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LAW AND LABOR RELATIONS
A STUDY OF THE INDUSTRIAL DISPUTES
INVESTIGATION ACT OF CANADA

BY
B. M. SELEKMAN



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INVESTIGATION ACT OF CANADA

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BY

B. M. SELEKMAN, Ph.D.

LECTURER IN URBAN INDUSTRIAL PROBLEMS



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Figures for all the tables presented in this study have been compiled from the *Annual Reports* of the Department of Labour and the reports of "Recent Proceedings under the Industrial Disputes Investigation Act" and of "Strikes and Lockouts in Canada" published in the monthly issues of *The Labour Gazette* for the period of operation of the Disputes Act.

B. M. SELEKMAN

March, 1936

Chapter I

GOVERNMENT AND LABOR RELATIONS IN CANADA AND IN THE UNITED STATES

Recent laws for government intervention in industrial disputes in the United States have brought again to the foreground of public attention one of the most controversial and persistent issues of labor relations, the issue of employees' representation and collective bargaining. Section 7a of the National Industrial Recovery Act, and its offshoots—the various executive orders creating the Longshoremen's, Steel, Textile, and National Labor Relations Boards—and most recently the Guffey Act and the Wagner Act—have attempted to apply to industry generally a public policy hitherto limited to the railroads. By their provisions, the Federal government has affirmed the right of employees to be represented for purposes of collective bargaining by spokesmen freely chosen without influence, interference, or coercion on the part of employers. These measures have undoubtedly stimulated organized dealings in industry. Company unions have multiplied rapidly since 1933; trade unions have launched aggressive organizing campaigns.

Issues in Labor Relations Sharpened by Recent Legislation

With such developments, the fundamental differences of opinion always evoked by these issues have naturally been sharpened. To the business man it appears that government policy is disturbing a pattern of relationships between management and men that has proved satisfactory. Desiring to promote cooperative dealings with his employees to the fullest possible extent, he looks back to the strengthening of harmonious relationships by the policies fostered during the twenties. It seems to him that, left to themselves, executives and workers can achieve by direct dealings, free from the interference of outsiders, peaceful collaboration which will be to the interest both of the parties to industry and of the public.

Attitude of Business Men

In support of this position, the business executive points to genuine improvements in industrial relations from 1922 to the end of the decade. Labor unions were hard put to it even to hold their own; indeed they lost over a million of their members between 1920 and 1930. This meant that employers increasingly were dealing with their men either on a direct, individual basis, or through company unions. Yet the decade as a whole was one of rising wages and expanding standards of life. Pension and stock-ownership plans also appeared in considerable number. The years registered a marked decrease in number of strikes and workers involved in them. The conviction grew among employers that high wages were sound economic policy, and that welfare programs were good business. The depression, executives will admit, affected seriously the status of these programs, as of so much else. But is there any reason to believe, they ask, that any other policies of industrial relations would have shielded the workers more effectively from the grinding pressures of world-wide stagnation and deflation? With the return of business prosperity, does not a revival of collaboration on the distinctive American model of the twenties hold better promise for healthy industrial relationships than forced interference from the outside to promote union, as against managerial, influence?

Attitude of Organized Labor

Organized labor, of course, challenges this position and program at every point. Granting that some employers deal more fairly with their workers than others, its spokesmen maintain that over industry as a whole nothing can protect the workers' interests and standards so fully as independent unions. With the growth of corporations and large-scale industry, they urge, realistic equality of bargaining power

demands that unions of employees extend beyond the plants in which any group may work. Organized labor demands the opportunity to engage trained technicians, as employers do, and to develop in labor spokesmen that independence and bargaining skill which comes only with specialization and freedom from the fear of being discharged. Moreover, in this view, a market-wide regulation of wage and working standards is necessary to protect the decent employer, as well as the workers, from the "cut-throat" competition of the minority.

Present Situation a Basis for Conflict

In such fundamentally opposed philosophies, with all the impelling sentiments and customs that cluster about them, lie the potentialities of serious conflict. Although recent legislation may appear at first glance to have quickened these potentialities, persons familiar with our industrial history will realize that law has merely enunciated and dramatized issues that have long and relentlessly pursued business executives, workers, and the public in general. For all the undoubted stimulus to harmonious relations given by the policies of the twenties, for all their continuing promise for the problems ahead, the signs are unmistakable that the basic issues of employees' representation and collective bargaining will persist—a fact confirmed by the very structure of present-day industrial relations. The striking growth of the company unions after the enactment of Section 7a of the National Industrial Recovery Act centered in the great mass-production industries. But trade union activity also has been concentrated in these industries. Within the labor movement itself, moreover, a sharp struggle is taking place over the type of unionism by which organization in this field should be attempted; the craft unions, speaking through the leadership of the American Federation of Labor, confront the industrial unions, more informally organized, and at present led by John L. Lewis of the United Mine Workers of America.

In this combination of opposing forces, alone, reside obvious possibilities of conflict. But they are further sharpened by other factors which will unquestionably play an important rôle in the immediate future. As business recovery advances, wage earners will undoubtedly move to restore wage rates and working standards lowered during the depression. Even if the Wagner and Guffey Acts should be declared unconstitutional, the old struggle to improve and clarify the legal status of trade unions, so persistently

pursued by organized labor, especially since the application of the anti-trust acts to union activity, will continue. Our new experiments with social security legislation will serve further to focus attention on the impact of government on labor relations. The prospect that advancing technology and other still-uncontrolled causes of business fluctuations will continue to bring in their train a large volume of unemployment even in prosperous years will no doubt contribute further to unrest and, consequently, to insistence upon government action. In brief, all signs point, in industry and in the state, to a clash of opposing programs and pressure groups over the issues of industrial relations.

Need for Satisfactory Methods of Avoiding Conflict

In such a situation, instruments for adjudication of industrial disputes take on primary importance. It may well be that certain issues in employer-employee relations can find settlement finally only in tests of strength. But strikes and lockouts are costly ventures to management, workers, and the public. The National Association of Manufacturers has placed the total cost of strikes in the decade 1916-1925 at roundly \$13,000,000,000.¹ While this total involves an annual loss considerably less than that resulting from industrial accidents, unemployment, or sickness, it represents nevertheless an impressive social waste. Moreover, various forces at work in American industrial life give to such conflicts among us a peculiar degree of violence and upheaval. When disputes exist or are threatened in industry, the need is not, of course, for a suppression of strikes which may arise from them, but for some method of promoting satisfactory settlement before strikes occur. The more that method is based on peaceful adjudication, whether through voluntary machinery of industrial relations or through government intervention, the more all concerned—employers, workers, and the public—stand to gain. It is this consideration that gives special significance at present to programs of tested and successful government intervention.

Canadian Experience with Government Intervention Illuminating

For almost three decades now Canada has been accumulating experience in government intervention

¹ Quoted by Edwin E. Witte in *The Government in Labor Disputes* (New York: McGraw-Hill Book Company, Inc., 1932), p. 2, from National Association of Manufacturers, *Convention Proceedings* (1926), p. 136.

in industrial disputes under the Industrial Disputes Investigation Act of 1907, a law which compels postponement of strikes and lockouts in mining and public utilities until the completion of an investigation under government auspices. Experience in one country, of course, can never yield conclusions that another country may fit perfectly to its own problems. Conditions vary, parallels are seldom exact, different social and historic backgrounds affect peoples in different ways. Yet when these qualifications have been granted, there still remains a core of identity in modern social problems everywhere that makes the lessons accumulated by one nation in dealing with them relevant for others. Especially is this true in the case of Canada and the United States, not only because of the obvious relationship of geographic neighbors, but also because of the many interrelationships of labor and industry.

The long development of the Disputes Act, therefore, merits careful consideration in the present fluid situation of law and labor relations in the United States. In the 28 years since its enactment, the Canadian Act has weathered prewar prosperity and depression, war upheaval, legal attack, and now the deep depression of the last years. Hostility and suspicion originally directed against it by both employers and employees have changed to general and firm approval. The knotty issues of employees' representation and collective bargaining, not generally dealt with in the early administration of the Act, have been brought within the category of disputes referable to its machinery.

The writer has been in touch with these Canadian developments now for 20 years. He has published two previous studies, each dealing with a distinct stage in the evolution of the Act. When the first study was made, in 1916, the Canadian labor movement was so hostile to the operation of the Act that it was asking for repeal.¹ The second study, published in 1927, noted as the outstanding development of the interval a complete reversal of labor's attitude from hostility to advocacy so warm that trade unions

¹ *Industrial Disputes and the Canadian Act: Facts About Nine Years Experience with Compulsory Investigation in Canada*, by B. M. Selekman. New York: Russell Sage Foundation, 1917.

immediately joined in efforts to reestablish the Act, after it had been declared *ultra vires* in 1925.² The present study not only analyzes the continuation of previous trends, but also records a significant amplification in administrative procedure. Between 1925 and 1932 the provisions of the Act were reestablished practically throughout Canada by both dominion and provincial laws. The Act obviously continues to enjoy the confidence and endorsement of the public, of employers, and of trade unions, and indeed of both the majority and minority unions. The handling of cases brought before boards during the depression offers an interesting test of the vitality of the procedures evolved under the Act. But perhaps the outstanding development of all may be found in the enlargement in the scope of disputes referable under the Act, not through new legislation but through administrative procedure, to include those involving issues of representation and collective bargaining—issues formerly held by its administrators to belong in the arena of tests of strength rather than in the chamber of adjudication. How this enlargement in scope has quietly been made, how general administrative techniques have been applied to such disputes, and what types of settlement have resulted, constitute the central subject to which this study is addressed. The findings it yields on these questions, as well as on the procedures which have won success in Canada in promoting industrial peace and in gaining assent from both management and men for government intervention, should offer illumination on present problems in the United States.³

² *Postponing Strikes: A Study of the Industrial Disputes Investigation Act of Canada*, by B. M. Selekman. New York: Russell Sage Foundation, 1927.

³ Among studies of the Act published by other investigators are the following: U. S. Bureau of Labor, Bulletin No. 76, *The Canadian Industrial Disputes Investigation Act of 1907*, by Victor S. Clark. Washington: Government Printing Office, 1908. Pp. 657-740.

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Chapter II

THE CANADIAN ACT, ITS OPERATION AND ADMINISTRATION: 1907 TO 1935

The provisions of the Industrial Disputes Investigation Act as they operate in Canada today are the result of no less than thirteen separate laws: the founding act of 1907; the amending acts of 1910, 1918, 1920, and 1925; and the eight provincial enabling acts passed between 1925 and 1932. The dominion law of 1925 and the eight provincial laws just mentioned were enacted to reestablish the Disputes Act after it had been declared *ultra vires*, or, as we should say in this country, unconstitutional, by the Judicial Committee of the British Privy Council on January 20, 1925.¹ The fundamental principle of the Act, however, remains as it was first enunciated in 1907: no strike or lockout shall be declared in certain defined industries affected with a public interest until a board of conciliation and investigation has reported on the dispute.

Origin of Act in Coal Mine Dispute

It is significant, in view of its later development, that the Act had its origin in an effort to protect the community from such dangers as threatened in 1906, when a prolonged coal strike in Alberta menaced Saskatchewan with a fuel famine on the very eve of an unusually cold winter. The purpose of the Act, as explicitly stated in its title, therefore became "to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities". Its coverage is indicated by the definition of the word "employer" to include operators of coal and other mines; steam, street, and electric railways; shipping; telephone and telegraph lines; and gas, electric, water, and power works employing ten or more persons. A dispute in any other industry may be referred upon written agreement of both parties involved.

¹ See p. 6. For full details of the constitutional issue see *Postponing Strikes*, Chapter XIII, pp. 207-287.

Basic Procedure for Handling Disputes in Order to Curtail Strikes

Employers and employees in these public utilities and mining industries are required to give at least 30 days' notice of changes which they contemplate making in conditions of employment. If the changes are protested, they are not to be made, nor are strikes or lockouts to be declared, until the dispute has been finally dealt with by a board appointed under the Act. A board of three members is to be established within 15 days after receipt of written application on a prescribed form, provided the Minister of Labour is satisfied that the dispute lies within the scope of the Act. One member is appointed on recommendation of the employers, one on recommendation of the employees, and a chairman on recommendation of the two so appointed. If either of the parties fails to make any recommendation within five days (or such extension as may be granted) after being requested to do so by the Minister, or if the board members similarly fail to agree upon a chairman, the Minister himself makes the required appointment. Boards are vested with extensive powers of investigation. They may inspect books and other pertinent documents, employ experts, visit work-places, summon witnesses, administer oaths, and compel the submission of evidence. To discourage legal technicalities, parties to a dispute may be represented by counsel at board hearings only upon consent of all parties and the board. Board members hold office until their signed report (or reports, if dissents occur) is transmitted to the Minister. They receive stipulated fees for their service. Copies of reports are sent to the disputants; and, to further the purposes of the Act as a measure to enlist public opinion, reports are published without delay in *The Labour Gazette*, issued monthly by the Department of Labour, and are available likewise to any newspaper which may apply for copies. Finally, penalties are set for stoppages illegal under the Act, ranging from \$100 to \$1,000 on employers

for each day of an illegal lockout, from \$10 to \$50 on each striking employee for each day of an illegal strike, and from \$50 to \$1,000 on "any person who incites, encourages or aids" such strikes or lockouts. The findings of a board are not mandatory; and, once the parties involved have received the report of the board, they are free to declare a strike or lockout.

Amendments, 1910-1925, Seeking to Improve Administrative Procedure

This, in summary, has remained the basic procedure by which Canada since 1907 has sought to prevent strikes and lockouts in industries affected with a public interest. The score or more of amendments adopted with the passage of the years provide only changes in details, principally attempts to clarify or improve administrative procedure. In most instances the end desired has been achieved by a single amendment. Thus over the period from 1910 to 1925, it was provided that oaths could be administered to board members by any qualified officer rather than only by a justice of the peace (1910); per diem fees to board members were increased (1910); compensation was granted witnesses before boards (1920); attempts to enjoin the proceedings of a duly constituted board were prohibited (1918); boards, after reporting, could be reconvened or asked to interpret moot points in their reports (1918); municipal authorities were empowered to make application for the appointment of a board (1918); the status of striking or discharged employees was safeguarded (1918); the definitions of "employer" were enlarged in such a way as to permit any one board to deal with a dispute involving more than one employer (1920). The powers of the Minister of Labour were variously amplified: he was authorized, in 1918, to refer to boards matters additional to those covered in any applications; to determine whether reports should be published verbatim or in summary; to bring within the purview of the Act disputes which seemed to him to create an emergency, or initiate under it inquiries seeking the promotion of industrial peace; and, in 1920, to order inquiries in industries coming within the scope of the Act, not only where strikes or lockouts existed, but where they appeared imminent.

On two matters it was not found easy to secure such changes in the machinery of the law as would satisfactorily correct certain inadequacies against which labor particularly protested. Thus the procedure for reference of disputes (Sections 15 and 16)

was redefined three times to facilitate applications for the appointment of a board by unions or by groups of employers. In 1910, Section 15b was so broadened as to permit officials of trade unions, such as the railroad brotherhoods, who were recognized by the employer as the authorized representatives of employees working in more than one province, to apply for a board instead of taking a strike vote of the entire membership of the union. In 1910 and 1920, Section 16 was so enlarged that the general committee of an interprovincial union, representatives of partially or wholly non-union workers duly designated by a vote of a majority of employees involved, and combinations of employers and employees or of their organizations, might become signatories to applications. In 1925 it was further provided that the general committee of an interprovincial union could also apply for a board in cases in which it had been "impossible to secure conference or to enter into negotiations" with the employer.

In the same way, it was only with the amendment of 1925 that labor finally achieved what it considered an equal obligation on both sides to maintain the industrial status quo before and during board hearings. Section 57 of the Act, as formulated in 1907, provided that employers and employees should give at least 30 days' notice of intended changes in wages or hours; and that, in cases in which a dispute resulted and was referred to a board, no change in existing conditions of employment or no stoppage of work should take place until the dispute had been finally dealt with by the board. Labor soon began to complain because in some instances employers, after announcing changes against which their workers protested, did not feel compelled to refer the dispute to a board before effectuating them. Accordingly, labor itself had to make application in such cases, as well as in those in which it initiated action for changed conditions. When it refused to accept the report, it found itself accused of "striking against its own board". Action on the part of both labor and employers, moreover, showed the need for modifying the language of the law to make quite clear when freedom to effectuate protested changes or enter on stoppages was regained. Therefore, Section 57 was so amended in 1910, 1920, and 1925 as to place explicitly upon the party initiating the proposal for protested changes responsibility for applying for a board, and to stay action until a copy of the board's report had been delivered by the Registrar of Boards to both parties. The penalties for declaring strikes or lockouts contrary to the Act were extended to

cover violations of this requirement to maintain existing conditions. Any attempt, however, to use these provisions unduly to delay proposed changes was to be penalized whenever a board reported such "stalling" to the Minister.

Dominion and Provincial Measures to Reestablish Constitutionality of Act

It is in this form, then, that the Disputes Act now functions—its basic structure unchanged, its detailed administration clarified and improved. As already indicated, its provisions now derive their authority not only from the Dominion Act and its amendments, but also from eight provincial acts. These provincial acts were necessary if the law was to be saved following the decision of the Judicial Committee of the British Privy Council, declaring the Act beyond the powers granted the Dominion Parliament by the British North America Act of 1867. Reactions to this decision showed how firmly the Act had entrenched itself in the industrial framework of the nation. In Parliament the Conservatives, who were then the opposition party, severely criticized the Liberals, under whose auspices the Act had been established in 1907, for permitting the issue of constitutionality thus to come before the courts. Representatives of labor at once asked for a constitutional amendment that would bring the Act clearly within dominion competence. Although the government refused this request, it took immediate steps to salvage the Act in other ways.

The amending Act of 1925 restricted the scope of the Act to those public utility and mining industries which may be regulated by dominion law. These include interprovincial industries, those not within the exclusive jurisdiction of any provincial parliament, those operated by aliens, intraprovincial industries which may have been declared by Parliament to be for the general advantage of Canada or of two or more provinces, those directly incorporated by the Dominion Parliament, and those in which a threatened dispute may create real or apprehended emergency. In addition to these, industries which come within exclusive provincial jurisdiction may be made subject to the Disputes Act by provincial legislatures. Significantly enough, all the provinces save Prince Edward Island have passed such enabling legislation—British Columbia as early as 1925; Saskatchewan, Nova Scotia, New Brunswick, and

Manitoba in 1926; Alberta in 1928; and Quebec and Ontario in 1932. Thus, since Prince Edward Island is an agricultural province, it is a fair statement that the Disputes Act has been reestablished throughout Canada. The resulting legal structure may be cumbersome; it may, as many believe, be still vulnerable to judicial attack; and there is still pressure, especially from labor, for a constitutional amendment which will bring its provisions directly within dominion competence. But, even as it now stands, there can be little doubt that the Disputes Act has won wide and deep approval in Canada.

The Record of Operation

To understand the sources of this approval of the Act, we must review first the facts of its operation. Just what has won such endorsement? Is it success in furthering orderly collective relationships? Is it compulsion imposed at early stages in the breakdown of collective bargaining? Is it success in avoiding stoppages? Is it publicity as an instrument of public policy?

The operation of the Act, as revealed by the figures for applications for boards, action taken upon these applications, and the results obtained, constitutes an undeniably impressive record. In judging these figures, it should be remembered: (1) that the provisions of the Act did not enjoy full national scope between June, 1925, and April, 1932; (2) that after 1918 most disputes involving grievances and the interpretation of agreements on railways were referred to the special Railway Boards of Adjustment, Numbers 1 and 2;¹ and (3) that the six years before the depression were in Canada, as in the United States, relatively a period of general industrial peace.²

¹ The Canadian Railway Board of Adjustment, Number 1, established voluntarily during the War by the railroads of Canada and the large international railroad brotherhoods, is composed of twelve members, six of whom represent the companies and six the unions. Eleven companies, members of the Railway Association of Canada, participate; and six railroad labor unions. From 1918 to 1934 this Board dealt with approximately 425 disputes. The success of this first Board stimulated the formation in 1925 of the Canadian National Railways Employees' Board of Adjustment, Number 2. This Board operates in a much more limited field, dealing with disputes arising between the Canadian National Railways and the Canadian Brotherhood of Railway Employees whose members are clerks, station employees, freight handlers, etc. Since its inception it has handled approximately 140 disputes. Similar disputes involving machinists, boilermakers, blacksmiths, and other railway workers of this type are adjusted under the terms of the agreement between the companies and Division No. 4 Railway Employees' Department of the American Federation of Labor. For full discussion of these and other agencies of adjustment additional to the Disputes Act, see *Postponing Strikes*, Chapter XIII, pp. 288-307.

The writer does not wish to imply that all disputes handled by these railroad boards would have been referred to boards under the Disputes Act. Many were of a minor nature, and it is doubtful whether they would have threatened stoppages, a condition required for the establishment of a board.

² The number of strikes occurring in all industries in the six years 1924 to 1930 was less than half the number that had occurred in the previous six years. During the depression, the number of strikes began again to increase.

From March 22, 1907, when the Act became effective, to March 31, 1935, a total of 819 applications for boards were made under the Act. Of these, 726, or almost nine-tenths, were made by employees. Table 1 shows the source and number of applications received in the 28 years of operation under review.

Table 1. Applications for Boards, by Origin of Application, March 22, 1907, to March 31, 1935

Applications made by	Number	Per Cent
Employees only	726*	88.6
Employers only	68	8.3
Employers and employees	18	2.2
Others	7†	0.9
Total	819	100.0

* In one case, an amended application was supported by a mayor and board of trade, as well as the employees originally applying; in another, a single application made by employees referred two separate disputes under the Act.

† In two cases, applications were made by municipalities; and in one, by a mayor; in three, no formal application was made, but a board was established by the Minister of Labour on his own initiative; and in one, application was made by the public officials of Coalfields in Saskatchewan.

Generally speaking, the Minister of Labour may dispose of applications in any one of three ways. He may handle the dispute by establishing a board under the Act; he may decide that some other agency can handle the dispute more effectively; or he may decide that no action should be taken because the dispute does not come within the scope of the Act. Table 2 classifies under these categories the action taken. It shows that 640, or almost four-fifths of the applications made, were referred to boards; 95, or somewhat over one-tenth, were referred to other agencies; and 82, or about another tenth, were not acted upon in any way.

Over Three-Fifths of All Reports Signed by All Board Members

Two tests may be applied to gauge the effectiveness of the Act. The first lies in the nature of the reports submitted by boards. Obviously, if these reports are in the main unanimous, we may conclude that all parties involved found them acceptable. This does not mean that employers or employees were wholly satisfied with the outcome. Inevitably, in a number of these disputes, either or both sides must have yielded one or more points considered important in order to achieve agreement. But, as most settlements of industrial disputes usually involve compromises, it may be inferred that the reaching of a

Table 2. Action Resulting from Applications for Boards, March 22, 1907, to March 31, 1935

Action	Number of Applications	Per Cent
Disputes referred to boards		
Boards constituted	508*	62.3
Boards partially constituted	28†	3.4
Boards not constituted	104‡	12.6
Total referred to boards	640	78.3
Disputes referred to other agencies		
Within scope of Act	88§	10.8
Not within scope of Act	7	0.8
Total referred to other agencies	95	11.6
No action taken (disputes not within scope of the Act)	82	10.1
Grand Total	817§¶	100.0

* In one case a board was constituted to handle a dispute submitted with another separate dispute in a single application.

† These disputes were adjusted while the boards were in process of being constituted.

‡ In 14 cases applications were referred to boards already in existence. In the other cases differences were adjusted or applications withdrawn.

§ Not including one dispute submitted with another separate dispute in a single application, as indicated in note above.

¶ Not including two applications upon which proceedings were unfinished at the close of the fiscal year ending March 31, 1935.

unanimous report does indicate satisfaction, however more desirable a complete victory on all points might be. By this test the evidence indicates a considerable degree of success. Thus, 311, or over three-fifths of the reports, as shown in Table 3, were unanimous in every respect, or on all save minor points. Employees' representatives dissented from the majority in 105, or about one-fifth of all reports submitted, and employers' representatives in 65, or about one-eighth.

Table 3. Extent of Agreement among Members of Boards, March 22, 1907, to March 31, 1935

Nature of Report	Number of Boards	Per Cent
Report signed by all members		
Decision unanimous	280	55.2
Reservations on minor points	31	6.1
One member dissenting		
Employees' representative	105	20.7
Employers' representative	65	12.8
Chairman	1	0.2
Separate report from each member	3	0.6
Nature of report not clear	10	2.0
No report	12	2.4
Total	507*	100.0

* Not including one board handling two disputes which had not yet submitted its final report at the close of the fiscal year ending March 31, 1935.

Stoppages Averted or Ended in Over Nine-Tenths of All Disputes Referred to Boards

The second test of the efficacy of the Act lies, naturally, in its success in averting or ending stoppages. The figures in Table 4 reveal a remarkable record of achievement. They show that of the 640 disputes referred to boards, strikes were averted or ended in 589, or 92%.

Table 4. Results Obtained in Disputes Referred to Boards, March 22, 1907, to March 31, 1935

Industry	Strike Averted or Ended*	Strike Not Averted or Ended	Total Disputes Referred to Boards
Public utilities	518	47†	565‡
War industries	21	2§	23
Other industries	50	—	50
Total	589	49	638‡

* "Strike ended" refers to settlements of strikes called before or during board proceedings. These strikes were few in number. They were illegal during the period 1907 to 1925 when they occurred in public utilities or war industries, and during the period 1925 to 1935 when they occurred in industries covered by the amending Act of 1925, and the successive enabling acts passed from 1925 through 1932.

† Of these strikes 30 were legal, that is, they occurred after the report of the board was submitted; 13 were illegal because they occurred before or during board proceedings; and in two cases the reports of the board did not avert continued imminence of a strike. In one of these two the dispute was referred to a special Joint Council and Commission appointed to deal with it under the provincial Industrial Conditions Act of Manitoba; in the other, to the Ontario Municipal Board; each, therefore, is counted as a strike not averted by the machinery of the Disputes Act.

‡ Not including two disputes referred to the same board in which proceedings were not finished at the close of the fiscal year ending March 31, 1935.

§ One legal; one illegal.

Strikes in Violation of Act

This record of success in averting stoppages, however, tells only that part of the story in which the Disputes Act was invoked. Accordingly, an important question remains: how many strikes occurred in violation of the Act, that is, prior to applying for a board or before a board had made its report, or in absence of any application at all for a board? Unfortunately, the Department of Labour has not kept any record of strikes and lockouts declared in violation of the Act. Figures for violations, therefore, have to be obtained by comparing applications for boards with the official figures for strikes and lockouts by industries.¹ The years 1925 to 1932 present added difficulties arising out of the uncertain status of the law and its piecemeal reestablishment by amending and provincial enabling acts. Nevertheless a rough but fairly reliable estimate of violations may be made even for this period by counting strikes as violations

¹ These figures for the period 1907 to 1925 are presented on pp. 68 and 343 of *Postponing Strikes*.

of the Act if they occurred in industries within the scope of the dominion amending or provincial enabling acts.² The important fact that emerges from these estimates of violations, as presented in Table 5, is that more strikes occurred in violation of the law than were averted by it. Thus 657 illegal strikes, as shown in Table 5, occurred in public utility industries as compared with the 589 averted by board procedure under the Act.

Table 5. Estimated Number of Strikes Occurring in Public Utility Industries* in Violation of the Act, March 22, 1907, to March 31, 1935

Nature of Violation	Number	Per Cent
No application made for a board	605	92.1
Application made for a board†	52	7.9
Total strikes in violation of act	657	100.0

* Illegal strikes also occurred in war industries from March, 1916, to November, 1918, during which period the Act was extended by an order-in-council to cover war industries. During the time of this extension, strikes occurred in munitions, shipbuilding, and other war works. Since statistics of strikes and lockouts were not kept specifically for war industries, it is not possible to identify accurately the strikes which occurred in them.

† Includes strikes called before application for a board, as well as those occurring before or during board proceedings. Strikes which occur after the report of a board are not in violation of the Act. In some cases, because of the occurrence of a strike before application, the dispute was not handled under the Act.

Concentration of Violations in Unstable Industries

What explains the fact that so widely endorsed a law shows on balance, after more than a quarter century's operation, a larger number of strikes occurring in violation of its provisions than of successes in averting threatened stoppages? Part of the answer lies in the emphasis which the administrators of the Act have placed on its conciliatory rather than on its compulsory features; part, and no doubt the major part, lies in the concentration of violations in that sick industry of modern times, coal mining. A detailed analysis of the distribution of violations among the industries covered by the Act reveals that during the period 1907 to 1925 the bulk of violations occurred in coal mining.³ Table 6 shows that this concentration not only has continued but has become even more marked. From 1907, when the Act was passed, to 1925, when it was declared *ultra vires*, coal mining

² From the data on strikes or lockouts presented by the Department of Labour, it is not possible to include in these estimates works operated by aliens or those of companies incorporated under authority of the Parliament of Canada, two categories brought, among others, within the scope of the dominion Amending Act of June 12, 1925. There is no reason to believe, however, that the inclusion of these would change the findings in any material way. It must be emphasized that all figures on violations should be accepted merely as rough indices of a situation which could be assessed fully only if detailed data on each strike were available. Nevertheless, the writer believes after careful study that the estimates in Tables 5 and 6 do fairly represent the situation in its basic outlines.

³ These figures will be found on pp. 69, 72, 78-79, and 343 of *Postponing Strikes*.

accounted for 198 out of 472 violations of the Act, or 41.9%; from 1925 to 1935 it accounted for 154 out of 185, or 83.2%. Shipping and other mining industries account for the bulk of the remainder from the beginning until the present day.

