REPORT VIII (1)

International Labour Conference

THIRTY-FIRST SESSION

SAN FRANCISCO, 1948

INDUSTRIAL RELATIONS

Application of the Principles of the Right to Organise and to Bargain Collectively, Collective Agreements, Conciliation and Arbitration, and Co-operation between Public Authorities and Employers' and Workers' Organisations

Eighth Item on the Agenda

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PREFACE

At its 30th Session, the International Labour Conference decided to place on the agenda of its 31st Session the two following items relating to the problems of "freedom of association and industrial relations" [1]:

1. Freedom of association and protection of the right to organise (single-discussion procedure).

2. *(a)* The application of the principles of the right to organise and to bargain collectively, *(b)* collective agreements, *(c)* conciliation and arbitration, and *(d)* co-operation between the public authorities and employers' and workers' organisations (double-discussion procedure).

As regards the first item, the Office, in accordance with Article 31 of the Standing Orders of the Conference, submitted a questionnaire on the subject to all Governments in August 1947.[2]

With regard to the second item, in accordance with Article 32, paragraph 1, of the Standing Orders of the Conference, which prescribes the preparatory stages of the double-discussion procedure, the Office is required to send to all Governments a preliminary report setting out the law and practice in the different countries, together with a questionnaire.

The present report has been prepared with this object. It comprises four parts, corresponding to the four heads of the second item thus placed on the agenda. Part I deals with the right to organise and to bargain collectively, Part II with collective agreements, Part III with conciliation and arbitration, and Part IV with co-operation between public authorities and employers' and workers' organisations. Further, Part IV is divided into three main chapters, in which co-operation at the level of the undertaking, co-operation at the level of the industry, and co-operation at the national level are discussed in turn.

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[1] International Labour Conference, 30th Session, Report VII: *Freedom of Association and Industrial Relations* (Geneva, I.L.O., 1947).

[2] International Labour Conference, 31st Session, Questionnaire: *Freedom of Association and Protection of the Right to Organise* (Geneva, I.L.O., 1947).

As these four parts of the report, though closely connected one with another, relate to four separate subjects on which the Conference is called upon to reach a decision, it has seemed necessary to submit to Governments four separate questionnaires, which, preceded in each case by a brief commentary, immediately follow the respective parts of the report.

The question with which this report deals was included in the agenda of the next session of the Conference less than eighteen months before that session is due to open ; therefore, in accordance with Article 32, paragraph 5, of its Standing Orders — the amended text of which was adopted by the Conference at the 30th Session [1] — the Officers of the Governing Body have decided, in agreement with the Director-General, that the preliminary report should reach Governments not later than 1 December 1947.

In view of the brief space of time left to the Office for preparation of this report, and of the time — also brief — which Governments will have in which to draft their replies to the questionnaires, the Office has had to restrict itself to dealing, in the present report, only with the essential features of the problems covered, as they appear in the law and practice of the different countries.

According to paragraph 3 of the above-mentioned Article 32, the Office will draft a definitive report, based on the replies and reasons given by the Governments, and this will be submitted to the Conference at its next session.

In order that the Office may study these replies, prepare the definitive report, and submit it to Governments in sufficient time for the latter to be able to examine it and for the necessary consultations to take place before their delegations leave for the Conference, *it is important that the replies of the Governments should reach the International Labour Office in Geneva as early as possible, and in any case not later than 1 March 1948.*

[1] International Labour Conference, 30th Session : *Provisional Record*, Nos. 12 and 33 (Geneva, I.L.O., 1947).

PART I

APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

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The provision by the State of a guarantee for freedom of association should enable the employers and workers to form organisations capable of determining wages and other conditions of work by means of collective agreements. It would however be difficult to achieve this result if the parties themselves questioned or impeded the exercise of the right of association or refused to engage in good faith in negotiations for the conclusion of such agreements. The recognition of workers' unions by employers should therefore be a corollary to the recognition of freedom of association by the State.

