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Accreditation and the Construction Industry : Five Approaches to Countervailing Employer Power

L'accréditation des associations d'employeurs dans l'industrie du bâtiment : Cinq façons de contrebalancer le pouvoir du patron.

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Résumé de l'article

Cet article recherche une double fin. Il s'agit d'abord de décrire les différentes mesures relatives à l'accréditation des associations d'employeurs qui ont été adoptées, ensuite d'évaluer les forces et les faiblesses des différentes tentatives qui ont été faites en vue d'atténuer l'effritement du bloc patronal et de redresser la balance du pouvoir.

Le concept de l'accréditation a été introduit depuis quelques années dans la législation du travail de cinq provinces : l'Ontario, le Nouveau-Brunswick, la Nouvelle-Ecosse, l'Alberta et la Colombie Britannique. Son adoption résulte de nombreuses études qui ont été faites sur les relations du travail dans l'industrie de la construction, études qui ont démontré la nécessité de « contre-balancer » la puissance patronale à l'intérieur des cadres de la négociation collective dans cette industrie. Par essence, l'accréditation octroie le droit exclusif de négociation à une association d'employeurs pour un métier ou des métiers dans une branche déterminée de l'industrie dans une région déterminée. On allègue généralement que, grâce à l'accréditation, les associations seront en meilleure posture pour exercer une orientation et un contrôle sur leurs membres et atténuer l'effritement des forces, en particulier pendant les phases décisives des négociations. Les partisans de l'accréditation estiment aussi qu'elle peut équilibrer le pouvoir de négociation et stabiliser les relations du travail dans l'industrie du bâtiment.

On peut qualifier les formes d'accréditation de « réalistes » ou de « conservatrices » selon la structure que revêt l'unité de négociation. Selon le mode réaliste, l'unité de négociation comprend tous les entrepreneurs*syndicalisés* par une association dans un métier ou une branche de métiers donnés dans une région. L'approche traditionnelle comprend les entrepreneurs membres d'une association d'employeurs existante qui entretient déjà des rapports collectifs de travail avec un syndicat dans un métier ou une branche de métiers donnés dans une région. C'est le modèle réaliste qui s'applique dans toutes les provinces à l'exception de la Colombie Britannique.

LE MODÈLE RÉALISTE

Bien qu'il y ait de nombreuses variantes dans ces formes d'accréditation, comme les critères fixés pour accréditer une association d'employeurs, deux distinctions majeures retiennent l'attention. En premier lieu, en Ontario, au Nouveau-Brunswick et en Alberta, l'accréditation est rattachée aux droits de négociation existants. Étant donné que la négociation a lieu au niveau local avec un seul syndicat, il est inconcevable que l'accréditation altère beaucoup la structure des négociations. L'Alberta, toutefois, permet à une association d'employeurs de céder son droit de négociation à un autre groupement d'employeurs, et ceci favorise des régimes de négociation plus centralisés. Par ailleurs, la Nouvelle-Ecosse prévoit l'accréditation par « branche » de métiers plutôt que par « métier ». Ainsi, les associations d'employeurs sont davantage intéressés à la « branche » et à la région qu'elles désirent voir négocier qu'à entreprendre des rapports directs de négociation. En facilitant l'accréditation par branche de métiers, il est probable que le régime de la Nouvelle-Ecosse favorisera la négociation multi-métiers centralisée ce qui, mieux que dans les autres modèles « réalistes » d'accréditation, permettra de triompher du danger de perpétuer et de consolider l'état de fragmentation actuel.

Une deuxième modification entre ces formules d'accréditation, c'est la mesure dans laquelle elle favorise l'unité chez les employeurs. La législation en cette matière accorde non seulement un statut de représentant exclusif à une association d'employeurs, mais elle défend aussi aux entrepreneurs pris individuellement de négocier et elle interdit tout accord ou toute entente en vue de fournir des employés durant une grève ou un lock-out légaux. Cependant, l'unité des employeurs se trouve menacée par une disposition dite clause de sauvegarde en Ontario et au Nouveau-Brunswick et par la limitation à soixante jours de l'interdiction de la négociation individuelle en Alberta. La clause de sauvegarde stipule que rien dans la loi n'interdit à un employeur de continuer le travail pendant une grève. En Alberta, si une grève dure plus de 60 jours, l'entrepreneur est libre de négocier individuellement. Ces deux restrictions, surtout la clause de sauvegarde, permettraient aux employeurs d'abandonner leurs associations et, par ricochet, rendre illusoire l'accréditation. En Nouvelle-Ecosse, où la négociation individuelle est interdite à moins que l'ordonnance d'accréditation soit expirée, on ne trouve aucune disposition de cette nature.

Un autre problème qui se pose aux associations d'employeurs, c'est celui des entrepreneurs nationaux ou multinationaux. Dans le passé, ces entrepreneurs signaient des conventions collectives exportables (free-ride agreements) en échange de la paix industrielle ainsi que dans l'intention de nuire au pouvoir de négociation des entrepreneurs locaux. Ce n'est qu'en Alberta où les associations d'employeurs ont l'autorité de négocier au nom des entrepreneurs nationaux et multinationaux qui ont à leur service des employés dans la région et dans le champ d'application du métier.