Table 6. Estimated Number of Stoppages Occurring in Public Utility Industries in Violation of the Act, by Industries and by Periods, 1907 to 1925 and 1925 to 1935

Industry	Stoppages in Violation of the Act		
	March 22, 1907 to March 31, 1925	June 12, 1925 to March 31, 1935	Total
Public Utilities			
Railroads	51	3	54
Street railways	25	1	26
Other municipal utilities	30	1	31
Coal mining	198	154	352
Shipping	58	17	75
Other mining	38	4	42
All others	72	5	77
Total public utilities	472*	185	657

* In two cases ignorance of the law was claimed, and the employees returned to work when informed.

Coal mining in Canada, as in most industrial countries, suffers seriously from overproduction, foreign competition, the development of other fuels, uncontrolled expansion, often unsound financing, and—specifically in Canada—heavy transportation costs due to the distant location of coal mines from industrial centers. For years, in addition, unions have fought bitterly for recognition, and various labor organizations have struggled among themselves for the allegiance of the miners. Under such pressures, with their consequences in irregular employment and uncertain returns for both workers and employers, bad conditions, meager living, and constant turmoil, the Disputes Act has understandably proved inadequate.

Conciliation a Primary Aim of Administrators

All laws derive their living content as much from the day-to-day procedures of their administrators as from their formal provisions. Thus the Canadian Disputes Act became a measure not of compulsion but rather of conciliation because its administrators—the Minister of Labour, the Registrar of Boards, and the boards themselves—all emphasized conciliation and used sparingly their powers to subpoena witnesses, compel submission of records, and require

testimony. They consistently refused to invoke the penalty clauses.

The strategic powers exercised by the Minister of Labour have already been indicated: determining action on applications, appointing board members in cases in which the parties themselves do not name their own appointees, establishing boards on his own initiative where he deems it necessary, and determining policy after awards have been made and accepted, or rejected, by the parties. Obviously the final administrative responsibility resides in him. As a cabinet officer, the Minister changes with the changing fortunes of the political party, Conservative or Liberal, which holds office. But, although ministers have changed, day-to-day administration of the Act has been lodged in the hands of permanent civil servants. To the Deputy Minister of Labour, as Registrar of Boards, come the details of handling applications, constituting boards, and disposing of their reports. The relatively long tenure of this official naturally has been an important factor in the stability of operation under the Act.¹

Finally, board members obviously play an important rôle in establishing successful administration. For one thing, Canadian experience has evolved a method of constituting boards which combines the advantages of both a changing and a permanent personnel. The Act requires a separate board for each dispute. But successful chairmen and board members are named again and again. What has happened, therefore, is that, without formal provision, panels of men who have demonstrated skill and aptitude for promoting settlements have been established, from which board members can be and are appointed.

Those appointed to boards in the early years exercised an important influence in establishing conciliation as the primary aim of the Act. Though lawyers represented the parties on these early boards, their chairmen (particularly Mr. Adam Shortt, an economist who served on eleven boards in the first two years of the Act) discouraged recourse to legal technicalities and other procedures that savored of formal court hearings. Sworn evidence, stenographic transcripts, subpoenas were eschewed. The machinery of the Act was used to bring the parties together, urge them to continue negotiations, promote settlement by joint conference. Only where this proved impossible were findings formulated by the board. Since this procedure became general in the early years, it naturally prevailed in the period after 1925, not only

¹ From 1908 to 1923, Mr. F. A. Acland served as Deputy Minister of Labour and Registrar of Boards. On his resignation, Mr. H. H. Ward was appointed to the office, which he held until 1934, when Mr. W. M. Dickson, the present incumbent, succeeded him.

because of its proved success but because the constitutional challenge had shaken the status of the Act. So firmly; indeed, has conciliation become rooted that in a shipping dispute in 1933 the board members actually disagreed among themselves as to whether conciliation had been promoted assiduously enough, and incorporated this disagreement into their majority and minority reports.¹

This is not to say, however, that boards have not on occasion, in the later years as in early ones, availed themselves of their compulsory powers. The Winnipeg Electric Company, for instance, refused, through its counsel, to appear before a board constituted in July, 1926, to hear a dispute between the company and its motormen and conductors who were members of the One Big Union. It based its refusal on two grounds: (1) that the Act had been declared *ultra vires* and a provincial enabling act could not make effective dominion legislation that Parliament had had no right to pass; and (2) that the One Big Union, which applied for the board, was not a union within the meaning of the Act. The board thereupon subpoenaed officials of the company and proceeded with its hearings.²

Compulsory Features of Act Minimized in Practice

In the furtherance of conciliation rather than compulsion, the penalty clauses have served to open the way for government intervention to promote settlements of disputes, rather than to afford a basis for punishing violators. Thus, of the violations of the law occurring between 1907 and 1925, only 16 were brought before the courts, and in no instance by the Dominion Government.³ Of the 185 violations occurring from June 12, 1925, to March 31, 1935, only 3 were brought before the courts, again in no instance by the government.⁴ All three prosecutions occurred

in coal mine disputes.⁵ In much the same way, publicity of findings, authorized by the Act, has only rarely been utilized to bring public opinion to bear on recalcitrant disputants. Findings, as published in the monthly *Labour Gazette*s and briefly summarized in the *Annual Reports*, are technical and impersonal. Potentially, of course, newspapers might utilize their material to sway opinion, and, indeed, releases of reports are given to the press. In cases where conciliation fails and a stoppage appears imminent, publicity is given in the press of the locality where the difficulty occurs. Public opinion thus may act as a restraining influence. But the very emphasis given to conciliation by the administrators of the Act naturally subordinates in their procedures recourse to the pressures of organized publicity, as well as to the penalty clauses.

It is entirely possible, even quite likely, as officials of the Department of Labour point out, that the existence of the penalty clauses and the threat of an unfavorable public opinion have served to restrain precipitate action, particularly among workers in populous centers; but to just what extent this is so, no one can say. It is true also that once one party to a dispute applies for a board the other party, whether willing or unwilling, has to submit to the procedures of the law. Yet, when all this has been granted, the facts still clearly indicate that the administrators of the Act have found it expedient to relegate its compulsory features to an exceedingly minor rôle, to be invoked, when invoked at all, not through the courts of law or the organs of public opinion, but as a mild threat to open the way for conciliation.

In a word, then, though the provisions of the Act make it a compulsory, as well as a conciliatory, measure, though foreign opinion has frequently regarded it as a compulsory law, and though the compulsions it authorizes undoubtedly exercise their restraints on responsible parties to industry, administration has made it almost entirely an instrument of conciliation.

¹ *The Labour Gazette*, Vol. XXXIII, No. 1, January, 1933, pp. 15-32: "Report of Board in Dispute between Shipping Interests of Port of St. John, N. B., and their Longshoremen".

² *The Labour Gazette*, Vol. XXVI, No. 8, August, 1926, pp. 754-759: "Report of Board in Dispute between the Winnipeg Electric Company and certain of its employees, being Motormen and Conductors, members of the Street Railway Employees' Unit, One Big Union".

³ For details, see *Postponing Strikes*, p. 119.

⁴ Such actions as have been brought have been at the instance of the injured party or of local officials.

⁵ One, bringing a miner before a magistrate in Saskatchewan, October, 1931, on the charge of inciting employees to continue on strike, was dismissed; the second, in which a colliery management, again in Saskatchewan, charged five miners in February, 1932, with striking against the removal of a checkweighman without first applying for a board, resulted in the conviction of the miners—a conviction that was confirmed on appeal; and the third, charging in December, 1932, ten miners with striking illegally in coal mines of British Columbia, was withdrawn on the termination of the strike. *Reports of the Department of Labour for the Fiscal Year Ending March 31, 1932*, p. 78, and for the Fiscal Year Ending March 31, 1933, p. 37.

Chapter III

THE BASIS OF BOARD DECISIONS: WAGES AND HOURS

By the terms of the Act, disputes referable are confined to those involving wages, hours, and other conditions of employment. "Conditions", of course, is a term that lends itself to interpretation; and cases have naturally occurred in which questions have arisen as to whether certain issues at dispute lay within the competence of boards.¹ Thus, for instance, the Winnipeg Electric Company in 1930 refused to admit that the dismissal of three motormen constituted a dispute within the meaning of the law.²

Boards Not Guided by Formulated Code or Precedents

No attempt has been made in Canada to build up precedents or to formulate a code of industrial principles to guide boards in their proceedings. Now and then the findings of some previous board may be quoted as precedents; other boards again explicitly reject considerations accepted in an earlier case as a basis for recommendations. But ordinarily each dispute is handled independently, and on its own merits. Nevertheless, a study of the arguments made before boards, and decisions handed down by them during the operation of the Disputes Act over the past 28 years, reveals certain broad uniformities in underlying principles. It reveals, also, modifications of these principles to suit changing conditions, as well as particular circumstances involved in any given dispute. In other words, board members, while bearing in mind certain economic and social considerations, have not attempted to establish an exact and absolute, but rather a relative and rough, justice—one that would work, that would maintain equilibrium and keep industry functioning with the consent of the parties concerned. That is why we find that the same principle accepted by one board is rejected by another board, or even by the same board sitting in a different case.

¹ For the exact wording of the law see Appendix, p. 53, Section 2(e).
² *The Labour Gazette*, Vol. XXX, No. 9, September, 1930, pp. 1009-10: "Reports of Board on Disputes between Winnipeg Electric Company and Its Employees".

Advancing Customs and Standards Embodied in Board Decisions

On first view the practice just described may seem inconsistent and confusing. But the practical administrator will recognize that here may lie one clue to a way of maintaining stability and yet permitting progressive change in so dynamic a social situation as is involved in industrial relationships. Even more important, a review of decisions with the passage of time reveals how the advancing standards of industry receive consideration, enunciation, and finally acceptance. As industrial mores and customs progress to higher levels of welfare, board decisions tend to formulate them as standards of best practice. This significant tendency is illustrated in every issue brought before boards—in wages, hours, general working conditions—on all of which both new doctrine from developing economic theory and evolving custom in industrial relations receive formulation by board hearings and decisions. Still more impressively is it demonstrated by the manner in which the difficult issues of employees' representation and collective bargaining, once rejected as subjects for board procedure, have been assimilated into the agenda of adjudication, as after the War they became more widely, to use the language of the Act itself, "matters relating to any established custom or usage, either generally or in the particular district affected".³

Seven Broad Factors Considered in Wage Decisions

The issues most frequently brought before boards in Canada, as is true in industrial disputes elsewhere, revolve about wages. From the initial passage of the Act to the present day, seven broad factors have been considered in evidence and decisions on wage matters, each, of course, comprising within its scope a variety of detailed arguments. These are: (1) general economic conditions; (2) the financial condition of the

³ See Appendix, p. 54, Section 2(e)(6).

employer involved; (3) the cost of living; (4) the standard of living; (5) comparative wages in similar trades, in similar localities, and in the United States; (6) the value of the service labor renders; and, in the most recent years, (7) broad policies of economic and social welfare, such as sharing in gains from technological improvements, maintaining wage levels to sustain purchasing power, and, conversely, reducing wages to stimulate revival. Though cases are found year after year that accept or reject one or more of these considerations in recommending wage rates, or, on the other hand, that use all of them, what becomes particularly interesting as one reviews the body of decisions is the new turns and the changing emphases given the same arguments.

By and large, arguments based upon general economic factors and business conditions are given more consideration in times of depression. In recent years labor spokesmen, particularly, have sought to counter such arguments by introducing into specific cases the new doctrines of the "economy of high wages" and "social purchasing power". They have also shown an increasing tendency to challenge the cost of living as a major determinant of wage rates. The arguments based on comparative wages receive a varying emphasis, but boards are seemingly chary of according any considerable weight to them. Finally, while the value of labor's service has not been urged so frequently as the other factors, in recent years an attempt has been made to bring before boards the bearing of technological changes on wages.

General Economic Conditions

With the precipitate decline of business that began in 1929, arguments revolving about general economic conditions have become the focus of recent wage cases. In prosperous years, too, of course, general business conditions appear in wage briefs. But then it is usually labor that urges them, and in support of wage increases. Thus, for instance, a board hearing a railroad dispute in 1929 weighed, as one of eight major considerations argued pro and con, the rôle which general economic conditions should play in setting wage rates. The employees urged that the prosperity of the railroads in recent years not only enabled them to grant wage increases but really made it imperative that they do so. The employers attempted to perform a *reductio ad absurdum* on this argument: "If employees are to share in fat years, they must do likewise in the lean years, and so might

find themselves in times of great depression or adversity with little or no wages—which is unthinkable. Besides they [the employers] prophesy that the incoming year will be a very lean one." The board, however, by unanimous decision recommended that "some increase in the rates of pay should be granted to all these employees . . ."¹

In contrast with such incidental appearances of arguments concerning general economic conditions during times of prosperity, almost all the wage cases heard by boards during recent years have centered upon the effects of the depression. Employers have cited the prostrating influence of the depression upon business as a reason for wage reductions. Employees have replied, not by denying these influences, but by affirming the adverse social and economic effects of wage cuts, the need for more nearly equal allocation of social sacrifices, and the potential sources of other economies.

During 1933, for instance, the Canadian Pacific and Canadian National Railways, together with four subsidiary lines, proposed a 10% reduction in basic rates of pay to be added to a similar reduction already made in 1931. The men protested; they were willing to continue the existing reduction, but not to add to it. Thereupon the companies applied for a board, and representatives of the five railroad brotherhoods spoke for the men in the proceedings that followed. The board itself summarized the arguments based on the influence of the depression which the companies had advanced:

The companies contend for the twenty per cent deduction principally (1) because of the precipitate decline of railway traffic in the last three years, which has brought the railways to the financial distress in which they find themselves; (2) because of the general economic conditions, the acute shrinkage of all values including that of labour, evidenced also by the large numbers of unemployed; (3) because the present diminished cost of all commodities make it that [sic] the lowered rate of pay will still leave the employees in position to support the diminution of pay because all articles entering into the cost of living are lower in price.²

¹ *The Labour Gazette*, Vol. XXIX, No. 10, October, 1929, pp. 1082-86: "Report of Board in Dispute Between Canadian Pacific Railway and Canadian National Railways and their Conductors, Trainmen and Yardmen on Western Lines".

² *The Labour Gazette*, Vol. XXXIII, No. 5, May, 1933, pp. 478-494: "Report of Board in Dispute between the Canadian National Railways and Canadian Pacific Railway (subsidiary railways: Dominion Atlantic Railway, Quebec Central Railway, Northern Alberta Railways, and Esquimalt and Nanaimo Railway) and their locomotive engineers, firemen, conductors, trainmen and telegraphers".

For other cases presented during the early thirties in which the evidence followed this same general pattern, see:

The Labour Gazette, Vol. XXXI, No. 12, December, 1931, pp. 1293-1300: "Report of Board of Conciliation and Investigation in Dispute between the Canadian National Railways and Canadian Pacific Railway and Subsidiary Railways, on the one hand, and their locomotive engineers, firemen, conductors, trainmen, telegraphers, etc., on the other hand".

The Labour Gazette, Vol. XXXII, No. 4, April, 1932, p. 391: "Report of Board in Dispute between the Hull Electric Railway and its motormen, conductors, trackmen, etc.".

The Labour Gazette, Vol. XXXIII, No. 1, January, 1933, pp. 15-32 (supra cit.).
The Labour Gazette, Vol. XXXIII, No. 7, July, 1933, pp. 676-680: "Report of

The workers, while admitting the adverse effects of the depression on the railroads, contended that the existing reduction of 10% was sufficient contribution from them for easement of the financial difficulties of the roads; that, since the Order-in-Council of 1918, declaring the McAdoo Award operative in Canada, their wages had been recognized as of right comparable to railway wages in the United States; that railroad workers there had not been asked to accept more than a 10% cut from basic rates; and that since dominion government salary cuts had not exceeded 10%, the employees of Canadian National Railways, some 12,000 in number, should not be forced to accept a greater reduction, because they were practically government employees. They also called attention to the extensive inroads workers had been forced to make into their savings, assets, and community resources to carry both themselves and their relatives through the hard years of depression.

Majority and minority reports were presented in this case, the majority recommending the full cut of 20% as a temporary deduction from basic wages, the representative of the employees dissenting. The company expressed its willingness to accept the majority report as a basis of an agreement, but the men refused. Instead, after resumed negotiations had become deadlocked, they took a strike vote. The Prime Minister intervened, however, and succeeded in winning agreement to a compromise calling for a total reduction of 15% from basic rates for one year, after which wages were to return to the rates prevailing before this case was decided, unless either side served notice of a desire to change the 10% deduction.¹

Financial Condition of Particular Employer

The group of arguments derived from the general category of the condition of the specific company involved in a dispute do not appear in such direct correlation to industrial fluctuations. It is entirely possible, of course, for any individual firm to suffer

reverses in times of general prosperity. Consequently, though all employers tend to urge their financial condition in wage arguments during depression years, some have to plead specific financial difficulties during prosperous ones. In much the same way employees have from time to time brought into evidence, during both general prosperity and general depression, a boom in a specific industry or the alleged success of a business as a reason for increasing wages. Finally, when an individual company finds itself facing the losses consequent upon general business depression, questions still may be raised regarding the allocation of these losses as among shareholders, bondholders, customers, and workers. Some interesting efforts have been made by boards in such cases to formulate workable decisions.

As early as 1908 a board rejected the demands of telegraphers on the Grand Trunk Railway for wage increases, despite its endorsement of "a living wage", because it felt that the financial condition of the company did not permit the wage schedule requested. The extent to which the financial condition of the Grand Trunk Railway influenced the decision may be appraised by the fact that the same board had granted a higher wage scale to telegraphers of the Canadian Pacific Railway, a relatively prosperous company at the time.² Another board, in 1915, however, refused to let stand two wage reductions which a railroad construction company had introduced on the ground that "an unforeseen financial stringency" made it impossible to borrow sufficient money to build the roads at the costs originally estimated. The board held that wage rates had been taken into account in formulating the original estimates, and no subsequent stringencies justified such sweeping reductions as the company had made.³

Similar issues confronted a board in 1929 in a dispute between the Ottawa Electric Railway Company and its employees. The men, in asking wage increases and the continuation of overtime rates, focused their arguments upon the fact that the company had obtained the right to increase fares from 5 cents to 7 cents in August, 1928. The company, in countering with demands for wage decreases and the abolition of special overtime rates, pointed out that no dividends had been paid since 1927, that the stockholders were legally entitled to a just and reasonable return on their investment, and that net profits were not sufficient to enable the company to meet its trust deed requirements for the issue of new bonds. In its report, accepted by both sides, the board com-

Board in Dispute between Various Shipping Companies Trading to the Port of Montreal and their Longshoremen".

¹ *The Labour Gazette*, Vol. XXXIII, No. 9, September, 1933, pp. 878-802: "Report of Board in Dispute between the Winnipeg Electric Company and its Employees".

² *The Labour Gazette*, Vol. XXXIII, No. 11, November, 1933, pp. 1066-70: "Report of Board in Dispute between the Canadian Pacific Railway and its Clerks, Freight Handlers, etc.".

³ *The Labour Gazette*, Vol. XXXIII, No. 12, December, 1933, pp. 1151-56: "Report of Board in Dispute between the Canadian National Railways and its Clerks Freight Handlers, etc.".

⁴ *The Labour Gazette*, Vol. XXXIV, No. 1, January, 1934, pp. 9-14: "Report of Board in Dispute between the British Columbia Electric Railway Company and certain of its Employees".

⁵ *The Labour Gazette*, Vol. XXXIV, No. 7, July, 1934, pp. 590-596: "Report of Board in Dispute between Toronto Transportation Commissioners and their Street Railway Employees".

⁶ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1934*, p. 32.

⁷ *Postponing Strikes*, pp. 130-131.

⁸ *Ibid.*, pp. 131-132.

promised between the men's demands for wage increases and the company's for decreases, by recommending the continuance of existing rates for another year. The men, it held, were entitled to a fair living wage considering the nature of their work and the cost of living; the stockholders were entitled to a fair return on their investment. But "without agreeing to the principle that wages should increase with increased prosperity of the Company regardless of variations in living costs, the Board trusts that the Company will, at the expiration of the year ending on April 30, 1930, should the revenue of the Company be sufficient to warrant it, deal generously with the men as it has always done hitherto."¹

In another case in which the argument of the company against wage increases centered entirely upon its annual deficits, a majority of the board rejected any correlation between such deficits and wages. The employees of the Hull Electric Company had supported demands for wage increases by arguments on the cost of living which the board summarily dismissed as "certainly paralleling in extravagance the claims for increased wages". But it held that the company's arguments for wage decreases because of deficits were of almost equally little aid toward a practical solution of the problem. To a majority of the Board it seemed obvious that claims of annual deficits

even if true, could not be held as justifying a claim for a special reduction in the rates paid by the company in the purchase of their cars, rails and other equipment of the system. Neither could it, therefore, be taken as justifying the reduction of a fair market rate for the purchase of the labour employed. The only practical conclusion from the claims of the company must be, that if it cannot operate its system at a profit under normal conditions, it must improve its income, sell the system to parties who could make it remunerative, or abandon it altogether. The latter decision would leave the service of local transportation in the area now served to, say, the motor buses which now compete with it, and which require a much less costly equipment in both capital outlay and wages, and might thus serve the public at a profit.²

Since the evidence of neither company nor employees seemed to the board helpful toward reaching a "practical solution", it based its decision on the "fair market rate for the purchase of the labour employed", as indicated by comparative wages in similar trades and localities.³

On the other hand, in a coal dispute in 1928, also

¹ *The Labour Gazette*, Vol. XXIX, No. 6, June, 1929, pp. 503-504: "Report of Board in Dispute between the Ottawa Electric Railway Company and Its Street Railway Employees". See below, p. 15, for subsequent developments.
² *The Labour Gazette*, Vol. XXIX, No. 2, February, 1929, pp. 131-134: "Report of Board in Dispute between Hull Electric Company and Its Street Railway Employees".
³ *Ibid.*

revolving upon the evidence of the company's financial condition, a majority of the board held that this condition fully justified the company's stand. In the course of three years the management had found it necessary to reduce by 60 cents an employee bonus of 91 cents a day established in 1924 under an agreement that increases and decreases in the amount of the bonus should be governed by competitive conditions. The miners had applied for a board to hear their demands for restoration of the 60 cents deducted. Evidence naturally focussed upon "competitive conditions". The management presented data on price decreases, and on competition from American fuel oil and from Alberta coal, all resulting in operating losses. It also argued that since 1910 approximately \$17,000,000 had been invested by the company, with nothing whatever paid as return to shareholders. Despite its losses, the company had continued working the mines in the hope that price increases or discoveries of new seams would turn losses into profits. It was willing to restore 15 cents of the bonus for every increase of 25 cents in the price of coal. The representative of the men countered with arguments that the financial difficulties were the result of "past folly"; that, without in any way improving the company's position, wage decreases had caused suffering among the men; and that other remedies might be tried. When the company offered a sworn statement of its financial condition from its chartered accountant, the men said that they could not afford to hire an accountant to examine this statement. Thereupon the company offered to pay the expense of such an examination, if the men had any doubt whatever as to the correctness of the statement. The men decided that this would be unnecessary. A majority of the board upheld the contentions of the management, stating that "the correctness of the reply of the Company to the miners' application . . . has been fully established".⁴

Attempts have been made in recent years to allocate the gains and losses of business among the parties to industry. Thus, railway workers on the Canadian Pacific Railways in 1930 supported their claims for wage increases by the following clear-cut statement:

Railway workers should be permitted to share in any general railway or national prosperity, certainly not less than other groups of workers, that is not to say that wages should advance or decline with every slight change in railway earnings; such a position, we believe, is unjustified. But a sound and general prosperity of the

⁴ *The Labour Gazette*, Vol. XXVIII, No. 3, March, 1928, pp. 252-255: "Report of Board in Dispute between the Canadian Collieries (Dunsmuir), Limited, and certain of its Coal Miners".

nation and of the railways should not exclude these railway workers, whose influence in creating such prosperity is second to that of no other group on the railways or in the nation.

Neither the company, in its counter-case, nor the majority of the board, in its decision, challenged this statement. The argument was, rather, that the general economic condition of the country and the specific condition of the company since 1927 did not seem to justify an increase in wages.¹

Another case involving similar issues arose in 1931 when the Ottawa Electric Railway Company again² applied for a board to hear a dispute with its employees over a proposed reduction of 10%. The workers countered with demands for wage increases and a retirement pension scheme. The evidence centered upon the decline in company revenues and net operating returns, and changes in the cost of living. A majority of the board recommended the rejection both of employers' and of employees' demands and the continuation of the status quo, upon the following interesting reasoning: In 1928 the company had been granted the right to increase fares, with an explicit grant of right to a return of 7% upon capital and 2% surplus, with a depreciation rate of 4.11% computed upon a plant life of 24.33 years. These adjustments had been based upon current operating costs, including the wages in question. It was true that net earnings had declined, but an analysis of the financial figures presented indicated

that the sharp increase in interest and special charges since 1927 were largely responsible for the failure of the Railway Commission's judgment of 1928 to give the necessary return to the company upon its invested capital which was intended. Hence the company's present financial position and its inability to provide for its dividends. Operating costs, which include wages, are apparently not responsible for this condition. . . .

The board went on to reject any close correlation between company condition and wages: "Wages do not necessarily rise and fall with the prosperity or adversity of the employer. They depend upon value of the service rendered and the factors of supply and demand."³

The company refused to accept the board's recommendations, but in putting into effect a reduction of 10% in wages "offered to make certain slight ad-

justments in favor of the men, and an agreement on this basis was signed".⁴

When such a depression as that of the thirties prostrates all industry, both the parties to disputes and the boards tend to accept the need for sacrifice among all classes. Issues focus, however, upon the relative weight and justice of the sacrifices asked and made. Thus in their brief against the 10% additional cut from basic rates proposed by the Canadian Pacific Railway in 1933, the clerks, freight handlers, and similar workers called attention to the burdens they had already assumed. Besides an initial 10% cut in wages, their earnings, they said, had been further reduced by part-time employment. Moreover, out of severely diminished incomes they, like all workers enjoying any employment at all, had to contribute to unemployed relatives and friends, as well as to general relief funds. Admitting the validity of this argument, the board, after weighing all the evidence, not only granted a further reduction of only 5% in place of the 10% proposed, but also established minimum monthly wages beyond which no reductions should be made.⁵ Similarly in protesting the total 15% cut asked by the British Columbia Electric Railway Company, the employees argued that in 1932, ten months before the expiration of their agreement, they had accepted voluntarily a 5% wage decrease as an earnest of their willingness to help meet financial difficulties, that they had also accepted reduced earnings through a share-the-work program, and that, finally, dividends should be reduced before the workers were asked to assume further sacrifices. The board was divided in its report, a majority declaring itself "satisfied that the request of the Company for a reduction is justified at the present time and that some effect should be given to it", the minority challenging the argument that the financial condition of the company was the real cause "why it could not afford to pay decent wages".⁶

In much the same way, the employees of the Winnipeg Electric Company, in contesting a proposed wage cut of 10%, called attention to the losses in earnings they had already shouldered through a share-the-work program. A majority of the board, in granting the wage cut, admitted the generosity of the senior men in sharing their work, but pointed out that the company's total pay roll was not decreased by the employment of more men on shorter shifts. It suggested, however, as did a number of boards,

¹ *The Labour Gazette*, Vol. XXX, No. 5, May, 1930, pp. 401-406: "Report of Board in Dispute between the Canadian Pacific Railway and its Railway Clerks, Freight Handlers, Station and Other Employees".

² See above, pp. 13-14.
³ *The Labour Gazette*, Vol. XXXI, No. 7, July, 1931, pp. 745-756: "Report of Board in Dispute between the Ottawa Electric Railway Company and Certain of its Employees".

⁴ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1932*, p. 74.

⁵ *The Labour Gazette*, Vol. XXXIII, No. 11, November, 1933, pp. 1066-70 (supra cit.).

⁶ *The Labour Gazette*, Vol. XXXIV, No. 1, January, 1934, pp. 9-14 (supra cit.).

that the duration of the recommended wage decreases should depend upon future movements of company earnings and the cost of living.¹ Others took an even stronger stand in attempting to pass judgment on the justice and economics of such adjustments as among the various parties to industry. Thus a majority of the board hearing the dispute between the Canadian National Railways and its clerks, freight handlers, and similar workers expressed both sympathy with the financial difficulties of the company and deep concern over the inadequate incomes of its lower-paid workers. Its primary observation on all the evidence, however, was as follows: "As a general principle, the Board seriously questions the value of any attempt by wage-reductions to find a solution of the financial problems of the Canadian National Railways."²

In making its specific recommendations this board, therefore, set minimum wages beyond which no reductions should be effected, a device also utilized, as we have just seen, in a similar dispute on the Canadian Pacific Railways.³

Changing Emphasis on Cost and Standard of Living

Even more than economic conditions, the cost of living has always figured heavily as a consideration in wage disputes referred to boards. During early years it played a dominant rôle in many cases; and with the War it assumed large proportions because of the rapid rise of prices.⁴ In more recent years it still appears frequently, but with a different emphasis. Labor has attempted to subordinate "mere living costs" to concepts of an expanding standard of living; it has also urged adequate wages to sustain purchasing power and therefore to stimulate revival and prosperity.

