Relations industrielles
Industrial Relations

The Saskatchewan Trade Union Act. 1983: The Public Battle

Robert Sass

Volume 40, Number 3, 1985

URI: https://id.erudit.org/iderudit/050162ar
DOI: https://doi.org/10.7202/050162ar

See table of contents

Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (print)
1703-8138 (digital)

Explore this journal

Cite this article

Sass, R. (1985). The Saskatchewan Trade Union Act. 1983: The Public Battle. *Relations industrielles / Industrial Relations*, *40*(3), 591–622. https://doi.org/10.7202/050162ar

Article abstract

This article reviews Labour's response to the Amendments, and concludes that the new amendments to The Trade Union Act indicate that the Government of the day leans more towards management's objectives than those of trade unions with regard to collective bargaining.

The Saskatchewan Trade Union Amendment Act, 1983

The Public Battle

Robert Sass

This article reviews Labour's response to the Amendments, and concludes that the new amendments to The Trade Union Act *indicate that the Government of the day leans more towards management's objectives than those of trade unions with regard to collective bargaining.*

The first effective Saskatchewan legislative protection of trade unions was passed by the Co-operative Commonwealth Federation (CCF) Government[1] in 1944 which contained unequivocal guarantees of the right of employees to form into unions and engage in concerted activity, including strike action, without fear of employer reprisals[2]. This Saskatchewan Act was patterned on the *Wagner Act*[3] passed in the United States in 1935, where there was an unmistakable public policy commitment to collective bargaining and the protection of workers' rights to organize «for the purpose of negotiating the terms of conditions of their employment»[4].

The Saskatchewan *Trade Union Act* remained closer to the general policies of the *Wagner Act* until the defeat of the New Democratic Party (NDP) in 1964[5] than to the Liberal Party of Canada. Under the Liberal Premier Ross Thatcher, amendments to the Trade Union Act were passed which were deemed by labour unions to be restrictive in organizing drives and in exclusions of employees from being represented by an industrial trade union.

On June 21, 1971, the NDP defeated the Liberal Government and enacted at the 1972 sessions of the Saskatchewan Legislature, February 24 to May 5, 1972, a new *Trade Union Act* which returned to the CCF-NDP principles based in the *Wagner Act*. The major amendments included a broader or wider definition of employee, redefinition of employer, the

* SASS, Robert, Professor, Department of Industrial Relations and Organizational Behaviour, College of Commerce, University of Saskatchewan.

inclusion of professional employees in the bargaining units, the enlarging of the powers of the Labour Relations Board and liberalization of the certification process[6]. The NDP also repealed amendments to the Statute enacted by the former Liberal regime pertaining to a «hot cargo»[7] clause and the requirement that a second strike vote could be taken 30 days after a strike began.

These changes and others were welcomed by the Saskatchewan Federation of Labour as a return to «Wagner» and a public declaration that Saskatchewan once again had the most «progressive» trade union legislation in Canada.

While there was, nontheless, criticism of parts of *The Trade Union Act* as administered by the NDP from the Saskatchewan Federation of Labour and some of its affiliates, the Act, as a whole, was seen as a «beacon» for labour unions elsewhere in Canada.

The Election of the Progressive Conservative Party

On April 26, 1982, the NDP was defeated in the Saskatchewan provincial election by the Progressive Conservative Party. On June 1, 1983, the P.C. Government introduced Bill 104 — *The Trade Union Amendment Act, 1983*[8], which were severely criticized by both the Saskatchewan Federation of Labour and the NDP, now in official opposition. Their public response to Bill 104 echoed a recrudescence of earlier criticism of the Liberal amendments, reflecting a feeling of *déjà vu*[9].

THE PUBLIC BATTLE

Bill 104, which initially contained eighteen amendments[10] to *The Trade Union Act,* was tabled in the legislature on June 1 during the closing days of the legislative session. Between the tabling of the bill and the third and final reading on June 17, a heated debate erupted in the media. Spokespersons for the Trade Union «movement» in the province and the NDP Opposition vituperatively railed against the amendments denouncing them as «anti-union».

Government's Marketing Strategy

The Minister of Labour, Hon. Lorne McLaren argued that the legislative changes were «overdue» and «moderate enough to satisfy the rank and file trade union members as well as business...»[11] And that the new amendments restored the «rights of the minority ... trampled by the previous law»[12]. The revisions ensured the union members' right to «natural

justice» if disciplined by the union, and further had the right of redress to the Labour Relations Board if denied the right to attend union meetings or to vote at them[13]. More specifically, the amendments would guarantee «the protection of union members from being oppressed by their union and their employer»[14].

The Government publicly repeated that the amendments represented «an increase in *worker rights*, which will protect them from acts of omissions by their trade unions, guarantee natural justice, the right to membership and the right of the worker, employer, and trade union to communicate with each other»[15]. (Emphasis added).

Of course, the debate also centered upon the substance of the individual amendments, but only peripherally. The Minister did, however, consistently relate the amendments to the needed promotion of industrial peace and bettering of industrial relations[16].

The Trade Union Response

The reaction to Bill 104 by the Saskatchewan Federation of Labour (SFL) and affiliated and non-affiliated unions was demonstratively negative and condemning. The labour movement's criticisms were along three lines. First, the amendments were «pro-business» reflecting «corporate interests» and «anti-union» bias. Secondly, they were a direct attack on union institutional security, and finally the labour movement was critical of the consequence of each amendment.

The exhortation of the «pro-business» charge was initially exclaimed by the President of the Saskatchewan Federation of Labour, Nadine Hunt, following the tabling of Bill 104. In an article in the *Star-Phoenix* headlined: «Trade Union Act Changes Said Gift to Business Sector»,[17] the opening paragraph stated that «Amendments to the Trade Union Act were soundly condemned by trade union officials ... as being a gift to the business community at the expense of the worker»[18].

Further, «Hunt said the bill seems to follow most of the suggestions of the Saskatchewan Chamber of Commerce and totally ignores all the representations made by labor»[19]. In the same article, Larry Brown, Executive Director of the Saskatchewan Government Employees Union (SGEU), stated that the amendments are «not ones that any working person could support»[20]. And the article reported that «He said they were tailor-made to suit the Chamber of Commerce, and he added Labor Minister Lorne McLaren should change his title to 'Chamber of Commerce Minister'»[21].

According to Terry Stevens, representative of the United Steelworkers of America, «The proposed amendments give nearly everything the Chamber of Commerce wanted ...» and «Gus Gerecke, business representative for the International Brotherhood of Electrical Workers, echoed Stevens' concerns, saying the bill is anti-union legislation»[22]. This theme is re-iterated by other labour officials throughout the June debate. The newspaper of the Saskatchewan Joint Board of the Retail, Wholesale and Department Store Union reported that «The tory amendments to the Act might well have been written by the Chamber of Commerce or Federated Co-op. Not a single request for improvement put forth by Saskatchewan unions is included. And in the same article: «it can be said without fear of contradiction that the amendments represent a political payoff to the business community that provided the war chest for the Tory election campaign»[23].

This «anti-union» theme was, in the view of labour, reinforced by managements' response to the amendments. For instance, Bob Findlay, Executive Director of the Saskatchewan Chamber of Commerce, said his organization is «modestly positive it (the bill) is a step in the right direction»[24]. John Gugulyn, Chairman of the Industrial Relations Committee of The Chamber of Commerce, and industrial relations manager for International Minerals Corporation, publicly stated that the amendments were «a major step in the right direction». He also said «the changes are the culmination of five years of «arduous lobbying» by the chamber with the two provincial governments and numerous labour ministers and deputy ministers»[25].

The *Leader-Post* reported that:

> «Saskatchewan's unionized contractors have given qualified support to amendments ... introduced by the provincial government ... Most of the things they have done we've advocated, so we're generally pleased, Jim Chase, president of the Saskatchewan Construction Labor Relations Council, said Monday».[26]

Labour union officials also berated the Government because the amendments, in their view, represented an attack on union institutional security, more specifically, the right of a union as a union to be secure as an organization. The unions interpreted the amendments as designed to «weaken»[27] unions allowing «the will of a small minority within the union to run roughshod over the rights of the majority»[28]. A greater concern was, in this regard, expressed by the President of the Saskatchewan Federation of Labour who said that Bill 104 «has come as close to right-to-work laws as they can»[29].

Finally, spokespersons attempted to publicly discredit the Minister's defense of individual amendments. Union officials also denied the Government's claim that the amendments would further «industrial peace»[30]. Throughout the public exchange, mention was frequently made of the government's failure to consult the SFL and other labour groups regarding the amendments[31].

During the eighteen day media battle, individual unions circulated petitions of protest among their members. It was reported that 141 petitions having 7,400 names were tabled in the legislature seeking the removal of Bill 104[32]. On June 25, a demonstration at the legislature was held to further express labour's dissatisfaction with the new amendments to *The Trade Union Act*.

