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The Politics of the Ontario Labour Relations Act
Business, Labour, and Government in the consolidation of Post-War Industrial Relations, 1949–1961

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Résumé de l'article

La Loi sur les relations de travail de l'Ontario a depuis longtemps gouverné les relations juridiques entre les syndicats et les employeurs dans la province. Bien qu'elle soit assujettie à des années de retard, quand le gouvernement provincial avait introduit la Loi sur les relations de travail en 1950, sa position officielle à l'égard des relations de travail était un programme « non interventionniste » conçu pour laisser la négociation collective aux participants. Souvent défini comme pluralisme industriel, ce nouveau régime juridique était supposé être confectionné au nom de « la justice et l'équilibre » dans lequel les syndicats avaient abandonné le militantisme précédent pour la liberté sanctionnée par l'État. Toutefois, par suite d'un examen minutieux, l'approche du gouvernement provincial au pluralisme industriel était moins non interventionniste que précédemment assumé. L'enchâssement de la négociation collective en Ontario était étroitement aligné avec les intérêts des entreprises de l'Ontario. Par l'intermédiaire d'une étude des politiques se rapportant à la Loi sur les relations de travail, cet article dénote que le gouvernemnet conservateur de Leslie Frost avait structuré cette loi pour faire des concessions aux demandes des employeurs relatives au réglementation juridique accru à l'égard de la négociation collective et au recrutement syndical, qui limitait la croissance de la syndicalisation partout dans la province. En faisant cette observation, cet article insiste sur le fait que le régime conservateur du pluralisme industriel était à la fois le produit dérivé et l'origine de l'antagonisme permanent des classes tout au long des années 1950.

ARTICLE

The Politics of the *Ontario Labour Relations Act*: Business, Labour, and Government in the Consolidation of Post-War Industrial Relations, 1949–1961

Charles W. Smith

Introduction

In 1957, the Ontario division of the Canadian Manufacturers' Association (CMA) criticized the *Ontario Labour Relations Act* (OLRA) because it "was designed to help and protect trade unions in the days when they were small and relatively weak [and] whatever basis of fact there may have been for the old-time picture of the trade union as a wholly idealistic organization of downtrodden workers….[it] has little relation to the situation today.... there is much more need to think in terms of protecting the interests of the public, the employers and the individual employee."[1] The CMA's argument was presented to a Select Committee of the Ontario Legislature that was appointed by Conservative Premier Leslie Frost to investigate the 1950 OLRA. Throughout the decade, employers in all sectors were condemning the Act on the basis that it violated individual rights by extending too much power to reckless and irresponsible union leaders. On these grounds, employers opposed the extension of freedoms in the OLRA and, following the lead of the CMA, pushed for restrictive legislation modeled on the Taft-Hartley reforms in the United

1. Archives of Ontario (hereafter AO), Proceedings of Select Committee on Labour Relations (hereafter PSCLR), RG 49–138, Box C 90, *Submission of the Ontario Division of The Canadian Manufacturers' Association,* 29 October 1957, 4.

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States.[2] Employers demanded the restriction of union security agreements, right-to-work legislation, the extension of employer speech rights, limits on picketing, and the incorporation of trade unions in order that they could be sued in court.[3]

The province's trade unions countered these arguments by suggesting that the OLRA erected barriers to unionization and needed to be reformed. Notwithstanding these appeals, the Select Committee's final report dampened any hope for progressive change. While stopping short of recommending a replication of Taft-Hartley, the Select Committee looked favourably on employer arguments to restrict the rights of trade unions to organize, bargain, and strike. Although controversial, the report was the catalyst behind the government's changes to the OLRA in 1960. When the Minister of Labour, Charles 'Tod' Daley introduced the government's amendments to the Act in the spring of 1960, he insisted that the legislation was not "a means whereby either labour or industry may have an undue advantage over the other, but shall encourage realistic and proper bargaining. Let us not forget that the old days and the old methods of doing business are gone forever."[4] By sweeping away the "old methods," Daley proclaimed that the new legislation provided the minimum standards for organized labour and management to interact peacefully.

Despite employers' criticism of trade unions before the Select Committee, Daley's proclamation of state neutrality reinforced the notion that government and business had matured to accept collective bargaining in the post-war period. Yet, in examining the politics surrounding the OLRA between 1949 and 1961, this claim is difficult to sustain. While it cannot be denied that government and business attitudes towards collective bargaining were reshaped by labour militancy during World War II, there is little evidence to suggest that provincial labour legislation entirely replaced "the old days and the old methods of doing business." Under the Conservative governments of George Drew and Leslie Frost, the minimum standards outlined in the OLRA came with numerous restrictions on the rights to organize and strike. An important question to ask then, is why did a government that was publicly committed

2. Harry A. Mills and Emily Clark Brown, *From the Wagner Act to Taft-Hartley: A Study of National Labor Policy and Labor Relations* (Chicago 1950). Passed in 1947, *The Labour Management Relations Act* (Taft-Hartley) made illegal certain aspects of union security clauses. The Act outlawed union shop agreements while making other security agreements subject to a mandatory vote. The Act also made secondary boycotts and sympathy strikes illegal and required trade union leaders to declare that they were not members of the Communist Party. Taft-Hartley also left the administration of union security agreements to individual states. Many of these states then implemented right-to-work laws giving individual employees the right to opt out of a union upon employment.

3. AO, PSCLR, RG 49–138, Box C 90, *Submission of the Toronto Board of Trade to the Select Committee on Labour Relations,* 31 January 1958, 6–7.

4. Legislative Assembly of Ontario, *Proceedings of the 26th Parliament, 2nd Session,* 3 March 1960, 937.

to collective bargaining actively work to curtail the benefits of that process? Further, why did legislation that proclaimed to be neutral in matters of unionization effectively limit the abilities of thousands of workers to organize? The answers to these questions are found in the close relationship that existed between the provincial government and regional employers during the 1940s and 1950s.

In order to map out this argument, the article will be divided into four areas. The first section examines the theoretical debates surrounding the extension of collective bargaining in Canada. Often defined as industrial pluralism, this analysis considers how the legal regime defended the minimum standards attributed to post-war legislation. With respect to the analyses raised by critical scholars, the evidence in Ontario suggests that labour legislation failed to live up to the standards ascribed by government to remain neutral from the collective bargaining process. Rather, the government's OLRA was much more closely aligned to business than has previously been assumed. In order to defend this position, the second and third sections will consider the politics surrounding the drafting of the OLRA in 1950 and the Select Committee examination in 1957 and 1958. Through this investigation, it will be demonstrated that the restrictions in the OLRA were heavily influenced by employer concerns of trade union irresponsibility. This was most notable in the decision to leave union security outside of the Act. Finally, in the fourth section, it will be shown that pressure from employers played a central role in constructing the reforms in the 1960 OLRA.

Industrial Pluralism in Canada

Much of the scholarship on industrial pluralism begins with the passage of Privy Council Order 1003 (PC 1003) in 1944 and the codification of those reforms in the 1948 *Industrial Disputes Investigation Act* (IRDIA). The second pillar of this regime was established in 1945, when Justice Ivan Rand ended the 1945 Ford strike by awarding union security in exchange for a no-strike pledge during the life of a collective agreement.[5] For many researchers, the

5. Canada Department of Labour, "Award on Issue of Union Security in Ford Dispute," *The Labour Gazette,* (January 1946), 123–31; Canada Department of Labour, "Union Security Clauses in Collective Agreements," *The Labour Gazette* (August 1954), 1140–41. After the Rand decision, union security clauses grew to include several components, which came in six forms: 1) The Closed Shop: an agreement where all employees in the bargaining unit are required to become members of the union as a condition of employment; 2) The Union Shop: an agreement that requires all employees to become members of the union but gives no direction to the employer on who to hire; 3) Modified Union Shop: exempts workers from compulsory membership who are not members at the time the agreement comes into force, but requires that all those new employees to join the union; 4) Maintenance of Membership: workers are under no obligation to join the union, but those who do must, as a condition of employment, maintain their membership throughout the life of a contract; 5) Optional Clause: requires employees who are not members of a union either to join or pay dues; 6) Preferential Hiring:

legal rules that emerged from these compromises constructed the foundation for the expansion of workers' rights in the post-war period. This legislation was designed to protect the ability of employers and unions to fairly bargain, prohibit anti-union behaviour, recognize the primacy of collective agreements, and acknowledge that the public needed to be protected during labour disputes.[6] In achieving these goals, organized labour was granted state protection for collective bargaining, the legal right to strike, mandatory recognition, and trade union security. To sustain these freedoms, unions were expected to respect the employer's right to manage during the life of a negotiated agreement, thus ensuring stability in the workplace. According to several historians, the compromise was constructed by sympathetic state officials, lawyers, and militant union leaders who compelled employers to accept unionization.[7] The long list of legal regulations, rules and procedures that grew out of this compromise became so essential to the governance of contemporary industrial relations, that most commentators have suggested that government constructed a pluralist regime that benefited both unions and employers.[8]

Theories of industrial pluralism are grounded in a basic understanding of labour in liberal capitalist societies. Industrial pluralists conceive of employers and trade unions as autonomous, self-governing equals whose interaction should be relatively free from state interference. In order to promote responsible negotiations, however, industrial conflict must be limited by public officials through legalized procedures designed to encourage negotiation and compromise.[9] Within this tradition, well-known legal scholar Harry Arthurs has argued that industrial conflict is resolved by extending democratic rules to the workplace.[10] While recognizing that strikes may occur, industrial pluralists

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The employer gives preference to members of the contracting union when hiring employees. Depending on the form of contract, a security clause was revocable, but this rarely occurred during the life of an agreement. For those unions able to win a security clause in collective agreements, the most common were the voluntary revocable plan (where the individual worker requests the check-off) or a compulsory plan (where participation was mandatory).

6. A.W.R. Carrothers, E.E. Palmer, and W.B. Rayner, *Collective Bargaining Law in Canada* (Toronto 1986), 63–4.

7. H.D. Logan, *State Intervention and Assistance in Collective Bargaining: The Canadian Experience, 1943–1954* (Toronto 1956); Laurel Sefton MacDowell, "The Formation of the Canadian Industrial Relations System during World War II," *Labour/Le Travail,* 3 (1978), 175–196; Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen* (Toronto 2001), 294–98; Taylor Hollander, "Making Reform Happen: The Passage of Canada's Collective-Bargaining Policy, 1943–1944," *Journal of Policy History,* 13 (Fall 2001), 300–1.

8. H.D. Woods and Sylvia Ostry, *Labour Policy in Canada* (Toronto 1973), 32.

9. Christopher Tomlins, "The New Deal, Collective Bargaining, and the Triumph of Industrial Pluralism," *Industrial and Labor Relations Review,* 39 (October 1985), 19.

10. Harry Arthurs, "Understanding Labour Law: The Debate over 'Industrial Pluralism'," *Current Legal Problems,* 38 (1985), 84; Harry Arthurs, "Developing Industrial Citizenship: A Challenge for Canada's Second Century," *The Canadian Bar Review,* 45 (December

maintain that legal restrictions on the right to strike promote consensus and dialogue between the parties.[11] By extending this form of industrial democracy, legal rules limit unilateral employer control while recognizing that state regulation can fairly distribute power between workers and employers. Based on these characteristics, it is assumed that employers, management, employees, unions, and the general public all have a degree of power within the industrial relations system.

For industrial pluralists, the principal players are unions and management. During bargaining, union goals are simply to extend their power while restraining the power of management. Reciprocally, management seeks to maintain its control over the workplace while limiting the growth of union power. According to H.D. Woods' classic defence of this system, the general public is protected by the neutral eye of the state.[12] When the relationship between employers and employees begins to threaten social order, the state must decide when to intervene to protect the public. Woods conceded that although government legislation restricted the rights of unions to strike, he insisted that this form of intervention is justified because it is designed to protect the public from economic hardship.[13] In these circumstances, there is no natural connection between the capitalist state and employers. Rather, unions and employers are interpreted as two powerful interest groups seeking concessions from each other.