Thus, in asking for wage increases in 1926, the conductors and trainmen on the Canadian Pacific and Canadian National Railways based their claim on a differentiation between a desired standard of living and "mere" living costs:

The main reasons now advanced as justifying or calling for increase of pay at the present time are:—the necessity for more money to enable these employees to

maintain a suitable standard of living; advance in the standard of living; the hazards and hardships and the responsibility incident to their employment; additional expense of living necessitated by their absence from home while in the discharge of the duties of their employment; and the added expenditure for clothing suitable for their work due to the character of their employment and especially to climatic conditions; and arguments were advanced—as will appear on a reference to the material filed—based upon and elaborating these and other reasons. Mr. Berry for the employees emphasized the importance that should be given to the employees' responsibilities and what is expected of them, and he submitted that the employees were not basing their request for increase of pay on cost of living and that cost of living should be considered as a mere factor of the case. [Italics the author's.]

A majority of the board, however, refused to concede this point, maintaining that: "Hitherto in arranging wage schedules the cost of living seems to have been a most important factor"⁵

Almost exactly the same reasoning was advanced in another important railroad dispute in 1931, although in this instance the employees made a last-minute qualification of their argument. The two railways and their subsidiaries based their case for the 10% wage cuts proposed upon declining revenues and "reductions in the cost of living". In reply, the workers urged that "increases or decreases in the cost of living are not the essential or determining factors in justifying an upward or downward scale of wages". On the last day of the sittings, however, they qualified this original position in a written reply to one of the company's statements by submitting that "so far as cost of living is concerned, increases in these costs may call for increases in wages and that decreases in actual changed standard cost of living, where shown to be permanent, may afford ground for argument in decreasing wages. . . ."

A majority of this board also refused to accept the argument:

. . . we are of the opinion that while, of course, there are other important factors to be considered, changes in the cost of living are an important factor in the arranging of rates of pay. In this connection, we observe also that it was clearly in the mind of Mr. McAdoo, from whose writings the employees quoted with approval, that this adjustment of railway wages was made principally on account of increases in the cost of living.

A consideration of the recommendations made by other Conciliation Boards would indicate that the cost of living has always been considered an important factor when considering rates of pay.⁶

¹ *The Labour Gazette*, Vol. XXXII, No. 1, January, 1932, pp. 16-26: "Report of Board in Dispute Between Winnipeg Electric Company and Motormen, Conductors, Busmen, Mechanical Department Employees, Trackmen and Gas Work Employees".

² *The Labour Gazette*, Vol. XXXIII, No. 12, December, 1933, pp. 1251-56 (supra cit.).

³ *The Labour Gazette*, Vol. XXXIII, No. 11, November, 1933, pp. 1066-70 (supra cit.).

⁴ *Postponing Strikes*, pp. 128-130, 220-234.

⁵ *The Labour Gazette*, Vol. XXVI, No. 11, November, 1926, pp. 1058-72: "Report of Board in Dispute between the Canadian Pacific Railway and Canadian National Railways and their Conductors and Trainmen".

⁶ *The Labour Gazette*, Vol. XXXI, No. 12, December, 1931, pp. 1203-1300 (supra cit.).

But on occasions, and particularly before the depression of recent years, boards, by either majority or unanimous decisions, have also endorsed the new stand taken on this issue by labor. In 1929, for instance, railway employees in asking for increases in wages argued in clear-cut fashion "that the mere 'cost of living' is not the only—indeed, at this date, not even a material factor". Consequently to take any prior agreement as a base for fixing present rates by computation of movements in living costs was unfair since "in no such agreement did the employees secure all they believed they were entitled to . . .". The employers replied that all agreements were the result of compromise and negotiation, and that "conceding the contention for decent and comfortable homes and family conditions, the cost of living has always, or nearly always, been a dominant, sometimes, as in the McAdoo and some subsequent Awards, the chief or only factor in granting increased rates; and that since 1926 the cost of living has not increased". The board, in this instance, "having given most careful thought and study to all the facts and circumstances" of the case, unanimously recommended wage increases.¹

With the same type of argument before them, a majority of a board hearing another railroad wage dispute in 1927 specifically criticized the existing practice of adding to a wage base, inadequate in terms of decent living standards, increases proportionate to rises in costs of living:

The classes of employees asking for increase in their rates of pay are among the lowest paid of the Company. The services required of many of them are of a character that requires fair education, experience and training. While it is true that the rates of wages for these employees have been substantially increased since 1914, the increases have been given to them to correspond with the percentage increase in the cost of living. It seems unquestionable that the rates of pay in 1914 were based exclusively on the bargaining powers of the parties at that time, which operated heavily against this class of worker and apparently without reference to what might be considered fair compensation or a fair standard of living . . .²

Social and Economic Welfare

Together with these arguments, based on a standard of living as distinguished from the cost of living, labor has recently been introducing considerations of

general communal welfare generalized into such doctrines as the economy of high wages, and the stimulus to mass purchasing power derived from maintaining adequate wage levels. Employers, on their side, have countered with the argument that lower rates would make for lower prices and, therefore, for higher earnings through increased employment. On the whole, boards have not as yet given such arguments any considerable weight, preferring to draw conclusions in any individual case from factors bearing specifically upon the industry concerned. They do, however, comment from time to time upon the introduction of these arguments.

In a complicated shipping dispute in New Brunswick during 1933 the employees urged, among other considerations, that "one of the things the country needs to restore it to prosperity, is an increase, not a decrease, in purchasing power of its wage earners along with its other citizens . . .". But a majority of the board rejected this contention. For one thing, it said,

Sixty cents now has more purchasing power than seventy cents had in 1927. Again, should it be desirable as a policy to artificially keep up or increase the purchasing power of the employees, who should stand the extra cost? No reasons have been advanced why the employers should stand this extra cost and the Board knows no reason. The Board is, therefore, of the opinion that the desirability of increasing purchasing power generally is no valid reason why it should decide that the rate of wages per hour in these instances should be higher than it would otherwise decide is fair.³

In the same way the employees in one of the railroad disputes of 1933 contended that "the policy of wage cutting is economically unsound, as the restoration of industry depends upon an increase in the purchasing power of the masses . . .". It was in this case that a majority of the board seriously questioned "the value of any attempt by wage reductions to find a solution" of the railroad's difficulties and granted, above certain minima, a 5% rather than a 10% reduction in wages, but without indicating what weight, if any, the purchasing power argument received in the deliberations.⁴ In the railroad dispute of 1931, already discussed,⁵ it was the representative of the men, Dr. J. C. Hemmeon, an economist, who emphasized this consideration in his minority report; while the majority, granting it "some validity" as a program for "concerted action . . . on a far-reaching scale" in the beginning of a depression, rejected it for

¹ *The Labour Gazette*, Vol. XXIX, No. 10, October, 1929, pp. 1082-86 (supra cit.).

² *The Labour Gazette*, Vol. XXVII, No. 3, March, 1927, pp. 250-263: "Report of Board in Dispute between the Canadian Pacific Railway Company and its Clerks, Freight Handlers, Station Employees, etc."

³ *The Labour Gazette*, Vol. XXXIII, No. 1, January, 1933, pp. 15-32 (supra cit.).

⁴ *The Labour Gazette*, Vol. XXXIII, No. 12, December, 1933, pp. 1150-56 (supra cit.).

⁵ See p. 16.

the specific case before the Board. Dr. Hemmeon's statement was in part as follows:

I trust that it will not be considered an intrusion of the academic point of view to suggest that a decrease in wages during the present depression is undesirable in that it curtails purchasing power. I do not suggest that wage earners are the only purchasers but I submit that their earnings are more likely to be spent in buying commodities than are the incomes of the other classes of society. Many economists are of the opinion that wage cuts only accentuate the downward movement in prices. If this is so, and I think that it is so, I am of the opinion that a cut in wages so serious and so widespread as the one proposed is a grave mistake. Probably the most accurate conclusion is that wages may properly be cut where such cuts would increase the amount of wage payments, and should be maintained where cuts would diminish the volume of wage payments.¹

Employers urging wage reductions have from time to time put forth the argument that wage reductions would help to increase employment, and so the "volume of wage payments", because lower costs and prices would stimulate demand. In a coal dispute in the Drumheller District in 1932 a majority of the board rejected such a claim, put forth by the operators, as based "on hope and conjecture". To quote the exact words of the chairman:

Much was said during the hearing as to the value to the industry generally, and consequently to the employees of a general reduction in the scale of wages, but, although I pressed the representatives of the employers for some concrete evidence as to increased production resulting from reduction of wages, none was provided. The whole claim on this point was based on hope and conjecture . . . I have not been able to satisfy myself that the question of production during the period under review was controlled to any extent by reduction of wages, because so many extraneous circumstances intervened that it was impossible to say what the cause thereof was.²

Comparative Wages

Comparative wages in similar trades and localities have, like the cost of living, always constituted a factor urged by parties to a wage dispute. Both management and employees on Canadian railroads have for many years offered wage standards in the United States as evidence for their respective demands. For, since the War, wage rates on Canadian railroads have paralleled those in the United States; and, as we have already seen, the McAdoo Award was brought into evidence by one side or the other as an original wage

base in several cases during the depression of the thirties.³ But more perhaps than other factors the argument based on comparative wages lends itself to special pleading. Workers are prone to make only those comparisons that support increases, and employers those that support decreases. Moreover, as boards have frequently insisted, so many differences in conditions may exist between localities that it is difficult to determine the applicability of attempted parallels.

Not unnaturally, therefore, board decisions have varied in the weight they accord to this argument. In 1922, four boards hearing wage disputes between Canadian railroads and their shopmen based their decisions in large part upon wage movements for railroad shopmen in the United States.⁴ In much the same way a board dealing in 1927 with a dispute between the Dominion Power and Transmission Company of Ontario and its electrical workers based its decision on the wages and conditions of workers of the Hamilton Hydro Commission. A majority recommended that if at the expiration of the current agreement "the Company's application to the Ontario Railway Board for increased fares be granted, the employees of the Dominion Power and Transmission Company be placed in the same position as the employees of the Hamilton Hydro Commission with regard to hours and wages"⁵

Other boards, again, have either rejected or qualified the argument. Thus a board hearing a railway dispute in 1926 in which the workers urged, and the company opposed, wage changes by example of increases recently granted on railroads in the United States, declared in its majority opinion that "there does not seem to be any obligation upon the Railway Companies in Canada to follow rates of pay in the United States. Moreover, it would appear that conditions in the United States are different from those in Canada"⁶ Likewise, when the longshoremen of Vancouver based their request for wage increases on wages paid in other Pacific ports, a majority of the board rejected the argument on the ground that

so many other factors may enter into the determination of the wage rates at these ports [referring to Seattle, Tacoma, and so on], such as higher cost of living, a lower average of available work per day and other considerations, touching which no evidence has been presented, that the mere fact of a difference in rate of pay, taken

¹ See pp. 13, 16, 17.

² *Postponing Strikes*, pp. 138-141.

³ *The Labour Gazette*, Vol. XXXI, No. 12, December, 1931, p. 1300 (supra cit.).
⁴ *The Labour Gazette*, Vol. XXXII, No. 7, July, 1932, pp. 753-760. "Report of Board in Dispute Between the Various Coal Operators in the Drumheller District and Employees, Members of District 18, United Mine Workers of America".

⁵ *The Labour Gazette*, Vol. XXVII, No. 10, October, 1927, pp. 1040-41. "Report of Board in Dispute between the Dominion Power and Transmission Company and its Electrical Workers".
⁶ *The Labour Gazette*, Vol. XXVI, No. 11, November, 1926, pp. 1058-72 (supra cit.).

by itself and without evidence as to other concomitant circumstances and conditions is not conclusive grounds for an increase.¹

The tendency to introduce into evidence only those comparative wages which support the demands of the respective sides in wage disputes, as well as the unwillingness of the parties to commit themselves to any hard and fast principles in negotiation, was clearly illustrated in another railway case heard during 1929. This time the employees asked that their wages be raised about 6.5% to the level on which comparable workers in the western United States were paid. In reply the employers attempted to show that conditions were not the same in the two areas, and also that general wage levels for all industrial workers were higher in the United States than in Canada. The board in its unanimous report made the following succinct and pointed comment: "On this important ground neither party would commit itself to the principle of accepting and applying at all times the rates that might obtain in Western United States."²

The Value of Labor's Services

One more factor, which may be designated as "the value of labor's services", has appeared in wage cases, either in the evidence presented by the disputants or in the reasoning offered by board members. In 1914, a majority of a board hearing a dispute between the Canadian Pacific Railway and its maintenance-of-way employees based its recommendation against wage increases on this ground:

Wages ought to be such as are a reasonable compensation for the services rendered . . . the difficulty lies in the proof of the value of the services. One test, and ordinarily speaking the best test, is . . . For what sum could the employer have the work as well performed by others as it is by those seeking higher wages; what would it cost to fill their places as well for the employer's purposes, as such places are now filled?³

Such "replacement costs", however, have not often constituted in recent years the measure by which boards have sought to assess the value of labor's services. Weight has rather been given to the "hazards and responsibility" of the work, the "training and experience" demanded by the job, the "degree of skill and education" required.⁴

¹ *The Labour Gazette*, Vol. XXXIV, No. 7, July, 1934, pp. 596-620: "Report of Board in Dispute Between Various Firms, Members of the Shipping Federation of British Columbia, Limited, and Their Employees, Members of the Vancouver and District Waterfront Workers' Association".

² *The Labour Gazette*, Vol. XXXIX, No. 10, October, 1929, pp. 1082-86 (supra cit.).

³ *Postponing Strikes*, pp. 132-134.

⁴ Cases in which there have been introduced one or more of such measures of the value of labor's services are reported in the following issues of *The Labour*

Technological Improvements in Relation to Wages

Perhaps the most interesting question under this general head is raised by claims before boards to financial participation in increased returns due to technological improvements. When an employer introduces one-man-operated trolleys, longer railroad trains with more powerful locomotives, more powerful slings in dock work, automatic telephone exchanges, a new manufacturing method, how much of the savings in costs and the returns of greater productivity should go to labor and how much to capital? Railway workers in 1930 gave typical expression to this claim when they argued that: "Improvements in the efficiency of productivity of the railway workers, or any class of them, justify higher rates of pay. A better quality or greater quantity of service rendered or a reduction in the unit cost of service merits recognition in the wage scale".⁵

The one-man car on street railways has brought the issue before several boards. It effects considerable savings in costs with only slight changes in equipment, largely from the decrease in total pay roll due to the smaller labor force required. More service is demanded of the one-man operator, with consequently increased strain and heavier responsibilities. Generally there is joint acceptance of these facts, and street railway companies in Canada pay a differential (usually of 4 to 5½ cents an hour more) to operators of one-man cars. Such differentials have been endorsed by boards hearing street railway disputes.⁶ But when workers have sought to increase their share of the gains, their argument has not been so favorably received. Thus employees of the Winnipeg Electric Company in 1930 based their demands for holidays with pay, increased wages, and pay at the rate of eight hours for seven hours' work on Sunday largely on the results of "the introduction and use of one-man cars". In brief, they brought into evidence the additional strain, the reduction in total number of employees, the consequently larger volume of work performed by the existing staff, and their right to a share in the "large saving in the general cost of operation". The company replied by setting against the

Gazette: Vol. XXVI, No. 11, November, 1926, pp. 1058-72 (supra cit.); Vol. XXVII, No. 3, March, 1927, pp. 259-263 (supra cit.); Vol. XXIX, No. 10, October, 1929, pp. 1083-86 (supra cit.); Vol. XXX, No. 5, May, 1930, pp. 401-496 (supra cit.); Vol. XXX, No. 8, August, 1930, pp. 889-890 ("Report of Board in Dispute between the Shipping Federation of British Columbia, Limited, and the Vancouver and District Waterfront Workers' Association"); Vol. XXXI, No. 7, July, 1931, pp. 745-756 (supra cit.).

⁵ *The Labour Gazette*, Vol. XXX, No. 5, May, 1930, p. 492 (supra cit.).

⁶ For illustrative cases, see *The Labour Gazette*, Vol. XXX, No. 2, February, 1929, pp. 131-134 (supra cit.); Vol. XXX, No. 9, September, 1930, pp. 1009-10 (supra cit.); Vol. XXXII, No. 1, January, 1932, pp. 16-26 ("Report of Board in Dispute Between Winnipeg Electric Company and Motornia, Conductors, Busmen, Mechanical Department Employees, Trackmen and Gas Work Employees"); Vol. XXXIV, No. 1, January, 1934, pp. 9-14 (supra cit.).

savings in operating costs yielded by one-man cars the decline in gross revenues that year, the estimated cost of granting the men's demands, and the differential already paid to one-man car operators. The management also advanced the right of investors and passengers to share in the savings from modern equipment, and pointed to the tendency everywhere toward installing one-man cars. A majority of the board held that the men's demands were in line with long-time trends but unjustified by existing conditions.¹

Technological improvements on railroads became an issue in 1929 when the conductors, trainmen, and yardmen on western lines of the Canadian National and Canadian Pacific Railways argued in support of demands for wage increases that "the ever-increasing length and weight of trains carry corresponding increases in work, responsibility and hazards . . .". Moreover, "because of increased size of trains and increased hauling power of locomotives, the train crews produce through their work more revenue for the employers than formerly, and therefore should share in these gains". Against these claims the employers contended, on the one hand, that the increases in employees' responsibility were trifling and, on the other, that the increase in revenue and efficiency was "due to invested capital, and not to labour".² These arguments constituted only two of the eight main points on the basis of which the board unanimously granted wage increases. But they undoubtedly had their weight, for the members prefaced their recommendation with the declaration that they had "given most careful thought and study to all the facts and circumstances connected with this entire application".³

In a shipping case in 1933, however, a majority of the board explicitly rejected savings resulting from technological improvements as a justification of wage increases:

It is a fact that by reason of the present use of improved and new mechanical appliances, the employees do handle more tons per hour than formerly. Should they therefore have a higher wage per hour than if it [sic] were not used? These mechanical appliances are provided by the employers and their use and coordination organized by the employers. Their use may entail more physical and mental effort on the part of employees or it may entail less. On this there was no evidence to support either view. The Board is, therefore, of opinion that this factor (if it be a factor at all) does not affect the situation as to what is now a fair wage per hour compared with 1927.⁴

¹ *The Labour Gazette*, Vol. XXX, No. 9, September, 1930, pp. 1012-13 (supra cit.).

² *The Labour Gazette*, Vol. XXXIX, No. 10, October, 1929, p. 1083 (supra cit.).

³ *Ibid.*, p. 1084.

⁴ *The Labour Gazette*, Vol. XXXIII, No. 1, January, 1933, pp. 18-19 (supra cit.).

A wage dispute in the Manitoba Telephone System arose during 1927 as a result of the introduction of the automatic exchange. In drawing up a revised schedule to express the relative position of different classes of repairmen under the new technological set-up, the wages of troublemen whose experience had been largely in "inside work" had been increased from 89 cents to 92 cents per hour, but those of troublemen trained primarily for outside work had been decreased from 94 cents to 92. When the latter protested, both sides agreed to submit the dispute to a board whose decision should be binding. The evidence showed, among other things, "that, since the substitution of the automatic exchange system for the earlier manual system, and since the street work had been mostly rebuilt, substituting pairs of insulated wires inside lead sheathed cables for open wires or insulators mounted on poles", the major number of repairs had come to involve inside rather than outside work. The board unanimously concluded that the new wage schedule correctly expressed the relative value of the work of the inside and outside men to the existing automatic system; work records submitted showed that more than four times as many inside as outside troubles had arisen in two typical months studied. Moreover the technological changes had made such outside troubles as did appear of the simpler kind that "do not require the services of an equipped gang of men". Despite this endorsement of the disputed changes in the wage schedule, however, the members of the board also expressed their regret, "in view of the long and loyal service rendered" by the outside troublemen, that the proper balancing of the wage scale required the reduction of their hourly rates from 94 cents to 92 cents. Accordingly it was their judgment that effective from May 1, 1927, "the rate to all Combination Troublemen [inside and outside] should be increased to 93 cents per hour, as this would not appear to affect the relative balance of the schedule . . .".⁵

Evolving Concepts of Shorter Working Day as Reflected in Decisions

In contrast to the presentation of wage disputes, the principles and evidence underlying decisions on hours and other conditions, exclusive of representation issues, seldom figure prominently in board reports. Most boards confronted with disputes over the

The Labour Gazette Vol. XXVIII, No. 4, April, 1928, pp. 352-353: "Report of Board in Dispute between the Manitoba Telephone System and Certain of its Employees"

length of the working day have shown themselves favorable to the trend toward shorter hours. In a case in 1911, for instance, a board unanimously recommended a reduction from ten to nine hours per day for machinists and boilermakers on the Grand Trunk Railway. Three reasons influenced its decision: (1) competing companies had established a nine-hour day with satisfactory results; (2) proper management methods could make it practicable; (3) reasonable reductions in working time usually "increased efficiency and improved social, domestic, and intellectual conditions".¹

In more recent years, it is the eight-hour day that has received similar endorsement. Generally the issue has reached boards in demands for the "basic day" of eight hours, in questions as to "spreads" within which the basic day must be worked out, and in questions of penalty overtime. In only one case since 1925 has a board recommended against a basic day because of the strenuous objections of the employer involved. This employer, an interurban railway, a subsidiary of the Canadian National Railways, argued that because of the nature of the service it rendered, a basic day would involve a substantial increase in the cost of operation—an increase which, in the face of an already serious operating deficit, it could not absorb. A majority of the board, basing its decision on grounds of immediate expediency, declared that although they were "very strongly in favour of the establishing of a basic day, deeming the same desirable in the interests of the employees, from both the efficiency and the health standpoint", they were not including it in their award because of the company's representations and "very strenuous objection to the adoption of a basic day at present . . .". They urged, however, "that in the interests of both the company and its employees" some effort be made "within the very near future" to fix "a basic day, since in the opinion of the undersigned, the number of hours worked by a good many employees is altogether excessive".²

Usually, for the same considerations of health and efficiency, boards have recommended that the "spreads" within which the basic day may be operated should be reduced to the lowest practicable limits. Thus in September, 1933, a board hearing a dispute on the Winnipeg Electric Railway recommended that "spread time" be reduced from 13 to 11 hours, with the explanation that

"spread time" is the period during which the employee does his day's work—the period between the beginning of the first run and the end of the last run. The runs aggregate the day's work. Thirteen hours is a long period within which to do seven or eight hours' work [a share-the-work scheme adopted by the workers explains the seven-hour day], and the Board recommends that as far as possible this period be reduced to eleven hours. This recommendation is put forward in the hope and belief that if acted upon it will improve the comforts of the men, without seriously affecting the efficiency of the Company's service.³

This same issue had been presented in two earlier cases arising from disputes in this company in 1926 and 1930.⁴

Similarly, in a shipping dispute in 1930, the board unanimously endorsed the men's demand for a reduction in the maximum hours per day from 13 to 10. The standard day was one of 8 hours; and, after weighing all evidence submitted for and against reduction in the maximum day, the board concluded that "the lesser hours of work would bring about higher efficiency and reduction of hazard and would realize the expressed aim of the Association [the workers] to attain a fairer distribution of work and more equitable earning opportunity among its members". The board was further satisfied "that the ideal working day is not more than eight hours . . .".⁵

Evolving Concepts of Better Working Conditions

A variety of miscellaneous conditions have been brought before boards. From time to time, boards have passed upon such questions as the rôle of seniority in promotions, sick leave, apprenticeship and vocational training, work uniforms, annual holidays with pay, and displacement from employment by reason of race or age. Most boards seem willing to accept seniority as a consideration for tenure or promotions, though other factors, as for instance merit and ability, are also endorsed.⁶

The four cases in which the issue of "holidays with pay" has been argued in recent years offer an interesting illustration of how every board tends to

¹ *The Labour Gazette*, Vol. XXXIII, No. 9, September, 1933, pp. 880-881 (supra cit.).

² *The Labour Gazette*, Vol. XXVI, No. 8, August, 1926, pp. 754-759 (supra cit.); Vol. XXX, No. 9, September, 1930, pp. 1009-19 (supra cit.).

³ *The Labour Gazette*, Vol. XXX, No. 8, August, 1930, pp. 889-900: "Reports of Board in Dispute between the Shipping Federation of British Columbia, Limited, and the Vancouver and District Waterfront Workers' Association".

⁴ See, for instance, *The Labour Gazette*, Vol. XXVI, No. 10, October, 1926, pp. 939-941: "Report of Board in Dispute between the Canadian National Express Company and Certain Employees". Some other cases involving the standard and maximum day are reported in *The Labour Gazette*, Vol. XXX, No. 11, November, 1930, pp. 1248-49 ("Report of Board in Dispute between Master Plumbers of Saint John, N.B., and their Journeyman Plumbers and Steam Fitters"); Vol. XXXIV, No. 7, July, 1934, pp. 597-620 (supra cit.).

¹ *Postponing Strikes*, pp. 141-142.

² *The Labour Gazette*, Vol. XXVI, No. 7, July, 1926, pp. 643-645: "Report of Board in Dispute between the Canadian National Railways (Montreal and Southern Counties Railway) and Certain of its Employees, Being Conductors, Trainmen and Motormen, Members of the Brotherhood of Railroad Trainmen".

consider each case on its own merits, and yet how with time a certain standard gains increasing acceptance. Thus in 1927 the employees of the British Columbia Electric Company demanded, among other things, holidays with pay on the ground that the principle was "gradually being adopted, particularly for motormen and conductors whose work is becoming more strenuous as street traffic has increased." A majority of the board rejected this demand by differentiating between the conditions of men paid by the month and by the hour: To grant holidays with pay in the case before them, they believed, would be "contrary to principle"; for "while men working by the month, who are obliged to work overtime from day to day without pay, are entitled to holidays, this does not apply to men who work by the hour and are paid for every hour overtime worked".¹

In 1930, a majority of a board considering the evidence presented on the same issue in a dispute involving the Winnipeg Electric Company, rejected the men's demand "for this year at any rate". For

while the tendencies in normal times and on the longer view are towards better working conditions, a shorter hourly week and holidays with pay, yet present conditions, both with the Company and generally, do not, in our opinion, warrant such a change as would substantially increase to the Company its cost of operation.

From the evidence presented it appeared that a very small percentage of employees in like service in other similar utilities, who are employed on an hourly basis, are receiving holidays with pay; and although, particularly among municipally owned street railway companies, a disposition was shown to grant holidays to men as a matter of right, and as contributing to their efficiency, yet for the above-mentioned reasons, and for this year at any rate, we think the Company should not be expected to add the additional expense required to meet the demands of the men of the various units in this respect.²

In 1933, a board considering this issue, raised once more by the employees of the same company, found itself unable to make any recommendation, although favorably disposed to the men's demand. The company had declared itself willing to grant annual holidays without pay. But the employees pointed out that, without compulsory holidays for all, certain

workers would refuse to avail themselves of the permissive leave, preferring continuous work. But the board felt that annual summer holidays of two weeks would mean in effect an increase of 4% in pay, and that, unless fixed to come at the end of 50 weeks' work regardless of the calendar year, this would be an increase "inequitably levied and administered". Yet the board considered that "the men are entitled to holidays, and if this were made compulsory, and the general rate of wages made satisfactory, the men could afford to take a holiday without either receiving or inflicting injustice, but in the circumstances we can make no recommendation".³

In the same year, a majority of a board hearing a dispute between the Hamilton Hydro-Electric Commission and its employees, without stating the principle behind their decision, recommended two weeks' holiday with pay for all meter men, salaried employees, and operators who had been in the employ of the company for one year, but not to maintenance and troublemen.⁴

Thus a standard, which in an early case was entirely rejected, in later ones came to be accepted as a desirable end in personnel practice. This does not mean to say, of course, that all boards will grant annual vacations with pay. The financial ability of the particular company concerned, and other factors, will always be taken into consideration in any given dispute. What is significant, however, not only on this issue, but on wages and conditions generally, is the manner in which a law such as the Canadian Industrial Disputes Investigation Act, administered flexibly and realistically, thus permits the evolving customs of industry to receive formal recognition as the standards toward which practice must aim.

So impressively has this tendency been working itself out in disputes over employees' representation and collective bargaining, and so suggestive for our own problems are the Canadian developments on this aspect of law and labor relations, that it seems worth while to set forth separately and in detail this most recent expansion of basic procedures under the Disputes Act.

¹ *The Labour Gazette*, Vol. XXVII, No. 12, December, 1927, pp. 1291-94: "Report of Board in Dispute between the British Columbia Electric Railway Company, Limited, and its Employees".

² *The Labour Gazette*, Vol. XXX, No. 9, September, 1930, pp. 1012-13 (supra cit.).

³ *The Labour Gazette*, Vol. XXXIII, No. 9, September, 1933, p. 884 (supra cit.).

⁴ *The Labour Gazette*, Vol. XXXIII, No. 8, August, 1933, pp. 759-763: "Report of Board in Dispute Between Hamilton Hydro-Electric Commission and Certain of its Employees".

