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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

GENEVA
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2. Temporary Legal Restrictions of Strikes and Lockouts

Strikes and Lockouts affecting Industry in General

The procedure of conciliation and arbitration is intended as a means of aiding parties to reach amicable adjustments of disputes without recourse to strikes and lockouts.

In certain countries the legislation imposes no restrictions on the right of the parties to engage in strikes and lockouts during the procedure (for example, in the United Kingdom).[1] However, the trade associations often provide in their constitutions and rules that there shall be no recourse to direct action so long as the procedure is being followed.

Conditions under which Strikes and Lockouts are Lawful

In some countries where the right to engage in strikes and lockouts is guaranteed by law, strikes and lockouts are subject to legal provisions in the sense that they are not lawful unless they are called for specified legitimate purposes, are supported by the majority of the persons concerned, and have been notified to the other party beforehand.

This is the case under the Mexican Labour Code, and under several Latin-American systems which are modelled on it.

In Mexico, the right of workers and employers to strike and to lockout is guaranteed in the Constitution. The Labour Code prescribes the conditions under which strikes and lockouts may be considered lawful, adopting in substance the constitutional provisions. Conciliation and arbitration boards adjudicate[2] as to the legality of a strike or lockout and, if it has been declared legal, the parties are free to resort to it.

Notice of Intention to Resort to Strike or Lockout

However, under the legislation establishing the conciliation and arbitration facilities in a number of countries the legislation tempo-

[1] For a description of the emergency measures in this connection, see below, p. 122.

[2] In the United States, as has been already noted (see above, Part I, Section 3, p. 17, a comparable function is exercised by the National Labor Relations Board in determining the validity of certain types of strikes which are prohibited if they have as their purpose objects declared illegal by law.

rarily restricts the right of the parties to resort to direct action, either for a specified period or during the entire procedure.

The restriction may only require that the conciliation authorities and the other party be notified of the contemplated action a specified period in advance, as in Denmark, Ecuador, Mexico, Sweden.

In the case of the United States, temporary restrictions of this kind are imposed on the parties only if a collective agreement is already in force in respect of an industry affecting commerce.

Under the Labor-Management Relations Act of 1947, the parties to such agreements must give 60 days' notice of intention to seek a modification or termination of the agreement. During the 60-day period the contract provisions must be continued in force without strike or lockout. At the expiration of 30 days, if an understanding has not been reached, the parties must notify the Federal Mediation and Conciliation Service, as well as any State or territorial agency established to mediate or conciliate disputes within the area, and, in co-operation with the Conciliation Service, must make every reasonable effort to reach an agreement.

The failure of either party to comply with the " notice " provisions of the statute renders it liable to " unfair practice " charges before the National Labor Relations Board, and any employee striking during the 60-day period thereby forfeits his status as an employee under the Act.

Restrictions during Conciliation and Arbitration Procedure

In certain other countries, however, temporary restrictions are imposed as a general rule during conciliation and arbitration procedure, irrespective of the existence or absence of collective agreements.

Under the prevailing system in Canada, strikes and lockouts are prohibited before attempts to conclude a collective agreement have been made and until the expiration of fourteen days following the submission to the Minister of the report of the Board of Conciliation.

In the Union of South Africa, strikes and lockouts are prohibited : (1) during the validity of a collective agreement or of an arbitral award ; (2) during the period of conciliation procedure, if that period does not exceed 30 days or some longer period prescribed by the industrial council or conciliation board ; and (3) during the period of arbitration procedure.

Under the Labour Code of Venezuela, strikes and lockouts are prohibited until the end of the conciliation proceedings prescribed by the Code.

Under the systems prevailing in some countries, the effect of such general restrictions is increased by provisions in the national legislation enabling one party, or the competent governmental official, to institute arbitration procedure (*e.g.*, China, India, Iran, Syria, etc.).

Under the 1947 Industrial Disputes Act in India, conciliators may intervene in a dispute, or a dispute may be referred by the competent authority to a board of conciliation or industrial tribunal at the request of either party, or *ex officio.*

Where a conciliation officer is unable to effect a settlement, he must submit a report of the case to the appropriate Government, showing all the steps taken to conciliate the dispute and the reasons, in his opinion, why conciliation failed. After considering this report, the appropriate Government may refer the dispute to a board of conciliation. If the board is unable to effect a settlement, a similar report must be filed with the appropriate Government, together with the board's recommendations for the determination of the dispute. The appropriate Government may thereupon refer the dispute to an industrial tribunal for adjudication, or may refer any matter appearing to be connected with or relevant to the dispute to a court of inquiry.

Strikes and lockouts are prohibited during the period of conciliation or arbitration proceedings, and for fixed periods thereafter, or during any period in which a settlement or award is in operation.