LE MODÈLE « CONSERVATEUR »

Contrairement aux autres provinces, une association d'employeurs accréditée est en Colombie Britannique l'agent de négociation exclusif pour les membres de l'association qui « acquiescent » à l'appliquer. La loi ne semble pas favoriser beaucoup l'union des employeurs, étant donné qu'elle permet à un employeur de se retirer de l'unité de négociation dans les quatre ou cinq mois qui suivent la mise en vigueur d'une convention collective négociée par l'association d'employeurs. Dans la pratique courante, cela n'a toutefois pas posé de problème à cause des critères stricts qui ont été imposés pour s'en retirer, soit un changement dans la nature des affaires. La plus grande menace à l'unité des employeurs provient de l'inaptitude des associations d'employeurs accréditées à exercer un contrôle sur les non-membres.

APPRÉCIATION PRÉLIMINAIRE

La nouveauté de la législation en matière d'accréditation ne permet guère encore d'en mesurer les effets sur l'industrie du bâtiment. Cependant, une appréciation préliminaire permet de voir que l'accréditation a raffermi l'union des employeurs quoique son influence sur l'équilibre dans les négociations et sur la stabilisation des relations du travail soit moins certaine. En Colombie Britannique, où l'expérience est plus avancée, la*Construction Labour Relations Association* (CLRA) en est arrivée à un degré marqué d'influence et de contrôle sur ses membres. En outre, elle a obtenu la coopération du Conseil des Employeurs pour s'assurer que les clients de l'industrie ne feront pas pression sur les entrepreneurs pour rompre les rangs. Toutefois, on a exprimé de l'inquiétude au sujet des faiblesses du cadre législatif existant pour favoriser l'union des employeurs en particulier à cause de la clause de sauvegarde et de l'exclusion des non-membres de l'accréditation.

L'accréditation a eu peu d'effet sur la structure des négociations à cause de la confiance que l'on portait au droit de négociation tel qu'il existait. Trois points à surveiller toutefois : 1. Le projet albertain de transfert des droits d'accréditation ; 2. La demande formulée par les syndicats d'entreprendre des négociations multi-métiers avec la CLRA en 1972 ; 3. L'approche de la négociation par branche de métiers en Nouvelle-Ecosse. Il faudra attendre les expériences de négociation sous ce nouveau régime avant d'être en mesure de voir si l'accréditation a stabilisé la négociation collective dans l'industrie de la construction. En Colombie Britannique, CLRA a réussi à réduire le taux d'inflation par les salaires, mais ce fut au prix de deux grèves prolongées.

CONCLUSION

L'analyse de la législation en matière d'accréditation indique que l'on a considéré sous de nombreux angles la nécessité de contre-balancer le pouvoir individuel de l'employeur dans l'industrie de la construction. Dans une certaine mesure, ces différences traduisent les conditions particulières qui existent dans chaque province. Elles constituent aussi une expérience dans ce secteur en vue de mettre au point des formules de représentation pour les employeurs. Même s'il est trop tôt pour se demander si l'accréditation a stabilisé les relations du travail dans l'industrie de la construction, la réponse éventuelle repose sur l'utilisation que feront les employeurs du nouveau système et de la valeur du cadre juridique mis en place pour favoriser convenablement une plus grande union parmi les employeurs.

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Accreditation and the Construction Industry: Five Approaches to Countervailing Employer Power

Joseph B. Rose

In this paper, the author aims at describing the various legislative approaches to accreditation which have been adopted and at evaluating the strengths and weaknesses of different efforts to reduce employer fragmentation and redress the imbalance of power within the industry.

Inquiries into the nature of labour-management relations in construction have pointed out the need for « countervailing employer power » within the industry's collective bargaining framework. [1] Accreditation legislation has been advanced as one means of achieving a better balance of power between labour and management in the organized sectors of the industry. Essentially, accreditation can be defined as the granting of exclusive bargaining rights to an employers' organization for a particular trade or trades in a specified sector of the industry within a desi-

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1 See *Report of the Royal Commission on Labour-Management Relations in the Construction Industry,* H. Carl GOLDENBERG, Commissioner, Ontario, 1962; H.W. ARTHURS and John H.G. CRISPO, « Countervailing Employer Power: Accreditation of Contractor Associations, » in *Construction Labour Relations,* eds. H. Carl GOLDENBERG and John H.G. CRISPO, Ottawa, Canadian Construction Association, 1968; and *Report of the Commission of Enquiry Into Industrial Relations in the Nova Scotia Construction Industry,* H.D. WOODS, Commissioner, Halifax, Department of Labour, 1970.

gnated geographic area. Through accreditation, employers' organizations would be better able to exercise direction and control of their members and thus reduce intraorganizational strains or fragmentation, particularly during crucial phases of negotiations.

The advocates of such legislation believe that it can equalize bargaining power in the industry and thus help to stabilize labour-management relations. [2] Spiraling wage settlements and labour unrest have prompted criticism of single-trade bargaining patterns and the ability of unions to employ divide-and-conquer tactics, e.g., whipsawing and leapfrogging, which have had an unsettling effect on collective bargaining. Once an employers' organization is accredited, individual employers covered by an accreditation order are prohibited from negotiating a separate agreement with a trade union or council of trade unions. Resort to individual bargaining by contractors has been a traditional structural weakness which has hampered the bargaining strength and effectiveness of employer associations. Furthermore, backers of accreditation feel that such legislation could in the future alter the bargaining structure in constrution by facilitating the growth and development of multi-trade and multi-party bargaining. An assessment of the impact of accreditation on bargaining patterns is presented below.