Chapter IV

THE BASIS OF BOARD DECISIONS: EMPLOYEES' REPRESENTATION AND COLLECTIVE BARGAINING

In every industrial country one of the sharpest issues in industrial relations arises from the inter-related procedures usually described as collective bargaining: namely, the selection of spokesmen by employees; the recognition of these spokesmen by management; and the joint negotiation of wages, hours, and conditions of work. In Canada, naturally, such issues have appeared before boards under the Act since the beginning of its development. As early as 1911 a board in a dispute on the Grand Trunk Railway laid down the principle that employees are entitled to have some voice in the determination of wages and conditions of work. It pointed to the success of cooperative dealing in these matters on other railroads. Other early boards were confronted outright with the issue of union recognition, particularly in coal disputes. During the War several royal commissions were appointed to deal with unionization disputes. But generally speaking, the administrators of the Act, during the earlier decades of its operation, tended to look upon union recognition as an issue that had to be fought out by the disputants rather than adjudicated.¹

Evolving Practice of Collective Bargaining Reflected in Decisions

Since 1925, however, cases involving this question of representation have been handled as readily as other types of disputes. The change, in turn, as already indicated, has been a product primarily of the continuous tendency of the administrators to formalize advancing industrial custom through the flexible machinery of the Act. This development received its first real impetus during the War; the post-war years have deepened and strengthened it. Among the matters included by explicit definition in the very meaning of "dispute" under the Act, it

¹ See *Postponing Strikes*, pp. 143-146, for discussion of the handling of representation issues before 1925.

will be recalled, is "any established custom or usage, either generally or in the particular district affected". Thus it is that if the Act has promoted collective bargaining in recent years, it has done so, as Department of Labour officials phrased it in a memorandum to the author, "*at a time when the method was being gradually put into more general practice in this and other countries*". Accordingly, of the 179 applications for boards from 1925 to 1935, 67 involved the issue of collective bargaining in some form; while, of the 86 reports submitted by boards during this period, 30, or over a third, dealt with union issues. The principles enunciated and the procedures followed in dealing with them differ in important ways from those now under trial in the United States. For one thing, in contrast to the judicial and compulsory techniques set up by much of our present legislation, the primary methods used by the administrators of the Canadian law in dealing with bargaining as with other disputes have been mediation, conciliation, and investigation. There is no final power of enforcing any form of employee representation. In each dispute peaceful settlement, always the goal of administrators, is sought by attempting to carry the parties as far along the road toward full collective bargaining as they can be persuaded to go. Union representatives and employers are brought into conference, strengths and differences are weighed, and terms of settlement proposed and canvassed. The final resort to a test of strength remains available if the parties feel they can gain more than government intervention has been able to achieve.

The forms in which representation issues have come before the Canadian administration during the last decade may be classified for the purpose of the present discussion under three major heads: (1) the right of employees to be represented by spokesmen of their own choosing; (2) the determination of who those representatives should be; and (3) the definition of what constitutes collective bargaining.

Employees' Right to Independent Representation Generally Affirmed

To the principle of the right of employees to representatives of their own choosing, boards have usually accorded emphatic endorsement, though of course employers have not always accepted their decisions. In three cases, however, boards have refused to recommend explicit or full freedom of choice. Two of these cases reveal both the difficulty confronting administrators when an employer is determined not to deal with a union and the unwillingness of Canadian boards to take the parties beyond the point where a realistic appraisal of their relative strength and of their day-by-day relationships shows they can be made to go. In the third case it was suggested that free choice of representatives should be restricted to non-revolutionary organizations.

Thus, when the International Brotherhood of Electrical Workers terminated an agreement with the British Columbia Telephone Company in 1926, preparatory to negotiating a new one, the company refused to enter joint conference. In the previous year control of the company had changed hands, and the new management followed the policies of other companies in the Pacific states. For labor relations this found expression in a determination to deal with its own employees. A "Synopsis of Working Conditions" was posted and a personal letter explaining his wage rate was sent to each employee. A company union called the "British Columbia Telephone Electrical Employees" began to compete with the Brotherhood for membership among the men. On the application of employees belonging to the Brotherhood, a board was appointed in 1927 to deal with the resulting dispute. The company did not advance before this board any specific complaints against the union, but explained its change of policy chiefly on two general grounds: in the first place, it was "thought not in the best interest to have a contract with the union", and, in the second, "there is no organization of telephone workers in the Pacific States". On their side, however, the workers proved themselves unable to establish any real complaints as to wages and working conditions. Wage differentials for "efficiency and faithfulness" had been established over and above a relatively high wage base; allegations of dissatisfaction over working-shift arrangements were met by pointing out that shift regulations had been copied verbatim from the Agreement of 1921 and had existed without serious complaint for 5½ years; and various benefits—disability and death benefits,

medical aid, and a savings plan—had been instituted. Finally, for handling such complaints as might arise, the management declared itself willing and ready at any time "to recognize a committee of the employees."

A majority of the board, therefore, concluded that "no grievance of real merit" existed between the company and its men, and that the object behind application for a board "was to have the Union recognized". They held that under the circumstances the plea for recognition of the union lest conditions eventually be made worse constituted only a future contingency; that the internal weaknesses of the union should be the first concern of the officials; that "the men should keep the Union intact, build up its morale . . .", and "that the company should be given a chance to work out its present policy of dealing with the men . . .".¹

In a similar case during the same year another board confronted again a determination on the part of the employers—in this instance, shipping companies—not to "recognize the right or authority of the men now assuming to act for the employees collectively, to so act". Further, "they were not aware of any grievance on the part of the men", and "each employer had always stood ready to hear any grievance from any of their immediate employees . . .". The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees asserted that it spoke for 80% of the employees involved; the employers argued that, when casuals were excluded, the Brotherhood represented only 40% "of permanent staff". The board strove to achieve some compromise, and was able to win agreement to wage increases. But regarding collective contract and working conditions, it had to declare unanimously that in view of the uncompromising determination of the employers to deal only with their immediate employees, it would not be "useful or constructive to make any finding on the issue of union representation".²

The third case in which freedom of choice was qualified arose from a serious coal strike in the Bienfait-Estevan district of Saskatchewan during 1931, accompanied by riots, bloodshed, and property damage. The Minister of Labour appointed a Royal Commission of Inquiry under Section 63A of the Act rather than a board. Judge Wylie in his report as Commissioner enunciated the principle that a com-

¹ *The Labour Gazette*, Vol. XXVII, No. 6, June, 1927, pp. 612-614: "Report of Board in Dispute between the British Columbia Telephone Company and its Electrical Workers".

² *The Labour Gazette*, Vol. XXVII, No. 5, May, 1927, pp. 492-495: "Report of Board in Dispute between the Shipping Federation of Canada and the Canadian Pacific Steamships, Limited, and Their Checkers and Coopers".

pany could not be "reasonably expected to recognize . . . an organization . . . pledged to a program and policy of revolutionary struggle for the complete overthrow of capitalism and for the establishment of a revolutionary workers' government". The organization in question was the Mine Workers' Union of Canada¹ and Judge Wylie quoted from its draft constitution to establish its avowed revolutionary purpose, its affiliation with the Workers' Unity League of Canada and with the Red International of Labour Unions. According to Judge Wylie, therefore, the workers' right to be represented by spokesmen of their own choosing did not extend to choice from a revolutionary organization. He expressed the opinion also, however, that an "organization in each mine, with a Committee authorized to represent the men in any difference or complaint arising out of wages or weights or working conditions, would have removed much of the dissatisfaction" and unrest that grew out of wage reductions and other conditions before the strike. "Prior to the year 1931, there had been no labour organization in this field, or in the individual mines".²

In practically all cases of this sort involving issues of representation there is some resistance on the part of the employer to recognize representatives chosen by certain of his employees. Even when administrators of the Act give the challenged right more definite backing than in these cases, they seek to take the parties only so far as they can be made peacefully to go. In the process of conciliation both relative strength and formulae for compromise are canvassed. Thus a board was constituted on the employees' application in 1926 to hear a dispute between the Winnipeg Electric Company and certain of its motormen and conductors who were members of the One Big Union. But when the employer refused to appear before the board on the two grounds that (1) the Act, declared *ultra vires* in 1925, could not be reestablished by provincial enabling legislation, and that (2) the One Big Union was not a trade union within the meaning of the Act, the board thereupon subpoenaed the employer. Despite this unpromising beginning, it attempted to conciliate the disputants. But it soon found that prerequisite to any headway in this direction was the formulation of some acceptable compromise which would guarantee the company against "outside interference" in

dealing with its workers. After discussion with both sides for several days a satisfactory formula was evolved. It consisted in an understanding that any agreement negotiated would be entered into by the company and its own employees, and that grievances would be adjusted by a committee representing local management and employees on the seniority list, free so far as the employees could guarantee it, from "outside influence or interference". But it also provided that neither company nor employees should discriminate against any worker for affiliation or non-affiliation with any labor organization. On this basis a working agreement was negotiated.³

In 1928 a board hearing a coal dispute similarly sought to carry the parties as far as it could along the road to collective dealing. The employers, five coal companies in Wayne, Alberta, had refused to deal with the Mine Workers' Union, convinced that it was unstable and could not be relied upon to carry out an agreement. At this time the Mine Workers' Union was affiliated with the All-Canadian Congress of Labour and not the revolutionary Workers' Unity League with which Judge Wylie found it associated three years later. The employers, however, had had an unfortunate experience some time before with the Industrial Workers of the World, when that organization had promoted a strike against them in disregard of an existing agreement. It was clear, therefore, that the employers were chary of union dealings; at the same time the union had undoubted support among the men. The board made heroic efforts to achieve some compromise, but in vain. Thereupon it announced its willingness to reconvene whenever either side had any further suggestions for settlement. Its own proposals on the union issue (wages were also in dispute) affirmed the employees' right to have "a strong union organization, which would be recognized by the operators . . . protect the interests of the men and help to stabilize the industry of which they are a part". But since the proceedings before them had shown that the employers would not accord such recognition, the board members further suggested that the parties to each agreement be a local union at each mine and the management; that dues be checked off and turned over to these local unions; that this arrangement endure one year to give the parties further opportunity for reconsidering the issue of union recognition; that grievance committees be constituted of representatives of employees and management; and that no impediments

¹ The Mine Workers' Union of Canada was organized in Alberta in 1925 by miners seceding from the United Mine Workers of America. In 1927 it affiliated itself with the All-Canadian Congress of Labour, but in 1931 its members voted for affiliation with the Workers' Unity League of Canada, organized in 1930 and in turn affiliated with the Red International of Labour Unions at Moscow.

² *The Labour Gazette*, Vol. XXXII, No. 3, March, 1932, pp. 262-270: "Report of Royal Commission on the Industrial Dispute in the Coal Mines in the Estevan District, Sask."

³ *The Labour Gazette*, Vol. XXVI, No. 8, August, 1926, pp. 754-759 (*supra cit.*) and Vol. XXVI, No. 9, September, 1926, p. 857: "Proceedings under The Industrial Disputes Act, 1907, During the Month of August, 1926. Other Proceedings under the Act".

be placed in the way of men to obtain suitable meeting places for conducting union business.¹ The men rejected these proposals and struck on August 13. Two weeks later one of the companies signed an agreement recognizing the Mine Workers' Union of Canada; in February, 1929, two of the other companies did likewise; and the remaining two signed agreements with the United Mine Workers of America.²

In a shipping dispute in 1927 at the Port of St. John, the employers took the stand, even before the appointment of a board

that they had received no complaints from their own employees, nor were they aware of any dissatisfaction; that they were able to secure all the help needed under present conditions; . . . and finally that, in the event of complaints, they were willing to meet and discuss any trouble with their own individual employees, but refused to meet the employees collectively.

A board, nevertheless, was constituted; and, as in other cases, the union appeared before it. The employers also attended all hearings; but they refused to participate actively, and the board could not move them from their original position. As the first of its recommendations, the board set forth "that the employers shall recognize the right of their employees, irrespective of union affiliations, to appoint their own representatives to approach the employers in the case of complaints or grievances, or matters of discipline or alleged discrimination, on behalf of the employees collectively".³ It then submitted six further recommendations on other disputed working conditions.

The Issue of Representation for Special Groups of Employees

A special issue arises when employers admit the general principle of union recognition but refuse to extend it to certain employees. In November, 1929, the boat crew on a railroad car ferry applied for a board when the Canadian National Railways rejected their demands for an agreement. The company had declined to accept representatives of the Canadian Brotherhood of Railway Employees as spokesmen for its ship employees, contending that the union's concern was properly with land workers only, and that the special conditions of ship service

and discipline made a "hard and fast agreement" inadvisable. In its final report the board submitted an agreement which it had succeeded in getting the parties to negotiate.⁴ All matters in dispute were settled, save only that of representation. The company insisted upon limiting choice of employees' spokesmen to the crew itself. The employees accepted this, without, however, abating in any way "their conviction that they should in justice have complete freedom to choose anyone they please—whether from their own membership or from outside—as a negotiator with the company on their behalf". This claim a majority of the board upheld for the following reasons:

(a) that the negotiating of a complicated schedule calls for experience and knowledge which cannot fairly be expected from working members of a ship's crew; (b) that complaint, for example, of grievances against the management of a ship cannot without embarrassment and difficulty be made by employees who must remain under the control of those they have to blame; and (c) that, in general, as set forth in the well-known judgment of the Chief Justice of the United States on May 26, 1930, collective action on the part of employees would lose its principal value "if representation were made futile by interference with freedom of choice".

In much the same way the Dominion Atlantic Railway Company refused to recognize the right of union affiliation for its headquarters clerks, holding that they "are from time to time in possession of confidential information which is peculiarly the property of the company, and it would be unfair [to both company and clerks] . . . if they should be placed in a position where supposed loyalty or duty to their organization would be an inducement to violate the confidence which they owe to the company". The board admitted the principle for employees actually placed in a direct personal and confidential position, but urged that the exceptions should be determined in conformity with like agreements in force on the railroads.⁵ A similar case arose when the Quebec Railway, Light, Heat & Power Company, Limited, dismissed three employees who refused to relinquish their union membership. The company avowed that it did not object "in principle to its clerical employees joining a union or Brotherhood, provided that this right be restricted to those who do not occupy positions of trust or confidence". The board which heard

¹ *The Labour Gazette*, Vol. XXVIII, No. 8, August, 1928, pp. 827-832: "Report of Board in Dispute between Certain Coal Companies in Wayne, Alberta, and Their Employees".

² *Report of the Department of Labour for the Fiscal Year Ending March 31, 1929*, pp. 12-13.

³ *The Labour Gazette*, Vol. XXVII, No. 4, April, 1927, pp. 359-365: "Report of Board in Dispute between Various Shipping Interests of the Port of St. John and their Checkers and Coopers".

⁴ *The Labour Gazette*, Vol. XXX, No. 10, October, 1930, pp. 1126-29: "Final Report of Board in Dispute between Canadian National Railways and Certain of its Employees on the Railway Car Ferry, ss. P. E. Island." See also the "Interim Report" of the board, *The Labour Gazette*, Vol. XXX, No. 8, August, 1930, pp. 889-890.

⁵ *The Labour Gazette*, Vol. XXXI, No. 5, May, 1931, pp. 517-518: "Report of Board in Dispute between the Dominion Atlantic Railway and its Clerks, Freight Handlers, etc.".

the case upheld the management but urged reengagement of two of the discharged employees as soon as possible in view of the length and satisfactory character of their service.¹

The Issue of Discrimination against Union Workers

Dismissal for union membership, or discrimination against union employees, is usually condemned by boards. One of the cases brought before a board in 1928 by the employees of the Toronto, Hamilton and Buffalo Railway Company charged the dismissal of a freight trucker for union affiliation. The board ascertained that this employee had not exhausted the established machinery of appeal to the management of the company; upon utilizing this machinery at the board's recommendation, he was reinstated.² Again in 1934, a board dealt with the dismissal of an employee on June 4, 1930, from the waterworks of the City of Edmonton. He was charged by the general foreman with having made statements injurious to the latter's "character and reputation" at a union meeting in May, 1930. A majority of the board, holding that his activities in the union were legitimate and in the line of his duty, recommended his reinstatement without discrimination, with all his rights of seniority as of and from the date of suspension, and with defined compensation for time actually lost from all employment.³

The Closed Shop and the Anti-Union Contract

A dispute concerning, among other things, the hiring of non-union men when union men were available brought the issue of the closed shop squarely before a board in an application by the Calgary Typographical Union. The decision of the board, by which both sides had agreed in advance to abide, unanimously affirmed closed-shop conditions. It recommended that, whenever the union proved unable to furnish as many competent compositors as the employer required, he should be at liberty to hire addi-

tional compositors regardless of their union affiliation. But it was stipulated that these new workers must be employed under the agreed union wages and conditions and must immediately make application for admission to membership into the union. In the event of their not being admitted, they must be dismissed within one week after the union notified the employer of its ability to supply competent union workmen.⁴

Perhaps one of the most significant cases on this issue of union representation arose before a board in 1929 in a dispute between the Hydro-Electric System of the Corporation of the City of Winnipeg and its linemen and cable splicers. On June 9, 1919, during the period of the Winnipeg general strike, the city authorities had passed a resolution requiring every individual seeking employment from the city to sign an agreement embodying, among other things, prohibition from membership in a labor union. In asking to be released from this obligation the employees offered to pledge themselves not to join any sympathetic strike. The board unanimously upheld the men on the ground that "affiliation with the Union of Electrical Workers assures the men of benefits beyond their reach as a small aggregation of workers", and ruled that the contract imposed under duress in denial of such affiliation should be abrogated on the terms proposed by the men, since "world conditions and the mental attitude and other phases of life" had changed and the "punishment for the offense of 1919 should not be perpetual".⁵ The city authorities abrogated the contract and put into effect the board's recommendation for all civic employees.⁶

Cases Involving Claims of Competing Organizations to Represent Employees

As we have recently been observing in the United States, question may arise as to which of a group of competing representatives has the right to speak for employees in their dealings with their employer. Several cases presenting this issue have come before boards under the Canadian Disputes Act. Usually the boards have applied the principle of majority representation to these disputes, but in two instances

¹ *The Labour Gazette*, Vol. XXVIII, No. 8, August, 1928, pp. 832-837: "Report of Board in Dispute between the Quebec Railway, Light, Heat & Power Company, Limited, and Certain of its Employees".

² *The Labour Gazette*, Vol. XXVIII, No. 3, March, 1928, pp. 251-253: "Report of Board in Dispute between the Toronto, Hamilton and Buffalo Railway Company and Certain of its Employees".

³ *The Labour Gazette*, Vol. XXXIV, No. 5, May, 1934, pp. 407-408: "Report of Board in Dispute between the Corporation of the City of Edmonton and Certain of its Employees in the Waterworks, Engineer's and Power House Departments". The apparent delay in this case arose from the process of appeal first to the City Commissioners and then to the City Council before resort could be had to board procedure under the Act.

⁴ *The Labour Gazette*, Vol. XXIX, No. 2, February, 1929, p. 130: "Report of Board in Dispute between Employing Printers of Calgary and Calgary Typographical Union No. 449".

⁵ *The Labour Gazette*, Vol. XXIX, No. 12, December, 1929, pp. 1333-34: "Report of Board in Dispute between City of Winnipeg and its Linemen and Cable Splicers".

⁶ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1930*, p. 17.

they have declined to indicate a choice. In the first of these instances, in 1928, a board hearing such a dispute refused to decide as between two unions. For eight years, La Fraternité Nationale et Catholique des Employés de Tramways de Quebec had enjoyed a closed-shop agreement with the Quebec Railway, Light and Power Company. Certain of its members in 1928 took steps to organize a local of the Amalgamated Association of Street and Electric Railway Employees of America, and were dismissed from employment. They applied for a board to pass upon their "alleged unfair dismissal . . . because of certain union affiliation". Efforts at conciliation failed: The company refused to abrogate its closed-shop agreement with the Fraternité; and the Fraternité refused to take back its former members as a group, insisting upon individual applications and the right to judge every case on its merits. Accordingly the board declared itself unable to make any useful recommendation, and stated its opinion "that this matter is one that is within the competency of a civil court".¹

In the second instance, a board in a railway case also refused to deal with a dispute involving two unions but for different reasons. In this case the inter-union dispute had been referred at the employer's request. The board concluded that any decision would constitute "interference with the rights of the employees concerned". The Canadian National Railways, in 1933, had asked a board hearing a wage dispute with its clerks, freight handlers, and similar employees to recommend that clerks in certain of its offices be permitted to withdraw from the agreement with the Canadian Brotherhood of Railway Employees and "to change their representation". They alleged in support of this request that communications from these clerks during the year, signed by the officials of a newly-formed Railway Clerks' Association, had convinced them that "over 50 per cent of the employees concerned" wished to be represented by the new association. To ascertain which method of representation was favored by a majority, the company had suggested that a ballot of the employees be taken, but this the representatives of both unions had opposed. In addition to the argument of majority representation, the company advanced some objection to grouping headquarters clerks with other employees, although disclaiming in general any concern with the labor affiliations of its employees. The Brotherhood objected strenuously to the management's interference in what it

¹ *The Labour Gazette*, Vol. XXVIII, No. 10, October, 1928, pp. 1052-58: "Report of Board in Dispute between the Quebec Railway, Light and Power Company and its Motormen and Conductors, Members of Division No. 985, Amalgamated Association of Street and Electric Railway Employees of America".

called a "jurisdictional dispute between two groups of employees". It interpreted this action as an attempt to interfere also "with the right of the employees to organize freely in labor unions and bargain collectively" and as thus constituting "an unprecedented infringement of their right to unrestricted and uncoerced freedom of choice in the matter of representation". It also challenged the company's argument of majority unionism, offering to prove by individual proxies that it possessed the allegiance of at least two-thirds of the headquarters staff. A majority of the board agreed with the employees' opinion that it "should not upon the application of the employer be required to adjudicate upon a dispute between two groups of employees". Moreover, it was noted "with some surprise that, in spite of the protestations of the Company that it was not especially concerned in the matter, it continued to insist that a decision be rendered by the Board". Such a decision, the majority felt, would be outside "the purview of the Act and would constitute interference with the rights of the employees".²

Application of Principle of Majority Representation

A particularly striking case of this same type, in which a board made definite provision for choice between competing unions by the principle of majority unionism, arose in Nova Scotia in 1927. For some time two unions—the United Mine Workers of America and the One Big Union—had been competing for members among the miners of the Inverness Railway and Coal Company. In February, 1927, the company proposed a wage reduction on which the two unions took different stands. The United Mine Workers of America accepted the proposed reduction on condition that a closed-shop agreement be signed with this union. The One Big Union opposed the reduction and applied for a board under the Disputes Act. When the company posted notices of the wage reduction without accepting the closed shop, the United Mine Workers of America declared a strike. Negotiations continued back and forth, and on April 14 a closed-shop contract was signed with the United Mine Workers of America, whereupon the One Big Union again applied for a board. In its report the board upheld the principle of majority representation as follows: ". . . the Board agrees with the Company that, in the particular circumstances

² *The Labour Gazette*, Vol. XXXIII, No. 12, December, 1933, pp. 1152-53 (supra cit.).

of the present situation at Inverness, it seems advisable that the employees should all belong to one organization". But as to deciding which of the two unions should represent the men, the members of the board differed. A majority felt that a free election should be held at the mines under the following conditions: that (1) all employees, regardless of particular union affiliation, should be returned to work; (2) in three months a plebiscite or referendum should be held to determine which union should be recognized—"it being definitely and distinctly understood that the minority shall fall in line with the decision of the majority"; (3) "those entitled to vote in the referendum shall consist of those who, on the tenth day before the referendum, are bona fide employees of the company as shown by the company's employment roll"; (4) "the voting shall be by secret ballot and . . . be conducted by a committee of five composed of the Resident Mine Manager and two representatives from either side"; (5) neither union should bring into the town outside propagandists for election purposes.

The minority report, submitted by the appointee of the company, objected to this elaborate election scheme. For, it held, the very fact that the One Big Union admittedly had in its membership only a minority of employees at the mine showed that "if there is any force in the argument that the majority should rule . . . the question is already settled". The board actually attempted to ascertain why the One Big Union men were unwilling to join the United Mine Workers of America. The minority member considered their objections in detail. After paying tribute to the fine leadership of the One Big Union at the mine, however, and admitting the sacrifice that might be involved in disbanding the local union, he recommended that the members of the latter join the United Mine Workers of America. This recommendation was ultimately accepted in settlement of the dispute.¹

In another case, employer, workers, and the board similarly made majority representation the accepted principle of collective procedure. The Canadian Brotherhood of Railway Employees had represented employees of the Canadian National Railways at the Montreal Wharf in 1923, but when a new agreement was to be negotiated in 1926 the International Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees asserted that it now held a majority of the employees

concerned. The railway declared that "naturally the company prefers similar classes of employees on the general territory to be represented by the same General Chairman and committee, as this simplifies the handling of matters and prevents grievances". It also intimated its willingness to accept whatever committee could prove itself the accredited majority representatives of the men.² The board decided that the dispute over an agreement on wages and conditions was one between the employer and the men, regardless of union affiliation—and so within board competence—but pointed out that the evidence clearly showed that the Railway Clerks "had a majority of the men concerned".

In handling applications for boards where two unions are involved, the Department of Labour has consistently based its procedure on the principle of majority representation. When a union attempts to gain a foothold in a company where workers are already covered by agreement with another union, the application of the principle is comparatively simple. In such cases the Department usually refuses to constitute a board. Thus in 1926 the One Big Union applied for a board to consider a seniority dispute in the Fort Rouge Rail Plant at Winnipeg. But since "the employees concerned were already covered by an agreement between the Railway Association of Canada (representing, among other railways, the Canadian National Railways) and the United Brotherhood of Maintenance-of-Way Employees and Railway Shop Labourers" covering wages and rules, and providing machinery for handling grievances, it was held that there was no ground for constituting a board.³ In 1929 the One Big Union again tried to obtain reference to a board of a dispute involving its members in this same shop. But again the Department refused to constitute a board, on the ground that an agreement covering the issues at dispute had just been negotiated between the Canadian National Railways and the Brotherhood of Maintenance-of-Way Employees. However, "the company promised the applicants that, in the event of a grievance arising, they would be prepared to meet with any employee individually or accompanied by two or more fellow employees".⁴ Once more, in 1932, the One Big Union applied for a board to hear a dispute involving members who in this instance were shopmen on the Canadian Pacific Railway. It sought

¹ *The Labour Gazette*, Vol. XXVII, No. 6, June, 1927, pp. 606-611: "Report of Board in Dispute between the Inverness Railway and Coal Company and Certain of its Miners". Also *Report of the Department of Labour for the Fiscal Year Ending March 31, 1928*, pp. 14 and 15.

² *The Labour Gazette*, Vol. XXVII, No. 1, January, 1927, pp. 50-78: "Report of Board in Dispute between the Canadian National Railways and its Checkers, Coopers and Porters on the Montreal Wharf". Also *Report of the Department of Labour for the Fiscal Year Ending March 31, 1927*, p. 25.

³ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1926*, p. 15.

⁴ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1930*, pp. 15 and 23.

to amend the existing agreement between the Railway Association of Canada and Division No. 4 of the Railway Employees' Department of the American Federation of Labor, as well as to negotiate upon a wage reduction recently put into effect. But upon inquiry the Department of Labour found "that the applicants comprised but a small percentage of the men covered by the agreement" and so refused to establish a board.¹

When, however, agreements are not in force and two unions submit applications for boards as spokesmen for the same workers, the Department usually establishes a board on the application of the union representing a majority. Thus in 1929 two unions, the Ottawa Railway Employees and the Amalgamated Association of Street and Electric Railway Employees of America, speaking for employees of the Ottawa Electric Railway Company, submitted applications for boards. Both applications raised the issue of a wage increase; the Ottawa Railway Employees also asked revision of working shifts. The Minister of Labour established a board upon the second application—that from the Amalgamated Association, "which represented the majority of the employees".² This board presented a unanimous report, recommending continuation of existing wage rates for another year; and its recommendation was accepted by both sides in settlement of the dispute. The issue of working shifts was regarded as "more a difference between the two bodies of employees than between the Company and employees".³

During the same year two applications were also received from representatives of the employees of the Canadian Marconi Company. The first was by the Commercial Telegraphers' Union, seeking a new agreement providing wage increases and improved working conditions in the marine and transoceanic services. A board was constituted and presented a unanimous report, which was accompanied by a draft agreement covering wages and working conditions acceptable to the parties. But more than two months later a second application was submitted by Radio Division No. 1 of the Electrical Communication Workers of Canada, demanding union recognition for the western operating personnel in addition to changes in wages and conditions.⁴ The Marconi Company itself expressed unwillingness to enter into an

agreement with a second union speaking on behalf of the company's workers. Upon conference with both sides, the Minister of Labour obtained assurance from officials of the company that the terms of the agreement negotiated with the Commercial Telegraphers' Union as a result of the board hearings would be extended to all its employees. Moreover, individual employees not members of that union might freely approach their local superintendent with any grievance, and, if dissatisfied with his decision, could carry their case to company headquarters.⁵

An Interesting Inter-Union Dispute on the Railroads

Of a somewhat different genre was the long-drawn-out altercation between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen on the Canadian Pacific and the Canadian National Railways. Well over 10,000 employees were affected; while no fewer than six different boards, as well as the Department of Labour, strove over a period of almost five years to help find a solution.⁶ The dispute did not involve questions of union recognition, for both unions had for years been accepted as the spokesmen of the respective classes of workers concerned; nor was it a jurisdictional dispute in the usual sense of that term. It arose when the engineers sought to obtain, in the tripartite agreements between the two unions and each of the railroads, certain revisions which the firemen protested would adversely affect them. Accordingly, among other issues presented to the boards constituted to hear the resulting dispute, were the right of the engineers to negotiate agreements

¹ It is interesting to note in this connection that the principle of majority representation has been embodied in legislation in Nova Scotia. This legislation relates to the union check-off among miners, by which employers hold back from miners' wages sums representing union dues. At the 1934 session of the legislature, the Coal Mines Regulation Act was amended to stipulate that no employer shall be required "to retain or pay any sum or sums to any person designated to represent a union other than the union to which belong the larger or largest number of employees in or about all mines operated by said employer". The number of written requests for deduction of union dues filed before November 15 in each year is to determine the union to which the majority belong. A representative of any union concerned may attend at the counting of such requests.