In China, the law on labour disputes was modified during the war so as to prevent, as far as possible, any recourse to strikes or lockouts. In the event of a dispute, the authorities have to appoint a conciliation committee at the request of either party, or *ex officio*, if such action is deemed necessary. The committee includes representatives of the parties concerned and of the public authority.

If the committee fails to conciliate the parties concerned, the dispute may be submitted to an arbitration committee at the request of either party, or *ex officio* by the authorities if the serious nature of the dispute is thought to make such action necessary. The arbitration committee consists of three representatives of the Government, one of the employers and one of the workers. The two latter members must be chosen from among persons who are not directly interested in the dispute.

During the conciliation and arbitration procedure both strikes and lockouts are illegal.

In Iran, the Labour Code provisionally adopted by the Council of Ministers in May 1946 provides for the setting up in each factory or undertaking of factory councils composed of one representative of the employer, one of the workers, and one of the Department-General of Labour. Collective disputes, if not settled in the factory council, are referred to a tripartite arbitration board. If the board fails to settle the dispute within 20 days, or refuses to give an award, or if its award is contrary to law, reference is made to the Board for the Settlement of Disputes. This Board is composed of certain Government and provincial officials and two representatives each of workers and employers. An award must be given within 20 days, and is final and binding. Strikes and lockouts are permitted only if the machinery provided by the procedure breaks down. [1]

In Syria, under the Labour Code of 11 June 1946 [2] strikes are prohibited until the prescribed procedure has been complied with. The workers' complaint is addressed to the employer, who must reply within 48 hours. If no reply is made, or if the reply is not acceptable, the dispute must be referred to the joint committee established by the Code for the province. An award must be made by the committee within one week, and this award is final if it is supported by a majority of at least four. If the award is not so supported, appeal may be made to the Superior Arbitration Board within five days. This Board must issue its award within two weeks. Alternatively, in the first place both parties may agree on an arbitrator or arbitrators of their own choice. An appeal against the arbitral award may be made to the Superior Arbitration Board.

Strikes are lawful if

(1) no reply is made within 48 hours ;

(2) the joint committee or the Superior Arbitration Board fails to make an award within the prescribed time ;

(3) the arbitrator appointed by agreement between the parties does not make an award within the time fixed by the parties when agreeing to submit the matter to arbitration ; and

(4) the employer fails to carry out the terms of an award within one week of its announcement.

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[1] I.L.O. : *International Labour Review*, Vol. LIV, Nos. 1–2, July-Aug. 1946, p. 82.

[2] *Journal officiel*, No. 25 of 13 June 1946.

In most of those countries where strikes and lockouts are regulated or subjected to temporary restrictions during conciliation or arbitration procedure, the law seeks to compensate the parties in some measure for the loss of this freedom to resort to direct action by safeguarding their legitimate interests, *e.g.*, by laying down rules regarding the reinstatement or protection of workers, or by preventing the alteration of existing conditions pending a settlement, etc. One or more safeguards of this kind have been provided, for instance, in Canada, China, Ecuador, India, Mexico, Union of South Africa, United States, etc., while in Syria, as already noted, the law expressly reserves to the parties the right to resort to direct action at any stage if the procedure is not strictly followed or the award not observed.

In Mexico, if the strike has been declared lawful, the authorities are bound to ensure that the rights of the strikers are respected, to protect them, and to support them in their efforts to make the strike effective. Moreover, the strike only suspends the labour contract, so that when work is resumed the workers are reinstated in their former employment and retain all the rights and privileges which they had acquired before the strike began.

The Labour Code of Ecuador expressly stipulates that workers who have been on strike cannot be dismissed in the year following the strike, except for certain enumerated reasons and after authorisation by the labour inspectorate.

In the United States, the contract provisions must be maintained in force during the period in which strikes and lockouts are prohibited.

Under the Canadian system, if a dispute is due to proposed changes in the existing conditions of employment, such changes may not be effected without the consent of the employees for a period of two months from the date on which the employees were notified of the proposed changes.

In the Union of South Africa, the employer must maintain or restore the *status quo* of conditions which have given rise to a dispute which is under consideration by the conciliation or arbitration agency.

Under the Indian system, during the period in which strikes and lockouts are prohibited, the conditions of employment of workers concerned in the dispute may not be altered to their prejudice.

In China an employer may not dismiss employees during the period in which direct action is prohibited.

Strikes and Lockouts in the Public Services and in Public Utility Undertakings

Whereas in a number of countries no special legislation has been enacted regarding the question of strikes or lockouts affecting workers employed in the public service or in public utility undertakings, in certain countries (Colombia, Costa Rica, Ecuador, India, Mexico, Nicaragua, Salvador, Union of South Africa, United States, Venezuela, etc.) special provisions have been enacted in order to prevent or lessen the effects of strikes and lockouts in the public services and in public utility undertakings, which might inflict particular hardship on the community and endanger health and safety.

