Toward a National Labour Policy

By G. A. McAllister

SINCE 1873 when the Canadian Labour Union urged that uniform labour standards should be established by the different provinces, the adoption of such a policy has been advocated from time to time. That the development not merely of uniform policies but a national labour policy is now imperative, was reflected in the sudden revival of the House of Commons' Committee on Industrial Relations. Behind the resuscitation of that long dormant body is a simple fact: a series of major industrial controversies—Ford, Great Lakes Shipping, and Steel—have in turn threatened the nation's difficult transition from war to peace; they have occurred at the very moment when the federal government's vast war-time control over labour matters is about to expend itself constitutionally. Once again the issue is raised, and this time squarely presented, whether labour policy is to be developed on a provincial basis, involving nine distinct jurisdictions, or on a national basis requiring revision of the British North America Act.

The answer, first given in 1873, has ceased to be one of preference. Only a national policy can embrace all labour matters in the perspective of time, present and distant. Forces, strong in their origin and impact, compel it. Acceptance of the Atlantic Charter's Four Freedoms has, if anything, strengthened them. In two of the freedoms the key to much current unrest is implicit: Freedom from Fear and Freedom from Want. For it is in such terms that union demands, whether for higher wages, shorter hours or union security, are most keenly appreciated. Collective bargaining it has yet to be recognized sufficiently in Canada, is neither a panacea nor itself an end; it is a process, one of many, towards human security and human adjustments.

EDITOR'S NOTE: G. A. McAllister, M.A,LL.M., is Associate Professor of Law at the University of British Columbia, and formerly Research Associate with the Institute of Public Affairs, Dalhousie University.

Economic and Social Security

First among the forces compelling the development of a national labour policy is the demand for security. The goal, both of management and labour, on the employment side, is full employment or, in the most modern jargon, "optimum employment." Whatever these controversial words may mean to economists, for the common man they mean employment with a level of prosperity—bread plus. But whether it will be bread with a plus or without it (or even with a minus) is not solely a matter of choice. It is old knowledge that Canada is one of the least self-sufficient of the world's great trading nations; that her economic prosperity is intimately bound up with the effectiveness of relief and rehabilitation measures in the war devastated areas that it is dependent upon the stabilization of world currency and the re-establishment and promotion of international trade. It is old wisdom that only national effort can provide, so far as possible, constant markets for Canada's export products; that only national effort can organize the Canadian economy to ensure in each region more than the pre-war subsistence which prevailed in some. Employment with prosperity is a cornerstone of a national labour policy and impossible without it.

Security, in its social aspects, means in Canada more than measures taken and their uniformity. Both are indispensable. It is Canada in world affairs. To say the least, it is ironic that for the second time at a world peace conference Canada should prepare to subscribe to the highest principles of social and industrial virtue which, on the whole, she is powerless to implement. One might have supposed, the Rowell-Sirois Commission reported, that, on becoming a member of the International Labour Organization, constitutional revision would have followed to enable the nation to perform her solemn obligations. That did not

happen. Neither did constitutional osmosis take place. Not a single convention ratified by Canada, pertaining to matters within provincial jurisdiction, has been implemented in its entirety by the provinces. If "a new day is dawning for humanity," one must expect a flow of labour conventions similar to those (concerning wages, hours and rest in industrial undertakings) which the courts held could be implemented only by provincial legislation. That power should exist at the national level of government whether the conventions pertain to social security (industrial and general sickness, old age or other hazards of social existence) or to economic security (standards of minimum wages and maximum hours, working conditions, employment of women and children or whatever). Canada must in world affairs be more than a puppet whose labour strings are worked by nine provincial premiers. Even the Rowell-Sirois Commission, though it hedged about centralized labour authority in general, was firm in its recommendation that the Dominion be empowered to implement any labour conventions adopted by the I.L.O.

