

## Employment Security and Job Loss: Lessons from Canada's National Railways, 1956-1995

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Résumé de l'article

Les syndicats ont traité la question épineuse de mises à pied depuis leur formation, mais relativement peu a été écrit à propos des stratégies syndicales pour surmonter un excédent majeur de main-d'œuvre. Cet article permet d'examiner ces stratégies dans une industrie qui est très familière avec les mises à pied massives : l'entreprise ferroviaire. Une analyse des réponses syndicales aux pertes d'emploi présume une compréhension des facteurs servant de base des décisions gestionnaires relatives à la compression du personnel. Nous sommes d'avis que la nature de la « rationalisation » a changé de façon considérable au cours des 40 dernières années. Dans les industries telles que l'entreprise ferroviaire, les gestionnaires se préoccupaient de la technologie économisant de la main-d'œuvre dans le passé. À ce titre, les syndicats ont lutté pour une voix unie et un rôle déterminant dans l'introduction de nouvelles machines. Au Canada, les syndicats ont presque obtenu un tel rôle par l'intermédiaire des recommandations du Rapport Freedman. Par suite de leur échec dans l'obtention d'un rôle important dans la détermination des questions de changement technologique, les syndicats de chemins de fer se sont concentrés sur la possibilité de gagner les dispositions relatives à la sécurité d'emploi dans leurs contrats. Toutefois, les gestionnaires verraient la sécurité d'emploi comme une anomalie quand ils se sont retournés vers le changement organisationnel pour augmenter la productivité. Plus récemment, les syndicats de chemins de fer plus anciens ainsi que les nouveaux venus dans l'industrie ont connu des désaccords tactiques sur la façon de confronter l'offensive contre la sécurité d'emploi dans l'entreprise ferroviaire.

# Employment Security and Job Loss: Lessons from Canada's National Railways, 1956-1995

Leslie Ehrlich and Bob Russell

## *Introduction*

TRADE UNIONS have generally been viewed as an apparatus of employment regulation that gives workers a voice and some power over determining the conditions of the employment contract. Among other things, unions have been identified with representation and industrial democracy in a pluralist society, interest aggregation in the exercise of collective bargaining, the integration of workers into a dominant system of production, and the carriers of an alternative social vision.<sup>1</sup> All of this assumes an employment relationship that is relatively stable and continuous. What do unions do when this is not the case? Although the role of job control unionism is well understood, and with it the regulation of internal labour markets through such principles as seniority and bumping rights, less is known about how unions respond to large scale permanent employment loss.<sup>2</sup>

<sup>1</sup>Examples of these differing positions on trade unions may be found in Sidney and Beatrice Webb, *Industrial Democracy* (London 1920); Selig Perlman, *A Theory of the Labor Movement* (New York 1966); Claus Offe, *Disorganized Capitalism: Contemporary Transformations of Work and Politics* (Cambridge 1985), Chapter 7; Colin Crouch, *Trade Unions: The Logic of Collective Action* (Glasgow 1982); Richard Hyman, *Industrial Relations: A Marxist Introduction* (London 1975); and Gregory S. Kealey and Bryan D. Palmer, *Dreaming of What Might Be: The Knights of Labor in Ontario, 1880-1900* (Cambridge 1982), respectively.

<sup>2</sup>A thorough account of job control unionism is provided by Thomas Kochan *et al.*, *The Transformation of American Industrial Relations* (New York 1986).

In order to examine this issue more fully, we provide a longitudinal analysis of downsizing in the Canadian railway industry. Railway workers represent a unionized workforce that has had to live with the uncertainty of automation and corporate organizational change in a more or less continuous fashion for the last 40-plus years. Railway workers were among the first workers to be represented on a permanent basis in national and international unions, and they came to symbolize an important element of the skilled, male, working class.<sup>3</sup> Unlike other components of this class grouping, railway workers did not vanish, nor did they become quaintly antiquarian as the 20th century moved on. Rail transportation has remained a critical component of the Canadian and North American economy to the present day. A study of employment loss and the ways it has been contested by unions should therefore prove instructive.

Although the emphasis in this article is on union responses to job losses due to technological change or organizational restructuring, this can not be done by only paying attention to union strategies in an isolated fashion. Precisely because we are interested in one facet of the employment relation — job loss on a significant scale — the actions of the other parties to the employment relationship, employers, and the state, must also be dealt with.

Large-scale job loss is, after all, inevitably initiated by an employer. Technological or organizational change may be the immediate progenitors of corporate downsizing, but in back of this may stand changing product markets or new relations between producers that entail different forms of competitive regulation. In other words, downsizing may be initiated for varying reasons and it may assume different complexions given the historical context in which it takes place. It is important to understand these contexts if we are to adequately evaluate the limitations and possibilities of trade-union action.

Given that high levels of redundancy will likely entail conflict and significant social costs, states will also likely become involved in such events. Various levels of the state may attempt to mitigate job loss through incentives to corporations, individual workers, or through programs of industrial nationalization. Governments may also entertain alternative agendas such as the promotion of economic efficiency through competition policies and the promotion of privatization and economic rationalization. In either instance, job loss may come with serious levels of social conflict, and the state will be called upon to settle this through a plethora of interventionist mechanisms ranging from coercion to the arbitration of final settlements.

Adding further to the complexity of understanding trade-union responses, it is important to recognize that none of the principal participants to the employment re-

<sup>3</sup>Eugene Forsey, *Trade Unionism in Canada: 1812-1902* (Toronto 1982), 46-7, 183-4; Craig Heron, *The Canadian Labour Movement: A Short History* (Toronto 1996), 91-2; and Bryan D. Palmer, *Working Class Experience: Rethinking the History of Canadian Labour* (Toronto 1992), Chapter 2.

lationship can be viewed as a monolithic body that speaks with a singular voice. As we shall see, a union may pursue a strategy that proves unsatisfactory to a membership that undertakes other initiatives. Then again, inter-union rivalry has been commonplace in railroading with its history of craft/occupational unions and this may also have impact upon the final outcomes of disputes. In the same vein, different levels and branches of the state may not find unanimity in the context of sudden job loss. Politicians/legislators of differing political convictions may bring different policies to bear on the situation, while the judiciary and intellectuals in the employ of the state may introduce novel contingencies to the situation. Finally, employers may have differing interests and goals with respect to employment levels, and may pursue what they consider to be the best practice in a myriad of different ways.

In recognition of such dynamics, we invoke an inductive approach in the analysis. That is, we take four of the most significant examples of job loss in the railway industry during the latter half of the 20th century and treat them as case studies. Each case exemplifies novel features that merit highlighting in the analysis. In some cases unions emerge as central actors in wresting away the initiative from employers and asserting their own needs. In others they appear more as captives of a set of processes (e.g. conciliation and arbitration proceedings), which seem beyond their control. In some instances, such as the ill-fated Freedman Report on the negotiation of technological change (1965), and in the very different uptake of these issues in the Canada Labour Code (1971), the state takes a leading role in setting the agenda that unions and employers attempt to ingest. In all instances managerial decisions around the investment/disinvestment function form a paramount part of the story. The object then is to analyse four significant instances of employment loss in the railway industry. In this context we examine specific managerial decisions to downsize and the factors driving such actions; important state interventions that had an impact on unions and their actions; and the choices that were undertaken or excluded by the unions themselves in this most traumatic of events — sudden, significant, large-scale job loss. The aim is to come to a more effective understanding of the possibilities and limitations of trade-union action when workers are confronted with job losses.

### *Unions and Job Loss*

Given the enormity of job loss across the industrial landscape (railways and transportation, telecommunications, automobile manufacturing, banking and finance, etc.), the politics of downsizing have become important and topical issues. Significantly, in a number of analyses unions either do not figure, or are not portrayed as an important oppositional force. In a powerfully argued set of works, David Noble, for example, argues that “labor has swallowed whole and internalized the liberal ideol-

ogy of progress.”<sup>4</sup> Given these conditions, unions have at best played an ameliorative role in attempting to assuage some of the most negative effects of technological change on those groups of workers who are most immediately affected. At their worst, unions have been duplicitous in the introduction of new technologies and the subsequent human displacements that have accompanied them. As Noble records:

Despite the efforts of rank and file workers to prevent or at least slow down the introduction of these technologies through the use of strikes and other forms of direct action (as well as demands for veto power over the decision to introduce the new systems), their unions uniformly bowed to the hegemonic ideology of progress. While some unions did succeed in gaining a measure of compensation and job protection for some of their members, they all yielded completely — over significant rank and file protest — to management’s exclusive right to decide on new technology.<sup>5</sup>

In support of this argument, Noble points to the apparent disinterest that unions such as the United Auto Workers (UAW) expressed towards the bleak prognostications that some were making concerning the future of automation in manufacturing. As convincing as this argument is, it still must be remembered that it only refers to a specific point in time. Have unions remained as blasé towards the issues of technological and organizational change as they seemingly were in the 1950s? Assuming that an unfettered belief in the ethic of progress will begin to wear thin if it consistently produces results that are not in the interests of certain organizations, what factors would account for the continuance of trade-union passivity? Noble does not tell us.

As suggested, Noble is pessimistic about union organized resistance to automation. Readers can evaluate whether the power of the ideology of progress is an adequate basis for his argument. At the very least, however, Noble does provide a critical account of trade-union (non)response to technological change. In other recent ethnographies of specific plant shutdowns, unions play an even more marginal role in the analysis. For example, although Kathryn Dudley acknowledges the historical influence that the UAW had in her hometown of Kenosha, Wisconsin, the role of the union takes up very little space in her treatment of the closure of the Chrysler assembly plants in that town.<sup>6</sup> Ruth Milkman does emphasize the importance of the union negotiated “Job Opportunity Bank-Security Program” in her study of downsizing at General Motors’ Linden, New Jersey car plant, while still

<sup>4</sup>David Noble, *Forces of Production: A Social History of Industrial Automation* (New York 1986), 248; also see David Noble, *Progress Without People: New Technology, Unemployment, and the Message of Resistance* (Toronto 1995).

<sup>5</sup>Noble, *Progress Without People*, 25.

<sup>6</sup>Kathryn Dudley, *End of the Line: Lost Jobs, New Lives in Postindustrial America* (Chicago 1994).

acknowledging that the national union, the UAW, was totally unprepared for the industrial restructuring that it would face in the 1980s. According to Milkman, "The UAW's long history of accommodation to management decisions in regard to such matters as investment and the organization of the production process left its leaders ill equipped to come to terms" with the changes that beset the industry.<sup>7</sup>

A more formal model of union response to large-scale employment loss associated with technological and/or organizational change is contained in Miriam Golden's comparative three nation, four industry study of downsizing.<sup>8</sup> Golden uses a game theoretical approach to reach conclusions that partly overlap and yet partly diverge with those of Noble. Golden argues that job preservation is virtually impossible once a firm has decided to downsize. "By engaging in a costly dispute when workforce reductions cannot actually be halted, the union will end up losing more than it can win. While the desire to protect jobs is noble and the strikes that revolve around job protection are often heroic, they are ultimately doomed."<sup>9</sup> As a result, unions will seldom enter into such battles. According to Golden, to do so would be irrational and union leaders know as much. On the other hand, unions will strike over and may emerge victorious in conflicts that involve the victimization of union activists and leaders. In these instances, the future of the union and its organizational integrity are at stake. If managers or governments use layoffs and downsizing as an opportunity to challenge the continued existence of unions, then conflict may well ensue as the union chooses to fight and possibly survive rather than face certain decimation. Accordingly, while strikes may ostensibly be organized around the politics of job loss, Golden argues that in effect this is a facade. They are really about the organizational survival of the union, on those few occasions when they do actually occur.<sup>10</sup>

Golden suggests that union rationality will be displayed in the same manner irrespective of the structural properties of national industrial relations systems. When individuals that the union considers to be important are directly threatened with layoff in downsizing exercises, unions will retaliate with industrial action. Otherwise they are prone to accept the negative consequences of technological/organizational change in a passive fashion. Yet, Golden's own data shows other things as well. When job loss involving the rank-and-file is extensive enough to impair a union, strikes may occur and receive avid support from members, as the 1984 British miner's strike demonstrates. In other words, managerial actions that leave a union leadership intact, but decimate sections of the membership may provoke widespread resistance. Secondly, an important contributing factor in determining whether unions will take up the cause of retrenched workers is whether or not there

<sup>7</sup>Ruth Milkman, *Farewell to the Factory: Auto Workers in the Late Twentieth Century* (Berkeley 1997), 87-8.

