

# The Malaise of Compulsory Conciliation Strike Prevention in Canada during World War II

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# The Malaise of Compulsory Conciliation:

## Strike Prevention in Canada during World War II

Jeremy Webber

CANADIAN GOVERNMENTS HAVE ALWAYS wished to avoid the economic disruption caused by strikes; during World War II, this desire was particularly compelling. Ottawa's chief tool for accomplishing this aim was compulsory conciliation, the regime of government-sponsored mediation enshrined in The Industrial Disputes Investigation Act, 1907 (IDIA).<sup>1</sup> Before the war, this regime constituted the dominant thrust of the federal government's intervention in the field of industrial relations. As the war progressed, however, the government came to recognize that conciliation alone would not achieve an acceptable level of industrial peace. It therefore began to intervene more directly in the labour/management relationship, attempting to reduce conflict first through wage controls, and then, with the passage of order-in-council PC 1003 (17 February 1944),<sup>2</sup> through the adoption of the principles embodied in the American Wagner Act:<sup>3</sup> compulsory recognition of workers' representatives, compulsory collective bargaining, the surveillance of labour relations by permanent administrative boards, and the forbidding of certain "unfair labour practices." But throughout this process of increasing governmental intervention, compulsory conciliation remained a key element of Canadian policy, serving, even under PC 1003 and post-war legislation, as the federal government's last line of defence against strikes and lockouts.

The purpose of this paper is to examine the nature and role of compulsory conciliation in Canadian labour relations law during World War II, focusing on how conciliation was pursued in practice and how it reflected the federal government's approach to labour relations.<sup>4</sup> The wartime experience is

<sup>1</sup> S.C. 1907, c. 20; revised with amendments, R.S.C. 1927, c. 112. Throughout this paper, I use the words "mediation" and "conciliation" interchangeably, treating them as synonymous.

<sup>2</sup> All of the orders-in-council referred to in this paper were passed under the authority of the War Measures Act, R.S.C. 1927, c. 206.

<sup>3</sup> National Labor Relations (Wagner) Act, ch. 372, 49 Stat. 449 (1935).

<sup>4</sup> The government's practice often differed considerably from its profession. For a



*Hon. Humphry Mitchell addressing members of Wartime Labour Relations Board on occasion of its first meeting, Ottawa, Ont. March 27, 1944. Public Archives of Canada/PA-112761.*



*Members of the National War Labour Board, Ottawa, Ont., March 1943. Left to right: J.L. Cohen, K.C., Hon. Justice C.P. McTague, K.C., Senator J.J. Bench, K.C. Public Archives of Canada/PA-112763.*

interesting because it portrays a government's concerted attempt to use the non-binding intervention of state-sponsored boards and individuals to resolve labour disputes under conditions of substantial industrial unrest. In large measure this attempt failed. In order to prevent work stoppages the government increasingly felt the need to manipulate the conciliation process, sending in numerous conciliators in succession, or, less frequently, subjecting one of the parties to covert pressure in order to procure concessions. Such manipulation was not unique to World War II. Paul Craven, in his fine study of the origin and early administration of the IDIA,<sup>3</sup> has noted similar actions by governmental representatives prior to 1911. But it is safe to say that during World War II, the overriding political importance of maintaining production in a whole range of war-related industries led the government to rely more often on such techniques. Eventually, the inability of the IDIA to preserve industrial peace, coupled with labour frustration over the delays inherent in the sometimes interminable conciliation process, led the government to control directly wage settlements and legislate specific norms of industrial conduct.

This paper consists of two parts. Part I will briefly discuss the background to the government's wartime labour policy, develop this paper's thesis, and review the evolution of Canadian labour law during the war. Part II will examine specific instances of conciliation in order to illustrate the themes presented here.

## I

WHAT WAS "COMPULSORY conciliation?" Essentially, it was a legal regime designed to insure that before a work stoppage occurred, a third party would intervene in the dispute and attempt to achieve a settlement. Strikes, lockouts, and changes in working conditions were therefore prohibited until a board had met with the parties and, if no settlement was arrived at, delivered a report containing non-binding recommendations "for the settlement of the dispute according to the merits and substantial justice of the case."<sup>6</sup> These ad hoc

thoughtful discussion of the trustworthiness of official pronouncements, see Paul Craven, *'An Impartial Unipire': Industrial Relations and the Canadian State 1900-1911* (Toronto 1980), 222-30. In this paper, I have relied principally upon the confidential records of the Department of Labour and, in the case of the Kirkland Lake dispute, on MacDowell's useful monograph (see below, note 12) for the details of intervention. While the departmental files may not give a complete picture of the origin and outcome of disputes, they can be trusted to give an accurate outline of governmental action. They often contain, in addition to the official documents relative to particular attempts at conciliation, intra-departmental correspondence, verbatim transcripts of telephone conversations, and confidential reports. For the reader's convenience, I have cited publicized board reports to the *Labour Gazette*, although the versions originally submitted by board members were also examined.

<sup>3</sup> *Ibid.*

<sup>6</sup> R.S.C. 1927, c. 112, s. 26. This paragraph of the paper summarizes the regime established by the IDIA. I shall only give references for direct quotations from that statute.

"Boards of Conciliation and Investigation" were composed of three members, one being nominated by the employees involved, one by the employer, with the chair being chosen by the first two (or, if these two could not agree, by the minister of labour). This third member occupied a crucial position on the board. The chair had the most influence over the board's choice of approach. From the activities of boards, as well as from the structure and wording of the statute, there appear to have been two main functions which a board could serve: (1) conciliation, in which it would encourage the parties to settle the matter amicably through discussion and compromise, and (2) adjudication, in which it would set itself apart from the parties, listen to their presentations, determine in its own wisdom the "right" or "just" solution, and then communicate its decision to the public at large, who would presumably exert pressure on the parties to respect the board's recommendation. These two basic approaches were by no means mutually exclusive: often they would both be used in one investigation. Yet they do represent two divergent perceptions of the board's function, and these perceptions had important practical consequences. If conciliation was the goal, the proceedings were informal, attempting above all to facilitate direct negotiations between the parties. If, on the other hand, adjudication was pursued, the hearings were usually conducted with more formality, the parties tending to adopt fixed positions which they then sought to justify to the board. In the latter case, more attention was paid to the dialogue between each party and the board than to the encouragement of discussion between the parties themselves. Often, of course, conciliation did not result in the desired agreement and, as in adjudication, the board had to prepare a report setting forth its recommendations. In determining the content of this document, the chair, as the only member of the board not expressly identified with either of the parties, once again assumed a key role. Standing between the rival interests, the chair would attempt, by a process of bargaining within the board, to win concessions from each of the other members in order to secure a unanimous report. Even if unanimity could not be obtained, the chair, by agreeing with one or the other of the parties' nominees, determined what would be the majority opinion. As a rule, the government did not purport to control or influence the substantive outcome of the negotiations or of the board's deliberations; this was left to the board members and the parties themselves. The IDIA was thus designed to promote industrial peace, while still allowing the parties much discretion in the organization of their affairs. It was a flexible instrument, adaptable to diverse circumstances,<sup>7</sup> and permitting considerable latitude in the choice of method used to procure a settlement.

The turbulent labour climate of World War II posed a severe challenge to this regime. Developments in union organization and the new economic circumstances of the war generated widespread labour unrest. In the late 1930s,

<sup>7</sup> Under the IDIA, for example, no distinction was made between interest, grievance, recognition, and jurisdictional disputes.

the aggressive organizing drive of the CIO had come to Canada.<sup>8</sup> Locals of industrial unions were springing up across the country, and battles for recognition were being fought in mass-production industries having large numbers of workers and vigorously anti-union employers. Indeed, the establishment of stable negotiating relationships was hindered not only by the employers' normal reluctance to include workers in decision-making, but also by the fact that many employers (and the governments of Quebec and Ontario) claimed to oppose the new brand of unionism on principle, alleging that such associations as the United Automobile Workers (UAW) and the International Union of Mine, Mill and Smelter Workers (Mine-Mill) were U.S.-dominated, "irresponsible," and run by communists. In most provinces there was no legal obligation upon employers to bargain with their workers, nor any efficacious unfair labour practices legislation.<sup>9</sup> Attempts by unions to organize plants, gain recognition, and negotiate contracts were therefore often met by the employers' resolute refusal to meet with worker representatives, campaigns by companies to discredit the unions, discriminatory firings, and strikebreaking. The severe pressures thus created were further aggravated by the nature of the wartime economy. Inflation led workers to demand more pay. At the same time, the booming market for manufactured goods and natural resources resulted in higher profits, making increased wages affordable and shutdowns due to strikes more costly for employers. Enlistment in the armed forces caused a labour shortage, making strikebreaking more difficult. These factors augmented labour's organizing and bargaining power, and strikes became more effective and more acceptable to workers. The latter did not always take full advantage of this leverage, however; they did support the war effort, and were sensitive to accusations of unpatriotic sabotage. Still, they were not content to suffer while others profited from the war; in the face of perceived injustice (and one's own demands always appear just), they would strike.

As labour relations deteriorated, Ottawa's determination to prevent strikes stiffened. To support the allied war effort, it embarked on a large-scale reor-

<sup>8</sup> See Irving Martin Abella, *Nationalism, Communism, and Canadian Labour: the CIO, the Communist Party, and the Canadian Congress of Labour 1935-1956* (Toronto 1973). For simplicity's sake, I will use the initials CIO to refer to the Canadian movement allied to the American Congress of Industrial Organizations. In 1940, the Canadian movement founded its own federation: the Canadian Congress of Labour (CCL).

