

## What's Law Got To Do With It? The IWA and the Politics of State Power in British Columbia, 1935-1939

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Article abstract

In THE wake of President Roosevelt's New Deal for labour in the US, the International Woodworkers of America (IWA) experienced tremendous growth in Oregon and Washington. Fearing the arrival of the IWA in BC, the provincial government enacted the Industrial Conciliation and Arbitration (ICA) Act as a means to stanch the growth of militant industrial unionism. It was at the company town of BlubberBay, BC, that the ICA Act was tested for the first time as capital, labour, and the state struggled over the pith and substance of the new legislation. Drawing on the insights of critical legal theorists and neo-institutionalists, this article examines the multiple ways in which the state, law, and legal process shaped both the formation of the IWA and the nature of class struggle itself. In particular, it illustrates how the expansion of formal collective bargaining, as well as the age-old legal remedies available at common and criminal law, worked together to set limits and erect boundaries on collective working-class action and, in the end, forge a "responsible union."

## ARTICLES

### What's Law Got To Do With It? The IWA and the Politics of State Power in British Columbia, 1935-1939

Andrew Parnaby

FROM HIS DOWNTOWN VICTORIA office, the minister of labour for British Columbia, George S. Pearson, watched the events unfolding south of the border with great unease. It was 1937 and across the United States and Canada the Congress of Industrial Organizations (CIO) was on the move, organizing the "unskilled" workers who, until then, had been ignored by the exclusivist and more conservative American Federation of Labor (AFL). What concerned Pearson most was the success of the CIO-affiliated International Woodworkers of America (IWA) in the woods of Oregon and Washington. Since its split from AFL-stalwart the United Brotherhood of Carpenters and Joiners (UBCJ) in 1936 the renegade IWA had successfully organized thousands of loggers, shingle workers, and mill hands, many of them former UBCJ members.<sup>1</sup> Buoyed by its success in the Pacific Northwest, by the fall of 1937 the IWA was poised to push its struggle into British Columbia. It was with this situation in mind that Pearson wrote to the premier of BC, T.D. "Duff"

<sup>1</sup>See Irving Abella's chapter on the woodworkers in *Nationalism, Communism, and Canadian Labour: The CIO, the Communist Party, and the Canadian Congress of Labour, 1935-1956* (Toronto 1973); Jerry Lembcke and William Tattam, *One Union in Wood: A Political History of the International Woodworkers of America* (Vancouver 1984); Bryan D. Palmer, *Working-Class Experience: Rethinking the History of Canadian Labour, 1880-1991* (Toronto 1992), 292-93; Jerry Lembcke, "The International Woodworkers of America in British Columbia, 1942-1951," *Labour/Le Travailleur*, 6 (Autumn 1980), 113-148.

Andrew Parnaby, "What's Law Got To Do With It? The IWA and the Politics of State Power in British Columbia, 1935-1939," *Labour/Le Travail*, 44 (Fall 1999), 9-45.

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Pattullo, and expressed his concern with the government's failure to prepare for the inevitable arrival of the IWA-CIO. Although labour relations in the province were "fairly peaceful," he told the premier, "the machinery we have ... for dealing with labour disputes is practically nil."<sup>2</sup> There was, of course, the Industrial Disputes Investigation Act, a federal law enacted in 1907; but, in Pearson's opinion, since it only applied to essential services and did not provide for binding arbitration, it was simply inadequate.<sup>3</sup> Without question, the events unfolding in the United States demonstrated to him the need for a more comprehensive, modernized, industrial relations policy, one that was capable of meeting the "threat" of the "radical" labour movement.<sup>4</sup>

To political pundits of the time, Pearson's bold legislative designs were perhaps not a complete surprise. He was, after all, regarded by some as the strongest advocate of social reform in a Liberal government that once promised the people of British Columbia the security of a "little New Deal."<sup>5</sup> And the minister was certainly not alone in this legislative endeavour; in other provinces (Nova Scotia) and other countries (New Zealand and the United States) the state was already charting new territory in the area of labour relations. Indeed, just two years earlier President Roosevelt had signed the National Labor Relations Act, more commonly referred to as the Wagner Act after its chief architect, a law that granted workers the right to organize and bargain collectively, identified unfair labour practices, and created the National Labor Relations Board (NLRB) to manage industrial disputes.<sup>6</sup> But unlike its American counterpart which, at least in the short term, redressed the immense imbalance of power that existed between capital and labour, Pearson's statute, the Industrial Conciliation and Arbitration (ICA) Act, sought a far more limited and coercive objective: to place significant restrictions on collective working-class political action and, on a wider canvas, to stifle the growth of militant industrial unionism in BC.

<sup>2</sup>British Columbia Archives and Records Services (BCARS), Premier's Papers (PP), GR 1222, Box 142, File 142-7, Pearson to Pattullo, 30 September 1937.

<sup>3</sup>BCARS, PP, GR 1222, Box 142, File 142-7, Pearson to Pattullo, 30 September 1937. For more on the IDIA and the creation of federal industrial relations policy in general see William M. Baker, "The Miners and the Mediator: The 1906 Lethbridge Strike and MacKenzie King," and Laurel Sefton MacDowell, "The Formation of the Canadian Industrial Relations System During World War Two," in Sefton MacDowell and Radforth, eds., *Canadian Working-Class History: Selected Readings* (Toronto 1992); Paul Craven, *An Impartial Umpire: Industrial Relations and the Canadian State, 1900-1911* (Toronto 1980).

<sup>4</sup>BCARS, PP, GR 1222, Box 142, File 142-5, Pearson to Pattullo, 24 September 1937.

<sup>5</sup>See Robin Fisher, *Duff Pattullo of British Columbia* (Toronto 1991), 309; Margaret Ormsby, "T. Dufferin Pattullo and the little New Deal," *Canadian Historical Review*, (December 1962), 277-297.

<sup>6</sup>Melvyn Dubofsky, *The State and Labor in Modern America* (Chapel Hill 1994), 111-119; Christopher Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960* (Cambridge 1985), 99-102.

The making of this new legal regime did not go uncontested. It was at the small company town of Blubber Bay, located on the northern tip of Texada Island between Vancouver Island and the BC mainland (figure 1), that the organizational muscle of the IWA and the state's machinery of dispute resolution met for the first time. It was there, through negotiation and struggle, that the Communist-led union attempted to organize the lime mine and sawmill workers of the Pacific Lime Company and, in the process, refashion both the legal form and content of the Act in line with its own conception of a more socialist society; a society where, at the very least, workers could organize and bargain collectively through organizations of their own choosing, exercise the unconditional right to strike, and mobilize without fear of employer intimidation. It was a "state-centred" approach to organization that was honed south of the border during the heady days of the New Deal, and it came to BC in 1937-38 with a proven track record. Indeed, the IWA had successfully exploited the legislative protection afforded by the NLRB on many occasions in Oregon and Washington.<sup>7</sup> But in BC, both the state and the union saw collective bargaining and the legal process as a means to obtaining specific, though conflicting, political objectives: for the former, the maintenance of industrial peace and stability; for the latter, encouraged by its success in the US, the potential for "one union in wood." It is precisely this process, the transformation of the state in the area of industrial relations, the emergence of the IWA and its particular approach to organization, and the struggle in BC over the pith and substance of the new legislation, that is the focus of this discussion.

For labour and working-class historians, the history of the IWA is often held up as an example of the vicious and fractious nature of labour's Cold War, and for good reason. From the late 1930s to the early 1950s, communist and non-communist factions battled for control of the union at the local, district, and international level. It was a protracted and bitter fight in which the combined forces of the Co-operative Commonwealth Federation (CCF), conservative trade unionists, and other "Cold War warriors" successfully ousted the red-dominated BC Coast District Council in 1948. Weakened, demoralized, and somewhat pacified it returned to the mainstream fold in 1950.<sup>8</sup> But the political temperament and direction of the IWA was defined by other forces as well. Indeed, as the period under study here reveals, the state, law, and legal process played a decisive role in shaping the formation of the union and the texture of class struggle itself. Drawing on the insights of neo-institutionalists and critical legal theorists, this analysis of the IWA's organizational campaign in the Pacific Northwest and the conflict at Blubber Bay provides

<sup>7</sup>The quotation is taken from an insightful, but unpublished PhD thesis by Stephen Gray entitled "Woodworkers and Legitimacy: The IWA in Canada, 1937-1957," (PhD Thesis, Simon Fraser University 1989), see the introduction.

<sup>8</sup>See Palmer *Working-Class Experience* for an overview, 292-293, and Lembecke, "The International Woodworkers of America in British Columbia," 113-148, for an in depth analysis of these battles.

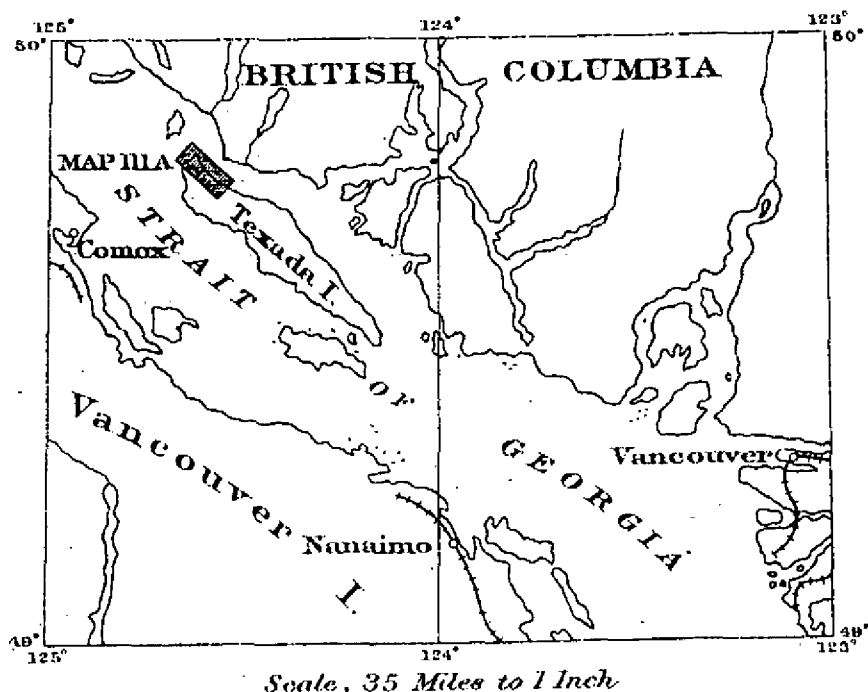


Figure 1. Map taken from the Geological Survey (1915). Blubber Bay is located on the northern tip of Texada Island between Vancouver Island and the BC mainland.

a lens through which to view the complex dimensions of state power.<sup>9</sup> Of interest are the ways in which the expansion of formal collective bargaining structured the actions of working people during a period of overt class conflict, what they thought of as just and inevitable, and how the law ordered their political choices and expectations. In the end, the experience of the IWA from 1935 to 1939 reveals the

<sup>9</sup>For a critical introduction to the field see Raymond L. Hogler "Critical Legal Studies and Industrial Relations Research: A Review Essay," *Industrial Relations Law Journal*, 9 (1987), 148-161 and James Naylor, "Bringing Which State Back In?," *Labour/Le Travail*, 36 (Fall 1995), 317-328. Here is just a selection of the material that has influenced this study: Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in Evans et al., eds., *Bringing the State Back In* (New York 1978), 3-37; Tomlins, *The State and the Unions*; William Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge 1991); Karen Orren, *Belated Feudalism* (New York 1991); Karl Klare, "Labor Law as Ideology: Toward a New Historiography of Collective Bargaining Law," *Industrial Relations Law Journal*, 4 (1981), 450-482; Peter Goodrich, "Law and Language: An Historical and Critical Introduction," *Journal of Law and Society*, 11 (Summer 1984), 173-207; E.P. Thompson, *Whigs and Hunters* (New York 1975).

state's enormous ability to legitimize its role as arbiter of class interests, nurture consent for the rule of law and manage what it perceives to be opposition to the existing social order.