The NDP Opposition Response

The New Democratic Party labour opposition critic Ned Shillington echoed many, if not all, of the concerns expressed by labour officials in the press as well as in the legislative debate[33]. Mr. Shillington and the former Premier, Mr. A.E. Blakeney, and other opposition members challenged the Government's arguments that the amendments would further worker rights and promote industrial peace. While it is beyond the scope of this paper to outline the lengthy historical, economic and statistical arguments presented, this section will exclusively confine itself only to those aspects of the debate which entered into the public arena in the «battle» to shape public opinion.

The opposition in the legislature and in the public media exhorted the view that Bill 104 «detracts from worker rights, gives the employer undue influence in internal union business and will worsen rather than improve industrial relations»[34]. This theme is repeated by opposition in the press throughout the debate[35]. It is a theme which, at the same time, opened the public debate. On June 2, NDP Leader Allan Blakeney is quoted as saying that Bill 104 «will not contribute to industrial peace and it will not assist ordinary working people to organize to get a better deal for themselves»[36]. The same article goes on to say that «Blakeney accused the Tories of opening the door to employer intimidation...»[37].

A stronger attack by the NDP was voiced by Bob Mitchell, president of the NDP Saskatoon Metro Council, who is reported to have said that the Bill comes «within a step of a Poland-style martial law» and in a less severe censorious critique, charged the Government with seeking «to weaken the trade union movement and to erode the workers' rights»[38].

The debate in the legislature was no less acrimonious with the questioning of the Honorable Minister of Labour's motive behind the tabling of Bill

104. Mr. Shillington made a number of references in the *Debate* to Mr. McLaren's association with Morris Rod Weeder Ltd., a farm implement firm, located in Yorkton, Saskatchewan. Mr. McLaren had been a senior management officer with the firm prior to his appointment as Minister of Labour. Mr. Shillington accused the company of maintaining a hostile anti-union policy and attitude against the Retail, Wholesale, and Department Store Union (RWDSU)[39]. The NDP Caucus Office also circulated a «memo» dated may 24, 1983 pertaining to «Lorne McLaren and Industrial Relations at Morris Rod Weeder»[40].

The «memo» cited six unfair labour practices against Morris Rod Weeder by the Labour Relations Board between 1972 and 1977[41] and contained three attachments. One, a letter from George Morris, President of Morris Rod Weeder to his employees dated August 17, 1981 according to the memo «implied that a union would be unwelcome to the employer and bad for the workers»[42]. Also, a copy of a Saskatchewan Labour Relations Board certifying order, April 6, 1973, cited that Lorne McLaren «interfered in the matter of the union applications»[43]. Also included was an article from *Saskatchewan Business Review* entitled «Compulsory Unionism — A Destructive Force in Saskatchewan?» by Morris Rod Weeder Co., Ltd., Personnel Departments[44].

The article, as its title indicates, is critical of union security clauses[45]. Unions, on the other hand, regard a union security clause combined with a checkoff provision in the collective agreement specifying the deduction of union dues, assessments, and initiation fees from the pay of all union members by the employer, crucial to the life of the union.

The article, widely circulated in labour circles stated that:

> One of the basic human rights of every individual in a democratic society is the freedom of choice. This choice is slowly being eroded and, in reality, the entire western world is in jeopardy of losing this freedom under segments of existing labour laws. Great Britain is a good example of how labour laws and the closed shop philosophy has all but destroyed an economy and a parliamentary system that once was the envy in other parts of the world. The 'closed shop' is a stipulation in many collective agreements in Saskatchewan and other provinces in Canada.
>
> A person can no longer freely offer his labour and services to an employer, because a union now stands between the individual and that prospective employer. Union membership then literally becomes the individual's «soul document» to spiritual, mental and physical well-being without that person becoming aware of it in a great many instances. Situations now frequently exist in this province whereby an individual's moral and ethical standards are being undermined, and even his religious beliefs are being infringed upon through unions. The Saskatchewan Civil Service is an example whereby a prerequisite

> for employment of all persons is membership in the union. These unions then openly support a political party with backing and money, regardless of the personal political beliefs of the individual members.
>
> In essence, our entire democratic system of liberty and freedom is slowly being undermined by union ideology. The present day Provincial Government appears to do everything in its power to support and enhance this ideology.
>
> Unions in Saskatchewan appear to have a very sympathetic government at their command and this servant legislature passes labour laws and makes decisions that appear to be totally in favor of the unions, with a total disregard for the injustices they inflict on individuals and the free enterprise system.[46]

The above quotes coupled with the company's past performance in resisting union organization in 1973[47], when Mr. McLaren, the Minister of Labour, was a senior member of management, became part of the debate against the Amendments to the *Trade Union Act*. The attempt to organize Morris Rod Weeder in Yorkton by the Retail, Wholesale and Department Store Union (RWDSU) was newsworthy in labour relations «circles» for over one year. The Yorkton area of the province was considered «non-union» territory primarily because of the high regard in which Mr. George Morris, president of Morris Rod Weeder was held by the community, and the paternalism of the company, as charged by RWDSU. The frequency of unfair labour practice charges against the company by the union in their attempt to organize the farm implement plant was always topical, and received more attention by the press and labour officials than might otherwise have been the case. For instance, after the first contract was signed between the two fractious parties in September, 1973, ending a strike, the *Leader-Post* reported that the agreement:

> «is seen as a possible important turning point in a major labor-management dispute that has gone on for a year.
>
> The dispute has spilled over into the community itself, become a provincial political issue, and has come before the courts as well as the provincial labor relations board.
>
> There have been countless charges and counter-charges, with the company picturing union leaders as radical troublemakers and the union replying that company management is reactionary and anti-union»[48]

It is primarily due to this history that the leadership of the Saskatchewan Federation of Labour viewed the appointment of Mr. Lorne McLaren as Minister of Labour by the newly elected Progressive Conservative government as a signal of forthcoming 'anti-labour' legislation. While Bill 104 may be the manifestation of a self-fulfilling prophecy, labour's suspicions regarding this particular Minister of Labour, *per se*, are not wholly captious or merely reflective of its general political bias regarding Toryism in Canada[49].

The Opposition's questioning of the Minister of Labour's past industrial relations experience during the 'Committee of the Whole' was directly linked to the repeal of Clause 5(a)(b) of the *Trade Union Act* and a substitution which proposed that where an application for certification has been dismissed by the Labour Relations Board, another application cannot be submitted to the Board for *six months*[50].

This particular amendment 5(1)(b) was publicly described as the «McLaren Amendment» by both labour officials and oppositon members. The rationale for this reference is due to the fact that the Retail, Wholesale and Department Store Union initially failed in its bid for certification for Morris Rod-Weeder employees on February 1, 1973, but the Union immediately sought another election and was certified on the following April 6. The following quote from a *Leader-Post* article succinctly describes this well-known and rare situation:

> «Late in 1972, the board (Labour Relations Board) heard the further charges of unfair labor practices and found the company guilty of several, most of them for various types of interference with union organizing.
>
> A vote of certification was held February 1 and is reported to have lost by two votes.
>
> The day after the vote, the company posted new positions in the plant as part of an expansion, but the employees mistakenly interpreted that as a threat to existing jobs, and there was a surge of new memberships. The union claimed it had 57 percent of the employees as members.
>
> On February 3, the union on that basis tried again for certification, but is was not heard by the board until its next regular sitting on April 6. The board ruled in favor of certification and said a second vote was not necessary. It said that under the act another certification vote could not be held, but it could certify the union because it had the majority of workers signed up».[51]

The company protested this decision, which attracted wide attention at the time, to the Premier. The NDP Labour Opposition Critic, during the Bill's Second Reading, stated that prohibiting a second certification election for six months

> «reduces and restricts the right of individual workers to associate and organize». Mr. Minister, we both know where the bizarre provision comes from. It comes from an incident in 1973, Morris Rod Weeder, where a certain employer couldn't resist dancing on what he thought was the graves of the union representatives — did so in such an obnoxious fashion as to irritate all the workers who promptly contacted the union ... «As I say, Mr. Minister, when you allow personal experiences to be reflected in this legislation, we would be derelict in our duty if we did not bring that to the attention of the public».[52]

The Bill received Third Reading and final approval on June 17 just over two weeks after its introduction in the Legislature. Bill 104 was one of the last Bills to receive royal assent before the Legislature adjourned for the summer. It is now the Law!

A CRITICAL REVIEW OF THE AMENDMENTS

This section will evaluate the intent of the new amendments to *The Saskatchewan Trade Union Act*. In so doing, it is necessary to comment upon the efficacy of the changes in *The Trade Union Amendment Act, 1983*, in regard to their effect on the relative advantage of the union vis-a-vis management during stages of the industrial relations process.

Definition of «Employee»

The new amendment Sec. 2(f)(i) excludes an employee from the bargaining unit if he/she «is an integral part of the employer's management». The change gives the Labour Relations Board wider discretion in excluding persons from the bargaining unit than was possible under the former definition[53]. Clearly the purpose of the amendment would make it easier for management to increase the number of out-of-scope workers from the bargaining unit which could be desirable during a work stoppage, and possibly weaken unions through increased exclusions and employer interference in union organizing drives.

