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the economic life of the country for the benefit of but a few.

Today employees and employers in most countries have the right to adhere to the professional organization of their choice or to abstain from any affiliation. If the freedom of contract has been perceptibly limited by statutes and collective agreements, the freedom of association is now protected by the law, although such protection may not always be very effective.[10]

As a matter of fact, trade-unions are indispensable for the development of reasonable working conditions, in order that those imposed unilaterally and arbitrarily by employers may be avoided. Indeed, the legislature is not equipped to intervene properly and conveniently in the legal relations between workers and employers. Legislative bodies do not possess that intimate knowledge of the operation of each firm or plant which is necessary for enacting legislation to take into account the needs of the business as well as the legitimate demands of the employees. The type of work varies from one firm to another and the living conditions of the employees are not identical in all parts of the country. Legislation, necessarily uniform, is therefore unfit to work properly in this field. On the other hand the "largeness" of the legislative body prevents the proper preparation of the hundreds and thousands of detailed regulations which would be necessary to cope with local and industrial conditions.[11] Therefore the government delegates to freely formed trade-unions and employers' associations the right to prepare and adopt the necessary regulations by means of collective bargaining and agreements.

(10) For details on this question, cf. the recent studies made at the request of trade-unions by the I.L.O. and the U.N.O.

To-day's problems

The situation at the present time is characterized by the triumph of regulations, by government or through collective agreements, over freedom of contract, i.e. over freely negotiated contracts between individuals, the employee and his employer.

Determined to break the feudalism of money, the State pays special attention to the working class and accords to professional organizations the right to formulate and enact principles of public policy, which are binding upon their affiliates. However, there is the danger that this attention may develop into a regime where labour would be the slave of the State or of its own trade-unions.

This proves once again that the choice is between protection and freedom. The evaluation of them varied considerably at different times in history and the attainment of a just balance between these two principles continues to remain the unending task of every civilised society.

(11) On the difficulties with which parliaments are constantly faced by reason of the "technicality" of the statutes they are asked to enact, cf. our study "*Le travail en équipes internationales*", p. 79 s.

LABOUR JURISPRUDENCE

Powers of Minimum Wage Commission

Claiming that they had not been paid time and a half for overtime work, thirteen employees of the defendant company made application to the Minimum Wage Commission. The Commission took action against the company.

Decision: The court decided to maintain the action in respect of twelve of the employees. The purpose of the Minimum Wage Act is to protect salaried workers. Now although this Act must be strictly interpreted in so far as it derogates from the common law of the province, yet the dispositions must be interpreted in a way that will assure the accomplishment of its object. Hence the Commission has the power not only to determine minimum wages but also to provide for the payment of additional amounts of overtime. If one of the orders of the Commission establishes that overtime is payable at the rate of time and a half, that provision is legal, even if the basic wage is higher that the minimum fixed by the Commission (see Ordinance No. 2, s. 3, Quebec). The Commission also has the power to provide for the payment of an indemnity in case of cancellation of contract of lease and hire of services (see Ordinance No. 3, s. 13, Quebec). The terms of section 14A of the Act directly cover the former, and the latter is covered by interpretation of section 14, since the Commission has the right to establish payment of wages on other than an hourly basis. Section 12 of Ordinance No. 4, establishing regular work weeks, and section 60, establishing overtime rates, were also discussed.

(Minimum Wage Commission v. Duke Equipment Co. Limited, 1949; C.S. 319, Montreal Superior Court, August 26, 1949; Justice Salvas; C.L.L.R. 31,125 No. 35,154.)

Interlocutory injunction — Strike — Picketing — Constitutionality

A union declared a strike and established a picket line during negotiations for a collective agreement. At this, the plaintiff made application for an interlocutory injunction.

