POSTPONING STRIKES

A Study of

THE INDUSTRIAL DISPUTES
INVESTIGATION ACT OF CANADA

BY

BEN M. SELEKMAN
Department of Industrial Studies
RUSSELL SAGE FOUNDATION

NEW YORK
RUSSELL SAGE FOUNDATION
1927

WM. F. FELL CO. PRINTERS
PHILADELPHIA

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

APPENDICES

LIST OF TABLES

MAP AND LIST OF DIAGRAMS

FOREWORD

ABOUT ten years ago the Russell Sage Foundation published a pamphlet entitled, Industrial Disputes and the Canadian Act, Facts about Nine Years' Experience with Compulsory Investigation in Canada, giving the findings of an inquiry made by a member of the staff of the Department of Industrial Studies, Ben M. Selekman. This book is a second report on the same subject by the same investigator. It embodies data of the earlier study and adds the results of nine additional years of experience. It is much more than a supplementary inquiry. The experience of eighteen years gives a more comprehensive and convincing picture of the actual effects of the act than the first nine of these years. Contrasts as well as similarities in the findings are significant.

Both studies are the result of observation "from the outside, looking in." The purposes of the Russell Sage Foundation are confined to our own country. Its charter states its aim as the improvement of social and living conditions in the United States. Often, however, crucial questions arise here to which the experience of our neighbor to the north may supply answers. This was true in 1916, when the threatened railroad strike in the United States brought many suggestions for the prevention of similar danger in the future. Frequent references were made then to the Canadian Industrial Disputes Investigation Act as a means of preventing strikes. The first study, made in 1916, had the specific purpose of answering the question, "Is the Canadian act a law which, if

put on the statute books in the United States, would be likely to prevent strikes?" Though now, early in 1927, no such single event as the danger of stopping the railroads has stirred interest, nevertheless strikes have been numerous enough to cause us to ask again whether the Canadian law is applicable here. We seek, then, not to bring enlightenment to Canadians, but to look across the border, toward our neighbor's, mines, railroads and factories, and to ask whether the act has accomplished its purposes satisfactorily and whether it can wisely be followed in this country.

The answers given are not precisely the same in these two studies. In 1916, the main conclusion was that, contrary to the common impression, the Canadian act had not been administered as a compulsory measure imposing penalties for violations by strikes or lockouts. Again, contrary to a favorable opinion of its effectiveness, the facts showed that it had not prevented strikes, notably in the very industry for which it was designed, coal mining. The implication was that the United States would not wisely adopt a compulsory measure of the kind which the Canadian law on its face appeared to be. The investigator inclined to favor, rather, a provision for continuous investigation by governmental bodies in the United States, so that the facts would be immediately available when strikes occurred.

Part of the evidence that such legislation was not practicable for the United States was the opposition of Canadian labor to it. Within the year in which the inquiry of 1916 was in progress, the Trades and Labor Congress, representing the largest group of trade unions in Canada, had passed a resolution calling for the repeal of the act. In view of the fact that the organizations to

which these Canadian trade unionists belong are the same unions which are found in the United States, the opposition of labor to the act was likely to be an obstacle in any effort to copy it here. Such an act, designed as it is to improve relations between employers and employes, must have the co-operation of both groups, or be capable of winning it, if it is to be successful in preventing strikes.

The outstanding fact in the present study is that the attitude of Canadian labor toward the act has had two phases and that the first phase, which was the period of opposition, was very nearly over when our first study was made in 1916. During the later years of the World War and since, Canadian labor has vigorously supported the act and urged its extension to other industries. Mr. Selekman's analysis of the reasons for this change of attitude is in itself an important contribution to the study of factors which enable a government successfully to intervene as a conciliator in industrial disputes. It is true today, as was brought out in our earlier report, that conciliation is the dominant feature of the administration of the law. It is the interpretation given to the law by the method and spirit of its administration which has won the support of labor. Labor opposed the compulsory features of the act, which seemed to be in the direction of prohibition of strikes, in the actual wording of the law. But in its operation men have not been punished for striking, and compulsion is not threatened to prevent their doing so; instead of threatening penalties, the Canadian Department of Labour has used the act as a means for bringing employers and employes together for conferences under the auspices of government, to enable them to lessen or to settle their differ-

ences. Administered in this way, the law has had for some time the adherence of both groups, despite their criticism of certain details.

Although the law is called the Industrial Disputes *Investigation* Act, and its theory has been that if the facts could be made known public opinion would stimulate a reasonable attitude in both groups, as a matter of fact investigation for the enlightenment of public opinion has not accompanied the administration of the act. Representatives of the government have sought, as already noted, to bring employers and employes together. They have believed that publicity would jeopardize the settling of differences. What the act has done has been to impose an obligation not to strike until this method of negotiation and conference can be tried. The act, therefore, is an experiment in conciliation rather than a trial of the method of current investigation and publicity by governmental bureaus.

Opinion of all sorts of people in Canada appears to be heartily in favor of this experiment in conciliation. If the United States would profit by Canadian experience, we would do well not to copy the act as it stands on the statute books, nor to think of it as legislation to prohibit strikes; but to look to the conciliatory spirit of its administration. The facts of Canadian experience seem to show that in the United States federal and state governments could wisely develop further their machinery for mediation and conciliation by providing for official representation of employers and employes for joint conference in specific disputes. At present, our federal Department of Labor and some state departments have conciliation bureaus which offer their services as mediators in disputes. If the Canadian law is

to be copied here, the next step would be to invite employers and employes to name representatives who would meet, under the auspices of government, in joint conferences to arrive at just settlements.

It would seem that conditions in the two countries are similar enough to justify our regarding the experience of eighteen years in Canada as significant for the United States.

Mr. Selekman submitted this study to Columbia University in partial fulfilment of the requirements for the degree of Ph.D. He has had the benefit, therefore, of advice from members of the Faculty of Political Science, especially Professor Samuel McCune Lindsay, in whose seminar in social legislation the thesis was submitted, and Professor Henry R. Seager. We in the Foundation greatly appreciate their contributions to the study.

MARY VAN KLEECK
Director, Department of Industrial Studies

SYNOPSIS

CHAPTER I.—INDUSTRIAL DISPUTES AND THE CANADIAN ACT

In the effort to find a satisfactory method in the United States for preventing strikes on railroads and street railway systems, in public utility industries and in coal mines, the Industrial Disputes Investigation Act of Canada, 1907 (referred to in this volume as the Industrial Disputes Act or Disputes Act) has been repeatedly pointed to as a model. Difference of opinion about its effectiveness has, however, led to a number of studies into its operation, five of them having been published between 1907 and 1918. A new study seems desirable for the following reasons: (1) Eight years have elapsed since the last published investigation. (2) The act was, perhaps, put to its most severe test during the war and post-war period. (3) A review is timely now because of the efforts made in Canada to salvage the act after it had been declared *ultra vires*, or unconstitutional, by the Judicial Committee of the Privy Council in January, 1925, on the ground that it infringed on the rights of provincial legislatures. (4) Since 1918 Canadian labor has evinced strong and consistent approval of the act—an approval sharply contrasted with its generally critical attitude before 1918, as well as with the opposition of organized labor in the United States toward legislation which in any way interferes with the right to call strikes.

The scope of this study is indicated by the following questions: (1) Has the Disputes Act prevented strikes in the industries coming under its provisions? (2) What suggestions do the working methods of boards of conciliation and investigation established under the act hold for the technique of mediation and conciliation, investigation and arbitration? (3) What factors explain the changes in the attitude of Canadian labor toward the act? (4) What administrative practices has the Canadian Department of Labour developed and emphasized in seeking to avert strikes and lockouts? (5) What light does Canadian experience throw on the possibilities of government intervention in industrial disputes in the United States?

Throughout this report in the text and in the statistical

tables the general term "public utility" is used to cover all industries embraced within the scope of the act, such as coal mines and steam railroads, because they are vital to the public interest, although in a strict definition of public utilities they would not be included.

CHAPTER II.—PROVISIONS OF THE CANADIAN ACT

The Disputes Act, which became a law on March 22, 1907, prohibits under penalty the declaration of a strike or lockout in public utility industries, and in mines, until a report on the dispute has been made by a board of conciliation and investigation. The general administration of the act is in the hands of the Minister of Labour, but the details are assigned to an official called the Registrar of Boards of Conciliation and Investigation, who is also Deputy Minister of Labour. The method of applying for boards is described. Each board consists of three members; one is appointed on the recommendation of the employer, and one on the recommendation of the employes. The third is appointed on the recommendation of the two so chosen. If the first two fail to agree, or if either employer or employes fail to recommend a member, the Minister of Labour is empowered to name him. Stipulated fees are paid members of boards. Boards are given extensive power to summon witnesses, administer oaths, compel submission of evidence and inspect premises. Reports made by boards are sent to the Minister of Labour and to each of the parties in dispute.

Amendments to the act passed in 1910, 1918, 1920 and 1925 are briefly summarized. An amendment passed in June, 1925 aimed to meet the constitutional difficulties raised by the decision of the Judicial Committee of the Privy Council earlier in the year by limiting the scope of the act to industries coming within the jurisdiction of the dominion government as defined by the British North America Act. The history of legislation for the adjustment of industrial disputes prior to the Disputes Act is outlined in this chapter. By providing for an interlude between the notice that a strike may be called and its actual occurrence, three objectives are sought by the sponsors of the law: (1) to compel employers and employes to meet and confer under the auspices of representatives of the community; (2) to give representatives of the community an opportunity to reconcile the differences between employers and employes

and thus bring about an amicable settlement; and (3) if conciliatory efforts fail, to furnish to the community through investigation the facts necessary to enable it to bring pressure to bear for a just settlement.

CHAPTER III.—THE OPERATION OF THE ACT

Statistics of the Canadian Department of Labour concerning the operation of the act for the period March 22, 1907 to March 31, 1925 are tabulated and analyzed. During these eighteen years 640 applications were made for boards of conciliation and investigation; 536 cases were handled under the act; 421 boards were actually constituted; and well over half of the reports rendered by the boards were unanimous. Of the total of 536 disputes handled under the act, 473 occurred in public utility industries. In 429, or 91 per cent, of these cases a strike was averted or ended; in only 44, or 9 per cent, was a strike not averted or ended. Of 23 disputes in war industries referred to boards during the two and one-half years in which the act was extended to cover this group of industries, 21 were settled and in only two cases did boards fail to avert strikes.

These figures, however, relate only to disputes in which the machinery of the act was invoked. During the same period there occurred in public utilities 425 strikes in which the act was completely ignored. Furthermore, in 47 of the disputes in which applications were made for boards, strikes occurred in violation of the act. It is difficult to say to what extent the Disputes Act has prevented strikes on railroads, for there have been few serious strikes on Canadian railroads either before or after the act. The railroad brotherhoods are conservative labor unions and extremely reluctant to use the strike weapon. Such strikes as have taken place on Canadian railroads and in other branches of transportation have been called largely by members of semi-skilled and unskilled crafts, such as freight handlers, teamsters and expressmen. On the other hand, the existence of the act has without doubt helped at times to prevent strikes of railway employes in Canada. When the railroad companies of Canada proposed wage reductions in 1922, in conformity with those introduced by the railroads in the United States, Canadian shopmen did not strike as did those in this country. Instead they applied for boards of conciliation and investigation, and the decisions of these

boards were used as a basis for settlement between employes and management.

Coal mining shows the largest proportion of working days lost through strikes. Thus during the period 1907 to 1924, disputes in coal mines were responsible on the average each year for a time loss of 40.7 per cent of all working days lost through all strikes. This proportion is considerably larger than that lost in the period before the act, 1901 to 1907, when it was 26.4 per cent. Since a strike in coal mining gave rise to the Disputes Act and one of its primary purposes was to prevent the recurrence of such strikes, the question is naturally asked why it has proved ineffective in this basic industry. Only a thoroughgoing study of industrial relations in the coal industry of Canada would reveal all the factors. But the most serious mining strikes are briefly reviewed to indicate some of the causes underlying them. First, during the early history of the act, strikes accompanied the campaigns carried on by the United Mine Workers of America to organize the miners of Canada. The issue of union recognition is one not easily settled by the machinery of a law like the Disputes Act. Second, the industrial dislocation created by the World War affected the coal industry vitally and caused discontent among the workers. Organizations more radical in their philosophy than the United Mine Workers, namely, the Communist party and the One Big Union, made their appeal to the workers. A three-cornered fight for the allegiance of the miners resulted.

These factors operated in other industries too. But in coal mining their influence was especially marked because of the peculiar economic conditions surrounding the coal industry of Canada. The industrial area of Canada, located in the central part of the Dominion, is nearer the coal regions of Pennsylvania in the United States than to those of Nova Scotia or British Columbia in Canada. Consequently transportation costs are higher from Canadian mines than from mines in the United States. For this reason, Canada, although having one-sixth of all the coal in the world, imports three-fifths of all the coal she consumes. Irregularity of employment prevails in the coal industry of Canada as it does in the United States. Canadian operators have contended that competition from the United States forces them to resist wage increases and at times even to reduce wages. The miners, on the other hand, pointing to a general rise in cost of living during the history of the act, have demanded

wage increases and have struck rather than accept wage decreases. The question is raised whether, in view of this fundamental economic problem of the industry, it is fair to regard the recurrent strikes in coal mining in Canada as evidence of failure of the Disputes Act.

CHAPTER IV.—THE ADMINISTRATION OF THE ACT

Boards of conciliation and investigation are enjoined by the law to bring about settlements, and from the very outset they have generally approached their task as mediators and conciliators. They have heard the cases presented to them not as judges called upon to render decisions, nor as investigators to discover the relevant facts for the education of the community, but as peacemakers called upon to create a friendly and informal atmosphere which will help to bring about amicable settlements. A number of cases are cited to illustrate the procedure of boards.

The emphasis given to conciliation by the Department of Labour and by boards of conciliation and investigation has inevitably resulted in minimizing the clauses of the act which impose penalties for declaring strikes or lockouts prior to the submission of disputes. Officials in the Department of Labour have consistently refused to undertake prosecutions for violations of the law. Thus, while 472 punishable violations of the law occurred from 1907 to 1925, only 16 appear to have come before the courts, none of them at the instigation of the government. Little publicity is given to the findings of boards, in spite of the fact that one of the main purposes of the act was to give an opportunity to the community to exercise a restraining influence on employers and employes before a strike or lockout was actually declared. The boards themselves, in order to expedite amicable settlements, have discouraged publicity, some of them even excluding newspaper men from hearings.

CHAPTER V.—THE BASIS OF BOARD DECISIONS

No code of industrial principles has been laid down or developed to govern decisions of boards. Decisions made by other boards in similar cases are seldom referred to. Indeed, some boards have freely rejected arguments accepted by others as a basis for decisions in similar disputes. Individual boards have, however, used certain principles in arriving at decisions upon the issues presented to them.

A number of decisions are abstracted to illustrate these principles.

CHAPTER VI.—CANADIAN LABOR AND THE ACT: PERIOD OF DISAPPROVAL

The importance of co-operation of employers and employes in the effective administration of a law like the Disputes Act is emphasized. When the law was first passed, organized labor in Canada was in favor of the act, but soon grew critical. The period 1907 to 1918 may on the whole be described as one in which labor was hostile to it. The discussions and resolutions with regard to the operation of the act at annual conventions of the Trades and Labor Congress are summarized.

CHAPTER VII.—CANADIAN LABOR AND THE ACT: PERIOD OF APPROVAL

Beginning with 1918, labor was on the whole friendly to the act. Amendments were still sought by the Trades and Labor Congress, but they were aimed at provisions which labor had come to regard as defects of detail in the law, rather than at its general operation and administration. In this chapter, as in the previous one, the annual discussions and resolutions of the Trades and Labor Congress regarding the act are summarized.

CHAPTER VIII.—CRITICISMS AND FACTS CONCERNING THE ADMINISTRATION OF THE ACT

In this chapter the complaints of labor concerning the administration of the act made prior to 1918 are tested by the facts. The complaints were in the main twofold. First, it was impossible in most cases for the representatives of employers and employes to agree upon a suitable person as chairman, and therefore the selection of this official devolved upon the Minister of Labour. His appointees, in the opinion of labor officials, were inclined to favor employers; and since the chairman had the deciding vote, the boards were, so to speak, "loaded against labor" from the beginning. Second, too much time elapsed both in establishing boards and in submitting reports, with the result that employers were given ample time to prepare for the emergency of a strike, or employes, if dissatisfied with board awards, faced the necessity of striking at an unpropitious time. The conclusion is reached that the

facts in the operation of the act on these points do not show any striking changes in the period after 1918, when labor was friendly to the act, compared with the period prior to that year, when labor was critical.

CHAPTER IX.—CANADIAN EMPLOYERS AND THE ACT

Canadian employers may be said to be favorably disposed toward the Disputes Act. But their attitude is not so enthusiastic as is that of Canadian labor at present. Three main criticisms are voiced by them: first, there is opportunity for advantage to labor in the power of the Minister of Labour to appoint the personnel of boards; second, there is a want of finality about the act, because employes are free to renew demands and apply for a board directly after an award has been made and accepted; and third, an amendment passed in 1925 has put an unfair burden upon management when facing the necessity of immediate reductions in wages. These criticisms are, in the main, based on hypothetical considerations. There is no direct charge, for instance, that ministers of labor have been partial since 1918 in the appointment of chairmen of boards, but only the fear that when they happen to be former trade-union officials they may appoint men sympathetic with labor. The facts, moreover, do not seem to justify this fear. Similarly, a period of a year or two has elapsed in most instances after a board has sat in a dispute before employes have applied for a board again. The amendment passed in 1925 was merely intended to clarify the original intent of the law and to correct a technical defect.

The specific reasons offered by employers in explanation of their attitude toward the Disputes Act do not, on the whole, seem to find marked substantiation in the facts. More fundamental causes have to be looked for.

CHAPTER X.—THE INFLUENCE OF ECONOMIC FACTORS ON THE ATTITUDES OF EMPLOYES AND EMPLOYERS

Consideration is given in this chapter to movements in prices and wages, and to fluctuations in business conditions and their possible effect on the varying policies adopted by organized labor and employers toward the Disputes Act. We find that, while both wages and cost of living moved upward until 1920, wages lagged behind living costs. This lag, with the resultant downward trend of real wages, was

probably a large factor in creating a critical attitude toward the act on the part of labor prior to 1918. It helps to explain especially the complaint with regard to delays in the consideration of disputes under the act, for during this period trade unions repeatedly sought increases to help their members overtake advancing living costs, and they naturally chafed at the delays permitted by the machinery of the act. Employers, in turn, became critical of the act during the deflation period beginning in the summer of 1920, when prices fell more sharply than wage rates, for then they found the law an obstacle in their efforts to reduce wages as promptly as possible.

Analysis of the changes of opinion of labor groups with regard to the law, coupled with a study of fluctuations in business conditions in Canada, suggests that ups and downs in prosperity change the relative power which employers and employes bring to the process of negotiating over wages as well as hours of work, union recognition and other issues arising between management and men. In general, it is found that when conditions were prosperous Canadian labor was hostile, apparently desiring to take advantage of the active demand for labor which prevailed, without any interference by the machinery of the act. When business was depressed, on the other hand, labor was generally favorable, apparently satisfied at such times to use the machinery of the act as a means of preventing reductions in wages sought by employers.

Trends in business conditions do not, however, explain why the change in attitude of labor from hostility to friendliness occurred in 1918. The recession following the armistice in 1918 was a slight one. It soon gave way to a period of revival and prosperity continuing through 1919 to its peak in the summer of 1920, during which trade unions made tremendous gains in membership. But in spite of this prosperity and comparative power, labor continued its approval of the act and, in fact, asked for amendments which would broaden its scope to include industries other than public utilities.

CHAPTER XI.—OTHER FACTORS DETERMINING THE ATTITUDE OF LABOR SINCE 1918

The forces which came into operation in 1918 to counteract the influence of business conditions on labor's policy toward the act are analyzed. In that year the government,

as a means of enlisting the full support of Canadian wage-earners in the prosecution of the war, accorded official recognition and endorsement to the international[1] labor movement of Canada, as well as to the standards which it had sought to establish in industry. In exchange, labor agreed not to call strikes and to co-operate in securing maximum production from all war industries. As a result of this rapprochement, a number of amendments were enacted, beginning with 1918, to remedy certain defects which labor had found in the operation of the act, and former trade-union officials were appointed to the Ministry of Labour. In addition, trade-union officials had found that the machinery of the act helped weak unions, especially during the war, when the act was extended to include war industries, to secure increases for their members without resorting to strikes. Again, internal strife caused by radical unions, like the One Big Union, divided the strength of the Canadian labor movement. In addition, this factionalism led to a continuation of the rapprochement reached between the international labor movement and government in 1918 for war purposes, this time to stem the influence of radical trade unions. With the latter part of 1920 came, as already mentioned, a period of rapidly falling prices, unemployment and loss in trade-union membership—a period when labor was put on the defensive to conserve the gains it had made during the war. All these factors have made it seem desirable since 1918 for labor to utilize the Disputes Act rather than to wield the strike weapon as a means of getting desired results.

CHAPTER XII.—THE CONSTITUTIONALITY OF THE ACT

The framework of the Canadian government is outlined in order to make clearer the constitutional questions which arose in the various court decisions with regard to the act. The decisions are analyzed. The Judicial Committee of the Privy Council, the court of last resort, based its opinion that the act was *ultra vires* on the ground that it infringed on the powers exclusively conferred upon provincial parliaments by Section 92 of the British North America Act, to deal with municipal institutions and matters pertaining to property and civil rights. Disappointment was expressed

[1] The term "international" is used because the jurisdiction of these unions extends over Canada and the United States.

everywhere in Canada at this decision. The efforts made both by the dominion government and by the provincial governments to salvage the act and to re-establish it on a constitutional basis are summarized.

CHAPTER XIII.—OTHER AGENCIES FOR ADJUSTMENT OF INDUSTRIAL DISPUTES IN CANADA

The Disputes Act is not the only measure used by the Canadian government for the adjustment of industrial disputes. This chapter contains a description of other agencies established for this purpose. Mediators and royal commissions have been continually used by the government since the organization of the Department of Labour. During the World War a number of special agencies were established to handle unusual emergencies. One of these, the Canadian Railway Board of Adjustment No. 1, a joint board of representatives of the railroad companies and railroad brotherhoods, has continued with marked success to the present day. In general, the Canadian government has, in administering these agencies, as in the Disputes Act, followed a procedure of conciliation.

CHAPTER XIV.—SIGNIFICANCE OF CANADIAN EXPERIENCE FOR THE UNITED STATES

In this chapter emphasis is placed upon the lessons which we in the United States can learn from Canada's long experience with the Disputes Act. The record in Canada would seem to point to conciliation as an excellent method of government intervention in industrial disputes. The chief value of conciliation seems to lie in the fact that it enables those intervening in an industrial dispute to take a realistic view of the situation at hand. Not called upon to make a final decision on the basis of abstract justice, conciliators can seek in each controversy that solution which will best resolve the conflict under consideration. Moreover, conciliation places upon the shoulders of employers and employes the responsibility for arriving at an amicable settlement—a procedure sound for two reasons. First, whatever settlement is finally made must be translated into everyday practice by the employers and employes involved. Second, it puts the actual details of working out the settlement upon those most familiar with the technical aspects of the industry in which the dispute has arisen.

Canadian experience throws light on the relative merits

of a separate board for each dispute as compared with a permanent board to hear all disputes. The procedure of appointing a separate board for each dispute, as is the practice under the Disputes Act, possesses two advantages. First, it avoids the risk of suspicion and antagonism so often incurred where the personnel is permanent. In the second place, it makes possible the development of a panel of men who have distinguished themselves as successful conciliators. In Canada individuals who have succeeded in effecting settlements satisfactory to all parties in dispute have found themselves invariably called upon again and again to act as members of boards.

The role of "public opinion" in preventing strikes and lockouts is discussed from the point of view of Canadian experience, as well as the questions raised with regard to the establishment of an "industrial code." Stability of industry is stressed as a prerequisite to peaceful industrial relationships. On Canadian railroads, where conditions are fairly stabilized, the machinery of the Disputes Act, when necessary to employ it, with its procedure of conciliation, has worked well. In Canadian coal mines, where instability and chronic irregularity of employment prevail, it has failed. Finally, Canadian experience demonstrates the futility of compulsion as compared with conference and negotiation, under government auspices, between management and men.

INTRODUCTION

THE scope of this investigation, though stated more in detail in Chapter I, may be briefly summarized here as follows: Granted the vital stake of the community in the continuous operation of public utility industries, what can we in the United States, confronted periodically with actual or threatened strikes in these industries, learn as to the best methods of government intervention in industrial disputes from the relatively long experience of Canada with the statute known as the Industrial Disputes Investigation Act, 1907?[1] This act has been on the statute books of our dominion neighbor since March 22, 1907. Thus while we have experimented with various laws—Congress alone having enacted, beginning with 1913, four different statutes to deal with industrial disputes on railroads—the Dominion of Canada has since 1907 consistently applied the Disputes Act to railroads, coal mines, street railways, shipping, power and other basic industries. The methods evolved and the results obtained in so long an experience should obviously be significant for the United States.

The data for this investigation have been drawn, in the main, from documentary sources, both published and unpublished, supplemented by interviews with government officials, labor leaders, employers and others who have had considerable experience in the

[1] The full title of the act is "The Industrial Disputes Investigation Act, 1907," but for purposes of brevity the title "Industrial Disputes Act" or "Disputes Act" will be used in this volume.

administration of the act. The published documents consulted include the monthly issues of the Labour Gazette, annual as well as special reports of the Department of Labour, reports of the Registrar of Boards of Conciliation and Investigation, the annual proceedings of the conventions of the Trades and Labor Congress of Canada, publications of various employers' associations, reports of royal commissions, parliamentary debates and reports of other investigations of the act.[1] In addition, the files of the Department of Labour at Ottawa were thoroughly examined for pertinent information.

Fortunately, the reports on the operation of the act are unusually detailed and complete. The Honourable W. L. Mackenzie King was its author and it was enacted upon his recommendation when he was Deputy Minister of Labour. He has naturally, therefore, always been deeply interested in it. And inasmuch as Mr. King was for some time responsible for the annual reports on its operation, he made them unusually complete—a precedent followed by those who have succeeded him in the Ministry of Labour. Moreover, not only are the records on the act itself adequate, but the reports on other phases of industrial relations published by the Canadian government are equally detailed and complete. Since 1901, for instance, the Department of Labour has published at intervals a Report on Strikes and Lockouts in Canada, by years, in terms of number of strikes and lockouts, employes affected, working days lost and issues involved. The Report on Labour

[1] Appendix B gives a brief summary of conclusions reached in previous investigations of the act. Appendix D gives in detail the various sources used in the present study.

Organization in Canada, published annually, is not only a valuable statistical compendium of the membership of various unions, their growth or decrease as compared with previous years, but also a source of valuable historical material on social and economic forces which affect the growth and programs of various unions. The development of the One Big Union in western Canada in 1919, the Winnipeg strike of that year, the factional disputes among the various groups of miners in Nova Scotia during the past few years, to cite only a few examples, are all recorded in the pages of these reports objectively and in detail.

Three visits were made to Canada by the writer to study the operation of the act. During the first one, in the winter of 1916–1917, government officials, trade-union leaders, employers and men who had served on boards of conciliation and investigation were interviewed in Ottawa and Montreal. Inasmuch as Ottawa is the Canadian capital, representatives of all groups could be easily seen there. Government officials courteously threw open the files of the Department of Labour bearing upon the operation of the Disputes Act, and correspondence, memoranda and other material which do not ordinarily appear in published reports were thoroughly examined. The results of this first investigation, as already mentioned, were embodied in a brief report issued by the Russell Sage Foundation in April, 1917, entitled Industrial Disputes and the Canadian Act, Facts about Nine Years' Experience with Compulsory Investigation in Canada.

In September, 1919 the writer again visited Canada, this time to attend the National Industrial Conference of Canada, held at Ottawa. The conference was

called by the Canadian government as a result of the recommendations of a Royal Commission on Industrial Relations, to bring together representatives of employers and employes of the whole Dominion for the purpose of working out some fundamental standards which, if accepted, might help prevent industrial unrest. An unusual opportunity was afforded on this occasion to get an insight into facts bearing not only on the Disputes Act, but on the entire subject of industrial relations in Canada. For here were assembled leading officials of the various unions, leading employers and important government officials from every province of Canada, discussing for almost a week the entire range of employer-employe relationships including such subjects as labor legislation, hours of work, wage determination and collective bargaining.

A third trip to Canada was made in September, 1920 to attend the annual convention of the Trades and Labor Congress, held that year at Windsor, Ontario. All trade-union officials who had played a role of any significance in the operation of the Disputes Act were interviewed. A number of them had acted repeatedly on boards of conciliation and investigation established under the act. Their experience afforded an excellent insight into the way in which boards operated. Following this convention, the records of the Department of Labour were again examined in Ottawa, pertinent information drawn off and government officials, employers and labor leaders interviewed.

Since 1920 various Canadians coming to this country have been consulted from time to time, especially those in close touch with the operation of the act. Opportunities for such interviews are by no means infrequent.

Officials of Canadian trade unions, for instance, come regularly as delegates to the conventions of the American Federation of Labor. Representatives of government departments, as well as of employer and labor groups, come to the meetings of the various learned societies held during the Christmas holidays. Finally, the study has been submitted to government officials, labor leaders and employers, whose criticisms have helped to make it both more accurate and more complete.

CHAPTER I

INDUSTRIAL DISPUTES AND THE CANADIAN ACT

HOW can continuous service in public utility industries be secured? Is it possible to discover a method in the United States for the adjustment of industrial disputes on railroads, on municipal traction systems, in coal mines and other basic industries, which will at once safeguard the interests of investors, management and wage-earners and insure uninterrupted service to the general public?

So vital is the concern of the entire community in the steady and efficient operation of its public utilities that legislators, government officials, labor leaders, business executives and prominent citizens throughout the country have for years attempted to find means of averting interruption of service through strikes or lockouts. Indeed, in the United States the right of wage-earners to strike in public utility industries is being challenged by a considerable section of the community.

This challenge, which has become increasingly articulate, makes an analysis of the Canadian Industrial Disputes Act especially timely and desirable. For the Canadian act, providing, as it does, for the compulsory postponement of strikes and lockouts in public utilities[1] and mines, until an investigation by an official board is completed, has been cited, by students of

[1] In the text and statistical tables of this report the term "public utilities" is used to include all the industries named in the act.

the subject in the United States more often probably than any other legislation, as a model method for averting strikes. In 1915 the state of Colorado passed a law directly modeled upon the Canadian act. The Colorado statute prohibits strikes and lockouts in all industries employing more than 10 workers until an investigation has been made by the Industrial Commission established under the law. In 1916 President Wilson, confronted with a threatened strike of the railroad brotherhoods, submitted to Congress a bill, also modeled upon the Canadian act in that it aimed to prohibit strikes on railroads until after a commission had submitted the report of its investigation. After the strike which occurred on the municipal traction system in New York City in 1917, the Chairman of the Public Service Commission, Oscar S. Straus, submitted a bill to the state legislature, once more based upon the principle embodied in the Canadian act of prohibiting a strike until the dispute had been investigated and an attempt made to avert it. In 1924, again, the Chairman of the Railroad Labor Board proposed an amendment to the Transportation Act of 1920, which sought to prohibit a strike or a lockout until investigation had been completed by the Board.

Strikes in Public Utilities in United States

The laws above referred to, whether proposed or enacted, are, as already indicated, the products of a rapidly growing opposition to strikes on railroads and traction systems, in coal mines and like industries. It is not difficult to understand the reasons behind this opposition. The advanced stage of industrial development attained by the United States has brought with it

such minute division of labor and services that life has become communal and interdependent. Continuous operation of railroads and street cars is essential to the very existence of our large urban communities. Coal is our main source of power. Coal mining is a basic industry upon which practically all of our industrial life depends; a serious coal shortage causes widespread disaster.

Consequently, every strike in any of these industries, whether only threatened or actually carried out, has elicited strong condemnation as well as various efforts to insure for the community some means of safety against interruptions in the future. Typical of such condemnation is a statement made by the Board of Arbitration appointed in 1912 to avert a strike threatened by the locomotive engineers on 52 railroads in the eastern part of the country:

> It is an intolerable situation when any group of men, whether employees or employers, have the power to decide that a great section of the country, as populous as all of France, shall undergo great loss of life, unspeakable suffering, and loss of property beyond power of description through stoppage of a necessary public service.[1]

These words, though uttered in 1912, would undoubtedly win the hearty endorsement of a considerable section of influential public opinion today as they did then. They were directed against threatened strikes on railroads in particular. For years there had been a general conviction that such strikes, above all, were

[1] Fisher, Clyde Olin, The Use of Federal Power in Settlement of Railway Labor Disputes. U. S. Bureau of Labor Statistics. Bulletin No. 303, Washington, 1922, p. 46. Mr. Fisher has quoted from the 1912 Report of the Board of Arbitration between the Eastern Railroads and the Brotherhood of Locomotive Firemen and Enginemen.

dangerous to the public welfare. In addition, their full implications had been brought forcibly to public notice by 1912 through the new strategy of the "concerted movements" begun by the railroad brotherhoods in 1907. Before 1907 the usual procedure had been for the members of one brotherhood to present their demands for changes in working conditions to the management of the railroad on which they happened to be working. Under the new program, several railroad brotherhoods usually combined to present their demands as a unit to a number of railroads in a whole section of the country. This strategy enabled the men so to mobilize their power that they could threaten strikes affecting a large section of, if not the entire country.

Indeed, a threat to tie up the whole nation was actually made in 1916, when for the first time the four great railroad brotherhoods[1] threatened a concerted nation-wide strike for the basic eight-hour day. The strike was averted by the passage of the Adamson Law, which granted the workers by legislation that which they had been ready to secure by their economic power; and the nation breathed more freely. But the threat to resort to a strike was condemned by the press throughout the country, and both President Wilson and Congress were severely criticized for yielding to what was interpreted as "coercion" on the part of the brotherhood officials.

The condemnation aroused by the strike of the railroad shopmen in 1922 is still fresh in the public mind.

[1] These brotherhoods are: the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen and the Order of Railway Conductors.

President Harding rebuked the strikers and their leaders in open proclamations, and to prevent the occurrence of such a strike in the future he recommended to Congress transferring the functions of the Railroad Labor Board to a labor division of an enlarged interstate commerce commission, giving its decisions the force of law, and prohibiting railroad strikes.[1]

Interruptions of service on municipal traction systems have been similarly condemned. A dramatic instance of such an interruption occurred in 1917, when the street-car, elevated and subway employes of New York City struck for union recognition and improvements in working conditions. For days commerce and industry in the largest city of the country were paralyzed. The exigency was met once again by an almost immediate demand for legislation which would prohibit strikes in public utilities. At the suggestion of a prominent citizen the Merchants' Association of New York drafted a bill, later introduced in the state legislature, which prohibited the withdrawal or discharge of any employe, except on ninety days' notice, during the term of a contract which had to be signed upon entry into the service of a public utility industry. In justification of his measure, the author of the bill said:

> . . . in the case of every corporation operating a public utility there is a third party, the public, whose interest is paramount. Under present-day conditions, the uninterrupted operation of public utilities has become indispensable. Their complete cessation would paralyze the life of the nation or of

[1] Seager, Henry R., "Company Unions vs. Trade Unions," *in* American Economic Review, Vol. XIII, p. 3, March, 1923. Presidential address delivered at the thirty-fifth annual meeting of the American Economic Association.

the states or municipalities involved. No group of citizens should be left free thus to make war on the community, and no legislation should be regarded as complete which does not eliminate this menace to the public peace.[1]

The opinion of public men has been almost equally strong, within recent years, against strikes in coal mining. Beginning with November, 1919, the nation has experienced four major strikes in this basic industry. The bituminous miners struck in 1919 and 1922, the anthracite miners in 1923 and 1925. In 1919 the strikers were accused of violating the Lever Act,[2] and a federal court actually enjoined the leaders of the union from putting the strike order into effect. The end of the strike brought an even more unmistakable indication of public sentiment in the establishment of the Kansas Industrial Court with powers of compulsory arbitration in coal and certain other vital industries. Both operators and miners in the anthracite mines in 1923 and 1925 were condemned by the press of the country for their alleged indifference to public welfare.

Difference of Opinion about Effectiveness of the Canadian Act

In seeking a means to avert stoppages in these vital industries, both state legislatures and the federal government have proposed and sometimes enacted laws which limit the right to strike or lockout in public utilities. The Industrial Disputes Act of Canada, as

[1] Towne, H. R., "The Canadian Disputes Act," *in* Survey, Vol. XXXVII, p. 758, March 31, 1917.

[2] The Lever Act, passed by Congress in 1917, provided, among other things, penalties for interfering with the continuous production of food and fuel during the war.

already indicated, has figured prominently as a prototype in the discussions upon such legislation. Yet a sharp difference of opinion upon the merits of the Canadian act has existed in this country. Charles W. Eliot called it "the wisest and most successful labor legislation anywhere adopted." Samuel Gompers, on the other hand, expressing the official attitude of organized labor in the United States, frequently denounced it as reactionary and un-American and challenged its principles as a violation of the Thirteenth Amendment to the Constitution because they would impose involuntary servitude upon wage-earners.

This difference of opinion upon an act so frequently used as a model of its kind has naturally led to several investigations into its operation, and reports of five such investigations were published between 1907 and 1918.[1] A new study seems desirable now. For one thing, nine years have elapsed since the last investigation; and frequent strikes in coal mines in the United States during these years, the railway shopmen's strike in 1922 and the recent enactment of the Railroad Labor

[1] The studies are briefly summarized in Appendix B, page 344. In chronological order they are:

Clark, Victor S., The Canadian Industrial Disputes Investigation Act of 1907. U. S. Bureau of Labor, Bulletin No. 76, Washington, 1908.

—— Canadian Industrial Disputes Investigation Act of 1907. U. S. Bureau of Labor, Bulletin No. 86, Washington, 1910.

Askwith, Sir George, Report on the Industrial Disputes Investigation Act of Canada, 1907. H. M. Stationery Office, London, 1912. This study had no reference to issues in the United States. It was made for the British Board of Trade.

Squires, Benjamin M., Operation of the Industrial Disputes Investigation Act of Canada. U. S. Bureau of Labor Statistics, Bulletin No 233, Washington, 1918.

National Industrial Conference Board, Canadian Industrial Disputes Investigation Act. Research Report, No. 5, New York, 1918.

Act[1] (which establishes, in place of the United States Railroad Labor Board, new machinery for adjusting labor disputes on railroads) indicate how far we still are from having found a satisfactory method of adjusting industrial disputes in public utility industries. For another, the efficacy of the Disputes Act has been put to the severe test of both war and post-war experience. Did it prevent strikes when numerous war and post-war factors made for discontent among wage-earners? Again, a review of its operation is particularly timely now because of the recent efforts made to salvage the act after it was declared *ultra vires*, or unconstitutional, by the Judicial Committee of the Privy Council[2] in January, 1925, on the ground that it infringed on the rights of provincial legislatures. To meet this decision the dominion Parliament passed an amendment in June, 1925, which re-establishes the act by limiting it to

[1] This act, approved by President Coolidge on May 20, 1926, "provides the following methods for the adjustment of railroad labor disputes: (1) boards of adjustment which may be created by agreement between employers and employes on one or more railroads; (2) a permanent board of mediation to be appointed by the President; (3) temporary boards of arbitration which may be created by the parties concerned if they so agree; (4) an emergency investigation board which may be appointed by the President in case of threat of serious interruption of traffic. There is no suggestion of compulsory arbitration. . . . " (Monthly Labor Review, Vol. XXII, p. vii, June, 1926.)

This act was urged upon Congress by both railroad unions and companies. Its intent is in effect to place the responsibility for the peaceful negotiation of differences upon management and employes with a minimum of governmental intervention. The enactment of this law would seem to indicate a reaction from the former demand for legislation, which aimed specifically to outlaw strikes on railroads.

[2] The Judicial Committee of the Privy Council is the court of final resort for the British Empire and therefore for Canada. As such, it decides whether laws are "within" or "beyond" the powers of the particular government, dominion or provincial, enacting them. For a more detailed description of the judicial system of Canada, see page 269.

those industries over which the dominion government has jurisdiction. In the provinces, a movement is on foot to confer upon the dominion government the power to apply the act even to those industries which come strictly within provincial jurisdiction. These attempts to continue the act in operation indicate what a useful place it has won in the industrial policy of Canada—a usefulness which may hold lessons of general importance to all nations concerned with a similar problem.

A final and compelling reason for a new study of the act lies in the fact that since 1918 Canadian labor has evinced strong and consistent approval of the act—an approval sharply contrasted with its generally critical attitude before 1918. How complete this reversal has been may be gauged from the following: In 1916 organized labor asked for the repeal of the act; in 1925, as soon as the decision of the Judicial Committee of the Privy Council had been announced, it demanded an amendment to the British North America Act,[1] Canada's constitution, which would bring the Disputes Act within the powers of the dominion government. The investigations of the act referred to above were made prior to 1918. They revealed that, with few exceptions, organized labor was hostile toward the act. Thus, while former reports showed a similarity in the attitudes of labor in Canada and in the United States, a present investigation must take cognizance of the marked contrast which has since developed between the two countries. For in the United States organized

[1] The British North America Act, enacted by the British Parliament in 1867, embodies the constitution under which Canada is governed. For a more detailed description of the provisions of this act, see Chapter XII, The Constitutionality of the Act, page 267.

labor has consistently opposed and is still opposing legislation which restricts the right to call strikes, even if the restriction covers only a temporary period pending investigation. This contrast in the attitude of labor in the two countries becomes all the more striking from the fact that the labor movement of Canada is closely related to the labor movement of the United States.[1]

Scope of This Study

In view of these important new factors which have entered into the operation of the Disputes Act since the publication of former investigations, a new study should prove illuminating to us in the United States. Accordingly, the present study aims to answer the following questions: First, and of primary interest to the general public, has the Disputes Act prevented in Canada strikes in coal mines, on railroads and street-car systems, and in other public utility industries? Second, what suggestions do the working methods of boards of conciliation and investigation established under the act hold for the methods of mediation and conciliation, investigation and arbitration? Third, what factors explain the changes in the attitude of Canadian labor toward the act? The general public, in its immediate and overwhelming desire to find a legislative method for the peaceful adjustment of industrial disputes, frequently overlooks how important for the successful operation of such laws is the confidence of employes as well as of employers. Whether or not such confidence

[1] The organized wage-earners of Canada and the United States belong, in the main, either to the same railroad brotherhoods or to the same international unions affiliated with the American Federation of Labor. See page 255 and footnote, page 27.

is obtained is intimately tied up, as the present study will show, with the manner in which these laws are administered. Fourth, what administrative practices has the Canadian Department of Labour developed and emphasized in seeking to avert strikes and lock-outs? Fifth, what light does this whole record of Canadian experience throw on the possibilities of government intervention in industrial disputes in the United States?

CHAPTER II

PROVISIONS OF THE CANADIAN ACT

THE distinguishing provision of the Canadian Industrial Disputes Investigation Act, which became a law on March 22, 1907, makes it illegal to declare a strike or lockout in certain industries about to be defined until a report on the dispute has been made by a board of conciliation and investigation.[1] Employers and employes are required, according to Section 57 of this act, to give "at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours." If such intended changes result in a dispute, wages and hours may not be changed, nor a strike or lockout declared, until the dispute has been finally dealt with by a board and a copy of its report delivered to both the employers and employes involved through the Registrar, who is also the Deputy Minister of Labour.[2]

The penalty clauses of the act are found in Sections 58, 59 and 60. According to these sections, employers declaring a lockout in violation of the act are liable to a fine ranging from $100 to $1,000 for each day of its duration; and each employe so striking is liable to a fine ranging from $10 to $50 for each day of the strike. Penalties ranging from $50 to $1,000 may be also imposed on "any person who incites, encourages or aids" such lockouts or strikes. The findings of a board,

[1] 6–7 Edward VII, Chap. 20. An Act to Aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries Connected with Public Utilities. For a copy of the act with its amendments—1910, 1918, 1920 and 1925—see Appendix C, page 348.

[2] See pages 97 and 98 for detailed account of the functions of the Registrar.

however, are not mandatory, and once its report has been submitted to the parties involved, a strike or lockout may be declared.

INDUSTRIES WITHIN SCOPE OF THE ACT

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." The term "public utilities" is not defined in the act, but its scope may be gathered from the definition of the word "employer." According to the act,[1] " '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 . . . railways, whether operated by steam, electricity or other motive power, steamships, telegraph and telephone lines, gas, electric light, water and power works. . . . "[2]

[1] The act was extended by an order-in-council issued on March 23, 1916, under the authority of the War Measures Act, 1914, to cover war industries. This order, which continued in force until the signing of the armistice, provided that the Disputes Act "shall specifically apply in the case of any dispute between employers and any employees engaged in the construction, production, repairing, manufacture, transportation or delivery of ships, vessels, works, buildings, munitions, ordnance, guns, explosives and materials and supplies of every nature and description whatsoever, intended for the use of His Majesty's military or naval forces or militia, or for the forces of the nations allied with the United Kingdom in the present war,—if such dispute threatens to result in a strike or lockout." (Labour Gazette, Vol. XVI, p. 1059, March, 1916)

By the amendment passed in June, 1925 the scope of the act was restricted to industries subject to the regulation of the dominion government under the powers conferred upon it by the British North America Act. See page 55 of this study.

[2] 6–7 Edward VII. Chap. 20, Sec. 2. See Appendix C of this volume, page 348.

While the compulsory features of the act apply only to mines and public utilities, Section 63 provides that boards may be appointed in other industries, if agreed to in writing by both employers and employes. Upon notification of the decision of the Minister to refer the dispute to a board under the provisions of the act, if a strike or lockout is in existence the parties to the dispute must call it off.

Procedure for Applying for Boards of Conciliation and Investigation

The general administration of the act is in the hands of the Minister of Labour, who holds a seat in the cabinet of the dominion government; but the details of administration are assigned to the Registrar. An application for a board of conciliation and investigation may come either from employer or employes. It must be made in writing and accompanied by a statement which contains the following: (1) the parties to the dispute; (2) the nature and cause of the dispute; (3) an approximate estimate of the number of persons involved; (4) the result of the efforts made by the parties themselves to adjust the dispute; and (5) a declaration that, failing the adjustment of the dispute, necessary authority has been obtained to order a lockout or strike.

If more than one employer is involved in the dispute, the application for a board of conciliation and investigation must be signed by each employer; if more than one trade union is involved, by the accredited representative of each union. Officials of a union must file with their application a statement that they have negotiated with the employers and have failed to obtain a satisfactory settlement. The party wishing a board

appointed is to transmit a copy of his application to the other party involved. The second party is then required to prepare without delay a statement in reply and to transmit it by registered letter or by personal delivery to the Registrar and to the party applying for a board. The Minister of Labour then considers the request and decides whether a board shall be appointed. His decision is final. If satisfied that the provisions of the act apply to the dispute in question, he is to establish a board within fifteen days from the date on which the application is received.

Personnel and Power of Boards

A separate board is established for each dispute, and each board consists of three members appointed by the Minister of Labour. One of the members is appointed on the recommendation of the employer and one on the recommendation of the employes. The two so chosen may recommend the third member, who acts as chairman. Each party to the dispute must, within five days after being so requested, or within such extension as the Minister may grant, recommend the name of one person who is willing and ready to act as a member of the board. If either of the parties fails to make any recommendation within five days or such extension as the Minister may grant, the Minister himself appoints that member. The members so chosen may within five days after their appointment, or within such extension as the Minister may grant, recommend the name of one person who is willing and ready to act as chairman of the board. If they fail to do so, the Minister appoints him. As soon as possible after the full board has been appointed, the Registrar transmits to the parties in-

volved in the dispute the names of the members of the board. Each member of a board holds office from the time of his appointment until the report of the board is signed and transmitted to the Minister. Stipulated fees are paid members of boards.

The boards are given extensive power. They may summon witnesses, administer oaths and compel the submission of evidence. They may inspect all pertinent documents and books or papers. Information obtained from these sources is not to be made public unless a board thinks such a course desirable. With the consent of the Minister, competent experts may be employed to examine books and other documents. Other technicians may be engaged to clarify the issues before a board. Members of boards also have authority to visit in person, or through representatives, buildings, mines, ships, vessels, factories or other work places which relate to disputes referred to them. Parties to a dispute may be represented by counsel if they so desire.

How Reports Are Made

If the parties arrive at a settlement while the dispute is before a board, a memorandum of the settlement is to be drawn up by the board and signed by both sides. This memorandum is binding if the parties so agree. A copy of it is forwarded to the Minister of Labour with a report of the proceedings. But if the parties do not arrive at a settlement, the board is to make a full written report to the Minister, which is to include the procedure followed for the purpose of ascertaining the facts, the facts themselves and the recommendations of the board. A minority report may be made by any

dissenting member of the board. Copies of these reports are to be sent to the disputants.

In order to make the facts available to the public, copies of reports are to be sent free to any newspaper published in Canada which applies for them. Finally, the report of a board and any minority report are to be published without delay in the Labour Gazette, the monthly organ of the Department of Labour.

AMENDMENTS TO THE ACT

The Industrial Disputes Act has been amended four times by act of Parliament—in 1910, 1918, 1920 and 1925. None of these amendments touched the fundamental principle of the act, namely, that no strike or lockout may be declared until a report on the dispute has been submitted by a board of conciliation and investigation. They served to clarify certain sections of the law, to improve administrative machinery or to meet constitutional difficulties. Most of these amendments were passed in response to criticisms voiced by representatives of labor. Their significance, therefore, will appear later, in the discussion of the attitude of Canadian employes toward the Disputes Act.[1] At this point a brief description of their provisions will suffice.

The amendment passed in 1910[2] provided that oath of office could be administered to board members by any "person authorized to administer an oath or affirmation" rather than only by a justice of the peace (which had been the earlier requirement), that officials

[1] See Chapter VI, Canadian Labor and the Act: Period of Disapproval, page 147.

[2] 9–10 Edward VII. Chap. 29. An Act to Amend [Sections 13, 15, 16, 51 and 57 of] the Industrial Disputes Investigation Act, 1907. Assented to May 4, 1910. (This amendment is incorporated in Appendix C of this study.)

of trade unions could apply for a board in disputes affecting their constituents when employed in more than one province, that fees paid to board members were to be increased from $15 to $20 a day and that no proposed changes in wages or hours which had been protested and had become issues of a dispute could become effective until a board had investigated and reported upon the dispute.

In 1918 the act was again amended.[1] The relation of employer and employe in a given establishment was not to be changed by the occurrence of a strike or lockout, or by dismissal, when application had been made for a board within thirty days after the occurrence of the strike or lockout or the dismissal. The decision of the Minister of Labour concerning the appointment of a board was to be final, and any attempt to enjoin board proceedings by court action was prohibited. The term of office of members of a board was extended to include further sessions to be held when the Minister should deem it necessary to reconvene that board. The Minister was empowered to refer any additional matters to a board which he should consider essential to its satisfactory proceeding, to determine the form in which reports of boards should be published in the Labour Gazette, to demand from members of boards interpretation of any mooted points in their reports, to bring any dispute within the purview of the act when he deemed it expedient to the public interest, and to initiate such inquiries as in his opinion would promote industrial peace.

[1] 8–9 George V. Chap. 27. An Act to Amend [Sections 2, 6, 10, 22 and 29, and to add Sections 63A and 63B of] the Industrial Disputes Investigation Act, 1907. Assented to May 24, 1918. (This amendment is incorporated in Appendix C of this study.)

The act was further amended in 1920.[1] The definition of "employer" was amplified to embrace not only "any person, company or corporation employing ten or more persons," in specified industries, but "any number of such persons, companies or corporations acting together, or who in the opinion of the Minister have interests in common." Applications might be made by a combination of employers or employes if signed by all or by a majority of them. Copies of applications made by such combinations of employers or employes and the replies to these applications were to be sent to federations of trade unions or employers' associations where such were involved, or to the individual unions or individual employers concerned where such associations did not exist. A minimum compensation of $4.00 a day was to be paid to witnesses called during board proceedings. The relation of employer and employe existing between the disputants should remain unaltered until the board had made its report. The Minister of Labour was empowered to order inquiries upon his own discretion, not only in industries in which strikes or lockouts had occurred, but also in industries in which such cessations seemed to him to be imminent.

THE AMENDMENT OF 1925 TO INSURE CONSTITUTIONALITY OF THE ACT

With these changes, then, the Disputes Act continued in operation until January 20, 1925. On that date it was declared unconstitutional. The decision, as already indicated and as will be explained in de-

[1] 10–11 George V. Chap 29 An Act to Amend [Sections 2, 16, 20, 34, 57 and 63A of] the Industrial Disputes Investigation Act, 1907 Assented to June 16, 1920. (This amendment is incorporated in Appendix C of this study.)

tail later,[1] was based chiefly on the argument that the powers vested in the dominion government by the Disputes Act infringed on the right of the provincial governments to legislate with regard to municipal institutions, property and civil rights as defined by the British North America Act of 1867. The dominion Parliament was in session when this decision reached Canada, with the Liberal party, which had introduced the act in 1907, in power under the premiership of the Honourable W. L. Mackenzie King, the author of the act. A bill was thereupon introduced by the Minister of Labour to amend the Disputes Act, with the purpose of meeting the objections raised by the Judicial Committee of the Privy Council. This amendment became law on June 12, 1925. It does not eliminate any of the coercive features of the original act, but limits its scope to those industries the regulation of which comes "within the legislative authority of the Parliament of Canada."[2] The amending act enumerates specifically the industries to which it applies. They include navigation and shipping, whether inland or maritime, steamship lines, railways, canals, telegraphs and any other interprovincial industries, businesses operated by aliens, works within a province which may have been declared by the Parliament of Canada to be for the general advantage of Canada or of two or more provinces, and works directly incorporated by the dominion Parliament. In addition to these specific industries, the act includes any dispute not within the

[1] See Chapter XII, The Constitutionality of the Act, page 267.

