IS COLLECTIVE BARGAINING VOLUNTARY IN CANADA?

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INDUSTRIAL Relations are essentially human relations (with the human element rather than the mechanical being increasingly stressed) unless we accept wholly the teachings of Karl Marx and certain philosophers as to the inevitability of class struggle and the law of the jungle.

The goal in industrial effort, then, should be the production of goods and services in such manner as best to serve the interests of the people at large. Naturally, production of goods and services implies a labour force, for the most part, today, under the direction of entrepreneurs or those who supply capital, with the general public of consumers supplying the market. The proper relationship between Capital, Labour and the Consuming Public is therefore, of prime importance in order to ensure industrial peace relatively free from disputes over wages and conditions of employment, to the detriment of all classes. Collective agreements setting forth the terms of employment between employers and employees have become increasingly prevalent and, where properly consummated, have contributed to the production of goods and services as well as to peace in industry.

It will be of interest to recall that Governments in Canada, in addition to private persons and organizations, have taken definite action towards the furtherance of peace in industry. Some of the most important steps by which the State in our country has invaded the voluntary process of collective bargaining, with resultant compulsion on the parties directly concerned, will be set forth in the following paragraphs. It will be noted that Dominion Statutes, which give promise of ultimately leading to more uniform Industrial Relations Practice in Canada, form the basis of this discussion. The more unusual practices, such as the extension of collective agreements under certain Provincial statutes, have, in the main, been deliberately left out. It will be further noted that Nova Scotia, as well as other Provinces of the Dominion, has adopted procedures which are very similar to those now obtaining federally.

1. The "Cooling-off Period."

The Industrial Disputes Investigation Act, enacted by the Dominion Parliament, following industrial unrest in the coal

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fields of Alberta in 1907, was the first important landmark, barring the Trade Unions Act of 1872 and various conciliatory measures of both the Donimion and the Provinces which had been of comparatively limited effort.

The Industrial Disputes Investigation Act provided, *inter alia*, that when discussions concerning a collective agreement had reached a stalemate a representative Board of Conciliation and Investigation might be appointed to assist the parties to the dispute in reaching a settlement. The feature of this new procedure was that strikes and lockouts were prohibited during the process and even for a certain period of time after the Report of the Board was made public. This "Cooling-Off" period, as it came to be called, was an innovation, and together with the publicity given the Report of the Board under the provisions of the Act, proved of great assistance in preventing serious stoppages of work in industries covered.

The fact that the Industrial Disputes Investigation Act as originally enacted had assumed a wider coverage than was constitutionally valid was corrected by an amendment after the decision of the *Snider Case* in 1925; this case, originating in Toronto, decided that employees of other than Dominion works were not subject to the Act. The amendment confined the application of the Act strictly to the Dominion field of legislative jurisdiction, provision being made, however, for its application to labour disputes in the Provincial field where enabled to do so at the request of the Province concerned after proper provincial enactment. It might be noted that most Provinces of Canada early made provision for the application of this Dominion conciliation procedure to provincial labour disputes.

2. The Determination of a "Proper Bargaining Agent.":

Exclusive of Section 502-A of the Criminal Code, which prohibited discrimination against workmen for union activity, various provincial statutes following to an extent the Wagner Act of the United States, and the freezing of wages and salaries as well as the cost of living bonus under the Dominion's wartime orders, the next important governmental intervention, was contained in Order-in Council, P.C. 1003, the Wartime Labour Relations Regulations.

The Wartime Labour Relations Regulations, a creation of the Dominion Government, was an order modelled after the Wagner Act, stemming from various provincial enactments,

following a recommendation of the War Labour Board's Inquiry into labour relations in Canada, released early in 1944. It will be remembered that, for the most part, wages and related matters had been placed outside the ambit of voluntary collective bargaining and under the administration of the War Labour Boards by various wage control orders which, together with price and salary controls, had been inposed by the Dominion Government during war time to check the evils of inflation. Order-in-Council P.C. 2685 and Order-in-Council P.C. 7440, government directives concerning industrial relations, had preceded these controls and regulations.

Coming to the important part of the Regulations, it is quite natural under present conditions of collective bargaining, where rival union organizations exist, that a question should often arise as to which organization or two, or more, competing should represent the employees in a certain unit in negotiations with the employer or employers concerned.

The Wartime Labour Relations Regulations, which covered labour relations, exclusive of wages and related matters, during the greater part of the emergency, made provision for Labour Relations Boards which, amongst other things, dealt in a final sense with jurisdictional disputes (i.e., disputes to determine which of two or more rival organizations was properly representative of the group of workers concerned and as such competent to enter into negotiations with the employer leading to the completion of a collective labour agreement) as well as providing facilities similar to those under the Industrial Disputes Investigation Act whereby Boards of Conciliation sought to iron out other matters in dispute.

It might be noted that there was no provision for Labour Relations Boards under the Industrial Disputes Investigation Act, Boards of Conciliation and Investigation thereunder dealing after a manner with jurisdictional as well as other labour disputes. The fact that recommendations of Boards of Conciliation and Investigation were for the most part capable of enforcement, in any case, made for uncertainty and chaos in regard to matters of union recognition, previous to the Wartime Labour Relations Regulations. The Regulations, although confined to war industries in general, were made applicable by agreements to most provincial industry as well.

3. Bargaining in "Good Faith"

After proper bargaining agents for employees were selected,

and certified by the Labour Relations Board, the requirement to meet and bargain in good faith with a view to concluding a collective labour agreement was imposed on the parties, on either of them (employer or employees) giving the other proper notice. There was an element of complusion in this procedure.