<sup>8</sup>Miriam Golden, *Heroic Defeats: The Politics of Job Loss* (Cambridge 1997).

<sup>9</sup>Golden, *Heroic Defeats*, 138.

<sup>10</sup>Golden, *Heroic Defeats*, 13, 18, 136-8.

are institutionally regulated means for handling downsizing. If, for example, the seniority principle is subscribed to, the likelihood of conflict will be reduced. While Golden recognizes the importance of this, she does not consider it to be a structural feature of some industrial relations systems and not others.

The case studies that we pursue will shed further light upon these issues. As we will see, under some circumstances, even unions that are well known for their conservative pedigree have offered up some unique challenges to management rights in these areas. Just as importantly, when unions have not resisted large-scale downsizing it is essential to provide an adequate explanation as to why they did not take action.

### *The Firemen's Dispute, 1956*

The first dispute that we examine, between the firemen and the Canadian Pacific Railway, began after the existing collective agreement had expired in 1956. It provides a striking example of technological change and trade union response to it.

The issue in this instance had been brewing long before the expiration of the 1956 contract. While the Brotherhood of Locomotive Firemen and Enginemen (BLF&E) were demanding a traditional wage increase in a new contract, this was countered by company proposals to entirely eliminate the fireman's position from freight and yard service work consequent to the change over to diesel operation in these divisions.<sup>11</sup> In fact, diesel locomotives had been used on North American railways as far back as the 1920s, but manufacturers did not offer standardized production models until the late 1930s. Canadian National (CN) and Canadian Pacific (CP) began dieselizing operations in the early 1940s, and it was in the freight yards of major cities where steam locomotives first began to disappear. A diesel locomotive was more fuel efficient, it needed less maintenance, and above all required less labour to operate and maintain than a steam engine. Indeed, CP estimated annual savings of eighteen million dollars in transportation expenses and six million dollars in locomotive repair costs after complete dieselization.<sup>12</sup> The changeover thus had the potential to affect the size and number of train crews, along with various non-operating personnel assigned to railway terminals. The railway may have anticipated savings in terms of labour costs when it tested its first diesel locomotive in yard service. CP's first diesel was unit 7000, an experimental switching locomotive that operated in the Montréal terminals in 1937 and ran without a fireman during the day shift.<sup>13</sup>

On the face of it, union opposition to deletion of the firemen's position appeared doomed as a classic example of attempting to "arrest progress." Steam tech-

<sup>11</sup>Canada, Department of Labour Canada, *Labour Gazette*, 58 (Ottawa 1958), 577.

<sup>12</sup>National Archives of Canada (hereafter NAC), Records of Federal Royal Commissions, RG 33/37, Series 16, vols. 1-3, Kellock Royal Commission Summary of Transcripts and Index (hereafter KRC).

<sup>13</sup>KRC, 27.

nology required two operating personnel, an engineer to control the throttle and brake and a fireman to keep the fire burning. Previously, the introduction of automatic stokers on coal fired steamers made the firemen's work easier and safer, and in later years many steam locomotives ran on oil. With automatic stokers the fireman's main responsibility involved monitoring the flow of fuel to the fire and keeping an eye out for mechanical problems. With diesel locomotives none of this was necessary, as fuel, water, and air flow could be monitored by the engineer right from the control stand. Before the railways completely dieselized their operations, many engineers agreed that steam locomotives were more demanding in terms of operating skills because the machines required a higher level of human judgement.<sup>14</sup> The transmission of energy from the firebox to the boiler, pistons, drive rods, and wheels could not be accomplished with the flick of a switch. The diesel locomotive, on the other hand, used an internal combustion engine to turn an electric generator, and the generator supplied power to electric traction motors that turned the locomotive's wheels. Only the engineer was required to start and stop a diesel, while constant speed could be maintained without having to regulate the flow of fuel.

The duties of firemen changed when diesels replaced steam power in road freight service, and railway officials argued that some of the remaining tasks overlapped with those of the head-end trainman. On a steam locomotive, a typical job description included:

- 1) Maintaining steam pressure.
- 2) Ensuring an adequate supply of water in the boiler.
- 3) Replenishing water and fuel supplies enroute.
- 4) Cleaning fires enroute when necessary.
- 5) Cleaning the ashpan enroute when necessary.
- 6) Maintaining the cab deck in a tidy condition.
- 7) Assisting the engineman.
- 8) Maintaining a forward lookout when possible.
- 9) Complying with the timetable, train orders, signal indication, special instructions, and the Uniform Code of Operating Rules.
- 10) Maintaining a running inspection of the left side of the train.<sup>15</sup>

On diesels, duties one through six were no longer required. Moreover, in 1957 CP demonstrated a dual control mechanism that would eliminate the need for a fireman as a lookout on the left side of the cab. An engineer could operate the locomotive via a wired remote control that regulated the throttle, independent brake, and dead man pedal.<sup>16</sup> Such a device only cost \$500 to install in each engine.<sup>17</sup> For the

<sup>14</sup>United Transportation Union (hereafter UTU), *Blueprint for the Future*, Final Report, UTU/Labour Canada Technology Impact Program Project, vol. 2 (Ottawa 1990), 18.

<sup>15</sup>NAC, UTU fonds, MG 28-I216, vol. 64, Royal Commission Exhibit 106.

<sup>16</sup>NAC, UTU fonds, MG 28-I216, vol. 41, file 385-E.

<sup>17</sup>NAC, UTU fonds, MG 28-I216, vol. 41, file 385-E.

railway companies, it was all a matter of the redundancies that “naturally” flow through from automation.

The implications of the proposed changes extended further than the fate of this one occupational category, however. In the steam era, engineers were given shovels before they were allowed to take the throttle. A locomotive engineer typically had three seniority dates over a career, beginning with hiring on for work in a locomotive shop, then making the first trip as a fireman, and finally making the first trip as an engineer.<sup>18</sup> Training took upwards of ten years, while service as a fireman constituted an invaluable aspect of that experience. With the switch to diesels, much of the training, including tacit knowledge and skill, was moved to simulators (not unlike driver training), while knowledge of the workings of the engine became wholly the preserve of maintenance personnel in the shops.

While the position of fireman was often a stepping-stone to that of engineer, firemen were represented by a separate union, and the union considered the job a separate craft requiring a specific set of skills. Both engineers and firemen had skill sets that were unique to the industry, and hence, non-transferable. With an employer offensive directed against the “diesel rule”<sup>19</sup> in the making by 1956, CP became one of the first “test cases” in an on-going struggle over technological and workplace change in the industry.

With a standoff over the future of railway firemen and in a time honoured Canadian tradition, a Board of Conciliation was appointed to break the impasse between the BLF&E and the CP. Hearings were spread out over a period of 23 days between June and November 1956, with 15 witnesses appearing on behalf of the company and 35 providing testimony for the union. With respect to freight service, union witnesses argued that firemen were necessary to keep a lookout for signals and hazards to the left side of the cab, while the company argued that the head-end trainman could perform this function. The union witnesses also argued that firemen were necessary to reset safety devices on the locomotive in the event of an emergency, but the company witnesses argued that on average safety alarms on diesels might trip every 7000 miles, and when engines are run under multiple unit control the trailing locomotives could still pull the train.<sup>20</sup> Regarding yard service, union witnesses testified that the visibility on the engineer’s side of the cab in a yard switcher was poor when turning left, and consequently a fireman was necessary to relay hand signals from the ground crew. Company witnesses argued that yard

<sup>18</sup>R.E. (Lefty) Morgan, *Worker's Control on the Railroad: A Practical Example "Right Under Your Nose"* (St. John's NF 1994).

<sup>19</sup>The “diesel rule” refers to the 1937 protocol that was signed by the union and American operators. The National Diesel-Electric Agreement required firemen on all diesel locomotives weighing over 90,000 pounds. A similar agreement was signed regulating the Canadian industry in 1948. Morris Horowitz, *Manpower Utilization in the Railroad Industry: An Analysis of Working Rules and Practices* (Boston 1960).

<sup>20</sup>*Labour Gazette*, 57 (1957), 186.

switchers moved at slow speeds, and the train could be stopped if necessary. In tight areas where signals could not be given within the engineer's view an extra yardman could be assigned to the crew when necessary.<sup>21</sup>

After the hearings concluded, the Board recommended that no new firemen be hired. Senior firemen would be promoted to engineers when positions became available, while firemen with less than three years of service would remain with the company for three months at full pay before accepting alternative employment with the company or accepting a severance payout.<sup>22</sup> In other words, the Board found in favour of CP, ruling the firemen were no longer a necessity in freight and yard service and ought to be phased out.

The BLF&E complained that the Board was biased in favour of the railways when it made its recommendations, and following further last minute talks it declared a strike.<sup>23</sup> This national nine day action only came to an end with the appointment of a Federal Royal Commission to investigate the operation of the industry. Even here, though, there was disagreement. While CP President N.R. Crump agreed to the establishment of a Royal Commission on condition that its findings were binding upon the parties, his counterpart BLF&E Vice-President W.E. Gamble would not go along with the provision for binding arbitration.

Once again, following lengthy observations of train crews, the three person Royal Commission chaired by Justice R.L. Kellock found in favour of the company's position. According to the Commission, an equitable solution could be authored principally through a strategy of natural attrition that would involve upward mobility for some and downward mobility for others. Workers with seniority extending beyond 1953 would remain in their positions until they could move up into engineers' positions. Those with seniority dates that fell between 1953 and 1956 would be offered alternative employment as trainmen, or in the yards, as positions became available. Finally, those with little accumulated seniority would be terminated, yet given preference in future hiring.<sup>24</sup> These proposals differed little from the 1956 Conciliation Board report, except that the seniority dates were more clearly spelled out in each of the Royal Commission's recommendations.

These remedies remained unsatisfactory for the BLF&E, and were consequently rejected. Meanwhile, the railway began making moves to implement the Board's findings, beginning with the layoffs of firemen from road and yard work. In this climate further talks quickly broke down, and a second strike date was set to coincide with the beginning of the forced redundancies. One should not underestimate the importance of these dynamics, as signified by a new initiative that involved the personal intervention of the prime minister of the day, Louis St. Laurent, who was ac-

<sup>21</sup>*Labour Gazette*, 57 (1957), 186.