[2] 15–16 George V. Chap. 14. An Act to Amend [Sections 15, 57 and 58, and to add Section 2A of] the Industrial Disputes Investigation Act, 1907. Assented to June 12, 1925. (This amendment is incorporated in Appendix C of this study.)

exclusive jurisdiction of any provincial parliament; and disputes which the Governor-General[1] may, because of a real or apprehended emergency, declare to be subject to the act.

Another provision in the amendment authorizes any province to declare disputes subject to the Disputes Act, although they may occur in industries the regulation of which comes within provincial jurisdiction under the British North America Act. How real is the desire to keep the act in operation with its original scope unchanged may be judged by the fact that the legislature of British Columbia passed on November 25, 1925 a bill "making the provisions of the Federal [dominion] Disputes Investigation Act applicable to industrial disputes otherwise within the exclusive legislative authority of the province."[2] Similar action has since been taken by other provinces.[3]

In addition, the amending bill of June, 1925 modified the act in three other ways. First, Section 15 of the act was amended to permit the establishment of a board in a case where an employer refused to confer

[1] The Governor-General is appointed by the Crown and is the titular head of the government of Canada. See page 268.

[2] Labour Gazette, Vol. XXV, p. 1162, December, 1925.

[3] A letter from H. H. Ward, Deputy Minister of Labour, indicates the status of these provincial bills as of June 24, 1926:

"Enabling legislation, as provided in Section 2A, paragraph (iv), of the Industrial Disputes Investigation Act, making the provisions of the federal statute applicable to disputes within exclusive provincial jurisdiction, has been passed by the Provinces of British Columbia, Saskatchewan, Manitoba, New Brunswick and Nova Scotia. A bill to the same effect introduced in the Ontario legislature was withdrawn on the second reading.

"In the case of the Province of Alberta, a Labour Disputes Act has been passed, following generally the lines of the Dominion Industrial Disputes Investigation Act and providing provincial machinery for dealing with industrial disputes within the exclusive jurisdiction of the province."

in regard to wages and working conditions with a union committee representing his employes. The second change specifically prohibited, under penalty, the introduction of any protested changes in wages or hours of work until the dispute has been disposed of by a board appointed under the act.[1] The third change placed the responsibility of applying for a board on the party "proposing the change in wages or in hours."[2]

Legislation Prior to the Disputes Act

The purpose and theory of the act emerge best from the history that lies behind it. Attempts of the dominion government of Canada to provide machinery for the adjustment of industrial disputes date back to 1886. In that year the government appointed a royal commission to inquire into "the practical operations of courts of arbitration and conciliation and the settlement of disputes between employers and employed and on the best mode of settling such disputes."[3] This commission in 1889 submitted a report which recommended a system of conciliation and voluntary arbitration modeled on the experience of Massachusetts and New York. But no action was taken by the dominion government until 1900, when the Conciliation Act of 1900 was passed. This act created the Department of Labour now in existence, with power to collect and

[1] A similar amendment was passed in 1910, with this important difference: no specific penalty was provided, in a technical sense, for making changes in wages or hours of work which had been protested. Until the amendment of 1925 only the act of striking or locking out was subject to penalty.

[2] These changes were all made as a result of complaints voiced by labor. See pages 174 ff.

[3] Mackintosh, Margaret, Government Intervention in Labour Disputes in Canada. p. 9. (Issued as a supplement to Labour Gazette, Vol. XXV, March, 1925.)

publish labor statistics. It also empowered the Minister of Labour to act as conciliator in industrial disputes. He was given authority "to inquire into the cause of any industrial dispute, to arrange a conference between the parties to the dispute, to appoint a conciliator or board of conciliation at the request of either employer or workmen, or to appoint an arbitrator on the application of both parties to the difference."[1]

During 1901 the trackmen of the Canadian Pacific Railway went on strike and stayed out about two and one-half months. As a result of this strike the Minister of Labour introduced in Parliament in 1902 a bill which provided for compulsory arbitration of industrial disputes on railroads.[2] This bill was not pressed and in its stead the Railway Labour Disputes Act was enacted in 1903. This law made no reference to compulsory arbitration but provided for the prevention and settlement of disputes between railway companies and employes by authorizing the Minister of Labour to appoint a committee of investigation and conciliation on the application of either party or at the request of a municipality concerned or of his own volition. If no settlement was effected by conciliation, the Minister had the power to refer the dispute to an arbitration board. This board could compel the attendance of witnesses, the production of documents, and could take evidence on oath. Its report, however, was not binding, but it was to be published in the Labour Gazette, in the hope that public opinion would lend the weight of

[1] *Ibid.*

[2] In 1888 Nova Scotia enacted a law providing for compulsory arbitration of industrial disputes occurring in coal mines. This law was never put into operation. In 1890 another law was enacted, similar in principle to the law of 1888. In 1903 this law was superseded by an act providing for voluntary arbitration.

its favor to the findings of the board. Thus for the first time an attempt was made in Canada to enlist the weight of an informed public opinion in the settlement of industrial disputes. In 1906 the provisions of the Conciliation Act of 1900 and the Railway Labour Disputes Act of 1903 were consolidated into the Conciliation and Labour Act, 1906.

Act Passed Following Coal Strike in Western Canada in 1906

On March 22, 1907, as previously indicated, the Industrial Disputes Act was added to those acts already on the statute books. This law had its immediate origin in a prolonged coal strike in Alberta. Commencing in March, 1906 and continuing until an unusually cold winter was approaching, the strike threatened to create a coal famine in the western provinces. In Saskatchewan the coal supply had been almost exhausted, and the settlers scattered in the small prairie towns were facing the danger of freezing to death. Local authorities tried but could do nothing to end the strike. They finally appealed for dominion intervention. Mr. King, who was then Deputy Minister of Labour, was dispatched to the scene by the government and succeeded in bringing about a settlement. So much was he impressed with the suffering that a long strike in this region might cause, that he recommended the enactment of a law, the provisions of which he drew up, to prevent such strikes. It was this proposed law that finally became the Disputes Act.

Objectives of the Disputes Act

The theory behind the act, as stated by Mr. King in his report on the coal strike just described, is that since

. . . organized society alone makes possible the operation of mines to the mutual benefit of those engaged in the work of production, a recognition of the obligations due society by the parties is something which the State is justified in compelling if the parties themselves are unwilling to concede it. . . .

The purpose of Parliament in enacting both the Conciliation [Act] and the Railway Disputes Act might . . . be considerably furthered were an Act applicable to strikes and lockouts in coal mines, similar in some features to the Railway Labour Disputes [Act], also enacted. . . . Such an end . . . might be achieved, at least in part, were provision made whereby . . . all questions in dispute might be referred to a Board empowered to conduct an investigation under oath, with the additional feature perhaps, that such reference should not be optional, but obligatory, and pending the investigation and until the Board has issued its finding the parties be restrained, on pain of penalty, from declaring a lockout or strike.[1]

By providing for an interlude between the occurrence of a dispute and the actual cessation of operations through strike or lockout, three objectives were sought: first, to compel employers and employes to meet and confer under the auspices of representatives of the public; second, to give the representatives of the public an opportunity to reconcile the differences between employers and employes and thus bring about an amicable settlement; and third, if conciliatory efforts fail, to furnish to the community through investigation the facts necessary to enable it to bring pressure to bear for a just settlement.

How have these aims been realized in practice?

[1] Fourth Report of the Registrar of Boards of Conciliation and Investigation of Proceedings under the Industrial Disputes Investigation Act, 1907, for fiscal year ending March 31, 1911. Department of Labour, Ottawa, p. 12.

CHAPTER III

THE OPERATION OF THE ACT

A MEASURE of the efficacy of the Disputes Act lies in the extent to which it has actually been used and the success attending such use in the industries which come within its scope. In how many disputes have applications been made for boards of conciliation and investigation since the enactment of the law in 1907? How many boards have been constituted as a result of these applications? How many of these boards have made unanimous reports, and how many minority reports have been presented by employers' or employes' representatives? And, finally, has the act succeeded in introducing a peaceful method of adjusting disputes in public utilities in Canada; that is, in how many cases have boards appointed to hear disputes brought about an amicable settlement, and in how many cases have strikes occurred in spite of the existence of the act?

Applications for Boards

To answer these questions, figures have been compiled from reports issued by the Canadian Department of Labour for the period, March 22, 1907, when the act took effect, to March 31, 1925.[1] Table 1 shows that,

[1] The classifications given in this chapter of the data dealing with the operation of the act are not always similar to those used by the Canadian Department of Labour. Moreover, it is frequently difficult to classify some of the data from the summary accounts given in the government reports. For instance, the manner in which applications are acted upon and the particular adjustments made are not always clear. In such cases, the figures represent the writer's best judgment. Slight errors are also found occasionally in the official figures, which the writer has attempted to correct.

altogether, 640 applications for boards were made during this period. Of these, 582, or 91 per cent, were made by employes only; 45, or 7 per cent, by employers only; and 9, or 1.4 per cent, by both employers and employes.

TABLE 1.—APPLICATIONS FOR BOARDS, BY ORIGIN OF APPLICATION, MARCH 22, 1907 TO MARCH 31, 1925

Applications made by	Number	Per cent
Employes only	582	91.0
Employers only	45	7.0
Employers and employes	9	1.4
Others	4[a]	.6
Total	640	100.0

[a] In two cases applications were made by municipalities; in one by a mayor; and 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.

Boards Constituted in Majority of Cases

Table 2 shows the action taken upon these applications. Generally speaking, the decisions of the Minister of Labour fall into three categories. The Minister may handle the dispute under the act; he may decide that a dispute can be adjusted better by some other agency than a board of conciliation and investigation; or he may decide that the dispute does not come at all within the scope of the act. In the last case, he may urge further direct negotiations between the parties involved, appoint mediators to intervene, establish special machinery or decide not to take any action whatever on the application. Of the 640 disputes in which applications for boards were made in the period March 22, 1907 to March 31, 1925, 536, or 83.8 per cent, were handled under the act; 48 disputes, or 7.5 per cent, were re-

TABLE 2.—ACTION RESULTING FROM APPLICATIONS FOR BOARDS, MARCH 22, 1907 TO MARCH 31, 1925

Action	Number of applications	Per cent
Disputes handled under the act		
Boards constituted	421	65.8
Boards partially constituted	26	4.1
Boards not constituted	89	13.9
Total handled under the act	536	83.8
Disputes referred to other agencies		
Within scope of the act	43	6.7
Not within scope of the act	5	.8
Total referred to other agencies	48	7.5
No action taken (disputes not within scope of the act)	56	8.7
Grand total	640	100.0

ferred to other agencies such as the Canadian Railway Board of Adjustment No. 1[1] and mediators of the Department of Labour; and in 56 cases, or 8.7 per cent, the application was not acted on.[2] Of the 536 applications that were handled under the act, 421 resulted in the constitution of boards, 26 in the partial constitution of boards and in 89 cases no boards were constituted.[3] Thus a majority of the total number of disputes submitted for action under the Disputes Act,

[1] For a description of this Board, see page 298.

[2] As shown in Table 2, five disputes referred to other agencies were also not within the scope of the act.

[3] Proceedings may be under way to appoint the members of a board when news comes that a settlement has been reached. In such a case, a board is not constituted. Again, the members representing employers and employes may have already been appointed to a board, but an agreement may have been reached before the appointment of the chairman. In such a case, the board is only partially constituted.

very close to two-thirds, indeed, resulted in the constitution of boards.

Over Half of All Reports Unanimous

Obviously one of the most important tests of the operation of the act should be the nature of the reports rendered by boards. If these reports are in the main unanimous; that is, if both the employes' and employers' representatives, as well as the chairman, sign the report in a given dispute, we may conclude that all parties involved are satisfied with the settlement recommended. Judged from this evidence, the conclusion must be reached that the act has been successful. As shown in Table 3, of a total of 421 boards constituted, 230, or 54.6 per cent, rendered unanimous reports. In addition, 25, or 5.9 per cent of the total number of boards constituted, were unanimous on all save minor points. Employes' representatives dissented from the majority opinion in the reports of 20.7 per cent, or about one-fifth of all the boards; and employers' rep-

TABLE 3.—NATURE OF REPORTS OF BOARDS CONSTITUTED, MARCH 22, 1907 TO MARCH 31, 1925

Nature of report	Number of boards	Per cent
Report signed by all members		
Decision unanimous	230	54.6
Reservations on minor points	25	5.9
One member dissenting		
Employes' representative	87	20.7
Employers' representative	53	12.6
Chairman	1	.2
Separate report from each member	3	.7
Nature of report not clear	10	2.4
No report	12	2.9
Total	421	100.0

resentatives dissented from reports in only 12.6 per cent. In a few cases no report was rendered by the board, and in a few other cases the nature of the report was not clear.

This much of the statistical record of the operation of the act shows that it has enjoyed a wide usefulness and success: in eighteen years 640 applications for boards were made under it, or an average of 35.5 applications a year; 536 cases were handled under the act; 421 boards were actually constituted; and well over half of the reports rendered by the boards were unanimous.

The Act as a Means of Averting Strikes

But the favorable record indicated thus far cannot be taken as a complete measure of the effectiveness of the Disputes Act. Two questions still remain. First, in how many of the 536 cases handled under the act were strikes averted or ended? Second, how many strikes occurred in violation of the act, that is, prior to applying for a board, before a board had made its report, or in the absence of any application for a board?

The figures in Table 4 show that, of the 536 disputes handled under the act, in only 46, or 8.6 per cent of these disputes, were strikes not averted or ended following action under the act. This remarkable record of averting or ending a cessation of work in 490, or 91.4 per cent, of the disputes handled under the act, is a tribute to the skill and intelligence both of the personnel of the boards appointed and of officials of the Department of Labour in those cases where boards were not constituted.

TABLE 4.—RESULTS OBTAINED IN DISPUTES HANDLED UNDER THE ACT, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Strike averted or ended[a]	Strike not averted or ended	Total disputes handled under the act
Public utilities	429	44[b]	473
War industries	21	2[c]	23
Other industries	40	–	40
Total	490	46	536

[a] Strike ended refers to settlement of strikes called before or during board proceedings. These strikes were few in number; they were illegal when they occurred in public utilities or war industries.

[b] Of these strikes, 30 were legal, that is, they occurred after the report of the board was submitted; 14 were illegal because they were called before or during board proceedings.

[c] One legal; one illegal.

Of the 536 disputes handled under the act, 473 occurred in public utility industries; and it was for these industries, it will be recalled, that the act was primarily intended. In only 44, or 9.3 per cent of these cases, were strikes not averted or ended after the dispute had been handled under the act. In 429, or 90.7 per cent of these public utility disputes, strikes were averted or ended. Of the 23 disputes in war industries handled in the two and one-half years during which the act was extended to cover this group of industries,[1] 21 were settled, and in only two cases did boards fail to avert a strike. Forty disputes in industries other than public utilities and war industries were handled under the act through the provision that boards may be established in other than such industries upon the joint agreement of the employer and employes involved. All these disputes were adjusted.

These figures, however, relate only to disputes in

[1] See page 49, footnote 1.

which the machinery of the act was used. The figures in Table 5 show that during the same period there were 425 strikes in public utilities in which the act was completely ignored. Furthermore, in 47 of the disputes in public utilities in which applications were made for boards, strikes occurred in violation of the act. In these cases a strike was called either prior to application for a board or before a report was made.[1] In all, 472 strikes in public utilities occurred in violation of the act during the same period in which it succeeded in averting or ending 429 strikes.

TABLE 5.—ESTIMATED NUMBER OF STRIKES OCCURRING IN PUBLIC UTILITY INDUSTRIES[a] IN VIOLATION OF THE ACT, MARCH 22, 1907 TO MARCH 31, 1925

	Number	Per cent
No application made for a board	425	90.0
Application made for a board[b]	47	10.0
Total strikes in violation of act	472	100.0

[a] Illegal strikes also occurred in war industries from March, 1916 to November, 1918, during which period the act was extended by order-in-council to cover war industries. During the time of this extension, strikes occurred in munitions, shipbuilding and other war work. Due to the fact that statistics of strikes and lockouts were not kept specifically for war industries, it is not possible to identify accurately the strikes which occurred in war industries.

[b] 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.

Some conception of the significance of strikes occurring in spite of the operation of the act may be had from the figures in Table 6. The figures compare strikes

[1] The Department of Labour does not keep a record of strikes and lockouts declared in violation of the act. The figures here given are obtained by comparing the applications for boards with the data for strikes and lockouts by industries as published in the Labour Gazette, annual reports and special reports of the Department of Labour. For more detailed sources, see Appendix A, page 335.

TABLE 6.—STRIKES AND LOCKOUTS IN CANADA IN ALL INDUSTRIES AND IN MINING AND TRANSPORTATION, BY YEAR OF ORIGIN, 1901 TO 1924

Year of origin	All industries	Mining[a]		Transportation[b]		Mining and transportation	
	Number	Number	Per cent of all industries	Number	Per cent of all industries	Number	Per cent of all industries
Before act							
1901	104	4	3.8	11	10.6	15	14.4
1902	121	3	2.5	10	8.3	13	10.7
1903	146	8	5.5	15	10.3	23	15.8
1904	99	6	6.1	2	2.0	8	8.1
1905	88	11	12.5	5	5.7	16	18.2
1906	141	14	9.9	16	11.3	30	21.3
1907[c]	17	2	11.8	1	5.9	3	17.6
After act							
1907[c]	127	9	7.1	16	12.6	25	19.7
1908	65	8	12.3	7	10.8	15	23.1
1909	68	10	14.7	7	10.3	17	25.0
1910	81	2	2.5	7	8.6	9	11.1
1911	95	6	6.3	12	12.6	18	18.9
1912	148	6	4.1	13	8.8	19	12.8
1913	106	4	3.8	7	6.6	11	10.4
1914	40	2	5.0	1	2.5	3	7.5
1915	38	6	15.8	4	10.5	10	26.3
1916	74	9	12.2	19	25.7	28	37.8
1917	141	20	14.2	22	15.6	42	29.8
1918	191	35	18.3	33	17.3	68	35.6
1919	290	16	5.5	26	9.0	42	14.5
1920	272	32	11.8	22	8.1	54	19.9
1921	138	12	8.7	7	5.1	19	13.8
1922	70	13	18.6	5	7.1	18	25.7
1923	91	29	31.9	10	11.0	39	42.9
1924	73	15	20.5	4	5.5	19	26.0
Yearly average							
Before act	115	8	6.7	10	8.4	17	15.1
After act	119	13	11.1	13	10.5	26	21.6

[a] Quarrying, stonecutting, pottery and smelting, sometimes grouped with mining in the Canadian reports, have been excluded.
[b] Railroads, shipping, municipal traction systems and express companies.
[c] The year 1907 is divided at March 22, when the act went into effect.

and lockouts in mining and transportation with those in all industries from 1901, the earliest year in which strike figures were gathered in Canada, to 1924.[1] Mining and transportation, which includes railroads, shipping, municipal traction systems and express companies, embrace most of the industries coming within the scope of the Disputes Act. The figures show that of the 119 strikes declared on the average each year in all industries during the period 1907 to 1924, about 26, or 21.6 per cent, occurred in these major public utilities. Moreover, the proportion of strikes and lockouts in these industries is greater than that for the period prior to the act, 1901 to 1907, when only 15.1 per cent of all strikes occurred in mining and transportation.

These figures for strikes do not, however, tell the whole story of industrial disputes in Canada before and after the enactment of the Disputes Act. For one national strike of coal miners involving 10,000 men is much more serious to the nation than dozens of small strikes in scattered communities. The number of strikes must therefore be supplemented by a measurement of their seriousness or costliness to employers, employes and the community. Such a measurement may be found in the number of working days lost, a figure obtained by multiplying the number of men involved by the number of working days during which the establishment was closed because of the strike.

[1] The figures do not actually include all strikes occurring in Canada. They represent the best efforts of the Department of Labour to discover those which occur. It is probable that a larger proportion of strikes in public utilities are included in these figures than of strikes in other industries, because the former are likely to attract public attention to a greater degree and do not, therefore, readily escape notice. As very few lockouts have occurred, the term "strikes" is frequently used in the text to cover all cessations of work.

Table 7 compares figures for working days lost through strikes in mining and transportation with those lost through strikes in all industries since 1901. During the period 1907 to 1924, when the act was in operation, an average of 566,156 working days were lost yearly because of strikes in mining and transportation, or 49.8 per cent, about half, of the total number of working days lost yearly because of strikes in all industries. This proportion of days lost in mining and transportation, again, was larger than that for the six-year period prior to the act, 1901 to 1907, when it was 43.9 per cent.

When the figures in Table 7 are examined, it becomes apparent that only a relatively small proportion of working days lost through strikes may be charged to transportation. For strikes in transportation have been responsible for only 7 per cent of the total number of working days lost in all strikes in the period 1907 to 1924. This proportion, moreover, is less than half of that for the period 1901 to 1907, when 15 per cent of the working days lost in all strikes were due to strikes in transportation. The relatively large proportion of working days lost through strikes in transportation during the period immediately before, as compared with the period after the act, does not mean that strikes were more numerous in these industries before 1907, as may be seen from Table 6, or that the act was instrumental in averting threatened strikes after 1907. For the annual average of working days lost during the period before the act is inflated by one strike of trackmen on the Canadian Pacific Railway in 1901, which lasted for two and one-half months.

TABLE 7.—WORKING DAYS LOST THROUGH STRIKES AND LOCKOUTS IN CANADA IN ALL INDUSTRIES AND IN MINING AND TRANSPORTATION, BY YEARS, 1901 TO 1924

Year	All industries	Mining[a]		Transportation[b]		Mining and transportation	
	Number	Number	Per cent of all industries	Number	Per cent of all industries	Number	Per cent of all industries
Before act							
1901	632,311	55,870	8.8	315,864	49.9	371,674	58.8
1902	120,940	9,720	8.0	10,120	8.4	19,840	16.4
1903	1,226,500	440,455	35.9	69,341	5.7	509,796	41.6
1904	265,004	10,166	3.8	9,540	3.6	19,706	7.4
1905	217,244	114,191	52.6	6,973	3.2	121,164	55.8
1906	359,797	187,780	52.2	16,697	4.6	204,477	56.8
1907[c]	45,740	11,400	24.9	800	1.7	12,200	26.7
After act							
1907[c]	576,222	191,860	33.3	39,412	6.8	231,272	40.1
1908	708,285	16,071	2.3	425,572	60.1	441,643	62.4
1909	871,845	711,207	81.6	10,000	1.1	721,207	82.7
1910	718,635	377,076	52.5	80,915	11.3	457,991	63.7
1911	2,018,740	1,592,800	78.9	85,493	4.2	1,678,293	83.1
1912	1,099,208	89,168	8.1	82,998	7.6	172,166	15.7
1913	1,287,678	702,726	54.6	23,988	1.9	726,714	56.4
1914	430,054	169,200	39.3	300	.1	169,500	39.4
1915	106,149	16,794	15.8	19,360	18.2	36,154	34.1
1916	208,277	88,494	42.5	27,288	13.1	115,782	55.6
1917	1,134,970[d]	585,600	51.6	51,651	4.6	637,251	56.1
1918	741,390[d]	141,634	19.1	114,748[e]	15.5	256,382	34.6
1919	3,926,416[d]	679,655	17.3	185,400	4.7	865,055	22.0
1920	886,754	161,123	18.2	48,536	5.5	209,659	23.6
1921	956,461[d]	27,671[d]	2.9	19,061	2.0	46,732	4.9
1922	1,975,276	1,219,064	61.7	97,920	5.0	1,316,984	66.7
1923	768,494	311,982	40.6	97,943	12.7	409,925	53.3
1924	1,770,825	1,555,105	87.8	1,461	.1	1,556,566	87.9
Yearly average							
Before act	458,806	132,733	28.9	68,684	15.0	201,417	43.9
After act	1,137,249	486,604	42.8	79,552	7.0	566,156	49.8

[a] Quarrying, stonecutting, pottery and smelting, sometimes grouped with mining in the Canadian reports, have been excluded.
[b] Railroads, shipping, municipal traction systems and express companies.
[c] The year 1907 is divided at March 22, when the act went into effect.
[d] Figures not available in case of one strike in 1917, two in 1918, five in 1919 and one in 1921.
[e] Figures not available in case of one strike.

Railroads under the Act

On the whole, few serious strikes have been declared on railroads in Canada. Only one may be charged to the railroad brotherhoods during the last twenty-five years. It was called in 1910, three years after the act was passed, when the trainmen and conductors on the Grand Trunk Railway refused to accept the recommendations of a board of conciliation and investigation. Indeed, so few strikes had taken place on the railroads of Canada that when the first draft of the Disputes Act was introduced in Parliament railroads were not included within its scope. Although the act in its final form did embrace railroads, most of the railroad disputes since 1918, as we shall presently see, have been referred to another agency, already mentioned, the Canadian Railway Board of Adjustment No. 1.[1]

It is, of course, difficult to say whether more strikes would have occurred on the railroads of Canada, had the Disputes Act not been in operation. On the one hand, is the fact that in Canada, as in the United States, the railroad brotherhoods, a very important factor in transportation service, are extremely conservative in the use of the strike weapon. Such strikes as have taken place on railroads and other branches of transportation have been called largely by semi-skilled and unskilled crafts, such as freight handlers, teamsters and expressmen. On the other hand, the presence of the act has without doubt helped at times to prevent threatened railroad strikes in Canada. No better example of its success in this connection can be cited than the emergency that arose in the railroad shopcrafts in 1922. During that year railroad shopmen

[1] See page 64.

throughout the United States went on strike in protest against wage reductions recommended by the United States Railroad Labor Board. This immediately created a tense situation in Canada, for industrial conditions in the United States frequently react upon those of the Dominion. Many shopmen in Canada were employed by lines originating in the United States, like the New York Central, and the union workers in companies operating in Canada were affiliated with the American Federation of Labor. Moreover, Canadian railroads had, with the entry of the United States into the World War, accepted for their employes the wage increases granted railway employes in the United States by the United States Railroad Administration appointed during the war emergency.

But when the railroad companies of Canada proposed wage reductions in 1922 in conformity with those introduced by railroads in the United States, Canadian shopmen did not strike as did those in this country. Instead they applied for boards under the Disputes Act and contended that the railroad companies had acted illegally in proposing wage reductions without first presenting the case to boards of conciliation and investigation created under the Disputes Act.[1] The Prime Minister intervened and brought pressure to bear upon Canadian railroads not to decrease wages until the dispute had been heard under the act. The companies finally agreed to such an arrangement, and four boards were appointed to hear the dispute be-

[1] Representatives of labor have contended throughout the history of the act that the responsibility for invoking the act should devolve upon the party which desires to initiate changes disputed by the other party. See Chapter VI, Canadian Labor and the Act: Period of Disapproval, pages 147 ff., particularly page 153.

tween the various railroad companies and their employes. One of the boards heard the case between the Canadian National Railways, the Canadian Pacific and the Grand Trunk, members of the Canadian Railway Association, and their employes, members of Division No. 4, Railway Employees' Department, American Federation of Labor. The other three boards sat in cases involving the Canadian workers on United States lines operating in Canada, namely, the Michigan Central, the Pere Marquette and the New York Central. After lengthy hearings, these boards rendered their decisions. In each instance a strike was averted. In the case of the Michigan Central and its shopmen, "though not formally accepted by either party to the dispute, the findings of the board are understood to have been effective in bringing about a working agreement which followed the line of the board's recommendations."[1] Similarly, in the Pere Marquette dispute, "the findings of the board were accepted by the employing company and, though not formally accepted by the representatives of the employes, are understood to have been regarded as definitely closing the dispute."[2] The report of the board in the case of the New York Central and its shopcraft employes "was unanimous and contained recommendations as to the settlement of the dispute."[3] In the case of the Canadian railways and their shopmen, "no cessation of work occurred, and the parties [were] understood to have reached a satisfactory working arrangement."[4]

[1] Labour Gazette, Vol. XXII, p. 1053, October, 1922.

[2] *Ibid.* p. 1070. [3] *Ibid.* p. 1083.

[4] Report of the Department of Labour for the fiscal year ending March 31, 1923. Ottawa, p. 16.

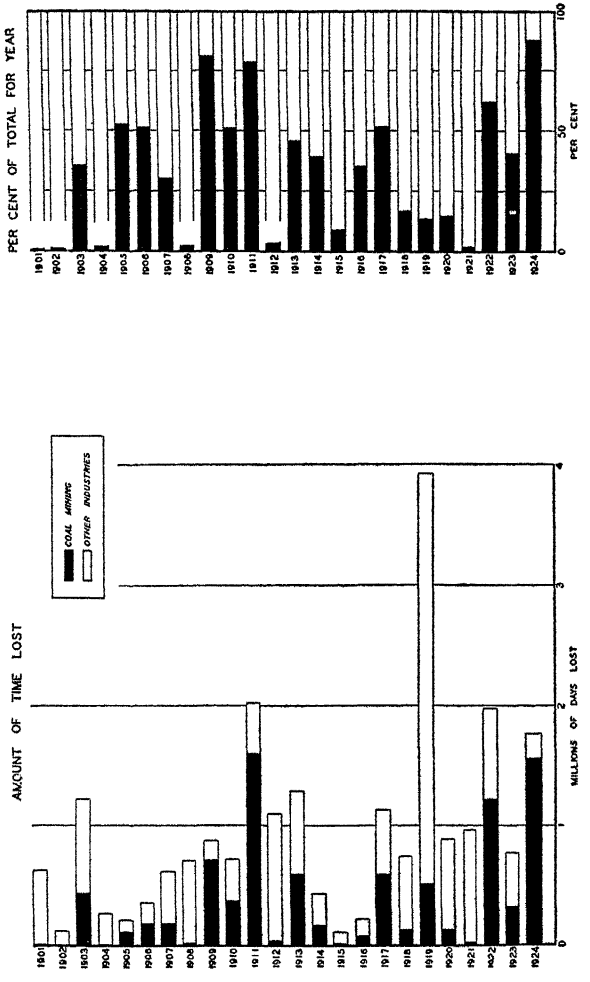

DIAGRAM 1.—TIME LOST THROUGH STRIKES AND LOCKOUTS IN CANADA IN COAL MINING AND IN OTHER INDUSTRIES, 1901 TO 1924

Coal Strikes before and after the Act

The figures of Table 7 establish clearly that a preponderant percentage of working days lost through strikes in public utilities have been lost in mines. Thus strikes in mining are responsible for 42.8 per cent of the total number of working days lost through all strikes since 1907, as against the time loss of 7 per cent which may be charged against transportation. A further analysis of the facts reveals that most of these strikes occurred in coal mining. Table 8 gives the figures for strikes and lockouts, employes affected and working days lost in coal mining alone as compared with all industries. During the period 1907 to 1924, disputes in coal mines were responsible on the average, each year for 9.4 per cent of all strikes, involving 24.7 per cent of the employes affected in all strikes and incurring a time loss of 40.7 per cent of all working days lost. The proportion of working days lost in strikes in coal mines during this period is considerably larger than that lost in the period before the act, 1901 to 1907, when it was 26.4 per cent. Diagram 1, based on the figures in Table 8, shows graphically the number and percentage of working days lost each year through strikes in coal mining as compared with those lost in all industries.

Thus it would seem that the operation of the act has not resulted in the establishment of industrial peace in the coal mines of Canada, the industry for which it was primarily intended. But coal mining has, with few exceptions, presented the most turbulent field of industrial relations everywhere. In Great Britain, and surely in the United States, the coal industry is a "sick" industry, in which almost periodical upheavals occur. It is pertinent therefore to inquire at this point as to

TABLE 8.—STRIKES AND LOCKOUTS, EMPLOYES AFFECTED, AND WORKING DAYS LOST IN CANADA IN ALL INDUSTRIES AND IN COAL MINING, BY YEARS, 1901 TO 1924

Year	Strikes and lockouts[a]			Employes affected[a]			Working days lost[a]		
	All industries	Coal mining	Per cent coal mining	All industries	Coal mining	Per cent coal mining	All industries	Coal mining	Per cent coal mining
Before act									
1901	104	2	1.9	28,086	2,560	9.1	632,311	5,740	.9
1902	121	1	.8	12,264	150	1.2	120,940	1,200	1.0
1903	146	7	4.8	50,041	11,612	23 2	1,226,500	436,585	35.6
1904	99	5	5.1	16,482	2,311	14.0	265,004	4,766	1.8
1905	88	9	10.2	16,223	8,164	50.3	217,244	113,758	52.4
1906	141	12	8.5	26,050	6,080	23.3	359,797	184,875	51.4
1907[b]	17	2	11.8	3,217	1,900	59.1	45,740	11,400	24.9
After act									
1907[b]	127	7	5.5	33,007	8,231	24.9	576,222	176,960	30.7
1908	65	6	9.2	25,293	2,861	11.3	708,285	15,283	2.2
1909	68	9	13.2	17,332	8,655	49.9	871,845	710,087	81.4
1910	81	1	1.2	21,280	1,934	9.1	718,635	367,956	51.2
1911	95	6	5.3	30,099	9,734	32.3	2,018,740	1,592,800	78.9

1912	148	2	1.4	40,511	3,060	7.6	1,099,208	37,740	3.4
1913	106	1	.9	39,536	3,537	8.9	1,287,678	589,036	45.7
1914	40	1	2.5	8,678	1,900	21.9	430,054	169,050	39.3
1915	38	5	13.2	9,140	1,832	20.0	106,149	9,294	8.8
1916	74	8	10.8	21,157	10,900	51.5	208,277	73,194	35.1
1917	141	19	13.5	48,329[c]	16,979	35.1	1,134,970[c]	585,170	51.6
1918	191	33	17.3	68,414[c]	12,112	17.7	741,390[c]	124,941	16.9
1919	290	10	3.4	138,936[c]	8,487	6.1	3,926,416[c]	512,479	13.1
1920	272	27	9.9	52,150	9,492	18.2	886,754	129,987	14.7
1921	138	8	5.8	22,930[c]	738	3.2	956,461[c]	18,599	1.9
1922	70	13	18.6	41,050	25,179	61.3	1,975,276	1,219,064	61.7
1923	91	29	31.9	32,868	21,692	66.0	768,494	311,982	40.6
1924	73	15	20.5	32,494	21,214	65.3	1,770,825	1,555,105	87.8
Yearly average									
Before act	115	6	5.3	24,378	5,244	21.5	458,806	121,332	26.4
After act	119	11	9.4	38,490	9,495	24.7	1,137,249	461,900	40.7

[a] Strikes and lockouts are listed by year of origin only, while employes affected and working days lost are given for each year.
[b] The year 1907 is divided at March 22, when the act went into effect.
[c] Figures not available in case of one strike in 1917, two in 1918, five in 1919 and one in 1921.

just what factors led to coal strikes in Canada; to discover, if possible, whether the inability of the act to avert these strikes may be due to deep, underlying factors peculiar to the industry itself rather than to inherent defects in the act.

A brief history of the important strikes may help to answer these questions. The important coal fields of Canada are the Crow's Nest Pass region, which embraces the southwestern portion of Alberta and the southeastern portion of British Columbia and is commonly known as District 18 of the United Mine Workers of America; Vancouver Island, at the extreme western end of British Columbia (not organized as a district of the United Mine Workers of America); and Nova Scotia, the extreme eastern portion of the Dominion, District 26 of the United Mine Workers of America.

The United Mine Workers of America entered District 18 in 1902 and began to organize the miners in this region. In 1906 the first strike, the one which resulted in the passage of the Disputes Act, was called under their auspices. Hence the period during which the act has been in operation is practically coincident with that during which the United Mine Workers have sought to secure recognition in the coal fields of Canada.

The agreement which brought the strike of 1906 to an end expired on April 1, 1907. On April 9 the western miners applied for a board under the new act, and on April 16, while the board was being constituted, they struck, thus violating the act the first time they had invoked it. The board failed to end this strike, but the Deputy Minister of Labour was instrumental in bringing about a settlement. During the same year an

important coal-mining strike also occurred in Nova Scotia—not, however, under the auspices of the United Mine Workers—over rates of pay. In this case, as in that of the western mines, the board was unable to effect a settlement. The total time losses for strikes for 1907, the year in which the act was passed, amounted to 188,360 days, which was 30.3 per cent of the total days lost in all strikes in Canada that year.

In 1907 an agreement had been signed in the Crow's Nest Pass field for two years. When it expired in March, 1909 a strike was called "over the renewal of the working agreement in which were involved certain fine points of recognition relating to collection of union dues"—the "check-off," in other words. The act was not invoked in this dispute until the strike had been on more than a month; thus again the miners violated the act. Neither party accepted the report of the board that had been constituted after the strike was called; but after continuing on strike for three months, an agreement extending to March 31, 1911 was signed and the men returned to work.

In the same year in which the 1907 agreement had expired, 1909, the United Mine Workers had begun a struggle to gain recognition in Nova Scotia. A local organization of miners known as the Provincial Workmen's Association had been in existence for some time in this province, and a strike which occurred that year in Nova Scotia resulted in a fight for supremacy between the two unions, with the operators favoring the local organization. The strike was centered in three places, Glace Bay, Springhill and Inverness. In the first two the men applied for boards before they ceased working, but the reports of the boards were not accepted

by the men. At Inverness the act was completely ignored. At Inverness the strike lasted for a few months, at Glace Bay from July, 1909, to April, 1910, and at Springhill from August, 1909, to May, 1911, a period of almost two years. In all three of these places riots occurred and "troops were stationed for a considerable time at each point." The United Mine Workers were defeated in their fight for recognition. These strikes in Nova Scotia and in the Crow's Nest Pass region conducted by them were responsible in 1909 for about four-fifths, and in 1910 for about one-half, of the total time loss due to all strikes and lockouts during the year.

On March 31, 1911 the agreement signed in 1909 between the United Mine Workers and the operators of the Crow's Nest Pass region expired, and 7,000 miners went out on strike, again without applying for a board until the strike had been on for some time. "The crucial point, as in 1909, was the 'check-off.'" This strike, together with the one that was prolonged from 1909 at Springhill, Nova Scotia, and a few minor ones, made the total time loss in 1911 through strikes in coal mines 1,592,800 working days, or 78.9 per cent of all the working days lost in all strikes occurring during the year.

On September 16, 1912 the Disputes Act was completely ignored in a struggle between the United Mine Workers and the mine operators on Vancouver Island. The act was not even invoked. The chief demand put forward by the union was "recognition." This strike was not called off until August 19, 1914, nearly two years later. As in Nova Scotia, the United Mine Workers were defeated. Mainly because of this strike, in 1913, coal mining was responsible for 45.7 per cent,

and, in 1914, 39.3 per cent, of all the working days lost in all strikes and lockouts.

Unrest in Coal Mines during the World War

Thus until the World War began, the outstanding cause of strikes in coal mines may be attributed to the demand for "recognition" on the part of the United Mine Workers. With the advance of the war came new influences making for increasing unrest. Perhaps the first of these influences was the sudden increase in the cost of living, a condition which bore heavily on all labor.[1] In 1916 the miners in the Crow's Nest Pass region, in spite of the fact that the agreement between them and the operators was not to expire until March, 1917, struck twice for a "war bonus" to meet the abnormal rise in the cost of living, in both cases in complete defiance of the act. In all, eight coal strikes occurred in 1916, distributed over practically all the coal fields of Canada. In only one case was the dispute referred for adjustment to a board under the act. The loss of working days in 1916 through strikes in coal mines was 35.1 per cent of the working days lost in all strikes.

In 1917 military recruiting and a constantly increasing demand for workers in munitions and shipbuilding brought Canada face to face with a labor shortage for the first time during the war. During the year, too, food prices, which had already been steadily advancing, underwent the most pronounced rise since the beginning of the war. Again the most serious strikes in this year took place in the coal mines of District 18. The act apparently could not stem the advancing tide of

[1] See pages 221 ff.

unrest in the western coal field. For, as the stress caused by the war was making itself felt, intermittent strikes which had begun in November, 1916 became widespread among the 9,000 miners employed in this region; and when the agreement under which the miners were working expired on March 31, 1917, a prolonged strike followed.[1] The Disputes Act was apparently completely ignored both by the miners and by the operators. The total loss of working days due to strikes in coal mining during 1917 was 51.6 per cent, or over half of all working days lost in all strikes and lockouts.[2]

A widespread fuel shortage both in the United States and in Canada had occurred during the winter of 1916–1917. War needs made the prevention of a similar shortage during the winter of 1917–1918 imperative. Coal had to be produced at all points possible. To achieve this purpose, and in view of the impotence of the Disputes Act in the situation, the Canadian government intervened in the strike of 1917 with a measure which superseded the Disputes Act in the Crow's Nest Pass region. Upon the recommendation of the Minister of Labour, a Director of Coal Operations was appointed for the district on June 25, 1917. By an order-in-council under the authority of the War Measures Act of 1914, this official was given extensive power to make all necessary investigations, to adjust grievances and to fix prices in this region. Penalties were provided for failure to comply with his orders. Upon his appointment, the strike which had been in force since April, 1917

[1] Report of the Department of Labour for the fiscal year ending March 31, 1918. Ottawa, pp. 24–25.

[2] Report of the Department of Labour for the fiscal year ending March 31, 1919. Ottawa, p. 7.

was called off. Several weeks later, the operators and miners signed a new agreement, in which some 70 points at issue were adjusted.

Coal Strikes in Post-War Period

In spite of the fact that he was appointed only for the war emergency, the Director of Coal Operations held office under a special act of the Canadian Parliament until June, 1921. The chief reason for continuing this office arose from the fact that the One Big Union, a new organization, which had developed in western Canada in 1919, had obtained a large membership among the coal miners of the Crow's Nest Pass region and the government feared that conflict between the United Mine Workers of America and the new union would create an unstable condition. Moreover, the government, through the Director of Coal Operations, pursued a policy of eliminating the One Big Union because it regarded "the principles of the new organization . . . [as] undoubtedly revolutionary in so far as respects established principles and practices of trade unionism . . . [and as] being subversive of existing industrial conditions generally."[1]

The activities of the Director of Coal Operations will be described elsewhere.[2] In 1921 his office was abolished and the Disputes Act was, so to speak, re-established in this region. Serious disturbances characterized Canadian industry in 1922, created in the main by the effort of employers to reduce wages in the deflation period following the war. The total working days lost through strikes in all industries in 1922 were almost

[1] Report of the Department of Labour for the fiscal year ending March 31, 1920. Ottawa, p. 11.

[2] See pages 297–298.

2,000,000. This number was the third highest since 1901, in which year the Department of Labour began to collect statistics on strikes and lockouts. Again, in that year, 1922, coal mining was the industry responsible for the greatest loss in working days—a total of 1,219,-064, or 61.7 per cent of the working days lost in all industries. Over 50 per cent of the total time losses were caused by a strike of coal miners in District 18, where the Disputes Act had just been reinstated. This strike was called on April 1 and continued for about five months. The men had applied for a board, but went out on strike while the board was being constituted. The strike was called "A Protest against the Proposed Reduction in Wages" and was concurrent with a strike of coal miners in the United States against a similar proposed reduction of wages. As in the United States, the scale of wages in existence prior to the strike was renewed in an agreement covering the period September 1, 1922 to March 31, 1923.

Another strike called in 1922 involved the miners of Nova Scotia, where by this time the Provincial Workmen's Association had been superseded by District 26 of the United Mine Workers of America. It involved approximately 15,000 coal miners who refused to accept the report of a board established by the Minister of Labour under Section 63A of the Disputes Act, in the absence of an application from either the employer or employes involved. The men objected to a proposed reduction in wages. They demanded a renewal of the rates paid in 1921. After staying out for three weeks, a settlement was reached providing for higher rates than those proposed by the operators but lower than those which were paid in 1921.

In 1923 coal mining stands out once again as the industry characterized by the greatest industrial unrest, being responsible in this year for a total loss of 311,982 working days, or 40.6 per cent of the total lost during the year in all strikes. Of this total, about 240,000 working days were lost in one strike, called by the miners of Cape Breton and elsewhere in Nova Scotia, without their even applying for a board under the act, in sympathy with the steel workers employed by the same employing company, the British Empire Steel Company. The strike of the steel workers was for higher wages, shorter hours and recognition of the union. The immediate cause of the sympathetic strike of the miners was the entrance of dominion troops and provincial police into the strike area. This strike was a violation not only of the Disputes Act but also of the contract which the company had with the United Mine Workers, prohibiting such cessations of work. The situation there was complicated then, as it has been since, by the entry of the Trade Union Educational League with its program of "left-wing unionism." The leaders who held office in the miners' union of Nova Scotia were in 1923 sympathetic with the program of this League. The One Big Union also entered Nova Scotia about this time and attempted to win the miners to the support of its program.[1] The president of the United Mine Workers of America ordered the men to observe their agreement by returning to work. Upon their refusal to do so, he suspended the autonomy of the district and appointed provisional officers. The strike, involving about 13,000 miners, lasted for nearly three weeks.

[1] See footnote 1, page 91.

The highest record in the proportion of working days lost through strikes in coal mines was not reached, however, until the following year, 1924, when such strikes entailed a total loss of 1,555,105 working days, or 87.8 per cent of the time lost in all strikes. This huge loss was due again to two large-scale strikes involving the same areas, District 18 in western Canada and District 26 in Nova Scotia. The first strike affected 7,000 men, with a time loss of over 1,000,000 working days; the second, 10,000 men, with a time loss of some 300,000 working days. Both strikes followed the expiration of agreements between the United Mine Workers and the operators, and the refusal of the men to accept wage reductions proposed by the operators as part of a new agreement. In neither strike did the men apply for a board under the Disputes Act.

Underlying Causes of Unrest in Coal Mines of Canada

This, then, is the history of the strikes occurring in the coal fields of Canada, a history of turbulence which the Disputes Act has apparently proved ineffective to allay. The present century has been one of industrial expansion in Canada and it is not, therefore, surprising to find an upward trend in total number of working days lost in strikes.

The population of Canada increased from 5,400,000 (in round numbers) in 1901 to 8,800,000 in 1921.[1] In the first decade of that period the total number of persons employed in all industries and occupations in-

[1] Sixth Census of Canada, 1921. Dominion Bureau of Statistics, Ottawa, 1924, Vol. I, Population, Table 1, p. 3.

creased from 1,800,000 in 1901 to 2,700,000 in 1911.[1] Unfortunately the information for occupations is not yet available from the census of 1921, but the earlier figures show something of the rate of increase. The occupational groups showing by far the largest increase in the decade following 1900 were those employed in mines and in transportation and communication. The number of miners increased from 29,000 in 1901 to 63,000 in 1911, or 117 per cent, and the number employed in transportation and communication advanced from 81,000 in 1901 to 218,000 in 1911, or 169 per cent. In the building trades in the same period the increase was from 213,000 to 246,000, or 15 per cent, and in manufactures from 274,000 to 491,000, or 79 per cent.

From these figures it is not possible to discover exactly the proportion which miners, particularly coal miners, constitute of the total number employed in distinctly industrial occupations, so that we cannot accurately measure the comparative percentage of increase. It is important to have this information in order to consider whether the proportion of working days lost in mining as compared with those lost in all industries has increased more rapidly than the increase in the number of miners would justify. A partial answer to the question is found by combining the figures for employment in the building trades, manufactures, mines, and transportation and communication. The total number in these groups increased from 600,000 in 1901 to 1,000,000 in 1911, or 67 per cent as compared with an increase of 117 per cent in the number

[1] Fifth Census of Canada, 1911. Census and Statistics Office, Ottawa, 1915, Vol. VI, Occupations of the People, Table 16, p. xxiv. The figures which follow regarding the numbers employed in different industrial groups are from the same table.

of men employed in mines. The figures are not given separately for coal miners except in 1911, when they numbered 20,000. The total group employed in mines constituted 4.8 per cent of the number employed in these specified industries in 1901 and 6.3 per cent of the number employed in the same industries in 1911. Of the working days lost in industrial disputes during the period 1901 to 1907, miners were responsible for 26.4 per cent, while in the period 1907 to 1924 they were responsible for 40.7 per cent.

To give still another measure, it may be pointed out that the 29,000 miners employed in 1901 lost, according to the available statistics, 56,000 working days, or an average of two days per miner, while in 1911 the 63,000 miners lost 1,600,000 working days, or an average of 25 days per miner.[1]

Only a thoroughgoing study of industrial relations in the coal industry of Canada would reveal why the act has been impotent in the industry for which it was originally drafted. Study of strikes in which the act has actually been invoked, together with information available through records in the Department of Labour and through interviews with government officials and labor leaders, enables us to indicate certain factors in the problem. It is evident that strikes called by the United Mine Workers of America to secure recognition in the important coal fields of Canada offer an issue not easily settled by the machinery of the act. Second, the industrial dislocation created by the war affected the coal industry vitally and caused abnormal conditions. In this situation organizations more radical in their philosophy than the United Mine Workers,

[1] See Table 7, page 72.

namely, the One Big Union and the Communist party, working through the Trade Union Educational League, made their appeal to the miners.[1] The development of the One Big Union in 1919 in western Canada was responsible for large-scale strikes among the coal miners as were it and the Trade Union Educational League in 1924 in Nova Scotia. Throughout this latter year in Nova Scotia a three-cornered fight was waged for the allegiance of the miners by the United Mine Workers of America, the One Big Union and the Trade Union Educational League.[2]

These factors, of course, operated in other industries as well as in coal mining. But their influence in coal mining was especially marked because of the peculiar conditions surrounding the coal industry of Canada—conditions which have led to perennial unrest among the miners of the Dominion. One of the arguments most frequently advanced by operators in both eastern and

[1] The Trade Union Educational League is the industrial branch of the Communist party and as such sympathizes with the Communist philosophy of Soviet Russia. It has been trying during the past few years to wrest control from the present officials of the United Mine Workers of America, as well as from other unions. The United Mine Workers is essentially a business union; that is, it aims to secure a favorable contract for its members in terms of wages, hours of work and working conditions. The One Big Union and the Communist party, on the other hand, have a revolutionary aim, that of overthrowing capitalism. Judging from the platforms of the One Big Union and the Communist party, there seems to be little fundamental difference in the philosophy of the two organizations. Both apparently aim to consolidate the workers into large industrial unions for the purpose of abolishing the capitalistic system. The One Big Union hopes to establish a completely new labor organization in competition with the existing system of trade unions. The Communist party, on the other hand, is out to capture the present labor movement. In addition, it aims to secure control of the political machinery of the country. For further discussion of this subject, see pages 253 ff.

[2] Fourteenth Annual Report on Labour Organization in Canada. Department of Labour, Ottawa, 1925, pp. 175–182.

western Canada in justification of proposed wage decreases has been that they "must enjoy lower costs if they are to meet competition from the United States." They have maintained that coal from the United States undersells their own product in most of the industrial centers of Canada. As Canada is very rich in coal resources, this argument of Canadian operators may seem strange. For the coal reserves of Canada are second only to those of the United States. Indeed, Canada has one-sixth of all the coal in the world, or over one and one-half times as much as all the countries of Europe combined. Yet Canada imports three-fifths of all the coal she consumes. This condition is due in the main to high transportation costs arising from the geographical distribution of the coal fields of Canada in relation to its industrial centers. The principal coal fields of Canada are located at its eastern and western extremities. The industrial centers of the country, on the other hand, are concentrated along the United States border in central Canada, in the provinces of Ontario and Quebec. Here three-fifths of the entire population of the Dominion are to be found. Toronto, in Ontario, is 1,000 miles from the coal fields of Nova Scotia and 2,000 miles from those of Alberta. On the other hand, it is only 358 miles from Scranton, Pennsylvania, an anthracite center, and 280 miles from Clearfield, Pennsylvania, a bituminous center. These long distances between the industrial centers and the coal areas of Canada render freight costs higher than the costs between those same centers and the coal fields of the United States. Thus,

. . . the freight rate on coal from Drumheller in Alberta to Toronto is $12.70 a ton for the 2,026-mile haul. . . .

From Scranton, Pennsylvania, to Toronto, the rate is $3.96 for anthracite, and . . . from Clearfield, Pennsylvania, it is $3.09 for bituminous. The rate from Springhill, Nova Scotia, to Toronto is $6.50 all rail, for the 1,052-mile haul, and $4.75, water and rail, from Sydney. Rates to Montreal permit competition there between Nova Scotia and United States coals. It costs from $1.00 to $1.25 by water and $3.60 all rail (613 miles) to ship a ton of coal from Sydney, Nova Scotia, to Montreal. From Scranton to Montreal (396 miles) the rate on anthracite is $4.42, while the freight rate on bituminous from Clearfield, Pennsylvania (477 miles) is $4.00. It is not difficult to understand why a large and lucrative trade has been built up between the United States and central Canada in both anthracite and bituminous coal.[1]

According to the statements of operators, this problem of competition from the United States has forced them to try to reduce wages and has prevented their yielding to demands for higher wages. The miners, on the other hand, contend that they have not been able to accept wage reductions because of the impossibility of meeting rising costs of living. Naturally such sharp divergence of interests gives rise to strikes, and these strikes cannot be settled by conciliation if, as seems probable, they arise out of fundamental economic instability in the industry.[2]

In view of this fundamental condition, one is compelled to ask whether it is fair to regard these strikes as evidence of the failure of the Disputes Act. In the United States and Great Britain, as in Canada, the coal industry has been characterized by repeated strikes.

[1] Patton, M. J., The Coal Resources of Canada. Departments of History and Political and Economic Science in Queen's University, Bulletin No. 50, Kingston, 1925, p. 2.

[2] For an illustration of this controversy between operators and miners, see pages 134 ff.

Recent official investigations in both these countries indicate similar causes of instability which in turn make for industrial unrest. In these two countries, as in Canada, there is evidence of over-development of coal mines. Operators in Great Britain have lost certain of their former markets and also find it difficult to compete with the lower cost mines of Germany. In the United States, the capacity of the bituminous industry is considerably greater than the capacity of the market. Lack of adequate markets leads to irregular employment. The miners, facing the necessity of earning an adequate annual income, demand a high wage rate. Operators confronted with shrinking markets not only are unwilling to increase rates but insist upon lower wage rates in the hope that lower labor costs may create larger markets. Neither position touches the real root of the trouble.