The limitations within this theoretical model have been emphasized by critical researchers who have highlighted the contradictions of state regulation in capitalist societies.[14] Judy Fudge and Harry Glasbeek, for instance, have argued that the post-war regime of industrial pluralism was never designed to ensure that workers and their trade unions received better agreements nor was it meant to constrain the prerogatives of management to control the work-

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1967), 788–9. See the analysis of the labour law in Paul Weiler, *Reconcilable Differences: New Directions in Canadian Labour Law* (Toronto 1980), 6–7.

11. Ivan Rand, "The Law and Industrial Relations," *Industrial Relations,* 17 (Winter 1962), 391–4.

12. Woods and Ostry, *Labour Policy in Canada,* 15.

13. H.D. Woods, "Labour Relations Law and Policy in Ontario," *Canadian Public Administration,* 2 (June 1958), 2–3, 9–10.

14. Richard Hyman, *Industrial Relations: A Marxist Introduction* (London 1975); Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Toronto 2001); Bryan Palmer, *Working Class Experience: Rethinking the History of Canadian Labour, 1800–1991* 2nd Ed. (Toronto 1992); Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* 3rd Ed. (Toronto 2003); F. David Millar, "Shapes of Power: The O.L.R.B.: 1944 to 1950" Ph.D. thesis, York University, 1980; Aaron McCrorie, "PC 1003: Labour, Capital and the State," in Cy Gonick, Paul Phillips, and Jesse Vorst eds., *Labour Gains, Labour Pains: 50 Years of PC 1003* (Halifax 1995), 15–38.

place.[15] Rather, labour legislation largely replicated the structure of industry which was "closely connected with the pattern of class division in society."[16] These limitations were intensified by the structure of the post-war economy which was regionally fragmented and characterized by uneven patterns of economic activity.[17] This regime of capitalist accumulation—frequently defined as Fordism—stabilized the labour process through a Taylorist routinization of industrial work alongside the rise of simplified assembly line production. In Ontario, the Fordist nature of heavy manufacturing and resource production was dependent on a nationally protected market in which high wages fuelled the consumer boom of the 1940s and 1950s.[18] Under Fordist regulation, trade unions relinquished control in the workplace in return for substantial wage gains at the bargaining table.

The Fordist compromise was constructed around high levels of employment and state sponsored social security which prioritized the needs of male breadwinners. Women, however, were characterized as dependents, and thus relegated to the secondary, largely non-unionized labour market.[19] Alienated in this manner, workers were subjected to a regime of industrial pluralism which replaced class antagonism with a juridical model of collective bargaining.[20]

15. Judy Fudge and Harry Glasbeek, "The Legacy of PC 1003," *Canadian Labour and Employment Law Journal,* 3 (Fall 1995), 359.

16. Hyman, *Industrial Relations,* 21.

17. H.C. Pentland, "A Study of the Changing Social, Economic and Political Background of the Canadian System of Industrial Relations," *Report on the Task Force on Labour Relations (The Woods Commission) No. 1* (Ottawa 1968), 322–32. Under the British North America Act, labour relations are a provincial responsibility. Although the federal government took responsibility for labour relations during the war, after the conclusion of hostilities it was returned to the provinces.

18. Daniel Drache and Harry Glasbeek, *The Changing Workplace: Reshaping Canada's Industrial Relations System* (Toronto 1992) 17–9; Greg Albo, "The "New Realism" and Canadian Workers," in Alain-G. Gagnon and James P. Bickerton, eds., *Canadian Politics* (Peterborough 1990), 476–9; Jane Jenson, ""Different" but not "Exceptional": Canada's Permeable Fordism," *Canadian Review of Sociology and Anthropology,* 26 (Spring 1989), 69–94.

19. Ann Porter, "Women and Income Security in the Post-War Period: The Case of Unemployment Insurance, 1945–1962," *Labour/Le Travail,* 31 (Spring 1993), 111–44; Ann Forrest, "Securing the Male Breadwinner: A Feminist Interpretation of PC 1003," in Gonick, Phillips, and Vorst, eds., *Labour Gains, Labour Pains,* 139–62; Judy Fudge and Eric Tucker, "Pluralism or Fragmentation?: The Twentieth-Century Employment Law Regime in Canada," *Labour/Le Travail,* 46 (Fall 2000), 279–83; Mark Thomas, "Setting the Minimum: Ontario's Employment Standards in the Postwar Years, 1944–1968," *Labour/Le Travail,* 54 (Fall 2004), 62–72.

20. Fudge and Tucker, *Labour Before the Law,* 263–301; Palmer, *Working Class Experience,* 278–84; Craig Heron, *The Canadian Labour Movement: A Short History* 2nd Ed. (Toronto 1996),75–84; Peter S. McInnis, *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada, 1943–1950* (Toronto 2002); Don Wells, "The Impact of the Postwar Compromise on Canadian Unionism: The Formation of an Auto Worker Local in the 1950s,"

The extensive legalism associated with post-war labour relations contributed to the bureaucratization of trade unions, which isolated the leadership from rank-and-file workers. In order to defend their position, the leadership within the trade unions also engaged in a purge of the Communist left.[21] The regime of industrial pluralism thus weakened organized labour because it encouraged the leadership to police its own members in order to demonstrate that they were responsible industrial citizens.[22]

An analysis that examines the class divisions associated with legal regulation is essential to understanding the post-war regime of industrial pluralism in the province of Ontario. It accepts that many aspects of legal regulation weakened workers' abilities to challenge their employers despite securing a trade union presence in the post-war economy. There is little debate, as Fudge and Tucker have argued, that the regime of industrial pluralism, codified in the IRDIA and the Rand formula, became hegemonic in the late 1940s and 1950s. Clearly, the institutional, legal and social changes that emerged after the war reshaped the terrain in which capital and labour interacted throughout the province. In Ontario, the Conservative government did commit to collective bargaining legislation which was reflected in the passage of the OLRA in 1950. Given the substantial limitations identified by critical legal researchers, however, to what degree was the regime of industrial pluralism actually accepted by provincial officials and employers? Or put another way, how did political tensions between business, labour, and the Conservative government shape the regime of industrial pluralism in Ontario throughout the 1950s?

The Consolidation of the Provincial Labour Code: The 1950 OLRA

Most observers interpret the 1943 election victory of the Ontario Conservatives under the leadership of George Drew as representing a shift within the traditional governing structures of the province.[23] This explanation is partially derived from the decision of party élites to transform the Conservative platform in 1942 at Port Hope, Ontario. The Port Hope conference was designed to reposition the party's laissez-faire economic policies with elements of "eco-

Labour/Le Travail, 36 (Fall 1995), 147–173; Jeremy Webber, "The Malaise of Compulsory Conciliation: Strike Prevention in Canada During World War II," *Labour/Le Travail,* 15 (Spring 1985), 57–88.

21. Irving Abella, *Nationalism, Communism and Canadian Labour: The CIO, the Communist Party and the Canadian Congress of Labour, 1935–1956* (Toronto 1973); Reg Whitaker and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945–1957* (Toronto 1994), 313–63.

22. Panitch and Swartz, *From Consent to Coercion,* 14–5; Fudge and Tucker, *Labour Before the Law,* 291–302.

23. See the general histories of Ontario: Joseph Schull, *Ontario Since 1867* (Toronto 1978), 314–5; Randall White, *Ontario 1610–1985: A Political and Economic History* (Toronto 1985), 265–7; Rand Dyck, *Provincial Politics in Canada* 2nd Ed. (Toronto 1991), 311–3.

nomic and social security from cradle to grave."[24] Given that the meeting was intended to be the Conservative's answer to the rising popularity of the Cooperative Commonwealth Federation (CCF), one of the imperatives was the adoption of a new labour relations programme.[25] Put forward by the Special Committee of the Conservative Business Men's Association of Toronto, the new proposals recommended that a future Conservative government commit itself to "granting full approval to the system of trade unionism and encouragement for their extension … the instrument which should be accorded the right of bargaining …. shall be freely chosen by the employees."[26] The Committee also endorsed workers' rights of association by restricting employers from interfering in the formation of trade unions or dominating labour organizations. Although not proposing an outright ban on company unions, the about-face on collective bargaining has been accepted as transforming the Conservative party in Ontario.[27]

Notwithstanding the commitments outlined in 1942, Drew's Conservative government did not amend the *Labour Relations Act* until 1948. Despite having several options available, when the government finally acted, the new code simply stated that it was of "the same form and to the same effect as that ... Act which may be passed by the Parliament of Canada at the session currently in progress...."[28] In other words, the 1948 OLRA was a legislative copy of the federal Liberal's IRDIA. On the surface, Drew's decision to replicate the federal legislation was contrary to his position which opposed the federal

24. Keith Brownsey, "Opposition Blues: Leadership, Policy, and Organization in the Ontario Conservative Party, 1934–1943," *Ontario History,* 88 (December 1996), 285–9. These early promises included support for the unemployed, public pensions, mothers' allowances, and national medical insurance.

25. "New Deal is Evolved by Tories," *Globe and Mail,* 8 September 1942 and "Conservatives' New Creed Asks Collective Bargaining," *Toronto Daily Star,* 8 September 1942. On the politics surrounding the conference, see Brownsey, "Opposition Blues," 285; J.L. Granatstein, *The Politics of Survival: The Conservative Party of Canada, 1939–1945* (Toronto 1967), 133–4.

26. AO, RG 3-23, Office of the Premier, Frost General Correspondence (hereafter OPFGC), Box 88, Frederick G. Gardiner, *Memorandum with Respect to the Labour Relations Policy of the Conservative Party,* 7 September 1942, 10. The Party argued that bona fide trade unions should be encouraged; jurisdictional disputes regulated through the OLRB; and that union organizing be based on a majority of the votes cast in an election. The committee was chaired by future Toronto Metro chair, Fred "Big Daddy" Gardiner. On his involvement see, Timothy J. Colton, *Big Daddy: Frederick G. Gardiner and the Building of Metropolitan Toronto* (Toronto 1980), 33.

27. Millar argues that the acceptance of company unionism was "part of the hidden agenda at Port Hope." See Millar, "Shapes of Power," 99 (note 33).

28. Quoted in Logan, *State Intervention,* 54. See also, National Archives of Canada (hereafter NAC), Jacob Finkelman Papers (hereafter FP), MG 31, E27, vol. 7, File, Labour Relations Act, Drafts of Act 1946–1947. Finkelman prepared several draft codes recommending an outright ban on company unions and extending the protection of unionization to marginalized workers. The politics surrounding Finkelman's draft codes and delaying tactics of the Drew government have been well told in Millar, "Shapes of Power," 321–26.

welfare state as it violated provincial rights.[29] Why, then, did the Drew government adopt the federal legislation in 1948?

According to official accounts, Ontario adopted the IRDIA in the name of uniformity.[30] Unofficially, historians have suggested that the provincial government adopted federal legislation because Drew continued to harbour suspicions about collective bargaining legislation. This tension was fuelled by the refusal of many provincial employers to recognize trade unions as legitimate bargaining agents in the workplace.[31] Between 1942 and 1948, employers fought lengthy campaigns to defeat demands for mandatory union recognition and collective bargaining legislation. When strike activity and the rise of the political left made the passage of protective legislation more likely, employers shifted their position and appealed for defined employer freedoms in a new Act. Employers lobbied for enhanced speech provisions, mandatory delays on the right to strike, the elimination of union security agreements, and the protection of company unions, insisting as well that trade unions be incorporated so that they could be held responsible in a court of law.[32]

The high level strike activity during this period placed the federal and provincial governments in a difficult position (See Appendix 1). Most observers understood that the willingness of workers to strike for wage, job, and union security implied that government could not ignore all of the concerns of the unions. Faced with the demands of employers and the militancy of trade unions, the provincial Conservatives left the heavy lifting to Ottawa. According to the Ontario Labour Relations Board (OLRB) chair Jacob Finkelman, the decision to adopt the federal code boiled down to questions of raw politics:

> By 1948 great progress had been made in drafting the bill, but the cabinet concluded at that stage that it would be unwise for Ontario to introduce its own legislation, because some of the top labour leaders had supported federal legislation when it was introduced and the feeling was that anything Ontario produced would be criticized.[33]

When the federal code was adopted in 1948, the Tories expected that the federal provisions on conciliation and final contract offers would balance employers' opposition while still maintaining union support for the codification of collective bargaining in the IRDIA.

