# Industrial Relations and Social Security

## Union Recognition and Collective Bargaining

By Bora Laskin

TO-DAY a man can speak favorably in public of union recognition and collective bargaining and still be considered respectable. Yet it is hardly open to dispute that we entered this war with a system of labour relations that showed little, if any, advance over that in vogue in 1914. About 20% of workers in industry were organized in trade unions, most of them craft unions of skilled workers whose interest in collective bargaining was strengthened by a desire to protect sickness, death and pension benefits in which they had invested through their various unions. The thousands of unskilled workers in our manufacturing and primary industries were largely untouched by any form of legitimate employee organization. There were no effective laws guaranteeing freedom of association or compelling collective bargaining. The open shop was a flourishing principle of labour relations policy, and discrimination on account of union activity through discharge or demotion was, prior to 1939 at any rate, neither unlawful nor unusual. At the same time existing legislation and court decisions relative to strikes and picketing made it fairly clear that any union activity that was likely to be effective, would be declared illegal and would subject the participants to both criminal and civil penalties.

### Early Provincial Trade Union Acts

The death of this old policy of negation of workers' freedom to combine and act for their mutual protection, and the birth of a new policy, was heralded in Nova Scotia by the enactment in 1937 of the Trade Union Act. This Act, and similar ones which followed in the provinces of Alberta and Saskatchewan, British Columbia, New Brunswick and Manitoba suffered from inadequacies both in terms and in provisions for enforcement. They did not provide an effective administration empowered to act affirmatively in enforcing upon employers a duty to bargain collectively with the trade union representing the majority of their employees. Notwithstanding this, however, the legislation was an unequivocal acknowledgment of the need to offer workers some legislative guarantees in connection with freedom of organization and collective bargaining. The fact that the majority of the provinces made this acknowledgment ought to have had some significance for the Dominion when it was confronted in the early days of the war with the need to state a labour relations policy. Apparently, however, the Dominion was not impressed—perhaps the absence of collective bargaining legislation in Ontario and in Quebec was more significant—and four and a half years of war were to elapse before the Dominion government bestirred itself to inaugurate a new regime of labour relations.

### The Dominion Enters the Field

Apart from the Industrial Disputes Investigation Act, the Dominion entered the labour relations field in 1939 through an amendment to the Criminal Code purporting to make it an offense for an employer (1) to refuse to employ or to dismiss any person on the sole ground of union membership; and (2) to discourage trade union membership through intimidation or by threatening or causing loss of position or employment. Shortly after the outbreak of war, it extended the provisions of the Industrial Disputes Investigation Act to cover war industries throughout the country. That Act provided for the appointment of a Board of Conciliation and Investigation in the case of a labour dispute, and postponed the right to strike or to enforce a lockout

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until the board had made its report and recommendations for the settlement of the dispute. The Board's recommendations were not binding and often there were long delays before it reported. These delays were aggravated rather than diminished by an amending order-in-council which provided for a preliminary investigation of the dispute by an inquiry commission, which might also be empowered to examine into any allegation of discharge or discrimination against an employee on account of trade union membership. While the Industrial Disputes Investigation Act, as amended, provided a method for airing disputes about union recognition and collective bargaining, it failed as an effective instrument for industrial peace because it neither compelled employers to bargain collectively with the duly chosen representatives of their employees nor did it prohibit them from fostering company-dominated unions or from interfering with their employees' attempts at self-organization.

Nor was the cause of industrial peace advanced by order-in-council 2685, passed in June, 1940. It was in the form of a recommendation to employers that workers should be free to organize and should be free to bargain collectively. The measure proved to be utterly ineffective.

The lack of constructive labour relations legislation was underscored when workers found that they could not even count upon Crown companies to acquiesce voluntarily in recognizing their unions and in bargaining collectively with them. An order-in-council of December, 1942, removed any legal doubts respecting the right of employees of Crown companies to organize and to bargain collectively, and while it authorized Crown companies to enter into collective agreements, there was no compulsion upon them to bargain collectively if they chose to ignore representative unions.

