

# The Implications of Technological Change for Collective Bargaining

## Implications des changements technologiques sur la négociation collective

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Volume 22, numéro 3, 1967

URI : <https://id.erudit.org/iderudit/027813ar>

DOI : <https://doi.org/10.7202/027813ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer cet article

Fryer, J. F. (1967). The Implications of Technological Change for Collective Bargaining. *Relations industrielles / Industrial Relations*, 22(3), 411–421. <https://doi.org/10.7202/027813ar>

### Résumé de l'article

Le travailleur est le membre de la société le plus directement touché par l'avènement de l'automatisation et autres changements technologiques. Ces changements auxquels il doit sans cesse s'ajuster ont contribué à le placer dans un climat d'insécurité, et la négociation collective, possible par l'entremise de son syndicat, est l'approche la plus directe qu'il puisse utiliser en vue d'obtenir une certaine sécurité à son emploi. Aussi ne faut-il pas se surprendre du fait que la sécurité de l'emploi ait reçu une importance accrue dans les négociations au cours des dernières années.

Bien qu'elle ne doive pas être considérée comme un substitut à des politiques gouvernementales en matière d'ajustements de main-d'œuvre, la négociation collective peut apporter une contribution importante à la solution des problèmes inhérents à l'introduction de changements technologiques. Les approches traditionnelles de négociation, cependant, devront être réexaminées, réévaluées et peut-être délaissées en faveur de techniques nouvelles et parfois plus radicales qui seront mieux adaptées aux nouveaux besoins des travailleurs.

Actuellement, des considérations d'ordre légaliste et contractuel, telle la théorie des droits résiduels de la direction, font obstacle à cette redéfinition du rôle de la négociation collective.

Au nom de cette théorie, qui stipule que tout ce qui n'est pas inscrit de façon spécifique dans la convention est du ressort exclusif de la direction, beaucoup trop d'employeurs refusent de discuter de l'introduction de changements avec l'employé, même si cela peut coûter son emploi à ce dernier. Pour le travailleur, la perte de l'emploi représente plus qu'une perte de revenu. Même s'il a la chance d'être embauché ailleurs, il sera placé au bas de l'échelle d'ancienneté et ses chances de promotion, sa vulnérabilité en cas de mise à pied, la durée de ses vacances, ses prestations de retraite en seront profondément affectées.

Le juge Freedman, dans le rapport de la Commission d'enquête industrielle instituée dans le secteur des chemins de fer en 1964, montre bien les vicissitudes d'une telle conception. En plus de l'impossibilité physique pour les parties de prévoir toutes les situations pouvant survenir pendant la durée de la convention, il y a le danger que l'employeur attende délibérément après la signature du contrat pour introduire des changements, moment où les employés n'ont plus aucun recours.

Comme la décision de moderniser de l'équipement ou de déplacer une usine ne se prend pas à la légère et demande une certaine période de réflexion, le commissaire Freedman estime qu'il est de la responsabilité et du devoir de la direction de retarder l'introduction de changements technologiques jusqu'à ce que le syndicat concerné en soit avisé et ait eu l'opportunité d'en faire un item sujet à négociation. Un moyen d'amener la négociation des changements technologiques consisterait à amender la Loi sur les relations industrielles et les enquêtes visant les différends du travail.

Lors de sa convention biennale tenue à Winnipeg en 1966, le Congrès du Travail du Canada a endossé les recommandations du rapport Freedman et a de plus demandé que des modifications législatives en ce sens soient apportées par les gouvernements fédéral et provinciaux.

La négociation collective a un rôle vital à jouer parce qu'il n'y a pas réellement d'alternative acceptable. Le syndicalisme n'abandonnera pas cette formule sous prétexte qu'elle ne peut apporter de solutions à tous les problèmes. Au surplus, elle est suffisamment flexible et les parties en connaissent déjà bien le fonctionnement.

La négociation devra être utilisée avec beaucoup d'imagination et d'ouverture d'esprit des deux côtés de la table. L'apport des comités de collaboration patronale-ouvrière va faciliter de beaucoup la tâche des représentants des deux parties. Des études intensives, des communications fréquentes et informelles, des discussions sur des sujets habituellement abordés dans un climat de crise, des incitations à faire l'expérience de nouvelles formules, tout cela devrait soulager le fardeau de la négociation, à condition, cependant, que cela reste subordonné à l'épreuve de force qui appartient à juste titre à la négociation proprement dite. En somme de tels comités ont des pouvoirs d'investigation et de recommandation, la responsabilité finale incombant aux parties à la table des négociations.