Can any legislation providing merely for the adjustment of industrial disputes remove such deep-lying causes of unrest? Under the Canadian act, as under most types of legislation providing for conciliation, investigation and arbitration of industrial disputes, intervention usually does not take place until a strike is imminent. Such intervention is bound to prove ineffective when the roots of the issues involved lie in fundamental economic factors. Stability and regularity of employment are prerequisite for peaceful industrial relationships. It has long been apparent to investigators of the coal industry that if this end is to be attained a fundamental reorganization of the industry is needed.

This conclusion becomes all the more convincing when industrial relations in the coal industry are contrasted with those in railroading. In railroading,

especially in the service branches, employment is relatively regular. The carriers and the railroad brotherhoods, both in Canada and in the United States, have in general achieved industrial peace to a high degree. Stability of employment has helped to make railroading relatively the most peaceful of industries, while its absence has helped to make coal mining the most chaotic.

CHAPTER IV

THE ADMINISTRATION OF THE ACT

WHATEVER may be the theory underlying any law, its real content and character are given to it by those charged with its administration. How, we must therefore ask, has the Disputes Act been administered? What factors in the application of the law to Canadian industry explain its statistical record as analyzed in the preceding chapter—a record which shows, on the one hand, that 429 of a total of 473 disputes arising in public utilities resulted in amicable settlements after being referred to the machinery of the act, and, on the other hand, that during the same period 472 strikes in violation of the act occurred? What procedure enabled government officials and board members to achieve such a high proportion of satisfactory adjustments in the disputes handled under the act? What action did these same officials take with regard to workers engaged in illegal strikes?

Part Played by Ministry of Labour

By the provisions of the act as originally formulated in 1907 and amended in 1910, 1918, 1920 and 1925, final administrative responsibility is vested in the Minister of Labour. His office is naturally a strategic one. He acts on applications for the establishment of boards by deciding whether a board should be constituted, or the dispute referred to another agency or, when there is doubt as to the application of the act,

whether it should be handled at all. The power of the Minister of Labour to appoint board members frequently enables him to control the character of the board sitting in a specific dispute. True, the law provides that two members of a board are to be appointed upon the respective recommendations of the employers and employes involved, while the third, who acts as chairman, is to be appointed upon recommendation of the other two. But cases often arise in which either employers or employes fail to make a recommendation, and, even more often, cases arise in which the employers' and employes' representatives on boards cannot agree upon a chairman. To the Minister of Labour, in these cases, falls the important task of naming the chairman or other members.[1]

Reports of boards are submitted to the Minister, and he directs their publication and distribution. He frequently endorses the reports of boards and attempts to secure their adoption by employers and employes. He may either reconvene a board or ask it during its proceedings to consider additional matters in the dispute under consideration. Even when no application has been made, the Minister of Labour may, when he deems it essential to the public welfare to do so, appoint boards of conciliation and investigation under the act or order investigations into disputes. Finally, he submits annual reports to the Prime Minister upon the operation of the act.

Another important official who must be considered in discussing the administration of the act is the Registrar of Boards of Conciliation and Investigation.

[1] In fact, ministers have appointed chairmen in over half of the cases. See Table 9, page 186.

As a member of the Department of Labour, he is responsible for the details of administration. Applications for boards are received and registered by him. They are brought by him to the immediate attention of the Minister. He conducts with the parties involved most of the correspondence necessary to the constitution and proceedings of boards. He frequently assists in the attempt to persuade employers and employes to accept the recommendations of boards. He keeps the files of all cases and supplies all information and forms requested under the act.

The actual administrators of the act have naturally differed with the changing fortunes of the Liberal and Conservative parties, the two major political parties in Canada. In 1907, when the law was enacted, the Liberals were in power under the leadership of Sir Wilfred Laurier. Although the Department of Labour had been created in 1900, there was no separate portfolio of labor then in the cabinet. From 1900 to 1909 the Department was administered by the Postmaster-General, who was also Minister of Labour. The Honourable Rodolphe Lemieux succeeded in 1906 the Honourable William Mulock as Postmaster-General and Minister of Labour.[1] Mr. King, the author of the act, as already noted, was Deputy Minister of Labour from 1900 to 1908. In 1909 the Department of Labour became a separate department and no longer was administered by the Postmaster-General. Mr. King became the first Minister of Labour with portfolio and continued in that position for two years. Thus, from 1907 to 1911 the administration of the Disputes Act

[1] Because it was Mr. Lemieux who introduced the act in Parliament, the Disputes Act is often called the Lemieux Act.

was in the hands of the Liberals, chiefly under the guidance of Mr. King. In 1911 the Conservatives came into power and remained in control until 1921.[1] From 1911 to 1918 the Honourable T. W. Crothers was Minister of Labour. In 1918 Mr. Crothers resigned and the Honourable G. D. Robertson was appointed to his place. This marked an important innovation in the history of the Department of Labour, for Mr. Robertson, a vice-president of the Order of Railroad Telegraphers, was the first Minister of Labour to be recruited from the labor movement. When the Liberal party was voted into power again in 1921, this policy was continued. An official of organized labor was again appointed Minister of Labour, in the person of the Honourable James Murdock, vice-president of the Brotherhood of Railroad Trainmen. Thus from 1918 to 1925 final responsibility for the administration of the Disputes Act was lodged in men who came from the ranks of organized labor.[2]

But, although ministers have changed, the day-to-day administration of the act has been the responsi-

[1] During the latter part of the war, a union or coalition government was formed under the Premiership of Sir Robert Borden, leader of the Conservative party.

[2] As a result of the elections held late in 1925, the Liberal party was again voted into power, with Mr. King as Premier. Mr. Murdock was, however, defeated in this election. The Honourable J. C. Elliott, a lawyer, was appointed Minister of Labour. He took office in March, 1926. In June, 1926 the Liberal party was defeated by a vote of lack of confidence in the House of Commons, and for a short time the Conservative party came into power. The Honourable George B. Jones, a lumber manufacturer of New Brunswick, was then appointed Minister of Labour. After a general election held in September, 1926, the Liberal party was returned to office. Mr. King then appointed as Minister of Labour the Honourable Peter Heenan, a member of the Brotherhood of Locomotive Engineers. Thus, after a short interlude the practice of appointing former trade unionists to the Ministry of Labour was resumed.

bility of the same individual through almost its entire history. For in Canada, as in Great Britain, under-secretaries and civil-service employes are permanent officials. From 1908 to 1923, F. A. Acland served as Deputy Minister of Labour and Registrar of Boards. Consequently, the detailed administration of the law was in the same hands over a long period. In 1923, when Mr. Acland resigned, H. H. Ward was appointed to succeed him.

Part Played by Members of Boards

In addition to these two officials, the Minister of Labour and the Registrar of Boards, the most important agents in the administration of the act are the members appointed to boards. Upon their skill, comprehension and tact has depended, as will later appear, the outcome of the cases referred to them, and consequently the success of the act. Some of the most successful chairmen have exercised a very important influence in establishing a procedure for the action of boards.

According to the act, a separate board is established for each dispute, and new members are appointed for each board.[1] The purpose underlying this requirement was that the personnel of successive boards need not be the same. There are undoubted advantages which can be urged in support of a changing personnel. For if either employers or employes should feel dissatisfied with the procedure or report of any one board, they can look forward to better results next time with a different board. Again, "there is a feeling of direct representation of interests when each side to a dispute

[1] See page 51.

has the opportunity of naming a member of the board."[1] A board appointed to deal with only one dispute, on the other hand, lacks advantages possessed by a permanent board which deals with all disputes. The latter avoids delays, inevitable when separate boards are established, in appointing members, in arranging for hearings and in working out a procedure. Members of a permanent board can act with expedition when an emergency is before their country. In addition, repeated experience in dealing with disputes should give them familiarity with industrial conditions and render them more skilled in the difficult task of conciliation.[2]

The Canadian Department of Labour seems to have worked out a procedure which has in it the best features of the two types of boards. For the practice of appointment of board members under the Disputes Act has varied considerably from the theory. While members are appointed to boards for each separate dispute, certain names begin to appear over and over again with marked frequency. Adam Shortt, for instance, while professor of economics at Queen's University, served as chairman of 11 boards during the first two years of the act.[3] His success in steering proceedings to amicable settlements became widely known and parties to various disputes naturally recommended him as chairman. Judge Colin G. Snider served as

[1] Squires, Benjamin M., Operation of the Industrial Disputes Investigation Act of Canada. U. S. Bureau of Labor Statistics, Bulletin No. 233, Washington, 1918, p. 137.

[2] *Ibid.*

[3] When Mr. Shortt was appointed in 1909 as chairman of the Civil Service Commission of Canada, he was no longer eligible to act on boards, because of a regulation forbidding civil service employes to receive compensation from the government for activities other than those incurred in their regular official duties.

chairman of 30 boards, and Judge R. D. Gunn as chairman of 26 boards. Similarly, employers and employes have come to select certain men repeatedly to represent them on boards. Indeed, instances are known where employes have delayed naming their representative on a board in a particular dispute until a certain man in whom they had acquired confidence because of his service as their representative on previous boards was free to represent them. As employes' representatives, for instance, Fred Bancroft acted on 42 boards, J. G. O'Donoghue on 41 boards, and David Campbell on 36 boards. As employers' representatives, F. H. McGuigan served on 36 boards and Wallace Nesbitt on 17 boards.

Thus, as a result of the practice developed in the administration of the Disputes Act, it became possible to secure the advantages of both a changing and a permanent personnel of boards. For since a new board could be appointed for each dispute, its members could proceed without the handicap of antagonisms incurred by decisions in previous disputes, while the method of nominating members who had served on previous boards developed, so to speak, panels of men who were not only experienced but who had shown exceptional skill and success as conciliators under the act.

Conciliation the Purpose of Boards

A clue to the understanding of the administrative developments under the Disputes Act may be found in the paragraph which defines the duties of boards. Section 23 of the act stipulates:

> 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.

It is clear from this provision that the purpose for which a board is appointed is to bring about a settlement. The board is "a Board of *Conciliation*[1] and Investigation." Conciliation is its first task. Investigation is to be conducted "*to this end.*"[1] Further, if settlement is not effected at once, the board must continue to seek settlement by conciliation during the progress of its proceedings. If conciliation proves successful, the board reports the terms of settlement. But if conciliation is not successful, the board proceeds with its investigation and draws up recommendations for settlement, which it submits in its report to the Minister of Labour. In the course of investigation the board is empowered to summon witnesses and to compel testimony and the submission of books, papers and documents pertinent to the issues involved.

Thus the provisions of the law specifically make conciliation its primary aim. Nevertheless, the act is also a compulsory law in that it makes the submission of disputes mandatory. Accordingly, it contains compulsory clauses which define the range of penalties for violations of the law. Indeed, as already indicated,[2]

[1] Italics are the author's.

[2] See Chapter II, Provisions of the Canadian Act, page 48.

the distinguishing provisions of the Disputes Act which justify describing it as a "compulsory" law are those making "strikes and lockouts prior to and pending a reference to a board illegal" and punishable by fines.

The procedure developed by boards possesses an interest and importance extending beyond national boundaries. For the issues growing out of conflicts between employers and employes are in their fundamentals similar everywhere; they relate chiefly to questions of wages, hours of work, safety and sanitary conditions, security of work and machinery for granting workers representation in decisions affecting their welfare. The majority of the boards constituted under the Disputes Act have succeeded, as we have seen, in effecting amicable settlements. The procedure followed and about to be described should therefore be illuminating to employers, employes, government officials and arbitrators called upon to help adjust industrial disputes elsewhere.

Early Development of Board Procedure

From the outset the boards have generally approached their task as one of conciliation. They have heard the cases presented to them not as judges called upon to render decisions but as peacemakers called upon, above everything else, to create a friendly and informal atmosphere which would help to bring about amicable settlements. They have not emphasized their powers to compel the attendance of witnesses and the submission of evidence.

Several typical cases illustrate this procedure of conciliation. On April 20, 1907, hardly a month after the act had been passed, the machinists employed by the

Grand Trunk Railway applied for a board. They had been unable to negotiate an agreement with the management regarding "the rules and rates of pay covering the service of machinists and machinists' apprentices. . . ."[1] In all, 400 men were involved. A board was duly constituted. Alex H. Champion was appointed on the recommendation of the employes, and Wallace Nesbitt on the recommendation of the employer. Inasmuch as these two failed to agree upon a chairman, the Minister of Labour appointed Mr. Shortt. Subsequently Mr. Champion resigned from the board, and J. G. O'Donoghue was appointed on the recommendation of the employes to take his place. The board met in Montreal on May 16, 17 and 18. An agreement was arrived at on the evening of the last day and signed by both parties to the dispute. It was a lengthy document covering not only wages and hours but also other complicated issues which will be described presently. The formal report of the chairman of the board to the Minister of Labour was dated May 20. The entire process took precisely one month and the board was actually sitting only three days.

In a letter sent informally to the Minister of Labour on May 21, 1907, Mr. Shortt described the procedure followed by him and his colleagues on the board in this dispute. The issues were complex, covering

> . . . almost every typical feature of the labour problem, such as rates of wages, hours of employment, including night and day work, overtime both as to hours and pay, classification of the men, the number and status of apprentices, the promotion of helpers, improvers, . . . the reinstate-

[1] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1908. Ottawa, p. 257.

ment of men on strike or lockout, some of them for over two years, and the general recognition of the unions. . . .[1]

At the opening hearing of the case, Mr. Shortt urged the company and the men to meet by themselves first to settle many minor matters, at least, which were involved in the dispute, because, in making reply to the application for a board, company officials had "declared that the dispute might have been settled if the men had not been so impatient."[2] But "after half a day's conference it was found that no progress had been made, hence every point at issue had to be taken up by the Board."[2]

Having secured the confidence of both sides, Mr. Shortt then encouraged them to discuss their case before the board. Patience, tact and understanding shown by the chairman and the other members of the board throughout the hearing helped to develop an atmosphere of mutual confidence between the management and the men. Agreement was consequently reached on all points:

I appear to have been fortunate enough to secure the confidence of both parties to the dispute, and my colleagues, though nominated by the opposite interests, exhibited a spirit of perfect fairness in every respect. Throughout the proceedings no attempt was made to settle differences on the easy but demoralizing principle of "splitting the difference," but every attention was given to deciding every matter on its merits. This appeared to greatly develop mutual confidence and matters became easier the further we advanced, until it was evident that a final settlement was merely a question of patiently covering the whole field. . . . By Saturday

[1] *Ibid.* p. 263.
[2] *Ibid.* p. 264.

evening practically everything had been disposed of but the readjustment of the minimum rates of wages. After considerable discussion, chiefly as to how the advances . . . would apply to individuals, the men . . . agreed to accept the offers of the railway and everything was settled. Mutual concessions were then in order, and it seemed difficult to determine which party was the better satisfied with the character of the proceedings and the efficiency of the new law, which all recognized to have been on trial, and which all parties admitted to have proved entirely successful. An important and complex labour dispute, involving feuds of more than two years' standing and not improving with age, had been settled to the satisfaction of both parties, without the loss of a day's work to the men, or a dollar to the company, and above all, without disturbance to the public service.[1]

The reply of the Minister of Labour to this letter revealed how completely he approved of the procedure pursued in this case. Indeed, he explicitly expressed the conviction that it would serve as "an illuminating example of procedure in all applications of the act."[2]

The following notes of the writer, based on an interview which he had with Mr. Shortt in Ottawa in December, 1916 give a more intimate picture of the methods followed by him as chairman of boards of conciliation and investigation:

Mr. Shortt was appointed chairman of the board which was to make the first real test of the act. As he was going to Montreal, where the case was to be heard, he felt nervous. The company had recommended as its representative Wallace Nesbitt, an eminent corporation lawyer. He had served on the Supreme Court bench and had retired to resume private

[1] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1908. Ottawa, p. 264.

[2] *Ibid.* p. 265.

practice. The men, on their side, had recommended J. G. O'Donoghue, also an eminent attorney and solicitor for the Trades and Labor Congress.

A teacher of economics, Mr. Shortt was only in a very general way familiar with court procedure, nevertheless he knew that here was a new statute and that this was the first real case coming under it. There was no doubt in his mind but that these two lawyers would resort to technicalities and would try to apply the rules of law to the procedure of the board. So on his way to Montreal he stopped to see Mr. Fitzpatrick, Chief Justice of the Supreme Court. He asked his advice. Justice Fitzpatrick said: "Shortt, the only thing for you to do is to overrule all technicalities. This is not a law to which court procedure applies. The very first time an effort is made to resort to legal technicalities, you just put a stop to it."

Mr. Shortt felt encouraged by this advice. When the board convened, both the company and the men had their chief executives there. They were anxious to see how the law would work. As soon as the hearings began, the first thing that happened was what Mr. Shortt had feared. Mr. Nesbitt arose and made the point that the act was a Canadian statute; that it applied only to Canadians, and that, therefore, the international officers of the union, who were citizens of the United States, ought not to be present and participate in the hearings. Mr. Shortt took the position that, while technically Mr. Nesbitt might be right, this was not a court of law. Here was a dispute between the men and their employer; the board was meeting not to interpret the law but to help bring about a settlement. The objection was overruled.

The representatives of the company shook their heads dubiously but said nothing. A little while later, Mr. O'Donoghue raised a technical objection. The company wished to present as evidence certain acts of its employes which were committed prior to the adoption of the Disputes Act. Mr. O'Donoghue objected. He argued that, inasmuch

as a law could not be retroactive, and as the men had committed the alleged breach before the enactment of the Disputes Act, the evidence of the company ought not to be accepted. Mr. Shortt took the position that, while technically Mr. O'Donoghue might be correct, this was not a court of law. There was no reason why the board should not have all the facts that would give it the background of the dispute. This decision evened things up, and Mr. Shortt had no more trouble with legal technicalities.

The conciliatory procedure of this first case was also followed in the 10 other cases in which Mr. Shortt was chairman. In each instance an agreement was reached between the two parties to the dispute. Thus, a policy of informal procedure aimed solely toward conciliation became established early in the history of the act.

As a result of this early experience the Department of Labour discouraged almost from the start the use of procedure which would make the sessions conducted by boards suggest in any way formal court hearings. At the end of the first four years in the history of the act, the Deputy Minister of Labour, who acted as Registrar, wrote:

> Experience in the administration of the Act has appeared to show that it is more effectively operated when freed, so far as possible, from the formal procedure suggestive of the ordinary judicial court. The taking of sworn evidence with stenographers' reports has been particularly discouraged as having proved far from conducive to an amicable adjustment of differences. . . .
>
> The most obvious virtue of the Act lies . . . in bringing the parties together before three fellow-citizens of standing and repute . . . where a free and frank discussion of the differences may take place and the dispute may be threshed out. . . . Granting that such discussion and investiga-

tion take place before a strike or lockout has been declared, and that the Board acts with proper discretion and tact, the chances are believed to be largely in favour of an amicable adjustment. . . .[1]

The acceptance of this whole procedure of conciliation might be illustrated by taking almost any case from the files of the Department of Labour. For instance, on December 10, 1919, 1,500 employes of the Canadian Express Company, including clerks, messengers, porters and other workers, who held membership in the Canadian Brotherhood of Railway Employees, applied for a board of conciliation and investigation. These employes and the company had been unable to agree on the terms of a contract covering such subjects as wages, hours, seniority, methods of adjusting grievances and other conditions of work. In applying for a board, the men nominated as their representative Fred Bancroft. The company nominated F. H. McGuigan. Mr. Bancroft and Mr. McGuigan could not agree upon the third member; consequently the Minister of Labour appointed Justice T. Fortin as chairman, and the board was constituted on January 7, 1920.

The report of the board was published in the Labour Gazette early in 1920. Its contents indicate the procedure followed. The board held its first session in Montreal on January 21, 1920. It met at various times from this date until February 7, when final adjustment was reached. The employes presented a "schedule of wages and conditions containing fifty clauses and covering every department of the service." The board

[1] Fourth Report of the Registrar of Boards of Conciliation and Investigation of the Proceedings under the Industrial Disputes Investigation Act for the fiscal year ending March 31, 1911. Department of Labour, Ottawa, p. 17.

heard at length a great mass of evidence on both sides; but—and this indicates the characteristic procedure—"from the commencement of, and throughout the sittings the Board unanimously and insistently pressed the parties to spare no effort to reach an agreement." To this end it encouraged both sides to get together in many private conferences from time to time and "when they failed to agree and reached a deadlock, the services of the Board were called in to . . . suggest adjustments. As a result of the continued and earnest efforts of both parties, assisted by the Board, an agreement was reached on all the items in dispute and duly signed by the representatives of both parties."[1]

To cite another example, which concerns a coal dispute occurring during the same period: At Sydney Mines, Cape Breton, Nova Scotia, the Acadia Coal Company, Limited, became involved in a dispute with the miners employed by it (members of District 26, United Mine Workers of America) over wages paid to the different classifications of workmen employed in or about the mines of the company. The board established under the act to investigate this dispute consisted of John McKeen, appointed on the recommendation of the company, J. C. Watters, on that of the men, and Judge Patterson, as chairman, on the joint recommendation of the other two members. Company officials and employes were first urged to settle their differences among themselves. They were offered the services of the board "in adjusting those matters upon which, after a full interchange of opinions and argument, they could not come to terms." The report then reads:

[1] Labour Gazette, Vol. XX, p. 250, March, 1920.

The suggestion was accepted by both sides in the most cordial manner, and acted upon. For some days the Company and their employees, through their respective representatives, met in friendly discussion, and agreed upon many of the items in dispute. Then when they could get no further they came before us. We heard all the evidence either side had to offer, and listened carefully to all arguments presented. And no better opportunity will occur than here to congratulate both sides upon the splendid manner in which they conducted their case. Everything said or done was said or done with good feeling, and neither side sought to take advantage of the other, but both seemed anxious for a fair and reasonable settlement. . . . Practically, we were asked to draw up a new schedule of wages. Many of these classifications are paid by the day—others are by contract. The parties themselves were able to settle and agree upon a rate for many, perhaps most, of the classifications paid by the day, but upon none of the contract rates could they agree. The Company would consent to no increase in any of these—the employees asked an increase in all.[1]

The board then presented a schedule of wages which embodied both the rates agreed upon between the company and its employes and also those which were referred to it for settlement. The report of the board was unanimous.

The general procedure followed by boards established under the Disputes Act is aimed primarily at conciliation and has usually fallen into several definite steps. Upon their constitution boards have sought first to discover how much of the disputes submitted could be adjusted by voluntary negotiation, and for this purpose the two parties have been urged to get together by themselves. The confidence and co-

[1] Labour Gazette, Vol. XX, p. 233, March, 1920.

operation of both employers and employes have been sought and free and informal discussion of all issues urged. During the hearings the board has attempted to bring about agreement on every issue possible and finally, decisions of boards have been made only on points on which agreement between the parties in dispute has been impossible.

Compulsory Powers of Boards Rarely Used

The desire to win the confidence of employers and workers has meant that boards have rarely used any of the compulsory powers conferred on them by the law. Very few of them, for instance, have subpoenaed witnesses or compelled submission of the records of establishments. And, indeed, no better proof of the success of conciliatory procedure can be found than a comparison of results in cases where boards used their compulsory powers with those in which they relied entirely on conciliatory efforts.

The few instances in which boards used their compulsory powers occurred mainly in the early years, when experience with the act was yet limited. The use of compulsion is illustrated by a dispute which arose in 1908 between the Cumberland Railway Coal Company, Limited, at Springhill, Nova Scotia, and some 1,600 miners employed by it.[1] These miners were members of Mechanics' Lodge, No. 23, of the Provincial Workmen's Association, a local labor organization no longer in existence. In applying for a board, the employes described the issue as a demand for wage increases for a number of the men.

[1] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1909. Ottawa, pp. 230–231.

Charging that the demands of the men were contrary to the terms under which they had returned to work on the preceding October 29, after a strike of thirteen weeks, the company notified the Department of Labour that it would take no part in the proceedings. It refused even to recommend its representative on the board. Consequently the Minister of Labour, in accordance with the law, appointed a member to represent the company. The board convened on May 13, 1908. It heard first the case of the employes, conducted by three of their number. The company refused to present any evidence on the issue. The chairman, therefore, announced early in the session of the board that, inasmuch as the decision to be given by the board "would be entitled to greater weight if evidence were submitted by each party to the dispute," the board had decided to subpoena the general manager and the manager of the company. The subpoenas were issued by the chairman and duly served. At the opening of the sittings on May 14 the general manager and the manager of the company were in attendance. Two other officials of the company were also present and were examined. The chairman of the board informed the committee representing the employes that these witnesses could be cross-examined by them, and various questions were asked of each witness by the members of the miners' committee.[1] After all the evidence had been presented, the board found itself unable to agree. A majority report was submitted, which declared against the demands of the men. Their representative on the board submitted a minority report. No strike

[1] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1909. Ottawa, pp. 230–231.

took place in this dispute, but the issues of the dispute remained unsettled.

A significant contrast to the foregoing procedure is offered by that of a board constituted at about the same time and under similar conditions. Mr. Shortt was chairman. On May 12, 1908, 1,750 coal miners employed by the Nova Scotia Steel and Coal Company, also members of various lodges of the Provincial Workmen's Association, applied for a board. The dispute arose over the refusal of the company to grant a wage increase of 15 per cent asked for by the employes to meet increases in the cost of living. This company, too, refused to recommend its representative on the board. Consequently the Minister of Labour appointed the member without a recommendation. When the board was finally constituted and began its hearings, the company, again paralleling the development of the Cumberland case, refused to participate in any way whatever. But the steps taken by the chairman in this impasse were entirely different from those of the board in the Cumberland case. His consistent aim was conciliation, and he finally secured not only the whole-hearted co-operation of both parties but also effected a satisfactory agreement in an extremely complex dispute. To accomplish this result, the chairman first sought to win the co-operation of the Company:

> Realizing that if this resolution [of the company to boycott the hearings] were adhered to there was little prospect of the Board being able to effect a settlement of the dispute, and that its labours would probably end in a barren report, I first endeavoured to remove the misapprehension as to the functions of the Board, which I felt was the basis of the attitude of the Company. The president of the Company, Mr. R. H. E.

Harris, K. C., of Halifax, consented to come to Sydney to discuss the matter. As the result of a meeting between Mr. Harris, Mr. Brown [the company superintendent] and myself on Monday, July 13, it was arranged that the Company would waive its objections and freely and unconditionally take part in the proceedings before the Board, and that Mr. Brown would conduct the case for the Company.[1]

That the confidence of the company had been won as a result of these discussions, is revealed by a statement later in the report, that "the members of the board were also given access to *confidential information*[2] as to contracts and earnings of the company." In this case, too, the board, after considering all of the evidence, reported against the demand of the men for an increase of wages.* It based its recommendation on the fact that the company was in no financial condition to increase its costs. But it did not stop with this. It found that "a wide difference in the earning power of the miners" existed within the collieries of the company, and proposed that they be equalized. The report states:

Very naturally the proposal was most strenuously opposed by the highly paid miners in No. 3 colliery, who, though their lodge was included on the same basis as the other in the application to the Department of Labour for a Board, yet made the claim that they were not involved in the matter before the Board as they made no request for a change in conditions. The Board, however, had ruled from the first, that whatever was essential or pertinent to the ultimate settlement of the matters in dispute would be considered and dealt with by the Board. . . . It is unnecessary to detail all the conferences and negotiations which followed and which, considering the importance of the issues for hundreds of individuals, were

[1] *Ibid.* p. 258.

[2] Italics are the author's.

conducted, on the whole, with moderation and with exceptional forbearance for the Board, the authors and advocates of an unpopular proposal.[1]

Although agreeing with the company that no substantial increase in wages was possible from a financial point of view, the board persuaded it to appropriate a small sum of money toward increasing wages in the interests of equalization and peace. "The proposal was met in a generous spirit. The amount to be saved by the proposed reductions was about $550 per month. To this the company agreed to add another $300 per month, making the total about $850 per month."[1]

In order to make more probable a peaceful settlement of the dispute, both the chairman and the employes' representative on the board attended the meetings of the union at which the report of the board was discussed, and explained the award. The agreement proposed by the board was signed by both parties, and an amicable settlement was thus reached in a difficult and complicated case. The extent to which the conciliatory spirit of the board was responsible for this settlement may be judged from the cordial manner in which the general manager of the company approved the procedure of the board in a letter to the Minister of Labour. This statement is especially significant in view of the original refusal of the management to cooperate in the work of the board.

We now wish to take this opportunity of expressing our appreciation of the very painstaking, able and courteous manner in which the Board carried on the protracted and difficult negotiations leading up to the arrangement arrived

[1] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1909. Ottawa, p. 260.

at on August 1; and we wish particularly to give expression to our appreciation for the very able way in which the chairman presided over the deliberations of the Board, and the patience which he and his colleagues exhibited all through the examination of witnesses, and more particularly the conciliatory work which both the chairman and Mr. Maddin took up after the closing of the presentation of each side of the case by the representatives of the employees and of the company.[1]

Penalty Clauses Not Enforced

The emphasis given to conciliation by the Department of Labour and the boards of conciliation and investigation constituted under the Disputes Act has inevitably resulted in minimizing the clauses of the act which impose penalties for strikes and lockouts pending investigation. Administrators anxious to win the confidence of disputants and to persuade them to agree on amicable settlements cannot at the same time threaten them with fines or imprisonment. Hence officials in the Department of Labour have consistently refused to undertake prosecutions for violations of the law. Mr. King in testifying before the United States Commission on Industrial Relations in 1914 stated: "The government has never laid particular stress upon the penalty end of it. The penalty part . . . has always been treated in much the same light as a penalty for trespass. If the party affected wishes to enter an action to recover damages they may do so. . . ."[2]

F. A. Acland, as already noted, Registrar of Boards from 1908 to 1923, put the official position of the

[1] *Ibid.* p. 257.

[2] Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations Created by the Act of August 23, 1912. Government Printing Office, Washington, 1916, Vol. I, p. 715.

government, in the Canadian Law Times of March, 1916, in the following words:

> What, it may be asked, becomes of the penalties prescribed for these apparent infringements of the statute? The reply must be that such cases have seldom gone to the courts. It has not been the policy of the successive Ministers under whose authority the statute has been administered to undertake the enforcement of these provisions.

Nothing illustrates the policy of the government not to prosecute the violators of the act better than the figures themselves.* According to the compilation in Table 5,[1] 472 punishable violations of the law occurred in public utilities from 1907 to 1925. But only 16 of these appear to have come before the courts.[2] Eleven represent prosecutions for strikes illegal under the act; seven of these were sustained by the courts and four discharged. Four represent prosecutions for illegal lockouts; in two of these cases the employers were fined. One case consisted of an application for an injunction to restrain an employer from reducing wages before the dispute had been heard by a board. The injunction was suspended on appeal to a higher court on the ground that, as the agreement had expired between employer and employes, no rates of wages were in existence about which there could be a dispute. Two additional prosecutions sought the enforcement of an agreement based on reports made by boards; nothing in the act justifies such prosecutions, and both of these cases were dismissed.[3]

[1] See page 68.

[2] None of these cases was brought before the court by the government.

[3] Mackintosh, Margaret, Government Intervention in Labour Disputes in Canada. p. 12. (Issued as a supplement to Labour Gazette, Vol. XXV, March, 1925.)

Several Canadian officials, asked by the writer why the miners who had been responsible for the most serious violations of the act had not been prosecuted, gave similar replies. One of them, referring to the repeated illegal strikes of the miners in western Canada, made the following typical statement:

> In a case of this kind the act is powerless; what can you do? Here are about 6,000 men, most of them foreigners. They don't understand the act. They don't care for it. What are you going to do? Fine them? Well, they won't pay. Put them in jail—if you could? The coal won't be mined. As far as I can see, any legislation in the world wouldn't prevent a strike from occurring under these circumstances.

Instead of initiating prosecutions, the Department of Labour has usually attempted to persuade those violating the act to avail themselves of its provisions. In his report for the year 1911–1912 the Registrar reviews the efforts to have the act invoked in the strikes occurring in the coal mines of District 18 in 1907, 1909 and 1911.[1] In each instance representatives of the Department of Labour were dispatched to western Canada to urge the operators and miners to apply for boards. To be sure, boards were appointed in each of these disputes, but only after the men had been on strike for some time.

What, then, is the value of the penalty clauses found in the Disputes Act, in the face of frequent violations and the established policy of the government not to prosecute those guilty of illegal strikes and lockouts? This question has been raised by all investigators. It

[1] Fifth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1912. Department of Labour, Ottawa, p. 7.

is a pertinent question. For the act has been regarded outside of Canada as a compulsory measure; and it is primarily because it penalizes stoppages on public utilities until an investigation is completed that it has attracted wide attention in the United States, Great Britain and other countries. The data of this investigation seem to show very clearly that, whatever may be the theory of the act, in practice it has operated as a conciliatory measure, and that as such its results must be judged. In practice, the penalty clauses of the law have been largely ignored.

It should be noted, however, that neither the Conservative nor the Liberal party when holding office has been willing to eliminate the penalty provisions from the act, in spite of frequent petitions to do so by representatives of organized labor. The administrators of the act have pointed to the fact that neither employers nor responsible trade unionists wish to be branded as violators of the public law; both court the good will of the community. Hence, say officials in the Department of Labour, the clauses in the law, making it mandatory to apply for a board before a strike or lockout, often gave the government an opportunity to intervene in a difficult situation when either management or men, or both, wished to fight their issues out without any interference.

The question still remains, however, whether the same end could not be obtained without the penalty clauses. For without these clauses the act empowers the government to intervene in any threatened dispute, for the purpose either of conciliation or of investigation. The penalty clauses add nothing to the government's power to investigate; they are simply negative pro-

visions forbidding men from striking prior to investigation. Their value as a restraining influence is extremely doubtful. Those men, like the miners of western Canada, who think it necessary and desirable to strike before invoking the act, do so with impunity; and, as we have seen, it is practically impossible to enforce the penalties against them even if the government wished to do so. Other workers on public utilities, such as railway men, seldom resort to strikes under any condition, and certainly they are too sensitive to the censure of public bodies to strike prior to the completion of an investigation by a government agency, regardless of whether such a strike is or is not forbidden by law.

Little Publicity Given to Findings of Boards

It will be recalled that one of the main objects of the Disputes Act was to give an opportunity to the community to exercise a restraining influence on employers and employes before a strike or lockout was actually declared. It was hoped, undoubtedly, that boards sitting under the act would place the facts in dispute before the general public and thus help to avert strikes and lockouts by bringing pressure to bear on the party whose case was unjust.

The Minister of Labour is directed by the Disputes Act to publish without delay the reports of boards, as well as minority reports, in the Labour Gazette, either verbatim or in summary form, as he may determine. Copies of reports are also to be sent free of charge to the parties to the dispute and to the representative of any newspaper published in Canada who may apply for them. Other applicants are to be supplied with copies

"for a prescribed fee." The Minister of Labour may, however, distribute copies of a report "in such manner as to him seems most desirable as a means of securing a compliance with the board's recommendation."

Since the act has been administered as a conciliatory measure, the general public has not played a large part in adjusting disputes. For, as has been pointed out, the conciliator's first task is to win the confidence of both sides in the dispute, and it is therefore unwise for him to press for those facts which are not willingly given. When given, they must often be held in confidence. Hence boards which aim to bring about an amicable settlement are more or less compelled to give a minimum of the facts to the public. One board, for instance, reporting on November 21, 1913, upon a dispute between the Grand Trunk Railway and its station and telegraph employes, deliberately refrained from recording the evidence submitted to it, because, in its opinion, such a course might prolong the ill-feeling then existing between management and men. The report of the board states:

> It is submitted that as no adequate benefits would accrue by setting out a detailed history of the evidence or steps taken by the Board in bringing about what they feel is a satisfactory adjustment of the difference in dispute herein, but on the other hand there might be grounds provided for prolonging the controversy between the parties from taking such a course, . . . the Board have refrained from making any unnecessary references in this report.[1]

Again, in order to aid in the processes of mediation, chairmen of boards have usually discouraged and in

[1] Seventh Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1914. Department of Labour, Ottawa, p. 186.

many instances prohibited the presence of newspaper reporters at hearings. The detailed reasons for this practice were given by Mr. Shortt as follows:

In the case of all the boards presided over by the writer, it was arranged that there should be no newspaper reports of the proceedings before the board. The objection to such reports has been that the very calling for a board implied that there were more or less radical differences of opinion and assertions of right, which the respective parties were about to lay down and defend, but which, in the course of the proceedings before the board, must be given up or at least greatly modified on one or both sides if a settlement were to be reached. In a court of law the arguments on either side are presented and maintained to the close of the case, the verdict is given by the court and accepted of necessity. There is no objection, therefore, to the publicity of the argument. But where, as before a board of conciliation, the verdict is to be reached by concession and compromise, and voluntarily accepted by both parties, it is not so readily reached if there is a daily record in the press of every modification of the original claims, which were advanced with confidence and backed with vigor through all the fruitless conferences which have preceded the reference of the case to a board. Moreover, in the presence of the press there is a strong temptation to talk to the gallery rather than to the subject in hand, all of which is very inimical to that attitude and frame of mind which is essential to the settlement of difficult and often bitter disputes.[1]

The reports of most boards are brief. Few of them give either the complete evidence brought before them or the reasoning which led to the decision. Moreover, almost all of the reports, long as well as short, are written in technical language which would be intelli-

[1] Shortt, Adam, "The Canadian Industrial Disputes Act," *in* American Economic Association Publications, Third Series, Vol. X, pp. 161–162, April, 1909.

gible to few laymen. No one in the Department of Labour edits and prepares these reports for the lay reader. Finally, no method has been developed for giving publicity to the facts summarized in the reports through the newspapers of Canada and the other mediums for reaching the community. Unless the initiative is taken by a newspaper, a private agency or individual, the reports are published only in the Labour Gazette, which is read by relatively few people.

Under these conditions it is hardly to be expected that the public should play an important role in enforcing observation of the act or of decisions made under it. Just how the general community can, however, become a more potent factor in establishing peaceful industrial relations is still a perplexing problem. Indeed, just what the public is and what makes up public opinion are complex questions which still await analysis. Nor is it easy to conceive of an educational method that would give the many heterogeneous groups that make up the community continuous information on the complex issues involved in industrial disputes.

At least part of the objective of the act in this matter—that of permitting the community to exercise a restraining influence before a strike or lockout—is realized in an indirect way. For the boards appointed under the act are in one sense the agents of the community. And, as this brief survey of the procedure of boards has revealed, they have almost always directed their efforts to discovering the basis for a settlement through conciliation rather than through finding the facts for the education of the community; "when a settlement is reached the chief public interest is served."[1]

[1] *Ibid.* p. 162.

But public opinion is always in the background, to which government officials may appeal. For if either employers or employes should refuse to accept the recommendations of a board, the Minister of Labour may publish its findings in the newspapers and even condemn in public statements the party threatening a strike or lockout. Under such circumstances, citizens of any community would be likely to place greater credence in the facts as reported by the board than in the facts as presented by either party to the dispute.

CHAPTER V

THE BASIS OF BOARD DECISIONS

OCCASIONALLY a board of conciliation and investigation will report fully the data submitted to it; but as a rule the reports, as already indicated, are brief. They usually contain a statement of the issues in dispute, the efforts made to secure a settlement, at times some of the evidence presented, and a copy of the agreement, if an agreement is reached. The reports also contain the decisions or recommendations of the board when an agreement has not been reached during the hearings. Minority reports, whenever made, always accompany the majority report.

No code of industrial principles has been laid down or developed to govern decisions of boards. Decisions made by other boards in similar cases are seldom referred to. Indeed, some boards have freely rejected arguments accepted by others as a basis for their recommendations in similar disputes.

Determining Wage Decisions

Individual boards have, however, used certain principles in arriving at decisions upon the issues presented to them. These principles may be urged in the arguments of the parties to the dispute, or they may be generally recognized in the current opinion concerning industrial problems. Thus, in wage questions, we find boards basing their decisions on such considerations as

the cost of living, rates paid by competitors, the prosperity of the industry, equalization of rates for similar work, special skill required and unusual hazards incurred.

The major issues in the disputes brought before boards in Canada, as is true in similar disputes elsewhere, revolve about wages. In making application for boards, employes (who, as we have seen, were the applicants in 91 per cent of all cases)[1] usually seek to have their wages increased or to keep employers from initiating a decrease. The varying principles commonly invoked by contending parties and often cited as the bases of board decisions are illustrated below by a number of cases. The cost of living was the dominant factor in the decision in two cases; in a third it was the necessity of securing a fair return to investors; in a fourth, the protection of the workers' wage as paramount even during a period of financial stringency; in a fifth, the wage rate as determined by the replacement cost to the employer at the current rate of wages; in a sixth, the necessity of meeting competition; and in a seventh, the interrelation of industrial conditions in Canada and the United States.

Cost of Living. A board reporting on July 5, 1911 in a dispute between District 18, United Mine Workers of America, and the Western Coal Operators' Association stated that it was guided by the following principles in setting a wage scale:

1. A Living Wage is a necessity.

2. In mines operating under the same Association and within the jurisdiction of the same Labour Union uniformity should prevail, as far as possible.

[1] See Table 1, page 63.

3. In the same mining camp equalization of wages should be sought.

4. After passing the limit of the Living Wage the financial standing of the Company should be considered.[1]

Applying these principles to the specific details of the case, the board recommended increases in wages.

The "cost-of-living" argument was unequivocally accepted as a reason for wage increases in a majority report signed by the chairman and the employes' representative on a board constituted on July 2, 1915 as a result of a dispute between the Toronto Hydro Electric Commission and members of Local 353 of the International Brotherhood of Electrical Workers. The report reads in part:

> The Board had to determine . . . what elements should enter into their consideration in deciding the question of pay, and they concluded that the cost of living—although not the only matter they looked into—is the primary basis of wages, and that an enterprise of the character of the Toronto Hydro Electric System should have its calculations so made and its estimates so arranged that provision should be made for reasonable and moderate living expenses for all its employees.
>
> . . . .
>
> It was strongly contended on behalf of the Toronto Hydro Electric System that they could not possibly raise the wages, in view of the reduction of business and the keen competition, et cetera, they would be unable to entertain for one moment the proposition of paying any increased wages.
>
> In this connection, however, the fact must not be overlooked that willingly or unwillingly the Toronto Hydro Electric System has reduced its rates to the people of Toronto, and

[1] Fifth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1912. Department of Labour, Ottawa, pp. 66–67.

thereby reduced its income to the extent of $250,000 a year. This being correct, and it was the statement of the manager himself, then surely if an enterprise is so profitable as to be able to make this enormous reduction it is quite profitable enough to pay living wages to the men who operate the system, and we have no hesitation therefore in stating if these were normal times we would recommend at once an increase of 10 per cent in wages to the men.[1]

Although the cost of living was the prime consideration in this decision, some weight was given to the financial condition of the business:

The Board feel that they cannot entirely overlook business conditions at the present time, and while they have no hesitation whatever in deciding that the wages of the employees in this work should be increased by at least 10 per cent, out of deference to the strained conditions which prevail at the present time and which are likely to continue at least for some time to come, recommend that this increase be made to commence from the 1st day of May, 1916.[2]

Fair Return to Capital. A board which reported on January 13, 1908, in a dispute between railroad telegraphers and the Grand Trunk Railway, was unable to recommend the increases desired by the men, on the ground that, while believing in the principle of "a living wage," it felt that the financial condition of the company did not permit the wage schedule demanded. It reached this decision in spite of the fact that it, the self-same board, had granted a higher scale of wages to the telegraphers of the Canadian Pacific Railway. The report in part reads:

[1] Ninth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1916. Department of Labour, Ottawa, p. 132.

[2] *Ibid.*

We thought, under the present conditions, that the offer of the company in the matter of increase of wages was all that could be justified. There are many considerations entering into the question. In our view, there is the right of the men to receive a living wage, and that right is paramount. The workman is entitled to get a fair day's wage for a fair day's work. What, however, often seems to be ignored is that capital and labour are both necessary in order to produce a profit, whether it is in the operation of railways, in manufacturing, or in any other branch of trade. The aim of the worker should be to secure a fair share of this profit. But there is also to be considered the position of the man who advances the money to enable the undertaking to be carried on, which gives employment; he, too, is entitled to receive a return for his money and his risk. A hundred millions of the capital stock of the Grand Trunk Railway receives no dividend whatever. If such dividends on the preferred stock as are now being paid are still further reduced by the wages bill being increased, what must necessarily follow? The company cannot obtain further money for expansion, for it can be more remuneratively employed in other undertakings.[1]

Protection of the Workers' Wage during a Financial Stringency. The stringent financial condition of the company was rejected, however, as an argument for wage reduction in a dispute in 1915, between a company engaged in railroad construction and its employes. The board hearing this dispute reported unanimously in favor of the employes.[2] The company had reduced wages twice before the men applied for a board. The men thereupon asked for re-establishment of the wages as they

[1] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1908. Ottawa, pp. 359–360.

[2] Ninth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1916. Department of Labour, Ottawa, pp. 94–96.

existed after the first reduction. In reply, the company argued "that had it not been for unforeseen financial stringency" it would have been willing to pay these rates. But "owing to the impossibility of borrowing sufficient money" the roads would have to be built for less than originally estimated, and for this reason wages would have to be further reduced.

The board upheld the demand of the employes in the following words:

> It would appear to the Board that the rate of wages paid to the operatives since June, 1913 (if not indeed the rate of pay at first established) must have been taken into account by the company when making its estimate of the cost of the construction of these roads, and the fact that since that time a financial stringency has intervened, should not of itself be sufficient to entitle the company to make a sweeping reduction of the wages as was done on November 1, 1914.
>
> While the Board recognizes that a very unfortunate condition would be likely to arise both as regards the province at large and as regards the City of Edmonton, if the company, owing to financial difficulties, should be compelled to discontinue construction, yet in spite of that it recommends that the company should restore the rates paid before the reduction of November 1, 1914, and while fully recognizing the financial difficulties which the company may be experiencing, it feels that some way should be found whereby this recommendation can be carried out.[1]

Current Rate of Wages. One board rejected the "cost-of-living" argument entirely in its deliberations upon wages, and based its decision on the wages the company would have to pay to secure new employes to do the work in question. The case arose when the maintenance-of-way employes asked the management

[1] *Ibid.* p. 95.

of the Canadian Pacific Railway for an increase in wages. The board, in a majority report made on January 14, 1914 and signed by the chairman and the representative of the company, refused to recommend the increase. The report was accompanied by a statement prepared by the chairman, giving the reasons underlying his conclusions. He declared himself in favor of a reasonable wage, but he felt that the difficulty lay in determining what was reasonable. The statement, in part, reads:

It is practically conceded that the increase of wages claimed is far too much; and it is obvious that such increases as are set out in the written claim now before us would be very unreasonable; but that is no reason why the Board should not recommend a reasonable increase if it would be just to do so. The question is not whether too much has been claimed, but is, what is reasonable?

Wages ought to be such as are a reasonable compensation for the services rendered. . . . There may be special reasons for giving more and for accepting less. But in such a case as this, that which is just is only to be considered. Neither employee nor employer is asking favours from the other.

There is no difficulty in stating what is the true measure of wages; it is . . . compensation; the difficulty lies in the proof of the value of the services. One test, and ordinarily speaking the best test, is, in such a case as this: 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?[1]

Admitting that the employes had established the

[1] Seventh Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1914. Department of Labour, Ottawa p. 202.

fact that the cost of living had risen, the chairman went on to attack the validity of such argument for increasing wages: "The increased cost of living is, unfortunately, a thing that seems to thrive upon itself; the increased cost of living requires higher wages, and higher wages increase the cost of production, and the increased cost of production causes increased cost of living."[1]

Necessity of Meeting Competition. A dispute between several coal companies of Nova Scotia and their employes occurred in the fall of 1921. The companies involved were the Dominion Coal Company, the Nova Scotia Steel and Coal Company and the Acadia Coal Company, Limited, subsidiaries of the British Empire Steel Corporation. The employes were members of District 26, United Mine Workers of America. Originating when the period of post-war deflation was in swing, the dispute in question arose over a proposal by the employers to reduce wages.

On October 29, 1921 the secretary-treasurer of District 26 was notified that for various reasons the operators were compelled to initiate a reduction in wages, to be effective on November 30, 1921, when the agreement then in operation would expire. In their reply, dated November 4, 1921, the mine workers offered to confer with the operators, but at the same time announced their opposition to any wage reductions. The representatives of both parties met on November 10 and 11, but as they could not settle on a new wage scale they agreed to extend the current contract for one month (to December 31, 1921) and to reconvene for further discussion at a later meeting. This

[1] *Ibid.* p. 203.

was held on December 19, when the two parties were still unable to reach a satisfactory agreement. Accordingly, a notice was posted on the coal properties, on December 19, informing the men that beginning with January 1, 1922 the new wage rates would be in effect. Further attempts to reach an understanding failed. On December 21, 1921 the employes applied for a board of conciliation and investigation, which was duly constituted by January 6, 1922, with N. E. Gillen as chairman, W. E. Thompson representing the employers (upon appointment by the Minister, since the employers refused to name a representative) and James Ling, Mayor of New Waterford, Nova Scotia, representing the employes.

The employers' case for reduced wages rested on a group of factors broadly described as "business conditions," including both the temporary ones arising out of the war and the permanent, local ones inherent in producing and selling coal mined in Nova Scotia. Among the post-war factors were the fall in the selling price of coal; increased production in other Canadian fields, thus closing markets formerly open to Nova Scotia coal; a decline in the demand for steel goods; a decrease in the demand for coal used by ships at Nova Scotia ports; and increased competition from the United States. Much was made of this last argument by the companies, which pointed out that the pressure of competition from the United States would in their opinion probably be increased by the probable reduction there in both freight rates and wages, and the probable elimination of the premium on the United States dollar which was being paid at that time. The local factors confronting the coal operators in Nova Scotia arose from the unfavor-

able location of their mines in relation to their markets, that is, the extreme distance from the industrial centers of Canada.[1] The operators contended that the United Mine Workers had agreed, when entering Nova Scotia, to recognize the limitation forced by the competitive factors here indicated on the coal industry in Nova Scotia. They maintained also that since the war the cost of living had fallen and, therefore, the miners should be willing to accept lower wages.

The miners, in their evidence, attempted chiefly to refute the arguments put forth by the operators. They challenged the figures which had been presented on the decline in living costs, and, insisting on the primary duty of the companies to pay a living wage, objected to the proposed reductions. They pointed out that they did not have access to cost data and were in no position, therefore, to know to what extent the inability of their employers to compete successfully with other operators was due to managerial inefficiency. They urged that the company should meet the present "hard times" out of surpluses accumulated during the recent "good times," when, they said, "we coal miners were very reasonable, and at no time sought to impose our economic strength upon the employer." They offered evidence to show that wage rates in the United States, even in the non-union fields, were higher than the rates then being paid in Nova Scotia.

Finally, the miners insisted that most of the arguments presented by the companies concerning the dangers of competition from the United States consisted of prophecies. The employes' representative pointed out that the operators had stated that freight rates

[1] For a more complete discussion of this problem, see pages 92–93.

would probably be reduced in the states. But then might not freight rates also be reduced in Canada? Miners' wages in the United States probably would be reduced, but should one not wait for the coming conference between operators and union officials to find out? The premium on New York funds would probably fall, thus eliminating an advantage to Canadian producers. But, the miners questioned, should one base present wage reductions on such a future possibility?

Forty-one exhibits were presented by both sides in the progress of the investigation, including such data as rates of pay, compared by year, occupation and locality; family budgets; financial statements published by the companies; tables of fatal accidents; sales sheets; and records of coal imports from the United States. The operators did not grant the miners' request that they be given access to the books of the companies, but submitted them for confidential review to the members of the board.

The board's decision upon the case was not unanimous except on minor points, such as the exclusion of certain employes in the agreement and the need for immediate and substantial reductions in expenses. On the major issue of wage reductions, the chairman and the employers' representative submitted a report which, while expressing sympathy with the workers, pointed to the repeated statement made by the companies that lower wage rates would enable them to compete with foreign coal producers and operate their mines at full capacity, and thus afford the workers more employment and larger annual wages. Their report, therefore, recommended wage reductions. The representative of the employes submitted a minority report, in which he

also recommended decreases in wage rates, but less drastic than the cuts proposed by the employers' representative and the chairman. He found himself unable to sign the majority report because "the wage rates proposed by the majority report, if enforced," would, in his opinion, "condemn thousands of men, women and children . . . to live in a state of semi-starvation."[1]

Neither party to the dispute accepted the findings of the board. Although "no strike occurred in this dispute," the differences between the operators and miners continued "in an acute form" and "were the subject of much public discussion." The board was reconvened later, but, after assembling, the members resigned, and "a new Board was established to make a further investigation."[2]

Interrelation of Industrial Conditions in Canada and the United States. An interesting case in which the decision was based in part upon standards established in the United States in similar industries is that of the railroad dispute in 1922, to which reference has already been made. The dispute arose with the shopmen over proposed wage reductions. As will be recalled, four individual disputes were involved. One arose on Canadian railroads, namely, the Canadian Pacific, the Grand Trunk and the Canadian National, all members of the Canadian Railway Association, and the others on United States lines running into Canada, namely, the Michigan Central, the Pere Marquette and the New York Central. All four cases involved the same issue of wage reductions. A wage decrease, the third within a

[1] Labour Gazette, Vol. XXII, p. 179, February, 1922.

[2] Report of the Department of Labour for the fiscal year ending March 31, 1922. Ottawa, p. 18.

year, recommended by the United States Railroad Labor Board in the rates of pay of shopcraft employes, had become effective on July 1, 1922. The United States lines with branches in Canada applied this decision to their Canadian employes, the latter having, through their unions, been parties to the hearings before the United States Railroad Labor Board. The Canadian lines also announced the adoption of the same schedules, which was consistent with the practice they had followed prior to 1922. Changes in wage rates on Canadian railroads throughout the war and post-war period had paralleled those in the United States, including the three increases granted by the United States Railroad Administration, the increase recommended by the United States Railroad Labor Board on May 1, 1920 and the two decreases subsequently recommended by this Board.

The Canadian workers on United States lines argued that their wages must be based on Canadian conditions as reflected in living costs and rates of pay. They contended, moreover, that, regardless of the action of the United States Railroad Labor Board, they should have the privilege of invoking the Disputes Act. They pointed to protests made by the railroads against an unquestioned acceptance of the increases ordered by the United States Railroad Administration during the war period. The workers on Canadian railways, of course, advanced similar arguments even more emphatically.

