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Industrial Unrest in Canada : A Diagnosis of Recent Experience
Le malaise industriel au Canada : un diagnostic de la récente expérience

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Aller au sommaire du numéro

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Résumé de l'article

UNE PERSPECTIVE DU MALAISE INDUSTRIEL AU CANADA

Nous pouvons croire au premier abord que le Canada, comme les autres sociétés industrielles libres, a subi la plupart des grandes manifestations du malaise industriel durant les années de croissance économique. Avant de vérifier la vérité de cette croyance, nous nous pencherons sur les deux caractéristiques de la présente vague de malaise qui semble avoir des causes très complexes :

1.—le militantisme spontané des ouvriers du rang ; 2.—le mépris accru de la loi de la part des syndicats.

Mais nous pourrions peut-être dire que ces deux traits sont la rançon de la prospérité.

LE SYNDICALISME, LA NÉGOCIATION COLLECTIVE, LE DROIT ET LES AVOCATS DU TRAVAIL

Le syndicalisme est sans contredit une partie essentielle de l'organisation industrielle d'une société libre. C'est en fait un participant indispensable au processus de la négociation collective. Cependant on ne considère trop souvent que le rôle proprement économique du syndicat, alors que sa plus grande contribution peut aussi bien être dans d'autres domaines.

Si nous considérons le point de vue légal, nous devons noter que le rôle du droit en relations industrielles n'est ni statique ni inévitable. Nos lois du travail soutiennent ce désir que la négociation collective soit une technique pour régulariser les relations industrielles en tentant de balancer le pouvoir entre les deux parties à la négociation. Mais alors que les lois du travail reflètent une pensée contemporaine, la jurisprudence représente un consensus social plus vieux basé sur des divergences de vues au sujet des politiques publiques et des propriétés de la négociation collective. Les politiques plus vieilles penchent vers la protection des entrepreneurs contre l'interférence syndicale alors que la législation contemporaine prone la protection de la négociation collective contre l'hostilité des employeurs.

Tout ceci nous amène à faire quelques remarques sur le rôle de l'avocat en relations industrielles. Même si l'esprit parfois trop juridique des avocats a contribué à empoisonner les relations de travail, ils peuvent, et le font de plus en plus, apporter une contribution à la fois constructive et créative.

LES CARACTERISTIQUES DE LA RECENTE VAGUE DE MALAISE INDUSTRIEL

Pour mieux analyser la récente vague de malaise industriel au Canada, nous devons d'abord identifier plus à fond ses caractéristiques. En plus des deux traits généraux déjà mentionnés, il y en a au moins six autres spécifiques à considérer :

1.—le haut taux de roulement des vieux chefs syndicaux ;
2.—le refus des membres de ratifier les conventions collectives ;
3.—les grèves sauvages ;
4.—les rivalités inter-syndicales ;
5.—la syndicalisation de nouveaux secteurs de l'économie ;
6.—le temps perdu dû aux grèves.

ANALYSE DE LA PRÉSENTE VAGUE DE MALAISE INDUSTRIEL

Dans les lignes qui suivent, nous porterons d'abord notre attention sur les causes du militantisme ouvrier pour ensuite considérer les raisons du mépris qu'ont les syndicats de l'ordre et de la loi.

a)*Explication de militantisme des ouvriers du rang*

1.—la tendance à toujours demander plus dans notre société d'abondance;
2.—l'inflation et l'élévation du coût de la vie ;
3.—la soi-disant formule Pearson ;
4.—l'insécurité d'emploi ;
5.—le caractère cachotier du patronat ;
6.—la rigidité de la convention collective face aux changements dans les conditions de travail ;
7.—le changement des centres de pouvoir syndicaux et patronaux ;
8.—les accords à long terme ;
9.—le manque d'expérience en négociation collective ;
10.—la croissance du nombre des jeunes membres ;
11.—les facteurs internes au mouvement ouvrier ;
12.—le manque de satisfaction des besoins supérieurs ;
13.—l'élévation du niveau d'éducation ;
14.—le plein emploi ;
15.—les fruits du militantisme ;
16.—le rôle de la direction.

b)*Explication du mépris accru des syndicats face à la loi*

Ce mépris de la loi doit être placé dans son contexte. Les syndicalistes ont la ferme conviction qu'ils ont peu à gagner et beaucoup à perdre en se soumettant à la loi. Il en serait ainsi dans le cas des délais, piquetages et des injonctions.

Mais il reste que les doctrines développées et administrées par les cours de justice sont souvent rigides et ne répondent pas aux besoins et aux problèmes du régime de négociation collective. Ayant donc perdu confiance dans la loi., les syndicats ont cessé de s'y soumettre. Ceci soulève une question à savoir comment peut-on retrouver la soumission d'antan ? Soit en appliquant la loi à la lettre ou, si cela s'avère inutile, la changer tout simplement.

CONCLUSION

Nous ne prétendons pas avoir apporté une foule de solutions aux problèmes existants. Nous avons seulement tenté de décrire la nature du récent malaise industriel au Canada. Le défi de longue période pour les syndicats serait alors de demeurer à la fois démocratique et responsable.

Industrial Unrest in Canada : A Diagnosis of Recent Experience

John H.G. Crispo and
H.W. Arthurs

To diagnose the recent wave of industrial unrest in Canada, it is first of all necessary to indentify its characteristics. The two major dimensions of this phenomenon concern the source of union militancy and its illegal manifestations.

Relations between labour and management in Canada have been unusually turbulent over the past few years. In an attempt to identify the source of this turbulence, and to assess its implications, we have endeavoured to utilize the dual perspectives of our two disciplines, law and industrial relations. While the exercise has proven highly self-educative, we are obliged to admit that it has not produced definitive data or cast-iron conclusions. [1]

A Perspective on Industrial Unrest in Canada

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Labour-management conflict seems to be the unavoidable by-product of industrialization in a free society. Canada, as might be

(1) The reader should be forewarned about the « method of research » which underlies much of the material presented in this paper. It began with a number of informal discussions with trade union leaders over two years ago. These discussions gave rise to the original outline of the paper : an outline which was used as the basis for an oral presentation on numerous occasions before a variety of union, management and government groups. On most of these occasions, a good deal of reaction was engendered. This reaction resulted in the addition of many more points to the outline and in the modification of some of those already incorporated into it. This process was supplemented by our practical and academic experience in related work over the past several years and by extensive reading around the subject. We might dignify our basic approach by terming it « action research » but some would even take offence at that. Unorthodox at best, our methodology is doubtless subject to serious reservations. This weakness was noted by those who reviewed the first draft of this paper. We are indebted to the following individuals for this observation and for many other helpful comments : Dean A.W.R. Carrothers, Dr. A.J. Craig, Professor A. Kruger, Dr. George Saunders, and Professor S.A. Schiff.

expected, has had its share of industrial unrest, the most obvious manifestations of which, at least recently, have coincided with period of economic prosperity. This is not to suggest that such strife is absent during economic downturns, but rather that it then tends to be muted and perhaps less intensive. This is to be expected in view of the effect of unemployment on union bargaining power and of the effect of reduced profits on management's negotiating position. During the late 50's and early 60's, for example, much of the conflict which took place was engendered by management's determination to withstand further union demands and to retrieve concessions made in the earlier postwar years. Labour's progress was not entirely halted during this period of economic recession, but it was unable to sustain the record of victories which it had enjoyed for most of the postwar period.