Collective Bargaining

Perhaps the most dynamic force toward a national labour policy is collective bargaining. It can, of course, fructify only as part of a comprehensive long-term labour policy designed to ensure employment and security. But it is a force also because new concepts of collective bargaining, and the role of the state with respect to it, have emerged. If, in adopting the Labour Code, Canada did not go as far as Australia where compulsory arbitration of disputes is required or as far as Sweden where agreements may be enforced in their specific terms, she went beyond the United States where so far only compulsory negotiation of an agreement is required. In prohibiting strikes and lockouts prior to negotiations, in providing state assistance with a view to completion of an agreement, in requiring, without resort to strike or lockout, final determination of all disputes arising under an agreement, and in prescribing penalties for the non-performance of an agreement, Canada has been a continental pioneer in state systematization of labour relations. The Canadian "way" is established.

Departure from that "way" is no longer possible at any level of government. For the Labour Code has been applicable to workers in all war industry and, under provincial enabling legislation, to those in non-war industry in all provinces except Saskatchewan, Quebec, Alberta and Prince Edward Island where, in effect, the "home-grown" legistion is substantially similar. Public opinion accepts the social desirability of unionism and collective bargaining; some 700,000 organized workers guarantee its continuance. Agreement is widespread, moreover, that the right to self-organization should be protected against all forms of employer discrimination, interference and domination; that all questions concerning recognition, choice of bargaining representatives and the bargaining unit, should be outside the area of controversy and determined objectively by an impartial state agency; that strikes and lockouts should be prohibited pending the determination of bargaining representatives and during a reasonable period of negotiations; that the state should provide negotiating parties with every assistance towards conclusion of an agreement; that, when agreement is reached, there should be an insistence upon fulfillment of its terms; that controversies arising during the life of an agreement should be settled without resort to strife. "Public interest," that pervasive something which led the federal government to establish these principles in the midst of war, is just as persuasive to-day. But it is not solely the fact that these principles have received universal acceptance, or that a uniform application is desirable, which necessitates continuance of a national collective bargaining system. Recent strikes have shown a more convincing impetus: collective bargaining in Canada

is no longer a purely private affair between an employer and his employees; the repercussions of a strike aren ot confined to a single province. New concepts of collective bargaining have emerged.

New Concepts Have Emerged

Industry-wide bargaining is one such concept. In Britain and Sweden it is accepted practice. In Canada less (much less) progress has been made toward it, but it is a goal of top union leaders and a desire among a section of industry. For bargaining on an industry-wide basis permits "overall" settlements; it removes the fear of unfair competition which stands as a barrier to individual settlements, particularly in highly competitive industries; it ensures, if it does not result in uniform conditions of work and wages throughout an industry, limited and controlled differentials. Recognition of these advantages is by no means recent in Canada; it is implicit in the several provincial Industrial Standards Acts, which provide, after conferences with representatives of employers and employees, for state standardization of working conditions and wages rates in an industry or zone, and in the Quebec Collective Agreement Act, which provides for the extension of an agreement, voluntarily entered into by a sufficient portion of industry, to non parties.

Whether, in the long run, bargaining on an industry-wide basis is in the best interests of labour generally has been questioned by economic experts; they have pointed to the possibility that it may lead to a new form of monopoly —a price-wage maintenance combination in which labour and management would in every sense be "partners in industry." Such problems, however, are most easily solved when they arise. Creation of machinery for the trend's peaceful continuation is a more immediate task. It is nonsense to suppose that this type of bargaining can either be prohibited or confined within a single province. The contrary was in fact assumed in the agreements providing for provincial administration of the Labour Code. The National War-time Labour Relations Board's jurisdiction over war industries was retained in full over matters involving employees in more than one province of the same employer, and over employees in more than one province of several employers.

No reluctance has been shown by the Board to certification of bargaining units on an industry-wide basis. But it has taken the view, on technical grounds, that it is without authority to do so where the unit comprises the employees of several employers, except when both parties express a "desire" to negotiate on that basis. Unless, of course, provision is made for the certification of "multiple-employer" bargaining units, as well as "multiple-plant" units, irrespective of provincial boundaries, battle must ensue for "recognition" in this its newest form. The right to bargain collectively means nothing unless it also means compulsory bargaining in such units if they are appropriate. Less modest is the formula recently suggested to the Federal Minister of Labour by the Canadian Congress of Labour's Wage Co-ordinating Committee. For under it the Government, upon request of either the employers or unions concerned, would order industry-wide negotiations, whenever in that industry a single union or a group of unions bargained for the major firms. Whatever the formula eventually adopted, only the federal government can provide machinery suitable for bargaining which is inter-provincial in scope.

