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# From Negotiation to Implementation

## A study of the reduction of working time in France (1998–2000)

Jérôme Pélisse

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ABSTRACT. In 1998, and then again in 2000, the French government adopted laws designed to reduce working time to 35 hours a week. This article will deal with two questions concerning this legislative process, which had already been anticipated by a 1996 law on the collective reduction of working time. The first of these questions bears on the originality of the role of the State based on the co-production of legal norms, a process in which the collective bargaining plays a significant part. In this case it is how the law is designed that is under scrutiny. The second question is directed towards the implementation of the law, and involves the exploitation of part of an empirical study of negotiations and applications at a company level. Thought is given to the way in which the rules are applied and the thesis is put forward that the implementation of legal rulings blurs traditional distinctions, between, for example, individual and collective labour law, and gives rise to questions as to the ways in which company self-regulation can develop. KEY WORDS • collective bargaining • France • law in action • working time reduction

Working time is a subject where several aspects of labour law converge. This is why the French Aubry Laws of 1998 and 2000, reducing the working week to 35 hours, represent such significant changes in French labour legislation.<sup>1</sup> As M. L. Morin (2000b) puts it:

The laws governing working time are protective; they affect the realities of subordination, while at the same time providing a basis for the ways in which pay is calculated and work is organized. . . These functions, inherent to the design and application of the law, can be seen at work in the evolutions of individual industrial relations. The existence of rules gives individual situations their legal framework. This framework, however, also gives rise to action which can justify institutional involvement leading to the political development of industrial compromises which in turn add new dimensions to the rules and the way in which they are interpreted. (p. 1)

As far as working time is concerned, labour laws have thus established a situation based on the existence of general norms (stability, daily and weekly limits to working schedules, weekly rest periods, paid holidays and so on), stability, the intervention of the state as arbitrator in laying down collective rules and on sanctions made possible by the existence of a body of work inspectors. This situation has, however, been seriously shaken over the last 20 years by, on the one hand, the ongoing widening of the right to collective bargaining and the transfer by the state of its powers to the industrial partners and on the breakdown of generally accepted working time patterns resulting from the individualization of work schedules and, on the other hand, increased flexibility (the development of part-time work, irregular hours, the 'modulation' and 'annualization' of working time<sup>2</sup>). The significance of working schedules has also changed: The length of time worked has generally become, both for the public authorities and the industrial partners, a variable used to maintain the level of employment and a bargaining tool in the service of production flexibility. To a certain extent, physical protection has given way to job protection (Thoemmes, 2000).

The objective of the shorter working week is no longer the re-distribution of productivity gains in the interest of social progress, but to combat unemployment by combining salary containment – thanks notably to public subsidies – and company competitiveness resulting from the flexibility of working schedules (Freyssinet, 1997). The legislator has encouraged company managers and employees to reduce working time (see, for example, the five-year law of 1993 and the Robien Law of 1996) as part of the relaxing of norms and a devolution to company level of the decision-making process which has contributed to the breakdown of traditionally accepted time scales.

Following the experiment of 1981, renewed debate on the reduction of working time since the 1990s, and the election of a left-wing government in 1997, the State announced a major reform aimed at reducing working time in order to combat unemployment. By providing for a complex legislative measure and offering a financial incentive to companies to reduce working time through negotiation and company agreements, rather than by the direct application of new legal rules, the government combined the primary objectives of reduced

working time – the fight against unemployment, the re-organization of companies, and an increase in free time – with that of working towards a new industrial dialogue in France.

How have these objectives been asserted, given their apparent incompatibility with previous tendencies? Does this legislative process represent a re-centralization of the establishment of norms and a return to regulated work-time? What rules and what measures were implemented during this two-year period which saw two complex legislative phases? Thus we will begin with a study of the law being made: The development of the legislative structure governing the reduction of working time by reviewing what was at stake and the strategies of the institutional entities involved (the employers, the unions and the State) over these two years. It is above all, however, at the grassroots level that the law has been defined and applied, through company negotiation. It is at the implementation level, based on a survey in the field, that these issues will then be covered: How do the law and the negotiated rules operate in the workplace? According to what rules is working time effectively reduced? These new rules, resulting from company negotiations, will be studied in terms of the law and also in terms of how they affect the labour organizations, and how they are applied.

### **Making the Law**

The governmental project of a 35-hour working week, when it was announced in October 1997, ‘was greeted with scepticism, verging on ridicule from the [foreign] economic community’ (Trumbull, 2002: 1). But the legislative initiative showed that numerous reflections undertaken progressively by French economists (see, for appraisals on this question, Cette and Taddéi, 1997; Commissariat Général au Plan, 2001) and by experts reporting to the government (for example in 1980, 1984 or 1993) were taken into account. In order to adapt, as far as is possible, the legislative process to the models suggested by these studies, which determined the conditions for an efficient reduction in working time, the government decided to give considerable leeway to decentralized negotiation in the implementation of the reduction in working time. The process was original in having two phases, codified by two laws. A first law (13 June 1998) declared that the legal limit to weekly working time was to be 35 hours as from 1 January 2000, and encouraged companies to take the initiative before this date by signing a working time reduction agreement which could be subsidized under certain conditions.<sup>3</sup> A second law, announced as from 1998 and voted in 2000, which ostensibly took into account the first phase negotiations, laid down the definitive rules governing effective working time, overtime, executive working time and ‘annualization’.<sup>4</sup>

However, the way in which the government would take into account the negotiations was never clearly spelt out, which is what gave them their strategic significance for the industrial partners. Previous experience advised them to adopt a cautious rather than innovative attitude, since the State kept in reserve a second law to determine working time definitively. What strategies were adopted? The analysis of C. Bloch-London (2000; 2001) opens a perspective from which we can look at the making of the law and ask to what extent the negotiations influenced the basic rules that were subsequently laid down. Between 1998 and 2000 those involved in the collective bargaining were able to, so to speak, invent rules, or more accurately to play on, rather than within, the rules since the latter, to a certain extent, remained to be defined.

