Industrial Relations and the International Labour Organization

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As now commonly used in Canada, the term "Industrial Relations" may be defined as the name given to the relationship between management as employer, and workers as employees. It comprises specifically the contacts and contracts between a union, representing the employees, and one or more business organizations which are the employer or the employers of the union's members, designed to arrange conditions of work. But such a relatively simple definition may well relegate to the background fundamental considerations which are necessarily antecedent to our present Canadian understanding of Industrial Relations. Within their respective jurisdictions the Federal Parliament and the Provincial Legislatives have authorized employees to form their unions, and have made it a requirement that an employer shall bargain in good faith with a representative union of his employees. Supported by such legal requirements, Industrial Relations then narrow down to actual settlement of working conditions between the partners in industry, subject to any statutory procedures which must be observed.

International Consideration More Expansive

When international consideration of Industrial Relations is proposed, a much broader view must be taken of what is comprised in this field. Nations have not progressed at an equal pace. To some, political democracy, and any form of industrial democracy, are still new. Peoples of other lands, labouring under some undemocratic form of Government, are not allowed much freedom of any kind. Even in the more advanced states, progress in the evolution of the right to organize, or more especially toward legal protection of the right to organize has not always reached the same level of development. Too, variation in legal systems has some bearing on the treatment of similar aspects of the case under different juridical systems.

Thus, any international consideration of Industrial Relations was bound to encounter a multitude of circumstances among the countries which made up the International Labour Organization from year to year. Since the end of World War I these circumstances at all times have varied from outright suppression in some lands of the right of either employers or workers freely to form their associations, through partial suppression or a lack of recognition of rights in others, to the happier situation in more democratic jurisdictions where for quite a period the right to organize freely has been recognized and accepted.

From the confused world picture of previous progress, it follows that any international discussion of the subject must take account, not only of Industrial Relations, as we use the term in Canada, but of fundamental considerations as well. Hence, in its approach to the general

subject of Industrial Relations, the International Labour Organization has had to start at the beginning, so to speak, in the interests of those peoples still denied elementary rights which are taken for granted in countries with freer institutions.

Freedom of Association

IT will be conceded that the prime antecedent requisite to any development in Industrial Relations is the recognized right of workers, with the equal right of employers, to form organizations for the advancement of their respective interests. If these organizations are state-directed, or if their very existence be forbidden, then there can be no collective bargaining, no Industrial Relations as we know the term. There must be freedom to associate before either party is free to exercise the influence which a democracy wishes to grant, which in fact a democracy feels is necessary. In all its approaches to the more general subject of Industrial Relations, ILO Conferences have always insisted upon starting with Freedom of Association, and if the freedom should seem to have been won permanently in many countries, one need not remind oneself that in a number of other nations it has either yet to be won, or having been once gained, it has been lost later.

It may be observed that the ILO always associates together the right of both employers and workers to organize. While efforts to thwart the organization of management qua employers is less frequent than those to prevent worker organization, in a country where the Government seeks to dominate every day life, freedom of association is not usually accorded to employers. Nevertheless, Freedom of Association in its most common implication refers to workers' rights—though in any event the equal right to employers may really be considered as a corollary to its establishment for workers, for where employees may form free unions, there seems no cause to fear that employers will be prohibited from equal rights.

In all ILO thinking, Freedom of Association for workers denotes an absence of two pressures—the interference of the State or overt opposition from employers. From the workers' viewpoint either is defeating, so that both are to be avoided.

Implications of Freedom to Organize

THERE are certain important consequential implications of Freedom of Association. The right to organize would be valueless unless the organizations are free to pursue legitimate objectives. Clearly the right to organize must be followed by the right to bargain collectively: the basic principle is only meaningful if collective bargaining be permitted. Then the formulation of collective agreements is an obvious sequence of collective bargaining. The next step in many cases is the composition of relations in cases where direct collective bargaining between the parties fails to bring agreement. The parties may at least agree voluntarily to name an outside conciliator or arbitrator, or the State may sense the necessity that it intervene to endeavour to promote a settlement. Bound up with State intervention is the whole question of the relations of organized workers and employers—the process initiated or supervised by a Government to promote industrial peace by constant encouragement of good relations between the two parties—and of both with the Government itself.

These, as the ILO has analysed the problem, are the components of Industrial Relations—Freedom of Association, collective bargaining with collective agreements, voluntary conciliation or arbitration, State intervention to compose differences, and methods of co-operation of employers and workers with Government. But as stated, the emphasis in the beginning inevitably must be upon Freedom of Association, for that concept is fundamental to all other aspects of Industrial Relations. Once the right to organize is recognized, methods for inducing the end result of industrial harmony may and must be devised.