Four boards were applied for and constituted during July; they sat through August and reported on various dates in September. These boards emphasized the long consideration given to the questions at issue by

the United States Railroad Labor Board. They pointed to the comparatively restricted time for consideration available to them, and by implication made this a reason for accepting the decision of the Railroad Labor Board. A unanimous decision was rendered by only one of these boards, the one sitting in the case of the New York Central and its men and presided over by the Honourable G. D. Robertson, former Minister of Labour, at this time a member of the Senate of the Canadian Parliament. It recommended that the final award in this case be made to conform to that which would be rendered by the board dealing with the dispute on the Canadian lines, since those companies employed the largest number of shopmen. In the three other cases the representatives of the men dissented from the decisions, which recommended in the main the acceptance of the reductions in wages ordered by the United States Railroad Labor Board on July 1, 1922.

The board appointed in the case involving the Canadian lines rendered a unique award. The majority held that the rates proposed by these railways were tentative rates. Consequently it recommended their acceptance, leaving the discussion of permanent rates until the settlement of the shopmen's strike in the United States. This view was challenged by the representative of the men, who held that the schedule in question proposed permanent rates of pay.

In the Michigan Central case the majority recommended a decrease in wages on the following grounds: even after these reductions, a majority of the men, working an eight-hour day, would earn about 49 per cent more than they could under the rate in effect in December, 1917; the rates of wages recommended in

the decision were better than those paid to artisans doing similar work in other industries of the region; the cost of living had decreased; and the proposed rates were based on wages paid by the same company in the United States, where the striking shopmen had already practically agreed to return to work.

The board appointed in the Pere Marquette case recommended the acceptance of the schedule established by the United States Railroad Labor Board, on the following grounds: higher living costs which were alleged for Canada could not be considered, since the rate of wages must be set for the system as a whole; general wage increases had been "far in excess of any increase in the cost of living"; the proposed rates were in excess of those paid for similar labor in the region; the shopmen's organization in the United States had signified their willingness to accept the reduced rates pending further investigations.

While minority reports were filed by employes' representatives on three of these boards, no strikes occurred. The decisions of the boards were used as a basis for settlement between the respective railroads and their employes.

Decisions on Hours of Work

The principles underlying decisions on issues other than wages are seldom given by boards. Occasionally, however, a board will accompany its recommendations with a statement of reasons. The following offers a full explanation of a decision involving hours of work. In a long-drawn-out case brought by 300 machinists and boilermakers against the Grand Trunk Pacific Railway, the men demanded a reduction in working

time from ten to nine hours per day. The unanimous report of the board, submitted on October 28, 1911, declared in favor of the nine-hour day for three reasons: first, competing companies had established a nine-hour day with satisfactory results; second, the nine-hour day could be made practicable by proper management methods; and third, "a reasonable shortening of the working day usually results in increased efficiency and improved social, domestic, and intellectual conditions."[1]

Freedom of Management versus Security of Job

Boards have been called upon from time to time to decide on the extent to which management should have unrestricted power with regard to the functions of hiring, promoting and discharging, consistent with a guarantee to the worker of security in his job. A clear statement of the opposing principles confronting a board in reaching a decision in such a case is contained in a report made on August 13, 1913, following a dispute between the British Columbia Electric Railway and its employes. The management was given, on the one hand, complete control in the maintenance and operation of the property:

> . . . the objects aimed at were to give the company absolute control of all features that seemed vital to the operation and maintenance of their railway system. The undersigned [i.e. board members] consider that the people who furnish the capital to carry on an enterprise such as this must have a free hand in that which vitally concerns its maintenance and operation.[2]

[1] Fifth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1912. Department of Labour, Ottawa, p. 115.

[2] Seventh Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1914. Department of Labour, Ottawa, p. 135.

On the other hand, the right of employes to security of employment and to seniority was upheld in the same decision:

A . . . principle in favour of the men was to secure to them permanence of occupation and retention of seniority. It was thought that men entering a service such as this should have the right to look forward to security in their positions so long as they were efficient and so long as the operations of the company required the existence of such positions, and further that the men should, subject to said qualifications, be assured of such seniority as they had acquired by length of service. This view was strongly combated by the company on the ground that it was an infringement of the principle of control on their part. The undersigned have endeavoured to provide against any difficulties arising on this score by giving to the company an absolute right of dismissal where inefficiency is proven. On the other hand, to guard against improper dismissals by subordinates, every employee has been given a right of appeal, in case of dismissal for inefficiency, to the general manager of the company, whose decision is made final. . . . The adoption of this view the undersigned consider has an important bearing on the question of wages, for a man is obviously better off who has assurance of permanent employment and of situation for the whole period of his working life, even at a lower but constant rate of pay than his mate, who alternates periods of higher pay with others of non-employment, and who can never count absolutely on definite continuous future employment.[1]

Employes' Representation

The question as to whether machinery should be provided through which wage-earners can present grievances to management has naturally arisen in disputes brought before boards. Some boards have

[1] *Ibid.* pp. 135–136.

recognized the principle that workers should be granted representation through committees elected by them. Thus in reporting on October 28, 1911 in the dispute, already mentioned, between the Grand Trunk Pacific Railway and the 300 machinists and boilermakers, the board declared:

> Committee representation is also asked for. The operation of this principle appears to be essential. It is almost in universal operation in Canada and the United States. In practice it is found to be a most satisfactory method of adjusting differences important and unimportant which continually arise between employer and employee, especially when, as in the case of a railroad corporation, the employee rarely comes in direct contact with the higher officials. He should have the right to appeal from decisions of foremen and minor officials to higher officers through a regularly constituted grievance committee. The Company claims no grievance existed. Undoubtedly grievances have existed, but perhaps they have not been presented, through lack of facilities or through fear of results to the individual.[1]

The board also laid down the principle that employes are

> . . . entitled to have some voice in the decision as to conditions under which their services shall be performed and as to the rate at which they shall be compensated. . . . Co-operation in these matters between the employer and employee has worked out most satisfactorily on other roads, and has apparently tended to reduce friction and encourage harmony and contentment.[2]

[1] Fifth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1912. Department of Labour, Ottawa, p. 114.

[2] *Ibid.* pp. 113–114.

Union Recognition

The question of union recognition has arisen frequently, as we have seen,[1] in disputes occurring in coal mines. In a dispute which arose in March, 1908 between the Manitoba and Saskatchewan Coal Company, Limited, and its employes the major issue was the "full recognition of the United Mine Workers." The majority report of the board, submitted on November 26, 1908, stated that "we do not feel called upon to give any opinion as to whether or not the Union should be recognized."[2]

Some boards did, however, deal with this issue. In a dispute occurring at the same time (March, 1908) between the Western Dominion Collieries, Limited, and its employes, recognition of the United Mine Workers of America was again one of the chief demands. The board reported on May 4, 1908 that it had succeeded in bringing the parties together for an amicable settlement. The agreement which accompanied the board's report recognized the United Mine Workers even to the extent of granting the "check-off."[3] Another board, reporting on December 12, 1911 in a dispute between the Alberta Coal Mining Company, Limited, and 80 of its employes, went so far as to say

> . . . it is clear that when the employees are organized more harmony between employer and employees should result, through the handling of matters in dispute through the employees' committees and representatives, than would otherwise result, and we would consider it advisable that such

[1] See pages 80–83.

[2] Appendix to Report of the Department of Labour for the fiscal year ending March 31, 1909. Ottawa, p. 222.

[3] *Ibid.* pp. 225–228.

methods of handling disputes and grievances should be followed out.[1]

Generally speaking, ministers of labor who have held office during the life of the act have been reluctant to appoint boards when "union recognition" was the chief issue in dispute. Indeed, one of them told the writer that he refused entirely to appoint boards under such conditions. "When one group of men want to be recognized as a union or want a trade agreement as a union," said another Minister of Labour to the writer, "and when the employer will not recognize them as a union, no legislation can meet a situation of this kind. It has got to be fought out."

Indeed, the record seems to bear out this statement. For, as was seen in the previous chapter, many of the serious strikes which have occurred in the coal industry of Canada had as their chief object the recognition of the United Mine Workers of America. In none of these cases could boards bring about a satisfactory settlement.

As early as 1912, the Registrar of Boards said:

> It was pointed out in a previous report bearing on the opations of the Industrial Disputes Investigation Act that disputes arising directly out of union recognition were peculiarly difficult of adjustment and have proved hardly susceptible to ordinary methods of conciliation. Inquiry into such disputes shows that agreement can be reached only by the abandonment on one side or the other of the matter of contention, there being no ground for a common point of view.[2]

[1] Fifth Report of the Registrar of Boards of Conciliation and Investigation for the fiscal year ending March 31, 1912. Department of Labour, Ottawa, p. 125.

[2] *Ibid.* p. 8.

CHAPTER VI

CANADIAN LABOR AND THE ACT: PERIOD OF DISAPPROVAL

THAT those laws work best which enjoy the approval and consent of the people they aim to govern, is an axiom of legislation. If this be true of legislation in general, it is especially true of a law like the Disputes Act. For, as the writer has pointed out, the enforcement of such a law by means of prosecutions is exceedingly difficult. Industrial disputes are complex in nature and involve large groups of men frequently numbering thousands. It is obviously unwise, even if it were possible, to penalize or jail whole communities. It is the task of statesmanship, then, not only to understand all of the complex factors underlying industrial unrest, but also to win the approval of employes and employers, in the administration of a measure which seeks to avoid strikes and lockouts. So vital is this co-operation to the success of government intervention in industrial disputes, that this study would necessarily be incomplete unless it included a record of the attitude of employes and employers toward the Disputes Act and of the influences which have made for antagonism as well as for co-operation.

From the discussion of the administration of the act in Chapter IV, it may appear that the emphasis placed upon the method of conciliation by the government is well calculated to win the co-operation and goodwill

of management and of men. On the whole, it has done so. That this result was not immediately achieved, has already been said. For the purpose of various administrators has not always been clear to the parties in dispute. Studying the record of the act through its entire history, one may conclude that conciliation has been the predominant note in its administration. But this practice has become established only as a result of the accumulation of experience with the act; it was not a definitely formulated policy at its inception. The penalty clauses, restraining strikes and lockouts prior to investigation, have been in the law, and in certain instances ministers of labor have pointed to their existence when labor or employers seemed unwilling to refer a dispute to a board. Administration of the act, again, has varied in accordance with the complexities presented by different disputes. Those intangible qualities which go to make up "personality" have also been factors in inspiring confidence in one board as compared with another, and also in the administration of the act under one minister as compared with the administration under another. Economic and social factors, such as fluctuations in business conditions, movements in prices and wages and the strength or weakness of the labor movement of Canada, have also, as we shall later see, played a fundamental role in determining the policy of employers and employes toward the act at particular times. Hence the attitudes of both parties toward the act have varied from time to time.

Indeed the attitude of labor in Canada toward the Disputes Act has passed through a complete cycle. When the act was passed in 1907, labor in general was in favor of it. During several following years, until 1911, its

spokesmen asked repeatedly for amendments. In 1911 and 1912 they asked for the repeal of the act. From 1912 to 1915 they again asked for amendments. In 1916 they again demanded repeal. Beginning with 1918, labor not only became friendly to the act but a year later, in 1919, asked that its machinery be made available to industries other than public utilities. Since 1918 organized labor has favored the act consistently and in 1925 made official record of its disappointment when the act was declared unconstitutional, and asked for an amendment to the British North America Act to bring the Disputes Act within the competence of the dominion government.[1]

It is through the resolutions adopted by the annual conventions of the Trades and Labor Congress of Canada that we may see the successive stages of this cycle. This Congress includes in its membership all the organized wage-earners of Canada with the exception of those belonging to the large railroad brotherhoods, to a few international unions not affiliated with the American Federation of Labor and to a few small national unions. The attitude of the railroad brotherhoods toward the act, which will be described later in this chapter, has with some exceptions been similar to that of the Trades and Labor Congress.

Labor in Favor of the Act in 1907

Although both the miners and the railroad employes were opposed to the new act, the labor movement as a whole seems to have been definitely in favor of it. The convention of the Trades and Labor Congress in Sep-

[1] See pages 267 ff. for a discussion of the constitutional aspects of the Disputes Act.

tember, 1907, some six months after the act had become law, indicated this favorable attitude by an overwhelming vote of endorsement. The executive officials, in recommending the act to the delegates to the convention, expressed enthusiastic approval of it in the following words:

> Probably the most important measure that became law [during the past year] was that introduced by the Minister of Labour, the Hon. Mr. Lemieux, entitled "The Trades [*sic*] Dispute Investigation Act, 1907." Your executive, after careful consideration, gave its hearty endorsement to the principle of the bill. Organized labor does not want to strike to enforce its demands if the consideration of them can be attained without recourse to that remedy. . . . Nor is organized labor blind to the fact that in every great industrial struggle the public have a large interest as well in the result as in the means adopted to reach that result. The least the public are entitled to is a knowledge of the merits of the dispute. . . . Your executive believes it will be a happy day when every labor dispute can be settled by the parties meeting together in the presence of an impartial tribunal to discuss their differences. Our great difficulty in the past has been that we could not get a hearing.[1]

The delegates by a vote of 81 to 19 adopted a resolution which virtually repeated this quotation.[2] Thus,

[1] Report of the Proceedings of the Twenty-third Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1907, p. 10.

[2] The resolution reads:

"Whereas organized labor has from time to time expressed its disapproval of strikes except as a last resort in industrial disputes, and, whereas, particularly in disputes in connection with public utilities the public have rights that must be respected and considered; and, whereas, the Lemieux Bill [Disputes Act] is designed to avoid strikes and lockouts in connection with industrial disputes in certain public utilities until such time as the merits of the dispute are publicly investigated; and, whereas, organized labor always courts investigation of

Canadian labor explicitly accepted in 1907 the fundamental principles of the act as originally conceived by affirming its belief in (1) avoiding strikes wherever any other method of settlement was available, (2) the desirability of informing the public on the merits of a dispute, (3) the importance of having machinery which would compel a hearing.

It is important to note, however, that when the Disputes Act was proposed in Parliament, the coal miners and railway employes, the two groups of workers most concerned in its provisions, were strongly opposed to it. It was while in session at a district convention in western Canada, late in March, 1907, just before the Disputes Act became law, that the miners learned that it was likely to be passed. Suspecting "that its purpose was to prevent them from taking quick action against their employers" and to assist the latter by delays in such a way as to enable them to prepare for any strike that might be called, "a proposal was made to cease work at once as a protest against the passing of the act." The delegates decided, however, to "wait until they knew what the provisions of the act were."[1]

The opposition of the railroad brotherhoods was equally strong. When the act was first proposed, it did not include railroads within its scope. When these were finally included, a joint deputation of the railroad

its grievances by reason of the justice of its claims and its desire to be fair;

"Resolved, that this Trades and Labor Congress of Canada hereby express its approval of the principle of the Lemieux Bill as being in consonance with the oft-expressed attitude of organized labor in favor of investigation and conciliation." (*Ibid.* pp. 55–56.)

[1] Askwith, Sir George, Report on the Industrial Disputes Investigation Act of Canada, 1907. H. M. Stationery Office, London, 1912, p. 9.

brotherhoods waited upon the Minister of Labour and contended that the Railway Labour Disputes Act of 1903[1] covered the situation adequately. But the railways were kept within the scope of the act as passed by Parliament, though both management and employes in railroading were given the choice of referring their disputes either under the act of 1903 or that of 1907.

Amendments Sought in 1908, 1909 and 1910

During the year of actual experience with the operation of the act that elapsed between the convention of the Trades and Labor Congress of September, 1907 and that of 1908, opposition developed. Indeed one resolution was introduced in the convention of 1908, demanding the repeal of the act. This resolution was signed by the United Mine Workers of America, the Brotherhood of Locomotive Engineers, who were at that time affiliated with the Congress, the Winnipeg Street Railway Employees and the Tailors' Union of Amherst. This resolution was not accompanied by any specific reasons for its passage, merely stating that "the workings of the Lemieux [Disputes] Act as at present constituted, are detrimental to labor as a whole."[2] The debate on this resolution was, unfortunately, not reported. The Congress, however, was not then disposed to ask for the repeal of the act. Instead, another resolution was adopted, instructing the disaffected unions to suggest amendments to the act, for which the executive officials of the Congress would press. The resolution read:

[1] See page 59.

[2] Report of the Proceedings of the Twenty-fourth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1908, p. 78.

That the Trades immediately affected by the Lemieux Act, and which are affiliated with the Congress, be requested to submit to the Executive Council of the Congress the necessary amendments to make the Bill effective, from the working-class standpoint, and that the Congress executive be instructed to obtain these amendments to the Act, and that in the event of the Government refusing to grant these amendments, a referendum on the advisability of repealing the Act be submitted to the Trades affected by the Act, and that the Congress pledge itself to abide by the result of that vote.[1]

No resolutions upon the act were introduced in the convention of the Trades and Labor Congress held in the following year, 1909.[2] But the delegates approved a report of the executive officials of the Congress, in which were recorded the amendments which they had submitted to the government in their annual interview with the cabinet.[3] One of these amendments proposed modifications of the act which would place the responsibility for applying for a board upon the party wishing to make changes in working conditions. Workers had found that they were usually compelled to make applications for boards, even when employers caused the disputes by making changes in working conditions. Machinists especially felt aggrieved on this score. Certain of their members working for the Canadian Pacific Railway had applied for a board during the preceding year, although the company had proposed the

[1] *Ibid.* p. 81.

[2] In that year the Minister of Labour was made a distinct official of the Canadian cabinet. See page 98.

[3] Report of the Proceedings of the Twenty-fifth Annual Convention of the Trades and Labor Congress of Canada Ottawa, 1909, p. 55.

It is the usual practice of the Canadian cabinet to meet annually with executive officials of the Trades and Labor Congress for the purpose of receiving information for the government of the day regarding the measures and policies sought by organized labor.

changes in working conditions. A board was established, but the machinists refused to accept the majority report and struck. In newspaper discussion of the strike, which was generally against the machinists, the charge was made that they had refused to accept an award of "their own board."

Another proposed amendment sought to penalize either employers or employes who used the act to maintain existing conditions through delay. It was aimed at employers who procrastinated in nominating their representative to a board or who in one way or another delayed its proceedings. A third amendment sought the elimination of the words, "and that the necessary authority to declare such lockout or strike has been obtained," in the clause of the act defining the method to be followed by trade-union officials when applying for boards. Union officials who had already been authorized by their constituents to negotiate with their employers did not wish to go through the expensive, prolonged and often necessarily provocative procedure of obtaining a vote that would sanction a strike. A final and less important amendment asked for an increase of fees paid to members of boards. These amendments did not come before Parliament until the following year.

At the convention of the Trades and Labor Congress held in September, 1910 the executive officials reported their success in obtaining the passage of three of the four amendments they had proposed the preceding year.[1] As already indicated,[2] the act had been amended,

[1] Report of the Proceedings of the Twenty-sixth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1910, p. 53.

[2] See pages 53–54.

in the first place, so that no change in wages or hours protested by labor could become effective until a board had made its investigation and report. The officials of the Congress reported that this provision would have the effect of placing responsibility for applying for a board upon employers who wished to reduce wages or increase hours of work. This hope of the workers was not realized, however, and in subsequent conventions they continued to ask for a more effective amendment until 1925, when their efforts met with success. The act was also amended to make it unnecessary to obtain a strike vote before union officials could apply for a board. The fees of board members were increased from $15 to $20 per day.

Repeal of the Act Demanded in 1911 and 1912

In spite of these amendments, the convention of the Trades and Labor Congress in the following year, 1911, unanimously and for the first time demanded the repeal of the act.[1] The miners in western Canada were the prime movers behind the action. For one thing, they were dissatisfied with the report of a board that had been appointed in the spring of that year in a dispute in which they were involved. As already pointed out,[2] the trade-union agreement between them, organized as District 18 of the United Mine Workers of America, and the operators of Alberta, had expired on March 31, 1911. Inasmuch as the parties had been unable to negotiate a new agreement, the miners had ceased work on that date, without applying for a board. But after

[1] Report of the Proceedings of the Twenty-seventh Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1911, p. 14.

[2] See page 82.

the strike had been on for a while, both the miners and the operators put in an application. The issues in the dispute were increases in wages and union recognition. The board was unable to make a unanimous report. The miners were much dissatisfied with the majority report signed by the chairman and the employers' representative, and at the time of the convention the strike was still on. Discontent which had been growing for some time because of an interpretation of the act made during the coal strike in 1909 at Inverness, Nova Scotia, also found expression in the convention. A judge of the province had declared a union official guilty of violating the act because he had distributed strike benefits, and had imposed a fine in accordance with the section of the act which makes it unlawful to aid a lockout or strike declared before or during an inquiry.[1]

Although the miners led the attack against the act, opposition to it had become so sharp among the workers as a whole that seven different resolutions demanding its repeal were submitted to the Congress and a special committee was appointed to consider the whole subject. This committee held lengthy hearings and recommended a resolution which instructed the executive officers "to press for the repeal" of the act. After a prolonged debate this resolution was defeated by a roll-call vote of 70 to 65. A substitute resolution was then proposed, reaffirming belief in the principles of the act, but demanding its repeal because of the manner in

[1] See page 48 for the pertinent sections of the act.
Attempts were made, unsuccessfully, in two successive sessions of the House of Commons to amend the Disputes Act so that the distribution of strike benefits in strikes called in violation of the act would not be considered unlawful.

which it had been interpreted and administered. This resolution, which was carried unanimously, follows:

> While this Congress still believes in the principle of investigation and conciliation, and while recognizing that benefits have accrued at times to various bodies of workmen under the operation of the Lemieux [Disputes] Act, yet in view of decisions and rulings and delays of the Department of Labour in connection with the administration of the Act, and in consequence of judicial decisions like that of Judge Townsend, in the Province of Nova Scotia, determining that feeding a starving man, on strike, contrary to the Act, is an offense under the Act: Be it resolved, that this Congress ask for the repeal of the Act.[1]

The Congress merely reiterated in the following year, 1912, its demand for the repeal of the act as expressed the previous year.[2] The president of the Congress, in urging this action, pointed to discussions in Great Britain in regard to legislation there similar to the Disputes Act.[3] He held that the workers of Canada owed it to the workers of Great Britain to make their dissatisfaction with the operation of the act absolutely clear.[4]

[1] Report of the Proceedings of the Twenty-seventh Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1911, p. 89.

[2] When the Congress met in 1912, the Conservative party was in office, with the Honourable T. W. Crothers as Minister of Labour.

[3] Following the strike of the British miners and the strike of the transport workers of the Port of London in 1912, the government was urged to look into the merits of the Disputes Act. For this reason Sir George Askwith made the investigation already referred to (page 43, footnote).

[4] Report of the Proceedings of the Twenty-eighth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1912, p. 16.

AMENDMENTS SOUGHT IN 1913, 1914 AND 1915

When the Trades and Labor Congress assembled for its convention of 1913, discontent with the operation of the act continued to be rife. A resolution introduced by the International Dredge Workers' Protective Association pointed out the grievances which the workers felt against its administration. It charged that the act "in its present form has been used as a weapon against organized labor" because "it gives lots of time to organized capital to prepare against any action of organized labor in which they may seek to gain fairer working conditions and decent living wages." Complaint was also voiced because "capital often ignores the board altogether, even to the extent of refusing to appoint a man to investigate in their behalf." The committee on resolutions recommended that the Congress concur in the resolution of the Dredge Workers, who asked for the repeal of the act.

This recommendation, however, was opposed by certain officials of the Congress. The secretary opposed it "on the ground that it changed the policy of the Congress with reference to the act." A vice-president, agreeing with the secretary, pointed to the fact that one resolution asking outright for the repeal of the act had been defeated at the convention of 1911. He interpreted the second resolution of 1911, which, as pointed out above, also asked for the repeal of the act, as calling for repeal only "in the event of satisfactory amendments being refused by the government." He therefore urged that the Congress go on record as favoring amendment of the act "to meet the wishes of the Trades and Labor Congress of Canada." The resolutions committee accordingly changed the word-

ing of the resolution submitted by the Dredge Workers, substituting the word "amended" for the word "repealed." With this change, the convention accepted the resolution "as a reaffirmation of the decision of the Congress" at its conventions of the past two years. The resolution adopted reads:

> Whereas the Lemieux [Disputes] Act in its present form has been used as a weapon against organized labor inasmuch that it gives lots of time to organized capital to prepare against any action of organized labor in which they may seek to gain fairer working conditions and decent living wages; and whereas, even when a Board of Conciliation is appointed to investigate, capital often ignores the Board altogether, even to the extent of refusing to appoint a man to investigate in their behalf; therefore be it resolved, that this Congress use every effort in its power to have the Lemieux Act amended, as it has been proven to be wholly in the interests of capital.[1]

Thus it would seem that in 1913 the Trades and Labor Congress was confused as to the exact meaning of the policy it had formulated in 1911 and 1912. There is no doubt, however, that in those two years the policy had been clearly for repeal. For the only difference between the resolution first proposed in 1911 and the one finally adopted was that the latter gave reasons for demanding the repeal of the act and reaffirmed belief in its principles, while the former proposed repeal only, without stating any reasons for demanding such drastic action. In 1912 the president of the Congress had strongly urged the adoption of a policy for repeal similar to that of 1911 in order to strengthen the opposition of British labor to legislation of this character, and the Congress

[1] Report of the Proceedings of the Twenty-ninth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1913, pp. 153–154.

had acted accordingly. In 1913, however, the leaders of the Congress were apparently ready to endorse amendment rather than repeal of the act. Thus after a two-year interlude, the Trades and Labor Congress returned to a policy of seeking amendments—a policy to which it adhered for three more years.

Demands for the repeal of the act were, however, heard at the convention of the Congress in 1914.[1] But the committee on resolutions recommended non-concurrence in the resolution for repeal introduced by the Commercial Telegraphers' Union. The resolution accepted by the Congress again instructed the executive officers to press for amendments which would make the act satisfactory to organized labor.

The World War had been in progress for over a year when the Congress assembled for its next convention, in September, 1915. Some time before this, the press had announced that the Minister of Labour intended to introduce a bill in Parliament which would bring munitions work within the scope of the Disputes Act. During the convention the Minister appeared before the delegates in person to explain a bill amending the act which he planned to submit to Parliament that year. This bill contained no provision extending the Disputes Act to munitions work; it was limited to changes designed by the Minister to improve the administration of the act.[2] It soon became evident that strong sentiment

[1] Report of the Proceedings of the Thirtieth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1914, p. 130.

[2] Some of the amendments suggested by him were:

1. To prohibit injunctions or other court action which would prevent the Minister of Labour from appointing a board.

2. Employers to give thirty days' notice before changing conditions of work, during which time employes might apply for a board. If the men struck, they were to retain their status of employes. This was to

against the act existed among the delegates at the convention. The machinists' union registered its protest against any extension of the act to war work and urged the convention to exert its utmost efforts against it.

The street railway employes of Vancouver had instructed their delegates "to once again impress upon that body the advisability of exerting all its power to bring about the repeal of the Lemieux Act, as we have found once more to our cost it is no just remedy for settling disputes between capital and labor."[1]

The Congress regarded the whole matter of the Disputes Act as so important that a special committee was again, as in 1911, appointed to formulate a policy. After some time the chairman of the committee reported failure to reach an agreement. He said:

> Some members of the committee felt that the Act should be repealed altogether. Others felt that there was no possible chance of having the Act repealed, and therefore a majority were in favor of opposing the drastic changes suggested in

prevent employers from taking the position that the men who had been on strike were no longer employes and thus could not bring their employers before a board.

3. A chairman of a board which made an award on which questions of interpretation arose might reconvene the board to interpret its meaning.

4. The party making changes in working conditions which were protested was to have the responsibility for applying for a board

5. Agreements between employers and employes were to be registered with the Department of Labour. A breach of such agreement if made before an investigation by a board was to constitute a violation of the Disputes Act.

6 The time allowed for the constitution of a board was to be reduced from fifteen to ten days.

(Report of the Proceedings of the Thirty-first Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1915, pp. 92–93.)

[1] Report of the Proceedings of the Thirty-first Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1915, p. 88.

the amended act [proposed by the Minister of Labour] and favoring such amendments as would make the Act workable.[1]

A resolution for repeal, introduced by the street railway employes of Vancouver, was defeated by a vote of 97 to 55. The Congress voted instead to refer the entire subject of the Disputes Act to the executive council, with definite instructions to secure from competent counsel interpretations of the amendments proposed by the Minister of Labour; to combat all objectionable and support all favorable amendments; and to bring to Ottawa for this purpose all such officers of organized labor as it deemed necessary. Thus, in 1915 as in 1913, while there was strong sentiment for the repeal of the act, the Congress voted in favor of seeking its amendment.

Demand for Repeal in 1916

By the following year, 1916, however, hostility toward the act had reached such proportions that it swept the convention to an unqualified demand for repeal. Various events had added to complaints already existing. Chief among these was the extension of the act, in March, 1916, to war industries, the refusal of the Minister of Labour to appoint boards of conciliation and investigation in two instances and the uncompromising stand taken by labor in the United States against enactment of similar legislation.

Various delegates to the convention held that year in Toronto took the executive council of the Congress severely to task for permitting the extension of the act to war industries without interposing the organized protest of the wage-earners of the Dominion to it. Indeed,

[1] *Ibid.* p. 94.

prior to the convention, representatives of member unions had censured the executive officials of the Congress for negligence in this vital matter. These officials defended themselves at the convention by pointing out that the extension was made not through an act of Parliament but through an order-in-council, an executive decree of the Canadian cabinet. There was, therefore, no open discussion where protest could be registered.

The reasons behind the objection to extending the act to war industries were twofold. In the first place, labor, already dissatisfied with the administration of the Disputes Act, naturally did not wish to see its scope broadened to include the new and important industries devoted to war work. In the second place, labor was anxious to have "the British fair wage clause" inserted in all munitions contracts, a clause which guaranteed wage-earners working in government industries the prevailing rate of wages established by negotiations between employers and trade-union officials. Under the conditions existing during the war, some officials felt, this clause offered the workers a better chance of wage advances than did the slower machinery of wage adjustment provided in the act.

The two disputes which brought from the delegates special criticism of the Minister of Labour were those involving the asbestos miners at Thetford, Quebec, and the metal miners at Cobalt, Ontario. The asbestos miners, working for five different companies, applied for a board of conciliation and investigation after failing to secure an increase in wages. The companies refused to agree upon a representative to the board. The Minister of Labour thereupon took the position that he

could not appoint a board unless the companies agreed upon their representative. At the same time, he held that the workers could not strike because they were engaged in necessary war work.[1] Representatives of the workers held, on the other hand, that the Minister of Labour should have appointed five separate boards "and have allowed the men from each mine to give evidence before one board." This evidence could have been used "in the work of the remaining four boards to save time and facilitate the work of [all of] the [five] boards."[2] For a similar reason the Minister of Labour also refused to appoint a board for which the miners at Cobalt had applied. Here 42 companies were involved and they, too, refused to agree on a representative to the board.[3]

Both the general dissatisfaction among the delegates with the administration of the act and the influence of events in the United States are revealed in the record of the discussions on the floor of the convention, of which only brief mention can be made here. One delegate stated, for instance, that for the first time he had come to the convention instructed to vote against the Disputes Act. Whenever a labor union was able to take care of itself, he said, a board was granted; but when labor was weak a board was refused.

Another delegate urged the Trades and Labor Con-

[1] Asbestos mining was then a strategic industry because of the general use of asbestos in handling machine guns and other implements of war

[2] Report of the Proceedings of the Thirty-second Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1916, p. 113

[3] In this case, as in the dispute arising at Thetford, serious difficulties faced the Minister of Labour, which will be described on page 196.

gress to repeal the act in order to lend moral support to the organized wage-earners of the United States in their opposition to similar legislation there. He said that he had been present at a conference of the representatives of international unions in Philadelphia when the act was the chief topic of discussion. He had, also, advised the San Francisco convention of the American Federation of Labor held in 1915 with respect to the act. It was the opinion of this delegate that, if the act was not repealed, the Trades and Labor Congress would be a party to "hoodwinking" not only the people of Canada but also of the United States. For an argument frequently used in other countries for the enactment of similar legislation was, he said, that Canadian labor, since it was not asking for its repeal, must be satisfied with the operation of the act. He further argued that the powerful labor organizations which were able to help themselves had "their hands tied" by the act. "Let the big organizations do their own fighting and let us strengthen the organizations that are now weak," he concluded.[1]

It should be remembered that at that time (1916) the feeling of labor in the United States was running high against a law, modeled on the Canadian act, which had been passed, as already mentioned, in Colorado in 1915. Another bill, based on the principle of compulsory investigation, had been introduced in the United States Congress to avert the strike which the railroad brotherhoods were threatening in order to secure the eight-hour day. This strike was finally averted by the Adam-

[1] Report of the Proceedings of the Thirty-second Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1916, p. 129.

son Law, but organized labor in the United States was waging a strong campaign against any measure which restricted the right to strike even temporarily. Since the organized wage-earners of Canada are members of the unions affiliated with the American Federation of Labor, it was only natural that, being already discontented with the operation of the Disputes Act, they should support their American brethren in the fight against similar laws.

Other events illustrate the intensity of feeling at the convention held in 1916. First, the delegates refused to consider the appointment of a special committee, in accordance with previous custom, to consider and report upon the act. They contended that the time for referring to committees had passed and that instead the act should be discussed by the convention as a whole. Second, their attitude was revealed by the reception they accorded the Minister of Labour, who was present at the convention. Some delegates suggested on the floor of the convention that he speak on the act; others, that he simply confine himself to answering questions; others again, that he be prohibited from speaking at all.[1] Third, the delegates rejected a proposed bill to amend the Disputes Act, which had been drafted at the direction of the executive council by the solicitor who usually represented the Congress in legal matters. The proposed amendments did not modify the compulsory features of the act, but aimed merely to improve its administration.[2]

[1] He did speak and defended his administration of the act.

[2] The most important of the amendments were as follows:

1. To establish boards within a week after application and to allow only one day instead of three for the representatives of employers and employes to agree upon a chairman. The purpose of this amend-

The action finally taken came as a natural outcome of these discussions. The convention took action definitely opposing the act—this time without any qualifying statements. The resolution was short and to the point. It read: "Resolved that we go on record as opposing the Lemieux [Disputes] Act in its entirety."[1]

Demand for repeal was reiterated in the convention of the Congress in 1917. At this convention the executive council reported that it had attempted, without success, to have the act repealed in accordance with the instructions of the previous year. A resolution introduced by the boilermakers and iron shipbuilders of Edmonton stated again that "inasmuch as the act has proven to be detrimental to labor," the necessary steps should be taken to have it repealed. The delegates decided that it was not necessary to pass on this resolution, because it was already covered by the policy formulated and approved in 1916.[2]

ment was to eliminate delays of which labor was complaining in the administration of the act.

2. To prohibit courts from interfering in the administration of the act.

3. To prohibit employers from locking out their employes by the subterfuge of laying them off for the purpose of taking stock.

4. To permit committees representing employes to apply for boards without taking a strike vote of the membership.

5. To permit a board to reconvene itself to interpret any report made by it.

6. To permit employes to strike if a board is not granted.

7. To prohibit the penalizing of persons giving assistance to strikers. The solicitor referred "to a case in Nova Scotia where a man was committed to prison for feeding strikers, the position of the judge being that the man had been guilty of assisting in prolonging the strike in defiance of the provisions of the Industrial Disputes Act, and had been guilty of encouraging the miners in continuing on strike." (Report of the Proceedings of the Thirty-second Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1916, p. 112.)

[1] *Ibid.* p. 132.

[2] Report of the Proceedings of the Thirty-third Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1917, p. 180.

CHAPTER VII

CANADIAN LABOR AND THE ACT: PERIOD OF APPROVAL

LABOR'S attitude during the years 1907 to 1918 may in general be summarized, then, as one of dissatisfaction with the administration and operation of the act. However, except perhaps in 1916, when the act was opposed "in its entirety," the Trades and Labor Congress had not challenged the principles underlying the act; rather it had repeatedly endorsed them. Since 1918 labor has on the whole been friendly to the act. To be sure, amendments were still sought after 1918 by the Trades and Labor Congress. But they were aimed at provisions which labor had come to regard as defects of detail in the law, rather than at its general operation and administration.

At the annual convention of the Congress in 1918 the executive council reported:

> Despite the fact that the Toronto convention [1916] decided that a demand should be made for the repeal of the Industrial Disputes Investigation Act, there is an increased demand for the application of the provisions of this act by the labor organizations of the Dominion, and recent amendments to the act have made it more in harmony with the wishes of those organizations which insist upon utilizing its provisions in times of threatened industrial trouble.[1]

[1] Report of the Proceedings of the Thirty-fourth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1918, p. 35.

For an account of the amendments referred to, see page 54.

Moreover, reports published by the Department of Labour showed, said the council, that a large number of disputes had been adjusted under the Disputes Act, and a majority of the adjustments had been satisfactory to the workers. The council recommended therefore: "As there is no indication that the Government intends to repeal the Act we would recommend that your Executive Council be authorized to press for such amendments from time to time as they deem necessary to make the Act more useful to the workers."[1]

The president of the Congress formally initiated the return to the policy of seeking amendments. He said:

> There may be much room for a difference of opinion as to the utility, merits, disadvantages or injurious results to organized labor by the operation of the Industrial Disputes Investigation Act, but there is no difference of opinion as to the desirability of amendments . . . to put it on a more satisfactory working basis while it remains on the statute book.[2]

He then reported on the amendments which had been introduced by the Minister of Labour and passed by Parliament during 1918. The convention accepted the reports of the president and executive council on the Disputes Act as expressions of its policy.

Requests for Extension of the Act in 1919, 1920 and 1921

In the following year, 1919, the Congress first sought extension of the scope of the act.[3] This policy was

[1] *Ibid.* p. 35.

[2] *Ibid.* p. 78.

[3] At the conclusion of the 1918 convention Tom Moore was elected president of the Congress for the first time. He has since been re-elected each year. In October, 1918, several weeks after the convention, the Honourable G. D Robertson was appointed Minister of Labour. As already indicated, this was the first instance of appointing ministers of labor from the trade-union movement.

urged upon the convention through two resolutions, both drafted by government employes who were chafing under a recent ruling made by dominion officials that the act did not apply to employes of government institutions. The first resolution was introduced by the Policemen's Federal Labor Union of Montreal. These policemen explained that the importance of their work to the community made it practically impossible for them to strike without hopelessly antagonizing public opinion. Yet, on the other hand, they had no machinery for voicing their grievances as employes. The other resolution was introduced by the Federated Association of Letter Carriers, to which belong letter carriers throughout Canada. This organization based its argument for the extension of the act upon a special problem created for its members by the war. Pointing to the inadequacy of their stationary wages against the rapid rise in living costs, they insisted that they required the machinery provided in the Disputes Act to bring their complaint to the attention of the public.[1]

A lingering demand for the repeal of the act was still

[1] Their resolution read: "Whereas, the Post Office Department of Canada has during the past five years of the war treated the Letter Carriers and other grade employees unfairly; and, whereas, for the first three years of the war no recognition was given to meet the increased cost of living, compelling some to use up their previous savings, and others to go into debt to live, and, whereas, the Letter Carriers have been denied by the Government a Board of Investigation and Conciliation to adjust their grievances; and, whereas, the present bonus recommended by the Civil Service Commission for 1919 is not adequate with the salary now paid to meet the increased cost of living; therefore, be it resolved, that this Congress calls upon the Government to place itself on record as conceding to its employees a Board of Investigation and Conciliation to determine the question of an adjustment of wages, which course it so frequently and persistently urges upon outside employers of labor to adopt." (Report of the Proceedings of the Thirty-fifth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1919, p. 187)

in evidence. The street-car employes of Ottawa asked the Congress to reaffirm its opposition to the act and seek its repeal. The committee on resolutions recommended, as a substitute for the three resolutions, that the executive council be empowered to obtain amendments to the act which would, while it remained on the statute books, bring public employes within its provisions. The resolution read:

> This Congress has insistently asked for the repeal of the Industrial Disputes Act, which still remains. There are many organizations who desire to come under its provisions, and such being the case, we believe the Executive Council should be empowered as long as the statute is in force to obtain amendments which will bring within its provisions civic employees, including policemen, firemen and other civic employees throughout the Dominion, and the Letter Carriers in Canada.[1]

This substitute resolution was adopted by the convention.

At the next convention, 1920, the executive officers of the Congress presented a lengthy report on the Disputes Act, in which they told of their efforts to execute the policy laid down in the previous convention. They described first their interview with the dominion cabinet, in which they had asked for the complete revision of the act—"the repeal of the penalizing clauses [and] also its extension to publicly owned utilities such as are now under the Act when privately owned."[2] They reported that the government refused to comply with this request.

[1] *Ibid.*

[2] Report of the Proceedings of the Thirty-sixth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1920, p. 15.

Several amendments, enacted during the 1920 session of Parliament, were, however, reported. Some of these modified the law in minor respects to make it more satisfactory to organized labor.[1] The officers further declared:

> During the past two years requests from affiliated unions have constantly reached this office asking the assistance of the Congress Executive to have the Government appoint boards under the Industrial Disputes Act. Suggestions have been made to us in some of these communications that the law should be amended to make compulsory the acceptance of a board when applied for by one of the parties to the dispute.[2]

In view of these facts the officers recommended that "this convention should again review the operations of this act and reach a decision that would enable the Congress Executive to act clearly in the interests of the majority of the organized wage-earners."

The continued and increasing demand for the extension of the act found expression in four resolutions introduced in this convention of 1920. One came from the Ontario Provincial Council of the United Brotherhood of Carpenters and Joiners of America; another from the Almonte Local Union of the United Textile Workers of America; a third from the Montreal Policemen's Federal Labor Union; and a fourth from the United Brotherhood of Carpenters and Joiners at Three Rivers.

The resolution which the Congress finally adopted as an expression of its current policy, even while reiterating its opposition to the penalty clauses, stressed its desire

[1] For an account of these amendments, see page 55.

[2] Report of the Proceedings of the Thirty-sixth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1920, p. 27.

for the extension of the act to any cases in industries other than public utilities in which either employer or employes applied for boards. It read:

> Be it resolved, that the Industrial Disputes Act be extended to all industries upon the application of either an organization involved, an employer, or a municipality; providing that the compulsory clauses restraining the right to strike pending decision of such board be eliminated and the Act so amended as to preserve full liberty of workers and employers during sitting of the board.[1]

The convention of the following year, 1921, accepted a report of the executive officers of the Congress in which they described their vain attempt to carry out the program formulated in 1920. They had requested amendments of the cabinet: (1) to eliminate the penalty clauses of the act; (2) to make the act apply to a dispute in any industry upon the application of either the employes or employer involved; and (3) to make it "apply to policemen, firemen and other civic employees and to all other industries mentioned in the Act, whether privately or publicly owned."[2]

Amendments Sought in 1922, 1923 and 1924

The convention of the Trades and Labor Congress in 1922 marked a definite crystallization of the favorable attitude toward the act which had been growing since 1918. In their report to the delegates, the executive officers emphasized the reversal of attitude that had followed the demand for repeal in 1916 and 1917. They pointed to the repeated requests from unions not coming

[1] *Ibid.* p. 182.

[2] Report of the Proceedings of the Thirty-seventh Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1921, p. 23.

within the scope of the act for its extension. These unions expressed their disappointment that the order-in-council which had extended the law to war industries (so keenly protested by labor in 1916–1917) had been rescinded after the armistice.

Another consideration influencing many unions in their desire for extension of the act lay in the hope of utilizing it as a means of stemming the tide of wage reductions which had set in in Canada after the war, as in other countries. An attempt to strengthen the act for this purpose is seen in a resolution[1] submitted to the convention by the street-car employes of London, Ontario, and in the discussion on it. The resolution sought an amendment to the act which would penalize employers[2] who put into effect protested changes in wages without the approval of a board constituted under the act. This would in effect require the employer to apply for a board.[2]

Senator G. D. Robertson, Minister of Labour from October, 1918 to December, 1921, participated in the debate on this resolution. Referring to wage reductions initiated by the railroads in 1922, he pointed out that the wrong procedure had been pursued in applications for boards, the responsibility for applying for boards having fallen upon the men. He said that the act needed to be amended so that an employer seeking changes in working conditions which had been protested by his employes would be required to apply for a board and to withhold any changes in conditions of work until a report had been made upon the case. He said:

[1] Report of the Proceedings of the Thirty-eighth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1922, p. 118.

[2] Such an amendment was passed in 1925. See pages 57–58.

We are advised by the Department of Justice that the action of the railways [in reducing wages before the conciliation boards had made an award] was in violation of the intended spirit of the act, but that technically the companies had not violated the law. . . . The only penalties that may be imposed under the law must be the result of a strike or a lockout. The company would not lock the men out; they merely reduced wages. That is why I believe that provision for an adequate scale of penalties for such violation will remedy the existing difficulties.[1]

Indeed, as already mentioned, the Disputes Act, although specifically prohibiting protested changes in wages, hours of work and other working conditions until an award had been made by a board of conciliation and investigation, did not provide a penalty for making such changes until the amendment of 1925 was adopted. It was only the declaration of a lockout or strike that had been subject to penalty.[2]

The committee on resolutions recommended to the convention a resolution which called for the imposition of penalties on employers who put into effect disputed changes in wages or working conditions before a board had made an award. It also embodied two other proposals, increase of the penalties for unlawful lockouts in proportion to the number of employes involved and the definite placing of responsibility for applying for a board upon the party seeking the change in wages or conditions of work. The resolution read:

[1] Report of the Proceedings of the Thirty-eighth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1922, p. 118.

[2] For the pertinent sections of the act and its amendments, see Appendix C, page 348.

In view of the fact that railway companies did violate Section 57 of the Industrial Disputes Investigation Act by putting into effect a reduction in wages to their employees after there was a dispute, and as there is no penalty for a violation of said section of the act; be it therefore resolved, that the Executive of the Trades and Labor Congress of Canada use its best efforts to have the clause amended imposing an adequate penalty on companies and corporations violating this section, also that the penalty imposed upon employers for unlawful lockouts be increased in proportion to the number of employees involved as in the case when applied to employees who unlawfully go on strike; and be it further resolved, that the Executive Council be instructed to urge upon the federal [dominion] Government to amend the act, making it compulsory upon the party seeking the change in wages or conditions to make application for the board, in case an agreement is not reached before . . . such [time as] changes can legally take effect.[1]

In the discussion on this resolution, the president of the Congress suggested another provision of the act for consideration by the convention. This was the requirement in the law which compelled union officials, except in the case of certain unions involved in interprovincial disputes, to take a strike vote before they could apply for a board. He held that this requirement tended to provoke strikes. He thought, therefore, that a properly executed statement setting forth the failure of negotiations to effect an agreement between employer and employes should be adequate before applying for a board. The resolution thus amended was adopted by the Congress.

[1] Report of the Proceedings of the Thirty-eighth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1922, p. 167.

This policy of friendliness to the act but of pressing for amendments to meet the objections of organized labor continued to be the official policy of the Congress in 1923 and 1924. At the conventions held in those two years, the executive officers reported their efforts to have enacted into law the amendments proposed by the convention of 1922. In 1923 a bill proposed by the Minister of Labour, containing these amendments, was passed by the House of Commons but was rejected by the Senate.[1] In 1924 a similar bill, proposed by the Minister of Labour, was passed by the House of Commons; but the Senate wished to add an amendment which would take from the Minister of Labour the power he now has, as already noted, to appoint members on boards of conciliation and investigation, as well as the chairman when the parties themselves cannot agree upon suitable persons; and to place this power in the hands of the Chief Justice of the Supreme Court of the province in which the dispute occurs, if the dispute were local in nature, or in the hands of the Chief Justice of the Supreme Court of Canada, if the dispute were interprovincial in nature.[2] The senator who sponsored this amendment argued that the judiciary, being appointed for life, would be more impartial than the Minister of Labour. For "if the position of Minister of Labour is occupied by a man in sympathy with labour . . . [as had been the case since October, 1918], labour will in all probability have an advantage in the

[1] Legislation in Canada must be passed by both houses of the legislature, that is, the House of Commons and the Senate. Legislation is initiated by one of the ministers in the cabinet of the government of the day, and he has the privilege of accepting or rejecting any amendments. For a more detailed description of the Canadian procedure in enacting legislation, see page 269, footnote.

[2] See pages 207 ff.

selection that would be made."[1] The Minister of Labour refused to accept this amendment and the bill was dropped.

The amendments proposed by the Minister of Labour in 1923 and 1924 were finally passed in June, 1925, when the act was also amended to meet the decision of the Judicial Committee of the Privy Council declaring the act beyond the competence of the dominion government.

Request for Reinstatement of the Act in 1925

That labor was now genuinely in favor of the act is shown by the fact that when it was declared unconstitutional by the decision of the Judicial Committee of the Privy Council, labor immediately moved for its re-enactment in substantially its previous form. Shortly after the announcement of the decision, representatives of the Trades and Labor Congress had their annual interview with the cabinet, on January 31, 1925. After pointing out that labor in Canada had in recent years changed from a hostile to a favorable attitude toward the Disputes Act, the secretary-treasurer of the Congress, as official spokesman for organized labor in Canada, urged that steps be taken to amend the British North America Act so that the Disputes Act, re-enacted "with the amendments previously sought by labor," might be brought within the competence of the dominion government. For he held that a similar law passed by each province, advocated in some quarters, would not be effective, because there was danger that some provinces might vary the provisions of the law and thus

[1] Quoted in Report of the Department of Labour for the fiscal year ending March 31, 1924. Ottawa, pp. 44–45.

together they would lack that uniformity so desirable in labor legislation. Nor would the plan suggested in some sources to embody the provisions of the Disputes Act in the Railway Act and the Shipping Act be satisfactory, for such attempts would decentralize the administration of the provisions aiming at the adjustment of industrial disputes.[1]

Organized labor is not at present satisfied with the provisions of the amendment passed in June, 1925 to meet the constitutional difficulties in the law. An editorial in the Canadian Congress Journal, the official organ of the Trades and Labor Congress, for June, 1925 expresses the fear that this amendment may also be declared unconstitutional and therefore urges again that the British North America Act be amended to bring the Disputes Act within the scope of powers granted the dominion government, on the ground that "if such legislation is to prevail in Canada . . . it is far better that it should be dominion rather than provincial legislation." For "in this way some degree of uniformity in its application will be insured."[2]

The Attitude of the Railroad Brotherhoods

The railroad brotherhoods in Canada are just as much in favor of the Disputes Act now as is the Trades and Labor Congress. They joined the Congress in 1925 in pressing for amendments to the British North America

[1] Draper, P. M., "Industrial Disputes Act, Memorandum Submitted to Government," *in* Canadian Congress Journal, Vol. IV, p. 16, February, 1925.

[2] It should be noted that the spokesmen of the Congress have not drafted the amendment requested by them. They have simply expressed their desire for and a willingness to co-operate in the drafting of such an amendment. The difficulties in the way of amending the British North America Act are discussed on pages 285 ff.

Act which would bring the Disputes Act within dominion competence. But all of the brotherhoods have not always been favorable to the act or unanimous in their attitude. They have varied from strong hostility, and partial dissatisfaction, to entire approval. The United Brotherhood of Maintenance-of-Way Employees and the Order of Railroad Telegraphers have from the start been most enthusiastic proponents. So much have they been in favor of it that in 1912 they severed their affiliation with the Congress when the latter went on record in 1911 as desiring the repeal of the act.

The Brotherhood of Locomotive Firemen and Enginemen in Canada, again, has always been friendly to the principle of the act, but, like the Trades and Labor Congress, has desired amendments to improve its administration. The Brotherhood of Locomotive Engineers, on the other hand, was at one time a most bitter opponent. Its legislative board expressed itself in no unmistakable language in November, 1916 in this resolution: "That this board do all in its power to have the Industrial Disputes Investigation Act wiped off the statute books." According to an official of this board:

> The opinion against the act was practically unanimous. While some of the men spoke of some minor advantages, yet all of them thought that there were no real benefits to be gained from the operation of the act. It simply caused a lot of delay and expense. Many times, when an adjustment committee would go to the railroad manager and say that they wanted to negotiate a new agreement, the manager would simply say: "Go and apply for a conciliation board under the Disputes Act."

Since 1918, however, all of the railroad brotherhoods have been unanimous in their approval. This may best

be shown by quoting from a letter addressed by their representatives to Senator G. D. Robertson in support of the amendments which were before the Senate in 1924.[1]

It is not necessary at this time to refer in detail to the history of the legislation or the chief reasons for its enactment. Suffice it to say that during the time the act has been in operation labor has generally accepted the principles of the act and has co-operated in giving effect to its chief purpose, "to aid in the prevention and settlement of strikes and lockouts in industries connected with public utilities." Generally speaking, this co-operation has continued, notwithstanding the fact that for many years the measure did not find popular favor among a large number of the workers affected. However, believing that in the public interest some legislative machinery should operate to insure ample opportunity for investigation and conciliation in industrial disputes, labor has gradually adapted itself to the principles and legal process of the act, and is further willing that it should be continued, provided that its operation is made equitable to all concerned.[2]

In a word, then, we may say that practically all of the organized workers of Canada stand today committed to a strong approval of the Disputes Act, an approval that is striking in its contrast with the dissatisfaction and hostility developed in the years preceding 1918.

[1] See page 177.

[2] Report of the Department of Labour for the fiscal year ending March 31, 1924. Ottawa, p. 42.
In the last clause of the quotation the brotherhoods had special reference to the desirability (1) of placing the responsibility for applying for boards on the party wishing to initiate changes in working conditions, and (2) that no changes be put into effect until the completion of hearings by boards. They felt that these amendments were necessary to prevent employers from reducing wages (as the railroads attempted to do in 1922) without applying for a board.