Decision: The court granted the request and declared: 1. The court cannot decide at this time on the basis of the litigation. It can only determine if the plaintiff has proved prima facie that there is cause for an injunction. This has been proved. Therefore the court orders the application of such an injunction restraining picketers from watching and besetting and from intimidating other employees in the manner described by section 501 of the Criminal Code, as well as from constituting a nuisance according to common law. Also this injunction is to prevent them from participating in any strike contrary to the Labour Relations Act. 2. The fact that the employer supported a company union before certification does not constitute an act of bad faith. And this cannot lead the court to use its discretion to refuse an injunction. 3. In interlocutory procedures, the court cannot make a final pronouncement upon the constitutionality of an act, but can only decide if the constitutionality of the act is probable or not. The Labour Relations Act is intra vires. The penality sections (sections 43 and 44) of this Act are merely ancillary to the chief purpose of the Act which falls under the heading of section 92 of the B.N.A. Act in regard to property and civil rights. Section 43 of the Labour Relations Act does not render strikes illegal, but it establishes penalties to be applied when a strike is declared before certain conditions have been complied with. This does not at all conflict with section 590 of the Criminal Code which removes the illegal character from certain strikes. This latter section does not prevent a province from legislating on subjects related to property and civil rights. 4. While it is doubtful whether action may be taken against a trade union in its own name under section 29 of the Special Procedure Act, c. 342, R.S.Q. 1941, judgment may be obtained de bene esse and against all the members of the union.

(Aird & Son Ltd. v. Local 500, International Union of Shoe and Leather Workers of United States and Canada et al. and Association of Shoe Manufacturers of Quebec, 1948; 3 D.L.R. 114; Superior Court, Quebec, December 16, 1947; Justice Campbell; C.L.L.R. 31,081 No. 35,083.)

STATISTICS AND INFORMATION

ANNUAL VACATION WITH PAY IN COLLECTIVE AGREEMENTS IN THE PROVINCE OF QUEBEC

This is the second excerpt from a work done in collaboration under the auspices of the research bureau of the *Département des relations industrielles.*

It deals with vacation with pay provisions in collective agreements deposited with the Quebec Labour Relations Board as of December 31, 1948.

The first table covers all establishments except manufacturing. In this division, 1,688 employers grant an initial vacation of one week to 28,856 workers; the minimum vacation is two weeks for 15,529 employees of 250 employers, and three weeks for 13 employees of two employers.

A maximum of one week's vacation is granted by 1,207 employers to 6,341 workers. The maximum vacation is two weeks for 698 employers employing 34,487 workers, three weeks for 3,361 employees of 14 employers, and four weeks for the 209 workers employed by one firm.

Among the different provisions of this group of agreements the following are worthy of note. Ordinance No 3 of the Minimum Wage Commission regulates in 39 agreements. The rate of pay is according to percentage in 17 agreements; average rate in 6 agreements; regular wages in 31 agreements. The fixing of vacations is left to the employer in 47 agreements; to employees in 6 agreements; in 29 the subject must be a matter of a joint understanding, while in 43 others seniority must be taken into account.

The second table is that of the body of collective agreements relating to manufacturing industries. It is the most important section because, of 1,185 collective agreements deposited with the Labour Relations Board as of December 31, 1948, 702 refer to it, and so 59.2% of these agreements regulate 32.8% of employers and 68.4% of workmen.

In this group, 855 employers grant to their 127,020 employees an initial vacation of one week, and 84 employers grant to their 10,180 employees a minimum vacation of two weeks after one year of service. In one case the minimum vacation is three weeks for 16 employees of one firm from the first year of service.

In relation to the total number of manufacturing industry workers subject to collective labour agreements, a negligible fraction, scarcely one tenth of one percent, have no right to any annual vacation with pay. However it is worthy of note that 7.4 percent of the workers have an initial vacation of two weeks from the very first year of service.

For 34,371 workers (25% of the group) working for 438 employers, the maximum vacation is one week; for 76,885 workers (56%) in the employ of 408 employers: two weeks; for 23,232 (16.9%) working for 81 employers: three weeks; for 2,728 (2.1%) employed by 13 employers: four weeks.

Close to three quarters of the number of industrial workers benefit from a vacation of two or three weeks. As to length of service required to have right to vacation: 86.6% of the total number of industrial workers have a right to two weeks annual vacation before having fulfilled six years of service. A maximum vacation of three weeks is the right of 8.5% of workers before 20 years of service; of 37.9% after 20 years; of 17.2% after 21 years; of 36.4% after 25 years. Thus this vacation is granted, in the majority of cases, after twenty or twenty-five years of service.