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For communist members of British Columbia's Lumber Workers Industrial Union (LWIU), as for communists the world over, 1935 was an important year. At the Seventh Party Congress, the Communist International — the centre of the world-wide revolutionary movement — called upon its comrades to abandon the "isolationist" and "ultra-leftist" tactics of the so-called Third Period, and to build broad alliances with more moderate working-class allies to fight fascism in Europe and abroad. As a result of this shift in political orientation, former rivals — the "social fascists" and "labor fakirs" — were to be courted, not shunned, and calls for the demise of capitalism, once the hallmark of red rhetoric, were now muted. Communists were still committed to leading the working class to socialism, but given the need to forge new political relationships, they "now moderated the means by which this would be achieved."<sup>10</sup> On the ground, this meant working cheek by jowl with their former rivals, the United Brotherhood of Carpenters and Joiners. Thus, shortly after Moscow's announcement, the two unions merged, the LWIU joining its American counterparts in Washington and Oregon which had voted to return to the mainstream fold a year before. The LWIU was renamed the Lumber and Sawmill Workers Union (LSWU).<sup>11</sup>

But like the prickly relationship that existed between the CIO and the AFL, relations between the LSWU and the UBCJ were likewise tense and volatile, rooted in the age-old traditions and class politics that separated industrial from pure-and-simple unionism.<sup>12</sup> Not surprisingly, then, when the AFL expelled the CIO from its ranks, the tenuous alliance between the two woodworkers' unions dissolved altogether. Buoyed by the tremendous momentum of the CIO and the palpable "psychology of success" that gripped workers in both the US and Canada, delegates from ten district councils of the LSWU gathered in Portland, Oregon, to form the Federation of Woodworkers. Harold Pritchett, leader of the BC Coast District Council and one-time UBCJ member, was elected president of the new federation (figure 2). A year later representatives from the Federation of Woodworkers

<sup>10</sup>Norman Penner, *Canadian Communism: The Stalin Years and Beyond* (Toronto 1988), 144-145; for a discussion of the so-called Third Period see John Manley's, "Canadian Communists, Revolutionary Unionism, and the 'Third Period': The Workers' Unity League, 1929-1935," *Journal of the Canadian Historical Association*, Volume 5, 167-94.

<sup>11</sup>Ian Radforth, *Bushworkers and Bosses: Logging in Northern Ontario, 1900-1980* (Toronto 1987); Lembcke and Tattam, *One Union in Wood*, 30-38

<sup>12</sup>Few in the LSWU would forget the sell-out of the Northwest lumber strike of 1935 orchestrated by Abe Muir, an executive member of the UBCJ. See Lembcke and Tattam, *One Union in Wood*.



*Figure 2.* Portrait of the delegates to the second constitutional convention of the IWA held in Seattle in 1938. Harold Pritchett is on the far right of the photograph, about five rows from the back, standing between a man with a fedora and glasses and another with grey hair and a delegate's ribbon in his lapel. (UBCSC, HPIWA photo collection, oversized material, #BC 1529-33. Special thanks to George Brandak and the staff at UBCSC for locating this picture.)

convened in Tacoma and voted to join the movement to "organize the unorganized," renaming themselves the International Woodworkers of America. "Successful organization is contagious," one IWA supporter observed. "The CIO could not have confined itself to one or two industries, even if it wanted to."<sup>13</sup> With this development, the stage was set for a vicious feud between the two rival unions, a struggle in which the New Deal state would play a decisive role.

It was not long after the IWA's founding convention that the district councils in Oregon and Washington found themselves immersed in a violent and debilitating series of jurisdictional conflicts with the UBCJ.<sup>14</sup> In Portland, shortly after workers at many of the city's major sawmills voted to affiliate with the renegade industrial union, the AFL orchestrated a massive product boycott to turn back the organizational tide. When the campaign eventually shut down several operations, Pritchett turned to the National Labor Relations Board for help. Although the IWA was unable to orchestrate a clean sweep of Portland's sawmills, Pritchett and the international leadership recognized the crucial importance of the state in their drive to unionize the lumber industry. Though its proceedings were costly and bureaucratic, they were, in the end, less draining for the young International than protracted battles in the field with recalcitrant employers and the well-funded, well-organized AFL. At the first constitutional convention of the IWA, Pritchett railed against the "starvation policies" of the AFL in Oregon; but as the early successes of the union under the auspices of the NLRB indicated, the way out of this jurisdictional slugfest was clear. "Our problem in the field of labor is to organize, and, having become organized, to demand the right of collective bargaining as the law provides and then educate our people to the true meaning and value of contracts," he announced.<sup>15</sup> The ability of the IWA to garner the "respect and admiration" of working people hinged on its ability to provide them with a "better deal." With this rhetorical nod to Roosevelt, Pritchett considered the NLRB indispensable to achieving this objective. Indeed, it was the heart and lungs of his political programme: "We cannot get it without collective bargaining. That is why we are creating our International."<sup>16</sup>

Pritchett's emphasis on the legitimacy of the IWA's political agenda and the importance of bargaining in good faith with lumber operators was as symbolic as it was strategic. During this period of great CIO success in the US and, increasingly,

<sup>13</sup>"The CIO Comes of Age," *BC Lumber Worker*, 17 March 1937.

<sup>14</sup>Local teamsters who refused to haul the tainted IWA lumber overturned trucks driven by IWA men and their sympathizers. As well, small rivers which carried raw logs to the mills were clogged with boats piloted by AFL sailors, workers' homes were stoned, a pro-CIO factory was set ablaze, and men on both sides of the line were beaten up. See Galenson, *The CIO Challenge*, 387-388; Lembcke and Tattam, *One Union in Wood*, 56.

<sup>15</sup>University of British Columbia — Special Collections (UBCSC), Harold Pritchett — IWA Papers (HPIWA), Addendum #1, Oversized Box #1, Report of the International President, Harold J. Pritchett to the First Constitutional Convention [of the IWA], 3 December 1937.

<sup>16</sup>UBCSC, HPIWA, Addendum #1, Oversized Box #1, Report of the International President, Harold J. Pritchett to the First Constitutional Convention [of the IWA], 3 December 1937.



in Canada too, state and provincial governments, employers, and rival unions frequently resorted to red-baiting to counter the movement towards industrial unionism. As well, the House Committee on Un-American Activities was becoming increasingly interested in Pritchett's political affiliations. In this regard, to organize under the auspices of the NLRB helped to solve two pressing problems: it assisted the district councils in handling the ongoing conflict with the carpenters' union and it demonstrated the legal, as opposed to the "subversive," nature of the IWA's strategy. Pritchett was under no illusions that the NLRB would completely silence his most vociferous critics. But at the very least, he thought, it would pressure obstinate employers to bargain in good faith. "We will expect the operators who enter into any contracts to live up to their part," he told his comrades. "This requires of us good generalship which has not always been displayed in the past. Failure on our part to use good tactics has always been used by the operators in order to win public support."<sup>17</sup>

Success, therefore, necessitated an understanding of the legality of collective bargaining and the ability to present well-documented and effectively argued cases before the labour board. By the first constitutional convention, the international leadership had a permanent staff of six and a legal department consisting of twelve attorneys whose primary responsibility was assisting local unions in filing their grievances with the NLRB — and they were, in many cases, successful in their endeavours.<sup>18</sup> Pritchett understood that the creation of a bureaucracy required more money. However, the importance of the lawyers' work and the "magnitude of the problems" that faced such "big organizations" justified the additional expenses, even if it meant increasing union dues. "We can't get something for nothing," he thundered. Labour bureaucrats — the "fat boys" of the trade union movement — once reviled by communists for their intimate connections with the state, were now considered indispensable to the success of "big organizations." Indeed, the immense importance of the law and legal know-how to the successful unionization of the lumber industry was captured by one delegate who remarked, well in advance of fashionable French social theorists, that "[k]nowledge is power .... We must not be caught dreaming our way through situations. We must read and learn and approach our problems with knowledge."<sup>19</sup>

<sup>17</sup>UBCSC, HPIWA, Addendum #1, Oversized Box #1, Report of the International President, Harold J. Pritchett to the First Constitutional Convention [of the IWA], 3 December 1937.

<sup>18</sup>UBCSC, HPIWA, Addendum #1, Oversized Box #1, Report of the International President, Harold J. Pritchett to the First Constitutional Convention [of the IWA], 3 December 1937. Pritchett was particularly pleased with the capabilities of the new legal department, remarking at the convention that "in the short period of six or seven weeks that this department has been established within our International, we have been able to give immediate assistance in 16 cases involving injunction, restraining orders, attachments of Union treasuries by the AFL leadership, as well as a large number of cases coming directly under the Wagner Act."

<sup>19</sup>UBCSC, HPIWA, Addendum #1, Oversized Box #1, Report of the International President, Harold J. Pritchett to the First Constitutional Convention [of the IWA], 3 December 1937.

The tactical ground that the international leadership was staking out at this time spoke to the new regime of industrial relations ushered in by the Wagner Act. Indeed, the NLRB brought about a drastic restructuring of employment relations — new disciplines, new incentives, and a new understanding of trade unionism. In navigating the murky waters of secession, the international leadership sought the protection of the labour board against the determined efforts of the AFL and lumber operators to crush the expansion of the CIO. It was a paradoxical political tactic. The power of employers and their allies to resist industrial unionism revealed the IWA's own inability to extend the "ambit of collective bargaining unaided."<sup>20</sup> However, as Christopher Tomlins has observed, by asking for state intervention to overcome these obstacles, it was by necessity becoming intimately involved with a power "over which [it] historically enjoyed little control."<sup>21</sup> But for union leaders, with a US membership fast approaching 100,000, the necessity of the state to the union's success was indisputable. Thus, as the government of British Columbia signalled its intention to introduce its own version of the Wagner Act, the IWA prepared to push its organizational campaign onto Canadian soil. Unlike President Roosevelt, however, Premier Pattullo (and the minister of labour) was not about to cede any organizational or political ground to the IWA.

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While the Oregon and Washington district councils forged ahead, in British Columbia the drive to organize the province's estimated 25,000 lumber workers was at a virtual standstill — and the obstacles facing the fledgling organization were legion. The industry blacklist and employer-controlled hiring halls persisted, camp bosses and managers intimidated union sympathizers and activists with relative impunity, and the expected windfall of resources from the new International failed to materialize.<sup>22</sup> As a result, the union's ability to communicate with sympathetic loggers in the camps was severely limited, a problem compounded by the transient nature of logging employment itself. "The problem is trying to keep old members," one delegate to the first district convention remarked, "we cannot get in touch with them if we have no delegates in camps."<sup>23</sup> The itinerancy of lumber workers was rooted in the early days of the industry, when they often tramped from camp to camp looking for work, or quit their jobs, went on strike, and picketed when and where it was needed — often before a union was even aware that there

<sup>20</sup>Tomlins, *State and the Unions*, 95.

<sup>21</sup>Tomlins, *State and the Unions*, 95.

<sup>22</sup>UBCSC, HPIWA, Box 1, File 8, *Minutes of the Annual Convention, BC Coast District Council*, 10/11 July 1937; *Minutes of Special Meeting of Executive Committee, BC Coast District Council*, 1 August 1937; Box 4, File 21, *Minutes of Special Meeting, BC Coast District Council*, 1/2 November 1937.

<sup>23</sup>UBCSC, HPIWA, Box 4, File 21, *Minutes of Special Meeting, BC Coast District Council*, 1/2 November 1937.

was a problem.<sup>24</sup> Employers usually responded to such collective and direct action by dismissing entire crews and hiring replacement workers through their own hiring halls.<sup>25</sup> Although the launch of the *Laur Wayne*, flagship of the "Loggers' Navy," provided the BC Coast District Council with a more effective means of contacting the men in more isolated northern climes, without a sustained union presence in the camps, its success was somewhat limited (figure 3).