CHAPTER VIII

CRITICISMS AND FACTS CONCERNING THE ADMINISTRATION OF THE ACT

ONE of the main questions of this study, it will be recalled, is to discover, if possible, the factors leading organized labor in Canada to the change of attitude described in the previous chapter. The written records taken from the proceedings of the annual conventions of the Trades and Labor Congress indicate, as was shown in Chapter VI, that many of the complaints made by labor prior to 1918, that is, during the period of hostility, revolved about administrative practices. That these practices were generally considered the main cause of dissatisfaction was made clear in interviews with labor leaders in the winter of 1916–1917, shortly after the unqualified resolution for repeal was adopted by the Congress. "You can boil it all down to a question of administration," said one prominent union official in explanation of this resolution. "The delegates were so worked up over their grievances," declared another, "that they were in no mood to distinguish between the principle of the act and its administration." When virtually the same leaders were interviewed again, during the summer of 1920, they attributed their change of policy from opposition to friendliness mainly to improvements in administration.

Were they right in this? Was there any marked difference in administration after 1918 as compared with

the period prior to that year? Or was the change in attitude caused by other, less obvious factors? To answer this question, the facts concerning the points criticized by labor have been tabulated for the two periods, March 22, 1907 to March 31, 1918 and April 1, 1918 to March 31, 1925. It is impossible, of course, to establish an exact turning point for such a gradual process as a change of attitude. But, although the Trades and Labor Congress did not officially indicate its change of attitude until it met in annual convention in September, 1918, nevertheless April 1, 1918 (the beginning of the Canadian government's fiscal year) has been taken as the date best representing the division between the periods of labor's hostility and friendliness toward the act. For, as will be shown later[1] a number of factors came into play early in 1918 which brought about a closer understanding between organized labor and the government, an understanding which inevitably affected labor's attitude toward the Disputes Act. By September, the time of the annual convention of the Trades and Labor Congress, labor's friendliness had gained sufficient strength to be crystallized as the new policy of the Congress.

Appointment of Chairmen of Boards

Foremost among the complaints against administration voiced by labor leaders prior to 1918 were those concerning the appointment of chairmen of boards by ministers of labor. They contended that in the majority of cases it was impossible for the two members recommended for a board by the employers and em-

[1] See Chapter XI, Other Factors Determining the Attitude of Labor since 1918, page 243.

ployes to agree upon a suitable person for chairman, and therefore the selection of this official devolved upon the Minister of Labour. His appointees, they further declared, tended to favor employers; and since the chairman had the deciding vote, the boards were, in a sense, "loaded" against them from the beginning. The following typical statement was made by an official of the Machinists' Union:

> The very personnel of the boards are against the interests of the workers. The chairman casts the deciding vote on these boards. In 99 out of 100 cases, the two members appointed by the employer and the men cannot agree upon a mutually suitable person. The Minister of Labour has to choose him, and he usually selects a judge or some professional man whose point of view is capitalistic and who has no sympathy for the working class. As a result, from the very beginning the chances are against getting a favorable decision for the workers. The chairman almost invariably lines up with the representative of the employer.

Similar attitudes on the part of employes, as well as of employers, are found wherever machinery for conciliation, investigation or arbitration is proposed or established. For, in the last analysis, the success of such machinery depends upon the impartiality, skill and judgment of the individuals appointed. Many times, when either employers or employes in a particular dispute refuse to submit their case, it is not so much to the function itself that they object, as to the probable personnel which will be appointed for the purpose. Conciliation, investigation or arbitration in such instances is suggested by some public official. The reception of the suggestion will depend a great deal on the extent to which either employers or employes, or

both, have confidence that the men appointed will be conversant with the technical problems of the particular industry, intelligent on the general factors involved in industrial relations, impartial in their attitude as between the parties to the contest and skilled in their ability to bring about amicable settlements. It is not surprising, therefore, to have heard the question raised in Canada on the part of employes with regard to the chairmen appointed under the Disputes Act. For it is true that the success or failure of a board must depend in a very large measure on the character and ability of the chairman appointed. Since the other members are nominated by the parties to the dispute, he alone is the impartial, neutral person on the board; and he has the deciding vote.

The proportion of disputes in which the choice of a chairman falls to the Minister of Labour has never been so large as would be expected from the complaints given above. For the whole period of the act this proportion, as shown by Table 9, is only about 57 per cent, the two other members having agreed upon a suitable chairman in 43 per cent of all boards constituted. More significant in an evaluation of the reasons given is the question of how the proportions of chairmen chosen by the Minister of Labour compare as between the periods before and after 1918. During the period before 1918 the two board members representing employers and employes agreed upon a chairman in 103 of 214 cases, or 48.1 per cent of all cases, while the Minister of Labour was called upon to designate a chairman, in the absence of a joint recommendation, in 111, or 51.9 per cent of the appointments. During the latter period, April 1, 1918 to March 31, 1925, the first two members

agreed upon a chairman in 78 of 206 cases, or 37.9 per cent of all cases, while the Minister of Labour had to name 128, or 62.1 per cent of all the chairmen. Thus since 1918, the period during which labor has been friendly to the act, the Minister of Labour has, as a matter of fact, been called on to choose a somewhat larger proportion of chairmen than before, when labor was hostile.

TABLE 9.—METHOD OF APPOINTING CHAIRMEN OF BOARDS CONSTITUTED, BY PERIODS, 1907 TO 1918 AND 1918 TO 1925

Chairman appointed	Boards constituted		
	March 22, 1907 to March 31, 1918	April 1, 1918 to March 31, 1925	Total
	Number		
On recommendation of other two members	103	78	181
By Minister of Labour	111	128	239
Total	214[a]	206	420[a]
	Per cent		
On recommendation of other two members	48.1	37.9	43.1
By Minister of Labour	51 9	62.1	56.9
Total	100.0	100.0	100.0

[a] Not including one case in which method was not made clear in the report.

Since labor objected to the appointment of chairmen before 1918, the facts relative to such appointment would lead to an expectation of continued if not strengthened objection afterward; but this was not the case. It would be unfair to explain labor's attitude since 1918 only by the fact that ministers of labor,

beginning in 1918, were chosen from the ranks of organized labor and therefore may have appointed chairmen who were sympathetic to wage-earners without examining further the evidence afforded by the nature of the reports of boards.

In order to answer further the complaint of partisanship in the operation of the act, the facts concerning the appointment of chairmen need to be supplemented by the figures on the nature of decisions made by boards. If their reports are in the main unanimous, that is, if both employers' and employes' representatives, as well as the chairman, signed the report in a given dispute, we may in general assume that the parties involved were satisfied.[1] If, on the other hand, the employes' or employers' representative dissented from a majority report, we may assume that the group with the dissenting representative was not satisfied with the decision of the board.[2]

For the whole period March 22, 1907 to March 31, 1925, 54.6 per cent, or over half of the boards consti-

[1] Occasionally a disputant refuses to accept a report even if signed by the member appointed on his recommendation to the board. Such cases are, however, very exceptional, and a unanimous decision usually means that the parties are willing to accept it as a basis of adjustment.

[2] The members of boards appointed on the recommendation of employers and employes are, according to the theory of the law, not partisans to the particular dispute. Yet they represent the party nominating them. The boards of conciliation and investigation constituted under the Disputes Act are similar to arbitration boards of three appointed in industrial disputes. That is, the employers appoint one member, the employes another; and the two so appointed are to choose a third man to act as chairman. On boards of this kind the chairman is really the only disinterested member. The other two, while not as partisan as the disputants themselves, nevertheless are assumed to be sympathetic, if not partial to the interests of the parties they represent, and will attempt to secure the most satisfactory award for their constituents.

TABLE 10.—NATURE OF REPORTS OF BOARDS CONSTITUTED, BY PERIODS, 1907 TO 1918 AND 1918 TO 1925

Nature of report	Boards constituted		
	March 22, 1907 to March 31, 1918	April 1, 1918 to March 31, 1925	Total
	Number		
Report signed by all members			
Decision unanimous	126	104	230
Reservations on minor points	10	15	25
One member dissenting			
Employes' representative	39	48	87
Employers' representative	26	27	53
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	206	421
	Per cent		
Report signed by all members			
Decision unanimous	58.6	50.5	54.6
Reservations on minor points	4.6	7.3	5.9
One member dissenting			
Employes' representative	18.1	23.3	20.7
Employers' representative	12.1	13.1	12 6
Chairman	–	.5	.2
Separate report from each member	.5	1.0	.7
Nature of report not clear	2.8	1.9	2.4
No report	3.3	2.4	2.9
Total	100.0	100.0	100.0

tuted, as shown in Table 10, rendered unanimous reports. Judging from the criticism made by employes prior to 1918, we should expect a smaller proportion of reports from which the employes' representative dissented in the period after 1918 as compared with the period before 1918. But the difference, although slight, is in favor of the earlier period. Employes' representatives dissented from 23.3 per cent of all reports rendered after 1918 as compared with only 18.1 per cent of all reports rendered before 1918. The proportion of reports submitted with the employers' representative dissenting is almost the same for the two periods, 13.1 per cent after 1918 as compared with 12.1 per cent before 1918. The proportion of unanimous decisions also differs only slightly for the two periods, 50.5 per cent after 1918 as compared with 58.6 per cent before 1918; but again the difference is in favor of the earlier period. It seems evident, then, that the facts do not substantiate the criticisms voiced by labor before 1918, that in the majority of cases the chairmen of boards were selected by the Minister of Labour, and that the boards were therefore "loaded" against labor. Nor do the facts as to appointment of chairmen or as to unanimity of reports afford any explanation of the change in the attitude of labor.

Delays in Administration of the Act

That the act served to delay settlement of disputes, was repeatedly charged at the annual conventions of the Trades and Labor Congress from 1908 to 1916. Interviews with union officials disclosed that these delays were due to several causes. In the first place, the very existence of the Disputes Act, labor leaders held, led

employers to refuse direct negotiation with union committees and so delayed action on disputes. In the second place, too much time was consumed in the constitution of boards. Employers delayed or refused entirely to name their representatives, or the Minister of Labour took too much time in considering the application. Finally, hearings before boards, they said, were unnecessarily protracted by employers.

These delays were important, explained the spokesmen of labor, because they actually resulted in a money loss to the workers. For one thing, they postponed the day when the increases in wages demanded by them were put into effect; for another, employers were given an opportunity to prepare for the eventuality of a strike. Moreover, by the time reports were finally made by boards, the opportune time for striking had often passed. For instance, an unsatisfactory report on a coal dispute occurring in winter or spring, which did not appear until summer, would leave the miners with the unpromising outlook of striking at an unpropitious time. Since 1918 the spokesmen of labor have expressed few if any complaints on these scores.

The administrators of the act have, on the whole, made a genuine attempt, in the opinion of the writer, to expedite proceedings and to reduce to a minimum the time elapsing between applications for boards and the submission of reports. But, as officials in the Department of Labour themselves frankly admit, delays have been inevitable. They arise, often, because of the very distances in Canada, so vast in extent, over which the act has to be administered. It takes time for the Registrar of Boards, located as he is in Ottawa, to correspond concerning nominees to boards with representa-

tives of management and workers in industries located in distant centers, and then to get in touch with the members finally chosen. Again, even after a member is agreed upon, it may be discovered that he is not available for service. Moreover, members of boards do not always live in the community where the dispute occurs, and considerable time may pass before they assemble. Delays may also be caused by the existence of rival unions in a given establishment. For it must be remembered that, while the international unions affiliated with the Trades and Labor Congress have jurisdiction over most of the organized workers of Canada, other trade unions, such as the Industrial Workers of the World, the One Big Union, the Canadian Federation of Labor and the Federation of Catholic Workers of Canada, compete with them for membership.[1] This rivalry for leadership often reflects itself in a contrary attitude toward the disposition of a particular dispute. That is, when one union applies for a board, another union, unwilling that its rival should receive official recognition under the laws of the country as the representative of the workers involved, protests the application either by stating that no grievance exists or by applying for a board itself as the bona fide representative of the workers.[2] Time must be taken by the Minister to consider the situation carefully in order to determine what course of action seems most likely to promote peace in the industry.

Finally, the conciliatory spirit in which the act is administered, entailing as it does time-consuming pa-

[1] See pages 253 ff. and pp. 87, 91, and 196 for more detailed references to these organizations.

[2] A good illustration of such an instance is offered by the Thetford mine case. See page 163.

tience, tact and understanding, inevitably causes delays. Files in the Department of Labour show, for instance, that employers frequently demur at nominating a representative for a board or ask for extensions of time.[1] A prominent official of the Department explained:

> We don't want to ride rough-shod over a company. If they say that they will not appoint a representative, we tell them that they must do so, and we try to reason with them that they should comply with the law. If they ask for an extension of time, we grant it to them and try to hurry the proceedings on as fast as possible.

Under such circumstances, then, it is but to be expected that considerable time will be consumed in handling disputes under the act. That this is so, is indicated beyond question by the facts. Table 11 gives data on the time elapsing between application for boards and their constitution. Of the total boards constituted from March 22, 1907 to March 31, 1925, only 161, or 38.3 per cent, were established within the 15 days contemplated by the law. The same proportion, 38.3 per cent, were constituted in from 16 to 30 days. In other words, 76.6 per cent, or about three-fourths of all the boards constituted, were established within 30 days, while it took more than one month to constitute 23.4 per cent, or about one-fourth of all boards.

Since labor was so critical of the administration of the act prior to 1918 on the score of delays, one would naturally expect that during this period a much longer time would have elapsed between application for and establishment of boards than after 1918. As a matter of fact, the variation between the periods before and

[1] It will be recalled that 91 per cent of the applications have been made by employes alone.

after 1918 is slight. Indeed, it can be seen at once from Table 11 that there is a marked parallel in the two periods in the length of time it has taken to establish boards.

TABLE 11.—TIME ELAPSING BETWEEN APPLICATION FOR AND CONSTITUTION OF BOARDS, BY PERIODS, 1907 TO 1918 AND 1918 TO 1925

Interval	Boards constituted		
	March 22, 1907 to March 31, 1918	April 1, 1918 to March 31, 1925	Total
	Number		
1 to 15 days	85	76	161
16 to 30 days	82	79	161
31 to 45 days	30	24	54
46 to 60 days	7	12	19
61 days or over	11	14	25
Total	215	205[a]	420[a]
	Per cent		
1 to 15 days	39.5	37.1	38.3
16 to 30 days	38.1	38.5	38.3
31 to 45 days	14 0	11.7	12.9
46 to 60 days	3.3	5.9	4.5
61 days or over	5.1	6.8	6.0
Total	100.0	100.0	100.0

[a] Not including the board constituted without an application.

But it is the time elapsing between the application for a board and the submission of its report that is the most vital consideration to both parties. For a *status quo* must be maintained in the relations between employers and employes until a final report on the dispute in question has been filed with the Minister of Labour. Table 12 relates to the time elapsing between applica-

tions for boards and the submission of their reports. For the entire period March 22, 1907 to March 31, 1925, it took over 60 days, or more than two months, after date of application for 41.2 per cent of all boards reporting to submit their reports, 17.4 per cent of all reports not being rendered until three months or more after the date of application. Even those reports which were completed more speedily involved considerable time loss. While 58.8 per cent of all reports were rendered within two months, only 13.5 per cent suc-

TABLE 12.—TIME ELAPSING BETWEEN APPLICATION FOR AND REPORT BY BOARDS, BY PERIODS, 1907 TO 1918 AND 1918 TO 1925

Interval	Boards reporting		
	March 22, 1907 to March 31, 1918	April 1, 1918 to March 31, 1925	Total
	Number		
1 to 30 days	22	33	55
31 to 45 days	48	50	98
46 to 60 days	47	40	87
61 to 75 days	23	34	57
76 to 90 days	26	14	40
91 days or over	41	30	71
Total	207	201[a]	408[a]
	Per cent		
1 to 30 days	10.6	16.4	13.5
31 to 45 days	23.2	24.9	24.0
46 to 60 days	22.7	19.9	21.3
61 to 75 days	11.1	16.9	14.0
76 to 90 days	12.6	7.0	9.8
91 days or over	19.8	14.9	17.4
Total	100.0	100.0	100.0

[a] Not including one board constituted without an application.

ceeded in rendering reports within one month from date of application. The figures show, however, that a general improvement took place in speeding up the reports of boards in the period 1918 to 1925 as compared with the period 1907 to 1918, but the improvement is not striking enough to explain the change of attitude on the part of labor.

Other Criticisms of Administration

Analysis of the figures with regard to the time elapsing between applications for boards and the rendering of their reports indicates, then, as do the figures concerning the appointment of chairmen, that there is little basis in the facts for criticizing the various ministers who have been responsible for the administration of the act. These constituted the major complaints of organized labor in Canada during the period 1907 to 1918. What about their other grievances voiced during the same period?

It will be remembered that one of the grievances that led to the first demand for repeal of the act in 1911 arose out of the arrest of a union official at Inverness, Nova Scotia, for distributing strike benefits in a strike called in violation of the act. Without entering into the merits of this particular case, it may be stated at once that on the whole labor has no basis for complaint on the score of its having been penalized for striking prior to its applying for a board or when it failed to apply for a board at all. For, although the miners have repeatedly violated the law in this respect, the dominion government itself has never prosecuted them; and in all, throughout the history of the act, there were only 16 prosecutions for illegal strikes.

Two specific cases, already referred to, those of the asbestos miners at Thetford and the metal miners at Cobalt, led to criticism in 1916. They arose out of the refusal of the Minister of Labour to appoint boards when applied for in 1916 by employes at these mines. Serious difficulties confronted the Minister of Labour when he received applications for boards from the men. In the Thetford case, two rival unions were contending for the membership of the employes—the Western Federation of Miners, affiliated with the Trades and Labor Congress, and a Catholic union, affiliated with the Catholic Federation of Trade Unions, an independent organization sponsored by the Catholic Church of Canada. The application for a board came from the membership of the Western Federation of Miners. But members of the Catholic union sent a resolution to the Minister of Labour, stating that they were content with the wages then paid them and were opposed to the appointment of a board. Moreover, five companies were involved, and the Disputes Act does not give the Minister of Labour specific power to appoint a representative for several employers when they refuse to agree upon a single representative. Finally, it should be emphasized that the Minister of Labour did not refuse to handle the grievance. It is true that he refused to establish a board, but he did dispatch a royal commissioner to investigate and attempt to bring about an amicable settlement of the dispute. In the case of the Cobalt mines, the Minister was confronted with the difficulty occasioned by the refusal of the 42 companies involved in the dispute to agree upon a representative to the board. In this instance again he attempted to meet the situation in a practical way by appointing a

royal commission to conduct hearings and, if possible effect a satisfactory adjustment.

The facts, then, do not justify the statement that partisanship in the administration of the act was the main cause of the hostility of labor prior to 1918. Nor have there been changes in administrative practice striking enough to explain labor's favorable attitude since 1918. Other influences, more fundamental than the ones advanced by labor itself, are apparently responsible for its varying policy toward the act. But before proceeding to discuss them, it will be well to consider the attitude of Canadian employers toward the law. For the same factors may explain their policy as well as that of labor.

CHAPTER IX

CANADIAN EMPLOYERS AND THE ACT

WHATEVER may be the decision of a board established under the Disputes Act with regard to wages, hours of work and other employment conditions, it is the employer who must put the terms of the decision into actual practice. Upon him falls the heavy responsibility of administering labor policy. If labor costs be increased as a result of the recommendations of a board, he must find the way to meet the addition by changes in method or by increasing the price of the commodity or service in the open market where he faces the competition of other employers, foreign as well as domestic. Obviously, legislation like the Disputes Act could not work successfully for any length of time unless its results proved consistent with the practical operation of business concerns.

Unfortunately, it is not so easy to trace the opinion of Canadian employers with regard to the act as that of labor. There is no single association of Canadian employers as there is of workers for the expression of common policies and programs. Again, while labor organizations deal primarily with questions involving industrial relations, employers' associations deal with a wider range of economic problems. When labor unions meet in convention, the entire program is consumed

with matters relating directly to the welfare of labor, such as questions of trade-union recognition, wage standards, the length of the working day, workmen's compensation, social insurance and other types of labor legislation. When an employers' association meets, labor policy constitutes but a small part of the program. The discussions are concerned primarily with matters pertaining to tariffs, marketing, transportation, international trade, credits and all the other complex economic and political factors which enter into the conduct of business.

Wage-earners express themselves much more explicitly than employers on issues arising in employer-employe relationships. They are the ones who take the initiative in demanding higher wages, reduction of hours and better conditions of work, and through their trade unions are constantly conducting militant campaigns to improve their status, campaigns which always involve publicity and often lead to strikes or threats of strikes. Even when an employer proposes to reduce wages, as frequently happens during periods of business depression, he seldom resorts to a lockout to force his men to submit. His usual practice is to propose new conditions of employment to his employes and to await the issue. If the men are dissatisfied with them or refuse to accept them, it is they who bring the issues before public attention by protesting or by going on strike. It is only natural, therefore, to find organized labor in Canada more articulate than employers with respect to the operation of a law like the Disputes Act, which plays such a constant and important role in the relationship between men and management in public utility industries.

Canadian Employers Generally Favorable to the Act

It is possible, however, to secure evidence of the attitude of Canadian employers toward the act. The friendliness or opposition of such organizations as the Canadian Manufacturers' Association, the Western Coal Operators' Association and the Canadian Institute of Mining and Metallurgy has been put on record from time to time. Also, the opinion of employers has been voiced in debates in the Canadian Parliament, especially in the Senate, when amendments to the act were being considered. In addition, representative business executives in Canada have been interviewed concerning their attitude toward and experience with the law, both by the writer and by others.

In general, Canadian employers may now be said to approve of the Disputes Act. For example, an official of the Canadian Manufacturers' Association, the largest and perhaps most influential employers' association in Canada, though not, as its name might imply, representing employers generally, states in a letter to the writer under date of December 23, 1925:

> The attitude of this association toward the Industrial Disputes Investigation Act may be said to be one of approval. The general feeling is that within the field of employment to which the act, as at present drawn, applies, it has proved of considerable service. . . . A very large number of strikes that threatened to be most serious have been averted.

That the Canadian Manufacturers' Association as a whole agrees with the statement just quoted may be judged from the action taken at its fifty-third annual meeting, held at Montreal in June, 1924, when the

question of the constitutionality of the act was before the country. The convention unanimously adopted a report of the committee on industrial relations, in which it was stated that, "while expressing no opinion upon the constitutional question involved, which is to be carried to the Privy Council, your committee feels it is safe in saying that the Lemieux [Disputes] Act has proved of great benefit in the field which it was originally intended to cover."[1]

A representative of the Shipping Federation of Canada also indicated, when interviewed, the friendly attitude of employers toward the act. "The act is all right," he declared, "because it prevents hasty action," and he went on to explain how it had helped to maintain a peaceful relationship between longshoremen and shippers in Montreal. Individual executives also expressed their approval of the act. The executive of a large railroad expressed the matter in this way:

> Suppose two or three labor leaders come into this office, and they have a thousand men behind them. They put certain demands up to us and say, "Here, give these to us or we'll strike by such and such a time." Well, we can say to them, "There is a Disputes Act on the statutes; you'll have to apply for a board or violate the law," and thus they are prevented from taking precipitate action against us.
>
> We had a recent case of this kind in which the men demanded certain increases in their wages. We informed them that we could not grant the rates desired. They then applied for a board and the report of the board was in their favor. For a time we hesitated to accept the report. But after considering everything, the condition of the labor market and so

[1] Proceedings of the Fifty-third Annual General Meeting of the Canadian Manufacturers' Association. Toronto, 1924.

forth, we decided to accept the award, because we knew that if the men struck they would win. That's the advantage of the act. It gives us a chance to think things over before taking action in a matter of this kind.

It would seem logical, from the point of view of practical business administration, that employers should be in favor of a law like the Disputes Act, aimed to prevent men from striking until an investigation is completed by a public body. In the first place, such a measure gives the business executive time to consider demands presented by his workers. If he decides that he can meet the demands, he is afforded some time in which to make the necessary financial arrangements to pay higher wages, to plan reorganization of his industry so as to permit a shorter working day, to formulate a program to offset higher labor costs by increasing the efficiency of his plant.

If, on the other hand, an employer feels that the demands of his men are unreasonable, he has the opportunity of appealing to a third party by putting his case before a board of conciliation and investigation. If the board approves the request of his men for higher wages, he is in a better position to pass on the additional labor cost to the consumer because a public body has made the decision. This consideration would be given special weight by transportation companies, such as railroads and traction systems, the rates of which are fixed by public service commissions. Finally, the recommendations of boards are not compulsory, and an employer is free to refuse to accept them. If a strike occurs after the decision, he has had some time to prepare for it. As Benjamin M. Squires puts it in the report of his investigation of the act:

A restriction upon the right to strike or lock out pending an investigation by a government board as provided in the Canadian act is generally favored by employers because it enables them to continue operation and to prepare for the possible contingency of a strike and does not force them to accept the findings of such a board. If the form of such legislation is changed to a compulsory acceptance of findings, employers are as apt as employees to take exception to adverse decisions.[1]

It should not be inferred that Canadian employers have always been in favor of the act. Thus, Sir George Askwith reported, as a result of an investigation undertaken by him in 1912, that for some time after the act was passed some employers objected to it. "The objection may have been due," he writes, "to various reasons, but I think mainly to the distrust frequently felt to any interference by government action in industrial matters."[2] By 1912, however, the opposition of Canadian employers, according to this investigator, had virtually disappeared:

> This distrust has, so far as I could judge, almost entirely disappeared, and some of the strongest opponents of the act, particularly among the railway employers, have been convinced of its value. I was afforded good opportunities for ascertaining the view of many railway officials, and found that they and employers generally had a high opinion of the moral weight of the findings of the conciliation boards and generally of the usefulness of the act.[3]

[1] Operation of the Industrial Disputes Investigation Act of Canada. U. S. Bureau of Labor Statistics, Bulletin No. 233, Washington, 1918, p. 138.

[2] Report on the Industrial Disputes Investigation Act of Canada, 1907. H. M. Stationery Office, London, 1912, p. 13.

[3] *Ibid.*

Extension to Industries Other Than Public Utilities Opposed

But while employers as a whole have seemed to favor the act, they have voiced certain reservations. They have been opposed, for instance, to amendments which would extend the act to include disputes in other than public utility industries provided either employer or employes wished to invoke its provisions. This extension of jurisdiction, it will be recalled, is one of the aims of the Trades and Labor Congress.[1]

Opposition to such a step was first indicated by employers in 1919. As a result of a national industrial conference held in Canada during that year for the purpose of formulating an acceptable labor policy for Canadian industry following the war, a joint committee of trade-union representatives and of employers was appointed to consider the desirability of making labor legislation uniform throughout the Dominion. For wage-earners had complained of the variety of standards found in the labor laws enacted by the various provinces. They cited as examples the difference in standards to be found in workmen's compensation laws and minimum wage laws. They also complained because a variety of statutes existed in the various provinces for the purposes of mediation and arbitration of industrial disputes. Consequently, the representatives of labor on this committee suggested, among other things, that the provinces drop existing legislation on this latter subject, that the Disputes Act be made a uniform law for the whole Dominion, and that it be extended to cover any industry in which either employer or employes wished

[1] See pages 172 ff.

to apply for a board. The representatives of employers on the committee objected to these proposals, and they were dropped. Further evidence of this attitude of Canadian employers may be gleaned from the following paragraph from the letter of the official representative of the Canadian Manufacturers' Association a portion of which has already been quoted on page 200.

> It is by no means clear that this association would approve of the extension of the act to cover industrial disputes in private industry. It is significant that certain public utilities to which it was doubtful whether or not the act could be applied have resisted the attempt to apply the act to them. The last case in point is that of the Toronto Hydro Electric Commissioners, who a year ago carried the case to the Privy Council in London and secured a decision to the effect that under the Canadian constitution the Industrial Disputes Investigation Act, being a federal act, could not be applied to an industrial dispute limited to a certain province unless such province had passed legislation providing that the act should so apply.

Some Criticisms by Canadian Employers

Opposition to the extension of the act on the part of employers is due in large part, no doubt, to their general objection to government intervention in private industry. For while they have become reconciled to government regulation of public utilities, employers feel that the constant intervention of public bodies in other industries would impair the freedom and flexibility of management essential to the successful conduct of business enterprise of a competitive character.

In part, however, employers oppose the extension of the act to other industries because they are not entirely satisfied with its present working. In the first place,

management officials complain because of the absence in the act of any stipulation as to the length of time in which a report of a board should be in force after being accepted by both employers and employes. Nothing in the law, they say, prevents the workers of a particular company from applying again for a board with a demand for increase in pay or other improvements in working conditions at any time after an award of a previous board has been put into effect.

It is not difficult to understand the reasons behind this complaint. Employers want agreements with their employes that extend over a reasonable period so that they may be able to figure future costs with some degree of assurance. In highly competitive industries sales prices may be figured on a very narrow margin of profit. A sudden increase in labor costs, due to higher wages, may result not only in the disappearance of any profit but actually in the incurring of a loss.

Another criticism which has been made, especially in the last few years, is precisely like that voiced by labor prior to 1918, namely, that the act has not been administered impartially. Employers apparently feel that recent ministers have been too sympathetic with labor and too little aware of the difficulties of management. This complaint has taken the form of questioning the fairness of the provisions in the act which now give to the Minister of Labour the power to name the representatives of employers or employes when either of them or both refuse to recommend a member of a board, and to name the chairman of a board when the two other members fail to agree on a suitable person.

It is in the Senate, the conservative body of the dominion Parliament, that discussion on this aspect of

the law has been sharply focused during the past few years. Indeed, as already noted,[1] amendments endorsed by employers were introduced and adopted in the Senate both in 1923 and 1924 which proposed to transfer the appointive power described above from the Minister of Labour to the judiciary. The amendments provided, it will be recalled, that appointments to boards (in the absence of recommendations or agreements of the parties involved) should be made by the Chief Justice of the Supreme Court of the province in which the dispute arises, or, if the dispute extends over more than one province, by the Chief Justice of the Supreme Court of Canada.[2]

These amendments proposed by the Senate were rejected by the Minister of Labour. But it is interesting to note the arguments given by senators in behalf of the amendments, for they indicate the critical attitude

[1] See page 177.

[2] The exact amendments as adopted in the Senate are:

"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 Chief Justice of the province in which the dispute arose, or, if there be no such Chief Justice in that province, the Chief Justice of the highest court of last resort in civil matters in that province, or, in any case where the dispute did not arise in one province only, the Chief Justice of the Supreme Court of Canada, 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."

"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 Chief Justice of the province in which the dispute arose, or, if there be no such Chief Justice in that province, the Chief Justice of the highest court of last resort in civil matters in that province, or, in any case where the dispute did not arise in one province only, the Chief Justice of the Supreme Court of Canada, 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 other two members of the Board." (Labour Gazette, Vol. XXIII, p. 747, July, 1923.)

among Canadian employers toward the administration of the act. Thus, the senator who introduced the amendments in 1923 gave voice to the complaint that there is danger of partiality to the workers on the part of the Minister of Labour when determining the personnel of boards:

By the provision of subsection 3 of section 8 of the act of 1907, where the employer and the employee do not agree upon a third arbitrator, the appointment is in the hands of the Minister of Labour. Now, it has been represented to me by very important employers that this is not a very satisfactory condition, and that a great many employers have refused to agree to a Board because they have felt that the Minister of Labour, in the nature of things, cannot be an impartial umpire between the contending parties. They say that the selection should be made by a man who is not affiliated with either side. I point out that it has been stated here that nearly all the applications for boards have been made by employees. One of the reasons, as given to me—personally I know nothing about it—is that the labor representative consistently declines to agree to a third man, because he thinks that the Minister of Labour will cast a benevolent eye on his side. I therefore wish to substitute for the Minister of Labour the Chief Justice of the province in which the dispute arises, or, if the dispute interests more than one province, then the Chief Justice of the Supreme Court of Canada.[1]

Another member stated that the Minister of Labour could not make impartial appointments because he was recruited from the ranks of organized labor and was expected, for political reasons, to be sympathetic with the interests of labor:

What is the situation of a Minister of Labour? . . . The political gain that any Ministry can obtain from nomina-

[1] Quoted in Labour Gazette, Vol. XXIII, p. 747, July, 1923.

tion of the gentleman representing the Labour Union would disappear completely if that representation did not lean a little, for political reasons alone, toward the labour classes. At all events, it is the opinion widely held throughout the country that the Minister of Labour is not entirely free, but that he has to feel the pulse of the labour people of the country when he acts in the capacity of Minister of Labour.[1]

The strongest criticism voiced by Canadian employers, however, is directed against the amendment passed in June, 1925. At this time, it will be remembered, Sections 57 and 58 of the act were so amended as to put the responsibility of applying for a board on the party proposing the changes in wages or hours of work which became the subject of dispute. The law was further amended so that the penalties which formerly applied only in case of an illegal strike or lockout apply now also when a disputed change in working conditions has been actually introduced before the completion of an investigation under the act.

Employers charge that this amendment, like the other penalty clauses of the law, imposes an unfair burden upon management. They complain that these clauses cannot be enforced against a body of workers or even against a union if it is not incorporated, as readily as they can against an incorporated employer. Thus one senator states:

> Everybody knows perfectly well that it [the penalty] imposes an obligation that is binding on one side, absolutely unbinding upon the other side. . . . You cannot impose upon men belonging to a union which is not incorporated a legal obligation not to strike. . . .

[1] Debates of the Senate, Dominion of Canada, Session 1923, May 31, 1923. p. 770.

Will my honourable friend contend that he can hold 10,000 men by a clause in a statute telling them not to strike? Everybody knows that that clause is absolutely futile as far as the men are concerned. . . . With this amendment, no corporation will dare to change wages, even though they have good reason for doing so, and during that time they may accumulate goods which they will never be able to sell because they were produced at wages absolutely out of reason.[1]

Another argument put forth by employers is that this amendment will jeopardize the success of business establishments because it will now be illegal to reduce wages immediately when such action is essential because of fluctuations in the price of the commodity they sell. This criticism is found, for instance, in a statement submitted to the Senate by the Asbestos Mine Operators' Association of the Province of Quebec.

[The amendment], generally speaking, says that an Operator desiring to make any change affecting wages or hours must give thirty days' notice of intention and that if a Board of Conciliation is asked for during that period of thirty days, conditions must not be changed until the Board has been appointed, heard the evidence and delivered their report.

. . . This means that should conditions necessitate a change of any kind, nothing can be done in less than about sixty days; and whether the employer can afford it or not, operations must be continued or he becomes liable to a penalty of from $100 to $1,000 per day, et cetera. . . .[2]

The Ontario Mining Association, an organization of employers engaged in the mining of metals, advanced a similar argument through one of the senators:

[1] Debates of the Senate, Dominion of Canada, Session 1925, May 27, 1925. p. 309.

[2] Debates of the Senate, Dominion of Canada, Session 1923, May 21, 1923. p. 752.

In the early development stage of every mine there is no income. Often operations are financed from month to month; and if labor trouble starts and those financially interested decide to withdraw their support, the owners, under the proposed conditions, would lose title in the property through the application of the penalty, because in many cases they could not continue to operate.

It is all very well to say that if either party uses these conditions for the purpose of delaying change, et cetera, they shall be guilty of an offense; but there is no way in which a penalty could be made applicable to the employees.

The Labour Department will remember where such procedure was attempted in Porcupine in the early days. The employees convinced the court that they were not on strike but taking a holiday because their physical condition required it.

Take, for example, the position of a silver mine operating on a narrow margin with silver at a price of 65 cents per ounce. If the market were to break to 55 cents per ounce and at a time concurrent with impending labour trouble, the mine might have to close down; yet under the terms of this proposed amendment, a shutdown would be looked upon as a lockout and the owners subject to a penalty of from $100 to $1,000 a day.[1]

Coal Operators Unfavorable to the Act

Strong opposition to the act was registered in the Senate by the Western Coal Operators' Association, which, until its dissolution in the latter part of 1925, represented about 30 companies in Alberta and southeastern British Columbia. Throughout the history of the Disputes Act, these operators have complained of the government's unwillingness to enforce the penalty clauses against the miners when they walked

[1] *Ibid.* pp. 752–753.

out, as they frequently did, on illegal strikes. On this occasion they reiterated their grievance:

The Act is enforceable against the employer, who is incorporated, but not against the employee, who, either as an individual or as a member of a trade union, is not. It is true that penalties for violation of the provisions of the Act, by either employer or employee, are specified in it, but it is equally a fact that they are not and never have been enforced against the employee. It is also well known to employers of labor that the employee does not lay himself open to the charge of infraction of the act by going on strike, but simply, in his own words, quits work. That might seem to negative his right to engage in any dispute or to carry on negotiations for new conditions or wages, but the fact remains that he has done so violated the Disputes Act], and continues to do so through the representative officers of his Union; and whether the action he has taken puts him outside the operation of the Act or leaves him within it, it is a fact that this course has been taken on numerous occasions in the West, and no action has been taken by the Government to test the application of the Act in such cases.[1]

The operators charged that the miners would use the amendment of 1925 to cause delays so that the high wages which they obtained during the war would be continued. Thus it would be impossible to reduce wages, and the operators would lose their markets:

The proposed amendments placed a serious barrier in the way of a return to normal mining conditions in the coal industry in western Canada. The agreements with the United Mine Workers of America, which organization represents the miners in this district, usually expire on the 31st of March. So far it has been found impossible to bring about a reduction in the high wage rates paid during and immediately following the years of the War. . . .

[1] *Ibid.* p. 753.

For example, on March 31, 1922, our agreement with the United Mine Workers expired. Thirty days prior to that date we entered into negotiations for a new agreement. We were paying peak rates to which wages had climbed during and after the War. Other industries had secured reductions and we proposed reductions in line with the decreased cost of living. The men demanded further increases in wages and reductions in hours of labor underground, already down to eight hours from bank to bank.

Nothing transpired until two days before the end of March, when the men applied for a Board. The Board was appointed and an award made in due course. The Chairman and the Miners' representative concurred in the majority finding, which proposed a reduction of approximately 27½ per cent. The men refused it and remained on strike. Finally, on August 28, owing to the settlement made in the United States by the same organization, the United Mine Workers of America, and to the public pressure due to the approach of winter, they secured a settlement on the old basis.

The Government now proposes to amend the Act so that while a Board is sitting even at the expiry of the agreement between the parties, the high wages shall continue. Naturally, the object of labour will be to delay the functioning of the Board, prolong its sittings interminably, and when the award is made reject it and rely on the approach of cold weather and the public interest aroused by fear of a coal shortage to enforce their demands and secure a renewal of the high scales. . . .

With the high wages, costs are correspondingly high, and they cannot be brought down unless and until wages are adjusted.[1]

A plea on behalf of all business interests was made by one senator against the amendment in May, 1925, when it was before the Senate. He said:

[1] *Ibid.* pp. 753–754.

I think we all agree that the Act should be allowed to continue. It has done good work in the past and will continue to do good work in the future. . . .

[But] there are a great many industries in the country today that are sailing pretty close to the wind. At present everything is going satisfactorily with the employers and the employees; but Parliament might reduce the tariff overnight, and consequently an industry might have to lower wages; yet the employer must give thirty days' notice.[1]

Evaluation of Employers' Criticisms

To summarize briefly, then, Canadian employers may be said to be favorably disposed toward the Disputes Act. But their attitude is not so enthusiastic as is that of Canadian labor at present. Thus, while they would like to see the act continued in its original scope, they would hardly endorse such a proposal as has been put forth by labor to extend it to all industries. Three main criticisms are voiced by Canadian employers: first, there is opportunity for advantage to labor in the power of the Minister of Labour to appoint the personnel of boards; second, there is a want of finality about the act, because employes are free to renew demands and apply for a board directly after an award has been made and accepted; and third, the amendment passed in 1925 has put an unfair burden upon management when facing the necessity of immediate reductions in wages. The last criticism is coupled with the complaint that the government has not enforced the compulsory features of the law against employes and that, as employers can be prosecuted much more easily than employes, the amendment of 1925 strengthens the compulsory clauses against employers only.

[1] Debates of the Senate, Dominion of Canada, Session 1925, May 27, 1925. p. 311.

It will be noted that the employers' criticisms are, in the main, based on hypothetical considerations. There is no direct charge, for instance, that ministers of labor have been partial since 1918 in the appointment of chairmen of boards, but only an expression of the fear that when ministers happen to be former trade-union officials they may appoint men sympathetic with labor. The facts both in the appointment of chairmen and in the decisions of boards, as already brought out in the previous chapter, show that there is no striking difference during the period 1918 to 1925, when ministers of labor were chosen from the ranks of labor, as compared with the period 1907 to 1918. In the former, as compared with the latter period, ministers appointed only a slightly larger proportion of chairmen without a recommendation from the other two members. Moreover, the respective proportions of dissenting reports submitted by employers' representatives are almost identical for the two periods, being 12 per cent prior to 1918 and 13 per cent after 1918.

Indeed, both Senator G. D. Robertson, and the Honourable James Murdock, Ministers of Labour from 1918 to 1925, expressed surprise when criticism was voiced in the Senate in 1923 concerning appointments of chairmen made by them. Senator Robertson said on the floor of the Senate on May 31, 1923:

> This act has been in force for seventeen years, and this is the first time I have ever heard it said that a single employer took exception to the chairman appointed in any instance. . . . I am sure it is correct to say that no one single appointment of a chairman was made during the time that I was minister that was not acceptable to both parties. . . . It is the practice of the Department of Labour, whenever they

find a successful chairman, a man who time after time has succeeded in bringing the parties together and in obtaining a unanimous report, to use the services of that man whenever possible.[1]

Similarly, Mr. Murdock expressed his surprise in the House of Commons when the Senate amendment proposing the appointment of chairmen by the judiciary was presented for discussion.[2] "The method or system under which the Ministers of Labour have made appointments," said he, "has not been the subject of any known criticism, and certainly the files contain no communications requesting or suggesting a change in the present practice."[3]

Both Senator Robertson and Mr. Murdock explained that, whenever possible, they had appointed judges as chairmen of boards when the two other members could not agree upon a suitable person. It was only when an amendment was passed to the Judges' Act in 1920, which increased the salaries of judges and at the same time prohibited them from accepting any other fees, that the ministers refrained from appointing them. Mr. Murdock's statement follows:

It had become a general though not invariable practice for the Minister of Labour, when called upon to appoint a chairman, to select a judge, but this practice ceased when two or three years ago the Judges' Act was so amended as to prohibit the acceptance by a judge of the fees ordinarily payable to a chairman or member of a conciliation board. It is true that the Minister of Labour is not under the Judges' Act, as it has been amended, prohibited from asking a judge to act

[1] Debates of the Senate, Dominion of Canada, Session 1923, May 31, 1923. p. 769.

[2] See page 177. [3] Labour Gazette, Vol. XXIII, p. 749, July, 1923.

as a chairman, nor is a judge apparently prohibited from accepting a chairmanship; but since fees are no longer payable in such circumstances to a judge, it has not been thought reasonable as a rule to request a judge to undertake the duties involved in a chairmanship; such duties, it will be understood, are frequently of a severe and arduous nature and in nearly all cases are of the highest moment to employers and to large numbers of workmen, as well as frequently to the public. In two cases since the amendment of the Judges' Act, judges have been, however, appointed, once by the Minister of Labour of the late administration and once by the present Minister of Labour, but in the latter case the appointment was made on the joint recommendation of the other board members. In both cases the judges concerned accepted from a sense of public duty; no fees were of course paid them. It may be said that there is every advantage in a chairman being secured by joint agreement and the Minister of Labour appoints a chairman with reluctance. Inquiry shows that this has been the case with most previous ministers. The chances of an agreement are manifestly increased when a chairman is secured by joint request of other board members.[1]

Indeed, a study of the record with regard to the administration of the Disputes Act must convince an investigator that on the whole ministers of labor have been eminently fair and intelligent in their selection of chairmen, and that they have chosen men who have possessed the ability and the technique of conciliators to a high degree—men who, rather than hand down decisions, preferred to exert their skill to bring the parties to disputes to agree on settlements themselves.

The contention of employers that employes are free to apply for a board immediately after an award has been made is true enough. The law permits them to do so.

[1] *Ibid.* p. 749.

But here again no concrete evidence is offered to show that wage-earners have actually made such applications or ministers of labor granted boards when they have been made. The record was examined in this investigation and little was found to substantiate the fears expressed by employers on this score. While it may be true that, in a few instances, boards have been applied for and established a few months after a report has been rendered in a dispute between the same employers and employes, in most instances a period of a year or two at least has elapsed before the employes applied for a board again.

That the government was acting fairly in introducing the amendment of 1925 must be conceded by the disinterested observer. The aim of the amendment was, after all, only to correct a technical defect in the original draft which, while prohibiting the introduction of disputed changes in working conditions, provided penalties only in the case of illegal strikes and lockouts. In approving Section 57 of the act, Parliament clearly intended to prevent protested changes in working conditions from being introduced in the industries coming within the scope of the act until a board had disposed of the dispute. This was the position taken by W. C. Kennedy, Acting Deputy Minister of Justice, when he was asked to rule on the legality of the wage reductions proposed by the railroads of Canada in 1922.[1] On that occasion he said:

> Upon consideration of these provisions [Section 57] I find it difficult to escape the conclusion that the intention of parliament in enacting this legislation was to prevent the doing of that which the railways are proposing to do; that is to say,

[1] See page 74.

that the making of a reduction in the actual amount of money paid out to employees on payday is making an alteration in the conditions of employment with respect to wages within the meaning of the statute, notwithstanding the fact that the intention of the railways is to account to the employees for the difference if and when a report in favor of the employees has been made by the board.

I do not overlook the fact that in case the railways continue payments at the old rates and the board reports in favor of a reduction they may not succeed in recovering back all of the overpayments so made, but I do not think this circumstance can be looked at as affecting the interpretation of the plain words of the statute.[1]

To what extent the amendment will handicap employers, only the future will show. It is clear, however, that at the worst the amendment can be considered an obstacle only in periods of business depression and deflation, when management may wish to initiate wage reductions. But even then the amendment prohibits the introduction of immediate reductions only. Assuming that the workers protest, after a report has been made by a board, management is free to make the reduction which gave rise to the dispute.

The specific reasons offered by employers in explanation of their attitude toward the Disputes Act, like those offered by employes, do not, on the whole, then, seem to find marked substantiation in the facts. Nevertheless the complaints voiced by either side should not be entirely discounted. For, although they are clearly not the sole or even primary factors, they may possess a significance in relation to more fundamental causes.

[1] Report of the Department of Labour for the fiscal year ending March 31, 1923. Ottawa, p. 28.

CHAPTER X

THE INFLUENCE OF ECONOMIC FACTORS ON THE ATTITUDES OF EMPLOYES AND EMPLOYERS

TO WHAT underlying factors may we attribute the policies adopted by employers and employes in regard to the Disputes Act? An examination of business conditions during the period in which the act has been in existence offers a promising clue. Changes in business conditions generally influence industrial relations in two important ways: they affect the movement of wages in relation to prices (including the cost of living), one of the primary issues between employers and wage-earners; and they affect the relative power which employers and employes bring to the process of negotiating about this, as well as the other issues involved in industrial relations.

On the whole, both prices and wages tend to rise during periods of business prosperity and to fall during periods of business depression. When industry is booming, prices tend to move upward more rapidly than do wages; or from the workers' point of view increases in wages lag behind increases in the cost of living. On the other hand, when depression sets in, both prices and wages fall, but wage rates tend to move downward more slowly than do prices; or from the employers' point of view the prices of their products tend to decrease more rapidly than the wages paid their men.

The present century in Canada has been marked by general expansion and prosperity. Partly as a result of

this expansion, there was an upward movement in both prices and wages in the decade and a half before the war. This trend became precipitate after 1915, mounting to a peak in 1920. Since 1920 there has been in Canada, as in the United States, a recession from the very high levels of the post-war boom.

Although Canada is still primarily an agricultural country, its industrial growth since 1900 has been unusually rapid.[1] Between about 1900 and 1912, alone, a total of two and one-half billion dollars of British capital was invested in Canadian industry. Unprecedented immigration characterized the first decade of the century, and the population of the Dominion grew from 5,371,000 in 1901 to 7,207,000 in 1911 and 8,788,000 in 1921. In 1924 it was estimated at 9,227,000.[2] Railway mileage more than doubled during this period, 39,771 miles of steam railroad being in operation in 1921 as compared with 18,140 miles in 1901.[3]

Rise in Wages and Cost of Living

Diagram 2 traces the trends of wages since 1901 and of the cost of living since 1909. The figures upon which the wage curve in the diagram is based are given in Table 13. They are figures of the Canadian Department of Labour, which may probably be taken as indicating as well as is possible the general movement of wage rates in Canada over this period. The average index in Table 13 is a simple average of indexes for six important industries

[1] Coats, R. H., "The Growth of Population in Canada," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, pp. 1–6, May, 1923.

[2] The Canada Year Book, 1924. Dominion Bureau of Statistics, Ottawa, 1925, p. xxv.

[3] *Ibid.* p. 588.

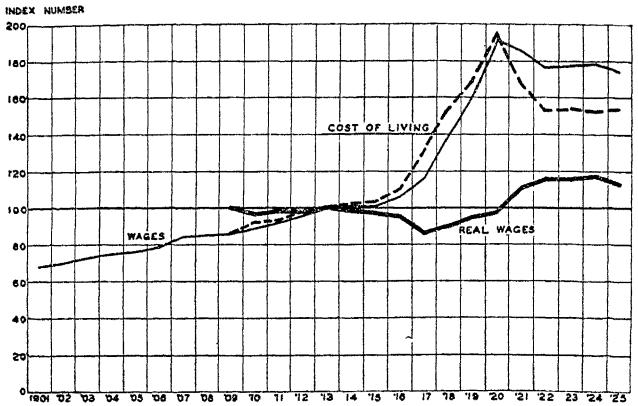

DIAGRAM 2.—MOVEMENT OF WAGES IN CANADA, 1901 TO 1925

Base: 1913 = 100

—building, metals, printing, electric railways, steam railways and coal mining. The indexes for building, metals, printing and electric railways are based on wage rates in 13 Canadian cities. The data underlying these indexes were obtained by the Department of Labour from union agreements, and from annual reports of representative employers and trade unions, supplemented and corrected by field representatives. The wage rate data from which were calculated the indexes for steam railways and coal mining were secured from the trade agreements signed by unions and employers.

It must be admitted that these six series of wage rate figures do not offer an entirely satisfactory means of measuring the trend of wages of Canadian labor during this period, for other factors than the rate of pay constitute an important element in determining the amount of wages earned, such as the duration of employment, the

amount of short time or of overtime and the payment of bonuses. An index based on total annual earnings might be more satisfactory for comparison with the cost

TABLE 13.—INDEX NUMBERS OF THE CANADIAN DEPARTMENT OF LABOUR FOR RATES OF WAGES IN CERTAIN INDUSTRIES IN CANADA, 1901 TO 1925[a]

Base: 1913 = 100

Year	Building trades	Metal trades	Printing trades	Electric railways	Steam railways	Coal mining	Average
1901	60.3	68.6	60.0	64.0	70.8	82.8	67.8
1902	64.2	70.2	61.6	68.0	73.6	83.8	70.2
1903	67.4	73.3	62.6	71.1	76.7	85.3	72.7
1904	69.7	75.9	66.1	73.1	78.6	85.1	74.8
1905	73.0	78.6	68.5	73.5	78.9	86.3	76.5
1906	76 9	79.8	72.2	75.7	80.2	87.4	78.7
1907	80.2	82.4	78.4	81.4	85.5	93.6	83.6
1908	81.5	84.7	80.5	81.8	86.7	94.8	85.0
1909	83.1	86.2	83.4	81.1	86.7	95.1	85.9
1910	86.9	88.8	87.8	85.7	91.2	94.2	89.1
1911	90 2	91.0	91.6	88 1	96.4	97.5	92.5
1912	96.0	95.3	96.0	92.3	98.3	98.3	96.0
1913	100.0	100.0	100.0	100.0	100.0	100.0	100.0
1914	100.8	100.5	102.4	101.0	101.7	101.9	101.4
1915	101.5	101.5	103.6	97.8	101.7	102.3	101.4
1916	102.4	106.9	105.8	102.2	104.9	111.7	105.7
1917	109.9	128.0	111.3	114.6	110.1	130.8	117.5
1918	125.9	155.2	123.7	142.9	133.2	157.8	139.8
1919	148.2	180.1	145.9	163.3	154.2	170.5	160.4
1920	180 9	209.4	184.0	194.2	186.6	197.7	192.1
1921	170.5	186.8	193.3	192.1	165.3	208.3	186.1
1922	162.5	173.7	192.3	184.4	155.1	197.8	176.8
1923	166.4	174.0	188.9	186.2	157.4	197.8	178.4
1924	169.7	175.5	191.9	186.4	157.4	192.4	179.3
1925	170.4	175.4	192.8	187 8	157.4	165.1	174.8

[a] Taken from Wages and Hours of Labour in Canada, 1920 to 1925 p. 4. (Issued as a supplement to Labour Gazette, Vol XXVI, January, 1926.)
The average of the final column is a simple average.

of living, but unfortunately such data are not available, and one must therefore fall back upon the information concerning rates of pay to indicate the trend of wages.

The rates here used[1] cover six large, organized industries, three of which—coal mining, steam and electric railways—are the most important industries falling within the scope of the Disputes Act. They are therefore especially pertinent for our present purposes of attempting to show the influence of wages and price movements on the attitude of organized labor in Canada toward the Disputes Act.

According to the index here used, wages almost trebled between 1901 and 1920 and more than doubled between 1907, the year in which the Disputes Act was passed, and 1920. Wages advanced without a break from year to year through 1914. They remained stationary in 1915, only to rise rapidly after that year to the high point in 1920. The index, at 67.8 in 1901, rose 33.6 points from 1901 to 1915, and 90.7 points from 1915 to 1920. From that year to 1925 the index fell back 17.3 points, but most of this drop came in the two years of depression following 1920.

The same general movement of wage rates may be observed in the figures for each of the separate industries included in this average. But it is interesting to note the variations between these industries. All rose steadily until 1913 and, in spite of world-wide depression, even registered a slight increase in 1914 over 1913. The building, metal and printing trades rose a little even in 1915 as compared with 1914. While the trend in all three industries was decidedly upward during the years 1915 to 1920, wage rates in the metal trades rose more

[1] Three other indexes of wage rates in Canada compiled by the Department of Labour are available—for common factory labor, miscellaneous factory trades, and logging and saw milling. These data available only from 1911, however, have not been combined by the Department in any composite index.

rapidly than in the other two. The recession of wages after 1920 was also by no means uniform within each of these trades. In 1921 rates rose in the printing trades; in 1922 all decreased; in 1923 rates in the building and metal trades rose slightly while they fell in the printing trades; in 1924 the rates in all three rose; in 1925 they remained almost stationary in the metal trades and rose slightly in the building and printing trades.