Two events combined to bring into effect on March 20, 1944, the War-time Labour Relations Regulations, P.C. 1003, legislation which in the main made a clear break with the previous policies. These events were (1) the enactment in the province of Ontario early in 1943, of the Ontario Collective Bargaining Act, and (2) the report of the National War Labor Board arising out of its inquiry into labour relations and wage conditions between April and June of 1943.

### Ontario Collective Bargaining Act

The Ontario Act marked a notable advance over previous legislative efforts to guarantee freedom of association and enforce collective bargaining as a working principle of employer-employee relations. It provided for the certification of bargaining agencies representative of employees in designated units. The bargaining unit was defined by practical considerations. It might include only production workers throughout a plant; or it might comprise all workers whether in the office or in production; or it might be confined to a craft group or groups within the general production force. The effect of certification was to impose upon the employer a duty to bargain collectively with the certified bargaining agency. No association of employees could qualify as a bargaining agency if its administration, management or policy was dominated, coerced or improperly influenced by the employer in any manner whether by financial aid or otherwise. The right of a bargaining agency to certification depended upon whether it represented the majority of employees within a designated bargaining unit. If any doubt arose whether a bargaining agency represented the majority of employees in any unit, it could be resolved by holding a vote under proper supervision.

This, in brief, was the scheme of the Ontario Act. Its administration was placed in the hands of a special branch of the Supreme Court of Ontario, named the Ontario Labour Court. This Court was given exclusive jurisdiction in all matters arising under the Act without right of appeal from its decisions. It had therefore an opportunity of developing a flexible labour relations policy for the province of Ontario. It is no

secret that in the nine months of its existence the Court established through its decisions a body of labour law which was, on the whole, acclaimed both by employers and employees alike as a significant contribution to industrial peace. The Labour Court experiment came to an end when the Dominion introduced its War-time Labour Relations Regulations early in 1944.

### The Labour Code

The National War Labour Board's report on labour relations and wage conditions was tabled in the House of Commons on January 28, 1944. In the field of labour relations, both the majority and minority members, although they disagreed on specific details, were unanimous in suggesting the enactment of a Dominion Labour Code which would make collective bargaining compulsory. Such a code, entitled the War-time Labour Relations Regulations, was made effective on March 20, 1944.

Any serious consideration of these Regulations must start from the acknowledged fact that they purport to be a war-time measure but express in leisurely fashion peace-time concepts which, although not adopted as working principles by employers, had become common in our social and economic thinking before the war began. In terms of policy, the Regulations can hardly be characterized as startling; in terms of their details they leave much to be desired.

The War-time Labour Relations Regulations cover employers and employees in all industries normally subject to federal jurisdiction, such as railways, and in all war industries. Employers and employees in non-war (civilian) industries are covered only if the particular provincial legislature makes the Regulations applicable to such industries. Domestic service, agriculture, horticulture, hunting and trapping are excluded in any event from the scope of the Regulations Administration is centered in a War-time Labour Relations Board representative of employers and employees and headed by two non-partisans, both judges as it happens. Provincial boards, similarly organized, function in all the provinces save Alberta and Prince Edward Island, and an appeal lies from their decisions to the central Board. Cases involving employers and employees in local war and non-war industries are heard in the first instance by the provincial boards. The central board exercises original jurisdiction in such industries as railways and shipping and in cases where employees in more than one province of a common employer are involved; and, of course, also in cases arising in provinces which have no provincial board. It is worthwhile to note, in passing, that the Quebec Board, unlike the boards in the other provinces, deals only with war industries since Quebec has not applied the Regulations to non-war industries, and these are subject to collective bargaining legislation passed by the province in February of this year, viz., the Quebec Labour Relations Act.

The administrative side of the Regulations is deserving of some comment which is perhaps equally applicable to many other boards and governmental agencies in Canada. Neither the central nor the provincial boards are full time tribunals; their members are not engaged exclusively in the task of administering the Regulations. Some of them, especially the central one, are unwieldy because of their large membership, a feature which impairs efficiency and effectiveness. These factors, reinforced by the bipartisan character of the boards, tend to produce loose administration, militate against the building up of a body of labour jurisprudence since written decisions are rare, and result in interpretations which proceed not so much on principle as on compromise.

