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"THE NOVA SCOTIA LABOUR RELATIONS BOARD"

(Address to the Halifax Rotary Club, Sept.2,1947)

The Trade Union Act of Nova Scotia came into effect on July 1, 1947.

PURPOSES OF ACT

The Act embodies certain old and new techniques for the prevention of industrial disputes involving strikes and lock-outs, and for their orderly adjustment when they do occur by the intervention of the State, chiefly by way of imposed delays and prescribed procedural steps to be taken by the parties with the aid of Conciliation Officers and Boards. The Act also seeks to eliminate certain unfair or discriminatory practices on the part of employers or employees; and also contains provisions as to check off of wages etc.

The Act also seeks to facilitate the making of agreements between employers and their employees collectively, covering wages and other terms and conditions of employment, and which, when made in accordance with the Act, are binding upon all who are, or become, employees. It is to the collective bargaining features of the Act that I shall confine myself today.

Because there is always a public interest involved in labour-management disputes, it is now recognized that these groups cannot be allowed complete freedom to contend with one another in disregard of the fact that other groups may be profoundly affected by their conduct. Like other groups, they must be required to conduct their mutual relations within a framework of law, defining their rights and the manner in which they must be exercised, and holding each

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accountable for failure to observe its corresponding responsibilities.

From time to time, as either labour or management is felt to be acting with undue disregard of these rules, demands arise for more repressive legislation to curb such excesses, and for requiring government to intervene more drastically in labour-management matters. But repressive laws seldom secure the best results. Moreover, government intervention in labour matters to an excessive extent, is seldom the way to permanent improvement; and, indeed, retards the development of that sense of responsibility and law-abidingness which is the true way to the ultimate reconciliation of group and public interests.

Even as to such an obvious matter as the necessity of preventing and settling disputes involving strikes and lock-outs, many believe that (except in extreme cases) government participation should confine itself chiefly to mediation and conciliation. Whatever steps government does take, and whatever technique it does employ, in such matters, the net result is simply the settlement of that particular dispute. Much more is necessary to remove the causes of such disputes; somehow labour and management must be brought to a more stable way of life.

One of the best ways of doing so is to help the parties to devise an agreed way of controlling their relations and to give the force of law to their agreement. In other words, government must either dictate the detailed terms upon which labour and management must live together - a task for which government is not equipped; or government must prescribe conditions and provide machinery calculated to bring the parties to a

mutual agreement as to the terms of employment. The Nova Scotia Act adopts this latter method; it recognizes the fact that persons associated together in an industry can best devise a contract for their own governance; it seeks to foster free discussion of terms of employment and methods of adjusting internal differences. In short, it seeks the largest possible degree of self-government in industry, and to exert compulsion only to the end of securing that whenever possible the parties shall come to an agreement; and that it shall be reasonably adequate to its function. It sees in voluntary collective bargaining-resulting in agreements which are comprehensive codes of relations, the most democratic, and, in the long run, the most effective method, of substituting reason for pressure; and thus minimizing protracted disputes which seldom produce permanent benefit to the industry and ~~invariably~~ usually produce injury to the public.

GENERAL DESCRIPTION OF ACT

It will be apparent that if collective agreements are to play any great part in labour relations, employers cannot be allowed to frustrate their making by simply refusing to deal with anyone but their individual employees. Accordingly, some element of compulsion must be present. It would be quite unfair and contrary to the concept of freedom of contract, however, to compel employers to make contracts with their employees through outside bodies, such as unions. Moreover, it would be unfair to compel an employer to accept any outside body as the bargaining agent of his employees, unless satisfied that that body has proper authority to bargain for them.

It does not follow that the group of employees which the applicant union seeks to represent is necessarily one appropriate for collective bargaining. Thus in a given industry the most appropriate group for such purpose may be all the employees, or all in a section of it, (e.g. the boiler shop) or those practising a given craft (such as carpenters).

Accordingly to the Board falls the duty of determining the particular group in which there is such community of interest that it, rather than other groups, should be regarded as the unit for which a union may bargain collectively. The Board must also determine whether or not that union has in fact the authority of the majority of the employees in that unit to bargain for them.

Again there are employees who are more or less identified with the management-side of the industry, such as supervisors, foremen and others standing in a relation of authority to the employees or of confidence as regards the employer. Ordinarily, it is not appropriate that employees of these classes should be included in a bargaining unit along with other employees. Here again, it is the duty of the Board to specify particular employees to be excluded from the general body in the unit so that they stand apart from the bargaining of the union.

