

## Relations industrielles Industrial Relations



# Contemporary Public Policy Issues in Industrial Relations Les politiques contemporaines et les relations industrielles : quelques implications

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### Résumé de l'article

#### INTRODUCTION

Le but de cet article est de décrire quelques-unes des implications des politiques publiques sur les relations industrielles au Canada. Nous avons également l'intention de définir, au moins dans ses grandes lignes, une nouvelle façon de prendre des décisions dans le domaine des relations de travail.

#### LA DOCTRINE DU LIBÉRALISME ÉCONOMIQUE

La philosophie de notre approche des relations patronales-ouvrières au Canada a toujours été et continue d'être une adaptation de la doctrine du libéralisme économique.

#### LA PROCÉDURE D'ACCREDITATION

La doctrine du laissez-faire est tellement ancrée dans cette procédure d'importance que presque toutes les commissions de relations du travail n'ont pas le pouvoir nécessaire pour juger de la qualité de représentation d'une organisation syndicale donnée. Notre incapacité à définir un rôle plus positif pour les commissions de relations du travail en ce qui a trait à l'accréditation a mené au développement d'un système très fragmenté de négociation collective.

#### LE PROCESSUS DE NÉGOCIATION COLLECTIVE

La doctrine du laissez-faire a causé de sérieux problèmes dans le règlement des conflits au Canada. En fait, la négociation collective est un processus par lequel les intérêts, attentes et besoins divergents sont rationalisés sous la forme du compromis. Ce n'est donc pas une question de monopole d'usage de cette technique par les syndicats.

#### LES RÈGLES DU JEU

1. — Au Canada la négociation collective n'est pas consécutive à une série d'arguments logiques et rationnels.

2. — Le pouvoir économique et politique demeure l'instrument majeur à la table des négociations.

#### L'INTÉRÊT PUBLIC ET LE RÈGLEMENT DES CONFLITS

La conciliation et la médiation réussissent mal à protéger l'intérêt public dans le règlement des conflits. C'est un mécanisme qui a pour but de faciliter et non d'influencer l'atteinte et la nature du règlement.

Un système qui, comme le nôtre met plus d'emphasis sur l'atteinte d'une entente plutôt que sur les conséquences de cette entente sur les autres négociations est voué au départ à de sérieuses difficultés.

#### UN REMÈDE AU LIBÉRALISME ÉCONOMIQUE

L'arbitrage obligatoire et les tribunaux du travail représentent une solution qui à mon avis n'est ni désirable ni nécessaire. Nous sommes donc en présence des deux pôles extrêmes d'un continuum (laissez-faire et arbitrage obligatoire) à l'intérieur duquel se situe la solution idéale.

#### LES RÈGLES DU JEU: L'EXPÉRIENCE DE LA COLOMBIE BRITANNIQUE

L'imposition de l'arbitrage par le ministre lorsque l'intérêt public est en jeu explique la popularité qui entoure le "Mediation Commission Act" ou encore le bill 33 de la Colombie Britannique. Le but de ce bill est en fait de tenter d'éloigner les parties de la notion de négociation basée sur la force économique et politique pour les faire tendre le plus possible vers le règlement rationnel des conflits, règlement qui mettrait l'intérêt public au centre de ses préoccupations.

#### LE CONCEPT DE "FARDEAU DE LA PREUVE"

En vertu du bill 33, la Commission de médiation désigne la partie à laquelle incombe le fardeau de la preuve. C'est donc une innovation importante.

#### LE BESOIN DE RECHERCHE

L'article 39 de ce bill 33 autorise la Commission, après avoir référé au ministre, à enquêter sur des matières, telles la croissance économique, les relations patronales-ouvrières, la productivité, les problèmes d'adaptation. En plus, les décisions de la Commission deviennent propriété publique.

#### LES PROBLÈMES D'APPLICATION

La Commission a le pouvoir de déterminer le principe qui servira à un accord mais non les termes à utiliser dans l'entente. C'est là une difficulté sérieuse. On peut s'entendre sur les principes et non sur les mots. L'arbitrage tel que conçu dans ce bill pose également de sérieux problèmes.

