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The Conciliation of Labour Disputes I — Typical Cases

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Article abstract

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The Conciliation of Labour Disputes

CONCILIATORS' EXPERIENCES

We have asked, as a matter of interest to our readers, two Conciliators, graduated, one from Laval and the other from Montreal University and Queen's, who are officials of the Provincial Labour Department, to give their views on conciliation as it now stands, in the districts of Montreal and Quebec.

I — TYPICAL CASES

by JEAN-PAUL FERLAND

Conciliation is a procedure occurring between direct negotiation and arbitration. It may take place during the negotiations, in view of an original collective agreement or during the renewal of such an agreement, or again during the discussion of a grievance which has come about in the duration of an agreement.

We shall limit ourselves to the study of the problems which may arise in the first two cases.

This procedure is under the chairmanship of an official of the Department of Labour, called a "conciliator". His task consists in meeting the parties and attempting to bring them to an understanding.

The problems that he encounters may often be about the same subject, but this does not mean that they require the same solution. In fact, the agents and the circumstances always change. A conciliator requires a great facility of adaptation.

Although the Labour Relations Act is in existence since the month of February, 1944, it still happens occasionally that an employer refuses to negotiate. His reason is that he does not recognize the employees' association as the authorized representative of his employees in spite

of the fact that certification has been granted by the Labour Relations Board. As an example, we may quote the following case: an employees' association is certified as the representative for all the hourly-paid and piecework employees in an establishment. The latter refuses to discuss the draft of agreement submitted by the union. The Labour Relations Board summons him to meet the union representatives to discuss this draft. The case is referred to a conciliator. The employer states that he has no counter-proposals to make as he does not recognize this association as the negotiating agent and that the majority of his employees no longer belong to it. The conciliator explains the law to the employer, and advises him to see his lawyer. At the second conciliation meeting, a legal adviser accompanies him and everything goes well.

It happens in some cases that the employer persists in his attitude, and in this case a council of Arbitration will be formed. Has it not been seen where an employer has refused to appear before a Council of Arbitration and has preferred to put up with a strike rather than negotiate in good faith, a collective agreement?

Refusals to negotiate are to-day

exceptional cases. It is however, more frequent that the two parties in dispute before the conciliator do not wish to compromise themselves. They then insist on the forming of a Council of Arbitration. The decision of this Council, unanimous or majority, will serve as a screen to the negotiating agents in reporting to those who have authorized them to negotiate.

These difficulties are concerned with conciliation procedure and they are therefore different from those problems which arise during the conciliation itself.

The parties do not agree on salaries, hours of work, annual vacation with pay, and paid holidays when they come to conciliation and no one is surprised. These are, as a matter of fact, the clauses of a collective agreement which are the most often the object of conciliation. It is interesting, however, to study the tendencies of labour unions in questions of social security.

In a large proportion of the drafts of collective agreements submitted by labour unions, is to be found a clause providing for a plan of accident-sickness-life-insurance. These plans are far from being uniform, that is why we shall give them some consideration.

Certain labour unions will submit for the attention of the employer with whom they are bargaining, a group insurance plan drawn up by one of the companies operating in the Province of Quebec. Others have their own insurance plan approved by the Superintendent of Insurance. The premiums to these insurance projects are sometimes payable only by the employer whereas in other cases employees and employers pay the premiums in a proportion which, without being uniform in all cases, is none the less specified in each agreement.

Before the conciliator, two principal problems may appear: in the

first case, the employer refuses to contribute to an insurance plan. After discussion, it may be possible to get him to agree at least in principle to his contribution to an insurance plan and to fix a certain period during which the parties will continue the study of this question, with the object of coming to an agreement.

A more difficult problem for the conciliator is presented when both parties have an insurance plan to submit, or when an insurance plan already exists in the plant. This case has happened several times and when the conciliator has not succeeded in getting the parties to agree, the arbitration council instructed to study the same problem has not succeeded in satisfying the parties concerned. What makes the problem so difficult is that it is necessary to make research into the matrimonial status, age and salary of employees and also take into account certain actuarial principles in making a comparison of the benefits offered and premiums required.

Several months ago, the arbitration interesting an establishment and a labour union came to a conclusion. The union was submitting an insurance plan while the company wished to maintain that which was already in force. The conciliation not having been successful, an arbitration council took up the task. There were almost 70 public and private meetings and most of them were about an insurance plan, not taking into account the hours during which the arbitrators studied, each one by himself, the numerous exhibits produced. In their award, the arbitrators preferred not to give an opinion on the question.

In employers' associations, we do not find, properly speaking, any generalized tendencies. However, a new attitude may be noted. The employer has no longer, most of the time, objections to negotiating. It insists, however, that the labour

union justify its demands. The conciliator does not have any less work when the parties are before him because they have exhausted up to this point a lot of arguments supporting their respective positions. It is then necessary to find new arguments to get one or the other to accept a viewpoint different from his own.

As conclusion to these few remarks on some of the problems that a conciliator meets, one can only invite the parties to co-operate. This attitude will have for result more friend-

ly employer-employee relationships in our Province. At the present time, one out of three cases goes to arbitration and this percentage can be improved by a greater mutual understanding.

It can be taken for granted that in all circumstances, the conciliator will do his utmost to help the parties come to an agreement. Conciliation, in fact, has not as its aims to delay arbitration procedures, but to attempt to reach a solution of the problems.

II — CONCILIATION FROM THE INSIDE VIEWPOINT

by LÉOPOLD JASMIN

This brief article does not pretend to define conciliation, nor to explain its techniques. At the most it attempts to underline certain aspects of a useful and interesting work which is in the centre of what sociologists group under the general heading of "human relations".

In an employer-employee dispute, we mention only two parties as being involved. It is taken for granted that there is identical interests on the part of capital and management on the employer side and equally identical interests on the part of the workers and the union leaders. In reality, the situation is sometimes more complex. Management may attach more importance to some of its prerogatives than to wage rates, whereas the holders of capital see in any increase in salaries a measure by which their profits may be reduced. On the other hand, the employees are especially interested in the salary, whereas their union leaders may add to this objective the preoccupation of union organization or expansion. This lack of unity on behalf of one or the other party to a dispute may result in added difficulty or, on the other hand, may help bring a final settlement. Salary, for example,

may be exchanged against union security or management prerogatives against salary.

A case where there is necessarily subdivision of the parties, is one in which the dispute concerns a decree under the Collective Agreement Act. The employer group includes many employers of which the problems, the mentality and the enterprises are different. This results in re-groupings by region, size of enterprise, etc., with repercussions on the workers' side. There again, this complex situation may render the work of the conciliator easier or more difficult as the case may be. In the end, it is usually a question of competition which it is necessary to balance.

The worst thing that the parties can do for themselves or for the conciliator is to form a negotiating committee with too many members. If each one has his say, the discussion drags out indefinitely. On the contrary, those who do not get everything said that they want to say during the meetings, make up for it between meetings by adopting a negative attitude on the compromises which might be submitted to them. Too numerous a group seldom