² For the reports on these cases, see:

Reports of the Department of Labour for the Fiscal Years Ending March 31, 1929 pp. 14, 24-25; 1930, pp. 13-14, 22; 1934, p. 37.

The Labour Gazette, Vol. XXVIII, No. 12, December, 1928, pp. 1327-29; "Report of Board in Dispute between Canadian Pacific Railway Company and Locomotive Engineers on Eastern Lines".

The Labour Gazette, Vol. XXIX, No. 2, February, 1929, pp. 128-130: "Report of Board in Dispute between Canadian Pacific Railway and Locomotive Firemen and Hostlers".

The Labour Gazette, Vol. XXIX, No. 8, August, 1929, pp. 858-862: "Report of Board in Dispute between the Canadian National Railways and its Locomotive Engineers".

The Labour Gazette, Vol. XXIX, No. 9, September, 1929, p. 980: "Report of Board in Dispute between the Canadian National Railways and its Locomotive Firemen and Enginemen".

The Labour Gazette, Vol. XXXIII, No. 3, March, 1933, pp. 265-270: "Report of Board in Dispute between Canadian National Railways and Employees being Members of the Brotherhood of Locomotive Firemen and Enginemen".

The Labour Gazette, Vol. XXXIII, No. 9, September, 1933, pp. 892-897: "Report of Board in Dispute between Canadian Pacific Railway and its Locomotive Firemen and Enginemen".

¹ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1933*, p. 32.

² *Report of the Department of Labour for the Fiscal Year Ending March 31, 1930*, p. 25.

³ *Ibid.*, pp. 15-16 and 25; see also *The Labour Gazette*, Vol. XXIX, No. 6, June, 1929, pp. 593-595 (*supra cit.*).

⁴ *Report of the Department of Labour for the Fiscal Year Ending March 31, 1930*, pp. 10-17 and 20-27; see also *The Labour Gazette*, Vol. XXIX, No. 7, July, 1929, pp. 712-719. The first application involved directly 300 employees; the second, 37.

with the railroads on the protested revisions, the competence of the boards themselves to deal with a dispute between two unions, and, only after these questions had been settled, the terms of the proposed revisions themselves.

For years there had existed an agreement between railway engineers and firemen, with the acquiescence of the respective railroads, that when curtailments in service and employment became necessary, engineers should enjoy certain preferential treatment in the apportionment of available work. Engineers achieve their position after a course of training and experience through the several grades of firemen's jobs. The senior fireman in the passenger services, upon promotion, enters the rank of "spare" engineer, who stands by, subject to call, to fill any vacancy or extra service need that may arise. From spare engineer the gradation moves through engineers' posts in the freight and kindred services to the highest rank of engineers on passenger service. In times of depression or curtailment, the process is reversed until the spare engineer returns temporarily to the status of fireman, and as the final step in the rearrangement the junior fireman is laid off.

From 1913 to 1927 an agreement had existed between the two Brotherhoods providing, among other things, that no engineer should be reduced to the status of fireman so long as the engineers in extra passenger service were averaging 4,000 miles per month, in extra freight-rate service 3,200 miles per month, and in extra road service 2,400 miles per month. In 1927 the engineers asked that these guaranteed minimum monthly mileages be changed to 4,000, 3,200, and 3,200 miles respectively. Parallel changes were demanded in the maximum mileage requirements before firemen returned to engineer service (from 4,800, 3,500, and 3,100 miles per month to 4,800, 3,800, and 3,800 miles, respectively). The firemen's union protested that these revisions would increase unemployment among its members. In 1928 the two unions reached a tentative compromise subject to ratification by their respective members. The firemen ratified, but the engineers rejected, the proposal. When the railroads refused to agree to the engineers' demands because of the protests of the firemen, the engineers applied for a board, which was constituted in September, 1928. Five other boards in succession grappled with this problem, the final report by the sixth board being delivered in August, 1933.

At the hearings of the first board, the Canadian Pacific declared that it was ready to accept the de-

mands of the engineers but feared action from the firemen under Section 58 of the Act, which forbade putting into effect any changes protested by workers before reference of the dispute. The board decided that the engineers were justified in negotiating for their members under terms of the tripartite agreement and endorsed their demands for revision of mileage requirements.

Thereupon the firemen applied for a board, which in turn decided that the matters in dispute really concerned two classes of employees, rather than employer and workers—"a matter not contemplated by the provisions of the Act under which this Board has been constituted".¹ Unlike the first board, however, this one passed also on the firemen's complaints, and declared that the evidence justified to some degree their fears that they might be adversely affected by the revisions proposed by the engineers. It recommended accordingly the postponement of any action, in order to give the Department of Labour an opportunity to reconcile the conflicting positions.

This the Department forthwith attempted, but without success. In the meantime engineers on the Canadian National Railways, like their fellow workers on the Canadian Pacific, also applied for a board to pass on the same issues. Once again the engineers were upheld in all their contentions; and once again the firemen submitted their dispute for board action. A majority of this fourth board, with the company representative dissenting, recommended acceptance of the compromise of 1928, which had been voted down at the time by the engineers.

Since two boards had definitely upheld the engineers, the revisions proposed by them were put into effect by the two railroad companies. Thereupon the firemen of both companies applied for boards during 1931, in an attempt to get a more clear-cut decision on the changes that they still protested. Efforts at conciliation continued, and only when it became apparent that no solution could be found were boards established in 1933. These boards asserted that they were competent to deal with the whole dispute anew, one of them holding (when challenged by both engineers and the companies) that its very appointment by the Minister of Labour to hear the dispute, the nature of which was abundantly clear, established its full competence. The board dealing with the dispute on the Canadian National Railways finally achieved a compromise on the mileage revisions, by which the category of spare engineer was restored and the right to revert to firemen's jobs in slack times

¹ *The Labour Gazette*, Vol. XXIX, No. 2, February, 1929, p. 129 (supra cit.).

was limited to those with average earnings computed on a monthly run of less than 2,700 miles. The board hearing the same dispute on the Canadian Pacific, however, was not similarly successful in bringing the parties together. Accordingly it submitted unanimous opinions on all issues involved from the beginning of this protracted dispute. It held that the provision in the tripartite agreement, by which the first boards had declared the engineers entitled to press for the proposed revisions, really constituted part of a larger relationship by which the firemen's union was similarly entitled to negotiate for its members. It criticized the procedure by which the early boards passed not on the merits of the case but on the legal status of the disputes and disputants. It denied that any precedents established in the long-drawn-out dispute precluded its decision on the same matters from a fresh point of view, holding that

the primary object of The Industrial Disputes Investigation Act would be greatly weakened and Boards of Conciliation and Investigation established thereunder would be unable to function effectually, if hampered by precedent or the action of any previous body, or influenced by any other consideration than a sense of justice and fair play in an endeavour to reconcile differences between contending parties. The keynote of the Act is "intercession and mediation" . . .¹

Finally the board passed upon the actual mileage guarantees themselves. The proposed revisions, it held, did affect the firemen adversely. Since mileage assurance to spare engineers in the United States in similar disputes had been set by mediation at 2,600 miles, and on the Canadian National Railways at 2,700 miles, the members of the board deplored their inability to obtain joint consent for this latter compromise on the Canadian Pacific. As a workable decision for the latter road, they recommended that 2,800 miles be made the limit for spare engineers instead of the 3,200 miles originally proposed by the engineers. Thus was this long, complicated, and significant dispute brought to a close.

Attempt to Achieve the Fullest Degree of Collective Relations Possible

The very emphasis on conciliation, the very persistence with which boards and officials of the Department of Labour have sought always to promote negotiations and agreements, are evidence of the steps which, in the opinion of the administrators of the Act, constitute collective bargaining. Wherever

possible an attempt is made to secure a written agreement as the culmination of negotiations. Confronted from time to time by employers who refused to go beyond preliminary stages, however, boards have again sought to take the parties as far along the road toward full collective bargaining as they could be made peacefully to go. Thus they have put forth such compromises as joint conference between management and the chosen representatives of employees;² and recognition and negotiations with trade unions, but handling of grievances with employees of the company concerned.³ Consequently, as we have seen, board decisions on these matters vary widely. Implicit or explicit in some of the decisions set forth above, for example, lie the principles of both the open and the closed-union shop. Decisions urging no discrimination as between union and non-union employees in hiring, dismissal, and treatment set the usual framework of the open shop,⁴ while those emphasizing the advantages of dealing with only one organization for any class of employees seem to prepare the ground for a closed shop.⁵ The decision, for instance, that effected the disbanding of the One Big Union at the Inverness coal mine, directly contributed to the latter result.⁶ Although most boards have upheld the right to union representation if employees so choose, some have by implication or by explicit recommendation suggested a unit of representation akin to a company union. In some instances such a suggestion has been put forth as the instrument best calculated to settle the dispute;⁷ in others it has been made after boards have vainly sought to persuade employers to deal with a union.⁸

In a word, then, in these cases presenting the extremely difficult issues of collective bargaining, the Canadian government has followed the same procedure of flexible and realistic administration as in the more tractable issues of wages and hours described in the previous chapter. No rigid formulae have been drafted or applied. Each dispute has been treated on its own merits; and always the aim has been, after appraising the relative strength of the parties and weighing all factors, to obtain that agreement which would win maximum consent as a workable settlement. Yet, here too, despite the emphasis on settlements, the procedures under the Act have been utilized to give recognition to changing custom and practice. Conditions during the war and post-war

¹ See pp. 25, 26.

² See pp. 25-26.

³ See p. 25.

⁴ See pp. 27, 29.

⁵ See pp. 28-29.

⁶ See p. 24.

⁷ See p. 26.

¹ *The Labour Gazette*, Vol. XXXIII, No. 9, September, 1933, p. 895 (supra cit.).

years in Canada, as in most industrial countries, greatly sharpened the demand of organized labor for status as the spokesman of workers in dealing with employers. The labor movement became a factor to be reckoned with, and the principles of collective bargaining won wider acceptance than ever before. In the disputes brought before boards under the Act, therefore, the administrators faced, on the one hand, the task of keeping labor, whenever possible, from striking for collective bargaining;¹ and, on the other, of persuading employers to go as far as possible in recognizing the rights of labor to representation and effective participation in determining conditions of work.

¹ After the requirements of the Act have been met, however, the parties can, and, as we have seen, on occasion do, "fight it out".

Agreements Promoted in Cases Involving Representation Issues

What have been the results of the procedures followed by the Canadian government in such cases as are described in this and in the preceding chapter? The figures in Table 7 present a significant record. They show the outcome of disputes handled under the Act during the years 1925 to 1935. Agreements were achieved in a great majority of the cases involving issues of representation and collective bargaining, as well as in those concerning only wages and working conditions. Thus of 67 disputes involving issues of collective bargaining, action was taken and completed on 60 within the period under review. In 46, or over three-fourths, mediation by the Department

Table 7. Outcome of Disputes Handled under the Act, by Nature of Dispute, April 1, 1925, to March 31, 1935

Year Ending March 31	Number of Disputes							Total Disputes
	In which agreement was achieved by Department of Labour action or resumed negotiation (without Board procedure)	In which Board reports embodied agreements	In which Board reports were basis of agreements	In which Board reports were rejected but agreements achieved by resumed negotiation or mediation	In which failure to achieve agreements was not followed by strikes	In which failure to achieve agreements was followed by, or did not end, strikes	In which no action was taken (dispute outside scope of Act)	
Number of Disputes Involving Wages and Conditions, Inclusive of Representation Issues								
1926	2	—	—	—	—	—	—	2
1927	3	1	3	—	2	—	1	10
1928	1	1	4	—	—	—	—	6
1929	2	1	5	—	1	1	—	10
1930	4	2	1	—	1	—	2	10
1931	3	1	6	—	3	—	1	14
1932	1	—	—	1	1	1	—	4
1933	2	—	1	—	—	—	—	3
1934	—	1	—	2	—	—	—	3
1935	1	—	—	—	—	1	—	2
Total	19	7	20	3	8	3	4	64*
Number of Disputes Involving Wages and Conditions, Exclusive of Representation Issues								
1926	2	—	—	—	—	—	—	2
1927	—	3	—	4	—	—	2	9
1928	7†	1	5	1	1	—	3	18†
1929	4	—	5	—	—	—	3	12
1930	3	2	6	1	—	—	1	13
1931	2	1	5	—	—	—	1	9
1932	9	2	1	3	—	—	1	16
1933	4	2	1	1	1	—	1	10
1934	4	—	6	3	—	—	—	13
1935	6	—	—	—	—	—	3	9
Total	41†	11	29	13	2	0	15	111†
All Disputes								
Total	60†	18	49	16	10	3	19	175*‡

* Not including three cases in which proceedings were unfinished at the end of the fiscal year 1935.

† Not including one case submitted with another separate dispute in one application.

‡ Not including one case in which proceedings were unfinished at the end of the fiscal year 1935.

of Labour, or board procedure, promoted agreements. In three more the dispute was eventually settled even though the reports of the boards were rejected. It seems fair to assume, however, that in these cases the boards helped to clarify the issues and prepare both parties for amicable settlements. In eight disputes in which no agreement could be reached, at least the status quo was maintained; for no strike followed the deadlock. In only three cases did a strike follow or continue upon failure of procedures under the Act to achieve settlement.

If we take all disputes handled since 1925—those involving collective bargaining issues, as well as those involving only issues of wages and employment—we find that, out of a total of 179 disputes handled under the Act, in 156 action was taken and completed. In 127, or over four-fifths of these 156, agreements were achieved. In 16 cases agreements were reached even though the reports of boards were rejected. In 10 cases no strike followed, although agreement had not been achieved, while in only 3 did strikes follow or continue upon such failure.

It will be noted that in a considerable number of disputes agreement has been achieved by the Department of Labour without board procedure. A total of 60, or almost two-fifths of all on which action was taken, were handled in this way. In this fact

lies a significant clue, not only to the administration of the Disputes Act, but to the spirit of government intervention as a whole in Canada. As soon as the Department of Labour receives an application for a board, it attempts wherever possible to bring about a settlement through mediation and conciliation and thus to avert the necessity for establishing a board. Attached to the Department of Labour, moreover, are a number of conciliation officers who keep in touch with developments in industry and use their good offices to prevent the outbreak of disputes. When these conciliation officers fail to avert a stoppage, or to secure a settlement, a higher official intervenes, or board procedure is instituted. But if board procedure fails, the officers of the Department up to the Minister of Labour himself, again enter the dispute. In some major conflicts even the Prime Minister intervenes in the effort to bring about a settlement. Thus in final analysis the Disputes Act stands forth as one instrument in a total program of consistently flexible and realistic administration by which the Canadian government seeks to keep industry a going concern by maintaining equilibrium in this explosive area of social relations while at the same time permitting the incorporation of developing custom and advancing standards into industrial practice.

CHANGING ATTITUDES TOWARDS THE ACT

The marked swings of attitude toward the Disputes Act on the part of labor constitute one of the most striking developments in the history of the Act. In the ranks of organized workers the period from 1907 to 1918 may fairly be labelled one of disapproval, culminating in demands for repeal; and the period after, one of approval, culminating in demands for extension of the Act to all industry and its reestablishment by constitutional amendment.

Reversal of Labor Opinion: From Demands for Repeal to Demands for General Application

When the Act was passed in 1907, the two classes of workers primarily affected by its provisions—miners and railroad men—opposed it; but the other trade unions, speaking through the Trades and Labour Congress, the Canadian equivalent of the American Federation of Labor, gave its “principle” explicit endorsement. As experience accumulated, however, opposition grew, expressing itself at the annual conventions of the Congress in demands for amendments from 1908 through 1910, for repeal in 1911 and 1912, for amendments again from 1913 through 1915, and for unqualified repeal in 1916 and 1917. During the early war years, labor, thus disgruntled, as might be expected, deplored the extension of the Act to war industries. With the turn of sentiment in 1918 came a return to the policy of asking for amendments. But the atmosphere had changed—so completely that within the next year, the unions, which had just recently opposed the war extensions of the Act, began to seek practically its general application. Government employees asked to be brought within its scope, then those working in publicly owned utilities; and finally labor proposed that the Act be made applicable in any industry in which either side applied for a board. Specific amendments were also asked in 1922, 1923, and 1924, but always only to improve operation and administration.

Employers' Opinion Now Generally Favorable, but Opposed to Extension of Act to Industries Other than Public Utilities

Employer opinion also has passed through a cycle of change, but one of less marked nature. Having greeted the law with a measure of hostility when it was first placed upon the statute books, by 1912 employers had been generally won over. Nevertheless, they have been consistently unwilling to see the Act extended beyond its original peace-time scope. Thus they refused to join with the Trades and Labour Congress in its demand for the appointment of boards in any industry in which either side requested it; and, as a result, this attempted extension was rejected at the National Industrial Conference of 1919. After 1918, protesting what they asserted was a partisan administration of the Act under ministers of labor chosen from the ranks of trade unions, employers asked that the courts, instead of the Minister of Labour, be empowered to make appointments to boards in cases where the parties could not agree upon nominees.¹ They became uneasy when the amendments of Sections 57 and 58 in 1925 placed responsibility for applying for a board clearly upon the party proposing protested changes in working conditions, and penalized employers who made such changes effective contrary to the provisions of the Act. Employers feared the rigidity in costs which these amendments might create during times of business depression, and felt that the penalty clauses were one-sided so long as trade unions were not legally responsible.²

By and large, these trends of opinion continued into the period after the Judicial Committee of the Privy Council had declared the Act *ultra vires* in 1925. The employers in these years, as before 1925, continued to express satisfaction with the opera-

¹ Amendments of the Act to make this change were introduced and adopted in the Senate in 1923 and 1924, but were not approved.

² For a full discussion of employers' attitudes toward the Act before 1925 see *Postponing Strikes*, Chap. IX, pp. 198-219.

tion of the Act, but opposed its extension to other than public utility industries. At its General Meetings in 1926 and 1927, the Canadian Manufacturers' Association took a stand against any attempt at extension, on the ground that although government intervention may be justifiable in industries affected with a public interest, in others it "constitutes an unwarranted interference with an employer's management of his own business".¹

Labor's approval has taken a more active form. It has sought the reestablishment of the Act, and, in order to place the law beyond any constitutional doubt, has consistently urged reestablishment through an amendment to the British North America Act, which defines the distribution of power as between dominion and provincial governments. When the government showed preference, however, for the dominion amending and provincial enabling acts as the machinery of reenactment, labor pressed for provincial acts in the legislatures of the provinces. Similarly labor has from time to time proposed the extension of the law, as already indicated, to any industry upon the application of either party to a dispute, and to any industry enjoying tariff protection or government subsidy.²

Alleged Reasons for Opinions on Both Sides Not Substantiated by Record of the Act

What explains such swings in opinion among the parties directly concerned with the Disputes Act? The answer to this question should uncover much of interest to the administrators of all similar laws, which obviously depend for their efficacy so largely on the consent of the governed. The author's previous analysis of this problem revealed several factors at work up to 1925.³ The present purpose is to determine whether these same factors account for the continuing satisfaction with the Act since 1925; and, if not, what new ones do. It need hardly be emphasized how significant is labor's changing attitude toward such a law as the Disputes Act. For the provisions of the Act, it will be recalled, impose limitations on the right to strike, by requiring a waiting period between the inception of a dispute and any strike action. Now for long years labor in North America had opposed any restrictions upon the strike weapon, and most of

the labor movement in the United States still opposes any laws of the type. Yet Canadian labor, after years of experience, has moved from hostility to an endorsement so cordial that it seeks extension of the Disputes Act to all industries. Employers, although they have been inclined to look favorably on laws promoting industrial peace by postponing or denying labor's right to take strike action, have feared any interference with their ability to make quick and flexible adjustments in wages and other costs in order to cope with business fluctuations. Yet employers, too, endorse in Canada a law which undoubtedly does impose delays before such adjustments can be made. Certainly it should prove illuminating to discover just what in the evolving operation of the Disputes Act has overcome so thoroughly the traditional resistances toward such fundamental government controls as curbs on the right to strike or on the right to enjoy the fullest possible freedom of management.

It seems fair to seek the explanation for organized group attitudes at any given time first in the allegations of the parties themselves. What reasons have labor and employers given for their disapproval or approval, and how far do the alleged causes really serve as explanations? It is significant that both trade unions and employers at one time or another explained their opposition to the Act in terms of the same three allegations. If organized labor charged partisan administration before 1918, employers raised the same accusation after that year, when ministers of labor were, for the first time, chosen from officials of the trade union movement. For obviously when the parties to industry relinquish any degree of their freedom of action, they become particularly anxious over the composition of the government agencies which may intervene between them. Similarly, if labor long chafed under the delays imposed upon strike action by the protracted procedure of constituting boards and holding hearings, employers feared the barriers to managerial flexibility threatened by these proceedings when amendment of the law forced them to apply for boards before making effective any changes which were protested by employees. If, finally, labor denounced the Act when coal miners were first prosecuted (though not by the government), for striking illegally in violation of it coal operators protested the government's failure to penalize miners engaged in illegal strikes, and employers generally opposed the new penalties written into Section 58 by the amendment of 1925 for effectuating protested changes in wages or con-

¹ *The Labour Gazette*, Vol. XXVI, No. 7, July, 1926, p. 664; Vol. XXVII, No. 7, July, 1927, p. 737.

² See *The Labour Gazette*, Vol. XXV (1925), pp. 172, 177, 895; Vol. XXVI (1926), pp. 346, 1208; Vol. XXVII (1927), pp. 59, 171; Vol. XXVIII (1928), pp. 104, 1084; Vol. XXIX (1929), pp. 189, 190, 634, 1019; Vol. XXX (1930), pp. 181, 183, 187, 628, 1104; Vol. XXXI (1931), pp. 37, 38, 187, 667, 1089, 1314, 1415, 1419; Vol. XXXII (1932), pp. 187, 303, 1072; Vol. XXXIII (1933), p. 51; Vol. XXXIV (1934), p. 153; Vol. XXXV (1935), pp. 156, 157, 166.

³ *Postponing Strikes*, pp. 188-206.

ditions before the completion of board procedure.

Always, in retrospect, it has seemed merely a question of which foot the shoe pinched. But, interestingly enough, the facts show it was even less than that. For, by such measures as we can apply to these charges, there seems little difference in administration—whether concerning appointments, “delays”, or prosecutions—as between periods of approval and periods of disapproval, between times when labor was critical and times when employers were so. Always the administrators of the Act have been realistic, even-handed, and concerned primarily with the promotion of industrial peace. Such curbs on the freedom of action as have been imposed on both sides inhere in the very provisions of the Act. Though both may rationalize as general opposition whatever discontents they may feel from time to time, the deep approval now enjoyed by the Act despite the continued application of these curbs suggests that the parties to industry will accept such controls by government under laws from which they obtain important balancing gains.

Criticism of Partisan Administration Refuted by Figures on Methods of Appointing Chairmen at Different Periods

Let us first, therefore, investigate the criticisms of partial administration, delays, and the penalty clauses, by which both sides have at various times explained their disapproval of the Act. Foremost “evidence” in labor’s criticism of partiality before 1918, and in that of employers after 1918, was the method of appointing chairmen. During the earlier period, labor argued that in a majority of cases it had proved impossible for the two members appointed on recommendation of the parties to the dispute to agree upon a chairman. Accordingly the appointment of this official devolved upon the Minister of Labour, who usually, it was contended, was drawn from sources favorable to employers, and so “loaded” the boards against labor from the beginning. In 1918, it will be recalled, the government initiated the policy of selecting the Minister of Labour from the ranks of trade unions. Thereupon charges of partisan administration were raised by employers, who urged that powers of appointing chairmen be transferred from the Minister to the courts. Interestingly enough, the figures in Table 8 show that the Minister appointed board chairmen in a smaller percentage of cases during the years before 1918 than in the years after 1918, 51.9% as compared with 56.7%.

Table 8. Method of Appointing Chairmen of Boards Constituted, by Periods, 1907 to 1918 and 1918 to 1935

Chairman Appointed	March 22, 1907, to March 31, 1918	April 1, 1918, to March 31, 1935	Total
Number			
On recommendation of other two members	103	127	230
By Minister of Labour	111	166	277
Total	214*	293	507*
Per Cent			
On recommendation of other two members	48.1	43.3	45.4
By Minister of Labour	51.9	56.7	54.6
Total	100.0	100.0	100.0

* Not including one case in which method was not made clear in the report.

Thus, the record certainly offers no substantiation for this one of labor’s own explanations of its dissatisfaction before 1918. But neither does it, as further analysis soon reveals, support in the main the employers’ charge of partisan administration in the post-war years. For one thing, the practice of choosing ministers from the ranks of organized labor has not been uniformly continued. Table 9, indicating party and professional affiliations of ministers since the enactment of the Disputes Act, shows that, since 1925, Ministers of Labour have been chosen not only from the ranks of unions, but also, as before, from the ranks of business and the professions.

Criticism of Partisan Administration Refuted by Nature of Board Reports at Different Periods

Again a second test, the nature of board reports, similarly refutes, by the record, charges of partisan administration, whether made by labor or by employers. When reports submitted are unanimous, or unanimous on all save minor points, it seems probable that the board members, however appointed, proposed settlements with which the parties were satisfied. By the same token, when the employers’ or the employees’ representative dissents from a majority report, it seems correspondingly probable that the group with the dissenting representative was not satisfied. Accordingly it is interesting to discover from the figures in Table 10 that, once more, no considerable differences can be found as between the two periods. In both, approximately three-fifths

Table 9. Party Affiliations and Professions of Ministers of Labour, 1907 to 1935

Terms of Office	Minister	Party Affiliation	Profession
1907-1909	Rodolphe Lemieux	Liberal	Journalist and lawyer
1909-1911	W. L. Mackenzie King	Liberal	Civil servant, politician
1911-1918	T. W. Crothers	Conservative	Lawyer
1918-1921	Senator G. D. Robertson	Conservative	Vice President, Order of Railroad Telegraphers
1921-1925	James Murdock	Liberal	Vice President, Brotherhood of Railroad Trainmen
1925-1926			
Dec.-Feb. 1926	J. H. King (Acting Minister)	Liberal	Physician; also President, King Lumber Mills, Ltd.
Mar.-June 1926	J. C. Elliott	Liberal	Lawyer
July-Sept. 1926	George B. Jones	Conservative	President, Jones Bros., Ltd.; President, Bayside Lumber Co., Ltd.
1926-1930	Peter Heenan	Liberal	Chairman, Brotherhood of Locomotive Engineers
1930-1932	Senator G. D. Robertson	Conservative	Vice President, Order of Railroad Telegraphers
1932-1935	W. A. Gordon	Conservative	Lawyer
1935-	Norman McL. Rogers	Liberal	Professor of Political Economy, Queen's University

of all boards turned in reports unanimous on all or on all save minor points. A slightly larger proportion of such reports was submitted, indeed, during the period when labor feared boards were loaded against it, than when the Minister was, at least during some years, chosen from trade union ranks—63.2% as compared with 59.9%. In the same way, labor's representatives dissented from a smaller proportion

of reports in the earlier than in the later period—18.1% as compared with 22.6%. But if the figures really do not support labor's allegation on this matter, neither do they corroborate, in the face of all the other evidence, any accusations from employers, on their side, of partisan administration after 1918; for the differences are too inconsiderable to suggest anything more than accidental variations. Certainly no marked changes in administration could be argued from either the 3% decrease after 1918 in practically unanimous reports or the 1% increase in dissents by employers' representatives.

Table 10. Extent of Agreement among Members of Boards, by Periods, 1907 to 1918 and 1918 to 1935

Nature of Report	March 22, 1907, to March 31, 1918	April 1, 1918, to March 31, 1935	Total
	Number		
Report signed by all members			
Decision unanimous	126	154	280
Reservations on minor points	10	21	31
One member dissenting			
Employees' representative	39	66	105
Employers' representative	26	39	65
Chairman	—	1	1
Separate report from each member	1	2	3
Nature of report not clear	6	4	10
No report	7	5	12
Total	215	292*	507*
	Per Cent		
Report signed by all members			
Decision unanimous	58.6	52.7	55.2
Reservations on minor points	4.6	7.2	6.1
One member dissenting			
Employees' representative	18.1	22.6	20.7
Employers' representative	12.1	13.4	12.8
Chairman	—	0.3	0.2
Separate report from each member	0.5	0.7	0.6
Nature of report not clear	2.8	1.4	2.0
No report	3.3	1.7	2.4
Total	100.0	100.0	100.0

* Not including one case in which board proceedings were unfinished at the close of the fiscal year ending March 31, 1935.

Criticisms of Delays in Administration

If the record does not support claims of partisanship in administration, can any argument be based on differences in the speed with which boards were constituted and reports submitted as between the two periods? Does the record show sufficient differences to uphold labor's claims of delays before 1918 and employers' fears of them after the enactment of the amendment of 1925? It is well known that labor wants freedom to act quickly on matters of wages and conditions when prices are rising, and employers want the same freedom when prices are falling. It is one of the purposes of the Disputes Act, of course, to impose delays before protested changes become effective. By maintaining under penalty the status quo in such cases while the government canvasses the possibilities of conciliation and investigation, it is hoped to prevent stoppages in public utilities. Moreover, the emphasis placed on conciliation by the administrators of the Act further slows up proceedings. When these things are granted, however, and allowances made for them, analysis of the time

elapsing between application for boards and reports by them, as shown by the figures in Table 11, reveals certain interesting trends. The figures are presented not only for the periods of labor approval and disapproval, but also for the years after 1925, when the employers feared delays as a result of the amendment of Sections 57 and 58.