29. Drew's stand on provincial rights was aggregated by increased pressure from the private sector to limit the inclusiveness of any social welfare provisions. See Millar, "Shapes of Power," 218. The opposition of the Insurance Companies to state welfare and the CCF has been chronicled in John Boyko, *Into the Hurricane: Attacking Socialism and the CCF* (Winnipeg 2006), 28–36.

30. Canada Department of Labour, "Ontario Labour Legislation, 1948," *The Labour Gazette,* (August 1948), 888–94.

31. Millar, "Shapes of Power," 327–36.

32. Fudge and Tucker, *Labour Before the Law,* 294–5.

33. NAC, FP, MG 31, E-27, vol. 8, Folder, *Oral History Project, 1971–72,* Jacob Finkelman Interview, November 1971, 5.

The leadership in the Canadian Congress of Labour (CCL) and the Trades and Labour Congress (TLC) did not embrace the Ontario government's adoption of the federal code. Rather, the unions were convinced that the OLRA was not strong enough to resist stubborn employers from thwarting organizing and bargaining in new sectors. President of the Ontario Provincial Federation of Labour (TLC), A.F. McArthur (himself a loyal Conservative),[34] maintained that "…the situation in the province, with its diversified industries, is bound to create friction rather than harmony. This code has been brought into being in the shadow of the Taft-Harley Act."[35] In a similar vein, CCL unions acknowledged that the 1948 OLRA was influenced by Taft-Hartley because decertification procedures and employer speech provisions encouraged union-busting.[36] The comparisons with Taft-Hartley were based on the close connections that the provincial government preserved with regionally based employers, especially with the mining employers and owners of small industry.[37] This was confirmed by Daley, who declared that the interests of small businesses guided Tory philosophy in drafting labour policy:

> …we just went conscientiously about the job of trying to improve and make things fairer and maintain industry so that it wasn't being put out of business. A lot of the demands [of the unions] would have shoveled out a lot of small industries, as I recall at that time. I couldn't name them, but there were things to be done that could be done without harming them by satisfying labour [but] not to the extent that they wanted to be satisfied.[38]

Under these circumstances, reforms to the OLRA were prefaced by protecting the rights of employers with absolute restrictions on the rights of trade unions to organize, bargain, and strike.

This philosophy was highlighted by Daley's mediation during labour disputes, commonly referred to as the so-called Daley formula. As part of the formula, the Minister brought the sides together and encouraged them to "keep talking" in order to avoid having the bargaining teams go back to the union halls for fear of "alter[ing] the discussions."[39] By isolating rank-and-file

34. Gad Horowitz, *Canadian Labour in Politics* (Toronto 1968), 164–5.

35. "Daley listens to unions in revising labor code," *Globe and Mail,* 10 February 1949.

36. "Call Ontario labour law 'vicious union-buster,'" *Toronto Daily Star,* 7 February 1949.

37. Harry J. Glasbeek, "Labour Relations Policy and Law as Mechanisms of Adjustment," *Osgoode Hall Law Journal,* 25 (Spring 1987), 201. Glasbeek maintains that the regionalization of labour relations was overly weighted to the demands of employers, many of whom were wedded to "old style capitalist competitive modes of production," and were determined to defeat trade unions.

38. AO, Ontario Historical Studies Series Political Interviews (hereafter OHSSPI), RG 47-27-1-29, Container Q-118, 1974, Interview with Mr. Charles "Tod" Daley, Ontario Minister of Labour, 1943–1961, 35. Daley was appointed Labour Minister in 1943 presumably because he was one of the few members of the Conservative caucus who had held a union card. He would remain in this post until his retirement in 1961.

39. AO, OHSSPI, RG-47-27-1-29, Interview with Mr. Charles "Tod" Daley, 117–18; AO, Ontario

members from the collective bargaining process, the Daley formula required bargaining teams to temper their demands to avoid a strike. During bargaining, Daley acknowledged that his approach was to call out union representatives because "some of this is ridiculous. It's not a matter for you…you wouldn't strike on it." He added, "why let us be bothered with a lot of this trash that you have in here. Get these all off the table, and then we'll get down to basics." In short, Daley's style of intervention was intended to create the conditions for "workable" agreements rather than giving workers the ability to use their collective strength to confront the employer's position during bargaining. Under the Daley formula, democratic and accountable trade unionism was secondary to the elimination of strikes.

Shortly after the passage of the 1948 OLRA, the government called a provincial election. Although Drew was defeated in his riding, the party was re-elected with a solid majority.[40] Following his personal defeat, Drew resigned from the premier's office to become leader of the federal Conservative Party. The replacement of Drew with provincial treasurer and Lindsay lawyer Leslie Frost was primarily an attempt to broaden the populist nature of the party. Frost's style was predicated on the fact that he could manage the economy from a rural business perspective while uniting the party's rural base with expanding urban constituencies.[41] In public, Frost adopted a conciliatory attitude towards labour and the political left, even being cordial with the few Communist members of provincial parliament in the 1950s.[42] This form

Minister of Labour Correspondence, (hereafter OMLC), RG 7 3-0-1 Box 1, Radio Broadcast from Honourable Charles Daley Minister of Labour, 14 February 1950. Daley made clear that his role as Minister and the administrative machinery of the provincial Department of Labour was, "…to prevent strikes and the like, and when they do occur, to get them settled as quickly as possible."

40. By the end of the campaign, the Tories were returned with a reduced majority, winning 53 seats on 41 percent of the popular vote. Meanwhile the CCF would form the official opposition with 21 seats and 27 percent of the vote. Although the Liberals (and the remnants of the Liberal-Labour coalition) won more votes than the CCF (30 percent), they received fewer seats (14).

41. Graham White, "Social Change and Political Stability in Ontario: Electoral Forces 1867–1977," Ph.D. thesis, McMaster University, 1979, 111. See also Keith Brownsey, "Tory Life: The Life Cycle of the Progressive Conservative Party of Ontario, 1935–1980," Ph.D. thesis, Trent University, 1994, 161–3 and Jonathan Manthorpe, *The Power & The Tories: Ontario Politics 1943 to the Present* (Toronto 1974), 42–3. The popular perception of Frost in these years (and today) was that he would govern from the barbershop chair in Lindsay, Ontario. This populist appeal reinforced Frost's often-public message that he would run government like a business, "the people's business!"

42. Jack Cahill, "25 years of Tory rule—and how it all began," *Toronto Daily Star,* 14 February 1968. In private, Frost (and the party machine led by A.D. Mackenzie) presided over malicious campaigns to defeat the Communist candidates in downtown Toronto in 1951 and 1955. In those campaigns, the Tories relied heavily on Cold War rhetoric to defeat the Communist candidates. See Peter Oliver, *Unlikely Tory: The Life and Politics of Allan Grossman* (Toronto 1985), Chapter 4: "Removing the Red Blot."

of populism was used by supporters to frame Frost as "Old Man Ontario," a designation which was intended to reach out to multiple regions and classes, uniting Tory tradition with the changes in the post-war economy.

During his leadership campaign, Frost encountered criticism from rival Kelso Roberts in relation to the government's decision to forgo a "made in Ontario" labour code.[43] In response to these concerns, Frost and Daley introduced Bill 82 The Ontario Labour Relations Act, in early 1950 (See Appendix 2). In keeping with Frost's conciliatory manner, the new legislation outlined a "hands off" policy which reflected the Conservative's intention to promote peaceful negotiations between unions and employers. Speaking in the House, Daley articulated this vision:

> The Labour Relations Act is not a substitute for collective bargaining, which we, as a government, firmly believe in. The Act provides for collective bargaining when employers and employees are unable to reach an agreement, and I think we have a good cohesive Act—an Act that fits together … right down through all the stages of negotiation and conciliation, and in certain cases, arbitration and settlement. It does not take away from organized labour the right to use their economic strength. It does make the rules which, if followed by employer and employee … while not entirely removing the necessity for a strike or lock-out, should minimize the possibility of these things being necessary.…I believe that legislation should be the minimum rather than the maximum, for in the final analysis and negotiation and discussion between the parties, you will find that is the only way to settle disputes.[44]

Daley, in effect, insisted that the Act was merely designed to outline the so-called rules of the game in which private enterprise and trade unions participated to their mutual benefit.

Notwithstanding this argument, the minimum standards ascribed in the OLRA came with significant restrictions for Ontario workers. Thousands of non-manufacturing workers, many of whom were women, including domestics, public sector workers, teachers, and administrative staff were prevented from collective bargaining. In addition, security guards, engineers, police, fire fighters, agricultural, and horticultural workers were also excluded from the Act.[45] Municipal councils were also given the right to "opt out" of the Act, giving employers the ability to eliminate collective bargaining and curtail the

43. On the debate over a provincial code, see Brownsey, "Tory Life," 162–3. Roberts was proposing to reach out to various segments of organized labour, especially in the construction trades.

44. Ontario House of Commons Debates, Proceedings of the 2nd Session of the 23rd Legislature, 8 March 1950, B9-B11.

45. NAC, FP, MG 31, E-27, vol.1, Folder, Labour Relations Act Collective Bargaining, 1949, Jacob Finkelman Memo to Charles Daley, 31 October 1949. Finkelman recommended expanding the number of workers covered by the Act to include public sector workers and teachers in 1949. Millar speculates that Daley's decision to leave agricultural and horticultural workers outside of the Act reflected the fact that his home riding encompassed Niagara which was dominated by the fruit growing industry. See Millar, "Shapes of Power," 405, note 51.

right to strike.[46] Further restrictions on the right to strike were legislated by constructing strict rules surrounding the grievance procedure, greater regulation of union bargaining committees, and extending mandatory conciliation provisions. The new conciliation rules stated that unions were unable to strike legally until seven days after a board issued a non-binding report. There was also a new section outlining that all collective agreements contain a clause stating that strikes may not occur during the life of a collective agreement.[47] In order to further deter the threat of illegal strikes, the legislation gave the Department of Labour the discretion to determine whether participation in an illegal strike prevented employees from returning their jobs. In essence, the delaying tactics and restrictive rules surrounding the right to strike extended the Daley formula into the OLRA.

The new legislation also altered the rules surrounding certification, and gave the OLRB explicit guidance on how to authorize decertification votes for existing unions. During certification drives a union had to demonstrate that it was supported by 55 percent of the employees in the appropriate bargaining unit. By contrast, an employer or a group of anti-union employees could obtain decertification in the final two months of a contract with a 50 percent vote. Most observers interpreted the higher number to obtain certification as a concession to employers who had argued that a bare majority of membership cards did not reflect the true wishes of employees.[48] Under the new certification process, a mandatory vote was required when membership cards fell between 45 and 55 percent. The legislation further required that a union had to receive the majority of all eligible voters rather than a majority of all those participating in the election.[49] Throughout his tenure as Labour Minister, Daley defended these voting rules because he felt that a trade union must be supported by the vast majority of the membership in order to

46. AO, PSCLR, RG 49-138, Box C 90, Testimony of the Ontario Provincial Joint Council #22 of Building Service Employees' International Union, 2 October 1957, 1067–9. Daley admitted in 1957 that leaving municipal workers outside of the Act was not his first choice. Despite his disapproval, he testified that his concerns were overruled by cabinet.

47. NAC, FP, MG 31, E-27, Vol.1, Folder, Labour Relations Act Collective Bargaining, 1950. According to Finkelman, this followed automatically from the Act itself. Nonetheless, employers insisted that a "no strike" clause be included in the Act in order to make it clear that wildcat strikes were illegal.