The new district president, John Brown, was well aware of the obstacles facing his 24 organizers. In an address to the district convention he tried to put the best face on a disheartening situation. "[H]aving no Wagner Act, having no sympathetic President in this Dominion, and having a very hostile set of employers, ... in spite of all this we have made progress," he said. But not much — and, in his opinion, it was the different legal environment that existed in BC that was responsible, to a large degree, for the union's dismal performance. Greater legislative protection, then, was crucial. Indeed, it would enable the union to take on the "hostile set of employers" and to harness lumber workers' independent instincts, objectives which required more resources and discipline than the LWIU had been able to provide during the so-called revolutionary Third Period. But success in this endeavour would require, among other things, some fancy political footwork. Despite its affiliation with the CIO in the US, the BC Coast District Council needed to stay close to the Trades and Labour Congress (TLC) of Canada, the AFL's northern counterpart, and its campaign for trade union rights or risk isolating itself from the recognized trade union movement. Indeed, unity with the TLC was both the logic of the Popular Front period and part of the IWA's larger agenda of securing a Canadian Wagner Act.<sup>26</sup> This was the irony of organizing during this time. As one scholar has noted, in spite of everything communists had advocated, they were now defending the "liberal democratic state" and forging linkages with those once considered impediments to socialism.<sup>27</sup>

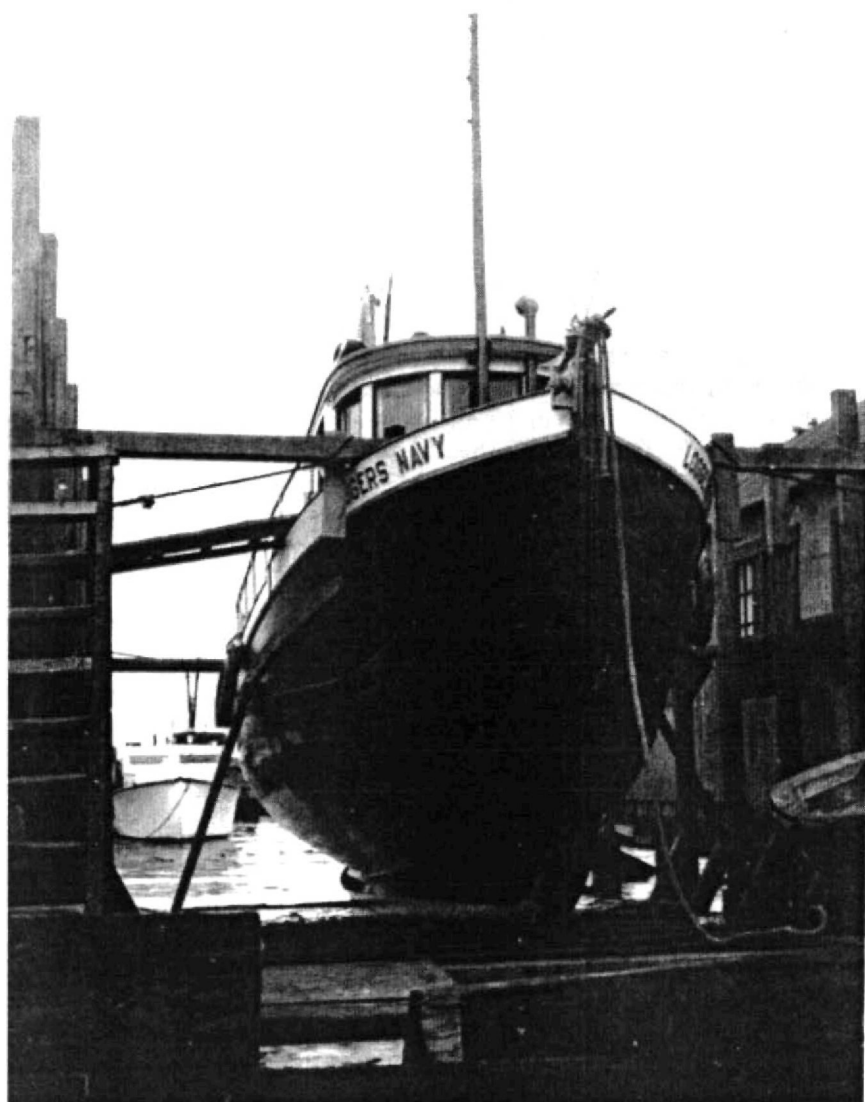
While the IWA battled the combined forces of the UBCJ and the AFL in the US and those at the helm of the BC Coast District Council plotted their tactical course, Minister of Labour George S. Pearson and the provincial bureaucracy set about creating a new labour relations code. Like the province's premier, indeed, like many of his "government generation," Pearson possessed an unwavering belief in the potent power of the state to mitigate the worst excesses of capitalism. This was the leitmotif of the Liberal government. "Clearly the time had come for a provincial government to turn from the easy-going frontier politics of roads and bridges to the politics of social welfare in order to retain the confidence of the people," Harry

<sup>24</sup> Mark Leier, *Where the Fraser River Flows: The Industrial Workers of the World in British Columbia* (Vancouver 1990).

<sup>25</sup> Gray, "Woodworkers and Legitimacy," 28.

<sup>26</sup> UBCSC, HPIWA, Box 1, File 8, Minutes of Special Meeting of Executive Committee, BC Coast District Council, 1 August 1937.

<sup>27</sup> Penner, *Canadian Communism*, 130.



*Figure 3.* Undated photo of the “Logger’s Navy.” (UBCSC, HPIWA photo collection, #BC 1902-73a).

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Cassidy, Pattullo's director of social welfare and former member of the League for Social Reconstruction, remarked shortly after the 1933 election.<sup>28</sup> And the government did, over the course of its first term in office, work hard to achieve this end. In the area of labour relations, for example, it established a new minimum wage for men and women, regulated the apprenticeship system, limited hours of work, and reorganized the workers' compensation system.<sup>29</sup> But by the re-election campaign of 1937, the reformist zeal that animated Pattullo's first term in power had largely disappeared, his most ambitious objectives such as large-scale public works projects and health insurance dashed on the rocks of Ottawa's fiscal conservatism.<sup>30</sup> Yet despite this marked shift in political orientation, Pattullo reappointed Pearson, a strong advocate of labour legislation, as minister of labour. Against the backdrop of the CIO's spectacular rise and the emergence of the IWA, as well as a spirited campaign led by the combined forces of the mainstream labour movement and the CCF for trade union rights, he introduced the Industrial Conciliation and Arbitration Act to the legislature in November, almost a year ahead of schedule.

Under the ICA Act, all disputes between workers and their employers that threatened to disturb the industrial peace were subject to compulsory conciliation and arbitration proceedings. If the government-appointed conciliation commissioner was unsuccessful in bringing about a resolution, the dispute would be referred to an arbitration board consisting of a representative of the workers, employers, and the state. The arbitration board was to function like any "Judge of the Supreme Court," with the power to summon witnesses and conduct extensive inquiries. Unlike the Supreme Court, however, the arbitration board was not bound by conventional rules governing the admissibility of evidence: "The Board may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal or not." Nor were its proceedings to be deemed "invalid by reason of any defect of form or any technical irregularity." In the event that the disputants were not satisfied with the arbitration board's decision and strike action appeared imminent, they were required to provide the department of labour with fourteen days notice before they were legally able to do so.<sup>31</sup>

<sup>28</sup> Allan Irving, "The Development of a Provincial Welfare State: British Columbia, 1900-1939," in Moscovitch and Albert, eds., *The Benevolent State: The Growth of Welfare in Canada* (Toronto 1987), 155-175; Doug Owram, *The Government Generation* (Toronto 1986), 143, 309-310; Fisher, *Duff Pattullo*, 274. The quote is from Irving, 165.

<sup>29</sup> BCARS, Thomas Dufferin Pattullo Papers (TDPP), Add. Mss 3, Volume 75, File 11, *Memorandum from Department of Labour to Premier's Office*, 26 March 1935. For an overview of labour legislation in BC before 1935 see Harold Fabian Underhill, "Labor Legislation in British Columbia," (PhD thesis, University of California, 1936).

<sup>30</sup> Jean Barman, *The West Beyond the West: A History of British Columbia* (Toronto 1991), 257-260; Paul Phillips, *No Power Greater: A Century of Labour In British Columbia* (Vancouver 1967), 115-116; Fisher, *Duff Pattullo*, 298-300.

<sup>31</sup> All references to the ICA Act are taken from the "Report of the Deputy Minister of Labour, 1937," *BC Sessional Papers* (1938), S71-S77.

For Pearson, the preservation of industrial peace pivoted on the notion of "responsible" and "irresponsible" unionism. "There is a wrong way and a right way to use the right to organize," he told the legislature. "There [has] been evidence in BC of men attempting to use that right in a manner which brought distress and hardship."<sup>32</sup> Pearson understood that compulsory conciliation and arbitration would not solve the strike question completely. The legislative coup was to make it all but impossible for the "Communistic elements" to gain a foothold in BC to begin with. Thus, in addition to the "machinery" of conciliation and arbitration, a metaphor which illuminates Pearson's liberal belief in the state's impartiality, the ICA Act granted workers the right to organize and bargain collectively while at the same time upholding the legality of non-union, employee "organizations." Under section one of the Act, "organizations" were defined as "any ... association of employees formed for the purposes of regulating relations between employers and employees" as such, may or may not be a "trade-union." Section five, the clause that defined "collective bargaining," was equally evasive, failing to make specific reference to unions at all.<sup>33</sup> It was this ambiguity that gave employers the legal leeway to avoid negotiating with militant unions.<sup>34</sup> According to Pattullo, this was precisely the objective of the new statute. "The Minister [of Labour] has taken the position that while employees have the right to name individuals who are not employees as their representatives, they may not name an outside union as their representative, though the individuals may be officials of such," he wrote later that year.<sup>35</sup> Whereas the Wagner Act was drafted with the express purpose of righting an imbalance of power in the workplace which had shifted in favour of employers during the Depression, the intent of the ICA Act was clearly far more limited.

The writing of section five came at the behest of a strong employer lobby that was launched during the weeks between the first and final reading of the bill. In early December 1937, Wendall B. Farris, prominent Vancouver lawyer and Liberal Party functionary, wrote to the minister of labour informing him that a delegation of prominent employers had met with the premier to discuss the new labour code, and that the amendments to section five had finally been agreed upon. "I have now had the opportunity of discussing the matter with a number of the group," he told Pearson. "I believe they are beginning to realize the wisdom on your part of introducing the act." In terms of section five, he continued, "my advice to my clients is that the act as now drawn is in their best interests."<sup>36</sup> Indeed. Though this version of section five was far more ambiguous than earlier drafts of the statute that restricted executive union positions to British subjects and threatened a union with

<sup>32</sup>*Vancouver Daily Province*, 9 December 1937.

<sup>33</sup>"Report of the Deputy Minister of Labour, 1937," *BC Sessional Papers* (1938), S71-S77.

<sup>34</sup>See the commentary in *BC Lumber Worker*, 15 December 1937.

<sup>35</sup>BCARS, PP, GR 1222, Box 142, File 6, Pattullo to A.A. Dysart [Premier of New Brunswick], 19 February 1938.

<sup>36</sup>BCARS, PP, GR 1222, Box 142, File 7, Wendall B. Farris to Minister of Labour, 10 December 1937.

de-certification if its rank and file was composed of more than 40 per cent "aliens," for Pearson, the message to union activists was clear: work hard, bargain in good faith, and do not dare disturb the industrial peace.<sup>37</sup> It was a position rooted in the unwavering assumption that it was only irresponsible unions, especially those led by communists, not bad employers, that were capable of fomenting industrial strife.

Less than two weeks after it was given first reading, the ICA Act became law. Percy Bengough, secretary of the Vancouver, New Westminster, and District Trades and Labour Council and vice-president of the TLC, was incensed with the government's move to make conciliation and arbitration compulsory. In a letter to the premier he argued that compulsory anything represented an unwarranted encroachment by the state on the affairs of trade unions, a move that would eliminate strike action and force working people to seek change through the ballot box and not the labour movement. "Had [the ICA Act] been drafted by the most rabid opponents of trades unionism, they could not have done better," he wrote. "The bill is an absolute negation of all the rights and privileges that trade unions have enjoyed throughout the [D]ominion of Canada for over 70 years ...."<sup>38</sup> On a deeper level, for Bengough, the legislation was an affront to the age-old traditions of craft unionism which held collective bargaining to be a private activity to be conducted by unions and employers. He certainly wanted government intervention, but only in so far as it provided trade unions with the legal protection necessary to safeguard "the interests and improve the conditions of workers in [BC]." Not only had the government failed to ban company unions, but with its compulsory provisions, the ICA Act turned collective bargaining into a public activity to be conducted and managed by institutions within a framework completely controlled by state agencies.<sup>39</sup> While Bengough's defense of trade union rights was certainly apt, with the expansion of the liberal state into the area of industrial relations, it was, too, a swan song for pure-and-simple collective bargaining.

Like Bengough, the leadership of the BC Coast District Council was also irate.<sup>40</sup> In the wake of the CIO's tremendous advance south of the border, the BC leadership of the IWA had pinned their hopes for an organizational breakthrough on the creation of a Canadian Wagner Act. However, the ICA Act owed few conceptual debts to Roosevelt. "[T]hey have the Wagner Act which makes it a penalty for the employer to refuse to bargain with the employees as an organized body; they have a national labor relations board which is definitely sympathetic to the trade union movement," local leader Hans Peterson observed. "We have a labour act which is so drafted in the interest of the employer in conjunction with the government to make the work

<sup>37</sup> BCARS, PP, GR 1222, Box 142, File 7, "Summary of Proposed 'Industrial Conciliation and Arbitration Act (British Columbia) 1937.'"

