Industrial Relations in Canada

by

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INDUSTRIAL RELATIONS IN CANADA

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I  Introduction

This survey provides both a historical and current perspective on the practice of union-management relations in this country. It is written primarily for those who require an introduction to the subject. The survey is divided into six sections. The following section, Section II gives a brief historical overview of trade unions. Section III follows with a description of the structure and functions of the trade union movement.

Section IV provides a brief history of labour relations legislation in this country and follows this with a description of the major elements of current legislation. Section V describes the collective bargaining or negotiation process and the resulting collective agreement. Section VI reviews briefly public sector collective bargaining and Section VII concludes the chapter.

An important element in the practice of union-management relations, that is the decisions of the courts, arbitration and labour relations boards established under the statutes is not covered in this survey. These decisions interpret, define and explain the complex web of rules contained in the legislation and collective agreements governing the relationships between unions and management. A review of these decisions would be a natural follow-up of this survey to complete the study of the field of union-management relations.

II  Brief History of the Labour Movement

(a)  The Beginnings

The Canadian labour movement had its beginnings in the late 18th and early 19th century. Unions or groupings of employees formed to better their conditions of work were found as early as 1794. The first union of record was
an organization of boot and shoe workers in Montreal in 1827. The printers are usually regarded as being the first occupational group to establish permanent unions in Canada. They established a trade union in Quebec City in 1827 to regulate wages, care for their sick and provide a place for social and recreational pursuits. The York Typographical Society (in Toronto) founded in 1832 by printers has remained in existence in one form or another to the present day.

Since few unions kept lasting records, it is difficult to trace in detail early developments in the growth of the Canadian labour movement. The little evidence that exists suggests that early unions were generally found in urban areas in Ontario, Quebec and Nova Scotia. In the main, they were local societies of skilled journeymen and craftsmen in the ship-building, printing, clothing, construction and metal industries. Much of the leadership in these early locals came from skilled British immigrants. Lack of finances, a hostile legal environment and employer opposition kept the union movement small and localized.

Attempts by unions to join together for mutual support often ran afoul of common law conspiracy in restraint of trade. Combinations for the purpose of setting wages, taking strike action and performing other organizational activities were generally deemed unlawful. However, prosecutions were not numerous since most of the employers who were opposed to unionism were generally successful in keeping their employees non-unionized without recourse to court action.

(b) The Second Half of the Nineteenth Century

In the 1850s and 1860s American assistance in the form of personnel and finances began to appear on a wide scale. Locals of printers and iron moulders, for example, affiliated with their counterparts in the U.S. In addition, city assemblies of local unions were formed and for the most part
were able to stay together despite an anti-union environment and the lack of legal protection.

Union activity accelerated in the 1870s and 1880s as public opinion began to shift in support of the struggles of the average working man against the abuses of industrialization. Examples of these abuses can be found in the report of the Royal Commission on Labour and Capital. The Commission, which handed down its report in 1888, catalogued a long list of beatings, blacklisting and long hours and told stories of abject misery to which workingmen were exposed.

However, it was two specific events in the 1870's that finally led to government action to free trade union organization from the shackles of the law.

In 1871, the labour movement, particularly unions in Ontario and Quebec launched a concerted drive for the nine-hour day. The drive brought stiff opposition from employers and prosecution of union members. The printers in Toronto, in particular bore the brunt of the opposition and the law leading to a number of imprisonments.

The second event was passage of the Trade Union Act in the British Parliament. That Act removed the conspiracy doctrine as it applied to trade unions in the United Kingdom. The Canadian Parliament was quick to follow with its own Trade Union Act which permitted groups of workers to join together to bargain for higher wages and better working conditions. At the same time the federal government passed the Criminal Law Amendment Act, which, along with the Trade Union Act legalized strike activity, but also provided penalties for violence or intimidation during organizing campaigns and strikes.
(c) The Emergence of National Federations

In 1873 the first national labour movement was founded with the establishment of the Canadian Labour Union (CLU), a council of some 35 unions from different cities across Ontario. This was followed by the Knights of Labour, an American movement which spread into Canada in 1881 organizing skilled and unskilled workers alike into general unions and trade assemblies. The Knights' philosophy of the equality of working men, the dignity of labour, and their position against monopolies held great appeal, as did their advocation of moderation, education and opposition to strikes except as a desperate last resort. They opened their assemblies without distinction of race, sex, skill or occupation, "excluding only lawyers, bankers and the liquor industry".

By 1890 the Knights had organized more than 257 assemblies across the country with a total membership in excess of 16,000, a very large number in those days.

However, these national organizations were shortlived. The CLU petered out by the end of the 1870s and the Knights, after reaching a peak in the 1890s, began a slow decline and eventually disappeared before World War I.

In 1886 the various diverse movements including purely Canadian unions, the Knights of Labour, and the growing number of international unions (that is, unions whose headquarters are in the United States) came together to form the Trades and Labour Congress (TLC) the same year as the American

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1 However, that organization was racked by strikes, led, in the main, by the lesser-skilled members. Most of these strikes were lost and in the end was a major factor in the decline of the Knights.


Federation of Labour (AFL) was established in the U.S. In both countries these were the first permanent national labour federations. They were to remain in existence until 1956.

From the very beginning of the TLC, internal tensions and conflicts pitted the internationals comprising, in the main, craft unions, against the Knights of Labour and the national unions (that is, purely Canadian unions). A major source was the rivalry among the three groups of unions for organizing rights for particular occupations or categories of workers. In order to minimize conflicts that served only to weaken the labour movement in a hostile environment, the international craft unions made it a cardinal principle that one union and only one union have the jurisdiction to organize particular groups of workers. Thus the United Brotherhood of Carpenters and Joiners of America would be the sole union to organize carpenters. Other unions that attempted to organize these workers would be guilty of "dual unionism" and threatened with expulsion from the federation.

The international unions had staked out their jurisdictions but were not able to solicit the agreement of the purely Canadian unions or the Knights of Labour. The result was constant inter-union competition and raiding to the detriment of the labour movement as a whole.

The struggles among the three groups of unions over raiding and other issues that separated them continued throughout the remainder of the nineteenth century. In 1902 the TLC under pressure from the AFL in the U.S. and its international affiliates finally expelled the Knights of Labour and several of the national unions, duplicating a similar expulsion in the name of dual unionism by the AFL in the early 1890s. But this did not end the conflict. The ousted unions joined together to form the Canadian Federation of Labour (CFL) which, for a few years, posed a threat to the TLC but eventually declined becoming a small, insignificant repository of unions that
finally petered out in the late 1920s.

(d) Labour Disunity

In the meantime, a purely Quebec labour movement based on the culture and language of that province began to emerge in the early years of this century. Its influence came from church-sponsored Catholic labour federations in France, Belgium, Holland and other European countries.

In 1918, the clergy in Quebec took the lead to form the National Central Trades Council in Quebec City, which, in 1921 became the Confederation des travailleurs catholiques du Canada (CTCC) or, in English, the Confederation of Canadian Catholic Labour (CCCL). This organization remained small through to the 1950s never being able to attract the majority of French Canadian unionists into its fold. Nevertheless it exercised a profound influence on labour relations in Quebec in the inter-war period reflecting the Church's philosophy of co-operation between labour and capital.

In sharp contrast, militant, radical unionism emerged in the West. The most successful was the One Big Union (OBU) founded in 1919 as a reaction to the conservatism of the TLC. The OBU, which was a conglomerate of disenchanted locals of international and national unions, was able to ride the crest of the Winnipeg General Strike of 1919 reaping large membership gains from it. The strike saw some 25,000 to 30,000 Winnipeggers from all walks of work life leave their jobs on May 15, 1919.

The immediate spark that started the strike was the refusal of Winnipeg employers to deal with a newly formed metal trades council. But the scope of the strike reflected the general unrest following World War I. The strike ended on June 26 after much violence, mass imprisonment, and little gain by the labour movement. For the OBU, the strike saw its membership soar to a peak of 40,000. After the strike the OBU went just as quickly into a decline and although it remained in existence until the early 1950s, it never regained
its former stature.

The demise of the OBU did not mark the end of radical or revolutionary unionism. This unionism did remain alive in a variety of forms during the 1920s but its activity like that of the rest of the labour movement was considerably reduced. The 1920s were generally prosperous years for the Canadian economy. Gross national product increased steadily, prices remained reasonably stable and wages rose. Despite this prosperity and easy environment the labour movement failed to make much progress. Union membership was stagnant largely because unionism was not yet ready or was unable to organize the emerging mass production industries and because management often with the help of government found effective ways to stave off the spread of union organization.

In 1927 purely Canadian unionism took another large step forward when the CFL, formed in 1902, was reorganized. Buttressed by remnants from the OBU, dissatisfied TLC unions and independent Canadian national unions such as the Canadian Brotherhood of Railway Employees, the CFL became the All-Canadian Congress of Labour (ACCL). Its objective was "to achieve the complete independence of the Canadian labour movement by removing every vestige of foreign control and by organizing the workers of Canada in industrial unions covering every Canadian industry".¹

By the end of the 1920s Canadian labour was in a weakened and disunited position. Unlike the united movement in the U.S. under the American Federation of Labor (AFL), labour in this country was fragmented among conservative craft, catholic, nationalist and revolutionary organizations. As a result it exercised little influence on government and was all but disregarded by employers.

¹Statement of Aaron Mosher, President of the ACCL, quoted in S. Jamieson, ibid, page 22.
(e) The 1930s and Renewed Union Growth

The depression in the early 1930's further weakened and disunited the labour movement. Severe membership losses were experienced and a new rival labour federation emerged in the form of the Workers Unity League established by the Communist Party at the beginning of the depression. The League lasted a few short years. When it was disbanded its members and organizing personnel joined, where possible, the TLC and ACCL. Although short-lived the federation had an important and divisive influence on Canadian labour that lasted through the 1930's and 1940's.

The fortunes of the Canadian labour movement took a turn for the better in 1935 as a result of developments in the U.S. In that year the U.S. Congress passed the Wagner Act which in effect opened up the large mass production industries in the U.S. to unionization. Until that time, labour law tolerated unionization and work stoppages but provided no protection to workers in their efforts to organize into unions. Without the protection of the law unionization made little headway in the large scale industries or indeed in any sector except the crafts and trades. The Wagner Act helped close this gap in the law by giving American workers the right to organize into unions of their own choosing, protecting this right and compelling employers to bargain in good faith with the exclusive representatives of their employees.

With the passage of the Act new industry-wide unions quickly sprung up in steel, rubber, auto, meatpacking, aluminum, and other heavy industries. On this solid base these unions quickly spread into Canada and successfully helped workers to organize in these industries in this country.