<sup>9</sup> A provision forbidding discrimination against employees for union activities was placed in the Criminal Code by S.C. 1939, c. 30, s. 11, but because of the criminal burden of proof and the need to use the ordinary courts, this was very difficult to enforce. Similar prohibitions are found in: The Strikes and Lockouts Prevention Act, S.M. 1937, c. 40, s. 46; The Freedom of Trade Union Association Act, 1938, S.S. 1938, c. 87; Trade Union Act, S.N.S. 1937, c. 6; Industrial Conciliation and Arbitration Act, S.B.C. 1937, c. 31; and The Industrial Conciliation and Arbitration Act, S.A. 1938, c. 57. The latter three statutes also imposed a duty to bargain, but without the supervision of labour relations boards, or the possibility of certification.

ganization of the economy designed to boost the production of war materiel. Work stoppages necessarily detracted from this goal. Moreover, the emphasis on production prompted the government to identify itself closely with the interests of manufacturers, transportation companies, and natural resource extractors. Indeed, it frequently participated directly in war-related industries through the medium of crown corporations. Seeing the economy from the producer's perspective, it began to share the private employers' strong antipathy towards strikes. *But the government's perspective was not limited to the supply side: Ottawa also constituted the principal consumer of many goods.* The economy became, in large measure, a public enterprise devoted to achieving maximum industrial output. In such an environment, strikes were seen as more than mere nuisances; they were direct challenges to the great national endeavour.

The government yearned for industrial peace, but it had little desire to make substantive changes in the worker/management relationship. If sheer repression (which would probably be counterproductive anyway) was to be avoided, any changes dealing with such matters as union recognition would have to be in favour of labour, and traditionally the Liberals had shied away from "class legislation," opting for what appeared to be the more evenhanded approach of conciliation. Intervening with legislation to favour one side or the other would, the government surmised, endanger the fragile consensus which was the cornerstone of Liberal politics: let the parties determine their own relations; the government should simply find a way of encouraging this process without having the parties resort to a strike or lockout. Of course, this non-interventionist approach assumed (1) that some accommodation could be reached between the parties in the absence of an economic test of strength, and (2) that even if job action did remain the final arbiter of industrial conflict, the fallout of the confrontation would be politically acceptable. Both these hypotheses eventually proved wrong, and Ottawa, despite itself, finally intervened to establish positive norms to govern the workplace. In the meantime, however, the government's commitment to the purely negative goal of strike prevention had two consequences: (1) legislation generally did not purport to deal with the causes of dissatisfaction, but rather erected a number of hurdles which unions had to cross before legal strikes could be declared (on the assumption that the intermediate steps would result either in a settlement, or at least in a narrowing of the issues to the point where a strike was no longer worthwhile); and (2) the Department of Labour treated the reports of conciliation boards as stages in a long process of conciliation, rather than as authoritative pronouncements of equity and justice which it should encourage the parties to accept.

This governmental indifference towards the causes of disputes led to great frustration among workers, especially those in the newly-organized and therefore less-established CIO unions. Delay, the failure of employers to comply with conciliation board reports, and the promotion of inadequate compromises on matters of crucial importance to the labour movement seemed all too often

the outcome of intervention by officials or boards. While the government publicly argued that compulsory conciliation was an *expeditious* means of airing the issues, obtaining a decision on the merits, and achieving compromise, it often appeared simply to wish to delay industrial strife. Mere delay was seldom in the workers' interest. Postponing job action gave the employer more opportunity to prepare for the strike through stockpiling goods, hiring strikebreakers, firing union leaders, or transferring production to other plants; meanwhile employees were subject to the old wage levels and working conditions. The delay was acceptable only if the union could, in the interim, achieve some of its goals without incurring the costs of a strike. It was in that hope that unions sought conciliation, and it was therefore a source of great consternation to them that employers frequently failed to implement the recommendations of boards. Pre-war experience with the IDIA had demonstrated that in order to secure employer compliance, one often needed strong support from a government which would marshal public opinion and apply behind-the-scenes pressure to the companies involved. During World War II, such commitment was rarely apparent until the very eve of a strike; union officials were left with many paper victories. Finally, bitterness resulted from the compromises continually suggested by government conciliators on issues that unions and employers considered to be matters of principle (for example, union recognition). In such circumstances, there was quite simply no acceptable middle ground between the parties, and pure conciliation (as opposed to adjudication or legislation), predicated as it was on the possibility of compromise, became inappropriate. Government promotion of "saw-offs" merely served to undercut a party's bargaining position or weaken the impact of a conciliation board's report.

The malaise resulting from the tension between the government's preoccupation with strike prevention on the one hand, and reluctance to grapple with the substantive content of labour relations on the other, afflicted the boards themselves. A department which saw the conciliation process primarily as a device for postponing strikes gave little guidance regarding either the means by which a board should proceed, or the normative basis on which issues should be decided. The department did appreciate the efforts of a chairman like Alexander Brady, professor of political economy at the University of Toronto, who prompted this comment to Director of Industrial Relations M.M. Maclean from Industrial Relations Officer Frank MacKinnon:

I should like to point out an evident difference between Dr. Brady and other Board chairmen. Many chairmen seem to study both sides of the case very much in the manner of a Judge in dealing with an action before a Court of Law, and then give an opinion and make a recommendation on the basis of what they have learned or on their own personal views of the matters at issue. In his cases, Dr. Brady has gone a step further and has emphasized the conciliation aspect of a Board's function. He does not make recommendations without doing all he can to obtain a settlement. . . .<sup>10</sup>

<sup>10</sup> Memorandum, MacKinnon to Maclean, Ottawa, 27 November 1944, Department of Labour Records, Public Archives of Canada, Ottawa, RG 27, vol. 1765, file 755:20.



Nevertheless, the department had, since the enactment of the IDIA, habitually appointed judges as chairs. The administration's ambiguity on this point is amply demonstrated by the response of Maclean to a correspondent who had complained that conciliation officers were doing too much judging and not enough conciliation. After denying that such was the case, Maclean went on to describe the method used to choose the chairs:

On the occasions on which the Minister has been called upon to make the selection of a Chairman, his policy has been to appoint members of the Bench when they are available, but in any event, to select persons whom he believes will have a judicial approach to the matters under dispute, and who have the qualities necessary to bring the parties together.<sup>11</sup>

The department was slow to give direction as to the grounds on which boards should base their decisions precisely because it did not wish to commit itself to defined policy goals. J.L. Cohen, labour lawyer and employee nominee on several boards, voiced a common complaint when he wrote:

[Ottawa prefers to] appear to be filling the role of umpire between competing social forces and behind that role . . . to conceal the fact that as a government it has failed to discharge its primary duty of prescribing the rules. Umpiring without rules is a makeshift process and that in great measure marks the whole attitude of government today on the question of labour relations and collective bargaining.<sup>12</sup>

Gradually, however, Ottawa did move to prescribe more rules, reluctantly defining its policy preferences and reducing the autonomy of the parties. The government's first piece of wartime labour legislation was order-in-council PC 3495 (7 November 1939), which simply extended the scope of the IDIA (which formerly had been confined to disputes in "public utilities") to cover all defence-related industries.<sup>13</sup> For these sectors of the economy, there were now two official stages of third-party intervention: conciliation boards under the IDIA, and the pre-existing system of informal conciliation pursued by "industrial relations officers" under the Conciliation and Labour Act.<sup>14</sup> While the latter system was purely voluntary, no legal strike could occur until the requirements of the IDIA had been satisfied. This led to a massive increase in the number of cases dealt with: in 1939, 33 applications for boards were received; in 1940, 67; and in 1941, 143.<sup>15</sup> The expansion of the IDIA's jurisdiction was supported by at least one major segment of organized labour, the well-

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Unless otherwise indicated, all subsequent citations of PAC material refer to the Department of Labour Records.

<sup>11</sup> Maclean to J.C. Adams, Ottawa, 31 March 1945, PAC, RG 27, vol. 1766, file 755:37.

<sup>12</sup> J.L. Cohen, *Collective Bargaining in Canada* (Toronto 1941), 15, quoted in Laurel Sefton MacDowell, "Remember Kirkland Lake": *The History and Effects of the Kirkland Lake Gold Miners' Strike, 1941-42* (Toronto 1983), 31.

<sup>13</sup> The definitions contained in PC 3495 were later amended by PC 1708 (10 March 1941).

<sup>14</sup> R.S.C. 1927, c. 110.

<sup>15</sup> PAC, RG 27, vol. 255, file 750.5.

established and relatively conservative (in comparison to the CIO activists) craft unionists: on 5 October 1939, a delegation from the Trades and Labor Congress of Canada (which had just expelled the CIO-affiliated unions) met with Prime Minister King to express its agreement with the government's aim of wartime strike prevention, and to suggest the extension of the IDIA as a means for resolving disputes without either work stoppages or compulsory arbitration. At that meeting, it also urged the government to declare itself in favour of collective bargaining and union recognition.<sup>16</sup> This latter demand led to the passage, almost nine months later, of order-in-council PC 2685 (19 June 1940).

PC 2685 was significant for two reasons: (1) it constituted the government's clearest statement to date in support of union recognition, collective bargaining, freedom of employees to organize into independent unions, and grievance arbitration (in short, the essential elements of American labour law); and (2) it enunciated loose standards of industrial conduct by which governmental and private action could be judged, both by workers and by conciliation boards. This breakthrough was not without precedent: PC 2685 was modelled closely on a World War I order-in-council which had, after a very brief existence, been superseded by a regime of compulsory arbitration.<sup>17</sup> Nor was it the type of imperative intervention that many people were looking for: the principles were merely advisory and liable to be interpreted even by representatives of the government in ways inimical to labour.<sup>18</sup> But it did provide union organizers with a basis in government policy on which to found their arguments.