#### CONCLUSION

Est-ce que les partenaires en relations du travail sont prêts à envisager une législation tel le bill 33 ? Sont-ils prêts à accepter le concept du fardeau de la preuve ?

# Contemporary Public Policy Issues in Industrial Relations

Noel A. Hall

*The present system of collective bargaining is more an exercise in the use of coercive economic and political power by labour and management than a process of rational, logical argument and existing conciliation procedures have proven inadequate in reflecting the public interest in dispute settlement. What then is the impact of B.C. Bill 33 ?*

## Introduction

The purpose of this paper is to delineate some of the major public policy issues currently plaguing the industrial relations scene in Canada. Those of you who know the field well will recognize the great difficulty involved in trying to generalize on such matters. Complications arise at the outset from the existence of eleven legislative jurisdictions operating in the field. Further complications relate to wide economic disparities across Canada, from the Atlantic provinces to British Columbia. And finally, the lack of public discussion of the pressing issues arising at the bargaining table make the task of analysis all the more difficult.

Despite these difficulties, I would like to address my remarks to several areas of immediate concern; areas that appear to be in greatest need of re-examination. As an over-riding theme, I want to suggest to you that our present system for regulating labour-management relations and the collective bargaining process is in a shocking state of disrepair, so much so, that in my view the system can only be put in order by a wholesale rethinking of the institutions involved and their relationship to the broader society. I want to define, at least in outline form, a substantially new approach to decision-making in the industrial relations field.

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## **The Laissez Faire Doctrine**

The fundamental philosophy underlying our approach to labour-management relations in Canada has been and continues to be an adaptation of the economic doctrine of laissez-faire. The principle is clearly evident in such vital areas as internal union government, decisions with respect to the certification of trade unions, and perhaps of greatest importance, the system of collective bargaining that has developed in Canada. Let me be more explicit.

Historically, we have adopted the position that trade unions are voluntary associations of individuals coming together with the common purpose of advancing their mutual interests. All legislative jurisdictions adopt this stance in declaring that « every employee has the right to be a member of a trade union and to participate in its lawful activities ». Similar support can be found for the right of free association in legislation prohibiting employer discrimination and interference in the process of organization and in our general prohibition against imposing any condition of employment through which the employer seeks to restrain an employee from exercising his right to belong to a trade union.

The historical necessity for such public policy statements springs from two sources ; firstly, the need to free individuals from charges of conspiracy in restraint of trade and secondly, to protect employees from employer reprisals in the early years of organization. This latter need still exists in some industries and areas of Canada, but over the years we have allowed the concept of voluntary unionism to mask what might otherwise have been a deep and growing concern for internal union government. Our legislation, by remaining silent on the question, adheres to the philosophy that trade unions are democratic, self-determining associations whose constitutions and by-laws are virtually free from public scrutiny.

The concept of voluntarism fails to recognize the extent to which compulsory membership provisions, either closed shop or union shop clauses, characterize collective agreements in Canada. It fails to recognize the extent to which Rand formula provisions and compulsory check-off provisions have become general in our major industries. In effect, access to employment for a significant proportion of the workforce in crucial industries is largely a function of union membership or compulsory dues contribution.

Let me make it clear that I am not arguing against the closed shop or any other compulsory membership provision. Nor am I arguing against the power of taxation granted to trade unions under compulsory check-off provisions. My point is that the widespread existence of such provisions seems on the face of it, to mitigate against the argument that trade unions continue to be « voluntary associations ». More specifically, by granting the power that goes with compulsory membership clauses and check-off provisions, society has a right to require in return : (1) some fairly precise definition of the conditions of membership, (2) constitutional guarantees to protect minority interests and viewpoints within the union structure, (3) some definition of conditions under which membership may be withdrawn, and finally, (4) some clearer understanding of the internal decision-making processes within union structures. To my knowledge, no significant legislative jurisdiction in Canada has shown any inclination to deal with this question, except on an ad hoc basis, for example, in the S.I.U. trusteeship.