The TLC was initially the main beneficiary of this drive helping it to reach new peaks of membership before the end of the decade of the 1930s. At the same time these new industrial unions generated the same old tensions that
had plagued the earlier struggles between the international crafts and the national unions and Knights of Labour in the latter nineteenth century. In 1937, the AFL in the U.S. expelled these new industrial unions, which in turn formed the rival federation, the Congress of Industrial Organizations (CIO). The TLC did the same in 1940 under pressure from the AFL and the international crafts. These expelled industrial unions were welcomed into the nationalistic ACCL despite the stance of the latter on international unions. The ACCL found common ground with these new internationals in their methods of union organizing and their shared rivalry against the old-line conservative international craft unions of the TLC. Together these new internationals and the ACCL formed the Canadian Congress of Labour (CCL).

(f) Drive to Labour Unity

Both the TLC and the new CCL experienced unprecedented membership gains during the war and postwar periods. Union membership soared from a depression low of 281,000 in 1934 to 359,000 before the outbreak of war in 1939 to more than 1,000,000 members in 1949. Despite these successes, conflicts and tensions continued to plague the labour movement. The two congresses vied with each other for members and both experienced a significant penetration of communist-dominated unions led largely by former personnel of the now defunct Workers Unity League. The struggles sapped the energies of the movement. It was not until the communists were expelled from the movement in 1949 and membership growth of the two organization slowed that progress was made toward unification of the labour movement.

The merger of the two Congresses finally occurred seven years later when in 1956 the TLC and the CCL joined together to form the Canadian Labour Congress (CLC). (The same event occurred independently at about the same time in the U.S. when the AFL and the CIO merged to form the AFL-CIO). With the formation of the CLC, the labour movement in English Canada was united into
one federation for the first time since the turn of the century.

Attempts were made at the same time to merge with the CCCL in Quebec and thereby achieve complete unity of Canadian labour. These attempts failed largely because of the significantly different philosophy and approach of the two federations and the sharp language and cultural differences. Nevertheless, the CLC, through its provincial affiliate, the Quebec Federation of Labour (QFL), continued to enjoy majority support among French Canadian workers. At the time of the TLC-CCL merger some 340,000 Quebec union members belonged to the QFL while only about 100,000 belonged to the CCCL.

Intense competition for union members in Quebec resulted in the CCCL becoming more militant in its stance. Some of the bitterest strikes in postwar Quebec involved this once acquiescent union federation. Three key strikes which contributed dramatically to the evolution of the CCCL were the Asbestos strike in 1949, the copper mining strike in Murdochville in 1947, and the strike of the CBC French language producers in 1959. Although the latter two involved QFL affiliated unions, the CCCL played key roles to the extent that brought it into direct confrontation with the government and the Church.

The growing militancy of the CCCL finally resulted in its break from the Church. At its 1960 convention the CCCL dropped the last vestiges of its identification with the Catholic Church and changed its name to the Confederation des syndicats nationaux (CSN) or, in English, Confederation of National Trade Unions (CNTU). Eventually, in 1972, a third federation, Centrale des syndicats democratisques (CSD) or Center for Democratic Unions broke off from the CNTU. However, this federation remains small with a membership of about 40,000. To all intents and purposes, then, since 1956 most union members belong to unions affiliated with the CLC or the much smaller CNTU. These two bodies have been the major central organizations. Several other, but much smaller organizations, such as the CSD in Quebec and
the Confederation of Canadian Unions (CCU) also exist but in total represent a miniscule proportion of union membership (see Table 2). In addition, several international unions (13) and a fairly large number of national unions (86) and independent local organizations are not affiliated with any Canadian federation. In total these bodies unaffiliated to any Canadian federation represent some 1,000,000 union members or about 28 per cent of all union members in Canada.

The potential of another break in trade union unity has occurred in the past two years with the suspension of the building trades unions representing about 350,000 union members from the CLC for non-payment of dues. There are a variety of reasons for the break, not the least of which is the fundamental difference between the CLC and the building trades unions over voting rights at CLC Conventions and political support of the NDP. The numerous building trades unionists find themselves at a disadvantage over a voting structure that favours unions with large numbers of locals.\(^1\) Also the CLC's active support of the NDP is anathema to the conservative construction unions who prefer to operate on the time-honoured American union tradition of "rewarding your friends and punishing your enemies", a principle that works well in the U.S. system of politics but not as well in the Canadian parliamentary system of government. However, the most immediate reason for the break was the failure of the CLC to support these unions in their squabble over raiding by the CLC affiliated QFL in Quebec. In 1982 some 10 of the 13 building trades unions, with a membership of some 200,000, founded the Canadian Federation of Labour. (This is the second time in Canadian labour history this name has been adopted by breakaway unions).

\(^1\)For example the Canadian Union of Public Employees (CUPE) has 1,629 locals and a membership of 267,000; the Public Service Alliance (PSA) has 1,407 locals and a membership of 155,000. In contrast, the building trades unions with a combined Canadian membership of approximately 350,000 has 689 locals in Canada.
With the emergence of this new federation buttressed by the growing number of unaffiliated unions, Canadian labour is once again moving away from the position of unity achieved in the 1956 merger of the TLC and CCL.

(g) **International Unions and Canadian Autonomy**

The current building trades dispute with the CLC and the QFL, which wants to establish its own building trade unions, may also be seen as another chapter in the recurring battle for union autonomy from U.S. domination, a battle that has characterized the history of the Canadian labour movement since the first international unions appeared on the scene in the 1850s. In the past these outbreaks have often led to breakaway federations formed by purely Canadian unions ousted from the established movement. The current Canadian Federation of Labour is a result of the reverse, formed by several international unions who are in the process of breaking away from the established CLC.

Canadian autonomy has progressed significantly since the mid-1960s. It has been helped by the phenomenal growth of national unions consequent upon the granting of collective bargaining rights to public sector employees in the late 1960s and 1970s. The emergence of these unions and other national unions is shifting the balance of union membership in the CLC away from the international unions. The result is strong encouragement and support on the part of the CLC for the establishment of autonomous Canadian divisions of international unions.¹ Many international unions have established such divisions.

¹In 1970 and again in 1974 the CLC Convention passed resolutions establishing Canadian standards of self-government for Canadian branches of international unions. These standards provide for election of Canadian officers by Canadians, Canadian policy matters to be determined by Canadian officers and members, and upgrading of Canadian elected personnel.
In several international unions the Canadian sections have broken completely away to form their own purely Canadian unions. The Canadian Paperworkers Union formerly part of the United Paperworkers International Union is a good example of one such union that has been formed in this way. These changes in union structure have occurred peacefully sometimes at the initiative of the international, sometimes with some opposition but almost always with the blessing of the international union once some measure of autonomy was achieved.

The need or desire for greater Canadian autonomy is now becoming generally accepted by the international union movement. A good number of these unions are prepared to negotiate autonomy or some form of it should their Canadian membership desire it. The fact that so many Canadians continue to belong to international unions reflects their wish to remain a part of that structure. It was the international union movement that gave substance and strength to the Canadian labour movement, and, for a high proportion of Canadian union members the benefits of belonging to an international union outweigh the disadvantages.

(h) Some Statistics

The table below (Table 1) traces the growth of union membership since 1911, the first year officials statistics were collected. In that year some 133,000 workers belonged to trade unions. Some 72 years later in 1983 union membership stood at about 3-1/2 million, a more than 25 fold increase. As a percent of the non-agricultural labour force, union membership rose from 16 per cent in 1921 to 40 per cent today.

Most of these workers belong to national and international unions affiliated to the CLC. As of 1983, about 2 million union members or almost 57 per cent were in these unions (see Table 2). About 200 thousand or 6 per cent belonged to CNTU affiliated unions, another 6 per cent belonged to the new CFL
### Table 1

**Union Membership, 1911-81**

<table>
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<tr>
<th>Year (Thousands)</th>
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<th>Union Membership as Percentage of non-agricultural paid workers</th>
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<td>1968</td>
<td>2,010</td>
<td>26.6</td>
<td>33.1</td>
</tr>
<tr>
<td>1969</td>
<td>2,075</td>
<td>26.3</td>
<td>32.5</td>
</tr>
<tr>
<td>1970</td>
<td>2,173</td>
<td>27.2</td>
<td>33.6</td>
</tr>
<tr>
<td>1971</td>
<td>2,231</td>
<td>26.8</td>
<td>33.6</td>
</tr>
<tr>
<td>1972</td>
<td>2,388</td>
<td>27.8</td>
<td>34.6</td>
</tr>
<tr>
<td>1973</td>
<td>2,591</td>
<td>29.2</td>
<td>36.1</td>
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<tr>
<td>1974</td>
<td>2,732</td>
<td>29.4</td>
<td>35.8</td>
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<td>1975</td>
<td>2,884</td>
<td>29.8</td>
<td>36.9</td>
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<td>2,042</td>
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<td>37.3</td>
</tr>
<tr>
<td>1977</td>
<td>3,149</td>
<td>31.0</td>
<td>38.2</td>
</tr>
<tr>
<td>1978</td>
<td>3,278</td>
<td>31.3</td>
<td>39.0</td>
</tr>
<tr>
<td>1980</td>
<td>3,397</td>
<td>30.5</td>
<td>37.6</td>
</tr>
<tr>
<td>1981</td>
<td>3,487</td>
<td>30.6</td>
<td>37.4</td>
</tr>
<tr>
<td>1982</td>
<td>3,617</td>
<td>31.4</td>
<td>39.0</td>
</tr>
<tr>
<td>1983</td>
<td>3,563</td>
<td>30.6</td>
<td>40.0</td>
</tr>
</tbody>
</table>

(a) Includes Newfoundland for the first time.
(b) Data on union membership for all years up to and including 1949 are as of December 31. In 1950 the reference date was moved ahead by one day to January 1, 1951. Thus, while no figure is shown for 1950, the annual series is, in effect, continued without interruption. The data on union membership for subsequent years are also as of January.

and the remainder belonged to the AFL-CIO only or to smaller federations and to unaffiliated national and international unions.

The notation "AFL-CIO" in Table 2 refers to the U.S. equivalent of the CLC. Generally international unions that belong to the CLC also belong to the AFL-CIO. There are exceptions. The International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (in short the United Auto Workers or UAW), for example, belongs to the CLC but not to the AFL-CIO. The construction unions recently suspended from the CLC still belong to the AFL-CIO in the U.S. Some internationals belong to neither federation. The best example is the International Brotherhood of Teamsters.