The purpose of the present study is twofold. The first is to describe the various legislative approaches to accreditation which have been adopted ; the second is to evaluate the strengths and weaknesses of different efforts to reduce employer fragmentation and redress the imbalance of power within the industry.

ACCREDITATION AND LABOUR LEGISLATION

Accreditation has been adopted in five provinces : Ontario, New Brunswick, Nova Scotia, Alberta and British Columbia. [3] At the present time there is also draft legislation on accreditation before the Prince Edward Island Legislature. Manitoba and Saskatchewan have recently amended thier labour codes, but have not made provisions for accredita-

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[2] ARTHURS and CRISPO, *op. cit.*, p. 377.

[3] Quebec, on the other hand, has adopted more extreme legislation which specifies bargaining representatives for the industry and contains a decree system (the juridical extension of a collective agreement to the entire industry within a specified area).

tion. In Newfoundland, no decision has been made regarding changes in the legal framework and in the federal jurisdiction, Bill C-183, which governs the construction industry in the Yukon and Northwest Territories, does not extend legal recognition to the current structure of construction collective bargaining. [4]

The various accredition schemes can be broadly classified as « realistic » of « conservative », depending on the form which the bargaining unit takes. Under the realistic model, « the bargaining unit could include all unionized contractors organized by a given union in a particular trade, sector and geographic area, but without regard to their membership in the association. » [5] The conservative model includes contractors who belong to an existing employer association which already has a collective bargaining relationship with a union in a particular trade, sector and geographic area. The realistic model has been adopted in all provinces except British Columbia.

ONTARIO AND NEW BRUNSWICK

New Brunswick's accreditation scheme was modelled on the approach contained in the *Ontario Labour Relations Act.* Essentially, there are no substantive differences in the two systems. However, as will be noted below, there has been an important amendment to the *New Brunswick Act* which may have a significant impact on construction collective bargaining. The analysis of accreditation schemes will focus on four areas : (1) determination of an appropriate unit ; (2) the legal effect of accreditation ; (3) termination of accreditation orders ; and (4) other issues.

Appropriateness of Unit

In order for an employers' organization to be accredited, the Ontario Labour Relations Board must rule on the appropriateness of the geo-

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[4] Canadian Consturction Association, *Submission to the Minister of Labour Regarding Bill C-253 — An Act to Amend the Canada Labour Code,* 1971, pp. 18-20. Under this scheme, contractors would be permitted to withdraw from the accredited group at any time, hardly a practice consistent with promoting greater employer unity. The whole question of accreditation is being reviewed by the Canada Department of Labour.

[5] ARTHURS and CRISPO, *op. cit.,* p. 403.

graphic area and sector [6] contained in the application. The Board need not restrict itself to a single geographic area or sector but rather can combine areas or sectors or parts thereof where advisable. [7] Additionally, an appropriate unit must encompass *all* unionized employers in the designated geographic area and sector. [8] The scope of accreditation orders, i.e., whether they are granted on a single-trade or multi-trade basis, depends on whether the employers' organization has bargaining rights with a single trade union or a council of trade unions. [9]

To be accredited, a double-majority is required. In other words, an employers' organization must represent a majority of the employers in the appropriate unit and these employers must in turn employ a majority of the employees in the unit. [10] The double-majority principle is designed to strike a balance between small and large contractors by providing a safeguard against accrediting an employers' organization dominated by many small firms employing a minority of employees on the one hand and one dominated by a few large firms employing a substantial number of employees on the other.

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[6] Sector is defined as a division of the construction industry as determined by work characteristics. These include the industrial, commercial and institutional sector, the residential sector, the heavy sewers, tunnels and watermains sector, the roads sector, the heavy engineering sector, the pipeline sector, and the electrical power sector. *Ontario Labour Relations Act* (1971), Section 106(e). In New Brunswick, sector is similarly defined except there is no electrical power sector.

[7] Section 114 (1). By defining sector in the Act, the Board does not have as much latitude in determining the appropriate unit as it does in certification cases. Moreover, some bargaining patterns cut accross sectors, complicating further the determination of an appropriate unit.

[8] Section 114 (2). The employers' organization must also be properly constituted and free of union interference. Sections 115 (3) and 115 (5).

[9] Section 113 states that

> « ... an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area described in the said certificates, voluntary recognition documents or collective agreements, as the case may be. »

[10] Sections 115 (2) (a)-(b). Majority support is determined on the basis of empolyers who employed employees within the past twelve months. However, an accreditation order covers employers in the appropriate unit who have a collective bargaining relationship with a trade union or council of trade unions regardless of whether they employed employees in the prior year. Board sponsored elections are not contemplated in Ontario or New Brunswick, although in Nova Scotia votes can be taken to accredit an employers' organization, and in Alberta votes can be taken to de-accredit an employers' organization.

Legal Effects

There are several legal effects of accreditation. First, existing collective agreements between an individual employer and a trade union remain in effect until the termination date at which point the collective agreement concluded by the accredited employers' organization becomes binding. This applies irrespective of whether the present agreement contains provisions for renewal of the contract. In addition, where a union establishes bargaining rights for employees of employers in the accredited unit, these employers are bound by the agreement concluded by the accredited employers' organization. [11] Finally, a collective agreement between an accredited employer organization and a trade union is binding upon the accredited employers' organization, the trade union, each employer and the employees in the bargaining unit.[12]

Terminating Accreditation

Three aspects regarding the termination of an accreditation order should be noted. First, where a collective agreement has not been concluded, an application will be considered timely during the two months following the one year period after an accreditation order was granted. Where a collective agreement is in force, applications will be accepted during the last two months of the contract's operation. [13] A second requirement for de-accreditation is the need to demonstrate double-majority support. Upon a Board declaration that the employers' organization no longer represents the employers in the unit, any collective agreement between the parties ceases to be operative. Therefore all rights, duties and obligations previously assumed by the accredited employers' organization must be assumed by individual contractors and the trade union may serve a notice to bargain for the purpose of concluding a collective agreement. [14]

Other Issues

There are several other features of the Act regulating the behavior of an accredited employers' organization. It establishes a duty of fair

[11] Sections 116(2)-(4).

