

arbitrator's powers under the Canada Labour Code, but I am not familiar with that. My question, more specifically, is: Does anyone other than the two parties or representatives of the two parties have a right, and will such a party have an opportunity to express his views to the arbitrator?

Mr. Cadieux: The arbitrator determines his own rules of procedure. I am sure that the arbitrator will listen to the parties and to whoever they determine to be their spokesperson. I know that the parties in the mediation process were represented by legal counsel, for example, so I presume that they will be going before the arbitrator with whatever help they need. The parties are not new to these proceedings, because they have gone through the arbitration procedure before. They know specifically what it is all about. I am confident that they will make sure that they are heard—and well heard—by the arbitrator.

Senator Olson: In reviewing recent history—and you have the expert with you this afternoon—have other parties been allowed to attend or invited to present their interests and their views, based on those interests, to an arbitrator? I am speaking of parties other than the two directly involved.

Mr. Cadieux: This arbitration will not be like an industrial commission, such as the one set up in connection with Bill C-24, where obviously the industrial commissioner went broadly because the questions were broad and had perhaps a bigger ambit. I am informed that normally the arbitrator will deal with the parties themselves, and their representatives, of course.

Senator Olson: Those are the only ones invited?

Mr. Cadieux: Normally, yes.

Senator Olson: Is that to be the case in this situation?

Mr. Cadieux: As I mentioned earlier, the arbitrator will establish his own rules.

The Chairman: Shall Clause 8 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 10 carry?

Senator MacEachen: Honourable senators, I want to make a comment with respect to the punishment that is provided for refusal to obey the legislation. On previous occasions the minister appeared before the Senate with a provision which would permit the stripping of a union officer of his post. At the time I found that provision to be extremely offensive. I remember expressing my disagreement with it and the hope that the minister would find it possible not to include such a provision in future back-to-work legislation.

I intended to congratulate the minister today on the omission of that provision, but I must say that my congratulations will be severely qualified by the reason he gave for not including the provision; namely, that he had reached a judgment in former cases where this provision was included that

[Senator Olson.]

the union or union officers were not likely to obey the law and that therefore he put a special provision in. In this case he decided that they were likely to obey the law and so he did not include the provision.

I find that to be a pretty awful way to make law, that it flows from an arbitrary decision by a minister as to what is likely to be the conduct of a particular union. In other words, this is not a policy of general application; it is a selective policy based upon nothing other than the arbitrary judgment of the minister. If I am in the Senate and that provision is included in a bill which requires urgent passage, I will not cooperate, particularly when I have learned that the reason for the inclusion is as arbitrary as the reason given by the minister today. I did not like it from the beginning, said so, and urged that it not be done again. But to hear that it is included on such an arbitrary, whimsical basis rather than on a general principle is an added reason why I would be inclined to refuse cooperation to give a bill containing this provision such speedy passage. It is not in the bill today, so the question does not arise. All I say to the minister is: Would he reconsider and not base its inclusion on such an arbitrary basis as a personal or departmental judgment as to the particular character of a particular union? It sounds like law tailor-made to each particular case, and there is something wrong with that. I am sorry that the President of the Canadian Bar Association is not here, because I am sure he would tell me that this is contrary to the principles of natural justice.

● (1630)

Mr. Cadieux: First, clause 11, to which the honourable senator referred, dealt in the past not only with union officers but also with management officers. Both parties were subject to that particular clause. As you know, the clause was based on past experience. I do not like to qualify certain unions, but in connection with Bill C-86, that union had defied previous legislation. Consequently, past experience existed, and that was one of the reasons why that particular clause was in that bill.

Senator MacEachen: I think it is appropriate to punish citizens for failure to obey the law, but it is extraordinary to include an additional punishment which removes a person from his or her job. I say it is extraordinary to punish an individual, as was done in clause 11. If persons are convicted of an offence, they are punished by a series of fines. In addition, they lose their job as a union officer or as a representative of management for five years. It says:

No individual who is convicted of an offence under this Act that was committed while the individual was acting in the capacity of an officer or representative of the union shall be employed in any capacity by, or act as an officer or representative of, the union . . .

So they lose their job and their ability to hold office. That is an additional punishment which, it seems to me, is very questionable.

The Chairman: Honourable senators, shall clause 10 carry?

Hon. Senators: Carried.