Table 3 shows that most of the international unions operating in Canada belong to the CLC. Some 23 internationals are not affiliated with the CLC, leaving some 51 international unions representing just under 1 million union members who are so affiliated. In contrast some 121 of the 146 national unions are not affiliated with the CLC. The 27 national unions which are affiliated, account for more than one million union members, marking the first time since its establishment in 1956 that union members belonging to purely Canadian national unions have outnumbered their international union brethren. Also, these few affiliated national unions represent more than one-half of the national union membership in Canada. Most of the remaining national unions are not affiliated with any federation. In the main, these are professional unions and unions in the provincial public sector, particularly in Ontario and Quebec.

Table 3 also shows that international unions represent about 40 per cent of all union members in Canada. This is a complete reversal of the historical position of the internationals. Before the rapid growth of public sector unionism in the late 1960s and 1970s international unions invariably comprised about 70 per cent of Canadians belonging to unions. This shift in the balance
Table 2

<table>
<thead>
<tr>
<th>Congress Affiliation</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
</tr>
<tr>
<td>CLC</td>
<td>2 013 050</td>
</tr>
<tr>
<td>AFL-CIO/CLC</td>
<td>851 341</td>
</tr>
<tr>
<td>*CLC only</td>
<td>1 161 709</td>
</tr>
<tr>
<td>CNTU</td>
<td>213 370</td>
</tr>
<tr>
<td>AFL-CIO/CFL</td>
<td>213 301</td>
</tr>
<tr>
<td>CSD</td>
<td>56 826</td>
</tr>
<tr>
<td>CCU</td>
<td>38 684</td>
</tr>
<tr>
<td>AFL-CIO only</td>
<td>167 515</td>
</tr>
<tr>
<td>Unaffiliated International Unions</td>
<td>104 268</td>
</tr>
<tr>
<td>Unaffiliated National Unions</td>
<td>654 034</td>
</tr>
<tr>
<td>Independent Local Organizations</td>
<td>101 751</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3 562 799</td>
</tr>
</tbody>
</table>

* This figure includes 46 000 construction workers who are members of organizations chartered by the National Building Trades Department of the CLC.


is not only the result of the emergence of home-grown unions but a considerable number comes from the establishment of autonomous unions of once formally Canadian sections of international unions. The large Canadian Paperworkers Union with some 60,000 members is a case in point.

III The Structure and Functions of Trade Unions

(a) The Central Federations

The point of departure in this survey has been the central federations such as the CLC. In fact, these federations rarely engage in collective bargaining, the raison d'être of North American unionism. Rather their major function is to service their affiliated unions by providing assistance in organizing workers, providing research, legal and education services particularly to those unions which are too small to provide these services themselves, and to co-ordinate union activities.
### Table 3
Union Membership by Type of Union and Affiliation, 1983

<table>
<thead>
<tr>
<th>Type of Affiliation</th>
<th>No. of Unions</th>
<th>No. of Locals</th>
<th>Membership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Number</td>
</tr>
<tr>
<td>International Unions</td>
<td>74</td>
<td>3,943</td>
<td>1,470,433</td>
</tr>
<tr>
<td>AFL-CIO/CLC</td>
<td>46</td>
<td>2,855</td>
<td>851,341</td>
</tr>
<tr>
<td>AFL-CIO/CFL</td>
<td>10</td>
<td>406</td>
<td>213,301</td>
</tr>
<tr>
<td>CLC only</td>
<td>5</td>
<td>263</td>
<td>134,008</td>
</tr>
<tr>
<td>AFL-CIO only</td>
<td>7</td>
<td>257</td>
<td>167,515</td>
</tr>
<tr>
<td>Unaffiliated Unions</td>
<td>6</td>
<td>162</td>
<td>104,268</td>
</tr>
<tr>
<td>National Unions</td>
<td>146</td>
<td>11,312</td>
<td>1,945,982</td>
</tr>
<tr>
<td>**CLC</td>
<td>27</td>
<td>5,670</td>
<td>1,018,792</td>
</tr>
<tr>
<td>CNTU</td>
<td>10</td>
<td>1,620</td>
<td>212,646</td>
</tr>
<tr>
<td>CSD</td>
<td>3</td>
<td>204</td>
<td>21,826</td>
</tr>
<tr>
<td>CCU</td>
<td>20</td>
<td>120</td>
<td>38,684</td>
</tr>
<tr>
<td>Unaffiliated Unions</td>
<td>86</td>
<td>3,698</td>
<td>634,834</td>
</tr>
<tr>
<td>SUB-TOTAL</td>
<td>220</td>
<td>15,255</td>
<td>3,416,415</td>
</tr>
<tr>
<td>Directly Chartered Unions</td>
<td>366</td>
<td>44,633</td>
<td>1.2</td>
</tr>
<tr>
<td>CLC</td>
<td>74</td>
<td>8,909</td>
<td>0.2</td>
</tr>
<tr>
<td>CNTU</td>
<td>5</td>
<td>224</td>
<td>*</td>
</tr>
<tr>
<td>CSD</td>
<td>287</td>
<td>35,000</td>
<td>1.0</td>
</tr>
<tr>
<td>Independent Local Organizations</td>
<td>240</td>
<td>101,751</td>
<td>2.9</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>826</td>
<td>3,562,799</td>
<td>100.0</td>
</tr>
</tbody>
</table>

* Less than 0.1 per cent.
** This figure includes 46,000 construction workers who are members of organizations chartered by the National Building Trades Department of the CLC.


This latter function includes settling disputes among affiliated unions, co-ordinating the views of affiliates on issues of concern to the labour movement, representing labour on government and non-government commissions, boards, agencies, etc., and acting as labour spokesmen in international forums and international union centres.
With the heavy involvement of government in the economic and social affairs of society, central federations like the CLC play an important role lobbying and making known to the government of the day the views and desires of the labour movement. The various federations, as well as the larger individual unaffiliated unions annually present briefs to governments on every conceivable economic, social and political issue in which labour has an interest. This includes not only issues related to labour legislation but also economic and monetary policies, housing programs, international trade and Canadian relations with other countries. An examination of recent briefs of the CLC indicate that there is virtually no major issue which escapes the attention of that organization.

In the last few years these federations have also played a key role representing labour in tripartite discussions with the Prime Minister and Members of his Cabinet, along with representatives of the business community.

Co-ordination of union activities also means regulating inter-union relationships. The most important of these functions is to ensure that affiliates do not engage in union organizing drives which encroach upon one another's territory. The CLC, for example, has an elaborate procedure to police these activities and is empowered to suspend or expel affiliates found guilty of raiding.

As noted earlier union raiding is contrary to the major philosophical basis of North American unionism. Yet such raiding is common. Much of this raiding is a result of the blurring of occupational lines that come with economic advance, the spread of industrial-type unions and the growth of purely Canadian unions. It is not uncommon to find one group of electrical workers belonging to the International Brotherhood of Electrical Workers and another group belonging to an industrial union such as the United Automobile Workers. The development of national unionism, especially in Quebec has
promoted endless conflicts between these unions and the internationals over the same group of workers. The current conflict between the international building trades unions and the Quebec Federation of Labour is a prime example of this conflict.

Inter-union raiding is also promoted by vaguely worded constitutions which give unions their mandates to organize groups of workers. The International Brotherhood of Teamsters was originally established to organize drivers and warehousemen but its constitution provides it with the mandate to organize "related workers". This kind of wording is not uncommon in union constitutions and in the case of the Teamsters has been interpreted by that union as a mandate to organize all types of workers. The Teamsters aggressiveness in this respect was the principal reason for its expulsion not only from the CLC in Canada but also from the AFL-CIO in the U.S.

In situations on which matters of jurisdiction cannot be decided or in which none of the affiliates are interested in organizing a particular group of workers, the CLC, for example, may step in and unionize these workers into local organizations directly affiliated to it. The CLC will handle the affairs of these local organizations, much as its affiliated unions conduct their own affairs, until jurisdiction can be decided. Once jurisdiction has been settled, these local organizations become part of the structure of an affiliated union. In this sense, the CLC and most other federations perform a holding operation ensuring the organization of workers who wish to be represented by unions.

Table 3 shows that in 1983 about one per cent of union membership was in directly chartered local unions.

How much influence federations can exercise in all of the various activities for which they are responsible is very much dependent on the power their affiliated unions are prepared to give to them and the personality and
style of the federation leadership. George Meany, former president of the AFL-CIO in the U.S., ruled that organization with an iron hand for many years. Although his power and influence were derived from the affiliated unions of that federation, few within the labour movement questioned his decisions and few without ignored his pronouncements. Few labour leaders in Canada have achieved this stature although there have been wide variations among them in the power and influence they have wielded.

The mandate of the federations is derived from annual or biennial conventions attended by representatives of the affiliated unions. At these conventions resolutions are passed which prescribe the policies and programs that will guide the federation between conventions. An executive is elected at these conventions to implement the resolutions and to administer the affairs of the federation.

The CLC is represented at the provincial level by provincial federations of labour. Generally, the unions affiliated with the CLC are also affiliated to these provincial federations. Provincial federations perform much the same tasks at the provincial level as the CLC does at the national level including representing affiliated unions in relations with provincial governments. At the local level, performing similar functions at the city and municipal levels, are local labour councils comprising the local branches of CLC-affiliated unions.

Since the CNTU has few members outside Quebec, it acts as both the national and provincial federation on behalf of its affiliated unions.

(b) Types of Unions

In general, there are two types of unions, industrial and craft. The industrial union includes all workers in a particular company or industry regardless of skill or occupation. The United Steelworkers of America or the United Auto Workers are examples of the industrial type of union. These
unions include all workers in steel, auto and related industries regardless of occupation.

Craft unions include workers belonging to one craft or to a closely related group of occupations. Craft unions, unlike industrial unions cut across many industry lines. Examples are the International Association of Machinists and the United Brotherhood of Carpenters.

Several unions such as the International Brotherhood of Electrical Workers (IBEW) organize on both occupational and industrial lines. Depending on the type of union organizing their workers, companies could be faced with anywhere from one union, an industrial union, to many unions (15 to 20 unions would not be unusual) if the craft type of organization prevails. Dealing with many unions presents problems since should one of them strike and set up a picket line the remaining unions, following time-honoured traditions, will, in all likelihood, respect that picket line effectively closing down the company. Industrial and craft-type unions are found among both national and international unions.

Unions are of varying sizes, ranging from a few members to many thousands. The smallest union listed in Labour Canada's Directory of Labour Organizations in Canada is the International Association of Siderographers (APL-CIO/CLC) with a membership in Canada of 4. Table 4 below lists unions with 50,000 or more Canadian members. In 1983 there were 16 unions which fell in this size category. The largest is the Canadian Union of Public Employees (CUPE) with a membership of 281,242. It can be seen that of the five largest unions, three are national all in the public sector. Before the growth of these relatively new unions the largest individual unions in Canada were the Canadian branches of internationals such as the steelworkers and auto workers.