PC 2685 was followed, on 16 December 1940, by another order-in-council establishing non-binding, purely advisory standards. This was PC 7440, which, after stating that the operation of the IDIA alone had not been wholly satisfactory, instituted a system of voluntary wage controls. Interestingly, the order was expressed to be "for the guidance of boards of conciliation set up under the Industrial Disputes Investigation Act,"<sup>19</sup> which were now encour-

<sup>16</sup> "Memorandum to the Prime Minister on Co-operation in War Time Activities," PAC, RG 27, vol. 254, file 721.02:1. The Trades and Labor Congress of Canada (TLC) unions still contributed their share to the wartime strike statistics, however. In 1940, they accounted for 79,306 days lost, as opposed to 86,775 for CCL unions, 65,450 for the Confederation of Catholic Workers of Canada, and 16,032 for the Canadian Federation of Labour: "Strikes in Canada, 1940," PAC, RG 27, vol. 254, file 721.02:1.

<sup>17</sup> PC 1743 (11 July 1918). Compulsory arbitration was established by PC 2525 (11 October 1918). For the relationship between PC 1743 and PC 2685, including a table of concordance, see the memorandum of the assistant deputy minister of labour, Ottawa, 5 March 1940, PAC, RG 27, vol. 254, file 721.02:1.

<sup>18</sup> See below, p. 70. MacDowell mentions that in 1941 in the National Steel Car plant in Hamilton, Ontario, a government-appointed controller at first refused to meet at all with representatives of a union supported by a majority of the employees, and then consented to bargain only with a non-union committee of employees: MacDowell, *Kirkland Lake*, 32-3.

<sup>19</sup> PC 7440 (16 December 1940), preamble.

aged to comply with both the wage guidelines and PC 2685 when rendering their awards. No longer was the government content to remain the neutral umpire between social forces; it was gently influencing the substantive content of the labour/management relationship. Rather than merely struggling for an acceptable compromise or sitting in norm-less judgement, conciliation boards were to act more like administrative bodies, implementing policy. Because the guidelines were purely voluntary, however, strikes over wages continued to occur, and, on 24 October 1941, a new order-in-council, PC 8253, subjected wage matters to mandatory regulation by the newly-created War Labour Boards. The IDIA boards could still make recommendations within the limits set by PC 8253 and the orders-in-council which followed it (they rarely did), but any increase in wages would have to be approved by the relevant War Labour Board.<sup>20</sup>

Still unsatisfied with the degree of labour peace achieved by the IDIA, the intervention of industrial relations officers, PC 2685, and voluntary wage controls, the government in June 1941 established yet another mechanism of conciliation. PC 4020 (6 June 1941) provided for the appointment, at the minister of labour's discretion and without the participation of the parties, of ad hoc "Industrial Disputes Inquiry Commissions," which would make preliminary investigations into disputes, attempt to secure settlements, and report back to the minister concerning the issues involved and whether or not the appointment of an IDIA board was justified. They were to pursue pure conciliation, not offering "any opinion as to the merits or substantial justice of such features of the case as may have to be submitted to a Board of Conciliation and Investigation" (although in practice, they did offer such advice.<sup>21</sup>) Strikes remained illegal until an IDIA board had reported, which raised the nice question as to whether, if an IDI Commission recommended that no board be appointed and the department agreed, workers in a plant could be denied for an indefinite period the freedom to strike. Even if an IDI Commission was appointed after a board had reported, the IDIA strike ban remained in effect until the Commission had completed its work.<sup>22</sup> IDI Commissions were used very frequently indeed. In fiscal 1941-2, 132 applications for conciliation boards were received by the department. Forty-eight of these were either rejected by the department

<sup>20</sup> PC 8253 (24 October 1941), s. 11(1). See also: Chief Executive Officer [Industrial Relations Branch] to A. Brady, Ottawa, 16 August 1944, PAC, RG 27, vol. 1764, file 755:9; Maclean to J.J. Coughlin, Ottawa, 12 October 1944, PAC, RG 27, vol. 1764, file 755:14.

<sup>21</sup> PC 4020 (6 June 1941), s. 1. For examples of recommendations for settlement, see PAC, RG 27, vol. 144, file 611.04:21. The activities of IDI Commissions were modified by PC 4844 (2 July 1941), PC 7068 (10 September 1941), PC 496 (19 January 1943), PC 4175 (20 May 1943), and PC 6482 (11 October 1945). PC 4844 gave the commissions power, among other things, to investigate unfair labour practices. If they found such wrongdoing, the minister could issue a binding order dealing with the matter.

<sup>22</sup> PC 4844 (2 July 1941), s. 2.



*Strikebreaking Ontario Provincial Police on parade during Miners Union Strike, Kirkland, Ont. November 18, 1941 to February 10th, 1942. Public Archives of Canada/PA-121252.*



*C.H. Millard, SWOC executive director, giving Andrew Brewin, union lawyer, receipt for fine paid upon conviction for distributing leaflets in New Toronto. Looking on at left is Joe Mackenzie, organizer for United Rubber Workers, 30 August 1940. Public Archives Canada/PA-98730.*

(for example, if the only issue was wages, the parties would have to apply directly to the relevant War Labour Board), withdrawn by the applicant, or disposed of without a reference to an IDI Commission or board. Of the remainder, 64 were submitted to IDI Commissions (resulting in the establishment of 25 boards; in the case of 10 inquiries, boards were found unwarranted, and in 24 a settlement was reached), and only 20 were referred directly to conciliation boards. In 1942-3, 106 applications were investigated first by IDI Commissions; in only 12 cases were boards immediately established.<sup>23</sup>

On 16 September 1941, the government passed another order-in-council, this time requiring that before a strike could occur in an industry subject to the IDIA, a government-supervised strike vote must take place if the minister so wished. PC 7307 was especially unpopular with organized labour because it gave the minister broad discretion to define who could vote: "all employees who in his opinion are affected by the dispute or whose employment might be affected by the proposed strike. . . ."<sup>24</sup> Thus, the minister could, and sometimes did, include employees who were not even members of what would later be called the bargaining unit (e.g., foremen or clerical staff).<sup>25</sup> In addition, the strike had to be approved by a majority of those *entitled* to vote, not merely of those actually voting.<sup>26</sup> Writing in *Canadian Forum*, George Grube criticized PC 7307 in terms equally applicable to much of Canada's wartime labour law: "Its aim is purely negative. It puts further delays and obstacles in the way of possible strikes, without doing anything whatsoever to deal with the causes of strikes."<sup>27</sup> On 13 November 1941, PC 7307 was amended to make it less objectionable, and on 1 September 1944, six months after the passage of PC 1003, it was repealed.<sup>28</sup>

The entry into force of PC 1003 (17 February 1944) on 20 March 1944<sup>29</sup> brought new stability to Canada's labour laws. Following the American model, the federal government enacted a comprehensive labour code designed to promote collective bargaining, a code essentially the same as that governing Canadian workers today. These measures had teeth: a union which had the support of the majority of a plant's work force would be recognized by the government as the bargaining agent for that plant and the employer was obliged to enter into negotiations with it; a regime of compulsory arbitration was substituted for the freedom to strike during the term of a collective agreement; more effective means were provided for punishing such unfair labour practices as discrimination by employers against pro-union employees. The new regime thus did away

<sup>23</sup> "Table summarizing Industrial Disputes Investigation Act," PAC, RG 27, vol. 254, file 721.02:1.

<sup>24</sup> PC 7307 (16 September 1941), s. 3.

<sup>25</sup> See below, p. 74.

<sup>26</sup> PC 7307 (16 September 1941), s. 4.

<sup>27</sup> "Labour Law by Order-in-Council," *Canadian Forum* 21 (1941), 239, quoted in MacDowell, *Kirkland Lake*, 112-3.

<sup>28</sup> PC 8821 (13 November 1941); PC 6893 (1 September 1944).

<sup>29</sup> PC 1982 (20 March 1944).

with recognition strikes, which had been common under the old dispensation,<sup>30</sup> and which the public, familiar with the American experience under the Wagner Act, had increasingly come to consider as unnecessary. Indeed, Ottawa, under pressure from all segments of organized labour, had already ordered Wagner Act principles be applied to employees of crown corporations;<sup>31</sup> and in April 1943 the Ontario government, in a vain attempt to save its electoral life, had enacted The Collective Bargaining Act, establishing compulsory recognition in that province, providing for the certification of bargaining agents, and placing the scheme under the supervision of a "Labour Court."<sup>32</sup> The obligation to bargain did not resolve all disputes, however. To deal with those issues insusceptible of agreement, compulsory conciliation was retained. Thus, strikes and lockouts were still prohibited until the parties had submitted their differences to a two-step process: (1) intervention by an individual "conciliation officer," and (2) investigation by an IDIA-style conciliation board. Much the same procedure therefore existed as under the IDIA at the beginning of the war, but the field of inquiry had shrunk from questions of recognition, wages, working conditions, and breaches of the collective agreement to the consideration of a single overriding issue: union security. Within this narrower compass, Ottawa remained unwilling to establish precise norms, although it still earnestly wished to prevent strikes. The cause of the malaise of compulsory conciliation — the contrast between the government's desire to intervene and its reluctance to make a formal decision favouring one side or the other — persisted.

## II

### Umpiring Without Rules: Kirkland Lake, Ontario, 1941<sup>33</sup>

THE EVENTS PRECEDING THE 1941-2 strike at Kirkland Lake portray clearly a number of characteristics of compulsory conciliation in the wartime environ-

<sup>30</sup> In 1941, for example, of the disputes giving rise to applications under the IDIA, 44 concerned recognition alone, 45 concerned recognition and other issues, and 54 dealt only with issues other than recognition: memorandum, assistant deputy minister of labour to minister of labour, Ottawa, 1 April 1942, PAC, RG 27, vol. 254, file 721.02:1. (The number in the last category would underrepresent somewhat the total number of disputes caused by non-recognition matters because after 15 November 1941, wage matters alone would have been referred to War Labour Boards.) It should be noted that although PC 1003 did do away with disputes *expressly* concerned with recognition, many unions still had great difficulty securing first collective agreements.

