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Les syndicats, les employeurs et le public

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See table of contents

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Article abstract

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Labour, Management and the Public

H. Carl Goldenberg

In this paper, presented at the Fifth National Labour, Management Seminar, University of British Columbia, October 1963, the author expresses the fruits of his long experience as a mediator and an arbitrator in labour-management disputes. The parties must face the facts; the law cannot settle everything; a continuous bargaining system would prove valuable.

It is now more than 25 years that I have been mediating and arbitrating labour-management disputes. A quarter of a century is a long time in anyone's life; in the life of a mediator, it is perhaps even longer.

Now, over this period of time, there has been considerable progress in the area of labour-management relations. We have, of course, seen greater progress in such fields as science and technology. But, labour relations being human relations, it should not be surprising if progress in this field has not been as marked as in others. I suggest that this is just because we continue to be human. It is a fact we have to face.

To Face The Facts

I find to-day, as I did 25 years ago, that a continuing cause of misunderstanding between labour and management is the refusal or inability of one side or the other or of both to face facts — not only social and economic facts but also important facts of human nature. I am sometimes reminded of one of Sir James Barrie's characters, of whom he said: « Facts were never pleasing to him. He acquired them with reluctance and got rid of them with relief. »

I find that the facts present difficulties not only to the parties directly involved but also to members of the public who choose to pass judgment on disputes. Without knowledge of the facts, they often tend to reach unfair and unwarranted conclusions. People like

GOLDENBERG, H. Carl, O.B.E., LL.D., Q.C. Well-known arbitrator. Served on many Royal Commissions Montreal.

to think in terms of black and white, of right and wrong. But, in labour disputes it is rare that either side is wholly right or wholly wrong.

We find that the public may misjudge not only particular disputes but also the state of labour relations in general. You know that human beings in their normal every-day behaviour are not news. The fact that 99 per cent of employed workers in an area may be at their work every day is not reported in the press. But when a group, however small, goes on strike — that is news! And it continues to be news until the strike is settled. I do not blame the press: its business is to publish news. But often the publicity and the accompanying discussion have the effect of giving an exaggerated impression of industrial conflict to the man on the street. He forgets that, in terms of the numbers at work, those on srike at any one time generally constitute a very small group. And he comes to the conclusion that the unions are always calling strikes.

The fact is, of course, that strikes are not the general rule. That is what makes them news when they do occur. The general rule is industrial peace. The vast majority of collective agreements are negotiated and re-negotiated without strikes and without publicity. I suggest that it would contribute to better understanding if this fact were more widely appreciated. It was recently pointed out by the United States Secretary of Labour that: « We lost more man-hours in unemployment last year than we lost from strikes in 35 years ».

LIMITS OF THE LAW

There is a tendency when a strike occurs for people to say « there ought to be a law ». Well, there are laws and, as a lawyer, I, of course, believe there should be laws. They are necessary to regulate the exercise of power and to curb its abuse. But, we have to accept the fact that there are problems in human relations which cannot be solved by law alone. This applies to relations between employers and employees as much as to relations within the family. The Civil Code of my Province imposes upon wives the obligation to obey their husbands. I assure you that, in practice, if there is any such obedience, it flows from other considerations.

Similarly, laws, however stringent, will not by themselves assure industrial peace. You have to face the fact that they are human beings on both sides of the bargaining table, that across the table each side faces human interests, human aspirations, human ambitions and human fears. Peaceful relations between them will therefore depend primarily not on laws but on the degree to which they are willing and able to understand each other and to make the compromises imposed by the facts which confront them. Such compromises are not a sign of weakness. Edmund Burke, the great conservative thinker, wrote almost

200 years ago that: « All government — indeed, every human benefit and enjoyment, every virtue and every prudent act — is founded on compromise and barter ».

COLLECTIVE BARGAINING

This is particularly true of government in a democracy, and collective bargaining between employers and trade unions representing their employees is the application of democratic practice to industrial relations. I do not think I have to tell you that trade unions and collective bargaining are an essential feature of modern industrial society. In the absence of collective bargaining there would be no bargaining at all under a system where the parties are as unequal in power as the individual worker and the corporation which employs him. In the words of Mr. Justice Ivan C. Rand, formerly of the Supreme Court of Canada, « the history of the past century has demonstrated (that) the power of organized labour, the necessary co-partner of capital, must be available to redress the balance of what is called social justice ».