As for electric railways, steam railways and coal mining—the important industries specifically included within the scope of the Disputes Act—it is interesting to note that all reflected the general advance to 1914; that in 1915 rates fell on electric railways, remained stationary on steam railways and rose in mining; that rates in all three rose during the years 1915 to 1920, with rates in coal mining increasing more rapidly than those in the other two industries; that after 1920 they fell on electric railways until 1922, rose in 1923, remained almost stationary in 1924 and rose slightly in 1925; that on steam railways they fell after 1920 to 1922 and then rose slightly in 1923 to a point at which they have since remained; and that in mining they actually rose in 1921, fell in 1922 to a level a little above that of 1920, remained stationary in 1923, fell in 1924 and fell more sharply in 1925.

The full significance of this movement of wage rates, of course, can be gauged only when set beside the movement in the cost of living. Unfortunately, annual index numbers for the cost of living are not available prior to 1910.[1] We know, however, that during the first decade of the century prices rose rather steadily. The increase

[1] Figures are available only for the month of December for the years 1900, 1905 and 1909.

in living costs occasioned a special investigation by the Department of Labour in 1909. The report commented upon the rise in the cost of living as follows:

. . . Since the beginning of the present century, one of the most important features of the general economic situation in Canada has been a rapid and continuous advance in prices and the cost of living. The upward tendency seemed to have reached its highest point in 1907, when prices attained a level unprecedented in many years previously. The financial panic of the autumn of that year operated in arresting this tendency, and in many departments set in motion a recession which extended over 1908. The check, however, proved but temporary; the comparative slightness of its effect and the early recovery of the upward trend constituted in fact an especially noteworthy feature of the stringency in Canada. This became marked with the increasing industrial activity and trade prosperity of 1909, in the closing months of which the high cost of living had become a subject of wide-spread discussion, affecting as it did the immediate personal well-being of nearly everyone in the community, especially those of the wage-earning and other classes dependent on fixed incomes. . . .[1]

The rapid rise in prices and therefore in living costs continued during the second decade of the century at an accelerated pace. Over this period, the rise is recorded by the index of the cost of living maintained by the Canadian Department of Labour, which is given here in Table 14. This index is based on the retail prices of food, fuel, rent, clothing and sundries in some 60 cities. The index is a "weighted" average of these prices, due emphasis being given to the relative amount of money spent by the typical family for the various items.[2] The

[1] Coats, R. H., Wholesale Prices in Canada, 1890–1909. Department of Labour, Ottawa, 1910, p. 1.

[2] Prices in Canada and Other Countries, 1925. pp. 6–7. (Issued as a supplement to Labour Gazette, Vol. XXVI, January, 1926.)

cost-of-living curve in Diagram 2 shows that living costs more than doubled between 1910 and 1920. In 1910 the index for the cost of living stood at 92; by 1920 it had risen to 195, an increase of 103 points. The peak at 201

TABLE 14.—INDEX NUMBERS OF RATES OF WAGES, COST OF LIVING AND REAL WAGES IN CANADA

Base: 1913 = 100

Year	Wages[a]	Cost of living[b]	Real wages
1901	68	–	–
1902	70	–	–
1903	73	–	–
1904	75	–	–
1905	76	–	–
1906	79	–	–
1907	84	–	–
1908	85	–	–
1909	86	–	–
1910	89	92	97
1911	92	93	99
1912	96	98	98
1913	100	100	100
1914	101	102	99
1915	101	103	98
1916	106	110	96
1917	117	134	87
1918	140	154	91
1919	160	169	95
1920	192	195[c]	98
1921	186	168	111
1922	177	153	116
1923	178	154	116
1924	179	152	118
1925	175	154	114

[a] From Table 13.
[b] Annual figures obtained by averaging monthly figures of the Dominion Bureau of Statistics.
[c] The peak was reached in June, 1920, when the index stood at 201.

was reached in June, 1920. Living costs, then, like wage rates, mounted steadily to 1914 and precipitately to 1920. After 1920, they fell sharply as did wages but more than wages, 27 points in 1921 and 15 more points

in 1922. Since 1922, changes in the cost of living have been small.

Wages Lag Behind Increasing Cost of Living until 1921

There is thus a general parallel in the whole trend of wages and living costs in Canada during the present century, rising steadily to 1913, then precipitately to 1920, and receding with some fluctuations after 1920. The important question to be considered now, however, is to what degree the changes in cost of living and in wage rates have been uniform. Has there been lag, in other words; and what has been its nature? With this question we touch the core of the problem.

A comparison of the indexes of wage rates with those of the cost of living for the years for which both are available reveals, as indicated by Table 14 and Diagram 2, that from 1910 to 1915 the increase in cost of living was only slightly greater than the rise in wages. But beginning with 1915 and continuing until 1921, wage rates lagged considerably behind living costs. It was not until 1921, when recession had already begun, that wage rates overtook the cost of living. The lag had been a continuous one. Although small, it began in 1910, when the index of the cost of living was three points above that of wages. In 1911 it was one point higher; in 1912, two points; in 1914, one point; and in 1915, two points. But as war influences became active, the gulf between advancing living costs and wage rates became accentuated. By 1916 the index of cost of living stood four points above that for wage rates; by 1917 it was 17 points ahead of wage rates; in 1918 it was 14 points higher; in 1919 it was nine points higher.

Movement of Real Wages

The significance of this lag may be realized more clearly by considering briefly the movement of wages in terms of real wages, or, in other words, of the purchasing power of the wage rates received by the workers. The index for real wages is here obtained by dividing the index of wage rates by the index of the cost of living. The base of comparison (100 per cent) is the year 1913; or for that year the index of real wages is 100. When it stands below 100, we know that wage rates bought fewer commodities as compared with 1913; when it stands above 100, we know that they bought more commodities. The figures in Table 14 and the curve for real wages in Diagram 2 show the movement of wage rates in Canada during the years under consideration. Their purchasing power was practically stationary until 1914. In 1914 and 1915 real wages declined. They fell sharply from 1916 to 1917, began to rise in 1918 and continued upward through 1919, 1920 and 1921. In 1921 for the first time the index stood above 100. Thus although wages rose steadily from 1915, it was not until 1921, after prices had begun to fall in 1920, that their purchasing power was as great as in 1913. In other words, while labor succeeded in obtaining increases in wage rates during the war period, they were not so well off as they had been prior to the war, when money wages were relatively lower. Real wages continued rising until 1922, changed little in 1923 and 1924, and fell off slightly in 1925.

After 1920 living costs fell more precipitately than wage rates, so that the latter stood consistently above the former. Thus, while retail prices fell 27 points

during 1921 from their peak in 1920, wage rates fell only six points. Real wages rose from 98 in 1920 to 118 in 1924. It should be noted that short time and unemployment would naturally reduce a real wage index if it were based on earnings rather than on wage rates. On the whole, we may regard the period before 1921 as one in which increases in wage rates followed after increases in living costs, and the period from 1921 on as one in which wage rates, while falling slightly, stood at a higher level relative to 1913 than the more rapidly falling cost of living.

It is not possible, as already indicated, to accept these figures of real wages at their face value. During the war, steady employment, overtime and the payment of bonuses increased the earnings of the worker over the increases recorded in the figures for wage rates. How much cannot be said, but it seems probable that the curve for wage rates does record substantially the movement of wages over this period. Similarly, the favorable showing of wage rates after 1920 does not tell the whole story of the buying power of wage-earners. Unemployment and part-time work, accompanying recession in business conditions, undoubtedly in several of these years reduced actual incomes in spite of continuing high rates of wages.

Complaints about Administration of Disputes Act Correlated with Changes in Wages

From this examination of changes in wages and cost of living may be drawn some understanding of the attitudes of employes and employers toward the act. At first glance it may appear that the attitudes of labor have had a direct relation to the curve of real wages;

that is, when real wages were declining labor was hostile to the act, and when real wages were rising labor became friendly. It is doubtful, however, whether such a direct causal relationship existed. The fact that real wages began to rise in 1918 does not provide ample reason for the change of attitude that actually occurred. For although the trend was upward beginning with 1918, real wages were at a very low point in that year and continued below the 1913 level until as late as 1921. Other important influences, which will be described in the next chapter, contributed to the change of attitude of labor beginning in 1918.

But the lag of wages behind living costs from 1907 to 1918, with the resultant downward trend of real wages, was probably a large factor in creating a critical attitude toward the act during these years. It helps to explain especially the complaint, already discussed at length,[1] with regard to the delays in the consideration of disputes under the act. For during this period trade unions constantly sought wage increases that would help their members overtake advancing living costs, and the machinery of the act permitted delays and interferences which were irksome to employes. To meet this aspect of their problem, the unions, as we have seen, continuously urged amendments. As early as 1909, they tried to prevent and penalize the perpetuation of existing conditions through delays. The first demand for repeal, in 1911, assigned as one of its causes the "delays of the Department of Labour in connection with the administration of the act."

Just as wage-earners were critical of the act during the period in which prices were rising, so employers became

[1] See pages 189 ff.

critical during the deflation period that began during the summer of 1920, a period during which prices fell more sharply than wage rates. For then employers found the Disputes Act an obstacle in their effort to reduce wages as promptly as possible. Perhaps the best known instance arose in 1922, when the Canadian railroads, as already indicated,[1] sought to reduce the wage rates of shop employes. The shopmen, it will be recalled, argued that it was illegal, under the Disputes Act, to initiate reductions which employes refused to accept until the dispute had been reported on by a board of conciliation and investigation. When the roads persisted in establishing the new rates before submission of the case, the government intervened and prevented the institution of the proposed rates until the dispute had been considered under the machinery of the act. The companies finally agreed to abide by the government's decision "pending an anticipated *early report* of the board of conciliation now sitting."[2] But since the roads had sought to introduce the proposed reductions on July 15, and the report was not submitted until September 1, the operation of the act interposed a delay of forty-eight days in the adjustment desired by the employers.

It is the fact that prices fall more rapidly than wages during deflation periods that also explains, in a large measure, the opposition of Canadian employers to the amendment passed in 1925. This amendment, it will be recalled, established clearly the illegality of reducing

[1] See page 74.

[2] Quoted from a letter of the presidents of the companies involved to the Prime Minister. Published in Report of the Department of Labour for the fiscal year ending March 31, 1923. Ottawa, p. 31. Italics are the author's.

wages until the dispute, if there is one, has been reported on by a board constituted under the law. Canadian employers are apparently fearful that they will be at a disadvantage with their competitors during periods of falling prices because, since time is consumed in the handling of disputes, they will not be free to introduce wage reductions as promptly as their competitors in the United States.[1] Representatives of labor, on the other hand, argued that, since labor took losses during the major period of the act, when prices were rising, employers should be willing, when prices are falling, to bear their share of the loss incidental to the operation of the Disputes Act. Senator Robertson, in commenting on the reductions proposed by the railroad companies in the case just mentioned, put the case of the workers in the following words: "For fourteen years we have complied with the requirements of the act and suffered the losses consequent upon awaiting the investigations and decisions of boards, and now we think that the rail-

[1] In this whole discussion of the relation of wages to prices, fundamental issues are, of course, raised as to the factors determining costs. An analysis of these factors is beyond the scope of this report. It should be pointed out, however, that the extent to which Canadian employers may be handicapped by the amendment of June, 1925, which clarifies the provision of the law prohibiting them from reducing wages, when such reductions are disputed by their employes, until the dispute has been reported on by a board, depends upon several considerations. The first is the actual effect upon unit costs of production resulting from changes in wages. The second is the extent to which the industries coming within the scope of the act in the same market compete with similar industries in the United States. If employers in the United States are in a position to reduce wages more promptly than employers in Canada, and if this enables them to reduce prices, they enjoy a competitive advantage. A third point to be considered is the probable trend of prices in the future. While commodity prices fell sharply between 1920 and 1922, the general trend since 1923 has been slightly upward. If prices should continue to rise steadily, wage-earners rather than employers will probably be at a disadvantage, if changes in wages must await a board's report.

way companies ought to do the same when the shoe is on the other foot."[1]

Change in Relative Power of Employers and Employes with Fluctuations in Business Conditions

Thus it would appear that changes in business conditions, particularly in wages and in cost of living, have coincided more or less closely with changes in the attitudes of employers and employes toward the Disputes Act. Business conditions may affect attitudes toward the act in another way. Analysis of the changes of opinion of the labor groups with reference to this legislation, coupled with a study of fluctuations in business conditions, suggests that ups and downs in prosperity change the relative power which employers and employes bring to the process of negotiating over wages as well as over hours of work, union recognition and the other issues arising between management and men.

In general, labor occupies a more strategic position during periods of prosperity, while employers have the upper hand during periods of business depression. Prosperity creates a strong demand for labor. Consequently at such times trade unions become militant in their organizing campaigns; their membership usually rises, and they press vigorously for higher wages, shorter hours and improved working conditions.[2] Business

[1] Debates of the Senate, Dominion of Canada, Session 1923, May 15, 1923. pp. 532–533.

[2] "A high level of employment among factory workers is a condition peculiarly favorable to the vigorous and successful conduct of campaigns of organization Workers then do not fear discharge and they are generally anxious to avail themselves of their collective bargaining power and of the skill of their union officials in winning concessions in wages, hours and working conditions." (Wolman, Leo, The Growth of American Trade Unions, 1880–1923. National Bureau of Economic Research, New York, 1924, p. 37)

depression, on the other hand, creates unemployment. Under such circumstances, trade unions generally rest on their oars and concentrate their efforts on resisting wage reductions and on conserving the gains made during periods of prosperity. With these shifts from comparative strength to comparative weakness, the manner in which either employers or wage-earners will regard such a law as the Disputes Act will naturally vary according to whether at the time in question general economic conditions make government intervention appear a barrier against the full and free utilization of their own strategic position, or an aid in combating the more advantageous position of the other side. That is, when business is flourishing we may expect labor, generally speaking, to be critical of such a law and employers friendly to it. On the other hand, when recession sets in, we may look for a reversal in the positions of the two groups, with employers critical of the law and wage-earners friendly to it.

During the first thirteen years of the operation of the act, conditions were propitious for the growth of the labor movement in Canada. Unfortunately, figures for trade-union membership in Canada are not available prior to 1911, but that there was large increase from 1911 to 1920 is evident from the data of Table 15 and Diagram 3. With the exception of 1914 and 1915, when they suffered a temporary setback because of the depression which affected Canada in common with the rest of the industrial world in those years, trade unions advanced steadily and rapidly. In 1916 their membership began to grow by leaps and bounds, reaching by 1919 a total of 378,047 workers, a number more than twice as large as that for 1916. In 1920 trade unions

were virtually at a standstill. Then, with the depression which characterized 1921 and most of 1922, came a sharp decline in membership. Thus, trade unions lost 60,522 workers from their ranks in 1921 and 36,699 more in 1922. In 1925 trade-union membership stood at 271,064. This was about 107,000, or 28 per cent, less than the high mark of 1919.

TABLE 15.—TRADE-UNION MEMBERSHIP IN CANADA, 1911 TO 1925[a]

Year	Members	Gain over previous year	Loss from previous year
1911	133,132	– –	– –
1912	160,120	26,988	– –
1913	175,799	15,679	– –
1914	166,163	– –	9,636
1915	143,343	– –	22,820
1916	160,407	17,064	– –
1917	204,630	44,223	– –
1918	248,887	44,257	– –
1919	378,047	129,160	– –
1920	373,842	– –	4,205
1921	313,320	– –	60,522
1922	276,621	– –	36,699
1923	278,092	1,471	– –
1924	260,643	– –	17,449
1925	271,064	10,421	– –

[a] Compiled from annual Reports on Labour Organization in Canada published by the Department of Labour.

The relatively weak state in which organized labor has found itself since 1920 has undoubtedly been one of the factors underlying the favorable attitude which it has shown toward the act in recent years. But how are we to explain the vacillation of labor during the period prior to 1918, when it was on the whole critical, now approving of the act, now asking for amendments, now demanding repeal, now suggesting amendments and

now demanding repeal?[1] It is significant to note that these changes in policy have corresponded roughly with short-time fluctuations in business conditions and the shifts in comparative strength induced by them.

Although the present century has been one of general industrial expansion in Canada, years of prosperity have alternated with years of depression, paralleling fluctuations in business conditions in the United States.

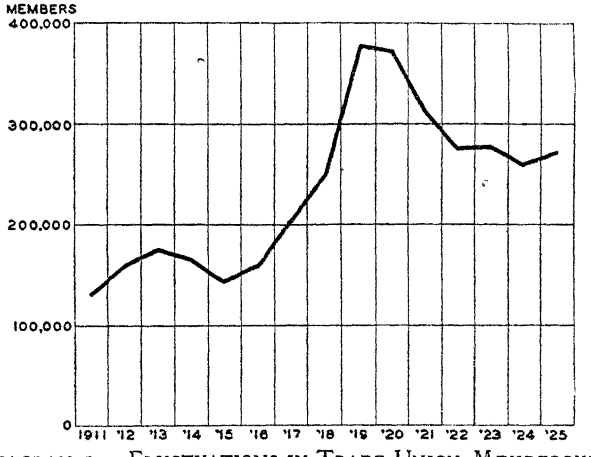

DIAGRAM 3.—FLUCTUATIONS IN TRADE-UNION MEMBERSHIP IN CANADA, 1911 TO 1925

Table 16 gives a summary of business conditions in Canada for the years 1900 to 1925. It has been prepared from facts as described in a study of business annals of 17 countries made by Willard L. Thorp of the

[1] We have not, unfortunately, for reasons given in Chapter IX, Canadian Employers and the Act, page 198, a yearly record of the policy adopted by Canadian employers toward the act. The discussion here will deal largely, therefore, with changes in the policy of labor as affected by business conditions.

TABLE 16.—FLUCTUATIONS OF BUSINESS CONDITIONS IN CANADA, 1900 TO 1925[a]

Year	Business conditions
1900	Prosperity; *slight recession*
1901	Revival; prosperity
1902	Prosperity, with financial distress
1903	Prosperity
1904	Uneven prosperity
1905	Full prosperity
1906	Prosperity peak
1907	Prosperity; *panic; recession*
1908	*Depression;* revival
1909	Revival
1910	Prosperity
1911	Prosperity
1912	Prosperity
1913	Prosperity; *recession*
1914	*Depression*
1915	*Depression;* revival
1916	War activity
1917	War activity
1918	War activity; *recession*
1919	Revival; prosperity
1920	Prosperity; *recession; depression*
1921	*Depression*
1922	*Depression;* revival
1923	Moderate prosperity
1924	*Recession; mild depression*
1925	Revival; prosperity

[a] This table has been prepa[illegible] siness conditions in each year as presente[illegible] nada, 1890–1925," of Business Annals. N[illegible], New York, 1926.

National Bureau of Economic Research. A comparison of business fluctuations as given in Table 16 with the changing attitudes of employes toward the Disputes Act shows, with exceptions to be noted later, a general coincidence of dissatisfaction with years of prosperity and trade-union strength, and of satisfaction with years of depression and union weakness.

Thus, when the Trades and Labor Congress met in September, 1907, a financial panic was under way. Considerable unemployment prevailed during the win-

ter of 1907–1908, upon which the Department of Labour reported as follows:

> It is unfortunately not possible to state that during the period covered by the present report the Dominion has maintained the remarkable record of prosperity that had prevailed for many years previously. A financial stringency in the United States of almost unprecedented severity and a widespread commercial depression were reflected in Canada in a slackening of operations in practically every branch of industrial activity. The active demand for labour that had prevailed almost continuously for several years fell off sharply during the year, and at many points in Canada there was a considerable lack of employment during the past winter.[1]

Facing these conditions, the Congress extended a generally favorable reception to the Disputes Act, which had been placed on the statute books during the year. But the attitude of the members soon changed. The revival in business which began late in 1908 continued at an accelerating pace during 1909. The following year, 1910, inaugurated a period of prosperity that extended through the first half of 1913. As early as 1908, we find labor becoming restive in its attitude toward the act; and at the convention of the Trades and Labor Congress held during that year, the delegates asked for amendments. As business conditions continued to improve through 1909 and 1910, the demand for amendments became more insistent. In 1911 and 1912, as the period of prosperity was approaching its peak, labor actually demanded the repeal of the act. The figures for trade-union membership, which became available with that year, reveal how these prosperous times

[1] Report of the Department of Labour for the fiscal year 1907–1908. Ottawa, p. 8.

brought increased strength to labor. From 1911 to 1913, as the figures in Table 15 show, trade-union membership in the Dominion increased by somewhat over 42,500.

The latter part of 1913, all of 1914 and most of 1915 constituted a period of heavy depression. The extent to which widespread unemployment prevailed in the latter half of 1913 and during 1914–1915 is indicated by Bryce M. Stewart, formerly director of the Employment Service of Canada, as follows:

> In 1913 it was evident that the long boom period was over. There was much hardship in the winter of 1913–14 and it is doubtful if the volume of unemployment during the following winter has ever been exceeded in the history of the country. The spring absorption of labor was insignificant and in 1915 city dwellers were confronted with the unusual spectacle of long queues of men waiting for relief in midsummer at the civic charity departments.[1]

How quickly these conditions produced a tangible decrease of labor's power may also be read in the figures for trade-union membership presented in Table 15. With the onset of the depression of 1914 the gains made in the two previous years were being lost. By the end of 1914 the unions had lost some 10,000 members, and the end of the next year showed a further loss of almost 23,000. In other words, by the end of 1915 the depression had reduced trade-union membership to a figure only a little above that of 1911 and well below that of 1913.

Confronted by such a situation, the officials of the Trades and Labor Congress persuaded the delegates

[1] "Unemployment and Organization of the Labour Market," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, p. 286, May, 1923.

again to accept the Disputes Act. In those years of depression, 1913, 1914 and 1915, the Congress accordingly reverted to the policy of seeking amendments. But in 1916, as war activity ushered in a period of prosperity, which soon reflected itself in a large increase in trade-union membership (a gain of over 17,000 as compared with 1915), the Congress voted unanimously that the act "be repealed in its entirety."[1] This attitude prevailed until 1918. In that year, it will be recalled, labor again adopted a policy of favoring the act.

It is questionable, however, whether the movement of business conditions can be considered a dominant influence in effecting the last change in attitude. For the Congress met in September, almost two months before the onset of the recession that followed the armistice. Moreover, the recession was a comparatively slight one. It soon gave way to a period of revival and prosperity, continuing through 1919 to its peak in the summer of 1920, during which the trade unions made tremendous gains in membership. But in spite of this prosperity and comparative power, labor continued its approval of the act, and in fact asked for amendments which would broaden its scope to include industries other than public utilities. Nor have the short-time fluctuations in business conditions since 1920 caused labor to modify its position of friendliness toward the act. This is no doubt due in part to the fact that the revivals in business since 1920 have not been long

[1] The decline of real wages beginning with 1916 was, as already pointed out, no doubt a large factor in creating the demand for repeal in this year. At the same time the shortage of labor and the increase in trade-union membership gave the unions a sense of strength which made them believe that they could do better through their own economic power without the act.

enough sustained to enable trade unions to regain their strength. As already indicated, the whole period since 1920 has been one of sharp decline in trade-union membership. With the exception of 1923 and 1925, every year has shown a large though relatively diminishing loss. Finding itself in a weakened condition, labor has apparently been glad to avail itself of the machinery of the Disputes Act as a means of combating the more strategic position in which employers have found themselves, and specifically as a means of stemming the tide of wage reductions set in motion by employers beginning with 1921. But why did labor change its attitude in 1918, when the upward movement of prices and prosperous business conditions called for a continuation of the militant policy of opposition initiated in 1916?

CHAPTER XI

OTHER FACTORS DETERMINING THE ATTITUDE OF LABOR SINCE 1918

A NUMBER of factors came into operation in 1918 which apparently counteracted the influence of business conditions and caused labor to change its policy from opposition to friendliness toward the Disputes Act. These forces, in the eyes of labor officials, minimized both the need for and the desirability of the use of the strike weapon. To understand clearly the significance of these forces, a brief review of the procedure usually followed by organized labor in Canada and the United States in dealing with employers may prove helpful. For in that procedure the strike weapon plays an exceedingly important role; and, in a final analysis, it is the extent to which the machinery of the act affects the efficient use of this weapon that determines the attitude of labor toward the law.

The essential purpose of trade unions, as already stated, is to improve the condition and status of their members. This objective is proclaimed in their constitutions; it is legislated for in their conventions; it is given as a mandate to their salaried officials. The characteristic process by means of which trade unions seek to achieve this purpose is known as collective bargaining. This is a give-and-take procedure, through which a compromise is reached between the demands of the workers and the counter demands of the employer. The settlement reached is formulated in a document called the union contract or trade agreement. In it are

usually defined such matters as rates of wages, hours of work, safety and sanitary standards, safeguards in protecting workers from being unjustly discharged, methods of handling shop disputes which arise from day to day between management and men, and of arbitrating those differences arising under the agreement which cannot be adjusted by the representatives of the workers and the employer.

It is in this collective dealing with employers that the strike weapon comes into play. Trade unions usually insist that they be "recognized" by the employing group; that is, that their officials be accepted as representatives of the employes and that the signatures of these officials be formally attached to such trade agreements as are finally formulated. But employers are generally loath to admit the jurisdiction of trade unions over their workers. They usually feel that relations between themselves and their employes are harmonious, and they would rather meet with their own men for the purpose of discussing and adjusting such grievances as may exist. They fear, moreover, that the injection of a union, an outside agency with interests extending far beyond the employer's particular establishment, will result in divided loyalties and inefficiency. To overcome such opposition on the part of employers, unions seek to enlist, through organizing campaigns, as many employes as possible within their ranks; and when the employer refuses to deal with them, they make "a show of power" by calling a strike. It is this issue of "union recognition" that has led to some of the most violent strikes.[1]

[1] The strikes called by the miners' union in Colorado, in West Virginia and on Vancouver Island are classic examples.

The second major use of the strike weapon is to obtain as favorable an agreement as possible for the workers. Thus, upon the expiration of agreements, trade-union officials may think that an opportune moment has come to secure higher wages and improvements in working conditions, or they may wish to prevent a reduction in wages proposed by the employing group. A strike may be called to further any of these ends.[1]

It should be noted, however, that, generally speaking, the strike, whether for "recognition" or for a more favorable contract, is a weapon of last resort only. It is rather the process of negotiation and collective bargaining, with the continuous possibility of a strike in the background, which is the characteristic technique of trade unions. If labor leaders can secure recognition for their organizations or desirable agreements, where they are already recognized, by other means, they do not resort to strikes. The skilful labor leader, in other words, is a diplomat first, and a military leader second.

Rapprochement between Labor and Government in 1918

If this picture of the strategy of trade unions—oversimplified as it is—is borne in mind, it will be easier to understand why the labor movement of Canada changed its attitude in 1918 from opposition to friendliness toward the Disputes Act. What happened in this year was that, as a means of enlisting the full support

[1] This description of union strategy is, of course, oversimplified. Trade unions do not usually call strikes purely for the sake of recognition. Other demands are almost always presented at the same time. Again, unions, in order to obtain a foothold in their industries, negotiate agreements for the workers without insisting on formal recognition Nor do wages constitute the only issue leading to strikes under agreements.

of Canadian wage-earners in the prosecution of the war, official recognition and endorsement were accorded the labor movement of Canada by the government then in power. We must remember that 1918 marked the fourth year of the World War. In January things looked critical for the Allies and no one could tell that hostilities would be over before the end of the year. Compulsory military service was introduced in the early part of the year in Canada, and maximum production in industry was a prime necessity if Canada was to co-operate effectively with the Allies in winning the war. To achieve this end without the help of the trade-union movement was difficult if at all possible. Consequently, following the lead of the action taken by the United States and Great Britain earlier in the war, the Canadian government invited representatives of the Trades and Labor Congress and the railroad brotherhoods to meet with cabinet officials in January, 1918 for the purpose of working out the terms, in exchange for which the organized labor movement would throw its strength whole-heartedly behind the war program.[1] Three joint meetings were held. The trade-union officials present took the stand, in brief, that as representatives of labor none of them would accept any official position in the government ("which would carry with it the necessity of subscribing to the platform of this or any other political government"),[2] but that they desired representation "on all advisory

[1] Labour Gazette, Vol. XVIII, p. 62, February, 1918.

[2] Report of the Proceedings of the Thirty-fourth Annual Convention of the Trades and Labor Congress of Canada, 1918. Ottawa, p. 16. However, "it was made plain that this decision did not prevent any member of organized labor from accepting such a position, as an individual."

committees and commissions which would have to do with the prosecution of the war." Some of the other important subjects which came up for discussion included the establishment of a national system of employment exchanges, the registration of man power and the protection of women entering war industries.

Trade-union officials interpreted the action of the government in calling these conferences as a recognition of the movement of which they were representatives. "Their attitude [the ministers of the government]," reported these officials to their members, "is now one of co-operation with the organized labor movement and, by tolerance on both sides, it is hoped that such co-operation will expand to its fullest degree."[1] The conferences, moreover, brought a large number of labor leaders and government officials together for the first time, with the result that both sides began to appreciate their mutual problems and responsibilities.

Several months after the conferences, in July, 1918, the government issued an order-in-council, which gave further public recognition and endorsement to the trade-union movement. In this order, the cabinet laid down a policy of industrial relations "which, in its view, should obtain in Canada during the progress of the war."[2] One of the foremost principles of this policy was that "all employes have the right to organize in trade unions, and this right shall not be denied or interfered with in any manner whatsoever, and through their chosen representatives should be permitted and encouraged to negotiate with employers concerning

[1] *Ibid.* p. 15.

[2] Report of the Department of Labour for the fiscal year ending March 31, 1919. Ottawa, p. 10.

working conditions, rates of pay, or other grievances."[1] Furthermore, employers were not to "discharge or refuse to employ workers merely by reason of membership in trade unions or for legitimate trade union activities outside working hours."[1]

Not only did the government thus recognize organized labor, but it also endorsed the insistent demand of wage-earners that wages be increased to keep pace with the mounting cost of living. To achieve this end, the same order-in-council declared that employers and employes should, when arriving at a trade agreement "as to wages and working conditions, agree to its continuance during the war, subject only to such changes in rates of pay as fluctuation in cost of living may justify"; and furthermore that "all workers, including common laborers, shall be entitled to a wage ample to enable them with thrift to maintain themselves and families in decency and comfort, and to make reasonable provision for old age."[2] Other standards long urged by labor were also endorsed by the cabinet, such as the basic eight-hour day, equal pay for equal work for women and adequate safeguards for the protection of health and safety.

In exchange for the recognition and endorsement thus extended to organized labor and to the standards for which it stood, the order-in-council stipulated "that there should be no strike or lockout during the war"; that workers should co-operate in securing "a maximum production from all war industries"; that when employers and employes were unable to agree on the adjustment of any dispute they should avail them-

[1] *Ibid.*

[2] *Ibid.* p. 11.

selves of the machinery provided for in the Disputes Act; and that if a board established under the act did not succeed in bringing about an amicable settlement, the dispute was to be referred to a Board of Appeal, on which labor and employers were to be equally represented.[1]

In accordance with the understanding reached earlier in the year, moreover, representatives of labor were appointed in 1918 on all important commissions having to do with the prosecution of the war.[2] This policy of appointing labor men on important government bodies was not only carried over into the reconstruction period following the war; it has, indeed, become the permanent practice of the Canadian government. In 1925 labor was represented on the following boards, among others: the Dominion Council of Health, the Advisory Council for Scientific and Industrial Research, the Employment Service Council, and the Board of Railway Commissioners.

Thus at one stroke the labor movement in Canada, as well as the principles it had long stood for, won official recognition in 1918. In return, it agreed to relinquish the use of the strike weapon during the period of the war. Curtailment of the freedom to strike, which inheres in the Disputes Act, was therefore no longer a vital issue to labor in 1918. Indeed, with the open acceptance, as the policy of the nation, of the principle of union recognition and of the standards demanded by

[1] The Board of Appeal and its work are described on pages 294–296.

[2] Some of the boards on which labor men were appointed follow: the War Trade Board, the Canada Registration Board, the labor subcommittee of the Reconstruction and Development Committee, the Board of Appeal, the Soldiers' Vocational Training Commission. (Eighth Annual Report on Labour Organization in Canada for the calendar year 1918. Department of Labour, Ottawa, p. 27.)

labor, the Disputes Act became a positive benefit rather than a detriment to trade unions. For, since the act was extended in scope to include all war industries, virtually any important group of workers could achieve the ends they desired as trade unionists by applying for a board and thus bringing government pressure to bear on employers who refused to establish in their concerns the standards formally prescribed for all industry.

Effect of Rapprochement on Administration of the Act

Certain other factors, already referred to, need further analysis here to show their influence upon the attitude of labor. Some of them were the outgrowth of the rapprochement reached between labor and government in 1918, just described. For one thing, the practice was initiated in that year of appointing to the Ministry of Labour men who had had long experience as officials of trade unions. For another thing, amendments to the act were introduced in Parliament early in 1918 by Mr. Crothers in an attempt to remedy some of the grievances that had long been voiced by wage-earners. These amendments were passed;[1] and one of the reasons offered by the executive council of the Trades and Labor Congress to the delegates at the convention of 1918 for changing the official policy toward the act was, as we have seen, that "recent amendments to the act have made it more in harmony with the wishes of those organizations which insist upon utilizing its provisions in times of threatened industrial trouble."[2] The beginning thus made by Mr.

[1] See page 54 for a summary of these amendments.

[2] Report of the Proceedings of the Thirty-fourth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1918, p. 35.

Crothers in modifying the provisions of the law to meet labor's complaints were continued by Senator Robertson, who introduced in 1920 further amendments desired by representatives of labor;[1] and by Mr. Murdock, who introduced amendments in the House of Commons in 1923, 1924 and 1925, to remove the inequalities which labor saw in the act from the standpoint of its interests.[2]

Moreover, in addition to formulating and enacting into law long-desired amendments, the new administration succeeded, from 1918 on, in gaining labor's confidence in the act in other ways. In the first place, labor representatives found in Messrs. Robertson and Murdock men who "understood their language." Having had the same type of experience as labor leaders who were now invoking the act, these ministers of labor could be relied upon for an intelligent handling of the particular situation at hand. If a group of workers, upon applying for a board, signified their desire to wait until a certain labor leader would be free to act as their representative, the Minister of Labour readily complied. In addition, the special efforts made by both Messrs. Robertson and Murdock to eliminate delays in handling disputes under the act won the approval of labor.[3]

The Act an Aid to Weak Unions

Another large influence, as already indicated, which led labor to change its policy toward the act in 1918 from opposition to endorsement was the realization, as

[1] See page 55 for the amendments of 1920.

[2] See pages 177–178 for the amendments proposed in 1923 and 1924 and finally passed in 1925.

[3] See Table 12, page 194, for figures on time elapsing between application for boards and the submission of reports.

a result of war experience, that the law was a positive benefit to weak unions. In March, 1916 the act was extended to include war industries by an order-in-council that was rescinded immediately after the armistice, in November, 1918.[1] During this period trade unions, by applying for boards, were able to secure an entry into establishments in which they had formerly been refused recognition.

Indeed, the very unions which in 1916 had fought against the order extending the act to all war industries protested violently when the order was withdrawn after the armistice. This protest was followed by a movement among the workers for the extension of the act, backed especially by municipal and federal employes, who, as we have seen, suffered more than any other group because of the lag in their wages behind the cost of living as well as the absence of adequate machinery for voicing their grievances to public administrators.

The extension of the act during the last two years of the war made not only the particular unions engaged in war industries but the whole labor movement more conscious of the value of the act. Before the war, representatives of trade unions outside the scope of the act paid little attention to its provisions or its operation. During discussions of the act, at annual conventions, they usually endorsed the position taken by those unions engaged in public utility industries. A prominent union official said to the writer in December, 1925:

> I remember distinctly that in 1911, when the resolution demanding the repeal of the act was before the convention of the Trades and Labor Congress, I paid very little attention to

[1] From 1916 to 1918, 30 applications for boards were made by workers engaged in war industries.

the merits of the case. I was in the lobby discussing other matters while the debate was going on. When the time came to vote, I followed the miners in voting for the repeal of the act. I said to myself: "After all, these men are the ones who have to work with the law, and therefore they know best what we should do about it."

But the war opened the eyes of this union official as well as of others to the advantages of the act. Most of them began to realize, first, how excellently it served weak unions fighting for status. Again, where they led unions that were young and undisciplined, though numerically strong, they preferred to utilize the act rather than to call a strike as a means of securing favorable wages and working conditions. For to be successful in the long run, strikes require large treasuries and a trained and disciplined membership. Finally, when employers began to initiate wage reductions after the prosperity peak of 1920 had been passed, labor leaders saw in the act a means of combating the stronger position of their opponents. For by applying for boards they were given opportunity to lay their case against wage reductions before a board of conciliation and investigation. And even when reductions were recommended by boards, the act served as a means of "putting off the evil day" when wage-earners would have to accept lower wages.

Effect of Internal Strife on Labor's Attitude toward the Act

Another factor, of quite a different kind, undoubtedly played some part in effecting the reversal of labor's attitude, especially the attitude of the leaders, toward the act in 1918. It arose from a division within trade-

union ranks, a division which culminated in the following year in the formation of the rival organization known as the One Big Union. This internal struggle affected the policy adopted by labor toward the act in several ways. In the first place, it impaired the strength of organized labor so that the strike weapon could not be employed so effectively against employers as when unity prevailed. In the second place, labor leaders, feeling that the strike might, in the hands of radical groups, become an uncontrollable tool, grew conservative in advocating its use. Rather than call strikes, they preferred to use the machinery of the act. In the third place, the government and the Canadian officials of the international[1] labor unions found in their common desire to combat radical trade unions a reason for continuing unofficially, after the armistice was signed in November, 1918, the rapprochement which they had agreed upon officially earlier in the year for war purposes. This rapprochement resulted, again, in creating a friendly attitude among labor leaders toward the Disputes Act.

Although the actual break in the Canadian labor movement did not occur until 1919, the rift was already visible in 1918. To understand the issues behind this strife it is necessary to review briefly at this point the structure and philosophy of trade unionism as it prevails in the United States and Canada. For the struggle ultimately found expression in a disagreement on the part of wage-earners in western Canada with the program and philosophy of the international unions.

It will be recalled that most unions in Canada are

[1] The term "international" to indicate a jurisdiction extending over Canada and the United States has been explained (page 27, footnote).

embraced within the so-called international trade-union movement, a term applied to those unions on the American continent affiliated with the American Federation of Labor and the railroad brotherhoods. The bulk of their membership is in the United States. The Canadian members of the movement, or, in other words, the Canadian branches of the international unions, are affiliated with the Trades and Labor Congress. The activities of the Congress are limited in the main to legislative and political matters. As the spokesman of Canadian labor to the dominion and provincial governments, it devotes much of its program to securing favorable legislation for Canadian wage-earners. No more than the American Federation of Labor itself, can the Congress call strikes. This power is vested exclusively in the respective international unions. The Congress does, however, hold considerable disciplinary powers over constituent unions, and thus can render effective aid to the international unions. For it will admit to membership only those unions which are in good standing with the respective internationals, and its officers devote much effort to preventing secession from the internationals during times of strife. In practice, moreover, the officers of the Congress give a large portion of their time to organizing activities, and to seeking to increase the membership of the international unions. Finally, they generally use their influence with the Canadian public and the government to promote the purely industrial program of all unions.

So much for structure and function. In philosophy, most international unions, and with them the Congress, accept the principle of private ownership and conduct of industry characteristic of the present economic order.

Their leaders regard themselves as the business representatives of wage-earners; that is, taking for granted the institution of private ownership of industry, they seek to secure for their members as large a portion as possible of the industrial product, in terms of high wages, regularity of employment and good working conditions. With few exceptions, most of these international unions believe that they can achieve this end most effectively by organizing along craft lines, that is, by combining each group of workers practicing a particular craft into a separate union which will bargain with their employers for the best possible terms. In the printing industry, for instance, the photo-engravers, the printers, the pressmen and the lithographers all maintain separate unions and negotiate separate agreements with employers.

For some time during the war, a rift had been appearing between the workers in western Canada and those in the eastern part. For one thing, a considerable number of wage-earners in the western part disagreed with the fundamental tenets of the philosophy of the international labor movement and its resulting structure and program. The creed of this western group was far more radical. In the first place, they were socialistic in philosophy, and so challenged the entire validity of the institution of private property and the conduct of industry for profit. In the second place, they were critical of the craft-union form of organization, and advocated, instead, the "industrial union." By this term they meant that all workers engaged in an industry, the building industry, for example, with its carpenters, bricklayers, plumbers and the others, should be united into one organization which would negotiate

for wages and working conditions for all the workers at the same time. All of these industrial unions, furthermore, according to this philosophy, were to be joined in one big union, which might, whenever desired, call a simultaneous strike of all workers to obtain whatever demands might be formulated. The theory behind this type of organization is that it gives much more power to the workers than do the numerous separate craft unions, chiefly because the strike weapon wielded by the industrial or one big union would become far more effective. Moreover, the advocates of such a union, again in contradistinction to the international unions, believe in striking for political as well as for economic ends. Thus it is conceivable that they might call a strike for the substitution of a socialistic system for the present competitive economic one.

Toward the end of the war, two influences served to sharpen this radical philosophy and win many recruits for it. The continuous and rapid rise in the cost of living stimulated in Canada, as elsewhere, a wide and deep unrest that ultimately found some outlet in the radical program of the West. Again, many of the western trade unionists came to feel that they were being neglected by the executive officials of the international unions and of the Trades and Labor Congress. Consequently, by the time the Congress met for its annual convention in September, 1918 storm clouds were clearly ahead for the administrators of the Canadian labor movement. The convention, however, resulted in a victory for the conservative element of eastern Canada, with the election of Tom Moore to the presidency of the Congress, as the successor of J. C. Watters, who had held office for seven years.

Six months later, the One Big Union was organized. Wholesale defections from the international unions followed. District 18 of the United Mine Workers, for instance, went over almost in its entirety to the One Big Union. The meteoric career of the One Big Union, in the words of R. H. Coats, "reached its climax in the most sensational incident" in the trade-union history of Canada, the Winnipeg strike of 1919.[1] At the end of its first year, 1919, it claimed a membership of 41,850. But it soon lost its hold on Canadian wage-

[1] "The Labour Movement in Canada," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, p. 284, May, 1923

The Winnipeg strike, which occurred in May, 1919, is an indication of the general unrest which prevailed during 1919. It was one of the most serious industrial difficulties in the history of Canada, being largely responsible for the unprecedented total of almost 4,000,000 working days lost in strikes in Canada during 1919. It began as a strike of the employes in the metal trades industry. "Several employers were concerned and their workers were distributed among different unions united into a group known as the Metal Trades Council." The workers insisted that the employers recognize this council and its constituent unions as their representatives in negotiating for conditions of work. The owners refused this on the ground that they themselves were not an association and declared that each employer would deal with his own men "in any collective capacity the latter might choose to adopt." The strike was for a time confined to the trades actually concerned, but on May 13 the Trades and Labour Council of Winnipeg, which includes all the organized workers of the city, voted in favor of a general strike. The general strike was declared on May 15 and involved not only the employes of the metal trades, but all the other unions of the city. On June 26, the strike was formally called off by the Trades and Labour Council. Eight of the strike leaders were arrested on the charge of sedition and were subsequently released on bail. Several were convicted and sentenced to terms of imprisonment. Many strikes were called in other parts of western Canada in sympathy with the striking men of Winnipeg. The Winnipeg strike occurred while the One Big Union was in process of organization. The two were closely associated in the public mind, but the fact is that the strike was called before the unions involved had, in most cases, formally passed upon the question of substituting the principles of the One Big Union for those of trade unionism as commonly practiced in Canada. (See Report of the Department of Labour for the fiscal year ending March 31, 1920. Ottawa, pp. 9–10.)

earners. Thus its membership had dwindled by 1921 to only 5,300, and by 1924 it was estimated to be only 1,200.[1]

Thus, although the labor movement of Canada as a whole was growing in numbers, registering a larger gain in 1919 than in any other year, it was weakened, as already mentioned, by this tumultuous internal strife. The schism which transferred a large section of the western membership from the international unions to the One Big Union naturally distracted the attention and energies of the union leaders. Consequently, they turned from pressing upon employers demands for better working conditions to disciplining their fractious members and healing the breach within the movement. Much of their time and effort went to suspending unions and their officials, canceling charters, reorganizing new local unions, engaging in debates and persuading the membership to return to the ranks of the internationals.

Nor did the rapid decline of the One Big Union mean the end of the tendency to form rival labor movements. Since 1922 the Communist party has been pursuing in Canada, as in the United States, its policy of "boring from within," a term applied to its continuous efforts to control and "capture" existing trade unions through a few active members (called "the militant minority") who are adherents of the Communist party. As we have already seen, the ranks of the coal miners of Nova Scotia appear to have been divided in recent years

[1] In its Report on Labour Organization in Canada for 1924 the Department of Labour does not give the membership of the One Big Union, claiming that "the general officers refuse to supply information." The report, however, mentions an address delivered at Calgary by a member of the Communist party, in which the membership of the One Big Union was given as 1,200.

because of a three-cornered fight waged by the Communist party working through the Trade Union Educational League, the One Big Union and the United Mine Workers of America. The Industrial Workers of the World, while not strong numerically, have also from time to time made a show of power in various parts of Canada by trying to organize wage-earners.

It is not difficult to see why this internal factionalism tended to produce in the official leaders of the Trades and Labor Congress a favorable attitude toward the Disputes Act. Their absorption in the details of the struggle necessarily left little time, as already indicated, for concentration upon the industrial and economic program. It was more than useful to be able to turn to the machinery of the Disputes Act for gaining desired improvements, especially since the rapprochement reached with the government in 1918 inspired the union leaders with confidence in the operation of the act. Moreover—and this proved of considerable significance—the advocacy of the large-scale use of the strike weapon by the One Big Union for securing not only economic but political ends has had, as indicated in the beginning of this discussion, its inevitable reaction on the more conservative officials of the labor movement. It has made them increasingly cautious in its use. At the convention of the Trades and Labor Congress in 1919, for instance, the executive officers warned the rank and file against unwise strikes as follows:

> A number of leaders of labor and those who follow them have been repeatedly warned of the economic danger of too frequent or too wide a use of the strike weapon. They have been told that it is inimical to production and to the best interests of the nation, and so will ultimately rebound

upon themselves. They have not, however, been sufficiently warned of the danger they run of spoiling their final and best weapon of defense by its too great use and by attempts to force by its means decisions that such a weapon ought never to be used to obtain.

The strikes that are proposed today . . . are intended for political purposes: to force the country . . . to agree to political policies which the country does not want and will only accept under compulsion.

A little analysis will show that the effects of a political strike of this character are very different from the ordinary wages or conditions strike. . . .

The political strike . . . is in its essentials a strike against the public at large. It is the attempt by one section . . . to force on the legislators appointed by the general public ideas that they do not wish to entertain; it is an attempt to do by economic force what their constitutional force was not strong enough to do at the polling booth.

This is where the danger to the striker who is acting on such methods comes in. Just as an employer, in an ordinary strike, is the one against whom it is directed, and so becomes an avowed antagonist, so the public, in the other case, is made a similar antagonist. The strike is directed against the public at large, and those who are conducting it have the whole of the general public up against them. . . .[1]

The appearance of radical rival unions served, moreover, as a reason for continuing the rapprochement reached between labor and the government in 1918. For, although the order-in-council by which this agreement was formally enunciated was rescinded immediately after the armistice, the government found it desirable to accord open recognition to international

[1] Report of the Proceedings of the Thirty-Fifth Annual Convention of the Trades and Labor Congress of Canada. Ottawa, 1919, pp. 69–70.

unions as a means of stemming the attempt on the part of the One Big Union, the Communists and other radical organizations to obtain a foothold in Canadian industry.

Perhaps the most important instance of this kind arose in the coal fields of western Canada, where, to discourage the growth of the One Big Union, the government encouraged the establishment of a "closed shop" against the One Big Union and in favor of the United Mine Workers of America.[1] This "closed shop" was established by means of an agreement negotiated under the auspices of the Minister of Labour between District 18 of the United Mine Workers of America and the Western Canada Coal Operators' Association. Under the agreement all employes had to be members of the United Mine Workers of America, and each operator was required to collect automatically the union dues of each miner from the payroll—a device commonly known as the "check-off." Inasmuch as no member of the One Big Union was admitted to membership in the United Mine Workers, this agreement virtually made it impossible for anyone professing membership in the former organization to secure work in any of the mines in this district.

As soon as the agreement was drafted, the Director of Coal Operations, who, as already described, was appointed in June, 1917, with full power to regulate the coal industry of District 18,[2] issued on July 21, 1920, an order known as Order 149, which pronounced the agreement the official working code for western Canada be-

[1] The information given here is based on an informal statement prepared by the Department of Labour. Substantially the same information is repeated in the Report of the Department of Labour for the fiscal year ending March 31, 1920. Ottawa, pp. 5–12, 60–67.

[2] See page 84.

tween operators and coal miners of District 18. The exact order reads as follows:

> By virtue of the authority vested in me by order of the committee of the Privy Council, passed under the provisions of the War Measures Act of Canada, 1914, I hereby approve and confirm an agreement entered into between the Western Canada Coal Operators' Association and the United Mine Workers of America, dated July 20, 1920 . . . [names of coal companies follow]

It is not often that a government will enact a trade-union agreement into law. Yet this extraordinary step was taken by the Canadian government. For the authority of the Director of Coal Operations was drawn from the War Measures Act and should have lapsed, therefore, upon the signing of peace. To make sure that Order 149, just quoted, would be legally binding, a special law was passed by Parliament in December, 1920, which legalized the authority of the Director of Coal Operations and all orders issued by him until the end of the parliament then in session, or until June, 1921.

This policy on the part of the government naturally strengthened the confidence of the international labor movement in the Department of Labour and in the Disputes Act. Moreover, the struggle between the conservative unions and the minority secessionists served to heighten the prestige of the act. For both sides attempted to use it as a means of strengthening their standing in the industrial community. Officials of the One Big Union, for instance, attempted to obtain status for their organization by applying for boards to hear the grievances of their members. The international unions took the position, when such cases arose, that

they already had jurisdiction over the workers whom the One Big Union claimed to represent and as such had established contractual relations with the particular employes concerned. The Minister of Labour usually endorsed the position of the international unions and accordingly rejected the applications for boards made by representatives of the One Big Union.

A case in point arose as recently as October 16, 1924. On this date R. B. Russell, general secretary of the One Big Union, made application to the Minister of Labour for the establishment of a board under the Disputes Act in a dispute involving a unit of miners at Thorburn, Nova Scotia. He claimed that the Acadia Coal Company, Limited (controlled by the British Empire Steel Corporation), had violated the Disputes Act by altering wages and working conditions and locking out men. The demand for a board was supported by a local branch of the One Big Union. Upon inquiry the Minister "learned that the shutdown was in the first instance due to lack of orders and later to a shortage of cars."[1] John W. McLeod, appointed temporary president of District 26 by John L. Lewis, international president of the United Mine Workers, explained to the Minister his version of the difficulty. He pointed out that the United Mine Workers had a trade agreement with the Acadia Coal Company, Limited, but that a tonnage rate had not yet been negotiated for a certain portion of the Thorburn mine which had been completed subsequent to the formulation of the existing agreement. The officials of the United Mine Workers

[1] Fourteenth Annual Report on Labour Organization in Canada for the calendar year 1924. Department of Labour, Ottawa, p. 182.

were, however, even then seeking to agree with the management upon a rate for this work.

The action taken by the government in this specific situation is illustrative of its general policy:

> The Minister, in replying to the request of the general secretary of the One Big Union for a board of investigation, pointed out that the United Mine Workers claim to have, and have been regarded as having, jurisdiction over coal miners in District 26, and that the organization also claims to be working under agreement or understanding with the employing companies as to wages or hours for workmen employed in the mining industry in Nova Scotia. The Minister, therefore, declined to establish a board as asked for by the One Big Union.[1]

In summary, then, certain forces were set in operation, beginning with 1918, which were bound to make Canadian labor friendly to the act. The rapprochement reached between labor and government in 1918 for war purposes led to a further understanding after the war, between these two groups, in an attempt to stem the influence of new and rival unions whose philosophy and tactics were more radical than those of the international unions which represent the overwhelming majority of the organized wage-earners of Canada. The result was the official recognition, on the part of the government, of the international labor movement, an acceptance of the standards which organized labor sought to establish in industry, a number of amendments to remedy complaints which labor had voiced against certain defects in the operation of the act, and the appointment of former trade-union officials to the Ministry of Labour. In addition, the machinery of the act helped weak

[1] *Ibid.* p. 182.

unions—especially during the war, when the act was extended to cover munitions industries—to secure increases in wages for their members without having to resort to strikes.

Again, internal strife caused by radical unions has divided the strength of the Canadian labor movement. Beginning with the latter part of 1920 came, too, a period of rapidly falling prices, unemployment and loss in trade-union membership—a period when labor was put on the defensive to conserve the gains it had made during the war. On top of this stands the fact that Canada is primarily an agricultural country and consequently trade unions find themselves a relatively weak minority movement. All these factors have made it seem desirable, since 1918, for labor to utilize the Disputes Act rather than wield the strike weapon as a means of getting desired results. And, finally, when it is remembered that the conciliatory manner in which the act has always been administered was emphasized even more by the former trade-union officials who have acted as ministers of labor since 1918, it can be readily seen why Canadian labor not only expressed friendliness to the act but even urged that its scope be widened to include all industries in which either employes or employers wished to invoke its provisions.