The wording of the amendment is vague, but, nonetheless, gives the Labour Relations Board wider discretion in excluding persons from the bargaining unit than was possible under the former definition.

The Hon. Lorne McLaren, the Minister of Labour stated, in a «Discussion Document on Proposed Amendments to The Trade Union Act»,

> «It is proposed that the definition of an 'employee' be broadened such that certain managerial employees which are not now excluded or excludable would, as a result of the amendment, become excluded or excludable. This is in keeping with changing modern management techniques».[54]

The Saskatchewan Mining Association brief to the Provincial Government favored a broader definition of preferred exclusions from the appropriate bargaining unit. The brief excludes «employees of managerial character, positions of confidential capacity, supervisory and professional positions». It defines «managerial character» as pertaining to «organization of production, work and quality standards, evaluation of employees, recommendation for promotion, discipline, health and safety, selection for

hiring, etc.»[55]. The brief represents a strong re-affirmation of management prerogatives and a broad definition of exclusions. It also expands the definition of «confidential capacity» to include costing of production, cost analysis, sales, personnel records, hiring, terminations, handling of matters pertaining to hours of work or conditions of employment»[56]. The Federated Co-op labour relations brief[57] is similar to the Mining Association brief, and The Chamber of Commerce brief[58] seeks a more «general» interpretation of managerial and confidential status.

The Saskatchewan Federation of Labour, on the other hand, viewed these proposals and requests as threatening to its interests[59]. First, for example, any of the management definitions of «employee» in their briefs submitted could result in more out-of-scope hiring in the Civil Service. Another example would be the possible exclusion of meat «managers» in retail chain stores who have title but no effective managerial authority.

The deletion of Section 2(f)(ii) which refers to contractors or the designation of an employee as contractor restricts the Labour Relations Board's discretion based on statutory policy and forces the Board to rely on a common law definition. This change can lead to more, not less, litigation and result in the possible removal of collective bargaining rights for an additional group of employees. The Saskatchewan Construction Labour Relations Council Brief[60] specifically called for the exclusion of «independent contractors» from the definition of «employee» under the Act.

Employer «Free Speech»

The amended section pertaining to the right of employees to organize into a trade union[61] now adds the following:

2) «Any trade union, employer or employee may communicate with employees but no one shall intimidate, threaten or use coercion.....»
(Section 11(1)(a), amended by 5.6(1).

What is essentially new in this section is that employers will have the right to «communicate» with their *employees* during all stages of the industrial relations process: organizing drives to collective bargaining. Under the *Wagner Act* and formerly in Saskatchewan, the employer had no place in the organizing process, and was restricted in by-passing the bargaining agent to communicate with the rank and file during negotiations[62].

The Minister's «notes» clarify this change as follows:

> «The new subsection [11(1)(a)] means that workers will be protected from trade unions or employers who attempt to intimidate, threaten or coerce employees with respect to the exercise of any rights conferred by the Act and it will guarantee that a worker, union or an employee may communicate with each other».[63]

The question of «communication» must also be seen in terms of the context of the workplace where the power relations between employees and employers are by no means symmetrical or equal. Encouraging employer «free speech» through this amendment can have no purpose other than legitimizing greater employer involvement in organizing drives by unions[64]. The protection of workers from intimidation with respect to the exercise of their rights was already covered by Section 11(1)(a), (b), (e), (f) and (o) as well as Section 11(2)(a) of *The Trade Union Act*. The amendment coincides with the Minister's view that employers have a legitimate interest in whether a union is formed, and «employees should have the right to know all the facts — from the employer as well as the union»[65]. The former policy was that the employer had no place in the debate regarding certification at all, even to present accurate information.

The amendment clearly represents a shift in policy regarding «*employer* free speech».

The Duty of Fair Representation

The Minister's «notes» explain the purpose of this new amendment as giving:

> «workers the right to be fairly represented by their trade union in matters of grievances or arbitration. At the same time, arbitrary discrimination or acts committed against an employee in bad faith by the trade union of which the employee is a member will be prohibited. It essentially guarantees the worker's rights vis-a-vis the unions of which they are members.[66]

The Minister's public description of the merits of the amendment cannot, in all fairness, be criticized. The amendment deals only with the question of fair representation, which has been statutorily imposed in Ontario[67] and British Columbia[68].

The «duty of fair representation» has already been applied by courts. At common law, an organization must act fairly in respect of its members when important rights are affected[69].

Nonetheless, labour organizations have expressed concerns regarding this amendment when combined with the newly introduced section 36.1 which provides for the application of natural justice in disputes between an employee and his union.

Union Discipline of Members

The new amendment pertaining to the «discipline» of union members proved to be one of the most controversial, since it comes «closest» to the

unions fear of «right-to-work» legislation when seen in conjunction with the deletion of Section 36(4)[70] which has the effect of securing continued employment for a union member «engaged in activity against the trade union»[71] as long as the member tenders dues. This amendment further restricts a union's ability to discipline a member by the incorporation of the following:

> «... a trade union may assess or fine any of its members who has *worked for the struck employer during a strike* ... a sum of not more than the net earnings that employee earned during the strike».[72]
> (emphasis added)

Although the Tory Government has not brought forth «right-to-work» legislation, they have, according to union spokespersons[73], passed legislation which could seriously undermine the effectiveness of unions as collective bargaining agents. They expressed reservations about the intent of the new section 36(4) and (5) as presented in the Minister's «notes» and his understanding of the new changes[74]. The notes say that the new sections:

> «gives a worker who, for whatever reason, disagrees with the trade union which represents him, more freedom of speech with respect to his trade union. Also, a worker who would no longer wish to be represented by a trade union may not be terminated through the Labour Relations Board or the Act for something termed '*activity against the union*'. A worker who wishes to actively engage in either the decertification of an existing union or any other similar activity will be more protected in terms of the union's ability to terminate that employee than he is under existing legislation». (emphasis added)

The «notes» according to Ms. Hunt, President of the Saskatchewan Federation of Labour, «read like an open invitation for decertifications and employer interference into internal union affairs, while encouraging them to bargain directly with employees»[75].

Pre-determination of «Employee» Status

> A new clause is intended to permit an employer to prepare a job description for the Labour Relations Board, which will then rule on whether that job will be out of scope. The determination will be in advance of the actual hiring of an employee, and so before the employee actually performs the job. The implication or sense of this amendment is that the Board may make a determination in respect of a vacant position, or after a certain individual is hired for the position, but before he or she is engaged in the primary duties of the position[76]. The amendment is contrary to established practice of the Saskatchewan Board and other Labour Relations Boards. Currently, they do not look at job descriptions, but at what the individual actually does.

The Minister's «notes» lend the following clarity to the change:

> «Recognizing that in order to maximize efficiency and in order to maintain competitive and secure Saskatchewan jobs, it is proposed that an employer may determine ahead of time as to whether or not an employee will be in or out of the union. The employer will be able to determine through the Labour Relations Board under certain circumstances whether or not a proposed employee or a proposed position will be inside or outside of the union. This will reduce any uncertainty workers might have whether they are in or out of a bargaining unit».[77].

Representatives of the labour movement naturally oppose the amendment because the «Government's alleged concern for a hypothetical contingent of employees will, in effect, discourage certifications while encouraging employers to hire additional employees opposed to trade unions»[78]. The new amendment gives greater discretion to the Board, in the first instance of worker choice, and will present some problems as to application by the Board to the construction industry where there is a good deal of seasonality and «timeliness» might mean that applications for certification can only happen during the summer months.

The «McLaren Amendment»

The new amendment provides that where an application for certification has been dismissed, another application cannot be made for *six months*. Formerly, the Act was silent on this matter and, as in The Morris Rod Weeder Case, the Board called for another certification election shortly after the workers rejected the union. I am unaware of any other high profile example where there were two applications swiftly following each other. It would appear that this event influenced the inclusion of this amendment in the Act, although the Minister supported the change with the following rationale:

> «*In order to encourage* private sector investment through the presenting of a reasonable legislative framework, it is proposed to limit the degree to which an employer is subjected to repeated certification applications in a similar manner to which there is a limit to repeated decertification applications. The suggested time limit is six months, but this may be abridged on application to the Labour Relations Board. This means that workers are not constantly harrassed or subject to repeated organizational applications, one immediately following upon another and will ensure some degree of stability in the work environment for the worker similar to what now exists in decertification».[79]

Under the former Act, if 25% or more of the employees support the union, and the union requests that a vote be held, the Board must direct a vote[80]. The new amendment leaves the question of a vote to the discretion of the Board, removing the guaranteed or mandatory provision for a vote.