International Experiment in Industrial Relations

WHEN the nations signed the Treaty of Versailles in 1919, they launched a new international experiment in Industrial Relations, one without precedent to

that time. Into the Treaty was written the Constitution of the International Labor Organization designed to institute regular conferences among Governments to consider, to plan and to decide upon parallel action in all countries, aimed at the betterment of working and living conditions for the workers of the world. In taking this step the Treaty makers set forth the view that lasting peace could "be established only if it is based upon social justice," and that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries." These sentiments, written into the Preamble to the ILO Constitution as provided in the Treaty, were further developed in that document by a list of the betterments stated to be required urgently to overcome conditions of labour involving "injustice, hardship and privation to large numbers of people," which were stated then to exist, and to be causing unrest. Among the listed desiderata, all aimed at bettering working conditions, was included "recognition of the principle of freedom of association." After next stating that their motives in establishing an organization to deal internationally with the problems recited stemmed from considerations of social justice, humanity and the promotion of peace, the Treaty proceeded to the development of the practical details of the ILO Constitution.

This Constitution was then made to take a long step forward in the practical application of Freedom of Association. Unlike other international organizations, created at any time, the ILO was to consist of both official Government delegates and certain unofficial delegates as well.

The annual International Labour Conference and the Governing Body of the Organization, it was provided, were both to be tripartite in their complexion. This was accomplished by a division of representation among Governments, workers' organizations and employers' organizations. It was set forth that each national delegation to the Conference should consist of four delegates, two of whom would be from Government, one from the most representative group of organized workers and another from the most representative group of organized employers. Similarly, it was provided that one half the Governing Body should be representatives of Governments, one quarter representatives of workers and the remaining quarter representatives of employers. This tripartite character is a permanent feature of the Organization, and is in evidence at all stages of its work.

The tripartite characteristic of ILO was arrived at very deliberately in 1919. It was regarded as important to give the workers standing in relation to the functioning of the Organization, and to parallel that representation with representatives of employers. But this formation was really an experiment in industrial relations. The Organization would be a forum at the international level which would bring together leading representatives of the two parties to all industrial relations, and would provide an opportunity for them to discuss their mutual problems and to share responsibility for decisions with representatives of Governments, for after all Governments must always have final responsibility. At one and the same time, however, such a structure for ILO gave quite specific testimony to the sentiments of the leading nations in regard to Freedom of Association. The international body they planned should embody the principle of the right to organize in its own structure as a beginning of the larger application of the same principle which the nations desired to promote.

Also, of course, it was felt that leading employers and workers meeting together from time to time would fix an example which might be extended much further nationally, an example of discussion and orderly agreement on matters of mutual interest.

Difficulties in International Approach

BEFORE proceeding to a discussion of the extended consideration given by ILO to Industrial Relations in its more than three decades, some general observations on the difficulties which confront

an international approach in this area of human activity may be in place. Under its Constitution ILO makes no demand, and can make no demand, for any surrender of sovereignty on the part of its State-Members. Each Government joining the Organization agrees to comply with the terms of the Constitution, but there is an absence of sanctions for non-compliance. ILO is not unique in this regard—in fact the ILO position is typical of a substantial number of similar positions which have developed over the years in relation to international intergovernmental effort.

When a country becomes an ILO menber, it subscribes to the principle of Freedom of Association, as part of the Constitution. But each national member is responsible for carrying out its own obligation. Even given a full measure of good faith, variable interpretations are quite easily possible. In some instances, of course, interpretation may be strained to a point of negativing the intention of the principle.

On occasions ILO has made investigation of whether Freedom of Association was being respected in a particular country, but an investigation of this nature following complaint could be made only with the agreement of the Government of the country. It is not suggested that the world has yet advanced to the stage where any measure of international control in such a matter is possible. The limitations on procedures now available are very real and fully recognized. They are bound to place serious obstacles in the way of advancing such a principle as that of Freedom of Association, by international action. None the less, most observers will agree that even with existing limitations a good deal of value attaches to international discussion. Specifically in reference to the right to organize freely, international discussion must eventually spur the workers in those areas where rights are curtailed. International discussion leads to norms acceptable to more enlightened Governments, and provides a beacon to those still struggling for their rights. In cases where rights have been established only weakly, support is given by the fixing of international standards. There seems no reason to doubt that constant prodding at the international level is bound to assist the very people to whom the Treaty of Versailles referred to as being denied social justice.