<sup>38</sup> BCARS, PP, GR 1222, Box 142, File 7, Bengough to Pattullo, 25 November 1937.

<sup>39</sup> See Tomlins, *State and the Unions*, 101.

<sup>40</sup> *BC Lumber Worker*, 1 December 1937.

of organization a hundred times more difficult."<sup>41</sup> Although the legislation did not protect trade unions, District Council President Brown advised local leaders to forge alliances with progressive organizations in order to struggle for its amendment. "[Following] the lines of least resistance" was no longer acceptable, he said. "Whenever we are sure of a majority vote in any operation, then we must crack down for an agreement ...."<sup>42</sup> Brown knew that such an opportunity would soon be at hand as a dispute between the lime mine and sawmill workers at Blubber Bay, Texada Island, and the Pacific Lime Company appeared imminent.

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Blubber Bay was a company town. It was very small, isolated, and dominated by a single employer — the Pacific Lime Company — which had come to the island in 1907 (figure 4). At the centre of its operations (and of the town) was the "glory hole," a massive open face mine approximately 250 feet deep that opened above thick, undulating beds of limestone.<sup>43</sup> With their pickaxes and shovels workers extracted raw lime from the earth, loading it into metal carts which travelled a network of rails and board walks to the massive kilns that overlooked the harbour (figures 5 and 6). On the surface the greyish-blue rock was roasted until it became a pure white lime — "99.5% Pure Lime" — which was later exported to the BC Lower Mainland, Washington, Oregon, and California.<sup>44</sup> Beside the quarry was a small sawmill which produced lumber for local markets, the remnants from which were used as fuel in the lime kilns.<sup>45</sup> After three decades of operating on the island, Pacific Lime employed 150 workers, 76 of which were Chinese and 74 were white.

Clustered around the company's operations and the government docks was the community itself. On one side of the harbour were houses that white workers, many of them married, or living with their families, rented from the company. Each one was like the other: peaked roof, wooden porch, picket fence, and small garden, so close to the sawmill and mine that the men could walk to work, so close that their families could hear the din of whirling saws and gears (figure 7).<sup>46</sup> Those without

<sup>41</sup>UBCSC, HPIWA, Box 1, File 9, J. Brown and H. Peterson to "Sir and Brother," 7 October 1938.

<sup>42</sup>UBCSC, HPIWA, Box 4, File 21, Minutes of District Council Meeting, 24 April 1938.

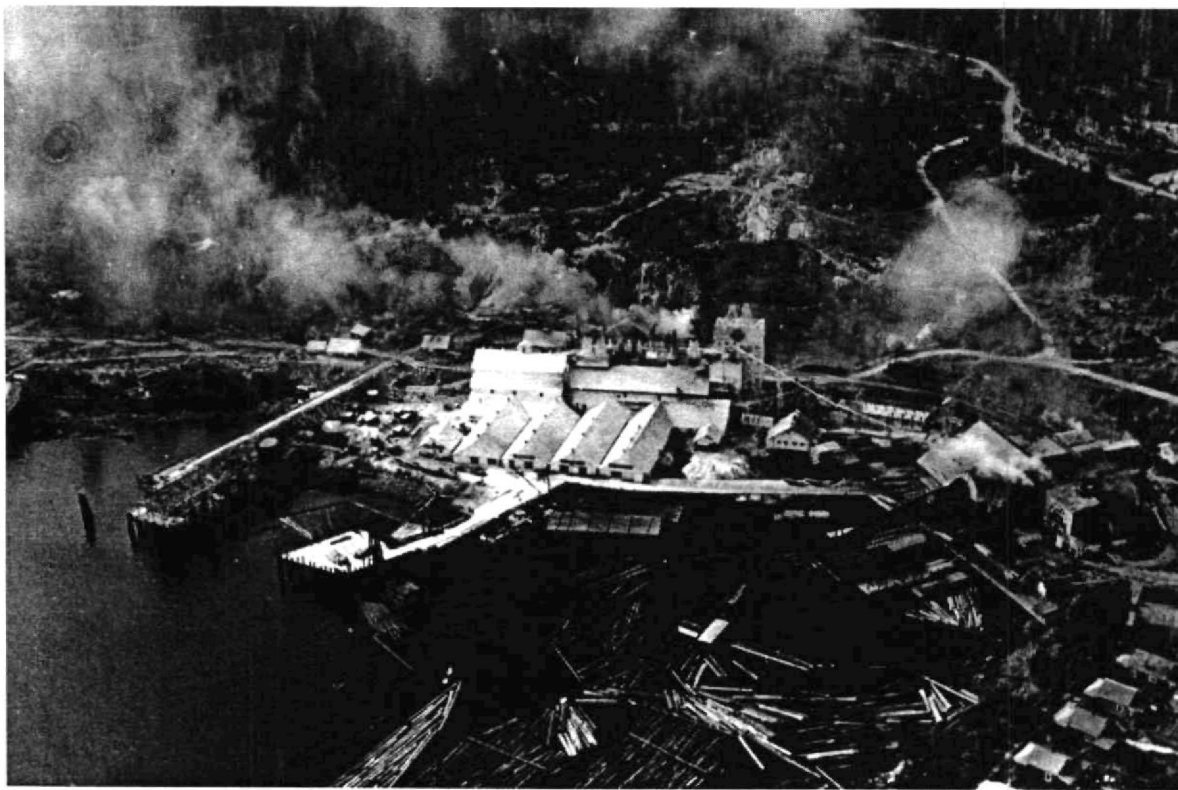
<sup>43</sup>R.C. Connell, *The Geological Survey of Canada* (Ottawa 1912), 18, 21, 96; Cecil May and the Texada Centennial Committee, *Texada* (n/a 1960), 4, 23, 35, 51.

<sup>44</sup>The facts here are taken from a Pacific Lime Company advertisement in the *BC Federationist*, 31 August 1917.

<sup>45</sup>BCARS, Audio and Visual Records Unit (AVRU), photographs #11631 A-4516 and #71459 H-1414; Myrtle Bergren, *Tough Timber* (Toronto 1966), 166; May, *Texada*, 4; *BC Lumber Worker*, 4 October 1938.

<sup>46</sup>BCARS, AVRU, photograph #11631 A-4516; #71461; #71460; UBCSC, John Stanton Papers (JSP), Box 6, File 12, F.S. DeGrey, Chief Sanitary Officer to Dr. H.E. Young, Provincial Health Officer, 24 June 1938.





*Figure 4.* The Pacific Lime Company operations at Blubber Bay. On the far left of the picture is the bunkhouse used by Chinese workers; in the lower right hand corner are the company houses used by white workers. Behind the main lime processing operation (centre) is the "glory hole" — the massive open pit lime mine. (BCARS, AVRU, #11631 A-4516)

the luxury of a company home lived in other island communities like Lime Kiln Bay and VanAnda. On the opposite side of the bay was the large two-storey bunkhouse where the single Chinese men lived.<sup>47</sup> Throughout the 1910s and 1920s the majority of the company's employees were Chinese, most of whom were hired through labour contractors after the completion of the Canadian Pacific Railway.<sup>48</sup> According to company records, 68 per cent of the Chinese workers at Blubber Bay had been there for more than 11 years (some as many as 30 years) whereas only 16 per cent of white employees had been there that long. For a modest rent, the company provided light, fuel, and water, though there were no showers for them to wash after a day in the pit and sanitation was often poor.<sup>49</sup> Many of the Chinese workers tended their own gardens and raised animals to supplement the limited selection of food at the company store. The company also built a tennis court and maintained roads and docks; the Post and Customs Office, bank, hotel, police station, jail, school house, and telephone and telegraph services were all housed in company buildings.<sup>50</sup> For many years, the only medical service available was that provided by company doctors.<sup>51</sup>

As a result, the ability of Pacific Lime to shape the social (and spatial) relations within the community was extraordinary and virtually uncontested. Its power rested on its dominance of the local labour market, its immense presence in the day-to-day lives of working people and their families, and its ability to respond to any opposition to its authority without fear of protracted worker resistance.<sup>52</sup> Although

<sup>47</sup>This geographical separation of white and Chinese workers mirrored the racial divisions which characterized some aspects of community life. For example, the banquets and dances which took place in VanAnda or Blubber Bay were usually attended by whites only. "It was not customary to include the Chinese," one Blubber Bay resident remarked. This notion was echoed by the Provincial Health Inspector during an inspection of the company's facilities: "[The Chinese] have their gardens, chickens etc. in their own way and [in] isolation." See UBCSC, JSP, Box 6, File 12, F.S. DeGrey, Chief Sanitary Officer to Dr. H.E. Young, Provincial Health Officer, 24 June 1938.

<sup>48</sup>Gillian Creese, "Class, Ethnicity, and Conflict: The Case of Chinese and Japanese Immigrants, 1880-1923," in Warburton and Coburn, eds., *Workers, Capital, and the State in British Columbia: Selected Readings* (Vancouver 1988), 61; see also "Exclusion or Solidarity? Vancouver Workers Confront the 'Oriental Problem'," in Radforth and MacDowell, eds., *Canadian Working-Class History: Selected Readings*, 311-333.

<sup>49</sup>BCARS, Attorney General Department (AGD), GR 1723, File 1-176-4, J.H. McMullin, Commissioner of BC Police to Secretary to the Honourable Attorney General, 23 August 1938. The letter indicates that the Pacific Lime Company provided water to the entire community of Blubber Bay; BCARS, Judge Charles McIntosh Papers (JCMP), Add. Mss 1174, Box 6, File 11, "In the matter of the Employees and Ex-Employees of the Pacific Lime Company Limited..." 11.

<sup>50</sup>BCARS, JCMP, Add. Mss 1174, Box 7, File 11, "Points available for meeting."

<sup>51</sup>May, *Texada*, 38.

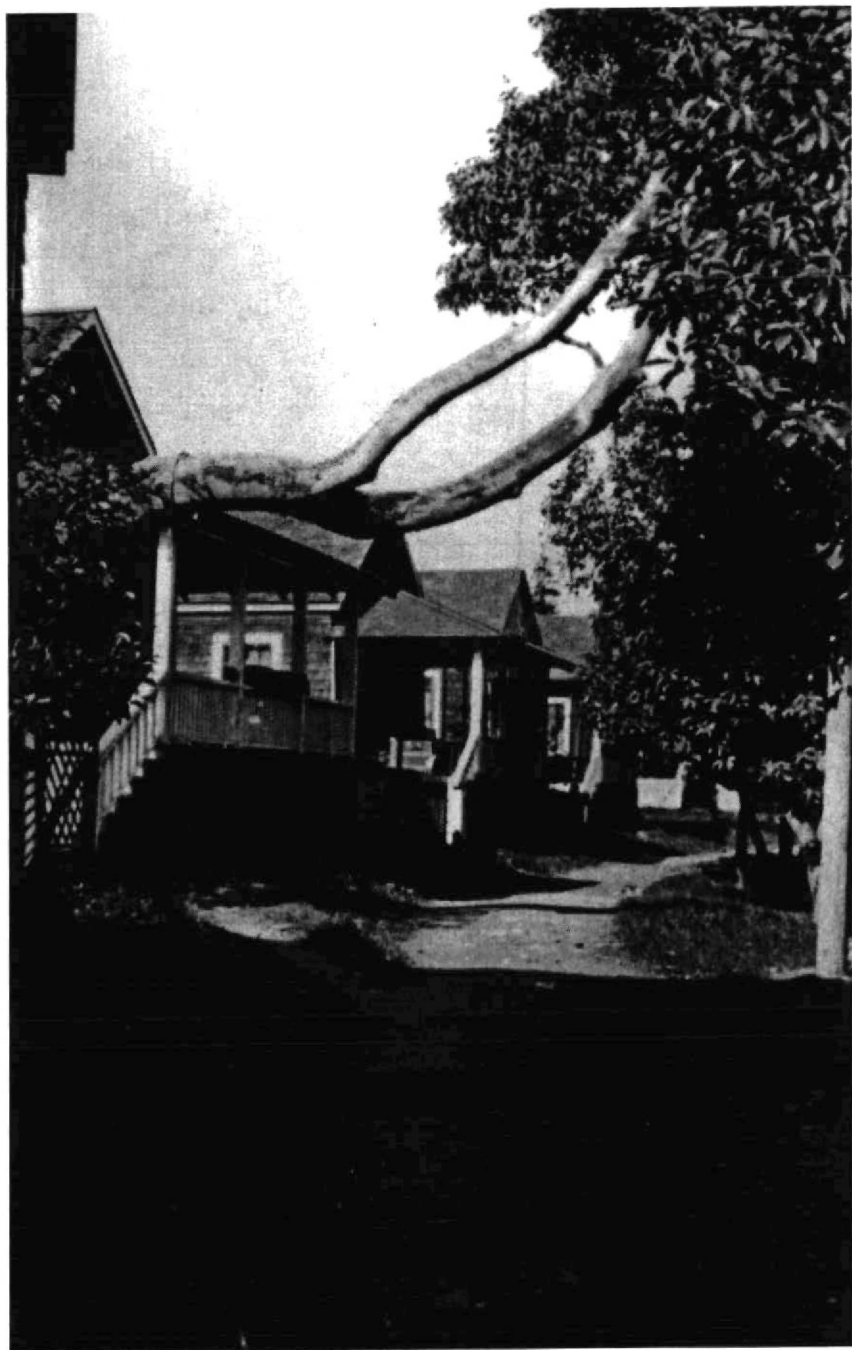
<sup>52</sup>David Frank, "Company Town/Labour Town: Local Government in the Cape Breton Coal Towns, 1917-1926," *Histoire Sociale/Social History* 14 (May-mai 1981), 178-179.