[12] Sections 117(2)-(3).

[13] Sections 118(1)-(2). New Brunswick's de-accreditation system is somewhat different from Ontario's. It specifies different timeliness criteria and applications to cancel an accreditation order can be filed by a trade union. *New Brunswick Industrial Relations Act* (1972), Sections 50(1)-(2) and 50(5)-(6).

[14] *Ontario Labour Relations Act,* Sections 118(4) and 118(6).

representation ; [15] it prohibits discrimination in denying or terminating membership ; [16] and it bans the charging of unreasonable or descriminatory fees. [17] Perhaps most important, however, is that the Act bans individual bargaining altogether. In addition to prohibiting bargaining by individual employers and deeming any collective agreements entered into by these employers void, there is also a ban on any agreements or understandings that would provide « for the supply of employees during a legal strike or lock-out . . . » [18] However, both Ontario and New Brunswick have a « saving » clause.

> Nothing in this Act prohibits an employer, represented by an accredited employers' organization, from continuing or attempting to continue his operations during a strike or lock-out involving employees of employers represented by the accredited employers' organization. [19]

This « saving » clause seems to contradict the intent of the prohibition on individual bargaining, since it would enable a contractor to operate during a strike or lockout. If an accredited employers' organization cannot exercise direction and control over the contractors it bargains for, especially over issues such as strikes and lockouts, then how can it hope to minimize employer fragmentation ? This « saving » clause is an open invitation to contractors to abandon their associations and thereby weaken the very essence of the accreditation system, which is to unify employers in collective bargaining. The ability of individual employers to abandon their associations will only exacerbate the vulnerability of employer associations to the « unions' traditional divide and conquer tactics. » [20]

Special Feature

In New Brunswick, the accreditation scheme largely parallels that of Ontario. However, with the passage of Bill 41, an amendment to the

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[15] Section 120.

[16] Section 121.

[17] Section 122.

[18] Section 119(2).

[19] Section 119(3). The question might be raised as to whether the bylaws of an employers' association could prohibit individual employers from operating during a work stoppage. It must be remembered that an accredited employers' organization is composed of both association members and non-members and that such bylaws would not be binding on non-members.

[20] John CRISPO, « Ontario's Bill 167 : Reform of the Status Quo, » *Relations Industrielles,* XXVI, January, 1972, p. 861.

Industrial Relations Act, a bold new experiment in industrial relations was launched. This amendment created the Lorneville Area Projects Bargaining Authority (LAPBA), which shall be responsible for the conduct of industrial relations in the Lorneville area. [21] The LAPBA is unique in that it consists not only of employers and employer associations, but also includes owners. In a sense, the Lorneville area has been insulated from the effects of accreditation in order to experiment with tripartite bargaining. It is a widely held belief that if Lorneville construction bargaining is successful, the concept will be applied throughout the province. The next year may reval what the future of accreditation will be in New Brunswick.

Assessment

There are three apparent weaknesses in the Ontario and New Brunswick accreditation systems. First, neither of these schemes goes far enough in promoting greater employer unity, largely because of the « saving » clause. Second, national-international contractors are not covered under this legislation. In the past, such contractors have signed free-ride agreements in exchange for labour peace. These agreements have had two negative effects : they have seriously undercut the bargaining position of local contractor associations and enabled striking workers to secure alternative work opportunities. The third problem is that accreditation is tied to existing bargaining rights. Since most bargaining takes place on a local single-trade basis, accreditation is unlikely to alter bargaining structure significantly. It should be noted that by permitting trade accreditation instead of sector accreditation (as in Nova Scotia) the danger exists of « consolidating and perpetuating the present trade (as distinct from regional) fragmentation. » [22]

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[21] The Lorneville area is the site of the Saint John Deep Project and the New Brunswick Power Commission's thermal generating station. The project is expected to last 12 to 15 years and the value of construction is expected to reach $1 billion by 1985. Letter from James Maskell, Development Manager for the New Brunswick Development Corporation, July 31, 1972.

[22] Letter from G. H. Durocher, Director of Labour Relations, Canadian Construction Association, January 3, 1973. Mr. Durocher has noted an important weakness in the way the Ontario legislation deals with existing agreements once an accreditation order is issued :

> « This is more important in the early years of experimenting with accreditation. Several establishments in Ontario have already managed to escape the accreditation net for up to 8 years by extending or entering into free-ride agreements while the legislation was still in the mill or before an accreditation order was issued. »

ALBERTA

The *Alberta Labour Act* (1970) and its amendment (Bill 79 passed in 1972) contain provisions for accreditation or, as it is referred to in the Act, registration of an employers' organization. The Act varies in a number of ways from Ontario and New Brunswick.