<sup>31</sup> PC 10802 (1 December 1942).

<sup>32</sup> S.O. 1943, c. 4.

<sup>33</sup> All facts here presented concerning the Kirkland Lake dispute, other than the contents of the reports of the IDI Commission and conciliation board, are taken from MacDowell, *Kirkland Lake*. I shall give references to her book only where I expressly use her statistics or adopt her opinions. Because of the lack of departmental material on conciliation prior to PC 1003 (virtually every file was destroyed), and the dispersed nature of other reliable sources, it is invaluable to have a careful monograph of a key strike on which to depend.

ment: (1) the continual delay leading to few concessions, but damaging the union's ability to sustain a strike; (2) the conciliators' repeated presentation of what the employees considered to be inadequate compromises on matters of principle; and (3) the lack of government backing for the recommendations of conciliation boards. The strike is also significant in that it contributed to public support for compulsory recognition, and thus helped to edge the federal government towards the reforms of PC 1003.

The Kirkland Lake dispute was fought squarely on the issue of recognition:<sup>34</sup> Local 240 of the International Union of Mine, Mill and Smelter Workers (Mine-Mill) sought to enter into a collective agreement with the management of several gold mines in the area; the latter refused to meet with union representatives, even though the union apparently had the support of a substantial majority of the miners. The first attempt at conciliation occurred on 21 June 1941, when the department's chief conciliation officer, M.S. Campbell, was dispatched to Kirkland Lake to prevent the impending clash. He was unable to persuade the companies to speak with the union and, on 18 July 1941, Local 240 applied for an IDIA board. This request was not immediately granted, although the union specifically asked that no further delay occur. Instead, on 2 August the parties were informed that an IDI Commission would investigate the dispute.

This three-man commission, under the chairmanship of Humphrey Mitchell (who entered the King government as minister of labour in December 1941) held a series of conferences with each of the parties on 5, 6, and 7 August. It had no more success than the conciliation officer in persuading the employers to meet with the union, the employers declaring themselves to be resolutely opposed to CIO unions (of which Mine-Mill was one) and doubting in any case whether collective agreements had any value. The commissioners did, however, get the companies to agree to a compromise: management would negotiate signed agreements, but only with committees elected by the workers in the various mines. Thus, the union itself would not be a party to the agreements, although presumably its supporters could participate in the election of committee members.

This method of fudging the recognition issue was not new; it had been used by Mackenzie King when, as deputy minister of labour, he had mediated disputes prior to the passage of the IDIA.<sup>35</sup> It preserved the semblance of collective bargaining, for working conditions appeared to be established by agreement between employer and employee. Indeed, the IDI Commission used the government's declared support for collective bargaining in PC 2685 to persuade the mine operators to accept the committee plan, and concluded that

<sup>34</sup> The union made other demands, and these were included in the reference to the conciliation board. However, the employers' stance necessarily focused attention on the recognition issue.

<sup>35</sup> See for example the solution proposed by King in the Western Fuel Co. strike, 1905: King Papers, PAC, MG 26, J4, vol. 13, file 82.

with its acceptance, "the Commission is of the opinion that the companies have agreed to go as far as is required under the provisions of Order in Council PC 2685. . . ."<sup>36</sup> The union, though, rejected the proposal, and this rejection was supported by the membership in a vote held on the IDI Commission's request. In the early days of its use, prior to World War I, the committee plan had often been acceptable to labour; at the very least, it established the principle that working conditions should be negotiated between the employees acting collectively and the employer; when employee organization was weak, the compromise would give the idea of collective action more prestige, win at least some concessions regarding working conditions, and allow the employees to consolidate their strength for a later battle. But by World War II, labour's opposition to the plan had hardened. First, the doctrine that workers had a right to choose their own representatives had gained ground because of the American Wagner Act example. The mere fact, then, that the employer could veto the participation of unions was taken to be too great an interference in the workers' own affairs. Moreover, employer influence over the form of representation often extended to the procedure for selecting committee members, the decision as to which workers would be represented, and the identification of what subjects could be discussed between employer and committee. Secondly, employee committees were much more susceptible to employer pressure than were union locals. Their financial resources were much less than those of unions. Their structure was ad hoc, emerging at each negotiation period, but lacking the strong organizational presence during the life of the collective agreement necessary to insure that the agreement's terms were respected. Because the committee members had to be employed in the particular plant that they represented, workers could not use the services of more experienced negotiators from outside the plant, committee members could devote only part of their time to union activities, and, because unfair labour practices legislation was virtually unenforceable, committee members would be vulnerable to company harassment and dismissal. Finally, without strong links to workers in other plants, committees were less able to pursue multi-plant action. In Kirkland Lake, the miners had already tried unsuccessfully to bargain on a plant-by-plant basis, and had decided to treat all the mines as one unit (fighting for a master agreement, and threatening to strike all the mines at once); accepting the employee committee proposal would have meant abandoning this strategy.

For these reasons, the members of Local 240 saw employee committees not as a reasonable compromise, but as capitulation, resulting in a form of company unionism. The IDI Commission, however, reiterated in its report to the minister its support for the committee plan, and indeed went on to declare that had Conciliation Officer Campbell not assured the union that a board would be

<sup>36</sup> "Case No. 19. Report of the Industrial Disputes Inquiry Commission on dispute between various gold mining companies, Kirkland Lake, Ontario, and certain of their employees," 12 August 1941, PAC, RG 27, vol. 144, file 611.04:21.



appointed, it would have recommended against establishing a board at all.<sup>37</sup> In effect, this suggestion came close to compulsory arbitration of the issue, for if the department had accepted it, the union would have been forced to choose between declaring an illegal strike and acquiescing in the committee plan. As it was, the commission did propose that the union leaders be summoned to Ottawa for a consultation with the minister. This meeting occurred on 19 August, and once again the men, backed by an overwhelming strike mandate received four days earlier, expressed their opposition to the committee plan. Even this did not spell the end of the proposal; to the government, employee committees remained the most likely solution to the difficulty.

Local 240's attempt to gain recognition provides a perfect example of an all-or-nothing demand — one based on principle. It was clear that the employees would settle for nothing short of full recognition of the union, and it was equally apparent that the company accepted the compromise only because it would have given the workers relatively ineffectual and easily-manipulated representation. Yet the commission and the minister repeatedly urged the committee proposal on the parties. Herein lay the weakness of conciliation as practised by Ottawa. Conciliation needs compromise. If, on a matter of consequence, all the concessions necessary to get agreement must come from one party, there are no longer any inducements, short of the threat of economic force, that can be used to pry them loose; either the issue must be fought out on the picket line, or the government must use its influence, through legislation or otherwise, to secure a solution. During World War II, the government was reluctant to adopt either alternative, and it therefore attempted to delay the inevitable conflict, while proposing saw-offs which often served merely to annoy the parties. Sometimes, these compromises verged on the ridiculous: in the 1945 CIL dispute in Toronto, for example, the conciliator suggested that the company recognize the desirability of a voluntary check-off of union dues in principle, but in practice simply give the union facilities to collect its own dues.<sup>38</sup> As in the CIL dispute, such proposals were often accepted by the parties eventually: worn down by negotiations and inquiries stretching over months, and with the points of disagreement narrowed to the difference between, for example, voluntary check-off and the provision of facilities for dues collection, the parties just lost the will to fight. While such an approach did indeed prevent strikes, it tended to undermine conciliation as a method for promoting consensual agreements, making it into one long endurance test. Dissatisfaction with this state of affairs was not limited to union ranks. In a series of dissenting opinions delivered in conciliation board decisions dealing with disputes over

<sup>37</sup> *Ibid.*

<sup>38</sup> PAC, RG 27, vol. 1766, file 755:38. Under the "check-off" the employer would deduct the amount of the dues from each member's paycheque, remitting the sums to the union. In a voluntary check-off, each member had to authorize the company to collect the dues; if the check-off was mandatory, each member's dues would be compulsorily turned over to the union.

union security (under PC 1003), a company nominee, J.S.D. Tory, criticized from the employer's perspective the practice of recommending compromises when principles were involved:

The issue here demonstrates that there is an honest difference of opinion between the parties with respect to the ultimate status of trade unions in industry. At the moment this difference appears to be irreconcilable and any suggestion that the parties merely forget about the main issue and in the meantime compromise the claim seems to me to be a wholly unwarranted procedure. If there were any practical value in the arrangements for maintenance of membership and check-off in a particular case I should be prepared to give them earnest consideration; but in a case where it has been demonstrated that neither of these arrangements will assist the Union, and where the suggestion is made that these arrangements are put into affect [sic] merely as compromise, I am inclined to the view that this would serve only to emphasize the real issue between the parties and that instead of lessening the friction between union and non-union employees, it would only tend to increase it. . . . In my opinion, it by no means follows that the refusal of an employer to agree to provisions for a union shop, maintenance of membership and check-off amounts to a negation of collective bargaining. Genuine collective bargaining can and does exist without any necessity for agreement on these particular items, which are merely the subject of collective bargaining.