<sup>22</sup>*Labour Gazette*, 57 (1957), 187-9.

<sup>23</sup>NAC, UTU fonds, MG28-1216, vol.41, file 385-B2

<sup>24</sup>R.L. Kellock, *Report of the Royal Commission on Employment of Firemen on Diesel Locomotives in Freight and Yard Service on the Canadian Pacific Railway* (Ottawa 1958), 23-4.

accompanied by the Minister of Labour, the Transport Minister, and the President of the CLC in last minute talks with the company and the union. This last ditch effort was only terminated in the hours leading up to the second strike that commenced on 11 May 1958.

During this second strike, the union claimed that 500 jobs would be lost if the Royal Commission's findings were accepted, while the railway predicted that only 100 people would be laid off.<sup>25</sup> Trains continued to run despite the strike, as other railway labour unions failed to lend support. Members of other unions did not see themselves as being affected by the discontinuance of the fireman's position, and they felt that there was little justification in preserving such positions for firemen who have not yet been hired.<sup>26</sup> Meanwhile, the CLC failed to outline a specific program of support for the BLF&E and Brotherhood of Locomotive Engineers' (BLE) leaders only committed to making a statement that firemen were necessary for safety reasons and as engineer trainees.<sup>27</sup> Nevertheless, shortly before midnight on 13 May 1958, a settlement was reached and firemen began to return to work two days after their second walkout.<sup>28</sup>

The proposals outlined in the Kellock Report were modified in significant ways. No one with two or more years seniority would be stood down to other jobs or forced out the door. Instead, workers with this amount of seniority would be taken up into engineers' positions as they became available. Until that time, they would remain in their current jobs. Firemen with less than two years seniority were stood down, with promises of preference for future employment as firemen in the passenger service of the company, or for other positions should they become available.<sup>29</sup>

After the dispute was settled, a total of 73 workers with the least seniority were laid off.<sup>30</sup> Existing jobs had been protected, although there would obviously be no future employment growth in this part of the industry.<sup>31</sup> The railways eventually discovered that the settlement with the firemen was working to their disadvantage. Firemen found their wages too attractive to encourage early exit.<sup>32</sup> In addition, the use of larger equipment meant that by 1970 there were not enough engineers' positions available to absorb the remaining firemen and thereby turn the attrition plan into a major savings venue for the companies.<sup>33</sup>

<sup>25</sup>Rosemary Speirs, "Technological Change and the Railway Unions, 1945-1972," PhD thesis, University of Toronto, 1974, 113.

<sup>26</sup>NAC, UTU fonds, MG 28-1216, vol. 108, 2500.16.18, newspaper clippings.

<sup>27</sup>NAC, UTU fonds, MG 28-1216, vol. 108, 2500.16.18, newspaper clippings.

<sup>28</sup>*Labour Gazette*, 58 (1958), 578.

<sup>29</sup>J.M. Patterson, "The Labour Movement within the CPR 1881-1995," unpublished manuscript, 1995.

<sup>30</sup>NAC, UTU fonds, MG 28-1216, vol.108, 2500.16.18.

<sup>31</sup>Speirs, "Technological Change," 122-3.

<sup>32</sup>Speirs, "Technological Change," 122-3.

<sup>33</sup>Speirs, "Technological Change," 122-3.

Occupational employment in the firemen's category at CP declined from a total of 3,150 in 1950 to four in 1995.<sup>34</sup> By 1969 the BLF&E had ceased to exist as a separate union entity and had merged with several other rail craft unions, (The Brotherhood of Railroad Trainmen, Order of Railway Conductors, and Switchmen's Union), to form the United Transportation Union.<sup>35</sup> This marked the beginning of the end of craft-based labour organizations in the railway industry. The conversion from steam to diesel locomotives represented a major technological change that affected a large part of the union membership.<sup>36</sup>

What conclusions may we draw from this first example? Certainly the union that was directly affected by dieselization, the BLF&E, did not capitulate in the face of mass layoffs. Two strikes were waged, and the Conciliation Board proposals as well as the recommendations of the Royal Commission of Inquiry for managing the redundancies were altered and improved upon. Clearly, individual workers fared better than they otherwise would have. Equally evident though was a lack of willingness on the part of the BLF&E, allied unions, or the larger labour movement to press this dispute onward. The BLF&E did propose to take strike action at CNR, where in the aftermath of the CP strikes, management followed suit by announcing a permanent moratorium on the hiring of firemen in freight and yard service. At CN, 3500 workers were eligible to walk out, but this proposal garnered little enthusiasm and was quietly dropped.<sup>37</sup> In short, the unions adopted a defensive strategy that focused upon the protection of existing members as opposed to the wider societal implications of further mechanization. The existing mechanisms of the industrial relations machinery, conciliation and legal strikes, were subscribed to throughout. This strategy secured the limited objectives that it set itself. Over the longer run, firemen in decreasing numbers continued to work even as their craft organization lost its identity to history. Meanwhile, the firemen's situation came to represent only the proverbial tip of the iceberg as our next case illustrates. Automation of rail traffic would have much larger implications to follow and would present on-going challenges to a strategy of defensive legalism.

*Negotiating Technological Change:  
The Lost Opportunity of the Freedman Report*

Prior to dieselization, railway terminals were placed at distances of between 100 and 125 miles apart. A steam locomotive could only travel so far before it needed fuel, water, and some light maintenance. Train crews were assigned to move stock between such points, commonly referred to as the "home terminal" and the "turn-around point." The former was where employees permanently resided. Typically,

<sup>34</sup>Patterson, "The Labour Movement."

<sup>35</sup>UTU, *Blueprint for the Future*, vol. 1, 41.

<sup>36</sup>NAC, UTU fonds, MG 28-I216, vol. 108, 2500.16.18.

<sup>37</sup>NAC, UTU fonds, MG 28-I216, vol. 108, 2500.16.18.

many “home terminals” were located in remote communities that were dependent upon the railroad for survival. The “turnaround point” was the end point on a worker’s route. A train would be taken to this terminal where a crew change would be effected. The originating crew would then pilot another train back to the “home terminal,” perhaps after a stay at this point.<sup>38</sup> At every point requiring a crew change the caboose had to be switched out, which basically meant detaching it from the train and reattaching it to a train that was making the journey back to the crew’s home terminal. This added to the time and money involved in operating a freight train.<sup>39</sup>

As we have seen, diesel locomotives were more fuel efficient, and when they were placed in road service the railways soon found that the distance between maintenance and fueling facilities could be extended in a practice known as “run-throughs.” Improvements to the track and roadbed, newer cabooses, larger rolling stock, and the use of two-way radios also had the same effect of making “run-throughs” possible.<sup>40</sup> The main objective of “run-throughs” was to reduce the number of crew changes and to speed up operations. This, it was argued, would lead to savings in a number of areas including the elimination of much switching, cut-backs in car and locomotive usage, reductions in car cycle time, and the elimination of terminal and switching crews payments, and lodging costs.<sup>41</sup> But, it would also ultimately mean the closure of divisional points and the dismissal of railway employees, as evidenced by the first experiments in “run-throughs.” Thus, when CN closed its Redditt, Ontario terminal in 1960, allowing trains to run straight through from Sioux Lookout, Ontario to Winnipeg, Manitoba the railway estimated an annual savings of about \$158,000.<sup>42</sup>

The first “run-throughs” had taken place prior to the Winnipeg experiment in Nova Scotia, New Brunswick, and Ontario in 1958. Train crews were naturally opposed to “run-throughs”, if they meant having to be uprooted from the “home terminal” community or being laid off. Later that year CN proposed to “run through” Belleville on the Toronto to Brockville line, and operating unions claimed that the railway’s decision violated Section 15(b) of The Industrial Relations Disputes Investigations Act (IRDIA). That section only permitted an employer to alter working conditions during the open period of a collective agreement, the period when the agreement was being re-negotiated. CN had not done this, and instead sought refuge in the notion of residual rights. More commonly known as managerial right or pre-

<sup>38</sup>Samuel Freedman, *Report of the Industrial Inquiry Commission on Canadian National Railways Run-Throughs*, Samuel Freedman—Commissioner (Ottawa 1965), Chapter 4, 31-47 (hereafter *Freedman Report*).

<sup>39</sup>*Freedman Report*, 46.

<sup>40</sup>*Freedman Report*, 7.

<sup>41</sup>*Freedman Report*, 31-47.

<sup>42</sup>*Freedman Report*, 41.

rogative,<sup>43</sup> this protocol stated that any technological, operational, or organizational change that is not specifically proscribed by the collective agreement can proceed without negotiations while the agreement is in effect. CN further specified what it took to be its natural right:

Traditionally, Management has believed that its freedom to act and make decisions in the pursuit of its goals is only limited to the extent that laws, the influence of the marketplace (i.e. the suppliers of raw material, customers supply and demand), and the collective agreement, if one exists, place restrictions on it. In other words, if some regulation or economic influence does not specifically restrict its freedom to act, management is free and has the right to take whatever action it desires.<sup>44</sup>

In response to these first experiments in "run-throughs," the chairman of the Brotherhood of Railroad Trainmen (BRT) went to Ottawa to discuss the issue with a representative from the Department of Labour. But, Industrial Relations Director Bernard Wilson ruled that CN's decision did not violate the Act. The union then put the case before the Canadian Railway Board of Adjustment No. 1, a board made up of company and union representatives. This body also failed to stop or alter the practice of "run-throughs," arguing that there was nothing in the collective agreements explicitly referring to "run-throughs," and this made it difficult to stop management from making the sought after changes on a unilateral basis.

In 1960 CN proposed to "run through" the towns of Folyet and Nakina, Ontario on a partial basis by allowing one freight train to bypass the towns in either direction. This time the BRT met with management to discuss the change in operations, but the union's request for cancellation was again denied. CN regional general manager W.C. Bowra said that the railway would try to negotiate future changes, but the term "negotiate" was not clearly defined and was susceptible to different interpretations by labour and management. In the end, the Brotherhoods backed down and let the "run-through" proceed.

The next "run-through" was the above mentioned case of Redditt, Ontario en route to Winnipeg. Redditt was a turnaround point for train crews, and CN wanted to eliminate all crew changes except for wayfreight operations. Three operating Brotherhoods joined in court action to stop the change, but when that was unsuccessful each union took a different view of the situation. The BRT saw the "run-through" as being inevitable and ended up agreeing with the railway's terms

<sup>43</sup>For more on the origins of the doctrine of management rights see Howell Harris, *The Right to Manage: Industrial Relations Policies of American Business in the 1940s* (Madison, WI 1982); also Nelson Lichtenstein, *Labor's War at Home: The CIO in World War II* (London 1982).

<sup>44</sup>CN Labour Relations Department, "The Scope and Limits of Management's Freedom to Act," in "Labour Relations Philosophy," position paper on labour-management relations, n.d., 1.

of operation. The BLF&E followed suit by dropping all formal opposition to the proposal, while the BLE remained opposed and once again took their case to the Canadian Railway Board of Adjustment No. 1. At issue here was the company's proposal to establish pools of train crews at Winnipeg and Sioux Lookout, providing that the men would "agree to waive the rule in the collective agreements calling for penalty payments to unassigned crews held away from their home terminal in excess of 16 hours."<sup>45</sup> The BLE was apparently unwilling to waive the rule. Again, the Board ruled against the Brotherhood and again the "run-through" proceeded.