The management briefs all favored amending this section. The Mining Association wanted the Board to hold a certification election with a «minimum of 50% required for a vote», and that a «majority eligible and not a majority of those voting» would be the basis of certification[81]. The Chamber of Commerce also requested that the 25% requirement be changed to 50%, and the Federated Co-op sought a revision in which the union must show majority support before applying for certification. Taking a position similar to the Mining Association, the Federated Co-op stated that all certifications should require a vote.

In practice, the trade union only requested a vote if it had *less* than a majority. If the union could demonstrate that it had, in fact, a majority of employees in an appropriate unit, the Board certified outright. The new amendment does not completely satisfy the employer concerns, but goes some way in their direction leaving the matter to the Board where it had been mandatory and clear cut. Labour organization officials, on the other hand, claim that the amendment is designed to inhibit certifications and represents one more way of impeding a union in its bid to acquire collective bargaining rights for employees[82].

Protection of Employee Benefits During A Dispute

Formerly Section 11(1)(1) protects any pension rights or benefits, *or any benefit* whatever that the employee enjoyed prior to a strike and during the strike as well. This general protection is now lost under the amendment except for the continued protection of «health rights or benefits or medical rights or benefits». The amendment removes protection of recall, seniority, and other employee rights during a strike or lockout, and repeals a long-standing clause first introduced in *The Saskatchewan Trade Union Act* of 1944. It remained unique to Canadian labour legislation until the enactment of Bill 104.

Mr. McLaren justifies this change «on the basis that a healthy balanced labour relations system will work well and lead to reasonable settlements. A good labour relations reputation for the province will attract the necessary skilled workers for potential investors, as it is proposed to guarantee certain worker benefits in strike situations»[83].

«Worker Rights»

The intended purpose of the amendment to Section 11(2)(a) appears to be to make unfair labour practices applicable to the union itself. Formerly it was the union representative who could be charged with a violation under

the Act. This is not a change of any significance, and the Minister views this as bringing the Act into line with other provinces which «subject trade unions to the discipline of unfair labour practices»[84]. He further stated:

> «Under this section the workers' right to have their trade union conduct itself in a responsible manner will be ensured by subjecting the trade union to the same rules, requirements, rights and obligations to which an employee or a union officer is subjected».[85]

Another change requires that a strike vote must be conducted among all employees in the bargaining unit, and not just limited to union members. This must be read in conjunction with the deletion of section 36(4) which would then permit an employee in the unit to be eligible to vote in respect of a work stoppage although engaged in anti-union activity as long as he/she renders dues to the union.

This is another example of how the amendments undermine a labour organization, and inhibit its effectiveness, according to labour spokespersons[86]. The labour movement maintains that the amendment promotes the role of dissidence within the bargaining unit and union[87].

The same criticism was extended to the Government's amending of Section 11(2)(f) which prohibits the union from using «coercion or intimidation of any kind against an employee with a view to discouraging activity which might lead to the decertification of a trade union»[88].

Mr. McLaren states that this amendment will subject unions «to the same requirement as employers in connection with certification activities of a worker»[89]. It is interesting to note that the Government equates the certification and decertification process as representing a «balance» between union rights and employer rights with regard to workers. This is similar to their reasoning in the «Free Speech» amendment which allows «balance» between the union and employer in their «communication» with workers during an organizing drive and with respect to the collective bargaining process.

It is this aspect of the legislation which unions criticize because it *abstracts* the actual power relations and content between labour and management as merely portraying a «balance» of rights and interests between the parties. The Government also supports the proposition that there is an equal need to «balance» the relationship between the rank and file and union officials enhancing «worker rights» in unions similar to the arguments supporting the *Labor-Management Reporting and Disclosure Act (1959)*[90] in the United States after the Government publicly investigated corruption within unions. The Saskatchewan Government appears to reject the view that the courts can adequately deal with the issue of internal union

democracy, while union leaders contend that the courts are the appropriate body of appeal and oppose the incorporation of such amendments into *The Trade Union Act*. This remains an area of serious contention between officials of trade unions and the Government of the day.

Strike and Lock-out Notices

New amendments to the Act deal with strike and lockout notices requiring the union to give «at least 48 hours written strike notice» to the employer [11(6)(a)], and the Minister of Labour [11(6)(b)]. The same procedure applies to an employer who locks-out [11(7)]. And 11(8) gives the Labour Relations Board discretion «on the application of the employer, the trade union or affected employers, to require that any strike vote ... or any vote of employees to ratify ... be supervised ... by the board ...»

This amendment again reflects labour's concern regarding government intervention into collective bargaining and internal union administrative matters, and the explicit separation between the union and its members. This dichotomy was the basis of the collective bargaining strategy of the General Electric Company in the United States during the 1950's. Under G.E.'s Vice-President of Industrial Relations, Mr. Lemuel Boulware, the company adopted in the late 1940's a policy which was based upon the view that the loyalty of the workers toward their unions was re-inforced at the employer's expense because the company had to deal with the union and not their employees in the collective bargaining process. Thus, Boulware concluded that «every improvement in employee welfare was getting to be regarded as something which we had greedily and viciously resisted, and which had to be forced out of us unwillingly»[91]. Accordingly, he rejected the «tendency» in the bargaining process of ceremony and ritual which enhanced the loyalty of the workers toward their union.

This company policy led to a negotiating strategy of a «firm but fair» offer and direct communication by the employer during negotiations with employees in the bargaining unit. The information of the company would counter the union's description of the bargaining developments. To Boulware, «G.E.'s failure in employee relations was above all a failure in marketing»[92]. As Northrup observes: «Effective union communication while management is either silent or ineffectual can often provide the basis for managerial loss of control of the shop»[93].

In the early 1960's this bargaining strategy was viewed by the National Labor Relations Board in the United States as «inflexible»[94]. The Board's

determination that the communication policy with its employees was an «unfair labor practice» was based, in part, on the NLRB policy on «free speech» which was «that employee rights and union rights are synonymous»[95].

Students of industrial relations hold differing opinions on the legitimacy of «Boulwarism»[96]. Herbert Northrup argues persuasively in defense of the legitimacy of this strategy, while Professor Selekman termed Boulwarism «an outstanding example of cynicism» which denies workers adequate and competent representation and denies a human institution of the opportunity to grow in maturity and responsibility[97].

The arguments, needless to say, are complex and do legitimately represent differing conceptions of the bargaining process and the roles of the labour market parties. Unfortunately, these issues were conspicuously absent in the debate. In fact, the matter is unnecessarily made obscure when the Minister's «notes» and public pronouncements defend these amendments on economic considerations. For instance, his «notes» in regard to subsection 11(7) state that «In order to ensure the operation of a genuine labour relations system and in order to encourage new investment, it is proposed that the Labour Relations Board may become extensively involved in ratification and strike votes»[98]. It is difficult to see how these new clauses, in fact, «encourage new investment». This argument does not add clarity to the debate on the important provisions pertaining to strike votes, which also covers such matters as study sessions, slowdowns and work-to-rule.

Offence and Penalty for Unfair Labour Practices

Section 15 amended by 0.7 increases the maximum fines to be levied by the Labour Relations Board for:

> «any person who takes part in, aids, abets ... any unfair labour practice ...» [15(1)] and for «any person who fails to comply with any order of the board ...» [15(2)]

This represents a minor or «housekeeping» amendment without particular significance.

Trade Union Party to Action

> «For the purpose of this Act, every trade union is deemed to be a person, and may sue or be sued and prosecute or be prosecuted under its own name».

This amendment makes a trade union a legal party as either a defendant and plaintiff, changing the union's status from an unincorporated to an incorporated body. The significance of this is not certain since, as A.W.R. Carrothers points out, it

> «Attempts to preserve the common law status of unions as voluntary unincorporated associations by providing that a union may not be sued unless action could be brought against it irrespective of the collective bargaining statutes».[99] However, unions in those provinces are not totally immune from legal proceedings, nor are they totally deprived of legal processes for pursuing their interests.[100]

According to Carrothers, unions, whether incorporated or unincorporated, are held responsible for their actions through representative actions[101], and have been sued and have, in turn, sued through their officers in their representative capacity.

Mr. Terry Stevens, on the other hand, is more suspicious about the consequences of the incorporation of unions in Saskatchewan[102]. First, he views the significance of the amendment within the context of the «Duty to Fair Representation» and «natural justice» amendments added to the Act. «In the light of these amendments, the incorporation of unions will open the door to lawsuits and more work for lawyers in an attempt by some employers to bankrupt unions in court»[103]. Further, he believes that incorporation of unions make them subject to corporate law, such as anti-combines.

The Minister's «notes» appear again to apply a «Boulwarist» approach to this amendment. He states that a «trade union shall not have less legal responsibility than a worker» and «as the law requires the worker to behave in a responsible manner, it will now require the trade union to behave in a legally responsible manner...»[104]. This repeated distinction between the «union» and its members by the Government, in public policy, appears to reject the notion that the trade union is nothing more than its members. To the contrary, Carrothers points out that:

> «at common law an unincorporated association has no juridical existence separate from the legal personalities of those who compose its membership. The relationship among the members is viewed, in essence, as contractual...»[105]

While one cannot at this time fully evaluate the effect of the new section 29, it has in the meantime heightened the anxiety and consternation of trade unions, as the Government has not clarified the problem which the amendment is intended to address and rectify.