### **The strategies of the negotiating parties**

It is the State which, by instigating a law, took the initiative in reducing working time. By fixing a norm and a deadline, the government recognized a long-standing deadlock and the fact that the industrial partners were powerless to enter into a collective process leading to a reduction in working time (Freyssinet, 1997).<sup>5</sup> But it gave them almost two years to negotiate this reduction according to the specific characteristics prevailing in different sectors and companies. Thus

to see in the RTT a return to a traditionnal *étatiste* Socialist agenda is to vastly overestimate the political power of Jospin's government. . . France's move to a 35-hour workweek must be understood instead as a creative response to new pressures and incentives arising from globalization. (Trumbull, 2002: 3)

The state wished to act differently from its previous interventions in this area, notably the immediate and universal reduction from 40 to 39 hours decreed in 1982. The process was designed to lead to a 'negotiated law'. This negotiation was built up through decentralized bargaining at company level based on the required global objective of a 35-hour workweek by 1 January 2000, and not through the ratification of prior inter-professional negotiation as was the case in 1978 or 1981.

The employers' organizations refused to accept such a role for the law and called for a non-compulsory reduction. After a period of uncompromising opposition, following the resignation of the president of the main employers' organization,<sup>6</sup> other strategies were opened up once the first law had been voted. While the strategy of some organizations was to block negotiations until the vote on the second law, others sought, through branch agreements signed with minority trades unions, to limit the effect of the reduction (Coutrot, 1999) and to exert an influence on the norms that would be adopted by the second law (Bloch-London, 2000). An agreement between the employers' union and three

trade unions, the FO, the CFTC, and the CGC, in the metalworking sector (the largest in France with some 1.8 million salaried employees) was signed just one month after the vote on the first law and neutralized any real effect of the reduction. Major companies, for example in the automobile industry, also signed agreements which voided the law of a large part of its content.

Finally the trade unions were divided on the strategies and rules they wished to adopt. Obligated to negotiate at the initiative of the employers, some trade unions accepted compromises rejected by others, while the CGT, one of the leading trade unions, signed very few branch agreements. But at the level of companies, to create or save jobs has often justified the signature of unions, as the agreement of the employees. In January 2000, 57 percent of the public (and 66 percent of salaried workers) felt the government was right to move to a 35-hour week, as highlighted by the newspaper *La Tribune* (Trumbull, 2002). In another opinion poll in 2000, 83 percent of the workers who had moved to the 35-hour workweek would not want to return to their previous schedule. During this period, the novelty was notably the large hope from middle managers to experience a working time reduction, although by definition these categories did not count their time in France. Such aspirations, resulting from the crisis of 1993, when for the first time middle managers were massively laid off, their first increase of working time for 20 years and some sociological transformations in the group, would not easily allow the employers to avoid a working time reduction for these categories.

### **The subject of the negotiations**

Between 1998 and 2000, the industrial partners negotiated rules for the second law to take into account, as the government had announced would be the case. Apart from its desire to generalize flexibility, the employers concentrated their strategy on three main points designed to counter an effective reduction. These are admirably described by C. Bloch-London (2000; 2001) on whose work we have largely drawn here, and consisted of:

- the definition of effective working time
- overtime rules
- the modalities of the reduction, notably in the case of middle managers.

(a) The employers sought first of all to go back on the definition of time worked. This led to a significant debate on the notion of effective working time. A large number of company or branch agreements maintained payment for 'unproductive' periods in the working day (changing time, snack or other breaks, stand-by time) including them in their definition of effective working time. By obliging companies to reduce working time, the government brought to the forefront the convention on effective working time which had gradually

stabilized since 1936.<sup>7</sup> It opened a kind of Pandora's box of usage and conventions which differed according to the branches and sectors which had, over the years, assimilated into their practices a certain number of payments which legally should not have been there. By referring to the most recent definition, based on legal precedent,<sup>8</sup> the legislator wished 'to clarify the notion of effective working time, distinguishing from among existing periods of non-productive presence, those to be included or not in the definition' (Bloch-London, 2000: 30). For employers' representatives from the branches or the major firms, it was an opportunity to re-define working and non-working time, excluding certain forms of presence from the definition of working time and to create a new distinction between effective working time and time paid.

This was the case, for example, for rest or changing times. If these are not considered as effective working time, it can be pointed out to employees that their working time is less than that officially agreed on. The Peugeot-Citroën agreement provided that, for a working week of 38 hours and 30 minutes, breaks amounting to 1 hour and 45 minutes were not effective working time.<sup>9</sup> This change in the definition of working time made it possible to reduce the working week by 1 hour and 45 minutes instead of 3 hours and 30 minutes. Other expedients opened the door to further restrictions in the scope of the reduction of working time. Thus when working time is reduced in the form of rest days, the negotiators could consider that certain national festivals ('Bank Holidays') or certain paid holidays, already represented an annual reduction in working time.<sup>10</sup> The agreement in the banking sector provided for a reduction in working time by granting 12 rest days a year. If working time had been reduced in those proportions required, by going from 39 to 35 hours (i.e. 10 percent) a total of 23 days should have been granted. Eleven existing days off (festivals or for family events) were thus included in the reduction of working time which, as a result, was less than it would have been.