### **The Certification Process**

The analysis can be taken a step further by an examination of the certification process in labour relations. The laissez-faire doctrine is so firmly entrenched in this vital area of decision that almost without exception, labour relations boards have no authority to pass judgment on the question as to whether or not the group of employees involved *ought to be* represented by the particular trade union making application. Once the labour relations board discovers majority wishes, as evidenced by membership in the union or by a direct vote to ascertain employee wishes, the board *must* certify the union as the exclusive bargaining authority, the agent of the employees in the bargaining unit, with the power to bind them to a collective agreement. In popular terminology the philosophy is « union of their own choosing. »

So called « government intervention » in the certification process is confined to determining majority wishes, to defining conditions for re-application, and to counting votes or membership cards. To my knowledge, the only clearly defined public policy expressed in the certification process is the attempt to protect traditional craft lines. As a consequence, we end up with about twenty-two unions in the construction industry and almost as many in the shipbuilding industry. The need for a positive policy in such situations is surely obvious. Self-determination, pure and simple, does not necessarily lead to a rational system of representation. I don't think anyone's fundamental rights would be seriously abridged by granting

labour relations boards the power to compel unions to organize themselves into some kind of joint council for bargaining purposes in industries characterized by multi-union representation.

Our failure to define a more positive role for labour relations boards in dealing with certification questions has led to the development of a highly fragmented system of collective bargaining. As a consequence, there is a lack of integration between bargaining units on the one hand and the decision making structure of trade unions on the other. New bargaining units are defined and absorbed into existing union locals with little or no concern for the representativeness of the resulting structure.

### **The Collective Bargaining Process**

The laissez-faire doctrine has led to serious problems in dispute settlement in Canada. At the root of the difficulty lies an apparent unwillingness to up-date our thinking about the nature and purpose of the bargaining process. Historically the phrase denotes a process of struggle between labour and management; a struggle through which the submerged working class sought freedom from oppressive working conditions and economic exploitation. For most of us « collective bargaining » may still conjure up a vision of workers storming the barricades under such romantic slogans as « workers arise, you have nothing to lose but your chains » or « solidarity forever ». It is not my intention to deride the genuine and legitimate accomplishments of trade unions under such slogans. Indeed much of the colour and drama of the union movement would be lost without them. And, some bargaining relationships are unfortunately still characterized in this primitive fashion, but collective bargaining has evolved into a much more complex relationship. It is a basic process by which individuals or institutions relate themselves to one another in our complex society. Apart from a vehicle for expressing dissatisfaction and unrest in the industrial scene, it is a process through which conflict is managed. Collective bargaining is the process through which conflicting expectations, interests, or needs are rationalized into some form of accomodation.

Given this broader definition of the process, trade unions do not hold a monopoly on collective bargaining as a technique for advancing their interests. The process is used, either *implicitly* or *explicitly* every time one segment of our society attempts to advance its interests relative to all others. For example, hospital boards « bargain » with governments for funds; universities « bargain » in a similar manner; prairie farmers

« bargain » with the Wheat Board in an attempt to advance their interests ; university students, by their collective behaviour, attempt to « bargain » with boards of governors and university senates. Similarly, the Canadian Association of University Teachers is in the process of bargaining with the administration at Simon Fraser University.

All of these relationships are characterized by potential conflict, by persuasion, by negotiation, by compromise, and by the use or threatened use of sanctions designed to affect the desired behaviour or response. The significant variables are the extent to which the bargaining process is made explicit and the extent to which the resulting accommodation is crystalized into a binding agreement or contract. They serve to point up the fact that collective bargaining is very much a vehicle for activating latent power. Power springing from a monopoly position ; power derived from control over access to particular skills ; power arising from holding a strategic position in the economy ; power based on widespread public support ; or power based on the irrefutable logic of one's stand.

### **The Rules of the Bargaining Game**

If it can be agreed that all of us either individually or collectively, or through the institutions we serve, are involved in various forms of bargaining, then what is unique about collective bargaining between labour and management ?

