Industrial Relations and Social Security

Labour Legislation in New Brunswick; 1786-1945

By J. C. HANSEN

IN the year 1784, New Brunswick was established as a separate province by Letters Patent of George III. Two years later, the stream of enactments, which was to grow and swell with the years, began to flow from the pens of the statute makers. The law-makers of these early days were not interested in labour legislation as such. Their attention was given to the promotion of trade and navigation, of ship-building and commerce. For nearly a century after the founding of the Province, paternalistic laws were enacted in the interests of the dominant economic class. Such were the laws relating to master and servant, apprenticeship training and the regulation of seamen and pilots.

Apprenticeship Laws

Judging by Canadian standards of 1946, the early laws relating to apprenticeship would seem to have been harsh and cold-blooded. These laws, which were still in effect a century later, were designed to encourage the employment of children rather than to restrict it. The first statutes provided that children under 14 could be apprenticed by the father or guardian or by the mother until 21, for boys, and until 18 or until married for girls. If illegitimate, they could be bound by their mother. In lieu of a parent of guardian, a child could bind itself with the consent of two Justices of the Peace. The terms of any indenture were subject to scrutiny by a Justice of the Peace. Any two justices could order the discharge of a minor if they found sufficient evidence of "cruel or hard usage." Also, it was provided in the early enactments that apprentices were to be instructed in reading, writing and the simple rules of arithmetic.

Following the same concept of mercantilism and deeming it "expedient to encourage the employment of the youth of this Province in the Art of Ship Building," the legislators of 1825 provided that every master ship-builder should employ in his shipyard at least two apprentices. In 1834 a board of commissioners with a life of two years was set up with the power to import juveniles for the purpose of binding them out to "respectable individuals" within the Province. Not until the twentieth century was well advanced was progress made toward revision of this apprenticeship system.

Prior to 1867, when the matter came under the jurisdiction of the Parliament of Canada, numerous laws were passed relating to the regulation of seamen. These laws were designed to prevent the desertion of seamen and to prevent seamen from being arrested for debt until the expiration of their period of service. Provision was made in 1849 for the establishment of a placement service for seamen at the Port of Saint John, and subsequently this service was extended to any port in the Province upon the application of local justices of the peace. During this period various laws were also enacted relating to the regulation of harbour pilots. Unlike the laws relating to apprentices, which tended to be imported from abroad, the "marine" laws tended to be evolutionary in their development. In them the significance of the province's "wood-wind-water" economy was reflected.

Lien Laws

By 1860, the impact of the Industrial Revolution had made itself felt in New Brunswick. Ship-building was a dying industry; small-scale manufacturing was developing in scattered communities throughout the Province. Legislation aimed to establish and protect certain civil rights of the working man under the circumstances of his particular occupation followed. Such were the various acts relating to payment of wages. The

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Lien laws, which served to define and to give rights to the parties to the labour contract, have been little changed since their original enactment. Watchmakers and jewellers were brought within the protection of lien laws in 1875; woodsmen in 1894. By 1923 a lien was provided to every person, regardless of occupation, who expended money, labour or skill upon any chattel. In 1894 a supplementary measure, an Act for the Protection of Wage Earners, was enacted, giving priority to wage claims in certain cases of liquidation and bankruptcy.

As the Industrial Revolution continued with its churning of society, it became apparent that the working class required protection against unfair employment practices; that the fair employer needed protection against unfair competition. With the turn of the century, legislation began to appear for the protection of women and children. It has since been extended in scope and practice. But the early legislation was essentially "protective." For it was not the intention of the legislators to interfere with natural economic laws. They merely wanted to modify the institutional framework within which the natural laws were to have sole jurisdiction; the prohibition of unfair employment practices was their goal; they wished to modify the rules but not to change the game.