I have said that collective bargaining is part of the democratic process. In democracies like Great Britain and Sweden it has long been accepted by both parties as the normal method for negotiating terms of employment. In Canada and the United States, however, where, we must admit, the principle has not been as universally accepted, it was found necessary to enact laws to make collective bargaining mandatory under prescribed conditions. We have thus written into the law the social desirability of labour organization and collective bargaining. We have labour relations laws and labour relations boards to administer them. They date from the Wagner Act of 1935 in the United States and are barely twenty years old in Canada.

Labour laws must, of course, protect the rights of both parties to industry and also the public interest. To achieve this they necessarily prescribe certain procedures and allow certain delays for their application. The law must allow some delays, but experience shows that where the delays are such as to permit one party to take advantage of them merely to frustrate the other, the results are not conducive to good labour relations. And businessmen know that poor labour relations can result in low efficiency and high labour costs.

The longer the settlement of a labour dispute is delayed, the more inflexible and unreasonable the parties tend to become in the positions they have taken. This is human nature — and I have had to contend with it. The parties for the time being seem to forget that a settlement has to be reached at some stage. They forget the truth of what Mackenzie King, who was an expert in the field of labour-management relations, pointed out, when he said that: « With Labour and Capital

it is very much as with husband and wife: despite differences, they must continue to live together, or cease the relationship altogether. » This is no less true because it was written by a bachelor.

A PERIODICAL REVIEW

I suggest that, since our labour relations laws are enacted to deal with the facts of industrial life, they should be reviewed periodically in the light of experience and of changing conditions. If it is found that they permit delays which serve to retard agreement unduly, such delays should be reduced. Undue delays intended to defer legal strike action are, in part, responsible for so-called « wildcat » strikes. Frustrating delays lead to irresponsible action.

Again, if it is found that procedures which are appropriate to some branches of industry are not appropriate to others, they should be made applicable only where they are appropriate. Procedures which meet the requirements of industries providing year-round employment do not necessarily meet the requirements of industries offering only irregular and seasonal employment, such as construction and shipping. If new procedures and practices appear necessary, they should be introduced.

THE PARTIES MUST FACE THE FACTS

It is not enough, however, for the law alone to take cognizance of the facts of industrial life. It is more important that these facts be faced by the parties themselves. They have to live with them. And if to live with them requires compromise and changes in traditional bargaining procedures, both trade unions and employers must be prepared to make them. Failing this, public opinion may, wisely or unwisely, lead to the imposition of restrictive controls.

Of particular importance in the field of labour relations is the public image of the parties; it is a factor which neither labour nor management can afford to ignore. Now, this image is not improved by disputes arising from a persistent refusal to make reasonable compromises or peaceful adjustments required by the facts. There are, for example, strikes arising from jurisdictional disputes between unions. The public does not understand that the underlying reason for such disputes is the simple human instinct of self-preservation. In the construction industry, where these disputes mainly occur, the unions operate on a labour market with an extremely high rate of turnover and, therefore, a very low degree of security of job tenure. Accordingly, they seek to achieve more security for their members by protecting their craft jurisdiction. This is not unusual. Business and farm organizations also exist to protect businessmen and farmers operating in an uncertain market economy. But, jurisdictional disputes in the ranks

of labour which lead to strikes and injure innocent parties do not help to create a favourable image.

I suggest that organized labour must establish effective machinery in Canada for the settlement of disputes between unions without work stoppages. This is particularly necessary where established craft jurisdictions are affected by new production methods or the use of new materials. Inter-union machinery is also required to deal with disputes arising from so-called union « raids » on the membership of other unions. The public understands strikes by unions arising from conflicts with employers; it does not understand strikes arising from conflicts between unions. This is a fact which must be faced because institutions operating in a democratic society cannot afford to ignore the impact of their conduct on public opinion.