Déjà, et en dépit des obstacles légaux, certains contrats collectifs, encore trop peu nombreux, assurent aux travailleurs des gains monétaires reliés à la productivité et des mesures protectrices face aux changements technologiques. Par exemple, un plan de conversion industrielle prévoyant le financement d'un fond de \$5 millions par la compagnie Dominion Tar and Chemical a été élaboré en vue de faciliter les ajustements de main-d'œuvre à l'intérieur de cette entreprise.

En l'absence de législation protectrice il reviendra à la négociation collective de combler le vide. Mais des recherches intensives seront nécessaires et les parties devront être « recyclées » et entraînées à mettre sur pied de nouvelles solutions.

Cela ne sera pas facile. Il faudra faire face à une opposition de la part de certains éléments syndicaux ; mais c'est surtout des cercles patronaux que viendront les critiques les plus véhémentes.

# The Implications of Technological Change for Collective Bargaining \*

John L. Fryer

*In the following article, the author tries to demonstrate how collective bargaining is likely to remain the cornerstone of our industrial relations system in developing successful adjustment programmes to cope with technological change. He underlines also some necessary change in bargaining attitudes.*

As Professor Arnold Weber of the University of Chicago has so aptly observed:

« With the exception of the birth of quintuplets and manned space flights, few activities have been the object of such close scrutiny as collective bargaining. Virtually every government official, economist and newspaper editor has his own fever chart which describes the present condition of the subject. The slightest rise in temperature elicits anxious concern and a variety of remedies ranging from stiff legislative prescriptions to imported patent medicines. »<sup>1</sup>

An increasingly common cause of overheating in our industrial relations system is occasioned by the introduction of technological change and employee reactions to it.

Indeed it could quite reasonably be argued that the introduction of automation and technological change is probably the greatest challenge facing labour labour-management relations in Canada today. For, while it is true that technolo-

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\* This article is based in a speech that I gave in May 1967 to the 50th Anniversary Conference of the British Columbia Department of Labour. The views expressed herein are my own and do not necessarily reflect those of other persons or institutions.

(1) ARNOLD R. WEBER, « Collective Bargaining and the Challenge of Technological Change », in *Industrial Relations, Challenges and Responses*, edited by John H. G. Crispo, University of Toronto Press, Toronto, 1966, p. 73.

gical advance has within itself the potential for much economic good, it is equally true that regardless of the pace at which it is introduced, technological change, like all other forms of economic change, demands adaptation on the part of the people involved. Thus the group in our society called upon to make the greatest adjustments are working men and women. The introduction of new technology gives rise to feelings of great economic insecurity because jobs and incomes are threatened by the new developments.

### **A Reassessment of Collective Bargaining's Role**

When faced with the need to adjust their traditional patterns of life, organized workers turn first to their unions, and through them to the collective bargaining process, seeking protection from the disruptions inherent in change. Job security has ranked historically as a dominant goal of trade unions in collective bargaining and in recent years the need for employment security has received renewed emphasis as a bargaining issue because the pace of dislocations arising from technological change and automation has accelerated.

While it should not be looked upon as a substitute for effective government adjustment policies nevertheless, as an institution in our society dedicated to the economic and social protection of the work force, collective bargaining can do much to alleviate many of the hardships associated with the introduction of technological change.

In attempting to negotiate meaningful adjustments to technological change, however, great strains will be placed upon the industrial relations process. The very complexity of the problems to be faced will tax it to its utmost. Traditional bargaining patterns and approaches will need to be reexamined, reevaluated and perhaps scrapped in favour of newer, and sometimes more radical, bargaining techniques that are more in tune with the needs of workers in a technological age. It is therefore particularly unfortunate that in trying to make the necessary adjustments the trade union movement and the collective bargaining process are confronted by what may best be described as a series of contractual and legalistic roadblocks that only serve to make this vital process of reexamination even more difficult.