Collective bargaining as it is currently practiced in Canada is not, by and large, responsive to logical, rational argument. To a growing extent the exercise of economic and political power is the key to final accommodation at the bargaining table. In far too many cases, wage increases reflect the raw economic power of either labour or management. Their ability to withstand the economic sanctions or the political pressures that each are capable of imposing upon the other seems to characterize the collective bargaining process. As a consequence, the wage and salary structure does little to encourage the acquisition of skills. It does not adequately reward those whose jobs place them in positions of greater responsibility. It tends to under-value the semi-professional, and white collar occupations. Fundamentally the collective bargaining system responds to power and therefore favours those who are willing to withdraw their services to support their economic demands. Conversely, groups possessing a strong orientation towards serving the public or whose services are essential to the public welfare are in a real sense at a disadvantage in collective bargaining. They are understandably reluctant to withdraw

their services as a strategy in bargaining and yet, the system is not equipped to deal effectively with non-power bargaining. It is not equipped to deal effectively with serious imbalances in the economic power of either labour or management.

### **The Public Interest in Dispute Settlement**

It seems almost unnecessary to state that existing conciliation and mediation procedures have proven inadequate to safeguard the public interest in dispute settlement. Such procedures, with few exceptions reflect an inherent reluctance at all levels of government to intervene in the collective bargaining process. True, we have had conciliation machinery set up by governments for many years, but it is a considerable misnomer to describe such machinery as « government intervention ». Such machinery was provided merely to *facilitate* settlement, not to *influence* the nature of the settlement towards some government policy. The fact is, and I speak from some considerable experience, that mediation and conciliation procedures as they have developed in Canada, do *not* change those involved with carrying the public interest into the dispute. Their function is, and I quote, « to find terms and conditions that the parties can agree to ». The void in giving expression to the public interest is obvious. In some industries, particularly those characterized by a near monopoly position of both labour and management, some recent agreements reflect an almost complete disregard for the public interest. I suggest that it does not necessarily follow that what is acceptable to the parties is necessarily in the public interest.

A system of dispute settlement that places such a high priority as ours does on agreement per se, with little judgment as to the « goodness » or the « badness » of that agreement in terms of its impact on other bargaining relationships or in terms of its impact on the economy, employment, prices and inflation, is bound to encounter great difficulty. Existing conciliation and mediation procedures in Canada, because they are carried-on by ad hoc boards, represent a fragmented approach to decision-making in what is in reality an integrated system. A change in one segment creates obvious pressures for changes in every other part. Further, because most boards are tri-partite, the chairman must of necessity compromise his analysis to affect a settlement. As soon as it becomes clear that a board is not going to be unanimous, the chairman's position becomes intolerable in that he becomes « captive » to either the labour representative or the management representative. The blame for this must, in my view, rest at the doorstep of government for failing to create dispute settlement

procedures that are more responsive to rational, logical argument and less responsive to the coercive exercise of economic and political power.

### **An Alternative to Laissez-faire**

The case for innovation in collective bargaining and dispute settlement is not a difficult one to make. The real issue is: What should be the role of government? What procedures or machinery should be created to implement this role?

I have suggested that our fundamental approach to labour management relations is essentially that of laissez-faire. Intervention in decisions concerning collective bargaining has focused largely on facilitating rather than influencing behaviour. Is there an alternative to this basic approach?

At the other end of the spectrum lies the possibility of compulsory arbitration and labour courts; of a system of highly centralized bargaining through institutional arrangements dictated largely by government, similar to the Swedish pattern. Such extreme measures are to my mind, neither desirable nor necessary. Despite the complexities of modern society, we still cling to two fundamental concepts that would be placed in jeopardy by such extreme measures. The first of these, the right to private property, is vital to our system of free enterprise. The second, the right to private contract, is equally vital. Just as the individual or corporation possesses a right to contract, so they possess a right *not* to contract. Rarely do we as a society compel individuals or corporations to exercise their capacity to contract. Our reluctance to interfere with these basic concepts is well-founded, particularly when the matter at issue is the employment contract or the conditions under which private property will be utilized. But there is a large area for innovation between the extremes of laissez-faire and compulsion.

### **New Rules for an Old Game : The B. C. Experiment**

If the present system of collective bargaining is more an exercise in the use of coercive economic and political power by labour and management than a process of rational, logical argument and if existing conciliation procedures have proven inadequate in reflecting the public interest in dispute settlement then indeed, new rules are badly needed to break the deadlock between labour and management.

British Columbia has recently enacted a new piece of legislation, the Mediation Commission Act, more commonly referred to as Bill 33. Public discussion of the Act has focused almost entirely on those sections which



empower the Lieutenant-Governor in Council to impose binding arbitration on the parties when it is necessary to protect the public interest and welfare.