It could be argued that the rising industrial unrest we experienced thereafter, at least for the early years of the 60's, was attributable to a release of pent-up frustrations over relative union ineffectiveness which accumulated during the late 50's. While this may be true in part, as a total explanation it reflects an oversimplified view that labour-management strife ebbs and flows in response to the phases of the business cycle. This school of thought we will return to shortly, but first we wish to focus attention on the two features of the present wave of unrest which suggest that its causes are much more complex.

To begin with, much of this unrest is characterized by militancy that is less the product of labour leadership than the spontaneous outbreak of rank and file restlessness. As one commentator recently noted, « Instead of having to whip their members into a mood militant enough to justify their call for a walkout, the union executives have given the impression of running behind the membership. » In some case the rank and file seem to have been rebelling as much against the « union establishment » as against the « business establishment ». Indeed, privately, union officials have been known to term some recent rank and file behaviour « mob rule », « the tyranny of the membership », and even worse. And yet, as we will suggest, we may be witnessing nothing more sinister than a healthy sign of renewed trade union vitality. But however characterized, this shift in the source of union militancy adds a new dimension to the industrial relations scene.

The second feature which is worthy of note is the increased lengths to which the labour movement appears willing to go in defiance of law

and order. An unusual incidence of illegal strikes and defiance of court orders has been a distinctive characteristic of the latest wave of labour-management conflict. It would be naive to suggest that law and order will ever command the undivided respect of labour and management, if only because historically the trade union movement feels that it could not have secured many of its present rights without deliberately defying legal restraints placed upon it. Accepting the fact, however, that disrespect for law is to some extent endemic in labour relations, the present situation seems to have brought the underlying tendency to lawlessness to the surface.

We do, finally, wish to avoid the impression of undue pessimism. It is important to place these two characteristics of the current industrial relations scene in proper perspective. While rank and file militancy and lawlessness have appeared of late in an unusually potent combination, some weight must be given to the view that our present difficulties may be simply part of the price of prosperity. Yet even to say this is to say something quite disturbing, for it suggests that a free society cannot maintain a period of sustained economic advance without engendering serious industrial unrest. To the extent that this unrest can only be relieved by round after round of generous settlements, the problem of maintaining price stability during a period of full employment can be aggravated. Thus it can be made increasingly difficult to achieve these two goals, let alone our other economic objectives, at one and the same time.

Of Trade Unionism, Collective Bargaining, Labour Law and Lawyers

It is appropriate at this stage to outline some of the pre-conceived notions we bring to bear to our subject. In the first place we should make clear our views on the role of trade unionism and collective bargaining. Quite frankly, our value judgments are basically those which are reflected in our present industrial relations system. Though collective bargaining may sometimes appear to result in a desperate and never-ending succession of crises, it is an essential part of industrial organization in a free society. This in turn leads us to accept trade unionism since it is an indispensable participant in the collective bargaining process.

Sometimes the labour movement is perceived almost exclusively in terms of its economic role, yet its most critical contribution may well

lie in other spheres. For example, by its legislative campaigns for social reform, and by private experiments in social security instituted through collective bargaining, the labour movement, pressing from the left, acts as one of the many competing interest groups in our pluralistic society. In this sense trade unionism acts as a countervailing power in the political as well as in the economic sphere.

We do not mean to minimize the role of trade unionism in our collective bargaining process. In this process unions are often viewed as « slot machines », disgorging economic benefits to those who invest their dues. No less importantly, they act as advocates of democratic values in industry, thereby contributing to the dignity and self respect of the worker. Above all, in both respects, unions through their leaders have traditionally functioned as « managers of discontent ». Collective bargaining depends on worker discontent as its motive power and utilizes the strike as a catalytic safety valve. Normally, union leaders do not have to seek out worker discontent: employers can usually be counted on to supply it. Sometimes, union leaders, as good entrepreneurs, become aware of the need to exploit new markets and attract new clientele, and manufacture discontent. But there are times — this would seem to be one — when unions and their leaders appear to be overwhelmed by unsolicited opportunities for business.

Given the fact that we accept collective bargaining and trade unionism as legitimate, even vital instruments in our society, what of our analysis of the legal framework within which they function ? We see law as a technique of securing orderly compliance with society's objectives and standards of behaviour. In a totalitarian society, of course, law may represent the imposed will of a ruling class; in a democracy it approximates the social consensus. The first point to be made about the role of law in industrial relations, then, is that it is neither static nor inevitable. As society's view of desirable industrial relations policies changes, society has it within its power to change the law. If there is a gap between prevailing social attitudes and the law, there is no intrinsic reason why it cannot be narrowed. To be sure, the law does acquire a vitality of its own, and legal institutions have the same perverse instinct for survival as other potentially obsolescent institutions. But it is unrealistic to either praise or condemn « the law » as a thing apart from the social policy which it embodies.

A basic theme of our contemporary policy, as we have noted, is the desirability of collective bargaining as a technique of regulating

industrial relations, and the legitimacy of the strike as an adjunct of the bargaining process. Our labour relations acts advance this policy by attempting to ensure the confrontation of reasonably equal labour and management power blocs. The right of workers to organize unions and to participate in their activities is proclaimed by law; employers are obliged to bargain in good faith with unions; upon the breakdown of negotiations, strikes are permitted and strikers are given certain limited immunities from reprisal. On the other side, unions also are obliged to bargain in good faith, to refrain from striking except in support of collective bargaining demands, and to refrain from various forms of harassment for the duration of a collective agreement. Civil, criminal and administrative remedies are available to force employers and unions to conduct collective bargaining and economic warfare according to these rules which are enshrined in our labour relations acts.

The educative function of legislation must be emphasized here, perhaps even more than its coercive impact. The very announcement of public policy by legislators leads the great majority of citizens — workers and employers — to give at least grudging allegiance to the statute. Where pockets of resistance remain, techniques of persuasion are mobilized to secure voluntary compliance. Conciliators may act as catalysts to good faith bargaining; field officers may be sent out by labour boards to persuade the parties to abandon unfair labour practices; the boards themselves may issue non-punitive declarations to encourage transgressors to cease illegal strikes. Even the sanctions available to the boards and to the courts have their greatest impact when they are used *in terrorem* to secure an end to illegality, rather than to punish it after-the-fact. Only in a tiny fraction of cases are criminal penalties actually invoked.