Table 11. Time Elapsing between Application for and Report by Boards, by Periods, 1907 to 1918, 1918 to 1935, and 1925 to 1935

Interval	Boards Reporting			
	March 22, 1907, to March 31, 1918	April 1, 1918, to March 31, 1935	April 1, 1925, to March 31, 1935	Total 1907 to 1935
Number				
1 to 30 days	22	36	3	58
31 to 45 days	48	59	9	107
46 to 60 days	47	54	14	101
61 to 75 days	23	48	14	71
76 to 90 days	26	22	8	48
91 days or over	41	66	36	107
Total	207	285	84	492*
Per Cent				
1 to 30 days	10.6	12.6	3.6	11.8
31 to 45 days	23.2	20.7	10.7	21.8
46 to 60 days	22.7	18.9	16.7	20.5
61 to 75 days	11.1	16.9	16.7	14.4
76 to 90 days	12.6	7.7	9.5	9.8
91 days or over	19.8	23.2	42.8	21.7
Total	100.0	100.0	100.0	100.0

* Not including twelve boards constituted which did not submit reports; three boards constituted, upon the initiative of the Minister of Labour, without an application; and one board which had not yet reported at the close of the fiscal year ending March 31, 1935.

In brief, the figures show a considerable parallel in the time consumed by proceedings under the Act as between the period of labor disapproval and the period of labor approval, with about one-fifth of the cases in each period running for three months or over. From these figures, therefore, it is hard to see how delays could really have weighed heavily as a differential factor behind labor's disapproval of the Act. The figures after 1925, however, seem to give some substance to employers' fears as to the effects of the amendments passed that year. It will be seen that the proportion of cases in these years consuming three months or more before freedom of action was restored more than doubled: 42.8% after 1925 as compared with 19.8% in the period 1907 to 1918.¹

¹ From 1918 to 1925, as shown in Table 12 of *Postponing Strikes* (p. 104), 14.0% of the cases fell in this category.

It is worth while, accordingly, to examine a little further the experience of the years after 1925, in order to discover how much justification there is for employers' fears over possible delays resulting from the amendment of 1925. In one way it is evident that this amendment, seeking to place responsibility for applying for a board upon the party proposing protested changes, really improved administrative procedure in the direction desired. For, as shown in Table 12, employers applied for boards in 12.9% of the cases after 1925, as compared with only 7.0% before 1925.

Table 12. Application for Boards, by Origin of Application, and by Periods, 1907 to 1925 and 1925 to 1935

Applications made by	March 22, 1907, to March 31, 1925	April 1, 1925, to March 31, 1935	Total 1907 to 1935
	Number		
Employees only	582	144†	726
Employers only	45	23	68
Employers and employees	9	9	18
Others	4*	3‡	7
Total	640	179	819
Per Cent			
Employees only	91.0	80.4	88.7
Employers only	7.0	12.9	8.3
Employers and employees	1.4	5.0	2.2
Others	0.6	1.7	0.8
Total	100.0	100.0	100.0

* In two cases applications were made by municipalities, and in one by a mayor; in the fourth no formal application was made, but a board was established by the Minister of Labour on his own initiative under Section 63A of the Act.

† In one case an amended application was supported by a mayor and Board of Trade, as well as the employees originally applying; and in one case an application referred two separate disputes.

‡ In two cases no formal application was made, but boards were established by the Minister of Labour on his own initiative; in another, application was made by a mayor and the public officials of Coalfields in Saskatchewan.

After 1925, however, there were years of prosperity, as well as depression; and consequently disputes occurred in which workers might chafe at delay, as well as disputes in which employers would chafe. Yet, in both, the same slowing up of proceedings appears. The first board to hear disputes over wage reductions on application from an employer during the current depression was constituted on April 30, 1931. Cases before boards from 1925 until that date largely concerned disputes over demands by employees for increased wages and improved conditions. A glance at Table 13 will show that 44 of the 84 reports submitted during the period as a

whole were not completed until 76 days or more had elapsed. In only one year before the depression, 1929, and in only two years during it, 1931 and 1932, did the parties in somewhat more than half the disputes regain freedom of action in less than that time. What emerges thus most strikingly from the record after the amendment of 1925, as before, is the fact that whatever restrictions the operation of the Act may impose upon freedom of action bear as much upon one party as upon the other.

Table 13. Time Elapsing between Application for and Report by Boards, by Years, 1927 to 1934*

Interval	Year Ending March 31								Total
	1927	1928	1929	1930	1931	1932	1933	1934	
1 to 30 days	0	0	2	0	1	0	0	0	3
31 to 45 days	1	2	2	1	1	1	1	0	9
46 to 60 days	3	1	3	1	1	2	2	1	14
61 to 75 days	0	2	4	1	4	2	0	1	14
76 to 90 days	2	1	1	1	1	0	1	1	8
91 or over	5	4	1	8	5	3	3	7	36
Total	11	10	13	12	13	8	7	10	84†

* The year ending March 31, 1926, is omitted because following the court decision declaring the Act *ultra vires* only four applications for boards were made, none of which resulted in the establishment of a board; the year ending March 31, 1935, is omitted because the one board appointed had not yet submitted its final report at the end of the fiscal year.

† Not including two boards constituted without an application upon the initiative of the Minister of Labour.

Detailed analyses of the actual cases arising during the depression, when employers desired freedom to make adjustments in costs, suggest further qualifications of what at first glance the figures might portray as substantiation of employers' fears in this regard. If, under the amendment of 1925, employers have applied for boards more frequently than before that year in disputes arising over changes proposed by them, they have not done so invariably. In 23 disputes of this kind they did initiate action, but in 17 it was the employees who applied for boards. In a shipping dispute in 1931, tug-boat owners applied for a board only after a strike had been called in protest against wage reductions of 10% which certain employers had already put into effect. If the men violated the law by striking, the employers apparently violated it first by putting into effect protested changes in conditions without invoking board procedure. Penalties were not imposed upon either party, however, and the application was withdrawn when the replacement of the strikers led to acceptance of the employers' terms.¹

¹ Report of the Department of Labour for the Fiscal Year Ending March 31, 1932 pp. 60-67, and 75.

In the 23 disputes in which employers did initiate proceedings during the depression, board procedure was followed in 17, while in 6 cases Department of Labour officials handled the dispute without invoking such procedure. Of the 6 latter cases, the one initiated by tug-boat owners was withdrawn, as just described; in the others, department officials promoted settlements. Of the 17 disputes referred to boards, the report of a board in one case was rejected and the dispute had to be referred finally to a special provincial board. Of the remaining 16, board reports embodied agreements or became the bases of settlements in 8 disputes; they were rejected by the men in 4 and by the employers in 4.² Despite rejection of the reports in these last cases, settlement was eventually achieved either through resumed negotiations or through further mediation by government. It is a fair statement, therefore, that the Act facilitated orderly adjustments to the trying conditions of the depression, while the amendment of 1925 increased the feeling of equal responsibility on both sides. In view of such an accomplishment it may well be that the winning of consent to adjustments that had to be made more than offset whatever delays the Act may have involved.

In other words, neither side can fairly charge that it suffers more than the other from delays caused by a law which seeks by its very purpose and by its major emphasis on conciliation to impose a period of further consideration in the hope of averting a stoppage in a vital industry—a hope that has been so often realized under the Act. When prices are falling, these delays may hamper employers; when they are rising, they may hamper labor. The particular party applying for a board will, of course, always chafe at the delays incurred; but over the years, with their cycles of good times and bad, the advantages and disadvantages of delay even out as between labor and employers.

In exactly the same way, workers, in criticizing the Act, have cited the institution of prosecutions against striking employees; and employers, the failure of government to initiate such prosecutions. As already indicated, however, the attitude of the government has been consistent from the outset; and certainly, though the penalty clauses have been retained in the Act, they have been used hardly at all, and their operation has never been invoked by the government.

² In one of these, the dispute had been referred to a board already constituted to hear another dispute.

Economic Fluctuations Not Explanation of Swings in Attitude

If, then, the various "reasons" given by the parties to explain such disapproval as they have felt for the Act from time to time turn out to be rationalizations, if no considerable differences in administration can be discovered as between periods of approval and periods of disapproval, what are the real factors behind the marked swings in opinion? Do business fluctuations, perhaps, underlie these swings? Such fluctuations can, and do, in many ways, affect policies of industrial relations. In times of prosperity, when prices rise and demand is active, wages usually move upward less rapidly than prices. Labor thus becomes restive at the very time when its bargaining power is probably increasing with a growing demand for workers. It wants to use that power, through the strike if necessary, but still free from such outside impediments as are imposed by the Disputes Act. In times of depression, when prices fall and demand slackens, just the opposite forces are at work, and employers chafe at restriction of their freedom to decrease labor costs. Thus at first glance these fluctuations would seem calculated to invoke the always existing fears of both sides with regard to laws imposing curbs on the strike or on managerial initiative. Yet no close continuing correlation can be established between economic conditions and changes in attitude toward the Disputes Act.¹ The present century as a whole, of course, has been one of rapid economic expansion in Canada, as in the United States. Wages did lag behind living costs from 1910 well into the World War; and, as union strength increased, labor did fret under the delays imposed by the Disputes Act in the constant effort to make wages overtake the cost of living. But the change in attitude in 1918 came at a time of prosperity and greatly increased union strength, and no direct causal relationship between attitudes and economic conditions can be discovered after 1918. Thus, while real wages began to move upward in 1918, they were still below the 1913 level as late as 1921.² Moreover, though trade unions made tremendous gains in membership from 1917 to the summer of 1920 and thus added considerably to their strength, labor sought after 1918 to broaden the scope of the Disputes Act to include all industry. Neither the prosperity of the twenties nor the depression of the

thirties has served to change the general currents of opinion among employees or employers.

Labor's Approval of Act since War Rooted in Its Aid to Collective Bargaining

We are left, therefore, with the conclusions that: (1) on the part of labor, the continuing endorsement of the Act is a reflection of a stronger status achieved with the help of the law; and (2) on the part of employers, approval of the Act is restricted to its operation in public utilities; and (3) these factors making for satisfaction have been strong enough, together with realistically flexible administration of the Act, to overcome the traditional fears of government interference with free industrial action.

Since the War, organized labor has discovered that the Act could be made a positive aid to weak unions.³ The rapprochement between labor and the government begun during the War constituted an important factor in predisposing labor to its new attitudes toward the Act.⁴ In 1918, as a means of enlisting the full support of labor in the prosecution of the War, the Canadian government accorded official recognition to the trade union movement and many of the principles for which it had long fought. In return for labor's promise to cooperate for full productivity and not to strike so long as hostilities continued, the government recommended that as a matter of public policy the right to organize and bargain collectively be fully granted; that wages be increased to keep pace with the rising cost of living, and be formulated in terms of decency, comfort, and saving for old age; and that working conditions include the basic eight-hour day, equal pay for equal work, and adequate measures for the protection of health and safety. In addition, representatives of labor were appointed to important government boards.

Even though these specific war-time policies of cooperation with labor ended or changed after the Armistice, the cordial relationships established under them between government and labor constituted the social atmosphere, so to speak, in which the Act operated. True, official endorsement of the right to organize, and of union wages and conditions, was extended only for the duration of the War. Again, though labor men were appointed to the important

¹ See *Postponing Strikes*, Chap. X, pp. 220-242.

² *Ibid.*, p. 231.

³ See *Postponing Strikes*, Chap. XI, pp. 243-266, for the development of this factor to 1925.

⁴ *Ibid.*, pp. 245-253.

cabinet position of Minister of Labour from 1918 until 1925, the practice was not uniformly maintained, as we have already seen, after 1925. Finally the order-in-council extending the Act to war industries in March, 1916, was rescinded immediately after the Armistice. Nevertheless, new bodies of labor had had time to learn that they could, by applying for boards, gain entry into establishments in which they had until then been refused recognition. They had learned, too, that the Act enabled them to stave off stoppages, if they possessed undisciplined strength, without the ample treasury and developed morale essential to successful strikes. Accordingly, whereas union leaders not interested primarily in the Act had been willing to acquiesce in the attitude of the hostile miners or workers covered by the Act when the labor movement was formulating its attitude at the annual meetings of the Trades and Labour Congress before 1918, after the War they proceeded from their own experience.

Act Utilized since 1925 by Radical as well as Conservative Unions

A significant confirmation of these conclusions has been clearly developing since 1925: the smaller and more radical "dual" unions in Canada, once opposed to the Act, as well as the older, more conservative ones, now use and cordially endorse the Act. Soon after the War the Canadian labour movement had begun to suffer a division in union ranks, ultimately producing a crop of dual unions beside the Trades and Labour Congress and its affiliates. The One Big Union appeared in 1919, the All-Canadian Congress of Labour in 1927, the Mine Workers' Union of Canada in 1925, the Amalgamated Mine Workers of Nova Scotia in 1932, and the communist Workers' Unity League in 1930. The resulting internal struggle in the beginning affected the attitude of the long-established and dominant unions toward the Disputes Act in several ways. For one thing, division weakened them and thus made them less disposed to rely upon strike action. For another, the very pressure of union rebels tended to make the leadership of the established unions more conservative in the use of such a tool as the strike. Finally, officials of the recognized unions found the administrators of the Act likely to be on their side against the more radical rebels.

But as post-war conditions became stabilized, a

significant development took place. A study of cases referred to boards in recent years reveals dual unions, whether radical or nationalist, now utilizing the Act both to advance their status and recognition and to maintain such a foothold in various industries as they may have gained.¹ Officials of organizations affiliated with the One Big Union, the All-Canadian Congress of Labour, and the Mine Workers' Union of Canada not only have applied for boards under the Act and participated in board proceedings, much as the older unions affiliated with the Trades and Labour Congress and the railroad brotherhoods have done, but also, through the machinery of the Act, have challenged the older unions for disputed membership.

In summary, then, one of the major continuing factors behind labor's approval since 1918, the one factor making for approval that has not been changed except to be strengthened, lies in the uses to which the unions have been able to put the Act in order to gain a foothold in industry. Quantitative proof of these effects of the law on the union movement is, of course, difficult to obtain.² The pressure exerted by all unions to extend the coverage of the Act, the statements of officials, the reports of annual conventions, certainly all constitute convincing, if not exactly measurable, evidence of labor's favorable attitude. As we have seen, labor organizations supported movements to reestablish the law after 1925; they have urged its extension to all tariff-protected and subsidized industries,³ and to all industries generally,⁴ and they still seek amendment of the British North America Act to insure the constitutionality of the Disputes Act beyond further challenge. In the annual conventions of the All-Canadian Congress of Labour in 1934 and 1935 the executive board expressly declared that the Disputes Act, among others, had given the workers "some legislative assistance in securing collective bargaining and union recognition", and did in fact "protect the organized workers and facilitate the peaceful functioning of the unions".⁵

¹ See Chap. IV, pp. 27-30.

² The figures on trade union membership are too uncertain to use. They do show gains in membership in Canada for the years 1925-1930, when losses are registered for unions in the United States. The figures are not compiled on the same basis; and, moreover, so many variables enter into the gain or loss of union membership that it is best not to put too much emphasis upon such data.

³ See above, p. 36; see also *The Labour Gazette*, Vol. XXXV, No. 2, February, 1935, p. 156.

⁴ See, for instance, *The Labour Gazette*, Vol. XXXIV, No. 2, February, 1934, p. 153.

⁵ *The Labour Gazette*, Vol. XXXIV, No. 5, May, 1934, pp. 434-435: "All-Canadian Congress of Labour Legislative Proposals submitted to the Dominion Government"; Vol. XXXV, No. 4, April, 1935, p. 326: "Legislative Proposals Submitted By Labour Organizations. Recommendations of All-Canadian Congress of Labour and Federation of Catholic Workers of Canada".

Employers' Approval Limited to Operation of Act in Public Utilities

But how does this affect the employers' attitude? Generally, it would seem, employers feel now, as for many years, that such curtailment of stoppages as the Act has effected in public utility industries, such stimulus to ordered relationships as it has given there, make it worth while. It seems very likely, however, that if the Act should be extended, and labor should seek to utilize it to further unionization throughout industry, the employers' tolerance would change to decided hostility. As we have already seen, employers have consistently opposed extensions of the Act since 1919; and, questioning as they do the amendment of 1925, they would inevitably oppose a wider scope for the provisions of the Act. Moreover, the Canadian Manufacturers' Association, at its Sixty-third Annual Convention, in 1934 explicitly opposed, through the report of its Industrial Relations Committee, the adoption by Canada of anything similar to Section 7a of the recent National Industrial Recovery Act.¹

Significance of Attitudes in Legislation Such as the Disputes Act

Thus on the basis of this inquiry into the factors behind the disapproval and approval accorded the Disputes Act in the three decades of its operation the following general conclusions may be advanced:

¹ *The Labour Gazette*, Vol. XXXIV, No. 6, June, 1934, p. 535: "Canadian Manufacturers' Association".

(1) Involving, as it does, curbs on freedom of industrial action, the Disputes Act has aroused on both sides from time to time the always present resistance against interference with the right to strike or to "manage one's own business". (2) Complaints of delays and partisanship in administration have subsided almost completely as positive advantages have become evident. (3) Experience under the Disputes Act shows how persistently the parties to industry will oppose any provisions of an act for intervention that seem to involve unilateral or uneven responsibilities. One case in point is labor's constant striving for an amendment to place responsibility for initiating board procedure squarely upon the party proposing protested changes, and to penalize employers effectuating such changes equally with employees striking against them in violation of the Act. (4) In the long run, administrative policy stands forth as one of the most important elements in the success of the Disputes Act. Thus much has been contributed to its ultimate success by the fact that its administrators gave little real substance for fears of partiality, arbitrariness, or lack of understanding of the problems of both sides. (5) Despite the strength of traditional fears over restrictions of the right to strike or to make needed adjustments in costs, the Act has won general endorsement from all concerned by yielding specifically valuable gains: These gains have been, for labor, assistance in promoting collective bargaining and independent organization; for employers, fewer interruptions to production and more orderly industrial relationships; and, for the public, increased peace in industries of vital national importance.

Chapter VI

SIGNIFICANCE OF CANADIAN EXPERIENCE FOR THE UNITED STATES

What guide posts, then, does the long Canadian experience described in this study set up for recent efforts in the United States to promote by law a sound basis of industrial relations?¹

To answer this question we must ask, first, just what, in summary, are the pertinent conclusions yielded over 28 years by the operation of the Industrial Disputes Act? Four broad generalizations suggest themselves:

Compulsion Subordinated to Conciliation

The substantial successes which the administrators of the Canadian Act have achieved are attributable in large part to subordination of the compulsions written into its formal provisions, with a corresponding emphasis upon the techniques of conciliation. That the successes won have been substantial, a mere summary of the record amply demonstrates. Of the 817 disputes submitted to the machinery of the Act between 1907 and 1935, 640, or 78.3%, were referred to boards, which succeeded in averting or ending strikes in 589 cases, or 92.0%. Of the remaining 177 disputes 95, or 11.6%, were referred to other agencies; while in 82, or 10.1%, no action was taken, on the ground that these disputes were outside the scope of the Act.

Analysis of these successes reveals an administrative policy of reliance upon the conciliatory rather than the compulsory procedures authorized by the Act. Formally the Act provides penalties upon employers and employees for declaring lockouts or strikes or establishing protested changes in wages or conditions before a board has investigated and reported upon the dispute. Formally, too, the reports submitted by boards may become instruments for bringing the restraints of public opinion to bear

upon the parties to disputes. Actually the administrators of the Act have never invoked the penalty clauses against either employers or employees guilty of violations, nor have they actively sought to organize public opinion in any specific situation. This does not mean, of course, that the compulsions provided in the law have not exerted their influence. Their very presence and potentialities have no doubt helped to introduce the procedures of conciliation into many a stubborn dispute. Boards, as we have seen, have utilized their powers of subpoena to bring the parties in disputes into conference. Responsible leaders, moreover, whether of well-established unions such as the railroad brotherhoods, or of business, do not lightly violate laws. Nor do workers or employers in vital utilities in populous cities flout public opinion by ignoring the provisions of such a law as the Disputes Act. It is suggestive, too, in this connection that in mining, where violations of the Act have tended to be concentrated, the communities in which miners live—and thus strike—are usually homogeneous, consisting mostly of miners and their friends; consequently, public opinion is naturally on the side of the miners. Yet to attempt to assess such influences exactly is to attempt to weigh imponderables. The measurable facts, on the other hand, show that while there were 657 stoppages in violation of the Act from 1907 to 1935, in only 19 were prosecutions instituted—and in no instance by central government officials charged with the Act's administration.

Success Dependent on Stability of Industry and Human Relations

Within this framework of successful conciliation, the distribution of specific successes and failures among the industries coming within the scope of the Disputes Act suggests that in a democracy the potentialities of government intervention vary with the degree to which basic economic conditions and industrial relations are ordered and stable. Where in-

¹ This chapter, as indeed the whole study, is limited to federal legislation because (1) recent legislation in the field of government intervention in industrial disputes has been almost entirely federal and (2) state laws in this country, as provincial laws in Canada, providing for mediation and arbitration have not on the whole been extensively invoked in recent years.

dustrial cooperation has been long established and organized, where the unions concerned have achieved prestige and status, as in the railroad services, success of the Act has been marked. Contrariwise, where an industry is suffering from fundamental disorganization, where competitive forces and overdevelopment press hard on all sides, and where workers in many places still fight for the right to representation, and rival unions compete for membership, as in coal mining, the Act has proved relatively ineffective. Thus the record may show at one and the same time the remarkable achievement of stoppages averted or ended in 589, or 92%, of the disputes referred to boards, and the seeming failure of 657 stoppages occurring in violation of the Act. But it shows also that 394 of these violations have occurred in coal and other mining, and 75 in shipping. In other words, almost three-quarters of the violations of the Act have occurred in industries where fundamental economic conditions make for instability. The evidence of the last decade, 1925 to 1935, further corroborates this conclusion. During these ten years, when the Act had become firmly rooted in the confidence of the parties to industry, 175 out of 185, or 95% of all violations occurred in these unstable industries, mining and shipping.

Assent to Law Determined by Estimate of Benefits Derived

Nevertheless, after allowance has been made for the influence exerted by the varying organization and conditions in different industries, Canadian experience reveals how vitally the general attitude of employers and workers toward any law for government intervention in a democracy conditions its effectiveness. Since 1918, in contrast to the years before, the Disputes Act has enjoyed consistently the approval and assent of both employers and employees. Within the period of approval, constitutional challenge of the Act has been met by determined, if piecemeal, reestablishment. Similarly, despite legal and economic vicissitudes, the law since 1918 has permitted a broadened consideration not only of the factors behind wages and conditions, but also of the knottier issues of employees' representation and collective bargaining. Canadian experience reveals, too, that approval or disapproval may arise in developments independent of allegations offered by the parties at any given time in explanation of their respective attitudes, or independent of the explicit purposes of the law itself. Thus analysis of the

reasons offered by employers and workers for their changing sentiments revealed so little substantiation in the facts as to make them seem rationalizations rather than real reasons. Nor could any close correlation be found between economic conditions and these changing attitudes, despite the fact that the very nature of the Canadian Act restricts freedom to adjust to fluctuating prices and costs as quickly as either side might desire.

The truth has seemed to be that the Disputes Act, like any law for government intervention that applies external compulsions upon the parties to industry, does involve interference with freedom of action. In the long run, under fair and skilful administration, the burdens of such interferences may even out, bearing under certain conditions more heavily on labor, under others more heavily on employers. But until and unless the parties come to feel that they derive some benefit from the law, their attitude towards it will be formulated in terms of the general objections to "government interference". When, however, such benefits are received, even though no marked changes occur in administration or operation, and with the same "interferences" continuing, hostility subsides and the old objections are seldom urged in the same terms of blanket condemnation. What is now determining Canadian labor's cordial endorsement of the Disputes Act, in contrast to the hostility of the years before 1918, is the assistance its machinery has offered since 1918 for promoting collective bargaining, a purpose certainly not explicit in the minds of the framers of the Act. Labor's realization of the new uses to which it might put the Act was born during the war-time rapprochement between government and the union movement. It has since been strengthened as a result of the aids obtained by dominant unions against internal dissension, and by weak ones in gaining status both against non-union employers and against competing unions. Employers, on their side, while opposing any extension of the Act to industry generally, seem to feel that its stimulus to peaceful adjustments in vital public utility industries makes it well worth while. The flexibility of administration that has permitted such developments under the law furnishes the base upon which the final and highly significant conclusion is grounded.

Administrative Procedure an Aid to Evolving Custom

By machinery for intervention in industrial disputes, a democratic government can further as

standards of practice those customs which are gradually rooting themselves. A study of the board reports made over almost 30 years reveals clearly that, while no industrial code has been formulated to aid boards in making decisions, and while indeed boards have often explicitly rejected precedents, evolving standards and customs have been written into practice through the machinery of the law. Thus, with the passing of the years, definite trends do emerge from these reports, for all their preoccupation with the particular conditions of each dispute—trends toward increasing wages, reducing hours of work, introducing improvements in conditions, and finally strengthening labor's status in industry by helping it attain a voice in determining conditions of work. In marking these trends, however, the administrators of the Act have followed rather than forced the channels of evolving custom; if they have hastened movements under way, they have done so by making it possible for the parties to bring into the consideration of any specific dispute what were generally becoming standards of best practice. This characteristic procedure is apparent in the handling of evidence urging new factors and considerations of social welfare in determining wages and conditions of work. But it is particularly noticeable in the handling of issues concerning collective bargaining. In the early years, administrators of the Act were chary of dealing with this problem at all. But now they deal with it in all its aspects, trying, where possible, to win acceptance for the complete process through the signing of agreements negotiated by freely chosen representatives of both sides. Failing this, they seek next to carry the parties as far toward this end as they can be persuaded to go. When such a compromise dissatisfies either side, the issue may be submitted to a trial of strength.

Differences between Canadian Act and Recent Laws in the United States

If, then, these are the broad conclusions that emerge from the operation of the Disputes Act, what is their pertinence for our present problems of law and labor relations in the United States? Unquestionably the problem upon which our recent legislation has concentrated, to repeat again, has been that rising from the issues of employees' representation and collective bargaining. Thus three acts for Federal intervention, on the statute books at this writing, embody similar provisions for defining and enforcing rights in industrial relations.¹ The Rail-

road Labor Act² makes these provisions part of a rounded machinery for settling all disputes; the Bituminous Coal Conservation Act,³ generally known as the Guffey Act, incorporates them into a program for codifying and stabilizing the industry; and the National Labor Relations Act,⁴ commonly referred to as the Wagner Act, centers upon them in all industry as they threaten disputes "burdening or obstructing interstate and foreign commerce". All three laws affirm the right of employees to representation by spokesmen freely chosen without interference, restraint, or coercion by employers. All define and prohibit as unfair practices certain specific activities on the part of employers. The Railroad Labor Act and the Wagner Act forbid (1) discrimination against employees for joining, or not joining, a labor union or participating in its activities; and (2) subsidy to, or special support of, company unions. The Bituminous Coal Conservation Act prohibits employers from requiring membership in any company union as a condition of employment. In various ways these acts affirm the principle of majority rule. Under the Railroad Labor Act and the Wagner Act representatives chosen by a majority of employees in any unit become spokesmen, for collective bargaining purposes, of all workmen in that unit. Under the Coal Conservation Act, maximum hours and wage rates written into agreements negotiated by representatives of a majority of miners and of the producers of two-thirds of the annual tonnage (of the nation with regard to hours, and of the district or districts covered with regard to wage rates) are to be accepted in the territory concerned. Administration of these provisions is vested in permanent boards of three members in each case—the National Mediation Board, the Bituminous Coal Board, and the National Labor Relations Board. Under all these laws disputes over who shall represent employees are to be settled by the respective boards by means of secret elections or any other appropriate method.

It is immediately apparent, of course, that marked differences exist in both objective and procedure between the provisions of these recent laws and those of the Canadian Industrial Disputes Investigation Act. Under the latter the government enters labor disputes primarily to prevent interruption of service and production. Indeed the Disputes Act, it will be

¹ A fourth law under which the Federal government today can intervene in industrial disputes is the Act of 1913 creating the Department of Labor. Under authority of Section 8, the Secretary of Labor may act as mediator or appoint commissioners of conciliation in disputes. A permanent conciliation service has been built up and now functions within the Department.

² May 20, 1920, c. 347, as amended June 21, 1934, c. 691, 45 U.S.C.A. Sec. 151 ff.

³ Aug. 30, 1935, c. 824, 15 U.S.C.A. Sec. 801 ff.

⁴ July 5, 1935, c. 372, 29 U.S.C.A. Sec. 151 ff.

recalled, had its immediate origin in public reaction to a prolonged coal strike which threatened a fuel famine. The purpose of the Act, as stated in its title, is "to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities". Thus, in both the coverage and the objectives of the Act the motivations of intervention proceed from the public interest in the continuous functioning of vital industries. To serve this interest the Act establishes a compulsory interval between the beginning of a dispute and the resort to a stoppage, or the effectuation of protested changes, during which government may investigate and conciliate. Nowhere in the Act, however, is there any definition of standards or prohibited practices in labor relations whether on wages, hours, conditions, or collective bargaining and employees' representation. All issues threatening to disturb peace are handled in the same way, and the growth and acceptance of custom is reflected over the years in board reports and changing administrative procedure.

The promotion of industrial peace, if not the primary, is certainly a leading objective also of our recent legislation, from the thoroughgoing procedures for handling all types of disputes, under the Railway Act, to the effort under the Wagner Act to remove from the realm of conflict to the realm of law the most explosive issue in industrial relations, that of employees' representation and collective bargaining. But the fundamental difference between the Canadian law and our legislation is that, while the former makes no attempt to establish any principles or "bill of rights", the latter, and particularly the Wagner Act, singles out the issue of representation and defines the rights of employees in discharging the function of collective bargaining. Moreover, to protect these rights, machinery is established for determining violations and enforcing compliance.

