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Résumé de l'article

Under this heading, which will appear in every issue of the Industrial Relations Review, we shall present the principal points of interest encountered in the arbitration awards rendered by the councils of arbitration during the three months preceding the publication of each of the issues of this review.

Occasionally, we shall analyze also, under this heading, the judgments rendered by the Courts of Common Law during the same period and relevant to labour laws. The arbitration awards studied in the present issue are those rendered during the months of May, June and July, 1951. We are only reporting the awards which contain points of particular interest to our readers.

and are not satisfied with achieving an uneasy equilibrium of two allegedly hostile social or occupational groups. They agree that when two organized groups, upon whose existence the functioning of modern industry depends but whose interests are not completely mutual, manage to co-exist in a reasonably peaceful relationship, it represents an achievement but by no means a completely desirable and ultimate end.

These persons want to push forward in an effort to establish a harmonious and creative relationship wherein the human personality can grow and find creative expression in industry. They believe, and experience has supported their convictions, that each employee is a poten-

tially valuable human resource capable of making a contribution not only to the success of the enterprise in which he is employed but to the happiness and well-being of his fellow-workmen — and management associates as well.

Mr. Golden's "third stage" has not been reached everywhere, of course. Indeed, in a few instances the second stage has not yet been reached. But where management has accepted a union organization as a legitimate institution and anticipates that it will become a constructive participant in the enterprise, the next logical development would seem to be the formation of a Labour-Management Production Committee.

## ARBITRATION JURISPRUDENCE

by JEAN-H GAGNÉ,

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1—REGENT KNITTING MILLS LIMITED, ST. JEROME, AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Cost of living bonus and the period of revision of the cost of living index.

In an unanimous award, the council of arbitration, recommends that the cost-of-living bonus be divided among the number of hours really worked by the employees; that the cost of living index be revised every three months and that it be taken into account in the readjustment of wages, either up or down.

(Union fédérale des employés du textile de St. Jérôme, Local 54; kind of enterprise: secondary textile manufacturer; 800 em-

ployees concerned out of 1,104; union affiliated with the T. L. C.; unanimous award rendered May 10th, 1951, 1951; members of council: employer's representative: Mr. Lucien Thinel; employees' representative: Mr. Maurice Fortier; president: Mr. Roger Lacoste.)

2—BESNER BUILDING, MONTREAL, AND EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Job evaluation and establishing of a normal work week.

*Job Evaluation:* Here are the rates recommended by the council for the principal jobs done by employees of public buildings:

Elevator operators, 50 hours per week at \$0.71 per hour; cleaners, 50 hours per week at \$0.73 per hour; watchmen, 66 hours per week at \$0.68 per hour; handy men, 50 hours per week at \$0.83 per hour; maintenance men, 45 hours at \$0.79 per week. In addition, the council recommends for elevator operators in particular, 15 minutes rest for every four-hour working period.

*Normal work week:* It will be of six days and time worked in excess thereof shall be paid for at the rate of time and one-half.

(Building Service Employees' International Union, Local 298; kind of business: public building; 5 employees concerned out of 5; union affiliated with the A. F. of L.; unanimous award rendered May 16th, 1951; members of council: employer's representative: Mr. M.A. Fels; employees' representative: Miss Jeannine Théoret; president: Hon. Justice René Lippé.)

#### 3—PREMIER PAPER BOX, MONTREAL, AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Job classification, statutory holidays and paid holidays; paid vacations.

*Job classification:* The council recommends a classification of jobs and a scale of wages for each job, the rates of which are to vary between \$1.02 and \$1.80 per hour.

*Statutory holidays and paid holidays:* The council recommends eight statutory holidays, some of which may be replaced by others with the consent of both parties. If the designated holiday falls on a Sunday, the following Monday shall be considered as a holiday. If the company is obliged to work its employees on these statutory holidays, they shall be paid at the rate of double time. Four of these eight statutory holidays are to be paid for.

*Paid vacations:* The council recommends that all employees having from 4 months to 5 years' service have the right to a paid vacation equivalent to one-half day for each month of employment, up to one complete week, to be paid at the regular wage rate. Employees with five years' service and more will have the right to two weeks paid vacations.

