Industrial Relations and Social Security

Some Comments on Arbitration

By B. S. KEIRSTEAD

CANADA, in the sphere of labour legislation, has reached the stage of participation by Government in the process of achieving collective agreements between employers and trades unions. Characteristic of this stage is the provision of conciliation and arbitration machinery. While there is widespread acceptance of the necessity for some such machinery, the nature it should take raises thorny issues, since labour disputes represent the whole field of labour relations.

Jurisdiction

One of the most controversial questions faced by a labour arbitration council to-day is the question of jurisdiction. All matters of wages, under the War-time Wages Control Order, 1943, P.C. 9384, have to be dealt with eventually by the Regional War Labour Board. It is the function of this Board to protect the wage-ceiling and to maintain the anti-inflation policy of the Dominion Government, at the same time remedying such glaring inconsistencies or injustices as may from time to time appear in the wage structure. Are Arbitration Councils thereby precluded from hearing evidence relative to, and adjudicating disputes over, wages? It has been seriously argued before Councils that wage matters cannot be dealt with by Arbitration Councils, acting under the authority either of the Dominion Labour Code, P.C. 1003, or of provincial statutes. Actually some Councils have taken this point of view. Others, recognizing their right to hear wage disputes, have, nevertheless, taken the stand that it was a useless duplication of effort to hear evidence on wages that would have to be repeated before the regional board. Still others have definitely made recommendations on wages. It seems to be the opinion of the Quebec Department of Labour that there would be small point in provincial legislation to provide for arbitration of disputes arising in those industries not covered by the Dominion legislation, if wage disputes were to be ruled out. There is involved, no doubt, the jealousy of provincial departments against possible encroachments by federal authority. It would, in any case, however, seem to be desirable from the point of view of the Regional Board to have recommendations made after judicial proceedings before a Council of Arbitration. Since there is little uniformity in the matter and since the decisions are made *ad hoc* in each case by the chairmen of Councils, it would seem to be desirable to have a clear and unequivocal ruling either from the chairmen of the National War Labour Board or, from the Ministry in Ottawa as to the right of Councils to make recommendations on wage disputes. The extension of Dominion powers to act in labour questions during war time has raised the whole problem of divided jurisdiction, and some clear ruling for the guidance of Councils and their chairmen is badly needed.

The distinction to be made between the functions of conciliation and arbitration is a second issue. Conciliation is, obviously, the effort on the part of a neutral third party nominated by the state, to bring the two disputants to an agreement. Arbitration, equally obviously, results in a judicial or quasi-judicial decision in favour of one or other of the disputants. As long as arbitral awards are not made compulsory,—and they should not be—arbitration frequently results in a deadlock, and may end in a strike. From the point of view of both

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parties a compromise agreement is really more satisfactory, but it is frequently tactically difficult for either party to the dispute to admit a willingness to compromise on important points in dispute in the early stages of negotiation. Under the Quebec Trade Disputes Act, conciliation, is conducted by an officer of the Department of Labour or a conciliation council, appointed by the parties to the dispute as a prior step to arbitration. This is the natural and logical order of procedure, but one wonders how often the work of a conciliation officer will be successful at an early stage in the dispute before arbitration proceedings have been begun. Personal experience, supported by that of other arbitrators, suggests that it is only after both parties have been before an Arbitration Board and have an inkling of how proceedings are going and some notion, too, of the opinions of the chairmen, that they are willing to compromise. An example may clarify this argument. In a case of which the author has direct knowledge, negotiations for a collective agreement had continued for over a year. Little progress towards an agreement had been made. An application having been duly made by one of the parties to the provincial department of labour, a conciliation officer was named and he attempted to bring the parties together. After further negotiations the parties submitted eight major points of disagreement to an arbitration board. The board heard evidence, and, as the sittings continued, both parties began to see how the board would probably divide on the points in dispute. It was fairly apparent that the majority report of the board would favour the union on most of the points in dispute. This caused the company to take a more favourable view of the possibility of reaching a compromise agreement. The union, too, anxious as it was for an agreement, saw that a decision, which the company could not and would not accept, would result in a deadlock and the necessity of a strike vote, and was therefore willing to take advantage of the more compromising frame of mind of the company. Arbitration proceedings were broken off and an agreement was reached. If this sort of situation is common, and there is reason to think so, it is important that too severe a distinction between conciliation and arbitration and too sharp a delimitation of powers, should not be drawn by the empowering legislation. In this respect the Dominion legislation which gives wide latitude to the boards is excellent. The Quebec legislation tends to make a fairly clear cut distinction of function, but has the saving grace of allowing wide latitude to council chairmen. However, it is probable that most chairmen would not interpret their instructions as empowering them to act as third party negotiators and conciliators. If the Act is later amended, it would be desirable explicitly to combine the conciliation and arbitration functions in the person of the chairman of the arbitration council.

Union Security Clauses

The collection bargaining provisions of provincial legislation, prior to the adoption of the Labour Code, gave rise in themselves to much misunderstanding. Like the present Quebec Labour Relations Act, (1941, C. 162A), legislation of some provinces was said to outlaw maintenance of membership as well as closed and union shop clauses in collective contracts. The debated section of the Quebec Act reads: "No person shall use intimidation or threats to induce anyone to become, refrain from becoming or cease to be a member of an association."