Workmen's Compensation

In common with workers in other provinces, the injured New Brunswick worker prior to the twentieth century met the common law with all its rigors. Statutory protection against the effects of accidents—damage to the body and the loss of earning power—was not given until 1903. Indeed, the statute—the Employer's Liability Act—consisted solely of a definition of those cases wherein the employer or employers would be liable for compensation to injured workmen. It did not apply to persons engaged in farming, lumbering, mining or domestic service. No administrative machinery, easily available to working men, was provided and injured workers were compelled to resort to the courts for redress unless the employer wished to settle. Under the 1903 Act, an injured workman was not entitled to compensation unless it could be proved that there was a defect in machinery, plant, building or premises, or negligence on the part of the employer, or negligence of a person in the service of the employer under whose order or direction the workman was engaged. Needless to say, this Act involved a long and costly procedure. During the next fifteen years, the 1903 Act was extended in scope and coverage but the basic principles were not changed until 1918.

In that year the Royal Commission appointed to investigate and report upon the administration of workmen's compensation in other provinces proposed that the principles of the common law, as clarified in the 1903 statute and subsequent amendments and merely defining specific cases wherein the employer was liable for compensation, be replaced by the doctrine "that the industry which has caused loss to the individual, or otherwise, should pay the loss." Thus, by the Workmen's Compensation Act of 1918, the idea of individual liability was superseded by a compulsory system of collective liability. The Act provided for the establishment of an "Accident Fund," into which industries would pay assessments, based on their payrolls and upon the hazard of the particular industry. This principle, although new to industry generally, was not new to the province. For the Sick and Disabled Seamen's Act, passed in 1820, and continued until shortly before Confederation, provided for the creation of a fund to be built up by means of a levy per registered ton upon all ships over sixty tons arriving at the various ports of the Province. Monies collected by virtue of this scheme were used for the hospitalization of sick and disabled seamen, not being paupers, belonging to the Province. Benefits have been payable under the Workmen's Compensation Act since 1918, to the workman's dependents in case of death or to himself in case

of permanent or partial disability. Compensation is also payable on account of certain occupational diseases though the coverage of the system has been broadened but little since 1918.

Child Labour

Twenty years after the first factories act in the Dominion was adopted in Ontario (1884) a New Brunswick Factories Act was proclaimed in 1905. This Act did not apply to factories employing less than ten persons nor did it apply to canneries outside cities and towns. Minimum age for employment was set at 14 unless a permit was issued by a factories inspector. If the work was declared "dangerous or unwholesome" by the Lieutenant Governor in Council then the employment of boys under 16 or girls under 18 was prohibited. Girls from 14 to 17 were not allowed to work more than ten hours a day or sixty hours a week unless Saturday was shortened, or unless a permit was issued. Factory inspectors were authorized to permit overtime to extend to thirteen and one-half hours per day and eighty-one hours per week but this was to be limited to thirty-six days in one year. Moreover, the Act contained certain safety regulations designed to eliminate injuries and deaths from moving machinery and from fires. Further, no work was to be done between the hours of 10.30 p.m. and 6.00 a.m. by any young girl or woman. This Act, which did not represent the most advanced thought of 1905, was a compromise between the forces of progress and reaction and became law as such.

Administration of the Factories Act was placed under the Workmen's Compensation Board in 1920. Minimum age for employment of boys in work declared "dangerous or unwholesome" was set at 14 by the 1920 Act as compared to 16 in the 1905 Act. This change was in line with provisions in other provinces. The stipulation of the 1912 Act, requiring children under 16 to file birth certificates with their employers, was continued by the 1920 Act. Significantly enough, however, the provision of the 1905 Act, prohibiting employment of children under fourteen without the consent of a Factory Inspector, was deleted. New regulations regarding the employment of children and females in factories were enacted in 1943. Minimum age for employment remained at 14, although there had been some indication in 1937 that this age would be raised to 15. Employment of women or males under 18 years of age, more than nine hours per day or more than 54 hours per week, is now forbidden unless the Minister of Labour gives written authorization. Night work (between the hours of 9.00 p.m. and 7 a.m.) in factories is also for bidden for that age group. The 1943 Act placed the administration of the Facto ries Act under a separate and distinct Department of Labour.

Having prohibited the employment of young persons in factories in 1905, The Legislature, in 1906, provided for their compulsory education. This Legislation was modelled on the English statute of 1870 which empowered local authorities to require school at tendance of all children of specified ages within their jurisdiction. At the option of the local New Brunswick authorities, attendance at school of children from six to sixteen in urban districts and from seven to twelve in rural districts was compulsory for certain periods each year. Special acts of the Legislature, passed between 1908 and 1938, required the compulsory school attendance of all children between six and fourteen years of age for a full term in Fredericton, Saint John, Newcastle, Chatham, Marysville, Edmundston and Campbellton. In 1941, the municipalities were deprived of their option of requiring compulsory school attendance. Under the present statute attendance of all children between the ages of seven and fourteen is compulsory on every day of the school year unless otherwise exempted.