CHAPTER XII

THE CONSTITUTIONALITY OF THE ACT

AFTER having become such an important element in the industrial policy of the nation during eighteen years of continuous operation, the Disputes Act was declared, as has been noted, *ultra vires* or unconstitutional by the Judicial Committee of the Privy Council of Great Britain on January 20, 1925. This decision is important not only for its bearing upon the constitutional phases of legislation providing for government intervention in industrial disputes but also for its relation to the issue of local versus federal jurisdiction, so hotly debated in this country recently with reference to the Child Labor Amendment. For the primary reason, as we shall presently see, which led the Judicial Committee to declare the Disputes Act *ultra vires* was that it dealt with matters reserved to the provincial legislatures by the British North America Act of 1867, commonly regarded as Canada's constitution.

The Framework of the Canadian Government

To understand the basis of the decision it is necessary to review briefly the organization of the Canadian government, as defined by this act. Canada has a federal government, consisting of a central or federal sovereignty, and nine local or provincial sovereignties.[1] In general, their structure is modeled on that of Great

[1] Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia.

Britain; that is, both provincial and dominion governments are founded on the parliamentary system, with executive power in the hands of the cabinet. The government is controlled by the dominant party, ministers in the dominion cabinet being appointed from the majority party in the House of Commons. The opposition, as in Great Britain, consists of the party having the second largest number of votes in the House of Commons. Nominally, executive authority is vested in the Crown, represented in the Dominion by a Governor-General appointed by the Crown, and in each province by a Lieutenant-Governor similarly appointed. The Governor-General holds office for five years. Like the Crown, his executive power is strictly limited, and appointments to the cabinet are made by him on the recommendation of the Premier only.

Legislative authority for the Dominion as a whole is vested in the Parliament of Canada. This is a bicameral house, consisting of the Senate and the House of Commons.[1] Senators are appointed for life by the Governor-General on the recommendation of the dominion cabinet. The only limitation upon the power of the Senate is that it may not originate any money bill. Theoretically, it may reject a finance bill, but may make no amendments to it. The House of Commons, as in Great Britain, is the more important of the two branches of Parliament. Members are elected to the House by popular vote. The House of Commons may be dissolved at any time by the Governor-General acting on ministerial advice, and no House may remain in continuous

[1] Only two of the provincial parliaments are bicameral, those of Nova Scotia and Quebec. There is an elective house of assembly in each of the nine provinces, and an appointive legislative council in these two.

existence for more than five years. As in British practice, dissolutions take place when the ministry in power is unable to obtain a vote of confidence on an important issue.[1]

The judiciary of Canada differs considerably from that of the United States. In contrast to the complete system of federal courts that exists in the United States, there are only two federal or dominion courts in Canada —the Supreme Court and the Court of Exchequer and Admiralty. The former consists of a chief justice and five associate judges, and possesses appellate jurisdiction, criminal and civil, throughout Canada. The courts constituted by the provinces embrace the superior (including the supreme courts), district and county courts. Though created by the provinces, they deal with all matters of litigation under dominion as well as under provincial law. On questions in which the jurisdiction of the provincial and dominion powers are in conflict, appeal may be had from the Supreme Court of Canada and by special leave from the higher provincial courts to the Judicial Committee of the Privy Council of Great Britain. This Committee, created in 1833, is

[1] The progress of legislation through these two houses follows usual practice. Upon each responsible minister in the cabinet devolves the task of presenting to the House of Commons all laws pertaining to matters coming under his department that have been approved by the cabinet. Thus, the Minister of Labour presented the Industrial Disputes Act in 1907. Members may question the Minister and it is his task to explain the bill thoroughly. Each proposed bill receives three readings; if passed on the third reading, it is sent to the Senate. In that body the task of steering through the measure falls upon the cabinet representative. In the Senate also the bill receives three readings. If passed on the third, it is sent to the Governor-General for signature as representative of the British Crown in Canada. The Senate may, however, amend the bill and send it back to the House in its amended form. If the latter accepts these amendments, the bill goes to the Governor-General; if not, it is dropped for the time being at least.

the court of final appeal for the colonies and dependencies.[1]

Relation of Courts to Legislation

Under the British North America Act, courts in Canada may not declare an act unconstitutional as the federal courts may in the United States. On one ground only may a Canadian statute be challenged: Does the statute in question come within the powers granted the provinces or within those granted the federal government? All that the courts of Canada may decide, therefore, is whether the subject matter of the particular act in question comes within the jurisdiction of the parliament which enacted it. Thus Canadian courts do not declare an act constitutional or unconstitutional. They pronounce it either *intra vires* or *ultra vires;* that is, the law is either within or beyond the powers of the government under consideration.

Questions of constitutionality take this form in Canada because the British North America Act definitely distributes, in Sections 91, 92, 93 and 95, legislative power over specific subjects between the dominion government and the provincial governments. Sections 93 and 95 need not concern us here. The first deals

[1] The Judicial Committee of the Privy Council is composed of one or two former Indian or colonial judges appointed for the purpose, of the Lords of Appeal in Ordinary, of all members of the Privy Council who hold, or have held, high judicial office in the United Kingdom or (not exceeding five in number) in the self-governing dominions and of two other members of the Privy Council the Crown thinks fit to appoint them. Three members constitute a quorum. The decisions of the Committee take the form of advice to the Crown—"advice [to quote President Lowell] which is, of course, always followed." Dissenting opinions, if any occur, are not made public. (Lowell, A. Lawrence, The Government of England. The Macmillan Company, New York, 1910, pp. 466–468.)

with power to regulate education, a power which is nominally in the hands of the provincial governments; the second deals with agriculture and immigration, over which the dominion and provincial parliaments have concurrent jurisdiction. No constitutional difficulties have arisen in connection with interpretation of these two sections. Section 91 gives to the dominion government exclusive power to deal with 29 enumerated subjects, and a general power, known as the residuary power, "to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the provinces." Section 92 gives to the provincial parliaments exclusive power to legislate with regard to 16 enumerated subjects. The specific powers granted the dominion government in Section 91 and the provincial governments in Section 92, pertinent to the present discussion, will appear directly when we take up the various court decisions with respect to the Disputes Act.

State Rights versus Federal Rights: Primary Issue in Disputes Act

Difficulties in deciding on the constitutionality of legislation like the Disputes Act arise from the fact that Sections 91 and 92 overlap. For example, a province might justify its enactment of a certain law on the ground that it has jurisdiction, under the constitution, over "property and civil rights," while the dominion government might pass a similar law because it has jurisdiction over "trade and commerce."

It was the issue as to whether the Disputes Act came within the jurisdiction of the provincial governments, as

defined in Section 92, or within the jurisdiction of the dominion government, as defined in Section 91, which had to be decided by the courts when this federal act was brought before them. For, under Section 92, jurisdiction over municipal institutions and over property and civil rights is specifically conferred upon the provincial legislatures. On the other hand, Section 91 confers specifically upon the dominion government, in addition to the general residuary powers already described, power to regulate trade and commerce and to legislate in relation to the criminal law. The concrete question before the courts, therefore, was whether the Disputes Act dealt with matters pertaining to civil and property rights or to municipal institutions and therefore could be enacted only by provincial legislatures; or whether it dealt with matters pertaining to trade and commerce, the criminal law, or the peace, order and good government of Canada, and therefore was within the jurisdiction of the dominion government.

The constitutionality of the act had been tested once before in 1912 and 1913, when the Montreal Street Railway initiated judicial proceedings to restrain a board from acting in a dispute between management and employes. The company contended that the Disputes Act was unconstitutional because it dealt with subject matter reserved, under the British North America Act, to the provincial legislatures. Both Justice Lafontaine of the Superior Court of Quebec and the Court of Review of the Montreal District, to which the case was appealed, upheld the validity of the act on the ground that since industrial disputes have a general or national importance they affect the peace, order and

good government of Canada and therefore come within the residuary powers of the federal government.[1]

The case which led to the decision of the Judicial Committee in 1925 is known as the Toronto Electric Commissioners *v.* Snider *et al.* The litigation began in the summer of 1923. Members of the Toronto branch of the Canadian Electric Trade Union who were employed by the municipality had applied for a board under the act, before which they could present their demands for increased wages and improvements in working conditions. The Toronto Electric Commissioners, who manage the electric light, heat and power plants of Toronto, refused to recommend their representative on the board. Consequently the Minister of Labour, in accordance with the power conferred upon him by the act, appointed this member. When the board thus constituted met in Toronto in August, 1923, the Commissioners asked the Supreme Court of Ontario for an injunction to restrain the board from proceeding with the inquiry. An interim injunction was granted on August 29, 1923 by Justice Orde of the High Court Division of the Supreme Court of Ontario. It restrained the board from interfering with the business of the Commissioners and from exercising any of the compulsory powers of investigation conferred upon it by the Disputes Act.

The Act Unconstitutional According to Justice Orde

The fundamental question of dominion versus provincial jurisdiction was raised at once in this initial

[1] Judicial Proceedings Respecting Constitutional Validity of the Industrial Disputes Investigation Act, 1907. Department of Labour, Ottawa, 1925, p. 7.

decision. In their argument before Justice Orde, lawyers for the dominion government, in attempting to establish the constitutionality of the Disputes Act, did not attempt to prove that the subject matter of the act fell within any of the 29 enumerated classes of power specifically assigned to the Dominion by Section 91. But they contended that neither did it come within any of the 16 classes of power exclusively assigned to the provinces by Section 92. Their chief argument was that the act came within the jurisdiction of the dominion Parliament under the residuary powers given to it in the opening clause of Section 91, to make laws for the peace, order and good government of Canada. This body, counsel continued, may interfere with civil and municipal rights in the provinces in order to achieve the objectives of peace, order and good government. They singled out the conciliatory provisions of the act as embodying its chief objectives, and they regarded the coercive features as ancillary or merely an aid to the achievement of the main purpose of conciliation.

Lawyers for the Electric Commissioners, on the other hand, emphasized the coercive features of the Disputes Act, which they regarded as primary and as violations of Section 92. They pointed to the facts that boards had power

> . . . to summon witnesses, including the parties to the dispute, to compel the production of books, papers and other documents, to enter buildings and other premises for purposes of inspection and to interrogate persons therein, and these powers are sanctioned by penalties for failure to attend or to give evidence or to permit inspection.[1]

[1] Judicial Proceedings Respecting Constitutional Validity of the Industrial Disputes Investigation Act, 1907. p. 10.
Boards are given for this purpose, according to Section 30 of the

Moreover, by requiring thirty days' notice of changes in wages and hours of work and the maintenance of a *status quo* during the progress of an inquiry, said counsel for the Commissioners, the act interfered with contractual relations between employers and employes.

Justice Orde decided with the Electric Commissioners. The Disputes Act, he said, interfered "in the most direct and positive manner with the civil rights of employers and employes, and also with the municipal institutions of the province, both subject matters of legislation exclusively assigned to the provinces"[1] under Section 92. He pointed out, further:

> Notwithstanding that the several contracts of employment may have come to an end, or be subject to cancellation for cause, neither the employers on the one hand nor the employees on the other can exercise their ordinary civil rights of bringing the engagement to an end, or of refusing to renew on the same terms, if either party sees fit to apply for a board of conciliation, without subjecting themselves to serious penalties.[2]

The Act Constitutional According to Justice Mowat

Having secured this temporary injunction, the Electric Commissioners thereupon applied for a permanent injunction to Justice Mowat, also of the High Court Division of the Supreme Court of Ontario. Justice Mowat dissented from the decision of Justice Orde, who

Disputes Act, all of the powers usually vested in a civil court. In addition, special penalties for not complying with a summons, or in other ways obstructing the procedure of boards, are provided in Sections 36, 37 and 38.

[1] *Ibid.* p. 11.

[2] *Ibid.* p. 10.

was co-ordinate in authority with him. After rendering his opinion, he referred the case on August 29, 1923 to the First Appellate Division of the same court, the Supreme Court of Ontario. His conclusion that the act was within the powers of the dominion Parliament was based on four main points:[1] (1) "The question of industrial strife, together with its ramifications and the growth of labor unions, is vastly different from the condition existing at the time of the passing of the British North America Act of 1867. . . ." (2) The British North America Act is silent upon the allocation of power to intervene in industrial disputes. (3) But as a matter of practice, the federal Department of Labour has for more than twenty years administered laws passed by the federal Parliament dealing with industrial disputes and other aspects of the labor problem. "This department has, by common consent of the provinces during this long period, been the principal administrative means of dealing with the question of eruptive industrial strife; and, while the fact of acquiescence does not settle the constitutional point of law," yet to infer "that all the governments and their law officers have erred or slept should not be arrived at unless the law is clear." (4) Since the British North America Act is not clear on the question of jurisdiction over industrial disputes, previous decisions of the Judicial Committee of the Privy Council in cases involving similar issues must be consulted.

Justice Mowat said, in explaining his decision, that such cases have frequently arisen because, as has been seen, the present distribution of powers to the dominion and provincial governments by the British North

[1] *Ibid.* pp. 14–16.

America Act results in overlapping. He cited several of these cases to support his conclusion that the Disputes Act was within the competence of the dominion Parliament. In one of them the Judicial Committee expressed the opinion that it was the intention of the British North America Act to "give to the Dominion Parliament authority to make laws for the good government of Canada in all matters not coming within the classes of subjects assigned exclusively to the provincial legislature."[1] In another it was stated that in any field of legislation where dominion and provincial jurisdiction overlap, and the British North America Act is not clear upon the allocation of powers in the field, the dominion legislation must prevail.[2] In summary, Justice Mowat felt that labor legislation such as the Disputes Act was a matter of national rather than local concern and thus came within the competence of the dominion Parliament.

Constitutionality of the Act Upheld by Appellate Division of Supreme Court of Ontario

The First Appellate Division of the Supreme Court of Ontario delivered its decision on April 22, 1924.[3] It confirmed the opinion of Justice Mowat and upheld the constitutionality of the Industrial Disputes Act by a decision of five to one. The majority opinion was delivered by Justice Ferguson. He stated that while the coercive features of the Disputes Act might encroach upon civil and property rights or the rights of municipal

[1] Citizens and Queen Insurance Companies *v.* Parsons (1881), 7 A.C. 96, p. 107. Cited in Justice Mowat's decision. *Ibid.* p. 15.

[2] Grand Trunk Railway Company *v.* Attorney-General of Canada (1907) A.C. 65, p. 68. Cited in Justice Mowat's decision. *Ibid.*

[3] *Ibid.* pp. 17–22.

institutions, these coercive features were incidental to the main objective of the act. This main objective, in his words, was

> . . . to authorize and provide machinery for conducting an inquiry and investigation into industrial disputes between certain classes of employers and their employees, which disputes in some cases may, and in other cases will, develop into disputes affecting not merely the immediate parties thereto, but the national welfare, peace, order and safety, and the national trade and business.[1]

The purpose of the inquiry conducted by boards brought the act within the competence of the dominion Parliament under those clauses of Section 91 which give it power to regulate trade and commerce and to legislate in relation to the criminal law. The purpose of the act, according to Justice Ferguson, was threefold: (1) to maintain continuous commercial activity by preventing strikes or lockouts in mines or public utilities; (2) to promote and protect the peace, order and safety of the nation by restricting an industrial dispute to a limited area or by bringing about a settlement; (3) to prevent riots and other violations of the criminal law which frequently accompany strikes and lockouts, by focusing the attention of an informed public opinion upon the parties to the dispute.

The Act Declared Unconstitutional by Judicial Committee of Privy Council

The case was thereupon appealed by the Toronto Commissioners to the Judicial Committee of the Privy Council of Great Britain.[2] It was heard during Novem-

[1] Judicial Proceedings Respecting Constitutional Validity of the Industrial Disputes Investigation Act, 1907. p. 18.
[2] *Ibid.* pp. 33–42.

ber, 1924. As has already been noted, the judgment, delivered by Viscount Haldane on January 20, 1925, declared the Industrial Disputes Act *ultra vires* or unconstitutional. The Judicial Committee considered the subject matter of the Disputes Act as clearly affecting property and civil rights, jurisdiction over which was reserved exclusively to the provincial legislatures by Section 92 of the British North America Act. Viscount Haldane further pointed out that there was no reason why any provincial legislature could not enact a law similar to the Disputes Act. He said:

> Whatever else may be the effect of this enactment [the Industrial Disputes Act], it is clear that it is one which could have been passed, so far as any province was concerned, by the provincial legislature under the powers conferred by section 92 of the British North America Act. For its provisions were concerned directly with the civil rights of both employers and employed in the province. It set up a Board of Inquiry which could summon them before it, administer to them oaths, call for their papers and enter their premises. It did no more than what a provincial legislature could have done under head 15 of section 92, when it imposed punishment by way of penalty in order to enforce the new restrictions on civil rights. It interfered further with civil rights when, by section 56, it suspended liberty to lock out or strike during a reference to a board. It does not appear that there is anything in the Dominion Act which could not have been enacted by the Legislature of Ontario, excepting one provision. The field for the operation of the Act was made the whole of Canada.[1]

The decision further held that since the Toronto Electric Commissioners constituted a municipal body the Disputes Act could not be applied to them. For

[1] *Ibid.* p. 34.

under Section 92 regulation of municipalities is reserved exclusively to the provincial legislature.

The authoritative interpretations that had been put upon Sections 91 and 92 of the British North America Act by previous decisions of the Judicial Committee of the Privy Council were summarized thus. The dominion Parliament has general power under Section 91 to make laws for Canada. But these laws are not to relate to the subjects assigned to the provinces by Section 92 unless they fall under heads specifically assigned to the dominion Parliament by Section 91. When a question arises as to which legislative authority has the power to pass an act, it must first be asked, therefore, whether the subject matter of the act falls within Section 92. Even if it does, the further question must be answered whether it falls also under Section 91. If so, and in case of overlapping, the dominion Parliament has the paramount power of legislation. If the subject falls within neither Section 91 or 92, then the dominion Parliament may have power to legislate under the general clause at the beginning of Section 91, authorizing it to make laws for the peace, order and good government of Canada.

Applying this reasoning, the Judicial Committee was of the opinion, said Viscount Haldane, that the subject matter of the Industrial Disputes Act fell fully and clearly within Section 92. The Judicial Committee then considered the attempt of previous courts and of counsel to bring the Disputes Act within certain categories of power given the dominion government under Section 91. First the argument that the act came under the category of criminal law was disposed of. The Judicial Committee held that the inclusion of penalties in the act does

not make it a criminal rather than a civil law. It is true that the dominion Parliament has exclusive legislative power to create new crimes, but the mere inclusion of penalties for violations of an act does not *per se* make it a criminal law. For the dominion Parliament may enact criminal law only in cases where the subject matter, by its very nature, belongs to the domain of criminal jurisprudence. But it is quite another thing to attempt, first, to interfere with a class of subjects committed exclusively to the provincial legislature, such as those involving civil or property rights, and then, by providing penalties for violations, to justify this legislative interference as criminal law.

Counsel for the dominion government had argued before the Judicial Committee that the Disputes Act came within the power of the federal Parliament to legislate in relation to crime because the criminal law of Canada was, in its foundation, the criminal law of England; and according to the criminal law of England in force in 1867 a strike was indictable as a conspiracy. This argument was also rejected by the Judicial Committee, on the ground that: (1) such an interpretation applied only to laws preventing strikes entirely, which the Disputes Act, by forbidding strikes in public utilities and mines only, did not do; (2) lockouts may not be considered as conspiracies, because one employer alone may declare a lockout; (3) since the Disputes Act deals with lockouts as well as strikes, it may be declared unconstitutional regardless of the legal status of strikes, because it interferes with lockouts.

The specific power granted the dominion Parliament by Section 91 to regulate trade and commerce did not, in the opinion of the Judicial Committee, render valid the

Disputes Act. It held that this power applied only to general trade and commerce. Consequently, dominion legislation dealing with the contracts of a particular trade or business is illegal because it conflicts with the powers over property and civil rights, exclusively assigned to the provinces.

Finally, Viscount Haldane pointed out, the clause at the beginning of Section 91, granting the dominion Parliament the power to make laws for the peace, order and good government of Canada, did not, in the opinion of the Judicial Committee, include such measures as the Disputes Act. This clause can be interpreted only to apply to highly exceptional emergencies, such as pestilence and war, which carry with them dangerous menace to national life. Federal power may be invoked in such crises because any one province cannot cope effectively with them. In cases in which the exercise of provincial power could cope adequately with an emergency, a dominion law on the subject, though it may be for the general good of Canada, is not justified.

Reactions to the Decision of Judicial Committee

Regrets were expressed on all sides when the Disputes Act was thus declared invalid. How widespread these regrets were and how firmly the act had entrenched itself in the industrial framework of the nation, is indicated by the severe criticism voiced in the House of Commons by Arthur Meighen, leader of the Conservative party, then the opposition, against the Minister of Labour for having permitted the issue of constitutionality to come before the courts. This criticism attains special significance when it is recalled that the Disputes Act was a measure introduced by the Liberal party—and recom-

mended by Mr. King, who was the Prime Minister when this criticism was made. Mr. Meighen said:

I am strongly of opinion that the proceedings which resulted in the decision were unnecessary and ill-advised. . . . Throughout the whole period of the life of that act I do not think there was a single month when the validity of its provisions was not at least in doubt on the part of the Justice department, and certainly on the part of eminent lawyers in this country. . . . I well recall on more than one occasion when we in our time encountered difficulties and sought the advice of the Justice department, we were cautioned to let well enough alone, to keep away from the courts. . . .

Now the case that came up was this: the act was sought to be put into force with respect to a wage dispute in connection with the Toronto Electric Commission. One would have thought that if there was any single case where the application of the act was on a very, very weak legal footing it would be there; and the wise course for the government to have taken, . . . was to have said to the Toronto Electric Commission, "Very well, if you don't want us to assist, take care of the matter yourselves; we will step aside. We are here to be of service if possible, but we are not going to fight any protracted lawsuit and chase you to the Privy Council to try to establish a jurisdiction over such a body."[1]

As indicated by Mr. Meighen, the administrators of the Department of Labour had for some time avoided joining issue in the courts with municipalities which challenged the operation of the act in industries under their control, however clearly those industries themselves might have fallen within its scope. For example, in 1917 the street-car employes of Edmonton applied for a board; but the municipality, which owned the traction system, refused, like the Toronto Electric Commission-

[1] House of Commons Debates, Dominion of Canada, Session 1925, May 13, 1925. p. 3,280.

ers six years later, to nominate a member to represent it.[1] The Minister of Labour appointed a representative for the municipality. But when the board assembled, it was served with an injunction restraining it from conducting hearings. "The injunction," reports the Department of Labour, "was not opposed by the Dominion authorities and no inquiry into the dispute took place before the board."[2]

Indeed, the issue as to whether the Disputes Act was applicable to industries controlled or conducted by municipalities or provinces was brought sharply to the front in 1918 and 1919 when policemen and firemen, restless, as repeatedly mentioned, under the rapid increase in living costs and the consequent shrinking of the purchasing power of their wages, began to organize and apply for boards under the Disputes Act. The municipalities concerned usually refused to submit such cases to the machinery of the act. They justified this position by the argument that, since the regulation of municipal institutions was reserved to the provincial governments, the Disputes Act was not applicable to municipal employes, even though they might be working in public utility industries.

Prior to the war, the question of jurisdiction in cases involving municipalities had been "avoided rather than determined." But the situation became so critical by 1918 that the Conservative government then in power formulated a general policy for dealing with it. According to this policy the federal government would not claim jurisdiction, when challenged, in a dispute "in

[1] Labour Gazette, Vol. XVII, p. 790, October, 1917; p. 898, November, 1917.

[2] Report of the Department of Labour for the fiscal year ending March 31, 1919. Ottawa, p. 14.

which the employer was a body created by or responsible to the government of the province." Instead, it would encourage the use of the act, through Section 63, which provides that the law can be invoked in industries not coming within the scope of the act on joint consent of employers and employes.[1]

When the decision of the Privy Council was published in Canada, early in 1925, representatives of labor requested, as already noted, that the British North America Act be amended to give the dominion Parliament competence to re-enact the Disputes Act with its original scope unchanged. The Liberal government then in power did not accede to this request. Its reluctance to do so no doubt grew largely out of the known difficulties of amending the Canadian constitution. Such amendments have to be passed by the British Parliament. Moreover, they require the general consent of all provinces; and sectional interests are so strong in Canada that the provinces would hardly agree to limit their own powers by giving any additional one to the federal government. In the words of W. P. M. Kennedy, professor of political science at the University of Toronto:

> . . . Canada has no authority either to alter the distribution of legislative powers or to vary the essential form of government. . . . All changes made in the constitution of 1867, other than those of small detail, have required imperial legislation. The formation of the federation has been treated as a covenanted occasion, and explicit recognition was given to this treatment in 1907 by the cabinets of the United Kingdom and of Canada, when admission was made that the general assent of the provinces was necessary to any

[1] *Ibid.* pp. 13–14.

constitutional changes. Canada is thus dependent on the imperial parliament for any important alterations in the instrument of government. The problem is one of difficulty. Imperial legislation would undoubtedly be refused were there signs of serious provincial opposition. On the other hand, it would be difficult to get general provincial agreement to any increase of the federal powers. The provinces are extremely suspicious of proposals which might appear to narrow their own legislative spheres.[1]

The Act Restored by Modification and by Supplementary Acts of Several Provincial Parliaments

But the government took immediate steps to salvage the Disputes Act. As already indicated, the dominion Parliament passed a bill, in June, 1925, which restricted the scope of the act to those industries which are subject to the regulation of the dominion Parliament[2] and at the same time made its provisions applicable to disputes which may be within the exclusive legislative jurisdiction of a province but which are made subject to the Disputes Act by an act of the legislature. By June, 1926 laws of this kind had been enacted by the provinces of British Columbia, Saskatchewan, Manitoba, New Brunswick and Nova Scotia.[3]

[1] The Constitution of Canada. Humphrey Milford, London, 1922, p. 450.

[2] See pages 56–58.

[3] See page 57, footnote 3. The law passed by British Columbia is typical:

"Whereas the provisions of the 'Industrial Disputes Investigation Act, 1907,' chapter 20 of the Acts of the Parliament of Canada, 1907, do not apply to industrial disputes which are within the exclusive legislative jurisdiction of any province of Canada;

"And whereas it was enacted by chapter 14 of the Acts of the Parliament of Canada, 1925, entitled 'An Act to amend the Industrial Disputes Investigation Act, 1907,' that the said act shall apply to, *inter*

Only the future can tell how the Disputes Act, thus amended by the dominion government to include interprovincial industries and restored to provincial operation by the enabling acts of several provinces, will work, or whether the courts will declare it *intra vires* if challenged. But these efforts to salvage the act, whatever their outcome, clearly indicate that Canada, as represented by all the political parties of the Dominion, is determined, after its long experience with the act, to keep its principles in operation.

alia, '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';

"And whereas it is deemed expedient, in view of the amendment recited above, that the provisions of the said act shall be made to apply to industrial disputes of the nature defined in the said act which are within the exclusive legislative jurisdiction of the province:

"Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

"1. This act may be cited as the 'Industrial Disputes Investigation Act (British Columbia).'

"2. The provisions of the 'Industrial Disputes Investigation Act,' chapter 20 of the Acts of the Parliament of Canada, 1907, and amendments thereto, shall apply to every industrial dispute of the nature therein defined which is within or subject to the exclusive legislative jurisdiction of the province.

"3. The Lieutenant-Governor may by proclamation apply the provisions of any amendment to the said act which may hereafter be enacted by the Parliament of the Dominion to every industrial dispute of the nature in said act defined which is within or subject to the exclusive legislative jurisdiction of the province, whereupon those provisions shall apply accordingly."

(From typewritten statement of law supplied by the Department of Labour. For reference to this law, see Labour Gazette, Vol. XXVI, p. 17, January, 1926.)

CHAPTER XIII

OTHER AGENCIES FOR ADJUSTMENT OF INDUSTRIAL DISPUTES IN CANADA

THE extent to which the policy of conciliation in the settlement of industrial disputes has won a secure place in the program of the Canadian government cannot be judged completely from the record of the Disputes Act. The act does not embrace the entire program for dealing with industrial disturbances. In brief, the government has endeavored to establish a flexible procedure which would enable it to meet every situation with a method best adapted to it. This explains the fact that the Department of Labour has been ready to establish agencies to supplement the Disputes Act or even to supersede it when the occasion seemed so to demand. In the main, these agencies may be divided into two groups, permanent ones in operation throughout the history of the act, and emergency ones created to cope with the special problems arising from the war. One of the latter, the Canadian Railway Board of Adjustment No. 1, has been continued as a peace-time measure and is still functioning today.

MEDIATORS

Perhaps the simplest device for the adjustment of industrial disputes has been the employment of special mediators by the Department of Labour. Under the authority of the Conciliation Act of 1900,[1] various officials of the Department of Labour can be appointed

[1] For a description of the provisions of this act, see pages 58–59.

as mediators in any difficulties which arise between employers and employes. An official acting as mediator makes an informal investigation, offers his services as an intermediary between the contestants and attempts to bring about an amicable settlement. Such mediation has been employed constantly since 1900 and it has often been used in preference to the Disputes Act since that law went into effect in 1907. Frequently, upon an application for a board under the Disputes Act, the Minister of Labour, instead of immediately granting such a board, assigns a representative of his Department to act as mediator; and only after such mediation has failed, does he proceed to establish a board under the Disputes Act. Thus in the case of three applications received together for boards in January, 1924, for example, this procedure was followed. The applications were received from the following sources:

(1) Truckers, coopers, etc., employed on the West St. John wharf, members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

(2) Foremen, checkers, etc., employed on the West St. John wharf, members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

(3) Grain elevator employees at St. John, N. B., being members of Local 121, International Longshoremen's Association.[1]

A settlement was effected in each instance and the application for a board was withdrawn.

The annual report of the Department of Labour usually contains a summary of its mediatory activities.

[1] Labour Gazette, Vol. XXIV, p. 106, February, 1924.

The report for the fiscal year ending March 31, 1922, for instance, lists 47 disputes[1] in which officials of the Department intervened, "mediation being as a rule effective in preventing a strike or in ending a strike when the controversy had reached that stage."[2]

Royal Commissions

From time to time, a royal commission has been appointed by an order-in-council under the Inquiries Act of Canada[3] to investigate industrial difficulties in place of a board of conciliation and investigation acting under the Disputes Act. Occasionally these commissions have consisted of one person, an outstanding citizen who commands the respect of all parties; but usually they consist of three members, one of whom has been prominently identified with the labor movement, one with the employing group and the third a prominent citizen who has not identified himself with either group. This last member usually acts as chairman. The commissions have power to examine witnesses, inspect records, investigate premises and initiate such other procedure as will enable them to secure all the facts underlying the controversies before them. In practice these commissions when appointed

[1] These 47 disputes were distributed as follows:

Coal mining	14	Clothing	2
Building and construction	8	Leather	1
Metals, machinery and conveyances	5	Transportation	10
		[illegible]	1
Pulp and paper	2	Miscellaneous	2
Printing and publishing	2		

[2] Report of the Department of Labour for the fiscal year ending March 31, 1922. Ottawa, p. 32.

[3] Under the Inquiries Act the Governor-General in Council may cause inquiry into any matter connected with the good government of Canada. (Revised Statutes of Canada, 1906. Chap. 104.)

to handle specific disputes have followed the same procedure as boards of conciliation and investigation sitting under the Disputes Act; they have attempted to bring employers and employes together with the purpose of arriving at an amicable settlement.[1] Royal commissions have been appointed when several labor organizations or several employers have been involved, or when the issues have been especially complex and the situation unusually critical. Such situations occurred during the war and post-war period. It is for such reasons, as we have seen, that royal commissions, instead of boards of conciliation and investigation, were appointed in 1916, in disputes arising in the Thetford and Cobalt mines.[2] In 1918 similar situations led to the establishment of six royal commissions. The annual report of the Department of Labour comments upon the work of these commissions as follows:

> Various disputes occurred during the year [1918] in which there were concerned on the one side different employers, and on the other side, as a rule, several labor organizations. The machinery of the Industrial Disputes Investigation Act not being easily adapted to dealing with such disputes, Royal Commissions were appointed. The industries concerned were, as a rule, either public utilities or war industries. In all cases the inquiry led to a settlement of the dispute effected on the basis of the Commission's findings. . . . The nature of the industries involved and the territories affected are: . . . the shipbuilding establishments of the Province of Quebec, and their workmen; . . . different coal and iron companies of the Province of Nova Scotia and their

[1] Royal commissions have also been appointed to make an exhaustive inquiry into the underlying causes of unrest in particular situations as well as throughout the Dominion.

[2] See pages 196–197.

coal miners and steel workers; . . . various employing establishments in the city of Winnipeg and their workmen, members of organizations included in the Metal Trades Council; . . . shipowners of British Columbia and their employees, masters and mates, members of the organization known as the Canadian Merchant Service Guild, engaged in water transportation between British Columbia ports and American ports in Puget Sound and Alaska; . . . also the same classes of employers and workmen doing business on the lakes and rivers of British Columbia; . . . the collieries of the Island of Vancouver and their workmen; . . . Messrs. J. J. Coughlan and Sons, Vancouver, B. C., shipbuilders, and their shipyard employees.[1]

An illustrative case in which a royal commission was appointed occurred in Nova Scotia and New Brunswick in 1920. Unrest among miners had been rife in the region, and several boards had been established under the Disputes Act to consider the issues involved. In some cases these boards had been successful in obtaining agreements; in others they had failed. One of the boards suggested that "a Royal Commission be appointed with full powers to deal with the whole mining industry of Nova Scotia with a view to making such recommendations and findings as in its judgment will tend to stabilize the industry and to best conserve the interests of the mine workers, the operators and the public." The board based its recommendation on the fact that the public interest would not be adequately served by an investigation restricted to one company, and "that several boards either meeting simultaneously or successively would find it almost impossible to arrive

[1] Report of the Department of Labour for the fiscal year ending March 31, 1919. Ottawa, pp. 33–34.

at a common agreement."[1] Accordingly, a royal commission was appointed and an agreement was finally reached on the basis of its report.

The report of the commission was received in September, 1920, and contained detailed recommendations concerning a basis of a settlement of the dispute. These findings were not wholly acceptable to the disputing parties and the unrest continued. In October, 1920, a conference of representatives of the operators and their employees was summoned in Montreal by the Department of Labour. The conference continued from October 20 to 21 and from November 3 to 8. . . . The findings of the Royal Commission were used as a basis of discussion during the conference. An agreement was finally reached and ratified by a referendum vote of the members of the United Mine Workers of America in District 26, the terms being communicated by the district officers to the employees of all the coal-mining companies in Nova Scotia and New Brunswick. Eventually agreements were signed between the various companies and their employees which terminated this dispute.[2]

One royal commission, created for the coal mines on Vancouver Island in the fall of 1918, continued in office upon the request of the miners and operators until November, 1924. It became known as the Cost of Living Commission for Vancouver Island. Its purpose was to make periodical investigations into the cost of living as a basis for the determination of miners' wages. A representative of the Department of Labour acted as chairman. A representative of each of the companies and of the miners employed by them constituted the remaining members. Every three months this Com-

[1] Report of the Department of Labour for the fiscal year ending March 31, 1921. Ottawa, p. 14.

[2] *Ibid.* p. 15.

mission reconsidered the rates of wages paid to miners, with the object of readjusting them to changes in the cost of living. By the nature of its work, the Commission was in reality not an agency for adjusting disputes. Its purpose was rather to prevent the occurrence of disputes in coal mines by providing a factual basis for removing one of the chief causes of unrest during the war and post-war period, the disparity between wages and the cost of living.

Special Agencies Created for the War and Post-War Period

The abnormal stress of the war and post-war period created special emergencies in Canada, as elsewhere, which called for new policies and additional measures to meet unrest in industry. To cope with the war crisis, the government had recourse to three steps. First, it broadened the scope of the Disputes Act, in March, 1916, as we have seen,[1] to include war industries; second, it supplemented the Disputes Act, in July, 1918, with additional machinery known as the Board of Appeal; and third, it created new agencies, such as royal commissions, already described, the Canadian Railway Board of Adjustment No. 1 and the Director of Coal Operations.

Board of Appeal

Two years after the act was extended to war industries the government issued, on July 11, 1918, an order-in-council which, as already indicated,[2] created the Board of Appeal. In announcing the order, the

[1] See page 49, footnote 1.

[2] See page 249.

government made it clear that this Board was being appointed to meet the grave and increasing unrest among wage-earners, against which the Disputes Act was proving inadequate. Commenting upon this unrest, the government reviewed the serious interruptions of work that had taken place during previous months, and expressed the fear that strikes would probably increase still further unless more effective efforts were made to avert them. For their cause seemed to lie, in the opinion of the government, in "too hasty action on the part of the working men in ignoring the provisions of the Disputes Act and consequently adopting drastic measures before exerting every reasonable effort to reach a satisfactory settlement."

The Board of Appeal established by this order acted as a final court for the settlement of disputes brought before boards under the Disputes Act. This body reviewed the findings of boards appointed under the Disputes Act, and listened to such further evidence as either party wished to submit at its own expense. It was composed of two representatives of labor, nominated by the officers of the Trades and Labor Congress, two representatives of employers, nominated by the Canadian Manufacturers' Association, and a chairman, nominated by these four members, or by the Minister of Labour if they failed to agree upon a mutually suitable person. In outlining the place which it intended for the Board of Appeal, the government indicated its desire that the Board serve, as its name suggests, as an agency of review. When a dispute arose, the parties involved were to attempt settlement first by using the provisions of the Disputes Act. If a satisfactory adjustment could not be reached then, either employer or

employes could apply to the Board of Appeal. The decision of the Board of Appeal was to be final, whereas the findings of boards serving under the Disputes Act were in the nature of recommendations only.

Three months later, on October 11, 1918, another order-in-council was issued. After deploring the increase both in the number and seriousness of strikes, the government in this order expressly prohibited strikes and lockouts before or after awards by boards appointed under the Disputes Act or by the Board of Appeal, and provided heavy penalties for violations. In other words, compulsory arbitration was established for disputes in industries coming within the scope of the Disputes Act when voluntary settlement had not proved possible. Organized labor protested vehemently against this order, for until then strikes and lockouts had not been illegal if they occurred after an investigation by a board appointed under the Disputes Act.[1] A month later, however, the armistice was signed; and these orders, having been issued for the duration of the war, became inoperative and the Board of Appeal was abolished. Thus the attempt at compulsory arbitration in Canada was short-lived. Only seven disputes were submitted to the Board of Appeal during its brief life of four months.

[1] In Canada, as in the United States and in England, trade-union officials could not always control the behavior of the rank and file, who, restless because of numerous war factors, walked out on strike in spite of agreements and rapprochements reached between labor officials and the government. This fact doubtless explains why the Canadian government resorted to compulsory arbitration without apparently consulting the officials of the Trades and Labor Congress in spite of the rapprochement reached earlier in the year. See pages 246 ff.

The Director of Coal Operations

Ineffective from the beginning in averting strikes in coal mines, the Disputes Act, as already noted, proved to be especially inadequate to cope with the growing unrest among the miners of western Canada during the war. The office of Director of Coal Operations, created to exercise final authority over all matters pertaining to the production and sale of coal in District 18,[1] was in existence from June, 1917 until June, 1921. Altogether 517 disputes were handled by the Director of Coal Operations during these four years. As compared with the upheaval characterizing the period immediately preceding his entry upon the scene, there were few strikes in the coal mines of District 18 during his incumbency. The only exception to this general success in maintaining amicable relations was in 1919, when the One Big Union was in the heyday of its power.

Disputes were referred to the Director only after attempts at local settlement had failed. They dealt with the whole range of questions usually arising in coal mines between management and employes, such as rates of pay, hours of work and "dead work." The Director of Coal Operations issued his decisions in the form of written orders which, under the terms creating his office, were mandatory upon both employers and employes. Thus compulsory arbitration was in reality established in the coal industry of District 18, a procedure usually opposed by the United Mine Workers of America with the utmost vehemence. It should be recalled, however, that this was an extraordinary meas-

[1] The events leading to the appointment of the Director of Coal Operations have been fully described on pages 84–85.

ure, sanctioned by this organization in its attempt to crush the One Big Union; and it is extremely doubtful whether such functions as those carried by the Director of Coal Operations during the war and post-war period could be continued indefinitely during peace times with any measure of success.

The Canadian Railway Board of Adjustment No. 1

As part of its effort to provide the best methods for the adjustment of labor difficulties during the war, the Canadian government had encouraged the establishment, in August, 1918, of the Canadian Railway Board of Adjustment No. 1.[1] This Board has worked with such a degree of satisfaction to both management and employes that it is still in operation today. It was not created by an act of Parliament or by an order-in-council. It was voluntarily established by the railways of Canada and the large railroad brotherhoods as the result of a joint meeting called by the Minister of Labour in July, 1918, for the purpose of establishing machinery for the adjustment of disputes on Canadian railways.

The Board is composed of 12 members, six of whom represent the companies[2] and six the labor unions. The railroad labor unions are: the Order of Railway Conductors, Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers, Brotherhood of

[1] Labour Gazette, Vol. XVIII, p. 981, November, 1918.

[2] The companies, members of the Railway Association of Canada, are: Canadian National Railways; Canadian Pacific Railway; Dominion Atlantic Railway, Edmonton, Dunvegan and British Columbia Railway; Esquimault and Nanaimo Railway; Grand Trunk Railway; Grand Trunk Pacific Railway; New Brunswick Coal and Railway Company, Quebec Central Railway; Temiskaming and Northern Ontario Railway; Toronto, Hamilton and Buffalo Railway.

Locomotive Firemen and Enginemen, Order of Railroad Telegraphers and the United Brotherhood of Maintenance-of-Way Employees and Railway Shop Laborers. Signatories to the memorandum creating the Board agreed that they would submit to it for adjustment all disputes arising between the respective employers and labor organizations which could not be settled by the local representatives of both parties. It assumed no formal responsibility with regard to disputes affecting organizations other than the six brotherhoods, but differences between railroads and workmen who were members of other organizations could by mutual consent be referred to it.

The original purpose of the Board, as expressed in the first agreement creating it, was "to avoid disputes or misunderstandings which would tend to lessen the efficiency of transportation service in Canada during the war." On April 15, 1921 the agreement creating the Board was renewed, giving this time as its objective, "to aid in the preservation of industrial peace in the Dominion of Canada."

The new agreement is substantially the same as the old one, save for two significant differences. The first agreement contained a clause which forbade strikes or lockouts. No such clause was embodied in the second agreement. While officials of the railroad brotherhoods were willing to give up the right to strike during the war emergency, they did not feel that it would be wise for them to continue such a policy in times of peace. The decision of a majority of the Board is binding, however, in any dispute referred to it. The original agreement provided that in cases where a majority decision could not be obtained, and the vote was divided

equally between representatives of the railroads and of the labor organizations, the dispute should be referred to an impartial arbitrator, who was to be appointed by the Governor-General in Council if the members of the Board themselves failed to agree on a suitable person. In the second agreement, the Minister of Labour is designated as the official to appoint the impartial arbitrator in such cases. The decision of this arbitrator is final and binding.

It is not the function of the Board to arbitrate terms of employment when new agreements are being negotiated between the unions and the carriers. It acts only after an agreement has been reached. The disputes which come before the Board involve, therefore, the interpretation of agreements and working rules as they are applied in the daily working life of the men. Disputes are referred to it by the chief executive officer of the union and the chief operating officer of the railway involved only after all other efforts on the part of management and men to adjust the difference have failed.[1]

[1] These efforts are made through the machinery usually provided in the agreements between the railroad brotherhoods and railroad companies. The procedure for submitting disputes to the Board is described as follows in Clause 8 of the agreement:

"All disputes including personal grievances, or controversies arising or pending under interpretation of wage agreements between officials of a railway and its employees covered by this agreement, are to be handled in the usual manner by General Committees of the employees up to and including the Chief Operating Officer of the railway (or some one officially designated by him), when, if an agreement be not reached, the Chairman of the General Committee of employees may refer the matter to the Executive Officer of the organization concerned, and if the contention of the employees' committee is approved by such Executive Officer, then the Chief Operating Officer of the railway, and the Executive Officer of the organization, shall refer the matter with all supporting papers to the Board, which shall promptly hear and decide the case, giving due notice to the Chief Operating Officer of the railway and to the Executive Officer of the organization of the time set for hearing."

A few typical cases will illustrate the disputes handled by the Board. In one dispute between a railway company and its employes the issue was whether overtime should be included in the guaranteed work period of one calendar month for yard crews. The case reads:

A yard crew of the Canadian Pacific Railway Company, western lines, was cancelled on April 15, 1921, overtime made during the month being included in making up the month's guarantee, provided for in Article 18 of the yardmen's schedule. This article reads as follows:

"Regular yardmen who do not lay off of their own accord and are held for entire month to fill an assignment will be paid for not less than the calendar working days of the month or their proportion thereof when an assignment is created or discontinued.

"This will not apply to irregular yard service unless men are held for such service."

The company claimed that ever since this article was inserted in the schedule the guaranteed payment included all time made during the month, and that in fact the intent of the article was to protect men held for duty so that their earnings each month would at least equal the pay for the number of calendar working days in the month. It was claimed that the company had applied the proper interpretation of the rule since its insertion in the schedule.

The employees contended that Article 18 of the present yard schedule referred only to the calendar working days of the month and provided a guarantee for pay for each and every calendar working day, and did not contemplate that crews might be cancelled on certain days and the overtime earned on other days used to make up the guarantee as in this case.

By decision of the board the claim of the employees was sustained.[1]

[1] Labour Gazette, Vol. XXII, p. 1176, November, 1922.

Another case presented a type of issue involving questions of payment. A conductor and crew, ordered to clear a yard of snow, later claimed payment for this work as "yardmen's work." The company contended, on the other hand, that this work was purely train work and should be paid for as such. This case reads:

A conductor and crew were called one day in winter to clear the yard at Atikokan of snow. The employees contended that under Rule 14 of the trainmen's schedule "Trainmen required to perform yardmen's work in any one yard in excess of five hours in any one day will be paid at yardmen's rates per hour for the actual time occupied." It was further claimed that the work performed in this case clearly came under the definition of yardmen's work as given in Clause B of the yardmen's schedule. On behalf of the railways it was contended that this was purely train work and should only be paid at rates provided for such, that no regular switching crews were assigned to that point at the time in question, and that Rule 14, Clause A, in the trainmen's schedule did not apply.

The decision of the Board was as follows:

"The Board is of the opinion that the service referred to, and the circumstances under which it was performed, do not support the claim, and it is therefore denied."[1]

Other typical disputes over questions of compensation concern such matters as the payments that should be made to train crews for detention at terminals or "terminal time," for switching, for legal holidays, for time out of service spent in court attendance; the rates applicable to various forms of service; overtime; and interpretations of wage rates in new schedules.

Questions of dismissals, suspensions and discipline also figure frequently in cases brought before the board.

[1] *Ibid.* p. 1172.

The dismissals which are appealed to it are for various breaches of rules, such as rules penalizing intoxication while on duty, malingering, insubordination, theft, irregularities in handling transportation, and improper protection of trains. Dismissal is usually the penalty for violations of this kind. Milder forms of discipline are imposed for less serious offenses, such as delay in "getting the train off the road" resulting from the crew's lack of "proper interest," and failure to remove funds upon leaving shops which do not have safes. Examples of these cases follow:

Case No. 130—The Canadian National Railways, western lines, and the Brotherhood of Railroad Trainmen.

This case had reference to the dismissal on the grounds of insubordination of a conductor of the Canadian National Railways for refusing to accept a call for service. The employees contended that in dismissing the conductor the officers of the company were meting out discipline too severe for the offense committed. At the hearing before the Board the parties to the controversy agreed between themselves as to its disposal and the case was therefore closed.[1]

Case No. 141—The Canadian Pacific Railway, western lines, and the Brotherhood of Railroad Trainmen.

A controversy arose over the dismissal of a brakeman of the Canadian Pacific Railway for alleged violation of Rule G, having been reported by a caller of the railway and to have been under the influence of liquor. The employees contended that this brakeman should not have been dismissed, as they alleged no evidence was produced at the time which showed that he was under the influence of liquor. The only statement furnished in the case was supplied eleven months later when the general manager of the company informed the men's committee that he had the caller's original statement.

In its general statement the Board said:

[1] *Ibid.* p. 1172.

"There appears to have been some misunderstanding and considerable delay in dealing with the matter when originally taken up between the representatives of the committee and of the company.

"The Board cannot, of course, countenance any violation of Rule G, about the evidence of which there can be no question."

The decision of the Board was as follows:

"Under all the circumstances the Board recommends to the company a reconsideration of the discipline applied in the case."[1]

Case No. 152—The Canadian Pacific Railway, western lines, and the Order of Railway Conductors.

A conductor of the Canadian Pacific Railway, western lines, was dismissed for the following reasons: "For violation of Rules 87, 99, and 106, resulting in being on the main line of the Tabêr Subdivision, when conductor on train 3rd 92, on the time of train 511, without orders or proper flag protection."

The employees admitted that train 3rd 92 was on the main line on the time of train 511 without authority, but claimed it was through no fault of the conductor, as his train was too heavy to back into the siding where he should have waited, and consequently he had to let the train go on. They also admitted that proper protection was not arranged as per Rule 99, but claimed that while the rule was not literally carried out, there was no conceivable risk on that account as it was a clear day, and there was a straight track at Coaldale where he stopped to take the train into a siding. The employees contended that the discipline given the conductor was extreme and that it should be changed from dismissal to suspension to date of his return to service.

The Board declared that it admitted that the conductor's train was, with his knowledge, on the time of and running against the rights of a superior train, without protection, and in the interests of safety it could not see its way clear to condone such a violation of operating rules.

The claim of the employees was therefore denied.[2]

[1] *Ibid.* p. 1177.

[2] Labour Gazette, Vol. XXIII, p. 366, April, 1923.

Other cases which the Board is called upon to decide concern the interpretation of technical working rules, and working schedules and agreements. Under such heads are considered the composition of crews, classification of service, and payment for disputed types of service.

Many of the disputes which have been handled by the Canadian Railway Board of Adjustment No. 1 would ordinarily have come before boards appointed under the Disputes Act. Indeed, the Disputes Act has had little to do since August, 1918 with difficulties arising between railroad companies and the six railroad brotherhoods. While the Railway Board was not created by a statute of the dominion government, it has received the hearty approval of the Department of Labour. For recent ministers of labor have felt that it is most advisable in the interests of industrial stability for parties involved in industrial relations to set up voluntarily their own machinery and through it to settle the differences arising between them. And indeed, the record of this Board shows the success that may be achieved through such voluntary machinery. The latest available report shows that up to September 30, 1923 the Railway Board of Adjustment No. 1 had given 180 decisions. All of them were unanimous.[1]

Canadian National Railways Employees' Board of Adjustment No. 2

As a result of the successful operation of the Canadian Railway Board of Adjustment No. 1, a similar board,

[1] Canadian Railway Board of Adjustment No. 1. Second Report of Proceedings of Board from September 1, 1920 to September 30, 1923. Department of Labour, Ottawa, 1923.

called Canadian National Railways Employees' Board of Adjustment No. 2, though operating in a much more limited field, was organized in October, 1925. This Board, as its name implies, has for its purpose the adjustment of disputes arising between the Canadian National Railways and the members of the Canadian Brotherhood of Railway Employees.[1] The workers brought within the jurisdiction of this Board include clerks, freight-handlers, blacksmiths, boilermakers, machinists and a number of other crafts working on the Canadian National Railways. Like Board No. 1, it is also composed of 12 members, six of whom represent the Canadian National Railways and six the Canadian Brotherhood of Railway Employees. At its first meeting, on November 17 and 19, 1925, held in Montreal, this Board heard nine cases. All of them were decided unanimously.

Thus, save for occasional emergencies arising during the war, the Canadian government has acted mainly as a mediator in its attempt to prevent industrial conflicts and has encouraged employers and employes to establish their own machinery, such as the

[1] The Canadian Brotherhood of Railway Employees was organized in 1908. While having one branch in the United States, it is in reality a Canadian union. It has a membership of 13,300. It is considered a dual organization by the American Federation of Labor and the Trades and Labor Congress because it claims jurisdiction over railway employes claimed by an earlier union, the Brotherhood of Railway and Steamship Clerks, Freight-Handlers and Station Employees. Between 1917 and 1921 the Brotherhood of Railway Employees was affiliated with the Trades and Labor Congress. It was expelled from the latter because it refused to yield its membership to its older rival. Early in 1926 the Brotherhood issued charters to Canadians who had seceded from the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers, and it is "now definitely in the field to accept into membership all classes of railway shopmen in Canada." (Labour Gazette, Vol. XXVI, p. 126, February, 1926.)

railway adjustment boards, for the continuous adjustment of disputes arising under trade agreements. In other words, just as in the administration of the Disputes Act, so in the establishment of other means for preventing strikes and lockouts the government has followed a procedure of conciliation.

CHAPTER XIV

SIGNIFICANCE OF CANADIAN EXPERIENCE FOR THE UNITED STATES

WHAT light does the experience of Canada with the Industrial Disputes Investigation Act throw on the possibilities of government intervention in industrial disputes? What lessons, in particular, does the relatively long history of the act have for those persons in the United States who are anxious to work out a method for safeguarding the community's interest in continuous and efficient operation of public utility industries? What insight does it yield into the methods and forces making for success and those making for failure in the effort to avert strikes on railroads, in coal mines and in other basic industries?

Types of Government Intervention

Legislation under which governments intervene in the settlement of industrial disputes may be divided into two classes, according to whether or not any restriction is placed upon the right to strike or lockout. Under the first, which may be called compulsory, strikes and lockouts are prohibited either completely, by laws providing for compulsory arbitration; or for a given period, by laws prohibiting strikes and lockouts pending investigation. Under the second, which may be called voluntary, the right to strike or lockout is not interfered with in any way whatsoever; machinery is merely provided for mediation or conciliation, investi-

gation or voluntary arbitration. Under compulsory arbitration, boards or courts are set up to pass on disputes arising between employers and employes. Their awards are final and binding. Under compulsory investigation, an inquiry is made by a government board or commission, but its findings are not binding. They are only recommendations for the adjustment of the dispute.

Under legislation of the first type, then, the parties to an industrial dispute must submit their case to the government either for final decision or for investigation. Under legislation of the second type, the government may suggest or even urge, but it has no legal power to compel the submission of a dispute. As mediators or conciliators representatives of the government tender their good offices to employers and employes where a dispute is threatened or has already occurred. By thus acting as intermediaries between the disputants, they hope to effect the resumption of negotiations between them and either avert a strike or end one already in existence.