However, the law is not monolithic. While the labour relations acts proclaim a contemporary policy which represents a substantial social consensus, the common law jurisprudence of labour relations represents an older social consensus, based upon different views of public policy and of the propriety of collective bargaining. The roots of the common law doctrines which are used to regulate picketing, boycotts and other labour activities, reach back about a century to a time when labour organization was characterized as a threat to industrial progress. The very act of combination, by employees at least, was considered a civil wrong, and activities such as picketing designed to bring economic pressure to bear upon the employer were likewise treated as torts. Today these precedants are still applied by the courts.

Thus, to speak of the role of « law » is something less than accurate. There are diverse, indeed conflicting, strains within the law. The older policy favous protection of entrepreneurial activity against union interference, and the newer policy favours protection of collective bargaining against employer hostility. As well, even within each of these policies there is an internal paradox. In each, the law strikes a delicate balance between freedom and order. Common law doctrines place a very high premium on order and restrict the freedom of employees to associate, assemble, and make public appeals in support of their economic objectives. Thus, « order » in this context means the order of the private employment contract whose terms are highly favourable to the party with superior bargaining power, normally the employer. The labour relations acts, in turn, severely inhibit the freedom of an employer to use this superior power to discourage unionization by threats, lockouts or dismissals. This restriction of the employer's freedom is undertaken, again, in the name of order, but in this context, « order » means the resolution of economic disputes by a process of collective bargaining. Clearly, this kind of « order » may result in an imbalance of power in favour of one party or the other.

Since collective bargaining statutes accept as legitimate occasional « disorders » of the very types the common law condemns, and since the quality of the bargain struck under the two systems is likely to be very different, labour and management have each to some extent acquired a vested interest in preserving and expanding that part of the legal system which reinforces their power position. Labour relations law, then, has become as much a tool of contending groups as an expression of social consensus.

Given this somewhat obscure and self-contradictory legal regime, it is not surprising that debate over future legal developments should be represented by two polar positions. At the one extreme it could be argued that the law should abstain totally from intervention in industrial relations; at the other extreme, there is the possibility of an all-embracing code which would regulate every significant feature of labour-management relations through legal institutions. It is, perhaps, significant that few lawyers professionally active in labour relations work are to be found in support of either position.

This brings us, finally, to a brief consideration of the current role of the lawyer in industrial relations. Clearly he is more than a profes-

sional genie whose awsome skill is placed at the service of whoever rubs the legal bottle. It is true that many lawyers have contributed to the exacerbation of labour-management tensions by violent partisanship; their capacity for mischief is part of the folklore of labour relations. Since lawyers are skilled in the use of legal techniques, they frequently win critical battles before boards and courts, and leave behind a residue of resentment. This resentment is directed not only at the law, but at those who administer it — judges, board members, and lawyers. But lawyers can, and increasingly do, operate in a constructive and creative way. Through skill at negotiation, ability to resolve conflict by constructing compromises, and instinct for reasoned, rather than arbitrary, solutions, lawyers can contribute much to good labour relations. The experienced lawyer, particularly, becomes at once tactician and moral tutor for his client. He is thus strategically located, if he understands the problems, to minimize the antagonisms between labour and management, while serving the long-run best interests of his client.

Against this view of the background of the system, its rules, assumptions, and principal participants, we proceed to an examination of the present situation.

Signs of the Recent Wave of Industrial Unrest

To diagnose the recent wave of industrial unrest in Canada, it is first of all necessary to identify its characteristics more fully than we have thus far done. As already indicated, the two major dimensions of the phenomenon concern the source of union militancy and its illegal manifestations. In addition, there are at least six specific features of unrest that can be distinguished.

THE UNSEATING OF LONG-TIME UNION LEADERS

One of the most significant signs of rank and file restiveness and industrial unrest in general is to be found in the turnover of senior union officers, particularly in some of the major international unions. Normally it is extremely difficult to oust the administration of a major labour organization, even when the opposition is itself reasonably highly placed within the union. Almost inevitably any radical change must be the product of a strong undercurrent of discontent among the members at large. Recent elections in such unions as the United Steelworkers of America and the International Union of Electrical Workers indicate how deeply this undercurrent has run of late in some unions.

Admittedly these two examples involve international unions and thus hardly provide compelling proof of the attitudes of Canadian union members. While there has been significant turnover among local union leaders in Canada, there is no evidence to indicate that its volume is greater than it has been in the past. Several outstanding cases, among postal employees, railway workers, and steelworkers, reveal what can happen here when the rank and file becomes disenchanted, but these may not be indicative of any major trends. More senior union officers might be unseated in Canada were it not for the fact that the Canadian membership in many international unions does not have direct control over its own top officers, who are elected as part of a slate at an international convention. This is particularly true among the railway and the building trades unions, where there has been a long-standing reluctance to allow the Canadian membership to elect its own representatives.

Yet even in the absence of additional data, discussions with union leaders and members, and with industrial relations observers, persuade us that union leadership on both sides of the border is being challenged more regularly and more effectively today than has been the case for years.

THE FAILURE TO RATIFY COLLECTIVE AGREEMENTS

Perhaps even more noteworthy than the previous feature is the refusal of union members to ratify collective agreements negotiated by their officers. Except where this can be shown to be a deliberate union strategem, such refusals are evidence of the waning power of the union hierarchy whose prestige and authority are undermined by repudiation of their negotiating « successes ». While no figures are available on this phenomenon in Canada, it is striking to note that ratification votes were unsuccessful in roughly 10% of the case which were handled by the Federal Mediation and Conciliation Services in the United States between mid 1965 and mid 1966. More recently that figure has risen to over 15%. Although the proportion of rejections is undoubtedly lower in Canada, membership refusal to ratify agreements has been a central problem in several major cases, including most notably those in the steel, packinghouse and transportation industries.

WILDCAT STRIKES

A third sign of unrest has taken the form of « wildcat » strikes which are neither called nor condoned by responsible union officers. To be

sure, unions have sometimes given clandestine support to so-called wildcat strikes in order to harrass management as part of their bargaining tactics. But the wildcat strikes to which we refer are authentic, spontaneous, rank and file uprisings. They are essentially protest demonstrations against the authority of both employer and union. Important examples of such strikes have occurred in the railway, primary steel and mining industries.