Appropriateness of Unit

There are essentially three differences in determining the appropriate unit in Alberta. First, the employers' organization need only represent a majority of the employers in the unit. [23] Second, the Alberta Industrial Relations Board must rule on the appropriateness of the trade jurisdiction and area applied for. [24] Unlike other provinces, sector is not defined in the Act and thus the Board has wider discretion in determining the appropriate unit. Finally, registered employers' organizations have exclusive authority to bargain on behalf of national-international contractors who employ employees in the area and trade jurisdiction. [25]

Legal Effects

In Alberta, a collective agreement between an employer and a trade union terminates when a collective agreement between an employes' organization and a trade union or council of trade unions is concluded or comes into force, whichever occurs later, or when notice is given of a lockout or a strike. [26] In addition, where a collective agreement has not been concluded by the registered employers' organization and a notice to bargain has been given to an employer covered by the registration order, the employers' organization shall bargain on his behalf. If a collective agreement is concluded, it remains in effect until a collective agreement between the registered employers' organization and the trade union is concluded or notice of a strike or lockout is given. [27]

Terminating Registration

Two aspects of de-registration are particularly noteworthy. The Board will consider applications where « a strike or lockout has been in

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23 *The Alberta Labour Act* (1970), Section 75(2)(b).

24 Section 75(2) (c)-(d)

25 Section 75(4) (a) (iii).

26 Section 75(5.1).

27 Section 75(5.3).

effect for a period of 60 days. » [28] This provision suggests that a registered employers' organization could have a very short « insulated » period in which its exclusive bargaining status is secure. It could also weaken the registration system since individual contractors could commence bargaining after 60 days. Where de-registration takes place, any collective agreement concluded by a registered employers' organization continues to be binding on every employer, trade union and employee. [29] This contrasts with other « realistic » models where such collective agreements cease to operate.

Other Provisions

The ban on individual bargaining is subject to one limitation.

> Where a strike or lockout is in effect, no parties to the dispute, other than the registered employers' organization and the trade union or trade union members of a trades council, shall for a period of 60 days from the date the strike or lockout commenced conclude any collective agreement or enter into any form of settlement and any such other agreement or settlement is void and of no effect. [30]

Thus after 60 days a contractor is free to enter a collective agreement and such agreement will remain in effect until or unless the registered employers' organization successfully concludes a collective agreement. [31] Such a provision could endanger the existence of a registered group if a substantial number of individual collective agreements or other types of settlement were reached. However, in two respects Alberta's legislation promotes greater employer unity : (1) there is no « saving » clause, and (2) selective strikes are banned and employers represented by a registered employers' organization must participate in a lockout supported by a majority of the employers. [32]

Another unique provision of the Act allows a registered employers' organization to assign bargaining rigths to another employer group. [33] This stipulation could encourage more centralized bargaining patterns. The Alberta Construction Labour Relations Association hopes to eventually assume bargaining rights for registered employers' organizations in the province.

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28 Section 76(1).
29 Section 76(4) (b).
30 Section 75(6).
31 Section 75(7).
32 Section 98(8)-(9).
33 Section 75.1.

NOVA SCOTIA

In October, 1972, Nova Scotia became the fifth province to adopt an accreditation system. While similar to other « realistic » models, three areas are worth contrasting : the appropriateness of the bargaining unit, cancellation of accreditation, and the promotion of employer unity.

Appropriate Unit

One immediate contrast is the definition of sector which includes : « industrial and commercial ; homebuilding ; sewers, tunnels and water mains ; roadbuilding ; or any other sectors determined by the Panel. » [34] Such a definition would give the Panel [35] greater flexibility in determining appropriate units than is the case in Ontario and New Brunswick, particularly where bargaining cuts across sectors. To be accredited the employers' organization must either represent a majority of the unionized contractors in the unit or not less than 35 percent of the unionized employers in the unit who in turn employ a majority of the employees in the designated geographic area and sector. [36] Although not as stringent as the double-majority principle, this plan does attempt to strike a balance between small and large contractors.

Perhaps the most outstanting aspect of Nova Scotia's legislation is that it promotes multi-trade, multi-party bargaining by providing for accreditation by « sector » rather than by « trade ». This is so because an employers' organization need not restrict itself to existing bargaining relationships when applying for accreditation. Instead the employers' organization need only be concerned with the sector and geographic area it wishes to bargain for. Presumably an accreditation order would cover all unionized employers within a sector, e.g., 15 to 19 trades in industrial and commercial construction. Therefore the Panel is likely to influence bargaining patterns, i.e., promote more centralized and multi-trade bargaining, to a greater degree than in other « realistic » models.

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[34] *Nova Scotia Trade Union Act* (1972), Section 89(h).

[35] The Construction Industry Panel of the Labour Relations Board. This Panel has greater authority than construction industry divisions of the Boards in Ontario and New Brunswick. For example, Section 91(6) states :

> « Any act of the Panel shall be conclusively deemed to be the act of the Board in relation to the jurisdiction, power and authority vested in and exercisable by the Panel or in relation to duties or functions performed by the Panel . . . »

[36] Section 94(3).

Terminating Accreditation

The Panel will consider an application where no collective agreement has been concluded one year after an accreditation order, or between the forty-sixth and forty-ninth months following an accreditation order, or « during the three month period immediately preceeding the end of every third year thereafter. » [37] The latter two stipulations provide an employers' organization with a greater period of security by substituting fixed time intervals for contract expiration dates in determining the timeliness of applications. Double majority support is required to cancel an accreditation order. [38]

Employer Unity

Nova Scotia's legislation goes further in promoting employer unity. The reason is twofold. First, there is no « saving » clause wihch would permit employers to continue operations during a legal strike or lockout. Furthermore, employers can engage in individual bargaining only after accreditation is terminated. Unlike Alberta, individual bargaining is not permitted after a 60-day strike or lockout.

