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Minutes of proceedings and evidence.

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SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

Bill No. 195—The Industrial Relations and Disputes Investigation Act.

WEDNESDAY, APRIL 14, 1948

TUESDAY, APRIL 27, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

INDUSTRIAL RELATIONS

ON

STANDING COMMITTEE

ORDERS OF REFERENCE

HOUSE OF COMMONS,

MONDAY, 2nd February, 1948.

Resolved,—That the following Members do compose the Standing Committee on Industrial Relations: Messrs. Adamson, Archibald, Beaudry, Black *(Cumberland)*, Blackmore, Boivin, Case, Charlton, Coté *(Verdun)*, Croll, Dechene, Dickey, Gauthier *(Nipissing)*, Gibson *(Comox-Alberni)*, Gillis, Gingues, Homuth, Johnston, Knowles, Lalonde, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Maybank, Merritt, Mitchell, Pouliot, Raymond *(Beauharnois-Laprairie)*, Ross *(Hamilton East)*, Sinclair *(Vancouver North)*, Smith *(Calgary West)*, Timmins, Viau—35. Quorum 10).

Ordered,—That the Standing Committee on Industrial Relations be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

THURSDAY, 8th April, 1948.

Ordered,—That the following Bill be referred to the said Committee, viz.:—

Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

TUESDAY, 13th April, 1948.

Ordered,—That the name of Mr. Bourget be substituted for that of Mr. Lalonde on the said Committee.

Ordered,—That the name of Mr. Hamel be substituted for that of Mr. Raymond *(Beauharnois-Laprairie)* on the said Committee.

WEDNESDAY, 14th April, 1948.

Ordered,—That the name of Mr. Skey be substituted for that of Mr. Homuth on the said Committee.

Ordered,—That the said Committee be empowered to print, from day to day, 700 copies in English and 200 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the said Committee be granted leave to sit while the House is sitting.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

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REPORT TO THE HOUSE OF COMMONS

WEDNESDAY, April 14, 1948.

The Standing Committee on Industrial Relations begs leave to present the following in a

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print, from day to day, 700 copies in English and 200 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

2. That it be granted leave to sit while the House is sitting.

All of which is respectfully submitted.

PAUL E. COTE,
Chairman.

(Concurred in this day)

MINUTES OF PROCEEDINGS

WEDNESDAY, April 14, 1948.

The Standing Committee on Industrial Relations met at 2.30 o'clock p.m.

Members present: Messrs. Bourget, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Knowles, McIvor, Maloney, Merritt, Mitchell, Pouliot, Sinclair (*Vancouver North*), Smith (*Calgary West*), Timmins.

On motion of Mr. Gauthier, seconded by Mr. Croll,

Resolved,—That Mr. P. E. Cote be Chairman.

The Chairman thanked the Committee for the honour conferred on him and assured the Committee that he would strive to carry out his duties in an impartial and efficient manner.

The Chairman read a letter dated April 8, 1948, from Mr. M. Lalonde, M.P., addressed to the Minister of Labour, in which he tendered his resignation as Chairman of the Committee. The Chairman referred briefly to the circumstances which necessitated Mr. Lalonde's resignation and added that he was sure the Committee would join him in expressing their sincere regrets.

On motion of Mr. Smith, it was unanimously

Resolved,—That a letter be sent to Mr. Lalonde expressing the regrets of the Committee on the loss of his services and thanking him for the courtesy, fairness and efficiency with which he had carried out the business of the Committee.

On motion of Mr. McIvor, seconded by Mr. Gauthier,

Resolved,—That Mr. D. A. Croll be Vice-Chairman.

The Honourable H. Mitchell, Minister of Labour, briefly addressed the Committee.

On motion of Mr. Dechene,

Resolved,—That permission be sought to print, from day to day, 700 copies in English and 200 copies in French of the minutes of proceedings and evidence of the Committee.

On motion of Mr. Croll,

Resolved,—That the Committee ask leave to sit during sittings of the House.

The Orders of Reference were read and the Committee considered procedure. It was agreed that this be referred to a Steering Committee which would be set up.

On motion of Mr. Smith,

Resolved,—That Mr. Skey be a member of the Steering Committee.

On motion of Mr. Knowles,

Resolved,—That Mr. Gillis be a member of the Steering Committee.

On motion of Mr. Dechene,

Resolved,—That the selection of the additional members of this sub-committee be left with the Chairman.

On motion of Mr. Smith,

Resolved,—That the next meeting be at the call of the Chair.

The Committee adjourned at 2.50 o'clock p.m.

TUESDAY, April 27, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black *(Cumberland)*, Bourget, Case, Cote *(Verdun)*, Croll, Dechene, Dickey, Gauthier *(Nipissing)*, Gibson *(Comox-Alberni)*, Gillis, Gingues, Hamel, Johnston, Knowles, Lockhart, MacInnis, McIvor, Maybank, Merritt, Mitchell, Pouliot, Ross *(Hamilton East)*, Sinclair *(Vancouver North)*, Skey, Smith *(Calgary West)*, Timmins, Viau.

The Chairman read a letter he had sent on behalf of the Committee to Mr. Lalonde, the former Chairman, thanking him for his services and expressing regret that ill-health had necessitated his resignation.

The First Report of the Steering Committee was read, viz:—

Your Steering Committee met Wednesday, 21st April, at 2.15 p.m. o'clock.

Members present: Messrs. Bourget, Croll, Gillis, Maybank, and the Chairman.

Your Committee considered the hearing of representations from Central Labour and Employer Organizations. As the views of such Organizations were presented at the 1947 session, and recorded as evidence, it was thought that the Committee was in a position to proceed with the clause-by-clause consideration of Bill No. 195.

It was directed that the Chairman write to the principal Organizations along this line.

An application from the Federation of Employee-Professional Engineers and Assistants requesting a hearing was received. It was agreed that this should stand over for further consideration.

Also received were three submissions of the Committee on Industrial Relations and Labour Law, of the Ontario, the Nova Scotia, and the B. C. sections of the Canadian Bar Association, and a submission dated 12th April, 1948, from the Canadian Chamber of Commerce.

It was recommended that the Committee meet twice weekly, on Tuesdays and Thursdays, at 10.30 a.m. to 1.00 o'clock p.m.

All of which is submitted.

The Chairman read the letter that was sent to the representatives of the following organizations in compliance with a decision reached by the Steering Committee: viz:—

OTTAWA, April 23, 1948.

Re: Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Dear Sir:

The House of Commons Standing Committee on Industrial Relations will resume its sittings on Tuesday next, April 27th, to consider the above bill.

During the last session your association has appeared before this Committee to give its views and submit representations on an almost identical bill. Your submission as that of the other witnesses has been printed in the Committee's Minutes of Proceedings and Evidence and will be properly considered as the Committee examine the bill clause by clause.

Should you feel that any additional representations could be of assistance to the members on points which you have not already covered, I would appreciate it if you would kindly forward same to the undersigned who will see to it that they are properly brought to the attention of the Committee.

Thanking you for your interest and helpful cooperation, I am

Yours truly,

PAUL E. COTE, M.P.

Chairman.

Chairman, Legislative Committee of the Railway Transportation Brotherhoods,

General Manager, Canadian Construction Association.

General Secretary, Canadian Manufacturers Association.

Secretary, Canadian Chamber of Commerce.

President, La Confederation des Travailleurs Catholiques du Canada, Inc.

President, Canadian Congress of Labour.

President, Trades and Labor Congress of Canada.

General Secretary, Railway Association of Canada.

Replies were read to the above-mentioned letter, viz.

(*a*) Letter dated 24th April,—The Railway Association of Canada;

(*b*) Letter dated 24th April,—The Canadian Manufacturers Association;

(*c*) Letter dated 26th April,—The Trades and Labor Congress of Canada;

(*d*) Letter dated 26th April,—The Canadian Congress of Labour.

Debate followed.

On motion of Mr. Smith, the First Report of the Steering Committee was concurred in.

Mr. Smith moved that the Committee do not accept further oral representations this year.

Debate followed.

The question being put, it was resolved, on division, in the affirmative.

On motion of Mr. Case, it was ordered that a Brief, with supplement, dated 12th April, 1948, from the Canadian Chamber of Commerce, be printed. (See *Appendix "A"*).

The Chairman read a number of telegrams and letters embodying views of engineering organizations and other individuals relative to subsection (ii), section (i) of clause 2, Bill No. 195.

It was ordered that a Brief, dated 26th April, 1948, submitted by the Chemical Institute of Canada, be printed as an Appendix (See *Appendix "B"*).

On motion of Mr. Mitchell,

Resolved,—That consideration of subsection (ii), section (i), clause 2, be deferred until representations have been received from National Organizations of Engineers.

On motion of Mr. Adamson, it was,

Ordered,—That the Draft Labour Code, with explanatory memorandum of February, 1948, prepared by the Canadian Congress of Labour be printed as an Appendix. (See *Appendix "C"*).

On motion of Mr. Adamson,

Resolved,—That all written representations be screened by the Steering Committee before printing.

It was directed that telegrams be sent to the national employee and employer organizations advising them that their supplementary written representations could be received by this Committee no later than Thursday, 6th May.

The Committee adjourned at 11.55 o'clock a.m. to meet again at 10.30 o'clock a.m., Thursday, 29th April.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
April 27, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: Order, please. We have a quorum, gentlemen.
First, I would ask the clerk to acquaint the committee with the letter I have written to Mr. Maurice Lalonde.

The CLERK:

Ottawa, 15th April, 1948.

M. Lalonde, Esq., M.P.,
Room 421, House of Commons,
Ottawa, Ontario.

Dear Mr. LALONDE: Your letter of April 8, addressed to the Minister of Labour, in which you tendered your resignation as Chairman, was read to the Committee on Industrial Relations at a meeting held 14th April.

At this meeting, the following motion was unanimously adopted:

That a letter be sent to Mr. Lalonde expressing the regrets of the committee on the loss of his services and thanking him for the courtesy, fairness and efficiency with which he carried out the business of the committee.

May I be permitted to add my own personal regrets on the circumstances which made necessary your resignation.

Yours very sincerely,

PAUL E. COTE, M.P.,
Chairman, Committee on Industrial Relations

Mr. POULIOT: Mr. Chairman, I would move a vote of thanks to Mr. Lalonde for the useful work he has done with this committee, and for the very able way in which he carried on in the past.

The CHAIRMAN: That was done at the last meeting, Mr. Pouliot.

Mr. POULIOT: Then I concur.

The CHAIRMAN: Now, gentlemen, before we start, if you will allow me I would like to say just a brief word. A committee such as our own will only be able to do its work properly and within a reasonable length of time if it sets up an orderly course of procedure and if it definitely adheres to it. Now, it is the special duty of the steering committee to consider this question of procedure and to make recommendations to the main committee. This year the steering committee is composed of Messrs. Bourget, Croll, Gillis, Maybank, Skey, Johnston and the chairman. The committee has held its first meeting. That was held on April 21, and I will ask the clerk to give us a report of the minutes of the meeting.

The CLERK:

FIRST REPORT—STEERING COMMITTEE—INDUSTRIAL RELATIONS

21st April, 1948.

Your Steering Committee met Wednesday, 21st April, at 2.15 p.m. o'clock.

Members present: Messrs. Bourget, Cote, Croll, Gillis, and Maybank.

Your committee considered the hearing of representations from central labour and employer organizations. As the views of such organizations were presented at the 1947 session, and recorded as evidence, it was thought that the committee was in a position to proceed with the clause-by-clause consideration of Bill No. 195.

It was directed that the chairman write to the principal organization along this line.

An application from the Federation of Employee-Professional Engineers and Assistants requesting a hearing was received. It was agreed that this should stand over for further consideration.

Also received were three submissions of the Committee on Industrial Relations and Labour Law, of the Ontario, the Nova Scotia, and the B.C. sections of the Canadian Bar Association, and a submission dated 12th April, 1948, from the Canadian Chamber of Commerce.

It was recommended that the committee meet twice weekly, on Tuesdays and Thursdays at 10.30 a.m. to 1.00 o'clock p.m.

All of which is submitted.

(Sgd) PAUL E. COTE,
Chairman.

The CHAIRMAN: Before I put the question on the adoption of the report of the steering committee, gentlemen, I would like to read to you a letter which I have forwarded to the main labour and management groups. These were: (1) Mr. A. J. Kelly, Chairman of the Legislative Committee of the Railway Transportation Brotherhood; (2) Mr. R. G. Johnson, General Manager, Canadian Construction Association; (3) Mr. J. M. McIntosh, General Secretary, Canadian Manufacturers Association; (4) Mr. D. L. Morrell, Secretary, Canadian Chamber of Commerce; (5) Gerard Picard, President, La Confederation des Travailleurs Catholiques du Canada Inc.; (6) A. R. Mosher, President, Canadian Congress of Labour; (7) Percy R. Bengough, President, Trades and Labour Congress of Canada; (8) J. A. Brass, General Secretary, Railway Association of Canada.

This is the letter.

Ottawa, April 23, 1948

Re: Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Dear Sir: The House of Commons' Standing Committee on Industrial Relations will resume its sittings on Tuesday next, April 27th, to consider the above bill.

During the last session your congress has appeared before this committee to give its views and submit representations on an almost identical bill. Your submission as that of the other witnesses has been printed in the Committee's Minutes of Proceedings and Evidence and will be properly considered as the committee examine the bill clause by clause.

Should you feel that any additional representations could be of assistance to the members on points which you have not already covered, I

would appreciate it if you would kindly forward same to the undersigned who will see to it that they are properly brought to the attention of the committee.

Yours truly,

PAUL E. COTE, M.P.
Chairman, Standing Committee on Industrial Relations.

The letter was dated April 23, 1948. Before the discussion is opened would you like to hear the answers I have received?

Mr. CROLL: Yes, in reply?

The CHAIRMAN: From the Railway Association of Canada there is a letter dated April 24, 1948, addressed to Paul E. Cote, M.P., Chairman, Standing Committee on Industrial Relations:

April 24, 1948.
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PAUL E. COTE, Esq., M.P.
Chairman,
The Standing Committee on Industrial Relations,
Ottawa, Ontario.

Dear Mr. COTE: I have your letter of April 23rd with reference to Bill No. 195, which is at present receiving the attention of the Standing Committee on Industrial Relations, and no doubt you have now received the letter I addressed to you in this respect on the same day that your letter was written.

As pointed out in our communication, we desire to make oral representations to your committee and will be glad to have your advice as to when they can be heard.

Yours very truly,

J. A. BRASS,
General Secretary.

The letter referred to by Mr. Brass, which was written on April 23, 1948, is a two and a half page letter.

Mr. SMITH: What is the gist of it?

The CHAIRMAN: The main purpose of it is concerning the definition of the word "employee", and asking for permission to submit representations to the committee in this connection.

Hon. Mr. MITCHELL: May I suggest that we put the representations in the record. Then you can read them at your leisure.

The CHAIRMAN: The conclusion of this brief is:

The Railway Association hereby requests that it be permitted to make oral representations to your committee on the matters aforesaid.

The only matter taken up in the brief is the definition of the word "employee" in the Act.

Mr. MACINNIS: May I point out that there are two difficulties or perhaps obstacles to putting them in the record.

The CHAIRMAN: With your permission, I think it would be better to have all the answers received to my invitation read to the committee before opening the discussion.

Mr. MACINNIS: I thought a decision was made to put this letter in the record.

The CHAIRMAN: It was just a suggestion made by the minister.

This is a letter from the Canadian Manufacturers Association dated April 24, 1948. It is addressed to Paul E. Cote, Chairman, Standing Committee on Industrial Relations.

> Dear Mr. COTE—I have your letter of April 23 on the above subject.
>
> The committees of the association have given a great deal of study to this subject and have completed the representations which they desire to make. The association is grateful for the opportunity provided by the committee to submit these representations at the committee's convenience.
>
> Yours faithfully,
>
> (Sgd) J. T. STIRRETT,
> *General Manager.*

The next is a letter from The Trades and Labor Congress of Canada, dated April 26, 1948. It is addressed to Paul E. Cote, Chairman, Standing Committee on Industrial Relations and reads as follows:—

> Replying to your communication of the 23rd instant extending an invitation to The Trades and Labor Congress of Canada to present additional representations to the Standing Committee on Industrial Relations *re* the above bill:
>
> We have considered Bill 195 and appreciate the improvements that have been made in some of the provisions contained in Bill 338.
>
> On behalf of The Trades and Labor Congress of Canada, we are prepared to accept Bill 195 as a good piece of legislation that will go a long way in establishing what most Canadians desire—peace and stability in labor relations.
>
> For the information of your committee, we desire to point out that since the Executive Council of this Congress appeared before the Standing Committee on Industrial Relations on July 1, 1947, the question of a Dominion Labor Code, the presentation as made to the parliamentary standing committee last session and the requests made to the dominion government were fully considered at the Sixty-second Annual Convention of The Trades and Labor Congress of Canada, held in the city of Hamilton, September 24 to October 4, 1947.
>
> The position taken by the Executive Council of this Congress on the question of the labor code, following due consideration pro and con, was unanimously endorsed.
>
> We are also pleased to state that all the railway shop trades, as represented in Division No. 4, both C.P.R. and C.N.R., as well as the railway brotherhoods in running service, unanimously endorsed the action taken by this Congress on this question.
>
> I am enclosing copy of proceedings of the 1947 convention of this Congress. On pages 34 to 41, inclusive, is set out the report of the Executive Council to the convention. Last two paragraphs, page 228, under caption "Labor Code" to page 235: The report of the committee was adopted.
>
> We are also enclosing for the information of your committee a copy of the memorandum presented to the dominion government by The Trades and Labor Congress of Canada on the 4th of March, 1948. On page 5, National Labor Code, the views of this Congress are also set out.
>
> Should you require further copies of the documents enclosed for the convenience of the members of your committee we would be very pleased to supply them.
>
> We are also enclosing for your information copy of the report of the commission recently appointed to inquire into a dispute between Colonial

Steamships Limited and the Canadian Seamen's Union. There is nothing we could add that would exemplify the urgent need of proper legislation for the settlement of industrial disputes than is set out in this report.

In conclusion, on behalf of The Trades and Labor Congress of Canada, we respectfully urge the Standing Committee on Industrial Relations to expedite the passage of Bill 195 as quickly as possible.

Yours truly,

(Sgd.) PERCY R. BENGOUGH,
President.

(Sgd.) J. W. BUCKLEY,
General Secretary-Treasurer.

THE TRADES AND LABOR CONGRESS OF CANADA.

The next letter is from the Canadian Congress of Labour, and reads:—

April 26, 1948.

Mr. PAUL E. COTE, M.P.,
Chairman, Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Ontario.

Dear Mr. COTE:—In reply to your letter of April 23, with regard to the sittings of the House of Commons' Committee on Industrial Relations, to consider Bill 195, the Congress feels that there are a number of aspects of this Bill which require special representations and discussion, in addition to the material submitted to the committee at the last session of parliament.

In the circumstances, the Congress would appreciate an opportunity to present its views to the committee on Friday afternoon of this week, April 30, or at any time which will be convenient to the committee during the following week.

Thanking you for your courtesy, and with all good wishes, I am,

Yours sincerely,

NORMAN S. DOWD,
Executive Secretary.

That concludes the recital of the answers to the letters which I wrote. Mr. MacInnis now has the floor.

Mr. MACINNIS: I was going to suggest, arising out of the proposal made by the Minister of Labour, that there are two objections to putting this material in the record now. The first objection is that it may be some time before we can get the printed record, and if we are to expedite the work of this committee we should have the material immediately before us so that we may give attention to it. I notice also that the minister said we could look it over at our leisure. If he can find the leisure for us I would have no objection to the suggestion.

Hon. Mr. MITCHELL: I was not speaking with respect to my own leisure.

Mr. MACINNIS: I think it would be preferable to mimeograph those submissions or communications, and let the members of the committee have them as quickly as possible so that we will not hold up the work of the committee while awaiting the printed record.

Hon. Mr. MITCHELL: I was indicating that basically the submissions have not changed since last year. The Canadian Chamber of Commerce, the Canadian Manufacturers' Association, the Canadian Construction Association, the Trades

and Labour Congress of Canada, the Catholic Syndicates, the Railway Brotherhood, and the Canadian Congress of Labour submissions are no different in principle to what they were a year ago. The question raised by the Railway Association of Canada is, in my judgment, a simple question which may be decided from the written submission. We have a submission from the law society and I met their committee and discussed the submission which deals mainly with conciliation board matters. I am anxious to see this bill put in the statute books this year and I think such an end is the responsibility of the committee to the employers, to the unions, to the Canadian people, and to the provincial governments. I think it is absolutely essential that we use every effort to expedite the passing of this bill.

Mr. CASE: I wonder how much progress we are going to make if we are going to hear all those briefs again? That is the big problem in my mind and yet I suppose it is important that there should be an opportunity given where necessary.

Mr. SMITH: I am going to move—to bring the matter to a head—that we do not accept further oral representations. All these people had an opportunity to come last year and most of them have supplemented what they then said by written briefs. I think it would be a waste of time to go over again what we did last year.

The CHAIRMAN: If you do not mind me interrupting, Mr. Smith, we have the report of the steering committee which must be disposed of first.

Mr. SMITH: All right.

The CHAIRMAN: I would require a motion for the adoption of the first report.

Mr. SMITH: What does the report say about the point which I have raised?

The CHAIRMAN: It directs the chairman to communicate with the four main labour organizations and the four main management organizations, advising them of the sittings and inviting them to forward to the chairman further representation which they might have.

Mr. SMITH: I will move the adoption of the steering committee report.

Carried.

The CHAIRMAN: Would you put your motion again, Mr. Smith?

Mr. SMITH: I am going to move that this committee this year do not hear further oral representations. You observe that about the only group which that affects are the lawyers who, I think, did not appear.

Mr. CROLL: Yes, they appeared.

Mr. SMITH: My motion is doubly sound then because they should not be heard again. My motion is that we do not hear further oral representations.

Mr. GAUTHIER: I second that.

Mr. GILLIS: Were you not informed by the Canadian Congress of Labour that they did intend to submit further oral evidence before this committee?

The CHAIRMAN: That is the purport of the letter I have read.

Mr. GILLIS: I was going to say that the steering committee recommended, after adoption of the report, that the door would be left open to anyone who wished to make further submissions.

Hon. Mr. MITCHELL: Any new matter.

Mr. GILLIS: It is still a new matter. Mr. Smith has moved a motion.

The CHAIRMAN: Before you go any further I will quote the reference in the report to the matter that has just been raised: "Your committee considered the hearing of representations from Central Labour and employer organizations. As the views of such organizations were presented at the 1947 session, and recorded as evidence, it was thought that the committee was in a position to proceed with the clause-by-clause consideration of bill No. 195."

Mr. GILLIS: You have read a letter from the Canadian Congress of Labour indicating that they desire to come here and submit further evidence orally. Now, Mr. Smith's motion informs this committee that after inviting them to come here for that purpose we are not going to give them the opportunity of appearing. It does not make sense to me.

Mr. SMITH: Oral representations.

Mr. GILLIS: They already have a bill here.

Mr. SMITH: What do they want to be heard again for?

Mr. GILLIS: To submit an argument. Perhaps you will not understand that. It may be necessary for somebody representing them to come here and explain certain things. Now, you are suggesting a motion to say that they cannot come.

Hon. Mr. MITCHELL: My good friend Mr. Gillis has said that we do not want to permit somebody to come here to explain something. I am not talking particularly of labour relations; but I have had submissions from the Canadian Manufacturers Association and also from Canadian Chambers of Commerce and employer organizations saying, "Let us go into this thing with our eyes open." Do you want to go into this matter all over again this year? If you take up a lot of time you will have no bill. I think I should say that to you.

Mr. GILLIS: The point I wanted to make is that the minister is here to explain the government's bill.

Mr. CROLL: May I say that in the report originally adopted our thought was not to hear all representations, we thought that we could get by with that; but at the same time we felt that we ought to offer these people the opportunity to come here if they have something new to add to previous submissions, something that may have arisen in the period of one year's time. Now, here we have one of the largest labour organizations. The Canadian Manufacturers Association, as I understand it, have sent a brief and they say that they have nothing further to add. That brief will probably be incorporated in the minutes. It may be a change over from last year or it may not; but certainly the C.C.L. feel that they have further representations to make and I think that we can very well set aside, say, Friday and hear all the representations that need to be made from different groups, but limiting the time—give them an hour's time or a half hour's time or something like that, and we would have the whole matter covered on Friday, and we shall not have closed the door to them and they will have no complaints. I think that is the better way to do it, rather than to refuse an organization to be heard here. Otherwise we may find constant objection. Others will say that they did not have an opportunity of being heard. There may be some things that they feel are objectionable. By fixing a time limit for Friday we will be covering that hurdle and we will be able to start on the bill on Monday or Tuesday morning.

Mr. MCIVOR: Mr. Chairman, I understand that this committee is meeting on Tuesday and Thursday; will Friday be an extra day? I think if you are leaving the door open to hear organizations that have something new to add that no organization should be barred; everybody should be treated alike.

The CHAIRMAN: Just to keep the record clear, following Mr. Gillis' remarks, I will quote again the last paragraph of the invitation which we have sent to the labour and management associations.

> Should you feel that any additional representations could be of assistance to the members on points which you have not already covered, I would appreciate it if you would kindly forward same to the undersigned who will see to it that they are properly brought to the attention of the committee.

I assume that the meaning which I have placed in this paragraph has been well understood, at least by the Trades and Labour Council, who have sent all their material, and offering to provide additional copies to the members of the committee.

Mr. MacInnis: Inasmuch as we are discussing an Act for the solution and betterment of industrial disputes, it seems to me that it would be a bad thing if we began, with an Act like this, in limiting unduly the representations which might be made to us by the parties concerned, or the parties who will be concerned with this legislation. I doubt if there would be a great many representations made this year; but if there are any of the parties who are concerned with this legislation and who wish to come before us, I think it would be well, when we have the time, to allow them to appear, not only on sufferance, but to welcome them here and to let them state their case.

I agree entirely with the Minister that we should get this legislation passed at this session and get it on the Statute books. It is true that we failed to get it on the Statute books last year; but if we could get it on the Statute books, it would be much more effective if we could have as much harmony and agreement as possible in putting it there. So I would support what was said by Mr. Croll because I think it would meet the situation very well.

Mr. Johnston: How many organizations want to make oral representations?

Mr. Croll: Two.

Mr. Johnston: If there are only two—

The Chairman: Well, I have other correspondence, which I have not read as yet, which makes reference to the definition of employees; and this correspondence comes from professional engineers of Canada and they have offered to send in written representations and to send some representatives here to give moral support to their representations.

Mr. Johnston: How many are there altogether who would like to appear orally?

The Chairman: They would total three.

Mr. Smith: If those three come in, then all the others will want to come in as well.

Mr. Adamson: If we open the door for one, we will have to open it for everybody. I personally have received three requests to appear before this committee from professional people; and I said to them that I thought their briefs could be submitted in writing to their greater advantage than for them to come down here and take up the time of the committee.

This is the third time this committee has been set up; this will be the third session when we have tried to produce an Act. Twice before we failed. If we are going to bring in an Act, surely it is now up to us on our own responsibility, as a committee of the House of Commons, to pass on that Act.

Mr. Johnston: It is a very important piece of legislation, particularly as it applies to labour-management as well; and I for one would be hesitant in trying to rush it through unduly. I can see the importance of trying to get the legislation through, as the Minister has suggested. But I think we would make speed faster if we did it carefully and thoroughly as we went along.

Mr. Case: If we are going to adopt Mr. Croll's suggestion that we set a time limit for them to come here and to present their briefs, then, if there is to be no cross-examination of the witnesses, it would be no better than to receive a written submission. So I think that the written submission would be better. And if we started in to cross-examination, we would be here for a long time. Therefore, I would support Mr. Smith's motion that we have just written briefs.

The CHAIRMAN: Mr. Smith, your motion would not shut out the submission of written evidence at any stage of this committee.

Mr. SMITH: I assumed that we could all read and write. That is the purport of my motion.

The CHAIRMAN: Well, gentlemen, are you ready for the question?

The CLERK OF THE COMMITTEE: It is moved by Mr. Smith and seconded by Mr. Gauthier that the committee do not accept further oral representations this year.

The CHAIRMAN: You have all heard the motion. All those in favour will please raise their hands? All those against? The motion is carried.

Now, I have further correspondence which I would like to place on the record. First, I have a brief from the Canadian Chamber of Commerce, dated April 12, 1948, which brief, I understand has been circulated among the members of the committee.

Mr. McIVOR: Yes.

The CHAIRMAN: Would you like to have this brief printed in the Minutes of Evidence?

Mr. GAUTHIER: I believe it should be.

The CHAIRMAN: I have a brief from the Canadian Chamber of Commerce, which has been circulated among the members of the committee, and I now ask the committee what their pleasure is. Shall we keep it as part of our records, or shall we print it as part of the evidence today?

Mr. CASE: I believe this brief should be printed because some members are misled.

The CHAIRMAN: All those in favour?

Carried.

(See Appendix)

The rest of the correspondence concerns the position taken by professional engineers, and I have a letter from Mr. Dave Croll, M.P., dated April 19, 1948, addressed to P. E. Cote, Chairman, Industrial Relations Committee, and the letter reads as follows:

> Dear Mr. Chairman:—I have received representations from the Federation of Employee-Professional Engineers and Assistants who are desirous of an opportunity to make representations to the Committee with a view to having the engineers included under Bill 195.
>
> This is the labour organization formed among employed professional engineers for collective bargaining purposes and the organization has been active in obtaining certifications and making agreements on behalf of employed professional engineers ever since collective bargaining codes were set up under P.C. 1003 and by provincial legislation. There are 1,100 members of this organization.
>
> Would you please bring this to the attention of the committee and communicate with Mr. Arthur L. Fleming of Fleming, Smoke and Mulholland, 330 Bay street, Toronto, whose firm is acting on behalf of the engineers.
>
> Yours very truly,
>
> (Sgd) DAVE CROLL

Then I have a letter from the Canadian Council of Professional Engineers, 18 Rideau Street, Ottawa, dated April 21, 1948, addressed to the Chairman.

Re: Bill No. 195,—An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Dear Sir:—The Canadian Council of Professional Engineers and Scientists in the membership of which are included the following organizations:—

Agricultural Institute of Canada.
Canadian Association of Physicists.
American Institute of Electrical Engineers, Canadian District.
Canadian Institute of Mining and Metallurgy.
Canadian Dietetic Association.
Canadian Society of Forest Engineers.
The Chemical Institute of Canada.
Dominion Council of Federated Professional Employees.
Association of Professional Engineers of British Columbia.
Association of Professional Engineers of Alberta.
Association of Professional Engineers of Saskatchewan.
Association of Professional Engineers of Ontario.
Institute of Radio Engineers, Canadian Council.

Royal Architectural Institute of Canada is interested in Collective Bargaining as it affects professional engineers and scientists. To the Hon. Humphrey Mitchell, Minister of Labour, it expressed its attitude in a letter of February 13, 1947, on the draft Labour Bill which was circulated prior to the introduction of Bill No. 338, of 1947.

Since first reading was given Bill No. 195 our Council has been studying the proposed Act. It wishes to present a brief to your Committee—

Mr. SMITH: How do you spell "Council"?

The Hon. The MINISTER: Yes, how is the word "Council" spelled in that letter?

The CHAIRMAN: Council is spelled as C-o-u-n-c-i-l.

... embodying its views; and if the opportunity is available later to support these views in an oral presentation. Hence I would appreciate being informed as to the closing date for submitting briefs and as to whether or not there will be an opportunity of our representatives appearing before your Committee in support of its brief.

In the event that any telephone messages may be necessary contact may be made with our Secretary, Mrs. M. L. White, in the afternoon, at 2-9584, or with our Liaison Officer, L. L. Bolton, at his residence 4-0119.

Yours sincerely,

(sgd) W. J. GILSON,
Chairman.

Then I have a wire dated April 27, 1948, addressed to the Chairman from the Association of Professional Engineers of Ontario. The wire reads as follows:

> Association of professional engineers of Ontario representing more than half of professional engineers in Canada, request that no final action be taken on section two subsection 1 of Bill 195 and referring to definition of "employee" until we have had opportunity of submitting brief now being prepared.
>
> (sgd) Association of Professional Engineers of Ontario
> per GEO. B. LANGFORD.

Now I have a good number of wires which are strongly advocating the exclusion of professional engineers. They are all in about the same phraseology so, in order to save time I will just give you the names at this time, but it may be well to have these wires appear just as they are in the record. The first wire is dated April 26, 1948, and is addressed to Arthur MacNamara, Deputy Minister of Labour, Ottawa.

> Failing separate legislation for engineering profession only strongly urge bill 195 excluding profession be adopted.
>
> (sgd) D. B. ARMSTRONG,
> 4196 Hingston Ave.,
> Montreal, P.Q.

The second wire is from R. M. Richardson, President, Association of Professional Engineers of New Brunswick:

> Dear Sir: Understand further agitation from same quarters re Bill 195 our Association favours Bill as it stands excluding professional engineers.

And the next wire is from G. M. Wynn, 485 McGill Street, Room 706, Montreal, P.Q.

Mr. POULIOT: What is his business?

The CHAIRMAN: It is not indicated.

Mr. McIVOR: Does he give any reason?

The CHAIRMAN: Oh, yes. It is the same wire as the other one.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from James S. Bryant, 4637 Royal avenue, Montreal, a professional engineer.

> Strongly urge that Bill 195 be adopted so as to *include* professional engineers.

The next wire is from J. L. Pidoux, 4329 Walkley avenue, Montreal, P.Q.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from J. R. Desloover, 5377 Earnscliffe, Montreal, professional engineer.

> Strongly urge that professional engineers be included in Bill 195 on equal footing with other professionals in bill.

The next wire is from J. M. Crawford, Member Montreal Branch Executive Engineering Institute of Canada.

> Failing separate legislation for the engineering profession only I strongly urge Bill No. 195 excluding the profession be adopted.

The next wire is from O. S. Hartvik, Senior Design Engineer care C. D. Howe Company Limited.

> I am very much in favour of the passing of Bill 195 as proposed to exclude engineers from collective bargaining. Urge that you support this bill to the full extent.

The next wire is from Harrison G. Burbridge, Professional Engineer, Port Arthur, Ontario.

> Labour Bill in respect to professional engineers is satisfactory as at first reading exclusion from act is essential to profession.

The next wire is from G. S. Halter, Assistant Electrical Design Engineer, care C. D. Howe Company Limited.

> Earnestly urge your utmost support of Bill 195 as it stands to exclude engineers from collective bargaining agreements.

The next wire is from R. W. Stedman, 252 St. James Street, Port Arthur, Ontario.

> Strongly urge Bill 195 be passed as it stands excluding engineering profession from collective bargaining.

The next wire is from L. M. Nantel, Professional Engineer, 1685 St. Joseph Boulevard E., Montreal, P.Q.

> Failing separate legislation for engineering profession only strongly urge adoption of Bill 195 as excluding profession.

The next wire is from L. A. Duchastel, Member Executive Committee, Montreal Branch Engineering Institute of Canada, 40 Kelvin Avenue, Outremont, P.Q.

> Failing separate legislation for engineering profession only strongly urge Bill 195 exclusive profession be adopted.

The next wire is from Maurice Prevost, Professional Engineer, Room 804, 132 St. James Street, West, Montreal.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from W. Taylor-Bailey, 3018 Trafalgar Avenue, Montreal.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from R. N. Coke, Chairman, Engineering Institute of Canada, Montreal Branch, 305 Strathern Avenue, Montreal, West.

> Failing separate legislation for engineering profession only, strongly urge Bill 195 excluding engineering profession be adopted.

The next wire is from E. Van Koughnet, Professional Engineer, 551 Lakeshore Road, Beaurepaire, P.Q.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

This next wire is in in different terms and I will read it. It is from K. G. Cameron, 38 Dufferin Road, Hampstead, P.Q. and it reads as follows:

> Reference bill Collective bargaining I deplore attempts to lower engineering profession by inclusion of professional engineers in any form of collective bargaining. Our professional standing at least equals medical or legal which were never included. My earnest request for exclusion is based on 35 years of professional experience.

Mr. POULIOT: Is he stuck up?

The CHAIRMAN: Now I have another wire from De Gaspe Beaubien, of Montreal, which reads as follows:

> Am very much against inclusion of engineers under labour organization bargaining because would lower professional standard.

I have another wire from Henri Gaudefroy, Member Executive Committee, Montreal Branch, (EIC) 1430 St. Denis Street.

> Failing separate legislation for engineering profession only strongly urge bill 195 excluding profession be adopted.

Now I have a letter addressed to A. MacNamara, Esq. Deputy Minister, Department of Labour, Ottawa, Ontario. The letter is dated April 26, 1948, and it reads as follows:

> Dear Mr. MacNamara:
>
> I hope you will support the desire of the great majority of professional engineers that they be excluded from Bill 195 as presently written.
>
> Yours very truly,
>
> (sgd.) J. B. CHALLIES.

Mr. Case: Is that all of the engineers?

The Chairman: That is all of the engineers, but there is one here which refers to the treatment given to the chemical engineers in the Bill. It is from the Chemical Institute of Canada, and they would like to receive exactly the same consideration as the engineers, since they are so closely connected with them. And it refers particularly to the chemical engineers.

Mr. Adamson: They are engineers as well, of course.

The Chairman: They are engineers of course, and also members of the Chemical Institute of Canada, and they say that they feel they would be in a false position if chemists were included, while the engineers are excluded. This letter is pretty long and it is in French; but it advocates the exclusion of chemists to the same extent as engineers, in Bill 195; so I would place it on the record so that the members of the committee may have an opportunity of studying it.

(See Appendix).

Mr. Pouliot: Might we have a definition of "collective bargaining"? Some are for it and some are against it, so I think it would be a good thing for the record for us to know exactly what is meant by "collective bargaining".

The Chairman: Order, please. Before your question is in order, Mr. Pouliot —and I know you won't mind—I have just received another wire which is dated April 26, 1948, from Austin Wright and addressed to the Deputy Minister, Mr. Arthur MacNamara, and it reads as follows:

> Meetings of branches at Port Arthur and Winnipeg gives strong support to Engineering Institutes resolution re exclusion of engineers for collective bargaining legislation. Petitions and individual messages now in mail to you asking for exclusion. Many more on the way for points west of here. There is no doubt that west majority prefers exclusion.

Now, Mr. Pouliot, you have the floor.

Mr. Ross: You read a number of telegrams and I have a large number. Are you going to include those in Hamilton who are very much against your proposition, against the exclusion of the engineers?

Mr. Johnston: Are those all from engineers too?

Mr. Ross: Yes, those are all from engineers. These engineers work for plants and they come under the same category as employees of an organization. They are just the same as any other trade; and in a manufacturing plant such as Westinghouse, or Harvester, or the Steel Company—these people are not professional engineers in the way that that fellow was who said that he had been one thirty-five years ago, that he had worked as a professional engineer. These people are just working men, but they are engineers, so I think they should be given an opportunity, if these other people are going to be allowed, at least to submit briefs.

The CHAIRMAN: With respect to the first communication which I read from Mr. Dave Croll, he was invited to get in touch with Mr. Arthur Fleming, barrister of Toronto, who represents a certain number of engineers, who oppose the exclusion of the profession from collective bargaining.

I understand they have a brief now under consideration to support their stand; so it will be up to them to submit that brief as soon as it is ready, when we will have both sides of the medal.

Mr. ROSS: I would like to have this placed on the record as opposing.

Mr. ADAMSON: I have got a great number of documents of the same nature.

Hon. Mr. MITCHELL: Would not this be the best thing to do at this stage. I noticed one organization there; I think the people are employed in the category which Mr. Ross speaks of, and there is another organization represented of which I think Mr. Wright is the Secretary. I received a letter, myself, from Mr. Wright. I think he is the general secretary of the Professional Institute of Canada. So would it not be better to ask for written submission from both parties, for this committee. If every member is going to place his wires on the record—

Mr. POULIOT: I understand that the professional engineers did oppose collective bargaining. They are individualists.

Mr. GAUTHIER: That is right.

Mr. POULIOT: They want to be in a position to deal as they wish with their employers without being tied by anybody. There are rules and regulations of the Board, of the Association.

Mr. GILLIS: I would like to ask the Minister a question. The professional engineers were included, in the last bill which was before this committee. So why were they excluded from this one?

Hon. Mr. MITCHELL: They were excluded from this bill on the basis of representations made at that time. The National Association of the Professional Engineers, the Engineering Institute of Canada, and some of their official organizations, asked that they be excluded from the jurisdiction of the Act. They were national organizations.

Mr. SMITH: I have a lot of these telegrams, and so on, and I wrote to all of these people the same letter and said that I thought the object of the bill was to do for the various groups what the groups themselves wanted, and that unless the engineers could get together and find out just what they wanted, it seemed to me rather difficult to pass legislation. We are split right down the middle.

Mr. JOHNSTON: Mr. Smith has suggested that the National Association be asked to submit a brief. I agree with him there. In fact, that is the only way. You have got to take the larger associations; you cannot have each individual coming in here and presenting his case.

Mr. SINCLAIR: The point is this: That if you are organized nationally, then individually, the professional association as such, would be against inclusion. But the bulk of the engineers are those who work as employees rather than as consulting engineers, and it would be very difficult to present a brief for them; and I do not see how they could come forward on the one brief. It is only through collective representation such as this.

Mr. SMITH: In Ontario they said they represented a great many and that they had representatives throughout Canada. They said they were preparing a brief and I assumed that they would give us some figures and so on.

Mr. SINCLAIR: Were they for or against inclusion?

Mr. SMITH: They were for inclusion; and it is the national outfit which, as I understand it, is opposed to inclusion.

Mr. LOCKHART: I have had some telegrams; some being for and some against. But I did as Mr. Smith did. I advised them, in my opinion, that whatever the main organization felt should be done that is the thing we are more interested in, rather than in individual representations by members of groups all over Canada.

Mr. MAYBANK: We could let the clause rest for a time.

The CHAIRMAN: Mr. Ross, are all the telegrams you have in your hands to the same effect?

Mr. ROSS: Oh, yes; every one is against.

The CHAIRMAN: How many telegrams have you?

Mr. ROSS: Twenty-four, and I also have some letters. Mr. Smith said that he wrote and told them about the same thing. But I have no address on any of mine. They are just signed by an individual, with no address.

Mr. LOCKHART: That was my trouble too. Nine out of ten have no address.

The CHAIRMAN: Order, please.

Mr. ROSS: I know of people who are engineers with an M.E. degree working in Westinghouse. They work in a plant; but it is different with engineers who go out and solicit business for themselves. But these men are spread around among the rest of the men in plants.

The CHAIRMAN: Perhaps Mr. Pouliot has something to say.

Mr. POULIOT: Oh, no, it is of no importance.

Mr. ARCHIBALD: The National Institute is opposed to entry or inclusion under the Act. Certain individuals are opposed to inclusion under the Act; but the organization wants to be brought under the Act. Is there another organization which wants to be brought in?

The CHAIRMAN: Yes.

Mr. ARCHIBALD: What is the name of it?

The CHAIRMAN: There are certain principal organizations, Mr. Archibald. Now, for your information, let me say that last week there was held in Ottawa a get-together of the professional engineers; and I am told that certain representatives of the national body, the Engineering Institute of Canada, have met with representatives of the other groups to try to compromise. I do not know what the result has been. But we are likely to read about it in the brief which we are told is under preparation just now.

Mr. SMITH: Did you move something that we could refer to?

Hon. Mr. MITCHELL: I move we defer any action of the definition of employee until we get the briefs from those organizations.

The CHAIRMAN: It is moved by the Hon. Mr. Mitchell that we defer any action on the definition of employee until we get the briefs from those two organizations. All those in favour?

Mr. ADAMSON: Just one question. What are the engineering organizations which wish to be included in collective bargaining?

Mr. SMITH: One was the professional engineers of Ontario.

Mr. ADAMSON: They wish to be included?

Mr. JOHNSTON: Yes; and there are some which wish to be excluded.

Mr. ADAMSON: A huge majority wish to be excluded.

Mr. SMITH: How do we know that?

Mr. ROSS: That is the question; the size of these two organizations.

Hon. Mr. MITCHELL: I get hundreds of telegrams a day, but I am not greatly interested in organized lobbies. I would rather hear representatives of the national organization who can speak with authority for the membership. I think that is all.

Mr. ROSS: I know of an engineer who works in a chemical company. He has no organization. He is just an individual and he wants to be included. How are we going to keep him out? Which is the bigger party, the ones who want in, or the ones who want out? I am in favour of the majority.

Hon. Mr. MITCHELL: That is what I am arguing.

Mr. ROSS: Where is the majority?

Mr. MAYBANK: Could we not back that majority?

Mr. POULIOT: The majority comes in as members of the C.I.O.

The CHAIRMAN: It is moved by the Hon. Mr. Mitchell that section 2, subsection (*i*) relating to the definition of employee, be allowed to stand for the time being. All those in favour? Those against, if any?

Carried.

Since there is no other correspondence or written matter before the committee I will call the bill section by section and I will read each section, after which discussion will be open.

Mr. MACINNIS: Mr. Chairman, before you do that, have we agreed to accept briefs that are not before us commenting on the Act? We have agreed to accept briefs that we have not yet seen. We will be dealing with the sections without having the viewpoint of these people.

Mr. SMITH: Mr. Chairman, I will go along with that. We have had a model bill submitted by the C.C.L. and it does seem to me if that is put on the record those other representations should be put on the record so that we shall be able to discuss them intelligently. When these people have submitted something we want to see it on the record.

Mr. POULIOT: Both sides.

Mr. JOHNSTON: I think that point is well taken.

The CHAIRMAN: Before we go any further may I say I had prepared by the clerk and circulated among the members an index of references sectoin by section with regard to last year's evidence, giving the page numbers and so forth. The basic principle of procedure in a committee like this is that the committee is all powerful and is master of its own procedure. Now, if we proceed clause by clause there is nothing to prevent a member at a later date moving for the reconsideratoin of any particular section where we have received such evidence in the way of a written submission which would warrant reconsideration of such a section, and we would be making headway and doing some constructive work. Had we not received such an amount of evidence last year the position would be different. Now, I am not taking any stand; I am just opening the discussion along that line.

Mr. SMITH: Mr. Chairman, perhaps I did not make myself clear. Let us take one point as an example. We have had submitted to us a model bill from the C.C.L. As yet, as I understand it, that has not become a part of the proceedings; and if we are going to record written representations—and we are—that is unanimous, I think—then we should have this in as a matter of record. It seems to me that is the proper way to give consideration to written representations. We did put one on the record a moment ago—from the Canadian Chamber of Commerce. I think before we proceed to make this examination we should also have these other submissions on the record so we can intelligently know from the submissions such new points as may have been raised. If we proceed now I think we shall be wasting time. Some of this has been sent to us in the ordinary mail.

Mr. ADAMSON: Can it be moved that the draft bill be incorporated in the record now? I move that the draft bill, suggested by the C.C.L., be incorporated in the record at this session.

Mr. JOHNSTON: It will take some little time to get it into the record and sent to us; therefore, we should not continue with this bill that is before us until we get the record.

Hon. Mr. MITCHELL: I am all for the greatest possible light on the submissions made by any organization irrespective of its affiliation, but this document was circularized to every member of the House of Commons, and there is this to be said in favour of it, that from an historical point of view—

Mr. McIVOR: Mr. Chairman, on a point of order, may I say that it is very difficult for the reporter to make the record if the speakers address members at the other end of the table. I know there are important men at the other end of the table, but it is very difficult to hear at this end.

Hon. Mr. MITCHELL: I think it is important to get historical information in the development of this legislation and to that end this submission by the Canadian Congress of Labour should be made part of the record.

Mr. ADAMSON: I so move.

Mr. SMITH: I want you to include other submissions, put them all in; and then you will have a record that is worth while.

The CHAIRMAN: Mr. Adamson has moved that the draft labour code of the Canadian Congress of Labour be put in the minutes of evidence of today's meeting.

Mr. ROSS: And all other submissions.

Mr. SMITH: Other formal submissions.

The CHAIRMAN: If I am receiving a special motion on this, Mr. Smith, it is because this draft labour code is not being submitted at this morning's meeting; it was circularized a month or two ago. So it is agreed that any submission that will come to the meeting from now on will go into the record and be printed.

Mr. SMITH: I think that should be moved. I think it should refer to organizations; we need not publish all the wires and letters that are received. I am suggesting that, although I am not insisting on it, that to preserve our record and make it of value we should take in these organizations.

The CHAIRMAN: Is the motion carried?

Carried.

Now, you will appreciate, gentlemen, that if you wish to have the minutes of proceedings and evidence of today in print and ready for the next meeting we may not be able to sit on the coming Thursday. Is it your desire to wait until the minutes have been printed before we hold another meeting?

Mr. JOHNSTON: I think that is necessary.

Mr. MACINNIS: Mr. Chairman, in view of the fact that we have received copies of the model bill of the Canadian Congress of Labour—at least it was sent to every member—it should not be necessary to have to wait until it appears in the minutes, because there would be nothing served by that procedure. We have that bill before us and if there is no other obstacle there is no reason why we should not go ahead and consider the clauses of this bill which has been sent to the committee—unless there is some other objection.

Mr. ADAMSON: The bill could be incorporated as an appendix later.

Mr. MACINNIS: Yes.

The CHAIRMAN: I may add for your information also that in the letter which I have read from the Trades and Labour Congress there were a few

references to certain materials. For instance, the report of the proccedings of the sixty-second annual convention of the Congress, and certain particular objects of that.

Mr. MacInnis: Two pages.

The Chairman: And the memorandum presented to the dominion government on March 4, 1948, also on collective agreements. Now, we have been offered as many copies of this reference as would be required by the members of the committee. Since you have discussed the printing of submissions would you feel that this should be printed too or are we to be satisfied with having the required number of copies distributed among the members?

Mr. Smith: I think that the written submission you have in your hands should be printed the same as the C.C.L. submission or that of the Canadian Chamber of Commerce, but I do not think because they refer to something that we should print the reference, as we will find that our record gives us a lead as to what they are talking about, and that would be sufficient and save a lot of printing. Because they might make reference to the second chapter of John and we would not want to print the whole Bible. It might be better than what we finally come out with, but still—

Mr. Adamson: Job would be better than John.

The Chairman: I brought this to the attention of the committee because the Trades and Labour Congress has sent me this reference accompanying the letter, as part of the letter, to avoid quoting from this.

Mr. Smith: I listened to you read the reference and I had no difficulty in understanding how to proceed. If one looks at page so-and-so he will find it. If we print the written submission that is all that is needed.

Mr. Archibald: That is all that is necessary.

The Chairman: Am I clear that you would be satisfied with receiving a copy of the reference for each of the members?

Agreed.

Mr. Smith: I want the letter printed; do not misunderstand me.

The Chairman: Yes, the letter will be printed. Now, what is your desire as to the time of our next meeting?

Mr. Adamson: I do not want to interrupt so much, but there is one further problem that we are going to have to face and that has to do with these submissions. If we leave it open for any organization or any group to submit material we may be snowed under with some irrelevant material. I submit that a committee should be set up with authority to decide on which submissions should be printed in the report and which should not. I think the committee must have that power within itself and we should not say that all submissions, irrespective of their relevancy should be printed.

The Chairman: Do you suggest that the steering committee should screen representations; use its own discretion?

Mr. Smith: Yes, we are all represented on that committee.

Mr. Adamson: I will make a motion that the steering committee should screen out the briefs submitted.

The Chairman: Is that motion carried?

Carried.

Now, gentlemen, I am not quite clear as to whether we should call our next meeting on Thursday or wait until the minutes of today's meeting are printed.

Mr. Johnston: We should wait until the minutes of today's meeting are printed.

Mr. SMITH: I am going to make a motion that we meet on Thursday. We all have copies of this document in our offices and if we have not got it the clerk can call up the C.C.L. organization and get copies. So we will actually have it in front of us even though there might be a delay in the printing. I think we might proceed this morning. I spoke to Mr. Gillis and asked him if the model bill has objections and he said there were certain objections. So, let us meet on Thursday and bring our own copies, and the clerk can phone the C.C.L. office and they will give us all the copies we want.

Mr. MACINNIS: I will support that suggestion.

The CHAIRMAN: The motion is that we meet on Thursday at the same place and at the same hour. Shall the motion carry?

Carried.

Hon. Mr. MITCHELL: I do not want to delay proceedings, but do you not think we should put a time limit on the receiving of submissions; say that they must be received within a week or a day?

Mr. SMITH: I think we should.

Mr. JOHNSTON: Is that enough time?

Hon. Mr. MITCHELL: I think they could be returned in twenty-four hours. Unless we are dealing with a specialized matter, I think that is all right.

Mr. SMITH: Why not make it a week from Thursday?

Mr. JOHNSTON: Yes, give them sufficient time, so that no one can say we are interfering with their presentations. I think a week from Thursday would be plenty of time.

Mr. MAYBANK: Does that refer to the engineers also?

Mr. SMITH: Yes.

Mr. MAYBANK: I think it is time enough for them, but I thought, probably, you would want to make sure that they had time.

Mr. SMITH: I think the clerk should wire them today.

Mr. MAYBANK: If there is any difficulty that could be considered.

Mr. MACINNIS: I served on one committee with our chairman and I found him very reasonable. I wonder if we could leave it in this way, that he could report at the next meeting that because of certain circumstances a little more time was required for an organization and that we extend the time; leave it open.

Mr. SMITH: We will not have any technical problems here, surely.

The CHAIRMAN: Is there any other business? If not, we will adjourn until next Thursday.

The committee adjourned to meet again on Thursday, April 29, 1948, at 10.30 a.m.

APPENDIX "A"

THE CANADIAN CHAMBER OF COMMERCE
BOARD OF TRADE BUILDING
Montreal 1.

April 12, 1948.

CHAIRMAN,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Ontario.

Re: Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

DEAR SIR:—The Executive Committee of the Canadian Chamber of Commerce note that Bill No. 195, an Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes, was given first reading in the House of Commons on April 6th, 1948, and on second reading was referred to the Standing Committee on Industrial Relations on April 8th. The importance of this legislation is such that the Executive Committee feel it incumbent on them to make representations to you regarding certain amendments which they believe could be made in the Bill.

The remarks set out hereunder may be divided in two categories—

I. those commenting on substantive portions of the Bill.
II. those commenting on the type and powers of the administration set up in the Bill.

The principal points covered may be summarised as follows:

I. *Those commenting on substantive portions of the Bill*

1. The persons covered by the Bill should be more clearly defined.
2. Right of employers and employees to abstain from joining an association or a union respectively, should be recognized.
3. An addition is recommended to the list of unfair labour practices.
4. Registration of unions is recommended.
5. Where a bargaining agent has been certified but no agreement is in force, provision should be made for employers to make changes in terms or conditions of employment.
6. Further limitations are recommended regarding strikes.
7. It is recommended that sub-section 32(8) prohibiting a lawyer from representing parties before a Conciliation Board be deleted.
8. It is recommended that the privileges and protection of the Act be denied to organizations led or dominated by subversive elements.

II. *Those commenting on administrative portions of the Bill*

9. Certain changes in the powers of the Minister are recommended.
10. Certain safeguards are recommended regarding operation of the Canada Labour Relations Board.

Before commenting on specific sections of the Bill, we wish to state our belief that good labour relations can only be maintained when there is a proper balance between the rights and responsibilities of labour on the one hand and those of management on the other. War-time labour legislation in Canada provided many privileges for labour without at the same time imposing on trade unions and employees responsibilities commensurate with such power and privileges. The present Bill is perpetuating this lack of balance between

the rights and responsibilities of employer and employee. While this may have been expedient in war-time, it cannot be maintained permanently if orderly conduct of labour relations is to be continued.

I. Therefore with the thought in mind that such balance should be restored, we would respectfully submit that the following changes should be made in the substantive portions of the Bill.

1. *Employees covered by the Bill—Section 2(1) (i)*—The definition of employees who are covered by the Bill should be reworded so as to more clearly exclude the following:

(i) a manager, superintendent, supervisor, or any other person who, in the opinion of the Board, exercises management functions or is employed in a confidential capacity.

(The Bill as introduced does not clearly exclude foremen from its operation although its wording would leave doubt as to whether foremen were intended to be covered. It is clear that foremen who exercise the function of management should be excluded. The problem is one of nomenclature and we have sought to overcome it by using the word supervisor. This word might be defined as one who directs or assists in directing the work of others or who, with or without such duties, has the authority to do any one of the following: hire, discharge, promote, demote or discipline employees or effectively recommend such action.)

(ii) persons employed in domestic service or in agriculture. It is realized that in view of Section 53 of the Bill the question of domestic servants and employees in agriculture will not come up under the Bill. However, in view of Sections 62 and 63 of the Bill dealing with its adoption by the provinces it was felt this matter could well be covered in the Bill.

2. *Freedom of Association—Sections 3 and 6(1)*—Section 3 recognizes formally the right of employees to belong to a trade union and of employers to belong to an employer's organization. While we have always endorsed this position, we believe that the section should also recognize expressly the right of employees and employers to abstain from joining a trade union or employers' organization, respectively. The section would then express accurately what we understand by the principle of freedom of association. In order to conform to this change, Section 6(1) should be deleted.

Similarly, there is nothing in the Bill to prevent an employer and a trade union from inserting in a collective agreement a provision requiring the employer to make deductions from his employees wages without their consent and to pay such sums as dues to a specified trade union. No such provision in a collective agreement should be valid with respect to any employee unless authorization of deduction is secured, in writing from the employee.

3. *Unfair Labour Practices—Section 4*—Sub-section 4(3), among other things, prohibits "intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union." This does not safeguard the right of an employee or an employer to enter his place of business and therefore the Bill should be amended to prohibit intimidation or coercion to prevent any employee or any other person from entering an employer's premises where he has a lawful right to go, or from leaving such premises.

4. *Registration of Unions—Section 52(2)*—Bill No. 195 provides that the Board *may* require unions to file a statutory declaration when applying for certification. It is suggested that it should be made mandatory, as

a condition of certification as a bargaining agent, that a union register with the Department of Labour and file a financial statement, list of its principal officers, initiation and other dues, and copy of its by-laws in a public office. Further, unions should be required to submit annual reports to their members.

5. *Right of Employer to change Conditions of Employment—Sections 14(b) and 15(b)*—Sub-section 14(b) provides that where the first agreement is being negotiated with a certified bargaining agent an employer shall not decrease wage rates or alter any other term or condition of employment without consent of or on behalf of employees affected. Similarly 15(*b*) provides that where a collective agreement has expired and a new agreement is being negotiated the employer shall not decrease wage rates nor change any other term or condition of employment without the consent of employees affected. In other words an employer's right to take such steps as he deems necessary to protect his own business are made subject to consent of his employees.

These provisions appear to place unwarranted and dangerous restrictions upon the rights and responsibilities of the employer with respect to the management and financial control of his business. Such a restriction would in certain circumstances compel an employer, especially a small employer with limited resources, to suspend or discontinue operations in his establishment during negotiations in order to protect the business against substantial losses which would be incurred if he continued operations. The employer would be entirely within his rights to suspend or discontinue operations in these circumstances under the provisions of Section 25 of the Bill. This would force unnecessary loss of employment and hardship upon the employees affected and unnecessary interruption to the employer's business.

The essence of collective bargaining is that the employer and employee agree to be bound by the terms of the agreement for the life of such agreement. To extend the life of such agreements artificially as long as negotiations are under way seems an unreasonable burden to place on employers, and places the decision for change in the hands of labour rather than management. Similarly to restrict the employer's right to change while a first agreement is being negotiated cannot be justified. We strongly urge that Sub-Section 14(b) and 15(b) together with Section 39 be deleted from the Bill.

6. *Strikes—Sections 21, 22 and 25*—Under Sections 21 and 22 a trade union can take a strike vote if its members and call a strike of all employees affected without submitting the employer's last offer of terms or conditions of employment to all the employees affected. These sections should be amended to provide that, following the other steps already provided for therein, no trade union shall take a strike vote or declare or authorize a strike of employees affected and that no employee shall strike until the employer's last offer of terms or conditions of the employment has been submitted to all the employees affected for their acceptance or rejection through a secret ballot under the supervision of a conciliation officer appointed by the Minister.

The principle underlying this proposal is that trade union executives and bargaining representatives have authority to act only as agents of employees. Such authority should not extend to the right to reject the employer's final offer of settlement nor to the calling of a strike.

Bill No. 195—as compared to previous Bill No. 338—reduces the length of time which must elapse from the date on which the report of the Conciliation Board is received by the Minister and strike or lockout

action is taken, from fourteen days to seven days (Section 21(*b*) and Section 22(*b*)). This allows insufficient time for the report to be transmitted to the parties concerned and for a final settlement to be negotiated between them or for a vote of the employees affected to be taken as recommended above before strike or lockout action is taken. It is recommended that at least fourteen day shall elapse after receipt by both parties to the dispute of the report of the Conciliation Board and the employer's last offer has been submitted to all the employees affected through a secret ballot as suggested.

In the interests of clarity it is recommended that Section 25 be amended to read "Nothing in this Act shall be interpreted as prohibiting an employer from suspending or discontinuing operations in that employer's establishment, in whole or in part, not constituting a lockout."

7. *Representation before a Conciliation Board—Section 32(8)*—Section 32(8) which limits the rights of party appearing before a Conciliation Board to be represented by counsel should be deleted from the Bill.

II. The necessity of maintaining adequate legal checks on the ever widening power of administrative boards and officers through which our country is now largely governed, is a matter of great concern. In several respects the Bill leaves much to be desired in this regard and we would therefore draw your attention to the following:

8. *Powers of Minister—Sections 46(1) and 56(1)*—Section 46(1) provides that no prosecution for an offence under the Bill may be taken without the consent of the Minister, while Section 56(1) provides in part that the Minister "may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes."

The inclusion of both these clauses appears to us an admission that the Bill as framed is not adequate in itself. Certain procedures for orderly negotiations, conciliation, etc., are set up but it is still felt necessary to allow almost unrestricted power to the Minister to take other steps on his own initiative. Again certain sanctions are established for contravention of the Bill but it is still necessary to make such sanctions subject to ministerial veto. Surely if the Act is reasonably satisfactory as a code for labour relations, there is no need to buttress it with further sections providing for ministerial control. We would suggest therefore that Section 56(1) be either completely deleted or its scope more clearly defined, and that Section 46 be amended so that prosecution may be made with consent of the Board rather than that of the Minister.

9. *Canada Labour Relations Board—Sections 58 to 61*—While we realize the new Canada Labour Relations Board cannot and should not be bound by all the formal rules of evidence or procedure which apply in a court of law, there are certain fundamental rules of justice which we feel should be stated in the sections establishing the Board and outlining its powers. These would not only assure the interested parties the protection they should have, but would also go far to establish the reputation of the Board as an impartial tribunal in the administration of the Act.

The specific recommendations we make are as follows:

1. amendment of Section 58(6) at least to the extent of limiting the evidence that may be required to relevant evidence.
2. a provision requiring the proposed Board to give interested parties an opportunity to be present while others are giving evidence or making representations and to hear them in rebuttal.

3. the situations in which the proposed Board may delegate authority under Section 59 should be defined restrictively or the section should be deleted.
4. written reasons should be given by the proposed Board for its decisions and it should be compulsory to publish such decisions and reasons, for the information of the public. The same recommendation as to compulsory publication is made with respect to reports of the proposed Conciliation Boards.
5. a provision for an appeal from the decisions of the proposed Board to the Exchequer Courts of Canada, on points of laws.

It is appreciated that it is probably the intention to cover the above points in Rules of the Board under Section 60 or in Regulations of the Governor in Council under Section 67, but they appear to be of such fundamental importance that they might well be contained in the Bill itself.

10. *Application of the Act—Sections 53, 54 and 55*—The Executive Committee of the Canadian Chamber of Commerce believes that the privileges and protection of the Act should not be extended to any organization which, in the opinion of the Board, is led or dominated by communists, communist sympathizers, or members or supporters of any organization that believes in or teaches overthrow of the government by force or unconstitutional means.

In this Brief we have earnestly endeavoured to point out improvements to this Bill in order to make it a workable piece of legislation which will help to remove industrial unrest from Canada. In the interests of labour, management and the public, we urge that the various points mentioned herein be given serious consideration by you and your Committee and that the Bill be amended accordingly.

Yours very truly,

H. GREVILLE SMITH,
Chairman of the Executive.

D. L. MORRELL,
Executive Secretary.

ANNEX TO BRIEF

CANADIAN CHAMBER OF COMMERCE

Certain Details and Arguments Supporting Brief on Bill No. 195
submitted by the Executive Committee of The
Canadian Chamber of Commerce

Item 1—Employees Covered by the Bill

The Brief suggests redrafting Section 2 (1) (i) so as to exclude those occupying supervisory positions, and those employed in domestic service or agriculture. The importance of having the employees who are covered by the proposed legislation clearly defined is too great to require further comment. As the scope of the Bill is industrial in character, it was decided this should be more clearly brought out by excluding those employed in domestic service and in agriculture.

Item 2—Freedom of Association

The Bill as presented specifically establishes an employee's right to join an association. The suggestion of the Chamber's Executive Committee is that with this right should go the corresponding right to refuse to join without suffering any economic penalty. The effect of the suggestion is that it will be illegal for an employer and bargaining agent to agree to any form of security clause which does not give the employee the freedom of withdrawing at any time from the association if he so desires or of refusing to join if he is not a member of the association, without affecting his position as an employee.

Item 3—Unfair Labour Practices

The change suggested by the Chamber's Executive Committe prohibits mass picketing. The thought behind this suggestion is that, while mass picketing is admittedly an indictable offence under the criminal code, the section of the code does not appear to be widely understood and certainly has been little used. Bill No. 195 is a Dominion code on labour relations and therefore mass picketing should appear as an unfair labour practice. Section 4 (3) establishes specific protection against intimidation or coercion to become or refrain from becoming a union member. It is equally important that an individual be protected in his right of access to or egress from his place of work.

Item 4—Registration of Unions—Section 52 (2)

In this connection it is pointed out that public companies are required by law to make an annual report on their affairs. Such provisions of course are for the protection of members of the company and of the general public. For precisely the same reasons unions should be required to report annually in writing to their members. Actually there should be no union objections to these provisions as any union which is legitimately pursuing its lawful objects could suffer no harm from such report but rather should gain in prestige.

Item 5—Right of Employer to Change Conditions of Employment—

Sections 14 (b) and 15 (b)

While provisions similar to Sections 14 (*b*) and 15 (*b*) were included in the old Industrial Disputes Investigations Act in effect before the war, and which the new act replaces, the old act only applied to a limited group of industries subject to federal jurisdiction, mostly large industries of a public utility character. The new Act may, by Sections 62 and 63, be applied to any province which adopts it, in which case it will apply to industries of all kinds, large and small, and such provisions as Section 14 (*b*) and 15 (*b*) are considered to be induly restrictive under these altered conditions.

Item 6—Strikes

The effect of the Chamber's Executive Committee's recommendations on the subject of strikes is that before a strike vote is held the employer's final offer of settlement would be submitted to a vote of all employees affected and such vote will be by secret ballot under government supervision.

The addition of a section requiring the submission of an employer's final offer to employees affected for a vote thereon, before taking a strike vote, means that negotiating committees will have to express the views of employees much more closely than if they can call an immediate strike vote, and assures the employer of the fact that the employees are fully acquainted with his final offer. The necessity for a secret ballot on the final offer is so obvious a means to avoid intimidation and coercion that it is difficult, when such vote is held under supervision of a conciliation officer appointed by the Minister, to foresee valid objections to this method unless union leaders will admit they are not endeavouring to represent employees' wishes.

Item 7—Representation by Counsel

The purpose of Section 31(8) in limiting both an employer's and a union's right to be represented by Counsel before a Board of Conciliation is not too clear. The right to be represented by someone you feel qualified to present your case adequately is one which, it is felt, should not be taken away. This particular section would, of course, be most onerous on small employers and small locals, but the principle underlying the sub-section is unsound and the sub-section should be deleted.

Item 8—Powers of the Minister

The Chamber would suggest the following:

(a) Section 46(1) should be amended so that prosecution may be made with consent of the Board rather than that of the Minister.

(b) Section 56(1) should be deleted or qualified by limiting the powers of the Minister to a considerable degree.

In connection with these changes, comment is made as follows:

A. The existence of a law without adequate sanctions for enforcing same has most undesirable social consequences. It would therefore be preferable to have an unrestricted right to prosecute for offences as the existence of the Minister's veto on such prosecutions could make the sanction sections of the act meaningless. Further the continuance of the Minister's power in this regard might give rise to a feeling that the Bill was being enforced unevenly which would lead to disrespect of the entire Bill.

B. If Section 56(1) is to be taken at its face value, it gives the Minister almost unlimited power. If it was inserted in the Bill for some specific purpose, the purpose should be stated and the section limited to its actual purpose. This section as it now appears in the Bill may have been justified under war-time conditions but its retention as a permanent feature of Canadian legislation does not appear to be justified.

Item 9—Canada Labour Relations Board

The specific recommendations of the Chamber's Executive Committee are set out in detail in their Brief, however, the following additional comment is made in connection therewith:

A. It is felt that much criticism of the Board can be avoided if written reasons are given by the proposed Board for its decisions and that such decisions be published for the information of the public.

B. It is felt that the Board should act along certain clearly defined lines. Thus we have suggested that the Board should be entitled to receive only relevant evidence, should not have an unlimited power to delegate its powers and duties, and should, in questions of law, be subject to correction by the Exchequer Court.

APPENDIX "B"

(Original in French. The following is a translated version)

THE CHEMICAL INSTITUTE OF CANADA

MONTREAL, 26th April, 1948.

Mr. P. E. CÔTÉ, M.P.,
Chairman of the Committee on Industrial Relations,
House of Commons,
Ottawa, Ont.

DEAR SIR,—I venture to write you in your capacity of parliamentary assistant to the Minister of Labour and Chairman of the Committee on Industrial Relations to acquaint you with the wishes of the Chemical Institute of Canada respecting the provisions of Bill 195 which is presently under study in the Commons.

The Chemical Institute of Canada, incorporated in 1921, is an association of chemists the great majority of whom are what we call professional members. To be eligible for professional membership in the Institute a person must possess a diploma in chemistry or in chemical engineering from a university whose courses and diplomas are approved by the Institute and count in addition at least two years' experience in the active practice of chemistry and chemical engineering. The present strength of the Institute comprises about 3,000 members of whom more than 2,500 are professional members and 850 students who are fitting themselves for the practice of chemistry or chemical engineering. The other members of the Institute are "associate" members, who while they do not hold university diplomas, are also engaged in the active practice of chemistry.

The professional interests of the members of the Institute are handled by the Committee on professional affairs to which belong all the professional members of the Institute's Council; "associate" members having no voice in the study and solution of professional problems.

This preamble was necessary in order to acquaint you with the position of the Chemical Institute of Canada in comparison with Canada's other professional associations, such as the Engineering Institute and the Canadian Institute of Mining and Metallurgy which are interested, like our Institute, in Bill 195.

For several years, in fact even before the publication of Order in Council 1003 which was made operative during the war, the Chemical Institute of Canada took a clear-cut stand on the question of collective agreements. The members of the Institute are not opposed to collective agreements but they do not want to be compelled to negotiate through the medium or instrumentality of a trade union.

We find in Part I, section 2, sub-section i of Bill 195 that the definition of employee does not include the members of the following professions: medicine, dental surgery, architecture and engineering, who have a right to practise under the laws of a province and are employed in that capacity.

I wish to submit to you that the chemists and chemical engineers, having the same professional qualifications as the engineers, should also be excluded from the definition of an employee by the terms and for the purposes of the bill in question. If engineers are excluded, there exists no reason why chemists and chemical engineers are not excluded likewise. Their non-exclusion would create manifold difficulties for the members of our profession.

1.—In fact, chemical engineers, by reason of the fact they practise one branch of engineering, would be excluded from collective agreements whereas their chemist associates would not be so.

2.—There is in the Province of Quebec an Association of professional chemists of Quebec which has the power to regulate the practice of the profession but which presently does not yet exercise that right. In Canada's other provinces, the privilege of becoming members of professional associations of engineers is now open to chemists. Those who would avail themselves of such a privilege would be in a false position. They would belong to an association the members of which would be excluded from the definition of an employee whereas they themselves would not be excluded therefrom in the capacity of chemists.

3.—Outside of Quebec, there are no professional associations of chemists, and that is the reason why the Chemical Institute of Canada, representing the great majority of Canadian chemists, demands on their behalf the same treatment which the bill vouchsafes to other professions. However, we foresee the formation of provincial professional associations of chemists and chemical engineers in the future. As the proposed legislation is no doubt destined for a long life, this contingency will have to be provided for.

4.—The application of this act will be limited in scope to certain very specialized industries which, generally speaking, employ few chemists. But those which they do employ, by reason of their small number, would be liable to be compelled to have themselves represented, in negotiations, by trade unions, something which runs counter to the professional ideal.

For all these reasons, the Chemical Institute of Canada hopes that the government will consent to amend the definition of the employee in such a manner that it will not include chemists and chemical engineers, in the same capacity as engineers and architects. The professional status of chemists is as obvious as that of architects and engineers.

To this end, the Committee on professional affairs of the Council of the Chemical Institute of Chemistry adopted at its regular meeting, in December, 1947, a resolution to the effect that chemists and chemical engineers be not included in the definition of employee for the purposes of Bill 338.