INTER-UNION RAIDING AND BREAKAWAY MOVEMENTS

As might be expected from these signs of self-assertion by the membership, traditional organizational loyalties are weakening and disappearing. This is reflected in a rising tendency, more prevalent in Canada than in the U.S., to exchange one union for another, through individual or en bloc defections. This has been especially obvious in the Province of Quebec, where for some years now the Confederation of National Trade Unions has provided national and international union members with a viable alternative.

Where no such obvious option has been available, local groups of disgruntled workers have sometimes chosen to go their own way. Across the country from Vancouver to St. John's, amongst all sorts of workers, one finds scattered breakaway and unaffiliated groups. Even within that portion of the labour movement which is affiliated to the Canadian Labour Congress, there is more of a tendency than in the recent past for workers to change unions when they think their position will be improved by so doing.

In general, the point is that workers are no longer content to suffer apathetically an inferior calibre of trade union representation. Instead they show relatively little hesitation in shifting their loyalty to a new bargaining agent which seems to promise more effective prosecution of their interests.

UNION BREAKTHROUGHS IN NEW SECTORS OF THE ECONOMY

Just as workers with a history of unionization have shown more inclination to transfer their loyalties from one union to another, so too have formerly uninterested workers begun to exhibit their disquiet by unionizing for the first time. The new enthusiasm for organization among public servants and professional employees is in marked contrast

to the cool response unions received in these sectors of the economy only a few years ago. These workers suddenly seem to be deciding that they have many grievances in common with their unionized counterparts in other sectors of the economy. They appear to be determined to make up overnight for any legacy of disadvantage inherited from their unorganized past.

LOST TIME DUE TO STRIKES

Lost time due to strikes is the one quantitative measure of labour unrest. In 1966 this loss in Canada amounted to over five million man days. In absolute terms, this topped the postwar peak of 4,500,000 man-days lost in strikes in 1946, but relative to the size of the workforce, it fell significantly short of that record year. More noteworthy from a current point of view is the fact that lost time due to strikes has, with the exception of one year, been rising throughout this decade. While 1966 may turn out to be a peak year for the 1960's, and while the time lost may decline somewhat in this and subsequent years, this fact does not diminish the significance of the trend to the end of 1966.

Diagnosing the Current Wave of Industrial Unrest

Acknowledging the risks of generalization, especially when based upon fragmentary and impressionistic evidence, we now attempt a diagnosis. As academics, no doubt we should prefer the security that attaches to the analysis of contemporary events which have already become history. As innocents abroad in the real world of industrial conflict, we cannot resist speculation — no matter how naive, how presumptuous it may seem. View us, if you will, as a pair of intellectual Luddites whose disdain for the computer has led us to this last ignominious public display of the decline of the academic artisan.

We will focus on the two most prominent manifestations of the current situation which we outlined earlier. First we will examine the causes of rank and file militancy and then we will turn to the causes of labour defiance of law and order. To begin, however, there is an important background consideration which we feel is of great significance.

A BACKGROUND FACTOR

Labour militancy in North America can be viewed as part of the pervasive restlessness of this century. In science and art, as in politics

and philosophy, this is an age of new truths. As empires and ideologies across the world explode and coalesce, and as mass media give the average worker some sense of involvement in these momentous events, it is almost inevitable that the excitement of the times will permeate every aspect of our lives — including industrial relations. Trade unionists, like so many in our society, seem less disposed today to accept the status quo. Along with others, they appear to share the view that things need not — indeed, should not — remain as they are for very long. Unlike some among the impatient, however, trade unionists are prepared to resort to concerted action to bring about desired changes. In this respect the labour movement resembles other broadly based reform movements in the world at large. Thus, there is a tendency among active trade unionists to identify their struggles with those of former colonial countries and the disenfranchised negro. Probably more noteworthy is the average worker's vague and inarticulate feeling of restlessness. The net effect of all of these forces may be to turn lack of respect for leaders and authority of any kind into an ingrained characteristic of our time.

Given this general consideration, why rank and file militancy ?

EXPLAINING RANK AND FILE MILITANCY

In suggesting answer to the question « why rank and file militancy ? », we do not intend to suggest any particular order of priority. Rather, our enumeration of factors is based on a logical framework for presentation instead of any relative ranking which we would attach to them.

The Pervasiveness of the Demand for More in Our Affluent Society

It is now so widely recognized that we live in an economy of rising expectations that it seems almost trite to mention it. Yet, only this characteristic of our time explains the increasingly apparent paradox that the more people get the more they want. Potentially even more troublesome are the demands which people accumulate when they do not get as much « more » as they expect for a period of time. As noted earlier, this may have been the case during the recession years of the late 1950's and early 1960's.

To be sure, should we ever flag in our quest for more, marketing and advertising experts revive our jaded appetites. Thus, society has institutionalized the business of creating discontent, by developing a whole new profession whose members might best be described as « merchants of discontent ». Of course, it would be naive to suggest that our acquisitive instincts would disappear if we were not constantly bombarded by hidden and not-so-hidden persuaders. We merely point out that middle class mores have been accepted by the organized worker in his capacity as a consumer, and that consequently middle class purchasing power is his immediate objective in collective bargaining. On this phenomenon we make no moral judgment, but we do observe that advertisers may be able to merchandize discontent more effectively than unions and their leaders can manage it or employers satisfy it.

Inflation and the Rising Cost of Living

Very much related to the first point is the role of inflation, regardless of its cause. Once the cost of living starts to rise, the scramble for more intensifies since it then takes more in money terms just to hold one's own in real terms.

In inflationary periods various groups are driven to devices such as cost-of-living « escalator » clauses to protect themselves from the rising cost of living. Unfortunately, however, resort to such devices may further aggravate the situation.

While inflation and the rising cost of living explain much of the unrest among workers today, it would be misleading to suggest that they are the underlying problem. At worst they are symptoms or aggravating factors, or both. In terms of underlying causes, they reflect the absence of concensus on the distribution of the fruits of the economic system. This lack of consensus, rather than inflation and the rising cost of living, is surely a more fundamental cause of difficulty.

The So-called « Pearson Formula »

Adding fuel to the fire, at least until recently, was a series of government-sanctioned settlements in some widely publicized disputes, including the Quebec longshoremen and the seaway workers. These

settlements ranged as high as 30% spread over two or three years. Although the seasonal nature of the work afforded a partial rationale for the abnormally high levels of these settlements, the public at large was left with the impression that expediency was the main criterion of government intervention. This impression was aggravated by faulty reporting in the mass media as to the exact nature of the settlements that emerged. The essential point is that although government intervention may have been unavoidable, its results encouraged a wide variety of groups to adopt extravagant bargaining demands in the hope of similarly benefiting from benevolent government intervention.