Four aspects of the Regulations deserve to be singled out for attention. First, they provide for the certification of bargaining representatives of employees; secondly, they provide for collective bargaining between the certified bargaining representatives and employers; thirdly, they provide for the negotiation and

renewal of collective agreements, and for conciliation proceedings in connection with any points upon which the parties are unable to agree; fourthly, they prohibit certain unfair labour practices, and also deny the right to strike or to enforce a lockout pending certification proceedings and a resort to conciliation.

### Certification of Bargaining Representatives

The idea of certifying bargaining representatives, i.e. individual employees, rather than a trade union or an employees' organization possesses novelty without practicality. Obviously, it is the function of bargaining representatives to engage in collective bargaining which will produce a completed agreement, and the notion that there can be any effective bargaining or successful operation of a collective agreement without the employees being organized into some permanent form of association is in the writer's opinion certainly an elusive one. The Regulations themselves support this conclusion by defining "collective agreement" to mean an agreement between an employer and a trade union or employees' organization, and the War-time Labour Relations Board, appointed to administer the Regulations, has adopted the practice, certainly not justified by any express terms of the Regulations, of certifying not only individuals but also the organization of which they are members and which in fact represents the majority of employees.

Bargaining representatives are certified for a designated unit, as was the practice under the Ontario Collective Bargaining Act. The Regulations in effect guarantee the integrity of craft unions by providing that they may select bargaining representatives for particular crafts if the majority of the employees therein are organized into trade unions. Regardless therefore of the wishes of an industrial union claiming to represent the majority of all employees considered as a single unit, as many separate craft units must be cut off from the general industrial one as there are crafts in each of which the majority of the employees belong to a craft union.

Certification of bargaining representatives is conditioned on their representing the majority of employees in a unit appropriate for collective bargaining, and this may be ascertained through a vote if necessary, or through examination of records or otherwise. Lest a long term collective agreement tie the hands of the employees so as to prevent them from changing their bargaining representatives, the Regulations provide that new bargaining representatives may be selected at any time after the expiry of ten months of the term of a collective agreement.

### Collective Bargaining

After certification, bargaining representatives are entitled to call on an employer to negotiate with them and to make every reasonable effort to reach an agreement. The Regulations do not specifically state that an agreement must result from the negotiations but that appears to be their object. An employer who fails to negotiate in good faith, is liable to a fine. If the parties are unable to agree, their points of disagreement become referable to conciliation and ultimately, a board of conciliation may make recommendations for settlement of the differences. It is, of course, conceivable that the machinery of the Regulations may be exhausted without a resulting agreement and that the conciliation board's recommendations may prove unacceptable. It is not clear whether the parties may continue then to stand at arm's length or whether they may be required to resume negotiations or start them afresh. However that may be, a skeleton agreement on a number of points is inevitable since the effect of the Regulations, if not also of certain other measures, is to establish statutory conditions which almost automatically become part of the collective bargaining relations of employer and trade union. Thus, the employer must recognize certified bargaining representatives or a trade union as the exclusive bargaining

agency for all employees in the designated unit, authorized to bind such employees by a collective agreement. Again, a collective agreement must be of at least one year's duration, and it must provide for termination on reasonable notice and for negotiations for its renewal. Finally, it must contain a provision for final settlement of differences concerning its interpretation or violation.

### Negotiating an Agreement

The War-time Labour Relations Regulations thus purport to go beyond the issue of collective bargaining and to ensure that the collective bargaining process will yield an agreement. By the provision already mentioned, requiring every collective agreement to contain a clause establishing a procedure for final settlement of differences concerning its interpretation or violation, the Regulations purport to stabilize industrial relations through compulsory and final arbitration of grievances arising out of collective bargaining relations. The stability is to some extent an illusory one, however, because all collective agreements are subject to renegotiation and revision, and at such time demands and counter-demands may be made which, on failure to resolve them, become ripe for submission to a conciliation board, a tribunal having only powers of recommendation and no right to enforce upon the contending parties any settlement which is distasteful to both or either of them.