Unions are found in virtually every Canadian industry. In some industries, for example, the railways or government, unionization is near
complete. Among major industry groups union membership ranges between less than one per cent of employees in agriculture and finance, insurance and real estate to more than two-thirds of employees in public administration, transportation and communications, transportation equipment, pulp and paper and rubber. Most blue collar workers are organized but only a minority of all white collar workers in the Canadian economy belong to unions.

The basic building block of the individual union is the local. It is the local that is responsible for the day-to-day relationships with employers and, in most unions, for negotiating the collective agreement. Locals may comprise workers in one plant or in several plants of the same employer or of different employers in the same locality.

There are more than 15,000 locals in Canada. The number of locals per union varies. Some 36 unions have less than 10 locals and another 25 have more than 100 locals. The steelworkers has 853 locals, the Public Service Alliance, 1,407 locals and CUPE, 1,629 locals.

In addition to these locals of unions there are some 213 independent locals organizations with a membership of about 100,000 that do not belong to any union or central federation. These are usually organizations based in one enterprise. For example, many faculty associations in universities are recognized unions that are not part of a larger or national organization.

Like unions themselves, locals are of varying sizes ranging from a few members to many thousands. Two of the largest are the auto workers local in Oshawa with about 12,000 members and the steelworkers local in Sudbury with more than 11,000 members.

Despite the longevity of some union leaders the typical Canadian labour union is in fact a very democratic organization. Policy is made at conventions, and most union officers whether at the local or union headquarters, whether at the local council, provincial federation or national
| 1. Canadian Union of Public Employees (CLC) | 281 242 |
| 2. National Union of Provincial Government Employees (CLC) | 242 321 |
| 3. Public Service Alliance of Canada (CLC) | 159 646 |
| 4. United Steelworkers of America (AFL-CIO/CLC) | 148 000 |
| 5. United Food and Commercial Workers (AFL-CIO/CLC) | 141 400 |
| 6. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (CLC) | 98 000 |
| 7. International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America (Ind.) | 91 500 |
| 8. Centrale de l'enseignement du Quebec (Ind.) | 86 615 |
| 9. United Brotherhood of Carpenters and Joiners of America (AFL-CIO) | 85 000 |
| 10. Federation des affaires sociales (CSN) | 83 246 |
| 11. International Brotherhood of Electrical Workers (AFL-CIO/CFL) | 71 000 |
| 12. Service Employees International Union (AFL-CIO/CLC) | 65 000 |
| 13. International Association of Machinists and Aerospace Workers (AFL-CIO/CLC) | 63 317 |
| 14. Canadian Paperworkers Union (CLC) | 63 180 |
| 15. Labourers' International Union of North America (AFL-CIO) | 61 315 |
| 16. International Woodworkers of America (AFL-CIO/CLC) | 59 600 |

Source: Directory of Labour Organizations in Canada, 1983

federation level are elected to their positions. For most unions, elections are held annually, generally by secret ballot.

Failure of union officers to respond to the wishes of their members could spell certain defeat at the ballot box. This has been the fate of many union leaders especially at the local level during the past ten years because they have not been militant or aggressive enough for the rank and file.

The militancy often ascribed by the press to union leadership has in fact its roots in rank and file restlessness. Two factors have contributed to this restlessness: a gradual erosion of living standards brought on by high inflation and high interest rates and rising aspirations for more. Turnover of union officers has been one symptom of this restlessness. Another has been
contract rejection. In most unions rank and file approval of contracts negotiated by their elected officials is required before collective agreements can be signed. Contract rejection has been a major industrial relations problem of the 1970s.

IV  Labour Relations Legislation

(a) Historical Overview

The Trade Union Act of 1872 is generally regarded as Canada's first piece of labour relations legislation. That Act permitted workers to form unions to better their wages and working conditions without fear of being subjected to criminal charges of restraint of trade.

In 1900 in response to growing industrial unrest at the turn of the century, the Federal Parliament passed the Conciliation Act. The Act authorized the Minister of Labour to appoint conciliation boards to help settle disputes. The procedure was voluntary, that is, it was dependent upon the request of one or other of the parties to the Minister to establish a board to assist them in reaching a settlement, and the acceptance of the procedure by the other party. Boards, when established would bring the parties together to resolve their differences. Failure to resolve the dispute was generally followed by a Board report recommending a possible settlement which the parties were free to accept or reject. The pressure of public opinion gave Board reports some force and was at times an effective mechanism in inducing settlement.

In 1903, the federal government passed the Railway Disputes Act, which made the conciliation procedure compulsory. The procedure could be set in motion on application by either party, or a municipal government or the Minister himself could act on his own motion.

In 1907, the Industrial Disputes Investigation Act (IDIAct) was passed extending the 1903 Act to a larger coverage of industries. That Act
specifically introduced the notion of restraint on work stoppages until the conciliation process was completed. Previously either party could strike or lockout before conciliation procedures were completed. The IDI Act remained in force until 1948 when replaced by a broader labour disputes act, which will be described below.

In 1925 the jurisdiction of the IDI Act was successfully challenged in a case involving the Toronto Electric Street Railway Company. The challenge resulted in the jurisdiction of the Act being restricted to undertakings specifically defined as in the federal sphere including interprovincial transportation, communications, shipping and certain mining operations. However, all provinces except Prince Edward Island passed enabling legislation extending the IDI Act to their jurisdiction.

Although the IDI Act was a unique piece of legislation in the western world in its compulsory conciliation and compulsory prevention of work stoppage provisions, it did not protect workers' rights to organize nor did it compel employers to bargain with unions. Employers were free to thwart union organizing efforts. They could threaten, dismiss, or blackmail employees belonging to unions or engaging in union activity. They could refuse to bargain with unions with majority support of the employees and they could enter into "sweetheart" agreements with unions of their own choosing.

These activities on the part of employers reached a peak in the depressed thirties resulting in an outbreak of bitter and costly "recognition" strikes. In the U.S. this conflict became particularly violence-ridden leading in 1935 to the passage of the Wagner Act by the U.S. Congress. By protecting workers rights to join unions, compelling employers to bargain with unions representing the majority of their employees and preventing employers from engaging in unfair labour practices, the Act removed a major source of conflict between labour and management. These same principles spread to
Canada and were adopted by several provinces in new legislation passed in these jurisdictions in the second half of the 1930s.

The federal government itself did not move in this direction until 1944 when, under its emergency wartime powers, it passed P.C. 1003, a Wagner-type law made to apply to all industries whether under federal or provincial jurisdiction. P.C. 1003, which replaced the IDI Act during hostilities, in addition to incorporating Wagner Act-type clauses, also retained IDI Act compulsory conciliation procedures. In fact, it expanded these procedures from a one step to a two step procedure. Previously the conciliation process involved a Conciliation Board stage only. P.C. 1003 introduced a conciliation officer stage to be followed by a Board stage. Both stages had to be observed by the parties before the right to strike or lockout was granted to them. P.C. 1003 also banned strikes and lockouts during the term of collective agreements. Impasses over the interpretation of the terms of collective agreements had to be settled by arbitration.

After the war, labour relations legislation again reverted to provincial jurisdiction. In 1948, the federal government repealed the IDI Act replacing it with the Industrial Relations and Disputes Investigation Act (IRDI Act). This Act incorporated the principles of P.C. 1003 including the two stage conciliation procedure, the ban on strikes or lockout during the term of a collective agreement, the protection of the right to organize, the compulsion on employers to bargain collectively with the representatives of their employees and the listing of both union and employer unfair labour practices. The various provinces passed similar legislation modeled after the IRDI Act.

In the 1950s the provinces began to move away from the IRDI Act model introducing features into their own labour relations legislation to meet the special needs of their jurisdiction. Ontario, with the largest jurisdiction, Quebec and British Columbia assumed leadership roles in breaking new ground in
Canadian labour relations policy.

Perhaps the most radical departure from the IRDI Act model was the retreat from the rigid two-stage compulsory conciliation procedure to procedures that included greater flexibility, greater degree of voluntarism, and more options available to governments to settle disputes.

The federal government waited until 1972 before it too finally changed its approach, which brought it closer to developments in the provinces. In the new Canada Labour Code, Part V, passed in that year, an "arsenal of weapons" type approach was introduced to give the Minister of Labour flexibility in settling disputes. When an impasse develops between the parties negotiating a new agreement, the Minister may do nothing, or he may follow one of several procedures set out in the Act, including appointing a conciliation officer, a conciliation commissioner or a conciliation board or he may follow a combination of these steps. If he chooses to do nothing, the parties are free to strike or lockout provided the termination date of the old agreement has passed and provided the minister was informed of the impasse. If he does make an appointment, the same rules apply as in the past and strike or lockout action is illegal until the procedure has been completed. In practice, the conciliation officer stage is still used while the conciliation board stage has fallen into disuse. The practice in the various provinces is more or less similar, that is, wide use of the conciliation officer stage as required and little use of conciliation boards. In addition, several provinces have introduced a mediation stage which can be used as a substitute for the conciliation officer or conciliation board. For example in Ontario, the parties may select a mediator and request his appointment. Once selected the Ontario law gives the mediator extensive powers of inquiry to assist in the settlement of the dispute.
(b) Labour Relations Legislation To-day

Currently the body of labour relations legislation in this country comprises the 11 general acts (10 provincial and one federal) and numerous specific acts applying to particular sectors such as the public sector or to particular occupations such as police, firefighters and teachers. In some jurisdictions these occupations or sectors may be covered by separate clauses in the general acts. In total there are about 45 separate acts not counting the special or separate sections of some of the general acts.

All jurisdictions have made important changes to their legislation during the 1970's. Most such changes follow or were influenced by the recommendations of the Prime Minister's Task Force on Labour Relations, which reported in 1969 after two years investigating and studying the Canadian industrial relations scene.

It would be much too complicated and lengthy to attempt to describe, even in summary form, the contents of the labour relations legislation in each jurisdiction. Instead, a cursory review will be provided of the general private sector legislation using the federal and Ontario jurisdictions as particular examples and with references to important departures in the legislation of other jurisdictions. A separate section is devoted to a discussion of public sector labour relations legislation.

There are certain important features common to virtually all labour relations legislation in all jurisdictions, whether general or specific. These include the following:

1. Procedures for the certification of a union to represent the employees in a particular unit and procedures for the decertification or replacement of an existing union.

2. Listing of unfair labour practices. These are practices which, otherwise legal under common law, are illegal in a labour relations context. For
example, it is generally illegal for employers to change unilaterally the terms and conditions of employment while certification proceedings are in process. Labour relations legislation list practices that cannot be committed by employers and unions.

