on their own behalf and on behalf of the companies they belonged to or represented to comply with the agreed rates faithfully and exactly. An equal commitment was made on their own behalf and on behalf of the trade union of seamen and dock workers of this port by the individuals of the above-mentioned committee, named by the said trade union to such effect".

The next round was initiated immediately, with the aim of approving the rates for loading and unloading the different types of merchandise. This was far more complex due to the enormous variety of commercial goods that the port dealt with, and which affected practically all of the city's activities, and comprised a total of 472 items. On this occasion, the Chamber's Trade Section was convened to negotiate the rates. The president of the Trade Section considered that in order to have sufficient understanding of all issues it was necessary to summon all of the members of the Chamber to a meeting[64], and even as many of the city's traders as saw fit to attend[65]. The general

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[61] Minutes of the board meeting of 7 June 1911.

[62] The meeting, held on 19 May at 9:00 pm, convened nine trade union representatives, with the union president, Mr. Antonio Huerta, at the head, and seven employers/businessmen, headed by the president of the Chamber's shipping section. Mr. Antonio González Ruiz, secretary of the Chamber, acted as secretary for this meeting.

[63] For example, for an eight-hour working day in this port, according to custom, six pesetas. Sundays, twelve. Work outside the port, for an eight-hour day, including the time employed in going from the port to the place where the work was to be carried out and the return to the port, 7.50 pesetas. Overtime in all cases and circumstances would be paid at the rate of 1.50 pesetas per hour. Payment of all work would take place wherever the shipping companies or shipping agents decided, but it must never be in taverns or "aguaduchos" (small open-air cafés), or in any other class of establishment where wines and spirits were sold.

[64] The Chambers of Commerce, Industry and Navegation were of voluntary membership at that time, and 301 employers were members of Seville's Chamber at the start of the century. Shortly after the events being recounted took place, these institutions were converted into Corporations of mandatory membership, with functions of representation of industry, commerce and navigation.

[65] "Mr. D. Romualdo Jiménez [president of the board of directors of the Trade Section of the Chamber] commented on how difficult it was to examine wage rates that contained 472 numbered items and some more unnumbered items, not to mention special rates for wood and coal, with a number of notes for the application of the said rates", state the minutes. "It is clearly impossible for any individual of the committee to know if the jobs relating to the numerous articles and items referred to have been assigned an appropriate or inappropriate rate: he could know those that constitute his own business well, but not the others. For his part, he knows the wood sector and can confirm that the pay rise demanded by the workers would be an increase of more than one hundred per cent of what is currently paid for the

president of the Chamber was not of the same opinion, and advocated dividing the negotiations up into groups of similar lines of business or related professions, a proposal which in the end prevailed[66]. Negotiations were initated with the wood sector, and these were entrusted to the president of the Chamber's Trade Section, who at the same time operated as a wood importer and stockholder. He was to call a meeting of employers in the sector and reach an agreement with respect to setting their corresponding rates, at which time the Chamber's board of directors would determine "what is considered to be appropriate for subsequent work and for a resolution of the matter".

The said importer and stockholder had come out very strongly against the trade union's proposal, which in his opinion would push up the rates by 100 per cent. For this reason, the board of directors' proposal to start with his sector could well be imagined as an indirect ploy to stop the initiative in its tracks. Surprisingly, the president of the Trade Section caried out his task in an exemplary fashion by visiting all of the employers of the guild, who, equally surprisingly, "unanimously recognised the need to improve the conditions of the working classes who perform the tasks of loading and unloading the timber", declaring "that they were willing to accept a formula of consensus, to which end they were at the disposal of the Chamber". The Chamber then decided, at the following month's meeting, to entrust the same director, the president of the Trade Section, to also convoke a meeting of coal importers, as both sectors, wood and coal, were those that most urgently needed reforming, in the opinion of the trade union of seamen and dock workers. That board meeting ended with some very expressive declarations by the president of the Chamber, in the sense that "it was necessary to take advantage of this occasion to set a modern rate of pay, as the old one was no use at all"[67].

As was only to be expected, the wood and coal sectors reached an "agreement" with the trade union, which the president of the Trade Section communicated to the Chamber's board of directors, which "received the news with satisfaction".

The wage rates for the different jobs working with wood in the port were as follows: work in the ship's hold ("unloading"), at 2.50 pesetas per *pallet*. Unloading

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different items recorded for work in the port, for which reason he affirms, of course, that the rate is totally unacceptable".

