RECENT LABOUR LEGISLATION IN CANADA*

My task tonight is to survey and to appraise a good many orders-in-council passed by the government of Canada. That is the task which confronts anyone who dares to discuss "recent labour legislation" before an audience. The orders-in-council with which I shall deal, and thousands of others with which we are not here concerned, derive their legal force from the War Measures Act. By this Act, the Parliament of Canada delegated to the government (or federal cabinet) very wide powers to take appropriate action for the promotion of the national war effort. We are hence entitled to assume that the primary purpose of the various orders-in-council as expressions of governmental policy, is to serve wartime ends. Any merit which they might otherwise possess is subsidiary, and wholly or partly incidental to this principal object. I do not suggest that all of them will disappear upon the termination of the war emergency which was the occasion for their birth. Some of them, to which I shall presently refer, have an important function to fulfil in the normalcy of peace. Whether they survive the war will depend to some extent upon principles of our constitutional law.

These principles derive from the British North America Act, Canada's written constitution which distributes law-making power between the Parliament of Canada and the legislatures of the provinces. It is a feature of this constitution that in time of emergency, such as war, the law-making power of the Dominion Parliament expands so that it becomes proper and lawful for it to deal with matters which, ordinarily, are subject to the exclusive jurisdiction of the respective provinces. Laws dealing with labour relations, for example, are, generally speaking, within the scope of provincial legislative power; but the Dominion Parliament, or by delegation from it, the federal cabinet, may enact such laws as a war measure. For the duration of the war emergency, federal laws on that subject will supersede any inconsistent provincial legislation of a similar character. The survival of such federal laws as permanent peacetime measures would require an amendment of the British North America Act. Without enlarging on this matter, it is sufficient to say that the probability of an amendment is a remote one.

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The expectation is that upon the termination of war through the conclusion of a treaty of peace the Dominion will withdraw its wartime legislation dealing with provincial matters. This will have the double effect of restoring the provinces to the enjoyment of their normal law-making powers and permitting revival of the operative effect of provincial laws which were temporarily eclipsed. It would not be surprising, however, if provincial legislatures copied into their legislation particular features of federal wartime measures which appeared to have some permanent value.

Five years of war have produced a harvest of labour legislation, most of it of a type and character unknown in this country before September, 1939. Most of it has been subjected, through these five stern years, to considerable amendment; some of it has suffered the indignity of outright repeal and replacement by more stringent or less stringent provisions. All of it was designed, by the federal cabinet which fathered it, to ensure continuous and maximum production through the full utilization of available manpower under conditions which in the minds of the cabinet, would most likely lead to such a result.

The wartime labour legislation of Canada lends itself to a threefold classification:

1. Labour relations legislation;
2. Wage control legislation;
3. Labour supply legislation.

The regulations respecting wage control and labour supply may justly be regarded as transitory. I propose therefore to make only brief mention of them and to devote the greater part of my remarks to the subject of labour relations legislation, a subject not only of vital current interest but one in which governmental regulation, whether by the Dominion or by the provinces, is likely to be continued, if not also extended.

The policy of wage control introduced late in 1941 was pivoted on the idea of keeping wages in any particular industry in a locality from rising above the level generally prevailing in that or in a comparable industry in the same or in a comparable locality. Rises in the cost of living were to be taken care of by a cost of living bonus, amounting roughly to 25 cents per week for each one point rise in the official cost of living index maintained by the Dominion Bureau of Statistics. There were two main criticisms of this policy from the wage earners' standpoint. First, it penalized those who worked in industries in which wages were generally depressed. Secondly, since volun-

tary bonuses paid by some employers prior to wage control were required to be continued and increased in accordance with rises in the cost of living index, an uneven situation was created as against those classes of workers whose employers had not paid any voluntary bonus and whose bonus was calculable only on rises in the index since the establishment of wage control. True, the war labour boards which administered the wage control regulations were given a limited power to redress inequalities among workers in respect of cost of living bonuses, but the power was far from adequate to establish uniformity.

The 1941 policy which I have described so shortly was continued through to the end of 1943 when it was replaced by a more stringent one. The new policy was reflected in the majority report of the National War Labour Board after a public inquiry into labour relations and wage conditions held between April and June of 1943. The report indicated a sympathy for the worker frozen by wage control to substandard wages, but its primary emphasis was on the inflationary aspect of wage increases and it felt that the existing formula of allowing wage revisions upwards on the comparative principle resulted merely in raising standards of comparison, which would inevitably tend to send wages higher and higher. To balance its recommendation of a tighter formula of control, the majority report advocated greater emphasis on incentive wages. The majority's concern for the worker at substandard wages and for more effective resort to incentive wages was shared by the minority report filed by the labour member of the Board. The latter report diverged completely, however, from the majority report on the inflation issue.