3. Procedures that must be followed before strike or lockout action can be taken.

4. Declaration that strikes or lockouts during the closed period when an agreement is in force is illegal and provisions for the arbitration of disputes over matters concerning the interpretation of the agreement.

5. Provision for the administration and enforcement of the legislation. Each Act provides for a labour relations board or equivalent to administer and enforce the provisions of the legislation.

Each of these matters will be discussed in turn except for 4 which will be discussed in the following Section (VI).

1. (a) **Certification of Bargaining Units**

   Under Canadian legislation an employer may voluntarily recognize a union and negotiate a collective agreement specifying the terms and conditions of work affecting a group of his employees. In cases where such voluntary recognition is not forthcoming, application may be made by the union to the labour relations board for certification to represent the employees of an employer for purposes of collective bargaining. Once certification is granted, the employer is compelled to negotiate with the representative union.

   The law sets down a number of rules and procedures concerning certification. Upon receipt of an application for certification, the board determines the legitimacy of the union, the appropriateness of the unit of employees for which representation is being sought, and the extent of support the union has. In making these determinations, boards generally provide the parties with the full opportunity to present evidence and make submissions.
On the question of legitimacy of the union, employer-influenced, dominated or controlled organizations are not considered unions under virtually all legislation. Applications for certification by such organizations are rejected.

Determination of the unit appropriate for collective bargaining is one of the more important functions of the board. Boards may accept the unit described in the union's application or it may alter it usually by adding or subtracting employees. Units may cover all plant workers of one employer, plant workers of several employers in the same area, workers in more than one plant of the same employer, parts of a plant, and particular occupations or crafts. Most legislation provide some guidelines on the matter of the appropriate unit. For example, the acts may suggest that professional employees would constitute one unit or that particular crafts or occupations such as carpenters, watchmen, supervisors, etc. may each be included in their own bargaining units.

Most acts also specify certain categories of workers who are not covered by the legislation. Generally management and personnel employees working in a confidential capacity as well as doctors, dentists, lawyers and certain other professionals are not covered. This means that these employees do not have the protection of the legislation should they wish to establish unions to represent them in negotiations with their employers.

In establishing the appropriate unit, boards generally pay close attention to the wishes of the employees, the history of bargaining in similar units, type of union organization (industrial or craft union) and the employees involved (plant, office, technical, professional, and craft). Most determinations involve a single plant and this is a principal reason why collective bargaining operates on a local plant basis.
With respect to the extent of employee support for the application, the various acts spell out the steps that must be followed for this determination. For example, in the Canada Labour Code, Part V, if the board is satisfied that more than 50 per cent of the employees in the unit are union members in good standing or are supportive of the application, it may issue a certification order without further action.

If such support is found to be less than 50 per cent but more than 35 per cent a representation vote is ordered. In this vote, a minimum 35 per cent of the constituency must cast ballots. A majority of those voting decide the matter. In earlier legislation and currently in several of the provincial acts determination is based on the majority of employees in the unit. In these instances, employees who do not cast ballots are in effect voting against representation.

The various provincial acts follow similar procedures but differ in detail. For example, in Ontario if the board is satisfied that more than 55 per cent of the employees in the unit are members of the applicant union, certification may be granted without a vote. If less than 55 per cent but more than 45 per cent are union members a representation vote may be ordered. In a vote, a majority of those voting determines the outcome. There is no minimum percentage requirements of those in the unit who must cast ballots before a vote is considered valid as in the federal legislation.

(b) Pre-Hearing Votes

Considerable time may elapse between an application for certification and the determination by the labour relations board of the need for a vote. During this period, employees could be swayed against the certification or lose interest for one reason or another, for example, because of inaction brought on by the delay. Since these delays have little to do with the applicant union, several of the acts provide for pre-hearing votes. Under
this provision in the act, the labour relations board will conduct a vote, if
requested, upon receipt of the application. In Ontario, for example, a pre-
hearing vote will be held upon request of the union and if the board is
satisfied that at least 35 per cent of the employees in the voting
constituency are members of the trade union. A pre-hearing vote usually
covers the unit specified in the application, although it may be modified by
the board on the basis of an examination of its records. The resulting
ballots are sealed until the certification proceedings have been completed.
Depending on the outcome of these proceedings the ballots will then be counted
to determine if the union is to be certified.

(c) **Decertification or Termination of Bargaining Rights**

All acts provide orderly procedures for decertifying unions. Generally
application for decertification can be made if, once certified, the union
fails to bargain or, after a certain lapsed period, either another union
claims majority support of the employees or the majority of employees indicate
that they do not want to be represented by a union. Where an agreement has
been signed, application for decertification or for a new certification can be
made only at specified periods, generally within the last two months of the
term of the agreement. The employer can also apply for decertification of the
union particularly in instances where the union fails to bargain.

(d) **Successor Rights**

A particular thorny issue in labour relations is what happens should
there be a change in the company or the union. Basically, in the case of a
business which is sold, most of the statutes provide that the certification
and existing collective bargaining agreements go with the business to the new
owners. The same generally holds if part of the business is sold or if the
business is leased or transferred in some other fashion. Purchase of assets
which are then put to another use may not be considered a sale of the business
and bargaining rights and the collective agreement could be terminated.

Sales of businesses may lead to amalgamation of functions and consequent changes in the bargaining unit. In these instances, the labour relations board will decide on the new bargaining unit and its implications for existing collective agreements. Similarly, in the case of union mergers or other union changes the board may be involved in sorting out the effects on bargaining units and collective agreements.

2. **Unfair Labour Practices**

There are certain practices committed by either the company or the union which are considered unfair and which are subject to enforcement by the labour relations boards or the courts. Most commonly listed practices affecting employers are interference with the rights of employees to select the union of their choice for collective bargaining purposes or discrimination against employees for union activity. This generally means that employers cannot dismiss, discipline or threaten employees in the exercise of their rights under the legislation. They cannot invoke promises which will influence an employee's choice of a union, for example promising "better benefits" should the employee select one union rather than another or vote for no union. These provisions, however, do not prevent employers from making their case in support of one union or another or for no union. What the employer can say under these circumstances, the manner in which he says it, and the forum he uses are matters which are susceptible to review by the labour relations boards.

In addition, it is generally considered an unfair labour practice for an employer to participate in the formation, selection or support, financial or otherwise, of unions representing his employees.

Finally, employers are prohibited from changing the terms of collective agreements unilaterally or to change the wages and working conditions during
certification proceedings or during collective bargaining before strike and lockout rights have been acquired if the purpose is to undermine the union. They are compelled, as are unions, to bargain in good faith or demonstrate serious bargaining.

Unions cannot commit unfair labour practices by interfering with or participating in the formation or administration of an employer's organization, interfering with the bargaining rights of a certified union, discriminating against union members or employees in the bargaining unit and intimidating or coercing employees to remain or become members of the union. Nor can unions force employers to discriminate against, dismiss or discipline union members. Unions are compelled to provide fair representation for all employees in the bargaining unit whether in collective bargaining or in grievance procedure cases.

Other unfair practices include striking or locking out or threatening a strike or lockout during certification, during the term of a collective agreement or during collective bargaining before procedures in the legislation have been exhausted.

Labour relations boards are empowered to stop such practices and to enforce appropriate remedies. By tabling its rulings in the appropriate court, board rulings become in effect court orders. During the term of a collective agreement, the parties may resort to the grievance procedure and eventual arbitration to resolve unfair labour practices.

3. (a) Government Intervention in Dispute Settlement

Collective bargaining disputes can arise during the negotiation of a first contract or a new contract (interest disputes) and negotiations on matters arising over the interpretation and application of an existing contract (rights disputes).
In all Canadian jurisdictions strikes or lockouts are forbidden as a means of settling rights disputes, that is disputes arising over the interpretation of the agreement. The parties are obliged to settle these impasses by arbitration. This provision is unique to Canadian labour relations. In the United States there is no ban on work stoppages during the term of the agreement but the vast majority of collective agreements (more than 90 per cent of them) provide for a system of arbitration, which in effect eliminates this type of industrial conflict.

The most interesting form of government intervention occurs during negotiations of a first agreement or negotiations replacing an existing agreement. We have already discussed briefly the history of government intervention and the evolution of the two-stage conciliation system to resolve industrial conflict. This section provides some pertinent details on the conciliation process as it works in the various jurisdictions.

Historically Canadian jurisdictions provided for a two stage conciliation procedure to which the parties must abide before being in a legal position to call a work stoppage. These procedures were generally implemented after the termination of the old agreement (or after notice to bargain a first agreement). They could, however, be implemented at any time once bargaining has commenced even though the old agreement is still in force.

Depending on the length of time to complete the procedures the right to strike or lockout could be postponed for months and, in some cases, one year or longer. This contrasts with the situation in other countries. For example, in the U.S. the parties have the right to strike or lockout on the termination date of the agreement unless the President of the U.S. declares such action to be a national emergency, in which case the right is postponed for 80 days.

The procedures in Canada call for a conciliation officer stage in which
the government at the request of either or both parties or on its own initiative (the specific practice varies from jurisdiction to jurisdiction) appoints a conciliation officer to try and settle an impasse. Should the officer, who is generally a full-time civil servant, fail to effect a settlement, he must report back after a certain period, usually 14 days, as specified either in the legislation or in his terms of reference, informing the government of the status of the dispute and making his recommendation for the appointment of a conciliation board. The officer stage may be prolonged on the agreement of both parties. Since conciliation can be requested at any time once bargaining has begun it is not uncommon to have this stage completed before the termination date of the old agreement.

If the dispute is still not settled a conciliation board comprising appointees of the parties and a neutral chairman may be appointed. The board will also try to obtain a settlement but, failing that, will report to the government its recommendations for a settlement. Again, the term of the board is set down in the legislation (usually 30 days) and may be extended by the parties. Once the board report is made most legislation call for another seven to fourteen days before the parties acquire the right to strike or lockout, should they not accept the board recommendations or reach an agreement in the meantime.

Changes in labour relations legislation during the past 15 years have reduced the scope and time of government intervention and, in some cases, changed its nature. The conciliation board stage no longer appears in some legislation and where it does appear it is not often used in private sector bargaining. As a substitute, conciliation commissioners or mediation is now provided for but their implementation often rests on the initiative of the parties.
The conciliation officer stage is still widely used when impasses develop but in some jurisdictions the law regarding its implementation has been relaxed. Unless requested by the parties, the government may choose not to implement it thereby giving the parties the immediate right to strike or lockout after the termination date of the old agreement should they not be able to settle their differences peacefully. In other jurisdictions (for example, the Atlantic Provinces and the federal jurisdiction) the legislation gives the government the option of not appointing a conciliation officer even though the parties have requested one. However, this option is rarely used. Conciliation officers are invariably appointed if an impasse develops between the parties.