[66] Mr. Jiménez, president of the Trade Section of the Chamber, desisted from making his proposal, but not without first emphasising the need of "merchants and industrialists working together in unison to defend their legitimate interests in the face of the community of workers as a whole who, taking advantage of the strength that their solirality (sic) gives them, endeavour to impose prices and conditions for their work that could not be sustained by our businesses." (Minutes of 7 June 1911, p. 43).

[67] Minutes of the meeting of the board of directors of 5 July 1911, p. 52.

from the ship, at 2.25 pesetas a pallet. Work on the dock or in warehouses (receivers, put-away workers and stackers), 5 pesetas for an eight-hour day. Loading wood in wagons, 4.50 pesetas for the same working day. For Galician wood or other wood from the kingdom, a peseta per ton.

With regard to the wage rates for the different jobs working with coal in the port, they included the following prices: work in the hold was paid differently according to whether the work was with coal or coke, and whether loading and unloading or transfer from ship to ship (between 0.90 and 1.15 pesetas per ton). The wages for unloading onto the dock also varied depending on whether the coal had been weighed or not, or whether the unloaded coal was ready for loading into wagons, but not weighed (between 0.10 and 1 peseta per ton). The rate for removing coal from the dock also varied depending on whether the coal had been weighed or not. Furthermore, there were other rates for loading and unloading materials in the secondary docks of the city (Triana and San Juan de Aznalfarache)[68].

Not everything could go so smoothly. Various coal-exporting companies declared that the agreement requested by the trade union was totally unacceptable, as this product was excessively taxed for different reasons, and both production and exports were in decline. They argued that increasing the rates of pay in these circumstances would be a total disaster for the mining industries that used these docks, that it would reduce trade in the sector significantly, and for this reason they warned the Chamber that it should notify the union of seamen and dock workers of the gravity of the situation[69]. The board of directors agreed to pass on this assesssment of current circumstances "when the Board considered it to be convenient, so as not to hinder the approval of the rates of other articles that were under discussion[70].

The negotiations in the port seemed to affect the whole city, which had been so closely linked to the export and import of products since the times when it was the

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[68] Minute book of 1905 and following, p. 59. The city was expensive for the workers: a kilo of meat cost 2.22 pesetas, much more than what was paid in Bilbao. For a comparison of prices between Seville and Bilbao at that time, see A. SOTO CARMONA, El trabajo industrial en la España contemporánea (1874-1936), Antrophos, Barcelona 1989, p. 254.

[69] The port of Seville suffered direct competition from the thriving port of Huelva, just 90 kilometres away, where the majority of non-ferric minerals from the Subbetic region were loaded on docks constructed by the French engineer Eiffel with British capital. The port of Seville loaded mineral proceeding from the mines of Aznalcóllar and Cala, and had been renovated in 1901 specifically to accommodate a wharf for minerals and various pontoons equipped with the most modern systems. For further details, see A. ZAPATA TINAJERO, *La reconversión del puerto de Sevilla en la primera mitad del siglo XX: de los muelles fluviales a la dársena cerrada*, unpublished doctoral thesis, University of Seville 1990, passim.; C. ARENAS POSADA, *Sevilla y el Estado 1892-1923*, op cit., p. 43.

[70] Minute book of 1905 and following, p. 60.

customs house responsible for overseas trade. Nevertheless, little by little different nuances appeared. The Chamber had contacted the trustees of the "guilds" or trade sectors in order to negotiate the offer of the workers' trade union, and the employers' responses started to reveal slight differences in opinion.

The "guild" of import and export agents declined to attend the meeting of 2 August or take any part in the discussions and approval of the port's wage rates as they were of the opinion that this did not directly affect them. Around the same time, the "merchants' guild, in representation of those that "receive and send" informed the Chamber about the progress of the negotiations with their members with respect to the same matter. The "guild" of preparers and seasoners of olives did likewise, and finally the "guild" of marble masons declared that they had agreed to accept a certain increase in the rates of pay, but not to the extent demanded by the union of seamen and dock workers. The board of directors of the Chamber agreed to communicate this situation to the trade union[71].