In Tory's view, compromises in such circumstances could only be justified as interim steps towards the complete adoption of the alternative policy; if the end was indeed worthwhile, he reasoned, the conciliation board or the government should have the courage to openly advocate it.<sup>39</sup>

On 22 August, Local 240's long-awaited conciliation board was appointed. Normally, the board would have met with the parties, accepted briefs and oral presentations, and then tried to conciliate the dispute. When at last the board convened in early October, however, the hearings took a most unusual turn: immediately after the parties' initial presentations, the employers withdrew from the proceedings, declaring that because they were "unalterably opposed" to recognizing the union, there was no reason to participate.<sup>40</sup> This was undoubtedly a tactical mistake. (The employers later apologized, claiming that their counsel had acted without authority.) The board, relying on the language of PC 2685 and the invocation of that order in PC 7440, delivered a unanimous report in favour of recognition, asserting that on the basis of the orders-in-council, "it is difficult to . . . find any authority for the proposition that an employer is to have any voice in selecting the employees' union, or other bargaining agency, or to impose any conditions of his own as to just what union or what type of union or bargaining agent he is prepared to bargain with. . . ."<sup>41</sup> It had no illusion "that the recommendation is likely to be more than a mere formality," however:

<sup>39</sup> The quotation is from the minority report in the Electro-Metallurgical dispute, *Labour Gazette* 45 (1945), 50-1. See also the minority reports in the Page-Hersey Tubes and John Inglis disputes: *Labour Gazette* 45 (1945), 45-7, and *Labour Gazette* 44 (1944), 1501-5.

<sup>40</sup> Majority report in the Kirkland Lake dispute, *Labour Gazette* 41 (1941), 1351 (emphasis in the original).

<sup>41</sup> *Ibid.*, 1350.

The employment of such a technique [the companies' withdrawal from the proceedings] together with the doubt as to jurisdiction under the Act [to deal with recognition problems] would seem to leave the broad question of collective bargaining to be dealt with by Parliament or Cabinet Council rather than by the old process of conciliation boards under the Industrial Disputes Investigation Act.<sup>42</sup>

Indeed, the companies did not accept the board's report. The union therefore applied for the supervised strike vote required by PC 7307. After another vain attempt by department officials to get the parties to agree, rules were drawn up for the conduct of the vote and approved by the union. The companies demanded some modifications, and two days before the vote was to be held, the union was informed of the revised rules. These were completely unacceptable to the union. Among other things, *everyone* on the payroll except the president, management, and directors of each company were to be eligible to vote. Intense lobbying by union leaders and sympathizers from across Canada followed, and the day before the vote the provisions were modified to limit the constituency. On 8 November, three-and-a-half months after the first government conciliator had intervened in the dispute, the calling of a strike was approved by 63 per cent of those eligible (67 per cent of those voting.<sup>43</sup>) Upon receiving this mandate, the union again asked the companies if they wished to negotiate. When the latter refused, 13 November was set as the date the strike would begin.

On 10 November, the union made one last appeal to the minister of labour to intervene and settle the dispute. After further discussions between the department and each of the parties, and a flurry of controversy over whether the minister should come to Kirkland Lake or the parties go to Ottawa, the meetings commenced in the capital on 17 November. To the union's chagrin, the employers still refused to meet in the same room as the union representatives, and the minister, instead of pressuring the companies to accept the board report, continued to search for a compromise. This course of events was by no means unusual: upon receiving a favourable report, employees often asked the government to force the employer to comply with the recommendations; by taking on the responsibility of establishing a board, the employees argued, the government had undertaken a "moral obligation" to support the implementation of that board's report.<sup>44</sup> More often than not, however, when the government did intervene, it simply sought further concessions from both sides. This tended to undercut the authority of the board: the latter's appreciation of the "justice" of the parties' demands did not appear to have much weight when the government immediately pushed for the acceptance of a different proposal. Arguments for employer compliance based on "right," "equity," or "justice" were therefore seriously undermined. This issue was raised with remark-

<sup>42</sup> *Ibid.*, 1351.

<sup>43</sup> MacDowell, *Kirkland Lake*, 120.

<sup>44</sup> See for example W. Sefton to M.M. Maclean, Toronto, 23 November 1944, PAC, RG 27, vol. 1764, file 755:14.

able clarity in the 1944-5 dispute at Ontario Steel Products Ltd., Chatham, Ontario. In that instance, the conciliation board had unanimously recommended the adoption of a voluntary, revocable check-off of union dues (a minimal form of union security), yet M.M. Maclean of the Department of Labour, without conferring with the union, wrote the company to suggest that an agreement might be reached if the company would simply provide facilities for the union to collect its own dues. The department, he said, could provide a possible draft for the clause. This raised a storm of protest from the union; George Burt (regional director of the UAW) wrote to Maclean to argue:

... your recommendation tends to break down the entire advantage which might accrue to the Union as a result of decisions and Conciliation Boards. ... the government should take a position that such recommendations should be accepted by the parties and further use the weight of the government in order to make sure the parties accept such recommendations.<sup>45</sup>

The department did not take Burt's advice, however; in the Steel Company of Canada dispute six months later, Maclean proposed exactly the same solution when faced with a similar situation.<sup>46</sup>

The minister's last attempts to conciliate the Kirkland Lake dispute failed to find the elusive compromise. The talks broke down, each side blaming the other. On the evening of 18 November, the strike began. After a bitter three-month fight, during which the government intervened yet again unsuccessfully to have the matter referred to binding arbitration (the workers turned down the proposal, fearing a revival of the employee committee plan), the union admitted complete failure on 12 February 1942, and those men that the company would accept returned to work. In the end, the lack of financial support and the knowledge that Ottawa would not use its leverage in support of recognition made it impossible for Local 240 to carry on. The fact that because of delays due to the conciliation process the strike had occurred during the harsh winter months, after the employers had much time to prepare, contributed to the failure.<sup>47</sup>

### III

#### Conciliation upon Conciliation:

#### The Electro-Metallurgical and Fairchild Aircraft Disputes, 1944-45

AS WE SAW IN THE Kirkland Lake dispute, informal attempts at conciliation often continued long after the conciliation board had brought down its report.

<sup>45</sup> Burt to Maclean, Windsor, Ontario, 11 May 1945, PAC, RG 27, vol. 1766, file 755:31. The facts given here relative to the dispute are taken from other documents in that file.

<sup>46</sup> Memorandum, Maclean to the minister, Ottawa, 2 November 1945, PAC, RG 27, vol. 1766, file 755:33. Nor was conciliation after a board's report a recent development. Craven discusses in great detail the nature and consequences of post-board conciliation in the 1910 Grand Trunk strike: 'An Impartial Umpire', 318-52.

<sup>47</sup> MacDowell, *Kirkland Lake*, *passim*.

Union leaders frequently encouraged this practice, either because they hoped that increased pressure by government would lead to more concessions, or because they realized that the area of disagreement had, through the negotiating process, become so narrow that the membership would be unwilling to bear the cost of a strike for the meagre potential gain. As in the Kirkland Lake dispute, this post-conciliation-board intervention was usually sufficiently restrained that no resolution was achieved, the ultimate confrontation merely being delayed.<sup>48</sup> Occasionally, however, when a strike appeared imminent in an industry of great importance to the war effort, the government did act more directly to influence the content of the negotiations in order to achieve a sure settlement. In this section of the paper, I shall deal briefly with two disputes where the government's commitment to achieving a settlement was high: one concerning the Electro-Metallurgical Co.'s plant in Welland, Ontario, and the other, three aircraft factories in Montreal.<sup>49</sup>

The dispute between the Electro-Metallurgical Co. and Local 523 of the United Electrical, Radio and Machine Workers of America provides a good example of the government's reliance on repeated attempts at conciliation to narrow the parties' differences, while at the same time postponing a work stoppage. It also demonstrates some of the techniques which Ottawa used to procure concessions.

The dispute was officially brought to the department's attention in July 1944 by the Ontario Labour Relations Board, which recommended the appointment of a conciliation officer. In accordance with the provisions of PC 1003, the union had referred the matter to the Labour Relations Board after negotiations had continued for more than 30 days without success. Industrial Relations Officer Harold Perkins was immediately dispatched to Welland to settle the dispute. He met with the parties, but no agreement was concluded, the matters at issue being the union's desire for a union shop (where membership in the union would be a condition of employment), and the check-off. A conciliation board was established, consisting of Alexander Brady as chair, a United Church minister as employee nominee, and lawyer J.S.D. Tory as employer representative. After investigating the dispute and attempting to achieve a settlement, the board was unable to come to a unanimous decision. The majority recommended that the union should drop its demand for a union shop, obtaining instead a maintenance-of-membership clause (so that once a worker became a union member, he would have to retain his membership until the end of the collective agreement), and a voluntary check-off provision, in which a

<sup>48</sup> This did not necessarily mean a strike would result: sometimes the union decided either that it could not win a strike, or that a strike was not worthwhile, and remained at work without agreement.

<sup>49</sup> The facts of these disputes are taken from the documents contained in PAC, RG 27, vol. 1764, file 755:11, and vol. 1763, file 755:8, respectively. I shall only cite the particular document when such a reference would more accurately identify the source, or aid in finding the document.

member's choice of check-off would be irrevocable during the term of the collective agreement. The minority report, by the company nominee, opposed any form of union security, arguing that the union shop and compulsory check-off violated individual rights, and that the compromise proposals were not of any value in themselves, merely constituting the first steps in a movement towards complete union security.<sup>50</sup> The majority's recommendations were accepted by the union, but not by the company.

The board's reports were delivered in mid-November 1944. By January 1945, the union was demanding that the government force Electro-Metallurgical to comply with the award, threatening to strike if no settlement was reached. Another conciliation officer, J.P. Nicol, was therefore sent to try further mediation on the understanding that the strike would be postponed pending the outcome of the talks. Nicol was unable to win any concessions from the company, and reported back to Ottawa that although he had tried to persuade the employees to stay at work, it seemed that a stoppage was inevitable. He also noted that virtually 100 per cent of the plant's production was war-related. If any settlement was to be achieved, the department concluded, more vigorous encouragement of the company was needed. On 24 January 1945, the following memo was sent by Assistant Director of Industrial Relations J.S. McCullagh to Deputy Minister of Labour Arthur MacNamara:

Yesterday I endeavoured to reach Mr. Harry Taylor of Toronto, whose company controls Electro-Metallurgical. I had in mind suggesting to Mr. Taylor that if he would authorize the Company to institute a check-off, we might get the Union to drop, for the time being at least, the maintenance of membership demand, but if the Company refuses to make any concession, there is every indication of a strike which would undoubtedly be embarrassing to the Minister, being in his Constituency.