Coincident with the Factories Act legislative effort was directed toward regulating the employment of young persons in shops, street trades and mines.

The School Act of 1906 forbade the employment of children under thirteen in cities and towns which required compulsory school attendance. Moreover, in those towns or cities no child under sixteen was to be employed during school hours unless so permitted by the local educational authorities. An amendment to this Act, adopted in 1911, provided that children between fourteen and sixteen could be employed during school hours in towns or cities which had adopted the compulsory school attendance by-law if they were declared to be "reasonably proficient" in reading, writing and arithmetic. Subsequently, in 1941, the legislature provided that no child between six and fourteen was to be employed during school hours.

The first statute dealing with the employment of children in street trades was enacted in 1913. As in England, local authorities were empowered to make regulations designed to prevent children from begging and peddling articles in public places at night. This provision was still in effect in 1945. In 1930 the Legislature had passed an enactment which specifically forbade the employment of children in street trades within certain age groups and only under certain conditions. This Act would have given no option to the local authorities in the prohibition of child labour in street trades. Unfortunately, the Act has not been proclaimed.

With the exception of New Brunswick and Prince Edward Island, legislation governing working conditions in mines had been enacted by 1930 by all the provinces of Canada. This legislation had been built up as the mining industry developed. Finally, in 1933, the Provincial Legislature fixed sixteen as the minimum age for employment in the underground workings of coal and metal mines. As yet, New Brunswick has no minimum age for employment above ground in the mining industry.

Sanitary Legislation

In 1918 the Public Health Act had given to the Minister of Health the responsibility of providing safeguards for the health of employees in factories and contruction camps. Among other duties the Department of Health was given the power to control the cleansing, regulation, inspection and sanitary requirements for the lumbering, mining, railway industries and "any camp, works, or places where labour is employed." Thus the machinery to protect the health of working men was at hand. Although coverage has been broadened, this statute has not been greatly changed since 1918. It marked, however, a first serious attempt to control sanitary condition in places of employment.

Minimum Wages

New Brunswick has made few legislative attempts to regulate the hours of work outside those contained in the various factories acts. However, in 1933, a statute had stipulated that persons should not be employed in the underground workings of coal or metal mines more than eight hours a day except in cases of accident or emergency. A 1913 statute required a "fair wage schedule" to be attached to and to become part of every contract entered into by the Department of Public Works.

However, it was not until after 1930 that the governmental authorities, recognizing that the problem of wages was central not only to industrial peace but to the happiness and well-being of the working people of the Province, provided for the establishment of machinery designed to fix a floor or bottom below which wages could not sink. In 1935, the Legislature authorized the establishment of the "Forest Operations Commission" which was empowered "to establish a minimum wage scale or scales, which should be fair and equitable as between employers and employees in the lumbering industry" after consultation with both parties to the wage dispute. It is noteworthy that the Legislature was attempting to place in the hands of the workers in the lumbering industry—New Brunswick's greatest industry—a minimum amount of purchasing power.

In the following year, the Fair Wage Act authorized a governmental officer, the fair wage officer, to hear complaints and conduct investigations regarding wages in any industry or trade. Moreover, in order to arrive at a voluntary adjustment of a wage dispute, the fair wage officer could call a conference of representatives of employers and employees. Lastly, the Board of Commissioners of Public Utilities was empowered by the 1936 Act to fix rates of wages in any trade. In 1937, the Fair Wage Board took over this function of arbitration of wage rates. The Labour and Industrial Relations Act, passed in 1938, repealed the Fair Wage Act but continued the principles and machinery established by that Act.

Collective Bargaining

Australia pioneered in legislation designed to allow the legal extension of the terms of a collective agreement to all or a part of an industry. As yet in New Brunswick, legislation of this kind, the Industrial Standards Act, 1939, applies only to the construction industry and to the automotive repair trade. This Act provided that in the industry and zone to which it was applied, rates of wages arrived at after a conference of a "proper and sufficient" representation of employers and employees could be extended by law to the whole industry within that zone; the agreed wage standard becomes binding upon all the employers in the trade.