BRITISH COLUMBIA

In April 1970, British Columbia became the first province to adopt a system of accreditation. [39] The prevailing characteristic of this accreditation system is that it is restricted to members of the applicant association and therefore does not bind non-members. Characterized as a voluntary system, the accredited employers' organization is the exclusive bargaining agent « of those members of the organization who *consent* to the application. » [40] This approach is in marked contrast to other accreditation schemes. Indeed, under this approach the Board's primary responsibility is to determine if the employer group is a proper organization for collective bargaining and if the employers belong to and have given authority to the applicant. [41]

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37 Section 98(1).

38 Section 98(3).

39 Accreditation in British Columbia is not solely restricted to the construction industry.

40 Winnipeg Builders Exchange, *Brief to the Manitoba Government,* 1970, p. 11 (mimeographed).

41 This approach is simplified by the fact that there are only two accredited employers' organizations in the construction industry. The B.C. Road Builders Association and the Construction Labour Relations Association represent contractors in road building construction and all other phases of construction, respectively.

An employer, named in the accreditation, may, during the fourth and fifth months immediately following the executing of a collective agreement entered into by the employers' organization on his own behalf, apply to the Board to withdraw from the accreditation. [42] Such a provision would appear to do little to unify employer representation and stabilize labour-management relations. However, in actual practice this has not been a problem because the Board has imposed stringent criteria for withdrawal, e.g., a change in the nature of the business or going out of business. The critical weakness of this scheme is the inability of the accredited employers' organization to control non-members.

IMPACT OF ACCREDITATION

Any attempt to measure the impact of accreditation on collective bargaining in the construction industry is subject to two limitations : the newness of the legislation and the difficulty of accurately measuring such concepts as stability in labour-management relations. However, a preliminary assessment of its impact in Ontario, Alberta and British Columbia [43] suggest that accreditation has enhanced employer unity, although its impact on bargaining parity and stabilizing labour-management relations is less clear. Through September, 1972, 16 employers' organizations have been accredited. [44] Three aspects of accreditation will be examined : (1) employer unity ; (2) impact on bargaining structure ; and (3) stability in labour relations. [45]

Employer Unity

In general, it appears that accreditation has helped to reduce employer fragmentation in collective bargaining. [46] For example, in British Columbia the Construction Labour Relations Association (CLRA) [47]

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[42] *British Columbia Labour Relations Act,* Section 9A(6).

[43] Accreditation legislation in New Brunswick and Nova Scotia was adopted in 1972 and therefore is too recent to analyze. In New Brunswick, several cases involving the Saint John Construction Association are awaiting decision.

[44] Seven each in Ontario and Alberta, and two in British Columbia.

[45] For a review of labour board experience with accreditation, see Joseph B. ROSE, *Report on Accreditation and the Construction Industry,* Fredericton, New Brunswick Department of Labour, 1972.

[46] This section of the paper is based on interviews with employer representatives and government officials in Ontario, Alberta and British Columbia.

[47] CLRA is a multi-trade, province-wide organization which bargains for approximately 850 employers employing between 30,000 and 50,000 workers.

has remained united despite two lockouts lasting more than three months. CLRA has also been aided by « [c]o-operation from the Employers' Council in ensuring that construction users did not put pressure on contractors to break ranks in order that their pet project could be completed » [48]. In Alberta, ACLRA has enjoyed some success in coordinating bargaining activities and is presently seeking cooperation from construction users. However, concern over weaknesses in the legislative framework, e.g., the « saving » clause and the exclusion of non-association members from accreditation in British Columbia, have been expressed.

Another issue has been the move to establish non-union companies by contractors covered under accreditation. This latter development points out that legislation can only help contractors who are willing to help themselves. In other words, accreditation can only help employers to effectively organize, if they so choose. However, non-union competition need not undercut the strength of accredited employers' organizations. It can be argued that the development of non-union firms, provided they do not offer employment to unionized strikers, will enhance the bargaining position of accredited employers' organizations [49].

Bargaining Structure

Accreditation has had only a limited impact on bargaining structure. While bringing some individual employers who normally bargain independently within the employers' organization, there has not been a centralization of the geographic scope of negotiations or a growth of multi-trade bargaining. However, two recent developments are noteworthy. The recent amendment to Alberta's legislation permitting the transfer of registration may result in more centralized bargaining. In addition, the recent request by six trade unions for multi-trade bargaining with CLRA in British Columbia may set the stage for future negotiations. Furthermore, it will be interesting to observe the effect of sector accreditation on the structure of bargaining in Nova Scotia.

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[48] Donald A. S. LANSKAIL, President of the Pulp and Paper Industrial Relations Bureau, *Address to 53rd Annual Convention of the Canadian Construction Association,* Toronto, Ontario, January 25, 1971, p. 13 (mimeographed).

[49] Letter from G. H. Durocher, op. cit. The « non-association unionized firm », on the other hand, has posed problems for CLRA in British Columbia.