The union of dock workers started to show signs of nervousness, as September had already started and the negotiaions had been going on for three months with little result, even though the union was in close contact with the Chamber, as shown by the fact that it sent a special rate for the different jobs involved working with cereals. The union consequently appealed to the president of the Chamber to offer his good offices "so that the approval of the part of the rates that were still pending be achieved in a short a time as possible, as due to the considerable time that had passed the workers were becoming impatient". The president of the Chamber replied by stating that the Chamber could not do as requested because the corporation did not approve wage rates, and nor could it exert pressure so that the rates were approved in the short time desired by the workers' trade union, as it was only a mediator between the workers' aspirations and the commercial interests of the employers, which could only be reconciled by the mutual agreement of both of the interested parties[72].

Just at this time the civil governor of the province had summoned the president of the Chamber and a committee of the union of dock workers to an urgent meeting due to a tip off received to the effect that pamphlets were being distributed in the ports for a meeting at the trade union's premises that very night, with the aim of calling an immediate strike of all dock workers due to the slowness with which the rates of pay

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[71] Board of Directors meeting of 6 September 1911, *Minute book* of 1905 and following, p. 70.
[72] Board of Directors meeting of 6 September, op. et loc. cit.

were being drawn up. The union representatives hinted that that a significant number of their colleagues were in favour of going on strike, although “they and the more sensible element were trying to prevent it”. The president of the Chamber reminded the union leaders what he had already told them on other occasions with regard to his role as mediator, and due to the diversity of interests that were in play he could not, and did not, give any guarantee whatsoever that the rates would be set within a certain deadline. In reply to this the union representatives gave the names of some employers that in the cereal trade sector were disposed to approve wage rates but, nevertheless, these had not been approved. The president anwered that the meeting of the “capitalist merchants” of cereals had discussed this and had been in favour, but due to the scant number who attended the meeting it had not been possible to reach an agreement, as it was impossible for such a small minority to approve the rate behind the backs of the majority and impose it on the entire guild[73]. The union representatives seemed to be satisfied with this explanation and showed themselves willing to inform the assembly that night and advise them not to agree to a strike. In the end the strike did not take place[74].

The friction in the mediation of the Sevillian Chamber was not only a result of the workers’ impatience, but there were also clashes with the organisations representing the employers. At the end of September of the same year, the Sevillian Employers’ Association of Metallurgical Industries sent a letter to the Chamber expressing their discontent over the news received that the Chamber “was participating in the setting of new rates of pay for jobs in the port, which would entail a considerable increase to the prices prevailing today, requesting and urging in such an event, with respect to the goods which affect the metallurgical industries, that the Chamber abstain from authorising the above-mentioned increases without the prior consent of the employers concerned”. The general meeting of the said Employers’ Association had met on the premises of the Unión General – an employers’ confederation that functioned as an interest group which competed with the Chamber to be the leading representative of Sevillian businessmen - and had unanimously decided on the ultimatum, a fact that had been promptly commented in the pages of the local press[75].

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[73] Same board meeting, p. 72.
[74] Report of the president of the Chamber to the Board of Directors meeting of 6 September, op cit. p. 72.
[75] Minutes of the meeting of the Board of Directors of Seville Chamber of Commerce, Industry and Navegation. *Minute book* of 1905 and following, p. 80.

The president's reply, which had previously received the approval of the board of directors, was unusually harsh: "I have the honour of informing you that this Corporation, safeguarding the legitimate interests of the classes that it legally and genuinely represents, is only a mediator between trade and industry and the working class in order that, without strikes, without conflicts and without disturbances of any kind, employers and workers come to understanding and agreement, and, by mutual consent, establish the wage rates that they consider to be appropriate for the particular tasks in question. The imperious demand – he continued – that this Chamber abstain from authorising increases in the wage rates for work done, insofar as they refer to the goods which affect the metallurgical industries, without the prior consent of the interested parties, which is expressed at the end of the aforementioned letter by agreement of the Employers' Association of Metallurgical Industries, excuses me from all kind of explanations, because such a demand, based on facts that are not true, is absolutely inopportune; and it is a great shame that, before formulating the demand, the said Association had not taken the trouble to find out what has been happening with respect to the establishment and approval of the wage rates in question…"[76].

At the board meeting of 8 November, the Seville Chamber of Commerce still continued to interest itself in the wage rates of the stevedores working at the port, with those of textiles, oranges and olives having already been approved, while negotiations continued over olive oil, haberdashery, parcels, trinkets and colognes[77]. And in another board meeting later, notice was given of the approval of the rates for olive oil and other fats, haberdashery, parcels and colognes, with negotiations having begun for the rates of soap, cork, ironmongery, drugs and paper[78]. It seems that the previous month's tough letter to the Employers' Association of Metallurgical Industries had taken effect, because the manufacturers of this sector had agreed to sit down and negotiate.