Job Insecurity

Another cause of recent labour militancy has been warranted or unwarrented concern us over job security. Publicly, the greatest amount of concern has been expressed about outright displacement. Such fears are bound to dominate the thinking of low seniority workers, particularly during an economic downturn. During the severe unemployment of the late 50's, for example, workers became particularly concerned about automation and other causes of displacement. Lacking bargaining power because of the economic downturn, unions then could do relatively little to protect their members. This left in its wake concerns which continue to come to the surface even after the problem has lessened in significance.

Today fear of outright displacement is not necessarily the critical issue. Often the more basic concern is the very thought of adjustment, even when it is not likely to give rise to external displacement. Especially among older and less educated workers there is a marked inclination to favour the status quo. They have been repeatedly reminded of their disadvantages in an age of rising skill requirements and they readily support union demands for their protection.

Management Secretiveness

Job insecurity breeds suspicion and makes workers susceptible to rumours. An employer's reputation for taking sudden unilateral action which affects his employees is bound to earn him ill will and generate discontent. Intensified worker anxiety adds to the pressure upon unions to win the job security safeguards they are demanding.

The Rigidity of the Collective Agreement in the Face of Changing Working Conditions

A collective agreement, in Canadian law, must be for a fixed period, generally at least one year. During the currency of the agreement, its terms and conditions can only be revised by consent of the parties. However, while the threat of strike or lockout is a spur to negotiations leading up to the creation of a contract, no such threat can be made by either party during discussions over its possible mid-term revision. Strikes are outlawed for the duration of the agreement. Thus, it is unlikely that an employer will consent to changes in the agreement, even though requested changes might reflect the pressures of changing working conditions in the plant.

One possible alternative would be for the parties to commit to an impartial arbitrator the job of amending the agreement to ensure that its terms are brought into line with changes which occur from time to time in techhnology or corporate structure. However, agreements almost never contain such a provision, and the law merely requires that the arbitrator be empowered to deal with « the interpretation, application, or alleged violation » of the agreement. Therefore, if a new process is introduced into the plant, the union's only recourse is to demonstrate that such action by management violates the terms of the agreement.

If a collective agreement merely provides that employees performing certain duties are to be paid at a specified rate, then upon introduction of a change, which requires the performance of a new range of duties, the company may unilaterally fix the new rates for those duties. Consequently, in such a situation, the union is powerless to stop a possible erosion of its hard-won wage structure. Only if an arbitrator is prepared to impose upon management an obligation to honour implied undertakings as well as the express language of the agreement can he give the union a remedy.

Few Canadian arbitrators are prepared to adopt the widespread American view that such implications can be made. No Canadian boards have yet adopted even the minimal requirement that an employer bargain with the union over the possible effects of technological change in an effort to minimize worker dislocation. The majority view amongst Canadian arbitrators is the « residual rights » theory, which reserves to management all of the rights it enjoyed before the advent of collective

bargaining, except those which are specifically surrendered in the express language of the collective agreement.

Whatever its merits, this doctrine has lessened the value of the arbitration process as an administrative safety valve, and has reduced organized labour's faith in it. We do not now propose to explore the merits of the residual rights doctrine, as opposed to the alternative suggested by Mr. Justice Freedman in his Inquiry into Run-throughs on the Canadian National Railways. Suffice it to say that while the prevailing practice may seem to be sound conventional legal doctrine, and to favour management, it may, for those very reasons, be an important factor in aggravating worker restiveness.

When workers fear change, and find that their union is unable to take effective steps to protect their position until the reopening of the contract, they may become quite disillusioned. Frustrated, but not powerless, they may be tempted to take matters into their own hands, in defiance of both unions and employers. They may try to win by an unlawful strike what they cannot achieve through legal remedies.

The Shifting Centres of Power in Union and Management

The problems stemming from the shifting centres of power in union and management can be examined at two levels. First there are difficulties resulting from centralized bargaining arrangements in which the interests of local unions are submerged in some kind of consolidated negotiating procedure. Second, there are problems that can occur solely within large local unions as the administration of the collective agreement becomes more centralized. Less attention has been paid to the latter than to the former problem and we will therefore begin with it.

There was a time when organized labour wanted to commit the collective agreement to writing and management was reluctant to do so. However, as written agreements became commonplace, management learned to live with them. Today the written agreement is management's Maginot Line, defended with vigour against a union adversary whose tactic is to flow around the fixed positions of the written word, and to draw strength from tacit understandings and customs.

This brings us to the source of the problem. As has been noted, failing agreement on the meaning of the collective agreement, the

parties are forced to resort to arbitration. Both sides have learned that arbitrators give a great deal of weight to past practice, at least in the event of ambiguity in the language of the agreement. From management's point of view, this means that if it wants to protect its interests, it must insure that none of its supervisors are setting precedents which could prove harmful in arbitration. To protect itself from union attempts to establish such precedents, management has frequently been driven to strip its first line supervisors of the power to make any significant contract interpretations lest they concede something they should not. Under these circumstances, it does not take long for the union steward (and ultimately the union members) involved to discover that lower-level management lacks the power to settle their grievances. In large organizations the delays which can result from more centralized handling of such problems can easily lead to a frustrating accumulation of unresolved issues. The consequent tensions may cause the workers affected to take matters into their own hands.

As noted at the beginning of this section, the same problem can affect local unions as a unit when they are caught up in multi-plant or multi-firm negotiations. Almost unavoidably there will be a tendency for the bargaining representatives to concentrate on common or unit-wide problems, to the neglect of local issues. If this neglect persists, local rebellions may be the result.

Long-term Agreements

Further complicating the situation in many instances is the practice of signing two, three, or even four years agreements. In terms of stability in the relationship between the parties, a strong case can be made for lengthy agreements. The danger is that so many unforseen issues may accumulate during the terms of these agreements that it will be very difficult to satisfy the pent-up demands of the members in the next round of negotiations. In effect, they will demand both catch-up concessions and guarantees against further frustration during the new agreement, which may put unbearable pressures on both union and management.

Inexperience in Bargaining

In some situations, unrest is the product of inexperience with collective bargaining. Newly-organized groups of workers may have

unrealistic expectations about the potential of concerted action to solve their problems, producing an unhealthy combination of naivete and strike-happiness. This appears to be particularly true of the professional and government employees who are just beginning to taste the fruits of their combined economic power. Clearly the problem is further compounded when their inexperience is matched by a similar lack of experience on the other side of the bargaining table.

The Influx of Young People

Related to the previous point is the influence of the rising numbers of young people entering the labour force. In contrast to earlier generations, these young people have born in a period of sustained prosperity, are better educated, are more impatient for the good things of life, are unintimidated by the experience of the depression, and are generally more skeptical of the values of their elders and of the need to respect authority. Unschooled in the traditions of trade unionism and collective bargaining unappreciative, perhaps unaware, of their past accomplishments and eager to share in their purported benefits, their impact is bound to be unsettling to say the least.