We further propose that, if there is a disposition to extend to the various professions the privilege of signing collective agreements with the employers, it shall be clearly understood that the groups in question must not include employees of a professional persuasion under the aegis of professional associations of engineers, of chemists or of architects.

We believe that this course of action will commend itself to the great majority of professional chemists and that it will also receive the support of a small minority which, failing a special act respecting collective agreements for professional employees, is ready to make the best of the provisions of the present bill just as it reluctantly made the best of the provisions of P.C. 1003 during the war.

The Chemical Institute of Canada intends associating itself in this manner with the formulation of a national labour code which will serve as a model for provincial governments wishing to regulate in the interests of all relations between employees and their employers. There is perhaps some point in repeating here that the interests of professional employees do not fit into the same pattern as those of other employees of industry. These employees contribute to the very creation of industry and to its expansion. Their number is comparatively limited yet they made a tremendous contribution to Canada's progress. It would be regrettable if they were compelled to resort to methods which, if they are effective for the workers whose power stems from their number, are incompatible with

the ideal of a professional to whom it is repugnant to go on strike and even to engage in the negotiations and the bargaining processes required by the bill. If, unfortunately, professionals were compelled to join trade unions in order to assert their rights, the freedom and the efficacy of their work could not fail to suffer thereby.

I am sure you will take into proper consideration the foregoing notes and that you will study them in the spirit that dictated them, that of contributing to the formulation of a national labour code that will satisfy all the interested parties while respecting the rights of each. I have written you on the suggestion of Mr. Raymond Eudes, M.P., to whom I am forwarding a copy of this letter. Acting on the suggestion of the deputy minister, Mr. McNamara, the Chemical Institute of Canada will also present a similar request in English, at the same time as other professional associations interested in the success of this undertaking.

I remain, Mr. Chairman,

Yours very truly,

LÉON LORTIE,
Chairman of the Board of Directors,
The Chemical Institute of Canada.

APPENDIX "B"

THE CHEMICAL INSTITUTE OF CANADA

MONTRÉAL, le 26 avril 1948.

M. P.-E. Côté, M.P.,
Président du Comité des relations industrielles,
Chambre des communes,
Ottawa, Ont.

Cher monsieur,—Je me permets de vous écrire en votre qualité d'Assistant-parlementaire du ministre du Travail et de président du Comité des relations industrielles pour vous faire part du désir de l'Institut de chimie du Canada en ce qui a trait aux dispositions du bill 195 dont l'étude se poursuit actuellement aux Communes.

L'Institut de chimie du Canada, incorporé en 1921, est une association de chimistes dont la grande majorité sont ce que l'on appelle des membres professionnels. Pour être membre professionnel de l'Institut il faut posséder un diplôme en chimie ou en génie chimique d'une université dont les cours et les diplômes sont approuvés par l'Institut, et avoir de plus une expérience de deux ans au moins dans la pratique active de la chimie ou du génie chimique dans une industrie ou un laboratoire reconnus par l'Institut. Les effectifs actuels de l'Institut comptent environ 3,600 membres dont plus de 2,500 sont des membres professionnels et 850 sont des étudiants qui se préparent à la pratique de la chimie ou du génie chimique. Les autres membres de l'Institut sont des membres "associés" qui, sans posséder de titres universitaires, sont aussi dans la pratique active de la chimie.

Les intérêts professionnels des membres de l'Institut sont entre les mains du Comité des affaires professionnelles dont font partie tous les membres professionnels du conseil de l'Institut; les membres "associés" n'ayant aucune voix au chapitre dans l'étude et la solution des problèmes professionnels.

Ce préambule était nécessaire pour vous faire comprendre la position de l'Institut de chimie du Canada en regard des autres associations professionnelles du Canada, telles que l'*Engineering Institute* et le *Canadian Institute of Mining and Metallurgy* qui s'intéressent, comme notre Institut, au bill 195.

Depuis plusieurs années, en fait depuis avant même la promulgation de l'ordre en conseil 1003 qui fut mis en force durant la guerre, l'Institut de chimie du Canada prit une position bien nette sur la question des conventions collectives. Les membres de l'Institut ne sont pas opposés aux conventions collectives mais ils ne veulent pas être forcés de négocier par l'entremise ou l'intermédiaire d'une union ouvrière (*trade union*).

Dans le bill 195, 1ère partie, article 2, paragraphe i, nous trouvons que la définition de l'employé n'inclut pas les membres des professions suivantes: médecine, chirurgie dentaire, architecture et génie, qui ont le droit de pratiquer en vertu des lois d'une province et employés comme tels.

Je désire vous soumettre que les chimistes et les ingénieurs-chimistes, possédant les mêmes titres professionnels que les ingénieurs, devraient aussi être exclus de la définition d'un employé aux termes et aux fins du projet de loi en question. Si les ingénieurs sont exclus, il n'existe pas de raison pour que les chimistes et les ingénieurs-chimistes ne le soient pas. S'ils ne l'étaient pas, cela créerait de multiples embarras pour les membres de notre profession.

1. En effet, les ingénieurs-chimistes, parce qu'ils pratiquent une branche de l'art de l'ingénieur, seraient exclus des conventions collectives alors que leurs collègues chimistes ne le seraient pas.

2. Dans la province de Québec, il existe une association des chimistes professionnels de Québec qui possède le pouvoir de règlementer la pratique de la profession mais qui, actuellement, n'exerce pas encore ce droit. Dans les autres provinces du Canada, on offre maintenant aux chimistes le privilège de faire partie des associations professionnelles d'ingénieurs. Ceux qui s'en prévaudraient seraient dans une fausse situation. Ils appartiendraient à une association dont les membres seraient exclus de la définition d'un employé alors qu'eux-mêmes n'en seraient pas exclus en tant que chimistes.

3. Il n'existe pas d'associations professionnelles de chimistes, sauf dans le Québec, et c'est pour cette raison que l'Institut de chimie du Canada, représentant la grande majorité des chimistes canadiens, réclame en leur nom un traitement que le projet de loi accorde à d'autres professions. Dans l'avenir, toutefois, nous prévoyons la formation d'associations professionnelles provinciales de chimistes et d'ingénieurs-chimistes. Comme la loi proposée aura sans doute une longue carrière, il faudra pourvoir à cette éventualité.

4. Le champ d'aplication de cette loi sera limité à certaines industries bien spécifiées qui, en général, emploient peu de chimistes. Mais ceux qu'elles emploient, en raison de leur petit nombre, seraient exposés à être forcés de se faire représenter, dans les négociations, par des unions ouvrières, ce à quoi l'idéal professionnel est opposé.

Pour toutes ces raisons, l'Institut de chimie du Canada espère que le gouvernement voudra bien amender la définition de l'employé de façon qu'elle n'inclue pas les chimistes et les ingénieurs-chimistes, au même titre que les ingénieurs et les architectes. Le statut professionnel des chimistes est aussi évident que celui des architectes et des ingénieurs.

A cette fin, le Comité des Affaires professionnelles du Conseil de l'institut de chimie du Canada a adopté, lors de sa réunion régulière de décembre 1947, une résolution à l'effet que les chimistes et ingénieurs-chimistes ne soient pas inclus dans la définition d'employé aux fins du bill 338.

Nous proposons en outre que, si on désire étendre aux diverses professions le privilège de signer des conventions collectives avec les employeurs, il soit bien entendu que les groupes en question ne devront comprendre que des employés de caractère professionnel sous l'égide des associations professionnelles d'ingénieurs, de chimistes ou d'architectes.

Nous croyons que cette façon de procéder satisfera la très grande majorité des chimistes professionnels et qu'elle recevra aussi l'appui d'une faible minorité qui, à défaut d'une loi spéciale concernant les conventions collectives pour employés professionnels, est prête à se contenter des dispositions du présent projet de loi comme elle s'est accommodée, à regret, des provisions du P.C.1003 durant la guerre.

L'Institut de chimie du Canada entend collaborer de cette façon à l'élaboration d'un code national du travail qui servira de modèle aux gouvernements provinciaux désireux de règlementer dans l'intérêt de tous, les relations entre les employeurs et leurs employés. Il n'est peut-être pas inutile de redire ici que les intérêts des employés professionnels ne sont pas du même ordre que ceux des autres employés de l'industrie. Ces employés collaborent à la création même et à l'expansion de l'industrie. Leur nombre est relativement restreint mais leur contribution au progrès du Canada est immense. Il serait regrettable si on les forçait à recourir à des méthodes qui, si elles sont efficaces pour les ouvriers dont la puissance provient de leur nombre, ne sont pas compatibles avec l'idéal d'un professionnel qui répugne à faire la grève et même à entreprendre les négociations et les marchandages requis par le projet de loi. Si, par malheur, des professionnels étaient forcés de se joindre aux unions ouvrières pour revendiquer leurs droits, la liberté et l'efficacité de leur travail ne sauraient qu'en souffrir.

Je suis sûr que vous prendrez en bonne considération les notes qui précèdent et que vous les étudierez dans l'esprit qui les a dictées, celui de contribuer à l'élaboration d'un code national du travail qui satisfasse tous les intéressés en respectant les droits de chacun. Je vous ai écrit à la suggestion de votre collègue, monsieur Raymond Eudes, M.P., à qui j'envoie copie de cette lettre. A la suggestion du sous-ministre, M. McNamara, l'Institut de chimie du Canada présentera aussi une semblable demande en anglais, en même temps que d'autres associations professionnelles intéressées au succès de cette entreprise.

Je vous prie d'agréer, monsieur le président, l'expression de mes sentiments distingués.

LÉON LORTIE,
Président du Conseil
d'Administration,
Institut de chimie du Canada.

APPENDIX "C"

A NATIONAL LABOUR CODE

PROPOSED BY THE CANADIAN CONGRESS OF LABOUR FEBRUARY, 1948

AN ACT TO PROVIDE FOR THE INVESTIGATION, CONCILIATION AND SETTLEMENT OF INDUSTRIAL DISPUTES

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as The Industrial Relations and Disputes Investigation Act, 1948.

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires,

(*a*) "bargaining agent" means a trade union that acts on behalf of employees
  (i) in collective bargaining; or
  (ii) as a party to a collective agreement with their employer;

(*b*) "Board" means the Canada Labour Relations Board;

(*c*) "certified bargaining agent" means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;

(*d*) "check-off" means the deduction by an employer of union fees, dues, fines, or assessments, or the deduction of any combination of fees, dues, fines and assessments, from the employee's wages or other remuneration and the payment of the sums so deducted to the union or its authorized representative; and "to check off" shall have a corresponding meaning;

(*e*) "collective agreement" means an agreement in writing between an employer or a group of employers, or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees, with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security;

(*f*) "collective bargaining" means negotiating in good faith with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be; the embodiment in writing of the terms of agreement arrived at in negotiations or required to be inserted in a collective agreement by this Act; the execution by or on behalf of the parties of such written agreement; and the negotiating from time to time for settlement of disputes and grievances of employees covered by the agreement and "bargaining collectively" and "bargain collectively" have corresponding meanings;

(*g*) "Conciliation Board" means a Board of Conciliation and Investigation appointed by the Minister in accordance with section twenty-two of this Act;

(*h*) "Conciliation Officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

(*i*) "dispute" or "industrial dispute" or "trade dispute" means any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees; and without limiting the generality of the foregoing, includes any dispute or difference relating to

(i) wages, allowances or other remuneration of employees or the price paid or to be paid in respect of services, hours of work, vacations with pay, statutory holidays, pensions, retirement benefits, or sickness benefits;

(ii) sex, age, qualication or status of employees;

(iii) employment of children or any person or persons or class of persons, or the dismissal of or refusal to employ any particular person or persons or class of persons;

(iv) claims on the part of an employer or any employee as to whether and, if so, under what circumstances preference of employment should or should not be given to one class of persons over another;

(v) the subject of check-off;

(vi) union security;

(vii) the interpretation of an agreement or a clause thereof; and

(viii) any established custom or usage;

(*j*) "employee" means a person employed to do skilled or unskilled manual, clerical, or technical work, and includes any person on strike or locked out in a current industrial dispute who has not secured permanent employment elsewhere, but does not include

(i) a manager or superintendent, or any person who, in the opinion of the Board, is employed in a confidential capacity in matters relating to labour relations;

(ii) a member of the medical, dental, architectural or legal profession qualified to practice under the laws of a province and employed in that capacity;

(*k*) "employer means any person who employs one or more employees, and includes His Majesty in right of Canada;

(*l*) "employer's agent" means:

(i) any person or association acting on behalf of an employer;

(ii) any officer, official, foreman or other representative or employee of an employer acting in any way on behalf of an employer in respect to hiring or discharging or any of the terms or conditions of employment of the employees of such employer;

(*m*) "employers' organization" means an organization of employers which has among its purposes the regulation of relations between employers and employees;

(*n*) "employer-dominated organization" means any association, committee or group of employees or any other entity purporting to bargain collectively on behalf of any employees, the formation or organization of which association, committee, group or other entity, has been or is being aided or abetted by an employer, or an agent of an employer, or the administration, management or policy of which has been or is being influenced, coerced, or controlled by an employer or an agent of an employer;

(*o*) "lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number

of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

(*p*) "Minister" means the Minister of Labour;

(*q*) "parties with reference to the appointment of, or proceedings before, a Conciliation Board means the parties who are engaged in the collective bargaining or the dispute in respect of which the Conciliation Board is or is not to be established;

(*r*) "regulation" means a regulation of the Governor in Council under this Act;

(*s*) "strike" includes a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

(*t*) "to strike" includes to cease work, or to refuse to work or to continue to work, in combination or in concert or in accordance with a common understanding, for the purpose of compelling the employer of the employees who so cease, or refuse, to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

(*u*) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees; but shall not include an employer-dominated organization;

(*v*) "union security" means a provision in a collective agreement whereby an employer agrees:

(i) to hire or retain in his service members of a trade union only; or

(ii) to give certain preferences as may be agreed in the hiring and/or retention in his service of union members; or

(iii) to effect a check-off in respect of members of a trade union or in respect of all his employees;

(*w*) words importing the masculine gender include corporations, trade unions and employers' organizations, as well as females.

(2) No person shall cease to be an employee within the meaning of this Act by reason only of dismissal contrary to this Act.

(3) For the purposes of this Act, a "unit" means a group or a classification or classifications of employees and "appropriate for collective bargaining" with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employer.

RIGHTS OF EMPLOYEES AND EMPLOYERS

3. (1) (*a*) Every employees shall have the right to be a member of a trade union, to form, join, or assist trade unions, to bargain collectively through representatives of his own choice, and to engage in concerted activities, for the purpose of collective bargaining or mutual aid or protection.

(*b*) A trade union and the acts thereof shall not be deemed to be unlawful by reason only that one or more of its objects are deemed by common law to be in restraint of trade.

(*c*) Any act done by two or more members of a trade union, if done in contemplation or furtherance of an industrial or trade dispute, shall not be actionable unless the act would be actionable if done without any agreement or combination.

(*d*) No trade union shall be made a party to any action unless the trade union might be made a party irrespective of the provisions of this Act.

(*e*) A collective agreement shall not be the subject of any action in any court unless such collective agreement might be the subject of such action irrespective of any of the provisions of this Act.

(2) Every employer has the right to be a member of an employers' organization and to participate in the activities thereof.

UNFAIR LABOUR PRACTICES

4. (1) It shall be an unfair labour practice for an employer or any person acting on behalf of any employer:

(*a*) to participate in or interfere with the formation or administration of a trade union, or contribute financial or other support to it; Provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied, or provide free transportation to representatives of a trade union for purposes of collective bargaining or permit a trade union the use of the employer's premises for the purposes of the trade union;

(*b*) to discriminate in regard to hiring or tenure of employment, or any term or condition of employment or to use coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a trade union or participation of any kind in a porceeding under this Act; Provided that nothing in this Act shall preclude an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in such trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if such trade union has been designated or selected by a majority of employees in any such unit as their bargaining agent;

(*c*) to interfere with, restrain or coerce any employee in the exercise of any right conferred by this Act or to impose any condition in a contract of employment seeking to restrain an employee from exercising any right conferred by this Act;

(*d*) to refuse or fail to bargain collectively, in good faith, as required by this Act;

(*e*) to refuse to permit any duly authorized representative of a trade union with which he has entered into a collective agreement to negociate with him during working hours for the settlement of disputes or grievances of employees covered by the agreement, or to make any deductions from the wages of any such duly authorized representative of a trade union in respect of the time actually spent in negociating for the settlement of such disputes or grievances;

(*f*) to interfer in the selection of a trade union as a bargaining agent of the employees;

(*g*) to maintain a system of industrial espionage or to employ or direct any person to spy upon a member or proceedings of a trade union or the offices thereof or the exercice by an employee of any right provided by this Act;

(*h*) to threaten to shut down or move a plant or any part of a plant in the course of a trade or industrial dispute;

(i) to declare or cause a lockout or to make or threaten any change in wages, hours, conditions of employment, benefits or privileges while any application is pending before the Board or any matter is pending before a Conciliation Board appointed under the provisions of this Act.

2. Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend transfer, lay off or discharge an employee for proper and sufficient cause.

5. It shall be an unfair labour practice for an employee or any person acting on behalf of a trade union:

(*a*) except with the consent of the employer, to attempt, at an employer's place of employment during the working hours of an employer of the employer, to persuade the employee to become or refrain from becoming or continuing to be a member of a trade union;

(*b*) to commence or take part in or attempt to persuade any employee to commence or take part in a strike while an application is pending before the Board or any matter is pending before a Conciliation Board established under the provisions of this Act.

COLLECTIVE BARGAINING

Application for Certification of Bargaining Agent

6. (1) A trade union may make application to the Board stating that a majority of the employees of an employer or employers or a majority of a unit of such employees, desire the trade union to bargain collectively on their behalf with their employer or employers, and requesting the Board to certify the applicant as the bargaining agent of such employees.

(2) Pending any application made hereunder, no employer shall make any change relating to the wages or hours of work of any employee affected by such application.

(3) Where no cellective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.

(4) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.

(5) Where a collective agreement is in force between the employer or employers and a trade union, other than the applicant, relating to the bargaining unit or any portion or section thereof, no application shall be entertained before ten months have expired of the period of the agreement; Provided that an application may be made after ten months have expired of the period of the agreement, if the applicant establishes that at least fifty per cent of the employees who constitute the bargaining unit are either members of the applicant union or, within six months prior to the filing of the application have requested or authorized the applicant union to bargain collectively on their behalf with their employer, in which event a vote may be ordered or conducted by the Board in order to determine the desire of the majority of the employees in the unit and the application shall then be dealt with in the manner prescribed by subsection five of section eight of this Act.

7. If, in accordance with established trade union practice, the majority of a group of employees who belong to a craft by reason of which they are distinguishable from the employees as a whole, are separately organized into a trade union pertaining to the craft, such trade union may be certified by the

Two or more employers

Board as bargaining agent of the said employees if the Board, in its discretion, is of the opinion that it is in the best interests of the employees, the employer and the public that this be done. If such group claims and is entitled to the rights conferred by this subsection the employees comprised in the craft shall not be entitled to vote for any of the purposes of any application or collective bargaining with such employer except when the application or collective bargaining relates solely to such craft; or shall such employees be taken into account in any manner in the computation of a majority in respect to any proceeding in which they are not entitled to vote.

CERTIFICATION

8. (1) Where a trade union makes application for certification under this Act as bargaining agent of employees in a unit, the Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate, include additional employees in, or exclude employees from, the unit.

(2) When, pursuant to an application for certification under this Act by a trade union, the Board has determined that a unit of employees is appropriate for collective bargaining

(*a*) if the Board is satisfied that the applicant is a trade union; and

(*b*) if the Board is satisfied that the majority of the employees in the unit desire the trade union to bargain collectively on their behalf with their employer or employers;

the Board shall certify the trade union as the bargaining agent of the employees in the unit.

(3) The Board shall, for the purposes of determining whether the majority of the employees in a unit desire the applicant to bargain collectively on their behalf with their employer or employers, make or cause to be made such examination of records or other inquiries at it deems necessary, including the holding of such hearings or the taking of such votes as it deems necessary or expedient, and the Board may prescribe the nature of the evidence to be furnished to the Board.

(4) Except as hereinafter provided in subsection five of this section, in any vote ordered or conducted by the Board, the desire of the employees in the bargaining unit in respect of which a vote has been ordered or conducted shall be that expressed by the majority of the employees who actually cast ballots in such vote.

(5) Where an application for certification is made under the circumstances described in subsection five of section six of this Act, the Board shall, for the purposes of determining whether at least fifty per cent of the employees in the unit are members of the applicant union, make or cause to be made such examination of records or other inquiries as it deems necessary or expedient, including the holding of such hearings as it deems expedient, and the Board may prescribe the nature of the evidence to be furnished to the Board. If the Board is satisfied that at least fifty per cent of the employees in the unit affected by the application are members of the applicant trade union or have requested or authorized the applicant trade union as aforesaid, the Board shall order a vote to be taken and if, as a result of such vote the Board is satisfied that over fifty per cent of the employees in the unit affected by the application desire the applicant trade union to bargain collectively for them, it shall certify the applicant trade union as the bargaining agent of the employees in the unit.

(6) Where an application is made affecting the employees employed by two or more employers, the Board shall not certify the applicant in respect of the

employees of any employer unless it is satisfied that a majority of the employees of such employer desire the applicant to bargain collectively on their behalf with their employer.

9. (1) Notwithstanding anything in this Act, no trade union, the formation, administration, management, or policy of which is, or has been in the opinion of the Board

(*a*) influenced by an employer, or

(*b*) dominated by an employer, or

(*c*) assisted in any manner contrary to paragraph (*a*) of subsection one of section four of this Act,

shall be certified as a bargaining agent of employees, nor shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement for the purposes of this Act.

(2) No employer-dominated organization shall be certified as a bargaining agent.

EFFECT OF CERTIFICATION—NOTICE TO NEGOTIATE

10. (1) Where a trade union is certified under this Act as the bargaining agent of the employees in a unit

(*a*) the trade union shall immediately replace any other bargaining agent of employees in the unit and shall have exclusive authority to bargain collectively on behalf of all employees in the unit;

(*b*) if another trade union had previously been certified as bargaining agent in respect of employees in the unit, the certification of the previously certified bargaining agent shall be deemed to be revoked in respect of such employees.

(2) Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer is in force,

(*a*) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining; or

(*b*) the employer of an employers' organization representing the employer may, by notice, require the bargaining agent to commence collective bargaining;

with a view to the conclusion of a collective agreement.

(3) Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and a collective agreement in respect of such employees is then in force, the trade union shall be substituted as a party to the agreement in place of the previous bargaining agent, and may, notwithstanding anything contained in the agreement, upon two months' notice to the employer terminate the agreement insofar as it applies to those employees.

(4) Either party to a collective agreement, whether entered into before or after the commencement of this Act, may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of the agreement, by notice, require the other party to the agreement to commence collective bargaining with a view to the renewal or revision of the agreement or conclusion of a new collective agreement.

NEGOTIATION

11. Where notice to commence collective bargaining has been given under subsection two of section ten of this Act

(*a*) the certified bargaining agent and the employer, or an employers' organization representing the employer shall, without delay, but in any case within ten clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized

representatives on their behalf to meet and commence to bargain collectively in good faith with one another and shall make every reasonable effort to conclude a collective agreement; and

(*b*) the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages or alter any other term or condition of employment of employees in the unit for which the bargaining agent is certified until a collective agreement has been concluded or until a Conciliation Board appointed to endeavour to bring about agreement has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

12. Where a party to a collective agreement has given notice under subsection four of section ten of this Act to the other party to the agreement,

(*a*) the parties shall, without delay, but in any case within ten clear days after the notice was given or such further time as the parties may agree upon, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and

(*b*) if a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination provided for in the agreement, until a renewal or revision of the agreement or a new collective agreement has been concluded or a Conciliation Board, appointed to endeavour to bring about agreement, has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

Conciliation

13. Where a notice to commence collective bargaining has been given under this Act and

(*a*) collective bargaining has not commenced within the time prescribed by this Act; or

(*b*) collective bargaining has commenced;

and either party thereto requests the Minister in writing to instruct a Conciliation Officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and such request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining, or in any other case in which in the opinion of the Minister it is advisable so to do, the Minister may instruct a Conciliation Officer to confer with the parties engaged in collective bargaining.

14. Where a Conciliation Officer fails to bring about an agreement between parties engaged in collective bargaining or in any other case where in the opinion of the Minister a Conciliation Board should be appointed to endeavour to bring about agreement between parties to a dispute, the Minister may appoint a Conciliation Board for such purpose, but the Minister shall not appoint a Conciliation Board in any case where the Board has found that either of the parties has failed or refused to bargain collectively in good faith.

COLLECTIVE AGREEMENTS

15. (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final settlement without stoppage of work, during the life of the agreement, by arbitration or otherwise, of all differences between the parties to the agreement or on whose behalf it was entered into, concerning its meaning and violation, and concerning the settlement of any grievance not specifically covered by the terms of the agreement affecting the terms of employment or working conditions of any employee of group of employees.

(2) Where a collective agreement, whether entered into before or after the commencement of this Act, does not contain a provision as required by this section, the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement.

16. (1) Notwithstanding anything therein contained, every collective agreement, whether entered into before or after the commencement of this Act, shall, if for a term of less than a year, be deemed to be for a term of one year from the date upon which it came or comes into operation, or if for an indeterminate term shall be deemed to be for a term of at least one year from that date and shall not, except as provided by section ten of this Act or with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

(2) Nothing in this section shall prevent the revision of any provision of a collective agreement, other than a provision relating to the term of the collective agreement, that under the agreement is subject to revision during the term thereof.

17. When a bargaining agent has been certified under this Act, and pending the conclusion of a collective agreement, the following grievance procedure shall be regarded as being in effect between the parties concerned, unless modified by mutual consent within a period of thirty days after the date of certification:

(*a*) The union shall appoint, and the employer shall recognize, a Grievance Committee of not fewer than three members of the union and not more than the number of plant divisions or departments in the employer's establishment.

(*b*) Should any grievance arise between the employer and the union, or any of its members, or any other employees included in the bargaining unit, respecting the terms of employment or working conditions, an earnest effort shall be made to adjust such grievance forthwith in the following manner:

(i) Between the aggrieved employee and the foreman of the department involved, a decision to be rendered by the foreman within two full working days. Failing a mutually satisfactory adjustment between the aggrieved employee and the foreman:

(ii) Between a member or members of the Grievance Committee and the chief supervisory officer of the employer in charge of personnel, if any, or any other officer whom the employer shall designate for this purpose, a decision to be rendered by such officer within three full working days. Failing a mutually satisfactory adjustment between the Grievance Committee and the chief supervisory officer:

(iii) Between the Grievance Committee and a representative or representatives appointed by the employer for this purpose, a decision to be rendered within five full working days. Failing a mutually satisfactory adjustment between the Grievance Committee and the representative or representatives as aforesaid:

(iv) By a Board of Conciliation.

Strikes and Lockouts

18. Where a trade union on behalf of a unit of employees has made application to the Board for certification under this Act, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit, and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees in the unit until the said application for certification has been finally determined by the Board.

19. Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit or declare or authorize a strike of the employees in the unit, and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees in the unit, until

(*a*) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement, and either

(*b*) a Conciliation Board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or

(*c*) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and seven days have elapsed since the Minister received the said request and

(i) no notice under subsection two of section twenty-two of this Act has been given by the Minister, or

(ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.

Provided that this section shall not be binding upon a trade union or any employee in the unit if the Board in any finding or decision holds or determines that an employer has refused or failed to bargain collectively in good faith with the trade union.

20. Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment in whole or in part, not constituting a lockout or strike.

× No strikes or lock-outs while agreement in force

CONCILIATION PROCEEDINGS

Conciliation Officers

21. Where a Conciliation Officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed or within such longer period as the Minister may from time to time allow, make a report to the Minister setting out

(*a*) the matters, if any, upon which the parties have agreed;

(*b*) the matters, if any, upon which the parties cannot agree; and

(*c*) the advisability of appointing a Conciliation Board with a view to effecting an agreement.

Constitution of Conciliation Boards

22. (1) A Board of Conciliation and Investigation under this Act shall consist of three members appointed in the manner provided in this section.

(2) Where the Minister has decided to appoint a Conciliation Board, he shall forthwith, by notice in writing, require each of the parties within seven

days after receipt by the party of the notice, to nominate one person to be a member of the Conciliation Board, and upon receipt of the nomination within the seven days, the Minister shall appoint such person a member of the Conciliation Board.

(3) If either of the parties to whom notice is given under this section, fails or neglects to nominate a person within seven days after receipt of the notice, the Minister shall appoint as a member of the Conciliation Board, a person he deems fit for such purpose, and such member shall be deemed to be appointed on the recommendation of the said party.

(4) The two members appointed under subsections two and three of this section shall, within five days after the day on which the second of them is appointed, nominate a third person, who is willing and ready to act, to be a member and Chairman of the Conciliation Board, and the Minister shall appoint such person a member and Chairman of the Conciliation Board.

(5) If the two members appointed under subsections two and three of this section fail or neglect to make a nomination within five days after the appointment of the second such member, the Minister shall forthwith appoint as the third member and Chairman of the Conciliation Board, a person whom he deems fit for such purpose.

(6) When the Conciliation Board has been appointed, the Minister shall forthwith notify the parties of the names of the members of the Board.

(7) Where the Minister has given notice to parties that a Conciliation Board has been appointed under this Act, it shall be conclusively presumed that the Conciliation Board described in the said notice has been established in accordance with the provisions of this Act, and no order shall be made or process entered or proceedings taken in any court to question the granting of refusal of a Conciliation Board, or to review, prohibit or restrain establishment of that Conciliation Board or any of its proceedings.

23. Upon a person ceasing to be a member of a Conciliation Board before it has completed its work, the Minister shall appoint a member in his place who shall be selected in the manner prescribed by this Act for the selection of the person who has so ceased to be a member.

24. Each member of a Conciliation Board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister, an oath or affirmation in the following form:—

> I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the Conciliation Board appointed to..... and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God.

Terms of Reference

25. (1) Where the Minister has appointed a Conciliation Board, he shall forthwith deliver to it a statement of the matters referred to it, and may, either before or after the making of its report, amend or add to such statement.

(2) After a Conciliation Board has made its report the Minister may direct it to clarify or amplify the report or any part thereof.

Procedure

26. (1) A Conciliation Board shall, immediately after appointment of the Chairman thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

(2) Except as otherwise provided in this Act, a Conciliation Board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

(3) The Chairman may, after consultation with the other members of the Board, fix the time and place of sittings of a Conciliation Board and shall notify the parties as to the time and place so fixed.

(4) The Chairman and one other member of a Conciliation Board shall be a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

(5) The decision of a majority of the members present at a sitting of a Conciliation Board shall be the decision of the Conciliation Board, and in the event that the votes are equal the Chairman shall have a casting vote.

(6) The Chairman shall forward to the Minister a detailed certified statement of the sittings of the Board, and of the members and witnesses present at each sitting.

(7) The report of the majority of its members shall be the report of the Conciliation Board.

(8) In any proceedings before the Conciliation Board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a Conciliation Board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

27. (1) A Conciliation Board shall have the power of summoning before it any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the Conciliation Board deems requisite to the full investigation and consideration of the matters referred to it, but the information so obtained from such documents shall not, except as the Conciliation Board deems expedient, be made public.

(2) A Conciliation Board shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

(3) Any member of a Conciliation Board may administer an oath, and the Conciliation Board may receive and accept such evidence on oath, affidavit or otherwise as it in its discretion may deem fit and proper whether admissible in evidence in a court of law or not.

28. A Conciliation Board or a member of a Conciliation Board or any person who has been authorized for such purpose in writing by a Conciliation Board may, without any other warrant than this section, at any time, enter a building, ship, vessel, factory, workshop, place, or premises of any kind wherein work is being or has been done or commenced by employees or in which an employer carries on business or any matter or thing is taking place or has taken place, concerning the matters referred to the Conciliation Board, and may inspect and view any work, material, machinery, appliance or article therein, and interrogate any person in or upon any such place, matter or thing hereinbefore mentioned; and no person shall hinder or obstruct the Board or any person authorized as aforesaid in the exercise of a power conferred by this section or refuse to answer an interrogation made as aforesaid.

Report

29. A Conciliation Board, shall, within fourteen days after the appointment of the Chairman of the Board, or within such longer period as may be agreed upon by the parties, or as may from time to time be allowed by the Minister, report its findings and recommendations to the Minister.

30. On receipt of the report of a Conciliation Board the Minister shall forthwith cause a copy thereof to be sent to the parties and he may cause the report to be published in such manner as he sees fit.

31. No report of a Conciliation Board, and no testimony or proceedings before a Conciliation Board shall be receivable in evidence in any court in Canada except in the case of a prosecution for perjury.

32. Failure of a Conciliation Officer or Conciliation Board to report to the Minister within the time provided in this Act shall not invalidate the proceedings of the Conciliation Officer or Conciliation Board or terminate the authority of the Conciliation Board under this Act.

ARBITRATION

33. Where a Conciliation Board has been appointed and at any time before or after it has made its report, if the parties so agree in writing, the recommendation of the Conciliation Board shall be binding on the parties and they shall give effect thereto.

x What actions on enforcement

CONCILIATION BOARDS—GENERAL

34. (1) Unless the Governor in Council otherwise orders, the following remuneration shall be paid:

(*a*) to a member of a Conciliation Board other than the chairman, an allowance of five dollars for each day, not more than three, during which he is engaged in considering the recommendation of a person to be the third member of the Board; and

(*b*) to a member of the Board an allowance at the rate of fifty dollars for each day he is present when the Board sits and for each day necessarily spent travelling from his place of residence to a meeting of the Board and returning therefrom and for each day not exceeding two days he is engaged in completion of the Board's report.

(2) Each member of a Conciliation Board is entitled to his actual and reasonable travelling and living expenses for each day that he is absent from his place of residence, in connection with the work of the Board.

35. Every person who is summoned by the Board or a Conciliation Board or Industrial Inquiry Commission and duly attends as a witness shall be entitled to an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits in the superior court in the province where the inquiry is being conducted, and in any event, he shall be entitled to not less than four dollars for each day he so attends.

36. The Minister may provide a Conciliation Board, or Industrial Inquiry Commission with a secretary, stenographer, and such clerical or other assistance as to the Minister seems necessary for the performance of its duties and fix their remuneration.

INDUSTRIAL INQUIRY COMMISSION

37. (1) The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he thinks fit regarding industrial matters, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

(2) For any of the purposes of subsection one of this section or where in any industry a dispute or difference between employers and employees exists or is apprenhended, the Minister may refer the matters involved to a Commission, to be designated as an Industrial Inquiry Commission, for investigation thereof, as the Minister deems expedient, and for report thereon; and shall furnish the Commission with a statement of the matters concerning which such inquiry is to be made, and, in the case of any inquiry involving any particular persons or parties, shall advise such persons or parties of such appointment.

(3) Immediately following its appointment an Industrial Inquiry Commission shall inquire into the matters referred to it by the Minister and endeavour to carry out its terms of reference; and in the case of a dispute or difference in which a settlement has not been effected in the meantime the report of the result of its inquiries, including its recommendations, shall be made to the Minister within fourteen days of its appointment or such extension thereof as the Minister may from time to time grant.

(4) Upon receipt of a report of an Industrial Inquiry Commission relating to any dispute or difference between employers and employees the Minister shall furnish a copy to each of the parties affected and shall publish the same in such manner as he sees fit.

(5) An Industrial Inquiry Commission shall consist of one or more members appointed by the Minister and the provisions of sections twenty-seven and twenty-eight of this Act shall apply, mutatis mutandis, as though enacted in respect of that Commission and the Commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations.

(6) The Chairman and members of an Industrial Inquiry Commission shall be paid remuneration and expenses at the same rate as payable to members of a Conciliation Board under this Act.

ADMINISTRATION

Minister

38. The Minister of Labour shall be charged with the administration of this Act and shall exercise the powers and perform the duties imposed on the Minister by this Act.

Canada Labour Relations Board

39. (1) There shall be a labour relations board to administer this Act which shall be known as the Canada Labour Relations Board and shall consist of a chairman, and such number of other members as the Governor in Council may determine, not exceeding eight consisting of an equal number of members representative of employees and employers.

(2) The members of the Board shall be appointed by the Governor in Council and shall hold office during pleasure.

(3) In addition to the chairman and members of the Board, the Governor in Council may appoint a person as vice-chairman to act in the place of the chairman during his absence for any reason, and the vice-chairman shall be a member of the Board while so acting.

(4) The head office of the Board shall be in Ottawa.

(5) The Board shall have the powers of commissioners under Part I of the Inquiries Act.

(6) The Board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it may deem fit and proper whether admissible as evidence in a court of law or not.

(7) The members shall be paid such remuneration as may be fixed by the Governor in Council, and such actual and reasonable expenses as may be incurred by them in the discharge of their duties.

40. The Board may by order authorize any person or board to exercise or perform all or any of its powers or duties under this Act relating to any particular matter and a person or board so authorized shall with respect to such matter have the powers of commissioners under Part I of the Inquiries Act.

41. The Board may, with the approval of the Governor in Council, make rules governing its procedure and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.

POWERS OF BOARD

42. (1) If in any proceeding under this Act a question arises as to whether

(*a*) a person is an employer or employee;

(b) an organization or association is an employers' organization or a trade union;

(*c*) in any case a collective agreement has been entered into and the terms thereof and the persons who are parties to the collective agreement or on whose behalf the collective agreement was entered into;

(*d*) a collective agreement is by its terms in full force and effect;

(*e*) any party to collective bargaining has failed or refused to bargain collectively in good faith;

(*f*) a group of employees is a unit appropriate for collective bargaining;

(*g*) an employee belongs to a craft or group exercising technical skills;

(*h*) a person is a member in good standing of a trade union; or

(*i*) a violation has been committed of any of its provisions; the Board shall decide the question and its decision shall be final and conclusive for all the purposes of this Act.

(2) In addition to any other powers conferred by this Act, the Board shall have power to make orders:

(*a*) requiring an employer to bargain collectively;

(*b*) requiring any person to refrain from violations of this Act or from engaging in any unfair labour practice;

(*c*) requiring an employer to reinstate any employee discharged contrary to the provisions of this Act and to pay such employee the monetary loss suffered by reason of such discharge;

(*d*) requiring an employer to disestablish an employer-dominated organization;

(*e*) rescinding or amending any order or decision of the Board upon receipt of evidence to the effect that such order or decision was obtained by fraudulent means.

(3) Upon application by a trade union, the Board may order or establish that a collective agreement made or being negotiated or proposed to be entered into, renewed or amended, shall include or be deemed to include such provisions of union security, as the Board shall decide to be appropriate; Provided that no provision shall be ordered or established by the Board, which, in the opinion of the applicant, is less satisfactory than any provision on the same or related subject contained in any collective agreement relating to any of the employees in the bargaining unit, in force, or which expired within six months prior to such collective bargainng.

43. (1) A decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable so to do, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.

(2) There shall be no appeal from an order of decision of the Board under this Act, and the Board shall have full power to determine any question of fact necessary to its jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or other proceeding whatsoever.

44. Upon the request of a trade union which represents a majority of the employees who constitute a bargaining unit of his employees, and upon receiving from any employee in such unit a request in writing to do so, an employer shall deduct and pay in regular periodic payments out of the wages due each such employee, to the person designated by the trade union to receive the same, the union dues of each such employee until any collective agreement then in force is terminated.

ENFORCEMENT

45. (1) Any employer or trade union may apply to the Board for an order that any person, employee, trade union, employer or employers' organization has violated a provision of this Act or has done some thing which is prohibited by this Act.

(2) Upon receipt of such an application, the Board shall by notice in writing, direct the person making the complaint and the person against whom the complaint has been made to appear before it and shall hear and receive such evidence as may be presented to it.

(3) After hearing the evidence, as aforesaid, the Board may, if it is of the opinion that there has been a violation of any of the provisions of this Act, issue an order indicating the precise nature of the violation.

(4) Where an order is made by the Board pursuant to subsection three of this section, the Chief Executive Officer of the Board or anyone acting through or under him, may file such order, duly certified by the Chairman of the Board, in the Police or Magistrate's Court of the jurisdiction in which the violation referred to in the said order took place, and the Magistrate of the said Court shall, by summons issued in the usual manner, thereupon direct the person, employee, trade union, employer or employers' organization against whom the order was made to appear before him and shall impose upon such person, employee, trade union, employer or employers' organization the punishment provided in this Act for the violation specified in the order of the Board. For the purpose of any proceedings taken under this subsection the fact of the violation shall be sufficiently proved in any court of law by the filing of the said order of the Board certified by the Chairman of the Board.

(5) If, in the opinion of a Magistrate, the order of the Board is ambiguous or its meaning not clear in any particular, he may refer to the Board any question or matter for clarification by the said Board.

(6) The Board may, if it wishes, appeal from any decision or judgment of a Police Magistrate.

46. Every employer and every person acting on behalf of an employer who decreases a wage rate or alters any term or condition of employment contrary to section eleven or section twelve of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding

(*a*) ten dollars in respect of each employee whose wage rate was so decreased or whose term or condition of employment was so altered, or

(*b*) two hundred and fifty dollars,

whichever is the greater, for each day during which such decrease or alteration continues contrary to this Act.

47. (1) Every person, trade union and employers' organization who violates section four or section five is guilty of an offence and liable upon summary conviction,

(*a*) if an individual, to a fine not exceeding two hundred dollars; or

(*b*) if a corporation or employers' organization, to a fine not exceeding five hundred dollars; or

(*c*) if a trade union, to a fine not exceeding two hundred and fifty dollars.

(2) Where an employer is convicted for violation of this Act by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, the convicting court, judge or magistrate in addition to any other penalty authorized by this Act shall order the employer to pay to the employee such sum as in the opinion of the court, judge or magistrate, as the case may be, is equivalent to the wages, salary or other remuneration that would have accrued to the employee up to the date of conviction but for such suspension, transfer, lay-off or discharge, and shall further order the employer to reinstate the employee in the position which he would have but for such suspension, transfer, lay-off or discharge.

(3) Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any lawful order of the Board is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars for each day during which such refusal or failure continues.

48. (1) Every employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding two hundred and fifty dollars for each day that the lockout exists.

(2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars.

(3) Every trade union that declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred and fifty dollars for each day that the strike exists.

(4) Every officer or representative of a trade union who declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding three hundred dollars.

49. Every person, trade union or employers' organization who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by him is guilty of an offence and, except where some other penalty is by this Act provided for the act, refusal or neglect is liable on summary conviction,

(*a*) if an individual, to a fine not exceeding one hundred dollars; or

(*b*) if a corporation or employers' organization, to a fine not exceeding five hundred dollars;

(*c*) if a trade union, to a fine not exceeding two hundred and fifty dollars.

50. (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section eleven of this Act or with paragraph (*a*) of section twelve of this Act, he may refer the same to the Board.

(2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection one of this section, the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the Board are necessary to secure compliance with paragraph (*a*) of section eleven or paragraph (*a*) of section twelve of this Act.

(3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

51. (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Board and the Board, upon receipt of such complaint, may require an Industrial Inquiry Commission appointed by it pursuant to section thirty-seven of this Act or a Conciliation Officer to investigate and make a report to it in respect of the alleged violation.

(2) Upon receipt of a report pursuant to subsection one of this section, the Board shall furnish a copy to each of the parties affected and if the Board considers it desirable to do so, shall publish the same in such manner as it sees fit.

(3) The Board shall take into account any report made pursuant to this section in granting or refusing to grant consent to prosecute under section fifty-three of this Act.

52. Every person is guilty of an indictable offence and liable to a fine not exceeding five thousand dollars, and not less than five hundred dollars or to imprisonment for a term not exceeding five years and not less than six months, or to both such fine and such imprisonment, who corruptly

(*a*) makes any offer, proposal, gift, loan or promise, or gives or offers any compensation or consideration, directly or indirectly, to a person concerned in the administration or enforcement of this Act or having or expected to have any duties to perform thereunder, for the purpose of influencing such person in the performance of his duties; or

(*b*) being a person concerned in the administration or enforcement of this Act or having or expected to have any duties to perform thereunder, accepts or agrees to accept or allows to be accepted by any person under his control or for his benefit any such offer, proposal, gift, loan, promise, compensation or consideration.

53. (1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

(2) A consent by the Board indicating that it has consented to the prosecution of a person named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, shall be a sufficient consent for the purposes of this section to the prosecution of the said person for any offence under this Act committed by or commencing on the said date.

54. In addition to any other penalties imposed or remedies provided by this Act, the Governor in Council, upon the application of the Board and upon being satisfied that any employer has wilfully disregarded or disobeyed any order made by the Board, may appoint a controller to take possession of any business, plant or premises of such employer as a going concern and operate the same on behalf of His Majesty until such time as the Governor in Council is satisfied that upon the return of such business, plant or premises to the employer the order of the Board will be obeyed.

X Part I

APPLICATION

55. This Act shall apply in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business which is within the legislative authority of the Parliament of Canada, including, but not so as to restrict the generality of the foregoing,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) works, undertakings or business of any company or corporation incorporated by or under an Act of the Parliament of Canada;

(*i*) such works, undertakings, or businesses as are done, operated or performed by or on behalf of or by or for an agency of His Majesty in right of Canada;

(*j*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province; and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

56. (1) Where the Governor in Council deems it necessary for the national security of Canada or for the settlement or prevention of existing or apprehended disputes or differences between employers and employees, of such dimensions or nature that they imperil the welfare of, or concern or would imperil the welfare of, or concern, the nation as a whole, the Governor in Council may, by proclamation, declare that the provisions of this Act in whole or in part apply to employees and employers in any work, undertaking or business in addition to those mentioned in section fifty-five of this Act, and, upon such proclamation being made, this Act or the provisions thereof specified in the proclamation shall apply in respect of the said employees and employers.

(2) The issue of a proclamation under subsection one of this section shall be conclusive evidence that it is necessary that the provisions of this Act or provisions thereof specified in the proclamation apply to employees and employers in any work, undertaking or business therein specified, for the national security of Canada or for the removal or prevention of real or apprehended disputes or differences of such dimensions or nature that they imperil the welfare of, or concern, or would imperil the welfare of or concern, the nation as a whole, and of the continuance of the necessity of such application until the issue of a further proclamation under the authority of the Governor in Council that the necessity no longer exists.

57. Notwithstanding anything contained in any other Act, no application for mandamus or injunction may be made to any Court in the Yukon or Northwest Territories in connection with any dispute or difference between an employer or employers and his or their employees except by or with the consent of the Board, evidenced by a certificate, signed by or on behalf of the Chairman of the Board.

Arrangements With Provinces

58. (1) Where legislation enacted by the legislature of a province and this Act are substantially uniform, the Minister of Labour may, on behalf of the Government of Canada, with the approval of the Governor in Council, enter into an agreement with the government of the province to provide for the administration by officers and employees of Canada of the provincial legislation.

(2) An agreement made pursuant to subsection one of this section may provide

(*a*) for the administration by Canada of the said legislation of the province with respect to any particular undertaking or business;

(*b*) that the person who is from time to time the Minister may on behalf of the province exercise or perform powers or duties conferred under the legislation of the province referred to in subsection one of this section;

(*c*) that the persons who from time to time are members of the Board, or other officers and employees of Caanda, may exercise or perform powers or duties conferred or imposed under the said legislation of the province, either by way of appeal or otherwise; and

(*d*) for payment by the government of the province to the Government of Canada for expenses incurred by the said Government of Canada in the administration of the said legislation of the province.

59. Where the legislature of a province has enacted legislation substantially uniform with this Act and

(*a*) an agreement has been entered into between the Government of Canada and the government of such province; or

(*b*) such legislation so provides and the Governor in Council so orders,

the person who is from time to time the Minister and the persons who, from time to time, are members of the Board, and other officers or employees of Canada, may exercise the powers and perform the duties specified in such legislation or agreement.

GENERAL

60. No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

61. For the purpose of this Act, an application to the Board or any notice or any collective agreement may be signed, if it is made, given or entered into

(*a*) by an employer who is an individual, by the employer himself;

(*b*) where by several individuals, who are jointly employers, by a majority of the said individuals;

(*c*) by a corporation, by one of its authorized managers or by one or more of the principal executive officers;

(*d*) by a trade union or employers' organization, by the president and secretary or by any two officers thereof or by any person authorized for such purpose by resolution duly passed at a meeting thereof.

62. (1) For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through His Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) A document may be served or delivered for the purposes of this Act or any proceedings thereunder in the manner prescribed by regulation.

63. (1) Any document purporting to contain, or to be a copy of any rule, decision or order of the Board, and purporting to be signed by a member of the Board, or the chief executive officer thereof, shall be accepted by any court as evidence of the regulation, rule, direction, order or other matter therein contained of which it purports to be a copy.

(2) A certificate purporting to be signed by the Minister or his Deputy or by an official in his department stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given, shall be prima facie evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same.

64. (1) Each of the parties to a collective agreement shall forthwith upon its execution file one copy with the Minister.

(2) The Board may direct any trade union or employers' organization which is a party to any application for certification, or is a party to an existing collective agreement, to file with the Board

(*a*) a statutory declaration signed by its president or secretary stating the names and addresses of its officers; and

(*b*) a copy of its constitution and by-laws;
and the trade union or employers' organization shall comply with the direction within the time prescribed by the Board.

REGULATIONS

65. (1) The Governor in Council may make regulations
(*a*) as to the time within which anything authorized by this Act shall be done;
(*b*) generally for carrying any of the purposes or provisions of this Act into effect.

(2) Regulations made under this section shall go into force on the day of the publication thereof in the *Canada Gazette*, and they shall be laid before Parliament within fifteen days after such publication, or, if Parliament is not then in session, within fifteen days after the opening of the next session thereof.

ANNUAL REPORT

66. An annual report with respect to the matters transacted by him under the Act shall be laid by the Minister before Parliament within the first fifteen days of each session thereof.

GENERAL

67. There may be employed in the manner authorized by law, such officers, clerks and employees as are necessary for the administration of this Act, including a Chief Executive Officer of the Board.

68. The expenses of the administration of this Act shall be paid out of moneys provided by Parliament.

69. All fines and penalties imposed under this Act shall be payable to the Receiver General of Canada and belong to His Majesty in right of Canada for the public uses of Canada.

CONTINUATION

70. (1) The Canada Labour Relations Board established by this Act shall be the successor to the Wartime Labour Relations Board established by order of His Excellency the Governor General in Council of the seventeenth day of February, one thousand nine hundred and forty-four, as amended from time to time, and the said order, as amended, shall be deemed to have been revoked on the coming into force of this Act, and all acts and things done and matters and proceedings commenced by the said Wartime Labour Relations Board under the said order, as amended, shall, in so far as the said matters and proceedings are within the authority of the Canada Labour Relations Board established by this Act, be continued by the Canada Labour Relations Board under this Act.

(2) Every regulation, order, decision or determination or any other act or thing, made, given or done by or on behalf of the Wartime Labour Relations Board or by the Minister or by any other person under the order of His Excellency the Governor General in Council mentioned in subsection one of this section, shall, in so far as the said regulation, order, decision, determination, act or thing might be done under this Act, be deemed to have been made, given or done by the Canada Labour Relations Board or the Minister or such other person under this Act.

(3) Where a person was certified, before the commencement of this Act, under the order of His Excellency the Governor General in Council mentioned in subsection one of this section, as a bargaining agent pursuant to an application by a trade union (including therein an employees' organization as defined in the said order) the said trade union shall be deemed to have been certified as

a bargaining agent for the purposes of this Act for the employees on behalf of whom the said person was so certified so far as this Act applies to the said employees, and where in any other case a person was so certified as a bargaining agent such person shall be deemed to be a bargaining agent for the purposes of this Act for the employees on behalf of whom he was so certified so far as this Act applies to the said employees.

REPEAL AND COMMENCEMENT

71. The *Industrial Disputes Investigation Act* is repealed.

72. This Act shall come into force on a day to be fixed by proclamation.

A NATIONAL LABOUR CODE PROPOSED BY THE CANADIAN CONGRESS OF LABOUR FEBRUARY, 1948 EXPLANATORY MEMORANDUM

Last session, the Canadian Congress of Labour proposed a large number of amendments to the government's bill on this subject. Neither the bill nor the amendments became law, as the session ended before they could be further considered. It is now understood that the government is about to introduce a new bill, substantially the same as last year's. The Congress has therefore decided to draft its own proposals, for the consideration of the government, members of parliament and the public.

The Congress has called its bill "A National Labour Code." It should be emphasized, however, that its coverage, though much wider than that of last year's government bill, is still not as wide as the Congress would like. But anything more would probably require an amendment to the British North America Act. This bill is probably as near as we can get to a genuine national code under the Constitution as it stands.

The main features of the bill are:

(1) It absolutely *outlaws "company unions"* (sections 2 (1) (n) and (u), 4 (1) (a), (b) and (f), and 9 (1) and (2). *The Government's 1947 bill did not effectively do this.*

(2) It definies, and *explicitly provides for, the check-off and union security* (sections 2 (1) (d) and (v), 42 (3), and 44. *This is new.* Employers must grant the check-off upon request by a union representing a majority of the employees and upon request of the individual employee concerned. If a union asks for it, the Labour Relations Board may order the inclusion in a collective agreement of such form of union security (closed shop, union shop, maintenance of membership, Rand formula, etc.) as it considers appropriate, but may not order anything which the union considers less favourable than what it has had in any existing agreement or any agreement which has expired in the preceding six months.

(3) If the Labour Relations Board is satisfied that a union is a genuine union and has a majority, *it must certify the union, automatically. Votes* anr held *only* if the Board *is in doubt about* whether the union really has a majority (section 8 (2) and (3). *This also is new.*

(4) If a vote is ordered, and the union wins *a majority of those voting,* in most cases *certification follows automatically.* There is only *one exception. If a union has a collective agreement,* then *no other union* can apply for certification for the same unit or any part of it *until ten months after the agreement comes into force.* When the ten months have passed, another union may apply, but it must satisfy the Board that *at least fifty per cent* of the employees are members or have within the preceding six months authorized the applicant to

bargain on their behalf. A vote will then follow, but the applicant union will be certified only if it gets a *majority of those eligible to vote.* (Sections 6 (5) and 8 (4) and (5)). The object of these provisions is to make it easy for employees to bargain collectively but to discourage irresponsible "raiding" and avoid unnecessary votes, which are a nuisance to the employer and the employees and costly to the public.

(5) The bill *protects unions against court actions of any kind* except as expressly provided by the bill itself. *This is new.* Like the Ontario Rights of Labour Act and the Saskatchewan Trade Union Act, it provides that trade unions and their acts shall not be deemed unlawful merely because they are deemed by common law to be in restraint of trade; that any act done by two or more union members in contemplation of furtherance of a trade dispute shall not be actionable unless it would be actionable if done without any agreement or combination; that no union shall be made a party to any court action unless it might be so made irrespective of this bill; and that a collective agreement shall not be the subject of any court action unless it might be the subject of such action irrespective of this bill (section 3 (1) (b) - (e)).

(6) The bill *lists, and carefully and comprehensively defiines nine unfair labour practices by employers* (section 4 (1)). The government's 1947 bill had four. These attempts to set up company unions, interference in the choice of a bargaining agent, failure or refusal to bargain collectively in good faith, the use of spies, and threats to shut down or move a plant during a trade dispute (the famous "Mohawk Valley formula"). *These last three are wholly new.*

(7) *The bill gives the Labour Relations Board very wide powers.* The Board can order an employer to bargain collectively; require any person to refrain from violations of the Act or any unfair labour practice; order reinstatement of any employee discharged contrary to the Act, with back pay; disestablish a company union; decide when there has been a violation of the Act (section 42). The Board's decisions are *final and without appeal,* and as in Ontario, and Saskatchewan, *not reviewable by any court by any proceeding whatsoever* (section 43.) *All this is new.* This is to protect the Board, unions, employers and the public against interminable and costly legal proceedings, and against virtual nullification of the Act by judges with little or no acquaintance with industrial relations. Delay may be fatal to good industrial relations, and "the law's delay" is proverbial.

(8) The bill provides *a simple, quick and nearly automatic method of enforcement,* instead of the complicated, slow, doubtful and generally ineffective method provided by all existing Canadian legislation except the Saskatchewan Act. The *Board* decides whether there has been a violation of the Act; the *Board,* not the Minister, decides whether or not to prosecute; and the *function of the police court is simply to impose the fines specified in the Act,* and where an employee has been discharged, laid off, suspended or transferred contrary to the Act, to order his *reinstatement,* with back pay, in the position *he would have had* (that is, *allowing for possible promotion*) but for such discharge, etc. (sections 45 (4) and 47 (2)). In addition, if the Board and the government are satisfied that an employer has *wilfully disregarded or disobeyed an order* of the Board, the *government may put a controller in charge of the business until the employer complies* (section 54). *This is all new.*

(9) The elaborate and complex *strikes and lockouts* sections of the Government's 1947 bill are replaced by two simple sections (18 & 19). The first prohibits strikes and lockouts and strike votes while an application for certification is before the Board. The second provides that, where a union is entitled to give an employer notice to bargain for an agreement or a renewal or revision of an agreement, there shall be no strikes or lockouts until the parties have bargained collectively and failed to reach agreement and *either* a Conciliation

Board has been appointed and *seven days* have passed since it reported, *or* either party has asked for a Conciliation Board and *seven days* have passed and the Minister has taken no steps to appoint a Board or has notified the party making the request that he has decided not to appoint a Board. This is similar to section 21 of the Government's 1947 bill, but *cuts the waiting period in half. (The time for giving notice to bargain is also cut in half* (sections 11 (*a*) and 12 (*a*).) The Congress bill also *prohibits* the establishment of a Conciliation Board where the Labour Relations Board has found that *either party has failed or refused to bargain collectively in good faith* (section 14), and provides that *employees and unions* shall be *exempt from the no strike provisions* where the Labour Relations Board has found that the employer has failed or refused to bargain collectively (section 19, proviso).

Section 22 of the Government's 1947 bill, dealing with strikes during the life of an agreement, disappears. So does section 23, which provides that where a Conciliation Board has been appointed to deal with a dispute "otherwise than during the term of an agreement or in the course of collective bargaining," strikes and lockouts are prohibited till fourteen days after the Board's report. So does section 24, prohibiting strikes by uncertified unions.

(10) The bill covers *every industry within the jurisdiction of the Dominion,* and explicity includes *business with Dominion charters, all Crown companies, and similar bodies, and the Dominion civil service* (sections 2 (1) (*k*) and 55). *All this is new.* It also provides that the Governor in Council may, by proclamation, *bring any other industry* under the Act, in whole or in part, where the Government thinks it necessary for the *national security,* or for the settlement of disputes *"of such dimensions or nature that they imperil the welfare of, or concern, the nation as a whole"* (section 56). *This is entirely new, and vitally important.* It would allow the Dominion to intervene in disputes like the packing-house strike of last year, or a nation-wide steel strike like that of 1946, instead of having to stand idly by, a helpless spectator, while various provinces, with widely varying laws, tried to deal with nation-wide employers and nation-wide unions. The bill also provides for co-operative arrangements with the provinces, along the same lines as the Government's 1947 bill (sections 58-59).

(11) *Injunctions* generally fall within provincial jurisdiction, and therefore cannot be dealt with in a Dominion bill. The only exception is the Yukon and the Northwest Territories, where the Dominion's authority is complete. The bill therefore provides that in the Yukon and the N.W.T., *no mandamus or injunction shall be applied for in any trade dispute except with the consent of the Labour Relations Board* (section 57). This section, which does not appear in any other legislation in Canada, should serve as a model for provincial legislation.

The chief differences between the Congress bill and the Government's 1947 bill, apart from those already noted, are:

(1) The *disappearance* of the Government bill's *section 11,* which allowed the Labour Relations Board to *revoke certification when it thought the union no longer represented a majority of the employees.* The Congress denounced this as an invitation to unscrupulous employers to defeat the whole purpose of the legislation.

(2) *The disappearance of every provision making collective agreements binding in law.* These provisions had opened up the possibility of unions being involved in endless litigation, with the lawyers virtually taking over industrial relations. If these provisions had remained, even the protection provided by the Congress bill's section 3 (1) (*d*) and (*e*) would not have been much use.

(3) *Provision for the establishment of grievance procedure immediately upon certification* (section 17 of the Congress bill). This would give the union certain rights, and the employees certain protection, even if the employer

deliberately spun out negotiations. The existence of this provision would remove some of the temptation to employers to try this kind of thing.

(4) The *disappearance* of the Government bill's section 9 (3) (*a*), giving *any individual employer a veto on certification of a union for employees of more than one employer.*

(5) The *disappearance* of the Government bill's sections 54 and 67 (1) (*b*), which *empowered the Governor in Council to exclude any Crown companies, or any employer or employee or class of employers or employees from the operation of the Act.*

(6) *Penalties:* The Congress bill, besides *greatly restricting the number and scope of the offences for which unions can be prosecuted, also decreases the fines which can be levied on unions* (sections 47 (1) (*c*) and 49 (*c*)).

(7) The *disappearance* of the Government bill's section 26, providing for *individual presentation of grievances. This would have undermined the whole structure of collective bargaining.*"

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

THURSDAY, APRIL 29, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

11732—1

MINUTES OF PROCEEDINGS

THURSDAY, 29th April, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Cote (*Verdun*), Croll, Dickey, Gauthier (*Nipissing*), Gillis, Gingues, Hamel, Johnston, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Merritt, Mitchell, Sinclair (*Vancouver North*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman read a letter dated 27th April from Mr. M. Lalonde, M.P., the former Chairman, conveying his sincere appreciation for the motion passed by the Committee on the 14th instant.

Copies of the following were distributed to Members present:—

(i) Memorandum, dated 4th March, 1948, presented to the Dominion Government by the Trades and Labor Congress of Canada.

(ii) Report of the proceedings of the sixty-second Annual Convention of the Trades and Labor Congress of Canada.

(iii) Letter dated 26th April, 1948, addressed to the Chairman, Committee on Industrial Relations, enclosing a copy of the Report of the Commission recently appointed to inquire into a dispute between Colonial Steamships Limited and the Canadian Seamen's Union.

(iv) A national Labour Code, February, 1948, with an explanatory memorandum proposed by the Canadian Congress of Labour.

(v) A folio of labour legislation prepared by the Department of Labour, Ottawa, enclosing:—

Canada:

(1) Industrial Disputes Investigation Act 1907.
(2) P.C. 4020 of June, 1941.
(3) Wartime Labour Relations Regulations.

Quebec:

(4) Labour Relations Act 1941 (with amendments to 1946).
(5) Public Services Employees Disputes Act 1941 (with amendments to 1946).

Nova Scotia:

(6) Trade Union Act 1947.

New Brunswick:

(7) Labour Relations Act 1945.

Saskatchewan:

(8) Trade Union Act 1944 (with amendments to 1947).

Alberta:

(9) Labour Act 1947.

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British Columbia:

(10) Industrial Conciliation and Arbitration Act 1947.

Ontario:

(11) Labour Relations Board Acts, 1944 and 1947.

United States:

(12) Railway Labor Act 1926 (with amendments to 1940).
(13) War Labor Disputes Act 1943.
(14) Labor-Management Relations Act 1947.

The Chairman read a telegram that was sent to the representatives of the following organizations informing them that written representations on Bill No. 195 should be received by the Committee not later than Thursday, 6th May:

> At a meeting held 27th April the Standing Committee on Industrial Relations directed that you be requested to have any supplementary representations your organization may wish to make on Bill No. 195 in the hands of the committee before Thursday, May 6, 1948 Stop The Chairman, Mr. P. E. Coté, wrote in this connection on the 23rd April last.
>
> Chairman,
> Legislative Committee of the
> Railway Transportation Brotherhoods.
>
> General Manager,
> Canadian Construction Association.
>
> General Secretary,
> Canadian Manufacturers Association.
>
> Secretary,
> Canadian Chamber of Commerce.
>
> President,
> La Confederation des Travailleurs
> Catholiques du Canada, Inc.
>
> President,
> Canadian Congress of Labour.
>
> President,
> Trades and Labour Congress of Canada.
>
> General Secretary,
> Railway Association of Canada.

In reply to a letter dated 23rd April, sent by the Chairman requesting written representations on Bill No. 195, letters from the following were read:

(*a*) Dated 26th April, with enclosure—The Canadian Chamber of Commerce.
(*b*) Dated 27th April—Dominion Joint Legislative Committee, Railway Transportation Brotherhoods.
(*c*) Dated 27th April—Canadian Construction Association.

The Chairman also read communications addressed to the Honourable C. Gibson, Secretary of State:

(*a*) Letter dated 23rd April, 1948, from the Chairman of the Dominion Section of the Canadian Bar Association on Industrial Relations and Labour Law expressing his views on Clause 32, Sub-Clause 8 of Bill No. 195.
(*b*) Telegram dated 27th April from the Secretary-Treasurer, Canadian Seamens Union stressing the need of a strong labour bill.

The Chairman stated that a number of communications had been received from engineering organizations and other interested individuals referring to Clause 2 (1) (*i*) of Bill No. 195. A suggestion by Mr. Croll that these be referred to the Steering Committee for tabulation was concurred in.

Clause by clause consideration was commenced of Bill No. 195.

Clause 1.

Stand.

Clause 2.

(1) (*a*), (*b*) and (*c*) carried.

(*d*) Mr. Gillis moved that paragraph (*d*) be deleted and the following be substituted.

"collective agreement" means an agreement in writing between an employer or a group of employers, or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees, with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security;

Debate followed.

And the question being put, it was resolved in the negative.

Mr. Croll moved that (*d*) be amended by adding to the last line the following words:

"or other working conditions."

And the question being put, it was resolved in the negative.

On motion of Mr. Adamson,

Resolved,—That paragraph (*d*) be amended to read as follows:

(*d*) "Collective agreement" means an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employees *and including provisions with reference to rates of pay, and hours of work.*

(*d*) As amended, carried.

(*e*), (*f*) and (*g*) carried.

(*h*) Mr. Gillis moved that the word "industrial" in the first line be deleted and the word "labour" be substituted.

And the question being put, it was resolved in the negative.

(*h*) Carried.

(*i*) Stood over.

(*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*) carried.

On motion of Mr. Gillis,

Resolved,—That paragraph (*r*) be amended to read as follows:—

(*r*) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees *but shall not include an employer-dominated organization;* and

(*r*) As amended, carried.

(*s*) (2) and (3) carried.

Clause 3
Carried.

Clause 4
Carried.

Clause 5
Carried.

Clause 6
Carried.

Clause 7
Carried.

Clause 8
Carried.

Clause 9
(1) Carried.
(2) Stood over.

On motion of Mr. Adamson,

Resolved—That the hours for future meetings of the Committee be 10.30 a.m. to 12.30 p.m.

The Committee adjourned at 12.55 o'clock, p.m. to meet again on Tuesday, 4th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

April 29, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: Order please. As you will notice, gentlemen, the clerk is distributing now copies of a memorandum dated March 4, 1948 presented to the dominion government by the Trades and Labour Congress, a report of the sixty-second annual convention of the Trades and Labour Congress; a report of the commission appointed to inquire into the dispute between the Colonial Steamship Limited and the Canadian Seamen's Union. There is also the National Labour Code with explanatory notes produced by the Canadian Congress of Labour.

Now I have a letter here from Mr. Maurice Lalonde, M.P., addressed to the chairman:—

April 27, 1948.

Mr. Paul Emile Cote, M.P.,
Chairman,
Industrial Relations Committee,
House of Commons,
Ottawa.

Mr. Chairman,

I beg to acknowledge receipt of your letter of April 9, for which I thank you and I would ask you to convey to your committee my most sincere appreciation for the resolution passed on April 14.

It is my earnest hope that it will be possible for me to again be a member of the committee next year.

Yours sincerely,

MAURICE LALONDE, M.P.

A telegram was sent on April 27, 1948 to the main labour and management organizations in accordance with the decision by the committee. It read as follows:—

At a meeting held 27th April the Standing Committee on Industrial Relations directed that you be requested to have any supplementary representations your organization may wish to make on Bill No. 195 in the hands of the committee before Thursday, May 6, 1948 stop the chairman, Mr. P. E. Cote, wrote in this connection on the 23rd April last.

J. G. DUBROY,
Clerk of the Committee.

I have received a letter from the Canadian Chamber of Commerce, which reads as follows:—

April 26, 1948.

Mr. PAUL E. COTE, M.P.,
Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Canada.
Dear Mr. COTE:

Re: Bill No. 195

In reply to your letter of April 23, please be advised that on April 12 we forwarded to your attention, and to the attention of your committee, copies of a submission with regard to Bill No. 195. For your information I am attaching hereto an additional copy of this brief.

This latest submission varies somewhat in detail from our previous representations as we have now had additional time to give this whole matter consideration. As your committee studies this latest brief of the Executive Committee of the Canadian Chamber of Commerce, questions may arise which you feel require clarification, and we would be only too pleased to make additional representations if desired.

We greatly appreciate your courtesy in advising us that, should there be additional points concerning this bill which might occur to the Executive Committee, we can make additional representations through you. Please be assured that we are most anxious to co-operate with your committee in this connection.

Yours sincerely,

W. J. SHERIDAN,
Assistant Secretary.

I have here another letter from the Dominion Joint Legislative Committee, Railway Transportation Brotherhoods, dated April 27, 1948 which reads as follows:—

April 27, 1948.

Mr. PAUL E. COTE, M.P.,
Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa.
Dear SIR:

Re: Bill 195—An Act to provide for Investigation, Conciliation and Settlement of Industrial Disputes—

This will acknowledge receipt of your letter of the 23rd instant, addressed to Mr. A. J. Kelly, Chairman of the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods, advising that the House of Commons' Standing Committee on Industrial Relations would resume its sittings on April 27 to consider the above bill.

The letter referred to the representations made by the Dominion Joint Legislative Committee before your Standing Committee at the last session on an almost identical bill, and suggested that if we had any additional representations to make on points which we had not already

covered, which would be of assistance to your committee, you would appreciate having same forwarded in order that they might properly be brought to the attention of the committee.

In reply would say that the letter referred to has been considered by this joint committee and we are directed to advise that a review of Bill 195, in comparison with former Bill 338 (the principles of which were endorsed by the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods on July 2, 1947) reveals but few changes which are not of material difference to the extent of warranting further representations by this committee.

Respectfully submitted,

J. B. WARD,
Secretary.

I shall now read a letter from the Canadian Construction Association dated April 27, 1948.

April 27, 1948.

Paul E. COTE, Esq., M.P.,
Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Canada.

Dear Mr. COTE: Re: Bill No. 195, an Act to provide for the investigation, conciliation and settlement of industrial disputes.

Thank you for your letter of April 23 inviting our association to make any additional representations regarding bill 195. As you point out, this bill is almost identical with the one presented to the House of Commons as bill No. 338 last year. Under the circumstances, the representations which we made to your committee under date of June 30, 1947, would apply equally to the present bill.

As we then pointed out, this legislation will not apply to the construction industry except in those provinces which see fit to pass implementary legislation. Our view is that the bill contains basic principles on which sound labour relations can be established. Experience under the legislation after it becomes law may suggest the desirability of revision from time to time.

We favour national uniformity in labour legislation of this kind. As it appears likely that the bill will be implemented by a number of the provinces for the purpose of providing such uniformity, we feel that occasions may arise when employers and employees will wish to be given the opportunity of making representations to such provinces. In such an event, the representations would concern local conditions which would call for amendment or revision in matters of detail without interfering with basic uniformity.

May I thank you on behalf of our association for the opportunity you have afforded us to comment on this legislation.

Respectfully submitted,

CANADIAN CONSTRUCTION ASSOCIATION,

(Sgd.) R. G. JOHNSON,
General Manager.

Mr. CASE: Mr. Chairman, may I interrupt for a moment? I do not think this correspondence is going to be of much use to the present issue, so I wonder if we could not preface it or summarize it and put it on the record, because it is going to take a good deal of time to read it?

The CHAIRMAN: I was going to make that suggestion at this point. I think it would be well to give in extenso the replies of the labour management groups to whom I had written last week. Your suggestion, Mr. Case, would apply in this case. I have a letter which I received from the Hon. Colin Gibson enclosing a one-page brief from Mr. Cecil W. Robinson, chairman of the dominion section of the Canadian Bar Association on industrial relations and labour law and dealing exclusively with section 32(8) of the bill. We could place this on the record.

Hon. Mr. MITCHELL: I think that should be made a part of the record.

Mr. CROLL: It is being made a part of the record.

The CHAIRMAN: I have here a telegram from T. G McManus, secretary-treasurer of the Canadian Seamen's Union, which is very hard to paraphrase.

Mr. TIMMINS: Mr. Chairman, if you are going to read one I think you should read the others, otherwise there is no justice or equity. If you are going to read this one I ask you to read the one which you had before and which I as a lawyer passed over.

The CHAIRMAN: We had in the record last year the case for the legal profession under section 32(8). This brief which I have just referred to is substantially the same as the evidence which we have on the record. That is why I did not insist on having it read at this time. It will be printed in the record in extenso.

THE CANADIAN BAR ASSOCIATION
6 James St., South, Hamilton, Ontario.

April 23, 1948.

The Honourable COLIN GIBSON,
Secretary of State,
Parliament Buildings,
Ottawa, Canada.

Dear SIR:

I am writing you in two capacities, firstly as a member with you of the Law Society of Upper Canada, and secondly in my position as chairman of the Dominion Section of the Canadian Bar Association on Industrial Relations and Labour Law. I am writing you, not in your capacity as Secretary of State, but in your position as a member of the Law Society of Upper Canada.