In 1960 the last proposed "run-through" was between Toronto and Armstrong, Ontario. A fast freight would operate between Toronto and Winnipeg while bypassing the communities of South Parry, Folyet, and Nakina. As the company and the unions attempted to resolve the issues posed by this "run-through," they appeared to be moving further apart. CN had no intentions of reimbursing employees for property loss in the event of relocation, and the Brotherhoods also objected to the poor quality of bunkhouses and cabooses. The unions claimed that longer runs could cause operator fatigue and prove to be hazardous to train crews and the public. However, CN managers made it clear they were not *asking* if they could change operating practices; they would simply follow past practice and go ahead with the "run-throughs" in spite of the Brotherhoods' objections.

Emerging out of these flare-ups, in 1961 a dispute arose between the BRT and CN over a new contract, where the union, in reaction to the continuing practice of run-throughs, demanded a protective clause requiring that "No material change or alteration of conditions of employment shall be made during the currency of contract unless mutually agreed to by both parties."<sup>46</sup> This request went to the heart of the question of management's rights, and a Conciliation Board was duly appointed to adjudicate the dispute. Board chairman Judge J.R. Robinson handed down a report the following year that recognized the problems workers faced, including layoffs and new work rules brought on by technological and organizational changes. None the less, the Board ultimately gave priority to managerial right, while at the same time recommending that the company "discuss" proposed changes that were occasioned by the "run-throughs" with the unions. The BRT wanted negotiations on the basis of parity, but the Board was not willing to go that far. While recognizing

That this is a major problem which will require the full cooperation of management and labour alike ... it would appear that the solution is not likely to be readily found and may require, perhaps the attention of Parliament itself.

However it may be, it is the opinion of the Board Chairman that the Brotherhood proposal, if instituted, might well severely hamper the Company in exercising the normal management responsibility for carrying on its operations in an efficient manner to meet the intense competition it must meet.<sup>47</sup>

<sup>45</sup> *Freedman Report*, 14.

<sup>46</sup> *Freedman Report*, 18.

<sup>47</sup> Judge J.R. Robinson, cited in *Freedman Report*, 18-9.

Alarmed at the ease with which the railways were able to alter past practices, the three operating Brotherhoods established the Joint Running Trades Association in 1963. This was primarily in response to discontent from the membership at large over the issue of “run-throughs” rather than from pressure emanating from union headquarters. BLE Assistant Grand Chief Engineer William Wright was reported as saying that his union would not support any strike action proposed by the Association, while CN refused to recognize the new body.

The Association did send a delegation to Ottawa to inform the federal government about the ill effects “run-throughs” were having on working conditions and labour relations. In their brief they specifically pointed to the threats that unilateral changes in working practices were having on the collective bargaining process. Vanishing communities, longer working hours, and diminished employment opportunities were also highlighted in the Association’s brief.<sup>48</sup> Cabinet ministers told the delegation that the brief would be given “careful consideration.”<sup>49</sup>

At about the same time authorized members of the BLE, BLF&E, BRT, and the Order of Railway Telegraphers presented a brief to the Ministers of Labour and Transport. It protested the absence of provisions in the Federal Labour Code requiring mutual consent prior to instituting changes to existing collective agreements. The Brotherhoods asked the Labour Minister to appoint an Industrial Inquiry Commission to look into the unilateral actions of management as epitomized by the “run-through” issue and to let the Commission search for clauses in either the Railway Act or the IRDIA that would provide relief from unilaterally instituted change. Once again this produced little in the way of satisfactory results.<sup>50</sup>

What is historically instructive about each of these initiatives is the way in which they referred back to the question of managerial right. Although the specific issue was the practice of the “run-through,” the unions were under no illusions that this was simply symptomatic of a larger problem — capital’s right to introduce change into the workplace through dictate. Existing labour legislation was of little help on this point. While it specified what labour could not do during the closed period of an agreement (i.e. engage in any form of job action), similar restrictions were not placed upon capital. As a result, business could initiate, but labour could not respond under the existent regime. As long as this situation prevailed, there was very little that could be done, within the limits of existing law, about divisional abandonment and the associated layoffs.

Frustration with this state of affairs, in which the railways proceeded to introduce incremental workplace change, while the unions lost the subsequent legal proceedings in failed bids to curtail managerial right, boiled over in two related wildcat strikes in the autumn of 1964. First, 1,455 workers from the Mountain Region of Alberta and 659 from the Prairie Region booked off sick on 22 October to protest

<sup>48</sup> *Freedman Report*, 26-7.

<sup>49</sup> *Freedman Report*, 27.

<sup>50</sup> *Freedman Report*, 27-8.

plans to close the divisional point of Wainwright, Alberta. This affected both workers in central Saskatchewan and those operating east of Edmonton. Overlapping with this action, 700 workers booked off sick on 25 October in protest against further "run-throughs" in northern Ontario. In this instance, CN planned to close down the home terminal of Nakina, which serviced a total of fourteen trains per day. This would effectively eliminate 23 engineer and firemen's positions and 21 trainmen's positions. Other non-operating positions would also be declared redundant, bringing total job loss to 50.<sup>51</sup>

When representatives from both sides held talks over the Nakina closure, they were labeled "discussions" rather than "negotiations," precisely because the word "negotiation" suggested parity between the company and the unions. Workers were allowed to make suggestions as to how changes were to be facilitated, but once again they had no say in limiting or preventing change. With the company determined to proceed with technological rationalization, and the federal government unwilling to intervene, rank-and-file workers walked off the job in the prairie and northern Ontario wildcat strikes.

Notably, the autumn strikes in northern Ontario and western Canada were rank-and-file initiatives, which received little in the way of visible support from the Brotherhoods. By this point, though, workers were visibly dissatisfied with their leadership and the "our hands are tied" approach they assumed as manifested in the absence of support for the wildcat actions.<sup>52</sup> With the partial shutdown of the industry that was brought on by these unofficial actions, government officials had few options but to address the issues that the "run-through" practices had created. They did this by appointing an Industrial Inquiry Commission, chaired by Judge Samuel Freedman, under section 56 of the IRDIA. This measure was approved by the Brotherhoods, who urged the striking workers to return to the job.

The Freedman Inquiry has not received the serious scrutiny that it deserves. In our view, the inquiry's findings and their potential impact were amongst the most important developments since the authoring of the post-war accord. On this score, it is tempting, yet not out of place, to draw analogies with the Rand decision, which was handed down in 1946.<sup>53</sup> As is well known, Rand provided a ruling on compulsory union membership and the payment of union dues in such a way as to solve the free rider problem that is associated with collective organization. If one was to enjoy the benefits provided by collective bargaining, it was incumbent that all share in the costs, or as Rand stated, "[it is] entirely equitable ... that all employees should

<sup>51</sup> *Freedman Report*, 49-50.

<sup>52</sup> Gary, P. Soley, "The Impact of Labour Reaction to the Implementation of Run-Throughs in the Canadian National Railways: An Analysis of Technological Change," MA thesis, Carleton University, 1969, 55-6.

<sup>53</sup> On the Rand inquiry and settlement see Bob Russell, *Back to Work? Labour, State, and Industrial Relations in Canada* (Scarborough, ON 1990), 222-30; Palmer, *Working-Class Experience* (Toronto 1992), 282-4.

be required to shoulder their portion of the burden of expense for administering the law of their employment, the union contract; ... they must take the burden along with the benefit."<sup>54</sup> While the Rand decision also placed new disciplinary responsibilities upon trade-unions, it was borne out of front line militancy and a conviction on the part of its author that such militancy could only be stemmed by the development of a responsible pluralism in industry.<sup>55</sup> To give effect to such a compromise the full autonomy of the state — in this case a wing of its judicial apparatus — was required "to redress the balance of what is called social justice."<sup>56</sup>

Like Rand, Freedman noted that:

The old concept of labour as a commodity simply will not suffice; it is at once wrong and dangerous. Hence there is a responsibility upon the entrepreneur [capitalist] who introduces technological change to see that it is not effected at the expense of his working force. This is the human aspect of the technological challenge.<sup>57</sup>

For Freedman, technological change was far more problematic for labour than for management. While such change was obviously not a wholly negative event, the problem according to Freedman was seen to lie with managerial notions that human labour was expendable in the same sense as industrial capital. The Inquiry reveals a good deal of its author's thinking on the state of contemporary Canadian industrial relations. Thus, according to the commissioner:

If run-throughs are allowed to remain as a managerial prerogative the men will simply continue to feel that they are victims of technology, inert instruments in a process beyond their control. Such a situation is fraught with danger. A mood of rebellion, already confronted in Nakina and Wainwright, may arise again.<sup>58</sup>

<sup>54</sup>Ivan Rand, *Award Notes* (Ottawa 1946), 14-5.

<sup>55</sup>Russell, *Back to Work*, 223-4; Daniel Drache and Harry Glasbeek, *The Changing Workplace: Reshaping Canada's Industrial Relations System* (Toronto 1992), 10-1, 121. The latter authors argue that "the positive, reformist and autonomist aspects" of the post-war accord, including the Rand formula, "have been less significant than the negative, restrictive features embedded in the regime" (Drache and Glasbeek, 11). While one should not downplay the fact that the post-war accord was a *compromise*, authored by the state in the context of unprecedented militancy and a discredited economic performance (the Great Depression, war-time wage controls, etc.), Drache and Glasbeek's argument strikes us as being too ahistorical. In other words, it projects the impacts of the accord forward in a teleological fashion to the present. In so doing, the authors pay inadequate attention to the historical context in which the accord was fashioned and fail to acknowledge the impact which it had on union membership and power.

<sup>56</sup>Rand, *Award Notes*, 3-4.

<sup>57</sup>Freedman Report, 84.

<sup>58</sup>Freedman Report, 97.

To avoid what he considered to be the threat of escalating wildcat strike action, Freedman advocated that advance notice of work change be made a requirement of the industrial relations system. Freedman recommended that such a protocol "would no longer be notice that a run-through was being established on a named date but rather notice preliminary to negotiations."<sup>59</sup> This had path breaking implications. First, as Freedman noted: "The recommendation contemplates the deferral of negotiations to the next open period, unless the Brotherhoods otherwise consent."<sup>60</sup> In short, workplace change would have to await the commencement of collective bargaining, either at the expiration of existing collective agreements or through agreement to re-open existing contracts. It would also become the object of legal strike action should labour and management not come to mutually satisfactory agreements.

Critics argued that adoption of the recommendations would provide labour with a *de facto* veto over employment change.<sup>61</sup> That is, management would either have to be savvy enough to obtain "buy-in" from labour for proposed changes, or strong enough to defeat trade-union opposition to such change. In the context of the 1960s, the latter proposition in particular was highly questionable. Freedman, however, was less alarmed at an extension of pluralism into the realm of managerial prerogative than were some of the critics. As he explicitly set out:

In advocating the negotiation of run-throughs the Commission has in mind something more than mere discussion. ... What is required if the men are not to feel that they are victims of a plan instead of participants in it is *negotiation on the basis of parity*.