Behind such a positive attitude of the different business sectors, and the apparent ease with which the trade union of dock workers was achieving its objectives, there must have been some additional element of conviction over and above the kind-heartedness of the employers. The union had shown itself to be conciliatory in the meeting that had taken place in the presence of the civil governor, but possibly the attitude on the docks was different. This is what seems to be the case according to the

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[76] *Minute book* of 1905, loc. cit.
[77] *Minute book* cited, p. 89.
[78] *Ibid*, p, 95.

complaint presented by the employer José María Tejera "for endeavouring to get paid for working with cement in the port at a higher price than that currently prevailing, and because their intention is that it is not their special operators who carry out the work, but rather the associated labourers". In this way the trade union, not necessarily the one which was negotiating but another competing one, as well as trying to impose higher wage rates than those already in effect, was also exerting pressure to try and ensure that their members were hired, by means of a *union shop* agreement with the aforementioned employer. The Chamber replied to Mr Tejera that the new wage rate for the sector had still not been approved, that it would be "the general rule for all" the employers of the sector, and that the employers would be able to carry out the work with their workers, regardless of whether they were members of the union or not. In this way the freedom to work was recognised, and it corresponded to the government authorities to support and defend this freedom, "and that this Chamber is only a mediator in the establishment of the wage rates that are approved by the mutual consent of the interested parties, that is to say, the employers and the labour element"[79].

The protests over the new rates continued for several years, as demonstrated by the request presented by the company Hijos de Vicente Aceña in 1915 that the Chamber of Commerce make known the names of the signatories of the wage rate agreement of 1911 and attest whether the Chamber had permitted itself to represent the employers who had not been present at the discussion and signing. Once again, in what was on the way to becoming a customary clause, the answer given was that the Chamber only intervened as a mediator between the trade and industry of Seville and the working class in order that, without strikes, without conflicts and without disturbances of any kind, employers and workers could come to understanding and agreement. He added that one party had been represented by the trade union and the other by the interested guilds, some in plenary session, and others by committees presided by the respective trustees after having met with the guild members; that a considerable number of guilds had reached agreement with the workers, some directly without the mediation of the Chamber; and that other guilds had refrained from signing an agreement[80].

There are no further references to those negotiations of 1911 in the minutes of the Seville Chamber of Commerce, nor to any other, until in 1917, in the middle of the

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[79] *Ibid*, p. 95.
[80] Minutes of the ordinary session of 7 February 1915, *Minute book of the Chamber* of 1915 to 1918, pp 13-14.

World War, a committee of port workers asked the port's General Customs Administrator, Mr Luis Ferrer y Vidal, for a 25 per cent increase over the 1911 rates. The Administrador subsequently summoned the trustees of the guilds, customs agents and employers in general to a meeting, which only 14 employers attended, and in which it was agreed to pay the increase. At this meeting, the president of the Chamber of Commerce once again emphasised the role of his corporation as a simple mediator in the avoidance of conflicts, as it lacked the "power to raise and lower wage rates"[81]. Once the agreement had been published, the Catalan Gas and Electricity Company addressed the Chamber to inform about a request to apply the above-mentioned agreement by a committee of hold stevedores, "responsible for filling baskets, which is not loading or unloading cargo", and as the company did not consider them to be affected by the new rate it asked for the Chamber's interpretation. The president of the Chamber declared that "the increase that by particular initiative" had been applied to daily rates of pay in the holds "was already known", making a record of it "as it is common knowledge, but not officially because there is no documentary record of it in this Corporation". The president of the Chamber subtly pointed out that he had also already informed the committee of hold workers that he was unable to make the clarification asked for because the agreement in question only affected the work of loading and unloading ships, so the parties involved would have to reach an agreement between themselves, and they were recommended to proceed with the maximum propriety and prudence. Although his opinion, as an industrialist and not as president of the Chamber, was that he considered it equitable that filling baskets be paid with an increase proportional to the pay rise that the other jobs in the port had received[82].