If, during the first phase, the State hadn't subsidized firms which adopted this novel means of calculation, it validated the strategy in two ways. First of all by officially recognizing, in the second law, an annual norm of 1600 hours: When working time is calculated annually the reduction required to reach this level could be less than the 10 percent needed to go from 39 to 35 hours. It is true that annualization could only be applied through agreements, which meant that it represented an exemption to the norms of the Labour Law Code which was based on a weekly calculation. However, annualization was, for the first time, recognized as legitimate by the State which had foreseen, from the time of the first law, the possibility of a reduction taking the form of days and hence of annualization. The State went further by seeking to apply to itself the same process, as can be seen by negotiations in the Civil Service. These negotiations all referred to an annual basis and often provided for a downscaling of working time before introducing the reduction, which depends on effective working time.

(b) The second key point of the negotiations concerned, at branch level, the question of overtime hours (Bloch-London, 2000: 36–8). In fact the threshold of legal working time can be exceeded, within certain limits, by higher paid overtime hours. Employers sought to lower their costs between the 36th and 39th hours (whereas overtime hours normally give rise to a 25 percent increase in payment as soon as legal time is exceeded) and above all to raise the threshold over which they gave entitlement to a compensation in the form of time. They could thus continue to require more than 35 hours weekly. The objective of the employers was to raise the possible quotas of overtime hours. This strategy was clearly summed up in the following statement by one of the employers' representatives in the textile sector:

'I'm going to offer my employees 35 hours worked, 35 hours paid, to which will be added 3 hours of compulsory overtime; this will bring us up to 38 working hours, of which the cost, given the increases for overtime hours, will come to 38h 75m. We will therefore have 38 hours worked, 39 hours paid. I intend to recover this lost hour by increased productivity and a more efficient use of equipment, notably on Saturdays'. (Coutrot, 1999: 662)

Moreover, when working time is annualized, overtime hours are calculated on a yearly rather than weekly basis; only those hours done in excess of an annual average of 35 hours a week give rise to an increase.<sup>11</sup> The trade unions obtained a reduction in the quota of overtime hours but to a lesser extent than they had hoped for.

The employers took advantage of the openings offered by the law and won the first round of the battle; the second law instigated a transition period during which, through a series of complex rules, employers were allowed not to reduce working time for a further two years, and to pay a modest increase (10 percent instead of 25 percent) for overtime between the 36th and the 39th hour. In the longer term, however, they would have to reduce working time, even though the reduction would be less than that initially planned (cf. the first stake). Finally, even if the new right-wing government has not removed the legal 35-hour working week, the employer's strategy has been successfully achieved with the 'Fillon law' recently voted. Indeed this law froze the working time negotiation process, allowing the firms, which had not yet reduced working time thanks to the transition period, to stay at the former level with modest wage increases.

(c) The third negotiating issue concerned how working time was managed, in particular for middle managers. The first 35-hour work-week law provided for the negotiation of derogatory agreements based on an annualization and individualization of working time. In 1998–9, employers frequently had recourse to this solution which was barely considered.<sup>12</sup> More than half of the agreements signed in 1999 provided for annualization or modulated working time. The reduction in working time then became subject to complex and individualized



measurement tools such as badging, written statements, computer systems and so on which codified new rules and rationalized the management of working time (Pélisse, 2000).

The outcome for the middle managers was somewhat harsh. In fact the negotiators introduced a working time calculation based on the number of days worked with no reference to hours. The second law legalized 'global day accounts' and fixed a maximum of 217 working days in the year (one executive trade union, the CGC, was both against the hourly based reference, and sought a 200-day maximum). The only daily limit which thus remained was the European directive<sup>13</sup> which required at least eleven hours of rest over a 24-hour period and one day of rest per week. As a result of this change in the calculation of working time, the reduction for executives risked disappearing altogether. If, in most cases, they succeeded in obtaining enough rest days to help reduce their work-time, it should be remembered that they were the only category of workers to have seen their work time increase globally in the 1980s. It is, on the other hand, clear that the essential issue is the workload rather than the number of hours or days worked. However, in very few cases was the reduction in working time accompanied by an adaptation of the workload or a re-definition of working assignments (Bouffartigue and Bouteiller, 2000). Middle managers were nevertheless the most satisfied with working time reduction, contrary to others employees. Indeed, even if only one partial survey has been conducted on the satisfaction of employees concerned by working time reduction (Estrade, Méda and Orain, 2001),<sup>14</sup> the reactions resulting for these reform and negotiations can be briefly and globally described. Two main results can be observed: 59 percent of employees declared that working time reduction has been an improvement on everyday life, 13 percent a degradation and 28 percent that it has no impact. But, differences along gender and skills are important: If more than 72 percent of female middle managers are thus satisfied, 40 percent of female unskilled workers are dissatisfied. The presence of children in the family plays also a great role. Secondly, although working time reduction is appreciated through its impacts on everyday life, its consequences on working conditions are most often depreciated (flexibility, intensification, maintainance of workload, little or absence of hiring in the service or workshop, difficulties for work organization etc.). In short, working time reduction is a complex process, which reveals, even increases, various inequalities in the workplace (Estrade and Ulrich, 2002; Lurol and Pélisse, 2002; Pélisse, 2002).

Provisory conclusions on the process of negotiation from 1998 to 2000 can be drawn: Even if these negotiations dealt with many other important issues such as training time or pluri-annualization of working time, it was around three main points (effective working time, overtime and working time management, especially for middle managers) that the effective results of the reduction of working time were played out, and which allow us to discern most clearly how the

negotiations influenced the second law. Relations between collective bargaining and the law were re-defined in the course of a process in which the law itself was negotiated.

### **Agreements, laws and constitutional law**

The originality of the method lay in the desire to establish, at one and the same time, through legislation and collective bargaining, the new rules governing working time. There is no doubt that the initiative came from the State, and that the reduction in working time and the timetable for its enforcement were imposed by law. However, on the one hand, the first law was intentionally left incomplete, giving the negotiations an explicit and significant role in fixing the new norms to be adopted. And on the other hand, the substance of the law was less significant than it appeared, given that the measures or procedures governing its application were to a considerable extent left to the initiative of the industrial partners. The latter were able to influence the norms finally adopted since the effect of the second law was to legalize, subject to specific agreement, a large number of new rules. It also gave a new legitimacy and wider application to annualization, enabling employers to get round the weekly norm and compress the reduction in working time.