ILO Action Up to World War II

IT is difficult to assess with accuracy the effect on promotion of freedom of organization which may have been exerted by the regular contacts within the ILO of leading Government, worker and employer representatives from member countries. Industrial relations are subject to so many pressures from time to time and from place to place, that it becomes an impossibility to measure or to prove the effect of one single train of incidents. However, opinion among those who have followed closely the transactions of the ILO favours the view that the periodic bringing together of representatives of the two partners in industry, assembled from various countries, has had beneficial results. They point out, that even though the workers and employers attending International Labour Conferences have frequently seen the same matters in different lights, large areas of agreement have also been discovered. Then the periodic meeting together of Governments, workers and employers has given impetus to similar practice at the national level, while it likewise gives encouragement to workers denied their liberties, when they see the freedom exercised by their fellows in other countries. Not infrequently respect has been developed on the part of each party for the views and representatives of the other, a factor which occasionally has resulted in the initiation of talks at an ILO meeting which led later to national agreement between workers and employers, resolving national problems of labour relations where previously the situation was obscure. Certainly those most experienced in labour relations know that the first step toward a solution of any particular problem is to secure the consent of the two parties to sit down and talk things over. The repetition of this procedure at ILO meetings is bound to exert an effect on men's minds in the course of time.

When one consults the record the impres-

sion is that at the early sessions of the Conference, since the principle of Freedom of Association was embedded in the Constitution, the matter was rather considered to be taken care of in so far as the Organization could go for the moment at least. It was realized that in some countries the right to organize was denied, for complaints of curtailment were heard almost immediately after the inception of ILO. For instance, as early as 1920 the International Labour Office was invited by the Government of Hungary to make enquiry into conditions in that country with a view to reporting whether there were a move afoot to defeat trade unionism, and the Office did undertake the enquiry. A complaint from Spain could not be investigated, as the Government of that country showed no particular desire for an investigation. While the Conference gave immediate consideration to the problems which were pressing, such as unemployment, direct consideration was not given immediately to Freedom of Association, although affirmation of the principle was implicit in some decisions of the Conference. For example, in adopting Convention No. 11, concerning the right to organize in agriculture, at the Third Session of the Conference in 1921, it was provided that each Government which ratified that Convention "undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers." Other Conventions and resolutions adopted by the Conference, carried references which clearly showed the attitude of the ILO on the question. Meanwhile some resolutions on the subject, stated in general terms, invariably received general support at the meetings.

BY 1923 it had become obvious that the mere affirmation of the Freedom of Association in the Constitution did not ensure observance of the principle, that some more definite action was needed. Consequently, at a meeting of the Governing Body in that year the Office was charged with the responsibility of collecting in an exhaustive way evidence with reference to the position in the territories of all ILO State-Members with regard to the application of the principle. This instruction was implemented most painstakingly by the Secretariat which published the results of a vast accumulation of materials in five volumes a few years later. This report showed that a great deal of ground had yet to be won.

It was in 1927 when Freedom of Association first appeared on the Agenda of the International Labour Conference. A draft submitted by the Secretariat to the Conference, looking to an eventual Convention, was the subject of heated discussion at the committee stage. Proposals submitted during committee consideration found sharp divergence of opinion, and the end result was that it was agreed not to proceed further with a draft Convention at that time. While there appeared to be general support for the principle, the divergence of views became pronounced when consideration was given to what should constitute the details. In particular two energetically supported amendments raised somewhat of a storm.

One of these amendments proposed to parallel the freedom of association with the freedom not to associate, thus introducing the delicate question of the closed and union shop.

The second proposal was really put forward on behalf of the totalitarian Governments of that day. It related to a plea to safeguard the prerogatives of the State. Adoption of such a clause in a Convention would, supporters of a Convention held, simply mean that each state would determine for itself what constituted freedom of association, and under some plea any measure of freedom might be withheld by state action.

Although no Convention grew out of the 1927 discussion, and although Freedom of Association did not again appear as a substantive item on the Conference agenda for two decades, the subject still received constant consideration from the ILO. Resolutions in general terms were offered and were adopted on a few occasions. Then the Governing Body maintained a committee on Freedom of Association, which grappled with the problem of possible action, but even a favourable recommenda-

tion of the committee in 1936 failed in its objective of placing the item on the Conference agenda. Perhaps it was not the sole reason why the Governing body declined again to bring the matter before the Conference, but it is a fact that as totalitarianism spread, the prospect of securing specific decisions from the Conference appeared to diminish. It seemed that the inherent difficulties of resolving all points of dispute, even within general agreement as to the prime objectives in any move to further liberty of organization, were a factor in obviating a definitive outline of the general principle.