*Figure 5. Lime miners at Blubber Bay circa 1928. (BCARS, AVRU, #71459 H-1414).*



Figure 6. [T]he lime ate through everything. Men wore out a pair of leather soles in three weeks. The men in the quarries wore wooden shoes," one miner recalled later, "The lime worked between fingers and into armpits, burning wherever the skin was tender." (Bergren, *Tough Timber*, 116; BCARS, AVRU, #71459 H-1417.)



*Figure 7.* Company houses at Blubber Bay circa 1928. (BCARS, AVRU, #71461)

Texada Island had a history of worker activism — miners there were once associated with the Western Federation of Miners and loggers in the 1920s struck with the assistance of the Lumber Workers Industrial Union — between 1908 and 1936 there was but one (reported) incident of labour unrest at Blubber Bay, a short strike orchestrated by the Chinese workers in the 1920s.<sup>53</sup> But such peaceful labour relations came to an end in July 1937 when a group of workers organized under the banner of the fledgling LSWU to protest wage reductions instituted by the new company manager, P.J. Maw. Pacific Lime was in no mood to bargain with organized workers, let alone a union thought to be “Communist directed,” but after a six-week strike it conceded the workers’ wage demands and agreed to refrain from firing those who were involved with the union. Despite the agreement, however, relations between the workers and the company remained rocky, the subsequent months characterized by repeated work stoppages and allegations of discrimination against union men. Secure in the knowledge that the union enjoyed solid support from the workers at Blubber Bay, yet concerned that Pacific Lime was about to “force upon the employees a committee chosen by the Company,” Secretary Jack Hole requested that the Department of Labour send a conciliation commissioner to Blubber Bay under the auspices of the new ICA Act.<sup>54</sup> The “machinery” of collective bargaining was finally in motion; at stake were not simply work-related grievances as they pertained to Blubber Bay, but the legal definition of the ICA Act itself and, by extension, the organizational future of the IWA in British Columbia.

Over the course of the winter and early spring of 1938, the conciliation commissioners made several trips to the island, but they were unable to resolve the most vexing issues: union recognition and reinstatement of the men fired for union activity.<sup>55</sup> As a result, Pearson dispatched Judge J. Charles McIntosh to convene an arbitration board consisting of Pacific Lime official R.D. Williams and local unionist Frank Leigh. It held several meetings in Blubber Bay and Vancouver in April of that year. Unlike the informal activities carried out by the commissioners, the arbitration hearings were a highly structured affair in which company and union officials called witnesses, launched cross-examinations, and communicated in the formal, measured tones expected of such dignified proceedings. In its opening submission to the Arbitration Board the union laid bare its reading of the infamous

<sup>53</sup>The *BC Federationist*, 15 July 1921, lists a strike at Gillies Bay, Texada Island, that involved the LWIU, but it is unclear whether or not the union had a local there or not. The exact date of the Blubber Bay strike remains sketchy. Internal correspondence within the Department of Labour states that the strike occurred “sometime in 1919 or 1920,” however, the *BC Lumber Worker* claims that it took place in 1924. See BCARS, JCMP, Add.Mss 1174, Box 7, File 11, James Thomson, Conciliation Commissioner to George S. Pearson, Minister of Labour, 7 April 1938; *BC Lumber Worker*, 4 October 1938.

<sup>54</sup>The quotation is taken from the “Report of the Deputy Minister of Labour, 1938” in *BC Sessional Papers* (1939), P82 to P84.

<sup>55</sup>BCARS, JCMP, Add.Mss 1174, Box 7, File 11, W.H. McGeough to George S. Pearson, 1 April 1938.

section five. "[T]he time has passed when the question of association was debatable," Leigh began. "The employees of a corporation in association are a party in a contract with the employer for the purpose of selling their service and labour to the employer and are in no way an inferior party, for without them business, which the contract of employment makes possible, could not be operated." "For union leaders, the legality of trade unionism and collective bargaining was no longer open to question." It was both their "legal and moral" right as an equal partner in a labour contract. Thus, the only real issue to be considered was the extent and legitimacy of the union's support amongst the workers, and it, judging by the elections held by the conciliation commissioners, was beyond reproach. For the IWA, this was the new language of industrial relations ushered in, at least in part, by the ICA Act. It was certainly a class-conscious discourse, but with its emphasis on the dignity of labour, equality of classes, and gradualism of parliamentary procedures the union's position sounded more labourist than socialist: "It is not kindness the employees want, it is justice."<sup>56</sup>

Company officials, however, were not convinced that they were either legally or morally required to recognize the IWA as the sole bargaining representative of the workers. "This company agrees to bargain collectively with its own employees thru a Committee elected by the employees as a whole," they maintained, "it being understood that the company does not recognize any affiliation between its employees and any outside union." Having profited from three decades of labour quiescence, Pacific Lime was clearly not interested in negotiating with a union committee, let alone one associated with Communism. Wrapping itself in the Red Ensign, it declared that "the union is not a Canadian union but is controlled in the US by the CIO...."<sup>57</sup> Ironically, Pacific Lime itself was also based in the US, the majority of its shares held by the Niagara Alkali Company of New York.<sup>58</sup> In a further attempt to quash the union, counsel for the company, H.I. Bird, maintained that unionists had coerced the workers, especially the Chinese, to endorse the union's agenda, arguing that "the company is not satisfied that the Chinese have done anything of their own volition." It was a position reiterated by manager Maw who argued that the "Occidental" and "Oriental" mind were essentially different, the latter so mysterious and docile that it was "susceptible to regimentation."<sup>59</sup> Not

<sup>56</sup>BCARS, JCMP, Add.Mss 1174, Box 6, File 11, "In the matter of the employees and ex-employees of the Pacific Lime Company Limited ... Submission to arbitration board on behalf of employees and ex-employees and the union," 1-2.

<sup>57</sup>BCARS, JCMP, Add.Mss 1174, Box 6, File 11, "Written argument of the Pacific Lime Company," 4. For more on labourism see Craig Heron's "Labourism and the Canadian Working Class," in Sefton MacDowell and Radforth, eds., *Canadian Working Class History: Selected Readings*, 355-382.

<sup>58</sup>John Stanton, *Never Say Die!: The Life and Times of a Pioneer Labour Lawyer* (Ottawa 1987), 14.

<sup>59</sup>BCARS, JCMP, Add.Mss 1174, Box 7, File 11, "In the matter of the 'Industrial Conciliation and Arbitration Act' and in the matter of a dispute between the Pacific Lime Co. Ltd, and

surprisingly, Hole and his cadre rejected such accusations; the Chinese men were union members and workers and, as such, "vo[t]ed on every motion and policy" and possessed "equal status under the law." They knew the strategic importance of fighting for the equality of all workers — "whether [they] be white, yellow, or black" — because Chinese employees represented about half of the workforce at Pacific Lime.<sup>60</sup> Indeed, Chinese men laboured at many of the sawmills throughout the province. To organize Blubber Bay, then, held out the possibility of cracking some of BC's largest operations. "There is not an Oriental in BC today who is not looking forward to Victory at Blubber Bay," one IWAer remarked.<sup>61</sup>

Negotiations continued for several weeks and included other heated debates that pitted workers' customary rights to job-sharing as well as their desire for greater control over the work process and increased wages against a push by the company to reorganize production in the name of increased productivity.<sup>62</sup> Like the debate over the legality of trade unions, there was no consensus in this realm either.<sup>63</sup> At stake was no less than the rights and privileges that traditionally belonged to masters, not servants, and Pacific Lime was not interested in placing any "control" in the "hands of the [union-led] committee."<sup>64</sup> In the end, the board's final decision was a complete repudiation of both the local's and IWA's agenda. Although it said yes to a modest wage increase and ordered the company to re-hire men dismissed for union activity, it refused to give the IWA an exclusive seat at the table, offering instead a committee consisting of union, non-union, and company officials.<sup>65</sup> Here, at long last, was the solution to the dispute at Blubber Bay and, on a wider plain, the CIO invasion: a responsible union.

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its employees," 5, 11; Box 6, File 11, "Written Argument of the Pacific Lime Company," 2-3.

<sup>60</sup>BCARS, JCMP, Add.Mss 1174, Box 6, File 11, "Written Argument of the Pacific Lime Company," 2-3; "A reply to Summary of Mr. Bird on Behalf of the Company," 2. The relationship between white and Chinese workers is taken up further in chapter two of my MA thesis, "Class, Law, and the Politics of State Power in the Blubber Bay Strike, 1938-39" (MA Thesis, Simon Fraser University, 1995), 33-34, 39-42, 48-49.

<sup>61</sup>UBCSC, HPIWA, Box 5, File 13, "Annual Convention of the BC Coast District Council, July 30 & 31, 1938," 6.

<sup>62</sup>For more on the work process, racial division of labour, and the union's workplace demands see Parnaby, "Class, Law, and the Politics of State Power," 41-42, 109 (endnote 38).

<sup>63</sup>BCARS, JCMP, Add.Mss 1174, Box 6, File 11, "In the matter of the employees and ex-employees of the Pacific Lime Company Ltd and the International Woodworkers of America Local #163," 15-16, 20-21; BCARS, GR 1695, B-7215, T-3004, Volume 936, Number 36, March 1938. See the IWA's proposal to Pacific Lime, especially clauses 4-8.

<sup>64</sup>BCARS, JCMP, Add.Mss 1174, Box 6, File 11, "In the matter of the 'Industrial Conciliation and Arbitration Act' ...," 7

<sup>65</sup>BCARS, JCMP, Add.Mss 1174, Box 7, File 11, "Award of the Board of Arbitration," 2-4.



The IWA's supporters at both the local and district level were infuriated by the board's decision. In a stern letter to Attorney General Gordon Wismer, unionist Tod McLennan asserted that the creation of a "grievance and negotiation committee" violated the workers' right to elect their own representatives by a majority vote. It was a position echoed by executive board member Frank Lundstrum who implored the minister of labour to bring about "democratic and effective amendments" to the ICA Act so that workers may have both the "right" and "freedom to organize."<sup>66</sup> Despite the failure of the union to secure a favourable decision at Blubber Bay and the occasional rumblings that it might, under certain circumstances, be better off steering clear of the ICA Act altogether, neither McLennan or Lundstrum were calling for a categorical rejection of state involvement in industrial relations. They were not arguing against the new regime of collective bargaining, but about it, calling into question the board's interpretation of the law, not its utilization.