This evolution was not necessarily in the government's intentions, as is shown by the measures providing for subsidies to companies introducing the legal reduction before the deadline of 2000. These companies had to commit themselves to recruiting new personnel, to maintaining their level of employment for two years, and above all to not changing their calculation of working time. The reduction in working time would then have to be 10 percent of whatever it was initially. A considerable number of branches and firms did, however, prefer to change the calculation at the cost of sacrificing the subsidies, in order to be free to impose new norms (annualization, working days for middle managers etc.) and thus compress the amplitude of the reduction. The conclusion can be drawn that the second law confirmed the success of the employers' strategy. A further example can be seen in the maintenance of the financial incentives (even at a reduced level) for companies negotiating a reduction in working time, while job creation and stable calculation of working time were no longer an obligation. The initial objective of the law, which was to combat unemployment, became less fundamental as growth recovered from 1999.

The second Aubry law did not, however, ratify all the clauses negotiated in the company and branch agreements. When the second law fixed a maximum annual limit of 1600 hours, it recognized the annualization of working time but at the same time obliged certain negotiators to review their agreements. Some agreements had been based on an annualization of 1645 hours resulting from traditional days off becoming part of the reduction of working time. In the same

way, the limits in terms of number of days were, in the second law, restricted to certain 'autonomous' categories of middle managers. Yet other examples could show that the legislator, while taking into account the negotiations which he had encouraged, did not ratify all their clauses. If the industrial partners were able to sign agreements (notably branch agreements) which voided the law of its substance, the government, for its part, failed to fully respect its promise to validate the negotiations which followed the first law and to be guided by them.

It was at this point that members of parliament opposed to the law took the matter to the *Conseil Constitutionnel* the legal body responsible for ensuring that laws respect the constitution. On 13 January 2000, its members delivered a judgement invalidating several points included in the second law, one of which had a significant effect on relations between the law and collective bargaining. The *Conseil Constitutionnel* condemned the fact that the new law rendered illegal certain clauses negotiated in the wake of the first law. Thus, where agreements had fixed an annual limit of 1645 hours, these remained valid, in spite of the new legal norm of 1600 hours. This decision considerably re-inforced the validity of the rules produced by the collective bargaining. This gave some degree of legitimacy to those employers who signed agreements, notably with minority trade unions, designed to influence the process of co-production of norms by the legislator and the industrial partners in their negotiations (Bloch-London, 2000). The contractual independence of the industrial partners in relation to the intervention or control of the legislator was thus asserted, based on a contract logic taken up in European Labour legislative texts (Gavini, 2000; Ray, 2000). In this perspective, the MEDEF (the chief employers' union) in fact instigated a vast programme known as the '*refondation sociale*' designed to bring about fundamental changes in social/ industrial rulings, the idea being that in certain areas, such as unemployment insurance, retirement benefits, labour medicine and professional training, the State's role should be restricted. To a certain extent, the reduction of working time, even though it was imposed by the government, can be seen as a test, or as a paradoxical preliminary phase to the strategy, adopted by employers and certain trade unions, which consisted of giving priority, in certain areas, to autonomous collective negotiation over and above the heteronomy of the law, or at least of limiting the extent of the legislators' field of competence.

### **Law in Action**

After a review of the key issues and vicissitudes which marked this period between the two laws, and having pointed out the impact which the period had on the traditional relations between the law and collective negotiations, we shall move on to ask how these laws were applied in the field, and to analyse the

results in practice of the regulation of working time. How did local negotiations at company level adapt and adjust to the rulings laid down by the legal framework? How was the law acted out and how did it influence attitudes and reactions in the workplace? We will approach from a different perspective the three themes dealt with earlier through a selective analysis of a three-year investigation based on a series of in-house monographs (Pélisse, 2000; 2002). Each of these themes stands alone as a research theme. We will begin by studying the introduction of the new norms generated by the negotiations and will ask, in the context of the conclusion drawn earlier, to what extent the 35-hour work-week led to the development of auto-regulation and autonomous rule-making procedures within the company itself. However, the same norm can be interpreted differently according to how work is organized and in what social context. We will then go on to deal with the way in which the reduction of working time has modified relations between collective norms and individual rights and will end by asking the question of how we should interpret the gap, revealed by the investigation, between norms and practice, or how the rules governing the norms are in fact applied. It will be seen that a study of regulations at company level needs to take into account evolutions in forms of professional integration and collective work structures.

### **Negotiations and internal company law**

In fact, if the application of the reduction of working time depends on negotiated in-house agreements, it is at this level that the law in action must be approached. As pointed out by J. Thoemmes (1999):

Rather than distinguishing between the legal and industrial components of the norm, very careful attention should be paid to the actors involved, to their projects, to their behaviour, to the rules which they instigate and to their way of 'making' or 'unmaking' changes to working time on a day to day basis. (p. 32).

#### *Methodology of the investigation*

In the context of a programme of studies undertaken on behalf of the DARES (a Department of the Ministry of Employment), twelve monographs of companies which adopted the 35-hour work-week according to the first Aubry law were drawn up in 1998–9. Interviews were conducted with the negotiators involved (management, trade union and workers' representatives). Further in-depth studies were pursued in 1999 and 2001 in six companies. In addition to extended interviews with management and workers' representatives, individual meetings were organized, usually at home, with some 50 people.

- Two parts of a big firm (4000 employees) in the sector of electrical components were mainly investigated: A plant in a rural environment which employs 140 workers – most of them are female and there is no union – and

the quality department, where the same number of male technicians and professionals work, with one activist of the main company's union (CGT).