Bill 195, which has had its second reading in the House, and which is going to the parliamentary committee for consideration, is an Act to provide for the investigation, conciliation and settlement of industrial disputes. Section 32(8) reads as follows, "In any proceedings before the conciliation board no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a conciliation board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings."

I would bespeak your efforts as a member of the cabinet to point out to your fellow members of the cabinet and to the fellow members of

your political party in the House, who are not lawyers, the very dangerous precedent which would be established if this section 32(8) is permitted to stand in the bill as enacted.

If it is enacted, then you and I as members of the Law Society of Upper Canada in good standing, would be refused permission to appear for a client before a conciliation board, while each and every disbarred lawyer would have a perfect right to appear before a conciliation board. It might be much more appropriate to enact section 32(8) in the form where no barrister, solicitor or advocate who has been disbarred from practising shall be entitled to appear before a conciliation board.

There are many other arguments which can be advanced why this section should not stand, but it suffices for me to say that, in my opinion, the right of a Canadian citizen to be represented by legal counsel of his own choice before any court, or before any body performing judicial or quasi-judicial functions, is one of the fundamental bulwarks of our democracy; and that this right should not be infringed upon under any circumstances.

I would, therefore, bespeak your assistance in the matter as fellow members of the Law Society of Upper Canada. I know that both of us have a sincere pride and respect in and for our profession.

Yours sincerely,

(Sgd.) CECIL W. ROBINSON.

Now, this is a new matter. This is a telegram dated April 27, 1948, and is addressed to the chairman, and reads as follows:

Montreal, Que., April 27, 1948.

We wish to refer you to Brockington McNish report dealing—

Hon. Mr. MITCHELL: Mr. Chairman, when we come to that, if it deals with this report all right, but if it does not—

The CHAIRMAN: It does.

Hon. Mr. MITCHELL: It deals with amendments to the bill.

The CHAIRMAN: The last line refers to this bill.

—with violations PC 1003 by certain shipping companies page six we are unanimous in stating our belief that the defiance of the existing law the breach of the existing agreement and the failure to fulfil the promise made by these companies to the government are a serious threat to the recognized practice of labour conciliation etc. Urge your committee recommend teeth in new labour bill to deal with companies who defy law.

T. G. McMANUS, *Secretary-Treasurer,*
Canadian Seamen's Union.

Now, the balance of the correspondence which I have received since last Tuesday concerns the case of the Professional Engineers. I imagine the committee would not be interested in having each of these telegrams and letters read. What would be your pleasure?

Mr. CROLL: File it and record it.

Mr. CASE: I think we could hear a statement as to who wrote them and then have them put in the record. Then, we would have an idea who is appealing.

Mr. CROLL: Is this from the engineers?

The CHAIRMAN: Yes.

Mr. CROLL: May I suggest, with respect, that I have had a telephone call from Mr. Fleming from Toronto to the effect that the engineers have not a brief ready as yet. This correspondence could be held until the brief is ready and it could all be put on the record together.

Mr. GAUTHIER: Yes, keep it all together.

The CHAIRMAN: Is the whole committee agreeable to this suggestion? Agreed.

Hon. Mr. MITCHELL: Perhaps, with regard to these telegrams, to save the time of the committee my department could review them and make a summary of the contents. Perhaps it could be made a part of the record and it would save a great deal of trouble.

The CHAIRMAN: You mean have a short summary made right now?

Hon. Mr. MITCHELL: We could do that.

Mr. TIMMINS: A summary for and against?

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: I see no objection to it from our point of view, but we may run into an objection from the fellow who loses. If a fellow sent in a brief and the pertinent points were left out, he may not think we were quite fair.

Hon. Mr. MITCHELL: These wires are continually coming in. I think both briefs should be printed. I think they should be made a part of the record at the same time, so one does not have to turn back the pages to see what was said. If we are going to take up our time reading hundreds of wires, which may not even be from engineers, we will waste a lot of time.

Mr. MACINNIS: Mr. Chairman, I think it would be better if we left this situation to our steering committee. Then, the steering committee could get whatever help it wants from the department. So far as this committee is concerned, we better leave the tabulation to the steering committee.

Mr. CROLL: Carried.

The CHAIRMAN: Would you change your motion accordingly, Mr. Croll.

Mr. CROLL: Yes, surely.

The CHAIRMAN: Now, gentlemen, before we start the bill, I had prepared, with the valuable assistance of the department, a summary of the Canadian legislation on labour relations, as well as the United States legislation. I would ask the clerk to distribute these documents at this time.

This folder includes labour legislation in Canada, the province of Quebec, Nova Scotia, New Brunswick, Saskatchewan, Alberta, British Columbia, Ontario and the United States. I hope this will be of some assistance to the members. Order, please.

Bill 195. An Act to provide for the investigation, conciliation and settlement of industrial disputes.

PART I.

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires,

(*a*) "Board" means the labour relations board established to administer this Part;

Should clause (*a*) carry?

Carried.

(*b*) "bargaining agent" means a trade union that acts on behalf of employees

(i) in collective bargaining; or

(ii) as a party to a collective agreement with their employer;

Carried.

(*c*) "certified bargaining agent" means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;

Carried.

(*d*) "collective agreement" means an agreement in writing between an employer and an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;

Mr. CROLL: Mr. Chairman, before that is carried I have one observation to make on it. I think the crux of the definition in the present clause is in the last couple of words; rates of pay and hours of work. My suggestion to the committee is that in modern circumstances that is too narrow, because I should think the reading of it would almost limit it to those two things. There are more things than that in a moderate collective binding agreement that become very important. The employer, for instance, may very well take the position that he is limited in fact—although I do not entirely agree that he is—to rates of pay and hours of work. Today the bargaining agreement has to deal with and does deal with such things as vacations with pay; it deals with holidays; it deals with sickness and benefits; and, as a matter of fact, it deals with pensions. That is all part of a collective bargaining agreement, whatever agreement they reach. And I think we ought to make our definition realistic. We know what the conditions are, and there is no use hiding behind it; that is what they bargain about. It may not include everything. We may leave something out, mind you; but we will correct it at a later date. In any event, we ourselves know that there is more to a collective agreement than just rates of pay and hours of work; and some of the provinces have already gone a little further than that in doing it. For instance, in the Saskatchewan Act there is the matter of checkoffs; but that is another matter entirely. They are dealing with union security; which is perhaps another matter on which they often negotiate. So that I think particularly that reference should be broadened to include these things which we know actually and realistically exist.

Mr. JOHNSTON: I agree with that. I think the reference there is too limited and could not possibly be extended to include everything in the collective agreement.

Hon. Mr. MITCHELL: All right, let's read it.

Hon. Mr. MITCHELL:

> "collective agreement" means an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand and a bargaining agent of his employees on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include positions with reference to rates of pay and hours of work;

That covers the water-front, I think.

Mr. JOHNSTON: Yes, that includes all those above mentioned things you have spoken or would be almost confined to these references on rates of pay.

Hon. Mr. MITCHELL: No.

> . . . acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms and conditions of employment . . .

That includes provision with reference to rates of pay and hours of work. I think that covers it.

Mr. JOHNSTON: I think it could be a little more inclusive to make definitely sure that it includes all these things which we have been speaking about, rather than to have it left, to be a debatable point afterwards.

Mr. CROLL: May I answer the Minister's question. To a great extent, what you are doing there, on that particular section, is leaving yourself open to continual wrangling.

That section is almost the same as the American section. Last week the National Labour Board in the United States rendered a decision which said welfare and pension benefits were matters for collective bargaining and that it was inclusive; and that was done after a great number of complaints and hearings. They finally rendered that decision indicating that it was all inclusive. My suggestion is that, if it is all contained, we leave it, and amongst others the following, and we may have left something out. Something else may come up but not limiting it. We would save ourselves a great deal of trouble.

Hon. Mr. MITCHELL: I have had some experience with negotiations as to this and many other things and I think that conditions of work and employment cover anything.

We have seen the evolutionary development of collective agreements. In my young days we were opposed to pension plans, but today I think they are readily understood to be a condition of employment. I would not make it too protective or too restrictive because, if you eliminate everything, you may, in the distant future, leave out something which may develop as a condition of employment. The trade unions and the trade unionists of this country—they know what conditions of employment are. I just leave that thought with you.

Take, for instance, the check-off. That is a condition of employment. The closed shop is a condition of employment and many of these things such as holidays with pay—in my judgment, those are conditions of employment. But we did, in addition to that, want to state specifically hours of labour and rates of pay. That is the generally accepted language.

Take, recently, in your province, Mr. Johnston, where they had a dispute between the miners and employers, the mine operators in Alberta. One of the conditions of the mining industry in Alberta is the welfare fund. Twenty years ago, if you talked about the welfare fund, there was no such a thing. But it has developed into a condition of employment and I think the more you take in that section, the easier it is.

Mr. JOHNSTON: Could we not make another section which would define what we mean by conditions of employment?

The CHAIRMAN: Order, please.

Mr. GILLIS: I agree with Mr. Croll. While the Minister may state that these things have been accepted in the past, that may be quite true, but it seems we are laying down a guide now for employers and employees which is going to be adhered to; and in this clause as it now stands, I think that Mr. Croll's fears are well grounded: that any employer, when negotiating an agreement with his employees can restrict that agreement to hours of labour and rates of pay, if this code is adopted as that section now reads. I think the Minister is not quite correct when he says that this wording is acceptable to organized labour.

The Canadian Congress of Labour in their brief, in Section E, write a clause which is acceptable to them, and it goes on in pretty much the same wording as this one: and it winds up, I think, by saying:

> ....on the other hand, containing terms or conditions of employment of employees, with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security.

Those are definitely in the scheme of things today. They are matters of collective agreement and in almost every industry in Canada during the war, most of our difficulties arose out of that very question, union security and the check-off. The fights were not about hours of labour and working conditions. So I think we would be well-advised, and we would save a lot of time, if we accepted clause (*e*) of the draft labour code of the Canadian Congress of Labour and substituted it for clause (*d*) in the draft bill No. 195. I think most of that wording is absolutely necessary under the present scheme of things.

Mr. SINCLAIR: I would suggest that this clause (*d*) amounts to falling between two stools. If it embraces all conditions of employment, you must leave it at that or go ahead and name them. And, as things stand at present, the third line from the bottom:—

> conditions of employment of employees....

if you put a period there, there would be no doubt and it would be all embracing.

Mr. CROLL: I do not follow you.

Mr. SINCLAIR: Getting down to the last three lines, I suggest that if we place a period here, following the words "conditions of employment of employees", that it would be all embracing, that it would be in general terms. But that if you go on to name things, then you must name all the things you can think of and the result would be that you would be limiting this clause.

I can think of one union in my riding whose immediate trouble is want of a measure of union security, a union shop. They might sit down this summer to work out a collective agreement which would make no mention of hours of work or rates of pay, but under which all attention would be paid to this drive for union security. Yet this clause (*d*) says:—

> ....containing terms or conditions of employment of employees include provisions with reference to rates of pay and hours of work;....

Hon. Mr. MITCHELL: Why not put "and" there?

Mr. SINCLAIR: It has either got to be a general thing or a specific reference; or, as Mr. Croll has suggested, state every conceivable thing.

Mr. CROLL: After the words "hours of work" place the words "or other working conditions." That would seem to me to meet everybody's suggestion. It would not hurt the bill, and it would make it very general.

Mr. SINCLAIR: How does that come in?

Mr. CROLL: "....containing terms or conditions of employment of employees."

Mr. TIMMINS: If you leave the suggestion of the Minister and change the word "that" to "and", I think you have covered the water-front. You have not limited it to the two last little phrases, and at the same time you have not restricted it. I think the Minister's suggestion is a good one.

Mr. CROLL: Why not change it to read "conditions of employment of employees" and stop there with a period. Then include the words: "including provisions with reference to rates of pay and hours of work and other conditions." Does that sound repetitious?

Mr. GILLIS: I think you are leaving out the very basis of the whole business, that is, the right of the union to negotiate, in its collective agreement, for some means of union security.

The Congress suggests in their draft code, the wording which is acceptable to them. And if the Minister will remember back to the Ford strike which caused so much difficulty, it was not hours of labour which made the trouble, it was union security.

Hon. Mr. MITCHELL: I would not say that.

Mr. GILLIS: Or think of the seamen's strike?

Hon. Mr. MITCHELL: I would not say that.

Mr. GILLIS: Unless we have something in like that, as a guide, we are not really drafting a code at all.

Mr. Chairman, I am going to move that we accept the wording of clause (*e*) in the draft labour code of the Canadian Congress of Labour as a substitute for clause (*d*) in Bill 195.

The CHAIRMAN: For my own information, Mr. Gillis, I interpret Section E of the Congress of Labour Code as making valid a collective agreement which would bear only on one of the four provisions mentioned there. Take hours of work alone, for instance, because you have these words in the said clause:—

> . . . with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security.

So, as long as collective agreement would take in one of these four provisions, it would be a valid collective agreement. While, under Bill 195, in order to be valid, the collective agreement has to incorporate the provisions, "with reference to rates of pay and hours of work". The specific conditions to render a collective agreement valid would have to provide for rates of pay and hours of work, and any other conditions of employment, but specifically these two.

Mr. SINCLAIR: Our objection to it is that it is quite possible to have a collective agreement to which the union contributes only one thing, let us say, union security; but that would not be possible; that is not a collective agreement, because there is no mention of hours of work and rates of pay.

Hon. Mr. MITCHELL: Let us not make the mistake which has been made in other countries where we have seen what were called fundamental rights of trade unions abrogated by law. So let us think as Canadians and Britishers. I do not say that in a critical sense.

You know what has happened in the United States, where they have had closed shops in the construction industry for years and years. Yet, what have they got? The Taft-Hartley law. They have written into the law that you cannot have a closed shop.

I speak as a Canadian and I think I know the temper of the average Canadian trade unionist. This is simple language. It is language which is understood. They understand it.

The questions raised by Mr. Gillis and Mr. Croll are covered in Section 6. Let us look at Section 6.

> Section 6 (I) "Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified union.

Mr. CROLL: I was not talking about that.

Hon. Mr. MITCHELL: I know what you are trying to talk about; and then, subsection (2):—

> No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of a union other than a specified trade union, shall be valid.

I think that covers the point fairly clearly. The high question of wisdom, if I may go a step further, is whether to write into legislation what is the normal function of discussion around a table. You see, it happens in other countries; but I believe the more responsibilities we put upon the parties to a dispute, taking the long view and not the short view, the better it is for the employers; the organization and the employees themselves.

Because, after all is said and done, a trade union agreement is not a legal contract. It is a contract based on character, on willingness to sit down and negotiate an agreement.

I can think of many organizations. Take the clothing trade today, the Amalgamated Clothing Workers. They had a strike, in former days, every spring in order to collect their dues. But today their organization is looked upon as an organization which does credit to both employers and employees.

The situation is like that of a child. In the early years it is difficult. The child has to learn about life through a period of slow growth. Then, as you engender confidence based upon fair dealing, you reach a stage where legislation of this character is beneficial not only to the people involved, but to the nation itself.

But when we write all these things into legislation and make them compulsory, I would question the wisdom of it. I leave that thought with you.

To those of you who are interested in a closed shop and in a check-off, I say it is absolutely permissible, as set out in Section 6. The trade unions understand what is meant by conditions of employment. They cover everything. The trade unions understand what is meant by rates of pay and hours of work. For us to write a lot of unnecessary things into the bill, might, I believe, offend.

Public interest must come first. And if you cannot be a special pleader for one side or the other, then your responsibility is to adopt the view point of both parties and endeavour to fashion something which will be fair to both sides of the dispute, to those vitally interested in legislation of this description.

If we are going to keep on quoting organizations—I am not saying this in a critical sense—we should cite the railroad organizations which are, probably, the best run organizations in the Dominion of Canada, and they have endorsed this. Then we have the construction industry. It has had a closed shop for fifty years; and they have endorsed this; and the Trades and Labour Congress.

I think we should keep to the middle of the road, try to be fair to both parties to the agreement, and not write too much into this bill which will offend one side or the other.

One might think it would work admirably, but there is no legislation in any country at any time which is one hundred per cent successful. I am not a lawyer, but it has been said that bad law rather than good law is the exception to the rule.

Mr. SINCLAIR: Taking up Section 6 as well as Section 2(*d*), before a collective agreement would be valid, there would have to be a reference to pay and hours of work. Now, let us consider the case of a union who might say, this summer, that they wanted to alter their present contract only with regard to union security or the check-off. Whether it be a closed shop does not matter. Can they make an agreement which would be binding under clause (*d*), purely as to those two things?

Hon. Mr. MITCHELL: Absolutely!

Mr. SINCLAIR: Nevertheless it says:—

> ...that includes provisions with reference to rates of pay and hours of work.

and in Section 6, with regard to a collective agreement which has to do with hours of work and rates of pay, you can include union security; but can you negotiate an agreement only which would have union security?

Hon. Mr. MITCHELL: Absolutely!

Mr. SINCLAIR: Well, I do not see that.

The CHAIRMAN: Order. Mr. MacInnis?

Mr. MACINNIS: I think we should keep ourselves to the point here and try to find the proper wording for this agreement. The mere fact that the railroad brotherhoods or other organizations have endorsed this does not mean anything. Railroad brotherhoods are a sheltered employment and not in the same position at all as the ordinary run of employees in an industry where they have not the same conditions.

I think that what is required here—and I think I am in general agreement with both the Minister and Mr. Croll—is a section which would not exclude any condition of employment that may be put into an agreement. We know that new conditions are being put into agreements all the time. They are growing, as the Minister has pointed out. More things are coming up, but I think this one word excluded, as it is at present worded, certain things in an agreement, and I believe the same things applies in Section E of the Congress bill. It takes about two or three lines:

> ....with reference to any matters pertaining to rates of pay, hours of work, the check-off or union security.

That is, in my opinion, the same limitation as shown in section (*d*) of Bill 195. I would delete the word "that" and substitute the word "and."

Hon. Mr. MITCHELL: Cut it off at employees and leave "conditions of employment"; include "conditions."

Mr. MACINNIS: "Containing terms and conditions of employment." I think that hours of work and rates of pay are conditions of employment. That satisfies me.

Mr. JOHNSTON: When you peruse the national labour code as set out by the Congress, you will find that it is in almost identical words with Bill 195, with this exception: that they have added the words "check-off or union security."

I believe the limitation is just as great in the case of the labour code, from the union, as it is in Bill 195; so I would take exactly the same objection to it.

I must say that I agree with Mr. Croll's suggestion there. I think it would be more inclusive and would meet with better satisfaction both with respect to this committee and the unions, if we could have it changed: starting with line 22 and say:—

> This includes provisions with reference to rates of pay and hours of work or other working conditions.

I do not see any particular necessity for having either rates of pay and hours of work. I think that is unnecessary. Without changing the wording of Bill 195, I would leave it as it is and change the word "that" to "and"; and then it would read:—

....provisions with reference to rates of pay, hours of work, or other working conditions.

Respecting section 6, to which the Minister referred a moment ago—he said, bearing that section in mind, that would clarify section (*d*) and would include the very things that are being suggested now.

If the Minister will permit me to say this: I think that section 6, if you leave it at that and refer it to subsection (*d*) without addition of the word suggested, I think you are limiting it more because, in section 6(1), that is defining what your conditions of employment are; and it limits it more than it did before. So I think that we should not limit the section but that we should add, or rather change the word "that" to "and", and add the words "or other working conditions."

Then I would see no objection, and I think the Minister would agree to that because it would be embracing the very thought he has expressed just now. I do not think it would interfere with the bill in any way, because, as the Minister has pointed out, that is the intent and purpose of the bill, to include some other conditions, and it seems to me that it would be making it clearer to both the government, to the members of this committee and to the unions

Mr. CASE: I have only one observation to make. I have been trying to follow the arguments as presented, but it does seem to me that the more specific we try to make this bill, the more restricted it is going to be.

I would be prepared to go along with the Minister and with Mr. MacInnis and put a period after employment. I see no objection to doing that. I do not think we should try to be too specific. If we do, then we are being restrictive. I do not think we should start to enumerate too many things, when the clause itself is a pretty wide provision.

Hon. Mr. MITCHELL: Section 6 was put in there to protect the very rights which Mr. Gillis spoke of. That section was deliberately put in there as the result of experience.

Mr. GILLIS: But it does not protect them. It does not mean anything. There is nothing in the bill which protects them.

Mr. ARCHIBALD: I would like to say that I am in support of Mr. Gillis and I think that the major fight at the present time, where the blow-ups will come in industry, is over the check-off in industry, where most industries have been organized in recent years. I would like to see Bill 195 include a provision with reference to rates of pay, and hours of work, and the check-off, and union security.

Mr. TIMMINS: I am going to move.

The CHAIRMAN: There is a motion already before the chair from Mr. Gillis.

Mr. ADAMSON: Surely the wording "conditions of employment" covers everything. The difficulty which I see being raised is in the wording of the last sentence. I would suggest that it be altered to read this way: Terms or conditions of employment of employees. Cross out "that" and use instead the word "include", or "including provisions with respect to rates of pay and hours of work", so that it will read: "conditions of employment of employees including provisions with reference to rates of pay and hours of work".

The CHAIRMAN: This cannot be made a motion at this time. It is just in the way of a suggestion, Mr. Adamson?

Mr. ADAMSON: Yes; just in the way of a suggestion. I can make a motion, but I understand you cannot have two motions at the same time. But I want to make that suggestion to the Minister and see if it would satisfy him.

Mr. CROLL: The observation made by Mr. MacInnis and some of the other speakers with reference to the bill of the Canadian Congress of Labour, I think are good observations in my opinion, but I think they limit it. I think they are limitations.

Mr. GILLIS: Let me ask you this question: How can you limit a thing by including the words "union security and check-off?" Doesn't that explain it?

Mr. CROLL: What we are trying to do is to make it as general as possible. You would be limiting it by including, for instance, "specific welfare fund".

Mr. GILLIS: Not necessarily.

Mr. CROLL: What we are trying to do is to be general, and I suggested working conditions. Mr. Johnston found favour with that, but I think perhaps Mr. Adamson's suggestion is better than the one which is here, because it seemed to me to be more inclusive. The more general we can make it, the better. There are such things as sickness benefits and holidays, but what I am trying to do is to emphasize that there is more to an agreement than hours of work and rates of pay. I do not know how far afield that goes.

Mr. MACINNIS: If we take the position that the check-off or union security is excluded because it is not specifically in the bill, then those other things mentioned by Mr. Croll are also excluded, such as holidays with pay, welfare fund, and so on; and it is impossible to think of the many things that may come up in the future. So I think the best way is to leave it wide open.

Mr. GILLIS: That is exactly what I am not trying to do and I think I have negotiated as many agreements for check-off and union security as any man sitting about this table. You do not draft your Criminal Code in a way that is wide open and ambiguous. But rather you lay down definite rules of law whereby a judge can render a decision.

Mr. GAUTHIER: But these people are not criminals!

Mr. GILLIS: Any one who has to do with labour problems in this country knows full well that for the last ten years your labour difficulties were on account of union security and check-off in your union agreement, and that caused all your difficulties.

I know what we went through in Nova Scotia with respect to coal and steel, and I know it was not until we had the right by law to write the check-off into our trade union act in that province that we settled those difficulties. It became a rule of law. So now, should you go to your employer and suggest writing in a measure of union security into your contract, his answer would be: "Sure; far be from me to dispute the law."

It is a rule for him to go by. And the problem was solved in my province in that way, at least, by writing the very words which the Congress now want to have written into this national labour code. And until you do so, you will not settle labour relations in this country.

Mr. MACINNIS: Is it your contention that the check-off or union security will be compulsory in a labour agreement if the words are included here?

Mr. GILLIS: Not compulsory, but the right for the negotiators to settle that question.

If Mr. Drew, for example, accepted this labour code before he saw it and made it applicable to every industry in this province—if it goes out in an ambiguous way, and if we decide to accept this clause here, in this province of Ontario, where there is still a terrific organizing job yet to be done in the field of labour, management would say that there is nothing in the national labour code which indicates that we should write union security into collective agreements.

There are strikes underway to-day on that very point, and the Minister himself knows that until such time as we get down to business and write something definite, it won't be satisfactory. I am not attacking any particular

organization, inasmuch as the Congress of Labour, who are affected most, and who represent more than 200,000 workers in the country, have decided that wording was necessary, and they wrote it into this clause.

The people who are affected are not the sheltered trades. They are quite all right. I am supporting the wording arising out of my own experience because I know there would not be much difficulty in this country, for a good many years, in negotiating wage rates or conditions.

Welfare is not a national thing at all. It is a provincial matter. Right now workers have been sitting in with their provincial governments trying to strike some kind of actuarial basis. It will vary from province to province. There cannot be included in this kind of thing such matters as vacations with pay, or holidays with pay.

But it was not until such time as the government wrote legislation on it—and there is no legislation now except in the provinces, where they have provincial governments. When this code becomes a national code and is accepted in the provinces—and Mr. Drew has accepted it—then, it is absolutely necessary that the wording of the provincial code be carried forward in this national code.

Mr. MERRITT: I find in the Nova Scotia statutes that the wording of this clause is identical with the wording of Bill 195 here. Mr. Gillis is satisfied with the Nova Scotia wording, yet the wording here is identical.

Mr. LOCKHART: Would the Minister be satisfied if the words read: "containing terms and conditions of employment", and stop right there? Then "terms and conditions", if you leave the word "or", there is a little limitation by inference. I am prepared to support the wording: "containing terms and conditions of employment" if the Minister feels that will cover it.

Hon. Mr. MITCHELL: Anything which does not restrict the purpose. After all is said and done, an agreement is not an agreement until it is signed. So it may include anything. Once you start to put those things on paper, you begin to make it restrictive; do not forget that. Mr. Gillis said that there are strikes on all over Ontario. To my knowledge, there is not a strike in Ontario.

Mr. GILLIS: What about the Berthram Company, on this very question?

Hon. Mr. MITCHELL: I know whereof I speak. It is not anything that you make it. I am agreeable there.

The CHAIRMAN: Order!

Mr. MERRITT: Three of these provincial bills contain the words "rates of pay and hours of work and other conditions of employment." One of them contains the same wording as Bill 195, of the four which I have looked at. It might be that we could take the wording of the majority of the provinces. That might meet Mr. MacInnis' objection.

Mr. CROLL: I will move an amendment to Mr. Gillis' motion. After the word "work"....

The CHAIRMAN: Pardon?

Mr. CROLL: After the word "work" in line 24, the words "or other working conditions" be added. That will be an amendment to the motion which you have before you. That ought to suit everyone. Mr. Johnston will second it.

The CHAIRMAN: I do not think I can accept your suggestion as a sub-amendment because the main motion calls for the complete deletion of clause (*d*) and a substitution therefor by clause (*e*) of the Congress Code. So I should think we should vote on this motion.

Mr. GILLIS: And then it will be open to you to make your motion as a main motion.

Mr. JOHNSTON: Was Mr. Gillis' motion seconded?

The CHAIRMAN: There is no necessity for it being seconded.

Mr. SINCLAIR: Was not there a motion to put a period in after the end of employees?

Mr. TIMMINS: We will have to vote on Mr. Croll's motion.

The CHAIRMAN: I think so. It is moved by Mr. Gillis that subsection (*d*) of section 2 of Bill 195, be deleted, and that the following be substituted therefor, that is, subsection (*e*) of the Congress Labour Code. Should I read it to you?

Mr. CROLL: No, we have got it.

The CHAIRMAN: All those in favour of the motion will please raise their hands? Those against? I declare the motion defeated, Mr. Croll.

Mr. CROLL: I shall move my amendment now; or rather, it does not become an amendment, it becomes a motion. My motion is that after the words "hours of work", there be added these words: "or other working conditions." You have heard the argument and I am not going to say anything more about it.

Mr. MACINNIS: Before you put the motion, there were two or three suggested amendments made. One was made, I think, by the Minister or by Mr. Sinclair, that the section end with the word "employees." Then there was a suggestion made, I think, by Mr. Adamson, which I thought was a very good one, to substitute "and" for "that", and "including provisions." I thought that would work.

Mr. SINCLAIR: What about "and may include"?

Mr. CASE: I think before we vote on Mr. Croll's amendment, we should consider Mr. Adamson's suggestion to take that out entirely and change "include" to "including". I think that covers the whole thing, and it is not restricted.

The CHAIRMAN: Have you any questions, Mr. Croll.

Mr. CROLL: No, let us get on with it, one way or the other; it won't make any difference.

The CHAIRMAN: Now, we have before the Chair a motion by Mr. Croll that the following words be added to the end of subsection (*d*): "or other working conditions."

Mr. LOCKHART: Are we leaving in any reference to rates of pay and hours of work?

The CHAIRMAN: Yes. The motion is that the following words be added, at the end of subsection (*d*): "or other working conditions."

Are you ready for the question, gentlemen? All those in favour of the motion will please raise their hands? And those against?

I declare that the motion is defeated.

Mr. ADAMSON: Well, the suggestion I made was: I moved that the words "or conditions of employment of employees including provisions with reference to rates of pay and hours of work".

Mr. ARCHIBALD: Would it be all right to add to that: "the check-off and union security"?

The CHAIRMAN: Order. Mr. Adamson, if I interpret your views correctly, all the words after the word "employees" in line 22 would be deleted and replaced by the following:—

> . . . including provision with reference to rates of pay and hours of work.

Mr. ADAMSON: That is all. Stop.

Mr. SINCLAIR: Before that motion is put, I again say that any collective agreement about union security or check-off would contain those same references to hours of work and rates of pay.

Hon. Mr. MITCHELL: Let us suppose that an agreement is consummated which has got to be signed at the end of the year. By the very nature of things they must include hours of work and rates of pay in that agreement.

Mr. ADAMSON: You could not conclude an agreement without including hours of work and rates of pay.

The CHAIRMAN: All those in favour of the motion will please raise their hands? Those against?

I declare the motion carried.

Mr. GILLIS: The question boils down then to a question of hours of work and rates of pay.

The CHAIRMAN: Order. Now we come to subsection (*e*):

(*e*) "collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be; and "bargaining collectively" and "bargain collectively" have corresponding meanings;

Does the subsection carry?
Carried.

Subsection (*f*)

(*f*) "Conciliation Board" means a Board of Conciliation and Investigation appointed by the Minister in accordance with section twenty-eight of this Act;

Does the subsection carry?
Carried.

Subsection (*g*)

(*g*) "Conciliation Officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

Does the subsection carry?
Carried.

Subsection (*h*)

(*h*) "dispute" or "industrial dispute" means any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees;

Does the subsection carry?

Mr. GILLIS: There is one word there which I think should be changed and that is the word "industrial". There are many disputes in this country which are not industrial disputes. For example, take your clerks, or your bank employees. Those people are all organized today in unions and will, in the future have difficulties; so I think that the word "industrial" dispute should be changed to trade dispute or to industrial and trade disputes, because you are limiting that particular class there to industrial disputes.

The CHAIRMAN: Do you intend to make a motion about this, Mr. Gillis?

Mr. CROLL: What is the objection to that?

Mr. GILLIS: I would just say "disputes", and it all would be in.

Mr. CROLL: It seemed repetitious to me.

The CHAIRMAN: Are you making a motion about this, Mr. Gillis?

Mr. GILLIS: I move an amendment, that the words "industrial dispute" be changed to "labour disputes".

Hon. Mr. MITCHELL: That term has existed since 1907 and has never given any trouble. We should be careful not to get mixed up with political disputes. I think if we say "disputes" or "industrial dispute" everybody understands what that means. But, as we have seen in Europe, they have entirely different kinds of disputes, and not only in Europe, but in other countries.

The CHAIRMAN: I have a motion before me that the words "industrial dispute" be changed to read "labour dispute". Are you ready for the question? All those in favour of the motion will please raise their hands? Those against?

The motion is defeated.

Mr. ADAMSON: I would like to ask the Minister here about "apprehended dispute" in line 5; and I think there is another reference to it. Would the Minister comment? Apparently this section deals with the possibility of apprehended or future disputes between employers and employees. Why was that put in? Is there a very special reason for it?

Hon. Mr. MITCHELL: I think there is a very special reason. A good many disputes never reach the stage of a dispute. Quite often employers will ask me to send in a conciliation officer, and quite often trade unions will do the same thing. But it is not a dispute until it is a dispute. What you must have is the power either to put a conciliation officer in there or a commissioner. That is where "apprehended dispute" comes in. A conciliation board under the law cannot be established until conciliation has failed; and until it is a dispute it is an "apprehended dispute." That is legal language which I use.

Mr. SINCLAIR: When does the apprehension start, when one of the parties asks your department for help?

Hon. Mr. MITCHELL: You cannot be dogmatic about it. My people report to me that they think the best thing to do is to put a conciliation officer in.

The CHAIRMAN: Does subsection (*h*) carry?

Carried!

Then, subsection (*i*).

(*i*) "employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include

(i) a manager or superintendent, or any other person who, in the opinion of the Board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations;

(ii) a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity;

Mr. CROLL: Let subsection (*i*) stand, please.

The CHAIRMAN: Subsection (*j*).

(*j*) "employer" means any person who employs one or more employees;

Does this subsection carry?

Carried!

Subsection (*k*)

(*k*) "employers' organization" means an organization of employers formed for purposes including the regulation of relations between employers and employees;

Does this subsection carry?

Carried!

Subsection (*l*)

(*l*) "lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

Does this subsection carry?
Carried!

Subsection (*m*)

(*m*) "Minister" means the Minister charged with the administration of this Act;

Does this subsection carry?
Carried!

Subsection (*n*)

(*n*) "parties" with reference to the appointment of, or proceedings before a Conciliation Board means the parties who are engaged in the collective bargaining or the dispute in respect of which the Conciliation Board is or is not to be established;

Does this subsection carry?
Carried!

Subsection (*o*):

(*o*) "regulation" means a regulation of the Governor in Council under this Act;

Does this subsection carry?
Carried!

Subsection (*p*):

(*p*) "strike" includes a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert or in accordance with a common understanding;

Does this subsection carry?
Carried!

Subsection (*q*):

(*q*) "to strike" includes to cease work, or to refuse to work or to continue to work, in combination or in concert or in accordance with a common understanding;

Does this subsection carry?
Carried!

Subsection (*r*)

(*r*) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees; and

Mr. CROLL: With reference to subsection (*r*), I think it is well for us to consider the exact meaning of it. We are given an opportunity, in this subsection, to strike a blow against company unions. I know that section 96 attempts to do so in a left-handed sort of way, but it does not do it.

Now, it seems to me that would still include a company union. I am personally opposed to them. I think, in general, the department is opposed to them. It does not foster them.

I have not yet written out something specific to indicate that we do not countenance trade unions and that we make a clear statement of principle at this particular time. I cannot say anything more at the moment because I think the committee, generally, shares my view as to company unions.

If there is anyone else who has any objection I think we ought to let this subsection stand until such time that we reach some agreement with respect to it.

Mr. ADAMSON: I have an objection and it has to do with the word "regulating".

> Subsection (*r*): "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees; and

I object to that word "regulating". The trade union does not really regulate relations between employers and employees. It acts on behalf of the employees in dealing, in negotiating with the employer. There are other things which regulate relations between employers and employees. The government regulates relations between employers and employees; and economic conditions; and I would suggest that consideration be given to allowing this clause to stand, for this point to be considered by the committee. I believe that trade unions have a definite function, but that function is not a regulatory function between employers and employees. I have not got anything at the moment to suggest how I would amend this clause, but I do believe that this point ought to be considered by the committee.

Hon. Mr. MITCHELL: We have already passed the same thing for employers and pay; we have already passed that and it is the same in the United States National Labour Act, and the same in Nova Scotia and in Alberta, and British Columbia and I presume it will be the same in Ontario and New Brunswick.

Mr. SINCLAIR: It is not the same in British Columbia.

Mr. McIVOR: Mr. Chairman, I do not see any reason or use for employer-dominated unions, when we have collective bargaining and collective security. If a union is dominated by an employer, it is not a union.

Mr. GILLIS: I was just going to state that I am concerned about the objection taken by Mr. Adamson. I think the function of a union is to regulate relations between the employer and the employee. It has stood the test of time, and I do not think we will have any difficulty on that score. But to meet the objection of Mr. Croll—he said that he objected to the clause on the ground that it leaves the gate open for the formation of company unions, and he wants to get away from it. He is not going to get away from it by making a declaration of principles. De did that in our first bill in 1940. I think the congress have set ont the wording here and we should accept it if we want to include company unions. The wording is exactly the same as in clause (u) of the draft bill of the congress, and they add, "but shall not include an employer-dominated organization." I am going to move that we add to the present clause (r) which we are discussing the words, "but shall not include an employer-dominated organization".

The CHAIRMAN: May I say that if I understood Mr. Croll correctly, he has moved that this subsection be allowed to stand for the time being.

Mr. GILLIS: No, Mr. Adamson moved it; he did not move it, he suggested it.

Mr. ADAMSON: I will move it now.

Mr. GILLIS: You are too late now; I will move it; you can move an amendment. I am moving that we add to the present clause, "but shall not include an employer-dominated organization."

Hon. Mr. MITCHELL: Look at section 9(5).

Mr. GILLIS: I think it should be here, too.

Mr. MacINNIS: I think that point is well taken. This is a good place to put that phrase in.

Hon. Mr. MITCHELL: "But shall not include an employer-dominated organization?"

Mr. MacINNIS: Yes.

The CHAIRMAN: It is moved by Mr. Gillis that the following words should be added at the end of this section, namely, "but shall not include an employer-dominated organization." Are you ready for the question?

Carried.

Let us come to clause (*s*), "masculine gender." Shall that carry?

Carried.

Now, subsection (2), "when not to cease being an employee." Shall that carry?

Carried.

Subsection (3), "unit," "appropriate for collective bargaining." Shall that carry?

Carried.

Shall we go on to section 3?

Mr. LOCKHART: Before we pass from section 2(3), there is something ambiguous there and I would like to ask for clarification. Subsection (*s*) reads:—

> (*s*) words importing the masculine gender include corporations, trade unions and employers' organizations, as well as females.

According to the decision of this committee you deleted that, did you not? I would like greater clarification.

Hon. Mr. MITCHELL: It says, "and employers' organizations."

The CHAIRMAN: Shall we go on to section 3 of the Act, "Rights of employees and employers"? Shall (1), "Trade union membership rights," carry?

Carried.

Shall (2), "Employers' organization rights," carry?

Carried.

Now we come to section 4, "Unfair labour practices."

> 4. (1) No employer or employers' organization, and no person acting on behalf of an employer or employers' organization, shall participate in or interfere with the formation or administration of a trade union, or contribute financial or other support to it: Provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied, or provide free transportation to representatives of a trade union for purposes of collective bargaining or permit a trade union the use of the employer's premises for the purposes of the trade union.
>
> (2) No employer, and no person acting on behalf of an employer, shall
>
> (*a*) refuse to employ or to continue to employ any person, or otherwise discriminate against any person in regard to employment or any term or condition of employment because the person is a member of a trade union; or

(*b*) impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act.

(3) No employer and no person acting on behalf of an employer shall seek by intimidation, by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to refrain from becoming or to cease to be a member or officer or representative of a trade union and no other person shall seek by intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union.

(4) Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.

Mr. CROLL: This is a little too big to go fast on. It says, "Provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours . . ." It strikes me that knowing what happens in practice, what usually happens, although we have eliminated company unions by inserting the clause to establish it in principle, as Mr. Gillis says, we ought to see if it will not work. ". . . permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction . . ." we are lending assistance to a company dominated union, which is the common practice. If he wants to belong to an employee dominated organization, to talk to some employee during working hours, let them walk about and talk, instead of making him do it at union hours as the union people have to do it. You may say that the union people have a right to go during working hours and that may be true; but they have a working agreement which gives them some rights. I think some objection should be made to the matter of giving an employee certain rights to allow him to continue on and do organization work during the working hours. There is a long list of cases on that. My suggestion is that the only employees that should be permitted to do this are those who have an agreement with the company, with the employer or anyone else, either the bargaining agent or the trade union; but these others should not be permitted during company hours. As a matter of fact, I think the minister will tell you that when that comes before a labour board, and if it can be proved, the labour board usually looks upon that as unfair labour practice and will often rule out an application made because it is considered an unfair labour practice. I think we should cut out the word "employee". Is there any objection to that, Mr. Minister?

Hon. Mr. MITCHELL: Do not let us go to extremes. Even Mr. Gillis approves of this section.

Mr. MACINNIS: Word for word.

Hon. Mr. MITCHELL: Suppose I am a small employer and I have no trade unions. I suppose there are lots of cases like that. You can express your own opinion whether you belong or do not belong to a trade union. I think they have a perfect right to come into my office during working hours. I do not think you should stop that by law. Free transportation is in there for a specific reason. When I worked for the D.P.T. company in Hamilton I was chairman of the grievance committee and they always provided transportation for the committee, and in the agreement it was provided that we could get leave of absence to go to conventions and do business with the union. There are the railroad organizations in the Dominion of Canada and there is a standing rule whereby all the officers of the union have passes to travel on the trains.

I think you can trust the National Labour Relations Board to decide on an application whether a union is a company union or a bona fide union. That board is made up of equal representation of large national organizations and also employers with a chairman and a deputy chairman, and I think we could leave it that way. They are grown up men with a lot of experience and they could easily say yes or no as to whether an organization is dominated by an employer or not.

Mr. CROLL: The reason I bring this matter up is that something has already happened that in my opinion would be an evasion of the Act if it were in force. Take the seamen's strike at the present time. Obviously, that is what they have been doing, and the result has been that we have chaos on the great lakes. We have had considerable difficulty. If there had been no such provision and if that had been an employer-labour practice it would put a different light entirely upon the organizing ability of those people who do not have the bargaining capacity in that particular trade. For that reason I think if we avoid these things at the present time we are less likely to have trouble in the future.

Mr. LOCKHART: I agree with what the minister has said. There are thousands of small employers throughout this country who foster pleasant relationships among the twenty, thirty, forty or fifty employees they have under their jurisdiction, and one of the greatest things I have found as a small employer of labour is that you can have these men come in and sit down and discuss things with you, although they do not belong to a trade union, permit a few of the employees, who may be machinists, or men who have qualifications to come in. They can join a trade union of some kind; but I do not want, because of my personal experience, to see anything happen to stop those very pleasant relationships that I can speak of personally. Hundreds of others enjoy that pleasant relationship, and I do not want to see anything done to curtail it. I think it is a dangerous practice to draw too much of a line of cleavage between employer and employee in the way it has been suggested here.

Mr. GILLIS: I support Mr. Croll; and while the congress bill uses practically the same wording as the present code, I disagree with it for this reason: I do not think the small groups, the little family compacts referred to by Mr. Lockhart would be affected at all—and we do know this, that in many large industrial organizations the employer will and has taken advantage of the fact that there are groups within his employ who are members of the union who will never go to a meeting, who know nothing about their contract or the terms or conditions and will act as individuals and shorten the thing up by dealing directly with the management, even when the agreement is set out and the grievance procedure is set out in the contract. The union is permitted an agency for the employees, and it should be the obligation of the employee to go through the union. In that way he is protecting himself because the committee set up to administer his contract during the period of the contract is familiar with the conditions and knows the employees' rights, and in many cases small groups on the outside get tangled up because they are short-circuiting their union. I suggest that that word "employee" should be taken out. If a plant is not organized and employees go in and do their business individually that is one thing, but once the contract is signed it is the obligation of the members of that union to go through the people they have selected themselves as the agents for their labour affairs. Those men are familiar with the agreement, and in that way a lot of friction is avoided. I have presided over unions where we have had to go out and stop strikes of little groups that were manipulating personal grievances on the outside. I suggest that the word "employee" should be taken out and merely leave in this section the words, "...permit a representative of a trade union to confer with him during working hours..." That is what they are

trying to arrange; that they get time off from their work to carry out their legitimate duties in the administration of the contracts. I do not want to make all the motions, but despite what the minister said I am going to suggest that that word "employee" be dropped, and the wording would be, "...a representative of a trade union to confer with him during working hours..."

Hon. Mr. MITCHELL: We hear of a lot of individual rights and freedoms —fundamental freedoms—and I would not like—I would not give a damn for any law that said I could not go and talk—

Mr. GILLIS: This does not say so.

Hon. Mr. MITCHELL: You have had your day in court, this is my turn. I think that is stretching it too far.

Mr. GILLIS: We are talking about collective agreements.

Hon. Mr. MITCHELL: I know something about collective agreements too. We might as well look at the matter logically. It is in the Alberta legislation; it would be in most other legislation; there is no objection from the employers or any of the trade unions; they are all satisfied. So are those people in this country who do not belong to a trade union.

Mr. LOCKHART: They allow any man to talk to the devil himself if he wants to.

Mr. GILLIS: That is not what I was saying. Certainly, the employee has the right to go and deal with the individual problems, but what I am talking about is the administration of a collective agreement; that the elected representatives of the union who signed that agreement should be able to work it out with management, and individual employees should not have the right to contravene their union by going in and dealing with matters dealt with in the collective agreement. There is nothing to stop any individual from talking to anybody, and it is not suggested. I want it to be the right of the elected representatives who have the responsibility of carrying that agreement out to deal with management on that agreement.

Mr. MACINNIS: Mr. Chairman, I think if a thing like this is acceptable to the congress that we could leave it as it is because it is rather difficult to come to any definite conclusion as to what an employee as distinguished from a representative of a trade union can do here. But in regard to an employee speaking on behalf of his organization, if he has not been appointed by his organization, that is something for the organization to do. Surely we are not going to legislate in this bill as to what an organization is going to allow its own members to do. If an employee is a member of a trade union it is up to his union to decide what he shall do—whether he shall talk to management or not. I have had some experience; and any member of the union who went beyond the organization to talk things up with the management would be very unlucky and would find himself without the support of the organization dealing with these matters.

Hon. Mr. MITCHELL: He would not longer be a member of the organization.

Mr. GILLIS: That may work all right in a street railway where you have forty members and a business agency, but it does not work where you have 12,000 or 16,000 or 20,000 members to deal with. I am thinking of the big mass organizations. The reason I am stressing this is that I know that in my own union, the miners' union in Nova Scotia, within the last three years they have had to take some drastic stand on this matter and they are endeavouring to route their membership through organization. My union is fighting this attitude.

Mr. CROLL: I think there is one objection to what Mr. Gillis and I have said. There is a collective agreement. What happens to a man who does not belong to a union—never mind about forming another union? He has some

rights. He does not want to join a union. He must have some rights. Suppose he has a grievance; there is no Rand formula there; he does not pay; where are his rights?

Mr. GILLIS: We have already outlawed him, have we not?

Mr. ARCHIBALD: Normally I agree with Mr. Gillis, but there is one point that comes to my mind and that is this: I am not exactly sure of the wording; I am thinking of fights within the union, and I am rather leery about withdrawing that because it can have a double-barrelled effect.

Mr. TIMMINS: In what way?

Mr. ARCHIBALD: I am keeping that to myself.

Mr. ADAMSON: I think that any regulation which prevents the closer association of the employee and the employer is dangerous.

The CHAIRMAN: Shall subsection (1), "Employer or employers' organization interference with trade union", carry?
Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Shall subsection (2) (*a*) carry?
Carried.

Shall clause (*b*) carry?
Carried.

Shall subsection (2) carry?
Carried.

Now we come to subsection (3), "Intimidation or threats against trade unionism". Shall that section carry?
Carried.

Subsection (4), "Right of employer to suspend, discharge, etc.".

(4) Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.

Mr. MACINNIS: Before this subsection is carried—I am not objecting to it—I wish to say that under our present laws the employer is not restricted or impeded by a trade union and can dismiss an employee at will, and even then he has not to give the reasons for dismissal. I think that is the law; and those who are dealing with human rights and fundamental freedoms should take note of that fact; because there is no freedom there at all, if a man can be dismissed from his livelihood without any reason being given whatsoever—except at the wish of the employer.

Mr. GILLIS: That is in unorganized industries.

Mr. MACINNIS: That is the practice and there is no protection in law.

Mr. GILLIS: This particular thing does not worry me because in every collective agreement that particular clause is covered and it is covered in the mechanics of the thing. If a man is laid off by anyone he goes before the union and if it is not handled by the union he goes before the superintendent of the company, and if they do not come to an understanding he goes before a referee, a person set up for the purpose of determining questions that cannot be agreed upon. If he is dismissed wrongly he is paid all his back wages and reinstated. That is a general clause in most collective agreements. I do not know how you are going to give them the protection as suggested by Mr. MacInnis unless you do it through human rights or fundamental freedoms.

Mr. LOCKHART: The employer has to go to the unemployment insurance office and he has to fill out a slip for his employees, stating in particular terms the reason why the employee is being dismissed. I think that matter is covered under the present regulations. I do not think there is any trouble about it.

Mr. CROLL: There is no inherent right, as Mr. MacInnis points out, and I do not know what we can do about it.

The CHAIRMAN: Subsection (4); shall it carry?
Carried.

Section 5, "Soliciting memberships in union during working hours." Shall the section carry?
Carried.

Section 6(1), "Collective agreement conditions allowed." Shall it carry?
Carried.

Subsection (2), "Invalid conditions." Shall it carry?
Carried.

Section 7, "Collective bargaining. Application for certification of bargaining agent." Subsection (1), "Conditions of application," shall it carry?

Mr. CROLL: Take the whole section, it is all tied in.

The CHAIRMAN: I shall read the whole section.

COLLECTIVE BARGAINING.

Application for Certification of Bargaining Agent.

7. (1) A trade union claiming to have as members in good standing a majority of employees of one or more employers in a unit that is appropriate for collective bargaining may, subject to the rules of the Board and in accordance with this section, make application to the Board to be certified as bargaining agent of the employees in the unit.

(2) Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.

(3) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.

(4) Where a collective agreement is in force, the application may be made at any time after the expiry of ten months of the term of the collective agreement, but not before, except with the consent of the Board.

(5) Two or more trade unions claiming to have as members in good standing of the said unions a majority of employees in a unit that is appropriate for collective bargaining, may join in an application under this section and the provisions of this Act relating to an application by one union and all matters or things arising therefrom, shall apply in respect of the said application and the said unions as if it were an application by one union.

Shall section 7 carry?

Mr. ADAMSON: I would like to have an explanation of subsection 5 of section 7, just what does that mean? That means, I take it, that two unions competing for certification in one plant may combine?

Hon. Mr. MITCHELL: Not competing unions.

Mr. ADAMSON: Oh, not competing unions?

Hon. Mr. MITCHELL: If they want to co-operate, that is all right; if they want to form a federation such as the railway federation.

Mr. ADAMSON: Subsection 1:

"A trade union claiming to have"

Does the union have to make some sort of claim?

Mr. CROLL: They make the assertion first.

Mr. ADAMSON: They make the assertion first, and that is looked at by the board to see whether they have sufficient; do they need to show the board that they have?

Hon. Mr. MITCHELL: That comes in the next section.

The CHAIRMAN: Does section 7 carry?

Carried!

Section 8:

> 8. Where a group of employees of an employer belong to a craft or group exercising technical skills, by reason of which they are distinguishable from the employees as a whole and the majority of the group are members of one trade union pertaining to such craft or other skills, the trade union may apply to the Board subject to the provisions of section seven of this Act, and shall be entitled to be certified as the bargaining agent of the employees in the group if the group is otherwise appropriate as a unit for collective bargaining.

Mr. CROLL: I do not know exactly what that means. My interpretation of it is that it would lead to trouble. What exactly does that mean? I can foresee some jurisdictional strikes.

Hon. Mr. MITCHELL: No, Mr. Croll. That protects your craft union. That has been the general practice on the North American continent. Take, for example, the boiler makers, or the machinists.

Mr. CROLL: They can go off on their own.

Hon. Mr. MITCHELL: They can go off on their own and negotiate their own agreements. Take the building trades, the plumbers and so on. That protects the craft union.

Mr. SINCLAIR: They do not have to follow the other unions in their plants.

Mr. ADAMSON: With respect to unions doing specialized or skilled work, there was a plant in Detroit where there was a small group of crane operators who were essential to the operation of the plant; and they formed themselves into a union. They are capable of paralysing the entire plant.

Now, it seems to me that this would open the way for such a small group, who are in a key position, to paralyse the entire plant against the wishes of the huge majority, or against the wishes of the other employees, and against the wishes of the employers of the plant. I do not quite see how you can get over it, because the craft unions are, very definitely, a law unto themselves, in many ways. It seems to me that this clause would leave that possibility, of a small group being able to paralyse a large industry.

Hon. Mr. MITCHELL: My good friend says that it opens the way. The way is open already.

Mr. GILLIS: It has been for a long time.

Hon. Mr. MITCHELL: It has been for a long time. It is like jurisdictional disputes. There is no substitution for good common sense, and that goes for both sides. You know, there are lunatic things done on both sides to any dispute, whether it be in a nation or in a community.

I think it is essential that you protect the rights of the old craft unions because they are the basis of our modern unions as we have them to-day. Some employers would rather deal with them. I know of many cases, such as the one you spoke of in Detroit. It is just one of those things. I think I mentioned once before that the mere fact you pass a law does not mean that that law won't be broken. I think most laws which are passed are broken, whether they be this kind or any other kind of law. But generally speaking we have not had any trouble of that kind in the unions.

The CHAIRMAN: Does section 8 carry?
Carried!

Section 9, subsection (1):

9. (1) Where a trade union makes application for certification under this Act as bargaining agent of employees in a unit, the Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate to do so, include additional employees in, or exclude employees from, the unit, and shall take such steps as it deems appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf.

Does the subsection carry?
Carried!

Subsection (2):

(2) When, pursuant to an application for certification under this Act by a trade union, the Board has determined that a unit of employees is appropriate for collective bargaining

(*a*) if the Board is satisfied that the majority of the employees in the unit are members in good standing of the trade union; or

(*b*) if, as a result of a vote of the employees in the unit, the Board is satisfied that a majority of them have selected the trade union to be a bargaining agent on their behalf;

the Board may certify the trade union as the bargaining agent of the employees in the unit.

Mr. CROLL: With respect to subsection (2) clause (*a*); that is a change from P.C. 1003. In P.C. 1003, the new words added are: "members in good standing of the trade union; or,"

That seems to me to be a very serious defect. The words in P.C. 1003 were: "authorization" were they not?

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: In the ordinary course of new unions being organized, the practice is that you sign an authorization card which you bring into the National Labour Board, or into the Regional Labour Board, or whatever labour board it may be, in the ordinary way, signed, and you say: I hereby authorize the union to act for me in a bargaining capacity. Usually there are dues to be paid in respect to that. Now, if the board is going to insist that you be a member in good standing, it means that it may lay down conditions; it may say that they must be in good standing for three months or for six months, or that you must not be in arrears. That would be a deterrent to organization. And they make reservations as to what these words may mean.

Mr. MERRITT: Has the board power to define those words?

Mr. CROLL: They have the power to make regulations. We passed that a few minutes ago. They can make conditions from time to time as to what good standing may mean. They may say: prove to me that you have no dues in arrears.

You may often have a union member with his dues in arrears, and yet the union may get those dues in time, and the union may carry him. It quite often happens.

Frequently the person who is a member of the union cannot afford the luxury of paying his dues in advance. Up to the present time the unions have never expected it. But now, if you insist that the unions be recognized, and that for all purposes they become dues-paying unions, you will find it to be a handicap to organization.

P.C. 1003 worked out very well. It allowed people to go out and obtain authorizations and then appear before the board. The board would then send someone around to make sure that the cards were properly authorized and not phonies. Or, if they were phonies once, they could not get away with it again. Now, to expect these people to be members of a union for a certain time, I think would be a deterrent.

Mr. TIMMINS: How do you interpret the words of section 7?

Mr. CROLL: Which words?

Mr. TIMMINS: Section 7, subsection (1), at the very beginning:

"Members in good standing"

Mr. CROLL: I am sorry; I missed these words; I did not seem to be paying much attention to them. This is a deviation from the former practice which has worked out very well. However, I think it is a dangerous deviation and I think we should make sure that we fully understand what the implications are before we pass it.

Hon. Mr. MITCHELL: It has been my experience as well as that of the Labour Board, I think, that people will sign anything so long as it does not cost them anything. These authorization cards—this is an extreme case which I shall cite—where they were fighting for jurisdiction over a certain industry in Ontario—these chaps usually come to my office when they get in a fight. One chap said: "I got my authorization cards out of the telephone book."

I think that if the trade union is worth anything, it is worth joining and if you are going to get these benefits from that organization, you should be big enough to pay the freight, which means, to pay the dues. That is language which is used in the labour movement.

Now, whether or not the period of time be three months or six months, that is usually governed by the constitution of the organization. Most constitutions of organizations permit the general executive board, or the general president to say, that for this organizing drive, it shall be one month or two months, and the initiation fee would be the yardstick for the policy which we will follow out during this drive.

I have seen so much of skullduggery on both sides in connection with the organizing of plants; but I still come back to the old principle that if the union is good enough to do something for you, it is good enough to join. And, like any other organization, whether it be lawyers, doctors or whatever it may be, this card business lends itself to a great deal of abuse today.

Mr. CROLL: As you know, this does go on, and I would like to speak about something I know more about, the textile industry. There are often times, when you have a union, when it will change from one to another. Now, at the present time the board is very sticky on it, and when they come before the

board they are asked: have you paid dues to the new union; and the answer must be no. Make sure that the answer is no, because if the answer is yes, the board immediately takes a poor view of it. And when you present the authorization card, if the answer has to be yes, you will often have people who just cannot make that investment, with the result that they do not get the benefit of better trade unionism.

Hon. Mr. MITCHELL: You are getting into what they call a jurisdictional dispute.

Mr. CROLL: Yes.

Hon. Mr. MITCHELL: There is a good deal of this going on, where groups of individuals come along and steal an organization, in the true sense of the word, away from another group of individuals who created that organization. Now, I think when they come along and say: the officers of your organization are no good; they have not represented you properly; I think it should be proven not merely by signing a card, but by paying dues into the new organization with an initiation fee, or by a vote.

Mr. CROLL: No. They cannot have a vote unless they are members in good standing.

Hon. Mr. MITCHELL: At the end of ten months?

Mr. ARCHIBALD: There is just one question that I would like to ask. Take, for example, the Seamen's International Union. You pay your initiation fee, but you do not get full membership standing for a good number of months, yet, to all intents and purposes you have paid your dues for several months. So there is this case where you do not get the full privileges of being a member until you have been in a certain number of months.

Hon. Mr. MITCHELL: If that evidence was given to me, that these men had paid their initiation fees, I would say they were bona fide members of the organization. Take the British seamen. They have a peculiar system. They call it democracy; but your vote in the union meeting is predicated on the length of your membership in the organization. I talked to a member of the organization quite recently and I said to him: How many votes do you have in the seamen's union? And he said: 35. That is done to control the fly-by-night fellows who join the organization.

Mr. GILLIS: I agree with Mr. Croll on this matter. I think the wording of that clause precludes organization. I am not thinking in terms of where the union is fairly well set up in a plant. It could work, but in the great majority of cases, the unions that would be looking for certification are unions which are getting into a new field. It is impossible for a union organizer where plants are fenced around; there is no chance of his talking to the workers or building up an organization. To have the majority of men employed in the plant paying dues to a union, and then seeking certification is an endless job.

I think the Saskatchewan act is the proper one. In the Saskatchewan act it says that if a union has 25 per cent of the employees of the plant, it can then apply for a vote of the employees in that plant, who then have the right to a vote as to whether they wish to become members of the union or not. Then, when the vote is taken, if the union secures 51 per cent of the employees in the plant, the union thereby secures bargaining rights for it.

In this case, if a union applied for certification, the board is not compelled to take a vote. The board can demand an examination of the records of the union, and unless the men have actually paid dues into the union, be it 50 per cent of the employees of the plant, or whatever percentage they want to set—I do not know what they consider a majority—there is no certification in that case. There is no certification indicated, and I think myself that this thing should be taken out altogether, and that the only wording in there should be that the

union applies for certification and proves that they have a certain percentage of the men in the plant indicating a desire to join a union; then I think the democratic way of doing it is to have the board take a vote—never mind the records of the union. That precludes manipulation of this card that the minister talks about. If the board takes a vote of the employees in the plant and a majority of them vote to join as their bargaining agency, then it is certified and once it is certified from then on in it is the job of the organizers to sign them up; but it is rather difficult when you are breaking into a plant where management is hostile, where men are afraid and are intimidated if they say anything or join a union for fear they will lose their job. Once the union is certified and has legal status, and they have had a secret vote, then the difficulty of organization has been removed. There is nothing in this, in my opinion, that can cause any difficulty except the wording in this Act where you have to prove you have members in good standing. That is where the manipulation the minister talks about comes in. They go out and get fake cards. If the vote is taken, that is the democratic way to do it.

Hon. Mr. MITCHELL: Under subsection (4), "The board may, for the purposes of determining whether the majority of the employees in a unit are members in good standing of a trade union or whether a majority of them have selected a trade union to be their bargaining agent, make or cause to be made such examination of records or other inquiries as it deems necessary, including the holding of such hearings or the taking of such votes as it deems expedient..." that is as wide as the ocean.

Mr. GILLIS: It is all predicated on, "If the board is satisfied that the majority of the employees are members in good standing of a trade union." If you cannot prove that in the first instance I do not imagine there would be any further action.

Hon. Mr. MITCHELL: It is all predicated on getting a majority. You and I have seen so much of this. If the organization has a majority of members in good standing that is all right, but there is this matter of signing these tickets or ballots and saying, "Boys, mark these ballots and it will get you $50 a week; the other fellows will only offer you $25."

Mr. GILLIS: Are you not up against that here?

Mr. MACINNIS: I think the difficulty is to differentiate—I do not know how it can be put into the Act—as between an organization and where there has been no organization—between building up a new union from the bottom up and where there has been a union. In the one case it is fairly simple; but if you are going to demand membership in good standing you first have to decide what is good standing.

Hon. Mr. MITCHELL: The constitution of the union.

Mr. MACINNIS: There may be no constitution if you have a new union. You cannot have a union until you have sufficient members who are willing to form a union.

Mr. TIMMINS: They have at least to pay an initiation fee to start with.

Mr. MACINNIS: I am speaking out of my experience with unions. You people are speaking of your experience with people who had education up until they were twenty-five of age or perhaps beyond that. Take people who are working in an organization where they are getting $5 or $6 or $7 a week, people with very little education—it is these people in unskilled work who can be fired and another person brought in immediately. There is no $1,400 initiation fee in those organizations, and it is most difficult to get sufficient members—a majority of the members—particularly if the employer is hostile; and he can be hostile in various ways without coming under this Act.

So I suggest that we leave this section over and see if we can find some way in which the board can deal with the unions that are being formed in an unorganized industry.

The CHAIRMAN: It is 1 o'clock.

Mr. ADAMSON: Mr. Chairman, before you adjourn I would like to suggest that some definite hour be set for the meeting of this committee. A lot of the members have to meet people just before 1 o'clock, and I move that the committee meet at 10.30 and adjourn at 12.30. That gives us two hours. I will make that motion.

The CHAIRMAN: You have heard the motion, shall it carry?
Carried.

The committee adjourned to meet on Tuesday, May 4, 1948, at 10.30 a.m.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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TUESDAY, MAY 4, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

TUESDAY, 4th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Hamel, Johnston, Knowles, Lockhart, MacInnis, Maloney, Maybank, Merritt, Mitchell, Sinclair (*Vancouver North*), Skey, Smith (*Calgary West*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The committee concurred in a correction to an error in the minutes of April 29, page No. 67, last two lines of Mr. Adamson's motion, which should have read: "employment of employees including provision with reference to rates of pay and hours of work."

Copies of the following were distributed to members:

(*a*) Brief, dated 3rd May, 1948, enclosing "A National Labour Code" and an explanatory memorandum, submitted by the Canadian Congress of Labour;

(*b*) Brief, dated April, 1948, submitted by the Canadian Manufacturers' Association.

A letter dated 3rd May from the Canadian Congress of Labour relating to alterations in their brief of 3rd May, was read by the Chairman.

It was agreed that the above briefs be referred to the Steering Committee.

A brief tabled by Mr. Adamson relative to views of engineers on Bill No. 195 was referred to the Steering Committee.

By unanimous consent, the committee reverted to Clause 4, whereupon Mr. Croll moved that the following be added to sub-clause (4) thereof:

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

Mr. MacInnis moved that immediate consideration be given to the proposed amendment of Mr. Croll. The question being put on the motion of Mr. MacInnis, is was resolved in the negative.

Consideration of Mr. Croll's motion was accordingly postponed.

Clause 9

(2) Carried.

(3) Carried on division.

11910—1½

(4) Carried.
(5) Stood over.

Clause 10
Carried.

Clause 11
Stand.

Clause 12
Carried.

Clause 13
Carried.

Clause 14
Carried.

Clause 15
Carried.

Clause 16
Carried.

Clause 17
Carried.

Clause 18
Stood over.

The committee adjourned at 12.30 o'clock p.m., to meet again Thursday, 6th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 4, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: The meeting will come to order, gentlemen; we have a quorum.

You have all received, gentlemen, the minutes of proceedings of the last meeting, which is No. 2. As for No. 1, I wish to point out that it has not been distributed by mail. It was held up by the clerk when he noticed an error in the printing on the front page. You have it in front of you. There are listed on the front page two names of witnesses in error. So this was returned to the printer to be corrected.

I wish also to point out an error in transcription on page 67, of the minutes of our last meeting, the last two lines of the motion made by Mr. Adamson and it should read as follows: "employment of employees including provision with reference to rates of pay and hours of work."

Now, gentlemen, we have distributed this morning a brief by the Canadian Congress of Labour dated May 3, 1948, with an additional copy of the private labour code of the congress. As agreed at our last meeting this will be submitted to your steering committee. As we have enough copies for all members of the committee we thought we would distribute it to you this morning.

I have a letter from the Canadian Congress of Labour rectifying certain words in their brief. This letter is dated May 3, 1948. It is addressed to the chairman, and reads as follows:

> Dear Mr. Cote:—In our memorandum on Bill 195, which I trust has already reached you, there are some minor corrections necessitated by the fact that since it was drafted, Ontario has passed new legislation and New Brunswick has announced that it is not adopting the Dominion legislation at the present session. Would you be kind enough therefore, to inform the committee of the following corrections:
>
> Page 12, line 8, delete the word "Ontario."
>
> Page 17, line 13, "four" should read "three."
>
> Page 17, line 15, "six" should read "seven."
>
> Page 17, line 18, after "Manitoba" insert "and," and after "Ontario" insert "Acts;". Strike out "and" and replace by "(6) the."
>
> Page 17, line 19, "Acts" should be "Act" and "(6)" should be "(7)."
>
> Yours truly,
>
> (EUGENE FORSEY)
> *Director of Research.*

We have distributed this morning also a brief from the Canadian Manufacturers' Association dated April 1948. Now, much of this brief was printed in 1947, but the new parts which have been added have been indicated by red markings in the margin of the brief, as you will notice.

When we adjourned at our last meeting we were considering section 9, subsection 2, clause (a); and discussion is still on this matter.

Mr. CROLL: Mr. Chairman, I wanted to revert to section 4. We were discussing here at the time section 4. I think it is just as well that we clarify it. There was considerable discussion about union security here and we did not—

The CHAIRMAN: What section is that?

Mr. CROLL: That was on section 4.

The CHAIRMAN: Are you now reverting to section 4? Do you wish to reopen discussion on that section?

Mr. CROLL: Yes, Mr. Chairman; I want to reopen discussion on section 4.

The CHAIRMAN: That cannot be done, unless it is agreeable to the committee.

Mr. CROLL: Oh, but we can discuss any section at all; I mean, otherwise, we would be put in a rather difficult position.

The CHAIRMAN: But you will recall that section 4 carried.

Mr. CROLL: Yes, I realize that, Mr. Chairman; but I am again referring to section 4, and I want to offer something that will be additional to it. As far as I am concerned it does not really matter a great deal because it also comes up in connection with a number of other different sections, but I think it is pertinent to section 4, and therefore should be disposed of before we come to subsequent sections.

The CHAIRMAN: I have no objection, if it is agreeable to the committee.

Mr. MACINNIS: Mr. Croll, I think perhaps it would be better procedure if we continued through the act dealing with each section as we come to it, then if members of the committee wish to after we finish we could go back over every one of these sections again if we want to. Would not that come up under another section?

Mr. CROLL: It might apply to other sections, Mr. MacInnis, but we were talking about matters of this kind particularly when we were discussing section 4, and I thought it might be helpful and save time for the committee if we were to dispose of it by reverting to section 4, and reopening discussion on that. The motion I propose to offer deals with the checkoff and I believe in discussing section 4, we considered that as a measure of union security. Now, Mr. Chairman, we have had considerable discussion on union security here before, and many of us have different views as to what it might mean and what it may contain. My resolution is this—seconded by Mr. Gauthier:

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

That is why I brought it under section 4. My purpose of offering this resolution at this time, Mr. Chairman, is to avoid repetitious discussion on it. It might be considered in connection with almost any section which follows. I think that is the least we can go in the way of union security. If we pass it, and if we concur in it, then we will know exactly where we are going rather than discussing continuously the question of the union shop, or whatever else we may decide on. As a matter of fact, what I am proposing is not new, because almost every agreement contains it as a matter of course. It really affects only a small number of cases, but perhaps some are still withholding, and for that reason I think it is important that we should give our support to the voluntary checkoff.

The CHAIRMAN: I think, before we proceed any further on this, Mr. Croll has stated his point. Is it agreeable to the committee that we should discuss this particular resolution under section 4, now?

Mr. LOCKHART: No.

Hon. Mr. MITCHELL: I just want to say this. I have not changed my opinion from what I expressed at the last meeting of this committee. I believe, and I am taking the long view and not the short view, that things generally are all right, and that there is ample provision for collective negotiation with respect to matters in that category.

Mr. CROLL: As I just said, it is in almost every agreement.

Hon. Mr. MITCHELL: I think the clauses of this bill are broad enough to cover this. We have seen what has happened south of the line. We have seen what has happened in other countries. I believe it is good sound judgment to just pass this bill which should properly be a bill to provide for collective bargaining and I think very little in the way of conciliation procedure should be written into it; I mean, of course, matters which properly belong to negotiations between the parties. I think that is one of the fundamental principles of this bill.

The CHAIRMAN: Now, gentlemen, are you ready for the question?

Mr. MACINNIS: I take it, Mr. Chairman, that the question before us is, are we to deal with Mr. Croll's resolution now?

The CHAIRMAN: Yes.

Mr. MACINNIS: In support of the argument Mr. Croll has put up to to why it should be considered now, I move that we consider it now; that will dispose of the matter.

The CHAIRMAN: Does anyone wish to speak to the point?

Mr. GILLIS: I think this is something that should be understood. I agree with you, Mr. Croll.

The CHAIRMAN: Mr. Gillis, would you restrict your remarks to the question of procedure, please.

Mr. GILLIS: You mean you were not discussing the resolution at all?

The CHAIRMAN: No. We have a motion by Mr. MacInnis, seconded by Mr. Knowles, that the committee should now consider the resolution of Mr. Croll. Is the motion carried?

Mr. TIMMINS: Would Mr. Croll tell us why it comes under section 4?

Mr. CROLL: It is an unfair labour practice, that is why it comes under section 4. We discussed it there before. It will come under section 9, subsection 5, and some other sections as we go along.

Mr. TIMMINS: You say it is an unfair labour practice and you suggest that we go back to deal with it by reopening section 4; is that it?

Mr. CROLL: You will find that it will recur on almost every section as we go along. If we dispose of it now by reopening section 4, it may avoid a good deal of repetitious discussion.

Mr. TIMMINS: I am suggesting that if it comes under another section let us not go back all the time, let us keep going forward and take it up under another section to which it can be related and deal with it then.

Mr. CASE: What would be the effect of the motion?

The CHAIRMAN: This would be an addition to section 4.

Mr. MERRITT: I should like to say that this proposal of Mr. Croll's is a very important one and that the wording of it will be very important, and I for one would like to deal with it at the earliest convenient stage, but I would like to have the wording of it before me.

The CHAIRMAN: But the resolution now before the committee is on the matter of procedure.

Mr. MERRITT: Yes. What I mean is this, that if we are going to discuss it now we ought to have a copy of the motion in front of us so that we would know with what we are dealing, what kind of a section we are proposing to write into the bill. I think that is very important.

The CHAIRMAN: Are you ready for the question, gentlemen? The question is on the motion by Mr. MacInnis, seconded by Mr. Knowles, to allow Mr. Croll to proceed with the discussion of his resolution.

Mr. KNOWLES: May I say just one word at this stage Mr. Chairman; if we settle this matter now we can then go on to the next subject. We will be saving time if we dispose of it right away.

The CHAIRMAN: The motion is to allow Mr. Croll to proceed with the discussion of his resolution now. All those in favour of the motion?

Mr. MERRITT: Before you put the question, hasn't Mr. Croll got copies of his motion so that we can all have it before us and know exactly on what we are acting?

Mr. CROLL: I gave all the copies I had to the chairman.

Mr. MERRITT: I do not want to discuss it without having it before me.

The CHAIRMAN: All those in favour of the motion? Opposed?

The motion is defeated.