Not surprisingly, Attorney General Wismer was not interested in getting involved in the Blubber Bay debacle, at least not on behalf of the union. The board was an independent body and the "Government can in no way interfere," he replied deftly. For him, there was nothing spurious about its decision to prevent the unionization of Pacific Lime. It was, after all, in keeping with both the letter and intent of the law. Indeed, while the Wagner Act empowered working people to organize, at least in the time its "judicial deradicalization," the ICA Act failed to alter the unequal power relations that existed between employers and workers thereby ensuring that it survived into the modern era of collective bargaining.<sup>67</sup> For the state and capital it was a given that the statutory provisions of the ICA Act should not (and would not!) encroach on the highly-prized, and to them, natural exploitative relationship between employee and employer. Clearly the state was not a neutral arbiter of two competing interests; embedded in the ICA Act was a historically specific world view which upheld employers as figures of authority to be treated with loyalty and respect, considered hierarchy in the workplace necessary and just, and viewed collective activity with great contempt.<sup>68</sup>

While members of the local and district councils petitioned the provincial government to amend the ICA Act, at the international level of the union delegates from the BC Coast District Council "fought hard" against several new executive-sponsored policies that threatened to scuttle their organizational campaign in BC altogether. Faced with the mounting costs of maintaining such a "big organization," the international leadership proposed cutting the number of organizers in the field,

<sup>66</sup>UBCSC, HPIWA, Box 10, File 4, Lundstrum to "Honorable Sir," 26 October 1938.

<sup>67</sup>Karl Klare, "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-41," in Beirne and Quinney, eds., *Marxism and Law* (Toronto 1982), 138-168; Orren, *Belated Feudalism*, 8.

<sup>68</sup>See Patrick Macklem, "Property, Status and Workplace Organizing," *University of Toronto Law Journal*, 40 (1990), 91.

hiking the price of a union membership, and increasing the percentage of union dues to be forwarded to the international office. At the IWA's annual convention, delegate Hans Peterson argued that since the BC Coast District Council was operating without the assistance of the state and, as a result, was considerably smaller and poorer than its American counterparts, it needed more, not less, money and support from the international. "[T]he locals in BC [are] not strong enough to maintain their own organizers," he told the convention. In short, the union needed a policy that was more sensitive to the profoundly different legal and political environments that existed on either side of the border. Despite the objections of the BC Coast District Council, however, the new austerity plan was adopted, prompting Peterson and fellow member of Local 1-71 John Brown to resign in protest. In a parting letter to union members, Peterson and Brown railed against the international leadership's discrimination against BC, the intransigence of employers and the provincial government, and the failure of the ICA Act to bring about any organizational breakthrough. They too wanted to build a big organization, one that was capable of negotiating collective agreements, fighting for better wages and working conditions, and running a hiring hall. But without greater financial and human resources the union's ability to struggle against both capital and the state in order to refashion the ICA Act was limited — the confrontation with the Pacific Lime Company was evidence of that.<sup>69</sup>

Back in Blubber Bay, the award of the arbitration board was posted in the company bunkhouses and distributed in the community in both English and Chinese. On 18 May 1938, government and company officials, union leaders, and workers attended a mass meeting at the local school where the board's award was finally put to a vote. After much discussion, the workers voted to reject it by a margin of 79 to 23 (with 7 spoiled ballots), the local union leaders claiming that it violated their right to collective bargaining.<sup>70</sup> Shortly thereafter, on 2 June, 102 of the 156 men at Pacific Lime representing 64 per cent of the men voted in favour of strike action, ushering in a bitter 11 month dispute that was, on many occasions, punctuated by acts of extreme violence. It was not supposed to happen like this. For the IWA brass, Blubber Bay was supposed to be an organizational hit and run, a prelude to the bigger battles to be fought at the larger lumber and sawmill operations throughout the province.<sup>71</sup> For the minister of labour, this was the

<sup>69</sup> "[W]e are more convinced than ever that we must strengthen our union and must continue our fight for recognition and job security," they wrote in the concluding paragraph of their letter of resignation. "[I]n our private lives we can assure you that our energies will be concentrated in this direction." See UBCSC, HPIWA, Box 5, File 13, "District Council Convention, 4,5,6 January 1938"; UBCSC, HPIWA, Box 1, File 9, J. Brown and H. Peterson to "Sir and Brother," 7 October 1938; A.A. MacNeil and John MacCuish to "Sir and Brother," 18 October 1938.

<sup>70</sup> "Report of the Deputy Minister [of Labour], 1938," in *BC Sessional Papers* (1939), P83.

<sup>71</sup> Bergren, *Tough Timber*, 121-122.

unsuccessful debut of his prized statute. It did succeed in marginalizing the "reds," but failed utterly to facilitate a settlement. As a result, the class conflict that he hoped to manage, to institutionalize, shifted to the community itself where the state would be forced to rely on the time-honoured restrictions on collective political activity available at common and criminal law, not the "machinery" of statutory collective bargaining, to make industrial peace.

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The Pacific Lime Company responded swiftly to the union's challenge and evicted Chinese workers from their company-owned bunkhouse. Initially, the men in Lim Yim's care refused to leave, prompting company officials to wire Victoria to ensure that an "adequate force of police" was available to prevent a "breach of [the] peace[.]" The British Columbia Provincial Police (BCPP) came to the aid of the company, something it would do frequently over the course of the dispute, by escorting the Chinese workers from company property to the wharf to await the next steamship.<sup>72</sup> White workers and their families were threatened as well.<sup>73</sup> Other tactics included restricting access to local roads that linked the community to the government wharf and requiring some children who wanted to attend school during the strike to present a pass signed by a company official.<sup>74</sup> Telephone and telegraph services housed in the company offices were off limits, unless one was accompanied by a police escort. One labour paper reported that Pacific Lime was encircled with barbed wire.<sup>75</sup> It was a tremendous show of class power, rooted in the company's ownership of both the means of production and, by extension, the community itself.

As Pacific Lime endeavoured to keep its operations working, the IWA mobilized too. A picket camp was secured a kilometre or so from the mine and sawmill — it was one of the few plots of land in the community not owned by the company — and pickets routinely walked the wharf, especially when the steamships arrived

<sup>72</sup>BCARS, AGD, GR 1723, File 1-176-4, H.I. Bird to Gordon Wismer, 8 June 1938; E.A. McLennan to Wismer, 4 August 1938; Pacific Lime Company to Wismer, 8 June 1938; Provincial Police (Powell River) to Division Headquarters (Vancouver), 10 June 1938.

<sup>73</sup>BCARS, AGD, GR 1723, File 1-176-4, H.I. Bird to Gordon Wismer, 8 June 1938; E.A. McLennan to Wismer, 4 August 1938; Pacific Lime Company to Wismer, 8 June 1938; UBCSC, JSP, Box 6, File 14, "Affidavit — Elizabeth Maylor, September 1938."

<sup>74</sup>For more on employer-state coercion see Parnaby "Class, Law, and the Politics of State Power in the Blubber Bay Strike," 45-52.

<sup>75</sup>BCARS, AGD, GR 1723, File 1-176-4, H.I. Bird to Gordon Wismer, 8 June 1938; E.A. McLennan to Wismer, 4 August 1938; Pacific Lime Company to Honourable Gordon Wismer, 8 June 1938; Provincial Police (Powell River) to Division Headquarters (Vancouver), 10 June 1938; UBCSC, JSP, Box 6, File 14, "Affidavit — Elizabeth Maylor, September 1938"; Box 6, File 12, Roy Maylor to John Stanton, 30 September 1938; John Stanton to G.M. Weir, Minister of Education, 12 September 1938; *People's Advocate*, 13 August 1938.

with mail, passengers, and, increasingly, replacement workers. In the skidroad and Chinatown districts of Vancouver unionists looked for people who would accept a few dollars in exchange for some time on the Blubber Bay picket line; the Ladies Auxiliary canvassed community and church groups for cash and food; and the local executive and District Council stepped up its efforts to secure alliances with their new found social-democratic allies in both the trade union movement and the legislature. They also hired a young politically active lawyer named John Stanton. A member of the Communist-led Canadian Youth Congress and future member of the Communist Party of Canada, Stanton was called to the bar in 1936 where he would represent working people and their unions for the next 40 years.<sup>76</sup> Over the course of the strike Stanton, along with Secretary Hole and CCF Member of the Legislature for Comox Colin Cameron, would contest the company's hegemony on several fronts, both big and small, most importantly its ability to limit access and mobility within the community.

Stanton's first item of business was the retrieval of the personal belongings left behind by the Chinese workers after their eviction earlier that summer.<sup>77</sup> Company Superintendent Oswald Peele had no intention of returning the clothes, tools, and food in question, arguing that the Chinese employees were given plenty of time to pack their belongings and vacate the bunkhouse.<sup>78</sup> Undeterred by this snubbing, Stanton, Colin Cameron, and strikers Lim Yim, Joe Yim, and Joe Eng went to Blubber Bay to retrieve the goods themselves, claiming that the principles of tort law were clearly in the union's favour. "When anyone has been unlawfully deprived of his goods he may lawfully reclaim and take them wherever he happens to find them, but not in a riotous manner or attended with breach of peace," Stanton told the attorney general, paraphrasing a textbook on the subject.<sup>79</sup> Not surprisingly, the young lawyer and his entourage were promptly arrested for trespassing on private property and detained for questioning in a company house that doubled as a jail. After a short interrogation they were released and no charges were laid. To be sure, this confrontation over the workers' chattels was a relatively minor one. As one police officer recorded later, "The whole incident did not take more than ten minutes."<sup>80</sup> But when placed in the broader context of capital-labour relations in Blubber Bay, it does underscore the enormous power and leverage that the Pacific

<sup>76</sup>Stanton's career as a labour lawyer is detailed in his two-volume autobiography. See *Never Say Die! and My Past is Now* (St. John's 1994).

<sup>77</sup>UBCSC, JSP, Box 6, File 12, Stanton to Peele, 21 August 1938.

<sup>78</sup>"They had eleven days notice, didn't they?" a company lawyer retorted. This quote comes from Stanton's handwritten notes from a conversation he had with lawyers working for the Pacific Lime Company. See UBCSC, JSP, Box 6, File 24, "notes" and Box 6, File 12, Bird and McLorg to Stanton, 29 August 1938.

<sup>79</sup>BCARS, AGD, GR 1723, File 1-176-4, Stanton to Attorney General, 9 December 1938.

<sup>80</sup>Stanton, *Never Say Die!*, 19; the quote is from BCARS, AGD, GR 1723, File 1-176-4, "[Police] Report. Re. Messrs. Grant McNeill, M.P., Colin Cameron, M.L.A. and Mr. Stanton, Solicitor. (Activities of)," 30 August 1938.

Lime Company possessed within the community; and, also, the constitutive role of the law, in this case the legal categories of private and public property, in maintaining such egregious and unequal power relations between the workers and the company.

But like the statutory provisions of the ICA Act, the common law notions of private and public property were likewise a site of struggle as illustrated by Stanton's subsequent defense of what he believed were workers' historic rights of usage in Blubber Bay: their right to use the roads, wharf, school, and other local amenities as they pleased. "In former years it was the custom of the company to keep the road open as a public thoroughfare, and to close it only one day each year, thus indicating that the road was private property," Stanton informed the deputy minister of public works. "I am therefore writing to you to ask whether ... any ruling has been made as to the rights of residents to have free access."<sup>81</sup> The state did indeed have an opinion on the matter, but it was not the one that Stanton was looking for. As one government official remarked in reference to a gate that blocked a laneway, it was "apparently a private road" and, despite custom, the government could not "force the company to through [sic] it open for public use."<sup>82</sup>

In response, Stanton made a formal request to the provincial secretary to have Blubber Bay declared a "company town" in accordance with the Company Towns Regulation Act, a provincial statute which held that

[w]here any one hundred or more persons employed by any company in or about any industrial operation ... carried on by the company are living or sojourning on lands owned, occupied, or controlled ... by the company, the Lieutenant-Governor ... may ... declare those lands ... to be a 'company town' ....<sup>83</sup>

It was a legal status that, ironically, brought with it a guarantee that the "general public shall have the right at all times ... to use and enjoy all those roads, streets, and ways as free and uninterrupted rights-of-way ...."<sup>84</sup> At this moment of overt class conflict, it was a provocative attempt to secure the customary geographies of social life — to secure "justice" — through the structured channels of the state. Indeed, by unravelling and contesting the reified spaces that the law, in part, constructed, Stanton was calling into question one of the most obvious manifestations of Pacific Lime's political and economic power: its control over the community. To do so was to secure unrestricted access to a telephone or a meeting hall, the simple, day-to-day things that were crucial to the development of both strategy and solidarity during a strike. Upon receiving the application, the provincial secretary thanked Stanton for his concern and, in the laconic tone that characterized

<sup>81</sup>UBCSC, JSP, Box 6, File 12, Stanton to Deputy Minister of Public Works, 21 August 1938.