The new wage control order, which appeared towards the end of 1943, and as amended early in 1944, abolished cost of living bonuses for the future while requiring existing bonuses to be incorporated into basic wage rates. It provided that wage increases could be made only where necessary to rectify a gross inequality or gross injustice, and in applying this vague standard the war labour boards must take into account the probable effect of the increase on the cost of living and cost of production in the industry. In addition, leeway was given to make such upward adjustments as would be fair and reasonable, provided that they did not go further than take up the slack in the amount of the full cost of living bonus which could formerly be paid. This particular provision could be invoked, of course, only against employers who had not been paying the maximum

bonus permissible. Power was conferred on the war labour boards to decrease wages which were so high as to be unsound or cause gross inequalities. Authority was also given to the boards to direct the introduction of an incentive wage system provided that it was practicable and would increase the volume or quality of production without increasing the per unit cost of production.

Undoubtedly, the formula of "gross inequality or gross injustice" was designed both to afford scope for raising sub-standard wages and to guard against increases in other cases. While it has perceptibly tightened administration on the second score, its extreme quality, from the standpoint of considering what is a substandard wage, leads to the conclusion that it might have been preferable to put a floor under wages or to leave an area for free bargaining up to a fixed amount.

Labour supply regulations involve a reference to the intricate controls administered by selective service. A start was made early in the war with a modest program which sought to eliminate competition in labour through the control of advertising and through a placement system based on obtaining a selective service permit. The developing war situation made it imperative to introduce specific priority procedures. In the result, provision was made for the compulsory transfer of workers from the non-essential to the essential industries, and freezing provisions were introduced to maintain employment forces engaged in vital war work. A necessary flexibility has characterized the administration of industrial manpower controls and discretion has been reserved to the selective service officials to vary the priority rankings of various industries as circumstances from time to time require. While local irritations were unavoidable, once the priority program took shape there was little criticism levied against it as compared with that which was directed against both wage control and labour relations regulations.

I turn now to my principal topic — labour relations legislation.

Today a man can speak favourably 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.

Had employers in Canada taken the trouble to read a little British and American history, they would have realized that the could hardly hope to stave off much longer the formation of organizations of employees on an industrial basis. Perhaps employers did read that history but hoped to avert the catastrophe of trade unionism which overcame their British and American confreres. It was inevitable that, with the upsurge in the 1930's of trade union activity in the U.S. and especially with the enactment there in 1935 of the Wagner Act (National Labour Relations Act), a similar reaction would take place in Canada. It could not be otherwise when we lie in the same economic orbit. Our labour statistics indicated an increasing number of strikes for union recognition and for collective bargaining, until by the beginning of the present war, these issues became the primary causes of industrial unrest. Many employers fanned the flames of this unrest by making a mockery of freedom of association in their promotion of "company dominated unions".

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 this very province by the enactment in 1937 of the Nova Scotia 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. I need not pause here to detail shortcomings, except to say that the principal defect was the failure to provide an effective administration empowered to act affirmatively in enforcing upon employers a duty to bargain collec-

tively 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 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 Industrial Disputes Investigation Act aside, the Dominion entered the labour relations field in 1939 through an amendment to the Criminal Code purporting to make it an offence 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. Upon the outbreak of war, shortly afterwards, 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 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. Its ineptitude, apparent in its want of any binding effect, made it the object of scorn beyond compare. It would be a case of "flogging a dead horse" were I to add my own at this time.

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 Wartime Labour Relations Regulations, P.C. 1003, legislation which in the main made a clear break with the exercises in futility which I have shortly summarized. 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 Labour Board arising out of its inquiry into labour relations and wage conditions between April and June of 1943.

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.

The Act defined "employees" to include all persons employed by an employer except officers or officials and persons acting on behalf of an employer in a supervisory or confidential capacity or having authority to employ, discharge or discipline. 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 significent contribution to industrial peace. Save for lingering attempts by some employers to promote dummy unions, it may be said that the battle for collective bargaining, for the opportunity of employees to share in the determination of the conditions under which they will work, is on the way to being won in Ontario. The Labour Court experiment came to an end when the Dominion introduced its Wartime Labour Relations Regulations early in 1944.

The National War Labour Board's report on labour relations and wage conditions was placed in the government's hands in August, 1943, but its contents remained for many months afterwards the open secret of some chosen few. It was tabled finally 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 Wartime 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 wartime measure but express in leisurely fashion peacetime 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, and I venture to suggest that they do not

shine by comparison with the now repealed Ontario Collective Bargaining Act.

The Wartime 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 Wartime 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 industries such 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 and a resort to conciliation.

The idea of certifying bargaining representatives, i.e., individual employees, rather than a trade union or an or 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 to me 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 Wartime 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.

That the provision for certification of bargaining representatives is a ridiculous one is proved by two other terms of the Regulations. In the first place, the Regulations state that where a trade union, as distinguished from an unaffiliated employees' organization, represents the majority of employees, it may elect or appoint its officers or other persons as bargaining representatives, so that they need not in such case be elected from among the employees as a whole. Secondly, the Regulations provide that when bargaining representatives have been certified, they may "enter into negotiations with a view to the completion of a collective agreement between the employer concerned on the one hand and the trade union or employees' organization on the other hand." If, then, the bargaining representatives may name a trade union as a party to a collective agreement negotiated by them, and if the trade union may name its officers as the bargaining representatives, is there any conceivable purpose in issuing a certificate containing the names of individuals as bargaining representatives? Is there any reason for courting difficulty which might arise if, during the currency of a certificate, a trade union wished to change its officers and appoint other bargaining repre-

sentatives? It seems to me that common sense requires that the bargaining certificate be issued in the name of a trade union or an employees' organization, as the case may be, and the Regulations ought to be amended accordingly.