It is indeed evident that the individual worker is in a position of inferiority in his relations with the employer, and that equality between the parties can only be established by unions which can oppose the solidarity of labour to the economic strength of the employers. But a union will only be able to achieve this object if it obtains recognition from the employer.

In all countries this recognition has been the subject of long and bitter struggle. In some it has been finally secured, and embodied in agreements between the parties, thanks to the extremely powerful character of the labour unions. This problem is examined below in the first section of the present part of the report.

In other countries, legislative intervention has been necessary to prohibit acts directed against organised workers or against the unions themselves. Legislation of this character is examined in the second section.

As a result of this recognition, the union becomes the qualified representative of the workers. It thereby acquires rights, but it also assumes certain responsibilities. It can naturally not have recourse to illicit action in order to impose its will either on the employer or on unorganised workers ; like any other association or person, it must act in conformity with the law and may not cause a disturbance of the peace. But is it illicit to include, in a collective agreement, a stipulation providing for compulsory

membership in a certain union as a condition for engagement or for maintenance in employment ? These questions are examined in the third and fourth sections.

A final section deals with the measures taken in the different countries to provide for supervision and to secure the enforcement of legislation and agreements regarding the protection of the right to organise and negotiate.

1. Mutual Recognition of Organisations

The best method of guaranteeing the exercise of the right of association and negotiation is certainly that of spontaneous agreement between the parties for their mutual recognition, without intervention by the authorities.

The classical instance of this method is provided by the United Kingdom. In that country the trade unions, with their progressive liberation from legal restrictions, have obtained practical recognition from the employers and employers' associations. The principle of collective bargaining is in fact unreservedly accepted by both parties. The proof of this may be seen in the network of collective agreements covering most industries, and in the existence of bargaining machinery instituted by the parties in order to facilitate the preparation, renewal and implementation of the agreements and the settlement of all industrial disputes.

This is a purely voluntary system, the operation of which depends essentially on the good will of the parties. The obligations accepted under it are regarded as of a moral rather than of a strictly legal character. The existence of the collective agreements consequently implies — although this is not expressly stated in any law or in the agreements themselves — an obligation on both the employers' and workers' organisations, and on their members, to respect the right of the other party to organise and bargain, for these rights are the foundation of the whole system. In such circumstances it has not been considered necessary, or even desirable, to enact special legislation for the protection of these rights against possible attack by one or other of the parties to the employment relationship.

It should however be added that legislative action has contributed indirectly to this result, particularly in two ways : first, by giving trade unions immunity from criminal proceedings, and to a large extent from civil liability, in case of industrial dispute ;

and secondly, by fixing minimum wage rates in " unorganised " industries or occupations, and in agriculture.

In other countries, mutual recognition arises out of agreements of national scope concluded between the employers' and workers' central organisations, as for example, the Danish " Concordat " of 1899 ; the Swedish " December compromise " of 1906, renewed and amplified by agreement of 1938 ; and the Norwegian national agreement of 1935. In these instruments the two parties undertake to respect freedom of association, to conduct their mutual relations through a system of collective bargaining, and to have recourse to conciliation and arbitration in collective industrial disputes. More recently, in 1944, a similar agreement was reached in Finland between the Confederation of Trade Unions and the Central Federation of Employers.

In France, on 17 July 1947, the General Confederation of Labour and the National Council of French Employers concluded an agreement which, though relating in the first place to the problem of wages and prices, lays down certain principles to govern relations between employers and employees. The existence of numerous social conflicts, due to the chaotic situation as regards wages and prices, led the Confederation and the National Council to proceed to direct discussion. The two parties recognise that the achievement of an increase in production and a higher rate of productivity in all the branches of the national economy remains the decisive means of improving the general situation. This object can be attained by normal relations between the great workers' and employers' organisations, by a fair distribution of the national income, securing decent conditions of life for the workers and normal profits for the employers, and by improving the situation of employed persons progressively according as production and the productivity of labour increase.