Even a cursory reading of the Act indicates that the compulsory arbitration feature, important as it is, represents only a relatively minor part of Bill 33. The main thrust of Bill 33 is an attempt to move the parties away from their present stance of coercive power bargaining into the realm of rational, logical decision-making in which the public interest will be a major determinant in dispute settlements, without impairing the traditional « rights » of unions or management. It does so by introducing the concept of « burden-of-proof » and the concept of « fair and reasonable decisions » into labour management relations.

### The “Burden-of-Proof” Concept

At the Mediation Officer stage, the Commission is empowered under Section 13 to conduct an inquiry for the purpose of deciding, among other things, « which party shall bear the burden of proof of any fact or matter in dispute ».

Following this preliminary inquiry and if no settlement results, the Commission may proceed to a full hearing on all matters in dispute. In the hearing, the Commission will proceed on the basis of naming the party which bears the *burden of proof of each matter in dispute*. Each party will have the right to cross-examine witnesses adverse in interest and to present argument orally or in writing.

Injecting the concept of burden or proof into collective bargaining is obviously a major innovation. Although I am not a lawyer, I understand that in law the burden of proof falls to the « accuser ». In effect one is innocent until proven guilty. The individual who brings a charge must accept the onus of proving his charge. The application of this concept to collective bargaining is bound to make it a more rational process, providing it can be adapted to meet the circumstances. For example, assume that the union is asking for a \$.40 per hour increase in wages. Will the Commission assign to the union the burden of proving the necessity for the increase or will the Commission turn to the employer and say, « prove that you cannot grant a \$.40 per hour increase. » If the wage argument hinges on « ability-to-pay », will the Commission ask the union to prove the positive proposition (that the employer does have the ability-to-pay) or will the employer be asked to prove the negative proposition (that he

does not have the ability-to-pay) ? Similarly, if the matter in dispute is a demand for a closed shop clause, upon whom will the burden of proof fall, union or management ? The application of the concept will be very tricky indeed on such matters as severance pay, automation and technological change clauses, hours of week, statutory holiday pay, scheduling of shifts and the myriad of other clauses typical in most collective agreements. Demands that arise in these areas are not, strictly speaking, subject to « proof ». They are however, subject to argument and discussion. Nevertheless the idea of compelling both labour and management to justify their respective position is a sound one. It is not too much to expect of mature people on both sides of the bargaining table, even though the Commission faces a major task in implementing the concept.

### **The Concept of Fair and Reasonable Decisions**

A second major innovation contained in Bill 33 is the attempt to shift the basis for decisions away from the established concept of « terms and conditions that the parties can agree to » which characterized the conciliation board process. After hearing a dispute, the Mediation Commission under Section 15 must hand down a decision stating « the terms and conditions of a collective agreement which in *the opinion* of the Commission would be a *fair and reasonable collective agreement* between the parties together *with reasons supporting* the opinion held by the Commission ».

It was noted earlier that one of the major handicaps that ad hoc conciliation boards face is the necessity of endeavouring to find a settlement that the parties could agree to. Board chairmen under such terms of reference are inevitably placed in a position of having to compromise their analysis of the dispute to ensure at least a majority report. The concept of a « fair and reasonable » decision, together with supporting reasons, should place the Mediation Commission in a position to express an independent viewpoint. Indeed, the implication is that collective bargaining ought to reflect an ability to justify one's position as indicated in the « burden of proof » concept and a willingness to be persuaded by a « fair and reasonable » decision. Such an approach promises hope for a system of dispute settlement in which the public interest is given full voice without impairing the established rights of the parties.

### **The Need for Research**

One further innovation relevant in defining a meaningful role for government in collective bargaining pertains to the need for research.

Section 39 of the B.C. Mediation Commission Act authorizes the Commission upon referral by the Minister of Labour to inquire and report on matters relating to economic growth, labour-management relations, productivity, problems of adjustment, industrial research and technology research which will assist in improving the means of disseminating industrial and labour information, and such other matters as seem calculated to maintain or secure industrial peace and to promote conditions favourable to the settlement of disputes. In addition, decisions of the Commission are to become public property. In short, an attempt will be made to ensure a well-informed public which should have the effect of increasing the persuasiveness of the Commission decisions.