We are now on section 9, subsection 2, clause (*a*):

Mr. MACINNIS: Mr. Chairman, when we adjourned last Thursday I was saying something on this section and my objection to it as it now stands is that it does not appear to provide for a trade union which is let us say in the making. For instance, in section (*a*), it says:

> If the board is satisfied that the majority of the employees in the unit are members in good standing of the trade union;

When I, or someone else, asked for an explanation of this clause, I think the Minister of Labour said that according to their appreciation of it a union has really to be in existence, and in fact must have been in existence for some time; and that they must have a constitution. Well, before a constitution can be drafted first you have to have a lot of work done in the way of organization. including the setting up of the bargaining unit. And I think the minister will agree with this, that it is necessary to have a sufficient number in the organization, even in an embryo organization, before it can make its proposals to the management. That is the most difficult time that a trade union has, and it is a time when particularly with new unions management in various ways can put obstacles in their way. There is, however, the possibility that paragraph (*b*) takes care of that. I am not sure. I looked at it last night for a considerable time but I unfortunately did not feel completely assured that paragraph (*b*) did take care of the situation I pointed out; but in case that that is so I suggest another paragraph that would come in between (*a*) and (*b*). I am just putting it this way. I think it might reach fruition. It is not worded, not expressed in legal terms. That could be done later. But the principle is what matters. Following after (*a*):

> if the board is satisfied the majority of the employees in a union affected by the application are members of trade unions, or have authorized to trade unions to act on its behalf.

I am putting that forward as a suggestion that would make this section of the act more applicable to a situation where a union has not yet been formed.

Hon. Mr. MITCHELL: If I might put it this way. I think it is a principle recognized by all congresses and unions. The point you have raised I do not think would arise under ordinary labour conditions as they exist at the present

time. I could understand it a few years ago. First of all, there is organization for everybody who wants to be organized. There are the International Unions, there is the C.I.O. Union, there is Railway Brotherhood, there is a Catholic syndicate—they are all capable of taking care of a situation of this kind; so I say, to take care of those who are out on a limb—if I might use that language—you have the federal charter of the Trades and Labour Congress of Canada; you have the big unions; and then, you have the Catholic syndicates. You and I both know the usual setup. We know the charter of our own unions and their place in the federal union scheme—I think it is sound policy in defence of what we called well established organizations to insist that a man should pay his dues towards the constitution of the organization; which, as I pointed out the last time, makes special provision for organizing campaigns. Now, it does seem to me, with the situation organized as it is today in North America, and particularly in the Dominion of Canada, that if you want to organize the facilities are there through the Trades and Labour Congress of Canada, through the Canadian Congress of Labour, through the Catholic Syndicate and all the others—I don't want to go down through all the affiliated organizations. I think you know what the situation is well enough. It does not compare to what it was twenty years ago; and to my own knowledge we have not come across difficulties of the kind to which you have referred. I say this, too, that we have adequate representation for permanent employee organizations in Canada; and I am quite prepared to leave to their judgment and discretion a point such as has been raised by yourself.

Mr. MacInnis: May I point, Mr. Minister, some examples to which you have referred, such as national and international bodies. It might apply to them; but under this section you are dealing not with trade unions entirely, you are dealing with others who are in the process of formation.

Hon. Mr. Mitchell: Yes, sure.

Mr. MacInnis: I am referring more particularly to employees who want to form a union. Supposing, for instance, we take the street railway employees in Vancouver who are not yet organized. Let us assume that, and that they were beginning to create an organization, and when they thought they had a sufficient number of applications for members to make an application to the board they would appear before the board. Under this section of the bill the first thing the board would be to find out how many members the union have in good standing. Now, if they had been in operation, shall we say for a period of six months, during which time they had been gathering in members, they could not very well take in more in any case. They would not have an organization strong enough to insist that each member would pay his dues in each month when the membership was getting no results from the organization. Now, it seems to me that there should be some provision for unions and employees who have not yet organized in Canada, by which they can properly be taken care of.

Hon. Mr. Mitchell: We hear a lot about company unions and particularly under present conditions in the west. It is something like ships that pass in the night. But I want to say this, they are already protected by trade unions while they are in the stage of formation, while they are organizing. I cannot understand why a permanent trade union would find any fault with that setup.

Mr. MacInnis: The bill proposed by the Canadian Congress of Labour amplified this part, but I felt it used too many words and could be made much shorter. But I would agree to this extent with the minister, that perhaps section (b) takes care of the situation which I mentioned:

> (*b*) If, as a result of a vote of the employees in the unit, the board is satisfied that a majority of them has selected the trade union to be a bargaining agent on their behalf;

If the committee are satisfied that this meets the situation I will be prepared to let it go.

Hon. Mr. MITCHELL: Is not this point taken care of by the petition for representation in the organization of the board itself. I think you will find that that is provided for.

Mr. TIMMINS: I think the minister's remarks are very practical and I think they have had a practical application recently. Within the last two weeks I have had experience in Ontario with something very similar to what is visualized in this particular clause. A union came into a plant where there had not been a union before. I cannot see any obstacle in this particular clause which would retard the organization one little bit. Mr. MacInnis says that when a union goes into a plant the management can put many obstacles in the way of the union. I do not see that the companies can and in fact the company is almost helpless with respect to the union. It does seem important to me that a person who is lining up with a union, and is presumably to get the benefit of that union, should at least have confidence in the people with whom he is associating himself and he should pay dues. I think that is the practical responsibility of the union.

Mr. ADAMSON: I think the regulations as they exist prevent the raiding of one union by another, something which would likely cause friction if not prevented. I think the employees request to have a trade union strengthens the position and is of benefit to the union. I think it is to the advantage of the members and I think it affords security in the way of preventing fly by night organizations from raiding a plant which is functioning happily and normally, and it thus prevents the upsetting of the operations of the plant.

Mr. MACINNIS: Mr. Adamson the difficulty is this expression "members in good standing". I do not think, as the result of my experience, that you can carry on without having members in good standing. I would like you to have a talk with some of the pioneers of union building in Canada and the United States who know something of the difficulties and who know how difficult it is to organize a union.

Mr. SMITH: We are having a talk with one of those persons now.

Mr. MACINNIS: During the war trade unions had an opportunity which does not come along every day. They had an opportunity to build their union when employment was in full flush and if the employer intended to dismiss anyone, not only would the employee get another job immediately but the government would tell the employer that he could not dismiss the man because they wanted production at that plant. When we get on to what may be a more normal situation in a few years the difficulties will be much greater than they were.

Mr. CROLL: I asked the minister the last time why the words "authorization" were replaced by "members in good standing". "Authorization" was the word used in P.C. 103. That was the case of presenting authorization cards to the board and the board dealing with the situation after assuring themselves that the authorization cards were properly signed and were not phonies. The danger appears to me to be that someone will have to define the words "good standing", and that someone will have to be the board. The board may say the members have to be paid up to within three months, or six months, or any period which they see fit, or they may say that men must not be in arrears. However, we know that there is always someone in arrears who catches up later on. It may mean in the case of a new union that a man may have to pay for three or four months without seeing any results and that may make unionization most difficult, particularly in the early stages where nothing is coming in and everything is going out. I suggest the word "authorization" should be left in unless we can give a meaning to the words "in good standing". That expression may turn out

to be what bites us, and I think that expression should not be used at all. I would be glad to support a resolution worded to the effect that the clause should be put in the same form as it was in P.C. 103.

Hon. Mr. MITCHELL: This bill and its wording is arrived at through our experience in the past, after consultation with organizations and all the provinces in Canada. These authorization cards have been mentioned and I will say that where you begin to organize a plant you may find that there are one or two or three organizations trying to obtain jurisdiction. An organizer comes along and he says to a man "you sign this authorization card and I will get you a $25 a month increase". That is the language which is used so that these men will understand. Another organizer comes along and says "you sign this card and I will get you $50 a month increase, the other fellow is a piker". That is the type of thing which creates these jurisdictional disputes about which my good friend Mr. Smith spoke in the House the other night. All the labour organizations with stability are satisfied with this clause. We should not come along here and try to defend a practice that is not working out very well. I think it is fair to say that all the board wants and all the unions want is to be fair. Mr. Croll and others have asked what is meant by the words "good standing". We know that in the labour movement powers are given to the general executive board for special dispensation with regard to the length of time a man is required to be in good standing. That exercise of discretion is given all the time. It may result in the good standing period being one month after the initiation is paid. I am firmly of the opinion that if you expect an organization to do something for you you should be prepared to pay the initiation fee and maintain your dues.

Mr. JOHNSTON: Have any of the labour unions objected to this?

Hon. Mr. MITCHELL: No.

Mr. JOHNSTON: I notice in the National Labour Code the language is almost the same as that used in the bill and I cannot see any objection.

Hon. Mr. MITCHELL: I think when P.C. 103 was drafted one of the errors I made was to give these authorization cards. I made the decision in the light of the conditions that then existed but I do not think they should be included here.

Mr. CASE: In almost any organization I think the words "in good standing" have an accepted meaning. The constitution, or something back of the union indicates that "in good standing" has a meaning. It must mean that you fulfil certain obligations, and I do not think that you can use better language.

Mr. MACINNIS: I would bring to Mr. Johnston's attention the fact that the Congress of Labour Code does ask for something else. I am reading part of subsection 5 of section 8 beginning about half way down "if the board is satisfied that at least 50 per cent of the employees in the unit affected by the application are members of the applicant trade union or have requested or authorized the applicant trade union as aforesaid, the board shall order a vote to be taken—". As a matter of fact that is what I suggest should be put in.

Mr. JOHNSTON: You suggest changing the word to "authorization"?

Mr. CROLL: That was the word used by P.C. 103.

Mr. SMITH: I am very much in favour of the clause as it stands. The words " in good standing" have a very simple meaning in any organization. You are either in good standing or you are not—you are a member by the approved method, the same as any other member, within the boundaries of the constitution. The moment you add such words as are now suggested by Mr. MacInnis you put upon the board an almost impossible task. A man has not paid his dues, or a man is not in good standing by reason of the fact he may have been expelled,

and I think the words "in good standing" are the only sane and sensible ones—and the only ones of which I know—to provide for what we desire, and I am very much in favour of the clause as it stands.

Mr. LOCKHART: Over the week-end I had a discussion on this matter with a very active union man and I pointed out this phraseology to him. I asked him if it was in keeping with his ideas on trade unions and he said that "in good standing" would not mean you have to pay dues in advance. The regulations of the union to which a man may belong provide for that contingency, and a man may be a month behind in his dues for some specific reason, but that does not put him in bad standing. The regulations of the union to which he belongs provide that for a stated period a man must not become more than so long in arrears, but he is still in good standing although he may be a month or so behind in the actual payment of his dues. The man to whom I was talking said that if the union is good enough for the man to belong to he should be in good standing—that is a bona fide member of the particular union—and the words of this particular section cover the situation. I think myself the words are sufficient.

The CHAIRMAN: Shall clause (a) carry?

Mr. GILLIS: No, I think both the bill itself and the congress bill have far too many words and I think you are putting an impossible job on the board. The meat of this legislation will be in its administration and I do not know who the board is going to be. As I see this particular clause here unions which are organized now and which are bargaining are not affected, but there is a very small percentage of the eligible workers of this country who belong to organizations today. The figure is less than 40 per cent, so we can see the main job of organization of unions in this country has still to be done. As I see this clause, when a union organizer goes into a plant to organize it he has no legal rights. Under this section the organizer, in going into a plant to organize, has no legal rights and surely the employer can stop him. The man must remember his job and that organizer has to pick up 50 per cent or 51 per cent—a majority of the men in the plant or factory—and bring them into the organization. Remember while he is doing that he has no bargaining rights. The union has nothing and the man going in does so with the fear of losing his job. An organizer faced with that kind of a proposition is in a very difficult spot. When he makes application under this clause to the board—which may consist of four judges—

Hon. Mr. MITCHELL: That is provided for under the act.

Mr. GILLIS: You perhaps will call them commissioners, but he is making an application. The board tells him that according to this language here he must go in, have a hearing, bring his records with him, his books, and his membership cards. The hearing is held and the board is all-powerful. The board can determine whether the books, records and so forth meet the provisions of this act, and the organizer has got to do that job in a new union with almost no chance of success at the start. The organizer is in a weak position. The simple thing to do, if we believe in democracy, is to get rid of the verbage in the congress bill and in this bill. The verbage means nothing except it can be used as stumbling blocks by anyone who wants to put up those stumbling blocks. The board is the important thing and I think the board should have the privilege of ordering a vote in any plant or factory in this country, and the employees should have a right to cast a secret ballot as to whether they want to join a union. When that vote is taken the result will be clear. The minister can look at his seamen's strike right now and it arose out of this sort of thing. The Canadian Seamen's Union was certified without a vote, with the result that you have got two of those unions battling, and it is anarchy there today. If a vote had been taken the bargaining agent would have been clear and it would have avoided friction.

Hon. Mr. MITCHELL: I think I should correct you on that point. There was a vote.

Mr. GILLIS: The Seamen's Union—the Sarnia Steamship Lines?

Hon. Mr. MITCHELL: Yes.

Mr. GILLIS: Your letter to me was wrong then?

Hon. Mr. MITCHELL: You are talking about the Canadian Steamships?

Mr. CROLL: Here is the report.

Mr. GILLIS: The Canadian Steamships were involved in the strike and the bargaining agency was given without a vote.

Hon. Mr. MITCHELL: No.

Mr. CROLL: I wrote specifically and the answer which I obtained from you was very specific.

Hon. Mr. MITCHELL: It does not make any difference, there was a vote.

Mr. GILLIS: It does make a difference, there is a mess existing now.

Mr. LOCKHART: What about proceeding with this clause?

Mr. GILLIS: I am doing that, and I am just pointing out to you the difficulties which arise when you get away from democracy.

Mr. LOCKHART: You should stay on the beam.

Mr. GILLIS: That is where I am, and I say I am opposed to this section because it is too wordy. It will solve nothing. It is putting the organizer who has to go out and form a union in this country in a most impossible position. If we just cut out a lot of wording, and if the board is satisfied that a majority of the employees in that plant would want a vote in that plant for the purpose of saying whether they want to join a union, then I think the board should have the vote and put the organizer in a legal position. Once the board has given its certificate the organizer can go in and obtain membership without fear of losing his job. I went through all this in the Sudbury and Kirkland Lake areas and I know what you are up against, and this clause is not satisfactory. The clause vote is a determining factor and as far as I am concerned this clause will not work.

The CHAIRMAN: Shall clause (*a*) carry?
Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 9, subsection 2, clause (*b*)—shall this section carry?
Carried.

Shall subsection 2 carry?
Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 9, subsection 3:—

> Where an application for certification under this Act is made by a trade union claiming to have as members in good standing a majority in a unit that is appropriate for collective bargaining, which includes employees of two or more employers, the Board shall not certify the trade union as the bargaining agent of the employees in the unit unless
>
> (*a*) all employers of the said employees consent thereto; and
>
> (*b*) the Board is satisfied that the trade union might be certified by it under this section as the bargaining agent of the employees in the unit of each such employer if separate applications for such purpose were made by the trade union.

Shall clause (*a*) carry?

Mr. CROLL: As I interpret clause (*a*) "all employers of the said employees consent thereto;—" that, in effect, gives an employer a veto power over industry-wide or country-wide bargaining. If there is only one employer in the industry he is obliged to bargain but if there is more than one industry he immediately has a veto and can stop it. Whether it is wise to leave the employer with the last word is a matter upon which I think the committee ought to consider. Should not that be discussed with the National Labour Board rather than with the employer? This is a matter of considerable concern to the country. This would obviously leave it in the hands of industry itself rather than in the hands of an impartial board.

Mr. GILLIS: I wonder if the minister would explain what he has in mind?

Hon. Mr. MITCHELL: You cannot force people. You cannot have one law for one side and a different law for the other side dealing with the same subject. You cannot force the trade union to join with another any more than you can force the employer to join with another employer. It acts both ways and I think it is elementary.

Mr. GILLIS: You find today there is one corporation with perhaps twenty-five or thirty subsidiary companies. To all intents and purposes it is one corporation but they keep the other companies separate largely for tax purposes. Now if a union makes application for certification for the over-all industry or corporation as such, is that corporation in a position to say that this company or that company or the other company which are subsidiaries of theirs cannot be certified as a bargaining agency? Could that interpretation be put on it?

Hon. Mr. MITCHELL: I would say yes.

The CHAIRMAN: Is the clause carried?

Mr. GILLIS: No, I think there is a grievance in that particular section with the possibility of breaking up unions that are in existence. I am thinking, for example, of my own union, the Mine Workers.

Mr. CROLL: Yes, and the packing houses.

Mr. GILLIS: A man working on an over-all contract with Dosco coal or steamship lines and so forth, has an agreement on that basis today. Under this section the corporation could start to disintegrate the association and say that for Dominion Coal, you are going to have one agreement, for Nova Scotia Coal you are going to have another agreement. Such action could result in smashing an over-all agreement into six or seven agreements within one union. I think the clause is dangerous in that an employer could do that very thing if he wanted.

Hon. Mr. MITCHELL: Let us take the other side of the picture. You are talking about Nova Scotia and do you suggest there should be one agreement with Dosco for the Halifax shipyards?

Mr. GILLIS: For the mining industry.

Hon. Mr. MITCHELL: For the steel industry, and the coal industry? I would think you would have some difficulty in getting the miners to join with the shipyard workers.

Mr. GILLIS: I would not suggest that.

Hon. Mr. MITCHELL: No, but I am following your argument there. I do not think it is wise or sound to insist that they should join without their consent. I am a great believer in common sense and co-operation, and I have seen—in connection with negotiations—that a lot of hypothetical difficulties are raised by both sides. However, I think the growth of the trade union movement in the last ten years is an indication of the importance of the difficulties you are anticipating at the moment. They are not real difficulties by hypothetical difficulties. You

were talking a few moments ago about verbiage and a short act, but if we take into consideration all the hypothetical cases which are possible you will have an act as lengthy as is Anthony Adverse.

Mr. GILLIS: Let me correct the minister. I am thinking of the steelworkers' union which has contracts in basic steel plants and fabricating plants under the same manager. I am thinking about your mine workers who have over-all contracts with five different companies—Cumberland Coal and Railway, Nova Scotia Steel and Coal, and Nova Scotia Coal—they have over-all contracts with different companies. The same thing applies to steel, to textiles and to the packing houses. I think the employer could go to work on those and smash the contracts from province to province and disintegrate them.

Hon. Mr. MITCHELL: Like yourself I have had long trade union experience and when you talk about employers smashing this and that, I would remind you that there are tough people on both sides.

Mr. GILLIS: Yes.

Hon. Mr. MITCHELL: Taking the over-all picture I think that there are bound to be difficulties—if there were no difficulties there would need to be no unions and by the same token there would be no political parties—but I believe this act will be all right. I do not hold with the thinking that everyone is a scoundrel.

Mr. GILLIS: I was not saying so.

Hon. Mr. MITCHELL: But you are talking of smashing. I think we have been rather free from labour disputes in this country because of the ordinary honest-to-God common sense of the people in Canada. We don't want to go smashing each other.

The CHAIRMAN: Order, gentlemen. Will you give me one moment, please? I have observed that if the good habit of Mr. Croll and Mr. Gillis is followed by everybody, if they would rise to their feet when they address the committee, it would be much easier for the reporter to take down what they say.

Some Hon. MEMBERS: Hear, hear.

Mr. ARCHIBALD: I would like to ask the minister this; if, as he has told us, the employer now has this power of veto, why put it in? The minister is always arguing about the good sense of the employers and the employees. Why not leave it out altogether so that they could hammer it out? But this actually puts them in the position where they can block it, it leaves it wide open so that even when they come to a national agreement they still have the power to stop it. It is stymied. You have the company given the power of taking away the benefits of the bargaining agreement when you put it this way.

Mr. GILLIS: They could leave it out altogether. With the confidence the minister has in the good judgment of the employers and the employees, I think they might work the thing out themselves if they have the interest of the industry as a whole at heart. It looks to me here as though somebody thought that maybe it would not be a bad idea if they were to have the privilege of that veto of power.

Mr. CASE: I think this subsection has its purpose.

Mr. TIMMINS: But is that the proper language, Mr. Case, or, could the minister tell us something about that?

Hon. Mr. MITCHELL: It is in there for this very simple reason, that it prevents the possibility of an unwelcome agreement being forced on them. I think, as Mr. Gillis said this morning, it is a sound principle that you cannot have co-operation except on a voluntary basis, that you cannot force co-operation. What might happen is this, that you may have one plant that is well organized and another which may not be so well organized or may not be organized at all. You may have one plant where they want to sit down and reach an agreement and you may have other employers and other plants where they may not have

an organization with which to effect that purpose. And I can say too that this has worked well in the past. And I would like to point this out too, if I may, while I am on my feet. I have to do a lot of talking in this committee . We have had conversations with all of the provinces in an attempt to arrive at a uniform legislation throughout the dominion, and I would regret it if we had to change this bill substantially after what has taken place in New Brunswick, Nova Scotia, British Columbia, Manitoba, Alberta and Ontario. I think we have a responsibility in that regard. As I say, this section has been in the bill for a long time and it has worked reasonably well.

Mr. SINCLAIR: Suppose you have a situation like with the mines in British Columbia. One employer says that he does not want to sign a national agreement. Now, the employees in that plant cannot force them to negotiate as an individual union?

Hon. Mr. MITCHELL: You speak about mining. You have a lot of these mining companies who are just opening up claims and who are not making sufficient money with which to pay any dividends. You make in a mine where the wage structure includes three thousand workers; and you may have in the industry a number of mines who are only in the organization stage. There can be a lot of argument backwards and forwards over a matter of this kind—

Mr. SINCLAIR: Is not that the main point; that if one of these employers does not want to sign one of these agreements, then his own employees could still force him to negotiate?

Hon. Mr. MITCHELL: Absolutely.

Mr. ARCHIBALD: I would like to bring up this point again, this matter of employer-employee consent. I do not think it is incorporated in here; that two or more employers have to bargain, and they have to agree before it can become effective. Now, it is quite conceivable in an industry-wide setup one unit could back out and hamstring the whole work. It could be set up as a dummy to ruin all negotiation; and we are now insisting that two or more employers or two or more companies have to bargain collectively, and if they say that we don't like this the way it is; that is all there is to it, they don't have to take it.

Mr. MACINNIS: Mr. Chairman, I do not think this deals exactly with bargaining. The section we are now dealing with has to do with the certification of a union and what happens if there are two or more employers and one of those employers objects to having the employees of any one union, or unions. Until they are certified there is no union; the board shall not certify the trade union as the bargaining agent of the employees in the unit unless, (a) all employers of the said employees consent thereto". Unless there is consent by the employers that they will bargain collectively with the bargaining agency which is asking for a certification there is no bargaining agency, there is no union to bargain with. That is exactly what the situation is. They will be certified to bargain with a particular employer. They will be certified to bargain with one or more employers, if the employers are agreeable; but they will not be certified to bargain with any combination of employers unless those employers are agreeable. Now, the point that we would decide I think in the matter of subsidiary organizations is, who is the employer; who is in fact the employer, the parent organization or the subsidiary division. Has the board or the department any instructions on that point? I looked up more than one section. I just refer to one point. The minister made the remark that he seems to be the target for a lot of criticism here—

Hon. Mr. MITCHELL: I didn't say that.

Mr. MACINNIS: All I can say is, this is the ministers' bill and there is no use in making everybody else a target for the minister. And I would like to assure him that I feel in the drafting of this bill he drafted the best bill he thought possible. I agree with that. I accept that. All I ask the minister to

do is to keep in mind the thought that we are trying to make the bill a better bill; and I am ready to pool anything I have with the judgment of the other members of the committee. There is a definite point here which may cause trouble later on.

The CHAIRMAN: Shall the subsection carry?

Mr. GILLIS: I would move that the clause be deleted.

The CHAIRMAN: Pardon?

Mr. GILLIS: I would move that we delete this clause from the bill.

Hon. Mr. MITCHELL: What clause?

Mr. GILLIS: This clause (*b*) or clause (*a*) of section 9.

Mr. MACINNIS: Of subsection 3, of section 9.

The CHAIRMAN: Order.

Mr. GILLIS: The whole of subsection 3, of section 9.

The CHAIRMAN: It is moved by Mr. Gillis that the whole of subsection 3, of section 9, be deleted. Those in favour? Opposed?

The motion is defeated.

Shall the subsection carry?

Carried.

On subsection 4:

Board Examination and Inquiries

(4) The Board may, for the purposes of determining whether the majority of the employees in a unit are members in good standing of a trade union or whether a majority of them have selected a trade union to be their bargaining agent, make or cause to be made such examination of records or other inquiries as it deems necessary, including the holding of such hearings or the taking of such votes as it deems expedient, and the Board may prescribe the nature of the evidence to be furinshed to the Board.

Mr. ADAMSON: Mr. Chairman, I just want to ask the minister and the department officials; this is one section which requires a vote. I would like some statement as to the method of voting, of carrying out that vote.

Hon. Mr. MITCHELL: Well, Mr. Adamson, this section deals particularly with the case where there may be two or more orgainzations, one of which would get the bargaining right. Employees may belong to one organization or the other, and in some cases they may belong to both organizations. We have had cases where there have been as many as three organizations asking to be certified. This subsection of the bill provides the procedure to be followed and the action to be taken in taking a vote. Of course, that vote is taken in the form of a secret ballot.

Mr. ADAMSON: Is the ballot taken in such a way that the choice is written on the ballot?

Hon. Mr. MITCHELL: Yes. As a rule we consult the officials concerned.

Mr. GILLIS: While you are on the matter of vote would the minister answer this: If a vote is taken under this section is a majority of those who cast ballots sufficient, or does this require a majority of all the employees?

Hon. Mr. MITCHELL: This is the employees in the union.

Mr. GILLIS: And those who don't vote are regarded as being against the union?

Hon. Mr. MITCHELL: Yes.

Mr. GILLIS: Isn't that absolutely unfair? Would that be fair in a federal election?

Hon. Mr. MITCHELL: Let us argue that out right now. Take the ordinary vote in an election. Of course, it is somewhat different in an election in a large constituency where there is not the same, shall I say, economic necessity for everybody voting. The situation is this, that you have only one candidate to vote for.

Mr. CROLL: You mean, only one union to vote for.

Hon. Mr. MITCHELL: I am talking about one union. I am merely using the word candidate instead of union. You and I have known cases where a union has a thousand members. This is for taking the decision of the organization. I think we cover that at a later stage. I think you must insist on the protection afforded by a section such as this.

Mr. GILLIS: If they are not interested enough to vote on the question of this kind there must be something wrong with them.

Hon. Mr. MITCHELL: If they are not interested enough to vote they should not have the bargaining right. That is my view. I do not think anybody should have a vested right—it becomes a vested right once it has certified—I do not think anybody should have a vested right to represent anybody unless the majority of the people involved approve. I know that brings up another argument. I know something about voting in employer-employee organizations, and it is a good thing. Under this procedure the union gets the bargaining rights without any fear of successful contradiction that they represent everybody in a plant.

Mr. GILLIS: Would there not be a chance of its being packed?

Hon. Mr. MITCHELL: I think that is unworthy of the honourable member. I take this view—

The CHAIRMAN: Order, please.

Mr. SMITH: Mr. Chairman, I think we are completely misinterpreting what this section says. I think some of the answers which the minister has given are quite wrong. I say that very respectfully. I think what the section means is this, that the board has its own jurisdiction and its own right to determine this question; that it is not necessarily wrong by the number of persons who vote or anything of that kind. If you read it, it is clear. We do two things; first, we determine the facts as to its members in good standing being a majority of a unit, and of their being members in good standing. That is the first point; whether the trade union represents a majority of the employees; and that the union selected shall represent a majority of the employees. Then it goes on and says that the board may make or cause to be made such examination of records or other inquiries as it deems necessary; including the holding of such hearings or the taking of such votes as it deems expedient, and the board may prescribe the nature of the evidence to be furnished to the board. Now, such a clause means just this; that the board is not trying to have a majority of the people working in the plant. It means this, that they by these various means, and such others as they see fit, will come to a conclusion as to whether or not the bargaining agent—that is what we are talking about—does in fact represent a majority. In other words, they are not bound by the vote. There is nothing in here about a secret ballot either; although perhaps we could assume they might do it that way. My point is, they do not have to. I think the clause is particularly well worded, it gives them a great and wide jurisdiction and the right to come to a conclusion as to whether in fact a majority of the employees are in favour of a particular bargaining agent. I submit with respect, Mr. Chairman, that no other interpretation of this clause than the one I have given can be taken from it. There is nothing in there about a secret ballot. There is nothing in there to the effect that they must have a majority; although that is very wise.

Hon. Mr. MITCHELL: If you will look at section 9, subsection 2, clause (*a*)—

Mr. SMITH: I am speaking about this clause at the moment, as it reads. There is nothing in there, except to say to the board by such means as you see fit; including an examination of the records, the taking of a vote, and such other information as you may see fit to require. Then, under that section, you cannot come to any other conclusion that is what the section means; and I do not think of a better way of wording it.

Mr. MACINNIS: Mr. Chairman, I am going to support this section because I think it brings in what we tried to bring in under subsection 2, clause (*a*), and for that reason I think it is a good section. The board is given wide latitude; at the same time I think the answer which was given to Mr. Gillis by the minister is quite right. We still have in this section the necessity of a majority of the employees being in the union.

The CHAIRMAN: Shall the subsection carry?

Carried.

Trade union influenced by employer

(5) Notwithstanding anything in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board,

(*a*) influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired; or

(*b*) dominated by an employer;

shall be certified as a bargaining of employees nor, shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement for the purposes of this Act.

Shall section 5 carry?

Mr. CROLL: Mr. Chairman, just one minute. At its last sittings I think this committee expressed itself pretty clearly on the question of company-dominated unions. That is what this is directed to. My suggestion is this, it reads this way:

(5) Notwithstanding anything in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board,

(*a*) influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining in impaired; or

(*b*) dominated by an employer;

shall be certified as a bargaining agent of employees—etc.

In the main, that takes care of the usual type of company-dominated union, but there have been cases where the formation of unions is also involved by company domination. I think, because of that, it is necessary that we should have the word "formation" in there because that is a danger point. On the other hand, I would like the minister to let me know what happens when a union which is company-dominated is certified how do you uncertify them in this act? I have not been able to find anything. Is there anything in this act?

Hon. Mr. MITCHELL: I will have to say this, that comes under unfair practices in the act; and I would say that once a conviction is registered in the courts the order would be set aside and that would end the certification.

Mr. CROLL: That comes under what section?

Hon. Mr. MITCHELL: Section 11.

Mr. CROLL: Let us see what section 11, says:

> 11. Where in the opinion of the Board a bargaining agent no longer represents a majority of employees in the unit for which it was certified, the Board may revoke such certification and thereupon, notwithstanding sections fourteen and fifteen of this Act, the employer shall not be required to bargain collectively with the bargaining agent, but nothing in this section shall prevent the bargaining agent from making an application under section seven of this Act.

That does not cover it. No. That is what I was bothered about there.

Hon. Mr. MITCHELL: We will take a look at that and let you know.

Mr. CROLL: All right. Would you allow section 5, to stand and let us go on, and we can come back to it later.

Mr. SMITH: If we are going to let that section stand then I would ask you to take another look at the word impaired—"influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired". No doubt you have a wonderful board, but what board is going to decide whether or not something is going to affect the eflectiveness of a union to the extent that it will be impaired. I suggest that a better word might be used.

Mr. CROLL: Can you suggest anything?

Mr. SMITH: It is going to stand, and I am suggesting to the minister that he perhaps give the matter further study.

Hon. Mr. MITCHELL: What about the word "prejudiced"?

Mr. SMITH: If you are going to let the section stand, what I had in mind was that you might be able to find a better word.

The CHAIRMAN: Shall this subsection stand?

Stand.

Mr. CROLL: Will you also give thought to the word "formation"?

Hon. Mr. MITCHELL: Yes, that might be taken care of in another section of the bill.

The CHAIRMAN: Section 10: exclusive authority of certified union: Should clause (*a*) carry?

Carried. Should clause (*b*) carry?

Clause (*b*) carried.

Shall clause (*c*) carry?

Clause (*c*) carried.

Section 11, revocation:

Hon. Mr. MITCHELL: We are going to look at that in connection with the other matter about which you spoke?

Mr. CROLL: Yes, we had better let that stand. There is a lot of objection to the section.

The CHAIRMAN: Shall the section stand?

Stands.

Section 12: notice to negotiate—

NOTICE TO NEGOTIATE

Order parties to commence collective bargaining.

12. Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer binding on or entered into on behalf of employees in the unit, is in force,

(*a*) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining; or

(*b*) the employer or an employers' organization representing the employer may, by notice, require the bargaining agent to commence collective bargaining;

with a view to the conclusion of a collective agreement.

Mr. CROLL: I wonder if the minister would tell us what that section means?

Hon. Mr. MITCHELL: That section provides for the setting in motion of the machinery necessary for collective bargaining.

Mr. CROLL: Does that cover the rules of the procedure for the different things, or does it provide for making rules and regulations?

Hon. Mr. MITCHELL: That comes later on.

Mr. CROLL: All right, that is good.

The CHAIRMAN: Does this section carry?

Mr. MACINNIS: What happens if the other side refused to bargain?

Hon. Mr. MITCHELL: Then the conciliation procedure moves in. I put in a conciliator. If he fails to bring the parties together they set up a board of conciliation.

Mr. MACINNIS: Then what happens? I mean, after the board makes its decision? I have a case in mind about which the minister knows.

Hon. Mr. MITCHELL: Sure.

Mr. MACINNIS: We have seen what actually happens, and it seems that the government, or the department, is going to act in a situation. I speak of employees who make charges against a company.

Hon. Mr. MITCHELL: Let's put the boot on the other foot—I know the case about which you speak. We have just had a board of conciliation established on the railways. The majority report of that board recommended an increase of 7 cents an hour. The minority report recommended an increase of 20 cents an hour. The organization turned down the majority report, and I presume they would approve the minority report. From then on I presume they are going to try direct negotiations. Sometimes that does not happen and it is the other way around, one side says, we will use our economic strength; or, the other side does the same thing. Unless you are prepared to accept the principle of compulsory arbitration.

Mr. MACINNIS: Mr. Chairman, I think the minister has gone a little off the point with which I was dealing. As a matter of fact, this bill provides for compulsory arbitration, if you like; but it does not provide for compulsory acceptance of the arbitration award. We have to keep that in mind.

Hon. Mr. MITCHELL: It does on agreements.

Mr. MACINNIS: Now, I am in favour of compulsory arbitration; that is, to compel the employers and the employees to arbitrate their differences; but I am not at the moment prepared to say that if the decision is not satisfactory to

one side or the other they are compelled to take it. Perhaps the situation I am talking about is where the employer is apparently ignoring the Department of Labour to the extent of telling them to go to—well—

Mr. CROLL: Let us have it, "to go".

Mr. MACINNIS: Yes, to go. If one employer can do that is there anything to prevent another employer from doing it; or, if one of the labour organizations wanted to do that, is there anything to prevent them from doing it? What is the procedure involved there?

Hon. Mr. MITCHELL: That is made very clear in this bill, that if a board of conciliation cannot reach an agreement then it is referred to a board of arbitration. Where one of the parties to a dispute does not comply with an award the other party has the right to prosecute, to bring an action to enforce or compel the other party to comply with the conditions of the award. I know the case to which you were referring, that is the shipping case.

Mr. GILLIS: That is the trouble with all labour legislation, there is no enforcement machinery.

The CHAIRMAN: We are discussing the notice to negotiate in cases where there have been no collective agreements and I would ask you to restrict your remarks to that particular section.

Mr. GILLIS: I am, but the minister is explaining the bill and Mr. MacInnis objects. While we have established a lot of machinery we have not taken any steps to enforce action and I think it is absolutely unfair to expect labour organizations to go through the courts. That is a very costly procedure and I think if the Department of Labour lays down certain laws in respect to the matter of labour relations then enforcement should be obligatory on the part of the Department of Labour. Provincially it is the same thing.

Mr. SMITH: Are you in favour of compulsory arbitration?

Mr. GILLIS: I agree with Mr. MacInnis.

Mr. SMITH: You are both in favour of compulsory arbitration.

Mr. GILLIS: Just a moment, I think we should be big enough to enforce the laws we make.

Mr. SMITH: I will go along with you there.

Mr. GILLIS: I think there is ample machinery provided in this matter. I think someone in the Labour Department should receive a report, sum it up and say that one side is wrong in this matter and then, instead of forcing the employer or the employee into court, the department should say "this is the law and you are being unreasonable and the department is going to enforce this act". I think it is a matter of bringing the rule of law into labour relations and enforcing it. When we sit down here and write a bill which is to be the law we should be prepared to enforce it as against anyone who might break it.

Hon. Mr. MITCHELL: I agree up to a point, but everybody is talking about enforcing the other fellow.

Mr. GILLIS: I am talking about enforcing it as against everybody breaking the law.

Hon. Mr. MITCHELL: If you will look at the record during the last four or five years you will see who is breaking the law. Like yourself, I have had some experience in the settlement of labour disputes and I think disputes are better settled without brass bands.

Mr. GILLIS: It is not a good thing to settle with a lead pipe either.

Hon. Mr. MITCHELL: That cuts both ways, or it did in Detroit the other day as far as the U.A.W. are concerned. I think the batting average has been pretty good. You cannot go contrary to what is the accepted and fundamental

principle in trade union negotiations. I have a vivid recollection of the Ford strike where I got both employees and employers to agree to arbitration, and then the men's organization—for reasons best known to themselves—went back on the arbitration. I called Mr. Thomas in Washington and I asked him if he wanted compulsory arbitration and he said no. He said they opposed it in principle—he was speaking of the American labour movement. I told him to send someone up to negotiate. He sent in one of his ranking officials and the dispute was over in two weeks. Mr. Gillis cannot convince me, nor can Mr. MacInnis convince me, that the principle of compulsory arbitration is sound.

Mr. GILLIS: We are talking about two different things. You are talking about compulsory arbitration but I am talking about enforcement of the law.

The CHAIRMAN: Mr. MacInnis, I have allowed the minister to reply on the point but I suggest the point is quite away from the subject of the subsection we are discussing which is notice to negotiate. Is the section carried?

Carried.

Section 13—renewal or revision of current agreement or conclusion of new agreement?

Carried.

Section 14.

14. Where notice to commence collective bargaining has been given under section twelve of this Act

(*a*) the certified bargaining agent and the employer, or an employers' organization representing the employer shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude a collective agreement; and

(*b*) the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages or alter any other term or condition of employment of employees in the unit for which the bargaining agent is certified until a collective agreement has been concluded or until a Conciliation Board appointed to endeavour to bring about agreement has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

Mr. CROLL: May I make the observation that in P.C. 103 the time was referred to as ten days instead of twenty days.

Mr. CHARLTON: The act last year stated fourteen days instead of twenty days.

Hon. Mr. MITCHELL: It was thirty days instead of twenty days.

Mr. CROLL: In any event here are the figures which I have computed in respect to what may possibly happen before a strike is called. This section provides twenty days before collective bargaining begins. There are then seven days for collective bargaining under the act and fourteen days for a conciliation officer to report—and that is not long—plus twelve days to appoint a conciliation board after the report of the conciliation officer. There are fourteen days for the conciliation board to report, and fourteen days after that under the act before a strike can be called. That is a total of eighty-one days. A worker can get pretty hungry in eighty-one days waiting around for something to happen.

Mr. SMITH: He is not on strike yet.

Mr. CROLL: No, I said before a strike.

Hon. Mr. MITCHELL: You said he would get hungry.

Mr. CROLL: I point out what we are trying to establish is a cooling off period during the highest tension between the parties. They are misunderstanding one another and what we are doing is providing time, but some of these times are far too long. Under section (*b*) the minister may or may not appoint a conciliation board as he chooses—he is not bound to appoint one. My suggestion is the times are too long extended under this act and we might, before we come to agreement as to the time, keep in mind all the operations that require attending to and we should know what the total period is.

Hon. Mr. MITCHELL: That twenty days was put in there to take care of the trade union organizations. For instance, in the transportation industry the members are scattered across the dominion and their representatives have to travel great distances. My own view, too, is that they do not go on strike until this period is over, and I am a great believer in the cooling off period. Mr. Croll spoke about the tension and I think both sides act far differently at the end of the period. In my experience if you are given time to reflect and consider, while you think one thing this afternoon by tomorrow you will have changed your mind. Both sides must bring their principals together but you will notice that it does say you can commence collective bargaining without delay. They can start immediately. Do not forget this only deals with disputes but there are hundreds of agreements arrived at without any recourse to this legislation. This only deals with the situation where there is a dispute between the parties concerned and, in my experience, sometimes the longer you take the better will be the agreement. I know that when I drafted P.C. 103 it was suggested that two weeks would be sufficient to take care of it but I said it would take six months.

Mr. GILLIS: This code is not going to be applicable in any province which does not accept it. It covers very few industries as it stands. I know that the practice in many cases is that in the written agreement they have specified that thirty days notice would be given—before expiration of the contract—in which to enter into negotiations for a new agreement. Then of course, it has been the practice for some years even where the contract expires that it is renewed for a month or two months during the continuation of the negotiations. The act as it is at the present time is only going to be applicable to national industry. It is not going to affect any of the established agreements and I do not think it means very much. It may mean more in this province where you are setting up new unions where there are new contracts and inexperienced people. I am afraid of this cooling off period when you are dealing with new unions. I do not think the act will affect those who have collective agreements now because they have already written into their agreements all their conditions as to how negotiations are to be carried on, and nothing we do will prevent them from carrying on in that fashion.

The CHAIRMAN: Is the section carried?

Carried.

Section 15.

15. Where a party to a collective agreement has given notice under section thirteen of this Act to the other party to the agreement

(*a*) the parties shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree upon, meet and commence or cause authorized representatives on their behalf to meet and commence

to bargain collectively and make every reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and

(*b*) if a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination provdied for in the agreement, until a renewal or revision of the agreement or a new collective agreement has been concluded or a Conciliation Board, appointed to endeavour to bring about agreement, has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

Mr. SMITH: I wonder if we have not gone a little too far in this middle line—"if a renewal or revision of the agreement or a new collective agreement has not been concluded before the expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry—" I was just wondering if we have not gone too far. Let us assume that holidays with pay might be one of the things upon which they would be bargaining. I would not want to see the employer able to cut it down but I would not want to see him precluded from increasing the holidays. That is a condition of employment and he is not allowed to alter that condition at all. I am, in short, not in favour of him altering against the employee, but I am against him being precluded from altering it in favour of the employee.

Hon. Mr. MITCHELL: We thought that if the employer wanted to improve the holidays with pay there would be no objection from the employee, but we put in the words regarding the decreased rates of wages because most objections are in respect of that item.

The CHAIRMAN: Shall the section carry?

Carried.

Section 16.

16. Where a notice to commence collective bargaining has been given under this Act and

(*a*) collective bargaining has not commenced within the time prescribed by this Act; or

(*b*) collective bargaining has commenced;

and either party thereto requests the Minister in writing to instruct a Conciliation Officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and such request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining, or in any other case in which in the opinion of the Minister it is advisable so to do, the Minister may instruct a Conciliation Officer to confer with the parties engaged in collective bargaining.

Mr. CROLL: What I have to say applies to both 16 and 17. I think the committee should be aware of the change here. In P.C. 103 the word "shall" was used in all cases where the word "may" is being used now. What is happen-

ing is that the minister is now having pretty wide discretion and I think that the power is being given to the minister and taken away from the board. I think that is a mistake, and I think the power should be with the board and not with the minister. I do not think the minister wants that power. Conciliation, as we have repeated time and again, is the very heart of this bill. Conciliation must not only be sure but final and quick, and the use of the word "shall" meant that the minister was bound to go through the procedure but now, in fact, he can use his discretion and he becomes almost the law.

Mr. JOHNSTON: What is the legal definition of the word "may". It has come up in the House so many times that I am rather confused?

Mr. CROLL: It would mean two different things.

Mr. JOHNSTON: The Minister of Agriculture gave it the same meaning.

Mr. CROLL: It may have the same meaning with respect to agriculture but I am sure it does not have the same meaning with respect to Industrial Relations.

Mr. SMITH: The Supreme Court of Canada once said that "may" in our legislation may mean "shall".

Hon. Mr. MITCHELL: I have taken the advice of the legal gentleman and "may" means "shall". The Justice Department says that the word "may" is satisfactory here.

Mr. JOHNSTON: It can be interpreted as being either one or the other.

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: Did the Justice Department give that opinion in relation to P.C. 103?

Hon. Mr. MITCHELL: You fellows change your minds so often that it is hard to keep up with you. I have found that in a dispute the best thing is to put a commission in right away and I have done so many times and in many disputes. Perhaps the quickest and most expeditious way of settling a dispute is by the appointment of a commissioner rather than by the establishment of a board of conciliation. I think the minister should have that discretion.

The CHAIRMAN: Shall section 16 carry?

Carried.

Mr. ADAMSON: On a point of order, Mr. Chairman, we have some six minutes left before the adjournment. I wonder what is happening about the tabling of these briefs. I have received a brief which I wish to table with respect to the engineers.

The CHAIRMAN: The deadline set by the committee is next Thursday and we thought the steering committee should not meet before that time.

Mr. ADAMSON: Do I table this brief with you today?

The CHAIRMAN: Yes.

Section 17—"Conciliation officer failing then conciliation board". Shall the section carry?

Carried.

Section 18.

18. A collective agreement entered into by a certified bargaining agent is, subject to and for the purposes of this Act, binding upon

(*a*) the bargaining agent and every employee in the unit of employees for which the bargaining agent has been certified; and

(*b*) the employer who has entered into the agreement or on whose behalf the agreement has been entered into.

Mr. CROLL: This is a pretty difficult section and I am not sure that I understand it.

Mr. SMITH: I understand it too well, that is my difficulty.

Mr. GILLIS: It sounds all right to me so there must be something wrong with it.

Mr. CROLL: Would you mind letting section 18 stand?

Mr. GILLIS: I was surprised you fellows wrote that provision.

The CHAIRMAN: Is it agreed that section 18 stand?

Stand.

Section 19.

19. (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.

(2) Where a collective agreement, whether entered into before or after the commencement of this Act, does not contain a provision as required by this section, the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement and binding on the parties to and all persons bound by the agreement and all persons on whose behalf the agreement was entered into.

(3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement and give effect thereto.

Mr. CROLL: I move we adjourn before we discuss this.

Mr. ADAMSON: I suggest this section stand. This whole subsection on collective agreements is a very important part of the bill and as the committee is adjourning in two minutes I suggest this section stand and be discussed at our next meeting.

The CHAIRMAN: Do I understand, Mr. Croll, that you will be in a position to discuss section 18 at the next meeting?

Mr. CROLL: Yes.

The CHAIRMAN: The business at the next meeting will be sections 18 and 19.

Mr. CROLL: When will you deal with the resolution that we did not deal with this morning? Will you deal with it when you have finished the bill or before?

The CHAIRMAN: I assume we will deal with it when we have concluded an examination of the bill and we will come back to the sections which have been allowed to stand.

The meeting adjourned to meet again Thursday, May 6, 1948 at 10.30 a.m.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

Bill No. 195—The Industrial Relations and Disputes Investigation Act.

THURSDAY, MAY 6, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

ERRATA

Minutes of Proceedings and Evidence No. 1, Tuesday, April 27, 1948:
Page 8, line 23,—For *could* read *should*.

12172—1½

MINUTES OF PROCEEDINGS

THURSDAY, 6th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Johnston, Knowles, Lapalme, Lockhart, MacInnis, Maloney, Merritt, Mitchell, Pouliot, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Smith (*Calgary West*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman read a letter dated 30th April from The Canadian and Catholic Confederation of Labour stating that the important points of Bill No. 195 were covered in their representations of last year on Bill No. 338.

The Committee resumed consideration of Bill No. 195.

Clause 18.—Stood over.
Clause 19.—Stood over.
Clause 20.—Carried.
Clause 21.—Carried.
Clause 22.—Carried.
Clause 23.—Stood over.
Clause 24.—Carried.
Clause 25.—Carried.
Clause 26.—Carried.
Clause 27.—On motion of Mr. Smith,

Resolved,—That the Department of Labour be requested to prepare an amendment providing for the use of the plural form, or sense, of "conciliation officer" in this and relative clauses.

Carried subject to the provision in the above motion.
Clause 28.—Carried.
Clause 29.—Carried.
Clause 30.—Carried.
Clause 31.—Carried.
Clause 32.—Mr. Merritt moved that Section (8) thereof be deleted.

The Chairman read a letter dated 30th April, from the Law Society of Upper Canada relative to section (8). He also referred to similar representations received from other provincial law societies.

On motion of Mr. Smith, consideration of the proposed amendment was adjourned.

The Committee adjourned at 12.40 o'clock p.m., to meet again at 10.30 o'clock a.m., Tuesday, May 11.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 6, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: Gentlemen, I wish to place on the record the reply which I have received from The Canadian and Catholic Confederation of Labour. It is contained in a letter dated April 30, 1948, addressed to the Chairman.

> Dear Mr. COTE,—I have received your letter dated April 23 relating to Bill No. 195 inviting the C.C.C.F. to express its views before the Committee on Industrial Relations, should it wish to add comments to the brief it forwarded last year when the original bill on federal industrial relations was introduced in the House of Commons.
>
> I have been directed by the C.C.C.F. to advise you that all the important points having been discussed in last year's brief, it bides by the opinions then expressed, and does not deem it expedient to present a further brief which would be on the whole a repetition of things already stated.
>
> I thank you for having got in touch with our organization in connection with bill No. 195, thus providing it with all the latitude desired to make known its opinion.
>
> Yours very truly,
>
> (Sgd.) GERARD PICARD,
> *President.*

This is a translation of the original letter.

Now, our order of business this morning starts with consideration of clause 18, collective agreements.

Mr. CROLL: Section 18 stands, as I understand it.

The CHAIRMAN: At the close of the last meeting, Mr. Croll, I asked the committee if they would be willing to consider sections 18 and 19 today. We touched upon those sections at the last meeting, and it was asked that they stand.

I have no objection to allowing it to stand if the committee is not prepared to revert to consideration of section 18 this morning. We could allow it to stand as we have done with the other sections.

Mr. CROLL: The meaning of section 18 is a difficult one and it revolves around a Privy Council case of 1931, giving meaning to the words. I have not had a chance to read the case and I should like to have an opportunity of reading it before giving an opinion. I should like to have the section stand, for that reason.

Hon. Mr. MITCHELL: I believe we should allow both these sections to stand. Let us get along with those things upon which we can agree.

The CHAIRMAN: Shall section 18 stand?

Section 18 stands.

Hon. Mr. MITCHELL: I am going to make this suggestion, so the members of the committee can consider it during the course of the meeting. There is an election in Ontario and there are elections elsewhere. I assume some of the members will find it necessary to be absent. Perhaps we could meet more frequently during the next week and try to get this bill cleaned up so the members would be free.

Mr. MACINNIS: If Mr. Mitchell wants to take part in the election—

Hon. Mr. MITCHELL: I included us all in that remark.

Mr. KNOWLES: It might be better for us all if we stayed here.

Hon. Mr. MITCHELL: I do not know about that. I sometimes think it might be better if some of us were away from here.

The CHAIRMAN: Would you have any suggestions to make?

Hon. Mr. MITCHELL: Perhaps at the end of the meeting; we might consider it in the meantime and then make a decision. I believe we can clean up this bill next week.

The CHAIRMAN: Section 19 stands.

Section 20, subsection (1).

Agreement deemed for term of one year

20. (1) Notwithstanding anything therein contained, every collective agreement, whether entered into before or after the commencement of this Act, shall, if for a term of less than a year, be deemed to be for a term of one year from the date upon which it came or comes into operation, or if for an indeterminate term shall be deemed to be for a term of at least one year from that date and shall not, except as provided by section ten of this Act or with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

Hon. Mr. MITCHELL: I will tell you the purpose of that. It creates stability. Once an agreement is negotiated, it runs for a year. It prevents what you might call jurisdictional disputes. You notice in subsection (2), it does not say anything about them having a meeting on the terms of the agreement. We feel there should be a minimum period of one year. It is standard practice.

Mr. MACINNIS: Does this mean that no collective agreement could be made for a period of less than one year and that any such thing as the 30-day clause is out?

Mr. CROLL: If you do that, then you are in difficulty when you come to decertify. After ten months, you can make a new application and it has always been the practice to have some standard time. It has always worked out pretty well that way. I would say it was all right.

Hon. Mr. MITCHELL: I will tell you what the experience has been in the United States. We have not had the experience here. Under the United States legislation, it is found votes are taking place continually and there is confusion all the time. Once the bargain is decided upon and there is an agreement, let them try it out for a year. If they do not like that, provision is made in the Act and a vote can be taken.

The CHAIRMAN: Shall the subsection carry?

Carried.

Subsection (2). Revision other than that of the term.

Shall this subsection carry?

Carried.

Section 21, strikes and lockouts.

Conditions Precedent to Strike Vote, Strike or Lockout.

21. Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit, or declare or authorize a strike of the employees in the unit and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees in the unit, until

(*a*) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement; and either

(*b*) a Conciliation Board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or

(*c*) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and fifteen days have elapsed since the Minister received the said request and

(i) no notice under subsection two of section twenty-eight of this Act has been given by the Minister, or

(ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.

Mr. LOCKHART: Could I ask the minister if he feels that the time allotted in these various sections is about the best that can be done? Is that his firm conviction?

Hon. Mr. MITCHELL: That has been our experience, Mr. Lockhart. I should like to point this out, clearly, too. I think it was Mr. Smith who raised the question in the House of Commons on the question of the sympathetic strike. This section outlaws the sympathetic strike.

Mr. CROLL: I do not understand that.

The CHAIRMAN: Shall the section carry?
Carried.

Section 22, subsection (1)

No Strikes and Lockouts While Agreement in Force.

22. (1) Except in respect of a dispute that is subject to the provisions of subsection two of this section

(*a*) no employer bound by or who is a party to a collective agreement, whether entered into before or after the commencement of this Act, shall declare or cause a lockout with respect to any employee bound by the collective agreement or on whose behalf the collective agreement was entered into; and

(*b*) during the term of the collective agreement, no employee bound by a collective agreement or on whose behalf a collective agreement has been entered into, whether entered into before or after the commencement of this Act, shall go on strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of any such employee.

Shall the subsection carry?

Mr. JOHNSTON: It seems to me that is the subsection which refers to the sympathetic strike.

Hon. Mr. MITCHELL: It does, too.

Mr. CROLL: Carried.

The CHAIRMAN: Carried.

Subsection (2).

Where Dispute Respecting Revision of Agreement.

(2) Where a collective agreement is in force and any dispute arises between the parties thereto with reference to the revision of a provision of the agreement that by the provisions of the agreement is subject to revision during the term of the agreement, the employer bound thereby or who is a party thereto shall not declare or cause a lockout with respect to any employee bound thereby or on whose behalf the collective agreement has been entered into, and no such employee shall strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of any such employee until

(*a*) the bargaining agent of such employees and the employer or representatives authorized by them on their behalf have bargained collectively and have failed to conclude an agreement on the matters in dispute; and either

(*b*) a Conciliation Board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or

(*c*) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and fifteen days have elapsed since the Minister received the said request and

(i) no notice under subsection two of section twenty-eight of this Act has been given by the Minister, or

(ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.

Shall this subsection carry?

Mr. LOCKHART: May I ask the same question of the minister at this point? Do you think seven days is enough?

Hon. Mr. MITCHELL: Yes.

The CHAIRMAN: The subsection carried.

Section 22?
Carried.

Section 23, subsection (1).

No Employee to Strike Until Bargaining Agent Entitled to Give Notice To Employer to Commence Collective Bargaining.

23. (1) No employee in a unit shall strike until a bargaining agent has become entitled on behalf of the unit of employees to require their employer by notice under this Act to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement and the provisions of section twenty-one or twenty-two of this Act, as the case may be, have been complied with.

Mr. KNOWLES: May I call attention to the comment which the C. C. L. brief made about this clause. I have no doubt that you, Mr. Chairman, and perhaps the minister have studied it. The general position taken by the C. C. L. seems to be that there seems to be a difference in the prohibition against employees and the prohibition against employers. It would seem that there is only one limitation placed upon employers, namely, that they shall not declare or cause

a lockout while an application for certification is pending before the board but, at any other time, it would appear that the employer can declare or cause a lockout.

On the other hand, the prohibition against the employee striking seems to be much more pervasive.

Hon. Mr. MITCHELL: The employer cannot break the agreement. It is covered by the Act, sections 21 and 22.

Mr. MACINNIS: Have you put that in, provided the provisions of section 21 or 22 of this Act have been complied with?

Hon. Mr. MITCHELL: I have not got the sections in my mind, but I believe if you go farther back you will find it says you cannot change working conditions or wages until you have resorted to a conciliation board. It is covered very clearly there.

Mr. MACINNIS: Is there any objection to adding the provision which you have in section 1 to section 2, and you remove any semblance of discrimination?

Hon. Mr. MITCHELL: Could we allow that to stand while I have a look at it to make sure there is no repetition?

The CHAIRMAN: Shall the section stand?

Stand.

Section 24.

Trade union not entitled to bargain not to declare strike.

24. A trade union that is not entitled to bargain collectively under this Act on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

Mr. CROLL: Mr. Chairman, I have some objection to that. I think this section is bad. I think I know what the minister is trying to get at. He is trying to get at the minority unions, but he is getting at them a little too well.

I believe this section means that an uncertified union cannot strike. Now, there are a great number of unions in this country which are uncertified and they remain uncertified. They have been that way for a great number of years. If we pass such a section, it will mean there will be a rush to the board immediately for purposes of certification. I do not believe it makes any difference whether they are certified or not, if they have had an agreement. It is a matter of procedure, and I do not think it should be vital. I think that is the first result you are going to get from this section.

The second point is that, I think The Wartime Prices and Trade Board laid down the regulation, if I recall, that there was no certification for short-time positions. Take a contractor, for instance, who may have a six months' or four months' job; that means his employees will be deprived of having union conditions because they cannot get certification. In any event, they will be deprived of the privilege of striking because they cannot get certification due to the time limitation. That is one decision made by The Wartime Prices and Trade Board.

We are trying to deal with minority unions, but we are taking the right to strike away from people who should have that right. I think section 24 should not be allowed to pass with the phraseology it has at the present time because it may lead to conditions which do not fit into our modern way of life. I would suggest, particularly, that if you do not want to deal with the section now, you allow it to stand. On the other hand, I have serious objection to it and it may be that some other members have some views on it.

Hon. Mr. MITCHELL: In the first place, I do not know what The Wartime Prices and Trade Board has to do with this legislation?

Mr. CROLL: Did I say The Wartime Prices and Trade Board? I am sorry, I meant the Wartime Labour Board.

Hon. Mr. MITCHELL: I must say that I have no knowledge of a case such as that to which you refer in the case of general contractors. I have been very close to the construction industry all my life. The general practice in Canada is to negotiate an agreement on the 1st of May for the year. I know of no case where conditions such as you mention have arisen.

Then, there is another angle to it. You can get an organization which says, "We do not care about certification."

Mr. CROLL: Are the railroad labour unions certified?

Hon. Mr. MITCHELL: Oh, yes.

Mr. CROLL: Everyone of them?

Hon. Mr. MITCHELL: Some of them.

Mr. CROLL: But some are not.

Hon. Mr. MITCHELL: Take the railroad industry, since you raise the point. The mere fact an organization is not certified does not place it outside the law.

Mr. CROLL: It places it outside this section.

Hon. Mr. MITCHELL: It says,

> A trade union that is not entitled to bargain collectively under this Act on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

Mr. MACINNIS: I am not clear in my own mind about this. If this Act requires that all trade unions to be entitled to bargain collectively must be certified under this Act, then this section would prevent any action by a trade union, no matter what procedure it had gone through and no matter how long it had been in existence prior to this Act coming into effect. I have in mind the union to which I belong, myself, the street railwaymen's union. We have had collective agreements with the company since 1898. I am fairly sure that the union is not certified under this Act. It has never received any certification because, when it came into being and, as it carried on, no certification was necessary. It was recognized as the bargaining agent.

Under this Act, even if the local of the Street Railwaymen's Union anywhere in Canada has gone through all the procedure legally required of it except being certified, it could not go on strike because of this section.

Mr. JOHNSTON: It could not be the bargaining agent unless it was certified.

Mr. MACINNIS: It is the bargaining agent and it is recognized as such. It is the bargaining agent now and it has a collective agreement with the company. The agreement is recognized.

There should be a period of time allotted, I think, during which unions which are not now certified could make application to be certified. I do not think they should be prevented from taking action which is normally theirs because this Act has been put on the statute books.

Hon. Mr. MITCHELL: If you look at section 15,

> Where a party to a collective agreement has given notice under section 13 of this Act to the other party to the agreement—

That covers the case of which you speak. They go through the normal procedure of conciliation. That section is there, so I think it covers the case pretty well.

Mr. GILLIS: I do not think it does. I think it only deals with notification for the renewal of a collective agreement. This section is rather rigid. If interpreted literally, it could mean that the unions of this country that have had bargaining rights with their employers for the last fifty years must now make application for certification.

It is not to be interpreted that way?

Hon. Mr. MITCHELL: No. It is aimed at covering such situations as the possibility of a break-away group in a union like the mine workers union.

Mr. GILLIS: I was going to say that my interpretation of this section would be to prevent the raiding of a certified and authorized union. Where there is a collective agreement, a new group cannot come in and wedge its way into the plant until it gets sufficient strength to interrupt operations. A small uncertified group could not cause a strike and interrupt the authorized union in the plant. I think that is what this section is designed to do.

Hon. Mr. MITCHELL: I think the point was raised by Mr. Adamson the other day, the same point you are raising now.

Mr. GILLIS: That is my conception of the section. Unfortunately, the minister does not interpret the section. Once the board gets it the board puts its own interpretation on it. However, it is understood that unions such as the railroad workers, the mine workers and the steel workers, who have never bothered with certification but who have collective agreements, are not to be interfered with?

Hon. Mr. MITCHELL: No.

Mr. CROLL: I am very glad you and the minister have an understanding. It is going to make it easier.

The CHAIRMAN: Shall this section carry?

Mr. CROLL: I think the whole section should be out.

Hon. Mr. MITCHELL: That has been the bugbear of responsible trade unions in this country, the raiding of these organizations by other people. It can be easily done, as Mr. Gillis and Mr. Smith and Mr. MacInnis and I know quite well.

Mr. GILLIS: Nothing more simple.

Mr. SMITH: It was done in the coal mining industry by the O.B.U., threw your outfit right out of the Dominion of Canada.

Hon. Mr. MITCHELL: I remember that.

The CHAIRMAN: Is the section carried?

Carried.

Section 25. Suspension or discontinuance of operations.

Is the section carried?

Carried.

26. Notwithstanding anything contained in this Act, any employee may present his personal grievance to his employer at any time.

Is the section carried?

Mr. KNOWLES: I think we should pause a moment on this one. It seems to me that while it does seem plausible and high principled it does bring into question the whole question of collective agreements.

Mr. CASE: You would not want to deny an employee the right to present his personal grievance to his employer?

Mr. ARCHIBALD: The C.C.F.L. take objection to it. They say that though that section deals with the individual there is nothing in there to permit of grievance procedure collectively.

Hon. Mr. MITCHELL: That is earlier in the Act. I think it is fundamental. You were not here the other day, Mr. Knowles, when I expressed my opinion on it. We have heard a lot about fundamental rights and freedoms, whatever they call it.

Mr. KNOWLES: I was in another committee talking about the same thing.

Hon. Mr. MITCHELL: There is no law in this country that is going to stop me from talking to the devil himself if I want to. I think that is fundamental.

The CHAIRMAN: Is the section carried?

Carried.

27. Where a Conciliation Officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed or within such longer period as the Minister may from time to time allow, make a report to the Minister setting out

(*a*) the matters, if any, upon which the parties have agreed;

(*b*) the matters, if any upon which the parties cannot agree; and

(*c*) as to the advisability of appointing a Conciliation Board with a view to effecting an agreement.

Mr. MACINNIS: Does that not interfere with the time limit set for certain stages of the dispute? The time limit here is at the absolute discretion of the Minister of Labour, and while we may admit that the present Minister of Labour would not prolong unduly a situation of this kind we may not be so fortunate as to have a Minister of Labour of this kind always.

Mr. CASE: He might be a C.C.F. man.

Mr. MACINNIS: My friend, Mr. Case, might be Minister of Labour and we would not feel so easy about it. I have an objection, unless there is some satisfactory explanation, to the absolute discretion given to the Minister of Labour in this matter.

Hon. Mr. MITCHELL: It happens from both sides. Frankly, since I have been in the portfolio, we have not had much difficulty. We may have had better luck than other people, but sometimes you will get an organization which will say, "Can you give us another three or four days? Can you give us another week?" I know in the mining dispute, Mr. Gillis, we dragged along the negotiations there for eight months, but reached an agreement that they were satisfied with. I do not think you can write common sense into a bill. You have got to give the minister some leeway.

Mr. MACINNIS: Is that your view of the bill?

Mr. CASE: We have to write common sense into the minister.

Hon. Mr. MITCHELL: I think you have got to give the minister discretion as to what is the natural thing to do. He must be able to talk to both sides. One side may say, "We are having some little difficulty. We think we can reach an agreement without even a conciliation board if you will give us another week or a couple of weeks or a couple of days." I call that common sense. This is legislation. I think the minister should be given some discretion because after all is said and done if you get the kind of minister that some of you think you might get the bar of public opinion and elections take care of those kind of people.

Mr. JOHNSTON: Could there be a time limit put in there?

Hon. Mr. MITCHELL: There is a limit of fourteen days.

Mr. MACINNIS: Could you not have some such phrase as "with the consent of the parties to the dispute"?

Mr. CASE: Is that not what it implies now?

Mr. SMITH: I am very much in favour of letting the section remain as it is. You have your conciliator working hard and running from one side to the other and he comes to the place where he thinks he is going to make it. Without this provision he would be chopped off. He would be functus officio. That is a term that Mr. Croll will explain to you people who do not know what it means. He is finished, whereas if he had another week or two weeks or so he might bring about a satisfactory result. Surely the minister is not just going to be an

automaton, and push a button and say "that thing is ended, now we go to the other one." I think this is designed and well worded to take care of exactly what I am talking about.

Mr. MacInnis: I am not going to put my understanding of legal phraseology against that of Mr. Smith, but I should like to know what this does to subsection B of section 21, which reads:

> A conciliation board has been appointed to endeavour to bring about agreement between them and 7 days has elapsed from the date on which the report of the conciliation board was received by the minister.

Hon. Mr. Mitchell: That is the board. We are talking about the conciliation officer here.

Mr. MacInnis: Yes, but I should like to point this out, too. One of the objections that has been made over the last few years is that the settlement of disputes has been carried over too long a period until one side or the other is worn out with delays. I see no reason why there should not be some provision here that the consent of the parties to the dispute should be required for the continuing of the dispute. Under this section the minister can set aside any time in his discretion, "Within such longer period as the minister may from time to time allow, make a report to the minister," and so on.

Hon. Mr. Mitchell: Is that not the logical thing to do? I get this so often that perhaps I took too much for granted and did not explain it fully. You get the parties. They meet. You say, "Well, I will see if I can get the other people to go along with that point of view." Disputes have been settled so often by giving the minister discretion, sometimes against the advice of one side or the other. That is bound to crop up, but as I have said before you cannot legislate for the exceptions to the rule. The legal people tell me that is bad law, but in my own experience with the federal department, irrespective of the party in power, and my experience goes back over a good many years, I cannot say I have had any difficulty.

Mr. MacInnis: I can give you a case in point.

Hon. Mr. Mitchell: I was going to suggest that the Bible has exactly the same view, the C.C.L. brief.

Mr. MacInnis: In the national steel dispute two years ago that dispute was carried on from one week to another with the hope that the employees would be starved out and go back to work.

Hon. Mr. Mitchell: Oh, no.

Mr. MacInnis: Well, I just happen to know.

Hon. Mr. Mitchell: They were actually on strike.

Mr. MacInnis: This may be the same thing. The company may say, "We will hold out for a while. We will not do anything yet. We think we can bring them to time without making this concession or that concession."

Mr. Gillis: Without agreeing or disagreeing with anybody, I think this is designed to prevent strikes. My experience has been that this kind of action is the kind of action that is necessary to prevent a general mix-up. I think what this is designed to do is this. When both parties notify each other that their agreement is terminating at a certain date then there are points of conflict where they cannot come together. I have always found that someone sent in from the outside, who is trained as a conciliation officer, can sit in between the two contending parties, can get them together and resolve their difficulties and the parties can save face without backing up. Within fourteen days that conciliation officer is going to have a fairly comprehensive picture of what the difficulties are. He makes a report to the minister, and if he has not resolved the difficulty the minister then decides on the basis of the evidence submitted to him that a conciliation board is necessary. He appoints that board. The

conciliation board then has a comprehensive picture of the whole thing rather than getting it mixed up as it would be had the conciliation officer not gone in.

With respect to the powers of the minister it has always been my contention that he who has the responsibility should have some authority. As I see the matter the good feature about this section is that while conciliation boards and labour boards may make decisions outside of the House of Commons, and we cannot question them or talk to them, yet if the minister is the final deciding factor, as he is under this machinery, we then can pull the minister up in the House and make him responsible to the House in any dispute that may be arising in any given industry. The House can get a picture from him through his conciliation officer that we would not otherwise get. I think myself this is legislation that is necessary in this day and age because this business of strikes and that kind of thing, in my opinion, belongs to the past. We are now in the administrative stage of unionism, and we have to set up some mechanics for it. This is new but I am for pinning responsibility on the man who has authority. I want that man to be as close to the House of Commons as we can get him. I have suggested as to pensions that in border-line cases the minister should be the deciding factor because we then can talk to him in the House. He should have some administrative latitude. With all due respect to the opinions expressed, my own experience in the rough and tumble of life in these matters is that when you get into a fight a man coming in from outside is a very important factor in resolving the difficulty.

Mr. SMITH: I have one suggestion I think the minister might consider. I am not presenting any amendment. I was wondering if in connection with this it should be "conciliation officer or officers." You would need to amend section 17 slightly. What I have in mind is one man may be persona non grata to the parties. They may say, "That fellow did so and so in Quebec city", or something of that kind. All I have in my mind is to give the minister permission to change the officer or make a new appointment of an individual because some of us are better conciliators than others. For example, I could conciliate Clarry Gillis but I would have an awful time conciliating Angus MacInnis. I am not saying he is tougher than Clarry Gillis because Jim Sinclair could conciliate Angus MacInnis where he would not get to first base with Clarry Gillis.

I am thinking of the human element in this picture because that is what it is. The man who conciliates has got to be the sort of fellow who will gain the confidence of both parties if he is going to get anywhere. It occurred to me you might want to broaden sections 16 and 17 to provide for the appointment of officers. I think if you added "or officers" or "alternate officers" it might strengthen your hand a little bit.

Hon. Mr. MITCHELL: I agree to that, officer or officers.

Mr. MACINNIS: I have one other word. First of all there are about six months in the year when the House is not in session and when you cannot get at the minister, and in my experience in the House—other people may not have had this experience—it is not very satisfactory when you can get at the minister. He can give you the brush-off just about as easy as anyone that I know, and that is generally what he does. I think perhaps the members of the committee have the idea this is before a strike may be called, but it is not. It is before a conciliation board is appointed, and the minister can, at his absolute discretion, postpone the conciliation board as long as he likes.

Mr. DICKEY: No, I do not think so. You have to look at section 27 with relation to section 21(*c*). Under section 21(*c*) either party may request the minister in writing to appoint a conciliation board, and can proceed after fifteen days have elapsed, the minister having received that notice. If one party at this stage does not want the matter carried on he can terminate it at the end of fifteen days.

Mr. SINCLAIR: I agree with Mr. MacInnis in one particular, that this could well be used as a means of stalling the conciliation process. I can quite see that if a situation occurred where a conciliator felt he was almost at the point of agreement it would certainly be desirable to give him extra time, but if he is at that point then I would say that both the employer and the employees' agents also realize that. Therefore I would suggest that if the phrase "with the consent of both parties" was put in here it would get around that because then neither party could say it was a stall to stretch out the conciliation. That would still give the minister the opportunity of putting a conciliation officer on the job for a longer time if he reports he is about to effect an agreement.

Hon. Mr. MITCHELL: I can say that it has been in 1003 for four years, and I do not know of a single complaint, either on the floor of the House of Commons or to my knowledge from any organization of employers or employees. Let us forget I am the minister. Are you not going to place the minister of the time in a stupid position if you deny him the right, irrespective of the opinion of either party, to take, shall I say, another crack at it, he knowing all the facts through his conciliation officer, facts that are not known sometimes to either party to a dispute? If he thinks he can pull the dispute out of the fire without a conciliation board are you going to deny him the chance to do that? I do not know.

Mr. LOCKHART: I am in agreement with the section with the exception that I also agree with Mr. Smith on the suggestion of making it plural instead of singular. I have had the experience in my own area where sometimes a conciliation officer has seemed to antagonize one side or the other, and where a new conciliation officer came in, and in one instance I have in mind two came in together. I think that the whole section is based on experience, but I do believe that Mr. Smith's suggestion of making it plural is a good one. That is the only thing.

Hon. Mr. MITCHELL: If Mr. Smith will move that I will second it.