48. Wilfred List, "Bill Eases Certification, Hits at Illegal Strikes," *Globe and Mail,* 1 March 1950.

49. Adam Bromke, *The Labour Relations Board in Ontario: A Study of the Administrative Tribunal* (Montreal 1961), 27–8. Bromke showed that these rules were not as restrictive as it seemed because OLRB policy was not to count non-voters against the union. The unions insisted, however, that the legislation demanded that unions receive more than 50 percent of those voting. The OFL also claimed that the voting rules gave employers additional time to mount anti-union campaigns. Canada Department of Labour, "Ontario Federation of Labour," *The Labour Gazette,* (March 1952), 265; "Frost Cabinet Refuses to Accept Voluntary Revocable Check-Off," *Toronto Daily Star,* 6 April 1950.

succeed in bargaining or to wage a successful strike.[50] As the Daley formula was predicated on limiting strike activity by isolating the rank-and-file from the leadership, however, this reasoning did not reflect a genuine concern for the internal democracy of trade unions.

The restrictions on certification were further exacerbated with the exclusion of union security. Officially, the Labour Minister claimed that the government opposed union security in legislation because it was deemed a matter for negotiations.[51] He neglected to mention that this argument was identical to that of the CMA, which stated in private communication that "the question whether or not there should be a check-off of union dues is a proper question for free collective bargaining, and laying it down by statute that the employer must institute a check-off would … deprive employers of their rights."[52] Frost elaborated further, stating that "it seems to me, [would] involve legislating in other matters reserved for collective bargaining such as statutory holidays, pensions, wages, all of which would bear no relationship to unorganized labour [or] to the widely different types of agreements which are already negotiated or … in effect in the majority of industry."[53] As the government did not want to set mandatory conditions in collective agreements, the legislation made union security legal (not replicating Taft-Hartley), but this was a likely outcome where unions were strong enough to secure such agreements. These restrictions implied that the minimum standards in the OLRA would only benefit existing trade unions.

The exclusion of union security was of particular concern for the CCL unions. In drafting the OLRA in 1950, the government had pushed aside the briefs from the CCL, partially because of its political connections with the CCF.[54] The CCL

50. AO, OMLC, RG 7-1-0-437, Box 9, Comments on the Recommendations of the Select Committee: Minister of Labour, January 1960.

51. AO, OHSSPI, RG-47-27-1-29, Interview with Mr. Charles "Tod" Daley, 117–18. Daley conceded that this exclusion was as much personal as it was principled as he "didn't believe in it. I thought a man had a right to belong to a union or not to belong. That's pretty much gone overboard because the unions have so much control that they can demand these things. Why should the employer have to do the paper work and office work for the union? That was their job."

52. AO, OPFGC, RG 3-24, Box 19, Canadian Manufacturers' Association, Letter to Charles Daley, 25 March 1950.

53. AO, OPFGC, RG 3-24, Box 19, Remarks of L.M. Frost on the Ontario Labour Relations Act in the Legislative Assembly, 3 April 1950, 4; AO, OPFGC, RG 3-24, Box 19, Toronto Board of Trade, Letter to Leslie Frost, 27 March 1950. In a letter to Frost, the Toronto Board of Trade emphasized that union security would result in the "material strengthening of the position of collective bargaining agents which even the more responsible elements of labour are seeking to drive out of existence."

54. Wilfred List, "Report on Labor: See CCF Ammunition in Labor Bill," *Globe and Mail,* 7 April 1950. The CCL unions had proposed various legislative reforms, including the 40 hour work week, eight mandatory statutory holidays, and two weeks vacation with pay. There were similarities in the TLC and CCL briefs on the labour code. Both centrals pushed for the removal

had advocated for union security for fear that employers would undermine the freedoms won in the OLRA. For these unions, security provisions created and sustained a strong financial base to operate and assisted in countering employer powers at the bargaining table. As unions were required to represent all workers in a bargaining unit and thus all workers benefited from collective bargaining, organized labour felt that every member should share in the cost of maintaining the local union. Mandatory union security also limited the likelihood that employers who had negotiated a collective agreement in one period could seek to eliminate it in another. Once security was won, most unions agreed that new and existing members understood that the union was a permanent, long-term fixture in the workplace.[55] Using evidence that unions in the manufacturing sector had demonstrated a level of legal responsibility in exchange for security, the CCL insisted that it be extended to areas where trade unions were more vulnerable due to employer hostility.[56]

None of these arguments influenced the provincial government. The government's opposition to union security coincided with employer concerns over illegal strikes. Most employers conceded that union security ran contrary to an individual's right to work. As the OLRA made it overly cumbersome to decertify a union, employers insisted that union security "in the present environment is mainly security against the wishes of their own members."[57] By relying on arguments based on individual rights, businesses suggested that there was an important distinction between the demands of union leaders on the one hand and membership needs on the other. In other words, mandatory union security compelled individuals to pay dues to an organization that they may, in fact, oppose.[58] Some employers stretched this argument even

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of decertification provisions, the elimination of all company unions and union security provisions. The TLC had specifically argued for the right to apply for certification when 25 percent of the employees signed cards. They also requested that 51 percent of those actually voting should decide certification. See Canada Department of Labour, "Legislative Proposals of Provincial Labour Organizations," *The Labour Gazette,* (May 1950), 649–51.

55. Wilfred List, "Political Influence Lags as Union Men Prosper," *Globe and Mail,* 7 November 1952. See also, AO, PSCLR, RG 49-138, Box C92, *Submission of the USWA to the Select Committee on Labour Relations,* 26 November 1957, 33. This argument was especially important for the Steelworkers, who were using the arguments of democratic unionism to further their raids against Mine-Mill in the mines.

56. Canada Department of Labour, "Security Provisions in Collective Agreements, Manufacturing Industry," *The Labour Gazette,* (October 1951), 1359–61. Some industries were successful in winning union security agreements. In 1951, federal officials estimated that 90 percent of collective agreements in manufacturing contained some form of negotiated security clause.

57. AO, PSCLR, RG 49-138, Box C92, Testimony of the Canadian Manufacturers' Association (Ontario Division), 29 & 30 October 1957, 2142.

58. AO, PSCLR, RG 49-138, Box C91, *Submission of the Toronto Board of Trade to the Select Committee on Labour Relations,* 15 September 1957, 21.

further, suggesting that security provisions led to an excessive number of work stoppages.[59]

Not all employers adopted this position. In the auto sector, companies reluctantly conceded union security after the 1945 Ford strike.[60] While these employers were not necessarily champions of union security, many had come to accept that it brought a measure of stability to the workplace. In 1949, D.B. Grieg, President of Ford Motor Company, Canada admitted that Rand's decision on union security had created a cordial atmosphere at the bargaining table.

> It has helped indirectly in that Rand's proposals and reasoning have shown the parties the need for co-operation between them if there is going to be any rest from industrial strife. It has helped directly in that the provisions in the formula have corrected many of the former major faults and score points in the company-union agreement, as far as labour was concerned, without having made the company give up any right on which the latter has felt strongly. Thus, there is now less ill-will toward the company on the part of labour, and more respect for labour's rights by the company.[61]

By making this agreement, the large auto companies acknowledged that union security facilitated cooperation with the unions and was thus beneficial to both parties.[62]

The auto companies' approach to union security was not universally adopted by other employers. In the mining sector, employers were determined to defeat any reforms that strengthened the position of workers. Mine owners also identified with a particular historical image of rugged frontier individualism that translated into an unrelenting level of contempt for trade unions.[63] Throughout the twentieth century, these characteristics compelled mine owners to develop close political connections with provincial government officials. In the 1920s and 1930s, friendly relations with the Ferguson and Hepburn governments influenced government policy in the mines. In collaboration with the mine owners, the provincial government limited the extension of financial securities regulation, gave public subsidies for mining exploration,

59. E.E. Palmer, "Union Security and the Individual Worker," *University of Toronto Law Journal,* 15 (Winter 1964), 338.

60. Desmond Morton, *Working People: An Illustrated History of the Canadian Labour Movement* (Montreal & Kingston 1998), 186. Morton suggests that manufacturing employers' embrace of the Rand Formula was "notably restrained." Before the strike, company lawyer J.B. Aylesworth argued that if Ford concede to the union's demands it would limit the company's rights at the bargaining table. When Ford and the union had agreed on binding arbitration by Justice Rand, the company took the same position as the Ontario CMA, suggesting that closed shop provisions violated the rights of individual employees.

61. Quoted in Jeremy Taylor, "The Rand Formula," *Quarterly Review of Commerce,* 14 (April 1949), 156.

62. Don Wells, "The Impact of the Postwar Compromise on Canadian Unionism," 149, 155–63.

63. H.V. Nelles, *The Politics of Development: Forests, Mines and Hydro-Electric Power in Ontario, 1849–1941* (Toronto 1974), 436.

and defended mining interests from federal regulators. The mine owners were also able to use their influence to keep provincial resource taxes exceedingly low and to encourage provincial opposition to industrial unions.[64] As many of the leading mining capitalists controlled large international corporations, this level of influence also brought government officials into close connection with American capital.

Despite the growth of the manufacturing sector and the reduction of mining interests after the war, mining capital maintained a cosy relationship with the Drew and Frost governments. In part, this association continued to drive mining development in northern Ontario, even as it declined in significance overall.[65] In the post-war period, uranium, nickel, copper, and zinc also took on added importance as the American military sought out resources for its new weaponry, including its expanding nuclear arsenal.[66] Given the significance of these minerals, the towns of Timmins, Sudbury, Cobalt and Kirkland Lake became synonymous with the companies of Inco, Hallnor, Falconbridge, Hollinger and McIntyre Porcupine. The high level of government support for the industry helped keep mining profits relatively healthy, despite frequent fluctuations in demand and competition from newly industrialized countries.[67] In the long term, however, government assistance could not mask mining's relative decline. Between 1950 and 1960, mineral exports were flagging due to the highly volatile nature of raw commodities on the international market which saw provincial production limited to 6½ percent. From the early 1950s to the mid 1960s, the mining industry failed to keep pace with the growth in the provincial economy, falling from six percent of Gross Provincial Product in 1950 to a just over three percent by the end of the 1960s.[68]

These abnormal conditions contributed to the volatility between miners and mining corporations. There was a long history of violent labour struggle in the mines as the unions had waged militant strikes in the 1930s and 1940s

64. Nelles, *The Politics of Development,* 431, 435–443. Nelles identifies a government study in 1930 that found in areas where there were comparable levels of mining development, Ontario taxes were amongst the lowest in the world. The report stated, for instance, that companies in South Africa paid taxes amounting to 35 percent of total profit. In South Africa, a single ounce of gold saw the government collect $2.15 in tax while a single ounce of gold in Ontario saw both levels of government collect $0.526 of tax.

65. K.J. Rea, *The Prosperous Years: The Economic History of Ontario* (Toronto 1985), 162–3.

66. Rea, *The Prosperous Years,* 169–177.

67. William A. Buik, "Noranda Mines Ltd.: A Study in Business and Economic History," M.A. thesis, University of Toronto, 1958, 160–63; AO, OPFGC, RG 3-24, Box 19, McLeod, Young, Wier & Company, Letter to Leslie Frost, 6 November 1953. In 1953, mining finance firm McLeod, Young, Wier & Co. wrote to Frost complaining that the profit made in the eleven gold mines created the impression that companies should use this money for wage increases. To do this, the mine owners would have to disregard the thousands of shareholders that invested in the industry at a time of considerable risk.

68. Buik, "Noranda Mines Ltd.," 183; Rea, *The Prosperous Years,* 162–3.

to obtain collective bargaining rights.[69] Although companies were required to recognize unions after the passage of PC 1003, the conclusion of the war witnessed employers once again seeking to purge unions from the mines. An important part of this strategy was to resist the inclusion of union security in the 1950 OLRA and to undermine the material strength of mining unions. Like the CMA, the mine owners opposed union security because they believed it was a scheme devised by union leadership to enhance their power and to coerce money from individual employees. This was problematic, the companies insisted, because union leadership was tied to left-wing political parties promising "to nationalize the mining industry as well as others."[70] During the drafting of the 1950 OLRA, mine owners warned the government that any provision strengthening the material base of labour would funnel money to the CCF and the Communists. They insisted that,

> ...the mines have had particularly vicious unions to deal with and some of the present officers are quite red. The so-called "voluntary" check-off places a company in a position of starting the entrenchment of officers in the saddle, whether good or bad. [71]

By making this appeal, mining companies declared that their opposition to union security was not simply a principled stand against reckless union leaders, but also a defense of free enterprise.