Collective Agreement Subject to Action

> «A collective bargaining agreement shall not be the subject of an action in any court unless the collective agreement might be the subject of such action irrespective of this Act.»[106]

The repeal of the above section appears to open the way for both employers and unions to enforce their respective perceived rights under the collective bargaining agreement in the courts. If this is the case, it represents a trend away from the arbitration process before a specialized tribunal which is considered by students of industrial relations to be a more effective and more informed forum to deal with the myriad set of issues that arise in the collective bargaining context. The repeal might encourage employers who are dissatisfied with arbitration decisions to circumvent the arbitration procedure and proceed to court to have these decisions quashed by judges who are often inexperienced in labour relations matters.

Duration of Collective Agreements

Subsection 33(3) is amended by striking out «two years» whenever it appears and in each case substituting «three years» as the maximum term of contract which collective bargaining agreements are to remain in force, should both parties be in agreement. This amendment extends the allowable term of the collective agreement to three years which was requested by the Saskatchewan Construction Labour Relations Council Brief. The Chamber of Commerce, Mining Association and Federated Co-op briefs to Government requested the total repeal of section 33(3).

The Minister defends the amendment because it «provides a guarantee of a reasonable period of labour peace...»[107]. This, of course, must be seen in combination with the new Section 44 which would prohibit strikes and lockouts during the term of the collective agreement[108]. Most collective agreements in the private sector already have a «no strike — no lockout» clause in them. The only significant agreements which do not have such clauses are the ones to which the Government is a party. These include the Public Service contract, the two agreements affecting the Saskatchewan Power Corporation (IBEW and ECWU)[109], and the collective agreement at Sask-Tel with the Communications Workers of Canada (CWC).

Mr. Bill Hyde, Regional Vice-President of the Communication Workers of Canada, interprets this amendment (Section 44) as one where Government is using its ultimate power of authority as the sovereign lawmaker to enact into its labour relations with its own employers a provision which it knows it could not negotiate as employer at the bargaining table[110]. Mr. Hyde is critical of the amendment because he believes the Government as employer would not be able to negotiate such a provision with the unions it bargains with: the Saskatchewan Government Employees Union, the International Brotherhood of Electrical Workers, the Energy, Chemical Workers Union, and his own Communications Workers of Canada. Mr. Hyde contends that it is «unfair» for Government as employer to use its ultimate authority to gain advantage which it could not gain in collective bargaining[111].

To critically assess the effects of these changes in regard to the Minister's reference to «industrial peace» is undoubtedly a difficult task. Of course, the new legislation prohibits a strike during the term of the agreement, which can be extended to three years. Nonetheless, in the long-run the consequences can be problematic, especially when economic conditions are fluctuating and inflation rates are by no means stable. Thus, there is the increased probability that unions in negotiations will be more militant in their «catch-up» attempts. One can only speculate that the increased demands may make collective bargaining more difficult in the long-run leading to more confrontation and work stoppages.

Vote on Employer's Final Offer

A new amendment makes a strike votre mandatory 30 days after the commencement of a strike upon the application of the union, the employees, or the employer. This, in effect, enables the employer to force a vote on its final offer *after* a 30-day strike.

A similar provision was introduced during the Liberal Government under Premier Ross Thatcher in 1963 and repealed in 1972 when the NDP became the majority Government in Saskatchewan. According to the present leader of the Liberal Party in Saskatchewan, Mr. Ralph Goodale, the efficacy of this amendment under Mr. Thatcher was questionable[112]. No other province in Canada has adopted this clause, and it is viewed by labour officials as another example of Government interference in internal union affairs and the collective bargaining process.

The Government, on the other hand, supports the amendment: in the interests of shortening periods of labour disputes and allowing for a sound labour relations investor climate...[113]

The Amendment allows for an application to the Labour Relations Board after 30 days. It is believed that the amendment would contribute to industrial peace. Mediators, on the other hand, generally view any opportunity for a delay in a settlement as counter-productive. The amendment introduces a new tactic into the bargaining process which would allow for an unnecessary delay in the settlement of the dispute, especially during the third week of a strike when the pressures for a settlement are strongest.

During the third week the union has organized its picketing and support activities and the striking workers have missed a pay day and are contemplating the economic realities of the strike action. The union turns its attention to a settlement, as does the employer; both having experiences the seriousness of the matter. The application for a vote on the final offer could very well encourage the union to keep the membership unnecessarily «hyper» for the strike vote.

Further delay may ensue because the Board may take a week or two to hear the application, make a decision, publish the order and arrange to conduct the vote. The amendments, unfortunately, may hinder rather than encourage a settlement.

In light of the Government's assumption pertaining to the dichotomy between union and rank and file relations, the Minister says «This is a counter-balance to the right of the union to require that the worker strike, sometime for prolonged periods of time»[114].

This is the same «Boulwarist» pattern of reasoning which pervades a large number of the new amendments in *The Trade Union Amendment Act, 1983*.

CONCLUSION

The amendments to the *Saskatchewan Trade Union Act* of 1983 do not in any way strengthen or enhance the union as bargaining agent for workers. On the contrary, the amendments which the Government argued would foster greater *worker* or *individual* «rights» were welcomed by business groups which was interpreted by labour union officials as a political «payoff» to this community. The union's view was re-inforced by their observation of the major management association briefs to government prior to Bill 104 presented by the Saskatchewan Mining Association, Chamber of Commerce, the Federated Co-operative and Saskatchewan Construction Labour Relations Council.

Management briefs and *The Trade Union Act* amendments more or less parallel developments in the United States since the passage of the *Wagner Act* as a conservative reaction to postwar strikes. The Government of the day, in the grip of the «cold war» hysteria, viewed industrial unrest «as examples of the concentration of economic power in the hands of a few union leaders»[115].

In 1959, Republican Senator Griffin (Michigan) and Representative Hartley (Georgia) introduced further revisions to the *National Labour Relations Act* which extended government regulation of internal union affairs establishing a «bill of rights» for union members following Senate Committee Hearings chaired by Senator McClelland on union and employer corruption and abuses in America. The widely publicized hearings focused on a number of unethical practices of unions, and especially the behavior of the President of the powerful Teamsters Union, Jimmy Hoffa. The hearings culminated with the passage of the *Landrum-Griffin Act*[116].

Drs. Chamberlain and Kuhn, elder statesmen of Industrial Relations in the United States, stated that:

> «The sentiment for thus curbing union power and fostering greater individual 'freedom' from the union was one in which business groups in conflict with the unions could and did capitalize. However, unless one is willing to consider the congressional majorities — and they were substantial in both cases[117] — to be nothing more than the tool of special interests, one must recognize that the acts manifest the same concern shown earlier by the courts when they first propounded the conspiracy and illegal purposes doctrines.[118]

Twelve years after the passage of the *Wagner Act* in 1935, Congress passed the *Taft-Hartley Act* with the express purpose of restricting trade unions, and further restraint upon their behavior became law twelve years later with the passage of the *Landrum-Griffin Act* in 1959. The parallel with Saskatchewan is that the Congressional intent in both American acts was, in large measure, collapsed into *Bill 104* promulgated 12 years after the New Democratic Party repealed the Liberal amendments to the Act in 1971.

The Saskatchewan unions and the NDP opposed the new amendments as a «Chamber of Commerce Bill». When the Labour Opposition Critic, Mr. Shillington, during Committee of the Whole asked the Minister of labour «which of these amendments were requested by the trade union movement», Mr. McLaren responded that «I would probably think that *none* of the amendments in the draft came from the leadership»[119].

Although recent amendments to *The Trade Union Act* reflect much of the concerns regarding the «balance» of powers between labour and management outlined in the management briefs to government, and nothing in the amendments desired by either the Saskatchewan Federation of Labour or any trade union in the province, it would nonetheless be too simplistic and even cynical to suggest that the Tory Government promulgated revisions to the Act in order to enhance or strengthen the position of a special interest group — management. While the amendments may have this effect, the incentive, I believe, represents a deeper idelogical perspective of the Government which shapes their conception of industrial relations and, therefore, their public policy response.

The comments of R.H. Tawney are particularly apposite in locating both «market forces» and «social values» in public policy matters. Tawney states that «economic laws ... indicate the manner in which, given certain historical conditions, and a certain form of social organization, and certain juristic institutions, production tends to be conducted and wealth to be distributed». This institutional context of market relations, according to Tawney, «is determined, not by immutable economic laws, but by the

values, preferences, interests and ideals which rule at any moment in a given society»[120]. This perspective gives appropriate importance to the social relations underlying economic life and our industrial relations system[121]. In this regard, the Government plays an important role by giving legal backing to rules and procedures which decide the distribution of advantages for labour unions and/or management in industry. John Dunlop in his classic book *Industrial Relations Systems*[122] acknowledges that the relative distribution of power in the larger society tends to be reflected within the industrial relations system itself.