After 1935, a new trend is apparent in Provincial legislation regarding labour unions and collective bargaining. Since that year, the Legislature seems to have been making deliberate attempts to equalize the bargaining powers of labour and capital. Presumably, the disparity of bargaining power between employers and employees had been noticed previous to 1935. However, prior to that year, nothing had been done to even the odds except that the Industrial Disputes Investigation Act, as amended in 1925 by the Parliament of Canada, was made applicable to disputes within the exclusive jurisdiction of the Legislature of New Brunswick by an enabling act of 1926. Finally, in 1938, the Legislature specifically authorized employers and employees to bargain collectively. Moreover, in order to prevent stoppages of work, conciliation services were provided, but the legal right to strike as a final resort, was safeguarded in case conciliation failed.

Under the authority of the War Measures Act, the Canadian Government in 1944, provided machinery to prevent disputes and to forward the negotiation of collective agreements through the instrumentality of the War-time Labour Relations Regulations, P.C. 1003. By enabling legislation, the Regulations, which were applicable to all war industry, were extended to all other industries ordinarily within the exclusive jurisdiction of the province. All provincial laws dealing with collective bargaining have been held in abeyance. The Labour Relations Act of 1945 is to replace P.C. 1003 in due course, and has, as yet, not been proclaimed. This Statute is, to all intents and purposes, based upon P.C. 1003 and given application to New Brunswick. It is designed to prevent labour disputes over union security, wage rates and hours of work; the parties are required to "negotiate in good faith and make every reasonable effort to reach a collective agreement."

Genesis of Legislation

The genesis of New Brunswick labour legislation provides an interesting commentary on its development. Most of the early labour legislation was imported into the Province directly from Great Britain. However, after 1850 much of the labour legislation of the Province was taken from the statute books of the other British North American provinces. For instance, the 1905 Factories Act was based on statutes then in force in Nova Scotia and Ontario, which in turn had been modelled on British acts. New Brunswick has been little influenced by American labour laws. However, legislation partially originating in the

United States has been enacted by other provinces of Canada and then, like the Workmen's Compensation system, has been adopted in New Brunswick. So far, although Canada is a member of the International Labour Organization, New Brunswick, like the other provinces, has failed to implement the conventions of that organization.

The present tendency is for the Province to adopt legislation sponsored by the Federal Government. A case in point is the Apprenticeship Act, 1944, which established a scheme for practical and technical training for persons registering as apprentices. This statute was not developed slowly and bit by bit from the early laws respecting masters and apprentices, but was passed by the Provincial Legislature after the Federal Government had promised financial aid for the training plan. The Federal authorities, moreover, have given the lead in other fields. For example, the new provincial statute respecting collective bargaining is substantially similar to the Federal War-time Regulations. There is as well at the present time the closest cooperation between the Dominion and provincial departments of labour both in the enforcement and in the enactment of labour laws.

It would seem on the whole that New Brunswick has borrowed most of its labour legislation from other provinces and countries; New Brunswickers have taken over the labour legislation of other people after a time lag of many years. When the reason for this lag is inquired into, the fact that the Province has failed to keep pace with the industrial expansion of central Canada is most apparent. This trend was clearly evident before the turn of the century and has become more pronounced since the twenties; generally speaking, since about 1860, industries have been moving out of and not into New Brunswick. Moreover, the prevalence of small-scale manufacturing establishments, existing on the margin, has been detrimental to the growth of a strong labour movement. These factors have retarded the growth of unionism, and delayed the legislative advance of organized labour within the Province. For, in the final analysis, labour legislation only arrives on the statute books as a result of working class pressure expressed through the union movement.

Since 1936, however, the legislative gap has been narrowing, but the Province and provincial labour must travel a considerable distance to close it. If the Parliament of Canada were to be given exclusive jurisdiction over labour legislation, there is reason to believe that the provincial labour movement would benefit immeasurably. But, only the future can tell if the Province will move towards that end or follow its historic course of emulative action taken belatedly. It must be said, however, that it was not until 1936 that a Labour Division was established in the Department of Health and Labour, and not until 1944 that the Legislature provided for the establishment of a separate governmental department dealing exclusively with labour matters.