ABUSES OF POWER

I know that, when I talk of the conduct of the parties and their public image, your mind turns to instances of abuse of power. Such abuse, where it exists, must be condemned — and, in the case of trade unions, no one condemns it more than the large majority of union leaders who are honest and responsible. Some people tend to judge all trade union leaders by the acts of a small minority. This is as unfair as it would be to condemn all businessmen because inquiries have disclosed dishonest practices by some of them or to condemn all politicians because corruption has been proved against a few. We must be fair. And, in seeking a remedy for abuse of power, we should avoid legislation which punishes the innocent with the guilty, legislation which has only the ulterior motive of imposing severe restrictions on free collective bargaining, or legislation which seeks merely to reduce the power of one party in order to place it at a disadvantage in its dealings with the other. Such laws would not make for industrial peace.

Now, I think there is general agreement that abuse of power must be curbed. In an age of big business and its counterpart, big unions, each in a position to wield great economic power, the exercise of such power, whether by unions or by business, is properly a matter of public concern and calls for appropriate protection by law against its abuse. I suggest, however, that protection to be effective requires not only a law but also the exercise of responsibility by the persons concerned. In a trade union, for example, abuse of power is made easier where there is lack of active participation by the rank and file in the business of the union. While laws can provide a frame-work for the application of democratic principles, I suggest to you that the application of such principles will in fact depend upon the responsibility shown by the union and its members.

In urging democracy upon trade unions, we must be realistic and accept the fact that democracy also requires discipline. It is important

to remember that employers do not like to bargain with trade union officers who cannot make a bargain. The same employers who may complain of the absence of democracy in a trade union, will also complain of lack of authority on the part of the leaders, of lack of union discipline and of inability by unions to enforce contracts. It will therefore not serve the interests either of employers or employees to force rigid rules on union organization and practices in the alleged interests of democracy. For effective collective bargaining and enforcement of contracts, we have to face the fact that there must be some compromise between the authority of the elected officers of a union and the control over their actions vested in the membership. As I have already said, compromise is of the essence of democracy.

STRIKES

As an example of abuse of authority, it is charged that some union leaders call strikes without the approval of their members. Considering the problems faced in organizing and conducting a strike, I would say that such instances are infrequent. But, to the extent that the allegation is true, it points to an abuse which should not be condoned. Strikes are costly to both sides and must not be called until all other means of settlement have been exhausted and the prior consent of a proper majority of the workers has been obtained through democratic procedures. I suggest that a strike vote should not be held until full use has been made of the conciliation machinery established by law.

The public must not be led to conclude from talk of strikes that union leaders are « strike-happy ». The facts prove otherwise. Nor should it be concluded that there is a cure-all for settling all industrial disputes without strikes by unions or lockouts by employers. Mediation or voluntary arbitration by third parties would be the more civilized method, but, since mutual confidence has not yet replaced mutual suspicion, I am afraid that the required degree of civilization has not yet been attained. This is not intended as a particular reflection on organized labour or on management; in another area, we last year witnessed a strike by the medical profession, which, like lawyers and other workers, is also organized.

Strikes are, of course, the feature of labour-management relations which attracts most public attention. They are highly publicized and directly or indirectly affect third parties. Their broad impact may be serious. The public therefore has an interest in the peaceful settlement of industrial disputes. Under a totalitarian regime, whether Fascist or Communist, there is an easy formula: strikes are prohibited. But a democracy must have regard to considerations which do not face dictatorships. To force men to work under conditions to which they object can only be justified in a democratic state by exceptional circumstances. We must face the fact that the right to strike and the em-

ployer's right to declare a lockout are necessary counterparts to free collective bargaining. The strike and the lockout are methods, however painful, for reaching agreement. The alternative is state regulation, which the parties to industry are not prepared to accept. You will agree that neither party wants agreement to be imposed upon them.

There have been particular disputes where conciliation or mediation having failed, government, representing the community, has imposed compulsory arbitration because it was deemed that a work stoppage would injure a vital or essential public interest. Such intervention has been rare; in a free society the power to force compulsory settlement must be used with great discretion. Nevertheless, we have to accept the principle that where the interests of the parties conflict with the overall interests of the community, it is the interests of the community which, must prevail. And this principle must govern in any area where the welfare or the safety of the community may be injuriously affected by the conduct of organized interests, be they professional associations, business groups or trade unions.