Taylor, however, refused to have the company change its policy without an express government directive on the point.

At this time, increased pressure was put on the union not to call a strike. MacNamara took the position that because the parties had signed a provisional agreement covering matters other than union security, a strike would be illegal under PC 1003. Representatives of the department attempted to persuade the union that maintenance-of-membership and the voluntary check-off were not worth striking over. The company sent a letter to the union claiming that "any action interfering with the vital war production of this plant in relation to this issue, would not only be illegal, but would also be grossly unpatriotic during the present war emergency."<sup>51</sup> Union members responded by asking their MP, the minister of labour, to intervene personally to settle the dispute. This led to another attempt at conciliation, this time by J.S. McCullagh. Early in February, he met with the parties, proposing that instead of the check-off, the company provide the union with facilities for collecting its own dues. He also

<sup>50</sup> See above, p. 73, and *Labour Gazette* 45 (1945), 47.

<sup>51</sup> E.L. Deitch to C.R. Sullivan, Welland, Ontario, 19 January 1945, PAC, RG 27, vol. 1764, file 755:11.

won a further postponement of the strike to allow consideration of this proposal. A week later he was back in Welland attempting to get more concessions from the company, specifically a clear commitment from Electro-Metallurgical that it would pay the person responsible for collecting dues. Calling each party in turn, he tried to get them to modify their positions, advising the union in particular that it would be most unwise to strike over such a small issue. Finally, on 13 February 1945, fully seven months after the initial reference to the Ontario Labour Relations Board, a settlement was reached. Electro-Metallurgical's war production continued uninterrupted; the confrontation over union security was delayed until the summer of 1946, when a strike did occur.

In the Fairchild Aircraft dispute, the government did not rely so heavily on repeated instances of conciliation, but rather sought to manipulate the constitution and proceedings of the conciliation board itself in order to achieve a favourable result. This more intense involvement reflected the high priority which the government gave to the production of aircraft during the war.

The dispute arose out of negotiations for a new collective agreement between three Montreal aircraft factories (Fairchild Aircraft Ltd., Noorduyne Aviation Ltd., and Canadian Vickers Ltd.) and Lodge 712 of the International Association of Machinists. There were a number of issues in question, but the most contentious was the lodge's demand for a union shop and check-off. Negotiations between the parties failed to lead to a settlement, and in June 1944 the union applied to the National Wartime Labour Relations Board for a conciliation officer. According to the agreement between Ottawa and Quebec regarding the administration of PC 1003, however, the union should have referred the matter to the *Quebec* Wartime Labour Relations Board, since the provincial boards had responsibility for insuring that the requirements of PC 1003 were satisfied and recommending that a conciliation officer be appointed. Mr. Justice G.B. O'Connor, chairman of the national board, therefore contacted M.M. Maclean to discuss whether the national board should insist that the normal procedure be followed. This would of course result in delay. After stating his desire not to offend the Quebec authorities, and mentioning that the union would probably accept a postponement, O'Connor remarked: "Personally, I can see the advantage of delay because the War is drawing to a close and every day gained brings us nearer to the time when the demand for aircraft will be less vital."<sup>52</sup> In the end, the Quebec board quickly gave its permission and a conciliation officer was appointed. Nevertheless, delay was to play an unusually large role in the proceedings before the board.

The conciliation officer's intervention did not produce a settlement, and he recommended that a board be appointed. When the nominees of the parties failed to agree on a chair, Maclean, following normal practice, asked Mr. Justice Oscar Boulanger if he would be willing to participate, and submitted the necessary documents to the minister for signature. The minister and his deputy,

<sup>52</sup> Memorandum, O'Connor to Maclean, Ottawa, 30 June 1944, PAC, RG 27, vol. 1763, file 755:8.

however, did not like the choice, apparently fearing that Boulanger would submit a report recommending too strong a union security clause. They therefore suggested that another chair be found. This proved impracticable, however, since Boulanger had already been informed that he would be appointed. The deputy minister then suggested that some way be found to restrict the board's consideration of union security, perhaps having it present an interim report on the other matters, deferring the union security discussions until after the decision had been rendered in a separate case involving Montreal Tramways (where the chairman was more to the minister's liking). This expedient was adopted (with the reluctant agreement of the union) and the board adjourned indefinitely.

The Montreal Tramways case, however, took longer than expected, and in November the Fairchild board asked if it could resume its own investigation. MacNamara wrote Maclean, "I should think Mr. Justice Belanger [sic] might proceed if we could find some way to tell him not to go farther than the agreement arranged with the packinghouse employees. I refer to the Union security clause resulting from Mr. Justice Richards's recent activity in Toronto."<sup>53</sup> Boulanger was summoned to Ottawa for discussions with Maclean, but he refused to be bound by the Richards award and the board's adjournment was extended until January. By this time, the union was becoming most impatient with the delay (the board had not met since August), and it protested to the department. Finally, on 24 January 1945, Maclean authorized the board to go ahead. Majority and minority reports resulted, Boulanger agreeing with the employees' nominee that a particularly strong maintenance-of-membership clause be included in the agreement.<sup>54</sup> The last item in the department's file dealing with the dispute is a memorandum from MacNamara to Maclean dated 31 March 1945, suggesting that if the recommendations were reasonable, the department should get Minister of Munitions and Supply C.D. Howe to put pressure on the aircraft companies to make the concessions necessary to secure an agreement.

#### IV

##### Adjudication vs. Conciliation:

##### The Okanagan Valley Packinghouse Dispute, 1944-45

AS INDICATED IN Part I of this paper, boards were often unsure whether they should attempt to adjudicate disputes, or simply find some workable settlement between the parties. From the department's propensity to continue to seek compromise after a board had reported, it might appear that the government looked on the appointment of a board as essentially another step in a long process of conciliation; certainly the government did not feel bound by any

<sup>53</sup> Memorandum, MacNamara to Maclean, Ottawa, 25 November 1944, PAC, RG 27, vol. 1763, file 755:8.

<sup>54</sup> See *Labour Gazette* 45 (1945), 491.



authoritative force in the board's decision. Indeed, its manipulation of the board in the Fairchild dispute would indicate that the whole process was perceived to be merely a useful tool for leveraging the parties closer together — a perception hardly compatible with our notions of the judicial function. Conciliation probably was the dominant role of the officers and boards: of the 124 applications for conciliation under PC 1003 that had been completely dealt with by 1 July 1945, 50 had been settled by conciliation officers and 12 by boards. Adjudication did not appear to be terribly effective at resolving disputes: of the 62 cases in which a settlement had not been reached prior to the board's report, 48 remained unsettled on 1 July.<sup>55</sup> Yet to dismiss out of hand the adjudicative role would be to ignore a major facet of the boards' activity. They were a schizophrenic institution, pulled between mediation and judgement, and often the latter approach predominated, especially in the minds of the board members themselves.<sup>56</sup>

One can see the influence of the adjudicative conception of the boards' role in the emphasis on the need for the parties' nominees to behave with some impartiality,<sup>57</sup> in the increasing use of board decisions as precedents,<sup>58</sup> in the unions' frequent demands that awards be enforced, in the legalistic arguments which were occasionally dealt with by boards,<sup>59</sup> and in the department's readiness to take down a written record of the proceedings if the circumstances

<sup>55</sup> "Conciliation Proceedings under Wartime Labour Relations Regulations as of July 1, 1945," PAC, RG 27, vol. 254, file 721.02:1. That conciliation, and not adjudication, was the primary role of IDIA boards in the early years of the policy has been noted by Ben M. Selekmán, *Postponing Strikes* (New York 1927), 102-13; James J. Atherton, "The Department of Labour and Industrial Relations, 1900-1911," M.A. thesis, Carleton University 1972, 220; and Craven, "An Impartial Umpire", 299-301.

<sup>56</sup> A glaring exception to this is found in company nominee Walter S. Owen's minority report in the Sun Publishing dispute. He said: "... if the Board fails by its intervention to bring about the completion of an agreement, i.e. an agreement between the parties freely and voluntarily entered into, then its task is ended. If it, by assuming the right nowhere granted to it by the regulations, should make a finding on the question, this would in effect be exercising compulsion or coercion upon the employer and, through him, upon the employees. This would be accomplished by lending moral strength or influence to the contention of the union and be a sufficient support for the union to gain its end by threatening a strike." *Labour Gazette* 44 (1944), 1498.

<sup>57</sup> See for example IDIA, R.S.C. 1927, c. 112, s. 14; S.C. 1940-41, c. 20. In the Swift Canadian dispute, the employer nominee withdrew when the department said that the company could not make up his loss in pay for attending the conciliation board proceedings: PAC, RG 27, vol. 1764, file 755:17.

<sup>58</sup> See below. Also, see the union brief in the Canadian Oil Companies case, PAC, RG 27, vol. 1764, file 755:12, the chairman's request for precedents and the union brief in the John Inglis case, PAC, RG 27, vol. 1764, file 755:14, and the majority report in the Sun Publishing case, *Labour Gazette* 44 (1944), 1495.