Manufacturers Seek Improved Canadian Labour Relations

A signpost in the direction of future labour relations in Canada is a statement of the Canadian Manufacturers' Association, adopted at the organization's 75th annual meeting in Toronto. Calling for maintenance of a high level of production as the foundation for a high Canadian standard of living, the Association declared "the successful functioning of industry can only be assured by full and harmonious co-operation between employers and employees."

Setting forth what it considers the essential foundations of tomorrow's industrial relations, the CMA urged both employers and employees to:

1. Observe faithfully the provisions of every agreement made by them;
2. Regard continuity and quality of service to the public as the first consideration;

3. Seek constantly to discover methods of increasing production and improving products;
4. Consider with open minds the proposals made by either party, each seeking to understand the other's needs and problems, and bearing in mind that neither can operate without the assistance of the other;
5. Settle differences by negotiation in good faith without interruption of operations.

Employers must take an active part in industrial relations. They should, declares the statement:

1. Provide facilities which will permit efficient and economical production and make all reasonable provisions for the safety and health of their employees during the hours of their employment;
2. Select and develop supervisors who are not only technically competent, but who will deal on a fair and friendly basis with the men and women they supervise;
3. Respect the right of employees to associate freely for all useful purposes;
4. Bargain collectively, in cases where representatives have been freely chosen by a majority of the employees affected, on wages, hours of work, and working conditions;
5. Organize operations with a view to promoting maximum regularity and continuity of employment and consequently maximum stability of income;
6. Give employees, as far as possible, opportunities to progress within the organization according to ability, experience and merit;
7. Support and develop good wage standards having regard to all circumstances which are material.

Employees, too, have their responsibilities, and the CMA asks them to:

1. Recognize the employer's right to plan, direct and manage the business;
2. Perform their assigned duties in an efficient and industrious manner;
3. Co-operate fully with management in meeting the many problems in which employees are concerned;
4. Conserve and protect the products, plant, equipment and machinery, and respect the rights, of employers as the owners of the property;
5. Recognize the right of an individual employee to join or not to join any lawful organization of employees or other citizens without impairing his right to work at the occupation of his choice.

ILO Presents Charter for Miners

Meeting in London recently, the International Labour Organization's Committee on Coal Mining drafted a charter outlining eight conditions designed to maintain "stability of employment in the industry, the social welfare of those devoting their lives to coal production, and the constant introduction of a sufficient number of young persons to ensure the future of the industry." The Committee's meeting brought together two representatives each of labour, management, and government from 11 chief coal producing countries.

The achievement of the Committee's aims rests upon a high standard of productivity in the industry, and the eight principles include:

1. The opportunity for steady employment, to be made possible through the stabilization of production and use of coal and the development of alternative uses of the products of the mines.
2. Wages at attractive rates as compared with those in the industry generally, so as to provide adequate manpower and improve the standard of living.
3. Working time in the mines effectively less than the working time in industry generally.

4. Work under conditions conducive to safety, health and comfort, and an adequate scheme for accident prevention and workmen's compensation.
5. Social betterment in the interests of coal miners and their families.
6. Schemes to provide adequate retirement allowances.
7. Training courses for new entrants.
8. Co-operation among the interests involved in the success of the industry, including collective bargaining.

Forty-Hour Week in New Zealand

The Government of New Zealand has passed legislation establishing a universal 40-hour week in the Dominion. The arbitration court is empowered to fix hours of work for shops and offices and direct the day of closing so as to reduce the working week to five days. A simultaneous amendment to the Factory Act provides for the institution of the 40-hour week in all factories, and time and a half overtime pay as the statutory rate for all Saturday work.

The law places the responsibility of deciding the manner in which the five-day week will be introduced on the court of arbitration and gives interested parties the opportunity of supplying evidence and testimony.

The day of closing will be staggered so that the maximum benefit and convenience to the communities is guaranteed.