Labour's effort to achieve uniformity in the basic provisions of its currently negotiated agreements is, quite apart from its inherence in the trend toward industry-wide bargaining, itself an important "force." When the rapid war-time membership gains are consolidated, and with organizational solidification, one must expect this effort to be more pronounced. How greatly it will be activated with the complete abandonment of war-time wages control policy is beyond prediction. Most certainly the activation will be considerable. Even now the

Canadian Congress of Labour, through its Wage Co-ordinating Committee, is preparing for a national wage drive.

War-time wage control has left, moreover, its own legacy. For the policies pursued permitted wage expansion at the "fringes." Benefit schemes (such as holidays with pay, paid sick leave, hospitalization, pensions, and premiums for night work) were scarcely known to labour before the war. That, during it, they should become so well known was a natural concomitant of severe wage control and consistent with it. It was as well an expression of labour's motive force channelled in a new direction. With the battle for compulsory recognition and bargaining generally won, labour's interest and participation in benefits schemes has been crystallized. A drive toward expansion and liberalization is certain. That it will not be limited to particular industries or provincial legislatures is equally certain. Union demands in both areas bear even now a remarkable similarity. A concession achieved in one (statutory provision for paid holidays in Ontario) is quickly pressed in another.

In the changing concept of collective bargaining, more particularly the content of agreements, there is a further "force." It is the trend toward restriction of management's most ancient prerogatives—the work to be done, plant organization, layout and equipment, size of the working force, job classifications, schedules and assignment of work, promotion methods, etc. Again, less headway in this direction has been made in Canada than in the United States. But, even as it is, there are management demands that the scope and subject matter of collective bargaining be defined and catalogued in a manner less vague than the Labour Code's terminology: "rates of pay, hours of work and other working conditions." Scarce mention is made of the fact that society and ideas have evolved since management's functions were first decided upon. One has but to think of factory legislation, establishment of industrial standards, workmen's compensation, unemployment insurance, and taxation sifted through social security channels to understand how far the process has run and to appreciate that it is a continuing one.

The issue is most strikingly illustrated by the current drive for union security. In management's view, it presents evils unmatched since time began; in labour's view, it means simply maintenance of union strength and integrity against disruptive forces which may come from the employer, a competing union, or from within the employee body itself. Organizational consolidation at the working level of unionism is its very essence. Unqualified acceptance of every provision for union security has, of course, its dangers—both for management and labour. Complete union control of a labour market—to indicate but two problems in an extreme case—may end the basic right of every man to earn a livelihood at his own trade, or, it may result in increased labour costs in a manner not related to cash wages. No one would deny that conditions may arise requiring special techniques, in the larger interests of the state, for the administration of union security provisions. But, in the meantime, the demand for union security presses with increasing vigor.

Between March, 1944, when the Labour Code became operative, and December, 1945, 125 of the 132 constituted boards of conciliation were concerned with union security demands; 90 boards or 72% recommended some form. Checkoff in combination with membership maintenance was recommended by 19.2%; maintenance of membership solely by 8.8%; union shop in combination with checkoff by 2.4%; union shop solely by 1.6%; and checkoff solely by 40%. In effect, checkoff alone or in combination with membership maintenance or union shop was recommended by 61.6% of the boards constituted; maintenance of membership alone or in combination with checkoff by 28%; and union shop alone or in combination with checkoff by 4%. Canadian workers still lag, however, behind their "brothers" in the United

States where an estimated 27% of those under agreements are covered by maintenance of membership; 28% by closed shop; 18% by union shop and more than 40% by checkoff. With checkoff recommended so frequently by conciliation boards, and so prevalent among American unions with which Canadian labour is affiliated, it seems no longer sensible that the subject should remain a matter of controversy.