Accordingly, it is of the essence of this part of the Act, that the Board, after due inquiry, shall certify a particular union as the authorized bargaining agent of the employees in a specified unit (minus those excluded therefrom); and that the employer must meet that union and endeavour to conclude an agreement with it covering the employees in

that unit.

If such negotiations do take place and fail to result in a contract, the situation is as before; for the Act neither compels the parties to make a contract, nor imposes one on them. It compels them only to make an honest effort to agree. If the compulsory negotiations are successful, then the Act makes the resultant contract binding upon the employer, the union, and upon all employees within the unit, for the term of the contract.

Finally, the Act requires every collective agreement to provide, within itself, for an orderly method of arriving at a final settlement, without stoppage of work, of disputes which may arise out of its daily operation.

Procedural Steps

In outlining the procedures to be followed in the endeavour to make the parties negotiate, and, if possible, to secure that their efforts will result in a contract, I shall treat only of the negotiation of new contracts; thus excluding cases where there already is a contract in effect, and it is desired to secure its revision or to change the bargaining agent.

1. Application of Act

The Act does not apply to employees falling within Dominion jurisdiction, e.g. employees of the Dominion Government, or employees engaged on Dominion "works" etc; it does not apply to employees of the Provincial Government; or to persons employed "in a confidential capacity, or who exercise management functions"; or to members of the professions of engineering, etc.

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2. Application for Certification

The first step in the process is for a trade union to apply to the Board to be certified as a bargaining agent for a specified group of employees.

On such application, it must show that a majority of the employees in that group are members

of the union, or that a majority of them have selected that union to be their bargaining agent. Secondly, it must satisfy the Board that the group in question constitutes "a unit of employees appropriate for collective bargaining".

The Board has various powers to enable it to determine by inquiries, votes, etc., whether the union does represent the majority of the employees in the unit, whether individuals are members in good standing of the union, etc.

The application can be made at any time; except that where there is an existing collective agreement, no application can be made before ten months after its making, and where there is already another certified bargaining agent, no application can be made for a year after such certification.

3. Certification

If the Board is satisfied (1) that the applicant union does represent the majority in a unit and (2) that that unit is an appropriate one, it then certifies the union as the bargaining agent of the employees in that unit. It must, however, refuse certification to a union which is "dominated or influenced by an employer so that its fitness to represent employees is impaired".

If the Board rejects an application, it may impose a time limit within which the applicant-union cannot make a fresh application.

4. Effect of Certification

Until its certification is revoked, the union certified by the Board "shall have exclusive authority to bargain collectively on behalf of employees in the unit and to bind them by a collective agreement".

5. Revocation

Whenever it appears to the Board that a bargaining agent no longer represents a majority of the employees in the unit for which it was certified, the Board may revoke that certification and the employer ceases to be bound to negotiate with it.

6. Negotiation

Either the certified union or the employer, may require the other to commence to bargain collectively; and they must do so within 20 days "and make every reasonable effort to conclude a collective agreement" under penalties provided by the Act.

On the request of either party, the Minister may assign a Conciliation Officer, and, if necessary, appoint a Conciliation Board, to help the parties to come to an agreement. Meanwhile the employer is prohibited from decreasing wage rates or altering any other term of employment.

7. Collective Agreements

If a collective agreement is entered into, it becomes legally binding upon the employer and the union, and upon all employees in the unit in question -- and shall be in force for at least one year and be incapable of earlier termination without the consent of the Board.

8. Powers of Board

The Board is required by Section 58 to decide all questions involved in the certification of bargaining agents; and its decision "shall be final and conclusive and not open to question or

review", though it may "reconsider" any such decision and vary or revoke it. The Board has power to receive any type of evidence it sees fit; and, with the approval of the Governor in Council, make regulations governing its procedure, but it must give interested parties the opportunity to present evidence and make representations.

9. Grievance Procedure

Section 19 of the Act provides:

"(1) Every collective agreement ~~entered into after the commencement of this Act~~ shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to, or persons bound by, the agreement, ~~or on whose behalf it was entered into~~, concerning its meaning or violation.