<sup>82</sup>UBCSC, JSP, Box 6, File 12, Stanton to Deputy Minister of Public Works, 23 August 1938; A Dixon, Chief Engineer, Department of Public Works to Stanton, 2 September 1938.

<sup>83</sup>See "Company Towns Regulation Act," in *RSBC*, 1924, Chapter 47, Section 3.

<sup>84</sup>See "Company Towns Regulation Act," in *RSBC*, 1924, Chapter 47, Section 4 (1).

much of his correspondence with the state, promised to consider the situation further.

It was there that Stanton's campaign would end, as his time, energy, and legal knowledge were required to tackle other issues related to the IWA's organizational drive. Like the stand off over the workers' possessions, the conflict over access and mobility rights within the community illuminates the class-bound and spatial dimensions of the law. Indeed, in the context of a community dominated by a single employer, the common law rights associated with the ownership of property enabled Pacific Lime to intimidate unionists and their supporters with impunity. In this regard, Stanton's oppositional reading of the law underscores the notion that the law was an arena for class struggle, a place in which alternative notions of what was legal and what was just were fought out. What's more, the law was deeply imbricated in the expression of class relations on a day-to-day basis in Blubber Bay. In this particular instance, the private and public spaces that defined the community and were responsible, at least in part, for Pacific Lime's hegemonic position were legal constructions, what one legal scholar has called the "encompassing and encaging spatializations of social life" associated with the historical development of capitalism.<sup>85</sup> The crucial point is not simply that the law was everywhere — at every "bloody level" of activity — but that the statutory provisions of the ICA Act and the rights associated with the ownership of private property shared a common emphasis: placing limits and setting boundaries on collective working-class political action.<sup>86</sup> For the former, it was a question of marginalizing the militant or "communistic" elements of the labour movement; for the latter, it was a case of intimidating strikers and their families and eliminating those spaces within which an oppositional challenge might develop. Taken together, these struggles expose the wide range of legal remedies available to both capital and the state dedicated to disempowering propertyless wage workers and, as a consequence, "forging responsible unions."<sup>87</sup>

But such legal coercion rested on more than a government agent's interpretation of common law. Indeed, at Blubber Bay the full weight of both the state's and capital's opposition to militant collective organization was felt daily as BCPP Sergeant T.D. Sutherland, commanding officer at Powell River, and his small

<sup>85</sup>The quotation is from Edward Soja, *Postmodern Geographies: The Reassertion of Space in Critical Theory* (New York 1989), 24. Nicholas K. Blomley has written extensively on the relationship between law, space, and power. See his "Text and context: rethinking the law-space nexus," *Progress in Human Geography*, 13 (1989), 513-533 and *Law, Space, and the Geographies of Power* (New York 1994).

<sup>86</sup>The quotation is taken from E.P. Thompson, "The Poverty of Theory or An Orrery of Errors," in *The Poverty of Theory and Other Essays* (New York 1978), 96.

<sup>87</sup>These issues are taken up by Eric Tucker and Judy Fudge in their insightful article, "Forging Responsible Unions: Metal Workers and the Rise of the Labour Injunction in Canada," *Labour/Le Travail*, 37 (Spring 1996), 81-120.

Texada Island detachment worked diligently to uphold law and order. Over the course of the dispute, the police escorted replacement workers to the mine, monitored the phone calls placed by union members and their supporters, surveilled IWA activity in Powell River and Vancouver, and attended union meetings held in public places at the request of those who, in the words of the attorney general, "objected to the use of the school for a political purpose."<sup>88</sup> Sutherland was particularly adept at coming to the aid of the company. In addition to his work as a police officer, he was a provincial relief inspector on the Sunshine Coast and in the months leading up to the strike had recruited several unemployed men to work for Pacific Lime. Given that the dismissal of union sympathizers was a key issue in sparking the dispute to begin with, by securing non-union labour, Sutherland was helping the company enforce its blacklist.<sup>89</sup> Union member Robert Gardner certainly understood the level of police antipathy in Blubber Bay. After being arrested for being a member of an unlawful assembly, he was taken into custody and beaten badly by Officer Williamson of the BCPP. Williamson was later convicted of the assault and sentenced to six months of hard labour. During the trial, Sergeant Sutherland, the star witness for the defense, testified that Gardner — a "known agitator" — had sustained his injuries during a scuffle with replacement workers. In the judge's opinion, however, the fractured ribs and multiple cuts and bruises to Gardner's arms and face were not the result of a dockside scuffle, but of a police officer evidently losing his "cool."<sup>90</sup> Clearly, to bring the state back in meant to bring state violence back in as well.

Over the course of the strike, the strained relationship between the company, police, union, and non-union forces often erupted into outright public confrontation: scuffles between union and non-union workers occurred on Blubber Bay's gravel laneways; District Council member Tod McLennan — "a big man, powerfully built" — beat up replacement workers on board the steamship *Chelohsin*; and, according to police, company property was repeatedly damaged by union men.<sup>91</sup> But it was on the main dock at Blubber Bay where strikers, replacement workers,

<sup>88</sup> BCARS, AGD, GR 1723, File 1-176-4, Attorney General Gordon Wismer to Grant MacNeill, 3 September 1938.

<sup>89</sup> Clearly the creation of a new "government generation" was an uneven process, the apparent conflict of interest here standing in stark contrast to the pursuit of an (ostensibly) objective and rational bureaucracy in Victoria. Sutherland's actions are discussed in more detail in Parnaby, "Class, Law, and the Politics of State Power in the Blubber Bay Strike," 67-68.

<sup>90</sup> For more on Williamson's trial and conviction see Parnaby, "Class, Law, and the Politics of State Power in the Blubber Bay Strike," 86-89.

<sup>91</sup> UBCSC, JSP, Box 6, File 12, Roy Maylor to John Stanton, 30 September 1938; (Powell River) *Town Crier*, 20-21 September 1938; the description of McLennan is taken from Stanton, *Never Say Die!*, 23. The violence at Blubber Bay and McLennan's exploits are taken up further in chapter three of Parnaby, "Class, Law, and the Politics of State Power at the Blubber Bay Strike."

and police clashed most often. The worst encounter took place on 17 September 1938 when a steamship arrived in port containing passengers looking for work at Blubber Bay. When the dust (and tear gas) had finally settled, 23 union members were charged with unlawful assembly and rioting, 15 of which were later committed to trial. Of the fifteen men, thirteen were white, including local leader Jack Hole, and two were Chinese, including Joe Eng, the IWA's representative amongst the Chinese workers.<sup>92</sup> That the IWA was now in a tough organizational and political predicament was symbolized by the plight of the *Laur Wayne*. Shortly after it left Vancouver for Texada Island with reinforcements for the beleaguered Blubber Bay local it ran aground on a sand bar in Malaspina Strait. The tide, both literally and metaphorically, was indeed turning against the union.

The proceedings against the Blubber Bay 15 began in October of 1938 and ended in early 1939. In order to proceed as efficiently and effectively as possible, Attorney General Wismer decided to try the strikers as a group. Upon hearing of this decision, counsel for the Crown, Angelo "Gladiator of the Court" Branca, informed Wismer that since the strikers were charged separately and committed to trial at the preliminary hearings as individuals, the Crown could not try them as a group. Although it may be more convenient and, in "view of the seriousness of this trouble in the Province," preferable to try them as a collective, it could result in the "misdirection and misreception of evidence" against the defendants and, upon appeal, a mistrial.<sup>93</sup> Wismer rejected Branca's position, citing a precedent which held that the court may simply amend such technical "defects" contained in the indictments and "proceed with the trial."<sup>94</sup> Thus, the proceedings would continue as planned, one striker would be tried alone as a test case and the rest would follow in groups of four or five. The attorney general certainly had the option to proceed with charges of common assault against key players in the strike, but it was the public and collective nature of workers' actions, not the injuries sustained by specific individuals, that posed the greatest threat to constituted authority and therefore deserved to be prosecuted and severely punished. To be sure, Wismer had the "trouble" that rocked Blubber Bay in mind when he made his decision. Indeed, the trials would serve two important objectives: they would successfully cripple the IWA's campaign at Blubber Bay and send a powerful message to British Columbians, specifically "irresponsible" trade unionists, about the dangerous and illegitimate nature of mass action.

<sup>92</sup>The Blubber Bay 15 included: D. Raeside, George Cope, John Hole, Stan Abercrombie, Edward Stewart, Grant Empey, Joe Eng, Peter Bergman, Herman Shaak, Ronald MacDonald, Robert Gardner, Walter Liebiech, L. Chun, Joe Jacobs, and R. Abercrombie.

<sup>93</sup>BCARS, AGD, GR 1763, File 1-176-4, Branca to the Attorney General, 1 November 1938 and 14 November 1938; the "misdirection" quote is taken from R. V. Cranc, 15 C.A.R. 23 (1920), 25.

<sup>94</sup>BCARS, AGD, GR 1763, File 1-176-4, Assistant Departmental Solicitor to Branca, 15 November 1938. The quotations are taken from *Queen v. Weir* (No.2) 3 C.C.C. 155 (1899), 160.



A criminal trial is a highly structured, dramatic affair. At the front of the court room is the judge, elevated and clad in a dark robe, who looks on, as the lawyers, also dressed in dramatic costume, parade before the court and weave their elaborate tales of guilt and innocence. In this particular case, the trial judge was Denis Murphy, a one-time Liberal member of the provincial legislature, lecturer in constitutional law at the University of British Columbia, and member of the Supreme Court since 1909.<sup>95</sup> The supporting cast in this legal drama consisted of two people that Murphy was familiar with: Counsel for the Crown was Angelo Branca, a former acquaintance of Murphy's from UBC, and Paul Murphy, his son, who was Branca's assistant. The strikers were represented by E.A. Lucas and John Stanton.

In order to secure a conviction of unlawful assembly and rioting, the Crown was required to demonstrate that at least three people gathered on the wharf in Blubber Bay with a common purpose and that members of the community, possessing "reasonable courage and firmness," believed that a breach of the peace was imminent. This was easily done. Sergeant Sutherland and other police officers testified that there was indeed a mob of strikers on the dock and that, as a collective, they sought to keep replacement workers from entering the community and residents of Blubber Bay who did not support the strike were called upon to recount their "fright" and "feelings of terror." But what made the Crown's case so compelling was the ability of Branca and Murphy to reconstruct the story of what took place on 17 September and imbue it with new meaning. In their skilful hands, the dockside riot and the larger struggle for free collective bargaining of which it was a part, were refashioned as a fight between an "imported, subversive, terrorist organization" — the IWA-CIO — and the rule of law and order.<sup>96</sup> It was a successful rhetorical strategy, or "legal narrative," that linked the dockside violence in Blubber Bay to the alleged chaos fomented by the union south of the border and the communist-inspired agitation amongst unemployed workers that had rocked BC for several years.<sup>97</sup> To jail the strikers, then, was to strike a blow for peace, order, and good government.

Lucas and Stanton attempted to rework the Crown's narrative completely, arguing instead that the entire riot was planned in advance by the police in a vain attempt to finally "clean house" at Blubber Bay. Judge Murphy was clearly not

<sup>95</sup>Vincent Moore, *Angelo Branca: Gladiator of the Courts* (Vancouver 1981), 21.

<sup>96</sup>The information on Branca comes from Moore, *Angelo Branca*, 20-21; the quote is taken from the *BC Lumber Worker*, 22 November 1938.

<sup>97</sup>My understanding of a "legal narrative" draws on the work of James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of Law* (Madison 1985); Kim Lane Scheppele, "Foreword, Telling Stories," *Michigan Law Review*, 87 (August 1989), 2075; John Steffler, "Poetic Knowledge: language as matter," *Poetry Canada Review*, 14 (1994), 14-15; and Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884-1951," *Canadian Historical Review*, LXXIII:2 (Spring 1992), 125-165.

impressed with the defense's position, asking "[a]re you seriously suggesting ... that the police were in a conspiracy to provoke a riot and ambush the strikers?" "That was definitely part of the plan to get these strikers out," Lucas replied.<sup>98</sup> Murphy's indignation is perhaps not a complete surprise; for him, the rule of law, properly administered and enforced, was the handmaiden of liberty and the foundation of constituted authority, and the police were its duly-appointed defenders.<sup>99</sup> Clearly the defense's position was going to be a tough sell. By taking on Sergeant Sutherland and the local detachment, Murphy's guardians of law and order, they were challenging his, and indeed the state's, entire world view.