Stability in Construction

Any attempt to assess the broader issue of whether accreditation has stabilized [50] labour relations in construction would be premature. Looking to British Columbia, where bargaining under accreditation began in 1970, success in reducing wage inflation has been reported. Wage settlements were running close to 20 percent annually in 1969, whereas estimates of recent settlements (including fringes) show a decline : 10.8 percent in 1970 ; 9.2 percent in 1971 ; and 7.7 percent in 1972 [51]. However, these results were achieved against a backdrop of two prolonged work stoppages. While some have decried such lengthy disputes, others have suggested that it is better to face a common expiration date for all trades and the possibility of a single work stoppage, even if lengthy, than to face numerous expiration dates and the uncertainty of an atmosphere of continual crisis (particularly since a single stoppage may shut down the entire industry anyway).

The British Columbia experience has pointed up the importance of voluntary employer activity in effectuating stable labour relations. CLRA has achieved a significant degree of direction and control over its members and reduced employer fragmentation during critical phases of collective bargaining. The development of cooperation with owner-clients has removed a traditional strain on employer unity. Moreover, even under this conservative system of accreditation, there has been a noticeable narrowing in the imbalance of power between contractors and unions [52]. The success of CLRA has resulted in the formation of similar province-wide employer associations in Alberta, Ontario and New Brunswick.

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50 Stability can be broadly defined as reducing the imbalance of power between contractors and labour unions (by promoting more effective employer organizations) as reflected by the level of wage settlements and the likelihood of economic conflict.

51 Annual wage increases alone averaged 17 percent in 1970 and 14 percent in 1971 throughout Canada. « Wage Increases in Construction Outstrip Output, » *Globe and Mail,* Toronto, September 6, 1972, p. 86. Statistics Canada has noted :

> « Since 1969 annual rate changes have been of the order of 10% or more for at least half of the city composite averages. This change to large annual increases is particularly conspciuous to the Ontario cities where in the last two years the smallest city increase was for 13.7% »

Statistics Canada, « Construction Price Statistics, » *Service Bulletin,* Vol. 1, No. 4, p. 2. Statistics Canada will soon publish wage data including pay supplements.

52 To achieve parity in bargaining power some spokesmen in the management community have suggested the need to include non-association members in accreditation.

CONCLUSION

The preceding review of accreditation reveals that there are numerous legislative approaches to the need for countervailing employer power in the construction industry. These variations are found in : the criteria for determining the appropriate unit and requirements for majority support ; the legal effect of accreditation on collective agreements ; the process of de-accreditation ; and the restrictions on individual bargaining. To a certain extent these differences represent a response to the particular circumstances existing in each province. They also represent an experiment in the area of designing employer representation schemes.

To what extent, then, will accreditation stabilize labour-management relations in construction ? The answer to this question depends on whether employers utilize this system and whether the present legal framework can adequately promote greater employer unity.

L'accréditation des associations d'employeurs dans l'industrie du bâtiment — Cinq façons de contre-balancer le pouvoir du patron

Cet article recherche une double fin. Il s'agit d'abord de décrire les différentes mesures relatives à l'accréditation des associations d'employeurs qui ont été adoptées, ensuite d'évaluer les forces et les faiblesses des différentes tentatives qui ont été faites en vue d'atténuer l'effritement du bloc patronal et de redresser la balance du pouvoir.

Le concept de l'accréditation a été introduit depuis quelques années dans la législation du travail de cinq provinces : l'Ontario, le Nouveau-Brunswick, la Nouvelle-Écosse, l'Alberta et la Colombie Britannique. Son adoption résulte de nombreuses études qui ont été faites sur les relations du travail dans l'industrie de la construction, études qui ont démontré la nécessité de « contre-balancer » la puissance patronale à l'intérieur des cadres de la négociation collective dans cette industrie. Par essence, l'accréditation octroie le droit exclusif de négociation à une association d'employeurs pour un métier ou des métiers dans une branche déterminée de l'industrie dans une région déterminée. On allègue généralement que, grâce à l'accréditation, les associations seront en meilleure posture pour exercer une orientation et un contrôle sur leurs membres et atténuer l'effritement des forces, en particulier pendant les phases décisives des négociations. Les partisans de l'accréditation estiment aussi qu'elle peut équilibrer le pouvoir de négociation et stabiliser les relations du travail dans l'industrie du bâtiment.

On peut qualifier les formes d'accréditation de « réalistes » ou de « conservatrices » selon la structure que revêt l'unité de négociation. Selon le mode réaliste, l'unité de négociation comprend tous les entrepreneurs *syndicalisés* par une association dans un métier ou une branche de métiers donnés dans une région. L'approche traditionnelle comprend les entrepreneurs membres d'une association d'employeurs existante qui entretient déjà des rapports collectifs de travail avec un syndicat dans un métier ou une branche de métiers donnés dans une région. C'est le modèle réaliste qui s'applique dans toutes les provinces à l'exception de la Colombie Britannique.

LE MODÈLE RÉALISTE

Bien qu'il y ait de nombreuses variantes dans ces formes d'accréditation, comme les critères fixés pour accréditer une association d'employeurs, deux distinctions majeures retiennent l'attention. En premier lieu, en Ontario, au Nouveau-Brunswick et en Alberta, l'accréditation est rattachée aux droits de négociation existants. Étant donné que la négociation a lieu au niveau local avec un seul syndicat, il est inconcevable que l'accréditation altère beaucoup la structure des négociations. L'Alberta, toutefois, permet à une association d'employeurs de céder son droit de négociation à un autre groupement d'employeurs, et ceci favorise des régimes de négociation plus centralisés. Par ailleurs, la Nouvelle-Écosse prévoit l'accréditation par « branche » de métiers plutôt que par « métier ». Ainsi, les associations d'employeurs sont davantage intéressés à la « branche » et à la région qu'elles désirent voir négocier qu'à entreprendre des rapports directs de négociation. En facilitant l'accréditation par branche de métiers, il est probable que le régime de la Nouvelle-Écosse favorisera la négociation multi-métiers centralisée ce qui, mieux que dans les autres modèles « réalistes » d'accréditation, permettra de triompher du danger de perpétuer et de consolider l'état de fragmentation actuel.

