Relations industrielles
Industrial Relations

The Renewal Clause of Collective Labour Agreements

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Volume 3, Number 8, April 1948

URI: https://id.erudit.org/iderudit/1024054ar
DOI: https://doi.org/10.7202/1024054ar

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Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

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

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Cite this article

Giroux, G.-M. (1948). The Renewal Clause of Collective Labour Agreements. *Relations industrielles / Industrial Relations*, *3*(8), 124–127. https://doi.org/10.7202/1024054ar

2—If the profits are converted partly into liquid cash, partly into purchases of land, buildings, machines, stock and additional working capital, the available portion is distributed as stated above. As for the other portion it is shown in the individual bonus book. The share of each individual share-holder or participating member of personnel [2] is calculated with the same co-efficients as for the cash distributions. It becomes a part of interest-bearing capital and can be distributed only if the possibilities of the enterprise permit it or in certain cases of absolute necessity.

3—If there is a loss in the fiscal period it is made good by a levy taken first from the reserve constituted for the purpose, then on the bonus recorded in the bonus book of each participant, [3] and finally, on the capital fund itself if necessary. Consequently, at the end of the first fiscal period showing profits the situation of capital is adjusted so as to bring it back to the original figures. The correction made, the three factors—capital, management and labour—once more divide the profits whether in the form of a distribution of money or as an entry in the bonus record.

These are the general lines of the formula. Needless to say, it is supposed that honesty and prudence govern the determination of the several percentages and that the perfect accuracy of the accounts is realized, and evident to the eyes of all. With this in view, Monsieur Romanet has handed over the control to the hands of sworn commissioners. Complete confidence has been accorded to the scheme so much so that workers spontaneously ask to invest in the enterprise in the form of shares or of deposits recorded in the bonus record book, those profits which are due them. [4]

To terminate our discussion let us point out that at the present time, in France, more than ninety firms of different types and of varying importance have adopted this plan and declare themselves fully satisfied. This is really « to temper the labour contract by elements borrowed from the partnership agreement ».

(2) Those members of the personnel having less than 2 years seniority do not have the right to this remuneration unless their professional value has given them from their arrival, this privilege.

(3) Instead of deductions in the bonus book, an account can be opened — "losses redeemable" — which future profits pay off in order of priority.

(4) For more detail read E. Romanet: "Participation des salariés aux résultats obtenus dans les entreprises", Address the author, 17 cours Jean Jaurès, Grenoble (Isère), France.

THE RENEWAL CLAUSE OF COLLECTIVE LABOUR AGREEMENTS

Georges-Michel GIROUX

The Legislature, by means of the Labour Relations Act, has made enactments dealing with the duration and the mode of renewal of collective labour agreements. Let us quote the provision relating thereto:

« 15—No collective agreement shall be made for more than one year, but it may be agreed that it shall be automatically renewed for a similar period, and so on, upon failure by one of the parties to give a written notice to the other party within a delay which shall not be more than sixty days nor less than thirty days prior to the expiration of each period.»

What is the juridical ambit of this enactment? It is precisely the object of the present study.

First of all, it would be fitting to recall the situation that existed before the promulgation of this Act and to emphasize the principles which have caused the new departure.

* * *

Under the Professional Syndicates Act, the collective labour agreement became a juridical entity; the Act defined the nature of the collective agreement and determined the scope of the obligations of the individuals bound by or subject to such agreement. Some provisions of the French Labour Code (s. 31 & seq.) were embodied in this legislation, but the principal articles giving this institution its specific character, were omitted.

Only such agreements as were signed by duly incorporated syndicates were considered as binding; those entered into by unincorporated labour unions were considered as « gentlemen's agreements » i.e. unenforceable agreements.

The law gave the parties full liberty of limiting the duration of the agreement. Our Legislator, contrary to the French Code, neither stated that the agreement with a limited duration could not be made for more than five years (s. 31 g.), nor that such agreement would, at the date of its expiration, remain in force as a non-limited agree-

ment (s. 31 h.); neither did he specify that the latter, upon one month's notice (s. 31 m.), would cease to apply to any person wishing to withdraw therefrom.

Before the promulgation of R.S.Q. chapter 162-A, the duration of collective labour agreements was, according to the prevalent principles of law, subject to the following rules.

a) The collective labour agreement comprising no clause of renewal, negotiated for the duration of a venture or for a specific period, expired automatically at the date of its maturity or with the termination of the venture;

b) unless a special provision were inserted therein, the collective labour agreement comprising no clause of renewal expired automatically at the option of a party who wished to withdraw from such agreement; the exceptional rules relating to the term of notice in the case of house-leasing or hiring of services could not be applied.