An Underlying Difficulty: The Status of Trade Unions

The clue to the distinctive development—and the difficulty—in this country lies perhaps in the history of legislative efforts to define the status of labor unions. As early as 1842, the right of labor to organize and act in concert was clearly recognized by the courts,¹ much earlier, in a certain sense, than labor in England and Canada achieved similar rights through legislation in the seventies. But what could be done

in the exercise of this right was not correspondingly clarified and defined by law in our country. It remained subject to judicial interpretation of the conspiracy and restraint-of-trade doctrines of the common law, of the due-process and equal-protection-of-the-laws clauses of the Constitution, and of the combination-in-restraint-of-trade principles of the anti-trust acts.² In England, on the other hand, definite statutes exempted labor from the doctrines of criminal and civil conspiracy.³ In Canada, the subject of our immediate study, labor organizations have been similarly exempted from the law of criminal conspiracy. Under the civil law, unless registered under the Trade Unions Act, they appear still to suffer certain disabilities. In interpreting the law in damage suits brought against trade unions, however, "the Canadian Courts have been generally more concerned with what they considered the realities of the problem and the merits of the cases before them than with the peculiar status of trade unions in Canada . . .".⁴ Finally, unions have been specifically exempted from the Combines Investigation Acts,⁵ i.e., the anti-trust laws.

Organized labor in the United States has long sought similar freedom from the restrictions of the conspiracy doctrines and the anti-trust laws. Indeed its failure to win this freedom explains in good part its present pressure for compulsory legislation defining rights and prohibitions in industrial relations. Until recently, in fact, organized labor has been opposed to the principle of government compulsion in employer-employee dealings. It has sought rather to free the activities essential to the development of employer-employee dealings from legal uncertainties and disabilities, such as the "Yellow Dog" contract, the application of anti-trust laws to labor activities, or the use of the injunction in labor cases. It has sought clarification of the rights to strike, unionize, boycott, and picket. To review this story in detail is beyond the scope of this study. To outline it briefly, however, may assist in explaining the background of the recent laws now under discussion.

Organized labor never admitted the validity of the interpretation of the Sherman Act which applied to trade unions prohibitions and penalties upon combinations in restraint of trade. It lobbied persistently

¹ Though the anti-trust acts have been the primary statutory basis for federal action, other acts have also been invoked in the federal courts, such as the interstate commerce acts and the prohibition of willful obstruction of the mails. Cases are also brought into the federal courts under the "diversity of citizenship" doctrine of our system of jurisprudence.

² Great Britain has no specific anti-trust legislation, but relies on the common law and its general corporation law to impose whatever controls are necessary on business combinations.

³ *Trade Union Law in Canada*. Bulletin of the Department of Labour (Canada), prepared by Margaret Mackintosh, January, 1935, p. 102.

⁴ *Ibid.*, p. 24.

¹ *Commonwealth v. Hunt*, 4 Metcalf 111, 38 Am. Dec. 346 (Mass. 1842).

to obtain an explicit statement of the original intent of Congress. What seemed like success in this effort was won in 1914 when the Clayton Act declared that the anti-trust acts should not be construed to forbid the existence and operation of labor organizations, or to restrain their members "from lawfully carrying out the legitimate objects thereof . . .".¹ Interpretation of this law, which labor hailed as a Magna Carta, soon revealed, however, that it had granted no new rights. In one important respect, indeed, it made the situation distinctly worse for trade unions by allowing private parties to obtain injunctions in labor disputes, a procedure permitted only to the government under the Sherman Act.²

Another line of effort before the War was initiated as early as 1898, when Section 10 of the Erdman Act declared it a criminal offense for any railroad to demand, as a condition of employment, agreement not to join any labor union, or to discriminate unjustly in any way against an employee for membership in such an organization.³ But that provision was declared unconstitutional by the Supreme Court in 1908,⁴ and similar statutes enacted by 22 states were also rendered inoperative by court decisions.⁵

It was after the War, however, that these legislative trends acquired the momentum which culminated in the Wagner Act. During the War itself the United States government, like the Canadian government, sought to obtain labor's cooperation for uninterrupted and efficient production by giving the unions representation on all war boards and according them recognition of long-sought rights. Thirteen new agencies for the adjustment of disputes were created, one for each of the larger government-operated industries and a National Labor Board for other essential war services. Among the principles formulated to guide board decisions were the acceptance of collective bargaining, and the right of workmen to belong to labor unions without interference from employers. Labor unions increased greatly in membership and secured a foothold in many hitherto unorganized industries.

None of these agencies of war-time adjustment survived, and we had no continuing law for intervention, such as the Canadian Disputes Act, under which government might continue the substance, if not the letter, of the war rapprochement with labor.

But the problems involved in employees' representation naturally persisted, the older issues now intensified, if anything, by the new competition between company and labor unions. Trade unions lost most of their war gains, while company unions multiplied. Judicial interpretations, moreover, continued to limit the activities of organized labor.⁶

Immediate Legislative Background of Recent Laws

The immediate lineage of our current legislation lies in four acts passed during the Harding, Coolidge, and Hoover administrations, three of them dealing with the settlement of disputes on the railroads, the fourth continuing the effort to define and restrict the uses of the injunction in labor cases and to outlaw the "Yellow Dog" contract.

The Transportation Act of 1920 provided that disputes in railroads be considered and, if possible, decided in conference between representatives of carriers and employees.⁷ In interpreting this requirement, the Railroad Labor Board affirmed the right of employees to be represented by individuals or organizations of their own choosing; it also enunciated the principle of majority representation.⁸ Its decision directing the Pennsylvania Railroad to deal with the regular labor unions instead of its company union was carried to the Supreme Court when the unions applied for a mandatory injunction to compel observance. The Court ruled that, although the labor provisions of the Act were constitutional, they provided for no stronger means of enforcement than public opinion.⁹ The mandatory character of

¹ Thus in 1917 the decision in *Hitchman Coal & Coke Co. v. Mitchell* (245 U. S. 229, 38 Sup. Ct. 67), which prohibited a unionization campaign among miners who had signed a "yellow dog" contract, led to a widespread increase in the use of such contracts. In 1921 the decision in *American Steel Foundries Co. v. Tri-City Trades Council* (257 U. S. 184, 42 Sup. Ct. 72) held that all picketing was unlawful but that former employees could lawfully place a single representative at each entrance of a plant to announce a strike and peaceably persuade those at work to join in it. The litigation in the *Coronado Coal* case, which ended in 1927, established that unions may be sued as entities and be held liable for treble damages, under certain conditions, for interference with mining or manufacturing under the anti-trust acts. (See *United Mine Workers v. Coronado Coal Co.*, 268 U. S. 295, 45 Sup. Ct. 551 [1925]. The case went back to jury trial; after disagreement and seating of another jury, it was settled out of court in 1927.) Similarly, unionization campaigns, strikes, interstate boycotts of non-union materials, and union rulings forbidding members to work upon non-union materials have been held violations of the anti-trust acts. (See *International Organizations, U.M.W.A., v. Red Jacket Consolidated Coal & Coke Co.*, 18 F. [2d] 830 [1927] and *Bordenland Coal Corp. v. International Organization*, 275 Fed. 871 [1921], modified in 278 Fed. 56 [1921]; *Pittsburgh Terminal Coal Corp. v. United Mine Workers*, 22 F. [2d] 550 [1927]; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 41 Sup. Ct. 272 [1921]; *Bedford Cut Stone Co. v. Journeymen Stone Cutters Assoc.*, 274 U. S. 37, 47 Sup. Ct. 522 [1927].)

² 41 Stat. 456, 469, Title III, Sec. 301 (1920).

³ Decision #218 (Docket 404) *Railway Employees Dept. (A.F. of L.) v. Pennsylvania R. System* (July 26, 1921) *Decisions of the U. S. Railroad Board*, Vol. II, pp. 207-214; Decision #119, (Dockets 1, 2, and 3) *International Association of Machinists et al. v. The Atchison, Topeka and Santa Fe Railway et al.* (April 14, 1921) *Ibid.*, pp. 87-96.

⁴ *Pennsylvania R. System and Allied Lines Federation v. Pa. R. Co.*, 267 U. S. 203, 45 Sup. Ct. 307 (1925); *Pa. System Board of Adjustment v. Pa. R. Co.*, 267 U. S. 219, 45 Sup. Ct. 312 (1925).

⁵ Oct. 15, 1914, c. 323, sec. 6, 38 Stat. 737, 15 U.S.C.A. sec. 17.

⁶ See Witte, Edwin E., *The Government in Labor Disputes* (New York: McGraw-Hill Book Company, Inc., 1932), p. 69; Berman, Edward, *Labor and the Sherman Act* (New York: Harper & Brothers, 1930), pp. 218-220; and Frankfurter, Felix and Greene, Nathan, *The Labor Injunction* (New York: The Macmillan Company, 1930), pp. 144-146.

⁷ 36 Stat. at L. 224.

⁸ *Ajar v. The United States*, 208 U. S. 161, 28 Sup. Ct. 277 (1908).

The leading case is *Coppage v. Kansas*, 236 U. S. 1, 35 Sup. Ct. 240 (1915).

similar provisions in current railway legislation probably originates in this ruling.

The Railway Labor Act of 1926 superseded the Transportation Act of 1920. This law explicitly affirmed labor's right to be represented by individuals or organizations of its own choosing "without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other".¹ Court action taken under this provision resulted in the mandatory dissolution of a company union as interference with the employees' right freely to choose their representatives for collective bargaining purposes.² Further legislative expression was given to this trend in the amendments to the Bankruptcy Act approved the day before President Roosevelt took office. Under these amendments, a judge or trustee having jurisdiction of railway property in process of reorganization was prohibited from (1) denying in any way the right of employees to free and uncoerced representation, (2) requiring as a condition of employment an agreement to join or not to join any labor organization, and (3) using "the funds of the railroad . . . in maintaining so-called company unions".³ Similar definition of public policy was written into the Norris-LaGuardia Anti-Injunction Act of 1932.⁴ To aid in interpretation of the Act, and its definitions and limitations of equity procedure in labor disputes, it was laid down as "public policy of the United States" that employees have the right to organize and be represented by spokesmen of their own choosing "free from the interference, restraint or coercion of employers". The "Yellow Dog" contract was made unenforceable in the courts, and the uses of injunctions in labor disputes were restricted.

The Roosevelt administration both continued and expanded those legislative tendencies. The Emergency Railroad Act of 1933 required private railroad management, as well as trustees in reorganizations, to comply with the "representation" amendments of the Bankruptcy Act just alluded to, and with the provisions of the railroad act of 1926. Section 7a of the N.I.R.A. incorporated into the recovery codes for all industry provisions on employer-employee dealings in industry which had been evolving, as has been described, in railroad and other legislation. The clash of interests and interpretation over Section 7a is still fresh and recent history. It was soon found in

practice that the language of this section was ambiguous, and that the withdrawal of the right to use the Blue Eagle, the sole power of enforcement, afforded an inadequate and often inequitable remedy, bearing heavily on some employers, and very little on others. The difficulties confronted by the various labor boards established in their attempt to enforce the principles of Section 7a underlay the mandatory clauses of the Wagner Act.

This background of legislative and industrial experience must obviously enter into our consideration of the laws now on the statute books. How long these laws will remain in effect, is impossible to say at the present writing. Two of them, the Guffey and Wagner Acts, are now on their way to the Supreme Court for decision as to their constitutionality. To realize the insistent trends that lie behind them, however, is to realize that the problems involved will persist for us beyond the fate of any specific measure. Accordingly it may be revealing to see just what light Canada's experience with the Disputes Act can throw not on the laws themselves but rather on the problems of law and labor relations which they present.

Application of Conclusions from Canadian Experience to Legislation in the United States

The first conclusion of that experience, let us recall, was that subordination of the compulsions written into the formal provisions of the Act, with a corresponding emphasis upon the techniques of conciliation, explained in considerable degree the substantial successes achieved by its administrators. In so far as our current laws for intervention accord an exclusive rôle to compulsion—and this is particularly true of the Wagner Act—they do not permit any such administrative flexibility. Skilled agents of the labor boards will, of course, as they already have done, try to achieve as many settlements as possible without recourse to the mandatory clauses.⁵ But in cases where that proves impossible it becomes their duty to enforce compliance with the law. They must thus invoke a technique of intervention for which little success has as yet been recorded in democratic nations. True, the penalties provided in the Disputes Act are more difficult to enforce than those in the Wagner Act. For under laws which seek primarily to prevent or postpone stoppages in industry, viola-

¹ 44 Stat. 577, c. 347 (1926) third subdivision of Sec. 2.

² Brotherhood of Railway & Steamship Clerks v. Tex. & N.O.R. Co., 24 F. (2d) 426 (1928); 25 F. (2d) 875 (1928); 33 F. (2d) 23 (1929); 282 U. S. 550, 50 Sup. Ct. 427 (1930).

³ 47 Stat. 1407 (1933), 22 U.S.C.A. Sec. 205, (p), (q).

⁴ 47 Stat. 70, c. 90 (1932), Sections 2 and 3. Since 1931, some twelve states have passed anti-injunction laws patterned on the Federal statute.

⁵ The mimeographed release on "Settlement of Labor Disputes Effected by the National Labor Relations Board", January 31, 1936, shows that from its organization in September, 1935, to December 31, 1935, more than one-third of the cases brought before it were closed before recourse was had to court procedure under the Act.

tions usually proceed from action by labor. Lockouts are rare; strikes much more frequent. A union leader may be prosecuted, but such individual action will not always end an illegal strike. Large numbers of workers cannot easily be jailed; fines cannot readily be collected. Penalties upon employers, on the other hand, are relatively easy to enforce. But here again, Canadian experience reveals that the government's unwillingness to invoke the penalty clauses has been motivated by more than the difficulty of applying them. For in 1925, as we have seen, the law was amended to penalize employers for effecting protested changes in wages or hours before completion of board procedure—a form of violation more likely to occur than lockouts. Nevertheless, though employers have on occasion violated this provision, prosecutions have not been instituted by the government.

It may well be, of course, that the very existence of the mandatory clauses in our laws will serve, as they have in Canada, to win compliance. For in the United States, as in Canada, responsible leaders of industry or labor do not lightly violate laws. The extent to which this may be true will inevitably vary in different industries. On this point, the second generalization yielded by Canadian experience throws revealing light. For there the distribution of specific successes and failures achieved during the operation of the Disputes Act suggests that the effectiveness of government intervention tends to vary with the degree to which basic economic conditions and human relations are ordered and stable. On the railroads, where organized industrial relationships have been long established and tested, success of the Disputes Act has been marked. For the very same reason, the Railway Labor Act in this country promises well. This law is the latest step in a long evolution both of the custom of collective dealings and of intervention to maintain uninterrupted service in a vital industry. In so far as bituminous coal is concerned, there has long existed in that industry, as in railroading, a tradition and custom of collective bargaining.¹ But in the United States, as in Canada, industrial relations have been continuously irritated by fundamental economic instability. Thus it has been that the violations of the Disputes Act in Canada tended to concentrate in coal mining. Similarly the provisions governing labor relations in any law such as the Guffey Act will probably find their

ultimate test in whether or not they really promote stability in the industry. For, on the demonstration of Canadian experience, it seems clear that a program for stable industrial relations in coal mining must depend, in the final analysis, upon a program for promoting economic stability in the industry. The Wagner Act covers a wide range of industries in which types of employer-employee dealings vary greatly, both with the typical size of the establishment and the nature of the industry.² Moreover, in the large mass-production industries, where company unions have been extensively established since 1933, trade union organization campaigns are already concentrating. Here, too, is the developing struggle between craft and industrial unionism. Disputes over what unit of organization is appropriate for groups of workers in these industries may be expected to be frequent and intense. To vest responsibility for decision in such cases in a government agency may be not only to subject it to the pressures of great conflicting forces but also to crystallize prematurely the patterns of relationships in a highly fluid situation.

In addition to such influences, the third conclusion from Canadian experience shows that the attitudes of employers and employees play an important rôle in government intervention. Assent to any law is essential to its ultimate success in a democracy. If only a minority of employers in the country were opposed to dealings with organized labor, the Wagner Act might perhaps serve to bring that minority into line. But all the evidence at hand—the daily press, the proceedings of various employers' associations, the rapid growth of company unions after the War, and particularly after the introduction of Section 7a—tends to show rather that large sections of American employers are still intensely resistant and hostile to the trade union movement. Hostility toward a law, of course, as experience with the Canadian Act shows, is by no means an inevitably continuing attitude. Just as the attitude of Canadian labor toward the Disputes Act has changed from opposition so complete as to demand repeal, to approval so cordial as to seek general extension, so the now hostile attitude of many employers may in time reverse itself. Skilful administration can, as in Can-

¹ Before 1933, trade union dealings were concentrated in the Central Competitive Coal Field. Today the findings of the most recent sample study indicate that over 90% of the bituminous miners are covered by trade union agreements. See *The Monthly Labor Review*, Vol. IV, No. 6, December, 1935: "Types of Employer-Employee Dealing", p. 1453.

² Thus the study of the Bureau of Labor Statistics just cited indicates that slightly over 30% of wage earners are employed in establishments dealing with trade unions alone, almost 20% with company unions alone, and about 7.5% with both trade and company unions (pp. 1445-55). The remaining 42.5% are dealt with on a basis of individual relationships. Moreover, they are concentrated in small establishments. On the other hand, company union organizations increase with the size of the plant, while trade union dealings are most common among plants of intermediate size. Marked differences exist also among the different industries, with mining showing the largest percentage of workers covered by trade unions, miscellaneous manufactures the largest percentage covered by company unions, and wholesale trade the largest percentage dealt with on an individual basis (pp. 1450-51).

ada, contribute toward such an outcome; it can also help to create a public opinion favorable to its objectives. But in the end the attitude of the parties will be conditioned by their estimate of the specific benefits they may derive from the Act, and the specific responsibilities imposed upon them by the Act. In Canada, as we have seen, labor strove for years to achieve what it considered equal responsibility of employers and employees for submitting disputes in defined situations to government intervention. Labor in this country must face the strong probability that enforcement of such compulsions as are written into the Wagner Act may eventuate in agitation for limitations on the right to strike, and other forms of regulation by public authority.

Need for a New Orientation on Labor Relations

Yet just as labor must realize this possibility implicit in such a law as the Wagner Act, so employers must realize for far-sighted determination of policy that the Wagner Act itself is in part a product of the restrictions and uneven compulsions long imposed upon the activity of labor. And it is here that the final conclusion yielded by Canadian experience seems relevant and important. For it shows that a democratic government can further as standards of practice in industry those customs which are gradually rooting themselves. It can, so to speak, enunciate and extend the developing common law of industry. But to permit such a sound development in the field of employees' representation and collective bargaining, conditions must exist under which custom may freely develop. Unfortunately, no dispassionate student of labor relations can say that such conditions exist in this country. With some notable exceptions, trade unions have as yet had no opportunity to become part and parcel of the industrial structure of the nation. Indeed, beyond even the uncertainties of legal status, the intense opposition of employers and the frequently hostile behavior of local police authorities during strikes have created an atmosphere in which, to all intents and purposes, trade unions operate as "outlaw" organizations. Consequently guerrilla warfare with a premium on militant leadership—at times even racketeering—has prevailed in a social situation calling for collaboration in the interests of all parties and the community as a whole.

Custom, in other words, can develop only when people and groups establish routines of cooperation. This does not mean to say that differences may not exist. In industry there will frequently arise differences as to wages and other conditions of employment, but beyond such differences remains the common task of keeping the particular plant or company an efficient going concern. Labor relations, to be realistic and healthy, must thus envisage a type of organization which permits the resolution of natural conflicts as well as the heightening of collaborative practice.

The achievement of such relationships is admittedly a difficult task, confronted as it is by sentiments deeply rooted in the tradition of management. To the individual employer, the appearance of a union almost invariably seems an unwarranted intrusion of an outsider between himself and his employees. Against the immediately powerful drive of such sentiments, it is not easy for him to act on a logical level, and decide that, since trade unions have a legitimate function in an industrial democracy, he ought to come to some understanding with the unions claiming jurisdiction over his employees. It is the more difficult when that union happens to be led by an aggressive, undiplomatic official who demands recognition under the threat of force involved in a potential strike.

And yet the interests of the whole industrial community demand that employers and trade unions make their peace. Only in this way will the latter develop that sense of responsibility which comes from participating in the task of keeping industry going. Only in this way can custom and a basis for collective dealings develop. And—to return to the main problem of this study—only in this way can a foundation be laid for a sound program of government intervention, a program which subordinates compulsions and persuades the interested parties themselves through conciliation to resolve such conflicts as may arise from time to time. Before this end can be achieved, the immediate task for government would seem to be to free both sides so that they may develop as equals, rather than to introduce the principle of compulsory regulation in so delicate and fluid an area as industrial relationships in the United States today. That principle once established may be extended with dangerous possibilities to all concerned—trade unions and consumers, as well as employers.

TEXT OF INDUSTRIAL DISPUTES INVESTIGATION ACT WITH AMENDMENTS
PASSED IN 1910, 1918, 1920, AND 1925

6-7 EDWARD VII¹

CHAPTER 20

An Act to Aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries Connected with Public Utilities.

[Assented to 22nd March, 1907.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This Act may be cited as *The Industrial Disputes Investigation Act, 1907*.

PRELIMINARY

Interpretation

2. In this Act, unless the context otherwise requires—

(a) "Minister" means the Minister of Labour;

(b) "department" means the Department of Labour;

(c) "employer" means any person, company or corporation employing ten or more persons and owning or operating any mining property, agency of transportation or communication, or public service utility, including, except as hereinafter provided, railways, whether operated by steam, electricity or other motive power, steamships, telegraph and telephone lines, gas, electric light, water and power works;

[Paragraph (c) was amended in 1920 by adding the following words at the end:]

"or any number of such persons, companies or corporations acting together, or who in the opinion of the Minister have interests in common". (10-11 George V, 1920, Chap. 29.)

(d) "employee" means any person employed by an employer to do any skilled or unskilled manual

or clerical work for hire or reward in any industry to which this Act applies;

[The following paragraph was inserted immediately after paragraph (d) by an amendment in 1918:]

"(dd) A lockout or strike shall not, nor, where application for a Board is made within thirty days after the dismissal, shall any dismissal, cause any employee to cease to be an employee, or an employer to cease to be an employer, within the meaning and for the purposes of this Act". (8-9 George V, 1918, Chap. 27.)

(e) "dispute" or "industrial dispute" means any dispute or difference between an employer and one or more of his employees, as to matters or things affecting or relating to work done or to be done by him or them, or as to the privileges, rights and duties of employers or employees (not involving any such violation thereof as constitutes an indictable offence); and, without limiting the general nature of the above definition, includes all matters relating to—

- (1) the wages allowance or other remuneration of employees, or the price paid or to be paid in respect of employment;
- (2) the hours of employment, sex, age, qualification or status of employees, and the mode, terms and conditions of employment;
- (3) the employment of children or any person or persons or class of persons, or the dismissal of or refusal to employ any particular person or persons or class of persons;
- (4) claims on the part of an employer or any employee as to whether and, if so, under what circumstances, preference of employment should or should not be given to one class over another of persons being or not being members of labour or other organizations, British subjects or aliens;
- (5) materials supplied and alleged to be bad, unfit or unsuitable, or damage alleged to have been done to work;

For the purpose of giving the reader an understanding of the evolution of the Act, the text is here presented in such form as will indicate its original version of 1907, and all subsequent amendments. It should be noted however, that the most recent official reference to the Act is Revised Statutes of Canada, 1927, Chapter 113, in which various sections have been renumbered.

- (6) any established custom or usage, either generally or in the particular district affected;
- (7) the interpretation of an agreement or a clause thereof;
- (f) "lockout" (without limiting the nature of its meaning) means a closing of a place of employment or a suspension of work, or a refusal by an employer to continue to employ any number of his employees in consequence of a dispute, done with a view to compelling his employees, or to aid another employer in compelling his employees, to accept terms of employment;
- (g) "strike" or "to go on strike" (without limiting the nature of its meaning) means the cessation of work by a body of employees acting in combination, or a concerted refusal or a refusal under a common understanding of any number of employees to continue to work for an employer, in consequence of a dispute, done as a means of compelling their employer, or to aid other employees in compelling their employer, to accept terms of employment;

(h) "board" means a Board of Conciliation and Investigation established under the provisions of this Act;

(i) "application" means an application for the appointment of a Board under the provisions of this Act;

(j) "Registrar" means the Registrar of Boards of Conciliation and Investigation under this Act;

(k) "prescribed" means prescribed by this Act, or by any rules or regulations made thereunder;

(l) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees.

[The following was inserted after Section 2 by an amendment in 1925:]

"APPLICATION OF ACT

"2A. This Act shall apply to the following disputes only:—

(i) Any dispute in relation to employment upon or in connection with any work, undertaking or business which is within the legislative authority of the Parliament of Canada, including but not so as to restrict the generality of the foregoing:

- (a) works, undertakings or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime;
- (b) lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting any province

with any other or others of the provinces, or extending beyond the limits of the province;

- (c) lines of steamships between a province and any British or foreign country;
- (d) ferries between any province and any British or foreign country, or between two provinces;
- (e) works, undertakings or business belonging to, carried on or operated by aliens, including foreign corporations immigrating into Canada to carry on business;
- (f) such works as, although wholly situate within the province, have been or may be declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the provinces;
- (g) works, undertakings or business of any company or corporation incorporated by or under the authority of the Parliament of Canada.

(ii) Any dispute which is not within the exclusive legislative authority of any provincial legislature to regulate in the manner provided by this Act.

(iii) Any dispute which the Governor in Council may by reason of any real or apprehended national emergency declare to be subject to the provisions of this Act.

(iv) Any dispute which is within the exclusive legislative jurisdiction of any province and which by the legislation of the province is made subject to the provisions of this Act". (15-16 George V, 1925, Chap. 14.)

"2B. The provisions of this Act shall be construed as relating only to the application of *The Industrial Disputes Investigation Act, 1907*, and not so as to extend the meaning of the word "employer" as defined by section two, paragraph (c), of the said Act". (15-16 George V, 1925, Chap. 14.)

Administration

3. The Minister of Labour shall have the general administration of this Act.

4. The Governor in Council shall appoint a Registrar of Boards of Conciliation and Investigation, who shall have the powers and perform the duties prescribed.

2. The Office of Registrar may be held either separately or in conjunction with any other office in the public service, and in the latter case the Registrar may, if the Governor in Council thinks fit, be appointed, not by name, but by reference to such other office, whereupon the person who for the time being holds such office, or performs its duties, shall by virtue thereof be the Registrar.

BOARDS OF CONCILIATION AND INVESTIGATION

Constitution of Boards

5. Wherever any dispute exists between an employer and any of his employees, and the parties thereto are unable to adjust it, either of the parties to the dispute may make application to the Minister for the appointment of a Board of Conciliation and Investigation, to which Board the dispute may be referred under the provisions of this Act: Provided, however, that, in the case of a dispute between a railway company and its employees, such dispute may be referred, for the purpose of conciliation and investigation, under the provisions concerning railway disputes in the Conciliation and Labour Act.

6. Whenever, under this Act, an application is made in due form for the appointment of a Board of Conciliation and Investigation, and such application does not relate to a dispute which is the subject of a reference under the provisions concerning railway disputes in the Conciliation and Labour Act, the Minister, whose decision for such purpose shall be final, shall, within fifteen days from the date at which the application is received, establish such Board under his hand and seal of office, if satisfied that the provisions of this Act apply.

[Section 6 was repealed in 1918 and the following substituted therefor:]

“6. (1) Whenever, under this Act, an application is made in due form for the appointment of a Board of Conciliation and Investigation, the Minister shall, within fifteen days from the date at which the application is received, establish such Board under his hand and seal of office, if satisfied that the provisions of this Act apply.

“(2) The decision of the Minister as to the granting or refusal of a Board shall be final, and when a Board is granted by the Minister, it shall be conclusively deemed to be authorized by and to be in accordance with the provisions of this Act, and no order shall be made or process or proceeding had or taken in any court to question the granting or refusal of a Board, or to review, prohibit, or restrain the

establishment of such Board or the proceedings thereof”. (8-9 George V, 1918, Chap. 27.)

7. Every Board shall consist of three members who shall be appointed by the Minister.

2. Of the three members of the Board one shall be appointed on the recommendation of the employer and one on the recommendation of the employees (the parties to the dispute), and the third on the recommendation of the members so chosen.

8. For the purposes of appointment of the members of the Board, the following provisions shall apply:—

1. Each party to the dispute may, at the time of making application or within five days after being requested so to do by the Minister, recommend the name of one person who is willing and ready to act as a member of the Board, and the Minister shall appoint such person a member of the Board.

2. If either of the parties fails or neglects to duly make any recommendation within the said period, or such extension thereof as the Minister, on cause shown, grants, the Minister shall, as soon thereafter as possible, appoint a fit person to be a member of the Board; and such member shall be deemed to be appointed on the recommendation of the said party.

3. The members chosen on the recommendation of the parties may, within five days after their appointment, recommend the name of one person who is willing and ready to act as a third member of the Board, and the Minister shall appoint such person a member of the Board.

4. If the members chosen on the recommendation of the parties fail or neglect to duly make any recommendation within the said period, or such extension thereof as the Minister, on cause shown, grants, the Minister shall, as soon thereafter as possible, appoint a fit person to be a third member of the Board, and such member shall be deemed to be appointed on the recommendation of the two other members of the Board.