Right now we live in a job-oriented society and consequently the emphasis which unions have and must place upon the struggle to win

protection against the impact of automation is a perfectly understandable one. Loss of a job means much more to the Canadian worker than merely a loss of wages. Even if he is lucky enough to find an equally good job with another firm, he starts at the bottom of the seniority ladder and seniority is vital because it determines, among other things, the degree of protection against layoffs, the right to promotion, length of vacation, amount of pension on retirement and so on.

With so much dependent upon the continuance of his job, it is inevitable that the worker, through his union, will fight bitterly to keep it or to receive substantial compensation if he loses it. Yet, at this very moment in history far too many employers can wreak havoc on the lives of their employees, their families and the communities in which they live, without even bothering to discuss it with the people directly involved. Far too many of them appear to take the attitude that the introduction of technological change is none of the employee's business, even if it costs him his job. To justify their refusal to discuss such crucial decisions they hide behind the so-called management's rights clauses found in most collective bargaining agreements. They invoke, as if it were sacrosanct, the notion of the residual theory of management's rights arguing that the introduction of job destroying technological change is their concern alone. This attitude, besides causing untold hardship, also has the effect of seriously weakening any role that collective bargaining might play in developing effective adjustment procedures to deal with the introduction of technological change.

### **The Freedman Report**

Matters were brought to a head in October 1964 by a strike against the Canadian National Railways. Following the dispute a one-man Industrial Inquiry Commission was appointed with the Honourable Mr. Justice Samuel Freedman as the Commissioner. His report was issued in November 1965 and in it two crucial issues were examined; one was the rapid development of technological change and its effect not only on the employees concerned but also on the communities affected. The other was the predisposition on the part of employers to introduce technological changes unilaterally even where there was a collective bargaining relationship with a trade union, under the guise of exclusive so-called management's rights.

The report found that it is virtually impossible for the parties to a collective bargaining agreement to anticipate every conceivable

situation which may arise during its currency. At best they can reduce to writing those issues which they know about and on which they are to reach agreement. But most management tend to the view that what is not included in the agreement, however unforeseeable, cannot be a matter on which a trade union has a right to intervene. The employer, in other words, asserts his right to exclusive jurisdiction over any issue affecting conditions of employment which is not specifically spelled out in the collective agreement. On the basis of this doctrine the employer claims the right to make whatever changes he wishes and whenever he wishes, regardless of their effect on the employees, with no right on the part of the union to interfere. It is too much to expect that trade unions will stand idly by while employers arbitrarily make changes which deprive workers of their jobs or drastically alter working conditions. Commissioner Freedman has clearly pointed out that this doctrine of the exclusive right of management is pernicious not only in its effect on the labour-management relationship but also on the employees concerned and on the communities which may be affected. He questioned whether management should continue to have this right as follows:

« Should it continue to have that right ? » he asks. « The question here raised lies at the heart of this Inquiry. The Commission is satisfied that it must be answered only in one way. The institution of run-throughs should be a matter for negotiation. To treat it as an unfettered management prerogative will only promote unrest, undermine morale, and drive the parties farther apart. In that direction lies disorder and danger. By placing run-throughs, on the other hand, within the realm of negotiation a long step will be taken towards the goal of industrial peace. More than that. Such a course will help to provide safeguards against the undue dislocation and hardship that often result from technological change.

« The Commission believes that its answer is rooted in fundamental fairness. A run-through program can not be developed overnight. Much prior planning for it is required. Management is the one to initiate such planning and it alone knows where the plan is to take effect and what is its proposed nature and scope. But it does not bring its plan to the bargaining table.

« In that state of affairs bargaining proceeds and a collective agreement is in due course signed. Thereafter management for the first time introduces its plan. By now the parties are in the closed period. The plan may have the effect of causing very material changes in working conditions, as was undoubtedly the case at Nakina and, to a lesser extent, at Biggar. But such a manoeuvre is not forbidden by the law, provided that the collective agreement itself is not violated.