(Montreal Printing Specialties and Paper Products' Union, Local 21; type of business: manufacturer of cardboard boxes; 175 employees concerned out of 223;

union affiliated with the A. F. of L.; unanimous award rendered May 16th, 1951; members of council: employer's representative: Mr. Hyman F. Fogel; employees' representative: Mr. Patrick G. Galley; president: Hon. Justice René Lippé.)

#### 4—THE SINGER MANUFACTURING CO. LTD. AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Union security; seniority system; general increase in wages.

In this case, the award has been unanimous on all the questions under discussion except the clause regarding wages.

*Union Security:* The award grants the irrevocable and compulsory check-off of union dues.

*Seniority:* The council recommends departmental seniority with the following particularity: that a special protection be given in lay-offs to the members of the union executive and the grievance committee. Even if they do not have the necessary seniority when lay-offs are made, employees filling such posts will be the last to be laid off.

*Increase in wages:* On the question of wages, it is interesting to note that each one of the three members of the council proposed a different solution to the problem. The employer's representative recommends a general increase of \$0.09 per hour plus a proportionate increase of \$0.01 according to the classification of the employees concerned. The employees' representative admits the conclusions of the president but recommends that an escalator clause be granted in order to follow the cost of living index. He recommends that an increase in salary of \$0.40 per week be granted to the employees for every increase of one point in the cost of living index, all retroactive to Jan. 1st, 1951.

The president recommends a general increase of \$0.12 per hour and an escalator clause to follow the cost of living index which would give to the employees an increase in salary of \$0.25 per week for each increase of one point in the cost of living index, all retroactive to Jan. 1st, 1951.

In view of the importance of this company and the particular attitude of the members of the council in the award of the arbitrators, we are giving here the factors taken into consideration by the president before rendering his decision. When he decided to grant the \$0.12 per

hour increase, he stated that he took into consideration:

a) the increase in the cost of living index since Jan. 1st, 1951 plus the possible increase in the same index for the remainder of the year covered by the contract to be settled between the parties;

b) the increase of wages in all the industry as made by the company concerned since December, 1950, that is an increase approximately from \$1.16 to \$1.20 per hour.

The president notes that the average salaries which have been used as a basis for comparisons have been taken from the industrial sector called "durable goods" whereas the business in question only comes under this category for 75% of its operations. 25% of this company's operations must be classed in the industrial sector known as wood furnishing;

c) the president states that it must be considered that the establishments of this company in the United States which pay better wages to their employees, produce for local consumption whereas the establishment concerned produces more than 70% of its production for exportation. The president submits that the factor of production for exportation is very important when the question of settling wages is under consideration, because of the fact that on the world market, the company must be able to compete with other countries where much lower wages are paid;

d) finally, the president submits that with the increase of wages that he is granting in his award, the employees of this company will have an average wage very much higher than the average wage paid by the other enterprises in the Province of Quebec.

This award was not accepted by the parties. A strike followed which was settled by the personal intervention of the Provincial Minister of Labour, the Hon. Antonio Barrette.

(United Steelworkers of America, Local 3764; type of business: manufacturer of sewing-machines; 180 employees concerned out of 2,500; union affiliated to the C. C. L. and to the C. I. O.; majority award, employees' representative dissenting, rendered May 16th, 1951; employer's representative: Mr. A. S. McNichols; employees' representative: Mr. W. J. Smith; president: Hon. Justice Herman Barrette.)

#### 5—STOWELL SCREW CO. LIMITED, LONGUEUIL AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* general increase in wages; cost of living bonus; retroactivity.

*Increase in wages:* The decision in regard to wages brought out certain special considerations on the part of the president. He states that the factors considered by the members of the council in order to determine the wage increase granted were the following:

a) the comparison with wages paid by certain companies in the same industry;

b) the average salaries paid in similar industries in Canada and in the Province of Quebec;

c) the particular circumstances in the case studied.

*Cost of Living Bonus:* We note in this arbitral award that the recommendation touching the cost of living bonus granted to the employees is a \$0.30 increase in wages per week for each increase of one point in the cost of living index. The revision to be made every three months. The employees' representative did not agree on this point and wanted to grant \$0.40.