In its recent legislative brief to the federal government, the Canadian Congress of Labour suggested a checkoff which would be automatic upon request from a union representing a majority of the employees, and upon written authorization of the individual employee. Legislation, both in Nova Scotia and Saskatchewan, provides, in substance, for such a checkoff. Justice Rand, acting as arbitrator in the Ford strike, while denying a union shop, went beyond the Congress' proposal. Compulsory checkoff was ordered for all employees irrespective of union membership or desire. Either form might well be accepted as a starting point toward removal of some of the critical issues involved in union security. Acceptance would avoid, as conciliation board records indicate, many current disputes. An opportunity would exist, although even a compulsory checkoff might not be sufficient for long, for the non-emotional evaluation of union security provisions in general.

"Those who control capital," Mr. Justice Rand said in the Ford strike, "are scarcely in a position to complain of the power of money in the hands of labour." He might have added that provincial legislatures are scarcely in a position to deny for long the express legal right to automatic checkoff; they are in no position to deal with the larger issues presented by union security demands. Nor are they in a better position to deal with the general content or subject matter of collective bargaining. Absence of legislation or great differences in provincial or industrial thought mean two things: constant legislative pressure to bring "backward" provinces into line with the most advanced; and cauldrons of industrial controversy to bring "backward" industries into line with the most advanced.[1]

Union Conduct

When union conduct is considered, the wisdom of a national labour policy is not less appealing. Charges that unions are irresponsible, foreign dominated, and subject to a multitude of sins which only saints escape, bear no repetition. For some elements in the community they have the same fascination which soap operas have for others. But such charges, even when justified, point to a matter which is, first of all, no more the concern of an employer as such than the control of cartels and combines is a function of unionism. Behind them, moreover, is a failure very often to appreciate that the common law affords to an individual union member some protection against irresponsible union conduct; that the criminal law offers protection against some forms of strike action; and that the Labour Code itself regulates union conduct in a number of ways. No one would deny that the Code's provisions are on the whole legitimate and reasonable; few would deny their general efficacy. Growth, security and experience will bring a pronounced maturity in union circles; repressive measures will bring a deepening animosity in which only the opponents of sound leadership are strengthened.

New techniques are undoubtedly evolving for the control of union affairs which impinge on the paramount public interest. Labour has much to fear, however, lest "public interest" should become a guise for repression. It has much to fear lest the techniques should be developed in the emotional vacuum which has so characterized recent legislative experiments in the United States, particularly at the state level. Control of labour matters at the national level

1. Since this article was written the Industrial Relations Committee of the House of Commons has recommended that "a measure of junior security" should accompany recognition of a union.

of government would alone seem to permit a balanced adjustment between labour's interest in its affairs and conduct and public interest where conflict exists, if it does. For, as it is to-day, provincial legislatures, according to their tastes, may prescribe the conduct of union affairs; they may hold unions responsible for damages for wrongs done to others or they may attempt to free them from such responsibility (as Ontario and Saskatchewan recently did and British Columbia as early as 1902); they may outlaw closed shops or make them compulsory; they may produce chaos or paradise. The federal government, responsive as it is to votes on a national scale, must at least devise policies to minimize labour unrest; it cannot successfully flout either unionism or a particular form of organization.

One further "force" must be mentioned. Conciliation is to industrial peace what legs are to man. Without a doubt federal conciliation has proved more effective than provincial. Both labour and management have come to desire its efficacy and its prestige value. Conciliation efforts at several levels of government offer no quick solution to a vortex of industrial strife which sweeps beyond provincial boundaries. The need is urgent, moreover, for an expansion of existing services, and for the development of new techniques in the use and organization of conciliation boards. The desirability of a labour information service which, without more formal inter vention, would be available to give impartial information to negotiating parties on wage rates and working conditions[2] in comparable industries is also apparent. A conciliation service, such as envisaged and required, is possible only at the federal level of government. For the federal government alone can sustain the cost, develop the organization, and operate inter-provincially.

2. A similar proposal was recently put before the Industrial Relations Committee of the House of Commons by the Secretary Treasurer of the Canadian Congress of Labour.