We hear it suggested from time to time that our society has reached a stage of development in which strikes and lockouts have become obsolete. I am afraid that, as a general statement, this is an example of over-simplification and over-optimism. Now, it is a fact that the effectiveness and, therefore, the use of the strike weapon have been and will continue to be influenced by social, economic and technological changes. Some highly automated industries have become relatively invulnerable to strike threats. Furthermore, social and economic progress has reduced certain areas of tension in industrial relations. But change in our society has not eliminated such tension. In fact, change has created serious new tensions which now call for new approaches by labour, management and government.

AUTOMATION AND THE SECURITY OF THE WORKER

We now face the impact of increasing automation on employment and the security of the worker. Men trained in particular skills, which they expected to use for the rest of their working lives, may find at an age when it is impossible for them to be retrained or to obtain new employment, that their skills are no longer required. And the loss of their jobs also affects their pension rights, their seniority, and other acquired rights. Here we find the raw material of conflict. It is this anxiety over job security and fear of unemployment — not wages and working conditions — that lie at the root of some of the recent major industrial conflicts in America, including the prolonged newspaper strikes in New York and Cleveland, the longshoremen's strikes, and others. The social costs of automation confront our society with problems which, if they are not reasonably solved, may have violent repercussions. Granted the importance of economic efficiency, it must, nevertheless, be balanced against social justice.

The changing patterns of industry and employment call for close co-operation between management and labour and for appropriate governmental action. Before introducing changes which will displace or shift labour or otherwise materially affect the relationships with labour, it is the responsibility of management to discuss the changes well in advance with the representatives of its employees, and to consult with them on the best means of adjusting to the new situation. This may require new skills on the part of both management and labour leaders, but such consultation is necessary to facilitate acceptance of and proper adjustment to the facts of change. I am confident that in this day and age no responsible management will take steps vitally affecting its working force before consulting its representatives. Without responsibility on one side, there will not be responsibility on the other.

CONTINUOUS CONSULTATION AND COOPERATION

While I am not one who suggests that it is now possible — however desirable it might be — for us to adopt all the labour relations practices of some of the more advanced European countries, I believe there are lessons that they can teach us. One is that, instead of meeting only as opponents in collective bargaining on the renewal of contracts, the representatives of management and unions should meet more regularly to discuss matters of mutual concern affecting the industry. This is necessary for the parties to understand each other and their respective problems. While wages, hours and working conditions can be negotiated by collective bargaining as we know it, the serious problems arising from automation and technological change can only be dealt with effectively by continuous labour-management consultation and co-operation. Such problems cannot be solved by last-minute consideration and compromises in the heat of regular contract bargaining sessions.

To meet the new issues before them, both parties, management as well as labour, must be prepared to look ahead and to tread new paths. We now see progress in this direction in major United States' industries in the form of continuous joint study of complicated issues well in advance of deadline pressures. In the steel industry, a Human Relations Committee, set up to explore the facts on a joint basis, has passed two major tests: it was responsible for an agreement three months ahead of schedule in 1962, which was unprecedented, and for a major agreement this year which is to extend to May 1965. During this period the Committee will continue its joint studies on a year-round basis. In the automobile industry, although the contract does not expire until 1964, there are now four joint committees seeking advance agreement on such matters as the effect of automation on productivity. In shipping on the West Coast, where the contract does not expire before 1965, joint studies are under way to determine manning requirements for new automated ships. Similar joint machinery now functions in the rubber, clothing, electrical manufacturing, coal and meat-packing industries.

A MORE RATIONAL EXPLORATION ON THE FACTS

In all of this we are witnessing a trend to a new form of collective bargaining based on a co-operative and more rational exploration of the facts. It involves new techniques and the shedding of old prejudices by both sides in order to substitute accomodation for conflict in the solution of complicated problems. Its success, however, will depend not only on the enlightened leaders of management and labour but also, in large part, on the state of the economy.

With machines tending to displace men more rapidly at a time when the work force itself is expanding at a quickened pace, the problems of unemployment and insecurity created by automation call for appropriate government policies to stimulate economic growth. A continued high rate of unemployment will not be conducive to the peaceful settlement of conflicts arising from technological change which involves the displacement of men. Workers will not co-operate peacefully in the introduction of machinery by which they are to be displaced if there is no alternative employment for them. These are problems which cannot be solved by labour and management alone. In their solution, government must play an active role.