- A second firm is a sub-contracting packaging company which employs 360 people – 65 percent are unskilled female workers – and, in addition, 300 temporary workers on average. Three plants were specially studied. Employees are very poorly represented by two unions (CGT and FO) with very few members.
- The third is an intercity passenger transit company (370 employees) in a department of Normandy. Most of the workers are male drivers and there are three unions which have some power.
- The fourth is an accounting company with 250 employees which specializes in the agriculture sector. Employees are well represented by a union (CFDT) and an active employees' committee.
- An agricultural processing plant (80 permanent male employees with only one union activist) is the fifth.
- Lastly, the sixth is a small (28 employees) lumber dealer of whom only one female accountant has been interviewed from the employees.

The analysis of the implementation of the 35-hour work-week was thus complemented by an account of the first hand experience of the employees of these companies. The enquiries into several firms which signed agreements according to the first law on the reduction of working time show a wide diversity of issues and positions adopted by management who entered into negotiations as a result of their desire to implement the reform before the legal deadline (Pélisse, 2000). In many cases, negotiations took place on the basis of a project put forward by the management, which incorporated, to a greater or lesser extent, certain trade union claims. The resulting compromises often favoured the management's position, and tended to satisfy company constraints rather than those of the employees; this outcome is not surprising given the nature of French industrial relations (low union membership and divided unions). This does not mean that the union representatives did not, to a certain extent, successfully defend their interests but that the context of the negotiations, the definition of the objectives and the subjects under discussion (the number, and above all the job assignments of new recruits, proposed productivity gains and work re-organization schemes, the modalities of work time reduction and flexibility etc.) were often drawn up beforehand by the management acting unilaterally.

The company can thus, through a specific agreement, break out of traditional scheduling patterns as has been the case with annualization, which has been a part of the great majority of reduction agreements (ten on twelve in my inquiry; more than 60 percent of the total between 1998 and 2000). These exemptions enable the employer to have recourse to a type of work organization which otherwise would have been impossible; they have thus become the tools of com-

pany auto-regulation (Supiot, 1994: 170–7). Admittedly, derogatory negotiation deals with issues that were previously within the sole powers of the employer as far as work organization and schedules were concerned. This type of negotiation thus has less in common with traditional wage-based bargaining than a form of participation in company management whereby a reduction in working time is accepted in return for something else, such as re-organization, flexibility, the maintenance of employment. However, the employer's power was previously circumscribed by legal or conventional rules, which were far less flexible than those which negotiations can give rise to.

More complex scheduling rules, which break with tradition, have thus emerged with the reduction in working time. These rules in turn have had repercussions on pay scales, work organization or professional relations. Thus the change in the way in which overtime hours are counted, in the case of annualization, often leads to overtime and related pay virtually disappearing. The desire of employers to maintain or to increase the time during which equipment is used, or during which departments are open, in spite of the reduction in working time, has led to the development of such factors as work assignment by shift, or by two-person teams, re-organization, polyvalence etc. And, lastly, when employees can manage part of their new-found free time, they must always have prior authorization from their hierarchical superior. These changes have thus been drawn up and codified by a body of rules specific to each agreement and to each company. Follow-up commissions have often been provided for the agreements. These are composed of management and employees' representatives; they supervise the implementation of the new rules, and solutions to problems these rules have created. They represent the authority which decides whether the rules conform to given work situations, and which produces and adapts new rules leading to further negotiations and new agreements. One company, in less than two years, thus added five new clauses to the original work-time reduction agreement. In the words of C. Gavini (1997) these rules and commissions illustrate the growth of a new type of 'internal company law'. This phenomenon is admittedly based on collective negotiation, the right to which guarantees an equal legal footing for both parties. It must, however, always be remembered that the balance of power and the respective resources of the actors, at company level, remain asymmetrical and, more often than not, unequal. This is the reason why this law based on negotiation turns out to be in fact law imposed from above (Gérard, Ost and van de Kerchove, 1996).

### **The significance of the reduction in working time. General rules versus individual rights**

This internal company law thus manifests itself in the form of negotiated agreements and rules which instigate so many norms governing the management of

working time. These norms, however, vary greatly in their practical significance according to the body of rules on which they are based, as is the case for annualization which is today becoming widely accepted in France. The starting point is the definition of a total number of hours worked in a year (e.g. 1600), calculated according to an original reference which remains weekly or daily.<sup>15</sup> But the fundamental factor is the annual management of this volume of hours. It is here that major differences become apparent according to the differences in agreements and their social/ economic context. Collective rules come into confrontation with individual rights.

When the reduction in working time is based on rest days, some of which are opted for by the employee on his/her own initiative, the rules which determine the reduction can be interpreted as an extension of individual rights connected with paid holidays. These rules stipulate the number of days at the employee's disposal, the fact that prior hierarchical authorization is required, the deadline by which the employee must put in for them, whether or not they can be taken grouped together etc. Employees often manage a part of these 'reduced working time days' as holidays, in terms of their aspirations, of their professional constraints and of the rules prevailing in the agreements. In this case annualization provides employees with a greater margin of manoeuvre; they are better able to reconcile working time and free time. This is the case in the big firm (quality department, twelve days off) and the accounting company (22 days off, two must be taken each month).

On the other hand, when it is the hierarchy which takes the initiative there is no enforcement of individual employees' rights. The situation is rather that of the traditional collective management of working schedules by the employer. This is the case notably for the modulation of schedules over the year, where it is the hierarchy which decides, in terms of the company's workload, which weeks will be fully or partly worked (a partly worked week being one in which one or two days are free). The rules in this case are that the weekly average for the year must be 35 hours, that any one week must not exceed 48 hours, that a calendar must be drawn up in advance, that the employee must be given specified notice in case of changes etc. All these negotiated rules governing the reduction in working time are based on legal requirements: It is the law which lays down the thresholds (an annual weekly total of 35 hours, a global total of 1600 hours), peak levels (48 hours in one week), the obligation to notify changes (seven days beforehand), the fact that some of the days can be at the employees initiative etc. This is the case in the packing company (in the agreement, it is written: 90 hours per year for the employees and 90 hours for the management) and the agricultural processing plant.

