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Article abstract

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INDUSTRIAL RELATIONS

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I—HISTORICAL EVOLUTION

Since its adoption in 1934, followed by two complete revisions in 1937 and 1940, the Collective Agreement Act (legal extension) has obtained the favour of labour and management organizations. It must be remembered that, in 1934, we were in the thick of the economic crisis which had begun in 1929. Wages were low as well as the cost of living. Employment was also at its lowest level, so much so that struggle for employment never had been so intense. This situation bore heavily on the employers and the employees. Each and everyone felt the need for minimum wages compatible with human dignity.

Trade-unionism was stagnant and practically without influence. Even well-meaning employers could not bind themselves by the clauses of a collective agreement because of the instability of prices. However, employers and

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employees found, in the legal extension of the agreements, a way to humanize competition and to establish standards which would put an end to the constant lowering of wages and, at the same time, increase the purchasing power of the workers. The shoe, the construction and the clothing industries as well as the barber and hairdressing trades attempted the first experiments. The results were conclusive. Freely, even without propaganda, the employers and the employees of the industries and trades above mentioned entered into agreements which were rendered obligatory by decree, providing the provisions of their agreements had obtained a preponderant importance and significance. The establishment of parity committees entrusted with the administration of the decrees as well as the right to levy assessments which insured a necessary income played a large part in the strengthening and progress of the legal institution.

From 1934 to 1941, the organization of labour relations through collective agreements legally extended developed normally. Federal control over war-time wages, from 1941 to 1946, took precedence over the provincial legislation and paralyzed the development of legal extension of agreements. However, the Regional War Labour Board for Quebec, with the consent of the Federal Government, permitted amendments to the wage rates of the decrees providing a decision was rendered for each and every employer governed by a decree Thereafter, the Lieutenant-Governor in Council amended the decree, making it possible for the Parity Committee to continue its administration.

In 1951, 200,000 workers are regulated by approximately 100 decrees, 19 of which relating to commerce, 14 to the building trades, 32 to industry and 35 to services.[1] The annual reports of the Department of Labour will be of interest in that they give most accurate statistics respecting decrees in force.

The Labour Relations Act of 1944 brought about a radical change in the field of labour relations. It establishes the following principles: reaffirmed and explicit recognition of the freedom of association already established in the Act respecting Workmen's Wages, 1937, but repealed in 1940; determination of unloyal practices forbidden employers and employees; obligation for an employer to negotiate in good faith a collective agreement if the bargaining agent of the employees proves before the Labour Relations Board that he represents the majority of employees of an economic unit; compulsory recourse to the conciliation and arbitration procedure in the event of failure of direct negotiations; suspension of the right to strike or lock out until the established procedure has been exhausted and fourteen days have elapsed after the date of receipt of the arbitral award by the Minister of Labour.

(1) See table of decrees.

DECREES IN FORCE IN 1951

Number	Decrees	Employers' Associations	Labour Unions				
			T.L.C.	C.C.C.L.	C.C.L.	IND.	TOTAL
19	Commerce	23	20	4		1	21
14	Construction	16	27	19	3	1	32
32	Industry	32	37	6		10	69
35	Services	41	37			6	49
100		112	121	29	3	18	171

(1) The table makes no distinction between union units, trade councils or federations.

The labour unions soon became aware that the Labour Relations Act was an instrument of promotion of trade-unionism and collective bargaining. The legislator had taken a step forward and had established that the collective agreement was a matter of "common good". There remained to invite and help the workers to organize. There was no more, at least in principle, any need to strike in order to obtain the right to organize and bring about negotiations with the employer. The provisions of the Act are conducive to conciliation and arbitration. Owing to the national economic expansion and to a full-employment system, the labour market is most favourable to workers. Economic advancement and trade-unionism development combine to ensure the success of collective bargaining and obtain, for the employees, fair wages, vacation and holidays with pay, shorter working hours, etc., etc. In 1951, over 1,200 collective agreements govern nearly 200,000 Quebec workers.