The result for the men is what they must suffer such a change in their working conditions; and this without recourse, for in the closed period strike action is forbidden. Their contract was made on the basis of one set of circumstances. Now it must be performed on the basis of another set of circumstances, devised by management alone and to which they have given no consent. There is a manifest inequity here which clamours for attention and correction. »<sup>2</sup>

He consequently made a number of recommendations to correct this situation. The recommendation which is of the greatest consequence in terms of labour-management relations is one which calls for a modification of the managerial prerogative as exercised hitherto. Commissioner Freedman argues convincingly that there is an obligation on the part of management to defer any technological changes until the trade union with which it has relations has been notified and been given an opportunity to treat it as a negotiable item. He suggests that an appropriate way of doing so would be through an amendment to the Industrial Relations and Disputes Investigation Act.

### The CLC Position

At the 1966 Canadian Labour Congress convention in Winnipeg the recommendations of the Freedman report were endorsed and a statement was adopted which called specifically for the necessary legislative changes at both the federal and provincial levels. In a document entitled *A National Programme to Cope with Automation*, the CLC stated that:

« The Canadian Labour Congress urgently demands that the federal government at once implement the Freedman recommendations. Furthermore, we call upon all provincial governments to amend their relevant statutes in a similar fashion. Such actions would ensure that throughout Canada organized workers would have the right to bargain collectively over the introduction of automation and technological change. »<sup>3</sup>

It is thus the feeling of the CLC that if collective bargaining is to function effectively in the age of automation the laws must be changed. The area of collective bargaining must be enlarged to encompass many aspects of employer-employee relationships that have not previously

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(2) *Report of Industrial Inquiry Commission on Canadian National Railways « Run-Throughs »*, November 1965, Queen's Printer, pp. 135-136.

(3) *A National Programme to Cope with Automation*, by Canadian Labour Congress, Ottawa, 1966, p. 2.

been a matter of negotiation. We cannot regard as sacrosanct any managerial functions whose consequences can be seen to have a disruptive effect upon our members. What we really need is a legislative framework within which collective bargaining can be given a real opportunity to find adequate solutions to the multifarious problems posed by the introduction of automation and technological change.

My own feeling is that collective bargaining has a vital role to play because there is really « no acceptable alternative ». Already there is much talk that collective bargaining can't handle *all* the problems posed by the introduction of technological change and the scientific revolution. I agree, but do not believe that we should write it off for this reason because surely it can make a substantial contribution. Collective bargaining, with its basic reliance upon the power positions of the parties, is remarkably flexible.

Also, and just as important, it is understood by the parties. Thus while not being the only answer — in a somewhat amended form it could do much to fill the vacuum left by government policy.

Thus collective bargaining legitimately has a very important role to play in finding and implementing meaningful adjustments to counteract the unpleasant employment effects associated with the introduction of automation and technological change. Furthermore, the role of collective bargaining, in easing the adjustments to change, in no way negates the very urgent need for adequate government policies aimed at first creating, and then maintaining, full employment in Canada.

### **Joint Study Committees**

The problems facing collective bargaining in the era of technological change are admittedly difficult ones to deal with and they will call for considerable imagination and foresight from both sides of the bargaining table. They are matters that are appropriately the subject of constant evaluation and planning and to this end the so-called Joint-Study Committees which enable year round consideration of difficult problems would provide an appropriate vehicle for their discussion. Many observers feel that the creation of these Joint-Study Committees is one of the most significant developments stemming from the pressures put upon the traditional collective bargaining process by the introduction of technological change.

The purpose of these committees is primarily to facilitate intensive study of limited issues during the period of the agreement. Besides this, however, they have other useful roles to play for they can also provide an informal vehicle for giving prolonged advance notice of change; permit bilateral fact finding; help to take certain issues away from the crisis bargaining period at the expiration of the agreement if such a course of action appears warranted; encourage some experimentation with substantive issues. At the Second Labour Management Conference held under the auspices of the Economic Council of Canada in March of this year, a document<sup>4</sup> was presented endorsing the joint committee approach and at the same time certain other agreed methods of adjustment to change were spelled out. It should be added, however, that Joint-Study Committees cannot and should not be allowed to supersede the power process that rightly belongs at the bargaining table. Indeed the effectiveness of such committees is probably enhanced if they are established within the framework of the existing collective bargaining machinery and their terms of reference incorporated into the agreement. In such a situation, while the committee has the powers of investigation and recommendation, the final determination of the issues involved is made by the interested parties at the bargaining table.