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.

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 at least of 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.

The Wartime 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. And 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 certain grievances arising out of collective bargaining. 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 concilliation 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. I emphasize this not because of any doubt as to the advisibility of seeking means to guarantee continuing harmonious relations between employers and trade unions, but because the present condition of things is not calculated to give much encouragement to the efficacy of conciliation boards.

The war and its accompanying regulations have severely restricted the area of free collective bargaining. A trade union today, and the same applies to an employer, cannot bargain on many vital matters upon which in peacetime 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 certain grievances, as I have pointed out, 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 today, is that denominated as "union security."

The vast majority of the conciliation boards that have been established under the Wartime 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 member of the union as a condition of continued employment, no restriction being placed on the employer's right 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 persons 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. I confess frankly that I am not much moved by employers' fervent declarations of concern for their individual employees' freedom of action, and their consequent unwillingness on that ground to make union membership a condition of continued employment. It may be readily conceded that, in theory at least, we are the guardians of each other's liberty. But I find it hard to believe that an employer, well disposed though he may be, has a greater stake in the freedom and independence and livelihood of his employees than the trade union which is their own instrument. Similarly, I see no particular problem in employers' expressed fears that union security relationships may cut them off from the opportunity to secure competent help because such help may have an antipathy to unionism. Competency in mass production undertakings, as our vocational training programs during this war have aptly illustrated, is frequently a matter of a few months' instruction. And it is not a demonstrable proposition that trade unions retard competency or that membership therein has an adverse effect on devotion to work or on production levels.

The seeking after union security is not, to my mind, 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. For a person in my position, who has no title to speak on behalf of either unions or employers, any suggestions on this score are entirely gratuitous. I may venture, however, a very brief comment. 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.

I have referred to the demand for a check off of union dues as a concomitant of claims for security. But the check off can very well stand alone, as is indicated by provision therefor under legislation in force in Nova Scotia. The revocable voluntary authorization to check off union dues is in fact very similar to ordinary assignments of debt in commercial relations. Except for the clerical work involved, this type of check off should be a matter of indifference to an employer, for it involves merely a voluntary direction by individual employees for the disposition of part of their wages. On the other hand, the mandatory irrevocable check off is, in effect, a form of maintenance of union membership. In some instances, union desire for a check off is dictated by practical difficulties in collecting dues — difficulties arising perhaps from the location of the employer's plant, from overlapping of shifts or other such causes. Voluntary dues check off, however, should hardly be related to practical collection difficulties. Admitting the absence of such difficulties, it is merely a matter of convenience to the union. The mandatory check off, while likewise a convenience, is also a forceful method of bringing home to an employee his assumption of responsibility to his union and his duty to participate in its activities as well as to maintain its services. What, however, is the employer's stake in this business? Why should he act as a collection agency gathering money to fill the union chest?

If there is any answer, it is to be found in the social and legal acceptance of collective bargaining as an integral part of the present day operation of industry. Collective bargaining can be successful only if the union is stable. The financial independence of the union is therefore not outside the scope of an employer's self-interest.

May I return now to the discussion of the Wartime Labour Relations Regulations proper, and to a consideration of the unfair labour practices defined therein. 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

(i) to support, condone or engage in a "slowdown" or other activity designed to restrict or limit production;

(ii) to participate in or to interfere with the formation or administration of an employers' organization;

(iii) 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 proscribed.

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 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 principal 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. It may be argued that while an employer's domination of or interference with an employees' organization properly subjects him to punishment, it does not affect the organization's right to represent the employees if it offers proof of support by a majority of them. Such an argument could not be made under the Ontario Collective Bargaining Act which disqualified company-dominated unions by definition. Nor can it succeed under the National Labour Relations Act of the United States, since the Board constituted thereunder has authority to take affirmative action to effectuate the policies of the Act, and may hence direct the disestablishment of company-dominated unions. It is a pity that the Wartime Labour Relations Regulations are not entirely clear on this important issue. It would be an absurdity if bargaining representatives supported by a company-dominated union could be certified under the Regulations. That this need not be so is indicated by clauses of the Regulations requiring, as a condition of certification, that the particular board be satisfied that an election or appointment of bargaining representatives was "regularly and properly made" or that they have been "duly elected or appointed". The Ontario Labour Relations Board has already acted on these words in disqualifying bargaining representatives put forward by an organization found to be dominated by the employer within the meaning of the Regulations.

My discussion of Canada's wartime labour legislation has been, I know, a mere sketch, not a finished portrait. Admittedly, I have overlooked points of importance which, if fully developed, could be adequately treated in not less than several lectures. But I have purposely travelled the crests as they appear in my vision. The result, I would hope, has not been too disappointing.

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