II—DIFFERENTIATION OF TWO SYSTEMS

1) As regards the contents of the agreement. The legal extension of the collective agreement means the approval by the Executive Council of a decree or an order-in-council enacting the statutory clauses of a collective

agreement. These clauses are determined under sections 9 and 10 of the Collective Agreement Act.

> "9. Whenever a decree is passed under section 2, the provisions of the agreement, whether amended or not, which become obligatory, are those respecting wages, hours of labour, apprenticeship and the proportion between the number of skilled workmen and that of apprentices in a given undertaking."
>
> "10. The decree may also render obligatory, with or without amendment, the provisions of the agreement respecting vacations with pay, family allowances, the classification of operations and the determining of the various classes of employees and employers and also such provisions as the Lieutenant-Governor in Council may deem in conformity with the spirit of this act."

Evidently, these are limiting clauses. They do not allow for the enacting of provisions respecting union security, the formation of grievance committees on the level of the undertaking, promotions, seniority, etc.

On the contrary, an agreement under the Labour Relations Act may embody, apart from the statutory clauses permitted under sections 9 and 10 of the Collective Agreement Act, any other statutory or contractual provisions not contrary to the law.

2) AS REGARDS THE CONTRACTING PARTIES. The decree must give effect to a collective agreement negotiated by the parties; the latter need not be recognized and qualified by the Labour Relations Board. Any bona fide group with no legal standing may beg the Lieutenant-Governor in Council to extend an agreement it has signed and the latter may do so if he deems that its provisions have acquired a preponderant significance and importance. Once the decree is in force, the collective agreement is put aside. However, the contracting parties must form a parity committee upon which lies the responsibility of administering the decree. Any future amendment of the decree is submitted either to the contracting parties or to the parity committee. In brief, the agreement is the basis upon which the public authority established the working conditions to be enacted; the contracting parties continue to act in the capacity of advisors; the functions of the parity committee can be compared to those of a self-governing administrative and advisory commission.

The labour party to an agreement under the Labour Relations Act must be recognized as negotiating agent by the Labour Relations Board to obtain compulsory bona fide negotiations with the employer. The collective agreement, once signed, is enforceable by itself and shall not be amended for its entire duration unless by mutual consent of the parties. The injured party, in the event of violation of the agreement, may either take legal action or avail itself of the conciliation and arbitration procedure. If there exists a "bonne

entente" committee, the latter has no legal right to proceed against the parties in court; its status is that of a moral institution of cooperation to help in the enforcement and observance of the clauses of the collective agreement; arbitration is then the sole recourse and the award shall only bind the parties within the scope of the provisions of the agreement.

3) AS REGARDS THE NATURE AND EFFECT OF THE OBLIGATION. The decree not only applies to the parties but to all employers and employees governed. It entails a matter of public order. Section 11 is quite clear on this subject.

> "11. The provisions of the decree entail a matter of public order and shall govern and rule any work of the same nature or kind as that contemplated by the agreement within the jurisdiction determined by the decree."

The collective agreement under the Labour Relations Act is a private agreement. It is the property of the parties who may, by mutual consent, either amend or repeal it.

The Lieutenant-Governor in Council may, ex officio, as provided for under section 8 of the Collective Agreement Act, extend or, at any time, repeal the decree; he may also amend it after consultation with the Parity Committee or the contracting parties and after publication of the usual notice referred to in section 5 of the Act. No such procedure is permitted the public authority in the case of a collective agreement under the Labour Relations Act.

In brief, the decree holds its authority from the executive power and from the Act; that of a collective agreement lies with the contracting parties themselves. The latter are usually required to be accepted as bargaining agents by the Labour Relations Board. We say "usually" because the provisions of section 18 make it possible for an unrecognized association to enter into a collective agreement, but such agreement "shall become void the day another association is recognized by the Board for the group represented by the latter association." Whereas the Board, under the Act and the regulations, is empowered to designate the bargaining agent, the obligation of concluding an agreement is imputable to the parties' volition. Furthermore, recognition of the union as bargaining agent gives it the right to govern, by its agreements with the employer, not only its members but all workers, even unorganized employees, of the economic unit it represents; then, there is actually a legal extension but on the level of the undertaking only.