While the Progressive Conservative party gives higher priority and greater legitimation to the «untrammeled» market, they also are more suspect of intrusions into employer-employee relations[123]. The Progressive Conservative Party, on the whole, having adopted market «values», tends to favor the restricting of those organizations which impede the workings of the market, and, at the same time, favor less regulation or encroachment on employers which may prejudice commercial viability and their right to manage and their authority to do so.

Further, the Conservative Party in Canada, as in Saskatchewan, favors policies congruent with a unitary frame of reference with regard to the right organization of industry. That is a view which stresses the importance of a common goal for the firm or enterprise with all participants having the same basic aim, and sharing in rewards as a team. This view is less tolerant of oppositional groups or factions and of achnowledging the legitimacy of challenges to the rightness of management authority.

Allan Fox describes this idelogy as one in which:

> «emphasis is placed on the common objectives and values said to unite all participants. Arising logically from this firm foundation is said to be the need for a unified structure of authority, leadership, and loyalty, with full managerial prerogative legitimized by all members of the organization...
>
> Employees should stop defining their situation in conflict terms of divergent goals, repose trust in their superordinates, accept their leadership, and legitimize their discretionary role. It follows from all this that conflict generated by organized — or even unorganized — oppositional behavior on the part of employees tends likewise to be seen as lacking full legitimacy, as do trade unions or unionized workgroups which organize it.»[124]

After serving as Associate Deputy Minister of labour in Saskatchewan for more than a decade[125], I am of the opinion that many managers in our

province subscribe to this «unitary» view. I believe it has a great deal of support in both industry and in government, including the former regime[126]. The unitary view is a useful conception to confer legitimacy on managerial actions. It is my contention that this unitary ideology played an important part in the preparation of Bill 104 and the revisions to *The Trade Union Act* of 1983. Such ideology explains the consensus in the «Management Briefs» to government for the strengthening of management rights at the expense of union security provisions, and in proposing that the very name of the Act be changed from *The Trade Union Act* to *The Industrial Relations Act*[127]. This represented managements' collective view that the *Trade Union Act* heavily favored unions at the expense of both workers and management in all aspects of the industrial relations process.

While the name of the Act was not changed, the amendments do reflect, on the whole, managements' objectives in collective bargaining as opposed to those of unions. It is because the government and management see the true nature of industrial enterprise as unitary that any challenge to managerial rule is of doubtful legitimacy[128].

Further, it has been my experience to observe a stronger attachment to the unitary perspective among smaller establishments[129], especially «old» family firms with paternalistic concerns and many long-service employees. Morris Rod-Weeder would be an example where the unitary frame of reference would be most applicable. This belief system was re-inforced by the charismatic head of the family enterprise, Mr. George Morris. And it appears that it is shared by his General Manager, Mr. Lorne McLaren.

In contrast to this unitary ideology is the «pluralist» perspective generally shared among managers of larger enterprises where the organization requires greater labour relations sophistication and a tendency to accept unions as legitimate organizations and an «independent source of power that could effectively challenge management and induce it to accept unpalatable modifications in its policies»[130].

This limiting of managerial governing has historically been accepted by the Liberal Party, and to a much greater degree by social-democratic ideology as embraced by the New Democratic Party. Mr. Shillington, during the bitter public debate on Bill 104 in Committee of the Whole, went so far as to say that «workers are the Union»[131], and implied in his arguments the separation between employees and unions. This distinction logically follows from the unitary conception of industrial relations, and was the basis of the collective bargaining strategy known as «Boulwarism»[132], which is anathema to labour unions. Boulwarism is based upon the employers «bypassing» the union in communicating the company's position in negotiations to their employees. Mr. Boulware, Vice-President of Industrial Rela-

tions for General Electric believed that the loyalty of the company's employees is up for grabs between the union and the employer[133]. This same view is, in part, revealed in the Morris Rod-Weeder Personnel Department article published by the Saskatchewan Chamber of Commerce. The article states:

> «The directors of union organizations are usually far removed from the members they represent and, for the most part, are out of touch with the real problems of these members, to say nothing of what these members really do for an organization or company.[134]

During recessionary periods when we have relatively higher levels of unemployment, management tends to be more aggressive, and workers and unions more acquiescent. This appears to be such a time. Management in Saskatchewan has concluded that the present Government outlook is synonymous with their objectives. Workers have repeatedly told me, on the other hand, that they frequently hear on the shop floor from lower level management that «The shoe is on the other foot»! And the labour «movement» has expressed the view that the Department of Labour has become an instrument for carrying out managements' objectives in industrial relations, and with regard to their broad economic and political goals as well[135].

Lastly, when one examines the underlying assumptions of the present Conservative Government's industrial relations policy, the background of the Minister of Labour, and the general political mood in Saskatchewan (as well as elsewhere in Canada), then I think it is reasonable to conclude that Bill 104 and the revised *Trade Union Act* represents a shift in public policy from the «left» to the «right». While the public pronouncements of the Government describe the changes as «moderate», I am of the opinion, based upon the facts outlined in this paper, that this belies their private utterances.

NOTES

1 The Co-operative Commonwealth Federation (CCF) emerged from an agrarian populist movement. The CCF Party represented the first Social Democratic Party to receive a majority representation in the Legislature in Canada. Unlike Social Democratic movements on the Continent, the CCF arose out of an agrarian «movement» as opposed to industry.

2 1944, second session, C. 69. Now R.S.S. 1953, c. 259 as amended.

3 *National Labour Relations Act* (NLRA), 1935. (*49 Stat.* 499). When the *Wagner Act* was passed its constitutionality was challenged in the courts. Its validity was upheld in 1937 in *N.L.R.B. v. Jones and Laughlin Steel Company* (1937, 307 U.S. 1).

4 Section 7, NLRA. The rights and freedoms which it proclaimed were enshrined in Section 3 on *The Saskatchewan Act:*

> Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively.

5 In 1961, The CCF became the New Democratic Party (NPD) by joining with the National Canadian Labour Congress (CLC).

6 The union requests a mandatory vote to show support of 25% or more of employee interest in joining a union. *The Trade Union Act*, R.S.S. 1978, c.T-17, ss. 6(2)(b).

7 The «hot cargo» clause made it an unfair labour practice for unions or employees to refuse to handle goods delivered by a carrier, unless there was valid dispute with the carrier.

8 S.S. 1983, c.81.

9 There is in Canada among political scientists a general consensus that both the Liberal and Progressive Conservative Parties have greater confidence in the workings of the marketplace in regard to the equitable distribution of «goods» than the New Democratic Party. The Conservatives, however, embrace to a much greater degree an «untrammeled market» doctrine and, thus, are more suspicious of the positive aspects of trade unions. The Liberal Party has its genesis in a «Free Market» doctrine although it has shifted to a «positive concept of liberty» which has a more balanced view on the virtue of «individualism» and less reliance upon the virtues of an unregulated «free market». While accepting the value of the institution of a market and individual initiative, it has come to support the regulation of the market by bureaucracy and government regulation for social, economic and political pragmatic ends. It is more accepting of «pluralist» values and the role of trade unions in industry or production. It is ideologically opposed to paternalism and/or *noblesse oblige*, «stewardship» etc. This «pluralist» view was represented in North America by the Roosevelt administration and The New Deal policies in the United States. It was under The New Deal that the *Wagner Act* was enacted.

The New Democratic Party, consistent with a social-democratic doctrine, is more suspicious of the market and tends to emphasize the inequities of an unregulated market.

These general outlooks by the three major Canadian political parties are, of course, mirrored in their respective approaches to industrial relations.

10 The final Bill was complete with fourteen amendments.

11 *Star-Phoenix* «Labor Bill Changes Called Moderate» June 3, 1983, p. A. 14.

12 *Ibid.*

13 *Ibid.*

14 *Ibid.*, June 17, 1983, p. C16.

15 «Background notes of Proposed Trade Union Act Amendments», Saskatchewan Department of Labour, unpublished, undated, 16 pp.

16 *Star-Phoenix* and *Leader-Post*.

17 *Star-Phoenix*, June 2, 1982, A12.

18 *Ibid.*

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *The Defender*, Saskatchewan Joint Board of The Retail, Wholesale and Department Store Union, June 1983, p. 3.

24 *Star-Phoenix*, June 2, 1982, A12.

25 *Leader-Post*, June 7, 1983. This information was presented to the house during the legislature debate by Mr. Ned Shillington, see *Debates* (Hansard) June 16, 1983, p. 3160.

26 *Ibid.* and *Hansard*, pp. 3160-3161.

27 *Ibid.* June 2, 1983, p. A12. Larry Brown is quoted as saying that the amendments «are just attempts by employer associations and the government to weaken unions».

