
Edith Lorentsen

This is a study commissioned by the Task Force on Labour Relations to determine how well the unfair labour practice provisions in Canadian provincial and federal labour relations legislation are achieving the purposes for which they were enacted. «Unfair labour practices» in the context of this study include not only those activities that are prohibited to ensure the right of employees to organize free from employer interference, or to outlaw coercive organizing methods of trade unions, but also any other activities prohibited as being inconsistent with the operation of the collective bargaining system; in the authors' words, «all those activities, not otherwise illegal, that are prohibited by labour relations statutes». Significant among these are the failure to bargain in good faith and illegal strikes and illegal picketing.

The method of inquiry was a survey in Canada of informed opinion and a similar survey on a limited scale in the United States in order to obtain a point of comparison. A subsidiary study was made of the reactions of employers and unions, who, in the year following February 1, 1966, had been involved in proceeding under Section 65 of the Labour Relations Act of Ontario.

Interviews were conducted with persons in different areas of Canada who had particular knowledge of the working of the law — lawyers active in labour relations, members and officers of labour relations boards, academic labour lawyers, union representatives who have appeared as counsel before the boards. These were divided into three groups: committed to management, committed to labour, uncommitted.

In the report, the prohibited practices are identified under each of the four stages of the collective bargaining relationship: organization, recognition, negotiation, and the administration of the collective agreement; under each of these headings the authors report their assessment of how efficacious the unfair labour practice provisions are considered to be by each of the groups interviewed. They then conclude by giving their personal assessment and their suggestions for improvement.

It is well to look at what the authors say about this unusual method for carrying out an examination of the effectiveness of legislation as a contribution to the development of policy. The questions to which they sought answers are reproduced in the Appendix, and are described by the authors as designed to elicit opinion on the efficacy of the legislation, facts about its application, legal opinion on its meaning and effect, and suggestions for reform. They do not claim that there was any scientific basis for the selection of persons to be interviewed. They describe the results obtained from the interviews as, in most cases, «a subjective reaction to accumulated experience, often greatly coloured by the most recent experience». They acknowledge that a lawyer committed to labour or to management is likely to discuss the effectiveness of provisions from the point of view of how well they serve the interests of his client; and while it would appear to me that the «uncommitted» group offset this bias to some extent, if they are members or officials of boards they are likely to look favourably upon the legislative system under which they operate, or if they are academic lawyers, to be somewhat removed from the actual arena of labour conflicts. The group questioned are clearly more competent to answer some questions than others. The authors give us clear warning of the limitations of their method, and the reader should not be misled into thinking that the survey of informed opinion that the study presents has more validity as a basis for the formulation of public policy than it deserves. It is significant that when it came to the point of drawing conclusions, the authors label the chapter a personal assessment, and their conclusions do not necessarily follow from the survey.

The method had advantages. The survey coverage included persons familiar with unfair labour practice legislation and administration in the federal jurisdiction and in all provinces, so that we have a Canada-wide overview,
and the structure of the interviews and
the knowledge of the persons interview-
ed were such as to bring into the dis-
cussion a broad range of the current
issues as they saw them. Also, the
method has to be weighed against pos-
sible alternatives. As one whose work
for many years involved a seeking after
tests of the efficacy of legislation, I
know how difficult it is to collect reliable
data on which to base an assessment.
Such records as there are of the various
tribunals in which unfair practice cases
have been adjudicated are difficult to
come by and, if collected, might provide
little more than a quantitative measure.
The informality surrounding settlements
achieved through accommodative me-
ths leaves the researcher without
objective data. Field studies are slow
and expensive.

Once the limitations of the method
are understood and accepted, the reader
can proceed to derive considerable in-
sight from the study. The survey was
worth while and has been well organized
and reported. An additional contribution
is made by the personal work of the
two authors.

The comparative study of the relevant
United States federal labour law is a
useful chapter in the report. The author
has wisely confined it to a brief des-
cription of the method of handling un-
fair labour practice cases in the United
States and the role of the trial examiner,
the National Labor Relations Board,
the courts and the arbitrator. It does
not purport to do more than point out
the main differences from the Canadian
system, and suggest areas where further
examination of the United States expe-
rience would be fruitful.

The project of interviews with mana-
gement and union representatives who
had been directly involved in unfair
practices proceedings before the Ontario
Board obviously had to be curtailed for
lack of time. Among the questions there
were some designed to inquire into the
effect of the complaint on the work life
of the individual involved in the dispute,
but no results are reported of this
inquiry. Perhaps that would have to be
a subject for a case study extending
over a longer period of time. The inter-
views did reveal some sobering facts
about the relationships between the
parties after the complaint proceedings.
In most cases the union succeeded in
getting certified, but only in about half
of the cases did the parties eventually
make a collective agreement.

In their personal assessment, the
authors see the law as reasonably satis-
factory, except in the area of picketing
where they recommend a codification
which would clearly identify what is
legal and that is illegal, but they would
make changes in administration. Juris-
diction over the whole range of unfair
practices, including illegal strikes and
picketing and failure to bargain in good
faith, should, in their view, be assigned
to a specialized tribunal such as a
labour relations board. An important
advantage would be the opportunity that
would be afforded, if the tribunal was
required to give reasons for decision,
to build up a consistent labour relations
jurisprudence that would, in time,
clarify such matters as the duty to bar-
gain in good faith. Unfair practices
which are also breaches of a collective
agreement they would, in general, leave
to arbitration. They would retain the
accommodative approach in the settle-
ment of unfair practices issues through
the use of field officers.

The study makes a useful addition
to the scanty Canadian literature on
unfair labour practices provisions.

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Industrial Conversion and Workers' At-
titudes to Change in Different in-
dustries, by Jan J. Louser and Michael
Fullan, Study no 12, Task Force on
Labour Relations, Ottawa, Privy

This study, like many others in the
highly commendable series commission-
ed by the federal Task Force on Labour
Relations, investigates an important area
of Canadian labour relations that has
been neglected in the past. While the
impact of industrial change is a matter
of importance to industry, government,
labour unions, and the general public
in any modern, industrial society, the
dynamic nature of our economy and the
need to fully utilize and positively mo-
tivate our labour force confers an added