The war and its accompanying regulations have severely restricted the area of free collective bargaining. A trade union to-day, and the same applies to an employer, cannot bargain on many vital matters upon which in peace-time there was the fullest opportunity to arrive at a mutually satisfactory decision after the usual give and take implicit in the bargaining process. Wage control and other regulations have put wages, hours, paid legal holidays, vacations with pay, overtime, transportation allowances, and compensation on reporting or on being recalled for work, all beyond the ambit of voluntary and untrammelled negotiation. Even grievances are subjected to final settlement, with the labour relations boards authorized to write in an appropriate clause on failure of the parties to agree to one. What then is left to free bargaining? Seniority provisions, for one, but they present no insuperable difficulties and are fast becoming standardized. Another, and perhaps the outstanding issue in labour relations to-day, is that denominated as "union security."

### Union Security

The vast majority of the conciliation boards that have been established under the War-time Labour Relations Regulations to effect a settlement of differences arising in negotiations for a collective agreement are concerned with "union security" controversies. These controversies revolve around claims by various unions that the employer agree to a closed shop, or a union shop or that he accept the principle of maintenance of membership, and in addition that he honour revocable voluntary authorizations by employees to check off union dues. Briefly, a closed shop is one in which the employer is restricted to hiring only employees who are already members of a union, save that he may hire other persons when the union is unable to supply him with suitable union help, but such persons must become members of the union. The union shop exemplifies a relationship between union and employer whereby employees must, usually after a short period, become members of the union as a condition of continued employment, no restriction being placed on the employer's rights in initial hirings. Maintenance of membership is a condition under which existing members of a union and any employees who may subsequently become members, must continue their membership if they are to remain in the employment.

The closed shop principle is one in which craft unions have a particular interest, especially crafts which have an apprenticeship system through which per-

sons become qualified to exercise a skilled trade. Such unions are in effect employment agencies for the supply of skilled labour and no cogent arguments exist against acknowledging the propriety of a closed shop relationship in their case. Such a relationship with craft unions is well established in many industries, as for example, in the building trades, in the needle trades, and in the printing trades; and its enforcement is based on the time-honoured principle, developed in England and usually found in craft union constitutions, prohibiting unionists from working with non-union men.

Industrial unions do not now and may perhaps never purport to act as employment agencies for the supply of labour, whether skilled or unskilled. The closed shop is not an issue with such unions because their demand for security is generally couched in terms of the union shop or maintenance of membership, along with dues check off.

There is undoubtedly a drive on by industrial unions to gain union security conditions in their collective agreements. To employers, many of whom are just becoming habituated to simple union recognition, this drive appears to be a presumptuous attempt to fix upon them responsibility for guaranteeing the permanence of unions which have not yet achieved an inner stability through their own efforts. But this seeking after union security is not, however, the promotion of some sinister conspiracy. It is implicit in the collective bargaining process, and flows inevitably out of a dynamic employer-union relationship. The contraction during the present war of the area of free collective bargaining has, perhaps prematurely in some cases, made union security the pivotal issue in labour relations, and has focussed such attention upon it that proper perspective is hard to maintain in discussions about it. Perhaps it provides an outlet in some cases to compensate for the frustration engendered by the present narrow scope of collective bargaining, a narrowness which in turn may confirm an employer in his unwillingness to have anything to do with it.

Whatever the causes which have centred a spotlight on union security, it will hardly do to dismiss it with a negative shake of the head. The very fact that the claim for security is made, is an indication that a union is not only a bargaining agent for employees but that it itself, considered as an entity, has a role to play in industry. If this be true, its desire for a guarantee of its integrity and of its continued existence becomes understandable. But, whether the employer should co-operate in making this possible is not an altogether easy question to answer in terms of a general principle. An answer in such terms may more properly come from government; for the employer it may be sufficient to face the issue factually and on the basis of individual cases.

The standards by which an employer should guide himself in this matter are not susceptible of easy or exhaustive formulation, even disregarding the obvious difficulty of persuading employers and unions to accept common standards. Material factors on the issue of union security include the history of collective bargaining, the membership position of the union, the extent of union-management co-operation, mutuality of confidence, the generality of union security relationships in the locality or in the industry. Special considerations arising out of the particular character of organization in the industry may be decidedly relevant.