Factors Internal to the Labour Movement

In addition to the factors already cited, there are a number of other forces at work that are largely internal to the labour movement. One of the most critical of these is the problem of communications within unions. Some of the larger labour organizations appear to be having a great deal of difficulty in bridging the gap between the leadership and the membership. This can become a particularly acute problem where union leaders participate in summit meetings with their opposite numbers from management. Occasionnally the result has been a crisis of confidence which has jeopardized existing bargaining arrangements in some industries. This, in turn, has sometimes forced unions and management to abandon their familiar and successful bargaining habits in order to come to grips with problems within the new political framework.

Related to the communications problem is the increasing difficulty which unions are having in reconciling the competing interests of their members. In some unions this is exemplified by a widening conflict of interest between skilled tradesmen and unskilled workers. In others

it is manifested in a « conflict of generations », with younger workers tending to want more in their weekly pay cheques, and older workers favouring increased pension plans and other fringe benefits. Unions have always had to engage in a great deal of « internal collective bargaining » prior to and during their external collective bargaining with management. If reconciliation of the competing interests within the union is difficult, reconciliation with management becomes doubly so.

Inter- and intra-union rivalry aggravates the situation in many cases. Inter-union rivalry has been particularly severe in Quebec, but it is also evident that unions try to outdo each other, at least at the bargaining table, in other parts of the country. Wage parity with the United States has now become a focal point for this kind of inter-union competition. Perhaps more prevalent, particularly outside Quebec, however, is intra-union factionalism. Although the left-wing faction is weaker in many unions than it was in the past, there are still the « ins » and « outs » vying for power particularly at the local union level.

Further aggravating the situation in many unions is the presence of the so-called « young turks », some of whom are eager aspirants to full-time union office. In the past when unions were growing more rapidly, new talent could be absorbed into the hierarchy. Now there are fewer openings and would-be leaders are driven to conclude that the path upward leads over the bodies of the incumbents. There is also the problem posed by younger members who do not take the union very seriously and often look upon the possibility of a strike as something of a lark. Both groups represent a difficult political challenge to established union officers, who are compelled to assume a posture of public responsibility, while nurturing within the union an image of personal militancy.

Lack of Satisfaction of Higher Order Needs

Earlier it was argued that the demand for a greater share of the fruits of our economic system is a major cause of worker discontent. At the same time it should be noted that material demands can become secondary and be replaced in terms of primacy by certain higher order needs. Given satisfaction of their basic physical needs, workers may begin to desire such things as job satisfaction and self-respect. Where

their work is inherently routine and monotonous, meeting these desires may not be compatible with efficiency. For a time employers may be able to buy off the resulting frustrations through higher wages and fringe benefits, but at some point this may not suffice. Ultimately, worker malaise may find expression in some act of wilful self-assertion, such as deliberate absenteeism, insubordination, or wildcat strikes.

Rising Educational Levels

The average level of education in the labour force is steadily increasing. This could be having a number of effects on attitudes which are relevant to the present discussion. In the first place workers' expectations may be raised, both in a material sense and in terms of the higher order needs to which reference has just been made. Second, workers may be more aware of the general prosperity that surrounds them, of the high profits of some of the firms for which they work, and of their enhanced bargaining power in a period of prosperity. Third, increased educational opportunities may divert the most intelligent and capable members of the work force away from the factory into « white collar » occupations, thus diluting the indigenous stock of potential leaders in the plant. Where a generation ago union office might be one of the few outlets for a bright youngster who was obliged to leave school prematurely, and to go to work, today's educational opportunities equip such persons for many other roles.

Full Employment

The existence of full, even over-full, employment is not to be minimized in explaining the recent militancy of union members. When a striking union has difficulty mustering members to man its picket lines — as has happened in some recent cases — it is clear that the workers have temporary employment elsewhere, and have nothing to lose and everything to gain by « striking » against their regular employer. Union leaders themselves have been embarrassed by the availability of alternative employment during a strike; on occasion, workers have refused to accept an employer's offer of a substantial increase because they are under no real pressure to see the strike draw to a close.

The Fruits of Militancy

One of the most obvious reasons for continuing militancy among union members is that it pays. In numerous recent cases, for example,

workers have discovered that after they have turned down a company offer, their leaders are able to extract further concessions. Having once experienced the success of this tactic, the temptation to use it regularly is well-nigh irresistible. As well, other workers are encouraged to simulate intransigence in the hope of extracting more enticing offers from their employer.

The Role of Management

It would be easy to enumerate various management practices which contribute to worker discontent and to stress the need for improvement in these practices. Already mentioned, for example, has been the adverse effect which management's failure to give advance warning about planned changes can have on workers' attitudes. Without minimizing the importance of improving managerial techniques, it would seem more useful to emphasize how management is unwittingly but clearly playing into the hands of the more militant elements within the ranks of union members.

In the last section it was noted that one of the factors which helps to explain continued rank and file union militancy is the fact that it is yielding results. This is true in many instances because management is buckling under pressure, instead of standing firm. Sometimes this is due to the seeming inability of firms in the same industry to band together for collective bargaining purposes. Sometimes it is due to the competitive position of a single firm. In virtually all cases, management's lack of resolve appears to reflect a decidely short-run view of the stakes involved.

In terms of expediency, it is quite understandable that management should often attempt to buy peace, especially when rank and file militancy is channelled through formal union action. However, this policy of appeasement is dangerous when worker resentment is being directed as much against the union as against management. Not surprisingly, in this kind of situation, union officials would often like to see management stand firm. Where rank and file members are defying their leaders and management capitulates in the face of their pressure, the union and its leadership can be so undermined as to completely upset the labour-management relationship. Moreover, management behaviour of this

kind — regardless of its motivation — clearly invites a repetition of membership defiance in the future.

Other causes could doubtless be added to the catalogue of factors we have cited in our attempt to explain the increased militancy of rank and file union members. One possible addition which comes readily to mind, for example, is the effect which outside criticisms of the labour movement could be having on its membership. Conceivably such criticism, especially when directed at alleged lack of union effectiveness, might induce union members to demand more of their leaders. However, this and other potential causes of rank and file restiveness do not in our opinion approach in general significance the sixteen factors we have examined.

EXPLAINING INCREASED LABOUR DEFIANCE OF THE LAW

We turn next to a question, the answers to which involve examination of societal values of the highest importance. Why is it that union militancy has not been expressed through lawful processes which are available to employees to redress their grievances and to advance or protect their economic position ?