III—ARE THE TWO SYSTEMS COMPATIBLE?

The simultaneous operation of the Collective Agreement Act and of the Labour Relations Act has given rise, in some instances, to difficulties. The

employers, generally, are in favour of the legal extension of collective agreements. Is it not reasonable to assume that the employers governed by a private agreement, or having to contend with an organized personnel, are eager to see their competitors, in the same industry and region, regulated by similar wages and working conditions; otherwise, there would be reason for supposing that the free employers will be in a position to reduce the cost of labour together with that of production. The workers, too, approve of standard wages and other working conditions in the industry well knowing that the competition of free employers and employees will, sooner or later, result in complete or partial unemployment unless they agree to a levelling of the working conditions.

But this is not the problem. The legal extension becomes desirable only when the workers in an industry or trade are not sufficiently organized. In fact, in some large industries, including the pulp and paper, textile, tobacco, airplane, steel and others, the extension is not at all necessary. The unions are powerful and control the labour market. Agreements are almost identical and cover the entire industry. Because of their economic strength, the unions could obtain the best working conditions possible.

This, however, is not the case in industries divided into many units, either large or small. There, it is next to impossible to control the labour market. The union is the weaker of the parties concluding the collective agreement. The solution, then, is the legal extension. Included in this category are the construction, printing, shoe and clothing industries, the commerce, etc. In many cases, the employers agree to fair working conditions only when they know that such conditions will be imposed on their competitors.

Of course trade-unionism seeks to expand even in those spheres where legal extension applies. Sometimes, a union qualified under the Labour Relations Act requests the opening of negotiations with an employer already governed by a decree in order to obtain the signing of a complementary agreement. This private agreement is apt to grant better working conditions than those of the decree. The employer holds out as this will place him in an unfavorable position towards his competitors. Being a party to the general agreement which made the decree possible he deems that he has complied with the obligation to negotiate in good faith with the labour organization.

The union refutes this attitude. It is of the opinion that its bargaining agent certificate, as issued by the Labour Relations Board, obliges the employer to negotiate in good faith, that with its economic strength it will obtain better working conditions for its members, that it is entitled to union security provisions, to the institution of a grievance committee and to promotion and seniority

clauses not provided for under sections 9 and 10 of the Collective Agreement Act.

The practical result of this difference of opinion between labour and management is that, on the one part, the Union regarding the decree as detrimental to organized labour and that, on the other part, the employer refusing to negotiate a private agreement when a decree exists, the recourse to the Collective Agreement Act becomes more and more difficult in some economic fields, pending its being put aside.

IV—IS THERE A SOLUTION?

A study of the problem with the law as well as the union needs and certain economic aspects in mind may help us find a solution to the difficulties.

1. — First, let us say that where a collective agreement on the level of the industry and for the entire province, or a district only, has resulted in a decree, none of the provisions of either the Collective Agreement Act or the Labour Relations Act forbid the negotiation of a private agreement at the level of the undertaking. Let us refer to section 13 of the Collective Agreement Act which reads as follows:

> "13. Unless expressly forbidden by the provisions of the decree, the clauses of a lease and hire of work shall be valid and lawful, notwithstanding the provisions of the above sections 9, 10, 11 and 12, in so far as they provide, in favour of the employee, a higher monetary remuneration in currency or more extended compensation or benefits than those fixed by the decree."

We may conclude, then, that if the clauses of an individual labour contract granting "more extended benefits than those fixed by the decree" are lawful, the same should apply to similar clauses of a private collective agreement.

2. — If powerful unions, qualified or not, negotiate complete agreements with individual employers or an employers' association and subsequently request an extension to third parties of some statutory clauses contemplated by sections 9 and 10 of the Collective Agreement Act, no difficulty is encountered because both the employers and the employees have generally agreed to protect themselves against the possible competition of those not regulated by the agreement. This is the case of the dress, men's clothing and printing industries. Employers and employees first conclude union agreements and then sign a new agreement made of statutory clauses, often less exacting, for which legal extension is requested. These agreements constitute a code which divides the undertakings into territorial zones with differentials in the wages, hours of work and number of apprentices.