As investigators a government body inquires into the issues in dispute. It is usually given the power to examine books, to subpoena witnesses, to investigate premises and to follow such procedure as will enable it to uncover all the pertinent facts; it formulates recommendations for the adjustment of the dispute. But, in contrast to investigation conducted under compulsory legislation, employer and employes are free, both before and during the investigation, the one to declare a lockout, the other to strike.

Under laws providing for voluntary arbitration, representatives of the government endeavor to persuade

the employer and employes to submit their case to a tribunal consisting of one or more arbitrators. If the parties to the dispute accept the suggestion, it is usually understood from the outset that the award of the tribunal will be binding upon both parties.

Any of these types of intervention, or a combination of them, are the possible means which a government may use in handling industrial disputes. What can be learned from Canadian experience with respect to their relative efficacy? The Industrial Disputes Act creates two methods of intervention, conciliation and investigation. Which of these has proved the more efficacious in avoiding strikes and lockouts? What can be learned from the experience of Canada with the compulsory clauses of the law, which compel the postponement of strikes and lockouts until the completion of an investigation?

Conciliation, Not Compulsion, Applied in Canada

It is worth while to examine in this connection the relative merits of the compulsory and voluntary methods of government intervention in industrial disputes, as revealed by Canadian experience. For Canada has used both. The Disputes Act was drafted upon the principle of compulsion. It has been administered largely as a voluntary measure. Also in its other attempts to meet industrial emergencies Canada, as was shown in the previous chapter, has established both compulsory and voluntary machinery.

The discussion is particularly pertinent to our present purpose because in the United States compulsory legislation, even to the extent of establishing compulsory arbitration, has been strongly urged from time to time.

Thus the United States Coal Commission appointed in 1923 was called upon to consider compulsory arbitration as a means of eliminating the periodical strikes which have been occurring in the coal industry. But after the most exhaustive investigation that has yet been made of this industry, the Commission was opposed to compulsory arbitration. Its report says:

> We recommend against compulsory arbitration as a means of preventing a national strike, because we do not believe in discretion-made law in either the industrial or political field, and because there is no way to enforce a compulsory award which does not involve enforced operation or enforced labor.[1]

The investigating staff of the Commission further elaborates this recommendation as follows:

> Freedom from strikes cannot be obtained by compulsion. It can grow only out of good relations, a solution of the economic problems which cause strikes, and on the part of both parties co-operating in making the collective bargaining arrangements serve the public as well as themselves. Policies to be successful must have the support of both parties. The best relations in industry cannot be obtained by the compulsory pronouncements of a third party, even though that body be a government labor board, any more than can the best domestic relations be obtained by the continuous intervention of a court of domestic relations. The wiser and more fundamental policy, even if it lacks the appearance of mechanical simplicity, is to stimulate both operators and union to such an attitude and to such an attack upon their own problems that both sides will realize the shortsightedness of policies which lead to a settlement of differences by a fight at the expense of the public.[2]

[1] Hunt, Edward Eyre (Editor), What the Coal Commission Found. Williams and Wilkins Company, Baltimore, 1925, p. 332.

[2] *Ibid.* pp. 333–334.

The experience of Canada with the operation of the Disputes Act bears out this conclusion to a singular degree. The corroboration it offers is all the more significant because the Canadian act provides only for a temporary postponement of strikes and lockouts as contrasted with their complete prohibition in the case of compulsory arbitration. If it has been found unwise to apply the milder form of coercion embodied in the Canadian act, how much more difficult would it be to apply the more drastic coercion of compulsory arbitration!

From the very beginning the Canadian law has thrown light on the difficulty of applying compulsion. The Disputes Act was proposed, it will be remembered, as the result of a serious coal strike. Its framers sought to prevent the occurrence of similar strikes not only in coal mines but in all public utilities by compelling the postponement of a shutdown until a publicly appointed board had heard the dispute. The board was to attempt conciliation; but if it failed in this objective, it was to investigate the issues in dispute and report the facts to the community so that an intelligently informed public opinion could bring pressure to bear upon both parties to reach an amicable and satisfactory agreement without interruption of service.

When the administrators of the act attempted to apply it to coal mining, they found in the first place a militant union, the United Mine Workers of America, attempting to secure recognition as the representative of the miners of Canada for determining wages and working conditions. The union stood ready to seek its ends first through negotiation; but if that method failed, as it usually does at the outset, it was prepared

to resort to strikes. Later, after the United Mine Workers had secured a foothold, and the issue of union recognition no longer made trouble, the administrators of the act found that they had sometimes to face cessations of work in the coal-mining industry of Canada simply because the negotiation of new trade agreements there is related to negotiations of new agreements in the coal industry of the United States. Wages in the Central Competitive Coal Field[1] are used as the base rates upon which wages are determined throughout the unionized fields of the United States and Canada. When wage agreements expire in the Central Competitive Coal Field and suspensions are initiated prior to the negotiation of new agreements, the officers of the United Mine Workers may, and do, call out coal miners in Canada as well as in this country. This practice has been responsible for a number of strikes in Canada, especially in the western coal fields.

Also, and perhaps most important, the administrators discovered that the peculiar economic conditions under which coal was mined in Canada made for instability, which in turn made for unrest and disputes over the wage bargain—disputes resulting in a number of long and costly strikes. Largely because of competition from the United States, Canadian operators, in seeking to counterbalance the more favorable transportation costs of operators in the United States by reducing their own production costs, have repeatedly asked the miners to take wage reductions. The miners, on the other hand, contending that a living wage should be a first charge on the industry, have resisted, even to the extent of striking, efforts to decrease their earnings.

[1] The Central Competitive Coal Field embraces the coal areas of Illinois, Indiana, Ohio and western Pennsylvania.

Facing such conditions—the long effort of the United Mine Workers to secure recognition in the coal fields of Canada, the policy of the union to call out the mine workers of Canada with those in the United States when ordering a suspension prior to negotiating a new agreement, and attempts of operators to reduce wages as a means of meeting competition from the United States—what measures could the administrators of the Disputes Act adopt to enforce the law? Was the government to prosecute the strikers and enforce the penalties provided in the law? Would the imposition of such penalties on 6,000 miners and the incarceration of them all, or of their leaders only, have removed the fundamental causes which led to the strike? While fundamental causes making for unrest served to produce more violations of the Disputes Act in coal mining than in any other industry coming within its scope, and thus put the policy of the government to its severest test, the technique of conciliation was gradually developed by the government in coal mines, as well as elsewhere, and has been used in all public utilities, whether stable or unstable. This technique has undoubtedly made the act, for all practical purposes, and in spite of the compulsory features written into it, a "voluntary" measure; no prosecutions by the government, no compulsion, but persuasion, rather, for the recalcitrant who disregarded the act in times of conflict. In the same way, boards appointed for disputes also found from practical experience that amicable settlements could be attained far better by pursuing a policy of mediation and conciliation than by threatening the use of power conferred upon them by the Disputes Act. Tact, patience, understanding and persuasiveness found a readier appeal than threats of subpoenas, fines and arrests.

The extent to which the government has attained success by disregarding the compulsory provisions of the act and emphasizing its conciliatory features has been clearly indicated by the record of its operation. In a word, then, whatever may have been the theory behind the act, its administration by the Canadian government has made it essentially a measure for conciliation. The success it has won in averting and settling disputes represents a triumph for intervention on a voluntary basis as contrasted with a compulsory one. So successful, indeed, has this method been found in Canada that, with the exception of a very short period during the World War, it has been consistently employed by the government in establishing other machinery for handling disputes, such as the railway adjustment boards.

Advantages of Conciliation

The record in Canada would seem to point to conciliation as an excellent method of government intervention in industrial disputes. The question then becomes: What elements in the process of conciliation explain its peculiar suitability for this purpose? The chief value of conciliation, as revealed by Canadian experience, seems to lie in the fact that it enables those intervening in an industrial dispute to take a realistic view of the situation at hand. Not called upon to make a final decision on the basis of abstract justice, conciliators can seek in each controversy that solution which will best resolve the conflict under consideration. Representing the public interest, the conciliators press upon the parties to the dispute, from the very outset and throughout the proceedings, the fact that interruption of service would constitute a danger to the whole com-

munity served by the industry concerned. This aspect emphasized, the conciliators can seek to place squarely upon the shoulders of the employers and employes involved the responsibility for arriving at an amicable settlement.

To make the disputants themselves responsible for finding a satisfactory adjustment seems sound for two reasons. In the first place, whatever settlement is finally made must be translated into everyday practice by the employers and employes involved. In the second place, it puts the actual details of working out the settlement into the hands of the people most familiar with the technical aspects of the industry in which the dispute has arisen. Frequently employers and employes are reluctant to turn over their differences to an outsider for arbitration for the very reason that he is not familiar with the technical processes of their particular industry. The conciliator, on the other hand, is not confronted at all with the task of making final decisions. His emphasis is not on the particular terms of a settlement but on arriving at a settlement. It is his responsibility to maintain uninterruptedly the processes of negotiation. Consequently he persuades both parties to continue in conference, on the theory that reasonable men discussing their differences step by step can arrive at an understanding and will thus avoid coming to blows.

The technique of conciliation is also particularly suited to assist employers and employes to negotiate the terms of the labor contract. If the methods which prevail in an industry to negotiate and establish rates of pay, hours of work and conditions of employment function well, there is no reason why strikes or lockouts

should take place. It is usually only after these methods have failed that either employers or employes prepare to use their economic power to secure, from their point of view, the best terms of a labor contract. As we have seen in Chapter X, The Influence of Economic Factors on the Attitudes of Employes and Employers,[1] the relative power which employers and employes bring to negotiations is affected by fluctuations in business conditions and by other social and economic factors. Employers are in a stronger position in slack times, and employes have the upper hand when business is booming and labor is scarce. Now the effectiveness of conciliation is that it makes possible, if the conciliator is skilful enough, the achievement of a settlement which represents an approximate balance of power between the parties at the time in question. Moreover, the conciliator seeks concessions from both sides. In times of prosperity, for instance, he will attempt to find out to what extent the employer is willing to increase wages and grant other improvements in working conditions rather than have his men strike and thus prevent him from selling on a rising market. In times of depression he will attempt to find out how much the workers are willing to concede rather than lose their jobs and find themselves thrown out into a glutted labor market. Then, having secured from each side the largest concession it is willing to make at a given time and under given circumstances, the conciliator is in a position to persuade both parties to arrive at a settlement in terms of these concessions rather than resort to hostilities in the form of a strike or lockout.

[1] See page 220.

Importance of Personnel and Flexibility in Board Membership

From the nature of conciliation, as just indicated, the importance of the personnel appointed to act on conciliation boards is apparent. The task of the conciliator is, in one sense, more difficult than that of the arbitrator or the investigator. The arbitrator listens to both sides and hands down a decision on the basis of the evidence presented. The investigator is charged with the straightforward duty of obtaining the facts and preparing a report upon them. The conciliator, on the other hand, enters into a controversy that may have reached a breaking point, attempts to heal the breach and to bring the disputants, by the method of conference, to a peaceful and mutually satisfactory settlement. Obviously the men capable of achieving such ends must possess, in a large degree, tact, persuasiveness, judgment and understanding. Canada seems to have been particularly fortunate in the competence of the personnel serving on boards established under the Disputes Act, as shown by the large proportion of unanimous reports and the small proportion of strikes and lockouts which took place after disputes were referred to boards.

The experience of Canada with the Disputes Act throws light on the relative merits of a separate board for each dispute as compared with a permanent board to hear all disputes. Under the Disputes Act, a separate board is appointed for every dispute. This method possesses two advantages. It avoids the risk of suspicion and antagonism, so often incurred where the personnel is permanent. A conciliator, as well as an arbitrator or investigator, may antagonize one or both

parties to a dispute, and the antagonism may be carried over to a large group. For instance, if the chairman of a certain board should antagonize the official of a large trade union, the reputation of that chairman as a fair conciliator might be ruined for the whole trade-union movement of the country. Should he act in another dispute, he would immediately encounter a distrust which would make it impossible for him to win the confidence of the workers and therefore to avert a strike. If he were a permanent appointee, this initial distrust might eventually nullify the effectiveness of the whole measure for intervention. But under the Canadian method such a chairman would simply never be appointed again to a board.

In the second place, under the Canadian practice a panel of men who have distinguished themselves as successful conciliators is virtually created through repeated reappointments. Individuals who have succeeded in effecting settlements satisfactory to all parties in a dispute find themselves invariably called upon again and again to act as members of boards. Thus the Canadian Disputes Act has avoided the danger of a permanent board, which may antagonize either the workers or the employers because of action unfavorable in any one dispute, and at the same time has secured the advantages of permanence and the skill which comes from repeated practice in industrial disputes.

Scope of Investigations Conducted under the Act Limited by Emphasis on Conciliation

By definition and intent, the Disputes Act had for one of its primary purposes the investigation of disputes arising in public utilities. But the central role

accorded to conciliation by the administrators of the act has necessarily tended to diminish the importance of the function of investigation. The conciliator above all must win the confidence of the parties to the dispute—a task likely to be beset by difficulties at the outset. The conciliator, it must be remembered, enters the scene after a break in negotiations has occurred. Indeed, employers and employes are precluded from invoking the Disputes Act until all negotiations to arrive at a settlement have failed, or unless one party has been unwilling to enter into negotiations; and in either case a strike or lockout would otherwise be declared. It is natural, therefore, that the atmosphere surrounding the first meetings of the board should be charged with emotion. Under these circumstances the chairman of a board must impress both sides with his friendliness and impartiality. This is easier if the hearings he conducts are informal. Either side may be reluctant to give certain information; to press for it may jeopardize the board's position as a conciliator. That is why the most successful chairmen of boards have been unwilling to apply the powers conferred by the law upon boards, to subpoena witnesses, examine books and compel the production of evidence under oath.

In short, boards have not considered themselves investigators charged with the duty of securing, either by their own efforts or by the efforts of special agents, all the pertinent data about a given dispute for presentation to the general public. Their technique has rather been one of co-operative discussion and inquiry by which the members of the board and the contestants together analyze the elements of the dispute with the

purpose of securing agreement step by step until the conflict is completely settled. Frequently during board hearings, when the disputants cannot agree on an adjustment of particular phases of the controversy, they agree to abide by the decisions of the boards. In this way the boards sometimes act as arbitrators. But this function of arbitration has been carried on within the limits set by the parties themselves and as part of the co-operative effort to adjust the issues in conflict and arrive at an amicable settlement.

Conciliation and Public Opinion

If the function of investigation has been thus minimized, what, it may be asked, has become of another primary objective of the Disputes Act, namely, the use of public opinion as a force exercising an intelligent and just influence on industrial disputes? Whatever may have been the original purpose of the sponsors of the law, the plain facts of the case are that the operation of the Disputes Act has not carried with it the education of the general community in the facts underlying industrial disputes. Reports of boards, as we have seen, are usually brief summaries of procedure followed and results obtained. No special provision is made for their wide and general distribution. The government has consistently stressed the importance of preventing or adjusting disputes, and boards have been enjoined, as has already been shown, to be conciliators first, and investigators only as a means of aiding in the processes of conciliation.

Certain conceptions of the nature of public opinion and its relation to industrial disputes, which are gradually gaining wide acceptance, seem to lend justification

to this ignoring of public opinion and slighting of "public education" on the part of the Canadian government. In recent years, students of politics have given growing attention to the question of just who compose the "public" and what constitutes "public opinion." Indeed, the whole question of the relationship of the general public to industrial relations is one which has not yet received the searching analysis which it deserves. Before we can proceed effectively to educate public opinion on industrial disputes, we would seem to need intensive research to discover how various elements of the community—its editors, its business men, its wage-earners, its professional groups—arrive at their opinions upon the merits of industrial controversies. What are the sources of facts for these groups? Under what circumstances do they become actively interested in industry as a whole or in particular industries? What steps do they take, if any, to build up conditions, standards and machinery which may prevent the occurrence of strikes and lockouts? Just how do they express their opinions when strikes or lockouts occur? What utterances in times of strikes may be accepted as the attitude of the general community? These are only a few of the questions which need to be answered before we can generalize to any extent about the function of public opinion in industrial disputes.

This much may perhaps be said. Broadly speaking, the citizens of a community who are not directly interested in a particular controversy are concerned only with securing efficient and uninterrupted service from industry. Unless we are coal miners or operators or otherwise directly interested in the mining of coal, our concern with coal mining is limited to procuring coal at

reasonable prices, when we need it to fill our bins. We want railways and street cars to run on schedule time. We expect fresh milk at our door every morning. With the technicalities of mining coal and running railways, with the determination and fairness of wages, with the quality of industrial citizenship promoted by the conditions of various industries—with such things the rank and file of the community who theoretically are the "public" are not usually concerned. It is only when a strike suddenly stops the delivery of coal or milk, interrupts the running of trains or street cars, that we as consumers become aware of problems in industry. And at that moment of interruption, no matter how conscientious we may be, we cannot become thoroughly informed immediately upon the particular issues raised by the parties to the dispute. The sources of information are too few (and probably too partisan), the technical aspects too many.

It is such considerations that make the emphasis placed by the Canadian government on conciliation rather than investigation sound. Canadian officials have frankly assumed that the community is primarily interested not in knowing the truth but in avoiding any interruption of service that will jeopardize its comfort and routine. The conciliator's success or failure as a representative of the community hinges on whether or not he succeeds in averting a strike. Moreover, if conciliation achieves a settlement by placing the responsibility for arriving at it on the contestants themselves, there is no special reason for acquainting the "man in the street" with the technical facts involved in the specific and numerous disputes. Ministers of labor have come to feel, apparently, that when they have

succeeded in bringing the disputants to formulate a mutually acceptable agreement they have discharged their duty to the general public.

Effectiveness of Arbitration When Limited to Differences Arising under Agreements

The success of the Canadian railway boards of adjustment in always arriving at unanimous decisions throws significant light on the role of arbitration in industrial disputes. Arbitration may be suggested for two different types of disputes arising between employers and employes. It may be proposed as a means for determining a scale of wages and conditions of work, where no previous agreement has been in existence, or at the expiration of existing agreements when employers or employes find it impossible to agree on new terms. Arbitration of this kind should be carefully distinguished from machinery for arbitration provided in agreements already formulated. The latter establishes a court of last resort when grievances arise from the application of an existing agreement to actual shop practices. Both parties readily subscribe to arbitration under these conditions. Most of the controversies with regard to the acceptance or rejection of arbitration in industrial disputes revolve around the first type of dispute, the weaker party urging arbitration, the stronger refusing it.

The railway boards of adjustment described in the previous chapter handle only those disputes that arise under the agreements existing between the unions and the railway companies. In other words, neither board will assume any part in the actual negotiation of new agreements, but strictly limits its functions to the

interpretation of whatever agreements may have been formulated and their application to specific disputes arising from day to day. The acceptance of this principle may be read especially in the record of the Canadian Railway Board of Adjustment No. 1, which has been in operation now for some eight years. The basic agreements negotiated between the railroad brotherhoods and the companies usually run for an indefinite period of time with the provision that either side may, upon thirty days' notice, reopen negotiations to suggest changes in wages or working conditions. In practice, then, both sides attempt to formulate new conditions by joint agreement. However, if they are unable to agree, their dispute is referred not to the Board of Adjustment but to a board appointed under the Industrial Disputes Act. In 1921, for instance, five brotherhoods—the engineers, firemen, conductors, trainmen and telegraphers—applied for a board under the act upon notification by the railroad companies that their wages would be reduced. When the carriers refused to nominate a representative to this board, one was appointed for them by the Minister of Labour. The roads co-operated in the hearings; and the report of the board, which was unanimous, resulted in the signing of a new agreement calling for reductions in wages. After this agreement was signed, the Board of Adjustment began to function again, as under the previous agreement, in applying the terms of the latter to disputes arising in the daily work. The success of this Board is indicated by its record, having rendered 180 decisions up to September 30, 1923, all of which were unanimous.

Absence of Binding Principles in Adjusting Disputes

That the administrators of the act have not evolved and formulated a set of principles that might serve as a general guide to boards in the handling of disputes has already been made clear. This fact possesses undoubted significance. Why has not the government during the course of the 500 cases disposed of under the Disputes Act attempted to build up a set of principles? One explanation lies, no doubt, in the fact that boards, acting as conciliators, attempted to find an adjustment for each particular dispute without letting themselves be hampered by any formal set of principles. This does not mean, however, that conciliators in Canada have come to disputes with blank minds. Most of the boards that rendered decisions did embody certain principles in their reports. Thus, as we have already seen, in recommending wage rates, such questions as relation of wages to cost of living, to productivity and to the state of the industry, to skill and to other factors have all been considered. But these principles were at no time codified. Indeed, different boards rendered like decisions for varying reasons, and varying decisions for like reasons.

It is very probable, moreover, that the parties concerned in any dispute would be unwilling to submit their case to a board which they knew came to its task with a definite code in mind. This unwillingness hinges upon what seems to be a strong factor militating against the adoption or formulation of such a code—the nature of industrial relations. For the terms of the labor contract are based generally not on any given set of ethical principles, but rather on the best conditions each side

can obtain at a given time. In times of prosperity, labor will attempt to secure the utmost in concessions from the employer and will even strike if the employer proves unwilling to grant what the workers then consider sufficient concessions. In times of depression, it is the employer who attempts to secure as many concessions as possible, and he may resort to a lockout if his employes are unwilling to make them. Each side in this bargaining process may point to principles in order to secure its end. But the principles usually serve only as excuses to justify the economic power available to each side. Thus in times of prosperity and rising cost of living, wage-earners may base their demands for increases in wages on the ground of increase in cost of living. These same wage-earners may, however, be unwilling to accept a reduction in wages in times of depression, when proposed by employers on the ground that the cost of living has declined. To counteract this, other arguments, such as the desirability of a high standard of living and unemployment, are then advanced. In times of depression an employer may argue for the reduction of wages on the ground that profits have decreased, but in times of prosperity the same employer may be unwilling to grant the increases in wages which are demanded on the ground that profits have increased.

But whatever the arguments for or against may be, Canadian experience has failed to show the desirability of formulating an industrial code. Such a code has been often urged in the United States in recent years. This code, according to its sponsors, would be in effect an industrial bill of rights. The organic law, or the magna charta of industry, it might be termed. It would

furnish the first essential step toward uniformity and stability in the relations between employer and employe—an accepted basis of procedure. Specifically, according to these advocates, fundamental principles would be defined and promulgated to govern the relations of labor and capital with respect to the right of employers and employes to organize, collective bargaining, wages, profits, interest, hours, women's work, participation in management, contractual obligations and the interest of the public in economic disturbances.[1]

Co-operation of Labor and Management Won through Policy of Conciliation

In direct contrast to Canadian experience, the tendency in the United States in recent years has been to emphasize the element of coercion. Whenever a law containing penalties similar to those in the Canadian act was placed on the statute books, infringements were likely to meet with prosecutions. The United States Railroad Labor Board, the Colorado State Industrial Commission and the Kansas Industrial Court have all attempted to prohibit, either permanently or temporarily, strikes in the industries coming within their jurisdiction. When the coal miners of Colorado struck in 1919 in response to the call of the United Mine Workers, the Industrial Commission of Colorado initiated prosecutions in the various counties against the miners for violating that section of the law which required investigation before striking. Likewise, the state of Kansas arrested Alexander Howat, president of the miners of Kansas, and imposed a prison sentence

[1] Lauck, W. Jett, and Watts, Claude S., The Industrial Code. Funk and Wagnalls Company, New York, 1922, p. 64.

upon him when he refused to recognize the Kansas Industrial Court and called a strike without submitting the dispute to the court. The United States Railroad Labor Board, while given no specific authority to prohibit strikes, took a strong position against them. It subpoenaed representatives both of labor unions and of railroad companies when they refused to appear before the Board. And when, in 1922, the railroad shopmen struck after refusing to accept the award of the Board which called for a reduction in wages, the chairman of the Board publicly declared that the strikers were "outlaws."

Just as the policy of conciliation pursued by the Canadian government has won the co-operation of labor in the administration of the Disputes Act, so the policy of coercion pursued by government bodies in this country has intensified the opposition of labor toward similar laws. The Railroad Labor Board, for example, was the object of constant attack by both the American Federation of Labor and the railroad brotherhoods. During the congressional session of 1924–1925 these organizations, by pressing for the enactment of the Howell-Barkley Bill, attempted to have the Railroad Labor Board abolished, and other machinery established for the adjustment of disputes on railroads. These efforts met with failure. During the following session of Congress (1925–1926) both the unions and the carriers pooled their forces in a vigorous campaign for the Watson-Parker Bill. This time they were successful. The bill went into effect as the Railroad Labor Act on May 20, 1926. It abolished the Railroad Labor Board and established in its place joint boards of adjustment to handle differences arising between management and

men, as well as government machinery for the mediation, investigation and arbitration of disputes which threaten to result in interruptions of service.[1]

Limitations of Conciliation

If Canadian experience may be accepted as proof, it seems clear that government bodies can obtain the best results in industrial disputes not by threatening arrest, imprisonment or fines, but by intervening in a sympathetic and conciliatory spirit to find those terms upon which agreement may be reached. Indeed, the question has been raised in Canada whether it would not be wiser to drop entirely from the Disputes Act the penalty clauses which prohibit strikes and lockouts. Thus R. M. MacIver, studying the point as a political scientist, asks "whether penal provisions which remain a dead letter are not worse than useless, whether it would not be better to dismiss the discredited and therefore politically unwise enforcement clauses so that the Act shall stand simply as a machinery for conciliation."[2]

That the policy of conciliation has worked well in Canada in the large majority of disputes where the Disputes Act has been invoked, has been made evident. But why has it failed in averting or ending so many strikes? In general, it may be said that conciliation in Canada has failed in those industries in which fundamental social and economic conditions have made for constant controversy between employers and employes.

[1] For a description of the chief provisions of the law, see page 44, footnote 1.

[2] "Arbitration and Conciliation in Canada," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, p. 297, May, 1923.

For conciliation, in its emphasis on the importance of averting a strike and coming to an agreement, does not often lead to an investigation of fundamental causes with the purpose of working out a basis for continuous peaceful relationships. The outstanding example of its inadequacy in Canada is offered by the coal industry. A strike in coal mining, as has been shown, gave rise to the Disputes Act. Yet the most serious strikes in Canada have occurred in coal mines, almost year by year, and in violation of the Disputes Act.

Importance of Stability of Industry

A contrast to the situation in mining is offered by that in the railroad industry. Major strikes on railroads in Canada, as in the United States, have been very rare. Only one strike has been called by a railroad brotherhood in the last twenty-five years. But this lasting peace has not been due wholly to the Disputes Act or to any other machinery created by the government, although by providing a method for the amicable settlement of disputes both the act and the adjustment boards have been of constant help in furthering industrial peace. It is due mostly to the basic conditions established through the joint efforts of the workers and management and to the general stability of the industry. The railroad brotherhoods and the executives of Canadian railroads have for years maintained friendly relations; and while they have had many differences, they have usually been able to arrive at satisfactory settlements.

The ineffectiveness of conciliation under the Disputes Act in the coal industry indicates that where fundamental economic conditions such as instability and

chronic irregularity of employment make for strikes, legislation aiming simply to provide machinery for the adjustment of disputes will not afford a solution of the problem. Freedom from strikes, to quote the staff of the United States Coal Commission again, "can grow only out of good relations, a solution of the economic problems" and such co-operation on the part of both operators and the miners' union as will aid in furthering industrial peace.

The continuous and efficient service of public utility industries is essential to the welfare of the general community. But certainly it cannot be assured by the short cut advocated by so many influential citizens in recent years—legislative limitations on the right to strike or lockout. For if Canadian experience may at all be taken as a guide for this country, it clearly demonstrates the futility of compulsion as compared with conference and negotiation, under government auspices, between representatives of management and men.

APPENDICES

APPENDIX A

Detailed Tables Relating to Disputes Referred for Adjustment under the Canadian Industrial Disputes Investigation Act during the Period March 22, 1907 to March 31, 1925

Tables 17–23 are based on data derived from the following reports:

Ninth and Tenth Reports of the Registrar of Boards of Conciliation and Investigation of Proceedings under the Industrial Disputes Investigation Act for fiscal years ending March 31, 1916 and March 31, 1917. (These two reports contain annual summaries of the operation of the act since 1907.)

Annual Reports of the Department of Labour for fiscal years ending March 31, 1918–1925.

Table 24 is based on data derived from the reports just cited, in addition to the following sources:

Report on Strikes and Lockouts in Canada, from 1901 to 1912.

Annual Reports of the Department of Labour for fiscal years ending March 31, 1914–1916.

Labour Gazette: February, 1917; February, 1918; March, 1919; March, 1920; February, 1921; March, 1922; March, 1923; February, 1924; February, 1925.

TABLE 17.—APPLICATIONS FOR BOARDS, BY ORIGIN OF APPLICATION AND BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Applications made by				Total applications
	Employes only	Employers only	Employers and employes	Others[a]	
Public utilities					
Railroads	184	6	1	1	192
Street railways	93	11	1	–	105
Other municipal utilities	56	1	1	–	58
Coal mining	59	9	1	2	71
Shipping	23	8	1	–	32
Other mining	20	1	–	–	21
All other	62	4	–	–	66
Total public utilities	497	40	5	3	545
War industries	29	–	1	–	30
Other industries	56[b]	5	3	1	65
Grand total	582	45	9	4	640
Per cent	91.0	7.0	1.4	.6	100.0

[a] In two cases applications were made by municipalities; in one by a mayor; and in the other 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.

[b] In one case the original application made by employes was not immediately acted upon because direct negotiations were renewed. A strike occurred, and a second application was received from the municipality.

TABLE 18.—ACTION RESULTING FROM APPLICATIONS FOR BOARDS, BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Disputes handled under the act				Disputes referred to other agencies[a]		No action taken (disputes not within scope of the act)	Total applications
	Boards constituted	Boards partially constituted[b]	Boards not constituted[c]	Total	Within scope of the act	Not within scope of the act		
Public utilities								
Railroads	122	8	43	173	11	–	8	192
Street railways	83	7	9	99	5	–	1	105
Other municipal utilities	29	5[d]	4	38	7	–	13	58
Coal mining	54	–	7	61	7	–	3	71
Shipping	17	2	6	25	4	1	2	32
Other mining	16	1	2	19	–	2	–	21
All other	47	2	9	58	3	–	5	66
Total public utilities	368	25	80	473	37	3	32	545
War industries	18	1	4	23	5	–	2	30
Other industries	35	–	5	40	1	2	22	65
Grand total	421	26	89	536	43	5	56	640
Per cent	65.8	4.1	13.9	83.8	6.7	.8	8.7	100.0

[a] Some of the agencies used to adjust these disputes were: mediators, royal commissions, the Canadian Railway Board of Adjustment No. 1 and the Director of Coal Operations. (See Chapter XIII, Other Agencies for Adjustment of Industrial Disputes in Canada, page 288.)

[b] Differences were adjusted or applications withdrawn before the boards were fully constituted.

[c] In 6 cases applications were referred to boards already in existence: railroads, 3; street railways, 1; other mining, 1; war industries, 1. In the other cases differences were adjusted or applications withdrawn.

[d] Not including 2 disputes which were referred to other agencies when strikes occurred while boards were being established.

TABLE 19.—METHOD OF APPOINTING CHAIRMEN OF BOARDS BY INDUSTRY,[a] MARCH 22, 1907 TO MARCH 31, 1925

Industry	Chairmen appointed		Total boards constituted
	On recommendation of other two members	By Minister of Labour	
Public utilities			
Railroads	48	74	122
Street railways	26	57	83
Other municipal utilities	23	6	29
Coal mining	24	30	54
Shipping	10	7	17
Other mining	4	11	15[b]
All other	21	26	47
Total public utilities	156	211	367[b]
War industries	7	11	18
Other industries	18	17	35
Grand total	181	239	420[b]
Per cent	43.1	56.9	100.0

[a] Employers and employes each nominate a representative. These two nominate a chairman. When they cannot agree, the chairman is chosen by the Minister of Labour.

[b] Not including one case in which the method was not made clear in the report.

TABLE 20.—TIME ELAPSING BETWEEN APPLICATION FOR AND CONSTITUTION OF BOARDS, BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Cases in which interval was					Total boards constituted
	1 to 15 days	16 to 30 days	31 to 45 days	46 to 60 days	61 days or over	
Public utilities						
Railroads	29	48	24	4	17[a]	122
Street railways	42	29	7	4	1	83
Other municipal utilities	14	12	1	1	1	29
Coal mining	21	16	10	3	3	53[b]
Shipping	7	7	1	2	–	17
Other mining	6	6	4	–	–	16
All other	14	24	5	4	–	47
Total public utilities	133	142	52	18	22	367[b]
War industries	7	10	1	–	–	18
Other industries	21	9	1	1	3[c]	35
Grand total	161[d]	161	54	19	25	420[b]
Per cent	38.3	38.3	12.9	4.5	6.0	100.0

[a] In one case the board was constituted 23 days after request for resumption of proceedings. The delay was due to employes.
[b] Not including one board constituted without an application.
[c] One case was delayed because direct negotiations were temporarily renewed.
[d] The interval was one week or less in 40 cases.

TABLE 21.—TIME ELAPSING BETWEEN APPLICATION FOR AND REPORT BY BOARDS, BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Cases in which interval was						Total boards reporting
	1 to 30 days	31 to 45 days	46 to 60 days	61 to 75 days	76 to 90 days	91 days or over	
Public utilities							
Railroads	4	19	23[a]	19	11	42[b]	118
Street railways	12	22	24[c]	10	7[d]	5	80
Other municipal utilities	5	11	6	3	2	2	29
Coal mining	4	9	12	11	7	7	50[e]
Shipping	3	9	1	–	1	3	17
Other mining	1	4	7	1	2	1	16
All other	5	12	8	9	7	5	46
Total public utilities	34	86	81	53	37	65	356[e]
War industries	4	7	3	1	2	1	18
Other industries	17[f]	5[g]	3	3	1	5[h]	34
Grand total	55[i]	98	87	57	40	71	408[e]
Per cent	13.5	24.0	21.3	14.0	9.8	17.4	100 0

[a] In one case a supplementary report to clear up minor points was issued 15 days later.
[b] In one case an interim report was issued 74 days earlier.
[c] In one case an interim report was issued 34 days earlier.
[d] In two cases board procedure was discontinued 42 days during the general strike in public utilities in Winnipeg.
[e] Not including one board constituted without an application.
[f] In one case a supplementary report to clear up minor points was issued 173 days later.
[g] In one case a supplementary report to clear up minor points was issued 28 days later.
[h] One case was delayed because direct negotiations were temporarily renewed.
[i] The interval was 15 days or less in 10 cases.

TABLE 22.—NATURE OF REPORTS OF BOARDS CONSTITUTED, BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Report signed by all members		Report from which one member dissented			Separate report from each member	Nature of report not clear	No report	Total boards constituted
	Decision unanimous	Reservations on minor points	Employes' representative	Employers' representative	Chairman				
Public utilities									
Railroads	65	7	26	18	–	–	2	4	122
Street railways	39	4	23	12	1	–	1	3	83
Other municipal utilities	20	2	3	3	–	–	1	–	29
Coal mining	30	2	12	3	–	–	4	3	54
Shipping	14	–	2	1	–	–	–	–	17
Other mining	8	–	6	1	–	1	–	–	16
All other	21	5	9	8	–	1	2	1	47
Total public utilities	197	20	81	46	1	2	10	11	368
War industries	8	2	2	5	–	1	–	–	18
Other industries	25	3	4	2	–	–	–	1	35
Grand total	230	25	87	53	1	3	10	12	421
Per cent	54.6	5.9	20.7	12.6	.2	.7	2.4	2 9	100.0

TABLE 23.—RESULTS OBTAINED IN DISPUTES HANDLED UNDER THE ACT, BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Strike averted or ended[a]	Strike not averted or ended	Total disputes handled under the act
Public utilities			
Railroads	165	8	173
Street railways	89	10	99
Other municipal utilities	34	4	38
Coal mining	50	11	61
Shipping	25	–	25
Other mining	14	5	19
All other	52	6	58
Total public utilities	429	44[b]	473
War industries	21	2[c]	23
Other industries	40	–	40
Grand total	490	46	536
Per cent	91.4	8.6	100.0

[a] "Strike ended" refers to settlement of strikes called before or during board proceedings. These strikes were few in number; they were illegal when they occurred in public utilities or war industries.

[b] Of these strikes, 30 were legal, that is, they occurred after the report of the board was submitted; 14 were illegal because they were called before or during board proceedings.

[c] One legal; one illegal.

TABLE 24.—ESTIMATED NUMBER OF STRIKES OCCURRING IN PUBLIC UTILITY INDUSTRIES IN VIOLATION OF THE ACT, BY INDUSTRY, MARCH 22, 1907 TO MARCH 31, 1925

Industry	Strikes in violation of the act		
	No application made for a board	Application made for a board[a]	Total
Public utilities			
Railroads	40	11	51
Street railways	16	9	25
Other municipal utilities	26	4	30
Coal mining	186	12[b]	198
Shipping	52	6	58
Other mining	37	1	38
All other	68	4	72
Total public utilities	425	47	472
Per cent	90.0	10.0	100.0

[a] 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.

[b] Including one lockout. In this case and in the case of one strike, ignorance of the law was claimed and the employes returned to work when informed.

APPENDIX B

Summary of Conclusions of Previous Investigations of the Industrial Disputes Investigation Act

Victor S. Clark made two studies of the act, both published by the Bureau of Labor of the United States Department of Commerce and Labor. One report appeared in May, 1908 and covered the operation of the act during the first year of its enactment.[1] The other appeared in January, 1910 and covered the operation of the act from April, 1908 to August 1909.[2] In the latter report, Mr. Clark states that "On the whole it does not seem necessary to revise the conclusions of the previous report, which the following observations will supplement rather than supersede."[3] The conclusions of the second report may therefore be accepted for both investigations. These were substantially as follows:

[1] . . . the Industrial Disputes Investigation Act seems to be gaining support in Canada with longer experience, and has very few opponents outside of labor ranks.

[2] The labor opposition is strongest where socialism is strongest. . . .

[3] The act has afforded machinery for settling most of the disputes that have occurred in the industries to which it applies; but in some cases it has postponed rather than prevented strikes, and in other cases strikers have defied the law with impunity. . . .

[4] The most serious danger it faces is the non-enforcement of the strike and lockout penalties in cases where the law is violated for the express purpose of weakening its authority. . . .

[5] Under the conditions for which it was devised, however, the Canadian law, in spite of some setbacks, is useful legislation, and

[1] The Canadian Industrial Disputes Investigation Act of 1907. Bulletin No. 76, Washington, 1908.

[2] Canadian Industrial Disputes Investigation Act of 1907. Bulletin No. 86, Washington, 1910.

[3] *Ibid.* p. 1.

promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention. . . .

[6] The adoption of a similar statute in any State or by the United States Government, whether desirable or not, is likely to be opposed by organized labor, and probably could be secured only after some industrial crisis .profoundly affecting public opinion had centered popular attention upon the question of strike prevention. . . .

[7] The enforcement of the penal clauses of the law would probably be more difficult in the United States than it is in Canada, and for that reason the success of such a statute somewhat less probable.[1]

The next report on the operation of the law was published in December, 1912. It was the result of an investigation made by Sir George Askwith at the request of the British Board of Trade, which, following several serious strikes, was anxious to find out whether the Canadian act would be applicable to conditions in England. Sir George spent the months of September and October, 1912 interviewing "several hundred employers, workmen, trade union officials, public men, and Government officials at most of the principal industrial centres."[2] His intention was "to examine, from the British point of view . . . the real advantage or disadvantage of the Act, and from practical knowledge of trade disputes to consider how far any development upon the lines of the Act can be of service generally in this country."[3] His conclusion in the main was

. . . that the forwarding of the spirit and intent of conciliation is the most valuable portion of the Canadian Act, and that an act on these lines, even if the restrictive features which aim at delaying stoppage until after inquiry were omitted, would be suitable and practicable in this country [i.e. Great Britain]. Such an act need not necessarily be applied in all cases, but neither need it be confined to services of public utility. It could be generally available in cases where the public were likely to be seriously affected. Without the restrictive

[1] *Ibid.* pp. 21–22.

[2] Report on the Industrial Disputes Investigation Act of Canada, 1907. H. M. Stationery Office, London, 1912, p. 2.

[3] *Ibid.* p. 3.

features it would give the right not only to conciliate but fully to investigate the matters in dispute, with similar powers in regard to witnesses, production of documents and inspection, as are vested in a court of record in civil cases, with a view, if conciliation fails, to recommendations being made as to what are believed to be fair terms.[1]

In 1918 the Bureau of Labor Statistics of the United States Department of Labor published a study of the act by Benjamin M. Squires. This report proposed "to consider primarily the effectiveness of the compulsory investigation provisions of the act." The files in the Canadian Department of Labour were examined and the operation of the act discussed "with the minister and deputy minister of labor and with other officials concerned with its administration."[2] Among his conclusions Mr. Squires states that "in view of the numerous violations of the restrictive provisions and the comparatively few prosecutions, the question naturally arises whether these provisions add materially to the value of the act,"[3] and that "in the administration of the Canadian act emphasis has been placed upon conciliation and mediation rather than upon compulsion."[4]

In 1918 the National Industrial Conference Board, an organization which represents various employers' associations in the United States, published a study of the act. The summary and conclusions of the Board are stated as follows:

(1) The commonly expressed opinion, that the failure to impose penalties for illegal strikes is the principal weakness of the Act and the cause of its comparatively infrequent application, is not borne out. . . . The Act might be quite as strong if the penalty provision was repealed. The few cases in which penalties have been imposed are responsible for much opposition to the act.

(2) The operation of the Act has signally failed to inspire complete confidence of workers. . . .

(3) The requirement of the Act that a Board may not be applied for unless one or the other of the disputants makes a statutory declaration

[1] *Ibid.* p. 17.

[2] Operation of the Industrial Disputes Investigation Act of Canada. Bulletin No. 233, Washington, 1918, p. 8.

[3] *Ibid.* p. 135.

[4] *Ibid.* p. 139.

that a strike or lockout will otherwise occur, has not operated advantageously, and is no doubt chargeable with some of the illegal strikes that have occurred. . . .

(4) Owing to the fact that incidental administrative rulings tend to become fixed as precedents, and further that, especially among workers, incidental causes of irritation are held in memory for many years, opposition to the Act is cumulative and tends to become stronger, despite the fact that its operation may have been generally beneficial to the workers themselves.

(5) The existence of the Act on the statute books has acted as a wholesome restraint both on employers and employees through a period of great industrial unrest; it has served in some degree to crystallize public opinion and in particular cases to make it effective for maintenance of industrial peace.

(6) Investigations have been most successful when most informally conducted; introduction of legal machinery is almost certain to destroy their usefulness.

(7) Where investigations have been fairly conducted, with no unfortunate administrative irritations, and with tactful, informal procedure, resultant recommendations have been almost universally backed by public opinion and accepted by the disputants.

(8) The Act after ten years of operation has the support of Canadian public opinion. The evidence of this is twofold: (a) No political party has even suggested making an issue of its repeal. (b) The restraint which organized labor feels, in spite of the fact that the penalty has seldom been imposed, is that of public opinion behind the Act.[1]

[1] Canadian Industrial Disputes Investigation Act. Research Report No. 5, 1918, pp. 21–23.

APPENDIX C

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

6-7 EDWARD VII
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;

(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 Dis-*

putes 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 pro-

visions 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 offence 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 recommendation 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 Parliament 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 appropriations 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.

APPENDIX D

BIBLIOGRAPHY

Acland, F. A. "Canadian Legislation Concerning Industrial Disputes," *in* Labour Gazette, Vol. XVI, pp. 1111–1119, April, 1916.

Askwith, Sir George. Report on the Industrial Disputes Investigation Act of Canada, 1907. 33 pp. H. M. Stationery Office, London, 1912.

———Industrial Problems and Disputes. pp. 242–251. John Murray, London, 1920.

Barnett, George E., and McCabe, David A. Mediation, Investigation and Arbitration in Industrial Disputes. 209 pp. D. Appleton and Company, New York, 1916.

California. Report on the Labor Laws and Labor Conditions of Foreign Countries in Relation to Strikes and Lockouts. Prepared by Harris Weinstock. 157 pp. State Printing Office, Sacramento, 1910.

Canada.

Census and Statistics Office. Fifth Census of Canada, 1911, Vol. VI, Occupations of the People, p. xxiv. Ottawa, 1915.

Labour, Department of.

Annual Reports of the Department of Labour for the fiscal years ending March 31, 1901–1925. Ottawa.

Annual Reports of the Registrar of Boards of Conciliation and Investigation of Proceedings under the Industrial Disputes Investigation Act, 1907, for the fiscal years ending March 31, 1907–1925. Ottawa.

Annual Reports on Labour Organization in Canada, 1911–1925. Ottawa.

Bulletins: Industrial Relations Series, 1921–1925. Ottawa.

Judicial Proceedings Respecting Constitutional Validity of the Industrial Disputes Investigation Act, 1907. 304 pp. Ottawa, 1925.

Labour Gazette. Published monthly. Ottawa.

Government Intervention in Labour Disputes in Canada. 22 pp. Prepared by Margaret Mackintosh. (Issued as a supplement to Labour Gazette, Vol. XXV, March, 1925.) Ottawa.

National Industrial Conference of Dominion and Provincial Governments with Representative Employers and Labour Men on the Subjects of Industrial Relations and Labour Laws, and for the Consideration of the Labour Features of the Treaty of Peace. Ottawa, September 15–20, 1919. Ottawa.

Prices in Canada and Other Countries. 30 pp. (Issued as a supplement to Labour Gazette, Vol. XXVI, January, 1926.) Ottawa.

Report of Provincial Royal Commission on Coal Mining Industry in Nova Scotia. 31 pp. (Issued as a supplement to Labour Gazette, Vol. XXVI, January, 1926.) Ottawa.

Report of the Deputy Minister of Labour on Industrial Conditions in the Coal Fields of Nova Scotia. 33 pp. Ottawa, 1909.

Report on Strikes and Lockouts in Canada, from 1901 to 1912. 279 pp. Ottawa, 1913.

Report on Strikes and Lockouts in Canada, 1901–1916. 138 pp. Ottawa, 1918.

Report of Commission Appointed under Order-in-Council (P. C. 670) to Enquire into Industrial Relations in Canada, Together with a Minority Report and Supplementary Report. Royal Commission on Industrial Relations. 28 pp. (Issued as a supplement to Labour Gazette, Vol. XIX, July, 1919.) Ottawa.

Wages and Hours of Labour in Canada, 1920–1925. 45 pp. (Issued as a supplement to Labour Gazette, Vol. XXVI, January, 1926.) Ottawa.

Wholesale Prices in Canada, 1890–1909. Prepared by R. H. Coats. 509 pp. Ottawa, 1910.

Parliament.

House of Commons. Debates. Session 1925, pp. 3271–3286. Printer to the King, Ottawa.

Senate. Debates. Session 1923, pp. 752–770. Session 1925, pp. 309–311. Printer to the King, Ottawa.

Statistics, Dominion Bureau of. The Canada Year Book. Published annually. Ottawa.

Sixth Census of Canada, 1921. Vol. I, Population, p. 3. Ottawa, 1924.

Canadian Manufacturers' Association. Proceedings of the Fifty-third Annual General Meeting. Toronto, 1924.

Canadian Railway Board of Adjustment No. 1. Report of Proceedings of Board from August 7, 1918 to August 31, 1920. 28 pp. Montreal.

Clark, Victor S. "The Canadian Industrial Disputes Act," *in* Proceedings of the Academy of Political Science, Vol. VII, pp. 10–18, 1917–1918.

—— The Canadian Industrial Disputes Investigation Act of 1907. pp. 657–740. U. S. Bureau of Labor, Bulletin No. 76, Washington, 1908.

—— Canadian Industrial Disputes Investigation Act of 1907. pp. 1–29. U. S. Bureau of Labor, Bulletin No. 86, Washington, 1910.

Coats, R. H. "The Growth of Population in Canada" and "The Labour Movement in Canada," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, pp. 1–6, pp. 282–285, May, 1923.

—— Wholesale Prices in Canada, 1890–1909. 509 pp. Canadian Department of Labour, Ottawa, 1910.

Commons, John R., and Andrews, John B. Principles of Labor Legislation. pp. 125–175. New York, Harper and Brothers, 1916.

Draper, P. M. "Industrial Disputes Act, Memorandum Submitted to Government," *in* Canadian Congress Journal, Vol. IV, p. 16, February, 1925.

Eliot, Charles W. A Remedy for Industrial Warfare. 16 pp. American Unitarian Association, Bulletin No. 4, Boston. No date.

Fisher, Clyde Olin. The Use of Federal Power in Settlement of Railway Labor Disputes. 121 pp. U. S. Bureau of Labor Statistics, Bulletin No. 303, Washington, 1922.

Hunt, Edward Eyre (Editor). What the Coal Commission Found. 416 pp. Williams and Wilkins Company, Baltimore, 1925.

Hurlin, Ralph G. "Canadian Employment Statistics," *in* Journal of the American Statistical Association, Vol. XVIII, pp. 615–622, March, 1923.

Kennedy, W. P. M. The Constitution of Canada. 519 pp. Humphrey Milford, London, 1922.

King, W. L. Mackenzie. Industry and Humanity. 556 pp. Boston, Houghton Mifflin Company, 1918.

———The Canadian Method of Preventing Strikes and Lockouts. 16 pp. Railway Business Association, New York, 1912.

Lauck, W. Jett, and Watts, Claude S. The Industrial Code. 571 pp. Funk and Wagnalls Company, New York, 1922.

Lowell, A. Lawrence. The Government of England. 2 vols. New York, The Macmillan Company, 1910.

MacIver, R. M. "Arbitration and Conciliation in Canada," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, pp. 294–296, May, 1923.

Mackintosh, Margaret. Government Intervention in Labour Disputes in Canada. 22 pp. (Issued as a supplement to Labour Gazette, Vol. XXV, March, 1925.) Ottawa.

National Consumers' League. Committee on Public Utilities and Franchises. Memorandum to the Public Service Commission of New York, First District, on the Proposed Plan to Provide for Fair and Reasonable Wages and Working Conditions and to Prevent Interruption of the Service on Street Railroads. 16 pp. New York, 1917.

National Industrial Conference Board. Canadian Industrial Disputes Investigation Act. 28 pp. Research Report No. 5, New York, 1918.

Parkinson, Thomas I. "Constitutional Aspects of Compulsory Arbitration," *in* Proceedings of the Academy of Political Science, Vol. VII, pp. 44–80, 1917–1918.

Patton, M. J. The Coal Resources of Canada. 19 pp. Departments of History and Political and Economic Science in Queen's University, Bulletin No. 50, Kingston, 1925.

Pigou, A. C. Principles and Methods of Industrial Peace. 240 pp. New York, The Macmillan Company, 1905.

Seager, Henry R. "Company Unions vs. Trade Unions," *in* American Economic Review, Vol. XIII, pp. 1–13, March, 1923.

Selekman, Ben M. Industrial Disputes and the Canadian Act, Facts about Nine Years' Experience with Compulsory Investigation in Canada. 41 pp. Reprinted from Survey, Vol XXXVII, March 31, 1917, by Russell Sage Foundation, New York, 1917, with tables added.

Shortt, Adam. "The Canadian Industrial Disputes Act," *in* American Economic Association Publications, Third Series, Vol. X, pp. 158–173, April, 1909.

Squires, Benjamin M. Operation of the Industrial Disputes Investigation Act of Canada. 150 pp. U. S. Bureau of Labor Statistics, Bulletin No. 233, Washington, 1918.

Stewart, Bryce M. "Unemployment and Organization of the Labour Market," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, pp. 286–293, May, 1923.

Survey. "The Canadian Industrial Disputes Act: A Symposium," *in* Vol. XXXVII, pp. 746–759, March 31, 1917.

Thorp, Willard L. "The Annals of Canada, 1890–1925," Chapter XII, *in* Business Annals. National Bureau of Economic Research, New York, 1926.

Towne, H. R. "The Canadian Disputes Act," *in* Survey, Vol. XXXVII, p. 758, March 31, 1917.

Trades and Labor Congress of Canada. Proceedings of Annual Conventions, 1907–1925. Ottawa.

United States.

Congress. Senate.

Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations Created by the Act of August 23, 1912. Vol. I, p. 715. Government Printing Office, Washington, 1916. (64th Congress, 1st session, S. 45.)

Report of the United States Coal Commission. Part III, pp. 1382–1384. Government Printing Office, Washington, 1925. (68th Congress, 2d session, S. 195.)

Labor, Bureau of.

The Canadian Industrial Disputes Investigation Act of 1907. Prepared by Victor S. Clark. pp. 657–740. Bulletin No. 76, Washington, 1908.

The Canadian Industrial Disputes Investigation Act of 1907. Prepared by Victor S. Clark. pp 1–29. Bulletin No. 86, Washington, 1910.

Labor Statistics, Bureau of.

Monthly Labor Review, Vol. XXVII, p. vii, June, 1926. Washington.

The Use of Federal Power in Settlement of Railway Labor Disputes. Prepared by Clyde Olin Fisher. 121 pp. Bulletin No. 303, Washington, 1922.

Operation of the Industrial Disputes Investigation Act of Canada. Prepared by Benjamin M. Squires. 150 pp. Bulletin No. 233, Washington, 1918.

Text of Canadian Industrial Disputes Investigation Act and Summary of Industrial Conciliation and Anti-Strike Legislation Relating to Public Utilities of Various Countries. Washington, 1917.

Weinstock, Harris. Report on the Labor Laws and Labor Conditions of Foreign Countries in Relation to Strikes and Lockouts. 157 pp. State Printing Office, Sacramento, 1910.

Wolman, Leo. The Growth of American Trade Unions, 1880–1923. 170 pp. National Bureau of Economic Research, New York, 1924.

Woodsworth, J. S. "Political Developments within the Labour Movement in Canada," *in* Annals of the American Academy of Political and Social Science, Vol. CVII, pp. 299–302, May, 1923.

INDEX

INDEX