Britons Seek Guaranteed Week

Peace-time collective bargaining negotiations in Britain have shown a distinct movement towards the principle of the guaranteed week, althoug no uniform conditions have as yet been laid down, according to *Labour and Industry in Britain*. During the war, the Essential Work Orders, which "froze" workers to their jobs, made it a condition that the worker was to receive a minimum weekly wage, equal to the normal full-time weekly average, as long as he was available for work, though there might be work not ready for him. Unions singled out this guaranteed work week as the most important of war-time measures to be maintained after signing of peace.

The Essential Work Orders have been withdrawn from a wide range of industry, but a guaranteed week, in some form, has been instituted by collective bargaining in many factories. The building industry, for instance, with a normal work week of 44 hours, guarantees 32 hours employment per week; the metal and machine trades guarantee 34 hours, of a normal 47-hour week, the cotton industry promises 80 per cent of normal wages, and the railway shops (47 hours), industrial canteens (44 hours), and baking industry (48 hours) all guarantee their full normal week to workers.

Other industries, still under war-time regulations, expect to achieve the guaranteed week. Dockworkers have been promised permanent decasualization; miners expect to receive the guaranteed week after the coal mining industry is nationalized; and shipbuilding and ship repair workers will seek the same conditions achieved by the metal workers.

Trends in Collective Bargaining

Recently issued by the National Industrial Conference Board in the United States is a study of "Trends in Collective Bargaining and Union Contracts," made up from a survey of 212 representative contracts between management and unions. Analysis of the contracts—95 A.F.L., 94 C.I.O. and 23 independent—revealed an increasing emphasis on union security, arbitration, and social security and insurance benefits.

Hiring and Firing

In 103 contracts unions have secured the right to appeal as discriminatory a company's refusal to hire applicants; in 96, discharges. In 76 contracts there is the power to appeal promotions and demotions, and in 89, layoffs. This power is usually contained in a clause along these lines, vesting "exclusively in the

company . . . the management of the company and the direction of the working forces, including the right to hire, suspend or discharge for just cause only or transfer, and the right to relieve employees from duty because of lack of work or for other legitimate reasons . . . provided that this will not be used for purposes of discrimination against any member of the Unions." Grievance machinery is used to appeal any act under the clause which the union feels unjustifiable.

Security and Arbitration

Union security has been a much-publicized reconstruction goal of organized labour, and of these 212 post-war contracts, all but 68 provide the union with some protection, 91 through a maintenance of membership clause, 47 via the union shop, and six—all A.F.L. craft unions—by way of the closed shop. In 90 contracts there was provision for the check-off of union dues.

Even more emphatic was the trend toward providing arbitration as the final step of grievance procedure, with all but 23 of the 212 contracts including such a provision.

Time and Money

Employees for whom no work is available, and who have not been requested in advance not to report for work, will receive wages covering from one hour up to a full day, under the provisions of 150 contracts. Over half the contracts required four hours pay, and 45 of them two hours pay.

Vacations with pay were granted in 170 contracts, and a number of employers are paying regular wages for holidays not worked and time and a half for holidays worked. Holidays usually compensated are Christmas (51), Thanksgiving (50), and Independence Day (49).

There was a noticeable increase in the number of contracts which provided time and one-half for the first two to four hours of overtime and double time thereafter.

Apparently unions are not optimistic about future full production, because in 53 contracts the company agreed to reduce weekly working hours considerably before resorting to layoffs. In 31 contracts the reduction would be to 32 hours; in 10, to 24 hours.

The Effect of the War on Canadian Schools—(*Continued from page 254*)

umbia before the war has spread during the war years to New Brunswick, Quebec, Ontario, and Saskatchewan as well as to Nova Scotia. And every province without exception now has to meet the challenge of the acute shortage of qualified teachers.

Of our own province I would simply say this. Nova Scotia is unlikely ever to become as wealthy as the central provinces. For that reason we shall probably have to forego the elaborate school buildings and equipment possible to the wealthier provinces, unless, as the Dawson Report recommends, the Federal Government gives educational grants to the needy provinces. But we have evolved out of a rugged environment and a historic past, a tradition which, without being exclusive or militant, has won the loyalty of Nova Scotians of many different creeds, tongues and races. There is a good hope that in ten years time we shall have a public school system worthy to perpetuate and develop this tradition. But we shall get it only if the present public interest in the schools is maintained.