... the Commission is not greatly alarmed by the prospect of run-throughs being made a subject of negotiation. *A power of veto* is not necessarily and inherently a vicious thing. It is the irresponsible abuse of that power which is vicious and should be condemned. The term 'veto' may have a sinister connotation in an international setting dominated by a cold war. But after all, is it not something which is encountered every day whenever two contracting parties sit down to arrive at an acceptable meeting of minds? ... that is precisely what occurs in the normal process of give and take in every bargaining situation preceding the formation of a contract. Only normally we do not stigmatize the process by applying to it the loaded term, veto.<sup>62</sup>

Freedman's recommendation that technological change, as signified by the "run-through" issue, be open to negotiation during either the closed or open period of an agreement, depending upon union preference, represented a novel development in Canadian industrial relations. As in the case of the Rand formula, it was a proposal that emanated from political quarters, signifying the entrance of the state in a more proactive fashion. It was also clear that the proposals were advanced to

<sup>59</sup> *Freedman Report*, 101.

<sup>60</sup> *Freedman Report*, 102.

<sup>61</sup> *Freedman Report*, 95-6.

<sup>62</sup> *Freedman Report*, 96. Emphasis added.

deal with the general issue of technological change and not just the specific case at CN. Thus, it was entirely conceivable to its author that the recommendations could find their way into revisions to the IRDIA.<sup>63</sup> It was equally clear to CN's management that should the recommendations be adopted, they would apply "not only to run-throughs but to other technological changes" as well.<sup>64</sup>

The unions were encouraged by the Freedman proposals. The Freedman Report ceded to them that which had been missing — namely the right to negotiate over what had previously been unilateral managerial right in the all important area of technological change. In effect, this would have given labour a strong measure of power over technological change. BRT spokesman J.M. Callaway argued that both labour and management must be equal partners in negotiating workplace changes, and only then "will labour-management negotiations genuinely go forward from Freedman."<sup>65</sup> Callaway argued that the such relations would be possible if the government introduced new labour legislation based on the recommendations in the Freedman Report.<sup>66</sup> In 1966 the Canadian Labour Congress endorsed Freedman's recommendations at their annual convention and they made a resolution calling for a "suitable amendment to the Industrial Relations and Disputes Investigations Act that would make technological changes introduced during the life of collective agreement subject to negotiations, conciliation and the right to strike."<sup>67</sup> The Congress also urged provincial federations of labour to seek changes to provincial legislation to provide similar protection to employees under provincial jurisdiction.<sup>68</sup> The railways reacted less favourably, noting that the Freedman Report's recommendations, if enacted, would give labour a veto over technological "progress."<sup>69</sup>

Former Labour Minister Allan MacEachen released the Freedman Report in December of 1965 and made the following comment on its recommendations:

Mr. Justice Freedman in his exhaustive inquiry has thrown a great deal of light on the implications of technological change for workers directly affected, for management, for communities and for government. He has had to struggle with one of the key economic and social problems of our day. He has presented some far-reaching conclusions for dealing with the adjustment problems involved. The recommendations will require very careful consider-

<sup>63</sup> *Freedman Report*, 102.

<sup>64</sup> CN Labour Relations Department, "Labour Relations Philosophy," 48-9.

<sup>65</sup> J.M. Callaway, in *Trainmen News in Canada*, newsletter of the Brotherhood of Railroad Trainmen, March 1968.

<sup>66</sup> Callaway, *Trainmen News in Canada*.

<sup>67</sup> Canadian Labour Congress, 6th Annual Constitutional Convention, Winnipeg MB, 25-29 April 1966.

<sup>68</sup> Canadian Labour Congress, 6th Annual Convention.

<sup>69</sup> Speirs, "Technological Change," 187.

ation by all concerned, particularly since some of them would involve important innovations.<sup>70</sup>

The government was willing to “consider” the recommendations, but made no promise of new labour legislation. Following publication of the Freedman Report, the railways ‘backed off’ on the aggressive pursuit of rationalization through the implementation of further run-throughs.

Labour Minister John Nicholson announced that the federal government would examine the Freedman recommendations as soon as possible. Nicholson reacted favourably to the Freedman Report and stated that the IRDIA had been inadequate for the “run-through” situation.

My own view is that, whatever is worked out between the railway and its employees or whatever action the government may find necessary must place the maximum emphasis on voluntary cooperation and the minimum on government intervention. In this, I am in full agreement with the spirit of the Freedman Report.

But the ideal is still a free and voluntary agreement between labour and management. There is nothing, for instance, to prevent an employer and a union in any industry from writing a clause into their next collective agreement to give effect to a plan similar to that proposed in the Freedman Report.<sup>71</sup>

In other words, he supported Freedman’s recommendations but preferred to let companies and unions develop their own technological change clauses rather than impose labour legislation requiring all bargaining units and employers to do so. He later decided to appoint a task force to look into the whole industrial relations system. This task force would become the body chaired by H.D. Woods of McGill University. Railway unions were apparently outraged at the delay of implementing the Freedman Inquiry’s recommendations, while management used this pause to further solidify its opposition to those same recommendations.<sup>72</sup>

At about the same time, Manpower Minister Jean Marchand entered the debate when he appeared before a labour-management conference in Ottawa sponsored by the Economic Council of Canada. Marchand proposed that employers be obliged to give three months notice of any impending [technological] changes. He went on to modify the Freedman proposals as follows:

I would prefer to consider a procedure whereby, if the manpower adjustments decided upon are unacceptable to the workers, there would be what would amount to a right of appeal to an arbitrator. But the appeal would not be on whether the change should be postponed. The arbi-

<sup>70</sup>Quoted in *Labour Gazette*, 5 July 1966, 346.

<sup>71</sup>Excerpt from speech delivered to the British Columbia division of the Canadian Manufacturers’ Association, Vancouver, BC, 19 May 1966. Cited in *Labour Gazette*, 5 July 1966, 346.

<sup>72</sup>Spiers, “Technological Change,” 187-9.

trator's terms of reference would be to decide whether the manpower adjustments to the technological change involved a change in working conditions so material that the existing collective agreement should in fairness be regarded as invalidated.

That is to say, the change would not be delayed to the next open period but the open period would be brought forward to follow closely on the change, if it was substantial enough.<sup>73</sup>

The final disposition of these issues, found in the Woods' Task Force Report and subsequent Federal labour legislation, rejected the recommendations of the Freedman Inquiry, although it did pick up upon some of Marchand's proposals. Woods expressed "serious doubts about the general application of the Freedman formula."

From the point of view of the individual workman it makes no difference whether he alone is out of a job because of a change or whether he is in a large company of fellow workers similarly separated from employment. Thus the arbitrator attempting to distinguish between minor and major changes [non-negotiable and negotiable, respectively—L.E and B.R.] under the Freedman formula would be placed in a difficult position since he would be attempting to dispense justice without standards to guide him.<sup>74</sup>

At best this was a minor issue, indeed a piece of sophistry. Operationalizing a definition for major technological change ought not to have imposed a serious impediment to adopting the Freedman recommendations, as subsequent technological change legislation has illustrated. Indeed as Woods went on to acknowledge, "More serious, the uncertainties created for management would, we believe, impose a barrier to efficient performance of their essential innovating role in the economic system."<sup>75</sup> In this one sentence, then, the doctrine of managerial right was re-imposed as a sacrosanct principle of the economic system. Workers and their organizations would be denied a central role in the all important realm of workplace change as had been envisaged by Freedman. Clearly, the Task Force considered this proposal to be too dangerous a precedent. Instead, Woods did go on to suggest that managerial right be tempered at the margins. Thus, managers should be prohibited from violating existent agreements — as they were under the then current legislation. Retraining programs should be underwritten by the state and made readily available to workers made redundant by new technologies. And, finally, unions should have a free hand in negotiating recompense for the effects that would flow on from technological change. The right to negotiate delays to the introduction of such change, i.e. time frames, and the right to strike over compensation for and the handling of workplace change during the term of an existing collective agreement

<sup>73</sup>Economic Council of Canada, *National Conference on Labour-Management Relations: Ottawa, March 21-22, 1967* (Ottawa 1967).

<sup>74</sup>*Canadian Industrial Relations: The Report of the Task Force on Labour Relations*, H.D. Woods, Chair (Ottawa 1968), 194.

<sup>75</sup>Woods, *Canadian Industrial Relations*, 194.

were also included in the Task Force's recommendations. In other words, if unions were strong enough to win the right to negotiate, then this ought to include all matters, except management's right to introduce labour displacing technological changes in the first place. The impacts of change were thereby deemed negotiable; the issue of whether such change should be allowed to proceed in the first place was to remain off limits.

This was essentially the tact that the new Canada Labour Code took in the 1971 overhaul of the IRDIA. The new legislation removed the gap in the old IRDIA which allowed management to introduce technological change without consultation. Henceforth, the parties to the collective agreement would be responsible for reaching a settlement on handling any adverse effects which might flow on from the introduction of new technologies. This could involve, in Marchand's formulation, bringing forward the open period for the purpose of collective bargaining. While an improvement over the silences of the preceding legislation, the new Canada Labour Code stopped far short of ceding direct bargaining rights over the issue of technological change, as had been recommended by the Freedman Inquiry. In the final analysis, then, when new technologies were introduced, unions would be permitted a voice in finding ways of accommodating them.

As for the conflict that sparked the struggle over managerial rights on the railways, future collective agreements, such as a master agreement taken from 1967, between the companies and the unions, foreshadowed the 1971 National Labour Code. It specified minimum notice periods for the introduction of changes (usually 60 or 90 days).<sup>76</sup> Management had an obligation to "negotiate with the unions on measures that would minimize the adverse effects of changes, such as severance pay, seniority rules, moving expenses in relocation, retraining and any other measures in attempting to offset the ill effects of job losses or transfers,"<sup>77</sup> and failing a resolution of these matters, to submit them to binding arbitration. On this latter point though the collective agreement was very careful indeed to spell out that "The issue of management's rights to make changes *shall not be* open to question *during arbitration*."<sup>78</sup>

This, of course, would become the general template in Canadian industrial relations for dealing with workplace change. In retrospect, it is important to recognize the opening that was first created by the wildcat strikes of 1964. Borne out of frustrations ensuing from the ineffective legal gridlock that railway workers found themselves in, these ground level actions were ultimately responsible for the commissioning of the Freedman Report. While there is no evidence that the wildcat ac-

<sup>76</sup> Arthur Howard, "Technological Change and the Adjustment Process on the Canadian National and Canadian Pacific Railways," MA thesis, McGill University, 1969, 59-60. Taken from Master Agreement between seven railways and seven non-operating unions, dated 14 March 1967.

<sup>77</sup> Howard, "Technological Change and the Adjustment Process," 59-60.

<sup>78</sup> Howard, "Technological Change and the Adjustment Process," 59-60. Emphasis added.

tions were orchestrated by a central union leadership, they did unleash an inquiry that would produce promising, perhaps even unexpected, findings. Freedman's recommendations, had they been adopted, would have moved the whole issue of workplace change, in its multiple dimensions, into the realm of collective bargaining. Instead, the strategy that was adopted by union leaderships allowed the genie of managerial right to be placed securely back into the bottle that management owned.<sup>79</sup>

As our next cases demonstrate, the future negotiation of workplace change would be conducted around the issue of employment security. This was not owing to some misbegotten belief in the sanctity of technological progress, for in fact job losses would increasingly be associated with organizational change rather than technological development. Rather, as we will see, unions moved from contesting the right to manage to negotiating the costs and benefits of that right because it suited their immediate needs. In short, such battles were more predictable and potentially more favourable, at least in the short-run.