### **Problems of Execution**

Despite the potential that Bill 33 has for providing a more rational system of dispute settlement, the Commission faces a monumental task in giving full effect to its main provisions. For example, the decisions of the Commission are not to be considered defective by reason of stating the substance only of the terms and conditions of a collective agreement, without prescribing the precise language in which the collective agreement shall be written. Clearly, it is possible to agree in principle but to disagree on language required to give effect to the principle. Similarly, Sections 18 and 19 dealing with compulsory arbitration are fraught with problems of execution. For example, after the Commission has handed down a binding award terminating a strike, each employee must return to work within 24 hours. Conversely, under the act no employer shall refuse to permit the return to work of an employee on strike. What happens during a protracted strike when key employees drift away to other jobs? Will they be compelled to return to their previous employer? What happens if as a result of a serious strike an employer's volume of business is seriously cut-back such that upon resumption of work, he no longer needs all of his employees? Will he be compelled to re-hire all of those working at the beginning of the strike? These and similar problems of application will demand of the Commission a great deal of wisdom.

### **Shortcomings of Bill 33**

There is a great deal that could be suggested to improve Bill 33. It is tempting to criticize the act for failing to define the « public interest and welfare » which is crucial to a decision by the Lieutenant-Governor in Council to order the Commission to hand down a binding decision to either prevent a strike or terminate an existing one. That definition is

probably more wisely left to evolve, given the traditional opposition of trade unions to compulsory arbitration. I think one could suggest however, that the decision to make such a judgment would be better located in the hands of the Commission as advice to the Lieutenant-Governor in Council. Such a change would strengthen the Commission's role as a truly independent body, free from political interference.

Bill 33 uses the phrase « to protect the public interest and welfare » as a basis for compulsory arbitration. This is potentially at least, a broader concept for example than if the phrase « essential services » had been used. This latter might generally be interpreted as applying to such occupations as firemen, policemen, nursing and health care services, ferry and transportation facilities, and perhaps municipal government employees. Even in these last two fields, we have shown both provincially and federally, that our society possesses great ability to adjust when apparently « essential » services are withdrawn. Federally, we have experienced nationwide strikes in postal services, railway transportation, air line operations, longshoring and the like. Provincially, we have experienced a strike of operating engineers in hospitals, civic employee groups, including sanitation services. We have also had strikes of employees in hydro employees and gas distribution services. Such strikes with the exception of policemen, firemen and nurses, cause a great deal of public inconvenience and annoyance, but whether or not they pose a threat to the « public interest and welfare » is subject to debate. Certainly, a judgment on the matter would have to take into account the duration of the strike the geographic area affected by the strike, the ability of consumers of the product or service to affect substitutes and perhaps the number of employees involved.

The most difficult aspect of the « public interest and welfare » concept lies not in essential services, but rather, in those industry where continued production is closely related to the economic health of the province. Protracted strikes in forestry, pulp and paper, mining and perhaps fishing might well be more detrimental to the public interest than a strike of municipal employees in for example, Delta municipality. Even in these industries, one would hope that the persuasive powers of the Commission could be used to affect reasonable settlements, without resort to compulsion. As a minimum, it seems clear that the over-use of compulsion will have the effect of driving disputes back to the plant level, rather than bringing them into the open for settlement. Such an event would hardly contribute to sound labour-management relations.

In many respects, the act if interpreted literally could improve extremely difficult to administer. In many sections, the wording is more constraining than is necessary and may leave the Commission with too little discretion. This is particularly relevant in the section already noted compelling a return to work and an obligation to re-hire following a binding decision. It is also a problem in applying the burden-of-proof concept. It may well be that both labour and management will find the burden-of-proof so onerous that they will begin to adopt strategies to circumvent the terms of references of the Commission. It is worth nothing that the parties are not bound to submit a dispute to the Commission, prior to the taking of strike or lockout action. This is another of those major changes in the act that has gone virtually unnoticed. As I read the act, the Mediation Commission can only enter a dispute at the request of either party or alternatively, at the direction of the Minister of Labour, *if he considers that the public interest is or may be affected by a dispute*. To the extent that labour and management may find it to their mutual advantage not to place their disputes before the Commission, the Commission may be dealing with something less than the total industrial relations scene.