Overall, it is estimated that about two-fifths of collective agreements are signed after the intervention of a third party. This proportion is down from about one-half that prevailed in the 1960s indicating less recourse to government intervention for the settlement of industrial disputes. The percentage of agreements signed after a work stoppage has occurred varies between 5 and 10 per cent with no clear trend over time.

(b) (i) Government Intervention in Dispute Settlement - Some Further Notes

Negotiations for a first agreement are subject to the same provisions in the legislation as negotiations for a new agreement. However, there is one important difference, which is becoming increasingly prevalent in Canadian law. In certain jurisdictions, including the federal, British Columbia, Manitoba and Quebec, if the parties are unsuccessful in reaching an agreement, usually after a certain period has elapsed, the labour relations board is empowered to impose a one year agreement. Such an agreement is based upon presentations by the parties and by collective bargaining practice in comparable situations.
(ii) Strike Votes

A final form of government intervention involves strike votes and notice to strike or lockout. Strike votes are required by law in New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan, Alberta and British Columbia. The provinces of Ontario, Manitoba and Newfoundland, and federal legislation do not require a strike vote before strike action is allowed. Generally strike votes must be taken after regular compulsory dispute settlement procedures have been followed and exhausted.

Strike votes may or may not be government supervised but must always be by secret ballot. Only Alberta and British Columbia provide for government supervised strike votes. In some jurisdictions the voting constituency is the employees in the bargaining unit (Prince Edward Island, Nova Scotia, Alberta and British Columbia), in others, members of the trade unions affected (Quebec) or either one or the other (New Brunswick). Except for New Brunswick the majority of those voting decide the issue. In New Brunswick the majority principle applies to the employees in the unit regardless of the voting constituency.

Lockout votes are also required in some jurisdictions, where more than one employer make up the employer bargaining unit. These jurisdictions include New Brunswick, Alberta, British Columbia and Saskatchewan (construction industry only).

Should a vote support strike or lockout action the parties are required, in addition, in some jurisdictions, to give notice of intent to strike or lockout. This provision is present in New Brunswick, Nova Scotia, Alberta and British Columbia and the notice period varies between one to three days.

4. Labour Relations Boards

Every act provides for an administrative body to administer the legislation. This body is known as the labour relations or industrial
relations board. Quebec abolished its labour relations board in 1969, establishing in its place a Labour Court and administrative machinery within the Department of Labour and Manpower.

In the smaller provinces labour relations boards are part-time and tripartite comprising representatives of labour, management and a neutral chairman. The federal jurisdiction provides for a full-time body and is the only jurisdiction in which all of its members including the chairman are neutral.

Labour relations boards or their equivalent are involved in a variety of matters concerning collective bargaining and union-management relations. The boards in Alberta and Manitoba have, in addition, responsibility in the labour standards area such as minimum wages, hours of work, equal pay and industrial standards.

Decisions of boards are generally final. Appeals can be made to the courts but only on matters related to the jurisdiction of a board or whether a board has acted illegally.

The major responsibilities of labour relations boards include the acquisition and transfer of bargaining rights, certification and decertification of bargaining agents, determination of appropriate bargaining units, determination of whether there has been a failure to bargain as required by the Act, and determination and control of unfair labour practices. Some boards (for example Ontario and British Columbia) under certain circumstances, arbitrate collective agreement disputes and some boards can impose first agreements on the parties.

Although boards possess wide statutory powers to remedy violation of collective bargaining legislation, their major difference from the courts, is their accommodative function. Boards will first try to obtain a settlement of a dispute or conflict before proceeding to apply remedies. Indeed, most
conflicts that come to the boards are settled in this accommodative manner.

V. The Collective Bargaining Process

(a) The Collective Agreement

The negotiation and the signing of a collective agreement between management and labour is the principal end objective of the labour movement. It is the major raison d'être for its existence.

The collective agreement is a document regulating the relations between the employer and his employees on most matters affecting conditions of work. Agreements are co-signed by both parties and govern their relations for periods ranging from one to five years or more. The minimum term of agreements is one year. There is no set maximum term, the term of the agreement being dependent on the outcome of the negotiations between the parties.

Most collective agreements run for two years with a number having a three year term and smaller numbers running four or five years.

Terms of agreements vary depending on a range of factors. Long-term agreements are advantageous to both parties since they ensure peace and stability in the relationship and result in savings in time and money that are incurred by frequent negotiations and possible strikes and lockouts.

Short-term agreements have the advantage of ensuring that wages and working conditions do not get out of line with those prevailing elsewhere in the community, in competing companies or in the country as a whole. This is particularly important in times of rapid inflation and this explains why short-term agreements predominated during much of the 1970s, compared to earlier periods.

There is no typical size of an agreement. Agreements can vary from two or three pages to several hundred. Some agreements simply state that current wages and working conditions in the unit covered by the agreement will be
changed by a certain amount and the new wages and working conditions will remain in force for the duration of that agreement.

At the other extreme are agreements that spell out in meticulous detail the wage rates of each occupation, the conditions of work including hours of work, pensions, vacations, group insurance, paid holidays, seniority arrangements, handling of grievances and the hundreds of other items that determine the working conditions and relations between the parties.

The range of items that may be found in collective agreements is so vast that it would take many pages to list them all. A recent analysis by the Canada Department of Labour summarizes the most important items typically found in agreements. The list includes some 164 items classified under 26 main headings. The most prevalent items are those dealing with wages and conditions of work. These are the most likely provisions to be found in collective agreements. But typical agreements now contain a variety of clauses once considered the exclusive preserve of management. These include restrictions on management's right to contract out work, rules governing the hiring, classification, promotion, transfer, lay off, discipline and discharge of employees and matters related to the scheduling of work and the introduction of new methods and machines.

There are no formal or legal rules governing the issues that are subject to bargaining, except in certain public sector bargaining in which the law limits the issues that can be negotiated and included in an agreement. In all other situations, what is discussed depends on what the union wants in the agreement, the power of the union to back up its demands, the receptiveness of management to these demands and the power and influence management can wield to resist discussions of them. Traditionally, unions have had little interest in becoming involved in management functions for fear of compromising their role. However, they will not hesitate to negotiate on those management
functions that are perceived to threaten the wages and working conditions of their members. Substantial inroads have been made on these functions during the past 20 years and further inroads can be expected in the future reflecting the increasing complexity and interrelationship of the employment function and the management of the enterprise.

To slow the pace of this encroachment, most collective agreements contain a management rights clause. There are various types of these clauses. Some spell out management rights. A typical clause of this sort is one that states that management has the exclusive right to manage the business, control production and maintain order and efficiency. Such clauses may go further and spell out what this means, for example to determine the number and location of plants, the products to be produced, the methods of manufacturing, the schedules of production, the machines and tools to be used and the processes of manufacturing and assembling. Still further, these clauses may spell out specific management rights concerning the employment function such as the right to discipline or discharge for just cause, to transfer, promote and demote and to hire, classify and lay off employees, providing these rights have not already been relinquished by specific clauses elsewhere in the agreement. In many collective agreements management rights clauses may simply state that managements' rights are subject to provisions of the agreement, or that management exercises all rights that are not specifically taken away by the agreement.

Which type of clause provides the best protection for management remains a moot point. Neither the decisions of arbitrators nor the courts have entirely settled the issue. One interpretation of these clauses follows the "residual rights" theory, to the effect that all rights remain with management except those taken away by the collective agreement. Another interpretation is that the agreement represents an understanding that all issues affecting
the employment relationship are subject to negotiation or challenge even though there may not be a specific clause on the issue. Thus, even though the agreement itself may be silent on a particular employment matter, it could be held that this is not an exclusive management prerogative. To protect against this interpretation an increasing number of agreements provide a detailed wording of the management rights clause as in the example above.

In the end, however, it is really not the clause itself that is important but the quality of the labour-management relationship. In mature, stable relationships what may appear to be union encroachment is really a mutual acceptance on the part of both parties that these matters should be jointly determined. Both sides have an equally important stake in how a particular function is administered. Management may see particular benefits in including the union in decisions involving its labour force.

(b) **Negotiation Process**

Negotiating a collective agreement can take anywhere from a few days to two or three years. The latter are rare but nevertheless have occurred especially in some public sector negotiations.

The length of negotiations depends on many factors including the number of issues to be settled, the militancy of the union, the feelings of the employees, public opinion, the economic position of the company, the kind of collective agreements being signed elsewhere, the willingness (or unwillingness) of the union, the workers and the company to strike or lockout and the length of time involved in satisfying legal requirements for conciliation.

The negotiation process has been likened to a poker game where bluffs, counter bluffs, eye movements, body gestures, words used in the conversation all carry meaning as one side or the other attempts to get the upper hand. The process also involves knowing when to assist your opponent out of corners.
in order to help him save face so that a mutually acceptable agreement can be facilitated.

A variety of theories have been developed to explain the negotiation process and its culmination in a collective agreement. But the nature of the process is such that no theory is capable of pinpointing the point of agreement. There are just too many constantly changing factors to be accommodated in a theoretical explanation. Simple changes in the external environment, in the negotiating personnel or in the company's fortunes are imponderables that do not lend themseleves to easy quantification or predicted outcomes.

The negotiation process begins with a notice by either side, but most often by the union, of intent to negotiate a new agreement. Most legislation require that a reasonable notice period be given (for example 30 to 90 days before termination of the old agreement). The usual practice in larger more mature relationships where the issues to be negotiated are habitually numerous and complex is for long notice periods. In these cases it is not unusual to find the parties beginning their negotiations many months before the termination date of the old agreement. The timing gives both parties an opportunity to discuss fully the items on the bargaining table and to reach agreement on them before the expiry date.

The termination date of the old agreement is one date the parties try to meet in negotiating a new agreement. A more important date is the strike or lockout deadline. Once the legal requirements have been met, the parties are free to set a date for a strike or a lockout anytime after the termination date of the agreement. The threat of a work stoppage is a strong catalyst that produces agreements, since both parties, in most cases, want to avoid this extreme economic action. These are the situations that produce the eleventh hour agreements in the small hours of the morning that we often read
about in the newspapers.

Although it is the negotiation process between the parties that grabs the headlines in the media, there are often much more difficult negotiations that go on within the organizations of the two sides to formulate the demands and positions that they will take at the bargaining table.