<sup>59</sup> See the minority reports in the Canadian Oil Companies case, *Labour Gazette* 44 (1944), 1355, and in the Upper Canada Mines case, *Labour Gazette* 45 (1945), 328-31.

warranted.<sup>60</sup> Maclean's response to MacNamara when the latter succumbed to the malaise of compulsory conciliation and labeled the appointment of a board "a waste — of time — money and effort" also indicated an appreciation for the boards' judicial function. Maclean said:

Even though at the moment it might appear in some of these cases where we are now establishing Boards of Conciliation that there is a waste of time, effort and money, I think that in the long-run it will be helpful and even necessary in order that there may be a body of opinion built up as a result of decisions of Boards which will set the pattern for both employers and unions on the union security issue.<sup>61</sup>

Sometimes, the two notions of the boards' role came into direct conflict. In his dissenting report in the Electro-Metallurgical dispute, for example, the company nominee, J.S.D. Tory, accused the employees' nominee, Rev. Dr. H.G. Forster, of having signed the majority report when he really did not agree with that report's content, but merely wanted to get the best possible result for the union.<sup>62</sup> Although such a criticism would be damning in a purely judicial context (and Forster did defend himself vociferously<sup>63</sup>), it strikes one as being of dubious relevance when dealing with a conciliation board: surely a prime object of the exercise was to find compromise, even if eventually one had to agree to a proposal which was not completely in accord with one's wishes. This section of the paper will discuss another case which clearly illustrates the tension between the boards' adjudicative and conciliatory roles: the 1944 dispute concerning Okanagan Valley packinghouse workers.<sup>64</sup>

This dispute, between Locals 1, 3, 4, 5, 6, 7, and 8 of the Fruit and Vegetable Workers Union and 16 out of 28 packinghouses in the Okanagan Valley of British Columbia, arose out of negotiations for a second collective agreement between the parties. The chief issue was the union's demand for a union shop and check-off. It differed from many wartime disputes in that it occurred in a conservative, agricultural region of the country among workers whose numbers were subject to great seasonal fluctuations (there were 111 permanent and 2,195 seasonal employees in the plants directly affected). A great deal of attention was focused on the conciliation board's proceedings because of the fruit growers' fear of the impact of union power on their volatile industry, and because of the union's desire to achieve a victory in this new organizational terrain.

A conciliation board was appointed in mid-October 1944, consisting of W.E. Haskins as the employers' nominee, B.G. Webber as employees' nominee, and Dean F.M. Clement of the U.B.C. Faculty of Agriculture as

<sup>60</sup> See below, p. 82, and the Sun Publishing case, PAC, RG 27, vol. 1764, file 755:13.

<sup>61</sup> Exchange of memoranda, Maclean to MacNamara, Ottawa, 28-29 July 1944, PAC, RG 27, vol. 1764, file 755:12.

<sup>62</sup> See *Labour Gazette* 45 (1945), 51.

<sup>63</sup> *Ibid.*, 52.

<sup>64</sup> The facts of this dispute are primarily taken from documents in PAC, RG 27, vol. 1765, files 755:24 and 755:24 part 2. I shall only give references where I used a different source or where further reference would aid in finding the document.

chairman. Because of the "wide ramifications" of the dispute, the regional director of the Canadian Congress of Labour, Danny O'Brien, asked that a written record be kept of the hearings. The employees' nominee and the chairman concurred in this request and, upon the department's approval, a stenographer was hired. From the beginning, then, the hearings took on a judicial appearance, the parties looking on the process as a means of creating new industrial norms.

The board in the Okanagan case sat for an unusually long time — sixteen days — but was unable either to achieve a settlement or to agree among themselves on a suitable solution. Haskins and Clement recommended that the existing agreement simply continue in effect, with no union security clause at all; Webber, on the other hand, suggested that permanent and seasonal employees who worked more than 30 days per year be subject to a union shop and check-off, and that the parties agree not to strike or lockout during the term of the collective agreement.<sup>65</sup> But the board's conclusions were not as straightforward as they appeared. During the course of the hearings, Clement had written to Maclean asking that the latter send him a copy of the Richards award in the Toronto meat-packing case (the same report that was recommended to Boulanger in the Fairchild Aircraft dispute). Then, when the Okanagan board's reports were delivered to the department, Clement, without informing the parties' nominees, sent along what amounted to a third report (marked "not for publication") suggesting a compromise along the lines of the Richards award (voluntary check-off, maintenance-of-membership, and a "no strike/no lockout" clause). He prefaced his suggestions with the remarks:

The majority report [which Clement signed] is, in my opinion, a fair one. It is based on the evidence submitted. I think the Board has carefully weighed the various practical considerations.

There is, however a question of principle that cannot be overlooked. Having in mind the question of principle and a consequent desire to arrive at some compromise solution about midway between the two extremes, the following suggestions were offered: . . .<sup>66</sup>

The schizophrenic nature of the board had resulted in a schizophrenic report: the adjudicative function was completely separated from that of conciliation, Clement proposing one set of recommendations for public consumption and precedential value, but suggesting another set for resolving the actual case at hand.

The dispute in the packinghouse remained unsettled. Consequently, in February 1945 O'Brien approached the B.C. minister of labour to say that a strike vote was being contemplated, and to request more conciliation. At the same meeting, he criticized the parties' nominees on the board for being too reluctant

<sup>65</sup> *Labour Gazette* 45 (1945), 170.

<sup>66</sup> Clement to Maclean, Vancouver, B.C., 19 January 1945, PAC, RG 27, vol. 1765, file 755:24. B.G. Webber has told me that he was not informed of Clement's letter (interview, 30 March 1983). I presume that Haskins, who had signed the majority report with Clement, was not informed.

to compromise (although there is evidence that, on the contrary, the employee nominee had attempted to secure a settlement and that at that time O'Brien had rebuked him for departing from the union's position.<sup>67</sup>) Apparently, the union had decided it did not want a strike in the Okanagan and preferred a compromise along the lines of Clement's suggestions to no union security at all. The B.C. minister therefore requested that the board be reconvened for "amplification" of the report; on 2 March 1945 Maclean complied with this request. The board only met once, however. Clement believed that an agreement might be reached more quickly if he conciliated the dispute on his own. Intensive negotiations with the parties did indeed lead to a settlement. The agreement was very similar to the Richards award, containing a voluntary check-off irrevocable by the member for the duration of the collective agreement, and a maintenance-of-membership clause.

## V

### Adjudication upon what principles?

BOARDS FREQUENTLY WERE REQUIRED to pass judgement on the merits of disputes, but on what principles did they base their decisions? Governments were reluctant to establish authoritative standards by which labour disputes could be resolved. The union/management relationship itself did not produce many commonly-accepted principles of industrial conduct. And despite the sanguine hopes of many, the long history of conciliation in Canada had contributed very slowly, if at all, to the formulation of such norms (prior to the passage of PC 1003, boards dealt with such crucial issues as the recognition of unions in much the same way as their predecessors had prior to World War I). To understand fully the contribution of conciliation boards to the emergence of new rules of labour/management behaviour, a longer time frame than that offered in this paper would be necessary. Ideally, a complete examination would also take account of other forms of private dispute settlement, especially consensual arbitration. While such an inquiry lies beyond the scope of this paper, I would like to offer some tentative observations on the adjudicative reasoning employed by conciliation boards during World War II.

<sup>67</sup> G.S. Pearson to Mitchell, Victoria, 27 February 1945, PAC, RG 27, vol. 1765, file 755:24. Webber says that O'Brien had earlier criticized him for being too willing to compromise (interview, 30 March 1983). A letter in his possession (O'Brien to Webber, 27 March 1945) indicates that Webber had been conciliatory: "I am also glad to know that you tried your best to get the members to agree to an adjournment so that the parties might have been got together, and something definite arrived at before the board was finally adjourned." That O'Brien had at least publicly opposed compromise is evident from his comment before the board: "I do ask you to bear in mind and to see our point that Maintenance of Membership would be a useless thing — no use to us at all. We should have to refuse to accept it, even if the employer offered it to us without a Board, because it does nothing, in our opinion, in an industry such as this, but day-nurse a minority. . . ." *Labour Gazette* 45 (1945), 172.

In their adjudicative capacity, conciliation boards occupied an unenviable position. Labour disputes were submitted to conciliation precisely because there were no clear standards, apart from the free agreement of the parties, by which disputes could be resolved, yet boards were expected to recommend a fair and just solution if conciliation failed. Some boards responded to this lack of accepted norms by declining to invoke any absolute standards of industrial justice. Their awards merely continued the search for compromise begun during the mediation phase of the proceedings. Their recommendations were not a declaration of right, but an educated guess as to what the parties themselves were likely to accept. A board presenting such an award was content to act, in the words of Adam Shortt, one of the first and most successful of conciliation board chairmen, "as a pathfinder, seeking the line of least resistance. . . ."<sup>88</sup> This was the role played by, for example, Clement's confidential recommendation in the Okanagan dispute. Even these amoral compromises could acquire influence as precedents when they proved particularly successful at resolving a given problem. Indeed, Clement based his suggestions on a previous decision.<sup>89</sup> When understood as proposals for compromise, awards did serve simply as steps in a process of conciliation, and further attempts to achieve compromise initiated after a board's report did not tend to negate the value of that award. But in such a case, the award itself had less authority, for it stood as a mere prediction of what the parties might agree to, unsupported by moral principle.

Many boards did, however, attempt to buttress their decisions by an appeal to conceptions of justice. The parties encouraged this practice by relying upon moral considerations when presenting their demands. But without the aid of standards declared by an authoritative body outside the bargaining relationship, it was difficult for boards to develop stable, well-accepted principles on which to base their awards. Both labour and management could usually assemble reasonable arguments in support of their positions. Regarding union security, for example, the workers' representatives would argue the need for stability in the bargaining relationship, and the justice of preventing non-members within unionized plants from acting as "free riders," taking the benefits of collective action without sharing its cost. Employers would assert management's need to control the qualifications of workers, and would insist on protecting the individual's ability to decide freely whether or not to join an organization. Both sides of the argument often found favour with board members, yet there was no apparent means of reconciling the two positions. Every concession in favour of one seemed to require the partial sacrifice of the other. Consensus seemed impossible. Boards therefore tried to "split the difference," resulting in ad hoc

<sup>88</sup> Speech by Adam Shortt before the annual convention of the American Association for Labor Legislation, Atlantic City, N.J., 29 and 30 December 1908, in *Labour Gazette* 9 (1909), 697. Shortt went on to specify certain principles "for which the chairman of the board considered it necessary to steadily contend. . . ." *ibid.*, 697-9.