The Secretariat continued its studies and reports in the field of freedom of association and in sequential areas. Some of these reports added substantially to the literature on the subject of industrial relations, and were of genuine interest to Governments and others. A 1933 report dealt with conciliation and arbitration in industrial disputes; a report on collective agreements was published in 1936; and others were also prepared.

As a footnote to this period it may be added that early in World War II (February, 1940) after withdrawal of totalitarian states from ILO, the Governing Body decided to put one phase of industrial relations on the agenda for the Conference to be held in that year, but the Conference did not take place.

Declaration of 1944

DURING World War II there was not the same opportunity for the ILO to pursue the question of freedom in labour relations. During that period the ILO (from its wartime headquarters in Montreal) did continue its work, but not until nearing the close of the conflict, when the attention of the free world was once more focused on peacetime objectives, was it feasible or effective to take up the struggle. At the 26th International Labour Conference in the city of Philadelphia (1944) a general re-statement of ILO objectives was agreed to, and was promulgated under the title of "The Declaration of Philadelphia." This Declaration carried as a re-affirmation of previous policy, these words: "Freedom of expression and of association are essential to sustained progress." The Declaration, widely publicized at the time, sounded the keynote of ILO policy in the post-war period.

In The Postwar World

IT was inevitable that Freedom of Association and its implications should call for extended consideration by the ILO immediately World War II had terminated. High hopes entertained during the War that victory would mean a recrudescence of liberty in its several aspects almost around the world, had not been realized, a fact which became apparent all too soon. In some Western democracies there had been a strong development of trade unionism during the War, and some unions had gained legal recognition of many of their aspirations. Nationally there had been some spread of the practice of defining in law the rights and responsibilities of employers and workers. In several countries it was only necessary (and unfortunately still is) to look over the fence into an adjoining country to see every semblance of freedom of organization withheld. In this atmosphere several speakers at the Montreal Conference of ILO in 1946 urged consideration of the whole field of industrial relations at an early stage, so that ILO might place its strength at the disposal of the forces seeking liberty in the economic field.

In 1947 the matter came up even more forcefully. In that year the World Federation of Trade Unions and the American Federation of Labour both submitted memoranda to the Eonomic and Social Council of the United Nations alleging the curtailment of the freedom of workers to organize in various parts of the post-war world, and asking prompt and effective action. After an extended discussion in the Council that body decided to transmit the statements of the trade union organizations to the International Labour Organization for consideration at its 30th Session to be held at Geneva in June 1947. Although in the Council Russia was opposed to this move, preferring that the matter

should be dealt with by the Council itself, a resolution proposed by the United Kingdom was carried, and the transmission to the International Labour Conference was made accordingly.

Commencing with the 1947 session, Freedom of Association in some of its implications has appeared on the agenda of each of the annual International Labour Conferences since that time. At each Conference the subject has been referred to one of the Conference committees. Every phase of every aspect of the question has been debated at considerable length by the representatives of Governments, workers and employers. Background agreement, agreement on general principles, has been usual, but disagreement between employers and workers on particular phases of the case has been not infrequent. This is not unexpected, in a matter which touches so closely the aspirations of the respective groups. Nevertheless progress has been made in the past five years, even if the matter still remains on the agenda for further consideration.

In 1947 a report was adopted unanimously, which embodied a lengthy resolution affirming once again the freedom of workers and employers to join organizations of their own choice, without interference by Government, and with the respective organizations to have the right of formulating their own constitutions and programs. The resolution also dealt in general principle with the right to bargain collectively, to conclude collective agreements, to effect voluntary conciliation and arbitration and for cooperation between public authorities and organizations of employers and workers. The Conference also approved placing upon its agenda for the next following session two items, Freedom of Association and the protection of the right to organize, and the application of the right to organize and to bargain collectively. It was the intention of Freedom of Association that the Conference could proceed to the adoption of one or several draft Conventions or Recommendations at the next session.

At the San Francisco Conference (June, 1948) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, was approved unanimously, with Governments, employers and workers generally voting "For". This Convention spells out at some length the right of workers and employers to form their respective organizations without reasonable interference of Government, and to function in the manner which is generally accepted in this country and in other democracies, but which is still unrecognised in several areas. This Convention seeks to establish the initial right to organize against enroachment by the state.