However, the application of the rules blurs this distinction between individual rights and collective management. When the reduction in working time takes the form of so many days, this is not necessarily synonymous with greater

employee liberty. There are clashes between an individual employee's time and company production time requiring frequent negotiations and arrangements. In the case of conflict, the hierarchy always has the last word; this is why new individual rights are always overshadowed by collective constraints. On the other hand, the modulation of schedules can give rise to a high degree of individualization in working time. In the subcontracting firm the hierarchy decides, for example, on the rest days for each employee without consulting them. The employees then refer to these days not as 'rest days' but in vernacular terms as a form of 'demodulation', which reveals that these days are not really considered to be appropriate:

*Question:* And for the 35 hours, how do you go about deciding on your days?

*Answer:* Demodulation; it's always the workshop supervisor who decides. It depends on the orders and how many hours work we have. One evening, if there's less work, the next day she looks at those who have most hours and says, 'You, you and you! You demodule tomorrow'. There is no way we can plan ahead to organize our lives.

(Interview with an employee in a packing plant)

This company, subject to short and unpredictable deadlines, tries to adapt its workforce to the volume of its orders on a given day and gives very short notice for changes in the course of the week. The employees therefore make themselves available for work everyday between 6am and 10pm, and on Saturday mornings, which was not the case before the 35 hours agreement, when they did eight-hour days and could turn down overtime. Unlike their holiday days, the rest days resulting from the reduction in working time are imposed on them, without their being able to know beforehand when, in the week, month or year, they will occur. The demands of the hierarchy for flexibility, which were already high, reached a point at which they were perceived as a form of insult to them and their work, 'disqualifying' them. If the reduction in working time often takes the form of rest days spread over the year, the legal rules which govern these modalities give rise to types of practical management and significance which differ greatly according to the socio-productive context and the particular nature of the industrial relations which prevail in each firm. The individualization and the reduction in working time can represent either more flexible hours, underlining the employees' availability for the company's needs, or new rights granted to employees who can dispose of them according to their aspirations (Morin, 2000a).

### **From rules to practice: How are the rules applied?**

To understand the implementation of the law, we need to ask how the legal rules are applied, bearing in mind that they are combined with industrial practices and rules. These involve the employee's professional ethics (the desire or taste for



work well done), work assessment by the hierarchy, promotion perspectives, types of social relations etc. and vary according to the firm, the jobs practised and the unions present. These industrial rules replace the rules provided for in the agreements. One employee in the accounting firm, who doesn't work on Wednesdays as a result of an agreement explains that, if asked to work on a Wednesday, she may not necessarily refuse: 'I think that to insist on rights like that, to take a hard line and say the rule is the rule and must be respected, would be, well, the best way for the rule to catch up with you.' Here, excessive formalism is denounced in the interests of the application of other industrial rules. For this employee adds immediately afterwards that she would agree to work on a Wednesday 'because where I work you can be recognized'. Recognition and the confidence of the management with regard to her work and herself go to make up an industrial rule which justifies tampering with the written rule. Flexibility in the rules governing working time depends here on a form of professional 'assurance', i.e. the assurance of job satisfaction and stability (Paugam, 2000). When this recognition doesn't exist and employees feel insulted, as in the case of the sub-contractor mentioned earlier, they can, on the contrary, cling to a respect for the rules and try to use them to give themselves a minimum margin for manoeuvre. Thus an employee refuses to take days made available for her during a slack period:

When we choose our days we decide for ourselves, but under pressure. They go along the lines and ask us to take our days when things are slack. But they don't agree when I put in for days which are normally due to me, so if I take those I'm under pressure to take, we're not free at all. (Interview with a woman working in one packing plant)

She is then given more demanding work and deprived of promotion as the hierarchy cannot 'depend' on her. The different ways in which the rules governing the reduction in working time by the employees thus strengthen possibilities for the hierarchy to assess their involvement in their work.

As can be seen in these two examples, the regulation of working time in practice, or the way in which the rules are applied, are connected to the prevailing industrial relations and forms of employee integration in the firm. This hypothesis, put forward rather than demonstrated here (Pélisse 2002), can be corroborated by a different and more general approach to the question of how rules are applied. I should like to conclude this study by putting forward a provisional hypothesis that the practical implementation of the rules resulting from the process of reducing working time took three forms: Routines, arrangements and negotiations, and forms of domination.

As clearly illustrated by Reynaud (2002) in her study on the introduction of a new rule in a maintenance workshop, routines are a common way of integrating a rule.<sup>16</sup> Reynaud started by asking how the rules are applied and showed that

they have two dominant characteristics: Their plurality, and the fact that they are incomplete. After having studied the evolutionary work of American scholars on the notion of routines, the author defined them as 'interpreted rules, or pragmatic interpretative working practices' (p. 87) which made it possible to give substance to rules. She added that 'routines are a pragmatic, local and temporary way of solving a problem to which the rules themselves give a theoretical abstract and general answer' (pp. 89–90). If we transfer these thoughts to our area of study, we can say that routines are practical, localized and temporarily stabilized solutions to a problem (for example, how to put in for one's working time reduction days) to which written rules (in the collective or company agreements) give an abstract, general and theoretical answer (for example, twelve days taken at the employees' initiative on condition that the Head of Department has given his/her authorization). Routines complete what is not specified by the rule (procedures for putting in for specific days off) with context-based data (such as the way in which days are taken). When employees describe reduced working time days as extra holiday days (in no agreement are they so described), this is because the practical rules governing the taking of these days have been incorporated into those used when taking paid holidays. A middle executive from a major firm bore witness to this merging of reduced working time days and holiday days and the way that routines make it possible to complete the rule.