Une deuxième modification entre ces formules d'accréditation, c'est la mesure dans laquelle elle favorise l'unité chez les employeurs. La législation en cette matière accorde non seulement un statut de représentant exclusif à une association d'employeurs, mais elle défend aussi aux entrepreneurs pris individuellement de négocier et elle interdit tout accord ou toute entente en vue de fournir des employés durant une grève ou un lock-out légaux. Cependant, l'unité des employeurs se trouve menacée par une disposition dite clause de sauvegarde en Ontario et au Nouveau-Brunswick et par la limitation à soixante jours de l'interdiction de la négociation individuelle en Alberta. La clause de sauvegarde stipule que rien dans la loi n'interdit à un employeur de continuer le travail pendant une grève. En Alberta, si une grève dure plus de 60 jours, l'entrepreneur est libre de négocier individuellement. Ces deux restrictions, surtout la clause de sauvegarde, permettraient aux employeurs d'abandonner leurs associations et, par ricochet, rendre illusoire l'accréditation. En Nouvelle-Écosse, où la négociation individuelle est interdite à moins que l'ordonnance d'accréditation soit expirée, on ne trouve aucune disposition de cette nature.

Un autre problème qui se pose aux associations d'employeurs, c'est celui des entrepreneurs nationaux ou multinationaux. Dans le passé, ces entrepreneurs si-

gnaient des conventions collectives exportables (free-ride agreements) en échange de la paix industrielle ainsi que dans l'intention de nuire au pouvoir de négociation des entrepreneurs locaux. Ce n'est qu'en Alberta où les associations d'employeurs ont l'autorité de négocier au nom des entrepreneurs nationaux et multinationaux qui ont à leur service des employés dans la région et dans le champ d'application du métier.

LE MODÈLE « CONSERVATEUR »

Contrairement aux autres provinces, une association d'employeurs accréditée est en Colombie Britannique l'agent de négociation exclusif pour les membres de l'association qui « acquiescent » à l'appliquer. La loi ne semble pas favoriser beaucoup l'union des employeurs, étant donné qu'elle permet à un employeur de se retirer de l'unité de négociation dans les quatre ou cinq mois qui suivent la mise en vigueur d'une convention collective négociée par l'association d'employeurs. Dans la pratique courante, cela n'a toutefois pas posé de problème à cause des critères stricts qui ont été imposés pour s'en retirer, soit un changement dans la nature des affaires. La plus grande menace à l'unité des employeurs provient de l'inaptitude des associations d'employeurs accrédités à exercer un contrôle sur les non-membres.

APPRÉCIATION PRÉLIMINAIRE

La nouveauté de la législation en matière d'accréditation ne permet guère encore d'en mesurer les effets sur l'industrie du bâtiment. Cependant, une appréciation préliminaire permet de voir que l'accréditation a raffermi l'union des employeurs quoique son influence sur l'équilibre dans les négociations et sur la stabilisation des relations du travail soit moins certaine. En Colombie Britannique, où l'expérience est plus avancée, la *Construction Labour Relations Association* (CLRA) en est arrivée à un degré marqué d'influence et de contrôle sur ses membres. En outre, elle a obtenu la coopération du Conseil des Employeurs pour s'assurer que les clients de l'industrie ne feront pas pression sur les entrepreneurs pour rompre les rangs. Toutefois, on a exprimé de l'inquiétude au sujet des faiblesses du cadre législatif existant pour favoriser l'union des employeurs en particulier à cause de la clause de sauvegarde et de l'exclusion des non-membres de l'accréditation.

L'accréditation a eu peu d'effet sur la structure des négociations à cause de la confiance que l'on portait au droit de négociation tel qu'il existait. Trois points à surveiller toutefois : 1. Le projet albertain de transfert des droits d'accréditation ; 2. La demande formulée par les syndicats d'entreprendre des négociations multimétiers avec la CLRA en 1972 ; 3. L'approche de la négociation par branche de métiers en Nouvelle-Écosse. Il faudra attendre les expériences de négociation sous ce nouveau régime avant d'être en mesure de voir si l'accréditation a stabilisé la négociation collective dans l'industrie de la construction. En Colombie Britannique, CLRA a réussi à réduire le taux d'inflation par les salaires, mais ce fut au prix de deux grèves prolongées.

CONCLUSION

L'analyse de la législation en matière d'accréditation indique que l'on a considéré sous de nombreux angles la nécessité de contre-balancer le pouvoir individuel de l'employeur dans l'industrie de la construction. Dans une certaine mesure, ces différences traduisent les conditions particulières qui existent dans chaque province. Elles constituent aussi une expérience dans ce secteur en vue de mettre au point des formules de représentation pour les employeurs. Même s'il est trop tôt pour se demander si l'accréditation a stabilisé les relations du travail dans l'industrie de la construction, la réponse éventuelle repose sur l'utilisation que feront les employeurs du nouveau système et de la valeur du cadre juridique mis en place pour favoriser convenablement une plus grande union parmi les employeurs.

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