*Retroactivity:* In this award, complete retroactivity was granted.

(Syndicat des machineries de Montreal; type of enterprise: manufacturer of screws; 75 employees concerned out of 120; union affiliated to the C. C. C. L.; unanimous award rendered June 2nd, 1951; members of the council: employer's representative: Mr. Raymond Caron; employees' representative: Mr. Théodore Lespérance; president: Hon. Justice René Lippé.)

#### 6—LAITERIE PERFECTION LIMITEE, MONTREAL AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Union security; general increase in wages; retroactivity.

*Union security:* The voluntary and irrevocable check-off of union dues is recommended as a system of union security.

*Wages:* A wage increase of \$1.25 per week is also recommended.

*Retroactivity:* As far as retroactivity is concerned, the council recommends a special method of calculation, that is to do so on the basis of \$1.00 per week for six days' work and for every week less than six days, an increase in proportion to the basis fixed. In order to benefit from the wage retroactivity, which comes from the increase in the cost of living index, the employees who have a right to it must still be in the company's employ at the time it is paid and must have been there at the date on which the index was first calculated.

(Union nationale des employés de laiteries, Local 20; type en entreprise: dairy and milk pasteurization; 105 employees concerned out of 143; union affiliated to

the C. C. L.; unanimous award rendered June 7th, 1951; members of the council: employer's representative: Mr. Léonard Roy; employees' representative: Mr. Philippe Vaillancourt; president: Hon. Justice C. E. Guérin.)

7—CANADIAN CAR & FOUNDRY LIMITED, MONTREAL, AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Union security, wages, retroactivity, cost of living bonus.

*Union security:* The union requested in this case the maintenance of membership for the present employees of this company who are members of the union; the Rand formula for the present employees who are not members and the union shop for future employees.

In spite of the proof put forward by the union that the union shop was in existence in this enterprise since 1938, the president of the council gave the opinion that the union shop and the Rand formula were forms of union security that were illegal in this province and in any case, should not be encouraged because they were in contradiction with the principles of true unionism. In particular, the president of the council gave the opinion that the Rand formula prevents the employees from using their right to a free choice in the question of union affiliation.

By a majority decision, the employer's representative dissenting, the council recommends in this case the maintenance of membership for the present employees, members of the union and the voluntary and irrevocable check-off of union dues.

*Wages:* The council recommends an increase in wages of \$0.20 per hour and submits the list of the factors studied in order to determine this increase. a) The increase in the cost of living index; b) the present wages paid in this enterprise compared with the wages paid in similar enterprises; c) the Company's capacity to pay.

The president submitted that the increase in the cost of living index is one of the most important factors to consider.

*Retroactivity:* The members of the council had to choose as the basic date in order to determine the retroactivity, that of the expiration of the former contract, that of the certification of the new union in this enterprise, that when the Company made its offers or finally, that of the beginning of the negotiations. It is this last date that was chosen. The reason for the choice of this date was the substantial increase in the cost of living in the period

between the date of the beginning of the negotiations and that of the beginning of the arbitration.

*Cost of living bonus:* The members of the council believe that it is so important to consider the increase in the cost of living index when there is a question of increase in the workers' salaries, that it would not be fair to the employees not to grant them an escalator clause. Consequently, for each increase of one point in the national cost of living index, the wages would be increased by \$0.40 per week for the employees concerned. The adjustment would be made every four months.

(Brotherhood Railway Car Men of America; kind of enterprise: railway car manufacturer; 1,182 employees concerned out of 1,235; union affiliated with the A. F. of L.; unanimous award rendered July 27th, 1951; members of the council: employer's representative: B. A. Paterson; employees' representative: Roger Provost; president: Hon. Justice René Lippé.)

8—DOMINION GLASS CO. LTD., MONTREAL, AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* increase in wages; union security; cost of living bonus.

*Wages:* The council grants an increase in wages of \$0.10 per hour to all the employees.

*Union Security:* The union had asked for the Rand formula. The president of the council gave the opinion that the Rand formula could not be granted for the following reasons: a) It is against the economy of our Civil Code. b) It is against the prescriptions of our Code of civil procedure and is not included in the methods of seizure prescribed in the said Code.