#### *New Times: Organizational Change and Downsizing*

Many of the major technological changes that affected railway labour were in place by the end of the 1960s. Higher levels of mechanization, including the adoption of diesel locomotives, were a *fait accompli*, while centralized traffic control and automated hump yards had thinned out the ranks of the running trades during the 1960s. The introduction of two-way radio also permitted reductions in yard crews and eventually road crews. The scaling back of passenger train service had a similar effect on both the running trades and non-operating personnel. Workers in the non-operating sector of the industry became vulnerable to layoffs as soon as track maintenance operations were mechanized and the loss in passenger service meant the closure of dozens of stations and express agencies across the country. Main-frame computers had a major impact on managing car inventories and switching movements in yards, while improved locomotive braking systems and welded rail allowed safer operation of longer and heavier trains. While further technical innovation such as ETUS (end of train units or caboosesless trains) and "hot box" detection units were still to come with the resolution of an accord on technological change, the railroad companies began to seriously examine their organizational profiles in order to more fully exploit the opportunities presented by the new technologies.

As management would come to appreciate, the adoption of new technologies need not automatically translate into productivity gain. Once this was realized, priorities shifted towards the management of new technology and more efficient deployment of capital. In other words, with the adoption of a more capital intensive

<sup>79</sup>As a final footnote, the Nakina divisional point was ultimately closed down 30 June 1986 — a full 22 years after this little known community had first made the news.

profile, greater attention was focused on adopting more intensive work practices.<sup>80</sup> Instead of deploying more machines, the railways began reducing staff levels, while either maintaining or enhancing levels of work effort. Meanwhile unions and their members, out of necessity, were forced to think about future employment security with ongoing automation now a certainty.

It is important to note that the employment security issue was taken up by the non-operating unions, as the running trades came to accept job losses through the process of attrition. The results of the firemen's dispute was the first example, but future incidences of crew reductions involved negotiations between labour and management. Yard crews were reduced by one member during the mid-1960s, and the position of rear-end trainman was eliminated in the early 1970s. In both instances the unions agreed to removal through the process of attrition.

Employment security as a new urgency did not emerge "over-night" — there were certainly glimpses of it in contract negotiations in the 1960s and early 1970s. As previously noted, concern over the employment displacing potential of the new mechanical technologies was evident since the 1950s. In 1961 for example, the non-operating unions in Canada put forward a proposal for an employment freeze.<sup>81</sup> Under this plan, separation from employment would only be permitted through processes of natural attrition. If work rules or job descriptions were altered, workers would be placed in retraining programs or alternative jobs, without loss of pay.<sup>82</sup> In the United States, the Order of Railway Telegraphers and the Southern Pacific Railroad succeeded in reaching an agreement that was very similar to the proposal of the Canadian unions, and it would become a bargaining goal for non-operating unions throughout the 1960s. It allowed for job loss through attrition only and further specified that only twenty positions per year could be terminated in this manner.<sup>83</sup> Generally, though, as we have seen above, priority was lent first to contesting management's right to unilaterally introduce such technologies into the workplace. After the Canada Labour Code placed definite limits upon labour's ability to issue challenges to the introduction of new technologies, unions turned their attention to the issue of employment security as the principle strategy for dealing with job loss.

These dynamics were evident in the national strike that occurred in 1973. The latter dispute witnessed a renewed call for an employment freeze for all non-operating personnel with more than two years of service.<sup>84</sup> The arbitrated decision which eventually brought this dispute to an end advanced what would become

<sup>80</sup> Elsewhere, Russell has described this as the principle of doing "more with less." Bob Russell, *More with Less: Work Reorganization in the Canadian Mining Industry* (Toronto 1999).

<sup>81</sup> Speirs, "Technological Change," 143-6.

<sup>82</sup> Howard, "Technological Change and the Adjustment Process," 55.

<sup>83</sup> Speirs, "Technological Change," 138.

<sup>84</sup> Speirs, "Technological Change," 246.

a quasi-regulatory framework for dealing with the issue of future employment security. The demands of the unions outlined in the Hall Report marked the beginning of negotiations over employment security. In it, Justice Emmett Hall outlined an employment protection scheme that would cover workers with eight or more years of service, although ultimately resolution of the issue was referred back to the parties themselves. Hall did go on to note, however, that

The Unions must do some real soul-searching within individual unions and by the Unions to determine the extent that rigid craft-lines or rigid lines of jurisdiction may tend to impede a real viable job security plan that would include all railway employees, because without some reciprocal arrangements within seniority groups and within Unions and between Unions, I am gravely in doubt that a job security plan based on the principle of attrition is feasible even at the 8 year level.<sup>85</sup>

This explicit connection — between what would eventually be defined as labour flexibility in the workplace and employment security — would set the parameters for future struggles over employment loss in the industry. Indeed the companies attempted to “buy” greater flexibility in the deployment of labour by explicitly tying it to employment security in offers made to the non-operating unions in 1973. Employees with eight or more years of service would be protected from layoff if the unions could come to some agreement on the operation of seniority rules between themselves and their corporate managements. Such a protocol would allow for workers in one union to exercise seniority rights over workers in another union (i.e. employees with less than eight years of service), in the event of downsizing. Even though this proposal was rejected by the unions, the 1973 strike and arbitration settlement marked the beginning of the railways’ efforts at organizing a more adaptable and flexible workforce. In future negotiations and disputes, seniority rules and craft demarcation would be major bargaining issues related to job security. This involved the creation of new terms for a new exchange: specific security provisions, such as conditions of eligibility, in return for the waiving of previous craft demarcations and other job rules.

The background to this new initiative was the deep recession of the early 1980s and the associated layoffs in many of Canada’s major industries. Owing to its status as a federal crown corporation and notions that such business entities had a broader public mandate than simple shareholder return, considerable leverage could be exercised on CN to limit politically unpopular job losses. It was precisely through such a dynamic that a program of employment security was launched in the railway industry. The Federal government thus pressured CN into adopting an employment security program, with the intent of marrying life-long employment with flexible

<sup>85</sup>Canada, *Railways Arbitration 1973, Report of the Arbitrator* (Ottawa, 16 January 1974), 43.

work arrangements.<sup>86</sup> CP would shortly thereafter be drawn into the process through the agreement making transfer mechanisms, including the existence of common unions, that existed across the industry.

By mid 1985, Employment Security Agreements had been signed between the railways and the non-operating unions. The running trades were not affected by the plan.<sup>87</sup> Prior to the 1985 agreement, non-operating employees had guaranteed income protection through a supplementary unemployment insurance fund, one that would operate in a similar fashion to those plans that had been adopted in the auto industry.<sup>88</sup> Since the 1960s the railways had been contributing one cent per hour to the fund, but by 1985 the fund was altered so that railways covered the cost entirely even if the fund was dry. In the 1970s, the insurance scheme was altered so that basic unemployment benefits would be "topped up" to 80 per cent of a worker's normal earnings following a short waiting period. The 1985 agreement provided Employment Security workers with eight or more years of seniority with protection against layoff by exercising the seniority rights to which they were entitled.<sup>89</sup> If positions were abolished and redundant workers could not be placed in other jobs due to a lack of qualifications, the companies undertook to provide the requisite training. In such instances, there would be no loss of pay for employees and minimal membership loss for the unions. This must have acted as a considerable attraction to the railway unions to take up the employment security option.

Although providing what many considered to be a just solution to the human issues associated with involuntary employment loss, the "devil" proved to be in the details of the 1985 protocol. As specified in the agreement of that year:

<sup>86</sup>Based on labour relations manager Scott MacDougald's analysis of employment security at CN. In a telephone interview MacDougald noted that the federal government wanted to introduce the Japanese model of lifelong employment to cushion the effects of an economic recession during the early 1980s.

<sup>87</sup>CN position paper on job security issues (1988), 3-4. The running trades do not have employment security clauses in their contracts. The main reason for this is due to the protocols on crew reduction through attrition that were reached in the past. Non-operating unions were more concerned about obtaining employment security because their numbers have been reduced significantly in proportion to those of the running trades. The railways must keep the trains moving, but they no longer require as much physical plant now that operations have become more centralized.

<sup>88</sup>See for example Harry Katz, *Shifting Gears: Changing Labor Relations in the US Automobile Industry* (Cambridge 1987).

<sup>89</sup>Canada, *In the Matter of a Dispute and in the Matter of an Arbitration under the Maintenance of Railway Operations Act, 1987. Between: Canadian Pacific Limited and Canadian National Railway Company and Associated Railway Unions*, D. Larson, Arbitrator (Ottawa 1988), 25-30 (hereafter *Larson Report*).

An employee with 8 years of cumulated compensated service is not subject to lay off as the result of the introduction of technological, organizational, or operational change provided that he exercises his maximum seniority rights, e.g. location, area, and region in accordance with the terms of his particular collective agreement.<sup>90</sup>

Subsequent negotiations over enlarged seniority provisions did not take place, as the railways would have wished for. As a result, the unions had achieved employment security for workers with a minimum of eight years employment, but existing seniority structures remained in place. These structures represented exactly the sort of narrow rigidity that 1990s style management found an anathema. In the pursuit of ever diminishing labour costs corporate managers turned towards more flexible working arrangements. This required workers to accept positions both across traditional craft boundaries as well as in different divisional localities. Job losses, it was argued, could still be avoided, but only in return for occupational flexibility. Meanwhile no new employees would be taken on.

From 1987 onwards, management dedicated itself to getting rid of the last vestiges of craft demarcation on the railways by amending the operation of the seniority principle as it tied in with employment security. An internal briefing paper sums up what railroad management was after and the changes that would be necessary:

Where there is a job available and the individual is qualified to do the job or can be qualified in reasonable time, he should be required to take such a job. This is irrespective of whether the job is in his own bargaining unit, another bargaining unit, or in the non-organized ranks.

2) In instances where employment security is absolute (i.e. protected against lay-off) the obligations should be to take any reasonable employment on the system.

3) The issue to be addressed ... is employment security (i.e. protection for the existing employees), not union security (i.e. retention of employment levels and the jealous guarding of jurisdictional barriers). If the Unions believe the same then they should be prepared to take a statesman-like approach to relaxed seniority arrangements.

4) ... This would mean that an individual should not only be required to fill any vacancy on a system-wide basis, but also has to be given rights to displace a junior employee in a bargaining unit in which he does not hold seniority.<sup>91</sup>

The question of seniority structures featured as a major issue in the 1986-87 round of negotiations between railways and a joint union bargaining committee, representing both running and non-operating workers, the Associated Railway Unions (ARU). Adding to the pressures were two other developments. In 1986 CN announced that 10,000 positions would be eliminated by 1990.<sup>92</sup> CN had already cut 5,000 positions during this period, which marked the beginning of an era of mass

<sup>90</sup> *Larson Report*, 25-30.

<sup>91</sup> CN position paper on job security issues (1988), 30.