LES SYNDICATS, LES EMPLOYEURS ET LE PUBLIC

Une des causes constantes de la mésentente entre les patrons et les ouvriers est le refus ou l'incapacité de l'une ou l'autre partie d'envisager la réalité, que celle-ci soit sociale, économique ou humaine. Les gens aiment ordinairement à penser en termes de blanc et noir, de bon et de mauvais. Mais, dans les conflits de travail, il est rare que d'un côté ou l'autre on ait entièrement raison ou entièrement tort.

Le public comprend très mal non seulement les conflits du travail, mais encore les relations du travail en général. Le cours normal des choses n'est pas sensationnel. Les journaux ne rapportent pas le fait que 99% des travailleurs sont au travail; mais qu'un groupe, si petit soit-il, se mettent en grève. Ca c'est une nouvelle. La publicité qui entoure les discussions a pour effet, chez l'homme de la rue, d'exagérer la nature et la portée des conflits du travail. On croit que les ouvriers sont toujours en grève. Pourtant ceci est loin d'être la règle générale. La grande majorité des conventions collectives sont négociées sans grève et sans publicité. Le Secrétaire au Travail des Etats-Unis déclarait récemment: « Avec le chômage, l'an dernier, nous avons perdu plus d'heures de travail, qu'avec toutes les grèves depuis 35 ans ».

Quand une grève survient, bien des gens se disent: « il devrait y avoir une loi pour régler les conflits ». Sans doute, il faut des lois pour empêcher les abus.

Mais on doit accepter le fait qu'en relations humaines, certains problèmes ne peuvent être réglés uniquement par la loi. Et ceci est aussi vrai dans les relations employeurs-employés que dans les relations au sein de la famille.

La convention collective est inhérente à tout système démocratique. Pour avoir de véritables négociations, il est essentiel que les parties soient sur un pied d'égalité. La loi doit protéger les droits des parties et l'intérêt public. Pour en arriver là, elle doit nécessairement déterminer une certaine procédure et permettre certains délais.

Puisque la législation du travail est établie en fonction de la réalité industrielle, elle doit être ajustée périodiquement à la lumière de l'expérience et des conditions nouvelles. Les employeurs et les syndicats ouvriers doivent aussi avoir le courage de reconsidérer leurs conceptions et leurs habitudes.

Il y a sans doute parfois des abus de pouvoir et on doit les condamner. Mais ils ne sont pas aussi fréquents qu'on le croit. Dans les mesures à prendre pour y porter remède, on doit éviter une législation qui punirait aussi bien les innocents que les coupables. De plus, pour être efficace, une loi doit promouvoir l'exercice de responsabilités.

Comme illustration d'abus d'autorité, on soutient que certains dirigeants syndicaux déclarent la grève sans l'approbation des membres du syndicat. Ce n'est pas si fréquent qu'on le pense; mais lorsqu'un tel fait se produit on doit condamner cet abus.

Le public est intéressé au règlement pacifique des conflits industriels. Dans un régime totalitaire, c'est bien simple, la grève est prohibée. En démocratie, il faut tenir compte d'autres valeurs; on ne peut forcer quelqu'un à travailler à moins de circonstances très exceptionnelles. La grève et le lock-out sont des éléments nécessaires à un système de véritables négociations collectives. Il y a sans doute des cas exceptionnels très rares où l'intérêt des parties en cause vient en conflit avec celui de toute la communauté. Il est évident alors que l'intérêt public doit prévaloir. Mais il est faux de prétendre que nous avons atteint un stage de développement où la grève ou le lock-out soient dépassés.

L'automation est une réalité nouvelle qui cause des problèmes sérieux pour les travailleurs. Si on ne tient pas compte des coûts sociaux, on se réserve des répercussions violentes. La coopération étroite entre les employeurs, les syndicats et les gouvernements s'impose pour prévoir les ajustements à cette situation.

Même s'il ne faut pas imiter tout ce qui se fait dans les pays avancés de l'Europe, on peut y prendre certaines leçons. Ainsi, au lieu de se rencontrer seulement comme des opposants dans la négociation collective des renouvellements de contrats, les représentants des deux parties auraient avantage à se voir plus souvent et à discuter leurs problèmes communs dans l'industrie. Aux Etats-Unis, on a fait des expériences du genre qui se sont révélées bénéfiques.