### Unfair Labour Practices

Several sections of the War-time Labour Relations Regulations deal with unfair labour practices. Prohibitions on this score are addressed specifically to employers, specifically to trade unions and generally to all persons. Violation of the Regulations by engaging in unfair practices is punishable by fine or imprisonment or both. The prohibition applicable generally to all persons is against the use of coercion or intimidation in compelling or influencing anyone to join a trade

union. Trade unions are forbidden (1) to support, condone or engage in a "slowdown" or other activity designed to restrict or limit production; (2) to participate in or interfere with the formation or administration of an employers' organization; and (3) to solicit union membership on an employers' premises during working hours, except with the employers' consent. Solicitation on such premises outside of working hours is neither expressly permitted nor denied.

The unfair practices prohibited to an employer are activities which would frustrate the purpose of the Regulations, i.e., the promotion of collective bargaining. Thus, employers may not refuse employment to any person on account of his union membership. They may not restrain an employee, through any term in his contract of employment, in the exercise of rights given by the Regulations; as for example, the right to join a trade union. And they may not, by intimidation, dismissal, threats or any other means, seek to compel an employee not to become or to cease to be a member or officer of a trade union or to abstain from exercising his lawful rights. All these unfair practices have to do with the exertion of pressure or exercise of discrimination against particular individuals because of union membership or activity. But the principle unfair practice, the one which goes to the heart of genuine collective bargaining is that of fostering company or employer dominated unions. In seeking a formula of words to outlaw such organizations, the Regulations borrow from the National Labour Relations Act of the United States (Wagner Act). Thus, it is stated that "no employer shall dominate or interfere with the formation or administration of a trade union or employees' organization or contribute financial or other support to it." The purpose of this provision is clear. Employees must be left to do their collective bargaining through agencies created and maintained by them without interference or assistance from the employer. The extent to which the purpose can be realized depends, of course, on the administrative strength of the Regulations.

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## Minimum Family Budget

For the fixing of minimum wages, for the granting of relief and similar social purposes, it is imperative to know what sums are required for the budget of a family which is to maintain health and self respect for its members. While a good many minimum family budgets have been worked out in Britain and the United States, pertinent information is very scarce in Canada. The pioneer work in this field has been done by the Welfare Council of Toronto which, in 1939, published a study on the cost of living. This study has repeatedly served as the basis for legislative measures of the Dominion as well as the provinces. Now the Council has revised the figures of the budget, taking into account the increase in the cost of living which has taken place between 1939 and 1944. The following table shows the items of the budget for a family of husband, wife and three children at the 1944 prices.

| | | $ | % of Budget |
|---|---|---|---|
| Rent | | 30.00 | 19.5 |
| Food: | | | |
| Man | $13.00 | | |
| Woman | 11.60 | | |
| Boy 6 | 7.60 | | |
| Girl 10 | 10.55 | | |
| Boy 12 | 10.55 | | |
| | | 53.30 | 34.5 |
| Clothing: | | | |
| Man | 6.40 | | |
| Woman | 6.00 | | |
| Boy 6 | 3.05 | | |
| Girl 10 | 4.15 | | |
| Boy 12 | 4.50 | | |
| | | 24.10 | 15.5 |
| Operation: | | | |
| Coal | 7.75 | | |
| Gas | 2.70 | | |
| Light | 1.08 | | |
| Water | .90 | | |
| Ice | 1.00 | | |
| Cleaning Supplies | 1.50 | | |
| Replacements | 2.50 | | |
| Carfare | 3.50 | | |
| | | 20.93 | 13.5 |

| | | |
|---|---|---|
| Advancement and Recreation: | | |
| Newspaper | .75 | |
| Allowances | 1.00 | |
| Radio License | .20 | |
| Vacations and Sports | 4.25 | |
| Church | 1.40 | |
| Shows, Sports, etc. | 1.00 | |
| Postage, Reading | 1.00 | |
| Carfare | 1.30 | |
| | 11.50 | 7.5 |
| Medical and Dental Care | 9.00 | .... |
| Savings | 4.50 | 3.5 |
| Insurance (Life policy for man) | .84 | |
| TOTAL PER MONTH | 154.17 | 100 |
| TOTAL PER WEEK | 35.85 | .... |

The figures apply to Toronto and prices in other parts of the Dominion may be somewhat different. But the Toronto budget can, nevertheless, serve as a model for other communities which plan to make a study of household budgets.