With this end in view, the General Confederation of Labour and the National Council of French Employers have jointly declared that " within the framework of existing legislation, the General Confederation of Labour does not contest the authority of management, and similarly the National Council of French Employers does not contest the exercise of trade union liberties ". The two parties will study the facilities which it may be possible to provide for the exercise of these liberties, and will strive to hasten the conclusion of collective agreements. [1]

[1] *Le Peuple*, 19 July 1947.

On 6 August 1947 the French Confederation of Christian Workers and the employers' central organisation concluded a similar agreement, in which they adhere to the principles expressed in the joint declaration of the General Confederation of Labour and the National Council of Employers. [1]

These examples show that the exercise of the right to organise and bargain collectively can be effectively protected, apart from any legislative intervention, by the organisations themselves. As the example of Great Britain and the Scandinavian countries indicates, this result will be most surely reached if the labour unions succeed in bringing the majority of the workers together in a single, powerful organisation, and in raising the practice of collective bargaining to the status of a general custom, firmly established and not less effective than the law.

2. Statutory Protection of the Right to Organise and to Bargain Collectively

In many countries, legislative action has been taken to secure the exercise of the right of association and negotiation. Before this had been done, unilateral acts on the employer's part — for instance, the dismissal of or refusal to engage a worker by reason of his membership of a union, or an agreement between an employer and an employee to the effect that the latter shall not join or shall resign from a union — were perfectly permissible under common law. In the same way, the employer was free to refuse to recognise a union, or to refuse to enter into negotiation with it, or even to interfere in its internal affairs. Nevertheless, such acts amounted in fact to the use of pressure, by which the employer, thanks to his economic position, attempted to prevent his employees from organising in independent unions and to restrict the activity of such unions. Special legislation was necessary to make these restrictive measures illegal and to prevent or repress them.

Protection of Freedom of Association for Individual Employees

The legislation of some countries, by using a very general formula, aims at making the protection of freedom of association

[1] *Syndicalisme*, 7-13 August 1947.

as comprehensive as possible. Thus, the Belgian Act of 24 May 1921 [1] guarantees freedom of association " in every field ", and the Swedish Act of 11 September 1936 [2] provides that there shall be no infringement of the right of association.

In many cases there is insistence on the fact that no one may be obliged to belong or not to belong to an association (as, for example, in Belgium, Costa Rica, Cuba, Dominican Republic, Finland, Haiti, Iran, Nicaragua, Turkey, Venezuela).

In France, according to the Collective Agreements Act of 23 December 1946, national agreements must contain stipulations concerning freedom of association and freedom of opinion for the workers and governing engagement and dismissal, but these stipulations may not affect the freedom of the workers to choose their own unions. For instance, an agreement concluded on 12 February 1947 between the Banks Association on the one hand and the federations representing bank employees on the other, which was approved, under the terms of the Act, by an Order of 20 August 1947 [3], includes the following provisions :

> The signatory parties recognise freedom of opinion and freedom to join or to belong to any trade union established in accordance with Book III of the Labour Code.
>
> In no case may a decision taken, and particularly one relating to engagement, distribution of work, vocational training, general discipline, promotion, penalty or dismissal, be based on the fact that the worker concerned does or does not belong to a trade union.
>
> The management of an undertaking or its representatives may not use any form of pressure in favour of or against any labour organisation.
>
> The law and the customs of the occupation should always be respected in the course of the exercise of freedom of association...
>
> Any employee or occupational group concerned, who or which considers that a decision has been taken in any undertaking in violation of the right to organise, may appeal from the employer's decision to the regional joint committee ...
>
> If, in the final ruling, it is recognised that the decision to which objection has been taken constituted a violation of the right to organise, the employee against whom such decision was taken shall be reinstated in all his rights.