Labour Law Administration

Effective methods for the administration and enforcement of labour laws, particularly collective bargaining, cannot be devised, moreover, at the provincial level of government. One province, for instance, cannot, except by persuasion or agreement, extend the operation of its laws to matters in another; it cannot there deal with the "root" causes of disturbances which have local repercussions. Variation in provincial enforcement methods and remedial measures (both of which characterized prewar collective bargaining legislation) is questionable wisdom in an age which expects certainty and demands identity of remedy. The need has yet to be made apparent for the innumerable boards and agencies concerned with the administration of labour law, unless of course their cluttering effect is itself a purpose. That the federal government should have complete jurisdiction over the criminal incidents of industrial unrest (picketing, etc). and no control over the machinery by which such strife is to be avoided is sheer nonsense. Divided jurisdiction has been in Canada the curse in many fields of human endeavour; in none is it likely to prove more painful or embarrassing than in the field of labour.

The Prospects

Such are the "forces" toward the development of a national labour policy. But what are the prospects? That the federal government, almost consistently since confederation, has been aware of the realities of industrial life is well known. As early as 1872 the federal government sought to free union members from the criminal consequences of combination, and earlier (1869) to hold them responsible for certain types of union action; there have been ill-fated attempts to devise "protective" legislation (Mr. Bennett's wages, hours and rest legislation); and an attempt to establish a national conciliation system (the Industrial Disputes Invesitgation Act of 1907 applied to a wide section

of industry before it was declared unconstitutional in 1925 and subsequently revised). More recently the federal government has proposed a comprehensive social security program, which in two important aspects, unemployment insurance (following a constitutional amendment) and Family Allowances, has been implemented. In the labour relations field, the federal government has proposed a constitutional amendment in the event that some provincial governments might "want to transfer jurisdiction over some types of industrial relations activities to the Dominion or to have Dominion legislation apply thereto." This proposal, obviously one of expediency, is based on a keen appreciation of the sacred nature of "provincial rights." No doubt both the federal government and labour desire, and would welcome, a more thorough going transfer of jurisdiction.

Among industrialists, there is, according to a recent survey (December, 1945) conducted by the Industrial Relations Committee of the Canadian Manufacturers' Association, considerable support for federal jurisdiction over labour matters. It is, according to the survey, fairly general in the Western Provinces and the Maritimes; in Ontario and Quebec there is considerable difference of opinion, particularly in Quebec, where there is a strong feeling in favour of the province retaining jurisdiction. Among provincial government officials, Mr. Duplessis has been adamant for retention of provincial jurisdiction, while Colonel Drew has favoured a national labour code. From time to time the remaining premiers have expressed either their desire for a national labour code or their willingness to consider the matter. But the question is much broader than a national collective bargaining system: it is labour legislation in its entirety.

The answer may be given in the near future when the scheduled Dominion-Provincial Conference on labour matters is convened. Should the tradition of previous conferences be followed, breakdown will be its only success with provincial authorities bundled even tighter in their petticoats of power. That the provinces have a keen interest in labour matters must be acknowledged. But they have no interest so important or to be preferred to a national policy which can alone comprise all labour matters. The Canadian Association of Administrators of Labour Legislation, organized expressly with the object of improving legislative and administrative standards and securing a greater measure of uniformity, though it includes in its membership representatives of every governmental agency administering any labour law, is a panacea on paper. Even if no other problems existed, past experience in securing uniform provincial action in a variety of fields has shown, whether the impetus came from such an agency or the federal government, that constitutional osmosis has never been in Canada an effective and ready substitute for constitutional power. Should the conference succeed, significant progress may be made *at once* toward an essentially national labour policy.

The Dangers of Dissolution of Parliament

By Raphael Tuck

IT has recently been suggested by the Progressive Conservative Party that the term of the Canadian Parliament be fixed in duration, allowing no opportunity to the Prime Minister of cutting its term short when necessary, or to Parliament of prolonging its life during a period of crisis. Such a change would undoubtedly have serious repercussions on our whole governmental system. On this decision will depend the question whether we are to continue to have a strong, stable, and responsible government, or whether our governments are

EDITOR'S NOTE: Raphael Tuck, jurist and political scientist, English by birth, has been teaching for the last few years at the Law School of the University of Saskatchewan and at McGill University.