<sup>89</sup> See above, p. 82.

compromises supported by moral arguments, rather than firm norms. Only very rarely was an adjudicator able to break out of the zero-sum game, finding a solution which met the chief concerns of both parties. A stunning example of such an award was that of Mr. Justice Rand in the 1945-6 Ford arbitration.<sup>70</sup> In a dispute over the union's demand for a union shop and check-off, Mr. Justice Rand ordered that all workers in the plant pay union dues (to be deducted by the employer and remitted to the union), but that membership in the union be optional. This new form of union security, known as the "Rand formula," was extraordinarily successful, serving as a durable precedent in subsequent disputes. *Its genius lay in its ability to satisfy the most forceful arguments of both parties: individual liberty was protected, the problem of free riders averted.*

*But the Rand award was the exception which proved the rule. By and large, boards were unable to find principles satisfactory to both parties, and they therefore looked to outside sources for direction. The most obvious and authoritative source was the series of orders-in-council passed by the federal cabinet, especially PC 2685 and PC 1003. Several boards began to probe the nature of collective bargaining in order to derive solutions to particular disputes. In the 1944-5 conciliation concerning the Upper Canada Mines in Kirkland Lake, one of the government's favourite chairmen, Cecil A. Wright, stated the problem and his preferred solution as follows:*

*With the legislative policy of leaving disputes over such issues as "union security" to Conciliation Boards whose recommendations have no effective sanction and for whose guidance on such matters no governmental policy has been laid down, we are not concerned. Much the same situation prevailed at the time when Boards were left to settle disputes by recommending the recognition of unions as bargaining agencies, even though, after June, 1940, PC 2685 may be said to have furnished some guide in this connection. In such circumstances a Board can only act on what it believes to be reasonable on the particular facts taking into account what it believes to be the broad — if vague — implications of compulsory collective bargaining legislation which was designed to prevent disputes ripening into more active industrial warfare.<sup>71</sup>*

The implications were indeed vague, judging from the variety of principles deduced by boards. For example, in the John Inglis dispute of 1944, the majority report came up with clearly-defined principles. First, it reasoned that the acquisition of different types of union security "can much increase the power for doing good by the right kind of Union, while it correspondingly increases the power for evil of the wrong kind of Union." It was obvious that the former should be encouraged and the latter discouraged, so the board proceeded to define the ideal union: "A Union vigilant in protecting its members from injustice, sincerely concerned in advancing the interests of the industry which affords employment to its members, and at least not unmindful of the welfare of the consuming public on whom the industry depends." The performance of the actual union was then compared to this ideal type, and the

<sup>70</sup> Reported at 1 CCH Can. Lab. L. Rep., para. 2150.

<sup>71</sup> *Labour Gazette* 45 (1945), 325.

amount of union security gauged accordingly.<sup>72</sup> In another dispute, the employee nominee explained in a "supplementary report" his agreement with the board's decision to deny the union's demand for a voluntary, revocable check-off as follows:

While I regard the check-off as an aid to union stability, which is important to good collective bargaining, I do not think that it should be made the means of initiating that stability, saving perhaps cases where it appears that an employer's unfair labour practices have prevented a union from establishing itself on a solid footing.<sup>73</sup>

Apparently, in this board member's view, compulsory collective bargaining legislation merely established unions' right to recognition and freedom from unfair labour practices; any other form of union security had to be won by the union in the economic contest with the employer. As if to emphasize the indistinct nature of collective bargaining's implications, the majority of the board in the Electro-Metallurgical dispute fastened on the bare necessity of compromise to justify its award. It declared:

... as is often the case where collective bargaining is of relatively short duration, the element of fear is the cause of the present disagreement. ... There is plainly no remedy for this condition of mutual fear except a frank readiness of both parties to place more trust in each other. Such trust may be expressed in and promoted by a moderation of the demands made, and a readiness on the other side to accept the moderated demands.

Genuine collective bargaining, in consonance with the essential principles of a democratic state, must reflect a spirit of give and take. It is obvious that it can grow sturdy and effective only where compromise is present. It must seek agreement with the minimum of mutual irritation. To this type of collective bargaining there is little alternative except harsh industrial struggle or a highly rigid prescription of industrial relationships by the state, under which both employers and employees would lose much of their present free decision.<sup>74</sup>

All these expressions of principle did little to provide unambiguous standards for future decision-making. Without a clear expression of governmental policy or a social consensus to support them, any concrete recommendations appeared to be merely the personal opinions of individual board members. It is not surprising, however, that universal norms were slow to emerge. The fundamental assumption of conciliation and collective bargaining was that the parties themselves were best able, through negotiation, to determine their own relationship. The terms and conditions of work were *ex hypothesi* not a matter of moral judgement, but of contract.

## VI

COMPULSORY CONCILIATION WAS, above all, a flexible institution. It could serve many different roles, depending on the objective of the government and

<sup>72</sup> *Labour Gazette* 44 (1944), 1500.

<sup>73</sup> *Labour Gazette* 44 (1944), 1359. In this instance, the employees' nominee was Bora Laskin, later Chief Justice of Canada.

<sup>74</sup> *Labour Gazette* 45 (1945), 48. See the employer's nominee's vigorous response, quoted above, p. 73.

the initiative of the board members (especially the chair). Most often, it promoted the mediation of disputes, the boards and officers striving, as Alexander Brady or Cecil A. Wright did, to find some workable compromise between the parties. When no such compromise emerged, however, or when from the first a board perceived itself to be essentially a judicial tribunal, conciliation boards did adjudicate the dispute, ruling on the justice of the parties' demands. Although these decisions seldom led directly to a settlement, they could serve to legitimize governmental pressure on the parties to make concessions, or serve as precedents in subsequent decisions. In addition, boards occasionally acted as administrative bodies, implementing, sometimes in a surreptitious manner, governmental policy (as in Ottawa's attempted manipulation of the Fairchild Aircraft board, or the promotion of wage guidelines through PC 7440). Finally, compulsory conciliation could be used as a mechanism of delay, merely postponing work stoppages.

From its inception, compulsory conciliation's chief purpose was the prevention of strikes. The most certain method of doing this was to get the parties to come to an agreement. Mediation, with its informal, confidential, probing method, was useful for finding the elusive compromise. Direct governmental pressure was sometimes applied as an aid to this tool, extracting concessions from reluctant parties. Adjudication could also promote agreements in several ways: the mere threat of a public report on the causes of the dispute could induce compromise; the report itself might have sufficient authority to be accepted; the award might serve as the justification for more forceful governmental intervention; or the adjudicators' solution could serve to reinforce one party's position in subsequent negotiations. In the absence of strong governmental action, however, the attainment of an agreement without a strike always depended on the possibility of compromise. If the parties were so committed to their particular positions that neither was prepared to budge, conciliation would be unavailing; the threat or use of economic force alone would solve the difficulty. The statutory form of compulsory conciliation reflected these considerations. The regime postponed strikes in order to allow third-party intervention a chance to succeed. There was ample provision for conciliation by both officers and boards. Only if a negotiated settlement could not be reached would a board make a formal recommendation. Adjudication served as the method of last resort to induce a settlement; if it failed, the resolution of the difficulty was left to the threat or application of economic coercion.

During World War II, however, the government departed from this formula. It wished to prevent all strikes, even those after the normal conciliation procedures, yet at the same time it was reluctant to compel concessions from unwilling parties or legislate standards of industrial conduct. It therefore attempted to prevent, or at least delay strikes by extending the conciliation process beyond the adjudicative stage. This had several consequences: (1) with no finality to the conciliation process, the pressure to make concessions was reduced: as a result, negotiations tended to stretch out over long periods; (2) the



authority of board decisions was undermined, the reports coming to be treated merely as additional opinions on what might be suitable settlements; (3) disputes lacking the necessary prerequisite of conciliation — the possibility of compromise — remained subject to a conciliatory process long after it became clear that the disagreements would only be resolved by job action; (4) Ottawa's attempts to postpone strikes through conciliation prompted demands that it intervene more forcefully to remove the cause of disputes; although the government was thus seen as the body responsible for attaining industrial peace, it refused to take the steps necessary to prevent strikes; (5) the promotion of delay when there was no reasonable hope of attaining a compromise prejudiced the interests of employees: the employer had more time to prepare for the strike, and during the negotiations, the employees remained subject to the old working conditions.

From these resulted the malaise of compulsory conciliation: the sense of acute frustration caused by prolonged involvement in a process whose aim was achieving settlements, but whose participants — government, management, and labour — all lacked the will to do what was necessary to avert strikes. It is true that frustration is, to a certain extent, endemic to any labour dispute that approaches the stage of a work stoppage; no one wants a strike or lockout, yet it is often hard to make the compromises necessary to secure an agreement. Indeed, in collective bargaining generally there exists a tension between the sometimes violently-opposing attitudes of the parties, and the need to achieve a *modus vivendi* for mutual benefit. Ordinarily, this tension is, when it becomes too great, relieved by the catharsis of a strike. During World War II, Ottawa's strong opposition to work stoppages restricted this method of release, generating more frustration, and focusing dissatisfaction on the government itself.

*This paper is the first fruit of a research project initiated by Chief Judge Alan B. Gold of the Quebec Provincial Court in spring 1982, while he was on sabbatical leave from that court and serving as Scholar-in-Residence at the Faculty of Law, McGill University. (He has since been appointed Chief Justice of the Quebec Superior Court.) The ultimate aim of this larger project is the writing of a history of compulsory conciliation in Canada during the first 50 years of this century.*

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