On the management side, depending on the size, scope and nature of the company, the formulation of demands or responses to union demands may involve the personnel department, the labour relations specialist, line managers (for example, the plant manager), foremen and other supervisory personnel, the top executives of the company and, in the case of multi-national companies, personnel from headquarters of the parent company. Each level or category of management has its own position on a particular union demand or its own demand that it would like presented at the bargaining table. The vice-president of finance will be concerned about costs, foremen will be concerned about their rights in work scheduling, the parent company located in, say, New York, may want to ensure uniformity of particular clauses across the company, and the personnel department and various others will be alerted to correcting problems that emerged between the parties during the term of the previous agreement. All of these different, sometimes conflicting, sometimes impossible issues (for example, negotiating a pension clause based on U.S. law) must be sifted, co-ordinated and brought together into a meaningful package which can be used by the management negotiators in their sessions with the unions. The problem of organizing this package to satisfy the varied needs and requirements of not only the different levels of the company but also different individuals is no mean feat and often requires as much tact, skill and diplomacy as does the actual negotiations with the union.

The situation within a union can even be more difficult. On the management side, if an impasse develops within the company over the management
package, the company president can quickly resolve the matter. The union, on the other hand, is a democratic organization and this is not always conducive to quick resolutions of problems.

In most unions, demands are formulated at the local union level mainly by a conference, general meeting or some other arrangement involving the local members. Union headquarters may request the local to include particular demands that are being negotiated union-wide. In other unions the process of formulating demands may involve more than one local and indeed may involve all the locals of the union. These situations are common where bargaining involves a pattern-setting company for the industry (for example, the United Auto Workers and one of the big three auto companies), area-wide bargaining as in West Coast pulp and paper and industry-wide bargaining as in the railways. In a few cases union demands may originate from the U.S. Canadian locals would be included in the process but would be outnumbered by their American brethren when it came to a final decision on the list of demands. Negotiations in the auto or can manufacturing industries may be of this character reflecting the North American market for the products of these industries. In these latter multi-local situations, however, the union bargaining package will invariably include locally-oriented issues reflecting the needs and requirements at the plant level. The latter are essential to satisfy the local membership for, if they are not included, there is a danger that the resulting agreement will not be ratified by the local rank and file.

This is not the end of the story. The union demands must also reflect the variety of issues of particular concerns to different segments of the union membership. For example, older workers will want provisions that emphasize pensions, younger workers would prefer to see demands focus on wages, low seniority workers will be interested in job security provisions and skilled workers will want to ensure that the wage differential between them
and unskilled workers is widened or at least not narrowed. These conflicting claims are not easily resolved. Collective bargaining history is replete with examples of revolts on the part of particular groups of workers whose demands have not been met. Well-known examples of such revolts are the skilled workers in industrial-type unions. These workers, being outnumbered by their unskilled and semi-skilled brethren, often find themselves forced to accept agreements not to their liking. In time, their accumulated grievances have resulted in their refusal to accept agreements ratified by the majority of the membership. Given their key position in the production process they are able to take effective strike action and close down operations forcing both employer and union to recognize their special situation and to develop solutions suited to their needs. The United Auto Workers and the United Steelworkers are good examples of industrial unions plagued by this problem.

Once the parties have formulated their position and demands, serious negotiations begin between them. At this point, an important question is who handles the bargaining. This is less a problem for the union than for management. Depending on the scope and structure of the bargaining relationship, representatives from the union side are the local union officers often assisted by a specialist from union headquarters. In larger bargaining situations or key bargaining situations, the national or international union president, or other high-ranking officers, may be involved. The negotiators on the union side can be expected to be highly experienced or skilled in the art of negotiation since it is their livelihood. Unless management is well represented it stands to lose considerably. A poor management negotiator, face-to-face with experienced and skilled union negotiators, cannot only quickly undo the work, energy and expense that went into developing the management position, but can also be very costly in terms of allowing the union to make unforeseen gains at the bargaining table.
In the larger companies negotiators come from the personnel or industrial relations department generally with the assistance of other staff departments, for example, finance, or certain line management. Employer organizations may provide the expertise on behalf of a member company. Smaller companies that do not belong to an employer organization that provides this service are usually well advised to obtain the services of specialists such as labour relations lawyers or consultants who specialize in labour-management negotiations.

(c) The Administration of the Agreement

The signing of a collective agreement does not signal the end of union-management negotiations or discussions until the next round of collective bargaining one, two, three or more years down the road, depending on the expiry date of the agreement.

Even the most carefully-worded agreement cannot cover all the possible situations that may arise in the employment relationship; and many agreements having been signed under the pressure of a deadline are far from this ideal. Many clauses are the result of compromises made during the final stages of the bargaining process. Further, clauses may be poorly-worded in an effort to get the agreement signed before a strike or lockout deadline. Other clauses may be purposely vaguely-worded to cover new areas in which there is little experience to deal with the particular issues at hand. And still others may simply provide for a mechanism for the two parties to continue discussing particular issues after the agreement has been signed. The result is a continuous day-to-day relationship between the parties to make the agreement work. The most important dimension of this continuing relationship is the procedures for resolving problems that arise out of the interpretation and application of the agreement.
Management daily initiates actions that will inevitably conflict with the agreement. For example, a foreman may promote one employee when another feels he should have been promoted according to the terms of the agreement. Management may assign an employee to some work without a change in pay which the union believes calls for a higher rate of pay. Certain employees may be denied a paid holiday to which they believe they are entitled. The examples are endless. In most cases these actions are taken in ignorance of the agreement. Not all managers read the agreement and even the personnel department may not be fully conversant with all the clauses and their nuances. In other instances changing conditions call for new methods and management may be forced to undertake an action in conflict with the agreement. In still other instances, either party may deliberately do something to test or clarify the meaning of a particular clause in the agreement.

To meet these day-to-day situations, most agreements provide for a grievance procedure with arbitration by an impartial outside arbitrator or arbitration tribunal as the final step. In all jurisdictions, the parties cannot strike or lockout over matters arising out of the application and interpretation of the collective agreement. Arbitration must be provided for in the resolution of impasses. In the view of some observers, the grievance procedure represents the most important clause in the agreement. A well-run grievance procedure ensures the orderly and just processing and resolution of complaints and other differences between the parties. It ensures, for example, that employees receive a fair hearing of their grievances right on up to an impartial outside arbitrator, that management will not suffer work stoppages in protest over its actions, that the rights of all three parties, the employee, the company, and the union, are protected and that the three parties have a channel of communication for the airing of their day-to-day problems.
There are many types of grievance procedures. Some are informal in which the parties attempt to resolve problems orally at whatever level of management a particular issue can be handled. Most procedures, particularly in the larger companies, provide for formal steps with time limits between each step. Three or four steps may be provided for in these procedures with both the grievance and the response recorded.

In a typical grievance procedure, an aggrieved employee may bring his problem directly to his immediate supervisor or to his union steward. The latter is an employee elected by the union membership in the plant to represent employees in the administration of the agreement and related matters. Most grievances are generally settled quickly and informally between the employee or his steward and the supervisor. However, if a grievance is not solved to the satisfaction of the employee, and the union steward believes there is a legitimate case, a formal complaint in writing would be lodged and the grievance processed to the next stage.

This step may be the next level of supervision and the procedure may involve a formal meeting between management, the union steward or officer from the union local, and the employee. If still not resolved, a third step may involve the company's top management and an officer from union headquarters. At each step of the procedure, the parties are usually free to call in outside expertise especially if the particular problem involves a technical matter. Seven to fourteen days are usually allowed between steps.

If settlement is still not reached, the case then goes to final and binding arbitration. Arbitration may be handled by a single arbitrator who may or may not be named in the agreement or by an arbitration tribunal comprising a representative of the union, a representative of management and an impartial chairman selected by the parties. Should the parties not be able to agree upon an arbitrator the Minister of Labour or the labour relations
board will name a person.

Experience has shown that only a very small fraction of grievances actually reach arbitration. Experience has also shown arbitration to be a bottleneck in many situations because of the time it takes to appoint the arbitrator, set the date for the hearings and present all the evidence. Most arbitrators are part-time, for example, they may be lawyers, professors or other professionally recognized persons doing arbitration as a sideline. Since the parties tend to use the same arbitrator for their cases, scheduling of hearings within a reasonable timeframe becomes difficult. If the number of grievances going to arbitration is large, the ensuing log jam may threaten the whole grievance procedure and seriously undermine the collective bargaining relationship.

The potential for overloading of the procedure exists in a climate of poor labour-management relations. Given the nature of the collective agreement, it is a fairly easy matter for either party to flood the system and prevent it from operating effectively and efficiently. The need for a good labour-management relationship is as important as a well-organized and well-structured grievance procedure if the mechanism is to work. One is not a substitute for the other.

Apart from this, overloading of the procedure can result from poorly-worded collective agreements that lend themselves to challenge at virtually every turn, from rapid economic and social change that forces the company unintentionally to take actions that are in conflict with the agreement or from newly established labour-management relationships where there is little experience to assist the parties in administering the agreement. To meet the problem of overloading some jurisdictions have introduced measures to enable the parties to speed up the arbitration process. Ontario, for example, at the request of either party, now provides for the establishment of arbitration to
hear and reply to cases within a specified period. This expedited procedure is particularly important in cases of discharge and related cases of harsh discipline where swift attention to the matter is essential for continued harmonious relations between the parties.

Both the law and court decisions have given the arbitration function considerable power and freedom. The substance or content of arbitration decisions cannot be appealed to the courts except under certain stringent circumstances. For example, an appeal could be entertained if it could be shown that an arbitrator went beyond the terms of his reference or did not provide a fair hearing of the dispute. Arbitrators can apply remedies, assess and award damages and change or modify an action. The latter has become a particularly thorny issue in discharge cases. In these cases arbitrators have not hesitated to impose their own judgment on the severity of the penalty. Discharge is the ultimate discipline weapon and its sometime capricious use by certain employers has resulted in arbitrators departing from the strict language of the contract to make their award. If in the opinion of an arbitrator a particular discharge is unwarranted he can reinstate the employee with damages for loss of pay or change the penalty to simple suspension with or without pay or with or without continuation of benefits. Decisions of arbitrators can become orders of the court and therefore legally enforceable.

During the last 10 or 15 years, in some Canadian jurisdictions there has been some loosening of the legal requirement to settle rights disputes by arbitration. For example, under certain circumstances in some jurisdictions for example, the federal, the union may negotiate the effects of technological change introduced during the term of the agreement. If a settlement is not reached, strike or lockout action can be taken provided that the parties have met the legal requirements for conciliation. Similarly, the parties may introduce "re-opener" clauses into the agreement. These clauses allow the
parties to re-negotiate an issue during the term of the agreement with the right to strike or lockout under certain circumstances, subject to the usual conciliation requirements. A common example is the wage re-opener clause. Such a clause provides the parties with the right to re-negotiate wages during the term of the agreement. These clauses are important in periods of rapidly rising wages and allows the parties to sign a long-term agreement on other issues but gives them the flexibility of dealing with the wage issue at regular intervals. Usually the parties have to observe a period of one year before these re-opener clauses become operational.