<sup>92</sup> Irwin Block, "Job Security is the key issue in rail talks," *Montreal Gazette*, 25 August 1987.

dismissals within the industry.<sup>93</sup> In the midst of the 1987 negotiations the federal government introduced the new National Transportation Act. The Act was introduced with the intention of deregulating the entire transportation sector and henceforth bringing greater competitive pressures on the railways. Washed away in the process was the broader mandate that had been bestowed upon public corporations and which had lent support to the concept of employment security in the first place.

In this context, the ARU pressed for a more liberal extension of existing employment security measures, arguing at first for a no layoff provision for those with more than two years service and then scaling this back to four years of seniority.<sup>94</sup> Such security, it was contended, ought not to be conditional upon forced relocations. The joint union bargaining committee was also adamant about closing loop-holes to existing out-sourcing provisions in the expired collective agreements and in rejecting any movement towards "multi-skilling" amongst shop-craft workers. Finally, the United Transportation Union declared that the deployment of ETUS (cabooseless trains) would be a strike issue in this round of negotiations. The union was more concerned about safety than job losses resulting from cabooseless trains, although crews in main line freight service were eventually reduced to two.

For the railways' part, the emphasis was on obtaining a truly flexible workforce. This, of course, melded with the goal of radical downsizing and the "unfinished business" of the 1985 employment and job security agreements. Following upon these aims, the railways proposed that employment security be premised upon region-wide and inter-union seniority lists. In other words, workers with more than eight years seniority would be covered by Employment Security provisions only if they were willing to relocate/bump into another position within the region and possibly within another union/occupation. Seniority would thus be made portable, but seniority within the original union or district would be forfeited when employment security was invoked.<sup>95</sup> Similarly, income security (i.e. supplementary unemployment insurance benefits) would be conditional upon the acceptance of work in any bargaining unit that was available at the time. Ultimately, then, the goal was to fashion one employment security plan that would be inclusive at each company.

The impasse that was created by these issues led to a three day national shutdown of the industry in the summer of 1987. What was novel about this dispute was the creation of a joint bargaining committee by the unions. This was the first instance in which both operating and non-operating unions agreed to address the issue of downsizing by taking job action against the railways. Unfortunately, what was entirely predictable was the immediate government legislation ordering workers to return to their jobs to await the outcome of yet another arbitrator's decision. And when the arbitrator's report was released, it was hardly definitive.

<sup>93</sup> *Larson Report*, 44.

<sup>94</sup> *Larson Report*, 44.

<sup>95</sup> *Larson Report*, 29-30.

The Larson decision did categorically reject the ARU's call for a broader more inclusive employment protection plan by lowering the years of service eligibility bar. This, it was suggested, would not allow the railways to shed labour in the areas and quantities required. Larson did not think it unreasonable that workers with greater levels of employment security transfer to other positions should their existing jobs be made redundant through technological or organizational change. Accordingly the 1987 award permitted relocation as a condition of continued employment for all but the most senior workers (those with twenty years of service and within five years of qualifying for early retirement), or for those who had been required to relocate over the past five years or voluntarily transferred with their work.<sup>96</sup> On the all important question of merged seniority lists between the members of the ARU, on the other hand, the arbitration award contained a mixed message. For the purposes of maintaining employment security, the boundaries of seniority groups could be enlarged, but this would have to be the outcome of further bargaining between the unions and the railway companies. In other words, the arbitrator set this issue aside. Eligibility for subsidized income security in the form of supplementary unemployment benefits, on the other hand, was made contingent upon individual willingness to take work in other bargaining units. In such cases, workers would take their seniority with them into their new union, while retaining seniority in the previous bargaining unit for a period of up to one year.<sup>97</sup>

While the unions may have learned to live with the settlements imposed in Larson's arbitration award, the issue of employment security continued to remain problematic for railway management. By the early 1990s CN and CP intended on downsizing their operations much further than had hitherto been the case. Existing employment security programs made this a difficult and expensive process. This is what sets the backdrop for our final case, the strike of 1995.

*The Employment Security Dispute of 1995: Two Unions, Two Strategies*

By 1995 the industrial relations landscape in the railway industry had changed in some significant ways. There were fewer unions representing workers in the industry as a result of previous amalgamations. Various shop craft personnel, for instance, had joined the Canadian Auto Workers Union (CAW). The Canadian Brotherhood of Railway, Transport and General Workers had also merged with the CAW. The principal unions in the 1995 dispute were the CAW and the Brotherhood of Maintenance of Way Employees (BMWE), who failed to pursue a joint bargaining strategy like that of ARU in the 1987 strike.

<sup>96</sup>Larson Report, 59.

<sup>97</sup>Larson Report, 75-8. Larson argued that the new job security provision (i.e. affecting supplementary unemployment benefits) should "not operate beyond requiring an employee to bid on vacant positions in other bargaining units represented by signatory unions for which he is qualified or may become qualified in a reasonable period of time."

The companies, on the other hand, wanted to complete the overhaul of the Employment Security (ES) schemes with which they had earlier been saddled. CP management demanded that workers acquiring ES status be prepared to “displace beyond the seniority territory in the bargaining unit and up to and including the system.”<sup>98</sup> In this case, “the system” referred to the entire railway, which meant that seniority and bumping would be exercised nation-wide rather than within the previously defined seniority districts. In addition to this, skilled trades workers would be required to bump into other crafts if the company requested this.<sup>99</sup> Finally, a cap would be placed upon ES so that it would be limited to a maximum of three years from the date effected.<sup>100</sup> Taken together, these measures entailed a drastic denigration of the ES concept.

In gearing up for this battle, the CAW ran a well thought out media campaign in defense of ES. While the companies portrayed ES as a prime example of featherbedding that allowed workers to sit at home and collect wages while jobs went unfilled, the CAW presented data that showed that most workers on ES were being called into work regularly or working on long term jobs within the industry. For instance, while

CP Rail claims that the closure of Angus Shops in Montreal has created a major ES problem. CP Rail wants to force ES employees in Montreal to move to other regions such as Kamloops B.C. Yet in Montreal, CP’s St. Luc diesel shop reported 38,000 hours of overtime in the first 11 months of 1994.... In July of 1994 the 227 workers on ES in the Montreal area were employed 95% of their available hours.<sup>101</sup>

In other words, most workers who were on ES had already been reallocated to alternative positions within their seniority districts. If the company had been willing to cut back on the excessive use of overtime work, more workers could also have been brought back to work without forced relocation. On the other hand, the CAW also made the valid point that abolishing ES would simply fuel the mal-distribution of available work, with yet more excessive levels of overtime, as well as increases in the out-sourcing of employment. In short, the problem was not the principle of employment security, but poor management.

<sup>98</sup>Canada, *In the Matter of: The Mediation-Arbitration Commission appointed by the Minister of Labour Pursuant to the Maintenance of Railway Operations Act, 1995. Between: Canadian National Railways and Brotherhood of Maintenance of Way Employees. Date of Decision: June 14, 1995. Before: Chairperson: The Honourable Mr. Justice George W. Adams. Company Nominee: Peter Gall. Union Nominee: David W. Brown* (Toronto 1995), 45.

<sup>99</sup>CAW Rail-Fax, “CP plays loose with the facts,” 12 March 1995. This fax was sent from CAW member Abe Rosner to fellow member Bob Chernecki.

<sup>100</sup>*BMW Journal*, “Special Showdown Issue,” 8 (1995), 10.

<sup>101</sup>CAW Media Advisory, “CAW debunks myths on rail issue of employment security,” 23 March 1995.

The BMW and the CAW resisted CP's attempt to reduce employment security benefits into 1995. CP was targeted for intense negotiations over the ES issue in early 1995, with the hope being that a favourable pattern could be established for upcoming negotiations with CN and Via Rail.<sup>102</sup> CP was selected rather than CN specifically to minimize the likelihood of back to work legislation. The latter company, by virtue of being a crown corporation was viewed as being more "politically empowered" than the rival CP.<sup>103</sup> Arguing that the federal government was in reality the most powerful player in the negotiations, the CAW wanted desperately to avoid direct state intervention through return to work legislation and an arbitrated settlement — and for good reason.<sup>104</sup> Federal Transport Minister Doug Young had made it known that in his view ES and the rules associated with it had been a major hindrance to productivity enhancement on the railways. If these rules could not be revised through collective bargaining, Young hinted that the government might step in and make the revisions in operating practices that it deemed necessary.<sup>105</sup> For this reason the CAW advocated a strategy of "work to rule" campaigns at CP that would bring pressure to bear on the company, but not the national economy, thereby avoiding back to work legislation. Advertisements were taken out warning shippers of an impending strike at CP and urging that alternate means of delivery be sought.<sup>106</sup>

Despite the concerns over federal intervention, the BMW and the CAW were unable to coordinate their actions. In part this was due to inter-union rivalry. The BMW favoured strike action, while arguing that the CAW chose not to go this route on account of its membership base in the auto industry. A prolonged railroad strike would lead to layoffs in the automotive manufacturing sector, an industry heavily dependent on rail service. The BMW believed that the CAW was placing the inter-

<sup>102</sup>M. Hallman, "CP targeted for negotiations," *Financial Post*, 1 March 1995. It is also worth noting that CN and CP had gotten out of passenger operations entirely in the 1970s, citing declining ridership as the primary reason for discontinuing service. At first, CN created a new subsidiary called Via Rail in 1976, which would solely focus on passenger operations. In 1978 Via was separated from CN and became a new federal crown corporation, and CP sold all its passenger equipment and turned its routes over to Via shortly after. Since its inception Via has been cutting service across the country, while its most economically viable routes are located within the Windsor — London — Toronto — Montreal — Quebec City corridor in central Canada.

<sup>103</sup>R. Lande, "CP counter-strategy does not achieve objective of provoking unions into a nation-wide strike," *Canadian Rail Strike Newsletter* (Westmount, PQ 1995).

<sup>104</sup>Basil 'Buzz' Hargrove, *CAW Council Report of Basil 'Buzz' Hargrove, President, CAW Family Education Centre, Port Elgin, ON, 21-23 April 1995*. CAW Fax issued from member Abe Rosner, "Upcoming Events," 22 February-13 April 1995.

<sup>105</sup>Rosner, "Upcoming Events."

<sup>106</sup>BMW/CAW notice to CP Rail Shippers, 10 March 1995, printed in selected daily newspapers.

ests of its auto employees first by rejecting full-scale strike action.<sup>107</sup> The CAW, in contrast, was principally concerned with avoiding state intervention in the strike. It correctly judged that an advantageous outcome to the issue of seniority and job security would hardly be forthcoming were the state to get involved. Following tactics successfully deployed in the auto industry, the CAW selected a specific strike target. One company would bear the pressure of job action in the hope that an acceptable pattern could be established for the industry as a whole.

The inability to coordinate strategy all but guaranteed the spread of a chaotic situation on the railways. Initially the BMWÉ began a series of rotating strikes a week before the CAW had positioned its strike deadline. Each walkout on the system, however, evoked a permanent lockout on the part of CP management. Within a week, CP had locked out all BMWÉ workers across the country. In support, BMWÉ members and the running trades at CN walked off the job, thus bringing about the very situation that the CAW had wanted to avoid — a national rail shutdown.<sup>108</sup> This played directly into the hands of those groups that wished to see an arbitrated end to the issue of ES. While initially back to work legislation only affected CN workers, it also had the effect of dissuading CP management from reaching a negotiated settlement. If nothing else, the company was now in a position where it could simply sit back and wait for an arbitrated resolution at CN. As it was, this was unnecessary. Bill 77, the Maintenance of Railway Operations Act, established separate arbitration commissions to deal with the situation at each company and with each union. A total of four tripartite commissions were established, one each for the BMWÉ and CAW at each of the two national railways.<sup>109</sup> The mandate given to each arbitration commission reflected the spirit of the times.