Labour lawlessness must, first, be placed in context. A distinguished jurist, J.C. McRuer, formerly Chief Justice of the High Court of Ontario, has said recently:

> I challenge the premise that the ordinary man on the street has less respect for justice today than he had fifty years ago. Our forefathers too often believed in vigourously defending laws and a social order that had one quality of justice for the powerful and another quality of justice for the weak... I am prepared to admit that there is a declining respect for many laws. I am not prepared to admit there is a declining respect for law. If there is a declining respect for law, legislators, lawyers and judges have failed to develop just laws and just procedures appropriate to the social changes brought about by the scientific developments of this century...

In the view of a man who has lived his life in the law, it is a passion for justice which has, in a broad sense, often led to disrespect for laws. This passion, in its most eloquent form, is exemplified by the campaign of civil disobedience waged by those who are protesting against racial injustice and what they conceive to be an immoral foreign policy. The

civil rights movement made « lawlessness » a badge of honour, worn with pride by those who were prepared to face fines and imprisonment rather than to abide injustice.

The new respectability of lawlessness, however, is premised upon a belief that the legal order is not a just order. Whether this is a simplistic view of Canadian labour relations law is a matter for debate. But the real facts of the matter are less relevant in terms of explaining labour lawlessness than the widespread conviction of unionists that they have little to gain and much to lose if they comply with the law.

To the extent that genuine grievances do exist, these must be recognized if labour is to be persuaded to change its view. Perhaps the least controversial of these complaints relates to the problem of delay. While delays are found in many areas throughout our legal system, the fast-moving nature of industrial relations makes expeditious handling of labour problems particularly urgent. Experience appears to be least satisfactory in conciliation and arbitration.

Many criticisms have also been made of our contemporary techniques of regulating picketing. Quite apart from the merits of particular cases, the statistical fact that the great majority of injunctions sought are actually granted, in and of itself raises a presumption of unfairness in the minds of unionists. To non-labour critics of the labour injunction, procedural abuses at least seem to call for substantial reforms. The appearance of fairness is dissipated — to some extent unavoidably so — by the short notice required to be given prior to a hearing, the practical impossibility of making full answer and defence, the peremptory nature of the hearings, and the virtual unavailability of appeal. Equally perplexing to the uncommitted observer, is the apparent manipulation of jurisprudential concepts and disregard of traditional strictures on the use of the court's injunctive power.

On the credit side, for those concerned with the fairness of the courts, is the recent demise of the *ex parte* injunction and signs of a trend towards more overt reliance by judges upon legislative policies as the basis for their decisions.

However the debits and the credits may balance out, the most unfortunate development is that the confidence of labour in the fairness

of the judiciary has been seriously undermined. It has been undermined sometimes by the cynical and suggestive remarks of critics and sometimes by self-incriminating judicial utterances. Consider, for example, such exceptional but gratuitous statements as:

> Therefore, the right, if there be such a right, of the (union) to engage in secondary picking of the ... premises must give way to the ... right to trade; the former, assuming it to be a legal right, is exercised for the benefit if a particular class only while the latter is a right far more fundamental and of far greater importance, in my view, as one which in its exercise affects and is for the benefit of the community at large.

or, again:

> In discussing the conduct of union members it may not be amiss to recognize that a high percentage of unions are dominated by persons from another State whose basic concept of law, order, good conduct and labour relations are not necessarily ours, but whose control seems almost to be absolute.

Beyond these infrequent fut blatant examples of judicial antipathy towards labour, there is the subtler, yet more important, fact that legal doctrines developed and administered by courts are often rigid and unresponsive to the needs and problems of a collective bargaining regime. For example, the ability of an employer, under present Canadian law, to undermine the structure of a collective bargaining relationship by the institution of technological change, or by relocation of the plant, has shaken the confidence of unions in the law's evenhandedness. Even when the substance of the law clearly favours the position of the union, as for example in imposing a duty of good faith bargaining upon the employer, practical difficulties of enforcement sometimes seem to render the law a hollow mockery.

The problems of enforcing the law produce a final explanation of why labour has turned to lawless techniques of satisfying its restless urges. Having lost confidence in the law, labour has ceased to comply with it voluntarily. This raises the problem of how compliance can be enforced. Certainly, in the present state of the law, it is difficult for an employer to secure monetary compensation through the regular courts for wrongs done by the union, although arbitration boards have on a number of occasions awarded employers damages because of union

liability for unlawful strikes. The criminal process is slow, proof is difficult, and police and prosecuting authorities are reluctant to intervene on behalf of either party to a labour dispute. Consequently, since he can neither prosecute nor sue for damages, the employer is driven to use the injunction as the primary technique of protecting his legal position.

Of course, an injunction is not self-executing; it is merely a command whose efficacy depends on the willingness of those to whom it is addressed to obey it willingly, or on the ability of those who make the command to enforce it. Until recently, the mere issuance of the injunction was sufficient to secure an end to picketing presumably because unionists were then no more prepared to abandon respect for the law than most citizens. However, as this respect has waned, with decreasing confidence in the basic fairness of the courts, deliberate disobedience of the injunction has become more prevalent. Although those who disobey an injunction are liable to fine and imprisonment for contempt of court, it seems unlikely that such sanctions can be completely effective. First, there is the practical problem of enforcement: large numbers of contemnors must be identified and brought to court, specific allegations must be made and proved against each, jails must be found to accommodate those found guilty, or extended proceedings taken to recover unpaid fines. The second problem is even greater: for a unionist who deliberately courts martyrdom, fines and jail are not a form of punishment but rather the very thing he seeks. If the situation deteriorates sufficiently a government may feel itself confronted by a dilemma from which it can only escape by reform of the law: vigorous enforcement of injunctions may produce a backlash at the polls; non-enforcement may undermine the credibility of the whole judicila process. To avoid this dilemma, the Government of Ontario has appointed a Royal Commission Inquiry into Labour Disputes. Whether its report will ultimately stimulate effective reform of the law remains to be seen.

Summary and Conclusions

The few insights planted throughout this paper are obviously inadequate to produce a bountiful crop of solutions. Indeed if we were to suggest plausible solutions we would be preempting the function of a swarm of task forces, labour-management committees and royal commissions. Instead, we will conclude by reviewing our major thesis, and by speculating about some of its implications.

We have tried to describe the nature of recent industrial unrest in Canada, with particular reference to two of its most disturbing features, rank and file militancy and labour defiance of the law. In each case, we have identified a variety of causes, but we wish to reiterate that, in a given situation, these causes may be present in varying degrees. We have therefore studiously avoided any suggestion that there is a monolithic explanation for these phenomena.