3. — The problem is different, however, when a federation, a council or a union more or less controlling the labour market concludes with an employers' association empowered by the Labour Relations Board a collective agreement for the immediate purpose of obtaining a decree. Has the obligation to negotiate in good faith, as imposed by section 4 of the Labour Relations Act, been complied with by the employer when he has participated, through his association, to the agreements which gave rise to the decree ? Is he in a position, after the coming into force of the decree, to refuse negotiating a private agreement with a labour union qualified by the Commission ? Up to now, there are no precedents of such a case in court.

It is our opinion that even if negotiations have taken place at the level of the industry, the obligation remains for an employer to negotiate at the level of the undertaking with the qualified union. The purpose of the master agreement is to establish standards which, owing to the decree, become a matter of public order and apply to the entire industry. These standards do not extend beyond the scope of the provisions of sections 9 and 10 of the Collective Agreement Act. On the other hand, the purpose of the private agreement is to establish private rules exclusive and restricted to the undertaking and covering local conditions. There is no restriction as to the number and nature of contractual clauses except that they must provide equal or more extended benefits than those fixed by the decree and not be contrary to the law.

The decree and the private agreement neither operate on the same level nor work towards the same end. The decree establishes limiting clauses or maximums for the entire industry whereas the private agreement is concerned with the undertaking. The decree tends to prevent a disloyal competition made possible by inferior working conditions whereas the private agreement solves the problems of the undertaking from a human and social standpoint. In fact, the private agreement alone may enbody seniority, promotion, grievance or consulting committee and union security clauses. Also, through it the union may obtain from the employer, whose undertaking is well organized and prosperous, better working conditions than those fixed by the decree and so have its members share in the success thereof.

4. — We have referred to the necessity of unions. The decree presupposes union organization but it does not favour it. As things are now, the Government, before rendering a decree, requires the concluding and singing of an agreement. It follows that there can be no agreement without a workers' union. Then the employers who wish to obtain a decree must accept the union whose very nature and aims tend to its development. But the decree, which guarantees minimum wages to unorganized employees, constitutes an invitation to nonmembership. The union will then have to look elsewhere for means of

survival and promotion. It will find in the complementary collective agreement, or « l'avenant » (additional agreement) as it is called in France, a means of obtaining better working conditions as well as adequate union security clauses which will be of assistance in recruiting and keeping its members.

5. — Trade-unionism embraces all working classes. Through it they acquire a higher standard of living. No trade-unionism, no collective agreement. Hence, the private collective agreement, at the level of the undertaking, can mean a real economic advantage for the workers only when the union is strong and holds a solid bargaining power. We must not blame the workers for wanting to organize and take the means of promoting trade-unionism (propaganda, organization, certification of labour units, collective agreements with employers). Upon these private agreements shall be based the agreements made with a view to legal extension. The agreements must influence the decrees which apply to all employees just like trade-unionism itself covers the entire working class. The private agreement may be negotiated either before or after the general agreement preceding the decree. What counts is the subsistence of the right to negotiate an agreement at the level of the undertaking, irrespective of the existence of a decree at the level of the industry.

IMMEDIATE REMEDIES

If an employer wants the continuance of decrees, he must accept the private agreement either preceding or following the general agreement. If he deems himself handicapped by the breaking of the general rule, he must not forget what would his position be without any decree to impose standards to his competitors whereas he, by the application of the Labour Relations Act, would be compelled to negotiate an agreement with rates as exacted by the economic strength of the union.

There are two remedies to this confused situation. First, the union or the federation when becoming party, together with an employers' association, to an agreement to be approved by decree could set forth the condition that, whenever union recognition is granted, the employer shall negotiate the agreement contemplated by the Labour Relations Act.

The second remedy is an amendment of the Labour Relations Act. A section could be added as follows:

> "Every employer who is party to an agreement made with a view to legal extension under the Collective Agreement Act, or who becomes governed by it, remains under the obligation of negotiating in good faith a private agreement with a labour union recognized under the present act."

Since the two systems of regulating working conditions must be maintained in the interest of peace and social progress, we are of the opinion that attempts should be made to render them more compatible.