As a rule, the acts which constitute pressure improperly affecting freedom of association are defined in the appropriate legislation.

First, contracts of employment which restrict the exercise of the right to organise are declared null and void. In the United

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[1] I.L.O. : *Legislative Series*, 1921, Bel. 2-3.
[2] *Idem*, 1936, Swe. 9.
[3] *Journal officiel*, 13 September 1947.

States, the Norris-LaGuardia Act of 23 March 1932 [1] renders illegal all contracts of employment under which one of the parties undertakes not to join an occupational organisation or to leave such an organisation. Contracts of this sort are also declared null and void in the following countries : Canada, Cuba, Egypt, Finland, Haiti, Netherlands (Collective Agreements Act), Turkey, Uruguay, etc.

Secondly, in many national laws certain unilateral acts on the employer's part are expressly prohibited, as for example :

(1) In Argentina, Belgium, Canada, Ecuador, France, United States, Venezuela, etc., the employer may not make the engagement of an employee dependent on the condition that he does not belong to a union or will leave the union to which he does belong.

(2) In Argentina, Australia, Belgium, Brazil, Canada, Colombia, Egypt, Union of South Africa, United States, etc., the employer may not penalise a worker during his employment because of his membership of a union or his union activities, either by reducing his pay, or by transferring him, or by any other discriminatory act.

(3) In Argentina, Australia, Belgium, Brazil, Canada, Colombia, Egypt, France, New Zealand, Union of South Africa, United States, etc., the employer may not dismiss an employee or threaten him with loss of employment because of his membership of a union or his union activities.

(4) In Argentina, Belgium, Bolivia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, France, Mexico, Nicaragua, Uruguay, United States, Venezuela, etc., the employer may not use any form of pressure, intimidation or compulsion such as may directly or indirectly involve a restriction of the worker's freedom of association.

In the United States, and similarly in Canada and Argentina, such acts are considered to be " unfair practices ". However, under the recent Labor-Management Relations Act of 23 June 1947, known as the Taft-Hartley Act [2], which amends the National Labor Relations Act of 1935, the expression or dissemination of views in written or other form does not constitute and is not

[1] I.L.O. : *Legislative Series*, 1932, U.S.A. 2.
[2] *Idem*, 1947, U.S.A, 2.

evidence of an unfair practice, if it contains no threats of reprisals or force, or promises of benefits.

It will be seen from this brief enumeration that at present the legislation of a large number of countries attempts, in one way or another, to protect the worker in the exercise of his freedom to associate. This protection is accorded to workers seeking employment as well as throughout the whole duration of their engagement. It relates both to acts of open coercion and intimidation and to those which, under cover of the law, in fact constitute disguised pressure of an economic kind.

Protection of Freedom of Association of Workers' Organisations

In order to shelter workers' organisations from any intervention on the employers' part, the legislation of several countries has sought to secure their full independence. A union would not, indeed, be in a position to defend the interests of the workers in any real sense if it were under the employers' influence. In many cases, therefore, employers and their organisations are forbidden to intervene in the constitution or administration of workers' organisations, or to support them financially or in any other way (*e.g.* in Argentina, Brazil, Canada, Colombia, Venezuela).

In the United States such acts are included in the list of unfair practices laid down by the National Labor Relations Act of 1935. Company unions, dominated by the employer, are consequently prohibited. The amending Act of 1947 even states that the support given by an employer to a workers' association affiliated to a national or international federation should also be considered as an unfair practice, although this has not hitherto been the case.

In many countries (such as Australia, Brazil, China, New Zealand, Union of South Africa, etc.) there are special provisions intended to protect union officials and agents — persons particularly exposed to reprisals by the management — against any discriminatory or punitive action which the employer may take against them either when engaging them or during their employment.

In several Latin-American countries (Bolivia, Chile, Colombia, Ecuador, Venezuela, etc.) the employer may not dismiss a union official without good reason, which must be established and approved by the competent authority.