Before concluding, however, we would like to pass beyond this disclaimer in order to make several more pointed observations. To begin with we should make it clear that to a degree we welcome the militancy recently displayed by rank and file union members. While this militancy obviously has its irresponsible and disturbing aspects, it can be viewed in a positive light as well. At least we have been reassured that union members are still determined to govern their own affairs. From time to time, they may have to reclaim the « collective » bargaining system as their own, if it is not to become the property of a labour bureaucracy. Although this self-assertion by the rank and file may produce more militancy and conflict than we are accustomed to, it is a price we must pay for the contribution which collective bargaining makes both to the maintenance of our free enterprise system on the economic side, and to our democratic system on the political side.

The basic challenge in the long run is for unions to remain at one and the same time both democratic — in the sense of being responsive to the wishes of their members — and responsible — in the sense of being able to commit themselves contractually and otherwise to employers and to society at large. Over the decades unions have done a commendable job of reconciling the various obligations which these twin pressures impose upon them. From time to time, however, undue deference may seem to be paid to one of these duties rather than to the other. It is at times such as this that we need to retain perspective. The seductive appeal of legislation is almost irresistible but, to the extent possible, dalliance should precede consummation. There is a real risk that a crisis statute will compound our problems rather than resolve them.

In conclusion, we would make one final point. As never before unions and their leaders are functioning as managers of discontent. Their constraints are more rigid and inflexible, their mandate more tenuous, than is generally appreciated. They need a reasonable freedom

from external pressure if they are not to become entirely the mere messengers of the discontented. Thus, if union leaders are to do what is responsible in the long run, they may have to do what seems irresponsible in the short run, or the membership will depose them. If this seems to be a choice of evils, we would only add that with collective bargaining, as with many democratic institutions, a perverse faith in the ultimate capabilities of men may be our only hope — that, and the absence of an acceptable alternative.

LE MALAISE INDUSTRIEL AU CANADA: UN DIAGNOSTIC DE LA RÉCENTE EXPÉRIENCE

UNE PERSPECTIVE DU MALAISE INDUSTRIEL AU CANADA

Nous pouvons croire au premier abord que le Canada, comme les autres sociétés industrielles libres, a subi la plupart des grandes manifestations du malaise industriel durant les années de croissance économique. Avant de vérifier la vérité de cette croyance, nous nous pencherons sur les deux caractéristiques de la présente vague de malaise qui semble avoir des causes très complexes :

1.—le militantisme spontané des ouvriers du rang ;
2.—le mépris accru de la loi de la part des syndicats.

Mais nous pourrions peut-être dire que ces deux traits sont la rançon de la prospérité.

LE SYNDICALISME, LA NÉGOCIATION COLLECTIVE, LE DROIT ET LES AVOCATS DU TRAVAIL

Le syndicalisme est sans contredit une partie essentielle de l'organisation industrielle d'une société libre. C'est en fait un participant indispensable au processus de la négociation collective. Cependant on ne considère trop souvent que le rôle proprement économique du syndicat, alors que sa plus grande contribution peut aussi bien être dans d'autres domaines.

Si nous considérons le point de vue légal, nous devons noter que le rôle du droit en relations industrielles n'est ni statique ni inévitable. Nos lois du travail soutiennent ce désir que la négociation collective soit une technique pour régulariser les relations industrielles en tentant de balancer le pouvoir entre les deux parties à la négociation. Mais alors que les lois du travail reflètent une pensée contemporaine, la jurisprudence représente un consensus social plus vieux basé sur des divergences de vues au sujet des politiques publiques et des propriétés

de la négociation collective. Les politiques plus vieilles penchent vers la protection des entrepreneurs contre l'interférence syndicale alors que la législation contemporaine prone la protection de la négociation collective contre l'hostilité des employeurs.

Tout ceci nous amène à faire quelques remarques sur le rôle de l'avocat en relations industrielles. Même si l'esprit parfois trop juridique des avocats a contribué à empoisonner les relations de travail, ils peuvent, et le font de plus en plus, apporter une contribution à la fois constructive et créative.

LES CARACTÉRISTIQUES DE LA RÉCENTE VAGUE DE MALAISE INDUSTRIEL

Pour mieux analyser la récente vague de malaise industriel au Canada, nous devons d'abord identifier plus à fond ses caractéristiques. En plus des deux traits généraux déjà mentionnés, il y en a au moins six autres spécifiques à considérer :

1.—le haut taux de roulement des vieux chefs syndicaux ;
2.—le refus des membres de ratifier les conventions collectives ;
3.—les grèves sauvages ;
4.—les rivalités inter-syndicales ;
5.—la syndicalisation de nouveaux secteurs de l'économie ;
6.—le temps perdu dû aux grèves.

ANALYSE DE LA PRÉSENTE VAGUE DE MALAISE INDUSTRIEL

Dans les lignes qui suivent, nous porterons d'abord notre attention sur les causes du militantisme ouvrier pour ensuite considérer les raisons du mépris qu'ont les syndicats de l'ordre et de la loi.

a) *Explication de militantisme des ouvriers du rang*

1.—la tendance à toujours demander plus dans notre société d'abondance ;
2.—l'inflation et l'élévation du coût de la vie ;
3.—la soi-disant formule Pearson ;
4.—l'insécurité d'emploi ;
5.—le caractère cachotier du patronat ;
6.—la rigidité de la convention collective face aux changements dans les conditions de travail ;
7.—le changement des centres de pouvoir syndicaux et patronaux ;
8.—les accords à long terme ;
9.—le manque d'expérience en négociation collective ;
10.—la croissance du nombre des jeunes membres ;
11.—les facteurs internes au mouvement ouvrier ;
12.—le manque de satisfaction des besoins supérieurs ;
13.—l'élévation du niveau d'éducation ;

14.—le plein emploi ;
15.—les fruits du militantisme ;
16.—le rôle de la direction.

b) *Explication du mépris accru des syndicats face à la loi*

Ce mépris de la loi doit être placé dans son contexte. Les syndicalistes ont la ferme conviction qu'ils ont peu à gagner et beaucoup à perdre en se soumettant à la loi. Il en serait ainsi dans le cas des délais, piquetages et des injonctions.

Mais il reste que les doctrines développées et administrées par les cours de justice sont souvent rigides et ne répondent pas aux besoins et aux problèmes du régime de négociation collective. Ayant donc perdu confiance dans la loi, les syndicats ont cessé de s'y soumettre. Ceci soulève une question à savoir comment peut-on retrouver la soumission d'antan ? Soit en appliquant la loi à la lettre ou, si cela s'avère inutile, la changer tout simplement.

CONCLUSION

Nous ne prétendons pas avoir apporté une foule de solutions aux problèmes existants. Nous avons seulement tenté de décrire la nature du récent malaise industriel au Canada. Le défi de longue période pour les syndicats serait alors de demeurer à la fois démocratique et responsable.