Mr. SMITH: I am going to move it in this way. It may be an out-of-order amendment, but I am going to move that the bill be amended to permit plural or alternative conciliation officers to be appointed. I am not going to try to draft it.

Hon. Mr. MITCHELL: In any section of the Act.

Mr. SMITH: Yes, because if we go back to sections 16 and 17 that is the important place. They are the ones that provided for appointment. I hope you will not pin me down too closely to try to word it. The minister has experts to do that. I think the idea is very plain. I think it might be of value.

Mr. LOCKHART: I would be very glad to second the principle of what Mr. Smith has suggested.

Mr. GILLIS: There is one point I should like to make. Some people whom I have heard speak seem to think this is mandatory. It is not. Unless the parties to the dispute request in writing that a conciliation officer be sent in there will be none sent in.

Hon. Mr. MITCHELL: No, no.

Mr. GILLIS: Read section 16.

Mr. SINCLAIR: The minister does not have to have a request.

Mr. GILLIS: Section 16 reads:

> Where a notice to commence collective bargaining has been given under this Act and (*a*) collective bargaining has not commenced within the time prescribed by this Act; or (*b*) collective bargaining has com-

menced; and either party thereto requests the minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them,

and so on.

Mr. SINCLAIR: Away down at the bottom, "or in any other case in which the opinion of the minister it is advisable so to do."

Mr. GILLIS: You have already adopted that.

Hon. Mr. MITCHELL: That provides for the point you are raising.

Mr. SINCLAIR: The minister has full discretion.

Mr. GILLIS: You have already adopted section 16. This is merely following through the mechanics. You have already adopted section 16. I am assuming those who administer the Act will be honest.

Mr. CROLL: Section 16 does not require request or consent.

Mr. GILLIS: Yes.

Mr. CROLL: No, read it.

Mr. GILLIS: I just read it—"and either party thereto requests the minister in writing"—

Mr. CROLL: "Or in any other case in which in the opinion of the minister it is advisable so to do."

Mr. GILLIS: You do not mean to tell me that the minister under the Act will set himself up as all supreme?

Mr. CROLL: Exactly.

Mr. GILLIS: You do not mean to say that without any contact, instructions or request from the parties to the dispute he is going to say, "I am going to do the job myself by a conciliation officer." I think that would be crazy. I do not think any minister would be foolish enough to take that attitude. I think in all this he is trying to gather evidence for his board before the board enters the picture.

Mr. SINCLAIR: I asked him a direct question on the section and he said yes, he would send a conciliator in where he saw a dispute brewing and where he thought that a conciliator could help.

Mr. GILLIS: It has been in 1003 for four years and it has worked very well.

Mr. MACINNIS: Surely the minister has the right to step in if either party to the dispute or both parties think they are a law unto themselves. We should grant that right to the minister without question. That is a part of his proper function, but to say that he can prolong that indefinitely is another matter altogether.

Mr. GILLIS: I do not think anyone says that. You just assume that.

Mr. CROLL: "Within such longer period as the minister may from time to time allow." That means anything, does it not?

Hon. Mr. MITCHELL: I have set up hundreds of boards, and I have never had any criticism on that ground.

Mr. CROLL: Is that in 1003?

Hon. Mr. MITCHELL: Yes.

The CHAIRMAN: Gentlemen, we have before us a motion by Mr. Smith which would amend not only section 27 but a few others in the bill. It is of a general nature and the effect of it is to add after the words "conciliation officer" wherever found in the bill the words "or conciliation officers."

Mr. SMITH: How would it be to let the section stand and have the minister's draftsmen work on it? He knows what we are talking about. They can bring it back in proper form and then I think it will go through without any further discussion.

The CHAIRMAN: I may say that we have already carried some sections where your amendment would apply.

Mr. SMITH: Section 16 is one.

The CHAIRMAN: If the committee would be agreeable to carrying section 27 subject to the application of your amendment that will be constructive.

Mr. SMITH: We can move reconsideration of section 16 and fix it up. I should like to see it properly drafted so that we will know what we are doing.

Hon. Mr. MITCHELL: And section 16.

Mr. CROLL: There may be others.

Hon. Mr. MITCHELL: Or any other section.

Mr. SMITH: Or any other section where the principle is involved.

The CHAIRMAN: I should like to have a vote on the principle of Mr. Smith's motion.

Shall the motion carry? Those in favour? Those opposed? The motion is carried.

Carried.

Shall section 27, subject to that motion, carry?
Carried.

Section 28, constitution of conciliation boards, subsection (1). Is the committee agreeable to considering these subsections separately?

Mr. CROLL: You had better read something which makes sense.

The CHAIRMAN: Section 28; I shall read the whole section.

Mr. CROLL: It seems all right.

The CHAIRMAN: Shall section 28 carry?
Carried.

Section 29; person ceasing to be a member; substituting appointment.
Carried.

Section 30; Oath of office. Shall this section carry?
Carried.

Section 31; Terms of reference. Shall this section carry?
Carried.

Section 32, procedure.

PROCEDURE

Function

32. (1) A Conciliation Board shall, immediately after appointment of the Chairman thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

Procedure

(2) Except as otherwise provided in this Act, a Conciliation Board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

Time and Place of Sittings

(3) The Chairman may, after consultation with the other members of the Board, fix the time and place of sittings of a Conciliation Board and shall notify the parties as to the time and place so fixed.

Quorum

(4) The Chairman and one other member of a Conciliation Board shall be a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

Majority Decision

(5) The decision of a majority of the members present at a sitting of a Conciliation Board shall be the decision of the Conciliation Board, and in the event that the votes are equal the Chairman shall have a casting vote.

Particulars of Sittings to Minister

(6) The Chairman shall forward to the Minister a detailed certified statement of the sittings of the Board, and of the members and witnesses present at each sitting.

Majority Report

(7) The report of the majority of its members shall be the report of the Conciliation Board.

Representation Before Board

(8) In any proceedings before the Conciliation Board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a Conciliation Board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

Mr. GILLIS: Carried.

Mr. CROLL: No, just a minute.

Mr. MERRITT: Well, Mr. Chairman, I object to clause 8.

Mr. KNOWLES: What is your profession?

Mr. MERRITT: Yes, I am a member of the profession. I know the argument which has been put forward for years and years but that really makes no difference here.

I have two basic objections to it. The first is that it is entirely ineffective in obtaining the objects which the labour organizations seek. The second is, of course, that it is in this great day of non-discrimination, a direct, gross and unwarranted discrimination against a recognized profession in Canada, and a recognized group of people in Canada. I know I am going to get the support of my friend from Vancouver North on my objection to this clause because my objection to it is exactly the same as his objection to the ban on margarine.

I do wish to say that, if you pass this subsection, you will be parties to a direct and entirely unwarranted discrimination. When you talk here of fundamental freedoms and human rights, that kind of thing, any person who votes for this section, will reveal his opinion on fundamental rights and freedoms.

Let us put that aside, because that is a matter of principle and I know the feeling on this matter. Let us get down to practical things. I think Mr. Bengough's evidence last year was that the intention of the organizations was that negotiations before conciliation boards should be carried on by principals, that is what they intended. They did not want paid and skilful men. They wanted the principals to try and get together and settle the dispute. If you say that, that the negotiations must take place between the manager of the plant and the president of the local union, okay. If you say that the negotiations must take place between some more senior officer of the international union and some more senior officer on behalf of the employer, okay. Then, you have achieved some purpose but all you are doing here is to make it impossible for barristers, solicitors or advocates to be the pleader for either side.

Mr. JOHNSTON: It is not impossible, because it can be done with consent.

Mr. MERRITT: Yes, I mean without consent of both sides.

Now, you do not prohibit a disbarred barrister from pleading on behalf of management or the union. Somebody who has been found guilty by his brothers of professional misconduct, who takes his skill as a pleader into this line of work, is perfectly eligible to appear without the consent of either party.

Then, of course, anyone can go to law school and get the same knowledge of law as any young lawyer has. He can then specialize in labour relations without paying fees to the Law society of his province. He could be much more technical in labour relations than any practicing lawyer could be. He might know all the ways of wriggling and avoiding an agreement and yet, simply because he does not pay his annual fee to the law society, you cannot prevent him from appearing before the board.

It is well known now that there are, in many parts of Canada, organizations set up for the express purpose of representing either management or labour in an industrial dispute. There is nothing in that section to stop these people from representing either side without consent of the parties. These people, and I say this with deference, have not got the long tradition of the bar. They have not got the responsibility towards the law society which every lawyer has. They are less qualified than lawyers to do a good job in this kind of procedure.

I shall not say any more, except to reiterate that if you want this section to say that only principals can appear before the conciliation boards, that is an entirely different thing.

(At this point Mr. Croll assumed the chair.)

You could say that no one who is not a member of the management staff or an employee of the company can appear before the board. I have no objection to that. However, if you simply single out a learned and very respectable and responsible profession in Canada for exclusion, without any reason except sheer prejudice, and if you do not succeed in ousting the other special pleaders, you have not achieved anything of any value at all. You are practising a rank discrimination which this parliament should not countenance for one moment.

The ACTING CHAIRMAN: Then, I understand you are moving to strike out clause 8 of section 32?

Mr. MERRITT: Yes.

(At this point, Mr. Coté resumed the chair.)

Mr. SMITH: I will second that motion. I want to say a word about it. In certain places, there is a prejudice against the union to which I belong. Just why that should be, I do not know.

Now, let us look at the other side of the picture. I can quite see how this arose. It arose in connection with workmen's compensation at a time when the trade unions were not as well organized as they are today. When workmen's compensation matters came before the courts, the employers were able to employ a good lawyer. May I say that I have been on the other side. The union has been unable to meet that chap in the controversy which was before the court at that time. I think there was something in the position taken at that time because, you see, the union did not support its individuals as it does now. It did not do so because it was, perhaps, financially incapable of doing it. Those days have gone. When we hear of a fine being levied on a union in the millions of dollars and being paid by return mail, it gives us an idea of the change which has taken place.

I want to say this, that labour has developed and properly developed, the best set of professional advocates of which I know.

Mr. DECHENE: Some of them are in this room.

Mr. SMITH: In this room—well now, we had the minister of labour blushing a moment ago and I do not want Angus and Clary to follow his performance.

Let us come down to cases. The lawyer who appears before a board is an advocate paid, it is true, to do what? To do the best he can for his side. On the other hand, I put this simple proposition to you; you could hunt the bar of the

Dominion of Canada from end to end and, in matters of this kind, you will not find an advocate, in my judgment, even comparable with Pat Conroy or Charlie Millard among the men in this section of the country. Going out to the section of the country in which I live, many of the employees used to employ me, for what reason I do not know because their Angus Morrison, in my judgment, is one of the best advocates I have ever met. He got a raise of $2 out there during the war. I was there as counsel, too, but I was really Angus Morrison's junior. So, I really know what I am talking about when it comes to that.

How would any of you like it if we put a section into this labour code which said that, in labour matters, Pat Conroy could not appear for the labour union or Charlie Millard or any of these chaps with experience. The fact that a man has a degree, signed by somebody, only means this; that he has gone to school and has been equipped for what? To learn something about the law of business; that is all it means. As any lawyer knows toway, he gains more from experience, as we all do, than from all the books which could possibly be written. If you follow the book, then some small point arises unexpectedly and off you go at a tangent.

The modern practice of law is this: we have so many commissions, so many inquiries and so on, a good lawyer today is one who can quickly accommodate himself to the business which is before the tribunal at that time. I remember on consecutive days jumping from a coal inquiry to a milk inquiry and, the next day, I was acting for someone who, it was alleged, was guilty of the gentle and beautiful art of seduction. That is what a lawyer does.

For a moment, I should like to take you back to the first meeting of this committee in the railway committee room. We heard the officers of the three steel companies. Now, who put up the case? It was put up by Millard and Conroy. Those other fellows were hopelessly lost. I am not making a plea for them on the ground that they could not hire somebody to do it. In fact, the one from Toronto, that fellow who wore this black vest when it was about 102 in the shade—I do not know how he did not roast himself to death.

I am not making so much a plea for my own profession as I am saying to you that if you start discrimination, and this is nothing less than discrimination, the minute you start that, I do not know where, in this supposedly democratic country, you are going to end.

I am going to give you a little history. For a long time, the unions disliked courts and have had, of course, an instinctive dislike of lawyers. Perhaps that is inbred or something of that kind. I think there was justification for it many years ago. I may say this to you, Mr. Chairman, a labour code can be decided upon, but I do not think the legal profession will go broke if unable to appear before the War Labour Board. You will always find this; the more high-priced the lawyer industry employs, the greater the opposition you have from the other side because they will say, "Well, that is the big shot; I am going to take a round out of him." That is true in our courts and it is true in our boards.

I hate the word "pleading" but I am pleading with this committee not so much to do something for my profession—I see I am getting a smile from Clary Gillis. I noticed that during the inquiry of the coal commission in Nova Scotia a year ago, that one which lasted so long, laboured so hard and brought forth a mouse—I am going to say this, they were quite capable of sending to Toronto and getting a man down there, a really high-priced fellow who is now not in circulation, but that fact has nothing to do with the coal inquiry down in Halifax.

I do want this committee to pass—not on our account, we will get along—but I do ask the committee to pass this motion. In Alberta, the wheel has made a full turn. There we have a board to deal with workmen's compensation. The greatest opposition to that board is coming from labour. We have a clause which is found, I think, in most provincial acts that the decision shall, in the

event of doubt, favour the man. It is something similar to that which you have in your Compensation Act. I am not saying that the United Mine Workers of America, District 18, want an appeal from the compensation board but I will say this, that the only opinions that are being expressed for that appeal are being expressed by members of that organization. So, you see, the wheel has made almost a complete turn.

Please do not misunderstand me. I am not saying that the majority of the miners in district 18 want that appeal, but I do say that many of them are complaining, certainly those individuals who were dealt with, are complaining because they have not an appeal to rectify what has been done by the compensation board.

Now, I should like someone in this committee who can divest himself of prejudice—I am quite sure Mr. Gillis can do that. I see he is taking the odd note and I flatter myself it is of what I say. Perhaps he is just registering the twelve o'clock whistle. I do put it to you in this way, not so much on our account but in its broader aspects, to say that the profession learned, not so much by study as by experience, to assess facts should not be barred from a logical place in which it might appear.

I close with this remark. You may have read in the paper the other day of a man by the name of John L. Lewis who walked into a similar board in the United States with eight lawyers with him.

Mr. CROLL: Look what happened to him.

Mr. SMITH: The only thing I can say with respect to that is this; he had the wrong agents. If he had taken you or I down there, I am quite sure the result would have been quite different. However, the old reason is gone today. I hate the repetition of the word "democracy", we hear it in the House of Commons at least fifty-five times a day. We are all talking about different things when we use the word "democracy", but I do suggest that the imposition of a prohibition on a profession whose business it is to assist and present facts should not be condoned by this committee.

The CHAIRMAN: Gentlemen, before I let the discussion proceed any further I have to acquaint you with a brief that I have received from the Law Society of Upper Canada on this same matter.

Mr. CROLL: Mr. Smith covered it better than they did.

The CHAIRMAN: I have to report to you I have this brief in my hand. Would you like me to read it or have it placed on the record as is?

Mr. CROLL: I think Mr. Merritt and Mr. Smith have both covered the subject and have covered it much better than the brief covers it.

The CHAIRMAN: I agree with you, but I have been requested by Mr. Lee Kelley, who has signed this brief, to place it before the committee, and I am discharging my duty by doing so.

Mr. JOHNSTON: Give us a summary.

Mr. CASE: Can you tell us what position they take?

Mr. MACINNIS: There is a point in what the chairman says, that if these people have prepared a brief on this question, either on one side or the other—I am not sure which side—I do not think we should deal with the question without hearing their brief.

Mr. CROLL: All right.

The CHAIRMAN: It is not a very long brief, just a page and a half.

Mr. MACINNIS: I move that the chairman read it.

The CHAIRMAN:

April 30, 1948.

P. E. COTE, Esq., M.P.,
Chairman of the Select Committee on
Industrial Relations,
Room 411, House of Commons,
Ottawa, Ontario.

Re: Law Society of Upper Canada Bill 195

Dear Mr. COTE.—The Law Society of Upper Canada appreciate the invitation of your Committee to file a brief with you respecting Section 32(8) of Bill 195. As counsel for the Society, I respectfully make the following submissions:

(1) The Society is strongly opposed to any restriction of the traditional right of the legal profession to practise before any judicial or quasi-judicial tribunal.

(2) It feels that it is contrary to the public interest that parties appearing before a Conciliation Board should not have the right to be adequately represented by competent legal advisers. Since 1944, particularly, lawyers have been appearing before labour tribunals and the experience and knowledge gained would be of great value to the parties and the skillful and logical presentation of evidence would be of considerable assistance to the Conciliation Boards.

(3) Under the Bill as presently framed, a disbarred lawyer with knowledge of labour matters, or an agent of unsavoury reputation and doubtful ability, could appear before a Conciliation Board, but a lawyer in good standing and of recognized ability could be refused a hearing.

(4) The latter part of Section 32(2) of the Bill states that a Conciliation Board, "shall give full opportunity to all parties to present evidence and make representations." Accordingly, it is imperative that the Board give the full opportunity to parties to present evidence and make representations, yet the very persons best qualified to present evidence and make representations may be barred from doing so. It is submitted that Section 32(8) defeats the intent of Section 32 (2).

(5) Canadian lawyers have always enjoyed an enviable reputation and every effort is made to justify and maintain this reputation, so the Bar Society of Upper Canada quite naturally resents the reflection cast upon lawyers through the inclusion of clause 32(8) and considers the clause discriminatory.

When I appeared before the committee last year and set forth the views of the Law Society of Upper Canada, Mr. Croll asked all those present whether they had any questions to put to me or if they required any further information from me. Though a number of labour unions and other organizations were represented before the committee that day, neither any member of the committee, nor any representative of labour or of the other organizations took objection to my submissions, nor did they question me or ask for further information and it appeared to me that they acquiesced in my submissions.

Yours very truly,

LEE A. KELLEY.

I want to point out that there is a reference to the same subsection 8 in a submission by the Ontario committee on Industrial Relations and Labour Law of the Canadian Bar Association, which we have here. It is the same plea put forward by Mr. Kelley.

Mr. MacInnis: I want to reply very briefly to some of the comments made by Mr. Merritt and Mr. Smith. Mr. Smith said, "If you bring this in now where is it going to end?" We are not bringing this in now. It has been in the Act since 1907 which brings me to the other point made by Mr. Smith as to how it happened to come in. It arose out of lawyers being used against workers who were making claims for compensation before compensation boards. The 1907 legislation is prior to any of our compensation legislation in Canada and that has no bearing on the matter. I should like to point out that at a conciliation board hearing a dispute between an employer and his employees is not a legal matter. There are really no legal matters enter into it all. Obviously the idea is to keep legal quibbling out of it. Mr. Merritt in demonstrating the effectiveness of labour men or labour representatives in putting their case used this phrase, and I took it down when he said it, "A greater ability in wriggling and preventing an agreement." You will find those words in the evidence when it is printed.

Mr. Merritt: Special pleaders.

Mr. MacInnis: The term used was "wriggling and preventing an agreement." That is just what we want to prevent in a conciliation board. It is not trying to prevent an agreement; it is trying to reach an agreement, and as a lawyer must take one side or the other he comes as a special pleader for the particular side he is on, and he sees nothing else. He brings up all sorts of technical points, legal points, in order to confuse the situation. If I were in a difficult position and was engaging a lawyer that is the kind of lawyer I would want.

Mr. Lockhart: Would you permit a question? May I ask Mr. MacInnis to explain the position of special pleaders on the other side, just what their position is?

Mr. MacInnis: They are representing their particular organization. Surely the employer with all the advantages that he has got and with the opportunities he has had, and the knowledge he has of his own business, is just as able to represent his business. That is what he is representing just as the trade union is representing their business.

This section has been in the industrial legislation since 1907 and it has worked well. I have never heard that any particular damage has been done to employers because they could not be represented by lawyers in these cases.

Then the argument was made that a disbarred lawyer could be a representative, but a disbarred lawyer is not a lawyer any longer. As I understand it he was not a lawyer until he was called to the bar, and when he has been disbarred he is no longer a lawyer. Consequently he does not come under this.

Hon. Mr. Mitchell: He might be ten times worse than a lawyer.

Mr. MacInnis: I imagine it is because he was a bad lawyer that he was disbarred. Anyone who wants to use the services of a bad lawyer has three strikes on him before he begins. There is nothing in that argument. I would suggest that this section having been in the old Industrial Disputes Act, and having caused no inconvenience or loss as far as I know to anybody, should be allowed to remain.

Mr. Gillis: I have a few words. Are you going to talk?

Mr. Croll: It will depend on what you say.

Mr. Gillis: First of all there is no discrimination in the clause because the wording definitely says that if both parties agree to call in a lawyer or two lawyers the Act permits it.

Mr. Johnston: But the conciliation board can then refuse to have lawyers appear.

Mr. GILLIS:

> In any proceedings before the conciliation board no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a conciliation board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

I do not see any discrimination there. I do not think any board would take the attitude, if both parties agreed they should be represented by a couple of lawyers, that they would not allow the parties to be so represented.

Mr. DICKEY: They are empowered under the Act not to.

Mr. GILLIS: They are, but I do not think that power would be used if both parties wanted it. I cannot see any discrimination. I just want to say this. As Mr. Smith has pointed out the labour movement has grown up. There was a time in this country when the movement was pretty immature. The officers were new and it was a pretty loose organization and it was necessary to bring in trained personnel such as lawyers, but during the past ten years particularly a large section of the movement in this country has a well developed national set-up with men like Conroy and Bengough and those people. Most unions have research directors, men who are dealing in facts with regard to the industry all the time. The companies have the same thing. They have experts in every department. Those are the men who actually know what the agreement is all about. If there is any chance of coming to an understanding those are the men who can best arrange it.

It has been the practice in some of the larger corporations in the past, where the union was merely using its own personnel, to bring in a high-priced lawyer who would enter on a legal wrangle for weeks and weeks at a time and which really prevented an agreement. The unions were not represented by a solicitor. As Mr. MacInnis pointed out, and this is something we have to remember, in labour relations you are dealing with economic matters. You are not dealing with legal matters at all. You must know the economics of the industry you are negotiating for.

He mentioned a moment ago that a certain high-priced lawyer was taken down on that coal inquiry. My personal opinion is he never should have been taken down there. I listened to it considerably, and all that fellow did was to put on a show. He had not the slightest conception of the industry he was trying to talk about. The men themselves were in a much better position to make a presentation. Who is in the best position? A union does not enter into negotiations or go before a conciliation board without having their case prepared and their facts assembled. Why is it necessary to bring in a lawyer to interpret something that they wrote themselves?

On the other hand, with the battery of experts that the industry has why is it necessary for them to bring in legal counsel? I think it delays it, ties it up, creates a fight, and as Mr. MacInnis has pointed out there is a lawyer on this side and a lawyer on that side, and whether you are innocent or guilty he is going to convict you or acquit you if he can. It is a straight personal matter between two very strong personalities, and the parties to the dispute merely appear as witnesses. They listen and many times they wonder what it is all about when they hear the arguments advanced from side to side.

When Mr. Merritt talks about special pleaders it is a misnomer. There is no such thing. Charlie Millard negotiates for the steel workers union, and any section of the steel workers union can call in Millard in any dispute. Pat Conroy is the head of the Canadian Congress of Labour and he is a member of that union.

Mr. MERRITT: Management should have special pleaders then.

Mr. GILLIS: Management has experts in every department. We heard that before the Industrial Relations Committee the last time. Mr. Hilton is in a position to call in an expert from any section of that industry to deal with that particular section in wage negotiations, and they do it. There is no such thing as special pleaders. There is no objection to the industry using any one in the industry before a conciliation board. All the union is asking is that management and unions be permitted to use their own personnel to work out an agreement with the board selected by themselves and with the chairman appointed by the government. It is to avoid delay and legal tangles that we have this section written in. The Congress brief has the same thing in it. There is really no necessity for lawyers with the union movement developed as it is today, with the trained personnel they have to present their cases to boards, and so forth.

On the other hand, in the final analysis a dispute under this Act may go to court. Pat Conroy of the Canadian Congress of Labour is not permitted to go into court and to plead before that court. That is reserved for the lawyers. They have a closed shop there.

Mr. SMITH: He can be subpoenaed as a witness.

Mr. GILLIS: He can be subpoenaed as a witness.

Mr. SMITH: He can tell the same story.

Mr. GILLIS: No, he cannot. He can be subpoenaed as a witness; he can be taken in there and psychoanalyzed by a battery of lawyers and the legal personnel sum the matter up and decide whether or not he is sane. If the legal profession are prepared to say that in the administration of this Act they are prepared to allow special pleaders, as Mr. Merritt terms them, from the unions to have the same rights before the courts of the country in the administration of the Act as lawyers would have before conciliation boards then that is fair, but what the lawyers are asking for is a closed shop in the courts where the matter is finally decided but an open shop in a field that belongs to management and labour themselves. That is about the position as I see it.

I think we have entered the stage where management should be given to understand that they have grown up and that labour relations are human relations. They themselves are the best people to deal with their employees. Labour should be made to understand that they have got to train personnel. They have got to use trained personnel in working out their agreement and following the procedure that we are trying to lay down under a national labour code. It makes both sides more responsible. This business of laying back and depending on somebody else to work out your problems does not work. I think the present practice is absolutely fair. I think it is in keeping with the times and unless, as I said before, Mr. Smith's union is prepared to open its doors and allow free access to the courts for the special pleaders from the union movement they have no right to say that they should be given an open shop under this particular legislation that belongs to unions.

Mr. LOCKHART: I wonder if the minister would enlarge on the reason for this section.

Mr. SMITH: Before he does so may I say a word? This is hot off the griddle and I do not want it to disappear while the minister comes in with his usual conciliatory attitude. As this section is drawn Pat Conroy cannot appear before this board because it bars barristers, solicitors and advocates. In the province of Quebec or in some other provinces it may be that the word "advocate" has some special meaning.

Mr. CROLL: You are wrong on that because they do appear before these boards. I can give you an example when Aylesworth—

Mr. SMITH: I know they do. I am not misunderstanding you at all, but what I am saying is that if we pass this section then no one can appear as an advocate. An advocate means someone advocating a position.

Mr. KNOWLES: Was that the wording in the former legislation?

Hon. Mr. MITCHELL: Since 1907.

Mr. GILLIS: Conroy is not an advocate. He is a part of the union set-up.

Mr. SMITH: Conroy is an advocate. He is a member of the United Mine Workers of America, and the minute he goes outside of that he is an advocate for someone else, absolutely.

Mr. GILLIS: In addition to being a member of the United Mine Workers of America Pat Conroy is Secretary-Treasurer of the Canadian Congress of Labour. That body co-ordinates 200,000 workers in this country. He is the official head of it, and in any section where there is a dispute and Pat Conroy's assistance is needed Conroy can be taken in as a part of the union set-up. He is not in there as a special advocate. He is merely there as a member of one of the parties to the dispute.

Mr. SMITH: Let us compare our union with yours. John Hackett gave the lawyers of the House of Commons and the Senate an excellent dinner the other evening as president of the Canadian Bar Association, but he cannot practice in the province of Alberta because he is not a member of that union of ours out there. He is in exactly the same spot as Conroy. He can act as an advocate before the board but then, of course, he is an advocate and the word "advocate", if you want what you want, should be taken out of this thing altogether. Then I come to another point. Let us assume that we have a lawyer who has joined a corporation, as many of them have. Corporations appreciate brains and take them where they can find them. This lawyer has now become president of the corporation. He is absolutely barred under this section.

Mr. GILLIS: No.

Mr. SMITH: Yes he is, clearly.

Mr. GILLIS: As president of the corporation he would be there in that official capacity.

Mr. SMITH: Let me read it

> In any proceedings before the conciliation board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate.

Mr. GILLIS: As such.

Mr. SMITH: It does not say so, and even if it did say "as such" I do not think that would affect it. This section simply says that if a man thirty years ago passed the bar examination and signed on the dotted line and took the necessary oath and then became president of the largest electrical company, we will say, in the Dominion of Canada, he cannot appear before this board under this section.

Mr. CASE: Murdoch, the head of Noranda, could not appear.

Mr. SMITH: He could not, because you have barred him as such, if instead of barrister you had said "ordained preacher" lots of people could not appear. When you come to advocate there is one who sits beside me here. In my short term in the House of Commons I do not know where you would go to find a better advocate when it comes to your rules. If you wanted a better lawyer on that subject I do not know where you would go to find him. I refer to my friend, Mr. Knowles.

We have heard a lot about quibbling, and so on. What does that mean? I am sorry that Mr. Gillis had the unfortunate experience which he did, but here

we have drawn an Act from which we have endeavoured to take all those things over which persons might quibble, so that we can say with regard to any one who would appear before this board that his job is to assemble his facts as best he can and put them before the board. I can visualize, if you want to continue your discrimination, that no person having achieved a certain position in a union should be allowed to appear before this board. It is equally as fair as what you are doing now.

Mr. Gillis has been referring altogether to wealthy corporations which are departmentalized with heads here and there. They are not the only people who have disputes because in the place from which I come we do not have these big industries at all. I met a man the other day who started a machine shop in Calgary some years ago. It is the Precision Machine Shop. He was down here trying to do something about his income tax, and he brought a chartered accountant with him. He is very wise. I know very few lawyers who know anything about it. I know a chartered accountant makes out mine and I sign it on the dotted line. What is his position? These are the kind of disputes we have. We are not all big steel companies or packing plants, and so on, as you have in the industrialized east. Ours are small concerns. We have many men operating them who came up from the benches. This chap who has this shop is one. He would be hopeless in trying to present his position before a labour board without the assistance of someone, whether he be a lawyer or whether he not be a lawyer, who was accustomed to assembling and presenting facts.

Mr. GILLIS: He can get that assistance.

Mr. CROLL: How?

Mr. GILLIS: By hiring a lawyer to draft a brief which he will read in court

Mr. CROLL: Then he gets it from a lawyer without letting the lawyer go to court.

Mr. SMITH: Mr. Gillis, you are certainly going contrary to many things I have heard you say.

Mr. GILLIS: You just said he could not get any assistance.

Mr. SMITH: In the House of Commons how would you like to be muzzled with a brief prepared by someone else? That is what you are asking my friend with his little machine shop to do.

Mr. GILLIS: Anybody running a machine shop is not muzzled.

Mr. SMITH: No, he has got an emery wheel to sharpen his wits, but that is all he has got, if you want to come down to the things he has got in presenting his position before the board. Now, pass this thing if you want to. I have pointed out two things to the minister that I think should be fixed. The first one is that because a man was a barrister thirty years ago he cannot present his position now when he is president of a corporation, and secondly I refer to the word "advocate". If you want it there, and if we want to be smart I would leave it there and advise some corporation, in the event that any of these people would hire me, to bar Pat Conroy coming in because he is an advocate in that position. He is nothing else. I think that this section should be dropped. It certainly should stand for revision in view of the various defects I have pointed out.

With respect to the brief filed by the Law Society of Upper Canada I am grateful to the chairman for reading it. I think I might have had a copy but I did not read it, but as you were kind enough to say it did not present much more than Mr. Merritt and I have done. I appeal to you in this last moment. What harm is it going to do to anybody, and that being so why restrict a group of our people, a union if you like, from a field which is their natural habitat?

Mr. CROLL: Question.

Mr. JOHNSTON: I might say a word. I am not a lawyer, and I do not intend to take part in the debate to any great extent, but it seems to me that if section 8 were changed just a little bit it might meet with the approval of all parties concerned. The first part of it reads:

> In any proceedings before the conciliation board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate—

and so on. It seems to me if the section were to stop there it would mean that if the parties to the dispute themselves were agreeable to be represented by legal advisors they could be. I do not see why the conciliation board should be allowed to come in and refuse the request of both parties concerned. I just cannot follow the logic of the last part of the section. If the two parties are agreeable to having their case presented by legal counsel then I think that should end it. I do not think the board should over-rule the desire of the parties themselves. I cannot see much sense in that unless it is, as some of the lawyers have put it here, to deliberately bar the profession. I can see a great deal of advantage and I can see a great deal of disadvantage in having legal counsel at these hearings but, on the other hand, if both parties desire to be represented by counsel then I cannot see any objection. If both parties or either one of the parties should object to it, then it is not permitted. However, I cannot see the logic of having the conciliation board come in and refuse a request made by both parties. Perhaps the minister can explain that. Perhaps he would also be in favour of dropping that last part of the section.

Mr. TIMMINS: I should like to say a word—

The CHAIRMAN: I have to remind you, gentlemen, it is twelve-thirty. Before we adjourn—

Hon. Mr. MITCHELL: Could we finish this section?

Mr. SMITH: I do not think so. To meet this objection concerning quibbling, why could you not give the board the power to refuse to hear a lawyer if he is quibbling?

Hon. Mr. MITCHELL: In the first place, the section was put in there at the suggestion of the two main labour organizations, the C.C.L. and the Trades and Labour Congress of Canada. It is almost identical with a section which has been in the Industrial Disputes Investigation Act since 1907. I cannot go back that far, but the workmen's organizations felt themselves stronger with this powerful defense in front of them.

I think it is a fair thing to say that, since 1907, there has been a tremendous development in the power of trade union organizations. I was talking about my own little organization a while ago. They just had their convention in Chicago and an organization of less than 150,000 members finds itself with $9,000,000 in the treasury; that is not hay.

Mr. SMITH: Do not let Judge Goldsborough hear about that.

Hon. Mr. MITCHELL: When it comes to salaries, we are pikers in this country; but that is beside the point. I think there is a vital principle at stake here and that is the right of a man to join a trade union and take part in the functions of that organization. Supposing a lawyer wants to join a trade union, he is barred from representing that union.

Mr. GILLIS: Not if he goes and gets a job.

Mr. SMITH: Take Mr. Maybank, if you will.

Hon. Mr. MITCHELL: When it comes to salaries, we are pikers in this All a lawyer has to do is join a trade union and he can appear. I have advocated this for years, that firms in this country build up personnel departments specializing in what I often described as engineering in human beings. It is

much more difficult than engineering in material things. Now, a lawyer is barred from taking a position of that description under this section. My own view is that I am not going to press this section too hard. It goes against the grain to say to a fellow, you cannot work at this; that is the position I take.

Mr. CROLL: Let us vote on it.

Mr. TIMMINS: If you are going to have a vote, let us all have a chance to speak.

The CHAIRMAN: Before we adjourn, would you be agreeable to sitting tomorrow morning, following the suggestion made at the beginning of this meeting?

Mr. CROLL: I am opposed to it. I want to vote on this section and I cannot be here.

Hon. Mr. MITCHELL: I shall repeat what I suggested at the opening of this meeting. Some of the members wish to get away, including myself. I thought perhaps we could meet more often and clean this bill up next week in this committee.

Mr. SMITH: May I make a suggestion, that we leave the hurry-up part till next week? I think we have made splendid progress in this committee. There is very little contentious matter left in the bill. I think we can well adjourn until next Tuesday and then if we want to hurry let us put the pressure on at that meeting. I do not think we should meet tomorrow.

The CHAIRMAN: We stand adjourned until next Tuesday.

The committee adjourned to meet again on Tuesday, May 11, 1948.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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TUESDAY, MAY 11, 1948

WITNESSES:

Mr. A. MacNamara, Deputy Minister, Department of Labour, Ottawa;

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

TUESDAY, 11th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gibson (*Comox-Alberni*), Gillis, Gingues, Johnston, Knowles, Lapalme, Lockhart, MacInnis, McIvor, Merritt, Mitchell, Pouliot, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Smith (*Calgary West*), Timmins, Viau.

In attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman presented the Second Report of the Steering Committee, viz.:—

Your Steering Committee met Friday, 7th May.

1. Written representations from the following were reviewed:—

(*a*) Brief, dated 3rd May, 1948,—the Canadian Congress of Labour;
(*b*) Brief, dated April, 1948,—the Canadian Manufacturers' Association;
(*c*) Report, dated January, 1948, of the Committee on Industrial Relations and Labour Law, B.C. Section, The Canadian Bar Association;
(*d*) Report, undated, by the Nova Scotia Committee on Industrial Relations, the Canadian Bar Association;
(*e*) Submission on Bill No. 338, undated, the Ontario Committee on Industrial Relations and Labour Law, the Canadian Bar Association;
(*f*) Brief, dated 1st May, 1948, Shipowners Association (Deep Sea) of British Columbia;
(*g*) Submission with respect to Bill No. 195, May, 1948, The International Nickel Company of Canada;
(*h*) Memorandum, dated 17th April, on Bill 195, Ontario Mining Association.

2. Items (*a*) and (*b*) were distributed to members on the 2nd May. Copies of other items are being prepared and will be circulated within a few days. Therefore, your Committee considers that no purpose will be served by the printing of any of these items.

3. Your Committee recommends that a letter, dated 24th April,—The Railway Association of Canada, be read into the record. This procedure is in line with the reading of letters from other central organizations that were requested to submit written representations.

4. Your Committee also reviewed the following:—

(*a*) Resolution, dated 7th April, Chamber of Commerce, Victoria B.C., endorsing brief submitted by the Executive Committee, Canadian Chamber of Commerce;

12340—1½

(*b*) Resolution, undated, Local 779, Textile Workers Union of America, Cornwall, Ont., in support of the Labour Code proposed by the Canadian Congress of Labour;

(*c*) Telegram, 3rd May, Deep Sea Steamship's Operators of Canadian Flag Vessels, East Coast, endorsing brief submitted by the B.C. Shipowners Association;

(*d*) Telegram, dated 5th May, Saskatchewan Employers Association, endorsing brief submitted by the Canadian Chamber of Commerce.

5. *Representations from Engineers*—After having considered many representations from engineering associations, and from individuals, your Committee is of the opinion that the great majority of engineers endorse clause 2 (*i*) (ii) of the Bill as drafted. This is borne out by representations received from the eight different provincial associations and the Engineering Institute of Canada.

On the other hand, the Federation of Employee-Professional Engineers and Assistants have submitted a brief advocating the inclusion of engineers and have referred particularly to existing collective agreements involving engineers as such.

A memorandum summarizing representations received on this question, and giving particulars of membership in each association concerned, is attached for the information of members.

(For text of memorandum, see Minutes of Evidence).

A suggestion by the Chairman to defer consideration of the said report to the next meeting was concurred in.

The Chairman read a letter dated 24th April from The Railway Association of Canada.

Copies of the following were distributed to members:—

(i) Submission with respect to Bill No. 195, May, 1948, The International Nickel Company of Canada.

(ii) Brief, dated 6th May, 1948, The Board of Trade of the city of Toronto.

The following were filed by the Chairman:

(i) Submission, dated 4th May, 1948, The Canadian Council, the Institute of Radio Engineers.

(ii) Letter dated 7th May, Northern Electric Engineering Employees Association, Montreal.

(iii) Telegram, dated 7th May, The Chamber of Commerce, Regina.

The Committee considered the advisability of holding evening and/or Wednesday morning sittings.

Mr. Johnston moved, that the Committee meet on Tuesday and Thursday mornings only.

Mr. Sinclair moved in amendment that the Committee meet also on Tuesday and Thursday evenings.

Debate followed and consideration of said motion and amendment was deferred.

The Committee resumed consideration of Bill No. 195.

Clause 32.

The question being put on the motion of Mr. Merritt, made at the last meeting, that subclause (8) be deleted, it was, on division, resolved in the affirmative.

Clause, as amended, carried.

Clause 33

Carried.

Clause 34

Carried.

Clause 35

Carried.

Clause 36

Carried.

Clause 37

Carried.

Clause 38

Carried.

Clause 39

Referred to the Steering Committee to consider a proposed amendment by Mr. Gillis relative to enforcement provisions.

Clause 40

In the absence of the Minister of Labour, Honourable H. Mitchell, Mr. MacNamara was called and questioned. He was assisted by Mr. A. H. Brown.

On motion of Mr. Croll,

Resolved,—That the word "one" be substituted for the word "two" in (*a*) and the words "one thousand" for "five hundred" in (*b*) thereof.

Clause, as amended, carried.

Clause 41

Carried.

Clause 42

Carried.

Clause 43

Carried.

Clause 44

Carried, subject to the application of the principle of the proposed amendment by Mr. Gillis to Clause 39.

Clause 45

Carried.

Clause 46

Carried.

Clause 47

Carried.

Clause 48

On motion of Mr. Smith,

Resolved,—That the word "registered" be inserted before the word "mails" in line 3 thereof and that the clause be redrafted accordingly.

Carried, subject to the above amendment.

Clause 49

Carried.

Clause 50

Carried.

Clause 51

Carried.

Clause 52

Carried.

Clause 53

Stood over for review by the Department of Labour.

Clause 54

Stood over.

Clause 55

Stand.

Clause 56

On motion of Mr. Croll, consideration was adjourned.

The Committee adjourned at 12.30 o'clock p.m., to meet again Thursday, 13th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 11, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: Order, please.

I wish to report first, gentlemen, that your steering committee met last Friday with the view to looking into the material which the committee has received in the way of correspondence and submissions. Most of the material came from the professional engineers advocating either the inclusion or the exclusion of their profession from the definition of the word "employee" in Section II-1-2. For the information of the committee I have had prepared as an appendix to the report of the steering committee a statement giving an outline of the engineering associations which have made representations as to what their constitutions are, their membership in each of the provinces, etc. To save time, as this is a six page report, I would suggest that we place the report on the record and postpone consideration of it until our next meeting. There is nothing particularly urgent in the report, so we can take it up at the beginning of the next meeting and in the meantime the members could have an opportunity of studying its contents. What is your pleasure, gentlemen?

Some Hon. MEMBERS: Carried.

COMMITTEE ON INDUSTRIAL RELATIONS 1948

SECOND REPORT

Your steering committee met Friday, 7th May.

1. Written representations from the following were reviewed:
   - (*a*) Brief, dated 3rd May, 1948,—The Canadian Congress of Labour;
   - (*b*) Brief, dated April, 1948,—the Canadian Manufacturers Association;
   - (*c*) Report, dated January, 1948, of the Committee on Industrial Relations and Labour Law, B.C. Section, The Canadian Bar Association.
   - (*d*) Report, undated, by the Nova Scotia Committee on Industrial Relations, the Canadian Bar Association;
   - (*e*) Submission on Bill No. 338, undated, the Ontario Committee on Industrial Relations and Labour Law, the Canadian Bar Association;
   - (*f*) Brief, dated 1st May, 1948, Shipowners Association (Deep Sea) of British Columbia;
   - (*g*) Submission with respect to Bill No. 195, May, 1948, The International Nickel Company of Canada;
   - (*h*) Memorandum, dated 17th April, on Bill 195, Ontario Mining Association.

2. Items (*a*) and (*b*) were distributed to members on the 2nd May. Copies of other items are being prepared and will be circulated within a few days. Therefore, your committee considers that no purpose will be served by the printing of any of these items.

3. Your committee recommends that a letter, dated 24th April,—The Railway Association of Canada, be read into the record. This procedure is in line with the reading of letters from other central organizations that were requested to submit written representations.

4. Your committee also reviewed the following:

(*a*) Resolution, dated 7th April, Chamber of Commerce, Victoria, B.C., endorsing brief submitted by the executive committee, Canadian Chamber of Commerce;

(*b*) Resolution, undated, Local 779, Textile Workers Union of America, Cornwall, Ont., in support of the labour code proposed by the Canadian Congress of Labour;

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(*d*) Telegram, dated 5th May, Saskatchewan Employers Association, endorsing brief submitted by the Canadian Chamber of Commerce.

5. *Representations from Engineers*—After having considered many representations from engineering associations, and from individuals, your committee is of the opinion that the great majority of engineers endorse clause 2 (*i*) (ii) of the Bill as drafted. This is borne out by representations received from the eight different provincial associations and the Engineering Institute of Canada.

On the other hand, the Federation of Employee-Professional Engineers and Assistants have submitted a brief advocating the inclusion of engineers and have referred particularly to existing collective agreements involving engineers as such.

A memorandum summarizing representations received on this question, and giving particulars of membership in each association concerned, is attached for the information of members.

All of which is respectfully submitted.

Chairman.

SUPPLEMENTARY STATEMENT REGARDING THE ENGINEERING PROFESSION (ALSO THE LAND SURVEYORS, PHYSICISTS, CHEMISTS AND SCIENTIFIC WORKERS) WITH PARTICULAR REFERENCE TO APPLICATION OF BILL 195.

In reviewing the position of the provincial associations of professional engineers, attention might first be drawn to the nature of the membership of these bodies. Registration as a member of a provincial association gives the individual professional engineer the right to practise professional engineering in the province concerned and to call himself a professional engineer. In this respect the engineering profession is in a position somewhat analogous to that of the professions such as law and medicine.

It has been submitted that the engineering profession is unlike the others mentioned in that a large proportion of professional engineers actually function as employees on somebody's payroll. One such group has been mentioned as having a strength of 510 engineers covered by a single collective agreement with one employer.

These employed engineers, however, are not in quite the same position as other "craft" units in that they enjoy under provincial legislation, equal status as members of an association with those engineers who come in the employer category. Reference has been made to the fact that each provincial association may in some ways be regarded as a "union" composed of individuals who have

the same status as members, regardless of whether they are employers or employed, and regardless of any difference in age or the degree of responsibility assumed in management.

The official views of the eight associations may be briefly summarized as follows, the approximate present membership being given in each case:

Nova Scotia (344 members)

The views of this association are indicated by the action already taken in securing from the provincial legislature, exclusion of members of the engineering profession "qualified to practise under the laws of a province and employed in that capacity" from the definition of "employee". This association has set up an industrial relations committee from its own membership "to negotiate for and on behalf of any member or engineer-in-training in any matter pertaining to his welfare as a professional engineer or engineer-in-training". It is stated that the duties of this committee will be to consider claims from registered engineers of unjust treatment, cases of low salaries, etc.

New Brunswick (240 members)

There is a telegram from the president of this association dated April 27, 1948, stating: "Our association favours bill as it stands excluding professional engineers".

Quebec (3,000 members)

There is a letter from the president of this association dated May 1, 1948, stating: "I submit that our corporations views be recorded as favouring the exclusion of engineers as presently worded in Section 2 (i) (ii) of Bill 195 presently before the House". This letter reaffirms the views of corporation formally recorded at a meeting of January 27, 1947, in a statement which includes the following paragraph: "It is evident, therefore, that the wish of professional engineers is that their interests be served through the medium of their professional societies and associations, without need of recourse to the machinery and procedure of collective bargaining under the auspices of the labour laws".

The full statement was published in the bulletin of the Quebec Corporation of Professional Engineers, which goes to all members, some 15 months ago. It might be mentioned that in Quebec members of professional organizations under provincial statutes (including engineers) are excluded from the application of provincial labour laws as they stand today.

Ontario (6,500 members)

The Council of the Ontario Association at its regular quarterly meeting (April 23 and 24, 1948) passed the following resolution: "Resolved that a telegram be sent to the Minister of Labour at Ottawa advising him that the Council of the Association of the Professional Engineers of the Province of Ontario is in favour of the retention of the clause in Bill 195 which excludes professional engineers from the provisions of the Act".

Manitoba (340 members)

Under date of April 30, 1948, the Registrar of the Manitoba Association wires as follows: "The Association of Professional Engineers of Manitoba desires that engineers be included in exclusion clause of Bill 195 stop no person or organization has authority to offer any differing opinion on our behalf".

Saskatchewan (151 members)

The Registrar of the Saskatchewan Association has wired under date of April 28 as follows: "The Council of the Association of Professional Engineers of Saskatchewan unanimously requests adoption Bill 195 as drafted to exclude engineers from its operation".

Alberta (510 members)

The Registrar of the Alberta Association has wired under date of May 3, 1948, to the Minister of Labour and of Fisheries endorsing Section of Bill 195 excluding engineers from status of "employee", "As the Association of Professional Engineers of Alberta with 510 registered members has continually asked through office of Canadian Council of Professional Engineers and Scientists and last affirmed January 12, 1948 that engineers be granted same professional recognition and exclusion as other professional groups."

British Columbia (1,030 members)

The Registrar of the British Columbia Association wired as follows: "Following resolutions passed by B.C. Council August nineteen forty-four and sent to Dominion Council quote one In order to implement the desires of the members on this issue they ask for complete exclusion from P.C. one thousand three for all members engineers in training and engineering pupils of the association stop two in the event of failure to obtain exclusion they request that P.C. one thousand three be amended so that for the purpose of collective bargaining professional engineers will be represented by professional persons stop believe resolution number two would be favoured by majority of members now".

This wire is followed by a letter dated May 7, 1948, in which it is stated that the Executive Committee of the B.C. Association on May 5, 1948, agreed to send a wire to B.C. members of parliament to the general effect that the definition of "employee" contained in Bill 195 should not include the members of the engineering profession.

The combined membership of these eight provincial organizations set up under provincial statutes is slightly over 12,000, counting full members only.

Views Contrary to Those of the Associations

The principal submission taking a stand opposed to that of the official views of the councils of the various professional associations is that from the Federation of Employee-Professional Engineers and Assistants. This body has submitted a brief direct and, in addition, has been spoken for by its solicitors, Messrs Fleming, Smoke and Mulholland.

The federation has a membership of 1,100 in Ontario and Quebec and is the only organization in Canada representing employee-professional engineers exclusively. On behalf of units of the federation, five collective agreements have been negotiated and executed under the labour codes (stemming from P.C. 1003); in a sixth case an interim agreement has been made for six months; in six other cases negotiations are pending or about to commence leading to agreements.

The federation submits that if Bill 195 is passed as now worded, all the above certifications will be invalidated.

It is further submitted by the federation that none of the provincial professional engineering organizations are employee organizations as they have a great many members in the consultant, supervisory, or management classes.

It would appear that the passage of Bill 195 as now worded would leave such collective bargaining units with only the alternative of operating outside the provisions of the proposed labour legislation without any of the sanctions provided for other industrial or "craft" groups.

The plea of such engineers as are members of this federation, and of any others who may feel similarly towards the question, is to the effect that the word "engineering" be removed from the list of professions to be excluded from the definition of "employee". This is in direct conflict with the submission of the provincial associations.

Other Professional Groups

Submissions have been received from all of the provincial Associations of Land Surveyors requesting that their profession be named along with the others whose members are to be excluded from the definition of employee.

The Canadian Association of Physicists have asked to be treated as a profession and in that connection submitted a proposal for an additional definition of "professional employee".

The submission of the Chemical Institute of Canada is already before the committee. (See page 35 of the minutes of proceeding and evidence.)

It might be pointed out that those who do not enjoy full membership in one of the provincial groups set up under provincial legislative authority would still remain as "employee" under Bill 195 as now drawn. Such persons include "engineer-in-training", "engineering pupils" and similar categories in those provinces in which they exist.

Individual communications have been received in substantial numbers. From the province of Quebec 29 individuals have wired or written protesting the exclusion of professional engineers from the definition of "employee" and 81 have supported exclusion. From Ontario 29 have protested exclusion of engineers and 98 have supported exclusion.

The Canadian Association of Scientific Workers has written under date of May 5, 1948. The main point in their letter is a request for the removal of the words "architectural" and "engineering" from Clause 2 in Section 2, Sub-section 1 on page 2 of the proposed Act. Their letter points out that their association includes in its membership, engineers and other scientists. While it does not quote the strength of their association at the present time, the number given in the Thirteenth Report on Organization in Industry, etc., of the Department of Labour, 1947, is 500.

A letter has been received from the Institute of Radio Engineers (The Canadian Council) dated May 4, 1948, outlining the history of collective bargaining from 1944. It concludes with the following sentence: "It seems to us that a grave injustice will have been done if Bill 195 is allowed to go through and become law as it is with no provision for collective bargaining for these very important groups".

The CHAIRMAN: In the second place, we have received a brief from the Board of Trade of the city of Toronto. We had a sufficient number of copies prepared for the members of the committee, so I will ask the clerk to distribute them.

I have also received a brief from the Canadian Council of the Institute of Radio Engineers Incorporated. The chairman, Mr. Howes, came to see me yesterday and he has agreed to have a sufficient number of copies prepared for the use of the members of the committee and they will be available by next Monday.

I have also received a brief from the Northern Electrical Engineering Employees Association. I will have a sufficient number of copies mimeographed and distributed as soon as possible.

Now, I have a wire from Mr. A. Aitken, Commissioner of the Regina Chamber of Commerce, reading as follows:

Regina, Sask., May 7, 1948
The Honourable Humphrey Mitchell,
Minister of Labour, Ottawa, Ont.

The Regina Chamber of Commerce endorses recommendations Canadian Chamber of Commerce *re* Federal Labour Relations Code and further recommends that Chairman Labour Relations Board or subsidiary board be members of the judiciary Stop That a government supervised secret strike vote be required Stop That the Federal Government have some responsibility for boards set up under enabling provincial legislation Stop That provision be made for appeal from provincial boards to Canada Labour Relations Board Stop Your favourable consideration of the above would be appreciated Stop Copies to Prime Minister and Hon. J. G. Gardiner Stop

A. AITKEN, *Commissioner*, Regina Chamber of Commerce.

I also have a submission from the Railway Association of Canada which was referred to at our meeting of April 27. As this was a three-page submission it was decided to refer it to the steering committee which in turn, decided to give it the same treatment as was given to submissions of the other central labour and management organizations. The document is to be placed on the record. Would you like to have me read it now?

Mr. JOHNSTON: How long is it?

The CHAIRMAN: Three pages.

Mr. JOHNSTON: You had better read it, if there is to be any discussion.

The CHAIRMAN: The letter is addresed to the chairman and reads as follows:

The Railway Association of Canada
437 St. James Street West, Montreal 1. April 23, 1948.
29.97

P. E. COTE, Esq., M.P., *Chairman*,
The Standing Committee on Industrial Relations,
Ottawa, Ont.

Re: Bill 195, The Industrial Relations and Disputes Investigation Act.

Dear Sir:—The Railway Association of Canada is strongly of the opinion that the wide definition of the word "employee" as used in the Act brings within its scope persons whose duties to their employers, particularly railway companies, are of such nature that the inclusion of such persons would be seriously detrimental to the employer. It submits that section 2(*i*) (1), containing exclusions from the definition, should be expanded along the lines mentioned at the foot of this submission for the following reasons:

A collective agreement is in the nature of a contract between two parties, the employer on the one hand and the employee (represented by a certified bargaining agent) on the other. Both employer and employee have their respective rights under the agreement and each is entitled to see that his rights are respected. A corporation can act only through its employees or agents and it is essential that in acting for his employer

no employee or agent have an interest in the subject matter which could possibly be adverse to that of the employer. Otherwise, such agent or employee is placed in an invidious position.

Many persons are employed in the organization and operation of a railway company whose duties relate to such things as confidential financial matters, confidential correspondence, the issuing and enforcement of instructions, or the hiring, discharging, promoting, demoting or disciplining employees, or the effective recommending of such actions. Such employment is either of a confidential character or involves the exercise of management functions.

It would be difficult, if not impossible, for employees whose duties to their employers are of the type above indicated to carry out their whole duties to their employers if the terms of bargaining agreements being negotiated between their employer and the bargaining agents of the trade unions (of which they may, or may not, be members) were to apply to them. The association submits that employees whose duties are of these types should be excluded from the definition of "employee" in the Act.

The association submits that ambiguity exists in clause 2 (*i*) (1) of the bill as drafted and considers that this ambiguity would be removed and that its submissions as aforesaid would be implemented by substitution for this clause 2 (*i*) (1) the following:—

> A manager or superintendent or any person who has authority to hire, discharge, promote, demote or discipline employees or to recommend effectively such action or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity.

The Railway Association hereby requests that it be permitted to make oral representations to your committee on the matters aforesaid.

All of which is respectfully submitted.

Yours truly,

(Sgd.) J. A. BRASS,
General Secretary.

Mr. JOHNSTON: Did you answer the other request with respect to the oral representation which was desired?

The CHAIRMAN: That request was answered, yes.

As you will note, in the report of the steering committee, there are certain briefs which have been examined and distribution among the members of this committee is being arranged. One of those briefs is from the International Nickel Company of Canada Limited, and it is now being circulated.

I would like to call the attention of the committee to a suggestion which was made at the last meeting with respect to our further sittings. It was suggested, if my recollection is correct, that perhaps we could meet a little more often this week. I have inquired and I can say this room will be available tonight and again on Thursday evening if the committee wishes to sit on those two evenings. We may also have this room available for tomorrow morning if you would care to sit. I would invite suggestions on this particular point.

Mr. TIMMINS: Mr. Chairman, some of us are members of this committee and also of Banking and Commerce which is meeting right now. Banking and Commerce usually meets on Tuesday and Thursday nights and we will be required to attend both meetings at the same time if we follow your suggestion. Wednesday would seem to be a day on which we could meet but I do not think Tuesday and Thursday would be satisfactory.

The CHAIRMAN: I made particular inquiries with respect to those two evenings because of the fact there are three committees sitting in the afternoon of the same days—Tuesdays and Thursday afternoons. In the evenings on those days only Banking and Commerce sits between the hours of eight and ten o'clock.

Mr. JOHNSTON: My view is that we should not start to crowd the meetings. When I was on the Prices committee that committee sat twice a day four days a week and it sat once on the fifth day. That was entirely too much and I am of the opinion you are going to crowd this committee as well. I think the way in which we are sitting now is just about right. I would not want to see our sittings changed. It may be quite true that some members wish to get away for an election or something of that nature and if they want to get away let them go. I am against having more committee meetings than there are now. We have our work in the House to carry on, most of us being interested in the legislation that is now going through, and extra sittings would be too heavy. We cannot attend in the House and in all the sessions of our committees when there are two or three meetings in a day.

The CHAIRMAN: It might expedite the matter if someone would put a motion one way or the other.

Mr. JOHNSTON: I would move that we continue sitting as at present.

Mr. SINCLAIR: I would move an amendment adding Tuesday and Thursday evenings.

Mr. GILLIS: It is not a matter of getting through this work, it is a matter of doing a job that has to be done, and doing it properly. As Mr. Johnston suggested I am interested in certain things going through the House and I think if we put our mind to this bill and continue as we are, forgetting the briefs—the briefs will have no influence on what is going to be written into the bill—we will get along very well. We have heard all the arguments contained in the briefs over the past years both pro and con. We have a specific matter here—the bill—and if we get down to it and go over it clause by clause as we are doing now, with our minds made up as to what we are going to do, sitting as we are now sitting, I think we will make the most constructive and rapid progress. This business of sitting Tuesday and Thursday nights is not satisfactory. Half of the members will not be present and the members present will not be able to consider the bill as they should. I think myself if we decide to go ahead as we are and take the bill, leaving out the verbiage, we will make rapid and constructive progress.

Mr. MCIVOR: These evening sittings are pretty hard on some of the older fellows but I think you might sit more often in the mornings. I want to see the bill go through this year and to that end I do not care how often we sit.

Hon. Mr. MITCHELL: I do not want to speak too long, but it does seem to me the most practical course to adopt would be the one suggested by Mr. Sinclair. It might be all to the good if some of us were not in the House; it might expedite the business of the House. Do not forget we are back to a peace-time House and those of us who have sat in the House in peace-time know there is more talk than there is during a war. It does seem to me we might meet in the evenings, but taking into consideration the question raised by Mr. Timmins and if a member is vitally interested in a particular section but is unable to be in attendance, the section might be allowed to stand until he can be present. Human beings being as they are, I think you will find when the month of June rolls around there will be a great number of members who will go home, for very obvious reasons. There will not be any pay days after the month of June.

Mr. LOCKHART: Is that the real reason, do you think?

Hon. Mr. MITCHELL: Well, it has an influence. Every labourer in worthy of his hire. If we did sit on these evenings or on other occasions, we could at least get this bill through. After all is said and done, this is legislation. I believe the people of this country, not only those directly affected by the bill itself, expect us to pass this legislation this year.

You know what happens in the dying days of the session. It never fails. History has a bad habit of repeating itself and it does so every twelve months. Everyone is in a hurry to get home and legislation is left over until the next year.

Mr. MACINNIS: I want to see this bill go through this session, but I cannot accept the viewpoint of the Minister of Labour that, if someone is absent from the House that would, perhaps, be a good thing. The next step would be to say that if some of us were not here at all, it would be even better.

An Hon. MEMBER: Hear, hear.

Mr. MACINNIS: That is the totalitarian mind which develops over a period of time. The person who said, "Power corrupts," was quite right. If some of us were not able to be in the committee, that would also be a good thing because the bill would pass much quicker. I do not think that is a good philosophy.

We should, I think give due consideration to this bill. We have a very representative meeting this morning and I am sure that situation will continue after we have dealt with the matters which are to come up this morning. There will be no difficulty in getting this bill through. I am interested both in this bill and in certain things which are coming up in the House. I do not think we should decide to sit Tuesday and Thursday nights, at least until we see how far we go today or tomorrow. If the committee wishes to sit on Wednesday night, that will suit me. I do not think we should rush this matter too much.

The Minister of Labour said there will be no pay days after June. Well, surely, that is an insult to the members of the committee. There are enough legal men here to know we are not paid by the year, we are paid for the session no matter what length of time a session takes. The people who are critical of absenteeism in industry have no business absenting themselves from the House when there is legislation to be considered.

Mr. SMITH: I am in favour of the sittings remaining as they are. Next Tuesday night the budget comes down and everybody wishes to be in the House. If we could limit these debates such as we are having now, we could finish this bill in about three more sessions which would give us ample time to consider it in the House. We have made good progress and I think we should continue as we have been. Why not wait until we see whether we are in difficulty or not before we start crowding the sessions.

The CHAIRMAN: Could we allow this motion to stand until another meeting? In the meantime, would the committee be agreeable to sitting tomorrow morning? We could have this room for tomorrow morning.

Mr. ADAMSON: We have a caucus.

The CHAIRMAN: Then, let us adjourn the discussion of this proposal.

We now revert, gentlemen, to the consideration of clause 32. We have before the chair a motion by Mr. Timmins that section 8 of clause 32 be deleted.

Mr. CROLL: Question?

The CHAIRMAN: Are you ready for the question?

Mr. MACINNIS: Before you put the motion, I suggest to the committee that they seriously consider what they are doing. When industrial relations legislation was first passed in 1907, legal representation before conciliation boards was prohibited without the consent of both parties to the dispute. I am satisfied there was good reason for that. It has worked well during the forty years or more it has been in operation. I do not think we should change it now.

A labour dispute is not a legal matter. It is a process of discussion between two parties out of which a contract is developed. If we are to have greater harmony, it can only come about if both sides deal freely with the question without legal quibbles. I have in my hand an item I cut from the paper *Labour*, the organ of the railwaymen of the United States It came to hand yesterday and it is dated May 8. It refers to the negotiations which led up to the recent developments. It reads as follows:

> Almost from the beginning to the end one of the real troubles in this dispute has been that the railroads have shifted their responsibility over to lawyers, a union leader declared. For example, during the emergency board hearing they had a battery of sixteen lawyers to handle their case while we had only one. Thus, collective bargaining on the iron horse has degenerated into litigation. You cannot have peace on the rails that way.

I suggest to this committee, before they throw conciliation boards open to the lawyers for argument, the employers will have the lawyers because they have no faith in themselves. You know exactly what you will get in a discussion of that kind, and that is my last word.

Mr. McIvor: Mr. Chairman, I am not a lawyer; neither have I a judicial mind, but I do not like this clause. I do not know who fathered it. I know that in the medical profession there are specialists and it is necessary to have these specialists. In the legal profession, we have corporation lawyers who have studied corporation law; we have municipal lawyers; we have business lawyers and we also have lawyers who have studied labour legislation and are up to date in that field. In small unions or even small business corporations, the leaders are not up to date in the field of labour legislation. The guidance of a lawyer is needed. You know, these lawyers do not push themselves in very much, that is when it suits them or suits the people for whom they are working. My experience with lawyers is that they have been a great help to the people they represent. Sometimes the fees are a bit high, but I believe they are well worth their fees, and this is especially true of the labour organizations these lawyers have represented. I believe these lawyers are necessary to the progress of labour so that labour and industry will be well guided in the matter of labour legislation.

The Chairman: Before I call for a vote on this motion, I have to give credit to whom credit is due. This motion is sponsored by Mr. Merritt, that subsection (8) be deleted. All those in favour of the motion will raise their hand.

I declare the motion carried.

Carried.

Shall clause 32 as amended carry?
Carried.

Section 33. Shall the section carry?

Carried.

Section 34. Shall the section carry?
Carried.

Section 35. Shall the section carry?
Carried.

Section 36.

Copy of report to parties.

Publication.

> On receipt of the report of a Conciliation Board the Minister shall forthwith cause a copy thereof to be sent to the parties and he may cause the report to be published in such manner as he sees fit.

Mr. ADAMSON: Just before this section is carried, there is a mention in the previous section, 33, of publicity. Now, the minister has a definite statement there that these things shall not be made public by the board. Then, it leaves in the hands of the minister the power to make public what he deems fit and not to make public what he does not deem fit.

Hon. Mr. MITCHELL: Only the report; when the report is submitted to me. The procedure is this; first of all we send copies of the report to the parties concerned. Then, we wait until we are reasonably sure it is in the hands of the parties concerned and a press release is issued. That is the procedure.

The CHAIRMAN: Shall the section carry?

Carried.

Section 37. Shall the section carry?

Carried.

Section 38. Shall the section carry?

Carried.

Section 39.

Offence of employer decreasing wage rate or altering terms of employment.

ENFORCEMENT

39. Every employer and every person acting on behalf of an employer who decreases a wage rate or alters any term or condition of employment contrary to section fourteen or section fifteen of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding

(*a*) five dollars in respect of each employee whose wage rate was so decreased or whose term of condition of employment was so altered, or

(*b*) two hundred and fifty dollars,

whichever is the lesser, for each day during which such decrease or alteration continues contrary to this Act.

Mr. CROLL: Section 39 introduces, of course, what is comparatively new in that a police magistrate will be the man who will, in all probability—as a matter of fact, he will deal with this matter. Now, there is some objection to that. The United States uses the National War Labour Board who are acquainted with the legislation, and have some labour background and some knowledge of these matters. It would seem to me you would get a more uniform practice and have a better application to the case itself if the matter went before the labour board rather than before a police magistrate.

Mr. MACINNIS: May I ask who is responsible for bringing cases of this kind before the court? Do violations of this section come under the National Labour Board for enforcement or will it depend on the employees concerned to take action?

Hon. Mr. MITCHELL: It can be done by an organization or the employees when they get leave to prosecute from the National Labour Relations Board.

Mr. CROLL: My point, then, is stronger. If they have to go to the board and make application, they have to make out a prima facie case. They have to disclose all the evidence before they are given an opportunity to prosecute. Oh, I see; you have changed it now, and it is the minister who gives permission.

Hon. Mr. MITCHELL: Yes.

Mr. MACINNIS: It seems to me, since you have to go to the board—

Hon. Mr. MITCHELL: It is now the minister.

Mr. MacInnis: The same thing applies, that the person who can give permission to bring the case to the court should bring the case to court himself. It should not be left to the employees to do that.

Mr. Gillis: I agree with Mr. Croll on this. I think a new section should be written in place of this one, to bring about what I have in mind.

Section 3 of this particular section 40 definitely sets out that magistrates, judges and so forth will enforce this Act. Now, to my mind, the Department of Labour, under whose jurisdiction this Act will come, is indeed setting up something new in Canada, a national code which brings the rule of law into labour relations. In other words, you are setting up a labour jurisprudence which is separate and apart from the ordinary laws of the country. I think the enforcement of this Act should be left to the Department of Labour. I believe the people who should determine whether or not there is any infraction of the Act either by an employee or an employer, should be the National Labour Relations Board. This board is dealing with economic matters. It hears all the evidence and assesses the facts. Then, I think that board should be in a position to say, so far as the enforcement of the Act is concerned, there has been an infraction of the Act. The board would determine that. The only place the courts of the country would come into the matter would be when fines or penalties were to be imposed. Then, the labour board could pass the matter over to the judge or magistrate for the purpose of imposing the necessary fine. The determination of a sentence under this particular Act should be, I think, the responsibility of the National Labour Relations Board and the Department of Labour because this code creates a rule of law separate and apart from the ordinary laws handled by judges and magistrates.

I will not be satisfied with this clause because, in the final analysis, the administration of this Act and the enforcement of this Act has got to be good. If you put the War Labour Board in the position of having to take evidence for weeks to determine whether or not there has been a violation of the Act and, after that you place the union or the employer in the position of having to seek the permission of a board or the minister to go before the court and the case then has to be dragged through the courts with a battery of legal experts on both sides, labour disputes are going to take a long time to settle. I think it would retard the labour relations machinery we are attempting to set up under this Act.

I would move that this particular section stand and that the steering committee be empowered to look it over as soon as possible and draft a section to replace this one. Such a section should place the responsibility on the Department of Labour and the National Labour Board for determination of infractions of this Act.

Hon. Mr. Mitchell: I should say this; that I regret I have to fly to Toronto in a few minutes and so must leave you, but I shall be back by six o'clock. I believe what is in this section is fundamental. I have always taken the view that the less you think about prosecutions the better it is for labour disputes. If I had to take a chance on the decision of a politician or a judge, I would take the judge every time. We have to be careful in legislation of this description that decisions are not made on a political basis. Frankly, under the I.D.A. Act, I have knowledge of only a couple of prosecutions since 1906. I believe that is the basis of the success of the I.D.A. Act. The labour disputes in this country would now go before the local magistrate who understands local conditions or before a higher court. I am thinking of the working man, not about the other side of the picture. The courts have had generations of experience in adjudication of disputes of all kinds and I think we can say, by and large, they have been exceptionally fair.

Do not forget this; the National Labour Board, to all intents and purposes, is an advisory board which is appointed upon nomination. I hope we never get

away from that principle. There is a chairman, a vice-chairman and eight other men, equally representative of the dominant labour organizations of this country and the employers. I believe you destroy the usefulness of the board if the question of prosecutions is cluttered up with its normal work. I believe that sincerely, and I think it is fundamental.

Mr. CROLL: You chose, a minute ago, as between the board and a politician.

Hon. Mr. MITCHELL: I would rather have a judge

Mr. CROLL: In this case, it is the board or the politician. If we passed that, you are the only one who can give authority to prosecute. You are returning it to the politician.

Hon. Mr. MITCHELL: I have no objection to this. We spent a lot of time considering whether the minister should be given the right to give permission to prosecute. If the committee, in its judgment, thinks that permission should be handed back to the board, I am quite prepared to accept that amendment. I believe it is vital to the protection of the average man in this country when he believes has has been dealt with unjustly, that he have the opportunity of appearing before the courts.

Mr. CROLL: For your own good, you ought to get out of this position.

Hon. Mr. MITCHELL: The only thought was that I am available every day and the board only meets once a month or so. So far as I am concerned, if the committee wishes to put that responsibility on the board, I am prepared to accept it.

Mr. SINCLAIR: I should like to comment upon what Mr. Gillis has said, that this is a new labour law and the Labour Department should be responsible for carrying it out. If you carry that thought to its logical conclusion, the income tax department should prosecute infractions of the Income Tax Act and the fisheries department should prosecute infractions of any of its acts. I think it is a far better thing not to have this decided by the labour board which represents labour on the one hand and the employers on the other and therefore is partisan to that extent, but by a judge who is skilled in hearing evidence and determining whether offences have been committed. After all, there is not much difference between arguing before the labour board and arguing before a magistrate or judge. The only difference is that the judge is impartial. He hears arguments and makes decisions every day in the ordinary course of his duties.

Mr. ARCHIBALD: As the section now reads, if someone breaks the law, permission has to be obtained to appeal to a judge.. I believe if the law has been broken the labour board should prosecute in much the same manner as the Wartime Prices and Trade Board did during the war. Such a provision is not contained in this Act, is it? The Wartime Prices and Trade Board protected the public better than any other body during the war. Such a provision should be incorporated in this Act.

Mr. CASE: You want to take the minister out of the picture?

Mr. ARCHIBALD: I do not want to see the minister give permission to the employers and employees to have a legal wrangle. The labour board should be called upon to enforce the Act and drag the parties before the courts.

Mr. MACINNIS: I can understand the minister not being too anxious to have to make a decision as to whether or not there has been a violation of the Act, or being put in the position where he would have to take action. However, in view of the fact either the minister or the board has to decide whether there has been a violation of the Act, why should the union have to bring the employer into court? This is the government's act; this is the government's law. If the employer has broken that law—

Mr. SINCLAIR: The minister only decides whether there is a case. He does not decide whether there has been a violation.

Mr. MacInnis: He decides that, in his opinion, there has been a violation of the law.

Mr. Sinclair: No.

Mr. MacInnis: Then, if he does not, on what basis does he refuse permission?

Mr. Sinclair: Because he does give permission, it does not mean there has been an infraction of the Act.

Mr. MacInnis: Then, it is not up to the union to bring the employer into court. If the income tax law is broken, it is not up to someone else to bring the offender into court. The government brings the offender into court. Why should it be left to private individuals who may be ill prepared to prosecute a case in the courts?

Hon. Mr. Mitchell: There is a point which I forgot to mention. Since I have been the minister, we have not prosecuted anybody and I think the labour relations of this country have benefited from that position. I have had this experience, Mr. Chairman, in industrial inquiry commissions: neither side would budge and wanted to rush to the courts. Oftentimes, they come to the minister. He is able to settle the matter without going to the courts. I would not dwell too much on the punitive sections of this legislation. They are there if people do not act in a sensible manner.