*Q:* And how is your work organized?

*A:* My working time comes down to 37 hours, that is to say that, in the context of the 35-hour agreement, we work 37 hours and are entitled to twelve extra days off which are put into a sort of time account.

*Q:* So how do you go about putting in for these twelve days?

*A:* There has been no change, we do what we used to do. Certain clauses have been defined through the negotiating process with the industrial partners, but when employees wish to take days, things like that, they submit a request, as they always did for their 'legal holidays', but since the account time days are also legal holidays they say, 'Can I have such or such a week?', they fill in the form, which I then validate, and that's all.

In the case of this quality department, the extra days off resulting from the reduction in working time have become, in practice, an extension of paid holiday entitlements.

Finally, Reynaud adds that routines, which define what each person agrees to do, represent an implicit contract symbolizing the adherence of the individual to a collective unit. She also confirms the hypothesis that the practical regulation of working time needs to be studied in relation to different forms of social solidarity and the integration of employees in their collective working unit. In the case of the above department it would appear that this practical incorporation of reduced working time (days into holiday days) has come about in a context in

which there is a well-structured collective working unit (stable work-teams, the presence of an active militant trade union representative) based on an identified professional category (lab technicians, professionals) and a healthy company (world leader in its market). The extent to which the employees are appreciated, their involvement in their work and the recognition of their value to the company (through a quality department, which, set up in new premises is a kind of 'shop window' for the company) create the foundations of trust between the supervisors and the work-teams, allowing a 'routinized' management of the reduced working time days, based on the incorporation of these days into employees' paid holidays entitlements.

This 'routine-based' organization is, nevertheless, something which arises through arrangements and negotiations between individuals and groups, and not through strictly pragmatic considerations without reference to an existing rule. This is why the notion of routines, which we owe to Reynaud, takes into account, above all, the development of practices which are 'adopted internally' or taken for granted by the employees concerned who cease to bring them into question. When the rules, which allow personnel to take days of reduced working time, are applied through negotiations and arrangements, they are referred to more specifically as points of reference and may be combined with other rules which are not necessarily written. Thus, confronted by a reduction of the daily working time of each employee to seven hours and an increase in the period of time for which the department has to stay open (from 8am to 8pm), a middle manager, in an other department in the same big firm, explained that

it was necessary to respect both the 35-hour work-week and the constraints of the department; it was therefore necessary to ask the employees to work later in the afternoon, while most of them wanted to work earlier in the morning. When I say ask them, I don't mean to force them, but they have clearly understood that it was in the interest of the work being done.

The rule is thus invoked and negotiated so that in practice it is 'adapted' or 'adjusted'.

Thus the management of the small firm imposed a reduction in working time from eight to seven hours daily. But the employees wanted to continue working eight hours a day and be able to take extra days off. In practice they succeeded in obtaining these terms since the written rule contained in the agreement was combined with another, non-written, rule, decided on by the management, which consisted of not paying overtime hours; the latter could only be converted into a time account. Henceforward the employees counted every minute of their working time in order to conform to the statutory seven hours a day. And, as soon as they could (whatever the reason: Absence of a colleague, work to be finished etc.), they worked overtime, accumulating hours which could then be taken as rest days.

In order to be applied in practice, the rules governing the reduction of working time need therefore both to be 'routinized' and to be, at the same time, a more explicit combination of legal and industrial rules, reached through negotiations, arrangements and 'adjustments'. If there can be seen here a varying capacity on the part of employees to invoke the rules and to enter into a collective regulation of working time (and the earlier example shows it can be defended by loose and unstructured collective groupings), this is not necessarily to the advantage of the employees.

In fact as is always the case where negotiations revolve around a rule, there can be an inequitable balance of power between the negotiating partners. When one of the partners has the advantage of exercising 'legal power', the negotiation can become one-sided. Lascoumes and Serverin (1985) pointed out that 'legally speaking, the capacity to exercise "legal power" corresponds to possessing, or maintaining possession of, the control of the rules to which you are subject' (pp. 192–3). They added that not being able to control the process by which the rules and law are invoked and applied (and hence to be in a subservient position) amounts to accepting an imposed standard line of action, being deprived of leverage in defining the situation, putting forward inadequate claims and being drawn into unfavourable terms of settlement. This is clearly the case when three employees, such as those in the packing firm which modulated its working time, consider their status to be that of temporary workers in so far as they never know when they're going to be called on to work:

*Q:* So what is the difference between a temp and a permanent worker?

*First:* Well, there isn't one. Not any more.

*Second:* Yes, it doesn't exist anymore.

*Third:* Since we went over to the 35 hours, I can tell you the difference no longer exists, we're just temporary workers now.

*First:* We've got a green working coat, which we have to wear, that's the only difference.

(Interview with three female workers in the packing firm)

The standard line of action which has been adopted here illustrates difficulties experienced in identifying with a working group (not only working schedules, but also the composition of working teams and the jobs occupied by each employee, are subject to permanent changes) and underlines the lack of any real integration. It also sums up a legal context whereby the employees see themselves at the beck and call of their employer, while, at the same time, being foreign to him, unable to exert any influence on a situation in which they work and with neither a fixed schedule nor the possibility of planning ahead as far as their free time is concerned. The employees are thus unable to counter the 'tyranny of the client' which demands flexibility. When they demand that, as people, they should be taken into account in the management of working time,

which the employer seeks only to rationalize for purely economic reasons, their demands are clearly inadequate and unrequited. In order to solve a conflict, an unbearable situation or prolonged dissatisfaction, they have no other solution than to resign, an outcome which plays into the employer's hands.