<sup>107</sup> *BMWÉ Journal*, "Special Showdown Issue," 8 (1995), 9.

<sup>108</sup> CN was reportedly losing \$10 million a day during the lockout, while CP was reported to have lost a total of \$24 million since the beginning of the lockouts. BMWÉ News Releases, "Railway management's tactics backfire," 21 March 1995 and "BMWÉ to resume negotiations with CP Rail," 22 March 1995.

<sup>109</sup> Canada, *Maintenance of Railway Operations, 1995* (Ottawa 1995), 4, 14.

**Table 1**  
**Employment Security Provisions for BMW Members at CP**

<b>Pre-1995</b>	<b>Post-1995</b>
Employment security benefits guaranteed at 100% of salary until retirement.	Employment security benefits guaranteed at 90% of salary until retirement. Employees eligible for bridging or early retirement are not entitled to ES.
Employees required to fill permanent vacancies in non-union positions and in positions represented by the Transportation-Communications Union and International Brotherhood of Electrical Workers (signals and communication) within their region.	Employees must be prepared to fill positions in all other bargaining units, including the running trades.
Employees not required to fill temporary vacancies outside their bargaining unit or in non-union positions.	Temporary vacancies must be filled if they arise within 35 miles of the home location. Employment outside CP within the geographic limit must also be accepted, and wages and benefits will be topped up if necessary. All outside earnings must be deducted from ES benefits, or failure to do so will result in forfeiture of the program.

Source: *Lancaster Labour Law Reports*, 19, 5, Contract Clauses, (Toronto 1995), 3.

**Table 2**  
**Employment Security Provisions for BMWWE Members at CN and CAW**  
**Members at CN and CP**

<b>Pre-1995</b>	<b>Post-1995</b>
<p>All employees with at least eight years of service are eligible for ES.</p> <p>ES benefits are paid at 100% of salary until retirement age. Workers eligible for early retirement are also qualified for ES. Employees with ES are protected from layoffs resulting from technological, operational, or organizational changes.</p>	<p>Employees hired on or after January 1, 1994 will not be eligible for ES.</p> <p>ES benefits will be available in an amount equivalent to 90% of salary, for a period of six years to those employees hired on or prior to December 31, 1993 with at least eight years [of service] and who:</p> <ul style="list-style-type: none"><li>- are affected by a technological, operation, and organizational change of a permanent nature, or</li><li>- are affected by any other permanent change of a known duration of one year or more and having an adverse effect on employees holding permanent positions, or</li><li>- are displaced from a permanent position by supervisors or by excepted or excluded employees returning to the bargaining unit.</li></ul> <p>Employees eligible for early retirement are no longer entitled to ES.</p>
<p>Relocation requirement restricted to regional level within bargaining unit.</p>	<p>Relocation requirement extended to national level within bargaining unit. For CAW members, employees on ES must fully exhaust their seniority within the bargaining unit at the national level. [The CAW later renegotiated with CP so that a transfer would not occur if it meant displacing another worker with eight years' service.<sup>110</sup>]</p>

<sup>110</sup>CAW Rail Fax, "New ES and Angus Agreements at CP Rail," 8 August 1995.

Work assignments can only be accepted within certain bargaining units, after exhausting seniority rights and filling vacancies within bargaining units.

Acceptance of employment outside the railway is not necessary to remain eligible for ES, nor are earnings to be deducted from such employment as long as the employee remains on call for assignments within the company.

Employees on ES are required to fill permanent vacancies in any bargaining unit with their respective employers.

Acceptance of outside work at the employee's home location required for continued eligibility. All earnings are to be deducted from ES payments. If earnings are less than 100% of the employee's ES benefits, they will be topped off to the full benefit level. The employee's entitlement period will not be affected by the top-off.

Source: Adams Arbitration Commission, CN-BMWE (1995) 61-3; *Lancaster Labour Law Reports*, 19, 6, Contract Clauses (Toronto 1995), 3. (Unless otherwise noted in table.)

Each Commission shall be guided by the need for terms and conditions of employment that are consistent with the economic viability and competitiveness of a coast-to-coast rail system in both the short term and the long term, taking into account the importance of good labour-management relations.<sup>111</sup>

In short, each panel was to be governed by the protocols of economic rationalism. While commissioners were to "take into account" good labour/management relations, they were ultimately to be guided by the fundamentals of continental corporate competitiveness.

The results of the arbitrations are most conveniently outlined in tables. The first table presents the picture at Canadian Pacific, between the company and the BMWE before and after the 1995 arbitration. Table Two presents similar data pertaining to BMWE workers at Canadian National and CAW workers at CN and CP.

As can be seen, the terms and conditions of employment security were substantially reduced at both companies and for workers in the various job categories. At CP, the BMWE saw the coverage of ES reduced from 100 per cent of take home pay to 90 per cent. The reduced plan would now be funded out of a payroll tax on wages. According to the BMWE, the new fund would be managed by the union. It would be funded through an initial deposit of \$7.5 million made by the company and supplemented monthly by 2 per cent levy on the gross payroll of BMWE workers.<sup>112</sup> While there was no limit on the duration of benefits, the provisions of ES would be operative only for so long as the fund remained liquid.<sup>113</sup> Intentionally, then, ES was

<sup>111</sup> *Maintenance of Railway Operations 1995*, 16.

<sup>112</sup> *BMWE Journal*, "Special Showdown Issue," 2.

<sup>113</sup> *BMWE News Release*, "BMWE reaches deal with CP Rail," 8 May 1995. The BMWE also noted that "ES will be maintained for new employees joining the company [and] em-

made considerably more insecure. BMW members at CP would become the only employees with this type of employment security plan.

For BMW members at CN and CAW members at both companies, benefits were also reduced by ten per cent. Here, however, the cap on corporate responsibility took a different form. Rather than introducing a cap on funding levels, ES would only be available to workers hired prior to 1994, and then only for a maximum of six years providing eight years of seniority had been accumulated. Eligibility requirements were also tightened up with workers now being required to fill positions in other bargaining units, as management had initially desired.

Within this new framework employment security could be offered in two ways. If workers still affected by the old agreement wanted to stay with the plan, they had to take work in any location across the country and the railway would pay \$50,000 in moving expenses.<sup>114</sup> If they chose the new plan at the 90 per cent of pay, then they only had to accept employment at the regional level.<sup>115</sup>

ES claims were not uniform across the country. They were more likely to occur in the eastern region than in the west, and this was one reason why management wanted to expand the territory.<sup>116</sup> After the Adams arbitration award was handed down, it turned out that several employees in the Toronto area decided not to relocate and forfeited their ES in favour of receiving supplementary unemployment benefits.<sup>117</sup>

Prior to the 1995 lockout and subsequent arbitrations, a conciliation commissioner appointed to look into the issue of ES reached the following conclusions:

Rail workers have been projected in some quarters as enjoying extravagant benefits which are vastly superior to the benefit levels enjoyed generally by unionized employees across the country. Based on the facts developed in the Commission proceedings that characterization is mischievous and unfair.<sup>118</sup>

Quite obviously, the arbitration commissions did not agree with this assessment. Overall, the new ES agreements entailed a substantial erosion of existing job protection for non-operating employees. One of the arbitrators characterized Employment Security as a set of "golden handcuffs" on the railways, and the results of the arbitration clearly loosened the cuffs several notches in line with the long sought af-

employees cannot be forced into accepting other employment on the system outside their home region."

<sup>114</sup>Scott MacDougald to Leslie Ehrlich [e-mail message], 2000. Based on the notes of Scott MacDougald on the CN Labour Relations Department.

<sup>115</sup>MacDougald to Ehrlich.

<sup>116</sup>MacDougald to Ehrlich.

<sup>117</sup>MacDougald to Ehrlich.

<sup>118</sup>*Conciliation Commissioner's Report to The Honourable Lloyd Axworthy, Minister of Employment and Immigration and Minister of Labour*. Submitted by H. Allan Hope, QC, Commissioner, 6 February 1994.

ter corporate objectives of removing any commitment to employment security.<sup>119</sup> This attitude prevailed in spite of the fact that the overall costs of Employment Security amounted to only a fraction of what the railways lost in the lockout of 1995.<sup>120</sup>

### *Conclusion*

The issue of job loss and what to do about it has long occupied unions in the railroad industry. By taking a longer-term view of this issue, we have attempted to come to a more nuanced assessment of the strengths and weaknesses of union strategies than is contained in some recent literature. Our findings may be summarized as follows.

It is certainly the case that railroad workers, and their union organizations, have shown a greater propensity to strike over job loss than is predicted in some accounts.<sup>121</sup> Furthermore, in instances such as the “run-through” disputes of the early 1960s, such strikes have made the connections between decision making control at corporate ranks and employment levels on the front line. On such occasions all parties to the employment relationship — workers, unions, employers and state officials — have expressed an awareness of the high stakes that were involved.

As detailed, strikes over the introduction of new technologies did occur on Canadian railways. While unions were hopeful that such pressing issues could be made part of the ambit of collective bargaining as recommended in the Freedman Report, there was little support for European-style works councils as a way of dealing with workplace change. Railway unions, like other unions, fought to make inroads into the code of management right, at least as it bore on employment levels, by bringing the issue of workplace change into an adversarial collective bargaining relationship. Had they been successful, this would have represented a significant shift in the frontier of control within the industry.

In the end, and under state leadership, the railway unions came away with less than was presaged by the Freedman Report. The right to bargain over the impacts of workplace change as opposed to alterations in work practices proper, led directly to the employment security plans of later years. These functioned to preserve existing employment levels, rather than to expand employment overall. It is to this defensive character of union struggles over job loss that commentators aptly draw our attention. Missing is an alternative vision to the status quo that would capture a broader agenda and critics are quite correct to point to this deficit in union strategies. Without such alternatives, it is difficult to imagine the development of a social movement form of unionism.

Finally, it is apparent from this review that the nature of employment loss has itself changed. In the earlier period covered by this study, job loss was viewed as a

<sup>119</sup> Adams Arbitration Commission, CN-BMWE (1995), 60.

<sup>120</sup> BMWE News Release “Railway management’s tactics backfire.”

<sup>121</sup> For example, Golden, *Heroic Defeats*.

by-product of technological change, although certainly was not automatically accepted as such by the unions. Commencing in the 1980s, staff reduction became a deliberate corporate policy in its own right. In this emergent climate, schemes such as ES had no place in the new corporate agenda. They militated against the type of insecure flexibility that the railway companies wished to achieve.

New times called for new tactics. The CAW seemed to have sensed this as it fought to preserve a program of employment security on Canada's national railroads. Education and publicity surrounding the social responsibilities of business, critiques of poor management, and a highly selective strategy of engagement in job actions were all part of this operation. Other unions were less certain, preferring the well-trodden path of short strikes, government back to work legislation, and an arbitrated resolution. While such a strategy may have produced debatable outcomes even in a previous era, as our review of the 1995 disputes shows, it was no longer an adequate response to massive corporate downsizing.