

Comparative Study of the Legislation on Conciliation and Arbitration

II — United States of America

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weight pressing down on the state treasury. But, this contrast of constantly increasing expenditures and decreasing revenues can only terminate in the form of a financial crisis for the regime.

The regime is therefore obliged to seek a remedy for such a crisis. Having entirely lost the confidence of its citizens, even of its citizens who formerly consented to a communist politic and who now show a passive and tacit resistance, the regime turns to its last resort: force. By force, it obtains the lacking man-power by imposing forced labour on every person who is unable to prove his loyalty to the regime. Consequently, the choice is easy.

Conclusion

The establishment in Czechoslovakia of the FLC's — or more exactly, of concentration camps — is therefore not a chance happening nor a transitory measure; this terrible practice is closely united to the regime's functioning and cannot be separated

from it. The political and economic reasons which compel the regime to resort to such extreme measures, demonstrate quite clearly that the FLC's are concomitant to every communist system and spring from its very essence.

A dictatorship for which an intelligent, cultured and politically developed people is unwilling to work — i.e., unwilling to assist in the attainment of ends which are inimical to democracy and to a democratic world — possesses no means to maintain itself in power other than force.

And, the cause which citizens of communist countries uphold today by their stubborn resistance and by suffering brutal treatment, is not only their cause, but that of the entire civilized world. The FLC's threaten not only the unfortunate citizens of those countries, but also — though in a different manner — those of the democratic countries as well. The FLC's are material evidence of the decided obstinacy of the communists in their final end of subjugating the whole world to their system.

Comparative Study of the Legislation on Conciliation and Arbitration

II—UNITED STATES OF AMERICA

In the national sphere, the settlement of labour disputes is governed by the Labour-Management Relations Act of June 23, 1947.

Besides determining accrediting requirements for labour union representatives, requiring employers to negotiate in good faith with recognized labour unions, and setting forth a number of unfair labour practices, the act also covers the conciliation of labour disputes in industries affecting commerce (Title II of the Act).

A — Scope of the Act

The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or

any Territory of the District of Columbia or any foreign country.

The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

As for the conciliation of railway labour disputes, the provisions of the Railway Labor Act shall continue to apply. Therefore, the provisions of this Act shall not be applicable with respect to railway employees or employers as regards labour disputes.

B — Labour dispute

A labour dispute includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

We shall not concern ourselves with labour disputes arising over the certification of bargaining units the settlement of which is connected with the determining of unfair practices which are to be directly examined by the National Labour Relations Board. We shall confine ourselves to labour disputes not bearing upon the representation of labour organizations, their certification, etc.

C — Policies

The Act stipulates that it is the policy of the United States that social peace can most satisfactorily be secured by the settlement of issues through the processes of conference and collective bargaining between the interested parties. The Act further states that the settlement of issues through collective bargaining may be advanced by making available full and adequate governmental facilities, and, third policy, that certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies".

D — Federal Mediation and Conciliation Service

The Act provides for the creation of a Federal mediation and conciliation service, distinct from the Department of Labor which is now relieved of conciliation and mediation functions. It is to be noted that the Director of the Service may establish an appropriate procedure for the co-operation with the State or local mediation services.

E — Legal Disputes

In the case of legal disputes final adjustment by a method agreed upon by the parties is declared to be the

desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, employers and employees and their representatives shall arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously. In case such dispute is not settled by conference, the parties participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

In practice we find that the great majority of collective agreements contain clauses providing for the final settlement of application or interpretation disputes without resort to strike or lock-out.

Strikes and lock-outs declared in violation of a collective agreement entail an action before the Federal courts.¹

In fact, suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction on the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Labour unions and employers are bound by the acts of their agents. Any labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in

the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

F — Conflicts of interests

i) Negotiation of a collective agreement

The representatives of a labour organization and the employer shall meet and discuss in good faith in respect of wages, hours of work and other working conditions towards the conclusion of a collective agreement. They shall make every reasonable effort to conclude and maintain agreements concerning rates of wages, duration and conditions of work, including provisions for adequate notice of any proposed change in the terms of such agreement. The Act apparently does not provide for any penalty in the event of violation of these provisions but we know that when an obligation is created by Law, the courts have the power to make it enforceable."² However, the obligation to bargain collectively does not entail that of accepting a proposition or of exacting a concession. In other words, collective bargaining may be compulsory, but not collective agreements. This is where the services of the Federal Mediation and Conciliation Service are to be brought into action.

It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

The Service may proffer its services either upon its own motion or

(1) Industrial Relations in the United States: Act of 1947, by John E. Lawyer, International Labor Review, August 1947.

(2) Idem.

upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce.

The Service shall use its best efforts, by mediation and conciliation, to bring the parties to agreement.

When conciliation does not produce results within a reasonable time, the Service shall seek to induce the parties voluntarily to find other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot.

However, the Act goes further to say that "the failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by the Act", meaning that the parties maintain their liberty of action unless the President of the United States shall apply the procedure provided for national emergencies, which will hereafter be looked into.

ii) Modification or termination of collective agreement

The procedure is more exacting when a party to an existing collective contract wishes to amend or terminate such contract. In that case, it shall serve a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

It shall also offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

It shall notify the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

Besides, it shall continue to observe, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

Any union which engages in a strike in violation of the foregoing provisions may lose its certification as bargaining agent. Besides, the parties involved still have legal recourse in the Federal courts.