Legal norms governing working time thus have no meaning outside their specific working environment where they can be combined 'situationally' with a number of other legal and industrial rules. It is the way in which these rules are invoked which we have referred to succinctly as 'routinization', whether they are negotiated or imposed, which makes it possible, so to speak, to bridge the gap that can often be seen between rules and practice.

## Conclusion

The reduction of working time in France is the result of a complex legislative process in which the heteronomy of the law and the autonomy of the contract are intertwined. It is undeniable that the legislator imposed a reduction in working time with a new legal limitation. But, above all, he imposed on the industrial partners a requirement to negotiate, giving them the time to do so in the context of a prior tendency towards more flexibility and greater decentralization of the elaboration of working norms. The industrial partners, and especially the employers, were able to influence the norms which were ultimately adopted, assisted as they were by the *Conseil Constitutionnel*, the highest jurisdictional authority in France. More specifically, the reduction in working time has given the dual tendencies of individualization and annualization the opportunity to assert themselves widely throughout the French workplace. As a result, disparities, even inequalities, in management of time and resources to master times of life, seem to increase between employees along gender, skills, forms of labour integration or work organizations in the workplaces. Although legal reference to the 35-hour work-week has been preserved by the new right-wing government, the new law adopted in January 2003 risks to increasing other inequalities between firms. They are not forced to reduce working time anymore, thus new inequalities will concern employees who experienced working time reduction and those who will not (generally in small companies). Implementation of the laws created heterogeneity between firms and employees that converge with the development of 'internal company law' developed in the framework of collective bargaining. Such evolutions manifested a hybridization between contract and law more than the victory of one on the other (Supiot, 2000; Barthélémy, 2003). Have we not yet witnessed, in Supiot's words, a 're-feudalization of social cohesion'<sup>17</sup>, diffracted in various legal realms?

## Notes

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1. Law n. 98–641 of 13 June 1998 and Law n. 2000–37 of 19 January 2000.
2. 'Annualization' consists of measuring and managing working time over an entire year, whereas 'modulation' is a measure whereby weekly periods of work can vary from troughs of no work (i.e. a week off) to peaks of up to 48 hours, with no overtime pay if the weekly average for the year does not exceed the legal maximum. This provision made its appearance in 1982 and was re-defined in 1987 and 1993.
3. The two main conditions were: Job creation amounting to at least 6 percent of the total, and a reduction of at least 10 percent of working time.
4. The companies concerned by the legal reduction of working time to 35 hours a week in 2000 were those with more than 20 salaried employees; for the others the legal time was only reduced in 2002.
5. Following a long period of reductions in the 1970s and the transition from 40 to 39 hours in 1982, collective working time in France became relatively stable. It's chiefly through the individual development of part-time work that there was a global reduction in the 1980s and 1990s.
6. When the law was announced in October 1997, this president, Jean Gandois, declared that his successor would have to be 'a killer'. The employer's union subsequently re-named itself the MEDEF (Movement for the Enterprises of France) and instigated a profound mutation. In October 1999, MEDEF brought together 30,000 employers in Paris to demonstrate against the 35-hour-working week initiative.
7. The term 'convention' refers to the convention theory (Salais and Thévenot, 1986). The process described here is that of a change in the convention based on going back to a legal reference reflecting previous compromises which are not brought into question. It can be noted in this context that such a return in terms of the convention governing effective working time did not (to our knowledge) apply in 1982, no doubt due to the fact that the reduction in working time concerned only one hour and not four.
8. The following definition was given by the French Supreme Court: 'Effective working time is time during which the employee is at his employer's disposal, and must follow his instructions, without being free to devote himself to his personal pursuits.'
9. This was already the case previously, but all parties thought in terms of the pay rather than in terms of effective working time. The breaks, even though they were not included in effective working time, were paid.
10. Only 1 May is a legal paid holiday. Twenty-five days of paid holidays are guaranteed by law. But from seven to nine annual days off are guaranteed by collective bargaining agreements, while some of these provide for a sixth week of paid holidays as well as rest days for family events (births, children's illness, marriage etc.).

11. Employees can thus, as a result of this system, work 45 hours for certain weeks with no overtime pay.
12. Indeed, 'modulation' was rarely implemented before the Aubry laws: Only 4 percent of existing companies were using it in 1994 (Le Corre, 1998).
13. Directive 93/104/CE of the Council dated 23 November 1993, concerning certain aspects of the organization of working time (JOCE n. L307/18 of 13 December 1993).
14. The survey was conducted with 1618 employees, who work full time and have known working time reduction in their firm for more than one year. Consequently, it concerned the most integrated employees because part time and recent/temporary employees were excluded from the analysis.
15. The figure 1600 is reached as follows: The estimated number of working weeks (52–55 weeks of legal paid holidays) is multiplied by 35 hours, giving a total of 1645 hours from which is deducted an average of seven days' paid holidays per year (i.e. 49 hours). Annual working time = 1596 hours. Another calculation is based on a daily reference: 365 days – two weekly rest days (i.e. 104 days) – 25 days of legal paid holidays – seven paid holiday days = 229 working days per year, multiplied by seven hours a day = 1603 hours a year.
16. A legal specialist such as A. Jeammaud (1993) has thus described how the reaction to legal norms can take an extreme form which can be described as 'assimilation'; he gives the example of the Highway Code, adding that the existence of these rules governing the activity of drivers is more a question of routine than of conscious awareness. See also Giddens (1985) on this notion of routines.
17. By this expression used by P. Legendre, A. Supiot (2000) describes the diversification of the legal regime, its emancipation from State jurisdiction, and the proliferation of 'special contracts' which organize the exercise of power from actors on others.

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