28 *Ibid.*

29 *Ibid.* «Right-to-work» laws allow workers to opt out of union membership in an organized bargaining unit. This is contrary to unions' desire for compulsory membership.

30 There was some criticism of the Bill made by professionals. For example, Prof. Makoto Ohtsu, Head of the Department of Industrial Relations and Organizational Behaviour at the University of Saskatchewan, is reported to have said that the amendments «are an attempt to block unionization of workers through legislation». (The *Star-Phoenix*, June 7, 1983, p. A8, «Labor Bill Seen Blocking Unions» by Joe Kuycha).

31 *Ibid.* and *The Defender*, *op. cit.*

32 *Star-Phoenix*, June 17, 1983, p. C16.

33 *Debates and Proceedings* (Hansard) 2nd Sess. — 20th Leg., Saskatchewan, N.S. Vol. XXVI, June 15, 1983 to June 17, 1983.

34 *Star-Phoenix*, June 18, 1983, «House Passes Controversial Trade Union Bill» by Larry JOHNSRUDE, p. 1, Mr. A.E. Blakeney, Opposition Leader, is reported to have argued the same. See *Star-Phoenix*, June 17, 1983, p. C16.

35 See also, *Ibid.* «Trade Union Act Seen Fostering Long, Bitter Strikes», by Larry JOHNSRUDE, June 16, 1983, p. A8.

36 *Ibid.* «Labor Peace Seen Threatened by Act Revisions» by Janet STEFFENHAGEN, June 2, 1983, p. 1.

37 *Ibid.*

38 *Ibid.* «Labor Bill Changes Said Within Step of Martial Law», by Larry JOHNSRUDE, June 7, 1983, p. A8.

39 *Debates* (Hansard) see pages: 3131, 3138, 3148 and 3157.

40 NDP Caucus Office *Memo* from Craig Dotson to file, dated May 24, 1983.

41 The dates were December 15, 1972, January 10, 1973, November 19, 1974, October 8, 1976, July 5, 1977, and on October 3, 1977.

42 The letter also stated that «However, after certification in Saskatchewan, any new employees can lose that freedom of choice at the simple request of the union business agent, even if only a small percentage of the membership supports him». (p. 2).

43 Retail, Wholesale and Department Store Union, Local 955 v. Morris Rod Weeder Co. Ltd. and Certain Employees. In *Decision of the Saskatchewan Labour Relations Board and Court Cases Arising Therefrom*, Volume III, 1965-1974, published under the authority of the Saskatchewan Department of Labour, dated April 6, 1973, pp. 316-317. The decision was handed down by the Board Chairman Clifford Peet.

44 «Compulsory Unionism — A Destructive Force in Saskatchewan?» in *Saskatchewan Business Review*, Spring 1977, published by the Saskatchewan Chamber of Commerce, p. 5.

45 Examples of union security clauses are: closed shop, an agreement between union and employer that the employer may hire only union members and retain only union members in the shop; preferential hiring, an agreement that an employer, in hiring new workers, will give preference to union members; union shop, an agreement that the employer may hire anyone he wants, but all the workers must join the union within a specified period of time after being hired and retain membership as a condition of continuing employment; maintenance of membership, a provision in a collective agreement stating that no worker must join the union as a condition of employment, but all workers who voluntarily join must maintain their membership for the duration of the contract in order to keep their jobs.

46 «Compulsory Unionism ... » *op. cit.*, p. 5.

47 *Leader-Post*, «Solid Wall of Resentment, Ill-feeling», by Mel HINDS, September 6, 1973, p. 4.

48 *Ibid.*

49 Many local unions are directly affiliated to the New Democratic Party in Saskatchewan as elsewhere in Canada. This development reflects the British influence in Canadian unionism as opposed to the American experience.

50 *Trade Union Act*, R.S.S. 1978, Sec. 5(a) (b). Prior to this stipulation of 6 months, the *Trade Union Act* did not specify any time limit, so that there could be another certification election shortly after a union was initially rejected as the bargaining agent.

51 *Leader-Post*, «Solid Wall of Resentment, Ill-feeling» by Mel HINDS, September 6, 1973, p. 4.

52 *Hansard*, June 15, 1983, p. 3138. The Minister refused to respond in the House to this «personal attack». He stated that «I also want to advise the Assembly that I am not going to be taking up the time of the Assembly to even address that issue. I can talk to anyone afterwards if they want the other side of the story». *Hansard*, June 16, 1983, p. 3192-3.

53 The original Section 2(f) (i) defined employee as «any person in the employ of an employer except any person whose primary responsibility is to actually exercise authority and actually perform functions that are of a managerial character, or any person who is regularly acting in a confidential capacity in respect to the industrial relations of his employer».

54 *Discussion Document on Proposed Amendments to The Trade Union Act* updated, p. 1. The purpose of the document is «to act as a discussion paper in order that the Minister of Labour may discuss with various interest groups his proposed changes to the *Trade Union Act* in terms of principles». (Preface)

55 Letter of R.L. Cheesman, Manager, Saskatchewan Mining Association to Hon. Lorne McLaren, Minister of Labour, July 22, 1982, p. 2.

56 *Ibid.*

57 Federated Co-operative Ltd., Brief to Hon. Lorne McLaren, M.L.A. Minister of Labour: *Re: Recommendations to The Amendments of the Trade Union Act C. T-17, and Labour Standards Act, Aug. 12, 1982.*

58 Chamber of Commerce, *Proposed Amendments to the Trade Union Act*, September, 1982.

59 Interview with Nadine Hunt, *op.cit.*

60 Saskatchewan Construction and Labour Relations Council, d.c., *Brief to the Government of Saskatchewan*, November 17, 1982, 15 pp. plus Appendices A and B.

61 This is the «keystone» ot the *Trade Union Act*. Sec. 3 in the Saskatchewan *Trade Union Act* reflected Section 7 of the historic *Wagner Act* which gave workers the right to join «unions of their own choosing». A fundamental principle of this Act is that the decision to unionize or not is a decision of the employees only and any involvement of the employer in that decision means it is no longer a free choice.

62 The policy of communicating with employees during negotiations is called «Boulwarism» which was deemed an unfair labour practice in the 1960's in America after continuous complaints of unfair labour practices by the union (International Union of Electrical Workers), (IUE), AFL-CIO.

63 Background «notes» *op. cit.*, p. 3.

64 Interview with labour lawyer Donald Ching, of *Mitchell, Taylor and Ching*, September 17, 1983. In the opinion of Mr. Ching, Labour Relations Board policy under the new Chairman, Mr. Dennis Ball, has already moved away from the former approach of the Board on the question of «employer free speech». Mr. Ching maintains that the policy of the «old» Board was that the employer had no place in the debate regarding union certification. Whereas, the new chairman has found that there is nothing in *The Trade Union Act* that prevents an employer from giving to employees an opinion based on fact, and implying that the economic position of the employer becomes relevant in an organizing campaign. According to Mr. Ching, this is a spurious argument since unionization itself does not automatically lead to a particular level of demands during negotiations.

65 Larry JOHNSRUDE, «House Passes Controversial Trade Union Bill», *Star-Phoenix*, June 18, 1983. See A, p. 1.

66 Minister's «notes», p. 3.

67 *Ontario Labour Relations Act*, R.S.O. 1970, c. 232, s. 60.

68 *British Columbia Labour Code*, S.B.C. 1973, c. 122, s. 7.

69 For fuller account see: Gary A. ZABOS, «Fair Representation: The 'Arbitrary Discriminatory or Bad Faith Test in Canada». *Saskatchewan Law Review*, Vol. 43, No. 1, 1978-9.

70 R.S.S. 1978 c. T-17, sec. 36(4).

71 *Ibid.*

72 R.S.S. 1983, Sec. 36(4).

73 Interview with Nadine Hunt and Terry Stevens, *op. cit.*

74 Minister's «notes» *op. cit.*, p. 13.

75 Interview with Nadine Hunt, *op. cit.*

76 Presumably, if a position is found to be within the scope of the bargaining unit, the employer will re-write its job description until the duties are managerial and, therefore, out of scope.

77 Minister's «notes» *op. cit.*, p. 6.

78 Interview with Nadine Hunt, *op. cit.*

79 Minister's «notes», *op. cit.*, p. 6-7.

80 *The Trade Union Act*, R.S.S. 1978, c. T-17, s. 6(3).

81 *Saskatchewan Mining Association Brief*, *op. cit.*, p. 3.

82 Terry Stevens, *op. cit.*

83 Minister's «notes» *op. cit.*, p. 8.

84 Minister's «notes», *op. cit.*, p. 8.

85 *Ibid.*

86 Interview with Nadine Hunt, *op. cit.*

87 *Ibid.*

88 *Ibid.*

89 Minister's «notes» *op. cit.*, p. 9.

90 *Labour-Management Reporting and Disclosure Act*, (Landrum-Griffin Act), 29 U.S.C.S. 401, (1959).