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### Hours of Work and Vacations with Pay in Ontario

On July 1st the Ontario Hours of Work and Vacations With Pay Act came into force. It marks an important new phase in Ontario's social legislation.

The Act limits working hours in industrial undertakings to eight per day. The maximum hours' provision does not apply to persons holding positions of supervision or management or employed in a confidential capacity, and it may be suspended in the case of war industries where in the opinion of the Industry and Labour Board it is not feasible to apply it. Longer daily or weekly hours may be authorized by the Board in agreement with the organizations of employers and workers concerned, and the limit of hours may also be exceeded in case of accident or urgent work or *force majeure* to the extent necessary to avoid serious interference with the normal working of the undertaking.

The Act further grants to all workers employed in an industrial undertaking an annual holiday with pay of at least one week. Every employee granted such a holiday is entitled to receive a minimum of 2 per cent of his total annual earnings. In the construction industry, when workers are employed by different employers, every employee is entitled to receive "a vacation with pay credit." He will be given, at cost, an employment record book to which the employer will affix vacation credit stamps, issued by the Minister of Labour and purchased by the employer, at the end of each working day or week, the value of the stamps beinig equivalent to 2 per cent of earnings during the work period in question. The employee should present his record book on or after 30 June each year to a provincial savings office, and will then receive the amount of money accruing to him.

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### Workers' Competition in Soviet Russia

In socialized industries the problem arises how to create an incentive for increased productivity as it is furnished under the system of free enterprise by the rivalry between firms in the same branch of an industry. Soviet Russia faced with this problem has launched a movement for "socialist competition in production" and the trade unions play a leading part in it.

Workers in the same plant and in plants turning out the same product are invited to compete with each other. Experience has shown that the most favourable results are obtained if competition is by trade.

In a resolution recently passed by the U.S.S.R. Central Council of Trade Unions and reported in the *International Labour Review*, the trade union factory committees were urged to make a special effort to promote and organize this form of competition, and it was decided that the winning workers should be given the title of "best worker" in the given trade, for instance, "best engineer," "best turner," etc. As a further encouragement, it was recommended that boards of

honour should be put up in the factories for posting the names of the best workers whose output during a three-month period had exceeded the average, and that a special honorary acknowledgment should be solemnly handed over by the manage ment to those maintaining the same achievement during six months.

The resolution called for an improvement of the work of the trade union organizations with regard to the "conferences of production" between workers and management. The trade unions should further pay special attention to the quality of technical training.

In an article written by the Chairman of the Trade Union Congress it was stated that production increased during the two years of socialist competition, on an average. by over 40 per cent. The average for the aircraft industry was 47 per cent, for tank production 43 per cent, for the ammunition industry 54 per cent, for light industry 55 per cent, etc. Participation of the workers in these competitions was very high. It ranged between 80 and 90 per cent in most of the industries.

### In Memoriam Dr. Temple

Dr. William Temple, the great churchman, scholar and religious philosopher, whose untimely death we mourn, was best known to the millions as the warm friend and courageous champion of social progress. The improvement of living conditions among people of low income was one of the great interests of his life. To this goal he devoted much of his time and energy. The minutes of the first meeting held by the Workers' Educational Association in the London area some forty years ago bear the signature of William Temple, secretary, and plans for social reconstruction in Britain were sponsored by the Archbishop shortly before his death.

PUBLIC AFFAIRS has special reason to mourn the death of this great man. Since the inception of the journal he had taken an interest in the experiment of providing for a well informed public opinion on social and economic problems, When in 1942 a reconstruction issue of the journal was prepared, Dr. Temple kindly agreed to write the introductory article. As he was soon afterwards transferred to the See of Canterbury, is looked for a time as if he would be unable to do the writing. But shortly before the issue went to the press the editor received a cable stating that the Archbishop had found a quiet morning and had finished the manuscript. It was flown to Canada and gives the keynote to PUBLIC AFFAIRS reconstruction issue.