In spite of this legislation, union and closed shop clauses appear in contracts currently negotiated, and Boards of Arbitration continue to bring in judgments in favour of the closed shop. It is a great pity that the Dominion Government has failed clearly to enunciate the general principle that such agreements are legal. The general effect of section 22 of the Quebec Act, whatever its intention, has not been to outlaw the closed shop, but only to confuse Councils of arbitration as to the legality of such clauses. In Canada the great objection

to a closed shop clause is that it may be used in inter-union competition as a method of preventing a rival union from organizing a trade. For example, it is sometimes used in Quebec to prevent the A.F. of L. and the C.C.L. unions from organizing a shop in which the Catholic syndicates have obtained membership. But on the whole the employers' objections to the union shop or the closed shop stem from their objections to unionism in general. In a country like England where trades unionism is universally accepted, the need for the closed shop does not exist. There will continue to be cases in Canada where the closed shop is objectionable for a variety of excellent reasons, but if our Federal and Provincial governments are genuinely anxious to assist trades unionism in industry, they will eventually have to come to a clear-cut legislative recognition of the closed shop or some variant such as the union shop or maintenance of membership.

Good Faith

The fourth point is the question of negotiation in good faith. The Quebec Act requires, like the Labour Code, that if a union is certified under the Act, the employer must negotiate with the union in good faith. It is perfectly possible for the company to enter on long negotiations without the slightest intention of signing a contract. It is nearly impossible, however, for a conciliation officer to find that, within the meaning of the Act, the company is not negotiating in good faith. The union is thus put at a great disadvantage. Its members want results; they want a contract reached, or an arbitral decision to support them if they are forced to strike. Yet any such action is illegal while negotiations are under way or while arbitration sittings are being held. A company may thus avoid the necessity of signing an agreement and at the same time wear the union out so that its membership falls off and it can no longer be certified as a bargaining agent. The United States National Labour Relations Act requires that as evidence of negotiation in good faith both parties must show a willingness to make mutual bargaining concessions. Such a definition of good faith in negotiations should be required in all collective bargaining legislation. Otherwise the legislative provision of conciliation officers and arbitration boards may be most one-sided in its effects.

Proceedings

One last comment concerns proceedings before the boards. Under the Quebec statute the chairmen enjoy the powers of judges of the Superior Court without the power to commit for contempt of court. Proceedings before industrial tribunals involve powerful groups, big, international trades unions and large corporations, and the matters in dispute are often as important to the disputants as those involved in disputes before the ordinary courts. The control of the court and the power to command witnesses to give evidence, alike make demands on the chairman, to meet which he should be entrusted with the fullest possible authority to recommend to the ordinary courts cases of contempt.

Personnel Management in Great Britain

In Great Britain, no less than in Canada and the United States, war-time developments in personnel management have been extensive. The underlying principles of the human aspect of management have been enunciated more clearly and authoritatively than ever before. The patronizing and paternalistic conceptions of welfare of earlier years have been replaced by a more fundamental principle. The personnel function of management is now wider in scope, more technical in application than the old welfare concept. At the same time, it is primarily concerned with the well being of the individual and the development of better relations within industry.

Mr. G. R. Moxon, Institute of Labour Management, writing in a recent issue of the *International Labour Review*, shows

that in Great Britain a fourfold increase in the number of personnel officers has taken place since the beginning of the war. Predominant considerations of manpower, the proper use of manpower, and the mobilization of the nation for total war have forced the establishment of personnel departments, particularly in war industries. The development was not achieved without growing pains. More often than not changes in manpower requirements took place before either management or workers fully grasped their purpose and significance and, frequently, before personnel and welfare officers, themselves often inexperienced and untried, had more than a hazy idea of their duties.

When the demand for the services of experienced personnel officers began to make itself felt in 1940, the Institute of Labour Management and the Joint Universities Council for Social Studies organized three months' emergency training courses. For those who could not take advantage of such courses, the Ministry of Labour, in conjunction with the Institute of Labour Management and various educational authorities, in 1943 organized a number of "refresher" courses.

In Canada, the Dominion Department of Labour, in conjunction with the universities, has sponsored similar courses since the outbreak of war. Canadian industry, however, has not given wide acceptance to the principles. Yet, Mr. Moxon's conclusion is equally applicable to Canada: "In this war the necessity for effective personnal management has been more widely understood; the principles have been reaffirmed and the nature of the present-day practice more authoritatively stated. Industry will, therefore, face the transition period when the war has been won with the knowledge that industrial efficiency will depend on the degree of success with which it solves its human problems no less than in the techniques of its production.

Social Research and Social Progress

It is not yet sufficiently recognized what important contributions research in social sciences could make to furthering economic and social progress. In that respect they lag very much behind natural and applied sciences. If a new invention is made, engineers or chemists get busy at once examining its applicability to industry and its effect on the existing store of knowledge. But when new social insights are gained and new social techniques developed, goernment and society are slow in putting them to a practical test. In an article "Liberals and Radicals," the *Economist* (1944) comments on this lack of progressive thinking.

"Bagehot foresaw the effect that technology would have on politics when he said, nearly eighty years ago, that 'the co-operative agency of the state' ought to be used 'in applying to our complicated society those results of science which are new to this age.' The physical sciences have, indeed, transformed the world; but the social sciences have done almost as much. Alongside the growth in the powers of production and destruction, there have been great social inventions too—techniques of collective welfare which, whether their application has been to the conquest of insecurity and the increase of wealth in peace-time, or to the safeguarding of social health amid the strains of total war, have opened up new vistas of possible achievement by the route of social organization.

"The new line of thought holds that twentieth century problems can only be solved by twentieth century methods. But equally it holds that, if these methods are used, the problems can be solved within the framework of a free society. The problem of poverty can be solved by the policy of the National Minimum. The problem of unemployment can be solved by skilled scientific treatment. The problem of productivity, can be solved by a single-minded devotion to technical requirements. But none of these problems can be solved if the technical treatment of them is to be beset by the timidities and prejudices of the embattled interests of the Right and Left."