5. The third member shall be the Chairman of the Board.

9. As soon as possible after the full Board has been appointed by the Minister, the Registrar shall notify the parties of the names of the members of the Board and the chairman thereof, and such notification shall be final and conclusive for all purposes.

10. Every member of a Board shall hold office from the time of his appointment until the report of the Board is signed and transmitted to the Minister.

[Section 10 was amended in 1918 by adding the following:]

“and for the purposes of subsection two of section twenty-nine of this Act, from the time the Board is reconvened by the Chairman until the report required under such section is transmitted to the Minister”. (8-9 George V, 1918, Chap. 27.)

11. No person shall act as a member of a Board who has any direct pecuniary interest in the issue of a dispute referred to such Board.

12. Every vacancy in the membership of a Board shall be supplied in the same manner as in the case of the original appointment of every person appointed.

13. Before entering upon the exercise of the functions of their office the members of a Board, including the chairman, shall make oath or affirmation before a justice of the peace that they will faithfully and impartially perform the duties of their office, and also that, except in the discharge of their duties, they will not disclose to any person any of the evidence or other matter brought before the Board.

[Section 13 was amended in 1910 by adding after the word “peace” in the fourth line in this paragraph the words:]

“or other person authorized to administer an oath or affirmation”. (9-10 Edward VII, 1910, Chap. 29.)

14. The department may provide the Board with a secretary, stenographer, or such other clerical assistance as to the Minister appears necessary for the efficient carrying out of the provisions of this Act.

Procedure for Reference of Disputes to Boards

15. For the purpose of determining the manner in which, and the persons by whom, an application for the appointment of a Board is to be made, the following provisions shall apply:—

1. The application shall be made in writing in the prescribed form, and shall be in substance a request to the Minister to appoint a Board to which the existing dispute may be referred under the provisions of this Act.

2. The application shall be accompanied by—

(a) A statement setting forth—

- (1) the parties to the dispute;
- (2) the nature and cause of the dispute, including any claims or demands made by either party upon the other, to which exception is taken;

(3) an approximate estimate of the number of persons affected or likely to be affected by the dispute;

(4) the efforts made by the parties themselves to adjust the dispute;

and—

(b) A statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board of Conciliation and Investigation under the Act, to the best of the knowledge and belief of the declarant, a lockout or strike, as the case may be, will be declared, and that the necessary authority to declare such lockout or strike has been obtained.

[Paragraph (b) was repealed in 1910 and the following substituted therefor:]

“(b) A statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board, to the best of the knowledge and belief of the declarant a lockout or strike will be declared, and (except where the application is made by an employer in consequence of an intended change in wages or hours proposed by the said employer) that the necessary authority to declare such lockout or strike has been obtained; or, where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes between employers and employees and so recognized by the employer, a statutory declaration by the chairman or president and by the secretary of such committee setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board, to the best of the knowledge and belief of the declarants a strike will be declared, that the dispute has been the subject of negotiations between the committee and the employer, that all efforts to obtain a satisfactory settlement have failed, and that there is no reasonable hope of securing a settlement by further negotiations”. (9-10 Edward VII, 1910, Chap. 29.)

[Paragraph (b) was again repealed in 1925 and the following substituted therefor:]

“(b) A statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board, to the best of the knowledge and belief of the declarant a lockout or strike will be declared, and (except where the application is made by an employer in consequence of an intended change in wages or hours proposed by the

said employer) that the necessary authority to declare such lockout or strike has been obtained; or, where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes between employers and employees and so recognized by the employer, a statutory declaration by the chairman or president and by the secretary of such committee setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a Board, to the best of the knowledge and belief of the declarants a strike will be declared, that the dispute has been the subject of negotiations between the committee of the employees and the employer, or that it has been impossible to secure conference or to enter into negotiations, that all efforts to obtain a satisfactory settlement have failed, and that there is no reasonable hope of securing a settlement by further effort or negotiations". (15-16 George V, 1925, Chap. 14.)

3. The application may mention the name of a person who is willing and ready and desires to act as a member of the Board representing the party or parties making the application.

16. The application and the declaration accompanying it—

- (1) if made by an employer, an incorporated company or corporation, shall be signed by some one of its duly authorized managers or other principal executive officers;
- (2) if made by an employer other than an incorporated company or corporation, shall be signed by the employer himself in case he is an individual, or a majority of the partners or members in case of a partnership, firm or association;
- (3) if made by employees, members of a trade union, shall be signed by two of its officers duly authorized by a majority vote of the members of the union, or by a vote taken by ballot of the members of the union present at a meeting called on not less than three days' notice for the purpose of discussing the question;

[Paragraph (3) was amended in 1910 by adding the following:]

"or, where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes

between employers and employees, and so recognized by the employer, may be signed by the chairman or president and by the secretary of the said committee". (9-10 Edward VII, 1910, Chap. 29.)

- (4) if made by employees some or all of whom are not members of a trade union, shall be signed by two of their number duly authorized by a majority vote taken by ballot of the employees present at a meeting called on not less than three days' notice for the purpose of discussing the question.

[Section 16 was repealed in 1920 and the following substituted therefor:]

"16. (1) The application and the declaration accompanying it shall be signed, if made—

- "(a) by an employer who is an individual, by the employer himself;
- "(b) by an employer which is a partnership, firm or association, by a majority of the partners or members;
- "(c) by an employer which is an incorporated company or corporation, by some one of its duly authorized managers or by one or more of the principal executive officers;
- "(d) by employees who are members of a trade union, by two of its officers authorized in writing by a majority of the union members affected. If such authorization is obtained by a vote taken in whole or in part at a meeting, such meeting shall be called on not less than three days' notice and the vote shall be by ballot. Where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorized to carry on negotiations in disputes between employers and employees, and so recognized by the employer, may be signed by the chairman or president and by the secretary of the said committee;
- "(e) by employees some or all of whom are not members of a trade union, by two of their number authorized in writing by a majority of such employees. If such authorization is obtained in whole or in part by a vote at a meeting, such meeting shall be called on not less than three days' notice and the vote shall be by ballot.

"(2) If more than one employer, or more than one trade union, or the employees of more than one employer, is or are interested, then and in such case the application and declaration shall be signed in the

manner aforesaid by or on behalf of each employer or trade union or the employees of each employer so interested, or by or on behalf of a majority of such employers, or trades unions, or of such employees". (10-11 George V, 1920, Chap. 29.)

17. Every application for the appointment of a Board shall be transmitted by post by registered letter addressed to the Registrar of Boards of Conciliation and Investigation, Department of Labour, Ottawa, and the date of the receipt of such registered letter at the department shall be regarded as the date of the receipt of such application.

18. In every case where an application is made for the appointment of a Board the party making application shall, at the time of transmitting it to the Registrar, also transmit by registered letter to the other party to the dispute, or by personal delivery, a copy of the application and of the accompanying statement and declaration.

19. Upon receipt by either party to a dispute of a copy of the application for the appointment of a Board such party shall, without delay, prepare a statement in reply to the application and transmit it by registered letter, or by personal delivery, to the Registrar and to the party making the application.

20. Copies of applications or statements in reply thereto, to be transmitted to the other party under any of the preceding sections where the other party is—

- (1) an employer, an incorporated company or corporation, shall be sent to the manager or other principal executive officer of the company or corporation;
- (2) an employer other than an incorporated company or corporation, shall be sent to the employer himself or to the employer in the name of the business or firm as commonly known;
- (3) composed of employees, members of a trade union, shall be sent to the president and secretary of such union;
- (4) composed of employees some or all of whom are not members of a trade union,—

(a) Where some of the employees are members of a trade union, shall be sent to the president and secretary of the union as representing the employees belonging to the union; also

(b) Where some of the employees are not members of a trade union and there are no persons authorized

to represent such employees, shall be sent to ten of their number;

(c) Where, under paragraph (4) of section 16, two persons have been authorized to make an application, shall be sent to such two persons.

[Section 20 was amended in 1920 by substituting in subparagraph (c) of paragraph (4) for the words:]

"paragraph (4) of section 16" the words "paragraph (e) of subsection (1) of section sixteen". (10-11 George V, 1920, Chap. 29.)

[Section 20 was further amended in 1920 by adding the following subsections:]

"(2) When the other party comprises more than one employer and those employers are members of an association authorized to carry on negotiations in disputes between employers and employees, copies of applications or statements in reply shall be transmitted to the secretary or principal executive officer of such association; when no such association exists copies of the applications or statements in reply shall be transmitted to each employer individually, or by agreement one employer may be designated by the individual employers concerned to receive copies of applications or statements in reply.

"(3) When in any individual industry the other party comprises more than one trade union and the latter are grouped in a council or federation authorized to carry on negotiations between employers or employees, copies of applications or statements in reply shall be transmitted to the president or secretary of such council or federation; when no such council or federation exists, copies of applications or statements in reply shall be transmitted to the president or secretary of each individual union". (10-11 George V, 1920, Chap. 29.)

Functions, Powers and Procedure of Boards

21. Any dispute may be referred to a Board by application in that behalf made in due form by any party thereto; provided that no dispute shall be the subject of reference to a Board under this Act in any case in which the employees affected by the dispute are fewer than ten.

22. Upon the appointment of the Board the Registrar shall forward to the chairman a copy of the application for the appointment of such Board, and of its accompanying statement and declaration, and of the statement in reply, and the Board shall forthwith proceed to deal with the matters referred to in these documents.

[Section 22 was amended in 1918 by adding the following subsection:]

“(2) Should it at any stage of the proceedings be made to appear to the Minister that it is necessary, in order to deal satisfactorily with the matters in dispute, that some other matter or matters involved in or incidental to those appearing in the application and statement in answer, if any, should also be referred to the Board, the Minister may under his hand and seal of office refer such matters to the Board accordingly”. (8-9 George V, 1918, Chap. 27.)

23. In every case where a dispute is duly referred to a Board it shall be the duty of the Board to endeavour to bring about a settlement of the dispute, and to this end the Board shall, in such manner as it thinks fit, expeditiously and carefully inquire into the dispute and all matters affecting the merits thereof and the right settlement thereof. In the course of such inquiry the Board may make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period the Board thinks reasonable to allow the parties to agree upon terms of settlement.

24. If a settlement of the dispute is arrived at by the parties during the course of its reference to the Board, a memorandum of the settlement shall be drawn up by the Board and signed by the parties, and shall, if the parties so agree, be binding as if made a recommendation by the Board under section 62 of this Act, and a copy thereof with a report upon the proceedings shall be forwarded to the Minister.

25. If a settlement of the dispute is not arrived at during the course of its reference to the Board, the Board shall make a full report thereon to the Minister, which report shall set forth the various proceedings and steps taken by the Board for the purpose of fully and carefully ascertaining all the facts and circumstances, and shall also set forth such facts and circumstances, and its findings therefrom, including the cause of the dispute and the Board's recommendation for the settlement of the dispute according to the merits and substantial justice of the case.

26. The Board's recommendation shall deal with each item of the dispute and shall state in plain terms, and avoiding as far as possible all technicalities, what in the Board's opinion ought or ought

not to be done by the respective parties concerned. Wherever it appears to the Board expedient so to do, its recommendation shall also state the period during which the proposed settlement should continue in force, and the date from which it should commence.

27. The Board's report and recommendation shall be made to the Minister in writing, and shall be signed by such of the members as concur therein, and shall be transmitted by the chairman by registered letter to the Registrar as soon as practicable after the reference of the dispute to the Board; and in the same manner a minority report may be made by any dissenting member of the Board.

28. Upon receipt of the Board's report the Minister shall forthwith cause the report to be filed in the office of the Registrar and a copy thereof to be sent free of charge to the parties to the dispute, and to the representative of any newspaper published in Canada who applies therefor, and the Minister may distribute copies of the report, and of any minority report, in such manner as to him seems most desirable as a means of securing a compliance with the Board's recommendation. The Registrar shall, upon application, supply certified copies for a prescribed fee, to persons other than those mentioned in this section.

29. For the information of Parliament and the public, the report and recommendation of the Board, and any minority report, shall, without delay, be published in the *Labour Gazette*, and be included in the annual report of the Department of Labour to the Governor General.

[Section 29 was repealed in 1918 and the following substituted therefor:]

“29. (1) For the information of Parliament and the public, the report and recommendations of the Board, and any minority report, shall, without delay, be published in the *Labour Gazette*, either verbatim or in summary form as the Minister may determine.

“(2) Where any question arises as to the meaning or application of, or as to anything relating to or connected with,—

(a) any recommendation made by the Board, or,

(b) any settlement agreement drawn up by the Board under section twenty-four of this Act,

the Minister, where he deems it expedient, may, on the application of either party or of his own motion, request from the chairman of the Board an expression

of the Board's opinion upon such question, and the chairman shall upon receipt of such request reconvene the Board, and the Board shall as soon as practicable report to the Minister its opinion upon such question". (8-9 George V, 1918, Chap. 27.)

30. For the purpose of its inquiry the Board shall have all the powers of summoning before it, and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters) and to produce such books, papers or other documents or things as the Board deems requisite to the full investigation of the matters into which it is inquiring, as is vested in any court of record in civil cases.

2. Any member of the Board may administer an oath, and the Board may accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

31. The summons shall be in the prescribed form, and may require any person to produce before the Board any books, papers or other documents or things in his possession or under his control in any way relating to the proceedings.

32. All books, papers and other documents or things produced before the Board, whether voluntarily or in pursuance to summons, may be inspected by the Board, and also by such parties as the Board allows; but the information obtained therefrom shall not, except in so far as the Board deems it expedient, be made public, and such parts of the books, papers or other documents as in the opinion of the Board do not relate to the matter at issue may be sealed up.

33. Any party to the proceedings shall be competent and may be compelled to give evidence as a witness.

34. Every person who is summoned and duly attends as a witness shall be entitled to an allowance for expenses according to the scale for the time being in force with respect to witnesses in civil suits in the superior courts in the province where the inquiry is being conducted.

[Section 34 was amended in 1920 by adding the following words at the end:]

"with a minimum allowance of four dollars per day". (10-11 George V, 1920, Chap. 29.)

35. Where a reference has been made to the Board of a dispute between a railway company and its employees, any witness summoned by the Board in

connection with the dispute shall be entitled to free transportation over any railway en route when proceeding to the place of meeting of the Board and thereafter returning to his home, and the Board shall furnish to such witness a proper certificate evidencing his right to such free transportation.

36. If any person who has been duly served with such summons and to whom at the same time payment or tender has been made of his reasonable travelling expenses according to the aforesaid scale, fails to duly attend or to duly produce any book, paper or other document or thing as required by his summons, he shall be guilty of an offense and liable to a penalty not exceeding one hundred dollars, unless he shows that there was good and sufficient cause for such failure.

37. If, in any proceedings before the Board, any person wilfully insults any member of the Board or wilfully interrupts the proceedings, or without good cause refuses to give evidence, or is guilty in any other manner of any wilful contempt in the face of the Board, any officer of the Board or any constable may take the person offending into custody and remove him from the precincts of the Board, to be detained in custody until the rising of the Board, and the person so offending shall be liable to a penalty not exceeding one hundred dollars.

38. The Board, or any member thereof, and, on being authorized in writing by the Board, any other person, may, without any other warrant than this Act, at any time, enter any building, mine, mine workings, ship, vessel, factory, workshop, place or premises of any kind, wherein, or in respect of which, any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking place or has taken place, which has been made the subject of a reference to the Board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon any such building, mine, mine workings, ship, vessel, factory, workshop, place or premises as aforesaid, in respect of or in relation to any matter or thing hereinbefore mentioned, and any person who hinders or obstructs the Board or any such person authorized as aforesaid, in the exercise of any power conferred by this section, shall be guilty of an offence and be liable to a penalty not exceeding one hundred dollars.

39. Any party to a reference may be represented before the Board by three or less than three persons

designated for the purpose, or by counsel or solicitor where allowed as hereinafter provided.

40. Every party appearing by a representative shall be bound by the acts of such representative.

41. No counsel or solicitor shall be entitled to appear or be heard before the Board, except with the consent of the parties to the dispute, and notwithstanding such consent the Board may decline to allow counsel or solicitors to appear.

42. Persons other than British subjects shall not be allowed to act as members of a Board.

43. If, without good cause shown, any party to proceedings before the Board fails to attend or to be represented, the Board may proceed as if he had duly attended or had been represented.

44. The sittings of the Board shall be held at such time and place as are from time to time fixed by the chairman, after consultation with the other members of the Board, and the parties shall be notified by the chairman as to the time and place at which sittings are to be held: Provided that, so far as practicable, the Board shall sit in the locality within which the subject-matter of the proceeding before it arose.

45. The proceedings of the Board shall be conducted in public; provided that at any such proceedings before it, the Board, on its own motion, or on the application of any of the parties, may direct that the proceedings shall be conducted in private and that all persons other than the parties, their representatives, the officers of the Board and the witnesses under examination shall withdraw.

46. The decision of a majority of the members present at a sitting of the Board shall be the decision of the Board, and the findings and recommendations of the majority of its members shall be those of the Board.

47. The presence of the chairman and at least one other member of the Board shall be necessary to constitute a sitting of the Board.

48. In case of the absence of any one member from a meeting of the Board the other two members shall not proceed, unless it is shown that the third member has been notified of the meeting in ample time to admit of his attendance.

2. If any member of a Board dies, or becomes incapacitated, or refuses or neglects to act, his successor shall be appointed in the manner provided with respect to the original member of the Board.

49. The Board may at any time dismiss any matter referred to it which it thinks frivolous or trivial.

50. The Board may, with the consent of the Minister, employ competent experts or assessors to examine the books or official reports of either party, and to advise it upon any technical or other matter material to the investigation, but shall not disclose such reports or the results of such inspection or examination under this section without the consent of both the parties to the dispute.

Remuneration and Expenses of Board

51. The members of a Board while engaged in the adjustment of a dispute shall be remunerated for their services as follows:

(a) to members other than the chairman—

(i) an allowance of five dollars a day for a time not exceeding three days during which the members may be actually engaged in selecting a third member of the board;

(ii) an allowance of fifteen dollars for each whole day's sitting of the Board;

(iii) an allowance of seven dollars for each half-day's sitting of the board;

(b) the chairman shall be allowed twenty dollars a day for each whole day's sitting of the Board, and ten dollars a day for each half-day's sittings;

(c) no allowance shall be made to any member of the Board on account of any sitting of the Board which does not extend over a half day, unless it is shown to the satisfaction of the Minister that such meeting of the Board was necessary to the performance of its duties as speedily as possible, and that the causes which prevented a half-day's sitting of the Board were beyond its control.

[Section 51 of the act was repealed in 1910 and the following substituted therefor:]

"51. The members of a Board shall be remunerated for their services as follows:

"(a) to members other than the chairman, an allowance of five dollars a day for a time not exceeding three days during which the members may be actually engaged in selecting a third member of the Board;

"(b) to each member of the Board, including the chairman, an allowance at the rate of twenty dollars for each day's sitting of the Board and for each day necessarily engaged in travelling from or to his place of residence to attend or after attending a meeting of the Board". (9-10 Edward VII, 1910, Chap. 29.)

52. No member of the Board shall accept in addition to his salary as a member of the Board any perquisite or gratuity of any kind, from any corporation, association, partnership or individual in any way interested in any matter or thing before or about to be brought before the Board in accordance with the provisions of this Act. The accepting of such perquisite or gratuity by any member of the Board shall be an offence and shall render such member liable to a fine not exceeding one thousand dollars.

53. Each member of the Board will be entitled to his actual necessary travelling expenses for each day that he is engaged in travelling from or to his place of residence for the purpose of attending or after having attended a meeting of the Board.

54. All expenses of the Board, including expenses for transportation incurred by the members thereof or by persons under its order in making investigations under this Act, salaries of employees and agents, and fees and mileage to witnesses shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the Board, which vouchers shall be forwarded by the chairman to the Minister. The chairman shall also forward to the Minister a certified and detailed statement of the sittings of the Board, and of the members present at such sittings.

DUTIES OF THE REGISTRAR

55. It shall be the duty of the Registrar:—

(a) to receive and register, and, subject to the provisions of this Act, to deal with all applications by employers or employees for a reference of any dispute to a Board, and to at once bring to the Minister's attention every such application;

(b) to conduct such correspondence with the parties and members of Boards as may be necessary to constitute any Board as speedily as possible in accordance with the provisions of this Act;

(c) to receive and file all reports and recommendations of Boards, and conduct such correspondence and do such things as may assist in rendering effective the recommendations of the Boards, in accordance with the provisions of this Act;

(d) to keep a register in which shall be entered the particulars of all applications, references, reports and recommendations relating to the appointment of a Board, and its proceedings; and to safely keep all applications, statements, reports, recommendations and other documents relating to proceedings before the Board, and, when so required, transmit all or any of such to the Minister;

(e) to supply to any parties, on request, information as to this Act, or any regulations or proceedings thereunder, and also to furnish parties to a dispute and members of the Board with necessary blank forms, forms of summons or other papers or documents required in connection with the effective carrying out of the provisions of this Act;

(f) generally, to do all such things and take all such proceedings as may be required in the performance of his duties prescribed under this Act or any regulations thereunder.

STRIKES AND LOCKOUTS PRIOR TO AND PENDING A REFERENCE TO A BOARD ILLEGAL

56. It shall be unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during a reference of such dispute to a Board of Conciliation and Investigation under the provisions of this Act, or prior to or during a reference under the provisions concerning railway disputes in the Conciliation and Labour Act: Provided that nothing in this Act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike: Provided also that, except where the parties have entered into an agreement under section 62 of this Act, nothing in this Act shall be held to restrain any employer from declaring a lockout, or any employee from going on strike in respect of any dispute which has been duly referred to a Board and which has been dealt with under section 24 or 25 of this Act, or in respect of any dispute which has been the subject of a reference under the provisions concerning railway disputes in the Conciliation and Labour Act.

57. Employers and employees shall give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and in every case where a dispute has been referred to a Board, until the dispute has been finally dealt with by the Board, neither of the parties nor the employees affected shall alter the conditions of employment with respect to wages or hours, or on account of the dispute do or be concerned in doing, directly or indirectly, anything in the nature of a lockout or strike, or a suspension or discontinuance of employment or work, but the relationship of employer and employee shall continue uninterrupted by the dispute, or anything arising out of the dispute; but if, in the opinion of the Board, either party uses this or any other provision of this Act for the purpose of unjustly maintaining a given condition of

affairs through delay, and the Board so reports to the Minister, such party shall be guilty of an offence, and liable to the same penalties as are imposed for a violation of the next preceding section.

[Section 57 was amended in 1910 by substituting for the words in the first seven lines as above down to "alter" inclusive the following:]

"57. Employers and employees shall give at least thirty days' notice of an intended change affecting conditions or employment with respect to wages or hours; and in the event of such intended change resulting in a dispute, until the dispute has been finally dealt with by a Board, neither of the parties affected shall alter". (9-10 Edward VII, 1910, Chap. 29.)

[Section 57 was further amended in 1920 by substituting for the words in the first seven lines thereof down to "alter" inclusive the following:]

"57. Employers and employees shall give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and in the event of such intended change resulting in a dispute, until the dispute has been finally dealt with by a Board, and a copy of its report has been delivered through the Registrar to both the parties affected, neither of those parties shall alter". (10-11 George V, 1920, Chap. 29.)

[Section 57 was repealed in 1925 and the following substituted therefor:]

"57. Employers and employees shall give at least thirty days' notice of an intended or desired change affecting conditions of employment with respect to wages or hours; and in the event of such intended or desired change resulting in a dispute, it shall be unlawful for the employer to make effective a proposed change in wages or hours or for the employees to go on strike, until the dispute has been finally dealt with by a Board, and a copy of its report has been delivered through the Registrar to both the parties affected; the application for the appointment of a Board shall be made by the employers or employees proposing the change in wages or in hours; neither of those parties shall alter the conditions of employment with respect to wages or hours, or on account of the dispute do or be concerned in doing directly or indirectly, anything in the nature of a lockout or strike, or a suspension or discontinuance of employment or work, but the relationship of employer and employee shall continue uninterrupted by the dispute, or anything arising out of the dispute; but if, in the opinion of the Board, either party uses this or

any other provision of this Act for the purpose of unjustly maintaining a given condition of affairs through delay, and the Board so reports to the Minister, such party shall be guilty of an offence, and liable to the same penalties as are imposed for a violation of the next preceding section". (15-16 George V, 1925, Chap. 14.)

58. Any employer declaring or causing a lockout contrary to the provisions of this Act shall be liable to a fine of not less than one hundred dollars, nor more than one thousand dollars for each day or part of a day that such lockout exists.

[Section 58 was repealed in 1925 and the following substituted therefor:]

"58. Any employer declaring or causing a lockout or making effective a change in wages or hours contrary to the provisions of this Act shall be liable to a fine of not less than one hundred dollars, nor more than one thousand dollars for each day or part of a day that such lockout or change exists". (15-16 George V, 1925, Chap. 14.)

59. Any employee who goes on strike contrary to the provisions of this Act shall be liable to a fine of not less than ten dollars nor more than fifty dollars, for each day or part of a day that such employee is on strike.

60. Any person who incites, encourages or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of this Act, shall be guilty of an offence and liable to a fine of not less than fifty dollars nor more than one thousand dollars.

61. The procedure for enforcing penalties imposed or authorized to be imposed by this Act shall be that prescribed by Part XV of *The Criminal Code* relating to summary convictions.

SPECIAL PROVISIONS

62. Either party to a dispute which may be referred under this Act to a Board may agree in writing, at any time before or after the Board has made its report and recommendation, to be bound by the recommendation of the Board in the same manner as parties are bound upon an award made pursuant to a reference to arbitration on the order of a court of record; every agreement so to be bound made by one party shall be forwarded to the Registrar who shall communicate it to the other party, and if the other party agrees in like manner to be bound by the recommendation of the Board, then the recommenda-

tion shall be made a rule of the said court on the application of either party and shall be enforceable in like manner.

63. In the event of a dispute arising in any industry or trade other than such as may be included under the provisions of this Act, and such dispute threatens to result in a lockout or strike, or has actually resulted in a lockout or strike, either of the parties may agree in writing to allow such dispute to be referred to a Board of Conciliation and Investigation, to be constituted under the provisions of this Act.

2. Every agreement to allow such reference shall be forwarded to the Registrar, who shall communicate it to the other party, and if such other party agrees in like manner to allow the dispute to be referred to a Board, the dispute may be so referred as if the industry or trade and the parties were included within the provisions of this Act.

3. From the time that the parties have been notified in writing by the Registrar that in consequence of their mutual agreement to refer the dispute to a Board under the provisions of this Act, the Minister has decided to refer such dispute, the lockout or strike, if in existence, shall forthwith cease, and the provisions of this Act shall bind the parties.

[The following section was inserted in 1918 after Section 63:]

"63A. Where in any industry any strike or lockout has occurred, and in the public interest or for any other reason it seems to the Minister expedient, the Minister, on the application of any municipality interested, or of the mayor, reeve, or other head officer or acting head officer thereof, or of his own motion, may, without application of either of the parties to the dispute, strike, or lockout, whether it involves one or more employers or employees in the employ of one or more employers, constitute a Board of Conciliation and Investigation under this Act in respect of any dispute, or strike or lockout, or may in any such case, if it seems to him expedient, either with or without an application from any interested party, recommend to the Governor in Council the appointment of some person or persons as commissioner or commissioners under the provisions of the *Inquiries Act* to inquire into the dispute, strike or lockout, or into any matters or circumstances connected therewith". (8-9 George V, 1918, Chap. 27.)

[Section 63A was amended in 1920 by inserting after the word "occurred" in the second line the words:]

"or seems to the Minister to be imminent". (10-11 George V, 1920, Chap. 29.)

[The following section was inserted in 1918 to follow Section 63A:]

"63B. The Minister, where he deems it expedient, may, either upon or without any application in that behalf, make or cause to be made any inquiries he thinks fit regarding industrial matters, and may cause such steps to be taken by his department and the officers thereof as seem calculated to secure industrial peace and to promote conditions favourable to settlement of disputes". (8-9 George V, 1918, Chap. 27.)

MISCELLANEOUS

64. No court of the Dominion of Canada, or of any province or territory thereof, shall have power or jurisdiction to recognize or enforce, or to receive in evidence any report of a Board, or any testimony or proceedings before a Board, as against any person or for any purpose, except in the case of the prosecution of such person for perjury.

65. No proceeding under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

66. The Minister shall determine the allowance or amounts to be paid to all persons other than the members of a Board, employed by the Government or any Board, including the Registrar, secretaries, clerks, experts, stenographers or other persons performing any services under the provisions of this Act.

67. In case of prosecutions under this Act, whether a conviction is or is not obtained, it shall be the duty of the clerk of the court before which any such prosecution takes place to briefly report the particulars of such prosecution to the Registrar within thirty days after it has been determined, and such clerk shall be entitled to a prescribed fee in payment of his services.

68. The Governor in Council may make regulations as to the time within which anything hereby authorized shall be done, and also as to any other matter or thing which appears to him necessary or advisable to the effectual working of the several provisions of this Act. All such regulations shall go into force on the day of the publication thereof in *The Canada Gazette*, and they shall be laid before Parlia-

ment within fifteen days after such publication, or, if Parliament is not then in session, within fifteen days after the opening of the next session thereof.

69. All charges and expenses incurred by the Government in connection with the administration of this Act shall be defrayed out of such appropria-

tions as are made by Parliament for that purpose.

70. An annual report with respect to the matters transacted by him under this Act shall be made by the Minister to the Governor General, and shall be laid before Parliament within the first fifteen days of each session thereof.

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