It will be well to remember, however, that no specific provision existed under the Regulations to cover the case where the employees did not elect to make use of the right to choose bargaining agents, which process was a pre-requisite to proper certification and collective bargaining. Instances where employees failed to take advantage of these rights are rare.

4. Disputes Concerning the Interpretation and Violation of the Agreement

Another feature of the Wartime Labour Relations Regulations was the provision whereby every collective agreement concluded thereunder should have a grievance procedure clause. By such clause, either voluntarily agreed upon by the parties themselves or laid down by the Wartime Labour Relations Board itself, provision was made for the arbitration by third parties of disputes concerning the interpretation and violation of the terms of the agreement. This procedure, accordingly might involve either voluntary or compulsory arbitration of disputes.

The appointment of an umpire to settle disputes between the Dominion Coal Company and District No. 26 of the U.M.W. of A., is a similar process.

5. Bargaining Representatives Hold Office at the Discretion of the Minister of Labour.

The Industrial Relations and Disputes Investigation Act, enacted by the Dominion Parliament in 1948, on its face, has not the wide coverage that the Wartime Labour Relations Regulations had under the emergency of war. The Act, however, provides, as did the Regulations and various Provincial enactments, for a Labour Relations Board and incorporates the essential features previously mentioned, including supervised voting for determining proper bargaining representatives for workers, provision for compelling the parties to meet and bargain collectively and make every reasonable effort to conclude an agreement, as well as the grievance procedure clause.

The 1948 Act also provides for representative Boards of Conciliation replete with procedure similar to both the Indus-

trial Disputes Investigation Act and the Wartime Labour Relations Regulations in an attempt to bring about agreement where there is disagreement between the parties in the process of bargaining concerning wages and working conditions. As under the Regulations, jurisdictional disputes are cleared away before the negotiations for an agreement begin.

It might be well to note that although the provisions of the 1948 Act are confined ordinarily to disputes within Dominion jurisdiction, provision is also made whereby Dominion-Provincial arrangements may be concluded and the provisions of the Act extended to the provincial field.

The Industrial Relations and Disputes Investigation Act goes further than previous measures in that the Minister of Labour may at his discretion cancel the certification of bargaining agents or representatives at any time if he so desires. This would appear to be a wide power containing possibilties of compulsion. Presumably such power will be used only in the most extreme cases.

In General

It might be noted that although the Wartime Labour Relations Regulations obliged the parties to meet and bargain in good faith and the Industrial Relations and Disputes Investiga- Act obliges the parties to meet and make every reasonable effort to conclude an agreement, yet in neither case is it imperative that an agreement be reached. Further, under the Industrial Dispute Investigation Act there was no compulsion on either of the parties to the dispute to accept the recommendation of the Board of Conciliation and Investigation, unless specific agreement to do so was reached either before or after the Report of the Board was made public; the Wartime Labour Relations Regulations did away with any form of agreement in this connection; the 1948 Act again permits such agreement.

In general, unfair labour practices on the part of both employer and employee are defined and provision made for taking care of these and other offences under the provisions of the Industrial Relations and Disputes Investigation Act in the ordinary courts under the Summary Convictions Act, after consent to do so is given by the Minister of Labour. In this connection it will be noted that these prohibitions apply to employers and employees who have reached an agreement without the assistance of any provisions of the Act.

The Industrial Relations and Disputes Investigation Act grants to labour organizations more legal personality than had

hitherto obtained, in that such organizations may now sue and be sued in their own names for purposes of the Act.

In Conclusion.

It will be seen from the foregoing that the State in Canada, although using compulsion on the parties in industry to meet and bargain collectively, as well as ensuring proper certification of bargaining representatives, is reluctant to make compulsory arbitration covering the terms of a collective agreement part of its labour relations policy, yet goes a long way towards accepting compulsory arbitration concerning the interpretation and violation of the terms of an agreement once concluded. The "Cooling-Off" period provided under procedure of Boards of Conciliation is so far as the State in Canada is prepared to go in the matter of direct compulsion during the conciliation of labour disputes. To go further would appear to be unwise, as it would tend to do away with the voluntary element in the concluding of agreements between employers and employees.

The Industrial Disputes Investigation Act did not make it clear that a strike or lockout was prohibited in all cases until reference to a Board of Conciliation and Investigation. It was provided by enactment that strikes were prohibited until certain formalities had been complied with. The Industrial Relations and Disputes Investigation Act prohibits both strikes and lockouts until conciliation and other requirements have been met.

Both the employer and the employee in Canada appear to have accepted this invasion by the State in the proceedings leading up to collective agreements, as well as the compulsion involved in the grievance procedure described before. The fact that unfair labour practices and other offences under the Act are enumerated but may justify court action only after consent of the Minister of Labour, despite the fact that the legal personality of labour organizations is advanced under the Act, indicates a restraining effect on prosecutions and may well be another means of furthering peace in industry short of full compulsion.

The process of collective bargaining developed on a voluntary basis in Canada with little or no government assistance (the Industrial Disputes Investigation Act procedure had been an attempt to substitute Faith for Fear), until a point was reached when definite rules were necessary to secure some measure of uniformity and to provide some guarantee that the

fair employer and the depressed worker would not continue to be penalized. The Right Hon. W. L. MacKenize King, former Prime Minister of Canada, has stated in *Industry and Humanity* that those who strive to bring about harmonious relations in industry and humanity are those whom history will honor. This assertion is applicable to governments as well as people.