But the parties usually specified a term as in the case of house-leasing (usually a year) and provided for the renewal of the agreement for the same period upon failure by one of the parties to give notice of termination to the other party within the delay provided for. These were indeed agreements for a limited duration with an automatic for the same period upon failure to give notice of non-renewal.

The rule to be recalled is that the collective labour agreement's provisions relating to its duration, its extension, the withdrawal of one of the parties and the notice of termination, were left entirely to the discretion of the parties, the Legislator having formulated no statutory rules on this subject.

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The Labour Relations Act compels any employer to negotiate in good faith with the association recognized as representing the absolute majority of employees.

Normally such recognition is of an indefinite duration; it has full effect until it is revoked (s. 41) or until another group is recognized (s. 16). The replacement of one certified association by another can be accomplished only within a certain delay, to wit: « from the sixtieth to the thirtieth day prior to the expiration of a collective agreement ». (s. 16).

From these provisions it follows that the value of certification is strongly influenced by the term of the collective labour agreement; in a word, the incidence of the Act is based upon the duration of the agreement. Logically the Legislator, considering the collective labour agreement as the hinges of labour relations, had to turn his attention to the contract's possible duration and conditions of automatic renewal. The provision respecting duration is necessarily the corollary of the right of certification as contemplated in section 16 in favor of a new association. Without section 15, this right might be illusive.

If the right of certification is in itself a public and statutory right, it has the same character for the new association that wishes to be substituted to the one already recognized. Consequently, the provision of section 15 is a rule of public order and of universal character, and, therefore, the parties cannot violate that provision without incurring the absolute nullity of their deeds (Cf. C.A., sections 13 & 14).

In the Latin countries, the substitution of a certified association is permitted after a delay computed from the date of certification; in these systems the provisions stipulating the duration are left to be drawn up by the parties exclusively.

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Let us now consider the agreements which may be subject to the rule of that section.

A) Whatever may be their provisions stipulating their duration, the agreements entered into before the coming into force of this Act (Labour Relations Act), i.e. before February 3, 1944, are subject to the term and prescription of renewal prescribed by section 15 (s. 53).

B) Those entered into by an unrecognized association after the promulgation of this Act, are not subject to section 15 as nothing in the Act prevents an unrecognized association from entering into a collective agreement (s. 18). But it is to be noted that, as a logical and necessary corrective, the Legislator has given such an agreement a precarious character and declares it to become void upon the recognition of a new association.

C) Section 15 cannot apply to decrees issued pursuant to the Collective Labour Agreement Act (R.S.Q., 1941, c. 163).

D) This provision governs the agreements entered into by certified associations, as is normally the case nowadays.

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Section 15 being of public order, what are the consequences of such a characteristic?

A) While in pursuance of section 53 the Legislator authoritatively reduces to one year, with automatic renewal if needed, the duration of the

agreements in existence at the date of the coming into force of the Act, section 15, on the contrary, leaves the matter to the free will of the parties but limits and determines the extent of such term. The scope of the provisions permitted is clearly defined and all that is not stated therein is null and void.

B) The labour agreement comes to exist as a whole by the mutual consent of the contracting parties, though it actually embodies a combination of individually characterized and even unrelated stipulations or understandings such as those pertaining to rates of wages, hours of work, arbitration, etc. But the jurist, in interpreting the contract and endeavouring to explain the provisions formulated therein, must, if possible, consider each provision as a separate unit. And then it is logical to maintain that a clause cannot become null by the mere fact that the next one is void, unless the latter be an essential element of the contract and of the convenants therein contained.

C) What would be the consequences of the derogation implied by a provision exceeding the time limit authorized by the Act? Would it cause the absolute nullity of the contract or would it entail the annulment of same only for the period of time exceeding that which is authorized by the Act? The jurist, imbued with the principles of the law, would be inclined to cancel the whole of the contract, and his opinion would be perfectly logical.

Practitioners, somewhat moralistic, will rather conclude that the duration of an agreement made for a longer period than that which is authorized by the statute must be reduced to the term permitted by the Act, and will argue that the duration of such an agreement, the one establishing « Law of the Land » is a sum of consecutive days, a divisible element, and that the consent of the parties, it is presumable, does not cover all the time provided for but only a certain succession of days. They will also recall that the Court shall always refuse to apply the « summum jus ». It is therefore to be believed that the Labour Relations Board, the party the most directly interested in the application of this provision, will conclude that the agreement made for more than one year should be considered as an agreement for one year.