G — National Emergencies

Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry.

i) Constitution of a Board of Inquiry

Such a board is directed to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's state-

ment of its position but shall not contain any recommendations. The President shall file a copy of such report with the Federal Mediation and Conciliation Service and shall make its contents available to the public. Each board of inquiry shall be composed of a chairman and such other members as the President shall determine.

ii) Strike or lock-out injunction

Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction on the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out — a) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and b) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate. The order or orders of the district court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court.

Whenever a district court has issued an order, it shall be the duty of the parties to the labor dispute to make every effort to adjust and settle their differences, with the assistance of the Federal Mediation and Conciliation Service. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute.

At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public.

iii) Secret ballot

The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Upon the certification of the results of such ballot or upon a settlement being reached, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged.

In other words, the parties recover their liberty of action. The President shall submit to the Congress a full and comprehensive report of the proceedings, including the finding of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

H — Strikes by government employees

The Act stipulates that it shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by

any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

I — National Labour-Management Panel

The Act has created a National Labor-Management Panel which is composed of twelve members appointed by the President, six of whom to be selected from among persons outstanding in the field of management and six of whom to be selected from among persons outstanding in the field of labor.

It shall be the duty of the panel, at the request of the Director of the Federal Mediation and Conciliation Service, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered with reference to controversies affecting the general welfare of the country.

J — Act to provide for the prompt dispositions of disputes between carriers and their employees, and other purposes

Railroad or air transport labour disputes come within the scope of this Act.³ In pursuance of this Act which was passed in 1926, two boards were established to prevent and settle labour disputes arising in rail and air transportation.⁴

(3) Act to provide for the prompt disposition of disputes between carriers and their employees, and other purposes, May 20, 1926.

(4) Working of the Railway Labour Act in the United States, Industry and Labour, International Labour Office.

i) National Mediation Board

The Act provides for the creation of a National Mediation Board composed of three independent members designated by the President of the United States. The following are the disputes under its jurisdiction:

a) disputes arising over the representation of workers at the time of collective bargaining;

b) disputes between carriers and their employees concerning wages, rules or working conditions not adjusted through negotiation between the parties;

c) disputes growing out of the interpretation or application of agreements entered into by way of mediation.

The act stresses the responsibility of both parties to make and maintain agreements governing labour relations and to settle disputes without interruption of service. During the intervention of the National Mediation Board, the parties shall maintain the status quo.

Failing agreement, the National Mediation Board shall seek to induce the parties to submit the dispute to arbitration. The parties are not compelled to accept this procedure but, should they accept, the award rendered is final and enforceable.

When all the above mentioned procedures have been exhausted without an agreement being reached, the National Mediation Board shall, if it considers that interstate commerce is seriously threatened, submit the matter to the President of the United States. The President may then at his discretion, create an emergency board entrusted with the investigations. These boards are allowed thirty days to investigate and to report. During that period, and during the thirty days thereafter, the parties involved shall make no change, except by agreement, unless an agreement has been reached, in the conditions out of which the dis-

pute arose. The findings of the emergency boards are not binding on the parties, but normally form the basis for a settlement of the dispute.

ii) National Railroad Adjustment Board

This is a 36-member, bipartite board which operates in four divisions, each having clearly defined jurisdiction to handle disputes involving a particular class of railroad employment. Eighteen members are selected, designated and paid by the carriers and the other eighteen by the national labour organisations.

The National Railroad Adjustment Board has jurisdiction over the disputes arising out of grievances or out of the application or interpretation of agreements made through direct negotiation of the parties (i.e. without mediation assistance).

The procedure followed by the National Railroad Adjustment Board is as follows: When the members of any board division are unable to agree upon an award because of deadlock or inability to secure a majority vote, they shall endeavour to agree on a neutral person (referee) to sit with the division as a member and make an award.

If they are unable to agree on such neutral person within 10 days, the situation may be referred to the Mediation Board for selection of the referee.

Awards of the several divisions of the Adjustment Board are final and binding, except in so far as they contain a money award. Disputes over the interpretation of awards

may, at the request of either party, be decided by the Board in the light of the dispute.

If a carrier does not comply with the provisions of an award within a fixed period, proceedings may be instituted by or on behalf of the petitioner in the Federal District Courts for the enforcement of the order. In such suits the proceedings are similar to other civil suits except that the findings and order of the Board are *prima facie* evidence of the facts stated therein.

K — State laws

To be complete, we must draw attention to the fact that the States are competent in matters pertaining to Labour and, specially, to the settlement of labour disputes not covered by the Federal Act. It is impossible, however, to analyse here the legislation of the various States; such analysis alone, would require a very long study. Besides, except for matters concerned with application, the legislation of the States, as regards conciliation and arbitration, is generally patterned upon policies similar to those above described. The systems of settlement of labour disputes in the various States only differ on points of minor importance. It is to be noted, however, that many States have a tendency to enact laws establishing compulsory arbitration with enforceable awards for the settlement of labour disputes involving public services or public utility undertakings, but the Supreme Court will likely have to decide upon the constitutionality of some clauses of these laws.

Be methodical if you would succeed in business, or in anything. Have a work for every moment, and mind the moment's work.

W. Mathews

We are firm believers in the maxim that for all right judgment of any man or thing it is useful, nay, essential, to see his good qualities before pronouncing on his bad.

Thomas Carlyle