Mr. Archibald talked of the government undertaking prosecution. I do not think the government should be the gravy train for employers or employees who wish to go to the courts. You run into this very serious difficulty which cuts both ways; if all the parties have to do is trot off to the courts, they will be in the courts all the time. There are two sides to every question and people should be able to sit around a table and settle their difficulties. It is for that reason we insist on arbitration. There must be an arbitration provision in the agreement.

I watched the situation in the United States where, originally, such a provision was not insisted upon. The cases just piled up before the boards. In some jurisdictions there were as many as three or four thousand cases awaiting adjudication by the respective labour boards. I believe this is fairly sound legislation. As I say, if you want to make the board responsible instead of the minister, that suits me.

Mr. Adamson: Does this not put the minister in the position of a grand jury, and he has to decide whether there is a true bill or not?

Mr. Smith: The situation is this; I do not care whether it is the board or the minister who makes the decision. If you wish the board to make the decision, it is all right. I imagine the minister would like to be relieved of that responsibility. All we are doing here, it seems to me—I may say I am ready to support Mr. Gillis' motion for reconsideration if we do not get together this morning on the wording of the section. The procedure is the same as going before the grand jury in the province of Ontario. The grand jury returns what is called a true bill. In the province from which I come we have no grand jury and for fourteen years I and I alone decided whether prosecutions would go forward. Now, someone has to accept that responsibility. Two things have to be considered. The first thing is, is there any evidence to present to the court, in this case a magistrate? What really happens is this; the question is asked, is there any hope of a successful prosecution? In practice, that is what is really done. It would then be the duty of the minister or the board to determine that simple question.

In other words, what I am trying to say is this; this Act simply provides a parallel for the ordinary and usual procedure which has worked so well in the administration of justice all these years. It is new jurisprudence, as Mr. Gillis says, but that is what we are trying to do. It does not seem to me to be of value if you have a board which will ultimately determine many things between the parties, to involve that board in small prosecutions all over the country.

A comparison has been made between the labour board and The Wartime Prices and Trade Board. In so far as The Wartime Prices and Trade Board were concerned, that was an emergency situation and it went so far as to tell the person who was prosecuted he was guilty before any evidence was brought forward. Under that Act the onus was on the defendant to prove his innocence. Surely, we all agree the sooner we get rid of that kind of thing in this country the better off we will be. I think, perhaps, we would all be satisfied if the matter of consent were shifted from the minister to the board; that would not take a great deal of the board's time. It seems to me we might compromise on that.

Now, as to the board being commanded by the Act to undertake these prosecutions: the situation might arise where that would occupy pretty much the full time of the board. I have certainly got over the idea that labour cannot afford to prosecute. Labour organizations have arrived, so to speak. They are now in the same position as everyone else. Remember this; in any breach of any statute, I mean of a criminal or quasi-criminal type, someone has to swear out an information that, to the best of his knowledge and belief, a certain offence was committed. You cannot get into any criminal court without swearing out an information. This is done by the individual who thinks he has been wronged.

When the government undertook prosecutions under The Wartime Prices and Trade Board, an information was always sworn out by the officer of that organization who was familiar with the facts. I do not think we, as a labour committee, would want to make any drastic change in that particular scheme or in that particular principle of prosecution which has served us so well for such a long time.

Mr. MacInnis: May I ask Mr. Smith a question, just to improve my own knowledge of the matter? He compared this procedure with that of a grand jury. After the grand jury has found a true bill, who then is responsible for the prosecution?

Mr. Croll: The Crown.

Mr. Smith: Let us get this straight; the prosecution began long before that, when the information was laid.

Mr. MacInnis: Quite true, but when the jury decides there is a case, then the Crown prosecutes. Here, you have a body deciding there is a case and leaving the prosecution to someone else.

Mr. Smith: That is always true in summary matters. There is nothing new in that.

Mr. Croll: In connection with summary matters, I could walk in and lay an information against you for assault. I could call on the Crown to prosecute. Those are my rights. Usually I do not do that. The usual practice is for me to bring my own lawyer, but I can call upon the Crown to do it. In this case, I cannot call the Crown to do it and that is the difficulty.

Mr. Archibald: The only law I ever studied was K.R. and O., and I had to do that to keep out of jail. I helped to negotiate one agreement last year for the Seafarers' International Union. It is a small local. If it had been necessary to go before the courts, it would have broken the union. We would never have lasted. Such a situation could easily apply in the case of a big union dealing with a small individual company. The union could break the company. I do not think it is fair to either party to leave it to the individuals concerned. I am still of the opinion it should be the board that should prosecute.

Mr. Case: I just have one question. The minister said the board would not always be in session and that might delay action. Would it complicate things if the section read, the minister or the board, and a person could go to either one?

Mr. Croll: You would have a shifting of responsibility, passing the buck.

Mr. Case: But you would get action.

Mr. CROLL: No, both of them would duck. As a matter of fact, Mr. Dickie has just pointed out to me the answer. He asked me a question I could not answer. What is to stop the trade union from laying the information, walking into the Crown and saying, "there is the evidence; you go ahead and prosecute." I do not think there is anything to stop them from doing that. It strikes me that is the answer.

Mr. SMITH: That is an answer, there is no question about that. However, in a great many places in this country there are no crown prosecutors. Then, I suppose you would proceed with the provincial police and they would no doubt take over for you. We have not crown prosecutors scattered all across the country.

Mr. CROLL: These cases seldom arise except in large industrial areas. The only one we have had in thirty years is the one concerning the seamen. I believe an application was made by the Imperial Optical Company, but that concerned the Ontario board.

Mr. BROWN: There have been a couple of applications.

Mr. CROLL: This is the only one in which leave has been granted?

Mr. BROWN: Even in cases where leave has been granted, prosecution has not proceeded.

Mr. SMITH: Why should we not pass this section and try it for a year. We are going to have to live by experience. I noticed in a despatch from Montreal we are going to meet again in 1949, anyway.

The CHAIRMAN: Shall the section carry?

Mr. GILLIS: No, Mr. Chairman, I moved a motion.

Mr. CROLL: Then, let it stand.

Mr. GILLIS: That is what I suggested. This is the meat of the bill.

The CHAIRMAN: Is it the wish of the committee that the section stand?

Mr. SMITH: If we permit the section to stand, let somebody put down on a piece of paper what he believes should be done so we can see what we are talking about.

The CHAIRMAN: Would you let me have your suggestions?

Mr. GILLIS: Yes.

The CHAIRMAN: Shall section 39 stand?
The section stands.

Section 40.

Unfair labour practices.—Offence.

40. (1) Every person, trade union and employers' organization who violates section four or section five of this Act is guilty of an offence and liable upon summary conviction,

Fine.

(*a*) if an individual, to a fine not exceeding two hundred dollars; or

(*b*) if a corporation, trade union or employers' organization, to a fine not exceeding five hundred dollars.

Payment to employee.
Reinstatement.

(2) Where an employer is convicted for violation of paragraph (*a*) of subsection two of section four of this Act by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, the convicting court, judge or magistrate, in addition to any

other penalty authorized by this Act may order the employer to pay compensation for loss of employment to the employee not exceeding such sum as in the opinion of the court, judge or magistrate, as the case may be, is equivalent to the wages, salary or other remuneration that would have accrued to the employee up to the date of conviction but for such suspension, transfer, lay-off or discharge, and may order the employer to reinstate the employee in his employ at such date as in the opinion of the court, judge or magistrate is just and proper in the circumstances in the position which the employee would have held but for such suspension, transfer, lay-off or discharge.

Refusal to comply with order.

(3) Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any order of a court, judge or magistrate made under this section or any lawful order of the Board is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars for each day during which such refusal or failure continues.

Mr. LOCKHART: Do not sections 39 and 40 pretty well go together, if you decide on the principle of whether it shall be the board or the minister?

Mr. CROLL: There is another portion of section 40 which is of interest. You will notice the penalties are $200 and $500, and that relates back to section 41 which deals with unfair practices.

Now, there is a section in the Criminal Code, section 502 (*a*), wherein the very same offences such as refusal to employ, intimidation or conspiracy are set forth. Under that section the penalty is $100 for the individual and $1,000 for the corporation. I am wondering whether, in this bill, we are not going to confuse things by having penalties different from those contained in the Criminal Code. There might be some reason for doing so, but the offences are the same, so why not have the penalties the same. There has been a reduction in the penalty in one instance.

Mr. SMITH: Before that question is answered, since the minister has had to leave, I wonder if the committee could not agree to having Mr. MacNamara take such part in our proceedings as the minister might have taken and give answers to these questions?

Agreed.

Mr. MACNAMARA: Thank you, gentlemen. On this question, we considered the whole question of penalties. Actually, we have not very much faith in penalties, anyway. We would like the committee to feel free to make the penalty whatever the committee feels would be adequate. We have no objection to Mr. Croll's suggestion.

Mr. CROLL: I am just suggesting that they be uniform.

Mr. JOHNSTON: Why were they made different in the first place? There is a difference, but why?

Mr. MACNAMARA: I think in this particular section we are dealing with penalties on a different basis.

Mr. CROLL: I was talking about section 40(*a*).

Mr. MACNAMARA: I think what we did was to follow 1003 which contained this wording. What the reasons were for that originally, I am afraid I cannot tell you.

Mr. CROLL: I will move an amendment that the $200 be changed to $100 in line 20 and the $500 be changed to $1,000 in line 23, I think it is, of the section.

Mr. MacNamara: No objection, Mr. Chairman.

The Chairman: Would you please repeat your amendment?

Mr. Croll: My amendment was to section 40, part (1), that $100 be substituted for $200 and $1,000 be substituted for $500.

The Chairman: We have a motion by Mr. Croll that $100 be substituted for $200 in line 20 and that $1,000 be substituted for $500 in line 23 of section 40. Are you ready for the question? Shall the motion carry?

Carried.

Mr. Croll: May I ask one more question? This section 40 is different from the section 40 in the last bill in that you have a reinstatement clause. We recommended that last year and the government saw fit to adopt it. I do not quite follow this; an order is made to reinstate—

Mr. Smith: I think we said the other day that meant to re-employ.

Mr. Croll: Yes, and the employer refuses to re-employ, is there any further step other than prosecution under section 3?

Mr. MacNamara: No. There is quite a heavy penalty, there.

Mr. Croll: That is the enforcement penalty and the only one. He does not go to any other place to enforce it?

Mr. MacNamara: No.

The Chairman: Shall section 40 as amended carry?

Carried.

Section 41.

Lockout.

41. (1) Every employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding two hundred and fifty dollars for each day that the lockout exists.

Idem.

(2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars.

Strike.

(3) Every trade union that declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred and fifty dollars for each day that the strike exists.

Idem.

(4) Every officer or representative of a trade union who contrary to this Act, authorizes or participates in the taking of a strike vote of employees or declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding three hundred dollars.

Mr. MacInnis: Who is responsible for initiating proceedings in case of violations of this section?

Mr. MacNamara: It might be the trade union or the employer, depending on the nature of the case. The board, itself, can prosecute but we have had not, so far, done anything of that nature.

Mr. Gillis: That is what we are going to try and fix up in section 39.

The Chairman: Shall this section carry?

Carried.

Section 42. Shall this section carry?

Carried.

Section 43.

Reference of Complaint by Minister to Board.

43. (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section fourteen of this Act or with paragraph (*a*) of section fifteen of this Act, he may refer the same to the Board.

Consideratioin and Disposition of Complaint.

(2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection one of this section, the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the Board are necessary to secure compliance with paragraph (*a*) of section fourteen or paragraph (*a*) of section fifteen of this Act.

Compliance with Order.

(3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

Mr. CROLL: Has this been changed from last year?

Mr. MACNAMARA: It is new, yes.

The CHAIRMAN: Shall the section carry?

Mr. MACINNIS: Does not this section now put the enforcement of this Act under the War Labour Board? Why is it we shift around from one section to another? In one section the board is enforcing the Act and in another section the employee has to enforce it or the employer has to enforce it. Surely, we should have a uniform procedure in the Act so a person would know just where he stood in regard to it without being a lawyer. It seems that, in this section, the board is all-powerful. The section reads, in part:

> . . . to do such things as in the opinion of the board are necessary to secure compliance with paragraph (*a*) of section 14 or paragraph (*a*) of section 15 of this Act.

It should be necessary to indicate in the Act whether the board is responsible for enforcing compliance with the Act or not.

Mr. MACNAMARA: This section deals with sections 14 and 15, which relate to the question of collective bargaining. If it is desired to get into a bargaining situation and the employer says, we won't bargain or one party or the other makes a complaint to the minister, the minister refers it to the board. The board sends for the parties and gets them together. In nine cases out of ten, a settlement is obtained. It is not a matter of enforcing the Act and saying, "Well, you are guilty of an offence and you have to go to court or pay a fine"; it is a matter of conciliation. It is a job the board is very well fitted to do and has been doing excellent work in that direction.

Mr. MACINNIS: If you get compliance in nine cases out of ten, what action are you going to take in the tenth case?

Mr. CROLL: I was just going to ask that question.

Mr. MACNAMARA: One or the other of the parties may apply for permission to prosecute.

The CHAIRMAN: Shall the section carry?

Carried.

Section 44.

Investigation and Report of Alleged Violations.

44. (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Minister and the Minister, upon receipt of such complaint, may require an Industrial Inquiry Commission appointed by him pursuant to section fifty-six of this Act or a Conciliation Officer to investigate and make a report to him in respect of the alleged violation.

Copy of Report to Parties.

(2) Upon receipt of a report pursuant to subsection one of this section, the Minister shall furnish a copy to each of the parties affected and if the Minister considers it desirable to do so, shall publish the same in such manner as he sees fit.

Consent to Prosecution.

(3) The Minister shall take into account any report made pursuant to this section or any action taken by the Board upon a complaint referred to it under this Act in granting or refusing to grant consent to prosecute under section forty-six of this Act.

Mr. LOCKHART: Well, what about the minister—

Mr. SMITH: We are going to reconsider this.

Mr. LOCKHART: Will this section not have to stand until you decide upon the principle in the former section?

The CHAIRMAN: It will be carried subject to the reconsideration of that principle.

Carried.

Section 45:

Prosecution of Employers' Organization or Trade Union.

45 (1) A prosecution for an offence under this Act may be brought against an employers' organization or a trade union and in the name of the organization or union and for the purpose of such a prosecution a trade union or an employers' organization shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union within the scope of his authority to act on behalf of the organization or union shall be deemed to be an act or thing done or omitted by the employers' organization or trade union.

(2) An information or complaint in respect of a contravention of the provisions of this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceedings in a prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Mr. MACINNIS: There is no departure in law in creating an entity by statute.

Mr. SMITH: I do not think you need it, Mr. MacInnis. I believe the definition of a "person" is wide enough to cover this. However, this section does carry the principle of agency a long way in saying that the principal is responsible for the acts of his agent. Where we have gone overboard is in

the second part which states an information is not bad merely because it contains several charges. I think that is bad law. However, I am not objecting because these will be informal proceedings.

The CHAIRMAN: Shall the section carry?

Carried.

Section 46. Shall the section carry?

Carried.

Section 47:

GENERAL

Signature to Application, Notice or Collective Agreement.

47. For the purposes of this Act, an application to the Board or any collective agreement may be signed, if it is made, given or entered into

(*a*) by an employer who is an individual, by the employer himself;

(*b*) where several individuals, who are jointly employers, by a majority of the said individuals;

(*c*) by a corporation, by one of its authorized managers or by one or more of the principal executive officers;

(*d*) by a trade union or employers' organization, by the president and secretary or by any two officers thereof or by any person authorized for such purpose by resolution duly passed at a meeting thereof.

Mr. MACINNIS: Is that a typographical error where the section speaks of a "trade union or employer's organization"? Should that be employee's organization?

Mr. TIMMINS: This is an attempt to bind both sides.

The CHAIRMAN: Shall this section carry?

Carried.

Section 48.

Notice by mail.

48. For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through His Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

Service prescribed by regulation.

(2) A document may be served or delivered for the purposes of this Act or any proceedings thereunder in the manner prescribed by regulation.

Mr. SMITH: I believe we have gone altogether too far in section 48. I think we should at least say, "registered mail," in which case one would have to sign a receipt when the mail was received. While we have a wonderful post office, we do know that letters do not reach their destination. I think the section should read, "registered mail." Getting back to the courts now, in which the lawyers operate, we have service by registered mail. I received a notice from The Wartime Prices and Trade Board concerning the amount of rent I am paying and that was delivered by registered mail and signed for. I believe we should have the word, "registered" in there.

Mr. MACNAMARA: There is no objection to that.

The CHAIRMAN: It is moved by Mr. Smith that the word "registered" be inserted between the words, "His Majesty's" and "mails". Shall the motion carry?

Mr. CASE: In the last line, too.

Mr. SMITH: I think you should cut out the words, "to have been received by the addressee in the ordinary course of mail".

The CHAIRMAN: Shall the section be further amended by deleting the words, "in the ordinary course of the mail"?

Mr. CROLL: We just asked that the word "registered" be inserted and that the section be redrafted and brought back here.

The CHAIRMAN: Shall the motion carry?

Carried.

Section 48, as amended—shall the section carry?

Carried.

Section 49 (1) and (2)—shall the section carry?

Carried.

Section 50.

> 50. Failure of a Conciliation Officer or Conciliation Board to report to the Minister within the time provided in this Act shall not invalidate the proceedings of the Conciliation Officer or Conciliation Board or terminate the authority of the Conciliation Board under this Act.

Mr. CROLL: What is this?

Mr. SMITH: I would like to know what it means?

Mr. CROLL: What would happen if I were appointed as conciliation officer and I did not do anything? I could go down to Bermuda for a while and if the minister did not like to hurt my feelings nothing would happen. Perhaps I would be too busy or not available and it would mean that nothing could be done, which would be a horrible situation. If the conciliation officer did not act within a specified time he ought no longer to be a conciliation officer.

Mr. SMITH: I think that it means that such failure will not invalidate the proceedings taken up to that time. What good would it do if you invalidated something which had to be done over again? I think it is a saving clause rather than one with the interpretation which you put on it.

Mr. MACINNIS: In view of section 35 is not this section redundant?

Mr. SMITH: If it is only redundant it does not hurt at all.

Mr. TIMMINS: It only ties in with the time element mentioned in section 35.

Mr. ARCHIBALD: In the case of a board being set up and the parties getting together—and that happened on the west coast and the report came in later—it leaves room for the conciliation and then for the board to meet.

Mr. MACNAMARA: It is purely and simply to avoid the technicalities which we cannot illustrate by anything which has happened in the past. We visualize the chairman of the conciliation board might die or be sick.

Mr. ADAMSON: It is sort of an escape clause.

Mr. MACNAMARA: Yes.

The CHAIRMAN: Shall section 50 carry?

Carried.

Shall Section 51 carry?

Carried.

Shall section 52 carry?

Carried.

Section 53.

53. Part I of this Act shall apply in respect of employees who are employed upon or in connection with the operation of the following works, undertakings or business, namely,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

Mr. ADAMSON: I want to go back and ask the deputy minister a question. There are certain railways that only operate within the confines of one province, I am thinking of the Pacific Great Eastern and the G.N.N.O. in Ontario. Would they be covered by this section?

Mr. MACNAMARA: They would come under the provincial authority unless parliament declared them the reverse for the general advantage of Canada.

Mr. ADAMSON: I just want to ask another question. We passed special legislation last year with regard to the Hudson Bay Mining and Smelting Company situated on the borders of Manitoba and Saskatchewan and they specifically asked to be allowed to come under this code. Is there anything covering avocations such as that?

Mr. MACNAMARA: I think you pass a declaration that the industry, for the general good of Canada, should come under this section.

Mr. SMITH: I am not going to move an amendment but I think we should pause to consider what we are here doing. I think the section should read and cover those works and employees who come within the jurisdiction of the dominion of Canada. While we set out these things and say that they are within certain jurisdiction, if in fact they are not within that jurisdiction our mere saying so does not affect them one way or the other. The province has its jurisdiction and the dominion has its jurisdiction. All we can do is pass an act which is applicable to the employees of the businesses which come within the orbit of the dominion. The parliament of Canada can pass all the acts it wants and take jurisdiction from the provinces but they will say that it is nonsense and it is no good. I would suggest to the Department of Labour that they reconsider this section from the standpoint I have mentioned. Supposing that we have missed some set of employees or some business which is not covered in this long list. We would look very foolish in saying the act would only apply to

those if there were a couple more to which it should apply. It seems to me we are in a position where we should say the section should apply to such business concerns and employers which are within the jurisdiction of Canada. You have accomplished everything which you wish to accomplish and you have covered the possibility of making errors.

Mr. MacInnis: Is not the point raised by Mr. Smith taken care of under (*h*), namely "any work, undertaking or business outside the exclusive legislative authority of the legislature of any province". I think that takes care of everything.

Mr. Johnston: Why have all the rest in?

Mr. Smith: That is my whole point.

Mr. MacInnis: I wish to ask Mr. MacNamara whether subsection (*a*) does not conflict with subsection (*c*)? The last two or three lines of subsection (*a*) include "the operation of ships and transportation by ship anywhere in Canada". In (*c*) you have "lines of steam and other ships connecting a province with any other or others of the province or extending beyond the limits of a province". In my opinion (*a*) includes ships operating anywhere in Canada. (*c*) eliminates ships in the coastal trade of one province. Take a boat which runs from Vancouver or Victoria to Nanaimo, under the section, in my opinion, it would not be included because it is operating somewhere in Canada and it would be included in (*a*).

Mr. Lockhart: Well, Mr. Chairman—

Mr. Croll: Let us have an answer.

Mr. Smith: In other words you could have (*h*) in here and leave the rest alone? For example it seems to me the Northwest Territory has been completely overlooked.

Mr. MacNamara: On the question raised by Mr. Smith as to the general nature of the clause, and that has been made to read that the jurisdiction fall where it may, I would say this follows pretty well the old idea in the I.D.A. Act. It follows advice given us by the Department of Justice and after careful consideration it does have some value as a matter of information to anyone reading the act. They get the general idea as to where the jurisdiction lies. In answer to Mr. MacInnis, it follows sections 91 and 92 of the British North America Act and there is some overlapping there in (*c*). It is in the B.N.A. Act and we have followed it here.

Mr. Smith: Do you not think you should include the Yukon and the Northwest Territories?

Mr. MacNamara: I should think (*h*) covers that.

Mr. Smith: If (*h*) covers it why bother with the rest?

Mr. Croll: It is educational.

Mr. Smith: I do not think it covers the situation because the Northwest Territories is not a province. I wonder if perhaps the department might just consider what I have said.

Mr. Croll: Let this section stand for consideration of the Justice Department.

Mr. Gillis: I do not think there is any necessity of letting it stand.

Mr. Croll: We let everything stand which you asked to have stand. Let us get on.

Mr. Gillis: There is a sound reason for me asking that a section stand but I do not think there is such a reason in this case.

Mr. Smith: That is an amazing distinction which you draw.

Mr. Gillis: I think myself the situation is well worded for this reason—

Mr. Smith: I will vote for it.

Mr. GILLIS: In (*a*) it provides for any shipping that is Canada wide.

Mr. JOHNSTON: It provides more than that.

Mr. GILLIS: It provides the department with the power, if it wishes to exercise it, to include in this act any industry that ramifies from province to province. That is effective in (*a*). Now my interpretation of (*c*)—

Mr. SMITH: They could not do what you suggest.

Mr. GILLIS: Yes, they could. Ships that work out of British Columbia come within the jurisdiction of the provincial government and they are covered by their own provincial acts. If the provincial government in British Columbia decides to scrap their own act and accept this as their over-all code in the province, automatically the ships which you have in mind would come within this act. In (*h*) I think the whole thing is covered by "any work, undertaking or business outside the exclusive legislative authority of the legislature of any province". It is my opinion, the wording of the section indicates that he drafters had in mind the provision for taking over industries that ramified from province to province leaving alone the ones covered by provincial acts.

Mr. SMITH: As a matter of fact I do not think that (*h*) means anything but we will not argue about that.

Mr. JOHNSTON: I am not arguing one way or the other but it does seem to me that in (*a*) there is confusion when you read the words "by ship anywhere in Canada". I think there is confusion there and I suggest the committee do let this section stand and the steering committee or the legal department should take the matter into consideration. I think they should also consider the point made by Mr. Smith which is the most practical point made so far.

The CHAIRMAN: Shall the section stand?

Stand.

Section 54.

> 54. Part I of this Act shall apply in respect of any corporation established to perform any function or duty on behalf of the Government of Canada and in respect of employees of such corporation, except any such corporation, and the employees thereof, that the Governor in Council, excludes from the provisions of Part I.

Mr. CROLL: I do not think this is a good section. I see no reason why the Governor in Council should have the right to exempt Crown companies, and he will have the right to exempt them. I think this leaves itself open to further objection. I have heard a great deal of talk in the House about the imposition of taxes by radio. What we do here is actually to give the Governor in Council—not parliament but the Governor in Council—an opportunity to nullify the whole act. He might say tomorrow that shipping does not come within the act. We will find ourselves out of labour legislation by television one of these days. I think we should decide whether the act should or should not apply and I think it should not be left to the Governor in Council. It is too serious a matter to be left to anyone but parliament, and I think this is a bad section. I do not know why it should not be deleted but let us hear from the department. As far as I am concerned it can be deleted, and I point out the objections.

Mr. LOCKHART: Could we have an explanation from the board?

Mr. MACNAMARA: The reason for the over-riding provision that the Governor in Council can make the exception lies in this fact. Crown corporations are children of the war if you would call them that. There was a little dubiousness on the part of the government to put collective bargaining in all types of Crown corporations, particularly those which might have involved the production of material of war. This is a protection in case the plan does not work or in the case of an emergency. That is the explanation of why it is left to the Governor in Council. There are a lot of different types of Crown corporations which have come into being and which were coming into being when this section was drafted.

Mr. ADAMSON: This would cover the employees of Chalk River?

Mr. MACNAMARA: Yes.

Mr. TIMMINS: Not necessarily.

The CHAIRMAN: Is the section carried?

Mr. MACINNIS: If you will turn to section 3 you will find there that an employee has the right to be a member of a trade union and to participate in the activities thereof. Now if you are going to have this section in you are deciding that employees have only a right to be organized into trade unions within such organizations as the government of Canada sees fit. That would take in the right to organize in Crown companies. While Crown companies may be doing and are doing all kinds of work I think we should consider this very carefully before we approve.

Mr. CROLL: Let the section stand.

The CHAIRMAN: Shall the section stand?

Mr. SMITH: Before you let the section stand I would point out all this says is that the government has not the right to take bargaining power away from anyone except Crown corporations. That is all the section says, and it is not going to hurt anybody very much.

Mr. JOHNSTON: Does it not go further than that?

Mr. SMITH: No, that is all it says. The point which we must make up our minds is whether we are in favour of the government saying it does not want the ordinary labour laws to apply in certain projects of one kind and another. I do not suppose they are thinking of the post office for instance, but what they seek is the right to say that in their own corporations this act shall not apply.

Mr. GILLIS: I think that is the very thing that should not be said.

Mr. SMITH: That is the only point.

Mr. GILLIS: It is a rather peculiar twist for the government to take. The government frames an act and makes acceptance of it obligatory on the part of every company, organization, and industry, except those under their own management. They are here giving power to the Governor-in-Council to exclude Crown companies from the obligations we are laying down. I think myself the government itself should be the first to set an example for other corporations by setting up a reasonable and fair collective bargaining standard in their own organization. I visualize a lot more Crown companies in the future than are now in existence—and the fact of the matter is the government is taking over some private enterprises which have failed.

Mr. SMITH: That is what governments are for.

Mr. GILLIS: You are quite right. If they are going to take the stand that the post office employees should be free to join a union of their own choice, then other employees in a government corporation should likewise be free. I think if we read this section into the bill we are defeating the purpose of the bill. We are saying to persons outside that the government wants them to accept this act as law but the government is not prepared to enforce it within it own organization. I suggest the clause should be thrown out and that government employees, Crown corporation employees, civil servants and so on, have the legitimate right as free citizens to have bargaining arrangements with their employers to ensure proper standards of living for their families.

The CHAIRMAN: Shall the section stand?

Stand.

Section 55?

Stand.

Mr. CROLL: The next section is a pretty difficult one and I would move that we adjourn.

The meeting adjourned to meet Thursday, May 13, 1948.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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THURSDAY, MAY 13, 1948

WITNESS:

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

THURSDAY, 13th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Gingues, Hamel, Johnston, Knowles, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Merritt, Mitchell, Pouliot, Sinclair (*Vancouver North*), Skey, Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

Copies of the following were distributed to members:

(1) Memorandum, dated April 17, 1948, on Bill 195, Ontario Mining Association;
(2) Report on the Industrial Relations and Disputes Investigation Act, 1947, Nova Scotia Committee on the Canadian Bar Association;
(3) Report, dated January, 1948, of Committee on Industrial Relations and Labour Law, B.C. Section, Canadian Bar Association;
(4) Submission on Bill 338, undated, by the Ontario Committee on Industrial Relations and Labour Law, Canadian Bar Association;
(5) Submission, dated 1st May, 1948, Shipowners Association (Deep Sea) of British Columbia;
(6) Letter dated 7th May, Northern Electric Engineering Employee Association, Montreal.

On motion of Mr. Dickey, the Second Report of the Steering Committee was concurred in.

The Committee resumed consideration of Bill No. 195.

Mr. A. H. Brown was called and questioned.

Clause 56
Carried.

Clause 57
Carried.

Clause 58
Carried.

Clause 59
Carried.

Clause 60
Carried.

Clause 61
Carried.

12873—1½

Clause 62
Carried.

Clause 63
Carried.

Clause 64
Carried.

Clause 65
Carried.

Clause 66
Carried.

Clause 67
Stand.

Clause 68
Carried.

Clause 69
Carried.

Clause 70
Carried.

Clause 71
Carried.

Clause 72
Carried.

Clause 73
Carried.

Clause 74
Carried.

The Committee reverted to the consideration of *Clause 2* (i).
(i) (i) carried.

Mr. MacInnis moved, that subclause (ii) thereof be deleted.

And the question being put, it was, on division, resolved in the negative.

Mr. Adamson moved that the following be added thereto as a new subclause:

Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

The Committee adjourned at 1.00 o'clock p.m. to meet again Tuesday, 18th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

May 13, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: Gentlemen, we have this morning distributed copies of the following: (1), a memorandum on Bill 195 from the Ontario Mining Association; (2), report on the Industrial Relations and Disputes Investigation Act by the Nova Scotia Committee of the Canadian Bar Association; (3), report of Committee on Industrial Relations and Labour Law, British Columbia section of the Canadian Bar Association; (4), submission of the Ontario Committee on Industrial Relations and Labour Law, Canadian Bar Association; (5) submission dated May 1 from the Shipowners Association, (Deep Sea) of British Columbia; (6) letter dated May 7 from the Northern Electric Engineering employee Association, Montreal.

I wish to point out there has been an unavoidable delay in the distribution of these briefs due to the fact we had to prepare the mimeographed copies ourselves. We received only the original copy of these submissions.

Mr. MACINNIS: In so far as it applies to the submission by the Bar Association, I do not think it matters because the submissions are on Bill 338. They are only a year late, anyway.

Mr. CROLL: They have given it a little thought.

The CHAIRMAN: Gentlemen, we come next to the consideration of the second report of the steering committee. At the last meeting, you received a copy of the steering committee's report, together with a copy of the appendix attached thereto. Are you ready to consider this report and to take action upon it. I need a motion for the adoption of the report.

Mr. DICKEY: I move the adoption of this report.

Mr. CASE: I second the motion.

The CHAIRMAN: Moved by Mr. Dickey and seconded by Mr. Case, that the report of the steering committee be concurred in. All in favour? Any contrary? Carried.

Mr. Johnston, would you have any objection to allowing your motion concerning the sittings of the committee to stand for another meeting?

Mr. JOHNSTON: Let it stand for another meeting.

The CHAIRMAN: Now, we resume consideration of the bill. We are at section 56, industrial inquiries. As this is a lengthy section, I think we may have discussion on each subsection as I call it.

INDUSTRIAL INQUIRIES

Ministerial powers.

(1) The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he

thinks fit regarding industrial matters, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

Shall this subsection carry?

Mr. GILLIS: I wonder if the minister would mind explaining that? It is rather broad. He may do anything he deems fit and necessary. What I am thinking about now is that he could, under that section, order in the mounted police and the army.

Hon. Mr. MITCHELL: No, let me say this; we have heard a lot about prosecutions. I have always held the opinion that the labour department is not a police force and the department should deal specifically with conciliation. The responsibility for law and order commences with the chief magistrate of the city, and carries on to the Attorney-General of the province and then the Attorney-General of Canada.

I should like to say this to Mr. Gillis that that is a fairly old section. It has been kicking around since 1907. It was in the old I.D.A. Act.

Mr. GILLIS: I have seen it used and that is why I am objecting. I do not want the minister to be thin skinned about this thing.

Hon. Mr. MITCHELL: You could not be a minister of labour and be thin skinned.

Mr. GILLIS: The language in this section gives the minister unlimited power. I am not unmindful of the fact the power has been there since 1906. Three times in my lifetime in industrial disputes in the province from which I come, I have seen the army and cavalry called in, barbed wire and everything.

Hon. Mr. MITCHELL: But not under this section.

Mr. GILLIS: Somebody used those powers. All I want from the minister is the assurance there will be no repetition of the use of force to maintain industrial peace in this country.

Hon. Mr. MITCHELL: I hope I will never live to see the day when, under any rational government—

Mr. GILLIS: You mean we were under irrational government at that time?

Hon. Mr. MITCHELL: —when under any rational government the labour department will be the police department.

Mr. GILLIS: I hope not.

The CHAIRMAN: Shall this subsection carry?
Carried.

Subsection (2). Shall this subsection carry?
Carried.

Subsection (3). Shall this subsection carry?
Carried.

Subsection (4). Shall this subsection carry?
Carried.

Subsection (5). Shall this subsection carry?
Carried.

Subsection (6). Shall this subsection carry?
Carried.

Shall section 56 carry?
Carried.

Section 57. Shall this section carry?
Carried.

Section 58. Shall this section carry?
Carried.

Section 59.

Delegation of powers. R.S., c. 99

59. Subject to regulation, the Board may by order authorize any person or board to exercise or perform all or any of its powers or duties under this Act relating to any particular matter and a person or board so authorized shall with respect to such matter have the powers of commissioners under Part I of the *Inquiries Act.*

Mr. GILLIS: Would the minister mind explaining that section?

Hon. Mr. MITCHELL: That takes in the Northwest Territories and places such as that which are a long way from home.

Mr. GILLIS: If it is necessary to send a board up there, then the minister could delegate them powers.

Hon. Mr. MITCHELL: Yes, that is the only reason for it.

The CHAIRMAN: Shall this section carry?
Carried.

Section 60.

Procedure rules. Publication.

60. (1) The Board may, with the approval of the Governor in Council, make rules governing its procedure, including the fixing of a quorum of the Board, and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.

(2) The rules of the Board shall have effect upon publication in the *Canada Gazette.*

Mr. LOCKHART: Should there be any time specified in this section? It might be held up for a long time. Could not the words, "As soon as possible", be inserted?

Mr. MACINNIS: I agree with Mr. Lockhart. I do not understand why a time limit has not been put in that section. There may be a satisfactory explanation. There is a time limit in some similar parts of the Act, is there not?

Mr. LOCKHART: It should be, "As soon as possible".

Mr. BROWN: This provision concerning the fixing of a further time limit is to prevent a multiplicity of applications. Where an application for certification has been made, dealt with by the board and has been rejected, the thought is the board should be given authority to fix a further time saying that a new application may not be made to the board within this time limit. Otherwise, you are going to have a continued process of agitation in a plant with respect to activities in support of a new application.

The board, under the wartime labour relations regulation has fixed a minimum period of time of six months. If an application has been dealt with by the board and rejected, then a new application is usually made and permitted six months later.

Mr. TIMMINS: Mr. Brown, if you were prescribing rules, you would probably put a six months' limit in the rules.

Hon. Mr. MITCHELL: What happens is this; the place is in a turmoil, this agitation continues; there might possibly be a demand for a vote two weeks after

bargaining rights have been given to a certain body. In the early days of the Wagner Act of the United States, that is what happened. Later, a principle was established that there should not be another vote for six months.

Mr. MACINNIS: This applies to an application which has been refused not to an application which has been granted, so I do not think the point made by the minister applies. What happens here is, if the application has been refused there is no certified organization for these employees. It is important that the time be limited in which the employees of an organization should be without a bargaining agent. It should be made as short as possible.

Hon. Mr. MITCHELL: I should have added this, but it slipped my memory. It may be an application by an organization to supplant the existing bargaining agent.

Mr. MACINNIS: Not under this section, so far as I can see.

> The board may, with the approval of the Governor in Council, make rules governing its procedure, including the fixing of a quorum of the board, and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.

It seems to me that section does not prevent an application being made by a different bargaining agent in respect of the same unit. If the applicant is new, an application can be made at any time. It is not limited.

Hon. Mr. MITCHELL: That is right.

Mr. GILLIS: Mr. Chairman, as I see that clause, I think it is all right. It is open and it is flexible. It means this; where an application has been made for certification, the board tries the case and finds the applicant cannot meet the requirements contained in the Act, perhaps due to the fact they have not got a majority. The organizer of that unit can go back and continue organizational work. It may be a week or it may be two months or six months, but if you state definitely six months, it is inflexible. It may hold back the unit which is able to build up the organization within two or three weeks and go back to the board.

Mr. CASE: Then, if someone else appeared claiming to have bargaining rights, an application could be made immediately.

Mr. CROLL: What is the time limit now, Mr. Brown?

Mr. BROWN: Ordinarily speaking, if the application has been dealt with on its merits, the usual period of time specified is six months; that holds true for both the national board and the Ontario board. I think it is a fairly good period of time. It has worked out satisfactorily. There have not been any complaints from the trade unions, themselves, as to that period.

Mr. MERRITT: There have been several recommendations that there should be an amendment to section 60 providing that the proceedings before the board be open to the public and the report of the decision of the board should be announced publicly. I should like to ask one of the officers of the department what the practice is now. Are the proceedings open to the public?

Mr. BROWN: Yes, all hearings are open to the public.

Mr. MERRITT: And the decision of the board is publicly announced and appears in the *Labour Gazette,* does it?

Mr. BROWN: Yes.

Mr. MERRITT: So a provision such as that would be unnecessary. You would not meet to give the public the right to attend because that right is in existence now, is that correct?

Mr. BROWN: That is correct.

Mr. LOCKHART: Have there been any complaints along that line?

Hon. Mr. MITCHELL: I know of none.

The CHAIRMAN: Shall the section carry?

Carried.

Section 61, powers of board.

POWERS OF BOARD

Decisions final and conclusive. Reconsider, vary or revoke.

61. (1) If in any proceeding before the Board a question arises under this Act as to whether

(*a*) a person is an employer or employee;

(*b*) an organization or association is an employees' organization or a trade union;

(*c*) in any case a collective agreement has been entered into and the terms thereof and the persons who are parties to or are bound by the collective agreement or on whose behalf the collective agreement was entered into;

(*d*) a collective agreement is by its terms in full force and effect;

(*e*) any party to collective bargaining has failed to comply with paragraph (*a*) of section fourteen or with paragraph (*a*) of section fifteen of this Act;

(*f*) a group of employees is a unit appropriate for collective bargaining;

(*g*) an employee belongs to a craft or group exercising technical skills; or

(*h*) a person is a member in good standing of a trade union;

the Board shall decide the question and its decision shall be final and conclusive for all the purposes of this Act.

(2) A decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable so to do, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.

Mr. CROLL: Mr. Chairman, I have one suggestion to make with respect to this section. I believe this section corresponds to section 21 of P.C. 1003 where the words, "final and conclusive" appear. Now, there are two points of view, either the decision of the board is final and conclusive or there should be permission given to take the matter before a board or court.

Up to this time, the board has always considered its decisions to be final and conclusive, but that is not quite right. I have here the case of the Canadian Fishermen's Union versus the owners of the *Sea Nympth* which was decided by the Supreme Court of Nova Scotia in 1946. It appeared that the board made a decision which was final and conclusive but that decision was reversed by the Supreme Court of Nova Scotia at that time.

I am neither in one corner or the other corner at the moment. I am satisfied to have it final and conclusive, but I think the words should be added that it is not open to review by any court or any other body. If it is to be open to review, it should be stated that it is open to review. At the present time the words do not go far enough and are not considered to be final and conclusive. It seems to me, in the light of that decision we ought to re-draft the section in order to make it stick or open the door and let the parties go to the courts if they so desire. I point out that, at the moment, it does not mean what it says.

Hon. Mr. MITCHELL: I remember that case very vividly. It was not a question of the interpretation of the Act as such, it was a question of jurisdiction. I think that is more or less down the drain at the moment until the B.N.A. Act is amended. What we did with this clause was to make it just as flexible as we possibly could.

Now, I do not know whether you should deny anyone the right to go to the court if he feels unjustly treated. I would not like to do it myself. It is just as flexible as we can make it. It did give power to review a decision already made.

Mr. CROLL: The question there was whether the crew of a fishing vessel who shared in the proceeds of the catch were employes. That was the question. It was not a question of jurisdiction. That was the question to be decided, and the Supreme Court of Nova Scotia reversed them. My point is that it is either final or not final. I agree entirely they should have the right to go to the courts but let us say so, either give them the right or close the door. At the moment they have the right to go despite the fact we say "final and conclusive." There is a decision of the Supreme Court of Nova Scotia which is final. I agree with it. I am quite content with it, but this does not mean final and conclusive.

Hon. Mr. MITCHELL: They did not go to the courts on the terms, rather on a technicality.

Mr. CROLL: The question of employees.

Hon. Mr. MITCHELL: That was the only reference to the court. It was not a bargaining agreement.

Mr. CROLL: The question was whether they were or were not employees. If they were employees they could not share. If they were not employees then they were partners.

Mr. LOCKHART: I am in agreement with Mr. Croll there, but I wonder if the minister can say why the right to go to any other judicial body should be denied. Would it not be democratic to put something of that kind in?

Hon. Mr. MITCHELL: This is about as tight as you can make it. That is the opinion of the Department of Justice, and any additional language would not add anything to the section. When I mentioned jurisdiction I used jurisdiction in the sense it is used in labour organizations. Under the decision of the Supreme Court of Nova Scotia they said that these people were not employees, that they were actually operators. That is how that came up.

Mr. JOHNSTON: Do the last two lines of this not make it very decisive? "The board shall decide the question and its decision shall be final and conclusive," and so on.

Mr. CROLL: Those were the exact words in the other section.

Mr. TIMMINS: In the brief of the Nova Scotia committee of the Canadian Bar Association they submit a recommendation in respect of this particular section. Perhaps I might read it.

> It is felt that the board's decision should not be final and binding on either questions of law or on questions of the jurisdiction of the board.

Then they give reasons.

> These matters should be left to the courts of the land, as they are in the Workmen's Compensation Acts and Public Utilities Acts and the Act should provide for submission of questions of law to the courts, and the jurisdiction of the board must be subject to review by the courts.

I am putting that forward as a submission, that perhaps it is something we ought to consider before we finally pass the section.

Mr. GILLIS: Mr. Chairman, what we are trying to do now is to enact a law, a completely different law from your Criminal Code. I do not think you will

ever have satisfaction in labour relations until you get yourself out of the courts. I agree with Mr. Croll. I think myself the Supreme Court of Nova Scotia erred in their judgment when they reversed the decision of the National War Labour Board. They are human beings also.

Mr. CROLL: In that court.

Mr. GILLIS: Yes, and they can be wrong. I remember that case very well. I think the minister is right also when he says it was a matter of jurisdiction. You still have your nine provinces functioning and everybody wanting to hang on to their jurisdictional rights. When the National War Labour Board made its decision based on the language of 1003 I submit their decision was final, binding and conclusive. I think the Nova Scotia Supreme Court was absolutely wrong when they did not accept that decision in that particular case until such time as 1003 was either revoked or changed. They went outside of a national law that was enacted in an emergency to take care of labour relations. That was an unfortunate case in that it gave them an opportunity to quibble with the law as it was on the question of the meaning of the word "employee."

The language contained in this section of the bill is all right as far as I am concerned, provided the people in this country want to live up to the law as enacted. If this is to be a national code and a guide for the future in labour relations I think we have got to begin to make people in this country understand that we are trying to bring about uniformity, we are trying to set up one jurisprudence, and that labour relations are human relations, and they cannot be adopted to the kind of laws you have in the criminal code where people are prosecuted as criminals.

This whole legislation is designed to expand democracy and give responsibility not only to the employer but to the employee. I think unless we are clear and definite in the language we use we are going to defeat our own purpose. I am quite satisfied that if this is left as it is drafted, and respected as a new law in this country, that there will be no difficulty with it.

When I was listening to the chairman reading the section and following him it seemed to me that it also brings in your 1,100 engineers in the province of Ontario who now have collective agreements. The board has a right to make a decision there, whether or not we write in the engineers. A collective agreement still exists. Personally I am quite satisfied to give this a trial as is with the understanding that the board has the final say in determining questions at issue under this particular Act.

Mr. CROLL: That is not the point. There are no more telling words than the word "final", "this is final, this is conclusive." I understand by that that is the end of it. That is what it says. In spite of that a court has said that the words "final and conclusive" do not mean final and conclusive. In view of that let us say that it shall be final and conclusive and not subject to review by any court or the minister, or say that it shall be subject to review by courts or the minister, one or the other, but let us put it into one or the other of those categories. It does not mean what it says. The words may mean that to you but they do not mean that to the people who interpret the law. We write the law; we do not interpret it. If we want it interpreted as we think it ought to be interpreted let us say so. Let us say it is not subject to review by anyone or it is subject to review.

Mr. JOHNSTON: That is what it does say.

Mr. CROLL: The courts have said it does not mean that.

Mr. JOHNSTON: How will you make it any stronger?

Mr. DICKEY: I think that we have got to remember that this is labour legislation. I think this section goes as far and expresses the thing as completely as it can be done in this Act, but we have got to remember that a question of the jurisdiction of the court cannot be found within the confines of this Act, that as

long as our system of law remains as it is under our present organization the jurisdiction of the courts will be found in other legislation, and they have a certain inherent jurisdiction that this kind of legislation cannot affect.

Mr. KNOWLES: May I say a word in support of Mr. Croll's contention that the wording of the Act does not make it mean what it seems to say. At the moment I am not participating in the argument as to what it should convey. I draw attention to the fact that the wording in P.C. 1003 at least in its preamble was a little different. It said:—

If a question arises under these regulations as to whether so and so is the case,

the board shall make a decision and its decision shall be final.

In section 61 (1) we see these words:—

If in any proceeding before the board a question arises under this Act and so on. I submit it would be possible for a court to say that the decision of the board on these matters is final only with respect to proceedings before the board. In other words I contend the wording—

Mr. MACINNIS: Read subsection (2).

Mr. KNOWLES: But I contend that the wording with reference to a proceeding before the board would leave it open to the court to say that the final decision referred only to proceedings before the board, and as Mr. Dickey has pointed out does not obligate the courts to pay attention to that restriction.

Mr. LOCKHART: Mr. Chairman, I am somewhat in agreement with what Mr. Croll has said. After I sit down could some of the officers or the minister indicate whether there have not been cases where the men felt that the matter should be reviewed again, and felt that perhaps a final decision by the board may not just give all the freedom of decision that some small union groups think should be exercised. Could someone answer that question as to whether or not there have not been cases of that kind over the years? Could we not make it doubly sure that in the event of some jurisdictional ruling the men would feel that they would still have the opportunity of having their case reviewed by judicial bodies? I am inclined, as I say, to agree with Mr. Croll, but I think we ought to ponder seriously that aspect of it. I am not objecting. If it means definitely one thing all right, but there is a little ambiguity and that is what I should like to point out.

Mr. MACINNIS: As far as the ordinary layman is concerned I do not think there is any ambiguity in the section. At least, it is quite clear as far as I am concerned.

A decision or order of the board,

and in my opinion this does not apply to a matter of procedure—

is final and conclusive and not open to question, or review,

and so on. I take that to mean by an outside body. I have great regard for the point made by Mr. Croll that it was not sufficient in the Nova Scotia case. The board decides as to whether a person is an employer or employee. I think that was the point the Nova Scotia case rested on.

Mr. CROLL: That is right.

Mr. MACINNIS: Is there any objection to putting in the words suggested by Mr. Croll, "not open to question or review by any court or by the minister"? I would prefer in a matter of this kind to leave the question wholly in the hands of the board, because they are dealing with a question where they have been appointed specifically to represent both parties to the dispute. In any case, a court decision is no more final than the board's decision except there is a finality of courts. The last court that has dealt with the matter has, of course, the final say, but there is no saying if there was another court to which it could

be referred what would be the decision of that court because each court may change the decision, and very often do change decisions made by the court below. I have seen cases where it was a see-saw. When the case was heard in the county court it was one decision, but when it was heard in the appeal court of the province there was another decision. When it went to the Supreme Court of Canada there was another decision, and when it went to the Privy Council it came back to the decision made by the county court. That is the situation. There is no finality except the finality of the last court. I think we would be well advised to make this power of the board as conclusive as possible so as to leave the matter in the jurisdiction of the board. If there is no legal objection to putting in the words, "by any court or by the minister" I think we should do that.

Hon. Mr. MITCHELL: Can you do that? We are talking so much about courts here. I think it is a fair thing to say that the Canadian industrial structure in the broader sense, employers and employees, has stayed away from the courts to a large degree, much greater than in the United States. Suppose it is a question of constitutionality.

Mr. MACINNIS: Constitutionally it is what the Act contains.

Mr. TIMMINS: You cannot take away anything that is inherent.

Hon. Mr. MITCHELL: That is right. The reason why we did not challenge the Nova Scotia case—and I think I can say this to the committee—was because normally that industry was under the jurisdiction of the government of the province of Nova Scotia.

Mr. LOCKHART: Are there any other such cases?

Hon. Mr. MITCHELL: I do not know of any others. We were just handing the jurisdiction back at that time, and no action was taken. The Department of Justice has told us that this section is about as water-tight as it possibly can be made. I should like to point out to the committee that it is not expected that there will be an appeal to the courts on every decision made by this board. I have got enough reliance on the common sense of our people that they would not do that kind of thing. You have a board which is representative of employers and employees with an impartial chairman, and up to now, as far as my board is concerned—and I have handled enough cases—we have had no difficulty except in this one case Mr. Croll speaks of.

Mr. ARCHIBALD: As I understand the situation when Bill 195 is passed it becomes an Act. Therefore it is a law and as a law is subject to the courts of the country. I do not think you can write into it anything that will take away from that. As the minister has pointed out it boils down to the good sense of the parties involved because this is the law and therefore it is subject to the courts.

Mr. LOCKHART: Can someone tell me if there is any provision within the Workmen's Compensation Act? I gather there is, and if there is could some similar provision be made in this Act as is made in the Workmen's Compensation Act?

Hon. Mr. MITCHELL: Speaking from memory I think the only province where you have that right is the province of Saskatchewan. There may be a change. I have not been close enough to it. There is no appeal against a decision of the Workmen's Compensation Board in other provinces, I believe.

Mr. MACINNIS: There is no appeal against a decision of the compensation board in the province of British Columbia.

Mr. CROLL: There is none in Ontario.

Mr. CASE: The question I should like to settle in my mind is whether the war labour board ruled specifically on the partnership employee question, or was that left for reference to the court?

Mr. CROLL: No.

Mr. CASE: Because there have been no other appeals.

Hon. Mr. MITCHELL: The board ruled in the first place.

Mr. CROLL: I believe that most people are under the impression this will not go to the courts, but here is the danger. A similar case may arise in the province of Ontario as to the question of what is an employee. You are bound to have it arise on the question of engineers on which this committee will divide I do not know how. Immediately a lawyer appearing in such a case will quote the Supreme Court case in the province of Nova Scotia and will point out that there was no appeal taken from it. He will say, "There is the only authority there is on the point." The courts are then in the position to give it a great deal of weight. Maybe they will decide it was not good law or they should not have interfered, but they would give it a great deal of weight. You have a precedent. As the minister pointed out it happened at a very unfortunate time when he was turning over the jurisdiction, and he was not much interested, and it did not appear to be dangerous, but nevertheless we are faced with it. We hope that this will become a uniform code across the country, but we are faced with that decision. That decision means that we will be thrown out in every court in the country where either an employer or employee, whoever is aggrieved, wants to appear before a court. If you can put words in here which can carry out the full intention by saying it shall not be subject to review by a court or by the minister, or that it shall be, whichever way the committee decides, then I think you have indicated to the country generally and to the people who are interested what you mean.

Mr. BROWN: Mr. Chairman, the provisions that are in P.C. 1003, to which Mr. Croll referred, have been strengthened in this respect by the provisions of subsection (2) of section 61 which say:

> A decision or order of the board is final and conclusive and not open to question or review.

and so on. Those particular words were not in P.C. 1003. It certainly was the intention in drafting this section to provide that the decision of the board would be final and binding, and would not be subject to review by a court. Of course, you never can exclude the power of a court to review a case where jurisdiction is involved. They can always do that on a question of certiorari no matter what you say they cannot do.

It was the intention within those limits to provide that the decision of the board would be final and binding, and in drafting it it was felt this language was just as conclusive as you could have it, and even if you did go on from there and say something further about not being open to review by a court actually as far as the language is concerned you would not be adding anything to what is there. That is the situation and purpose in drafting the legislation. I do think you have added something by subsection (2).

The CHAIRMAN: Are you ready for the question? Is section 61 carried?

Carried.

Section 62. "Where uniform provincial legislation. Agreements for administration by Canada."

Is section 62 carried?

Carried.

Section 63. "Where powers or duties conferred on minister or dominion officers by provincial legislation."

Is the section carried?

Carried.

Section 64. Shall the section carry?
Carried.

Section 65. Shall the section carry?
Carried.

Section 66. Shall the section carry?
Carried.

Section 67.

REGULATIONS

G. in C. regulations. Publication. Laid before Parliament.

67. (1) The Governor in Council may make regulations

(*a*) as to the time within which anything authorized by this Act shall be done;

(*b*) excluding an employer or employee or any class of employers or employees from the provisions of Part I of this Act or any of the provisions thereof; and

(*c*) generally for carrying any of the purposes or provisions of this Act into effect.

(2) Regulations made under this section shall go into force on the day of the publication thereof in the *Canada Gazete*, and they shall be laid before Parliament within fifteen days after such publication, or, if Parliament is not then in session, within fifteen days after the opening of the next session thereof.

Mr. CROLL: Mr. Chairman, in connection with (*b*) we have not actually settled on that because we allowed one of the other sections to stand. I think that is giving far too much power to the Governor in Council. I raised the point before that there should not be the right to exclude anyone from the Act. Once the Act covers them, they ought to stay covered by the Act. Otherwise you may find, from time to time, certain people excluded whom we thought to be included in the Act. I am opposed to subsection (*b*) as it stands at the present time. I think we ought to let that section stand and when we deal with this other section, we can decide on it. I would ask that this section stand until we do that.

Mr. MACINNIS: I would support Mr. Croll. I was going to get to my feet when he rose.

Mr. GILLIS: I do, also, for the same reason.

Mr. MACINNIS: I think it is giving the minister to wide powers. I believe it is making trouble for the minister, himself. He will be pressured, if I may use that term, by persons who want to be excluded from this Act.

The CHAIRMAN: Shall the section stand?
The section stands.

Section 68. Shall this section carry?
Carried.

Section 69. Shall this section carry?
Carried.

Section 70. Shall this section carry?
Carried.

Section 71. Shall this section carry?
Carried.

Mr. CASE: Just one question at this point. If the provinces agreed to accept this code, would those fines still be payable to the Receiver General?

Hon. Mr. MITCHELL: The provinces will take care of that; you do not need to worry about the provinces.

The CHAIRMAN: Section 72, subsection (1). Shall the subsection carry?
Carried.

Subsection (2). Shall the subsection carry?
Carried.

Subsection (3). Shall the subsection carry?
Carried.

Section 73. Shall the section carry?
Carried.

Section 74. Shall the section carry?
Carried.

Now, gentlemen, we revert to section 2 of the bill, clause (i).

> "Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include
>
> (1) a manager or superintendent or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations.

I think we should stop there and have a discussion on this first part. Is that agreeable to the committee?
Agreed.

Shall Clause (i) (1) carry?

Mr. GILLIS: Is this not the one under which we are excluding the engineer?

Mr. CROLL: No, it is clause (2).

The CHAIRMAN: Shall this clause carry?
Carried.

> (2) a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity.

Mr. McIVOR: I think we have all had a good many letters and requests concerning this clause. I have had a few. I believe the engineers, like the lawyers and doctors, like to be called professional men. The weight of the evidence points in that direction; that is what they want.

Mr. GILLIS: I should like to say a word on this section, Mr. Chairman. The steering committee had a long discussion on this matter and the weight of evidence, according to the information we had at that time would make appear that the engineers do not want to be included for bargaining purposes. I am not satisfied that the weight of evidence is in that direction for this reason; there are two classifications of engineers. Most of the telegrams and briefs which were received came from the Engineering Institute. Now, most of the people, in my opinion, who would sit on the executive council of the Engineering Institute, rather than being employees would be employers. Most of the engineers in that position would be in the managerial class rather than in the employee class. When an executive council, on that basis, makes a decision so far as I am concerned, it would not carry much weight. I would say it does not express the opinion of the rank and file of the engineers.

On the other hand, there was proof given to the steering committee that there are at the present time in Canada, some 1,100 employee engineers who now have collective agreements as employees. These agreements were secured under P.C. 1003. Now, if we leave the engineering profession out we are going to scrap these collective agreements which these men wanted and under which they secured benefits.

Mr. MERRITT: Of these 1,100, how many of them are working for companies or in occupations which fall under the Dominion Act?

Mr. GILLIS: That fall under the Dominion Act?

Mr. MERRITT: Yes.

Mr. GILLIS: I would say, so far as Ontario is concerned and that is where most of them are, they all fall under the Act.

Mr. TIMMINS: The information I have is that there are 500 with the Hydro in Ontario. There is also an agreement with The Bell Telephone Company, the Canadian National Telegraphs and an agreement with the C.B.C. At the present time, these people are all operating under agreements.

Mr. GILLIS: Since the province of Ontario has accepted this code, these people will all be included. If we exclude the engineers as such from this particular Act, they would lose their collective agreements.

I believe as matters stood under P.C. 1003, it was not obligatory for those in the engineering profession to set themselves up as a bargaining unit. The ones who are now saying the engineers should not come under this particular bill never did come in under P.C. 1003; they stayed out. Nevertheless, if we do not include the engineers now in this bill, we are going to deal out some 1,100 employees, learned in the engineering profession who now have collective agreements.

If those who stayed out still wish to say out, they have that right. They do not have to come in; it is not obligatory under this particular legislation. However, it is necessary for us to include the engineering profession in order to protect the 1,100 who now have collective agreements. So far as I am concerned I think it is only fair and reasonable that we should include the engineering profession in this Act to protect those who now come under the Act very definitely, with the understanding that those who do not want to come in do not have to come in. They can continue in the way they did under P.C. 1003.

Mr. SKEY: Does not the point in question come down to this; will those employees who wish to continue these agreements be altogether excluded from the benefit of this Act or can they have the benefit of this Act by reorganizing in another union, not calling themselves engineers? I should like to put that question to the minister and his assistant, if I have made myself clear, because I think if those men who wish to have the benefit of the Act can be protected and the 88·5 per cent who represent the associations and wish the engineers to be classed as a professional body could have their wishes at the same time, we would solve the difficulty. Have I made myself clear?

Hon. Mr. MITCHELL: If they are employed as professional engineers they are out.

Mr. GILLIS: And the company would define that.

Hon. Mr. MITCHELL: No, the board would define that.

Mr. KNOWLES: No matter what name he calls himself.

Mr. SKEY: Would a man have to resign from his professional association?

Hon. Mr. MITCHELL: I would not like to go that far. I am not a great believer in hypothetical cases. I think there is enough commonsense and good

judgment among the members of the labour board to decide the thing in a rational manner. They have done it up until now and I think they will continue to do it.

I want to say this while I am speaking about the board: the average life of a chairman of a board in the United States is about five months. We have not changed ours at all. We have not changed the membership. I think one member resigned.

Mr. CROLL: May I say that I think the answer lies with the engineers themselves. If they do not want to go to the board for purposes of certification, there is no obligation upon them to do so. Those who want to go to the board, and they have had that privilege since 1944, in my opinion, ought not to be deprived of the right to go before the board.

Mr. Timmins read a short list of those who had collective bargaining agreements. I think I can add a few names to that. I believe he mentioned there was a bargaining agreement and certification granted in the case of The Bell Telephone Company of Canada, both eastern and western divisions; Canadian National Telegraphs; Canadian Broadcasting Corporation; Algoma Steel Company; Canadian Bridge Company Limited; Toronto Hydro Electric System; A. V. Roe Company; Toronto Transportation Commission; the Corporation of the City of Hamilton; the Hydro Electric Power Commission of Ontario; the Canadian General Electric Company, a portion of it; and the Canadian General Electric Company, Peterboro plant. Now, those people all have collective agreements. It seems to have worked harmoniously. I do not think we ought to deprive them of it. It seems to me the purpose of the Act is to bring as many people as possible under the Act in the interests of good labour relations. We believe this code will do that.

Now, when we start excluding people from this Act and saying you cannot come in, that is a different thing from saying you may or you may not. As I said before, the matter lies entirely in the hands of the engineers. They do not have to go to the board and they do not have to bargain collectively, but those who feel their position requires it, in my opinion, ought not to be deprived of the right.

Mr. CASE: Do you accept the clause as it is?

Mr. CROLL: No, I want the word "engineer" out.

Mr. TIMMINS: I had a large number of communications from engineers asking that they be brought under the Act. I made it my business to see a number of engineers, some of them in the Hydro in the province of Ontario. I found there was a general feeling they wanted to be included. Some of them have had collective bargaining agreements since 1944. They feel it has worked well and they would like to come under the Act.

The minister has heard representations, no doubt—I may be wrong on this—from both sides. He has heard representations from the Engineering Institute and he has heard representations from the others. He has decided probably, he can correct me if I am wrong, there are more engineers who want to be kept out than there are engineers who want to be brought in. However, I do not believe the rest of us here have that knowledge. In fact I think, speaking for myself, probably there are more engineers who wish to come under the Act than there are engineers who wish to be excluded. I do not think we should exclude those engineers without having some first-hand knowledge in respect to the matter. I think we ought to hear what the minister or his deputy can tell us in that regard. Then, if we are not satisfied we can, perhaps, find some way of letting these people who have never had a chance to come before us, come before us and see whether they can convince us one way or the other.

Mr. ADAMSON: Perhaps I should say something about this since I happen to be one of those who worked at one time for the Hydro Electric Power Commission. There is a great deal in the contention of the engineers for this commission from whom representations have been received. I will just read you one paragraph, if I may, of their brief and it is this: this brief is signed by about eight or nine engineers, all members of the Institute who are employed by the Hydro.

> It s a well-known fact that, in the past, the salaries of engineers have been substantially below other professional groups and, for that matter, much less than many of the trade groups. Only through organized effort can we expect to maintain a standard for engineers. This, we believe, can be best accomplished for engineers who are employees performing professional engineering on a salary basis through the Federation of Employee-Professional Engineers and Assistants—our collective bargaining organization.

I shall not read you any more, but I think this brief makes it very clear. There is no question but that engineering is almost, I would say, the poorest paid profession of all. There is no question that by bargaining with his employer where there is a large group of employees, he has materially and substantially improved his position with regard to pay and other matters. Not only that, but the engineer has improved his professional position.

Now I believe, speaking as a professional engineer, I would be against the inclusion of engineers in the Act—I mean, I would be against taking the engineers out of the section—despite my own experience and the experience I have had working in the Hydro myself. It may sound like a contradition, but I believe there should be another clause added to this, a third clause, worded somewhat along these lines: where an employer employs a group of employees who have professional standing, they should be allowed to organize and bargain collectively with their employer. I suggest that as a way out of the impasse in which we are. As a professional engineer, personally, I would not like to see the engineers included in the general bargaining agreement. However, I do say, unless you get some machinery whereby engineers, as a group, where they are employed in large numbers by one employer, unless you get some machinery whereby these men can bargain together to protect themselves, you are going to relegate the engineer to an inferior position. I would be very much against that. It is for that reason I have made my suggestion.

I just want to say one thing more. I was talking to the Dean of Engineering of one of the largest universities. I shall not name him. He said, "If I had a son, I would certainly not send him into the engineering profession because it is the poorest paid."

Mr. GILLIS: You are making a strong argument for a collective bargaining unit.

Mr. ADAMSON: As I have said, as a professional man, I would be against it if you took it out of this Act.

Mr. KNOWLES: May I just make one comment on the suggested third clause Mr. Adamson proposes? I would just say it would also cover lawyers working for a firm or doctors working for a hospital and dentists working for a clinic. I am not against that, but I am interested in hearing from the member who made the proposal.

May I come back to the situation before us? Is it not really quite simple and quite clear? With respect to the word "engineering" in this clause, if the word stays in the clause that means we arbitrarily state to those groups mentioned by Mr. Timmins and Mr. Croll who now have collective agreements that they can no longer have collective agreements.

Hon. Mr. MITCHELL: May I break in at this point?

Mr. KNOWLES: Certainly.

Hon. Mr. MITCHELL: There is nothing in this statute which prevents collective bargaining by anybody, but it is on the question of certification. There are lots of organizations in this country, trade unions, which are not certified and still bargain collectively with their employers.

Mr. KNOWLES: It puts them beyond the benefits of the provisions of this Act?

Hon. Mr. MITCHELL: No.

Mr. KNOWLES: They would not be employees under this Act. While there might be protection for those presently enjoying collective agreements even, perchance, under section 72 (3), which we passed a few minutes ago, that protection would not be there for any similar group in the future. I appreciate the force of the interjection the minister made, but it does seem to me we run the risk of putting a barrier against certain engineers who want collective bargaining if we leave the word "engineering" in. If we remove the word, we leave the door open for those who want it and we do not force the engineers who do not want it into it.

Mr. LOCKHART: Could we establish a principle here and make some progress? It seems to me if I sense the feeling of this committee we, perhaps, would want to have those engineerse who have collective agreements included in the Act. We could establish that principle first and then work out the phraseology to bring them within the Act.

Mr. JOHNSTON: I should like to say a word in regard to what the minister said a minute ago, that the purpose of the Act is not to bar anybody. I think we are all of the opinion that is so, but I would point out to the minister that this question was reviewed very thoroughly by the steering committee. They were of the opinion, at least some of them, that if you leave that word "engineering" in the Act, then you do bar engineers from coming under this Act.

It is true that they could come under the Act as employees but there are 1,100 at least of the engineers who object to that feature. I can quite readily appreciate their objections. I think they want to retain their identity as engineers and still be allowed to come under this Act. Now, the very fact that the Act has been carrying on satisfactorily and allowing engineers to enjoy bargaining rights, I think is a good argument in itself, for excluding the word "engineering" from subsection (2). Such a move would leave the engineers in exactly the same position as they are now. As Mr. Gillis has pointed out there are 1,100 of them who are already under an agreement, and if you include the word "engineer" in the Act as it is now you would deprive those men of the right to bargain collectively under this Act. I do not think that is right. Somebody referred to doctors a moment ago. Personally I would have no objection to doctors obtaining collective agreements if they desired to. I would not have any objection to allowing lawyers to enter into a collective agreement if they themselves desire to.

Mr. KNOWLES: Some agreement.

Mr. JOHNSTON: But I do believe it would be wrong to exclude a group of 1,100 men who are professional engineers from coming under this Act when they have definitely expressed a desire so to do. Therefore I am against having that word "engineer" appear in paragraph 2 of subsection (i) of section 2 of the Act.

Mr. CHARLTON: Is it not true that even if the word "engineer" is included in this paragraph 2 of subsection (i) that under section 8 of the Act it would be possible, at the discretion of the board, for them to take advantage of this legislation. Section 8 reads:

> Where a group of employees of an employer belong to a craft or group exercising technical skills.

and so on.

Hon. Mr. MITCHELL: If what Mr. Adamson says is right that conditions are as bad in the industry as he says they are, I do not think I would bother to work as an engineer. I think Mr. Gillis and Mr. MacInnis will agree with me that I belonged to a pretty powerful trade union before there was any legislation of this kind or character.

Mr. ARCHIBALD: I should like to ask the minister if it would not be practical to drop all of paragraph 2 of subsection (i)? You have mentioned certain professions there, skilled and unskilled. If you are going to mention any professions why do you not include preachers, chartered accountants and politicians? Why single these people out and give them the status of being above and beyond the ordinary hoi polloi? I would suggest the removal of that. Then, as the minister has already pointed out, it would fall back on themselves for labour relations, and they have good sense and all the rest of it. Leave it out. Then there would be no fight over who was a professional man.

Mr. MACINNIS: Arising out of some remarks made by the minister a moment ago I should like to say a few words. Paragraph 2 of subsection (i) has nothing to do with what the engineers are doing in their particular employment. It provides only that if they are qualified according to the laws of their particular province that they are not entitled to collective bargaining under this Act.

Mr. DICKEY: And employed in that capacity.

Mr. MACINNIS: Employed in that capacity. What does that mean? Is not every engineer who goes into a plant to work in the engineering department of that plant an engineer in that capacity? All right. As the industry has developed today there are hundreds of engineers where there were only a few, one or two, a very few years ago.

Mr. MACNAMARA: This chap has to be registered.

Mr. MACINNIS: He would be registered as an engineer.

Mr. MACNAMARA: Licensed.

Mr. MACINNIS: Licensed.

Mr. CROLL: Qualified.

Mr. MACINNIS: I agree with Mr. Archibald that this section should be dropped because no group is compelled to ask for certification under the Act. I do not see any reason why doctors should be either included or excluded because I heard over the radio the other night that they had decided that from now on their fees would be such and such. They have raised their fees by a dollar per call and if you want to call him up on the telephone there will be a charge for that, too. When you are in an organization like that you do not need this legislation. They use the knife. I do not see any reason why we should not delete paragraph 2 of subsection (i) and if that is not agreeable why we should not delete the word "engineer" in it. We cannot leave it at the discretion of the board because this is a definition of employee.

Mr. CROLL: There is no discretion.

Mr. MACINNIS: There is no discretion there. You have to take employee in relation to subsections (*b*) and (*c*) of section 2. I would move that this section be deleted.

Mr. BOURGET: As a member of the engineering profession I should like to say a few words on this question. We have discussed this matter in the steering committee and, of course, I do not agree with what Mr. Gillis has just said. He mentioned the fact that we have received many telegrams from the engineering institute, and he also mentioned the fact that the engineering institute is controlled by employers.

Mr. GILLIS: I did not say that.

Mr. BOURGET: I gathered that from what you said.

Mr. GILLIS: I did not say that.

Mr. BOURGET: I appeal to the members of the committee whether or not it is true.

Mr. GILLIS: I would like to put you straight on that. I said the representations from the engineering institute came from a small executive body. I said you will find that there are two classifications of engineers, those in the managerial class and those in the employee class, and that on the executive body of your institute you will find that the engineers are largely in the managerial class rather than the employee class. That is why I said that I did not consider that it carried as much weight as representing the views of the employee class of engineer.

Mr. BOURGET: All right, but I can assure you as a member of the engineering institute that we have as many employee members as those of the managerial class in the institute. The telegrams we have received from employees or employers do not have any bearing on the question. I think what the committee wants is to get an expression of opinion from all the associations of engineers in all the provinces except Prince Edward Island where there is no association. They are the legal bodies in the provinces which are entitled to speak on behalf of the whole engineering profession. The institute is just an organization that gathers together all the engineers of Canada, but it is not a legally recognized body in the provinces.

When we first discussed this clause in the committee at the first or second session the members asked, "Who are entitled to speak on behalf of the engineers"? Today the minister or deputy minister say they have received letters or telegrams from the councils of all the associations of the provinces saying that they are against the inclusion of the word "engineer" in the bill. You may say that we have some group of engineers who are now bargaining collectively, but I say that organization can work even if they do not come under this bill. Moreover, I think that we have our own union just as the lawyers have their Canadian bar association and their own associations in the provinces. The doctors have their medical association. Those are unions. We are not depriving our member of the right to go into a union. We have our own and we are proud of it.

It is true, as Mr. Adamson has just said, that we were the poorest paid profession. I am glad he did not bring that up in the House because if you remember correctly in the House last year I was the one engineer who insisted that the government give an example in this country by giving higher salaries to a profession that has worked hard during the war, and I think I may proudly say it is the one profession that during the war did the most towards the winning of the war. It is a profession of builders.

That is why I would not like to see our profession included in this bill. I have nothing against other professions but I think if we include the word "engineer" then let us be fair to everyone of us. Let us include lawyers, doctors and everyone.

I am not against those engineers who have made agreements for collective bargaining. They may not have been well treated by certain companies, but I think in the last few years the trend has changed a little and employers are learning to deal more with their employees. You will admit that no employer who has any principle left will refuse to bargain collectively with a certain group of employees who do not come under this bill. I think you will all agree with me. Gentlemen, that is my point. I am sorry I could not put it in better English.

Mr. LOCKHART: Would the deletion of the clause not meet your wishes?

Mr. BOURGET: The deletion of the clause, sure, I will agree to that.