D) This question of nullity specially arises from the application of section 16. Should the agreement made for more than one year be void, any new association may at any time, ask to be certified; should only the term be reduced, a new association may request to be certified only within the period extending from the sixtieth to the thirtieth day prior to the anniversary of the contract.

E) Section 15 decrees on two separate things: the duration and the extension of time. It may happen that the agreement be valid for its specific term but that the nullity of the provision respecting its extension hinders its renewal. But it is admitted that should the clause respecting the term be null, it would naturally cause the annulment of the clause relating to the renewal.

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What are the rules of section 15, as regards duration? « No collective agreement shall be made for more than one year ».

A) Any provision extending the agreement beyond 365 or 366 days (as the case may be) shall be void.

B) The clause of retroactivity must be carefully written so as to avoid the extension of the term beyond the year.

C) The maintenance of the agreement after its expiration and during the bargaining for its renewal becomes a provision that is to be deprived of all legal value; it is a provision that section 15 does not permit.

D) The agreement can be made for less than one year, v.g. 3 or 6 months.

E) Should it be necessarily made for a specified period? The statute seems to enact so. The right to establish a term shorter than one year derives from the rule that fixes a precise computable term. Consequently the part of the year must be computable as the year itself. Any agreement entered into for the duration of a venture or comprising no specific term, is therefore contrary to the spirit as well as to the letter of the statute.

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The clause of extension of time must therefore comprise the following elements:

a) the automatic renewal of the agreement for one year;

b) the right of withdrawal for either of the parties;

c) a written notice from the party that wishes to withdraw from the agreement;

d) the delay of notice of withdrawal which shall not be at each period, « of more than sixty days nor less than thirty days prior to the date of expiration of the contract ».

The parties, in order to avail themselves of the automatic renewal of their agreement, must include the above conditions in the text of their

contract; should one of them be missing, the provision will become null and void because of the imperativeness of this rule. Finally, in their agreement, the parties should insert, word for word, the provisions of section 15, since they are not likely to express the same thought with different words.

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In section 15, the Legislator refers to the usual case, i.e., that within the delay provided for, one party informs the other of its intention not to be bound by the agreement, and, that if it fails to give such notice, it continues to be bound by such agreement.

Oftentimes one of the parties wishes to continue being a party to an agreement but also wishes to amend various clauses thereof; in such a case, it presents a request of amendment. Such a petition is not a notice of non-renewal; indeed it is just the opposite.

The Legislator wishes to have the rule of section 15 inserted in every agreement, he decrees that the agreement shall be renewed for a new term if it is not denounced. And as the party who is requesting the amendment of the agreement is not denouncing it, one must conclude that despite the petition for amendment the agreement is renewed as such.

To uphold that the request of amendment is no obstacle whatever to the renewal of the agreement in its original form is somewhat rigorous. « Dura lex, sed lex ». Consequently, according to the Labour Relations Act, the employer is not compelled to consider the request of amendment nor need he trouble about it in any way at all.

In the new wording of laws dealing with industrial relations, this anomaly was taken into account; for instance, section 13 of Federal Bill No. 388 stipulates that the revision of the agreement may be asked for by one of the parties within the delay of denunciation.

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Therefore the Legislator has established the provision concerning the duration and extension of the agreement as a principle of public law by which the parties must abide; he gave this provision such a specific character in order to fix the period during which a new association can be substituted to the one that is already recognized. It is only with reference to the existence of the agreement that the Legislator determined that period, although such agreement is not obligatory and though the conditions of work might result from an arbitration award or a plant regulation, since the text of the Act does not compel the employer to enter an agreement but merely to negotiate.

The Act could determine in some other manner the period during which the substitution of a new association to the one already recognized could be accomplished; it could allow the substitution to be made between the 300th and the 340th day from the date of the coming into force of the agreement and, for each subsequent year, during the period elapsing between the anniversaries of these dates, this rule applying both to awards and plant regulations agreed to by a recognized association.

Such a legislative amendment would render section 15 utterly useless; the parties would then be free to determine of their own accord the duration and the mode of extension of their collective labour agreement, and the latter would not become void merely because of the omission of a word in a clause having imperative wording.

Neither do law writers nor ordinary men like drastic clauses; indeed, they are happy to propose their suppression whenever, without them, the specific character of a juridical institution can be maintained.

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