The ideological divide between the judge and the union came into sharp focus during a small debate waged over the use of the word "scab" during the court's proceedings. In this particular case, Lucas was unable to use the word when referring to replacement workers because the court considered it an extremely offensive and derogatory term which would prejudice the jury. It was a position laid bare by Magistrate Filmore during the preliminary hearings at Powell River: "I do not want anything said against anybody. Scabs has been held to be a term that ought not to be applied .... Workers, pickets, those are proper names to use. Men are entitled to be picketers and workers — but not scabs."<sup>100</sup> In union parlance, "scab" was a negative verb, noun, and adjective. Unlike Judge Murphy and Magistrate Filmore, however, for unionists its meaning was rooted in a deep-seated belief in workers' right to organize, the importance of collective activity, and the sanctity of the picket line. In this regard, the court considered the term "scab" offensive precisely because it embodied an ideology anathema to what Murphy once called, "the fundamental traits of human nature."<sup>101</sup> In this case it was liberalism not socialism that was considered natural. This ruling speaks to the immense power of the court to, as one scholar has noted, "exclude and stigmatise — define out — all such discourses [which] are inherently recalcitrant to [its] basic belief system ...."<sup>102</sup> By eliminating the use of the word scab, the court naturalized the replacement workers' "right to work" and removed the political and moral questions associated with the struggle at Blubber Bay from the legal debate altogether.

By the end of the proceedings, the complex events that led to the dockside disturbance at Blubber Bay had been distilled into one simple question: might or right? And the jury, with few exceptions, chose what it believed to be "right."<sup>103</sup>

<sup>98</sup>Both Murphy and Lucas are quoted in *Vancouver Daily Province*, 25 November 1938.

<sup>99</sup>See Murphy's essay, "British Principles of Government," *Canadian Bar Review*, 2 (1924), 433-443.

<sup>100</sup>BCARS, AGD, GR 419, Box 473, File 68, "Preliminary Hearings — Rex v. MacDonald," 19-20; *Vancouver Daily Province*, 5 August 1938.

<sup>101</sup>Murphy, "British Principles of Government," 441-2.

<sup>102</sup>Goodrich, "Law and Language," 189.

<sup>103</sup>See chapter three of Parnaby, "Class, Law, and the Politics of State Power in the Blubber Bay Strike."

As result, all but three of the fifteen men on trial were convicted, including several of the local's organizers, strategists, and staunch supporters. Two Chinese unionists were acquitted for lack of evidence — one was not even in Blubber Bay at the time of the riot — as was union supporter Stan Abercrombie, an employee for 21 years. Abercrombie was the only striker to have an employer attest to his good character and, unlike the other trials, only one police officer testified against him.<sup>104</sup> That these trials were deeply political was further illustrated by the counter suit that Stanton filed against the police and the replacement workers, charging *them* with being members of an unlawful assembly and rioting; after all, he thought, there were at least three police officers and scabs on the dock in Blubber Bay, they did share a common objective — namely to break the picket line — and the strikers, men of reasonable courage and firmness, were convinced that a breach of the peace was imminent. But for the lower court judge, such accusations were tantamount to “a counter-attack against authority” and, as such, were dismissed.<sup>105</sup> Clearly, it was only specific kinds of collective activity that were at issue here. The notion that company officials, the police, and replacement workers might have been irresponsible, might have been looking for retribution, might have caused the riot was simply beyond the court's frame of reference. Like the ICA Act and the rights guaranteed employers at common law, the criminal charge of unlawful assembly and rioting was, at its ontological core, deeply contemptuous of collective activity and dedicated to the protection of constituted authority through the enforcement of proper, which is to say “responsible,” political behaviour.

Not surprisingly, as the trials continued in Vancouver, in Blubber Bay, the strike began to falter, the arrest and subsequent conviction of the strikers draining the union of scarce human and financial resources. Signs that the local and district leadership were considering a tactical retreat were evident as early as October 1938, a month before the trials began, when the District Council instructed the remaining pickets to apply for government relief to supplement their dwindling strike pay and elected to re-open negotiations with Pacific Lime.<sup>106</sup> With International President Pritchett in attendance for the first time since the strike began, a new bargaining team drafted a “memorandum of conversation” that outlined conditions under which the union would agree to resume negotiations; in an attempt to save face, the IWA indicated its willingness to remove union recognition from its list of demands, leaving instead the reinstatement of all those involved in the strike as its primary

<sup>104</sup> BCARS, JCMP, Add. MSS 1174, “List of Employees and Years of Service.”; UBCSC, JSP, Box 6, File 24, Stanton to Cameron, 8 December 1938.

<sup>105</sup> UBCSC, JSP, Box 6, File 18, “Case Against Pacific Lime Company Strike-Breakers: Memo for Mr. Henderson [Crown Prosecutor].”; BCARS, AGD, GR 1763, File 1-174-3, Alex Henderson to Eric Pepler, Deputy Attorney General, 27 January 1939.

<sup>106</sup> UBCSC, JSP, Box 6, File 12, Stanton to Hole, 28 October 1938; *Vancouver Daily Province*, 7 October 1938; *BC Lumber Worker*, 18 October 1938.

objective.<sup>107</sup> But by the new year, Pacific Lime was, in the words of the department of labour, "operating with a ... normal [work] force." As a result, there would be no agreement of any kind. Like the renewed negotiations, attempts by CCF members of the provincial legislature to bring about a judicial inquiry into the debacle at Blubber Bay were also unsuccessful, Pattullo, despite the advice of his own attorney general, steadfastly refusing to investigate the BCPP during this period of labour unrest. "[W]hat kind of police do you think you'd have if they were afraid of a judicial inquiry every time they acted?" he asked the House rhetorically.<sup>108</sup> By the spring of 1939, after ten months of struggle, the picket line in Blubber Bay was almost non-existent and donations from union allies had slowed to a trickle. As a result, in May the IWA officially called the strike off.

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The IWA paid dearly for the Blubber Bay campaign. Not only did it financially cripple the District Council, but it cost Robert Gardner his life. While in prison for being a member of the Blubber Bay 15 and still suffering from the beating carried out by constable Williamson, Gardner contracted influenza and died. Even today, some consider Gardner to be the first martyr of the IWA.<sup>109</sup> It is not surprising, then, that years later union organizers Arne Johnson, John McCuish, and Hjalmar Bergren would remember the strike with some ambivalence. "It was a mistake for the IWA to get involved in such a strike," but once it had done so and "overstepped the boundaries the strike had to be fought," they agreed.<sup>110</sup> Despite eleven months of struggle, the IWA had little to show for its trouble. While it pushed the Liberals to finally change the Act to allow workers to choose their bargaining representatives, there was still nothing in the statute to compel an employer to recognize and negotiate with a bona fide trade union. Not only was it unsuccessful in its bid for a collective agreement, but it was unable to achieve its larger objective of remaking the Act in the image of its American counterpart. This is perhaps what made the defeat at Blubber Bay so galling for the IWA leadership. Consequently,

<sup>107</sup>UBCSC, HPIWA, Box 10, File 13, "Minutes of the Strike Relief and Defence Committee," 5 October 1938, 11 October 1938; UBCSC, JSP, Box 6, File 12, "Memorandum of conversation between ...," 7 October 1938; BCARS, PP, GR 1222, Box 20, File 1, Lundstrum to "The Honourable T.D. Pattullo," 26 October 1938.

<sup>108</sup>BCARS, TDPP, Add.Mss 3, Volume 65, File 1a, "Premier's Speech," 31 October 1938; *Vancouver Sun*, 1 November 1938.

<sup>109</sup>Grant MacNeil, *The IWA in British Columbia* (Vancouver 1971), 23.

<sup>110</sup>Bergren, *Tough Timber*, 121-22. According to Bill White, the bitterness between strikers and replacement workers still lingers to this day on Texada Island: "[I]n Vananda [sic] there's guys who've never lived down the time they scabbed the Blubber Bay strike of [1938]. And to me, that's the way it should be. I love to see it. It makes you think people learn something after all." See Howard White ed., *A Hard Man to Beat: The Story of Bill White — Labour Leader, Historian, Shipyard Worker, Raconteur* (Vancouver 1983), 149.

the union would have to wait until World War II in order to achieve its first large-scale breakthrough in BC. With the onset of the war, the federal government assumed control over industries considered vital to the war effort; the "unconditional surrender" of four major lumber companies to the demands of the IWA came at the behest of a federal board of arbitration, not a board constituted under the provincial statute.

In British Columbia, as in other provinces and states, the period bracketed by the end of the so-called Third Period and the onset of World War II was one of transition for the state and for labour. The CIO's tremendous advance in the woods of Oregon and Washington prompted the provincial government to head off the growth of militant industrial unionism through the regulation and institutionalization of class struggle. At its ideological core, the ICA Act was deeply suspicious of collective political activity and sought to safeguard, not alter, the age-old exploitative relationship between labour and capital. In this regard, the Act looked backwards to the values and assumptions embedded in both the laws of master and servant and the law of criminal conspiracy that forced workers to honour their contracts and refrain from particular forms of collective behaviour. At the same time, though, by entering and centrally co-ordinating the activities of labour and capital through its own infrastructure, the ICA Act represented a new interventionist role for the state in industrial relations in BC. In this sense, it was a harbinger of things to come as governments at both the federal and provincial level would carve out a more extensive and permanent role in the management of class conflict in the post-war period.<sup>111</sup> Indeed, this notion of the state in transition comes into sharp focus at Blubber Bay where, ironically, it was not the ICA Act, but the common law rights associated with the ownership of private property and the criminal charge of unlawful assembly and rioting, backed by the full weight of the police — the "old coercion" — that secured the industrial peace.<sup>112</sup>

The impact of the state, law, and legal process on the IWA was extensive. Against the backdrop of the IWA's success under the auspices of the Wagner Act, the politics of the popular front period, and the immense obstacles to organization facing the union, the BC Coast District Council accepted state intervention in labour relations. The leaders believed that unless they demonstrated their ability to organize the province's Depression-weary lumber workers, they risked losing all political credibility. It was certainly a thorny political calculation, the implications of which would not be apparent for some time. As this discussion has shown, the new collective bargaining regime taking hold during this period provided the union leadership with a new legal vocabulary to describe and interpret class politics. This system of knowledge erected limits and set boundaries to what was considered possible for the union and, ultimately, would supplant a more incisive critique of the province's political economy and the legal order of which the ICA Act was a

<sup>111</sup>Palmer, *Working-Class Experience*, 284.

<sup>112</sup>Tucker and Fudge, "Forging Responsible Unions," 87.

part. In the long term, state intervention in industrial relations necessitated the professionalization of the union. It was a process that began in earnest during the jurisdictional battles with the AFL in the US and would eventually heighten the power and influence of business agents, labour lawyers, and bureaucrats to the exclusion of rank-and-file workers.

As a result, the union leadership came to rely on state agencies and industrial legality, not "combativity and collectivity" for its social, political, and economic gains.<sup>113</sup> As Stephen Gray has pointed out, this "legislative approach" created the environment within which the bitter anti-Communism of the post-war period would take root. The power of the state, law, and legal process, then, was coercive and ideological; it prevented the unionization of Blubber Bay and would, over time, reshape both the terrain of class conflict and the very political imagination of those caught in its midst. As a result, the political activity of this industrial union was channelled into more moderate objectives and the logic of capitalism would remain unchallenged.

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<sup>113</sup>The quotation is taken from Bryan D. Palmer, *Solidarity: The Rise and Fall of an Opposition* (Vancouver 1987), 87.

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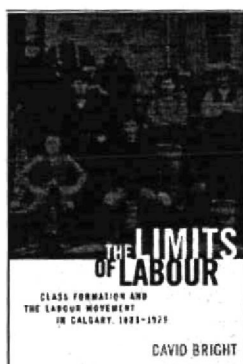
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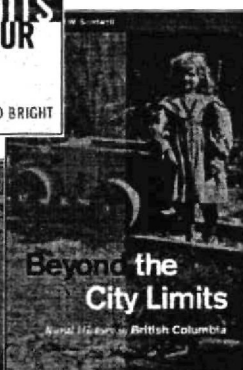
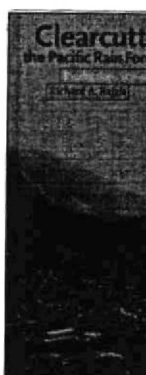
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