Another attempt at mediation on the part of the Chamber, in another matter unrelated to the port, proceeds from the same year, 1917. This was the Sunday rest of shop assistants in accordance with the Law of 1904 mentioned above. The Shop Assistants' Association wrote to the president of the Chamber requesting that he exert his influence to persuade the shop owners to faithfully observe the obligation to close every Sunday "without the need to resort to extreme measures, which they were trying to avoid". The president considered that in this case the Chamber could not refuse to contribute to upholding the law, and it was unanimously agreed to contact the governor

[81] Minutes of 30 November 1917, p. 371 of the *Minute book of Seville Chamber of Commerce, Industry and Navigation*.
[82] Minutes of 30 November 1917, ibid, p. 372.

of the province to communicate to him categorically the corporation's desire to apply the law, and that this be published in the local press[83].

Neither Andalusia in general, nor Seville in particular, were conflict-free zones, as the numerous general and sectoral strikes that took place from 1900 to 1917, twenty-three of which were successful, clearly demonstrated[84]. Some were quite simply intended to achieve revolutionary goals, while others, on the contrary, presented very specific demands – as we have just seen. The trade unions that supported the strikes, mostly anarcho-syndical, disappeared just as quickly as they had been created, as the systematic failure of the general strikes disheartened the proletariat[85]. The Chamber of Commerce tried to avoid such an unstable environment in its repeated arguments in favour of intervening in order to prevent strikes and conflicts, a very different type of mediation from the action undertaken by the Italian chambers of commerce, as it was not decisive in the resolution of conflicts[86], but rather a promoter of collective bargaining.

Our journey with the Chamber of Commerce and the setting of standards in Andalusia ends with the Great War, as at this time the first joint committees were constituted in some parts of the country's commercial sector and the first legislation on joint committees appeared. As late as 1919 the Seville Chamber of Commerce summoned the representatives of the 23 registered workers' organisations with the aim of convening a meeting of employers and workers and preparing a report on their joint opinion about laws and agreements that helped prevent strikes or resolve them

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[83] Ordinary session of 25 May 1917, *Minute book* 1915-1918, pp. 316-317.

[84] A. GONZÁLEZ FERNÁNDEZ, *Lucha obrera en Sevilla. Conflictividad Social 1900-1917*, Editorial L. Carbonell, Barcelona. 1988, p. 111 ff.

[85] The trade union *Sindicato Minero de Rio Tinto*, created in 1912 and affiliated to the General Union of Workers (UGT) was one of the few exceptions. The great strike of 1920 in the Rio Tinto mines became such a serious concern for the directors of the Rio Tinto Company that in November 1920 - when of the 11,000 workers, 2,000 had abandoned the strike because of the hunger- the Rothschild, preference shareholders of the Board of Directors, sent a representative so that he could give them his versión of the causes of the strike and look into what had to be resolved so that a confrontation on such a scale would not occur again (D. FERRERO BLANCO, "La huelga minera de Río Tinto de 1920. El diagnóstico del conflicto según Sir Rhys Williams, enviado de los Rothschild", *Revista de Estudios Regionale*s, 3 [2003], 249 ff; from the same author, on the repression of 1888 by the civil guard in Río Tinto, "El Año de los Tiros. La Primera Gran Huelga Minera de la Historia Contemporánea", *Andalucia en la Historia* 13 (2006), p. 247; on the company police or "guardiñas" and their role in controlling the workers, F. BAENA, "Colonialismo y comunicación. La política informativa de la Compañía británica en las Minas de Riotinto, Huelva (1913-1920)", ZER, *Revista de Estudios y Comunicación*, 2007, in Internet).

[86] The Seville Chamber had a court to deal with conflicts, today called the Court of Arbitration, and before that court existed the Commercial Court, as well as the Consulate of the Sea and Land of the Archbishopric: Memorias Anuales de la Cámara de Comercio, Industria y Navegación de Sevilla, Libro 1886-1896, p. 59 of the Record for the year 1892-1893. But these did not, and do not, intervene in labour disputes between employers and their workers.

equitatively[87]. Its corporate vision of labour relations and of the functions it carried out could not last any longer. The Port of Seville's wage rates that we have seen in such detail, however, lasted until 1921[88]. The following annotation is from 1923: "bullying prevails in the Port"[89].

[87] *Vol. X,* Minutes of 12 April 1919.
[88] Chamber of Commerce, minutes of 30 March 1921. The situation became very difficult for the Spanish economy from this time on, difficulties to which the reverberations of the Crash of 1929 would be added just a few years later.
[89] Minutes of 30 October 1923.