The opposition to trade unions in the mines was led by Jules Timmins of Hollinger, Balmer Neilley of McIntyre, and J.Y. Murdoch of Noranda and Porcupine.[72] In 1951, Timmins' Hollinger and Broulan Reef gold mines fought a bitter seven-week strike in the city that bore the company president's name over the United Steelworkers of America's demands for the check-off.[73] During the strike, the miners enjoyed a great deal of community support, ranging from church donations to local restaurateurs organizing a soup kitchen to feed miners and their families. Encouraged by such solidarity, Steelworker President C.H. Millard threatened to extend the strike to other companies if

69. Laurel Sefton MacDowell, *'Remember Kirkland Lake' The Gold Miners' Strike of 1941–42* (Toronto 1983). See also, Mike Solski and John Smaller, *The History of the International Union of Mine, Mill and Smelter Workers in Canada Since 1895* (Ottawa 1984).

70. Noranda Mines Ltd., "The Strike at Noranda," *Globe and Mail,* 15 March 1954.

71. AO, OPFGC, RG 3-24, Box 19, C.D.H MacAlpine, President of Ventures Ltd., Letter to Leslie Frost 23 March 1950. MacAlpine was a Toronto mining financier and president of Ventures Ltd., which was the holding company for every major mining company in Ontario.

72. The Porcupine area gold mines were connected to Murdoch's Noranda group. Murdoch was also the President of the Pamour, Hallnor, and Aunor gold mines in the Timmins area, as well as President of Norbeau Mines in Quebec; Waite Amulet Mines, Goldale Mines; Amulet Dufault Mines Ltd; and Vice President and Director of Pacific Gold Mines Ltd; Wright Hargreaves Mines Ltd and Hollinger Consolidated Gold Mines; the Mining Corporation of Canada; Iron Ore Company; Cariboo Quartz Mining Company Ltd; and Labrador Mining and Exploration Company.

73. Roger Graham, *Old Man Ontario: Leslie M. Frost* (Toronto 1990), 272–73.

Hollinger did not grant the check-off.[74] In order to end the strike, company officials wrote to Frost seeking government support. Frost responded to their requests by insisting that Daley "use his personal connections with the mine owners to end the dispute."[75] Once the government intervened, the company agreed to a settlement of a 13 cents/hour wage increase, but only after Daley was able to get the union to drop the check-off.[76] The settlement demonstrated that Hollinger and Broulan Reef mines were willing to grant one-time wage increases to avoid conceding the security of trade unions in their mines.

Similar conditions were present in a series of violent strikes in 1953 and 1954 at Hollinger and Broulan Reef. In this dispute, the miners launched an illegal strike over Timmins' refusal during conciliation to grant union security or fair wage increases.[77] The strike quickly spread to Murdoch's operations at Hallnor, Porcupine and Preston East Dome mines. Unlike in 1951, Timmins and Murdoch were determined to defeat the union by using replacement workers which led to a series of violent conflicts with the miners. In order to win this dispute, companies relied on government support for the mining industry to protect strike breakers and continue operations.[78] These requests pressured the government to intervene. Using his close relationship with Frost, Murdoch also insisted that the government end the question of union security once and for all by adopting right-to-work laws in Ontario.[79] Given the violence in the mines, however, the government acted cautiously, using conciliation and mediation to bring both sides to the table and negotiate a settlement.[80] After six months of negotiations and violent clashes, the strike

74. Graham, *Old Man Ontario,* 273.

75. AO, OPFGC, RG 3-23, Box 87, Leslie Frost Personal and Confidential Letter to Charles Daley, 7 August 1951. The unions were well aware of the connection between the government and the mines. The unions had hoped to expose this connection when Pat Conroy (Treasurer of the CCL) asked Frost to act as a mediator between the parties. Frost did not take the bait.

76. Ontario conciliation officer, Louis Fine, assisted Daley in the negotiations.

77. Roger Graham, *Old Man Ontario,* 275.

78. AO, OPFGC, RG 3-24, Box 19, Geo T. Pepall (Vice President Samuel, Son & Co. Iron-Steel-Metals), Letter to Leslie Frost, 21 July 1953. Pepall's business was directly tied to production in the mines. In order to end the strike, Pepall "respectfully requested [that] you to give instructions to the Provincial Police for some forms of constabulary to provide the necessary protection to continue business."

79. AO, OPFGC, RG 3-24, Box 19, J. Y. Murdoch, Letter to Leslie Frost 3 September 1953; AO OPFGC, RG 3-24, Box 19, Canadian Metal Mining Association, Unlawful Actions by the Unions vs. The Future For Gold Mining in Ontario, 5 September 1950.

80. AO, OPFGC, RG 3-24, Box 19, Leslie Frost, Statement Concerning Law Observance August 1953; AO, OPFGC, RG 3-24, Box 19, Department of the Attorney-General, Memorandum Re: Broulan Reef and Porcupine Mine Workers Union, 23 July 1953. Frost responded with a province-wide address stating that picketline violence would be prosecuted under the law. The emphasis on law and order was important, as the Premier had quietly asked the Attorney General to conduct an investigation and lay charges after the conclusion of the strike. Despite

only ended when Daley and Frost were able to pressure the Steelworkers into dropping the demand for the check-off with a five cent wage increase.[81]

The disputes over union security reflected a much larger critique of the OLRA by employers and unions. Although it cannot be denied that the 1950 legislation constructed the foundation for collective bargaining in the province, the minimum standards in the OLRA continued to leave unionization unattainable for thousands of workers. Having delayed the Act throughout the 1940s, the politics surrounding the 1950 Act demonstrate that the government was not nearly as neutral as it claimed to be. Throughout the 1950s, the freedoms of organized labour were directly limited because of employer demands, which resulted in various exclusions and hurdles. In addition, employers were adamant that any freedoms in the Act had to be balanced by increasing their rights to counter trade unions at the bargaining table. By 1957, even these concessions were being rethought by employers, as they sought to make obvious that the OLRA unfairly extended trade union power in the province.

The Select Committee on Labour Relations

After the merger of the two largest labour federations in 1956, the newly formed Ontario Federation of Labour (OFL) launched a series of hearings critiquing the OLRA. Unionists identified several problematic areas in the Act, and found consensus on easing restrictions in the certification process, eliminating mandatory conciliation, removing the ban on mid-term strikes, and entrenching union security.[82] Coupled with the increased use of injunctions to end strikes, Ontario's largest labour body insisted that the Conservative government's intervention during labour disputes openly sided with employers. Criticism of the Act was also emanating from employers, who continued to raise concerns about illegal strikes. In response to these claims, Frost announced in the 1957 Speech from the Throne that the government would thoroughly review the OLRA.[83] Rather than launch a formal investigation, the Tories opted for an all-party Select Committee of the Legislature to examine and recommend changes to the Act.[84]

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acknowledging the union's role in escalating violence, Frost stopped short of conceding to employer demands to send in police reinforcements to end the strike.

81. See Roger Graham, *Old Man Ontario,* 285–86. See also, Wilfred List, "End Hollinger Strike, Terms Displease Union," *Globe and Mail,* 23 December 1953.

82. Canada Department of Labour, "Ontario Labour Relations Act Criticized," *The Labour Gazette,* (August 1956), 972–99.

83. According to the Select Committee Secretary Harold Perkins, the formation of the Committee was "likely prompted by the action of the OFL," in their traveling hearings a year earlier. Bruce Levett, "Ontario Wrestles With Labor Laws," *Windsor Star,* 3 January 1958.

84. It was the Select Committee process that provided one of the catalysts for the introduction of the Labour Relations Act in 1943. Bora Laskin, "Collective Bargaining in Ontario: A New

The Committee was composed of eight members of the Conservative caucus, two Liberals and one member of the CCF. Alongside the Chair and Minister of Mines, James A. Maloney, the seven additional Conservative members brought with them a wealth of experience as employers in the private sector. Ellis Morningstar, MPP from Welland, was a well-known local manufacturer as was G.E. Jackson from London South. Members also included future Minister of Labour, Leslie Rowntree and future Minister of Economics and Development, Robert Macaulay. The other Conservative members (John Yaremko, Wilfred Spooner,[85] and R.M. Myers) were all lawyers and well known Frost loyalists. The additional participants were Liberal Arthur Reaume (former Conservative Mayor of Windsor, Liberal-Labour candidate, and local businessperson), Albert Wren (Liberal-Labour Member of Parliament and public servant) and CCF leader, Donald MacDonald (journalist).

The Committee's structure gives a rare glimpse into how the three political parties in the Ontario legislature approached post-war industrial relations. The inclusion of MacDonald, for example, provided a voice for the CLC unions as they were aligned with the CCF. In addition, the selection of Wren and Reaume[86] together with Robert Macaulay[87] gave unions some hope that the hearings could promote progressive change. Employers, meanwhile, decried that the hearings were being held in public as they were concerned that public pressure would lead to sympathy for the unions.[88] Despite the optimism of unions and the trepidation of employers, both groups were given ample opportunity to have their voices heard. The Committee received hundreds of submissions and heard testimony numbering over 5000 pages before submitting its report in 1958. Although there were several differences by sector and

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Legislative Approach," *Canadian Bar Review,* 21 (November 1943), 684.

85. Wilfred Spooner was Minister of Mines from July 1957– December 1958. He was then appointed to be Minister of Lands and Forests from July 1958–November 1961.

86. Both Albert Wren and Arthur Reaume had both long histories in the "Liberal-Labour" camp. Wren was the longest serving Liberal-Labour MPP, sitting in the legislature from 1951 until his premature death in 1961. Reaume had been mayor of Windsor during the Ford strike in 1945 and had been a member of the Conservative Party until that point. He broke with the party over Drew's actions during the strike and ran as a member of the Liberal-Labour coalition in the 1948 provincial election. In 1951, Reaume was elected as a Liberal, representing the riding in Windsor. See Abella, *Nationalism, Communism and Canadian Labour,* 144–5.

87. Canada Department of Labour, "Ontario Labour Relations Act Criticized," *The Labour Gazette,* (August 1956), 975. During the traveling hearings, Macaulay stated that there were omissions to be filled in the Act. He sided with labour's criticisms of conciliation delay and stated that he was opposed to the use of *ex parte* injunctions during labour disputes.

88. AO, Ministry of Labour Legislation and Regulation Files (hereafter MLLRF), RG 7-14-0-108, Box 3, Canadian Manufacturers Association Letter to Leslie Frost 19 March 1957; AO, MLLRF, RG-7-14-0-107, Box 3, Canada Vitrified Products Ltd., Letter to the Select Committee, 7 November 1957.

by region, the positions of business and labour were well summarized by the CMA and the OFL.

The CMA was determined to increase the regulation on trade unions in the Act. Insisting that it was committed to collective bargaining, the CMA stressed that unions had now reached a state where they surpassed the power of employers.

> The fact is that, under what was designed to be protective legislation, trade unions have acquired such status and such power that there is today a marked imbalance of power between management and labour. We submit that the changed circumstances require a re-orientation in the approach to the law on labour relations. New legislation is needed now not merely in the best interests of the public and of employers but also of employees—union members and non-members—and indeed, in the long term best interests of trade unions themselves…trade unions must be required to accept equal legal responsibilities with employers and other groups in our society. They should be required to obey the laws of the land, especially in view of the substantial grants of exclusive power implicit in the certification process.[89]

The CMA reasoned that the continued use of illegal strikes demonstrated that unions lacked a "legal and moral responsibility."[90] Accordingly, the association insisted that the OLRA should provide no further protection to trade unions.

By emphasizing the coercive aspect of unionism, the CMA positioned itself as a defender of individual rights. In order to preserve individual liberty, government had the responsibility to limit union security agreements by introducing right-to-work laws in Ontario.[91] This request coincided with the argument that individuals have the specific right to "not join a union." Further, the CMA sought to expand on existing powers by increasing employer speech protection in the Act. Reform of this nature would ensure, as H.J. Clawson, chair of the CMA's Industrial Relations Committee argued, that no union may "keep someone else out, who wants to work. That person would have a natural right to work."[92]

In order to combat these accusations, the OFL made clear that it actively encouraged affiliates to obey the law. It also pointed out that it had worked throughout the decade to rid the unions of Communist elements thus further

89. AO, PSCLR, RG 49-138, Box C 92, *Submission of the Ontario Division of the Canadian Manufacture's Association,* 29 October 1957, 5.