According to the president of the council, the only acceptable formula for deducting an amount of money from the salary of an employee, is that where this deduction is made voluntarily, with the full consent of the employee concerned or following a writ of execution rendered by a competent court.

The award reviews the arguments invoked by the union in favour of the Rand formula. The union put forward the reason that the non-union employees benefit from the collective agreement and its advantages to the same extent as the union employees and because of this, they should be obliged to contribute towards the expenses of the union caused by the proceedings undertaken in view of improving

the working conditions in the enterprise concerned.

The members of the council recognize that the argument is valuable but emphasize that it must be considered that the dues obtained in accordance with union wishes, cover not only the services rendered on the occasion of the negotiation of the collective labour agreement, but also the support of the union itself in all its obligations towards its members. For this reason, and for the others mentioned before, the members of the council recognize that it is impossible to make the check-off of union dues compulsory for all the employees when these latter do not consent to pay them voluntarily.

*Cost of living bonus:* On this point, the award recommends for the whole year under consideration an increase in wages of \$0.05 per hour for each hour worked by the employees concerned, all effective from the date of the signature of the suggested contract. The union had requested an increase in wages of \$0.40 per week for each point of increase in the national cost of living index.

The president submits that it is very difficult to accede to this request in view of the lack of precision of the statistics serving as the basis for the fixing of the rate of the official index of the cost of living.

On page 22 of the award, we may read the following opinion on the subject: "All statistics are not absolutely scientific. They fail more often than not, by lack of precision, or are subject to the variations of temperament or personal interests of those who constitute them or fabricate them".

(Union nationale des ouvriers du verre, Local 206; kind of enterprise: glass manufacturer; 512 employees concerned out of 573; union affiliated with the C. C. L.; majority award, employees' representative dissenting, rendered July 27th, 1951; members of council: employer's representative: Mr. A. S. McNichols; employees' representative: Mr. Philippe Vaillancourt; president: Mr. Ulric Laurencelle.)

9—MOUNT ROYAL DAIRIES CO. LTD., AND ITS EMPLOYEES' UNION.

*Jurisdiction of the arbitrators:* Wages, retroactivity.

The president, in his majority award, justified the increase in wages granted by

invoking the increase in the cost of living during the period studied. He seems to have looked at this factor as being the principal one to be considered in face of a request for an increase in wages made by the representatives of the employees.

In the case under consideration, the last agreement began July 1st, 1949 and terminated October 1st, 1950. During this period the increase in the cost of living was very great. From the date the agreement expired, that is, from October, 1950, up to the date the council was called upon to consider this question of wages, there was another considerable increase in the cost of living index. The president of the council gave the opinion that in all justice such an increase could not be ignored.

He rejects the argument, that such an increase in the cost of living index should not be considered on the pretext that the parties concerned could have signed an agreement last November when the cost of living was much lower. He also rejects the argument that would ignore what the cost of living index will be in the months to come when the rendered award would be in force during these same months. He pretends that the tendency of the index to be on the way up or down must be considered.

*Retroactivity:* The president states that he cannot suggest that it be paid in accordance with the increase in wages accorded, considering that the factor "cost of living" would act unjustly against the Company. The council grants therefore a retroactivity established on definite bases but different following the periods considered and the work accomplished by the employees during these same periods.

In order to calculate the retroactivity, the Company must not take into account the individual increases granted to certain of its employees. In other words, it must be calculated from the wage rates granted and fixed by the agreement for specific jobs. If these individual increases exceed the amount due in retroactivity calculated on the basis mentioned above, the Company will not be obliged to pay any amount whatever for these. If these increases are less, the Company must make up the accounts due in accordance with the retroactivity granted.

(Union nationale des employés de laiteries, Local 17, Montreal; kind of enterprise, dairy; 120 employees concerned out of 180; Union affiliated to the C. C. L.; unanimous award rendered July 30th, 1951; members of council: employer's representative: Mr. Maurice Fortier, K.C.; employees' representative: Mr. Philippe Vaillancourt; president: Mr. André Montpetit, K.C.)