Mr. JOHNSTON: That is the motion now.

Mr. MacIvor: Question.

Mr. Bourget: Just a minute; I want to be clear on that point. Will that bar anyone, the medical profession, dental profession or professional engineer?

Mr. Lockhart: The whole works.

Mr. Bourget: I will agree with that.

Mr. Skey: I should like to ask the minister again if we are not already getting into a position whereby people like chemists and geologists, and so on, are asking for inclusion in their professional status, and if we would not have any number of other groups coming before the government or before the labour relations board asking to be included as a professional group, and we would have the same situation arising in many other ways. We would have many other groups of employees and their professional associations. Would the deletion of the clause not save the government a tremendous amount of trouble in the future and place the whole onus on the board for defining their status?

Mr. Case: I have one observation to make. It seems to me that the moment you begin to qualify then you also introduce the process of disqualifying. If we delete the clause it becomes wide open and does not disqualify nor qualify anyone. They are all eligible.

Mr. Merritt: I would like to say a word. I do not think we can easily ignore the expressions of opinion of the professional engineers' associations of the various provinces. I do not know much about them, but I understand they are by statute in their provinces the governing body of the professional engineers in that province. I understand that they set standards of excellence which must be reached by members of their profession, and that they have the right, for instance, to prevent a professional engineer, whose qualifications they do not approve, from practising in their province. I think if you ignore their wishes, which I understand have been unanimous that the clause should stand as it is, you may be doing some harm to the recognized body which governs that profession. I am concerned about these 1,100 whom Mr. Gillis talks about. I would not like to see anyone disenfranchised, so to speak, like that. Therefore I am very much in favour of Mr. Adamson's suggestion. If you enable them to become in any unit a craft union, so to speak, I think you have a good compromise between the two views. They can adopt it or refuse to adopt it as they see fit.

I feel myself that there is much more to this than the simple question of industrial relations. I think it goes further into the right these organizations have to govern their professions in their provinces. Before you decide to delete this clause against the expressed wishes of the governing bodies I think we should give serious consideration to Mr. Adamson's suggestion which I think would cut the Gordian knot, give the people who have agreements already what they want, and nevertheless satisfy the engineering profession.

There is one thing further I want to point out. If you just delete it you are going to have an awful lot of trouble before your board in deciding whether this engineer has managerial functions and this engineer has not managerial functions. You are going to have great disputes as to whether these engineers should be in a collective bargaining unit. Take the Rand formula whereby every employee, whether he belongs to the union or not, must pay dues. I think the Rand formula was a very fine decision, but as Mr. Justice Rand said it was applied to an organization of the size and nature of the Ford company. It may be that there will be other developments along that line. As I say, while I would certainly not oppose and would support a suggestion that they be allowed to organize in craft unions as they see fit I could not be in favour, in view of the opinion of the governing bodies, of the straight deletion of the clause.

Hon. Mr. Mitchell: I might give a review of my position. We spent a good deal of time on the drafting of this legislation. What we did was we

forwarded imperfect ideas to all the national organizations in the country, labour organizations, professional organizations, which Colonel Merritt has just mentioned, and employers' organizations. What is going to be the yardstick? We took this as the yardstick, that the expression of the national organization speaking for their constituent members was the majority voice of the profession. That is why that is in there. When you come to the medical profession and they pass a resolution and say, "We want to be excluded from certain legislation," then on a fundamental question like that I think you have got to give some respect to the viewpoint expressed by that organization. The same thing applies to lawyers, dentists, architects, and now we have got the engineers. As I said before there is nothing to prevent those people from forming an organization, and I expressed my own opinion that if they did do so and they asked for the conciliation services of my department they would certainly get them. I do not know whether I would not go so far as to put a commissioner in there if there was a dispute notwithstanding that they were not certified under legislation.

Mr. KNOWLES: They would get it under your discretion as minister, not under the Act?

Hon. Mr. MITCHELL: I think I have got enough power—

Mr. MACINNIS: You are on dangerous ground.

Hon. Mr. MITCHELL: No, I am not. Under section 56 I can do that quite easily. That is the position we are in. What are you going to do? Are you going to listen to the majority opinion of these organizations, or are you not? Whatever you may do about engineers I think we are certainly obligated to have the lawyers, doctors, architects, and the dentist in the bill. The only reason this discussion has come up is because there is a group inside a profession who feel that particular word "engineer" should be excluded from the bill. If we had not had it there we would have had a discussion just the same. Whether it is in there or not we would have had a discussion.

Mr. SKEY: Have you not had other applications to be included in that clause, too?

Hon. Mr. MITCHELL: Yes, we have, the chemists.

Mr. SKEY: And geologists?

Hon. Mr. MITCHELL: No.

Mr. CROLL: May I say that I support the contention of Mr. MacInnis that we leave them on their own, but under P.C. 1003 there has been excluded from that domestic service, agriculture, hunting and trapping, and horticulture. There is some reason for it. By implication since it is not included in the Act, they may, entirely in their own discretion, say they may not bargain collectively. That is all it is. There was some good reason at that time for excluding them during the war perhaps, but there is not any reason now and so they are left on their own. I think these other professions ought to be left on their own. The lawyers are not likely to be asking for a collective bargaining agreement. They have got a better union themselves than the government can ever provide them. Mr. MacInnis referred to the medical men and spoke of their union which raised their pay by announcing it on the radio.

Mr. KNOWLES: Just like Mr. Abbott.

Mr. CROLL: But to exclude people from the implications of that Act is a wrong principle when the minister says we are trying to bring as many people as we possibly can within the legislation.

Mr. POULIOT: I would remind the committee that the professional engineers are the oldest union. They existed as guilds in France and England and everywhere. We have a group of men who have common interests. They meet together. They have representatives who apply sanctions when a member does

not behave properly. They have common interests. It is entirely different from the associations which come under the bill. In my humble opinion that clause of the bill has been wisely provided so as to any difficulty. If the clause is struck out then we will have difficulties. Some will want to belong to another union, and there will be a complete mix-up. I do not say that because I am parochial. I have not practised law for fifteen years, but I still belong to the law association of my province. I am satisfied with what is being done there. If any lawyer acts improperly with his client he is reprimanded and punished by the executive of the association and is prevented from practising for a certain period of time. That is the sanction that is imposed on lawyers so that all lawyers act according to the ethics and the standards of the profession.

With regard to the fees which are charged by lawyers for the information of the members I might say that there are two kinds of fees. There are fees to be paid by one party to the lawyer on the other side who wins the case. Then rates are set by the council of the bar association, and the lawyer cannot charge any more than the amount that is set by that council. When a lawyer charges his client more it is a matter of understanding between him and his client. Suppose an individual goes to a lawyer to ask him if he will take his case. The lawyer says, "I will look after you if you will pay me so much." If the client agrees to that payment, what ever it is, he cannot blame anyone except himself for agreeing to pay that amount. If he finds the fee too high he only has to go to another lawyer who may charge him less. Therefore it is an understanding between one man and his lawyer.

With regard to the fees that are paid by one party at court to the lawyer on the other side it is decided by the council of the bar association, and the memorandum of fees is approved by the clerk of the court, and no one can charge any more. I do not know anything about the practice in the provinces outside of Quebec, but I presume it is the same thing all over the country.

Mr. MacInnis: I want to say one word before we adjourn because I should like to see a vote on this clause. If you leave that clause in you are debarring people from doing certain things they may otherwise do. You are limiting their freedom. If there are engineers in industries whom the engineering institute has failed to get proper salaries and wages and proper conditions then if you leave it in you are preventing those engineers from acting on their own behalf and forming an association to bargain collectively. You are absolutely doing that. The engineers do not come under the Act. I do not think there can be any successful argument in that regard.

If you delete this altogether you are not compelling doctors, lawyers, or engineers to come under the Act, but you are doing the same thing with them as you are doing with plumbers, conductors, street railway men, miners and others. You are leaving them free to make use of this Act or not make use of the Act. I do not think it is democratic procedure to say that a certain class of people cannot take advantage of legislation on our statute books to better their own condition, particularly when their own profession has failed to do that. I think if you delete this altogether you are leaving the matter free and making the Act work.

Mr. Bourget: I do not want to delay the work of the committee too long, but I should like to say that the purpose of this bill is to create harmonious relations between employer and employee. That is the object of it. This bill outlines the procedure that is to be utilized by employers and employees. If you exclude the word "engineer" from the bill what is going to happen? You are going to have conflicts between the associations of engineers and labour unions. That is what is going to happen. We have to foresee these things. That is what is going to happen.

Now, it has been said that some groups of engineers have not received the best salary; that might be true. I agree with that. However, one should also

take into account the fact that the engineering profession is a young profession. It has only been established twenty-five or thirty-five years. Of course, there is something more to it. As has been said a few minutes ago, we have our own organization. If those engineers who are asking for permission to come under this bill are not satisfied, they can always change their council. Every year we have elections and we can change the council. Mr. Adamson and Mr. Sinclair who are engineers can both testify to the truth of that.

We have made gains in securing higher salaries for the engineers. Therefore, Mr. Chairman, I believe we should leave the section as it is now. In a year or two, if we find it does not work, we can change it then. Let us leave it as it is at the moment.

The CHAIRMAN: Before we proceed any further, may I remind the members it is twelve-thirty. Would the committee be agreeable to completing the discussion on this point even at the cost of sitting until one o'clock?

Mr. CROLL: Ask the question now.

Mr. TIMMINS: The discussion on this matter arose because certain representations were made by people engaged in the engineering field. Speaking for myself as a lawyer, and having regard to the representations made to the minister and his department in drawing this clause, the legal profession has said it desired to have lawyers excluded from the Act. I think we should be guided by that. Since the medical profession say they wish to be not within the purview of the Act, I think we should be guided by that. However, in respect of the engineering profession, the minister has had representations made to him which convinced him that the engineering profession generally—

Mr. BOURGET: 90 per cent.

Mr. TIMMINS: Whatever it may be, the minister has received representations that the engineers wished to be not included in the Act. All we are doing here is trying to make up our minds whether or not the minister has had full information and we should be guided by the information he has or whether we should be guided by the representations which have been made to us individually.

I believe the whole clause is useful. Further than that, I think it is necessary and it should be continued in the Act. We should confine our discussion or voting to the question of whether or not, "engineering" should remain in this clause or not.

Mr. KNOWLES: I noted the minister remarked we probably would have had this discussion anyway. I think we would have had the discussion but not the representations which have confused us. Put it this way; supposing this sub-clause (2) had not been put into the bill at all. I do not think either the lawyers or the Bar Association would have made a clamour to have themselves excluded from the bill. Lawyers are not interested in collective bargaining. It is not an issue for them and the same is true of doctors.

Hon. Mr. MITCHELL: Why do you say the same is true for doctors? Medicine is an industry. Take a big hospital like the Royal Victoria, for instance, or any other large hospital, it is an industry.

Mr. KNOWLES: If the doctors in the Royal Victoria want collective bargaining I think they should have the right, but this denies it to them. I say further with regard to the representations we had from the engineering institute that if this clause had not been there in the first place we would not have had those representations. Why did we have these representations? Because this clause was put in which seemed to deny collective bargaining to some employee engineers who now have it, and they made representations against the clause being in here, and when the employer engineers heard of it they got the impression that to take the word "engineer" out of the clause would be a case of forcing the employer engineers into collective bargaining. I think that they have misunderstood it.

Hon. Mr. MITCHELL: I have not had any representations whatsoever from any employer in this country.

Mr. MACINNIS: Managerial engineers.

Hon. Mr. MITCHELL: Except from the organization.

Mr. KNOWLES: The representations that are causing us concern this morning are from engineers who are on the managerial end. I submit that the engineers and lawyers are misunderstanding this when they think that to take this clause out forces them into collective bargaining. It does not do anything of the kind. When we propose to take it out we simply propose to give these people the right to enter into collective bargaining if they want to. I cannot help but remember the changes that were wrung in this committee the other day about freedom, and fundamental human rights when there was a clause disbarring lawyers from appearing before conciliation courts.

Mr. CROLL: You were against it.

Mr. KNOWLES: I have the same fundamental right to be inconsistent as my friend.

Mr. DICKEY: What I have to say has particular reference to the point that Mr. Knowles tried to make, that lawyers or doctors have no reason to want to have this clause stay as it is. That is absolutely incorrect. They have a very very serious reason to want the medical profession and the dental profession to be named in this clause because it is a definition clause. It defines the word "employee". If that clause is not there a doctor who is an employee of a plant hospital, lawyers who are employed in the legal branch of an industrial concern, are then employees under the definition of this Act. A trade union may be certified as the bargaining agent for the employees in this unit. They reach an agreement which includes, for instance, the check-off. Then the lawyer, doctor or any professional employee then comes under the check-off.

Mr. CROLL: No, no.

Mr. MACINNIS: No.

Mr. DICKEY: Why not?

Mr. CROLL: Because one individual does not bargain. A trade union may cover a certain number of individuals who are in the same craft, the same work.

Mr. SINCLAIR: What about the sulphite workers? Everybody in the plant is in the union.

Mr. DICKEY: Where are they to be excluded? The only exclusion is in this clause. That is the only exclusion because otherwise the word "employee" means everybody that they may bring in under the words "manual, clerical or technical work".

Mr. CROLL: It is in a confidential capacity.

Mr. DICKEY: No, not a confidential capacity at all. I submit that that is what excludes these people from the necessity of joining a trade union and that is a right which should not be taken away from them.

On the question of leaving the word "engineering" in the clause, I just want to say this: to me, it has been a little bit interesting this morning to see that everyone presumes engineering is a profession. I can remember, even in my short experience, when that was not admitted. The reason that has come to be an accepted fact is due to the work of the engineering societies in the various provinces and the work of the Canadian Institute of Professional Engineers. The work this institute has carried out has been to get engineering established as a profession. The engineering societies felt that was the best method of serving the interests of the people who take the training and qualify themselves to do the job. It was believed that the people who do this kind of work could best be served by being represented by a professional organization and not by a trade union.

Mr. BLACK: I have not taken much part in the debates on these questions. A great many subjects have come up and I have been guided by the recommendations made by the minister and his associates. In this case, I am going to continue to be guided by the minister and his associates. He has, today, the support of the engineers who are represented here. They wish to be excluded from the provisions of this Act.

In addition, I have representations from the Engineering Institute of Nova Scotia that they be not included, and that the Act should be passed as it is in the bill before us. Therefore, I am disposed to support the continuance of this section of the bill excluding the engineers.

Mr. ARCHIBALD: I should just like to bring up one point. You are forming a law which is going to carry on for a great length of time. You can specify something as a profession or merely as labour. Consider, for a moment, the evolution in some trades. The minister will recall that the cigar makers were once a strong union and now are no longer a factor. The doctors were once just barbers. Soothsayers and star-gazers were once the highest paid professions in the world. They are washed out now. Once you start specifying, you are going to run into trouble because the evolution in mechanics changes things every day.

Mr. GILLIS: I do not want to delay the passage of this section, but I think it has got off on the wrong foot. With regard to what my honourable friend had to say I want to make this point very strongly; while the Engineering Institute has made representations, I said several times and I reiterate it now, I do not think the institute, as such, is speaking for the majority of the employee engineers. They represent largely the managerial end of the profession.

Mr. BLACK: They would be in Nova Scotia.

Mr. GILLIS: No, they would not. I am positive of that. For example, let me draw this analogy. You have, in Canada, the mining institute, and the provincial mining institute.

Mr. BOURGET: They are not engineers. They are not qualified under the law to practise.

Mr. GILLIS: It is a mining institute. It is a national group, linked up provincially the same as your engineers institute. Would this committee take it as valid evidence if the managerial end of the mining institute said we want to exclude the mining industry from this particular bill? It is the same thing, oh, yes.

Mr. BOURGET: Oh, no.

Mr. GILLIS: On the other hand you are talking here about doctors, lawyers and so forth. We are not dealing with doctors and lawyers. We are dealing with an industrial problem. You are enacting legislation which has to do with industrial relations. Doctors and lawyers and people like them are not employed in an industry. They do not come under this bill. They are separate and apart completely from it.

Mr. DICKEY: Why are they?

Mr. GILLIS: The medical association can announce an increase of $1 a visit for themselves over the air. They did not consult you, this parliament or any provincial legislature, did they? Can an engineering employee through his institute announce an increase in wages for himself of $1 an hour? He cannot do it. He is subject to the laws of this country. We are not asking you to write into this bill anything that takes any right from the managerial end of the engineering profession. We are merely asking you to leave this open so that any group in the country which thinks that they want to form a collective bargaining unit, and can conform with the Act as laid down, may do so. You

are merely, by deleting the clause as Mr. MacInnis has moved, placing the jurisdictional power then in the hands of the board to administer the Act in accordance with the democratic procedure of this country. You are not ruling anyone out. You are not taking anybody in. I think myself that the words, "doctors, lawyers," and so forth written in that particular clause are merely put in there as verbiage to surround the very question we are discussing today. They have not anything to do with this Act. They never come under it. They do not have to come under it, but in dealing with the engineer you are dealing with a man who is tied up definitely in industry in this country, and will be more so in the future. We have got to draw that distinction between the two classes of engineers, the employee engineer and the engineer at the managerial level. We are not asking you to bring him in. We are merely asking you to leave the Act open and the jurisdictional power in the hands of the board to continue this collective agreement for 1,100 people who have already entered it. That is all. If any new group of engineers in this country wants to form a collective bargaining organization then all they have got to do is to comply with the Act as laid down here and make representations to the board. You are not bringing them in; you are not leaving them out. You are leaving the door open. That is all. I suggest that the motion Mr. MacInnis moved should be carried. It is democracy; it is not closing the door on anybody.

Mr. SINCLAIR: I should like to make one or two remarks on what Mr. Gillis has said. To begin with, neither the Engineering Institute of Canada nor the Mining Institute have any professional connotation, as far as that is concerned. It is the eight provincial associations in the provinces which decide what are the standards. They also decide, just as the medical profession does in the provinces, what are the consulting fees, but they have no more power than the medical association has by their announcement yesterday to say that in a plant where a doctor is employed as an employee, "that your pay is now lifted." They cannot say that, nor can, for example, a mining company in British Columbia which employs a battery of lawyers. They and they alone are the ones who say to the lawyers what their salaries are going to be. It is quite true that the British Columbia law association can announce that on taxation its fees are going to be raised, but that again does not affect the salaries of lawyers or doctors or dentists who are employees, and your engineers are in exactly the same category in that relationship as are doctors, dentists and lawyers who are employees of companies.

I was about to move for the deletion of this clause and vote for it until the point raised by Mr. Dickey, which I think is a very important point, the fact that if you delete this clause then all employees can come under a collective bargaining agreement except those who are managers, and so on, in class one. I am thinking of a small pulp town in my riding where there is one doctor and four or five junior engineers and the whole plant has an industrial union.

There is an industrial union for the whole plant, as is the case in most of these plants, which is the Pulp Sulphite Workers Union. If this exclusion is not contained in clause (2), will that mean the four or five junior chemical engineers are all automatically going to be bargained for by that union?

Mr. GILLIS: No.

Mr. SINCLAIR: I am not so sure. I believe the clause Mr. Adamson intends to move is a more satisfactory approach to the problem. It does permit those engineers who wish to be employee engineers, not consulting engineers, or mining engineers, but employee engineers to bargain with their employers. It will do that. It will do the same for doctors, dentists or architects who are similarly employed as employees of large corporations. I would suggest Mr. Adamson read the third clause he intends to move.

Mr. ADAMSON: Thank you, Mr. Chairman. After this motion is voted upon, I propose to move this as a third clause in this section. It reads as follows:

> Where a number of professional persons working for a single employer so wish, they may form a professional association empowered to bargain collectively with their employer.

I just mention that. I do not propose to move it—at least I have moved it. I should like some discussion on it in order to ascertain the general reaction of the committee to it. I believe it will overcome our difficulties.

Mr. CROLL: May I say, only with respect to what Mr. Sinclair said with reference to lawyers and doctors, we have in the province of Ontario and across the whole country, hundreds of industrially unionized plants, and the office staff is never covered by that union. As a matter of practice the office staff has to form a union of its own and has difficulty in doing it. It is very well known. It is never intended that they should be covered by it and they are never covered by it. I believe that is the practice across the whole of the country.

Mr. SINCLAIR: But these chemical engineers are working right in the plant. They are not office staff. They would certainly be included. They are on about the same level as a foreman.

Mr. CROLL: Foremen are not included.

Mr. MACINNIS: My friends, I am afraid, do not know very much about collective bargaining and how it is arranged. A group of employees making application to be certified as the collective bargaining agent must indicate the section or group of employees for which they are making the application. Then, there is a vote taken. It is only those employees who are included who vote for that bargaining unit that is included in the bargaining agent. It does not include the office staff. A doctor would be a member of the office staff. It does not include any member who wants to keep outside of it.

When Mr. Justice Rand made his findings in the Ford dispute, all the employees did not have to pay dues to the union. The office staff was not in it at all. It only included those employees working in the plant at a particular kind of work.

Mr. CROLL: The plumbers, bricklayers and carpenters were excluded.

Mr. SINCLAIR: But they have a union of their own.

Mr. MACINNIS: It was not an industrial union, though, it was a craft union. It does not include people who want to keep outside of it. All we are saying here is that people who do want to make application to the board should have the right to do so.

Mr. MERRITT: Would not Mr. Adamson's suggestion, then, satisfy your view entirely? That would give them the power to form a plumbers' union or a craft union.

The CHAIRMAN: Are you ready for the question? It is moved by Mr. MacInnis that paragraph 2 of subsection (i) of section 2 be deleted. All those in favour raise their hands.

Mr. BOURGET: Will you repeat that?

The CHAIRMAN: It is moved that paragraph 2 of section (i) of section 2 be deleted. Those in favour please raise their hands. Those against? The motion is defeated.

Mr. ADAMSON: Now I should like to move my motion, Mr. Chairman. I do not ask that it be voted on today. I move it merely as a matter for discussion and to see if there is any great objection to it, and to see whether it would not overcome our difficulties.

The CHAIRMAN: To be in order I will read the motion again. It is moved by Mr. Adamson that a new clause, clause 3, be added to subsection (i) which would read as follows:

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

Mr. CROLL: May I point out one thing for the information of the members, that under section 4 we are going to deal with the question of check-off, so that the members may know and give it some thought and know what section will be dealt with.

The CHAIRMAN: Are you willing to adjourn at this time? Adjourned until next Tuesday.

—The committee adjourned to resume on Tuesday, May 18, 1948.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

Bill No. 195—The Industrial Relations and Disputes Investigation Act.

TUESDAY, MAY 18, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

ORDER OF REFERENCE

HOUSE OF COMMONS,
MONDAY, 18th May, 1948.

Ordered,—That the name of Mr. Cloutier be substituted for that of Mr. Boivin on the said committee.

Ordered,—That the name of Mr. Dionne (*Beauce*) be substituted for that of Mr. Beaudry on the said committee.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

12877—1½

MINUTES OF PROCEEDINGS

TUESDAY, 18th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Coté, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cloutier, Coté (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Hamel, Johnston, Knowles, Lockhart, MacInnis, McIvor, Maloney, Mitchell, Ross (*Hamilton East*), Timmins.

In attendance: Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

Copies of the following were distributed to members:

(1) Submission dated May 4, 1948, The Canadian Council, The Institute of Radio Engineers;

(2) Submission, dated May 17, 1948, The Canadian Dietetic Association.

The Chairman read a letter dated 3rd May from the Toronto Branch, Engineering Institute of Canada, relative to the exclusion of engineers in Bill No. 195.

The Committee resumed consideration of Bill No. 195.

Mr. Brown was called and questioned.

Clause 2 (i) (ii)

Further consideration was given to the motion moved at the last meeting by Mr. Adamson that the following be added:

> Except where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

In the course of the discussion, Mr. Croll moved that the word "engineering" be deleted from the existing clause. And the question being put on Mr. Croll's motion, it was resolved in the negative.

On the question being put on Mr. Adamson's motion, it was resolved in the negative.

Subclause 2(i) (ii) carried.

Clause 4

Consideration was given to Mr. Croll's amendment, moved 4th May, proposing that the following be added as subclause (5), viz:—

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

On the question being put, it was resolved in the affirmative.

The Chairman accepted the following as a notice of motion by Mr. Knowles:—

That Section 4, sub-section (2) (*b*) be amended by changing the period after the word "Act" to a comma, and adding thereafter the following words:

"and without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act".

The Committee adjourned at 12.35 p.m. to meet again Thursday, 20th May at 10.30 o'clock, a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 18, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: We have distributed to you this morning, gentlemen, copies of a brief received from the Canadian Council of the Institute of Radio Engineers, dated May 4, 1948, but they were only received over the weekend. That is why you get them this morning.

I have also received a brief from the Canadian Dietetic Association, Montreal, with a covering letter addressed to the chairman. I only had three copies of this brief. I received it only half an hour before the meeting but I had time to have a sufficient number prepared and distributed to you a few moments ago.

There is a letter from the Toronto branch of the Engineering Institute of Canada adopting a stand directly opposite to that taken by the Dominion Council of the Engineering Institute of Canada. Would you like to have this letter read to you?

Mr. JOHNSTON: I think it should be read into the record.

The CHAIRMAN: It is dated May 3, 1948, but I only received it last Friday. It is addressed to the chairman.

THE ENGINEERING INSTITUTE OF CANADA

TORONTO, ONT.
May 3, 1948.

The Chairman,
Committee on Industrial Relations,
House of Commons,
Ottawa, Ont.

Re: Bill 195

Sir:—It has been drawn to my attention that your committee has been in receipt of a communication from L. Austin Wright, General Secretary of the Engineering Institute of Canada, saying that the Port Arthur and Winnipeg branches are in support of the policy of exclusion of engineers from collective bargaining. I am unable to find that an action of the executive committee of the Toronto branch has similarly been, or is likely to be, reported to you.

I therefore deem it desirable to advise you of a resolution passed without dissenting voice at a meeting of the executive committee of the Toronto branch, Engineering Institute of Canada, on April 15, 1948, that Toronto branch executive disapprove of the action taken at the February meeting of council of E.I.C., in its decision to ask for exclusion of engineers from labour legislation.

Yours truly,

D. G. GEIGER
Chairman, Toronto branch.

I have also received a copy of a brief presented last year by the Shareholders' Institute. That brief is dated February 12, 1947, and is referred to in the 1947 minutes of proceedings and evidence, pages 61 and 62. At that time it was decided that this group, not being a national body, should not be given the opportunity either to appear or to submit a definite brief on the bill.

You have received from the clerk of the committee a list of the clauses of the bill which are still standing for your consideration. I think that should be of assistance to you.

Mr. GILLIS: Before we pass on to that, I think it was rather unfortunate that we did not have the brief that we have received this morning from the Radio Engineers, and that letter you have just read to the committee, when dealing with the question of including engineers for bargaining purposes in this Act. Unfortunately we have already settled that question by a vote.

Mr. CROLL: No, we did not.

The CHAIRMAN: Order; would you let me call the first item and then I will allow you to proceed. We resume consideration of clause 2 of subsection (i) of section 2 of the bill, and we have before us a motion by Mr. Adamson which reads as follows:—

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

Mr. ADAMSON: I should like to make one little amendment to that. Instead of "association" I would say "group". It has been suggested to me that it would be better. The reason I moved this amendment was simply this, to see if we could not get clarification of the position of professional people generally who are employed in large numbers by a single employer, with regard to their bargaining rights with their employer. I realize as a professional man myself that I would be against the inclusion of myself, at any rate, in a trade union or bargaining group of that nature because I feel that professional status should be outside that, but I do feel there should be some place where a professional group, whether it be doctors, lawyers, engineers or men with professional training, should have some machinery which would allow them if they are employed in large numbers by a single employer to get together and form an agreement with their employer. I say that because of the reasons I stated before in this committee, that I feel that the professional men are very frequently at a great disadvantage because they, in some instances, have not this power. I merely made this suggestion hoping that some discussion and general airing of different opinions would arise on it.

Mr. MACINNIS: Do I understand—

The CHAIRMAN: I had promised the floor to Mr. Gillis.

Mr. MACINNIS: I am just asking a question. Do I understand that Mr. Adamson is not objecting to, or is not opposed to the professional people having bargaining rights, but he is opposed to having those bargaining rights designated under trade union bargaining rights?

Mr. ADAMSON: Yes, I think there is a difference there.

Mr. MACINNIS: It is a little bit snooty, but it will do.

Mr. ADAMSON: I do not think it is snooty at all. I disagree with you.

Mr. LOCKHART: Would not a part of that letter read by the chairman in connection with the engineers more or less be covered? Would not your amendment include them?

Mr. ADAMSON: Yes, it would include them.

Mr. CROLL: Mr. Chairman, there is one objection, as I see it. I suppose there are as many differences of opinion as there are people around this table as

to what is meant by a professional man. That will be the difficulty because some one will have to designate who are professional persons. For instance, the dietitians have made representations. I do not know how many of us feel that dietitians are professional persons. They think they are. Hairdressers may believe they are a profession. That to me seems to be the fatal difficulty here. I suppose we can say that would be the first objection taken by those people who are opposed to giving that status, but I suppose the answer is that the board may say who are professional persons and who are not.

Mr. LOCKHART: In the opinion of the board.

Mr. CROLL: Yes, but it is for us to lay down some definition.

Mr. TIMMINS: Is it not academic having regard to the fact that this definition refers to professional persons working for a single employer? There would not be more than one or two dietitians working for any one employer.

Mr. CROLL: Suppose they want to bargain collectively; do you say they are professional persons?

Mr. TIMMINS: It does not make very much difference whether they are professional or not. There would not be very many persons of that type working for a single employer.

Mr. CROLL: A single employer may have 15. For instance, I presume Simpson's, let us say, would have 15 dietitians or 10 dietitians, at least. That is a single employer. Eaton's may have the very same number. For that reason it strikes me that the administrative part of it will be the difficult part to overcome.

Mr. JOHNSTON: Would it not include any person who is not directly under the Act? Then there would be no objection.

Mr. CROLL: I am not sure. I am going to move an amendment to that. My amendment is that the word "engineering" be struck out of clause 2 of subsection (i) of section 2. That is at line 21, and that the clause be adopted as it stands with the word "engineering" struck out. Then the Act will remain as it was under order in council 1003, and engineers will have the right to bargain collectively as they have had before.

Mr. ARCHIBALD: I will second that.

The CHAIRMAN: Mr. Croll, we have a motion by Mr. Adamson before the chair.

Mr. CROLL: I am moving an amendment to it, an amendment to his motion.

Mr. JOHNSTON: What section is that?

Mr. CROLL: I am just knocking out the word "engineering."

The CHAIRMAN: Mr. Croll, for my information would you read subclause 2 as it would stand if your amendment carried?

Mr. CROLL:

> A member of the medical, dental, architectural or legal profession qualified to practice under the laws of a province and employed in that capacity.

All I said was strike out the word "engineering".

Mr. CHARLTON: We voted that down the other day.

Mr. ARCHIBALD: We deleted the whole clause.

Mr. CROLL: We did not.

Mr. ARCHIBALD: We tried to.

The CHAIRMAN: You are not amending the motion of Mr. Adamson.

Mr. CROLL: This is a motion. It is not an amendment. It is the only motion there is.

The CHAIRMAN: If I understand the purport of Mr. Adamson's motion it is to add those four lines to subclause 2 of clause (i). Is that it?

Mr. MACINNIS: I would support Mr. Croll—

The CHAIRMAN: We are discussing procedure just now.

Mr. MACINNIS: This is on procedure. I think Mr. Adamson's motion is an amendment of clause 2 of subsection (i), and I think it has preference because it was moved earlier. It has preference over Mr. Croll's amendment. We will have to deal with it before we deal with Mr. Croll's amendment.

Mr. ADAMSON: If I may be allowed to say so I meant to add a third subclause, and this was the third subclause. I suppose it really should begin with the words, "Notwithstanding anything herein"—

Mr. MACINNIS: Then it is not an amendment.

Mr. CROLL: If Mr. Adamson moves his as a third clause then my amendment is in order because it comes before that, and if it carries I presume Mr. Adamson's amendment can still carry. Therefore I suggest my motion is in order.

The CHAIRMAN: Will all due respect, Mr. Croll, Mr. Adamson's motion has not been declared out of order.

Mr. CROLL: I am not suggesting that.

The CHAIRMAN: Until such time as it is, or until such time as Mr. Adamson agrees to withdraw his motion temporarily to allow consideration of clause 2 to proceed I cannot accept your motion because we have a motion before the chair. Would you be agreeable?

Mr. CROLL: You have no motion on clause 2 of subsection (i).

The CHAIRMAN: We have a motion before the committee, and we have to dispose of that motion before I accept another one.

Mr. JOHNSTON: Maybe Mr. Adamson would let his stand.

The CHAIRMAN: Order.

Mr. ADAMSON: I am in the hands of the committee. I will do anything. I am only trying to be helpful. I should like an expression of opinion of the committee on this suggestion, but if it will help things I will withdraw it until later.

Hon. Mr. MITCHELL: I would say that your suggestion is bad law to begin with. You have to have a definition of a professional man. I think at the moment what we had better do is to make up our minds if the engineers are in or out, and do not let us have any quibbling. I take this view, and I have always taken it, that in dealing with organizations I take the view of the national organization. I know there is a difference of opinion, but if you are going to listen to every man who walks down the street because he sends you a wire you do not know whether or not he is an engineer.

Mr. GILLIS: That letter was pretty strong and from a very representative body.

Hon. Mr. MITCHELL: I am talking about the national organization.

Mr. GILLIS: That dealt with the national organization, and it completely upsets the other.

Mr. ADAMSON: I was only trying to overcome a situation which does exist under certain conditions where one employer does employ a great number of professional men. I am thinking specifically of the Hydro-Electric Power Commission of Ontario.

The CHAIRMAN: Mr. Adamson, since your motion does not affect in any way clause 2 of subsection (i) would you allow it to stand?

Mr. ADAMSON: I will allow it to stand over.

The CHAIRMAN: Then I accept Mr. Croll's motion to the effect that the word "engineering" in clause 2 of subsection (i) be deleted. Is that it?

Mr. CROLL: That is it.

The CHAIRMAN: The discussion is on the amendment of Mr. Croll.

Mr. LOCKHART: Was clause 2 not deleted by a majority?

The CHAIRMAN: No.

Mr. ROSS: Explain what you mean by taking it out.

Mr. CROLL: Mr. Chairman, under order in council 1003, that is the wartime labour board order in council, engineers were permitted to bargain collectively, and they have bargained collectively since 1944, and have a great number of agreements that we brought before the committee last time. The new bill, and the minister has explained the reason, has excluded engineers. There have been various opinions on that, but my motion is to the effect that engineers be permitted to bargain collectively as they have in the past. That is all.

The CHAIRMAN: Gentlemen, I think it is my duty at this time to remind you that we have printed in the record a brief from the Chemical Institute of Canada advocating their exclusion on the same basis as the engineers have been excluded. You will also find a reference in the second report of the steering committee to the stand taken by the land surveyors of Canada, adopting exactly the same attitude, and also the Canadian Association of Physicists wish to be treated in the same way. To do justice to those groups it is my duty to remind you that when you are dealing with engineers you have to keep these others in mind.

Mr. CROLL: That statement is not quite fair; I may suggest it does not present a proper picture when you say to do justice to them. We are doing no injustice to anyone. We do not wish to. No one must bargain collectively, but if you wish to bargain collectively then the Act permits you to bargain collectively. That is all we say. We do not force anyone. What we are doing is substantial justice to everybody. There is a law there that permits you to do it, but whether or not you do is a matter entirely for you. It prohibits no one.

The CHAIRMAN: I am not taking sides on this question, but I referred to those because the steering committee decided not to distribute their briefs among the members. I am only referring to their stand because you have nothing in front of you from those groups that I have mentioned.

Mr. GILLIS: Mr. Chairman, I want to see if my mind is clear on the matter. Mind you, I think when we voted on this last day we were a bit mixed up on it. What happened last day when we took the vote was that Mr. MacInnis had moved for the elimination of clause 2 of subsection (*i*), which would take out engineers and the other professions mentioned. Mr. Croll is merely taking out the word "engineering" which leaves the road clear for that group, or any section of the professional engineers to come in if they want to. There is nothing mandatory about this Act. There is nothing compulsory about it. Any of the engineers mentioned by the chairman are in a position, if we remove that word "engineering" to either come in or stay out if they want to. There is nothing compulsory about it. I think if Mr. Croll's amendment is carried there is no necessity for Mr. Adamson's motion. I agree with the minister that we should decide that they are either in or out.

Hon. Mr. MITCHELL: That is right.

Mr. GILLIS: If we take that word "engineering" out we leave them in the position to come in if they want to. It leaves in effect the collective agreements established now for certain sections of that profession. It legalizes them for collective bargaining purposes if they want to come in. Let us not act on the assumption that we are doing something that is compulsory. We are merely

leaving the door open for them to come in or stay out, as they see fit. I think we should have a vote on that motion.

Mr. DICKEY: I just want to say a word. I agree that we should get this motion to a vote, but there is another side to the question. What this Act is doing is setting up rules for collective bargaining to apply to the particular situation of trade unions for employees who can properly belong to and form the membership of a trade union. The attitude of the Engineering Institutes across Canada, as I understand it, is that they want their members to deal with their employers as professional groups and not under the same circumstances as trade unions.

Now, there is nothing high hat about that. It is simply that the conditions of professional employees are very different from the conditions pertaining to members of a trade union. The idea of the national association in excluding them is to try to keep their membership on a professional basis; that is the whole thing.

Mr. ARCHIBALD: I should like to say this about it. If we take the word "engineering" out of this section, we are not forcing the engineers into a trade union. We are talking about democracy. This association of engineers is the one thing that is being mandatory. It is saying, "Thou shalt not join a trade union". For example, say I belong to a certain religion. I am a Presbyterian. Someone comes along and says, "You have to be a Baptist". No matter what way you look at it, it boils down to that. Nobody is going to tell me any such thing.

Mr. MACINNIS: Mr. Chairman, the acceptance of Mr. Croll's amendment does not make trade unionists of engineers. I want to ease the minds of these professional people on that point. It does not degrade them at all. This Act does not compel bargaining as trade unions. It compels bargaining as bargaining agents of which the trade union may be one. If some body wants to bargain under another name, I do not think it prevents them from bargaining under that name.

About half of our trade unions today, or what goes under the name of trade unions are not trade unions. They are industrial unions. To apply the term "trade union" now is not applying a term which covers the labour movement at all. I try to get away from that by just referring to them as labour unions. Where workers are engaged in an industry as employees, whether they are doing pick and shovel work or whether they are doing draughting or something of that kind, they are in exactly the same position so far as their relationship to their employer is concerned, unless they are in a confidential capacity or managerial capacity. They are selling their labour power to the employer and because they are selling their labour power to the employer, as they increase in numbers they will organize and make a collective agreement. It is only by making collective agreements that they can deal with their employers satisfactorily.

Mr. LOCKHART: I wish to be perfectly clear on this point. We voted down an amendment to delete clause (i) of section 2. Now, we are going right back and voting on whether we will take one group out and leave all the others in. I still think if we are going to differentiate between professional groups and trade unions, we either have to do the thing in toto or not at all. I still think we made a mistake in not deleting the clause and stopping all this controversy.

Mr. CHARLTON: I am in agreement with what Mr. Lockhart has said. I do not think we should make any differentiation between dentists, doctors and architects. If we are going to delete one group, we should delete them all. I am not in agreement with taking out the engineers only.

Mr. JOHNSTON: That question was decided the other day when it was decided to leave the clause as it is. As I stated the other day, I do not think a labour code should bar anybody. Everyone should be able to come under it, even

doctors and Presbyterians. If they want to be able to come under this code, they should be able to do so.

I would agree with Mr. Croll in this regard; in view of the fact the 1,100 engineers have asked to come under this Act, they should be able to do so. I believe 1,100 members of any organization are worth considering. They have particularly asked to be allowed to come under this Act. Therefore, I would agree and I would vote for Mr. Croll's amendment. I still think, possibly, Mr. Adamson would have a right and should move his motion because that would fix it so any other group or organization could come under the Act if they so desired, whether they were lawyers, doctors or dietitians. If they desire to take advantage of this code, which is national in scope, then I think they should be allowed to do so. I will support Mr. Croll's amendment because of the fact 1,100 engineers wish to come under this Act. I will also support Mr. Adamson's motion because I think any group should be allowed to come under the Act if that is their wish.

The CHAIRMAN: Are you ready for the question? The question is an amendment by Mr. Croll to amend section 2, clause (i), by deleting the word "engineering". Those in favour? Those against?

The motion is defeated.

Now, the discussion will be on a motion by Mr. Adamson that an additional clause be added to subsection (i) which would be clause (3) and which would read as follows:—

> Where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

Are you ready for the question?

Mr. MACINNIS: I do not think you can put that clause in as a separate clause because of the wording of this scetion of the Act. If you take clause (i),

> Employee means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include—

the professional people in paragraph 2. Then, you would add a paragraph saying that, despite paragraph 2 and without making any proviso, professional people are covered by the Act. I think it would be much better to make Mr. Adamson's motion a part of section 2 having such wording as, "providing that certain persons—".

Then, you say there has to be a number before they can take advantage of the Act. Yet, if you look at (J),

> Employer means any person who employs one or more employees.

If there is just one employee, by himself, he can enter into a collective agreement with the employer, but if he is a professional person there will have to be a group. All that may be quibbling a bit, but I think your amendment should be made a part of section 2.

The CHAIRMAN: On this point of procedure, you are expressing precisely my views. It was for that reason, in the first instance, I put up Mr. Adamson's motion.

Mr. ADAMSON: I bow to your ruling, Mr. Chairman, if you wish it to be part of section 2, it is perfectly satisfactory to me.

Mr. MACINNIS: I would have supported you, too, but I wanted Mr. Croll's amendment to come first.

The CHAIRMAN: I think it would be more in order if we were to follow the suggestion made by Mr. MacInnis. With your approval, Mr. Adamson, your motion will read as an addition to clause (2), subsection (i).

Mr. MACINNIS: If the principle is approved, it will be referred for legal drafting?

The CHAIRMAN: Right.

Hon. Mr. MITCHELL: I think you have taken a stand and said that the engineer is out very definitely. You come along and qualify that now. How are you going to qualify it in language? It is a negative amendment, considering what you have done today. I do not know of anyone who could put that into language.

Mr. JOHNSTON: Would it not just permit any group of these professional organizations to come under the Act if they so desired.

Hon. Mr. MITCHELL: You have them now.

Mr. MACINNIS: Just one other word; are not acts of parliament and of legislatures full of phrases such as, "Notwithstanding anything in this bill," or, "Despite anything else in the bill", such a thing is provided? I think Mr. Brown and every other lawyer around the table could tell the Minister of Labour that legislation is full of that sort of thing. All that has to be done is to make a proviso and the situation is covered.

Hon. Mr. MITCHELL: I am not a lawyer, but I think I have a measure of commonsense. As my good friend has said, you are either in or out.

Mr. LOCKHART: What was that you said?

Hon. Mr. MITCHELL: Just wait a minute.

Mr. LOCKHART: What was the last remark about commonsense?

Hon. Mr. MITCHELL: I said I am not a lawyer, but I think I have a measure of commonsense. I am not saying this in a critical way. You should say engineers are either in or out. You cannot have qualifications and make the section work, no matter what language you use. You have to either let these people stay out of the Act or put them in it.

Mr. KNOWLES: May I ask the minister a question by way of clarification? The minister says the engineers are either in or out, one way or the other, yet the minister said with regard to the 1,100 who have agreements that this wording will not prevent them from continuing those trade agreements. He has already said, in practice, there is the qualification he says you cannot have. Is not Mr. Adamson simply trying to put into language something which records the fact?

Hon. Mr. MITCHELL: I said the other day, and I shall repeat it, the only thing these people lose by this section is the right to certification. No law in this nation can say that the retired clergyman, for instance, cannot bargain collectively. The only thing those people miss in this legislation is certification, that is all.

Mr. TIMMINS: An employer does not have to bargain with them?

Hon. Mr. MITCHELL: If he has any sense, he will.

Mr. ARCHIBALD: I am going to oppose Mr. Adamson's motion because I agree with the minister in this respect. I add this to it: this is just the thin edge of the wedge of company unionism. Anyone could call his group a professional group. You can go a little too far with that. One of these days, the oldest profession in the world may be on the minister's doorstep.

Hon. Mr. MITCHELL: I do not know to what you are referring.

Mr. DICKEY: I am in agreement with the minister, I do not think the engineers can have it both ways. I believe we have made a decision which is in accord with the expressed wishes of the national organization, that they be permitted to act as a profession. Now, they cannot have it both ways. They cannot have the protection of this Act and the protection of their professional association, too. I think we would be going contrary to the spirit of the votes already taken if we carry this motion.

Mr. CHARLTON: I agree with most of what the Hon. Mr. Mtchell has said. Not being a lawyer, I cannot agree with what he said here. I think Mr. Adamson's motion is simply legalizing what he has been doing for the past four or five years. I do not think a group can be actually kept outside of this Act

because it says, "a member", which includes an individual. Whether a group can come in, I do not know, but Mr. Mitchell said they had not been excluded. I do not know whether they had certification or not. However, this is something to legalize what the department has been doing for the past four or five years.

Mr. CROLL: I took the original objection to that and the minister agreed with me. I think the effect of Mr. Adamson's clause is exactly what effect he meant to give it. I understand, so far as those who were opposed to engineers being included in the section are concerned, it was a question of some who considered themselves on a managerial basis and some who were more or less on another basis.

The effect, as I read it, will be to at least give some status to those 1,100 people who already have agreements. They are certainly professional persons. They have been recognized as professionals and it will have the effect of keeping these agreements alive. What else will be brought in, I do not know.

Sooner or later, the board will have to say what is a professional man. The board has, in the past, said that they are professional men. Consequently, these agreements will be kept in effect. I think it is worth our while to support this amendment to keep those agreements in effect. I think it would be highly unfair for us to throw these 1,100 people to the wolves. Everyone here agreed that they had raised the standard for engineers. I know very little about them. The professional engineers agree they have raised the standard as a result of the bargaining. I think we ought to keep that bargaining right and this is one way of doing it.

Hon. Mr. MITCHELL: I want to state this very clearly; I would not be a party to throwing anyone to the wolves. I was responsible for laying down the basic principles of this legislation. We have heard a lot about democracy this morning and at the other meetings. I took the views of what I considered were the parent organizations; in this case, the Engineering Institute of Canada. The Institute said they did not want to be within the four corners of this legislation. Some of my friends say that is not democratic, but how about the close shop? Would you call that democratic? I think it is, too, but that is the same idea in reverse. If you do not belong to the union, you do not work in that shop. Do not forget that. I am not quarelling with that point of view. These people will not be thrown to the wolves. The agreements will still exist. The only thing is, the organization will not be certified.

Mr. HAMEL: They had to be certified before?

Hon. Mr. MITCHELL: Yes. I belonged to trade unions and so did Mr. Gillis and Mr. MacInnis, before any of this kind of thing was on the statute books. We used to sit down and deal with our employers. In Great Britain, the most powerful trade union under the canopy of heaven has not any such legislation. They would not touch it. They say, "Let the government keep its hands off us".

This is something which has cropped upon the North American continent. These fellows will not be thrown to the wolves. Apparently there is a difference of opinion. The sensible thing to do—I suppose some of us will be here next year—the sensible thing to do would be to take another look at it and if it is found, in the light of experience, it needs amending we can do that providing we get the support to do it. I should like to go along with you, Mr. Adamson, but I think it is bad law. What you are trying to do, I do not say this disrespectfully or critically, cannot be done. You cannot sit on a tight rope. You have to be either in or out.

Mr. TIMMINS: Would it be proper to ask Mr. Brown to advise us on what he feels are the difficulties in respect to bringing it in?

Mr. BROWN: Mr. Chairman, you have excluded certain of these professions in subsection (2) (i). Now, if you go on and include Mr. Adamson's provision, it can only apply to the professions which are not excluded. I think that is clear.

In other words, it would not apply to the engineering profession or any of these other professions because they are excluded.

There is a further point, I suggest with due deference, that Mr. Adamson's motion is restrictive of the rights of professional people. In other words, it really says you can only suggest, at any rate that you bargain for these professional groups and not otherwise. Under the Act as it stands, they have the right if they are an appropriate group, to go to the labour relations board and be certified. Under P. C. 1003, the engineering group has gone to the board and has been certified.

There is one other point, too, which I think has not been raised and which arises particularly in connection with the engineering group. In some companies you have your classification of engineering employees. Some of them are qualified professional engineers, qualified to practice under the laws of the province and some of them are men who have come up through the ranks. They are all in the same engineering grade; they are all getting the same salary and working under the same conditions. It is very awkward to split that group and say this is the organization which will bargain only for the professionally qualified engineers because you have then left out the other employees in the same classification, you see, who should be bargained for by the same people.

Therefore, the labour relations board, in considering these applications for certification has dealt with all people in the same classification and has said in the bargaining unit there will be all those employees of certain engineering grades. I rather think that the proposition of having a very tight professional unit is apt to lead to practical difficulties in bargaining.

On the other hand there is no doubt about it, if you have a group of employees working professionally, the whole trend of collective bargaining has been to deal with them as a separate group and exclude them from the other classes of employees.

Mr. ADAMSON: As I said in the beginning, this is an attempt to overcome the difficulties of the professional people and, by professional people, I mean anyone who has presumably taken a course at the university; obtained a degree and been accepted by a professional association such as the Engineering Institute of Canada.

First of all, I think the amendment has served a useful purpose in that it has caused a considerable amount of general discussion on the whole matter. My reason for moving it, and I am going to ask that it be voted upon, was just to take care of the very large corporations which employ 50, 60 or perhaps 100 professional engineers such as the Hydro Electric Power Commission of Ontario and The Bell Telephone Company. Possibly there are other corporations. Then, the engineers will be allowed to form an association and talk, as a group, with their employers. It is for that reason I am moving the amendment.

Mr. CHARLTON: There is one other point. Do I understand correctly that if the word "engineering" is left in clause 2 that all an engineer would have to do is drop his membership in the provincial organization and then he could go on and be certified? It only says here, "a member of the medical, dental, architectural, engineering or legal profession qualified to practice under the laws of a province and employed in that capacity." If he drops his membership in the provincial organization, or if a group of them drop their membership then they can be certified as a professional group even though they are no longer eligible to practice under the laws of the province. They are working for one individual. Would that not cause quite a riff in the provincial organization? I think Mr. Adamson's motion will get away from any antagonism within the groups themselves.

Mr. LOCKHART: I have to have a little clarification. If we go back to subsection (*i*) and read the definition of employee we see that it reads:

"Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include a member of the medical, dental, architectural, engineering or legal profession qualified to practice under the laws of a province and employed in that capacity.

Will there not have to be some words put in there, prior to the words of this amendment, and make it a part of clause 2? Would you not have to have some words in there which would read something like this, "but does not exclude a number of professional persons working for a single employer."

Mr. CROLL: We are going to have that redrafted by the legal department.

The CHAIRMAN: Are you ready for the question, gentlemen?

Mr. GILLIS: We had better make up our minds on this matter. We dealt them out. That is exactly the position we are in. You have already voted and adopted a motion to exclude professional engineers. Therefore they are out for collective bargaining purposes, are they not? That is what you decided.

Mr. DICKEY: They are outside the Act.

Mr. GILLIS: If they are outside the Act why are you trying to write them into the Act? It cannot be done. All that will do, in my opinion, if you try that kind of thing, is to split the engineering profession.

Mr. LOCKHART: Are they split?

Mr. GILLIS: There are 1,100 of them who have a collective bargaining agreement and legal rights under the old Act. We have taken that from them under this Act.

Mr. CHARLTON: We are trying to give it back.

Mr. GILLIS: You have taken their legal status from them. In effect all you are doing now with Mr. Adamson's motion, with all due respect to his motives, is to permit the engineering profession to establish in plants where they are employed a company union with the administration of whatever bargaining they may do in the hands of their institute. That is all. If they want that they have got it now. There is no use of our sending a bill to the House of Commons for discussion or out to the public which has a clause excluding engineeers and the other professions and then write in a proviso that tries to bring them in. It makes it look ridiculous. It makes us look as though we did not know what we were doing. That is why I agree with the minister. I think the legal adviser made a very sensible presentation on the question to the committee. I do not know how anyone can bring them in if we have already very definitely ruled them out. I see it as he sees it. If the Act goes out in that way then it will cause a split in the engineering profession. You are going to have 1,100 people fighting for the right to retain their collective bargaining agreements. There is no doubt about that.

On the other question of the great majority of engineers not wanting to come under the Act for collective bargaining purposes, on reading this brief which was presented to us this morning it would appear that in 1944 when a poll was taken, and province by province reported, the engineering profession certainly did not want to remain out. They did favour collective bargaining arrangements, and the only place they can get legal rights to collective bargaining is in an Act of this kind. If you are merely going to leave them in the hands of their institute they are already there. Another thing I do not like about the whole matter is that in effect we have taken away the right to certification and the right to retain certain collective agreements now in effect for members of this profession. I certainly cannot vote for Mr. Adamson's motion to try to include them now when the committee definitely ruled them out. It does not make sense.

Mr. JOHNSTON: Would they not have the right to certification if this clause carried?

Mr. GILLIS: No.

Mr. JOHNSTON:

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

That would give them their certification. You are bringing back the power to allow them to form themselves into a union and you are giving them the right to certification if they so desire. I cannot see anything wrong.

Mr. MACINNIS: I have one word before we vote on this. I regret I have not been enlightened either by what the minister has said or by what his legal adviser has said. The minister says in one breath that they are either in or they are out. In the next breath he says they are covered, that those who are in now will not be put out.

Hon. Mr. MITCHELL: I did not say that.

Mr. MACINNIS: That is what I gathered from what you said.

Hon. Mr. MITCHELL: You see you are in a muddle yourself.

Mr. MACINNIS: I am so close to the minister it is difficult to avoid it. I took down what Mr. Brown said. He said, "they have a perfect right to go to the board and be certified." That is what Mr. Brown said. If that is not what he said he can clear it up after I sit down. As I understood it his whole argument was that although people were excluded in this section they could still come under this Act for bargaining. I do not believe it is at all impossible to draft an amendment such as proposed by Mr. Adamson despite what is said in the section. Looking over the Act I see that it says in one place, "nothwithstanding anything in this Act." That is subsection 5 of section 9. It says, "notwithstanding anything in this Act," and so on. That means that notwithstanding what may be said to the contrary that a certain thing will happen. Then I turn to—I had it a moment ago—another section where we have another notwithstanding. Then we have "nothing in this Act prohibits the parties to a collective agreement," and so on. There are two or three other places where I saw the same words. When you have the words "provided that" or some such words as that, it will put these people in the position where they cannot enter into a collective agreement with their employers.

Mr. CHARLTON: I simply want to say I do not think Mr. Gillis is very consistent when he says he cannot vote for Mr. Adamson's amendment. A moment ago he voted to take the engineers out. Now he is going to vote against Mr. Adamson's motion to try to put them in in a legal way.

Mr. GILLIS: No.

Mr. CROLL: My friend is expecting too much from Mr. Gillis, anyway. You must not do that. It seems to me this is the position. I thoroughly agree that we closed the front door when we voted a few minutes ago but personally I am anxious to see the engineers come in. I do not care if you just allow a few of them in by the back door, no matter how they get in. I think that will bring some of them in that way, and for that reason I am voting for it.

Mr. GILLIS: On the question of consistency Mr. Croll is now giving us a first class demonstration of inconsistency. He is the man who argued very strongly against the formation of company unions.

Mr. CROLL: Yes, of course.

Mr. GILLIS: In effect I am opposed to Mr. Adamson's motion because it provides for company unions among professional groups which are employed in industry. This Industrial Relations Act—

Mr. CROLL: Mr. Gillis—

Mr. GILLIS: Anyone coming under this, employed in industry, has a legal right to be written into the Act for certification and for collective bargaining purposes.

Mr. CROLL: Are these 1,100 in a company union?

Mr. GILLIS: No. They were under P.C. 1003. You are not protecting them.

Mr. CROLL: Those are the people I want to protect.

Mr. GILLIS: No. Under P.C. 1003 they had certification and were protected by law. The order in council covered them. In this Act we are excluding them. We have already done it in clause 2 of subsection (*i*).

Mr. JOHNSTON: Not if you put in Mr. Adamson's amendment.

Mr. GILLIS: If you put in Mr. Adamson's motion all you are doing is handing the right to the institute, the national organization, to bargain for these employees in any way they see fit. Despite the fact they have an agreement now that agreement will go out with the passage of the Act because they no longer have any legal status. We have taken it from them. I have already said I do not agree with company unions in this Act. We have so amended it on the advice of Mr. Croll, and I cannot understand his position now that in this Act having to do with industrial relations he is prepared to allow a section of people employed in industry to set up unions outside the scope of this Act. In effect they are nothing but company unions.

Mr. MACINNIS: They are in the Act.

Mr. GILLIS: No, we have already dealt them out.

Mr. BOURGET: I want to say a few words. Some members are saying that we are barring about 1,100 engineers. I can say to my friend that we are not barring 1,100 engineers. Take, for instance, the brief that has been submitted to us by the Northern Electric Engineering Employee Association. They pretend they have 200 members. Of that 200 members only 25 are professional engineers. If we take the same average for all the other organizations which have asked to come under this Act, for instance, the Institute of Radio Engineers, we are not barring 1,100 engineers. We are probably barring 200 or 300. That is all. After all the engineers are not left as orphans. We have our own organization; we have our own union. I do not know of any men better qualified than the engineers themselves to bargain with their employers for the benefit of the engineers. They understand their problems. They know their profession. They have their code of ethics. They have their laws. I do not see why we should include engineers in this Act.

Mr. JOHNSTON: They cannot bargain under this Act.

Mr. BOURGET: They can bargain anyway. The only thing we are depriving them of is the obligation of the employer to discuss with them. I do not see why we are taking all this time discussing this. It is clear that dentists, lawyers and doctors are out. Why not engineers? I do not see any good reason for that. In the province of Quebec the corporation of professional engineers have set up a committee to survey salaries. There is a salary survey to be undertaken by the corporation, and a special officer to be appointed. Here we have employed a special officer to make a survey of the companies, municipalities, the government and all the rest as to the salaries of the engineers. Therefore I cannot agree with those who say that we are barring engineers from this Act, that we are doing harm to them. We have our own organization, and I think we should leave the engineers out of the Act.

Mr. KNOWLES: Without at the moment participating in the argument may I in good faith suggest an alternative to the wording that Mr. Adamson has proposed with the thought that it might put in writing what we are trying to get at. As I see it earlier we voted on the question of whether engineers were

all in or all out. The committee by majority made the decision they were to be out. What we are concerned about now is whether we should make some provision to permit employee engineers to still be in. I think that was the motive of Mr. Adamson's amendment. Some difficulties have been found both with the wording and with the idea. My suggestion is this. Can we achieve what we are seeking to do, and can we apply it to all doctors, lawyers and dentists as well by putting instead of Mr. Adamson's words some such words as these at the end of clause (i) of subsection 2? Perhaps I had better read the whole section.

> A member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity,

and my suggestion is that there should be added to that, "at the managerial level." More appropriate words than those might be found, but what I am getting at is it is only doctors, lawyers, dentists and engineers at the managerial level who will be excluded. Mr. Adamson suggests there are cases where doctors who are employed might want to be included not as a professional unit, but as a bargaining group. There are employee engineers working for the Ontario Hydro, and so on, who want to have all the rights of collective bargaining. I wonder whether some such wording as that might not solve the problem. It will also avoid making any distinction between engineers and doctors, and would treat them all alike. We would say doctors, lawyers, engineers, dentists, architects, when employed in a managerial capacity, are out of the Act. Otherwise they are employees and are in.

Hon. Mr. MITCHELL: Let us analyse this. I want to keep on the rails if I can. I do not know of any doctors in a managerial capacity in this country. I do not know of any dentists. There may be, but I do not know of any. I want to stick to this principle. Mind you, I have my own personal views about the section, but I think it would be unwise for the committee to fly in the face of the recommendation, we will say, of the medical society or the organization representing the dentists, or the organizations representing other people here. Here we are sitting down and discussing a trade union bill and we say to the doctors, "you are all wrong; you are all wrong." We say to the dentists, "you are all wrong." We say to the architects, "you are all wrong." I do not think it is our business to do that. They should do that themselves. If in their own wisdom any of these organizations feel they should be a trade union rather than a professional organization I think they have a perfect right to say so, but I am not able to agree with Mr. Adamson's motion.

Mr. ADAMSON: I agree with the minister that the one thing we are trying to prevent is to have professional men as a trade union, and as I said before it is merely to overcome one or two very exceptional cases from which we have had all the representations. I was particularly impressed with the brief of the Engineering Institute of Canada from the Toronto branch where there are, I believe, probably the greatest number of employee engineers in Canada. My intention certainly was to keep the profession as a profession and keep them separate and outside a trade union.

Mr. HAMEL: Since last week I have met 12 engineers from my province representing various industries. They were all employee engineers. I have discussed with them this clause of bill 195 and I have also discussed the amendment of Mr. Adamson. Even if I did not have the exact wording I have discussed it with them because I knew what Mr. Adamson's idea was. There were 12 of them and they were unanimous on two points. The first point on which they were unanimous was to have the right to collective bargaining, but they were unanimous in their opposition to being compelled to bargain, and to having to bargain with a labour union. They were absolutely unanimous on those points.

The question of the qualifications of an engineer has been discussed. Is he an engineer or is he not an engineer? I think the provincial laws in every province give a definition of what is an engineer. It is the corporation itself which decides if one man is an engineer according to their own corporation rules, or if he is not. I think that question does not arise, and we have nothing to decide about that because that is fixed by the organization itself. So far as bargaining is concerned there is absolutely nothing in this law or in any law which prevents these employee engineers from having as a bargaining agent their own organization. They can say that the Canadian institute will be their bargaining agent. Because I met these people who are all employee engineers, and who are definitely opposed to bargaining with a labour union, that is the reason why I voted against Mr. Croll's amendment, deleting the word "engineering." I voted for the deletion of the whole clause because I believe it would put every profession on the same footing, and I am in support of Mr. Adamson's motion.

Mr. CASE: Mr. Chairman, I think there is possibly one thing we are overlooking. Representations have been made by what is represented to be a group of engineers. They have asked that they be left outside of the provisions of this Act. It seems to me we are treating this as the last word. We hope it will be for a time, but it does seem to me that as they have asked to be left out they should be left out. If they find that does not work certainly representations will be made in due time to be included in the Act. If they want to be left out I do not see why we should put them in. We can only deal with the representations that are made to us. I think it is sound as it is at the present time, and we should leave it as it is.

Hon. Mr. MITCHELL: I should say that in Nova Scotia, Quebec and Manitoba the section is exactly the same in their provincial legislation as it is here.

Mr. Ross: I should like to ask the minister a question. Local 700 in the city of Hamilton, operating engineers—

Hon. Mr. MITCHELL: I am a member of it.

Mr. Ross: You should know something about it. They are in a lot of industries. What happens to those men who are in Westinghouse, International Harvester, Firestone, and so on?

Hon. Mr. MITCHELL: They are not professional engineers.

Mr. Ross: They call themselves professional engineers.

Hon. Mr. MITCHELL: They are not. If I may say this to you, as you know that organization is probably one of the most progressive—I can say this to you—and best paid in the Dominion of Canada. When we formed that organization there was no legislation like this. We built that organization largely on their fidelity to contracts made. Those chaps are not professional engineers. They are stationary engineers, shovel runners, drag-line operators, and what have you. This organization does not need this kind of legislation.

Mr. MACINNIS: On one thing we should be quite clear, and that is if we do not include them under this section they are outside the Act. You are making a definition for employee.

> Employee means a person employed to do skilled or unskilled manual, clerical or technical work but does not include—

and then you exclude engineers. If we turn to section 3 we see that it reads:

> Every employee has the right to be a member of a trade union and to participate in the activities thereof.

Now, when you exclude engineers they have not the right to be a member of any group which comes in under the provisions of this Act, unless you bring them in. You decide what you are going to do about it. You bring them in or you leave them out.

Hon. Mr. MITCHELL: That is right.

Mr. LOCKHART: Before you put the motion would you read it please?

The CHAIRMAN: Are you ready for the question? Mr. Adamson has moved, subject to proper redrafting by the legal adviser of the department, that the following words be added to clause 2 of subsection (i) of section 2, namely:

> Where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

All those in favour?

Mr. ROSS: Read it again.

Mr. ADAMSON: I take it it is an exception clause and it should read, "except where a number of professional persons," and so on. I think that makes a little better grammar.

The CHAIRMAN: I will read it again.

> Except where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

I have qualified that by saying, "subject to redrafting by the legal adviser."

Mr. BOURGET: It cannot be redrafted.

Hon. Mr. MITCHELL: It is all right to leave the child on the doorstep of the other fellow, but it is my considered opinion there is nobody can draft an amendment along that line. That is my considered opinion. It just cannot be done.

The CHAIRMAN: Are you ready for the question? All those in favour of the motion please raise their hands? Those opposed? The motion is defeated.

Mr. DICKEY: Before we leave this clause there is one suggestion I should like to make, that when clause 1 of subsection (i) was considered there was no discussion on the particular wording. There were in the hands of the members, or have since been received by the members of the committee, several briefs which relate very importantly to that wording. I do not want to discuss the submissions in those briefs at the moment, but I do want to suggest that the committee might consider the advisability of now looking at this clause as a whole and discussing it and passing the whole clause (i).

There is one point I should like to draw particularly to the attention of the committee. In the discussion of clause 2 of subsection (i) there were a good many references to the fact that people employed in confidential capacities were excluded, and we should not consider them. That was brought up with respect to lawyers and various other people. Actually the wording of clause 1, in my humble opinion, does not exclude anybody in a confidential capacity except where they are employed in a confidential capacity in matters relating to labour relations. That is a restriction that does not seem to bear out the opinion that is held by some members of the committee. I wonder if the committee would consider going back to that.

The CHAIRMAN: Before I allow any discussion on this I must remind the committee that clause 1 has been carried, and I cannot allow any discussion on it unless it is with the unanimous consent of the committee.

Mr. ROSS: When was it carried?

Mr. ADAMSON: I am sorry to be on my feet so much in this committee and to take up so much time, but it was not my opinion it was carried because I want to move an amendment deleting the words "in matters relating to labour relations." I wanted to delete those six words, and my reason for that is that there are a lot of men employed in extremely confidential capacities not relating to labour relations. There are men working for chemical companies, men working in laboratories or men working on secret formulas for companies where they are definitely working in a confidential manner. In my opinion at least, they should not be in the bargaining unit.

The CHAIRMAN: Would you give me a moment, please. I would refer you to page 200 of the record of the proceedings. I may say I almost invited discussion on clause 1, but could not get any. I quote from the record.

Now, gentlemen, we revert to section 2 of the bill, clause (i).

"Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include

(1) a manager or superintendent or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations.

I think we should stop there and have a discussion on this first part. Is this agreeable to the committee?

Agreed.

Now, I put the question.

"Shall clause (i) (1) carry?"

There was an interjection by Mr. Gillis who wanted to discuss clause (2) but he was out of order. Then, clause (i) subsection (1) was carried without any objection.

Mr. GILLIS: I think, under the circumstances, we got off on engineers before we appreciated the significance of clause (1). I think we might very well consider this clause (1) for a moment and the suggestion made by Mr. Dickey.

Mr. MACINNIS: We did not do enough engineering before we passed it. I guess we ought to go back.

The CHAIRMAN: Is it the unanimous wish of the committee we should revert to clause (1)? All those in favour of reverting to clause (1)?

Mr. GILLIS: Are you going to start unravelling this bill because there are new briefs coming in?

The CHAIRMAN: I must say, frankly, that the section has been carried and unless we have the unanimous consent of the committee we should not revert to any section which has already been carried.

Mr. DICKEY: That was my request; I put it up to the committee. If the committee considers, under the circumstances, reading the record that everyone's mind was clearly on the point at issue at that time, that is all right. I did think, from the way it happened to go through, that proper consideration might not have been given to it. I made the suggestion on that basis.

The CHAIRMAN: I shall put the question this way, is there any opposition to reverting to an examination of clause (1), subsection (i)?

Hon. Mr. MITCHELL: If we are going to keep on dodging backwards and forwards, we will never get through this bill. I think we should go right along.

Mr. CROLL: Does this section contain the same wording as P.C. 1003?

Hon. Mr. MITCHELL: No, some few words were added to it, "in matters relating to labour relations". Those are the words added to it.

The CHAIRMAN: I take it, gentlemen, we cannot get unanimous consent.

Mr. TIMMINS: Does it have to be unanimous?

The CHAIRMAN: Would you repeat that, I cannot hear you.

Mr. TIMMINS: I do not suppose a motion to reopen has to be unanimous. We are not bound by that rule. Surely, the majority rules?

The CHAIRMAN: I am responsible for the orderly procedure of the committee. This is the principle I have laid down. If I am in error, I should like someone to point it out to me. If I do not hold to that decision, we will never get through with this bill. Clause (1) has been carried without and dissension of any kind, so it has been carried unanimously.

Mr. TIMMINS: I think, with all due respect, Mr. Gillis unintentionally took us over the fence before we realize it. He had us in clause (2) before we really had our minds on clause (1).

The CHAIRMAN: Yes, but speaking on a matter of procedure, you have to bear in mind that this clause (1) has been carried unanimously. Unless we have the unanimous consent of the committee, we cannot revert to that section.

Mr. ADAMSON: Apropos of reverting to this section, I was certainly of the opinion it had not been carried, but we had jumped to the engineering clause. I had intended to move a motion that these words be deleted. Certainly, I had discussed it with my own group here at the end of the table. I see, according to the record, the section has been carried, but that certainly was not my opinion and I do not think it was the opinion of the group this far away from the speaker.

The CHAIRMAN: When we reached clause (1) subsection (i), I purposely stopped reading and immediately invited discussion on that clause (1).

Mr. GILLIS: There is nothing wrong with the clause at all.

The CHAIRMAN: I cannot allow any discussion on the merits of the clause.

Mr. GILLIS: Why did you allow Mr. Dickey to start this discussion. He injected the principle of the clause into the discussion, and whether we were right or wrong in making our decision.

The CHAIRMAN: I just allowed Mr. Dickey to give the preamble to the question he wanted to raise.

Mr. MACINNIS: To get us over the dilemma, there is a trade union rule that a two-thirds majority is required to revert or change anything which has already been decided. I think, if the committee will accept that, since it is a reasonable condition, we ought to take a vote now. If those who are in favour of reverting to that section can get a two-thirds majority, we should reopen the matter.

Mr. ARCHIBALD: Mr. Chairman, you have laid down a rule that it has to be unanimous consent. I am not going to give mine.

The CHAIRMAN: I rule there is no unanimity on reverting to clause (1) subsection (i) and any discussion on that is out of order.

Now, the next question is, shall subsection (i) of section (2) carry?

Carried.

Subsection (i) of section (2) carries without amendment.

Now, gentlemen, the next is consideration of section (4). While discussing clause (9), Mr. Croll asked leave to make a suggestion to the committee which would be more appropriate in the way of a motion to amend clause (4). With the unanimous consent of the committee at that time, he was allowed to reopen the discussion on clause (4), when it might be reached. This can be found in the record of the committee at page 105.

Under these circumstances, I will call section 4 of the bill. Now, the motion which is before the committee is by Mr. Croll. It is to add a new subsection to section 4 which would be subsection (5) and would read as follows:—

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

Mr. CROLL: Mr. Chairman and gentlemen: the committee will undoubtedly recognize that that is the check-off. It is commonly referred to in the labour movement as a measure of union security. Now, there are various measures of union security. There is the closed shop, the union shop and so on. This is, of course, the smallest measure of union security. I am sure the members of

the committee also know it places no hardship on the employer. It is more of a mechanical act on the machines when preparing the payroll. It simply means punching another digit. Consequently, in a great number of collective bargaining agreements, this clause already exists; that cannot be denied.

However, it has this important aspect. One of the things the trade unions need in order to continue functioning is a certain amount of money in their treasury. Sometimes employers who bargain collectively, but nevertheless reluctantly, withhold this particular part of union security, with the result that he continues to carry on a sort of labour guerrilla warfare long after there is any need for it. It seems to me when an employer bargains with a union collectively and the union is certified, that he ought to, in a broad way, give to the employees something that gives them the ability to carry on. What I am trying to say, in effect, is it takes the union out of the fighting stage into the administrative stage which will help labour relations, which is the real purpose of this Act.

Now, I think there are three steps. Usually, there is certification before the labour board. Then comes the collective agreement, and it is my suggestion that when we have a collective agreement we should write in a check-off clause. I know the objection to it is that we are attempting by law to force collective bargaining. We are not attempting to bargain collectively by law at all. We are allowing the employer and employees to reach agreement. However, once agreement has been reached we want stability from the union as well as stability from the employer. I believe this will be a helpful thing. I think it will be a useful clause with respect to good labour relations. If we write it in, we should say the check-off follows automatically in the same way certification follows automatically if the majority of the employees so indicate or so designate. In my opinion, the writing in of the check-off now will be a forward step in labour relations. It will give a lead to some of the provinces who have not yet gone as far as we have. It is imposing no hardship on the employer and, at the same time, it gives the employer something he ought to want and that is a stable union with which to deal. For that reason, I recommend it to you.