90. AO, PSCLR, RG 49-138, Box C 90, Testimony of the Canadian Manufacturers' Association (Ontario Division), 29 & 30 October, 2174.

91. AO, OPFGC, RG 3-23, Box 87, Letters to Leslie Frost. Throughout the hearings, not a single employer supported the inclusion of union security in the Act.

92. AO, PSCLR, RG 49-138, Box C 90, Testimony of the Canadian Manufacturers' Association (Ontario Division), 29 & 30 October, 2202–3. Clawson recognized "that a strike is a war between a company and a union. I don't think it is strike-breaking for a company to attempt to operate its plant if there are some of the employees willing to work."

promoting trade union "responsibility."[93] When Conservative and Liberal representatives challenged the OFL's commitment to eliminating Communist members while also following the letter of the law, the OFL responded that it had little power to discipline its affiliates. Nevertheless, the OFL testified that its policy was to reprimand any affiliate found guilty of breaking the law. In stressing this point, Secretary-Treasurer Douglas Hamilton argued that the Canadian Labour Congress (CLC) had been working to find a democratic process to discipline unruly members, but that "democracy moves exceedingly slow."[94]

Throughout the hearings, the OFL advocated legislative protection of union security, an end to the ban on mid-term strikes, and the elimination of *ex parte* injunctions. At the centre of the OFL testimony was the insistence that many employers had strengthened their resolve to defeat unionization by violating the law. The union insisted that companies were routinely guilty of contravening the OLRA by intimidating or firing pro-union employees. Many union members also reported that employers failed to adequately compensate workers under contract and continued to recruit strikebreakers during legal strikes.[95] They also identified several instances where employers ignored the *Unemployment Insurance Act* and the *Holidays with Pay Act* by refusing to pay additional benefits.

After a year of hearings, the Committee reported to the legislature on 10 July 1958. The Committee's recommendations—while openly supportive of collective bargaining—made 51 recommendations to overhaul the OLRA.[96] Chief among these recommendations was the proposal to adopt union security, provided that 60 percent of members voted in its favour. This proposal was far from unanimous. Conservative members G.E. Jackson, Ellis Morningstar and Leslie Rowntree all dissented because they felt that union security was a

93. AO, PSCLR, RG 49-138, Box C 90, Testimony of the Ontario Federation of Labour, 1 October 1957, 843. This was a response to questions from Albert Wren regarding the OFL's membership base. In an eerie similarity to the McCarthy trials in the United States, Wren and fellow Liberal-Labour member Albert Reaume (along with Conservative members) probed the OFL's relationship to the Communist leadership in Mine Mill and the United Electrical Workers. Douglas Hamilton and David Archer responded stating that the "legitimate" house of labour did not include organizations that were Communist dominated.

94. AO, PSCLR, RG 49-138, Box C 90, Testimony of the Ontario Federation of Labour, 1 October 1957, 867.

95. Ontario Federation of Labour, "2nd OFL Brief to Select Committee: Counter-Attack," *Ontario Labour Review,* (May 1958). The OFL outlined one popular union-busting tactic. Nathan Shefferman (a professional strike breaker) had been hired by many Canadian firms to break strikes. One of Mr. Shefferman's favourite tactics was to stage an act of violence which would then be blamed on the union. In other instances, police were used to provoke peaceful strikers into violence.

96. Select Committee on Labour Relations of the Ontario Legislature (hereafter SCLROL), *Report of the Select Committee on Labour Relations of the Ontario Legislature* (Toronto 1958).

matter for collective bargaining and not for legislation.[97] The Committee also endorsed further regulation of trade unions by proposing to alter their ability to win certification. In bowing to the arguments put forward by employers, the Committee called for a mandatory certification vote if at least 35 percent but not more than 75 percent of employees in the bargaining unit signed union cards.[98] The Committee also suggested that certification be attained after winning 50 percent of the votes, if 66 2/3 percent of those eligible to vote cast ballots.[99]

In acknowledging the concerns of the CMA, the Committee insisted that employer speech provisions were disproportionately restricted by the Act. In order to correct this problem, the Committee proposed that employers be "free to express their views on an equal basis with trade unions provided they do not use coercion, intimidation, threats or promises or undue influence."[100] The Committee also suggested that no individual be denied employment because of refusal to join a trade union.[101] In order to protect the "public interest" during labour disputes, the Committee advocated for a ban on secondary boycotts, the legal incorporation of trade unions, and the creation of an Industrial Inquiry Commission to determine the legitimacy of strikes.[102] As the "public interest" was left vague and open to interpretation, this proposal sought to place further limitations on the right of workers to legally strike.

The Committee also reviewed the supervision of collective bargaining, the enforcement of OLRB decisions, and the regulation of internal union affairs.[103] Similar to all of its proposals concerning collective bargaining, the

97. SCLROL, *Report of the Select Committee,* 30.

98. SCLROL, *Report of the Select Committee,* 34. MacDonald was the lone dissenter on this recommendation, as he felt that the 75 percent number was too high.

99. MacDonald dissented on this recommendation as well, suggesting that the principle of the amendment should be 51 percent of those eligible to vote.

100. SCLROL, *Report of the Select Committee,* 38. MacDonald, Macaulay and Wren all dissented on this recommendation.

101. SCLROL, *Report of the Select Committee,* 42.

102. SCLROL, *Report of the Select Committee,* 44. Recommendation 51 stated that: "In matters affecting the public interest, the Lieutenant-Governor in Council may either upon application or of his own initiative…make or cause to be made any inquires the Lieutenant-Governor in Council thinks fit regarding industrial matters, and do such things as may seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes … where in any industry a dispute or difference between employers and employees exists or is apprehended, and where the matter involves the public interest, the Lieutenant-Governor in Council may refer the matters involved to a Commission, to be designated as an Industrial Inquiry Commission, for investigation … and shall furnish the Commission with a statement concerning which such inquiry is to be made, and in the case of any inquiry involving any particular persons or parties, shall advise such persons or parties of such appointment." This proposal received unanimous support.

103. See Bromke, *The Labour Relations Board in Ontario,* 61–6.

Committee's recommendations concerning the administration of the Act overwhelmingly dismissed the arguments put forward by labour and favoured the submissions of business. Perhaps the most blatant management inspired proposal was the decision to allow judicial appeals for all OLRB decisions.[104] As such practice had long existed in the United States, the Committee felt that management's plea to protect individual rights through judicial review would offset the security obtained from union certification.[105] For the majority of the Committee, the Board functioned as a tribunal designed to extend trade unionism rather than a neutral ground where employers and unions met as equals. To correct this problem, the Committee sought to extend the ability of courts to curb the discretionary power of the Board. According to *Globe and Mail* reporter Wilfred List, this proposal was "the most contentious of the report" while Adam Bromke concluded this was an open attempt to pacify management.[106]

Not all the recommendations reflected the demands of the employers. The report called for an end to the provision allowing municipal councils to opt out of the Act and proposed to eliminate restrictions on office workers seeking bargaining rights.[107] In its examination of certification, the Committee did recommend strengthening the Board's power to enforce a form of successor rights.[108] There were also proposals to amend the Board's ability to rule in unfair practice cases by encouraging management to negotiate responsibly at the bargaining table. This offer was mitigated, however, by suggesting that the Board also be given the power to decertify a union that was guilty of extreme violations of bad faith bargaining.[109] The Committee was also critical of *ex parte* injunctions, stating that they were only desirable in an emergency.[110]

104. SCLROL, *Report of the Select Committee,* 37.

105. MacDonald and Macaulay dissented from this provision.

106. Wilfred List, "Act Would Keep Right of Appeal," *Globe and Mail,* 3 February 1959; Bromke, *The Labour Relations Board in Ontario,* 64. Bromke suggests that support for the Board fell overwhelmingly across partisan lines with the unions overwhelmingly supportive of expanding the Board's discretionary power while employers supported the increased role for the courts.

107. SCLROL, *Report of the Select Committee,*40.

108. SCLROL, *Report of the Select Committee,* 41–2.

109. SCLROL, *Report of the Select Committee,* 29.

110. SCLROL, *Report of the Select Committee,* 39. Under the terms of the *Judicature Act*, any employer subjected to a picketline could apply for an *ex parte* injunction. The *ex parte* injunction occurs when a single party appeals to a judge without giving notice to the other party. On the politics surrounding the injunction in Ontario, see AO, Premier J.P. Robarts General Correspondence, RG 3-26, Box 189, File Strikes-Exparte Injunction January 1966–June 1966, Harry Arthurs, Confidential Memorandum on Injunctions, 8 October 1964. See also, Joan Sangster, "'We No Longer Respect the Law': The Tilco Strike, Labour Injunctions, and the State," *Labour/Le Travail,* 53 (Spring 2004), 55–6.

Although not recommending their outright ban, the critique of the *ex parte* nature of injunctions did address concerns that they generally passed without the knowledge of striking workers.

Notwithstanding these concessions, the Committee's report was met with enthusiasm by the CMA and other business groups.[111] Faced with employer calls to implement the report, the labour movement claimed that the Committee was an attempt by Conservative backbenchers and employers to undermine the freedoms that unions had won since the end of the war. Having made these conclusions, trade unions distanced themselves from the report in its entirety. As rumours circulated that the report would form the basis for future reforms to the OLRA, unions took the unusual step of defending existing legislation for fear that the most offensive recommendations would be implemented.[112] This fear was so intense that by the end of 1959, veteran labour leaders acknowledged that the Select Committee report represented "the greatest danger [labour] has faced in 35 years."[113]

Expanding Employer Freedoms: The 1960 OLRA

During the 1959 provincial election campaign, the Ontario government promised to thoroughly review the OLRA.[114] Throughout the election, Frost took no position on the Committee report, although he did make vague references "to make improvements where indicated." The ambiguity of these commitments did not go unopposed by the CCF.[115] Campaigning in St. Catharines, the CCF

111. Frost's correspondence files were bursting with letters from employers to implement the recommendations of the Select Committee.

112. AO, OPFGC, RG 3-23, Box 88, United Brotherhood of Carpenters and Joiners of America, Letter to Leslie Frost Re: Report of the Select Committee on Labour Relations, 1960 January 20. The Council stated, "when the many anti-labour recommendations contained in the Report are pitted against the paltry one or two recommendations which may be beneficial to us; we would be willing to forego these, rather than be plagued by the vicious anti-labour legislation invoked by this report."

113. "Cites Pending Ontario Legislation: Peril at New High, Labor Told," *Globe and Mail,* 26 November 1959. Wilfred List "Union Leaders Fear Growing Regulation," *Globe and Mail,* 21 December 1959.

114. "Calls June 11 Election, Frost Issues Blueprint: Premier Cites Record on Decade in Office," *Globe and Mail,* 5 May 1959; Murray Goldblatt, "B.C.-Type Labor Law Threat in Ontario Could Handcuff Union," *Toronto Daily Star,* 4 April 1959.

115. Anthony Westell, "Vote No Tea Party, Push Basic Issues," *Globe and Mail,* 20 May 1959; Anthony Westell, "John Wintermeyer: Labor Relations Report Shelved For Campaign," *Globe and Mail,* 22 May 1959. The choice of Wintermeyer led most journalists to conclude that the Party consolidated its position to the right of the Conservatives. "The Liberals: Are They Growing Too Conservative?," *Toronto Daily Star,* 29 May 1959. This was reflected in Wintermeyer's promise to implement the report in its entirety as well as appoint a series of labour-management councils to discuss various issues affecting the workplace, including automation, security and the "dislocation of industry."

leader highlighted rising unemployment and warned of "industrial chaos" if the Conservatives followed the suggestions of the Committee.[116] Ignoring the fact that he consented on 41 of the 51 recommendations, MacDonald used forceful rhetoric when he compared the Committee's proposals to the "Mein Kempf" of the CMA and stated that the Conservatives "would make it almost impossible to organize new unions." Notwithstanding these critiques, the Tories were re-elected with a third straight majority. Given the vague commitments to examine the OLRA, the question of how the new government would address the Select Committee report remained an open-ended question.