In viewing Bill 33 in total, it is not at all clear how labour and management will react to its provisions, apart from the compulsory arbitration feature. I am not at all convinced that the parties, labour and management, are prepared to accept the full implications of the burden-of-proof concept. Its application may prove equally demanding on both parties, with the degree of public scrutiny implied. For example, in handing down « fair and reasonable » decisions the Commission must by implication involve itself in judgments concerning the potential impact of wage increases in costs of production, on assessing the impact of cost increases on profits and sales, and on assessing the ability of the employer to absorb a cost increase without a corresponding increase in prices.

## Summary

Clearly, there is a great deal more to Bill 33 than the question of compulsory arbitration. Important as that provision is, the main innovations lie in providing a full-time Commission to replace the ad hoc conciliation board system. This in itself should provide a more rational system of disputes settlement in British Columbia. That objective should be further enhanced by introducing the concept of burden-of-proof into collective bargaining and the concept of fair and reasonable settlement into decisions concerning collective agreements. Assuming that Sections

18 and 19 are used with constraint, Bill 33 represents the kind of innovation that is possible between the extremes of laissez-faire and that of compulsion in the settlement of industrial disputes. Despite some obvious shortcomings, such an approach promises hope for a system of collective bargaining in which the public interest is given full voice, without impairing the established rights of the parties. Whether it works in practice will depend upon the wisdom of the Commission and the goodwill of labour and management.

## **LES POLITIQUES CONTEMPORAINES ET LES RELATIONS INDUSTRIELLES: QUELQUES IMPLICATIONS**

### **INTRODUCTION**

Le but de cet article est de décrire quelques-unes des implications des politiques publiques sur les relations industrielles au Canada. Nous avons également l'intention de définir, au moins dans ses grandes lignes, une nouvelle façon de prendre des décisions dans le domaine des relations de travail.

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La doctrine du laissez-faire a causé de sérieux problèmes dans le règlement des conflits au Canada. En fait, la négociation collective est un processus par lequel les intérêts, attentes et besoins divergents sont rationalisés sous la forme du compromis. Ce n'est donc pas une question de monopole d'usage de cette technique par les syndicats.

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L'arbitrage obligatoire et les tribunaux du travail représentent une solution qui à mon avis n'est ni désirable ni nécessaire. Nous sommes donc en présence des deux pôles extrêmes d'un continuum (laissez-faire et arbitrage obligatoire) à l'intérieur duquel se situe la solution idéale.

### LES RÈGLES DU JEU: L'EXPÉRIENCE DE LA COLOMBIE BRITANNIQUE

L'imposition de l'arbitrage par le ministre lorsque l'intérêt public est en jeu explique la popularité qui entoure le "Mediation Commission Act" ou encore le bill 33 de la Colombie Britannique. Le but de ce bill est en fait de tenter d'éloigner les parties de la notion de négociation basée sur la force économique et politique pour les faire tendre le plus possible vers le règlement rationnel des conflits, règlement qui mettrait l'intérêt public au centre de ses préoccupations.

### LE CONCEPT DE "FARDEAU DE LA PREUVE"

En vertu du bill 33, la Commission de médiation désigne la partie à laquelle incombe le fardeau de la preuve. C'est donc une innovation importante.

### LE BESOIN DE RECHERCHE

L'article 39 de ce bill 33 autorise la Commission, après avoir référé au ministre, à enquêter sur des matières, telles la croissance économique, les relations patronales-ouvrières, la productivité, les problèmes d'adaptation. En plus, les décisions de la Commission deviennent propriété publique.

### LES PROBLÈMES D'APPLICATION

La Commission a le pouvoir de déterminer le principe qui servira à un accord mais non les termes à utiliser dans l'entente. C'est là une difficulté sérieuse. On peut s'entendre sur les principes et non sur les mots. L'arbitrage tel que conçu dans ce bill pose également de sérieux problèmes.

### CONCLUSION

Est-ce que les partenaires en relations du travail sont prêts à envisager une législation tel le bill 33 ? Sont-ils prêts à accepter le concept du fardeau de la preuve ?