(2) Where a collective agreement, ~~whether entered into before or after the commencement of this Act,~~ does not contain a provision as required by this Section, the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement and binding on the parties to, and all persons bound by the agreement, ~~and all persons on whose behalf the agreement was entered into.~~"

These "grievance" provisions have nothing to do with certification or the procedures for arriving at a collective agreement. They envisage the fact that differences will inevitably arise during the period of the agreement, and they require that there shall be in existence a predetermined procedure for discovering the facts and adjudicating upon them. Grievance procedure provisions are a vital part of self-government in industry and should be written by the parties themselves whenever possible, and in terms applicable to the conditions of that industry. So written they provide a clearly defined channel through which grievances may be processed through various stages to a final authority of an independent nature.

To be most effective, all differences of the types covered by the provision, should be submitted to this process and the ultimate decision should be accepted by the parties as finally settling the matter, just as citizens accept the decisions of courts. And all of this, of course, goes on whilst the industry is still functioning, without stoppage of work.

CONCLUSIONS

(1) It is obvious that these provisions respecting collective bargaining differ vastly from such repressive and restrictive measures as were contained in the Wage Control Order; for this is enabling and progressive legislation designed to cause employers and their employees (through certified bargaining agents) to endeavour to reach an agreement for the governance of their mutual affairs.

(2) Other than this, the Act imposes no duty upon employers and employees to reach an actual agreement; still less does it require them to agree in any prescribed way. Indeed the spirit of the Act is to intervene to the minimum extent in employer-employee relations.

(3) The Act enables all parties to profit from the wartime experience which has shown that, once brought together at the conference table, labour and management do succeed in most cases in reaching satisfactory agreements, and, thereby, promote their own interests, and the paramount interest of the public in industrial peace. I may add that such an agreement should be carefully drawn after earnest effort to cover all the important aspects of the employment so as to constitute a clear and comprehensive code.

(4) The provision requiring the insertion in all agreements of a procedure for the final settlement of differences arising as to the interpretation or alleged breach of an agreement is of the greatest importance. It encourages the parties to write their own ticket in their own way, and, if carefully

drawn and faithfully followed, enables disputes to be settled quickly and amicably without any government intervention at all.

TRANSITIONAL MATTERS

Here I wish to refer to a very important matter, namely, the effect to be given under the new Act to things done, for example, orders of certification given and collective agreements entered into during the period when the Wartime Regulations were in force. There are provisions in the Act which indicate the general intention to carry over into the new Act matters done under the Regulations and to treat them as having been done under the new Act. These indicate the laudable desire to preserve benefits secured under the previous legislation and so to maintain stability in collective bargaining matters.

There is a fact, however, which may makes it difficult to attain this desire in all cases. That fact is that there was an interval of some six weeks between the going out of effect of the Wartime Regulations (May 15) and the coming into effect of the present Act (July 1) and that acts may have been done in that intervening period (e.g. the negotiation of an agreement) which may come into collision with rights secured under the old Regulations. Accordingly, it may not always be possible to interpret the Act as continuing the effect of things done under the previous Regulations; for that might involve ignoring things done before it came into operation. Already the Board has been made aware of situations which may well require decisions which

may seem contrary to convenience. In the last analysis, however, the Board must apply the words of the Legislature and call the shots in whatever way the words require. [Indeed, it is impossible to expect that we can pass from a wartime period when collective bargaining was governed by Dominion Regulations into a peacetime period governed by Provincial legislation without some discrepancies and dislocations of coverage.]

CONCLUSION

May I conclude with a plea that management and labour alike should seek to understand the legislation we have to administer and accept the decisions of the Board in the same way as litigants accept the decisions of courts of law. We shall endeavor to be impartial and wise and to build up a jurisprudence which will in time make the Act a definite guide and aid to management and labour in their mutual concerns but that process will certainly be retarded if our decisions are called into question constantly as based on ignorance or partiality. It is a curious circumstance that even in wartime the decisions of Labour Boards throughout Canada were constantly subjected to a degree of criticism not accorded to the decisions of other Boards, such as the Public Utilities Boards for example. In no other field of government do disappointed litigants become so vocal and condemnatory of Boards, which like courts, are charged with judicial duties, which they are sworn to discharge impartially. In no other field do decisions become the immediate object of public denunciation in which inefficiency and low motives are so freely imputed. Surely it is time for the

parties to labour controversies to abide by decisions made by the agencies set up by the State to deal with ~~them~~ in an orderly way.

I know of no member of the Board who has not accepted his appointment with a sense of the responsibility which goes with his position and the opportunity it affords him to contribute to the establishment of industrial relations which will reconcile so far as possible the interests of the parties and of the public.

At all events, we will seek to apply the new statute to the facts of the various cases without conscious bias and make ~~its~~ decisions "with firmness in the right as God gives us to see the right."