A FURTHER Convention, No. 98, "Concerning the Right to Organize and Collective Bargaining" was adopted at the 32nd Session (Geneva June-July 1949). This Convention seeks to establish the right to organize, and to carry further than the Convention of the previous year the application of the principles. Specifically, the Convention seeks to protect the organizations of either party against restrictive practices on the part of the other. It seeks to protect workers' organizations against hostile action on the part of an employer. While the adoption of the Convention was voted by a combination of Government and worker delegates, the employer delegates present at the Conference divided—some voted "Against", but more abstained. The employer group differed from the majority of the Conference on two points: the first was a question of principle and the second a question of procedure. Employer representatives raised the issue of freedom *not* to organize, thus introducing once again the question of compulsory union membership under collective agreement. The second point raised by the employers was that the instrument should be a Recommendation rather than the more formal Convention.

At its 33rd Session (Geneva June 1950) the Conference, through a committee, gave extended consideration to collective agreements and voluntary conciliation and arbitration. The Conference decided to proceed with further consideration of these topics in 1951, looking to a formal Recommendation. As the committee had not time to go into the question of co-operation

between public authorities and employers and workers organizations, it was decided also to place that item on the agenda for 1951.

Meantime there had been worked out between ILO and the Economic and Social Council of the United Nations an agreement covering the establishment of a Fact-Finding and Conciliation Commission on Freedom of Association to be established by ILO, in order to provide machinery for the international investigation of complaints regarding infringements of the right to organize. By resolution of the 1950 Conference the plan drawn up was approved. This agreement arose out of extended consideration given by the Governing Body of the ILO to the problem. Such a departure as this is a particularly involved matter, if the deliberations of such a commission are to be made as effective as circumstances will allow. At the moment still further consideration is being given to the practical application of the procedure already decided upon in general principle, in order to establish a regime of international enquiry.

At the Conference in this year (Geneva, June 1951) there were adopted two further Recommendations for the guidance of Governments in the industrial relations field. One relates to collective agreements, the second to voluntary conciliation and arbitration. Each goes into detail on regulations recommended to attain the general objectives implied in the subject dealt with. On the former the employers' group for the most part abstained from voting, but on the second Recommendation members of all three groups voted in support, with no contrary votes recorded. The employers explained their attitude on the collective agreements Recommendation by stating that they were not opposed to collective agreements, but they objected to the suggestion in the Recommendation that collective agreements should be hedged in by legal regulations, instead of being left to voluntary action.

A still further phase of industrial relations—co-operation of public authorities and workers and employers—will appear on the 1952 Conference Agenda.

At the present time ILO is in the process of urging member countries to put into effect the provisions of these various instruments adopted by the Conference in recent years, where they represent advances over existing arrangements. In the case of Canada, because of her Federal system, the instruments treat with matters in part Federal, and in part Provincial.

Conclusions

IT is possible to draw some conclusions from the experience of the ILO in regard to industrial relations, but these are set out with some diffidence for any conclusions must be emprical. Even in Canada, with our settled conditions and slow evolutionary ways we have witnessed important changes in many aspects of Industrial Relations during the past generation. Considered internationally changes are bound to be more numerous, more nearly revolutionary at times, and in every way infinitely more complex than in the national field. Nevertheless international experience in this matter does have its lessons.

The first conclusion is that Freedom of Association is precedent to any pretence of democracy in industry. The orderly method of conducting industrial relations and of promoting industrial peace appears very definitely to originate in Freedom of Association.

There is a marked contrast between those countries which have adopted the democratic system and those which operate under other systems, in regard to Freedom of Association. In fact, Freedom of Association is closely bound up with other freedoms, and usually the absence of one indicates the absence of the other.

With the necessary limitation on the authority of any international organization, there is no simple method by which Freedom of Association may be introduced into a country where it is unknown. On the other hand, precept and example hold considerable force, so that international discussion and international standards are not without avail.

Even within a country where there is agreement on general principle, favourable

to Freedom of Association, sharp differences of opinion arise as to its practical application. However, the agreement on principle would appear as the more important element, and with a lengthened experience one would hope that solution of differences as to detail might some day be discovered.

After all, freedom in any form calls for a continual struggle to gain, and some effort to hold. The right to organize in the economic field is still a comparatively new manifestation of the age old struggle for freedom. Any one with confidence that liberty will win out finally will have equal confidence that freedom of association will some day be recognized generally —but not without many trials and disappointments before universal recognition of the principle becomes a reality.

To Tax Or Not To Tax

Oliver Wendell Holmes, the great author and doctor, remarked: "If our property is taxed, it is only to teach us that liberty is worth paying for as well as fighting for." Years later his son, Justice Wendell Holmes of the United States Supreme Court, was to add this comment: "Taxes are the price we pay for civilization."