VI Union-Management Relations in the Public Sector

(a) Introduction

The preceding sections of this chapter discussed in the main, union-management relations in the private sector. Collective bargaining for certain public sector workers such as municipal workers, police and firefighters is as old as collective bargaining in the private sector. Except for Saskatchewan the extension of bargaining rights to other public sectors including the civil service and certain sectors of education and health care did not occur until the 1960s. Saskatchewan granted bargaining rights to all workers, public and private sector alike, in 1944.

Ontario granted its civil servants bargaining rights but not strike rights in 1962 and Quebec followed in 1965 giving both bargaining and strike rights to all public sector workers. The landmark legislation on this continent is generally considered to be the Public Service Staff Relations Act (PSSRA) of 1967 giving federal civil servants both bargaining and strike rights. Other provinces quickly followed and by 1973 all political jurisdictions in Canada had legislation giving their civil servants bargaining rights. Only some, (New Brunswick, Newfoundland and British Columbia in addition to Saskatchewan, Quebec and Federal) give their employees strike
rights as well. The others provide arbitration for the settlement of impasses. Only British Columbia gives the government the right to lockout. In all other jurisdictions this right is not available to governments. In the U.S., strike rights are not available to most public sector workers including civil servants at the federal level and most states. Collective bargaining rights in these situations are available but often in a restricted form.

As in private sector legislation, public sector acts in Canada provide for the certification of bargaining units, mandatory conciliation procedures before strike rights are acquired (in those jurisdictions which provide for these rights), listings of unfair labour practices which are illegal under the acts, prohibition of strikes during the term of the agreement, and provision of machinery to administer the legislation. These are major legislative similarities between the two sectors. However, differences are much more important and interesting. Major legislative differences between the public and private sectors are discussed in the next section followed by a brief discussion of non-legislative differences.

(b) Legislative Differences

(i) Coverage of the legislation

In some jurisdictions, one public sector act covers all public sector workers, other than those covered by the private sector act. At the Federal level, the Canada Labour Code applies to the private sector plus certain crown companies such as Canada Post, CNR and Air Canada. The Public Service Staff Relations Act covers civil servants and other public sector employees. In other jurisdictions, there are several public sector acts. Ontario is an extreme example with separate acts for police, firefighters, civil servants, teachers and hospitals. At the other extreme is Quebec where the Labour Code applies equally to all workers public and private alike. However, special provisions within the Code apply to different categories of worker's including
certain categories of public sector workers as well as certain categories of private sector workers such as construction workers.

(ii) Certification of Bargaining Units

Unlike the private sector, most public sector acts pre-determine these units in the legislation. For example, the Federal and New Brunswick statutes provide that bargaining units must be determined along occupational lines. Thus separate bargaining units must be formed to represent clerical employees, administrative employees, secretaries, economists, etc. In the federal jurisdiction there are more than 100 bargaining units each representing a different occupational group.

Ontario and other jurisdictions provide for a small number of very broad province-wide bargaining units for their civil servants. Some jurisdictions for example, Ontario and Alberta also grant statutory recognition to the association or union representing civil servants, that is the association to which civil servants must belong is named in the statute. In other respects, certification procedures in the public sector in the various jurisdictions parallel those in the private sector.

(iii) Strike Rights

As already noted strike rights are available to some public sector workers but not to others. These rights are not found consistently. For example, in Ontario, civil servants do not have strike rights but teachers do. In British Columbia the reverse is found.

Where strike rights are available third party intervention procedures (conciliation, mediation, fact finding) must be observed as in the private sector before these rights can be exercised. However, these procedures are applied much more rigidly in the public than in the private sector. Strike rights in the public sector are subject to other restraints as well. Public sector acts usually designate certain employees in bargaining units that have
strike rights to remain on the job during a strike. This ensures continuation of emergency and essential services while a strike is in progress. In some jurisdictions, for example the federal, designated employees are a matter of negotiations between the parties, in others, designated employees are determined unilaterally by the government and in still others, as in Quebec, the affected union determines who will stay behind on the job in the event of a strike. Further diminution of strike rights is also found in special acts. For example, in British Columbia most public sector workers are subject to the Essential Services Disputes Act which provides for government intervention in a strike should Cabinet feel there is an emergency.

(iv) Choice of Procedures

In two jurisdictions, the Federal and New Brunswick, the legislation provides public sector workers strike rights in a novel manner. In both jurisdictions, bargaining units have a choice of electing to strike or going to arbitration to settle their impasses. This choice is not available to government, which must abide by the wishes of their employees on this matter. Further, bargaining units can change their choice. For example in the Federal jurisdiction bargaining units make their choice before the commencement of bargaining for a new collective agreement. If arbitration is selected, then strike rights are renounced for that set of negotiations. If an impasse develops, either party may request arbitration. The award of the arbitration tribunal is final and binding. In the next round of bargaining the bargaining unit may request that bargaining be conducted in the strike route. In this route the bargaining unit has the right to strike to back up its demands provided the impasse has been first considered by a conciliation board.

(v) Scope of Bargaining

Most public sector acts put restrictions on bargainable items. For example under the PSSRA pensions is not a bargainable item nor are matters
related to certain personnel functions such as hiring, promotions, classification and layoffs. Similar restrictions are found in the provincial jurisdictions. Under private sector legislation, there are no such restrictions; the parties are free to bargain over and to include in their agreements any matter or issue of concern to them.

(vi) **Wage Setting**

A characteristic feature of the PSSRA and of other public sector acts is the listing of criteria for wage setting purposes. The PSSRA, for example, sets down five criteria which are to be taken into account in determining the level of wage and salary increases. These include wages for comparable categories or occupations in outside sectors, internal wage relativities, the needs of the public service, wages that are considered fair for the work to be done and the qualifications required, and any other factor that appears relevant in the particular dispute. Similar criteria are found in other public sector legislation. Recently in some jurisdictions criteria related to the government's fiscal position and government economic policy have been added to the list. Criteria have their major impact in arbitration where it is usually incumbent upon arbitrators to adhere to them in making their awards.

(vii) **Administrative Machinery**

As in private sector legislation, public sector acts provide for the establishment of boards or other similar arrangements to administer the legislation. The PSSRA, for example, provides for the establishment of the Public Service Staff Relations Board, an independent agency reporting directly to Parliament.

In some jurisdictions, the private sector labour relations board is given the function of administering public sector legislation.

The boards have functions similar to those in the private sector. In addition, they generally handle the administration of the conciliation,
mediation and arbitration machinery, a matter left to Ministers of Labour in the private sector. Quebec and Saskatchewan are important exceptions. There, the Ministers of Labour administer these procedures in the public as well as in the private sector.

(c) Non-Legislative Differences

Although the general objectives and nature of labour relations in private and public sectors are generally similar there are important differences that are worth noting.

First, unions in the public sector are dominated by white collar workers as opposed to blue collar in the private sector. Only a small fraction of white collar workers in the private sector are organized. This has implications among other things for strike proneness, which tends to be less in the public sector, and the nature of bargaining demands, which tends to be of a higher order in the public than in the private sector. For example demands in the public sector reflect the unique needs of professional workers - teaching and nursing loads, attendance at conventions, financing of research, etc. Monetary issues are important but relatively less so compared to bargaining in the private sector.

Second, almost all public sector workers, which have the protection of the legislation for purposes of collective bargaining, have in fact joined unions for that purpose. In contrast, in the private sector, large chunks of workers such as those in trade, banking and insurance have yet to exercise their rights in this respect.

Third, management in the public sector is more diverse than in the private sector. In hospital, teacher and municipal collective bargaining, in particular, it is often difficult to know who, on the management side has final decision-making authority. In large part this is because the real decisions often lie with the various responsible provincial ministries who
control the purse strings. The result is often a type of bargaining not found in the private sector. Thus, terms such as "multilateral" bargaining "phantom" bargaining or "end runs" have emerged in the lexicon to describe bargaining taking place simultaneously on several fronts. For example while the union bargaining team may be going through the motions with the employer team, it is also bargaining with the responsible provincial ministry, the provincial minister, relevant MPPs, mayor or aldermen in order to change the employer's position or to loosen the purse string to allow the employer to accede to union demands. In an increasing number of provinces, governments are now including their own officials on the employer hospital or education bargaining team, reflecting a recognition of their financial involvement in final settlements.

Fourth, most unions in the public sector are national or "home grown", whereas in the private sector international unions command the majority of union members.

Fifth, most public sector unions have not joined one of the central federations. These unions, in particular those representing nurses, teachers and other professional workers, have chosen voluntarily to remain outside the mainstream labour movement in this country. In certain cases the legislation prevents affiliation with the central federations. This is the situation in most jurisdictions with respect to police and fire-fighters.

These are just some of the major differences between the two sectors. Recent developments highlight another, and perhaps, the most important difference, the lawmaking powers of the government employer. What the government as employer cannot achieve, the government as lawmaker (perhaps) can. For example, in recent years governments have found or felt themselves relatively powerless to control the rate of wage increase won by their employees through collective bargaining. To slow this rate both federal and
provincial governments have passed restraint legislation temporarily limiting bargaining and strike rights and imposing wage ceilings on civil servants and other public sector workers. The legislation has been reasonably successful in keeping wage increases under control but its future is in doubt. The labour movement is challenging the legislation, particularly those sections that restrict bargaining and strike rights on the grounds, that they are in conflict with the new Charter of Rights. A successful result not only would reduce governments' powers to tamper with the rights of their employees but also could conceivably force legislative changes to put public sector workers bargaining and strike rights on a footing approaching that of the private sector. Recent court decisions in Ontario point in this direction.

VII Conclusion

This chapter has reviewed the union-management relations system and collective bargaining in this country. Experts generally agree that it is not the best system for the resolution of conflict between labour and management. But given the nature of our free mixed enterprise economy we would be hard-pressed to find a better system. This does not mean we cannot improve it. We have and have now brought it to the point where there is considerable agreement that it represents an important example of successful industrial relations. The system gives the parties the opportunity to resolve major differences once every one, two, three or more years with the full use of their economic power or the use of a third party neutral. Once an agreement has been signed, the system then provides for the flexible, peaceful and equitable handling of differences thereby reducing industrial conflict. It has facilitated, generally, the management function while at the same time ensuring an effective and orderly outlet for employee dissatisfaction and frustration, which otherwise could adversely affect output and productivity.
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