Behind the scenes, there is some indication that the Tories were moving closer to employer demands to amend the Act. Throughout the campaign, many employers wrote to the premier conveying that their support for the Conservatives was tied to reformed labour laws. In one exchange, employers in the construction and manufacturing sectors chastised the government for not introducing the report before the election.[117] They subtly reminded Frost that it was small and medium sized businesses that "had supported the government in past campaigns," and cautioned that they were expecting the government to implement the report upon the party's re-election. After the campaign, employer demands to amend the OLRA intensified. In a series of letters, hundreds of employers wrote to Frost promoting the virtues of the report, suggesting that it would bring:

(a) Union responsibility to the same extent that companies are liable for breaches of law.
(b) Effective provincial machinery for a speedy and binding settlement of all jurisdictional disputes.
(c) Legislation to effectively eliminate unlawful work stoppages.
(d) Effective legislation prohibiting picketing for the purposes or in support of unlawful activities.
(e) Legislation providing enforcement machinery to ensure speedy compliance with the LRA.
(f) Means by which the Department of Labour be made fully and directly responsible for the enforcement of its own labour legislation.[118]

Armed with the Select Committee report, employers understood that the proposals had the potential to substantially reduce the power of trade unions.[119]

As these tensions simmered beneath the surface, Daley stressed his reluctance to undermine the work he had done since becoming minister in

116. Ben Rose, "Chaos Threatening Labor-MacDonald," *Toronto Daily Star,* 11 May 1959.

117. AO, OPFGC, RG 3-23, Box 87, D.R. Emery, President of Emery Engineering Co. Ltd (Barrie Ontario) Telegram to Leslie Frost 8 June 1959.

118. AO, OPFGC, RG 3-23, Box 87, Telegrams to Leslie Frost, 8 June 1959–January 1960; AO, OPFGC, RG 3-23, Box 87, H. Freure, President of K.W. House Builders Association, Letter to Leslie Frost, April 1960.

119. AO, OPFGC, RG 3-23, Box 88; John Inglis Co. Ltd., Letter to Leslie Frost, 11 March 1960.

1943. Given his central role in creating the 1950 Act, Daley was particularly suspicious of the report and was reluctant to address most of the recommendations.[120] In a series of memos to Deputy Minister J.P. Metzler, Daley broke down the majority of proposals as unworkable, suggesting that the implementation of all 51 recommendations would destroy his labour legislation. He was particularly annoyed by the suggestion concerning good faith bargaining (it was impossible to make management responsible at the bargaining table he wrote) and deplored the idea of union security.[121] Daley was also perturbed by the proposals regarding certification, stating that these would lead to chaos and destroy the balance in the 1950 Act. Although sympathetic to the endorsement concerning the limitation of strikes and the extension of employer speech provisions, he was hesitant to tip the Act too far in favour of employers.[122] Ultimately, the compromise he was able to reach in cabinet was to introduce greater "labour control" amendments while dropping many of the most offensive suggestions concerning certification and the right to strike.

The introduction of Bill 74, An Act to Amend the Labour Relations Act was introduced in February 1960, becoming law on 22 October 1960 (See Appendix 2). In the new Act, the government focused on the Select Committee's technical concerns over certification, conciliation, mediation, arbitration, and OLRB discretionary power. Meanwhile, it shelved many of the more egregious suggestions pertaining to certification, judicial appeals, and the abolition of secondary boycotts. The amendments did seek to appease the Select Committee by allowing individual union members to challenge a certified bargaining agent. In the building trades, the new legislation accomplished this by establishing a jurisdictional disputes commission to regulate conflicts between unions while bringing in restrictions on union security and union strike activity.[123]

120. Wilfred List, "Labor Minister Opposes Drastic Changes in Law," *Globe and Mail,* 3 November 1959. In a speech to the 1959 OFL convention, Daley stated that the recommendations confused him and the government believed that "a more satisfactory state can be achieved by a minimum of interference by the legislature." This observation stemmed from his firm belief that labour relations had improved considerably since 1950 and that the "old spirit of ill-will ha[d] now disappeared."

121. Legislative Assembly of Ontario, Proceedings of the 26th Parliament, 2nd Session, 24 February 1960, 696.

122. Wilfred List, "Cabinet Approves Labor Act Changes," *Globe and Mail,* 20 February 1960; Pat McNenly, "Labor Arms Against Tougher Ontario Law, *Toronto Daily Star,* 15 December 1960. The matter was fiercely divisive in the cabinet. On the one hand, former Select Committee members John Yaremko, (Transport Minister) Robert Macaulay, (Minister of Energy) and James Maloney (Minister of Mines) had been pressing for tough union controls and in some cases outright legalization of union-busting. On the other hand, Daley's lukewarm reception to the final report contributed to watering down the report.

123. The commission would have the power to issue interim orders enforceable in the courts in order to prevent jurisdictional disputes from interfering with production.

Bill 74 sought to impose two broad policy goals: a more streamlined process to settle industrial disputes and the increased legal regulation of trade union responsibility. In order to accomplish these goals, the government implemented the procedural aspects of the Select Committee's report pertaining to union certification and conciliation delay. It also expanded the discretionary power of the OLRB to regulate unfair labour practices during collective bargaining. In addressing certification changes, the government relied on the Select Committee's observation that the current process was slow and cumbersome. While Daley shied away from the radical proposals of the Committee, he persevered with the recommendation to loosen employer speech provisions during certification drives.[124] Daley also kept the 45 percent threshold to receive an OLRB certification vote and maintained the long criticized provision that the union receive the support of 50 percent of all those eligible to cast votes rather than just a majority of those who actually voted. This amendment allowed the government to shelve the much higher threshold recommended by the Committee while ignoring the unions' argument that certification votes be based on a simple majority. In this area, the status quo prevailed.

In other areas, the government sought to impose restrictions on the ability to enter into a security agreement or to go on strike. Above all, the government refused to include the voluntary revocable check-off in the Act. Although recognizing that union security had been a key ingredient in leading to employer hostility in the mines, Daley continued to argue that it adversely affected the balance of power by limiting employer rights.[125] The reforms also weakened the ability of a union to win a voluntary security agreement during first contract negotiations. Under this new provision, a union and an employer could not enter into a closed shop or maintenance of membership agreement unless 55 percent of employees were members at the time the agreement was signed. Further reforms were designed to protect individual employees from losing employment "because he was or is a member of another trade union or has engaged in activity against the trade union which is party to a collective agreement." According to officials, this amendment made clear that employees were not protected if they had colluded with employers to defeat a union but were flexible enough to protect workers who supported a raiding union.[126]

124. The wording in the Act (s. 45) stated that "… nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises, or undue influence." This was almost identical to the CMA's proposals that stated employer speech be protected "no matter how favourable or unfavourable such statements may be to any trade union, so long as no intimidation or coercion is involved." AO, PSCLR, RG 49-138, Box C 90, *Submission of The Canadian Manufacture's Association (Ontario Division),* 29 & 30 October, 16.

125. Legislative Assembly of Ontario, *Proceedings of the 26th Parliament, 2nd Session,* 24 February 1960, 696.

126. NAC, FP, MG 31, E-27, vol.1, Folder, Labour Relations Act Collective Bargaining, Memo Re: S. 16 of the Labour Relations Amendment Act 1960, March 1960, 3. Finkelman stated that

While this reform sought to walk a fine legal line between legitimate and illegitimate behaviour of trade union members, the wording in the Act sided with the CMA's argument, calling for restriction on union security agreements because they eroded individual rights in the workplace. By limiting the wording to "engaged in activity against the trade union," the new regulations implied that the Act would protect individuals performing legitimate and illegitimate activity against a certified bargaining agent. In so doing, many union members felt that these words resembled an underhanded attempt to implement a right-to-work clause in the OLRA.[127] While Frost denied this,[128] CCF organizer David Lewis (legal counsel for the OFL) argued that this provision was reminiscent of the "anti-labour attitude of a majority in the legislature," and nothing less than a vicious attempt to "legalize union-busting."[129]

Bill 74 also included a new section stating that "no person shall do any act if he knows or ought to know that, as a probable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful act." Finkelman defended the wording in this section, suggesting that phrases of these types are,

> ...frequently used in criminal and penal statutes [and] it has suggested that the use of the phrase "if he knows or ought to know" coupled with the phrase "probable consequences" which follows it may prevent a person from exercising his rights because of the fear that some other person or persons may use his action as an excuse for engaging in an unlawful strike or lockout. However, it is highly unlikely that the subsection even as originally drafted would be so interpreted. [130]

The letter of endorsement by the OLRB chair signalled a united effort to crackdown on illegal strike activity and further limited trade unions' from using the strike weapon for purposes not directly tied to a single employer economic dispute. The Labour Gazette read this amendment as having multi-layered consequences for the enforcement of illegal behaviour during strikes. It predicted that where a strike was declared illegal, picketing of any kind would be illegal even if employees simply respected the picketline out of soli-

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this provision was meant "to protect an employee who becomes involved in any situations where one union is certified and another union is attempting to replace the certified union and replace it with a new one."

127. AO, OPFGC, RG 3-23, Box 88, Private Letter to Leslie Frost, Re: *The Labour Relations Act,* 1 March 1960.

128. AO, OPFGC, RG 3-23, Box 88, Leslie Frost, Letter to Constituent Re: *The Labour Relations Act,* 14 March 1960.

129. Ontario Federation of Labour, *Bill 74 An Act to Amend the Labour Relations Act: An Analysis by David Lewis and Labour Representatives on the Labour Relations Board,* (May 1960), 11–2.

130. NAC, FP, MG 31, E-27, Vol. 1, Folder, Labour Relations Act Collective Bargaining, Memo Re: Section 27 of the *Labour Relations Amendment Act,* March 1960, 2.

darity with their fellow workers and refused to go to work.[131] Daley's reforms in this area sought to meet some of the demands of employers by limiting the likelihood of secondary boycotts and large picketlines during illegal strikes, but stopped short of making unions liable in court.

Given that the new Act shelved many of the most antagonistic recommendations of the Committee, Bromke concludes his study of the OLRA by stating that the new Act did not drastically alter the "social objectives underlying labour legislation in Ontario, nor alter the balance between labour and management."[132] Bromke's analysis suggests that the modifications in the 1960 Act were based on sound policy objections designed to bring the Act into line with the economic and social conditions in the 1960s. By maintaining an invisible balance of power, Bromke praised the changes for not conceding to employer pressure while accepting those proposals which strengthened the administration of labour relations in the province. Such a limited read on the amendments to the 1960 Act suggests that government changes were crafted in a purely technical and non-partisan manner. A more critical read on the 1960 reforms, suggests that government changes were far more influenced by employer demands. In Bromke's view, the changes in 1960 were purely a way to deal with backlog and inefficiencies in the certification process. Yet, the decision to ignore many of the more offensive provisions in the report does not negate the fact that the vast majority of labour briefs were pushed aside to appease employer arguments regarding the irresponsibility of trade unions. In the final analysis, the reforms constructed substantial legal barriers to union activity.

While the amendments to the OLRA received top billing in the 1960 session, the government also passed a change to the *Judicature Act* on the same day it introduced Bill 74. On 24 February 1960, Attorney General Kelso Roberts introduced an amendment which allowed for the entrenchment of *ex parte* injunctions in order to deal with emergent situations related to strikes and strike activity. The amended *Judicature Act* allowed for the granting of an *ex parte* injunction, "where the court is satisfied that a breach of the peace, injury to the person or damage to property has occurred or an interruption of an essential public service has occurred or is likely to occur." In introducing this change on the same day as the amendments to the OLRA, the government reinforced the ability of employers to end strikes through the courts. Whereas Bill 74 placed limits on the likelihood of illegal strike activity, Bill 75 gave employers greater freedom to end legal and illegal disputes, if it was determined that a strike had the potential to lead to injury or a threat to public service.[133] By

131. Canada Department of Labour, "Labour Law: Labour Relations Legislation in 1960," *The Labour Gazette,* 60 (September 1960), 1165.