While the services included under these heads may vary somewhat in different countries, they generally include services furnishing power, light, heat, water, gas, electricity, sanitation, public transport and the like. In some countries certain industries which are not quite the same as public services are treated on the same basis because they are deemed to be essential industries (*e.g.*, in Colombia, Costa Rica, India, Nicaragua, Salvador).

The nature of the restrictions may be of a conditional character, *e.g.*, that a strike or lockout shall not be called without a specified period of notice being given, or of a temporary nature, for instance, a prohibition of strikes and lockouts during conciliation and arbitration procedure. Thirdly, the restrictions may amount to a permanent prohibition of strikes or lockouts in the industries or trades concerned.

Strikes and lockouts in the public services are lawful in Mexico and Ecuador only if a specified period of notice is given.

Under the Labour Code of Ecuador, persons engaged in hospitals, curative establishments, homes and health and welfare services in general, may not cease work " without proper cause ", and must notify the inspector or sub-inspector ten days in advance of their intention to declare a strike.

Similarly, in Mexico, intending strikers in the public services must give ten days' notice of their intention instead of the usual six days.

Under the Indian Industrial Disputes Act of 1947, strikes in breach of contract by employees, or lockouts by employers, in public utility services are illegal if engaged in without 14 days' notice, given during the six weeks preceding the strike or lockout. Such services include railway, postal, telegraph or telephone services, industries supplying power, light or water to the public, systems of public conservancy or sanitation, and such sections of industrial establishments on the working of which the safety of the establishment or of the workmen employed therein depends. Moreover, if public emergency or interest is deemed to require it, the Government may declare certain industries to be public utility services for a specified period ; for example, coal, cotton textiles, foodstuffs, iron and steel, and transport for the carriage of passengers or goods.

In the United States, strikes and lockouts may be prohibited during conciliation and arbitration procedure or for a specified period in consequence of the granting of an injunction.

Under the Labor-Management Relations Act of 1947, where a strike or lockout is threatened or in existence and affects a substantial part of an industry engaged in trade, commerce, transportation, transmission of communications between the States or with foreign countries, or in the production of goods for commerce, and the President is of the opinion that the dispute may imperil national health or safety, he may appoint a board of inquiry. Under the ensuing procedure it is possible for an injunction to be granted to restrain the strike or lockout until such time as is prescribed.[1]

In Venezuela, in the event of a strike or lockout occurring in an undertaking or service the stoppage of which would directly imperil public health or the economic and social life of the population, the Government may take such steps for the resumption of work as the public interest requires. This is quite apart from the general rule that strikes in all industries are lawful only if the temporary restrictions before and during conciliation and arbitration procedures are complied with.

In the Union of South Africa, whenever a dispute between a local authority and the employees engaged in the performance of work connected with the supply of light, power and water or with sanitation or passenger transport, or the extinguishing of fires, has been referred to an industrial council or a conciliation board, and no settlement has been reached after 30 days, it must be submitted to arbitration. Strikes and lockouts are prohibited during the procedure.

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[1] See pp. 104-105.

In Colombia the competent labour judge or court may declare a strike unlawful if it affects a public service, including *(a)* undertakings for transport by land, water or air, water supply and electric power and telecommunication undertakings, provided that they perform services for the public on account of the State or under a concession from the State, or subject to tariffs, conditions and regulations prescribed by the State ; *(b)* public hygiene services, street-cleaning services, and public assistance and charitable institutions, such as hospitals, clinics, asylums and homes ; *(c)* dairies, markets and slaughter-houses belonging to public bodies.

The Collective Labour Disputes Act, 1946, in Salvador, prohibits all strikes and lockouts in the public services, which is interpreted widely to include services performed by employees of the State, by employees of private transport undertakings, and by workers who " are absolutely indispensable for the functioning of private undertakings which cannot suspend their services without causing serious and immediate detriment to health or public economy ".

Very similar measures are in force in Costa Rica and Nicaragua, where public services are deemed to include those mentioned in the case of Salvador, and, in addition, work performed by employees engaged in the sowing, cultivation, care or harvesting of agricultural or sylvicultural products, or in stock-raising, and likewise in the processing of the products if they are perishable. Moreover, in accordance with constitutional provisions, the Executive of the Republic may, at any time, declare any particular work to be a public service if it is deemed necessary.

3. Compulsory Conciliation and Arbitration

Under the legal systems just examined, the right to engage in strikes or lockouts is generally only temporarily restrained during the course of procedures designed to facilitate the conclusion of agreements where direct negotiations have broken down. Under the system of compulsory conciliation and arbitration, strikes and lockouts are absolutely prohibited.

Compulsory systems are sometimes employed as a general method of dealing with labour disputes ; in other instances they are employed where, owing to the nature of the national economy, it has been considered that the determination of wages and other