91 Herbert R. NORTHRUP, *Boulwarism,* Bureau of Industrial Relations, The University of Michigan, Ann Arbor, 1964, p. 27.

92 *Ibid.*, p. 28.

93 *Ibid.*, p. 32.

94 *Ibid.*, p. 95.

95 *Ibid.*, p. 135.

96 *Ibid.*, p. 153-162.

97 *Ibid.*, p. 154. See Benjamin SELEKMAN, «Cynicism and Managerial Morality», *Harvard Business Review,* September-October, 1958, pp. 64-65.

98 Minister's «notes», *op. cit.*, p. 10.

99 *Ontario Rights of Labour Act*, s.3, see *Nipissing Hotel* v. *Hotel Restaurant Employees, etc. Union* (1963), 36 D.L.R. (2), 81, *The Trade Union Act*, R.S.S. 1978, c. T-17, s. 23, (2d).

100 A.W.R. CARROTHERS, *Collective Bargaining Law in Canada*, Toronto, Butterworths, 1965, p. 501.

101 *Ibid.*, pp. 388-407.

102 Interview with Terry Stevens, *op. cit.*

103 *Ibid.*

104 Minister's «notes», pp. 11-12.

105 CARROTHERS, *op. cit.*, p. 501. Trade Unions in the United States still retain unincorporated status.

106 *The Trade Union Act*, 1972, c. 137, s.30.

107 Minister's «notes», *op. cit.*, p. 12.

108 Saskatchewan had been the single exception in Canada by not requiring a «no-strike — no-lockout» clause in the collective agreements since 1944.

109 International Brotherhood of Electrical Workers and Energy, Chemical Workers Union.

110 Interview with Bill Hyde, October 10, 1983, Saskatoon.

111 *Ibid.*

112 Discussion with Mr. Ralph Goodale, October 15, 1983, Saskatoon.

113 Minister's «notes», *op. cit.*, p. 15.

114 *Ibid.*

115 Neil W. CHAMBERLAIN, and James W. KUHN, *Collective Bargaining* (Second Edition) McGraw-Hill Book Co., 1965, p. 289. Throughout the defense of Bill 104, the Minister of labour made repeated reference to his dissatisfaction with man-days lost due to strikes in Saskatchewan.

116 *Labor-Management Reporting and Disclosure Act* (1959).

117 The Republicans had a majority in both the House and Senate.

118 CHAMBERLAIN and KUHN, *op. cit.*, p. 290.

119 *Hansards*, June 17, 1983, p. 3249, emphasis added.

120 R.H. TAWNEY, *Equality*, Allen and Unwin, 1964, pp. 53-4.

121 It is, I believe, more correct to view the «market» as not only a reflection of the distribution of power in society, but a medium of power as well. This is not to detract from the importance of our present intractable and interrelated problems of unemployment, inflation, balance-of-payments imbalance, and a declining low rate of economic growth.

122 J.T. DUNLOP, *Industrial Relations Systems*, New York, Henry Holt and Co. Inc., 1958.

123 Unions through collective bargaining conflict with the working of the «free» market and with «free enterprise». For instance, the collective agreement restricts work practices (seniority over merit) and restricts individual initiative. And, of course, unions are seen as being the direct result of strikes and the cessation of production itself.

124 A. FOX, *Beyond Contract: Work, Power and Trust Relations*, London, Faber and Faber, 1974, p. 249.

125 From late 1972 to early 1974, I was head of the Industrial Relations Division in the Department of Labour. From 1975 to mid 1982 I was Associate Deputy Minister.

126 Despite the lip-service to democracy by industrial relations professionals within the crown corporation, there was, nonetheless, a strong attachment to the traditional «master-servant» relations in industry.

127 Only the Saskatchewan Construction Labour Relations Council brief wanted the Act to be changed to «Labour Relations Act».

128 With the common-law development of contract this ideology passed into the assumptions of the employment contract.

129 Approximately 85% of the employers in Saskatchewan employ less than 10 workers.

130 FOX, *op. cit.*, p. 256.

131 *Hansard*, June 15, 1983, p. 3154.

132 «Boulwarism» is derived from the bargaining strategy of Lemuel Boulware, Vice-President of Industrial Relations for General Electric Company in America in the mid-1950s. Mr. Boulware believed that a «firm but fair» offer by the company did not represent a failure to bargain in «good faith». The company would alter its position only upon appropriate union argument and evidence. This was ultimately viewed as an ultimatum and deemed an unfair labour practice.

133 For a favorable account of this collective bargaining strategy see Herbert R. NORTHRUP, *Boulwarism*, Bureau of Industrial Relations, The University of Michigan, 1964.

134 «Compulsory Unionism» *op. cit.*, p. 5. Mr. Shillington in debate states «... your documents say, Mr. Minister, that the union members need protection against their associations, not against their employers». *Hansard*, June 15, 1983, p. 3125.

135 Interview with Nadine Hunt, President of the Saskatchewan Federation of Labour, September 27, 1983, Regina. Ms. Hunt supported her criticism with the following: the freezing of the minimum wage; appointments to senior Department of labour positions, and Labour Relations Board, the removal of labour nominees from the Board of Directors of Crown Corporations; and the «synthesizing» of the management briefs rather than publicly stating that they are contrary to «free» collective bargaining.

There are, of course, many conceptions of a Department of Labour. A former NDP Deputy Minister of Labour, Bob Mitchell, publicly described the Department of Labour as a department for *Labour* in the process of capital formation. In this regard, other departments in government were concerned with development and job creation etc. The Department of Labour, on the other hand, was concerned with the setting of standards and enforcement in the interests, or in behalf of «labour». This distinction made by Mr. Mitchell was in contrast to his Department being a part of carrying out over-all economic policies of the State, i.e. manpower training, regulating salaries in the public sector, prohibition of public employees strikes, etc. The Department in Alberta is named «The Department of Industrial Relations and Manpower».

Les modifications de 1983 à la loi sur les syndicats en Saskatchewan

Le 17 juin 1983, le gouvernement du parti progressiste conservateur en Saskatchewan votait en troisième lecture à la Législature le projet de loi numéro 104 qui modifiait la loi sur les syndicats (*The Saskatchewan Trade Unions Act*). L'opposition néo-démocrate, la Fédération du travail de Saskatchewan et ses syndicats affiliés critiquèrent ces modifications qu'ils taxaient d'anti-syndicalisme.

Cet article expose la lutte des milieux syndicaux contre ces nouvelles modifications à la loi et conclut que le gouvernement actuel penche davantage vers les objectifs des employeurs que vers ceux des syndicats en matière de négociation collective. Les modifications, dans l'ensemble, restreignent la sécurité syndicale institutionnalisée (premier objectif des syndicats) en affaiblissant leur contrôle sur leur droit de sanctionner la conduite des membres, même lorsqu'ils traversent les lignes de piquetage et combattent le syndicat, et cela aussi longtemps qu'ils continuent à payer leurs cotisations. De plus, les syndicats se voient imposer, en vertu de la nouvelle législation, le statut juridique d'organismes incorporés. L'incorporation, lorsqu'elle est associée à «l'obligation de représentation équitable» et aux «principes de la justice naturelle» peut accroître la vulnérabilité des syndicats aux poursuites civiles.

D'autres modifications prévoient une intervention plus grande du gouvernement dans les affaires internes des syndicats. Chaque employé doit recevoir un avis raisonnable des assemblées auxquelles il a droit d'assister et il faut donner également un avis de quarante-huit heures à l'occasion d'une grève. De plus, la Commission des relations du travail peut exiger la tenue d'un vote de grève sur requête de vingt-cinq pour cent des membres ou d'un maximum de cent d'entre eux, s'il s'agit d'un syndicat important, après trente jours de grève.

La loi permet de s'immiscer davantage dans le processus même de la négociation collective en précisant qu'il est obligatoire d'insérer une clause d'interdiction de grève et de lock-out dans les conventions collectives, ce qui était antérieurement laissé à la discrétion des parties. La durée maximale d'une convention est portée de deux à trois ans.

Enfin, les modifications favorisent les employeurs dans les campagnes de recrutement syndical en libéralisant et en élargissant l'article touchant «la liberté de parole» de ceux-ci prévu à la loi au cours des tentatives d'organisation et pendant les négociations collectives. La nouvelle loi prévoit une définition plus large des employés «hors accréditation» qui pourrait permettre à la Commission des relations du travail de refuser les requêtes en se prévalant de l'argument de l'expansion future de l'emploi. Les postes peuvent être déclarés «hors accréditation» avant qu'ils soient établis et occupés.

La Commission des relations du travail possède d'autres pouvoirs discrétionnaires dans la nouvelle loi. Par exemple, il n'est plus obligatoire de tenir un scrutin de représentation syndicale lorsque vingt-cinq pour cent seulement ou plus des travailleurs adhèrent au syndicat. En outre, les modifications retirent certains droits établis dans les conventions durant une grève ou un lock-out à l'exclusion des avantages relatifs à la maladie.