132. Bromke, *The Labour Relations Board in Ontario,* 98.

133. Bora Laskin, "The Ontario Labour Relations Amendment Act, 1960," *University of Toronto Law Journal,* 14 (Winter 1961), 117. In analyzing the unexpected powers given to judges in

extending the powers of judges to rule on damages, violence, or public safety before it even occurred, Bill 75 significantly challenged the capacity of trade unions to strike.

The amendments to the OLRA proved politically successful for the governing party. In dispensing with the most contentious suggestions from the Select Committee, the government was able to appease large segments of the labour movement by simply doing nothing. While some business leaders were unhappy that Frost chose not to implement all of the recommendations of the Committee, their most vocal criticism was aimed at the decision not to implement right-to-work laws in the province.[134] Nonetheless, employers praised the government's new Act for improving labour relations in the Province because it considerably increased the regulation of trade unions.[135] For trade unions, the major grievances regarding employer abuse, difficulties in organizing, the unfettered right to strike, and union security remained unaddressed. In addition, unions were placed on the defensive by the extension of employer speech provisions. As Frost's term as premier drew to a close, the changes to the OLRA and the *Judicature Act* contributed to the unprecedented level of working class unrest during the 1960s.

Conclusion

In the immediate post-war period, collective bargaining legislation did contribute to reshaping the role of trade unions in the economy. Despite years of delay, in 1950 the government of Leslie Frost introduced a Labour Relations Act that respected the right of unions to organize, bargain, and under rigorous legal restrictions, to strike. Although celebrated by supporters as the arrival of industrial pluralism in Ontario, the freedoms outlined in the Act were undermined by the provincial government's association with private businesses. This support led to numerous restrictions in the Act, which included the exclusion of thousands of workers, restrictions on union security, narrowed the right to strike, and limited the participation of rank-and-file workers in the collective bargaining process. Bowing to the requirements of legal responsibility, these barriers undermined the democratic potential of trade unions and made unionization in new sectors more difficult.

Throughout the 1950s, the comfortable relationship that business enjoyed

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the *Judicature Act* Bora Laskin concluded that the government "…went beyond the Select Committee's recommendations by permitting such injunctions on the occurrence, *inter alia*, of injury to the person or damage to property … and [changed] the specification in the enactment of a right to seek an *ex parte* injunction where an interruption of a essential public service has occurred or is likely to occur."

134. AO, OPFGC, RG 3-23, Box 88, Canadian Automobile Chamber of Commerce, Letter to Charles Daley, 15 March 1960.

135. AO, OPFGC, RG 3-23, Box 88, John Inglis Co. Ltd., Letter to Leslie Frost Re: Bill 74, 11 March 1960.

with the provincial Conservatives continued to challenge the extension of unionization in the province. During this period, business sought to demonstrate that minimum standards in the 1950 OLRA had destroyed notions of balance with the post-war economy. In order to address these concerns, employers pressed for greater freedoms in the Act, ranging from the extension of employer speech provisions to the full implementation of Taft-Hartley in Ontario. In positioning themselves as defenders of individual rights, employers also suggested that the power of unions be curtailed by making them more responsible to the law. This position was emphasized during the Select Committee hearings and again in the amendments to the OLRA in 1960. While many of the most radical proposals of the Select Committee were not included in the modified Act, several reforms did seek to address the growing power of trade unions by extending freedoms to employers to defeat unionization drives. Although the Minister of Labour proclaimed that these changes ended the "old methods of doing business," the concessions in the Act reflected the fact that government policy was still very much motivated by the demands of private enterprise.

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Appendix 1

Strikes and Lockouts in Ontario by Fiscal Years, 1938–1961

Year	Number of Disputes	Number of Workers	Days Lost
1938	127	22,749	294,906
1939	54	5,795	86,997
1940	36	6,075	50,468
1941	55	9,188	36,318
1942	109	28,690	298,393
1943	98	32,582	171,178
1944	90	31,497	134,840
1945	67	32,999	263,621
1946	69	42,705	1,108,417
1947	66	38,591	1,883,482
1948	100	14,893	192,957
1949	59	12,570	262,891
1950	65	30,881	387, 219
1951	98	83,861	447,647
1952	115	57,129	527,435
1953	95	26,336	350,380
1954	85	27,051	680,601
1955	75	26,576	952,964
1956	87	37,218	1,949,672
1957	133	40,951	334,362
1958(a)	132	58,467	1,918,030
1959	104	25,540	267,730
1960	156	24, 085	337,370
1961	166	39,817	644,770

Sources: (1) Ontario Department of Labour, *39th Report of the Ontario Department of Labour,* 1958. (2) Ontario Ministry of Treasury, Economics and Intergovernmental Affairs, *Ontario Statistics,* 1975, *Table 10.28 Strikes and Lockouts, Ontario, 1958-1971.*
(a) Adjusted

Appendix 2

1950 & 1960 OLRA

SECTIONS	1950 OLRA	SECTIONS	1960 OLRA (AMENDMENTS)
1	DEFINITIONS	1	DEFINITIONS
2	**Exclusions:** • Domestic • Agricultural • Horticultural • Police • Fire • Teachers	2	**Exclusions:** • ***(new)*** To a person, other than an employee of a municipality employed in silvaculture
3-4	**Freedoms:** • Every person is free to join a trade union of their choice • Every person is free to join an employers' organization of their choice	3-4	**Freedoms:** (no change)
5-6	**Establishment of bargaining rights by certification:** • Trade union may apply to the Board for certification • Board shall determine unit • Adds separate rules to address craft units	5-6	**Establishment of bargaining rights by certification:** • ***(new)*** Termination rights • ***(new)*** Two month window for termination added
7	**Certification:** • Board determination of union members in bargaining unit • Representation vote: 45-55% • Certification after vote: 50 % of all those eligible to vote • Certification without vote: more than 50%	7	**Certification:** • (no change)

8	**Exclusion of security guards**	**8**	**Pre-Hearing Representation Votes *(new)*:** • Trade union may request that a pre-hearing representation vote be taken • Board may determine a voting constituency (45%) necessary for a pre-hearing vote • Board may direct that the ballot box be sealed until after a hearing has taken place • After the vote, the Board shall determine that is appropriate for collective bargaining and if it has 45% support, than the vote is the equivalent of a representation vote in S. 7
9	**Banning of company unions**	**9**	**Exclusion of security guards** (no change)
10-12	**Negotiation of a collective agreement:** • Union must give written notice of its desire to bargain • Parties shall meet within 20 days and shall bargain in good faith to reach an agreement	**10**	**Banning of company unions** (no change)
13-14	**Requests for conciliation**	**11-12**	**Negotiation of a collective agreement** • ***(new)*** Parties shall meet within 15 days and shall bargain in good faith to reach an agreement
15-29	Duties and powers of the conciliation board and its members	**13-15**	**Requests for conciliation** (minor changes)

30-33	**Contents of collective agreements:** • No strike or lockout provision • Arbitration provisions • Union security can be negotiated	**16-31**	**Duties and powers of the conciliation board and its members** (no change)
34-37	**Operation of collective agreements:** • Certain agreements will not be considered collective agreements if an employer participated in the formation or administration of the organization • A Collective Agreement cannot discriminate against any person because of race or creed • Collective agreements are binding on employers, unions, employees • Collective agreements are to be at least one year in length	**32-35**	**Contents of collective agreements:** • ***(new)*** No employer shall discharge an employee who has been expelled or suspended from membership in a trade union • ***(new)*** A trade union and an employer shall not enter into a collective agreement that includes union security agreements unless the trade union has established that not less than 55% of the employees were members of the bargaining unit at the time of certification
38-39	**Bargaining:** • Notice of desire to bargain for a new collective agreement – 2 months before the expiration of an existing collective agreement	**36-39**	**Operation of collective agreements:** • Collective agreements cannot discriminate because of race, creed, ***(new)***, colour, nationality, ancestry or place of origin • Collective agreements are binding • ***(new)*** provisions for council of trade unions to negotiate agreements and make them binding

40-44	**Termination of bargaining rights:** • **One year agreements:** 2 month widow after ten months and before 12 months for a new union • **Multiple year agreements:** 2 month widow before the agreement expires • Voting procedures for termination are outlined (similar to section 7) • After one year if an agreement has not been reached members can apply for decertification • Certification obtained by fraud is outlawed • Termination for failure to give notice to bargain or to bargain within 60 days • Application for termination cannot proceed if conciliation services have been granted	**40-41**	**Bargaining:** • (minor changes to address employer organizations)

45• 46	**Unfair practices:** • Employers not to interfere with the formation or administration of unions • Unions not to interfere with employers organizations	**42-46**	**Termination of bargaining rights:** • ***(new)*** **Two year agreements:** in the case of collective of collective agreements for a term of not more that two years, only in the last two months of operations in the case of a collective agreement • ***(new)*** **More than two years:** Only after the twenty-third month • ***(new)*** Application for termination after conciliation services have been granted are not accepted
47-48	**Employers not to interfere with employees' rights:** • Cannot discriminate against pro-union employees • instate as a condition of employment not to join a union • Dismiss officers of a union • Use intimidation and coercion • Use persuasion to intimidate during working hours	**47**	**Successor Rights** ***(new)*** • A trade union can apply to the Board after a merger, amalgamation or transfer of jurisdiction to maintain certification rights at the business

49-52	**Strike or lockout agreement:** • No strike or lockout can occur while a collective agreement is in operation • Where no collective agreement is in operation, no employee shall strike and no employer shall lockout • No trade union shall authorize an illegal strike • No employer shall authorize and illegal lockout	**48-50**	**Unfair Practices:** (amended) • No employer and no person acting on behalf of the employer shall participate in or interfere with the formation, selection or administration of a trade union, ***but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence (new)***
53	**Employer limits after certification:** • Working conditions may not be altered where a union has been certified and an agreement has not yet been reached	**51-53**	**Employers not to interfere with employees' rights** (no change)

54-56	**Information of collective agreements and constitution to be filed with Board**	**54-58**	**Strike or lockout agreement:** (amended) • ***(new)*** a strike vote taken by a trade union shall be by ballots cast in such a manner that a person expressing his choice cannot be identified with the choice expressed • ***(new)*** no person shall do any act if he knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out • ***(new)*** Nothing in this Act prohibits any suspension for cause of an employer's operation or the quitting of employment for cause
57-61	**Enforcement:** • Minister can appoint a conciliation officer • Conciliation officer has power to inquire into the complaint and endeavour to effect a settlement of the matter complained • Board has power to declare lockout or strike unlawful	**59**	**Employer limits after certification:** (no change)
62-65	**Powers to prosecute offenders**	**60**	**Locals under trusteeship** ***(new)*** • Any provincial, national or international trade union that assumes supervision over a subordinate trade union, shall, within 60 days file with the Board a statement explaining the trusteeship • trusteeship cannot continue for beyond 12 months (unless consent of the Board is given)

66-68	**Administration of the Act:** • Function and powers of the OLRB • Jurisdiction of the Board	**61-64**	**Information:** (amended) • ***(new)***Unions are required to furnish financial statements to members, which can be enforced by the Board
69	**Privative Clause:** • OLRB decisions are final and may not be reviewed in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board	**65-66**	**Enforcement:** (amended) • Board has power to appoint a filed officer • Creation of a jurisdictional disputes commission
70-71	**Powers of OLRB members**	**67-71**	**Declaration of Unlawful Strike** (amended) • trade unions and employers can apply to the Board for to declare an action unlawful • fines are increased
72-77	**General administrative powers, procedures and rights**	**72-74**	**Prosecution under the Act** (amended) • Board orders to be filed with the Ontario courts
78	**Municipal exclusion clause**	**75-79**	**Administration of the Act:** (minor amendments)
		80	**Privative Clause** (no changes)
		81-82	**Board members and legal rights**

		83-89	**Administrative issues:** • Secrecy of information • Minister's powers can be delegated to Deputy Minister
		89	**Municipal exclusion clause** (no change)