### **New Approaches at the Bargaining Table**

At this point in time despite the advice of many so-called experts, I would not wish to see any decision making authority delegated away from the bargaining table. Rather we should use collective bargaining in an imaginative way to alleviate hardships induced by automation. Far from being « Too Old at 28 »<sup>5</sup> collective bargaining has not yet had a proper chance to show what it can do in Canada in this new and rapidly changing environment. In the absence of an acceptable alternative, it has a crucial role to play.

It is thus my considered view that technological change is an appropriate subject matter for negotiations and in finding acceptable solutions collective bargaining has a crucial role to play. Despite the current legal obstacles, collective bargaining has already been used

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(4) *A Declaration on Manpower Adjustments to Technological Change*, Economic Council of Canada, November 1966, Queen's Printer.

(5) *Old Before It's Time: Collective Bargaining at 28*, by Paul Jacobs, published by Center for the Study of Democratic Institutions.



in Canada to obtain agreements that have given union members a share in the gains of increasing productivity as well as cushioning the impact against lay-off by means of a variety of other protective clauses. Once completely unfettered, the parties to the collective bargaining process will be able to use all the ingenuity and flexibility at their disposal to devise yet others.

Already a number of ingenious contract provisions have been negotiated. One of the more far-reaching programmes for dealing with the problems inherent in adjustment to technological change was worked out recently between the Dominion Tar and Chemical Company and senior representatives of some twenty of the unions with which it bargains. If it is adopted by the union membership involved, the Domtar Industrial Conversion Plan would provide for a company financed fund of \$5 million that will be used to supplement current public manpower adjustment measures designed to aid those employees dislocated by change. The joint labour-management committee that is to administer the fund would also have the authority to initiate new programmes where these are deemed necessary.<sup>6</sup>

Unfortunately one must search the present industrial relations scene carefully to find such path breaking agreements for there are far too few of them. The Canadian Labour Congress has on file in its Ottawa Research Department some 6,000 current collective bargaining agreements and yet there is an absence of meaningful adjustment clauses in them. Even so, those few novel agreements that have been negotiated serve to demonstrate the flexibility of the collective bargaining process and indicate the importance of its role in an age of technological change.

In the absence of effective protective legislation, it will surely fall to collective bargaining to fill the gap and both management and labour, as well as government, should begin immediately to reevaluate and reassess the role of collective bargaining in the age of automation. There is obviously a need to try out new approaches at the bargaining table in order to find solutions to the highly complex problems posed by the introduction of technological change. Some of the traditional concepts of collective bargaining may need to be abandoned in favour of never techniques and, in some cases, new patterns of bargaining.

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(6) *Domtar Industrial Conversion Plan* and Information Booklet for Negotiated Employees, November 1966.

Extensive research is called for and the very complexity of some of the newer collective bargaining provision will call for a continuing refinement of skills and attitudes. They also serve to clearly show the need for a major educational effort aimed at familiarizing all sections of the parties involved with the many aspects of technological change and how to effectively handle them.

Many of the proposals will be novel to the Canadian industrial relations scene and will undoubtedly be opposed to some extent by elements within the ranks of organized labour but more importantly and more vehemently, I suspect, by management who will tend to view any meaningful solution as an invasion of management's rights.

The best adjustment programmes will consist of a package of programmes for helping particular workers and groups of workers. These various approaches will have to be both public and private. Collective bargaining alone, however imaginative, cannot solve all the problems of adjustment inherent in a technological age. The correct mix of public and private policies is a matter of urgent consideration.

Much more study is needed. The establishment of an enquiry to investigate all aspects of technological change in Canada is long overdue. It should have similar terms of reference to those of the National Commission on Technology, Automation and Economic Progress in the United States which made its first report public in February of 1966.

While year round discussion of difficult problems is laudable, we should be cautious of relying too heavily on labour-management cooperation formulae. As yet, we have not nearly taxed the collective bargaining machine to anything like its limit — and it is well to remember that this is a machine with whose inner working the parties to the industrial relations process are thoroughly familiar.

## IMPLICATIONS DES CHANGEMENTS TECHNOLOGIQUES SUR LA NÉGOCIATION COLLECTIVE

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Volume 3

Mai 1967

Numéro 5

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