Mr. LOCKHART: I just wish to ask a question of Mr. Croll. This phraseology which you have suggested leads off by calling this a compulsory check-off. It commences by making it a compulsory check-off.

Mr. CROLL: No, upon request; that is not compulsory. "Upon the request in writing of any employee"; it is entirely in the hands of the employee.

Hon. Mr. MITCHELL: I think I should say I am opposed to this motion on the principle that what governments can give, they can take away. Those of us who have watched legislation of this character in Europe know that, in Germany in particular, they got so close to the government they were just servants of the state. They thought they were trade union leaders, but they were not. The pendulum always swings backwards and forwards. You see it happen every time. I studiously avoided putting in this legislation things which should normally be put into a collective bargaining agreement by negotiation.

Take for example, the situation in the United States where the law has swung completely the other way. Trade unions are forbidden to make political contributions, are forbidden to have a closed shop and many of those things that men who have lived their lives in trade unions have fought to establish. On these grounds, I do not believe there is any substitute for collective agreements. The next step will be that they will do as they do in some countries and write wages into the law. We do not want that type of thing in the Dominion of Canada.

Mr. CROLL: We write minimum wage laws now.

Hon. Mr. MITCHELL: I know we do, and they are pitifully small.

Mr. CROLL: We could always revise them.

Hon. Mr. MITCHELL: I favour the good old trade union way. We will settle the wages. We do not want to let politicians do it for us. We would rather sit down as free men and bargain collectively. I am frank to admit that I adhere to the British point of view on this question. You should not put into a law something which can be negotiated because, sooner or later, you are going to lose it.

In the United States, there was a lot said about the Wagner Act. Some people, in their wisdom, thought it went too far to the left. Now, we have this other act which many people feel—I am not intruding in the affairs of another country, I am merely using this as an illustration—went too far to the right. You are bound to get trouble when you have such extreme swings from one end to the other.

I should like this legislation, Mr. Chairman, to stay as legislation which will serve purely as a guide for a consideration of the employers and employees. In this way, we will build up confidence between both parties. If they wish the closed shop, let them have it. There is a section specifically written in this Act which says,

> Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

Now, that was written in there to guard what I considered was a fundamental right enjoyed both by the employer and the employee. Take the building trades, for example; they have had a closed shop in that industry for fifty years and the employers would not be without it. Then, you have the typographical organizations of the Dominion of Canada. They have a somewhat similar condition and, generally speaking, both the employers and the employees would not be without it. I think it is far better to negotiate a collective agreement concerning conditions of employment, than it is to have a law setting forth specific conditions. I think you will live to regret it if you move in that direction.

Mr. MCIVOR: I was just going to ask Mr. Croll a question. Does this mean that it will make it easier for the union to collect dues?

Mr. CROLL: Yes.

Mr. MCIVOR: It will be compulsory for the employee to pay dues?

Mr. CROLL: No, it is not compulsory. He can either pay or not pay. The matter is up to him. He sends a note to the employer telling him to deduct the dues from his pay. When he does not want that done any longer, he writes the employer not to deduct the dues.

Mr. MCIVOR: I think any man who receives the benefit of what the union stands for should pay his dues.

Mr. MACINNIS: Just one word; while I agree with a great deal of what the Minister of Labour has said, I am supporting this section which has been drafted by Mr. Croll. The minister said he favoured organized labour setting its own wages. That is quite in order, but it is very difficult in this country with the opposition of employers, for workers in many industries to arrive at a position where they can set their own wages through agreements. These people are employed in unskilled trades and, except in this short period through which we are going now, there are always more workers than employment.

In Great Britain, the situation is different because of different circumstances there. While I would think it would be much better if you could get those who receive the benefits of trade unions to realize that they are receiving the benefits and make it a point of supporting their organization, for various reasons, in this country you have difficulty doing that. As the minister points out, there is a danger that what is put into a law may be taken out by another government.

He mentioned, without naming it, the Taft-Hartley law in the United States. Now, I think those who were drafting the Taft-Hartley law in the United States thought they were pulling a fast one. I am convinced they are going to cement the two large labour bodies in the United States, and that these people will be confronted with a more powerful body than the United States has ever had before. To that extent, I must thank the Taft-Hartley people for what they have done because it was necessary in the United States.

This section, added to what we have, does not, in my opinion, do harm or violence to the principle of the bill which is now before us. I have been a member of a trade union for over thirty-eight years in which there has been a closed shop. We did not have a check-off. It was not necessary because when a person did not pay his dues we told the company he was no longer a member of the union. I have seen the general manager bring a man before him and state he had nothing but contempt for a man who would accept the benefits of a trade union and refuse to pay for its support. In closing, I wish to say I support Mr. Croll's amendment.

Mr. GILLIS: I do not suppose we are going to finish this discussion, but I have had quite a bit of experience with this check-off. While it is possible to get a closed shop with organizations like the car workers or the railroad workers, it is not possible in large industries to get the same co-operation of management. Mr. Croll is not suggesting anything which is mandatory or which will take anyone's rights from him.

In Canada today, you have acts in most of the provinces which carry a check-off provision. These provisions were written into the act after a long struggle. As Mr. Mitchell points out, in the formation of the unions in industries such as mining and steel, the employers put up terrific opposition to this question of a check-off.

Suppose this act is adopted and it does not carry this voluntary check-off provision recommended by Mr. Croll. Then, the province of British Columbia decides to set the provincial act aside and adopt the national code. Since there is no provincial act, there is no longer any check-off provision in the law. I think it would be wise to adopt Mr. Croll's suggestion.

Now, comparing either Great Britain or the United States with Canada is not a fair comparison. The trade movement in Great Britain is over 150 years old, so the accomplishment of something like this is very easy. Do not forget, either, that you have a unitary government there and you have a homogenous people who are relatively easy to handle.

Hon. Mr. MITCHELL: You are telling me.

Mr. GILLIS: However, you get into the mass industries such as steel, coal and textiles and you have a very difficult proposition on your hands. As Mr. Croll has pointed out, I think we have gone beyond the fighting stage in unions. I think the time has arrived when both the employer and the employee as well as the general public should recognize the fact that the legal, sensible way to do business is to sit around the conference table. We should get away from this dog eat dog type of action which we had in the past. I helped to build the trade unions of this country and I do not want to see anybody else have the experience I had when we did not have this legislative protection.

In Nova Scotia we had the check-off. In 1934, we decided it was a bad thing. For four years, we struggled along without it. We found we were in an impossible position. Those who should have been studying the problems of the union were on the road continuously trying to collect dues. Both the management and the union decided we should return to the check-off and we took another vote which restored the check-off. It is the only way you can get stable relations. It relieves those who are administering the affairs of the union from having to tramp around trying to collect dues. They can study the problems of the union,

and budget their income. They know what the income will be. Trade unions no longer are just bargaining agencies. They are social organizations. In places where the union has stabilized conditions, you will find the men getting benefits back in educational programs. In my opinion, one of the most necessary steps in creating stable conditions is the check-off.

You know what happened in the steel industry down in my end of the country until that check-off clause was written in the Nova Scotia act. The trade unions did much to solve that difficulty. We do not have any more of the old-fashioned strikes. There are no picket lines. When the last strike took place in that end of the country, things just stopped. There were no picket lines, no fights. We just sat around a table and worked the thing out.

I think we would be well advised to pass Mr. Croll's motion. He is only asking for a very reasonable amount of union security in this bill. Then, too, we should protect the Acts which now exist in the provinces in case this national code is accepted by the provinces in the future.

Hon. Mr. MITCHELL: I am not opposed to the check-off, let that be clearly understood. My opposition is based on the fundamental principle of not letting the state get its hands on you any more than is absolutely necessary. Do not forget this, freedom is like the air you breathe. You do not miss it until you cannot get it.

Let me tell you, the other day the government of Queensland passed a bill. You people talk about peaceful picketing and that sort of thing. This bill would make your hair stand on end. There is one indication of a labour government going to the right. They had to do it. When you start writing into labour legislation things which can be negotiated by agreement, that is what happens.

What my friend Mr. Gillis has said is absolutely true. Mention has been made of the old days in Great Britain. I suppose you will all recall Ben Tillet, of Great Britain, the dock workers M.P. He and I were once talking about industrial craft unions and he said to me, "We do not want these fellows on our backs". Ben actually represented what was considered in those days the unskilled worker, and today that organization is the largest and most powerful trade union in the world.

I come back to the question of principle. I am not opposed to the check-off; I am not opposed to the closed shop. I am not opposed to high wages. I think they should be just as high as the traffic can bear, but I think these things should be settled around the table by agreement because I would not trust the state. They swing to the right and left as they always do. The farther you can stay from them the better it is for everyone.

Mr. BLACK: I want to be consistent. I have been guided very largely by what the minister and his advisers have said. On the other hand, as pointed out by Mr. Gillis, there is the compulsory check-off in Nova Scotia, and I have been in favour of the compulsory check-off there. To be consistent I am going to support Mr. Croll's motion.

The CHAIRMAN: Before I put the question, gentlemen, for the purposes of the record I must mention to you that I have received a wire from the Canadian Manufacturers Association expressing their views on the subject matter of the motion which is before the committee. Is it your desire I should read this wire?

Mr. MACINNIS: Tell us their views. I suppose they are in favour.

The CHAIRMAN: They are opposing any authority in the bill to order the insertion in a collective agreement of any union security clause including the check-off, voluntary or compulsory, and so forth. Are you ready for the question gentlemen? The question is on the motion by Mr. Croll to amend section 4 of the bill by adding a new subsection at the end thereof which would be subsection 5, and which I have read already. All those in favour of the motion will please raise their hands? Those against? I declare the motion carried.

Mr. KNOWLES: Before you leave clause 4 may I in all humility ask the committee to permit further discussion of sub-clause 2B of this section. I may say my reason for asking this is that I happen to be, as many members are, a member of another committee, and the day when section 4 was up for discussion it was impossible for me to be here. I am not asking that the discussion be proceeded with today. I wish to propose an amendment to subsection 2B. I have copies of it which can de distributed today or at a future date. I can give notice to you if you wish or I can indicate the nature of the matter. I am making this request today before we leave.

The CHAIRMAN: Mr. Knowles, I may say this—order, please. When Mr. Croll's request to revert to section 4 was brought up, we were considering section 9, subsection (5) of the bill. Mr. Croll definitely stated that his motion would be in order under section 9, subsection (5), but it was a motion which was of a nature affecting a certain number of the other sections of the bill. Owing to the general application of his motion, he suggested it would be more in order to bring it under section 4. Then, he asked leave to revert to section 4.

Now, I have to curtail, to a certain extent of course, any discussion beyond the order of business of this committee. I am telling you this to explain how the committee arrived at giving unanimous consent to Mr. Croll's request.

Mr. KNOWLES: I fully appreciate your position. My request cannot be put on the same basis as Mr. Croll's. This would introduce a new matter. The basis of my request is purely a matter of courtesy in view of the fact it was impossible for me to be here at the time this matter was discussed. The committee to which I referred is Mr. Speaker's committee on rules. It is a sort of command when you get an invitation from Mr. Speaker to attend his meeting, so I did have to be away. This is a matter which I did wish to have discussed. It is obvious, if I cannot have it discussed here—this is not a threat—I will have to do it in the committee of the whole House when the bill comes back from this committee. I leave it up to the committee.

The CHAIRMAN: Gentlemen, it is now twelve-thirty and unless the committee is agreeable to sitting any longer, we should adjourn.

Mr. LOCKHART: As I am a member of another committee meeting this afternoon, I move we adjourn.

Mr. KNOWLES: Did you make any decision with respect to my motion?

The CHAIRMAN: I am taking it as notice and we will discuss it at our next meeting. The committee will stand adjourned until next Thursday.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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THURSDAY, MAY 20, 1948

WITNESSES:

Mr. A. MacNamara, Deputy Minister, Department of Labour, Ottawa;

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

TUESDAY, 20th May, 1948,

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Dionne (*Beauce*), Gillis, Gingues, Hamel, Johnston, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The following, relative to the exclusion of engineers in Bill No. 195, were read by the Chairman:

(1) Letter dated 18th May, 1948, from the Chemical Institute of Canada, Montreal.

(2) Letter, undated, from the Canadian Council, Institute of Radio Engineers, Montreal.

The Committee resumed consideration of Bill No. 195.

Mr. A. MacNamara and Mr. A. H. Brown were called and questioned.

Clauses 4, 9, 11, 16, 18 and 19

Stood over.

Clause 23

Carried.

Clause 27

On Thursday, 6th May, on motion of Mr. Smith, an amendment was adopted viz:

That the Department of Labour be requested to prepare an amendment providing for the use of the plural form, or sense, of "conciliation officer" in this and relative clauses.

Honourable Mr. Mitchell suggested that the amendment was appropriate to Clause 16 and recommended that it be amended accordingly. The Committee concurred in this recommendation.

Clause, without amendment, carried.

Clause 16

The Committee reverted to the consideration of Clause 16(b).

On motion of Mr. Mitchell,

Resolved,—That the words "a Conciliation Officer" in line 9 thereof be deleted and the following be substituted therefor:

"one or more Conciliation Officers".

Clause, as amended, carried.

13178—1½

Clause 39—Mr. Gillis moved,

That the responsibility for the enforcement of the Act to be placed with the Canada Labour Relations Board and not with the employer, or the trade union.

And the question being put, it was resolved in the negative.

Clause carried.

Clause 48—Pursuant to a motion by Mr. Smith adopted Tuesday, 11th May, referring this clause to the Department of Labour for redrafting, Mr. Brown recommended that the words "by registered mail" be substituted for the words "through His Majesty's mails" in line 3 thereof.

Clause, as redrafted, carried.

Clause 35—On Motion of Mr. Mitchell,

Resolved,—That all the words in line 3 thereof be deleted and that the following be substituted therefor:

of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including but not so as to restrict the generality of the foregoing.

Clause, as amended, carried.

Clause 54

Carried on division.

Clause 55

Carried on division.

Clause 67

Carried.

Clause 9—The Committee reverted to the consideration of clause 9(5).

Mr. Croll moved,—

That the Canada Labour Relations Board shall have power to require an employer to disestablish an employer formed, influenced or dominated organization.

And the question being put, it was resolved in the negative.

Clause carried.

Clause 11

Carried.

Clause 18

Carried.

Clause 19

Carried.

The Committee adjourned at 12.35 o'clock p.m. to meet again Tuesday, 25th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,

May 20, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: First of all, gentlemen, I should like to place on the record a letter which I have received from the chairman of the board of directors of the Chemical Institute of Canada. Would you allow me to place it on the record as if it were read?

Carried.

MONTREAL, May 18, 1948.

Mr. P. E. COTE,
Chairman of the Standing
Committee on Industrial Relations,
House of Commons,
Ottawa.

Dear Mr. COTE: Last week's newspapers informed us that engineers as mentioned in the text of bill 195, were excluded from the definition of 'employee'. In order that chemists be also excluded, I believe that the bill would need to be amended. I take the liberty of reminding you that the members of the Chemical Institute of Canada, through their Council and their Board of Directors, wish very much that the government will submit an amendment to this end. In addition to the letter referred to above, our Institute has submitted a brief to the Honourable Minister of Labour. We are glad that the government has won its point in the case of the engineers and we hope that the chemists will be treated similarly. I am glad to let you know that the division alluded to in the case of Engineers' Association does not exist among the chemists. There is but one association of chemists and its members wish to be excluded from the definition of 'employee' in bill 195.

Yours very truly,

Leon Lortie,

Chairman, Board of Directors,
The Chemical Institute of Canada.

I should also like to place on the record a letter from the Institute of Radio Engineers addressed to the chairman, and commenting on the brief which was circulated to the members of the committee at the last meeting. Is that agreeable?

Carried.

1250 St. Matthew Street,
Apt. 4, Montreal, Que.

Mr. Paul Emile Cote. Chairman,
Industrial Relations Committee,
Room 411, House of Commons,
Ottawa, Canada.

Dear Mr. Cote: I am enclosing herewith four additional copies of the brief submitted by the Canadian Council, Institute of Radio Engineers, in connection with bill 195.

I shall mail you a further thirty copies on Saturday which you should receive on Monday.

I regret that my lack of experience with such matters has resulted in this delay in placing sufficient copies at your disposal.

Although I am aware that the deadline for the presentation of material is past, there are a few additional facts which have come to my attention this last week which support the thesis of the Can. Council, I.R.E. brief which I beg leave to bring to your attention.

The thesis of the brief which our Council submitted was that whereas all of the evidence available indicates that 90 per cent of Canada's engineers and scientists are in the employee category and want to retain and exercise their collective bargaining rights, their professional and technical societies are dominated by persons in the category of private consultants or management, who, in this instance, have let their personal preference prevail over their duty toward the majority membership of the organizations which they control.

The additional evidence which I wish to present is as follows:

I have been informed by the chairman of the Toronto branch of the Engineering Institute that his council and the council of the Peterborough branch both protested to the general secretary of the Engineering Institute against the stand taken by the E.I.C. for the exclusion of engineers from the provisions of bill 195 and requested inclusion instead. The Toronto branch alone contains about one fifth of the professional members of the E.I.C.

These requests were completely ignored by the general secretary of the E.I.C. according to my information.

I have been further informed during the past week concerning the Association of Professional Engineers of Ontario which has, I believe, come out in support of the E.I.C. position on exclusion, that their council, which has eighteen members, is composed as follows:

Presidents, vice-presidents or managers of companies	12
Consulting engineers	2
University professors	2
Engineers in employee category	2
	18

Among this group, five in the management class, one consultant and one university professor are members of the E.I.C.

An examination of the personnel of the councils of the other provincial professional associations (which in all cases are much smaller) shows exactly the same trend both with regard to domination by management and, in most cases, an even greater preponderance of high level E.I.C. membership.

The weight of the evidence therefore appears to point very strongly to the conclusion that the effort to obtain complete exclusion of engineers from collective bargaining procedures under bill 195 is, in fact, a deliberate conspiracy on the part of management to deprive engineers and high level technical personnel of their right to collectively improve their economic position under the law and that, in this effort, the council of the Engineering Institute of Canada is providing the leadership.

Had some of the above factual information been available earlier, it would have been included in the brief which I submitted on behalf of the Canadian Council of the Institute of Radio Engineers.

Sincerely yours,

F. S. HOWES, *Chairman,*
Canadian Council,
Institute of Radio Engineers.

Towards the end of the last meeting we had a notice of motion from Mr. Knowles for leave to revert to consideration of section 4. Mr. Knowles has to attend another important meeting this morning. I thought we could extend the courtesy to him of letting his notice of motion stand until I have arrived at some agreement with him as to the time it should be brought to your attention. Is that agreeable?

Carried.

On the agenda for this morning we have clauses 9, 11, 18 and 19 to reconsider. As the request under each of these sections to allow them to stand was made by Mr. Croll, and as Mr. Croll cannot be here before 11 o'clock for important reasons, I wonder if we could let them stand until a little later this morning.

Mr. LOCKHART: Let us adjourn then.

The CHAIRMAN: Mr. Croll will be here at 11 o'clock. I thought that perhaps we could take the next item, section 23, and revert to the four sections which I have just mentioned a little later this morning. Section 23 has been allowed to stand at the request of the minister, as you will see at page 134 of the record of the proceedings.

Mr. MACINNIS: Page 135.

The CHAIRMAN: Page 134 at the bottom and page 135.

Hon. Mr. MITCHELL: I think I should say about this section that I have talked it over with my people and we do not think it can be improved upon. I think the point that Mr. MacInnis raised was about a possible lockout. That is 23(2).

The CHAIRMAN: Will this section carry?

Mr. ADAMSON: What was the objection that the minister raised?

Hon. Mr. MITCHELL: It was Mr. MacInnis raised the objection as to the possibility of a lockout. Frankly I cannot see that it could happen.

Mr. MACINNIS: If, as appears to be the case, the minister does not think it necessary or is opposed to putting anything in, I have brought it to the attention of the committee, and that is all I can do.

Hon. Mr. MITCHELL: I do not think it requires anything more. I think your fears are largely imaginary.

Mr. GILLIS: Was it not Mr. Croll who asked for this to stand?

Hon. Mr. MITCHELL: No.

The CHAIRMAN: Is there any further discussion?

Mr. GILLIS: Mr. Chairman, it is not section 23 or section 24 which require clarification. It is section 25.

Hon. Mr. MITCHELL: Then let us carry section 23 and go on to section 25.

The CHAIRMAN: Is section 23 carried?

Carried.

Hon. Mr. MITCHELL: Section 25 has been carried.

The CHAIRMAN: Section 25 has been carried. The next item is section 27, referred at page 142 of the record.

Hon. Mr. MITCHELL: That just makes conciliation officers plural. We did that in 16 and 17.

The CHAIRMAN: Would you repeat, Mr. Mitchell, please?

Hon. Mr. MITCHELL: It is section 16. It does not need to be changed there.

The CHAIRMAN: But the motion was made by Mr. Smith to add after the words "conciliation officer" wherever found in the bill the words "conciliation officers."

Mr. MACLEAN: The change is being made in section 16.

Hon. Mr. MITCHELL: If you will go back to section 16 I will move an amendment to section 16(*b*), "and either party thereto requests the minister in writing to instruct one or more conciliation officers."

Mr. BROWN: In line 35 it would be "may instruct one or more conciliation officers."

Hon. Mr. MITCHEL: I have it up here, too.

The CHAIRMAN: Is that the only section where the change has to be made?

Mr. MACINNIS: Mr. Chairman, I think there should be an understanding that the department must have the right, where we have made an amendment in a section in the wording which demands a change in another section, to make such alteration. You cannot bring the bill into the House without that. That will be understood.

The CHAIRMAN: Yes, that is definitely understood, but from the remarks which Mr. Smith made while considering section 27 he intimated that there was a sort of principle involved in the recommendation which he was making. Is it the wish of the committee that we revert to section 16 and consider the motion which the minister has indicated?

Hon. Mr. MITCHELL: That is in the last two lines. "The minister may instruct one or more conciliation officers."

The CHAIRMAN: It is moved by Mr. Mitchell that in subsection B of section 16 in the second last line the words "one or more conciliation officers" be substituted for "a conciliation officer." Is that carried?

Carried.

Mr. MACINNIS: What is the exact phrasing?

Mr. BROWN: "The minister may instruct one or more conciliation officers to confer with the parties", and so on.

Hon. Mr. MITCHELL: Can we understand this, that we will look through the other sections and see that they conform with that change?

Mr. JOHNSTON: Does that comply with Mr. Smith's request?

Hon. Mr. MITCHELL: That is the point he raised.

Mr. JOHNSTON: If you leave it as the minister has indicated, one or more, then one could be the number or more.

Mr. MACINNIS: That is what Mr. Smith wanted. He wanted the plural to be there in case the minister thought it desirable to have more than one.

Mr. JOHNSTON: I think his point was there should be more.

Hon. Mr. MITCHELL: No. As a matter of fact, it is the practice now if a man cannot get along with one side or the other that we pull him out and put another man in.

Mr. GILLIS: You can put two in if necessary.

Hon. Mr. MITCHELL: Sure.

The CHAIRMAN: Section 39.

Mr. MACNAMARA: What about 27?

The CHAIRMAN: Section 27 was carried. On section 39 we have a suggestion by Mr. Gillis which you will find on page 2 of the agenda of the committee which was circulated a meeting or two ago. From what I gather here the suggestion of Mr. Gillis could be implemented better by an amendment to section 45 by substituting the word "board" in the third line of subsection 1 for the words "organization or union." Mr. Gillis has the floor if he has any comment to make.

Mr. GILLIS: Mr. Chairman, all those sections from 39 to 46 deal with the matter of enforcement and I think myself they are the meat of the whole Act, if we want to change labour relations from the picket line to the judicial. I am satisfied with all these sections down to section 45. What I have in mind is that if we pass this Act and we leave the Act as it now stands in the event of a dispute between employer and employee, and the failure of the conciliation machinery provided in the Act, and it is necessary then for either one side or the other to take the matter to court, we are leaving the matter exactly as it is today, where the union either prosecutes the employer or the employer prosecutes the union. In any case in a matter of that kind it generally winds up in an eruption and the whole community suffers. My opinion is that unless the Department of Labour is prepared through their board to enforce this Act when there is an infraction of the Act then we are wasting our time in laying down an Act at all. I think the best people to determine whether there has been an infraction of the Act, or whether one side or the other has been unreasonable, are the men who handle these matters, the national labour relations board. I think all that is necessary, as the chairman points out, in all these sections from 39 to 46 is in line 21 of section 45 to take out the words "organization or union" and substitute the word "board". In my opinion that gives the board the necessary latitude, if the Act has been violated on one side or the other, for proceedings to be instituted in court by the board themselves rather than leaving it as it is today. It is not the rule of law now at all. It is a matter of anarchy. The Seamen's Union is a good example right now of what takes place when it is left to either the union or the employer to observe the laws of the country and carry the matter through the ordinary court channels. You have got a whole industry, particularly in this section of the country, in chaos today, with the employer in this case refusing completely to go along with the labour relations board or to obey the instructions of the Department of Labour, or even bend themselves to the extent of sitting down with a conciliation officer sent in by the Department of Labour. A report has been made which condemns them.

Nevertheless, there is no legal machinery in labour relations to force either the employer or the employee into a legal and reasonable position. There is chaos in that particular industry, and that is what I am trying to avoid in this bill. If we are going to take the trouble to write a legal document bringing the rule of law into labour relations, then I think the board which handles the case and knows the personalties on both sides is in the best position to determine who is reasonable and who is unreasonable and who has committed an infraction of the Act. It is the body which should say, "You are either going to obey the laws of the country as enacted by the House of Commons or it is our prerogative to take you into court and prosecute for an infraction of the law."

It is done in the Income Tax Department. They take proceedings against anyone violating any income tax laws. The provinces do it in connection with the motor vehicles branch. In my opinion, both the employer and the employee going into a national labour relations board, knowing that Board has judicial power to prosecute, will go in there with a much more respectful attitude. It is not a matter of going through the mechanics of talking to each other any more. It is a matter of facing a body which has a law to enforce. The parties will be very careful they do not put themselves in an illegal position.

If a large corporation or a large union wants to take the position one is going to break the other, it is simply a matter of being unreasonable before the Board and taking the matter to court. Then, whichever side has the most money will break the other. In the final analysis, it is the community which suffers. John Public, who stands on the sidelines and watches that sort of thing is going to suffer. I feel very strongly on this subject. Unless we give the Board that power, we are setting up another board for which people will have very little respect. The Board, itself, is a kind of impotent body which listens to arguments here and there, then sits back and says, "You go out and settle it yourselves." I would seriously urge that simple change be made in 45. I think then, so far as the whole section is concerned, from 39 to 45, it is acceptable to me.

Hon. Mr. MITCHELL: May I clear up the point raised by Mr. Gillis? I think it may be said that the Industrial Disputes Investigation Act which existed prior to this was possibly the most successful legislation of its kind ever provided. It is all predicated on conciliation and mediation. You cannot have a conciliation board being judge and prosecutor at the same time.

Mr. GILLIS: I am not asking for that.

Hon. Mr. MITCHELL: Just wait one moment; I have knowledge and I imagine you have, yourself, of what has recently transpired in Australia. There, you have an arbitration court. If the decision of that court—not the decision of the court, sometimes the parties would not wait for the decision of the court. You had a general tie-up in the state of Queensland. I am not expressing an opinion on that legislation. A certain set of conditions existed which, in the wisdom of the labour government there, made them feel it was necessary. Legislation was enacted which I thought never would be passed in a free country. I am offering no criticism because I know nothing about the conditions except what I see in cold print. However, they have had that experience there.

Now, the United States took it away from the labour boards last year because they found it impracticable. I have often used the phrase that, if you are going to make the board the gravy train for prosecutions, the courts of this country will be cluttered with cases of this description. Such an idea is opposed to the whole conception of conciliation in labour relations.

The Act, itself provides for agreement between the parties. A conciliation board can form itself into an arbitration board by agreement, if that is desired. I think it is a fair comment to say that the people who would be opposed more than anyone else to the suggestion you have made would be the responsible labour organizations. I am not saying that the opinions you have just expressed—

Mr. GILLIS: The Congress of Labour are not.

Hon. Mr. MITCHELL: Well, the Congress,—

Mr. GILLIS: Are they not responsible?

Hon. Mr. MITCHELL: I am not suggesting they are not. There are a lot of young fellows in the labour movement who are in a hurry. They think you can stop it raining by just passing a law. It just cannot be done.

You have talked of one and I have talked of many others. On the North American continent it is traditional that we should not have compulsory arbitra-

tion; that is fundamental with all the labour organizations on this continent. It is the American practice. Take the railway case at the moment, where you have a majority and minority report. The unions, in their wisdom have turned down the majority report. There are other cases where the employers turned down the majority report. I could quote many cases where organizations, and I should say this is probably more true of the organizations than of the employers, have turned down reports of conciliation boards. Even after that has transpired, in my judgment, it is not the thing to rush to the courts. I cannot understand that mentality, when you want to rush off to the courts at every opportunity.

There are extreme cases when you have to do that. However, I think the reasonable conciliation machinery is being developed in this country, and on a much larger scale since the outbreak of war. Even after the breakdown of this conciliation machinery, the minister and his officials can step in and often do step in and resolve the dispute on a conciliatory basis.

I might make another point; I do not think you can have a representative board and make it be judge and prosecutor at the same time. I think the next demand would be for a straight judicial set-up such as they have in Australia. My own view is this; that there is no better way of settling disputes than through the national board and the provincial boards which have existed in every province since the dominion had jurisdiction. I think that can be fairly said of every province in the dominion where you have some kind of industrial organization in existence on a comparatively large scale.

We tried it. You remember Mr. Justice McTague, an able, conscientious chairman who made a great contribution during the war. He held the view a three man board composed of legal gentlemen was better than a representative board. I felt it was the fair thing, since the judge had assumed that responsibility, to give him his way in the composition of that board. That is a matter of history now. I do not think it functioned as well as some people thought it would function.

In this case, you get a chairman; a representative of the running trades; a representative of the Canadian Congress of Labour and of this catholic syndicate. You get a broad cross-section of the nation. On the other side, you get the representatives of the construction industry, the Chamber of Commerce, the Manufacturers' Association and the railroads, on the employer's side.

I believe the leaders of all these groups will admit that it is working reasonably well. I think I mentioned this at one of our previous meetings, I do not know of any resignations because of disagreement with policy since we established that principle. I believe I also mentioned that, in the United States, the life of a chairman of a board has been about five months. I would rather stay with a system our people understand and, for that reason, I do not want this language changed any more than we can possibly help. The trades' unions and the employers in the provinces know the approach and know the language. If I thought we could have legislation which would obviate industrial disputes, naturally I would say let us have it. Human beings being what they are, I think this is as good a piece of legislation as exists on the North American continent today.

I should like to say to you quite frankly that I would not deny any individual in this country the right to go to the courts and have men with ability in this judicial field decide whether, in a given situation, there has been a breach of the law. To place it in the hands of people who have not had experience in that field, would be a bad move. I am sorry I cannot accept your suggestion.

Mr. GILLIS: Your whole argument is in favour of it.

Mr. McIvor: I was just thinking, if Mr. Gillis were the Minister of Labour, would he be willing to put in this amendment?

Mr. Gillis: The answer is definitely yes.

Mr. McIvor: When you appoint a conciliation board of three members and they give their decision, you, as Minister of Labour, would say that decision is fair. If either side does not agree, then I do not think the board should be responsible for instituting action because the board has already given its opinion and will be biased in so far as any other decision is concerned. I believe those who did not get what they thought fair and resorted to the courts should pay the bill, not the citizens of Canada.

Mr. Gillis: Do you hold that view in so far as income tax and other laws you now enforce are concerned?

Mr. McIvor: I do not like this amendment.

Mr. MacInnis: I agree, Mr. Chairman, that this is a matter about which, perhaps, we cannot be dogmatic. However, I think we should consider the matter carefully because the question we have before us is not the one to which Mr. McIvor referred at all, as to the enforcement of a conciliation board award. I do not think that enters into this question at all. The question concerns the refusal of either one or the other of the parties to accept the provisions of this Act. If either one or the other refuses to accept the law, who is responsible for the enforcement of the law?

The principle put forth by the minister in the Act is that, if the law is broken it is no concern of the government. It is only the concern of the parties to the dispute. That is the position taken. Let me point out the underlying basis of this law. This is not a law which is made for employers and employees solely to try to get them to resolve their difficulties. This is a law which is made because of the recognition that the community, the nation, is concerned with industrial relations. The law is made so that the community will not be destroyed in the struggle between employers and employees. Fundamentally, that is the purpose of this law.

Now then, the position of employers and employees is very different in its impact on the community or it may be very different. If a sufficient number of employees refuses to accept an award or as has already been done, ignores the whole thing, then they would withdraw their labour from the community. They would disrupt the economy of the country. Does anyone take the position, then, it is the duty of the employer to take these employees to court and enforce the law? Surely, that is not a reasonable law taking into consideration the basis of the legislation before us.

On the other hand, if an employer refuses to recognize the law at all and could get sufficient workers to carry on the operations in which he is engaged, then the community is not particularly affected at all. Consequently, the people will say, "Why should we take these people to court or bring these fellows to time?"

The minister referred to the Australian situation. In Australia they have had compulsory arbitration for years. When I say compulsory arbitration I do not mean compulsory only to bring a case to an arbitration court, but compulsory in the acceptance of the arbitration court's award. I am free to admit that sometimes the award is not accepted, but nevertheless it has worked fairly well in the past. The situation that has arisen recently in Queensland is more of a political situation than that of an industrial dispute. Let us take the case to which Mr. Gillis referred, that of the steamship companies. These steamship companies just refused to have anything to do with the board the minister has set up. As a matter of fact, my impression is that they not only refused to have anything to do with such boards, but they challenge the minister's right under the law to establish these boards, and

because they can get enough workers to carry on their business, the country does not hear very much about it. If one employer can get away with that sort of thing without prosecution by this government what will happen? I should like the members of this committee who have not already done so to read the report made by Mr. Brockington and Mr. McNeish to the minister, and if they can find any strong language of condemnation in that report by these two outstanding Canadian citizens I should like to see it. So, a violation of this Act is not solely a matter of concern to the parties involved. A violation of this statute effects the people of Canada, and therefore the enforcement of the Act should be properly carried out.

Mr. ADAMSON: With regard to the strike in Detroit in the United States, has not the government stepped in and prosecuted the union? What is happening there?

Hon. Mr. MITCHELL: Only yesterday I was reading in the New York *Times* about that strike. I understand that the Governor of Michigan is contemplating looking into the strike on a legal basis. They have a state law which he feels is being contravened by this organization.

Mr. ADAMSON: If we accept this amendment would it not bring our law into line with the state law in Michigan?

Hon. Mr. MITCHELL: When it comes to a question of constitutionality I think the government has a direct responsibility, and while I cannot speak for the government I shall certainly defend the constitutionality of this legislation in the courts. When the government gets into prosecution as such, people always take the easiest way out and say, "Why should we worry, let the government prosecute". It is just like the Appeal Board situation during the war. Appeals went from one board to another, and the first board did not always assume the responsibility it should have. My judgment is that the loser would be the working people themselves, if this idea ever came into effect. We have had this kind of legislation for forty years and we have only had eighteen prosecutions. Mr. Chairman, I feel the whole thing is a matter of conciliation. There are bound to be exceptions to every rule.

Mr. TIMMINS: I want to say that I see eighteen- and nineteen-year old boys working outside my office and they do not know what the Seamen's Union situation is all about. I met this fellow Dewar Ferguson, and he told me what he is going to do. He is running the strike. He is the union. You should know perfectly well that the whole thing is dominated by communists and that they are making the rest of us—fellows like you who know the trade union movement—look like monkeys over this situation.

Mr. GILLIS: If you are talking to me, I just want to say that Mr. Brockington, a government-appointed official, definitely stated to the Minister of Labour that the employers are unreasonable and that they refuse to obey the laws of this country.

Mr. MACINNIS: I think that Mr. Timmins, who I understand is a good lawyer, is missing the point here altogether. If an employer can refuse today to negotiate with his union because there are communists in it, another employer can refuse tomorrow to negotiate because there are conservatives in it. You think that is something that might happen, but the wheel turns very fast in the present world situation, and it is none of the company's business what the political leanings of the employees are. That, I assume, is the situation in Canada.

Mr. TIMMINS: We have had three or four years experience with the union and we know what we are dealing with.

Mr. DICKEY: I do not want to get into any argument that has developed into a political question of the Canadian Seamen's Union, but there are two or three brief observations I should like to make on the amendment that has been

put forth by Mr. Gillis. It seems to me that we are not quite fair on one point. That is, that there has been some demand for the government to have power to prosecute under this Act. Now, that is not what this amendment calls for. The amendment calls for the board to have, not only the power but the responsibility to prosecute under this Act. I think that the point which the minister has raised is absolutely fundamental, and that the whole concept of this legislation is to set up a board as a conciliatory. To add to that the absolutely foreign element that the board should prosecute one or the other of the parties who appear before it for conciliation, will be, I submit, to completely destroy the whole purpose of this legislation.

Now, with respect to Mr. Gillis, I cannot agree with him on the various parallels which he has drawn between income tax legislation and other legislation that the government enforces. I do not think that anybody would consider that there is any element of conciliation in income tax legislation or any legislation relating to national revenue. It is a completely different situation where the government passes certain laws applicable to the raising of revenue and where certain persons have been found to have evaded that law. In such a case it is quite apparent that the government, as its own tax gatherer, is the only party who is interested in prosecuting. This is the kind of legislation where the parties are involved, and where two parties have definite interest, and we must remember the various functions of government. One of these functions is the judicial function, and the nation provides courts to carry out the judicial function. This legislation sets out very clearly the offences for which, if somebody commits them, he will be brought before the courts. I think it should be left to the people who are aggrieved to bring the other party before the courts and to conduct any prosecution themselves.

The last little point which I should like to make, which may not be considered by some to be of importance, but I think it is of importance, is that if we put this power in the hands of the board to bring the law breaker before the courts, is the board to conduct that prosecution? Is the board to have the power to conduct the prosecution or do they have to go to the party who feels they are aggrieved and say, "Now, we are going to prosecute such and such a person. How do you want us to prosecute, and who do you want to represent the board?" I think that would be an impossible situation. If we give this power to the board we must give it to them fully, so that they may conduct the prosecution also. It is quite conceivable that a labour union or an employer might make a complaint to the board and ask for a prosecution, and the board might proceed to prosecute, and if the result was not in accord with the wishes of the person who thought he was aggrieved, he might turn around and say, "We have not received satisfaction from the board. This case was not properly prosecuted, and we want to prosecute ourselves."

Mr. ADAMSON: Then there is the other question that if the board is not unanimous what will happen? If the board is not unanimous in its decision what are you going to do?

Mr. MACINNIS: May I just ask Mr. Dickey a question. He took the position that the board cannot enter into this, but let us make it clear that the prosecution cannot be laid without the consent of the board. Now, then, if the board decides that there is no case they will not give permission to prosecute.

Mr. ADAMSON: The minister does that.

Mr. MACINNIS: If I remember rightly I think it is the board that does that. In the present case the board has given the seamen's union authority to prosecute. If the board can say that there is no case, why should the board not take the case?

Mr. DICKEY: All I have to say is that I have given my reasons why I consider that the board should not be the one to take that case to court. It destroys the fundamental reason of the board.

Mr. MacInnis: Why should the board decide on the prosecution of a case?

Mr. Dickey: The minister does that.

Mr. Gillis: In my opinion Mr. Dickey has put a completely erroneous conception on the fundamentals of this bill. He says that this bill is predicated on conciliation. It is not. If it is, why is there written in here these penalties and all the things that will happen to people who might commit an infraction of the Act? It is definitely laid down and the law must be enforced. The minister takes the United States as an example, but I do not want to get into the position they are in in that country. That is exactly what I am trying to avoid. I think the government, the minister, and the board have been placed in a ridiculous position by the seamen's union dispute. If I were the Minister of Labour tomorrow, I would want to have some authority to get out of that sort of thing. I would not want to occupy a position where I could be made a fool of by anybody, as has been done in this case. It is quite all right for the members here to argue, "I do not want to take the right from any individual of having his day in court" but that right is taken from a good many individuals in this country because they cannot afford to go to court. The fact cannot be disputed or denied. There are many small unions in this country who may not get the benefit of this Act because the employers concerned are big and tough. It is very costly to take an industrial dispute into the courts of this country.

Mr. Adamson: Do you know of any situation of that kind?

Mr. Gillis: Yes, all kinds of them. I would advise you to keep your eye on the seamen's union. You have another dispute down here in Ontario, the Bertram Company.

Mr. Croll: Where?

Mr. Gillis: Hamilton, a small little union that tried to follow out the laws of the country in the matter of wage negotiations, and the employer locks the plant up and goes down to Florida for a vacation, and the community suffers. That union cannot have its day in court because it cannot afford it. What I am trying to do in this case is that I want to point out that I do not think anybody is in a better position to decide whether court action is necessary than the board to which we give authority to take evidence and assess it. It hears both sides of it.

Mr. Johnston: They have to give consent now.

Mr. Gillis: Yes, but what I am trying to do here is to give the board power if they so desire, if in their opinion they think the matter should be taken to the courts of the country. Then the board has at least the authority to do that. I think it will create respect for the board, as I said before, by both parties. If I could accept the statement that everyone has his day in court I would say, "sure, let it go as it is", but I know that is not possible. If we are not going to enforce the Act, as I said before, we are wasting our time in passing it. The Minister of Labour is in the position today where, if a dispute develops and it reaches an impasse before the board, he can say, "It is no longer our responsibility. You two fellows go out and fight it out in court". Then we sit it out. I know who wins in that case. I know who can sit out longest, and it is not the employee. As Mr. MacInnis pointed out it is a matter of protecting the whole public, the people of Canada, because in this country and in the United States today you have got a false prosperity but there is a time coming when you are going to have a lot of labour disputes in this country, and I should like to see someone responsible, someone in a ministerial capacity, or a judicial board of some kind, with at least the authority to see that the laws of this country are going to be enforced, and not be made a fool of as we are at the present time in the seamen's dispute. If we do not want to accept the responsibility as far as I am concerned we are wasting our time in discussing the Act.

Hon. Mr. MITCHELL: Let me get this thought over to you. I think I have expressed the opinion before that I do not believe the labour department should turn itself into a policeman.

Mr. GILLIS: I am not asking you to.

Hon. Mr. MITCHELL: That is all right, but wait a minute. I do not think that is its function. I believe that public opinion will decide in the long run. The whole basis of this legislation is let the sun shine in. Perhaps I should not say this, but I am going to say it anyway. The labour department has probably spent more money on the seamen's union than any other organization in the history of this country. What do you get? You get a split in the organization. You have Sullivan, who admitted he was a communist—he did not admit it to me—and you have people there fighting amongst themselves. It is just like a family fight. It is all right to place the child on my doorstep, but I am not responsible for Sullivan and neither is this government. I am not responsible for the man Mr. Timmins mentioned this morning. Public opinion will in the long run, as it always does, be the factor that will decide the justice of these things. That is the whole basis of the idea of the Act. We know of hundreds of disputes where one side or the other has turned down the report of the board and the department has moved in and settled it to the satisfaction of one or the other. I do not think there is any substitution for suffering for your sins. Even the law cannot be a substitute for suffering for your sins. I think if you make a darn fool of yourself you should suffer accordingly. It is the greatest teacher in the world. I know when I had the responsibility of setting up war labour boards in this country I felt that sooner or later one might be able to establish a system right across this country for the adjudication of wage disputes through the instrumentality of these labour boards, but as you all know both sides were opposed, both employer and employee. It was a part of the anti-inflation campaign, and I think we did reasonably well. When I say "we" I mean everybody.

My view of industrial disputes is that first of all you have got to sit down and look at the economics of the industry. Sometimes the employer is wrong and sometimes the employee is wrong, and if you do not use good common sense, which cannot be substituted for by law, either one or the other gets a licking. I believe this kind of legislation is far better than the legislation they have got in the United States at the present time, and I am offering no criticism of that legislation, but as I have explained before my whole approach to labour disputes has been that I was raised in the school where we did not want too much law. I think the farther you stay away from courts—and give this advice to both sides—the better it is for everybody concerned. The amendment as suggested by you, Mr. Gillis, I think would destroy the very basis of this legislation. I remember reading about Napoleon who had a price control system in France during the Napoleonic wars, and he wound up in the position where he had to make every janitor in Paris a policeman. He could not get enough policemen to watch the people there to keep it on an even keel. This idea of thinking that all you have got to do is appoint enough policemen and you will have a good time and everybody will be satisfied is all wrong. I have never accepted that position and I know my good friend, Mr. Gillis, does not either. Do not forget that the springboard or plank to that situation—and I think you are saying it unconsciously—in any country is the suggestion you are making this morning.

Mr. GILLIS: I am trying to get away from anarchy.

Hon. Mr. MITCHELL: It just depends on what you call anarchy. You know that we used to think the British trade union movement was the most powerful in history of the world. Actually the German was numerically and every other way. As I said the other day they got so close to the state that when Hitler

got his fingers on the ammunition they were no longer free men. They were servants of the state. It is a powerful thing when you can say to a fellow, "if you do not behave you will not wake up tomorrow morning." I have heard that argument in the British trade union congress in 1933. It is the kind of ideology we get in some parts of the continent of Europe and in Asia.

I think section 57 of the bill gives me all the power that is necessary, and I say this sincerely to you that I would not like to be placed in the position of having to prosecute for the employer or the employee.

Mr. CROLL: Section 57 does not give you the power to prosecute.

Hon. Mr. MITCHELL: I do not want that power. I do not want the power to prosecute anybody. Let them prosecute each other. I would rather settle the thing by conciliation.

Mr. MACINNIS: May I ask the minister one question? We are dealing now with the board. I have already said I have an open mind on this matter, although I am inclined to agree with the suggestion made by Mr. Gillis, but section 43 at least puts some obligation on the board to do certain things. I want to know how the board is going to get compliance with the powers that have been given to it here. Let me read it.

> (1) Where the minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section 14 of this Act or with paragraph (*a*) of section 15 of this Act, he may refer the same to the board.
>
> (2) Where a complaint from a party to collective bargaining is referred to the board pursuant to subsection 1 of this section, the board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the board are necessary to secure compliance with paragraph (*a*) of section 14 or paragraph (*a*) of section 15 of this Act.

That is compliance with bargaining. The case we are dealing with is where an employer refuses to bargain.

> (3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

If the parties do not comply, as the case is now, what action is open to the board? Obviously the board must in that instance use the sanctions of the court, the sanctions of the law, because no other sanction can bring an organization to heel in this respect except that sanction.

Mr. SINCLAIR: Mr. Chairman, when I first heard Mr. Gillis' proposition I thought it was probably a very good thing because, as he points out, there are occasions when small unions obviously have not got funds to wage a successful prosecution, even after getting consent of the board, against a large and wealthy employer. If all these prosecutions were to be by unions against employers then I would say this is probably a good thing, but there undoubtedly will be cases where a union breaks the law, a union, for example, led by the communists, as out on the west coast several unions are. In that case if the labour board gives consent—and as far as the average working man is concerned the labour board is the whole labour department—and they then come to court and prosecute the union you know the cry which will be raised across the country by the Murphys and the Dewars, "Here is a fascist government striking at the working man."

It is all very well to say that there will not be much attention paid to that, but three or four such prosecutions under such a law will build up in the minds of the average working man, who does not follow these things too closely, the feeling that the labour department is the enemy of the working man because

they are prosecuting working men. I say when that situation occurs that the entire value of the labour department is gone. I agree with the minister that the best thing to do is to keep the Department of Labour and the board out of such prosecutions and leave the prosecutions, once the board has approved, to the ordinary processes of law, where the aggrieved party prosecutes the party who committed the offence.

Mr. MACINNIS: Would the minister answer my question? How is the board going to compel compliance with the law under section 43, on the refusal of either party to a dispute to take part in conciliation proceedings before the board?

Hon. Mr. MITCHELL: Read section 44, too.

Mr. MACINNIS: Section 43 is quite clear to me.

Hon. Mr. MITCHELL: I will tell you what has been the general practice there up to now. We did not have a section like that under 1003.

Mr. CROLL: Like section 43?

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: Just the first part.

Hon. Mr. MITCHELL: Yes, but the whole thing is new. Section 44 does give me power to put in an industrial disputes inquiry commissioner, and I have often done that. As a matter of fact, I think it worked better than the conciliation board.

Mr. MACINNIS: As it appears to me the proposed section 44 over-rides the provisions of section 43. Section 44 reads:

> 44. (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the minister,

and so on, but section 43 deals exclusively with the matter of conciliation. It lays down the basis for compliance with the request by the board that the parties shall conciliate, and I think it is the pertinent section to the matter we are discussing.

Mr. JOHNSTON: I am not quite clear on section 43 after what Mr. MacInnis has said. Section 43 (3) reads:

> Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

I should like to ask the minister what the procedure there would be. If the company was at fault would the union go to the minister and get consent to prosecute?

Mr. CROLL: The last subsection of that section?

Mr. JOHNSTON: Yes. Suppose they do not comply. What is the procedure then?

Hon. Mr. MITCHELL: Then there is a penalty.

Mr. JOHNSTON: Who imposes the penalty?

Hon. Mr. MITCHELL: The court.

Mr. MACINNIS: Who takes them to court? The board does not.

Hon. Mr. MITCHELL: If you will read these sections together, if people will not sit down one with another and bargain collectively then under section 44 I have the power to put in a commissioner who makes a report to myself before I give leave to prosecute.

Mr. JOHNSTON: When you give leave to prosecute to either side then they must go ahead and do the prosecuting?

Hon. Mr. MITCHELL: I can say this to you. You have to deal with so many cases in a department like mine, but if you remember, during the war we had what we called 4020 which gave me power to put in a commissioner. If a man was discharged for union activity and the commissioner so decided all I had to do was to make an order and then the man had to be put back to work. That is all right under war conditions.

Mr. JOHNSTON: Suppose they do not comply?

Hon. Mr. MITCHELL: It could work either way. I used that as an example. What we provided this clause for was to be able to put in a commissioner who would give me the facts, and the minister will decide whether or not leave to prosecute shall be given. I would think if the commissioner's report was on either one side or the other it would have a powerful influence when the matter was taken before the courts by either the employer or the employees' organization.

Mr. JOHNSTON: You would only give consent to one of the parties to go to court. I understand that is what you do when you get the evidence from the commissioner?

Hon. Mr. MITCHELL: Oh yes, I thought I made that clear.

Mr. JOHNSTON: You would give consent to prosecute?

Hon. Mr. MITCHELL: Yes.

Mr. JOHNSTON: Either the union or the company would have to go ahead and institute the prosecution.

Hon. Mr. MITCHELL: I can say this to you as to this whole prosecution business, that I suppose if I were more of a politician I would say let the board do it, why should you not put the child on the doorstep of somebody else, but I have felt in my judgment, rightly or wrongly, that was a responsibility of the minister. What you have got to make up your mind about is that you do not permit frivolous prosecutions that will clutter up the whole machinery of labour conciliation and administration. These people would come to me more or less as the end of the road before going to court and I could say to one side or the other, "I think I will have to give leave to prosecute." Once you have made that decision on many occasions one side or the other would give way and have a settlement.

When I was industrial disputes commissioner, I sat on many cases similar to that. I would say to one side or the other, "You are quite wrong. Now, in my judgment, the best thing for you to do is to make a settlement." Of course, it is not quite as easy as that. I am just using short phrases. I may say we sat on 53 disputes and only one went sour. I do not think you can substitute putting people in jail for commonsense and decency; that is my whole approach to this matter.

I am not and I never have been scared. I think I never will be frightened of these over-night revolutionaries because they get up and say I should be fired. It is so ridiculous. You cannot do your duty if you are going to listen to every half-wit who comes down the pike. Your judgment is swayed. The only approach possible is to try and be fair and decent to both sides. You cannot substitute the law for that.

Mr. MACINNIS: I want to know what section 43 means. If it does not mean anything, why have it here? If it means something, then let us know exactly what it means. It outlines the duties and functions of the board. Let me read subsection (2) of it again and I shall show you just what this section requires the board to do.

> Where a complaint from a party to collective bargaining is referred to the board pursuant to subsection (1) of this section, the board shall enquire into the complaint and may dismiss the complaint—

If the board does not dismiss the complaint,

—the board shall—

Mr. CROLL: May.

Mr. MACINNIS:

—or may make an order requiring any party to such collective bargaining to do certain things as in the opinion of the board are necessary to secure compliance with paragraph (*a*) of section 14 or paragraph (*a*) of section 15 of this Act.

Now, paragraph (*a*) of subsection 14 and paragraph (*a*) section 15, requires that they bargain. This section has some value or it has not. If this section has not any value, if it does not mean a darn thing, let us not clutter up the statute with it. If it means something, let us know what it means. This section stands by itself and does not refer to any other sections except 14 and 15.

Mr. CROLL: Mr. Chairman, I am sorry, but I did not get the benefit of all the observations which were made. However, on reading the section—what did you say Mr. MacNamara?

Mr. MACNAMARA: Look at section 40, part (3).

Mr. CROLL: Yes, that is exactly what I had before me.

Mr. MACINNIS: Who is going to enforce the law in case of an offence?

Mr. CROLL: Let us see what happens. Section 40, subsection (3) refers to an offence similar to the offence, let us say, which took place in the Seamen's strike. It is an unfair labour practice. They refused to bargain collectively; that is the offence. What does this section say?

40, subsection (3): Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any order of a court, judge or magistrate made under this section or any lawful order of the board is guilty of an offence—

Mr. MACINNIS: What section is that?

Mr. CROLL: Section 40, subsection (3).

—is guilty of an offence and liable on summary conviction to a fine not exceeding $50 for each day during which such refusal or failure continues.

Let me ask this question. Was that section in P.C. 1003?

Mr. MACNAMARA: No.

Mr. CROLL: That is the point I want to make. It is new to me. In my opinion, if we pass this Act the problem we have here solves itself. I think we ought to leave it alone. I remember very well, and some of the members here will remember also that, during the last hearing we had before us some gentlemen from the Manufacturers' Association. I asked a question of one of them, "Could a determined employer break a union by firing the leaders?" He thought the question over and he said, "Yes, by paying the fines in each case and continuing to pay the fines and not reinstating the man." My interpretation of section 40 (3) is that in any strike which comes within the four corners of this Act, the matter is left up to the board and not to us.

Mr. MACINNIS: That is exactly the point we have been arguing.

Mr. CROLL: I do not think this is the place for you to get an answer. After all, you allowed the lawyers to come in and practise. We will interpret this for you in due course, after you pay the fee.

Mr. MACINNIS: I interpret it myself.

Mr. CROLL: I agree with you. The only difference is I can charge a fee for this, you cannot. I agree with this and the deputy minister agrees. It is a new section, and if we leave it alone, I think we will find the board has to carry the thing through.

Mr. MacInnis: It has already been carried, but I do not think it means what it says.

Mr. Lockhart: All we are trying to decide now is whether or not this phraseology suggested by Mr. Gillis is to be included. I believe we have had plenty of discussion here this morning on this matter and we ought to decide one way or the other now.

Mr. Gillis: I am not satisfied we have had plenty of discussion.

Mr. Croll: Do you not think that is what it means?

Mr. Gillis: I think you are wrong and that is why I am speaking again. All subsection (3) of section 40 does is to empower the board to determine that someone has been wrong. After that determination has been made, the board is finished with it. Then, either the employer or the employee has to go to court.

Mr. MacNamara: They could issue an order.

Mr. Gillis: They have not the authority, so far as my reading of it is concerned. All this board can say is that a certain party is wrong and the parties have to go to court with it. All I am asking is that, in section 45, you merely write in the word "board". The part of section 45 to which I am referring definitely states that the enforcement of the Act must be done by employers or employees. I merely want to write the word "board" in there to give the section the effect Mr. Croll suggests section 40, subsection (3) might have. When the board begins to function, I am sure the National Labour Relations Board as such, will have no power to refer the matter to the courts.

Hon. Mr. Mitchell: The other day, you were complaining—

Mr. Gillis: I never complain.

Hon. Mr. Mitchell: —that there was no responsibility on the minister.

Mr. Gillis: No, I do not think I said that. I think you really have dictatorial powers.

Hon. Mr. Mitchell: I thought you said that. However, it is rather nice to get up on orders of the day and say we have given leave to prosecute. I have no objection to that. It may be yourself, you know. Probably it should be done by the board to relieve the House of Commons of the responsibility.

Mr. Gillis: The board is still the creature of the House of Commons.

Hon. Mr. Mitchell: A good many other boards are, too. They have had the daylights panned out of them and were abolished. Then, people said they wished the boards were back again. I think the minister should be responsible for leave to prosecute. He has to make up his mind whether it is frivolous or otherwise. Having received a recommendation from a board or commission appointed by himself, a minister could not do anything else but give leave to prosecute.

Mr. Gillis: To whom are you going to give leave?

Hon. Mr. Mitchell: To either one side or the other.

Mr. Gillis: But you wash your hands of it.

Hon. Mr. Mitchell: I am opposed to setting up any star chamber.

Mr. Gillis: This is no star chamber. You are being big enough to enforce your own legislation.

The Chairman: Your motion, if carried, would have some effect on each section referring to enforcement; that is, from section 39 to section 47. I wonder if it could be of a more general nature. For instance, would you be agreeable to something worded this way: That the responsibility for the enforcement of the Act be placed on the Canadian Labour Relations Board and not on the employer or the trade union as provided for more specifically in section 45, subsection (1)?

Mr. Gillis: That would be perfectly satisfactory to me.

Mr. BROWN: I would call your attention to the fact it is not section 45 which is involved, it is section 46.

Mr. GILLIS: No, I think it is section 45.

Mr. BROWN: All section 45 does is to say that a prosecution for an offence under this Act may be brought against an employers' organization or a trade union and in the name of the organization or union—. In other words, it may be brought against that union in the name of the trade union.

Mr. GILLIS: Or in the name of the board which gives the board authority to institute proceedings.

Mr. BROWN: No, it is a prosecution against the trade union taken in the name of the trade union. In other words, the union is the party against whom the prosecution is taken.

Mr. GILLIS: I want the board to be able to take proceedings against either party.

Mr. CROLL: I think Mr. Brown is right.

The CHAIRMAN: Would you be satisfied to delete from the draft motion I have submitted to you any reference to any section?

Mr. GILLIS: Yes, if you could write this into the Act somewhere, I would be satisfied.

The CHAIRMAN: We would have this motion, then.

> That the responsibility for the enforcement of the Act to be placed on the Canada Labour Relations Board and not on the employer or the trade union.

Mr. CROLL: That is very wide.

Mr. GILLIS: It is specific. There would be no quibbling with that.

The CHAIRMAN: Is that the motion you wish placed before the committee?

Mr. GILLIS: Yes.

The CHAIRMAN: Are you ready for the question? All those in favour of the motion will please raise their hands? Those against?

The motion is defeated.

Now, we come to section 48. Before we reach that, may I say that section 39 is still standing. Shall section 39, as it is, carry?

Carried.

Mr. ADAMSON: Mr. Chairman, with regard to section 48 this is to be carried as amended by adding the words, "registered mail". Mr. Smith's motion has been carried.

The CHAIRMAN: I just called the section to see whether the minister or Mr. Brown had something to say as to the manner in which the motion we have carried could be implemented?

Mr. BROWN: Mr. Chairman, you just substitute the words, "by registered mail" for the words "through His Majesty's mails," and that would cover it.

The CHAIRMAN: Shall it carry?

Carried.

Mr. DICKEY: Was section 44 carried?

The CHAIRMAN: It was carried subject to the principle involved in Mr. Gillis' motion.

Section 53; you will find a reference to it at pages 183 and 184 of the minutes and proceedings.

Hon. Mr. MITCHELL: I think it was Mr. Smith asked that that be amended. We drafted this,

> Any work, undertaking or business, that is within the legislative authority of the parliament of Canada including, but not so as to restrict the generality of the foregoing—

Mr. CROLL: All you did was reverse it.

Hon. Mr. MITCHELL: That is right. That is what you wanted and we have no objection to it.

Mr. ADAMSON: Section (*g*) stands as it is?

Mr. JOHNSTON: Is this a new section?

Hon. Mr. MITCHELL: No, it is an amendment to the first part.

Mr. CROLL: How will it read?

The CHAIRMAN: It is moved by Hon. Mr. Mitchell that the following words in section 53,

—the following works, undertakings or businesses, namely,—

be deleted and the following substituted therefor:

—any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing—

Mr. CROLL: Then read clause (*h*); that is substituted for clause (*a*).

The CHAIRMAN: I assume that these subsections (*a*) to (*h*) are only a recital of what is found in the B.N.A. Act?

Mr. SINCLAIR: Clause (*g*) takes in the Hudson Bay Mine on the Saskatchewan-Manitoba boundary.

Mr. ADAMSON: Let us see what it does before we vote on this. I agree that some simplification should be made to this long list. This amendment would strike out clauses (*a*), (*b*), (*c*), (*d*) and (*e*)—

Mr. SINCLAIR: No.

The CHAIRMAN: We are just deleting the short line in section 53.

Mr. LOCKHART: Will you read it again, Mr. Chairman?

The CHAIRMAN: I will read the first three lines of section 53 as they will be after the amendment is carried, if it is carried.

53. Part I of this Act shall apply in respect to employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing—

And then the subsections remain as they are.

Shall the motion carry?

Carried.

Shall section 53 as amended carry?

Carried.

Now, section 54.

Mr. ADAMSON: Sections 54 and 55 are still standing?

The CHAIRMAN: 54 and 55 are standing. Do you wish to discuss them together?

Mr. CROLL: Mr. Chairman, I made the objection to that originally on the basis that it gave the governor in council a great deal of power. For instance, during the war the National Harbours Board was excluded.

Some HON. MEMBER: Included.

Mr. CROLL: I am informed that the National Harbours Board was one that was included, but my point is that authority is given to exclude Crown companies. I do not see any reason for that. It gives them authority, in fact, under certain circumstances, to almost nullify the Act by excluding anyone they like. My point is that exclusion is a matter of legislation and should not be in the hands of the governor in council. This is an Act passed by the parliament of Canada and should so remain. I move to delete it.

Mr. GILLIS: I second your motion.

Hon. Mr. MITCHELL: Before this is deleted may I say something about the principle involved. There are certain things for which the government must take responsibility, such as the plant at Chalk River. Some time when parliament is not in session you cannot tell who might get into Chalk River. Then you have such bodies as the National Film Board and the National Research Council, which at the moment must be excluded from the operation of this section because their employees are civil servants. I think this had better stand as it is.

Some HON. MEMBERS: Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 55.

Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 67. The committee expressed the desire of letting this section stand while we were considering clause (*b*), subsection 1 of section 67. A reference in the Minutes of Proceedings is that it may be found on page 199. Mr. Croll will have the floor on section 67.

Mr. CROLL: If the other falls, section 67 falls also.

The CHAIRMAN: Does section 67 carry?

Carried.

Now, gentlemen, we revert to section 9.

Mr. CROLL: Mr. Chairman, my objection to section 9 was made at the time we were previously discussing it and I asked the minister the following question:

> What happens in the case of a union that is certified and is later found to be a company union?

My submission is that there is nothing in the Act at all that gives anyone any authority to deal with it. I have looked through the Act again since then, and so I am offering to the committee this amendment: That section 9 have a subsection (6) added to read as follows:

> That the Canadian Labour Relations Board shall have power to require an employer to dis-establish an employer formed, influenced or dominated organization.

The purpose of this amendment is to drive out of existence all company unions. We have already passed on the principle, but that is the method of doing it:

> That the Canadian Labour Relations Board shall have power to require an employer to dis-establish an employer formed, influenced or dominated organization.

That is a matter for the Board to do. It is something that is necessary, and, as I say, there is no provision in the Act for doing it at the present time.

Mr. JOHNSTON: Mr. Croll, is your point that a union could be properly formed and after it was so formed it could come under the domination of the company?

Mr. CROLL: I am not in a position to say when it might come under the domination of the company, but if the Board were to find out that it did become a company union it could do something about it.

Mr. JOHNSTON: Have you ever heard of any such cases?

Mr. CROLL: Yes.

Hon. Mr. MITCHELL: I can say that I was through that sort of thing myself a good many years ago. When I came back from the last war, the firm for which I worked had a company union.

Mr. MacInnis: You do not like it?

Hon. Mr. Mitchell: I shall tell you about it. I ran against the superintendent of the company for a place on the executive of the company union, and from then on it was a trade union. You have to be careful in a situation of that sort, where you are discussing the formation of a union. In many instances the men go to the employer and the employer assists them in forming a trade union. In this connection you might start a first-class jurisdictional dispute because another movement might come along and say that an employer helped form the local union of, say, mine workers, and that is illegal under the Act. I do not think that Mr. Croll's suggestion is necessary, because the Board, after listening to the evidence, cannot give bargaining rights to a company union.

Mr. Lockhart: I would suggest to Mr. Croll that he look at section 61.

Mr. Croll: What I am saying is that if it is found at some later time that the union is a company dominated one, that the Board should have some authority to deal with the situation.

Mr. Dickey: Do you suggest that the Board might make a mistake and find it out later on?

Mr. Croll: I intended to use the word "fraud" in there, but I thought it was a rather harsh word to use. I do not see the word "fraud" used throughout the whole Act and therefore I put in the words "influenced or dominated." However, I am not sticking on this form. What does section 61 say?

Some Hon. Members: Clause 2.

Mr. MacInnis: I believe that Mr. Croll is asking that they give an order that a union may be disbanded, if it is found out that they are a company dominated union.

Mr. Croll: I see here that it is a matter of certification, but I went further than that and said to dis-establish. I said, "to dis-establish an employer formed, influenced or dominated organization."

Mr. MacInnis: Would that mean that it would throw them out and they would have to start all over again?

Mr. Croll: No.

Mr. Johnston: That is what you do in the certification.

Mr. Croll: I am talking about dis-establishment.

Mr. MacInnis: As I see it they cannot bargain under this Act unless they are certified. They are not an organization under this Act for bargaining purposes unless they are certified under this Act.

Hon. Mr. Mitchell: The point is, how can we say to a certain group of people that they cannot get together and form an organization? We have not yet said that to the communist party. Some people do not like Free Masons and some do not like Knights of Columbus, or what have you. I do not know what would happen if you were to tell people that they could not associate, one with another, under the law.

Mr. MacInnis: Might I ask Mr. Croll whether perhaps he has not got his amendment in the wrong place? Should his amendment not be to section 61 instead of section 9, so that it would come under the powers for all the board?

Mr. Croll: I stood section 9, and I did not stand section 61. I originally intended to put it in there.

Mr. Lockhart: Is not what Mr. Croll is suggesting included in section 61; that is, to all intent and purposes?

Mr. Dickey: I think Mr. Lockhart is right except that there is the important element included in Mr. Croll's motion, that the Board have the power to dis-establish the union.

Hon. Mr. MITCHELL: With the set-up of the Board as it is where representatives of the employers and employees are both heard, I think it could be decided whether an organization is a company union or not. I think you have all the necessary power to deal with company unions in section 9 as it stands. I do not want to go back on what I said about dis-establishment. I do not know where you are going to do it. I suppose you could do it in Russia quite easily. I do not see what we could do here. Mr. Croll, you cannot say anything too strong for me so far as company unions are concerned. I think they have had their day and they have had their day in court. I do not know of any company unions in Canada now. I have heard that some trade unions have been accused of being company unions but that is a matter of opinion.

Mr. CROLL: I think that section is to be found in two provincial Acts in the Dominion now. I think it is in the Nova Scotia section and also in the Saskatchewan section. I can give you the Saskatchewan section.

Mr. LOCKHART: It is only in Saskatchewan.

Mr. SINCLAIR: What is the difference between your section (6), Mr. Croll and the suggestion of Mr. Lacroix? It is exactly the same thing.

Mr. CROLL: It is a company dominated union and not a trade union.

Mr. SINCLAIR: When you take away certification, when whatever rights and privileges the union get under the Act are removed, all you have got left is an association of employees. Still in our country it is not wrong. We may have company unions and it is not wrong. If they are foolish enough to do that they can go ahead. I think your resolution is exactly on the same plane as the bill to kill the L.P.P. party, to disestablish them. It undoubtedly would be a desirable end result but we simply cannot do it under our set-up.

Mr. CROLL: I do not want to dis-establish anybody's rights, who comes within the four corners of this Act.

Mr. SINCLAIR: These people are not within the Act once certification is removed.

Mr. CROLL: It may be they have no right to once their certification is removed, but I am not sure that is just correct because they can continue on without certification and act in the capacity of a trade union and appear to be a trade union and yet they are a company union.

Mr. SINCLAIR: Whatever bargaining they do cannot be backed up by any official of the Act.

Mr. CROLL: You might have an organization coming within the four corners of the Act.

Mr. GILLIS: You are liable to disestablish the engineers. Under Mr. Croll's amendment engineers who set up their professional associations to bargain for them could be dis-established by the board.

Mr. CROLL: Not if they are not company dominated.

The CHAIRMAN: Order, please. Mr. Croll, is it still your intention to tie up your motion to section 9 or would you prefer to have the committee pronounce itself on the principle involved?

Mr. CROLL: I think it is worth while for the committee to pronounce itself on the principle rather than on the section.

Mr. MACINNIS: That is a good point.

The CHAIRMAN: You have before you the motion by Mr. Croll that the Canada labour relations board shall have power to require an employer to disestablish an employer formed, influenced or dominated organization. Are you ready for the question?

Mr. MacInnis: The chairman's suggestion is a very good one. If we accept the principle then those who do the drafting will insert it where it properly belongs.

The Chairman: All those in favour of the motion will please raise their hands. Those against? I declare the motion defeated. Is subsection 5 of section 9 carried?

Carried.

Section 11 was also allowed to stand for the same reason as the previous one. Shall section 11 carry

Carried.

We now come to section 18 which is referred to at pages 125 to 131 of the minutes and proceedings and evidence.

Mr. Croll: I have no objection to it.

The Chairman: Is the section carried

Carried.

Section 19 was allowed to stand for the same reason. Is section 19 carried?

Carried.

That covers our agenda for this morning, gentlemen. The meeting will stand adjourned until next Tuesday morning.

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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INCLUDING THE REPORT TO THE HOUSE

TUESDAY, MAY 25, 1948

WITNESS:

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

REPORT TO THE HOUSE

WEDNESDAY, May 26, 1948.

The Standing Committee on Industrial Relations begs leave to present the following as a

SECOND REPORT

Your Committee has considered Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes, and has agreed to report it with amendments.

A copy of the printed minutes of proceedings and evidence is appended.

All of which is respectfully submitted.

PAUL E. COTE,
Chairman.

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MINUTES OF PROCEEDINGS

TUESDAY, 25th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Charlton, Cote (*Verdun*), Croll, Dickey, Dechene, Dionne (*Beauce*), Gillis, Hamel, Johnston, Knowles, Lockhart, MacInnis, McIvor, Maloney, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Skey, Timmins.

In Attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman filed a letter, dated 5th May, from the Canadian District, American Institute of Electrical Engineers, relative to the exclusion of engineers in Bill No. 195.

Clause 4

By unanimous consent, Mr. Knowles moved,

That Section 4, sub-section (2) (*b*) be amended by changing the period after the word "Act" to a comma, and adding thereafter the following words: "and without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act".

And the question being put, it was resolved in the negative.

Consideration was given to Mr. Croll's amendment adopted 18th May, proposing that the following be added as sub-clause (5), viz:—

Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

Mr. A. H. Brown was called. He suggested that this provision would be more appropriate if included as an amendment to Clause 6.

The Committee concurred.

Clause stood as carried initially.

Clause 6

Mr. Brown recommended the following as sub-clause 3:

Upon request of a trade union entitled to bargain collectively under this Act on behalf of a unit of employees and upon receipt of a request in writing signed by any employee in such unit, the employer of such employee

shall, until the employee in writing withdraws such request, periodically deduct and pay out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee; and the employer shall furnish to such trade union the names of the employees who have given and withdrawn such authority.

Proposed amendment carried.

Clause, as amended, carried.

Clause 2 (i) (i)

By unanimous consent, Mr. Skey moved, That the word "or" be inserted after the word "capacity" in line 4.

Discussion followed. By leave, the said amendment was withdrawn.

Mr. Adamson moved that all the words after "capacity" in line 4 be struck out.

On the question being put, it was resolved in the affirmative.

Clause, as amended, carried.

Clause 1

Carried.

Preamble

Carried.

Title

Carried.

Ordered, That Bill No. 195, as amended, be reported to the House.

The Chairman thanked the members for their co-operation, courtesy and attention throughout the sittings of the Committee. The Honourable H. Mitchell and Messrs. Adamson, MacInnis, and McIvor spoke briefly in reply.

The Committee adjourned at 12.20 o'clock p.m. to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 25, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: First of all, gentlemen, you have received this morning a printed copy of the brief of the International Nickel Company of Canada which was distributed to you in mimeographed form on the 11th of May. In the second place, I wish to file a communication from the American Institute of Electrical Engineers.

Mr. CROLL: What do they say?

Mr. ADAMSON: Just out of curiosity, are they in favour of incorporating engineeers under the Act or not?

The CHAIRMAN: Well, as this was not a Canadian national body I did not make any extensive analysis of it.

Hon. Mr. MITCHELL: We have got enough trouble running our own affairs.

Mr. MACINNIS: What does it say on superficial analysis?

The CHAIRMAN: The writer of this communication is Mr. Geiger of whom we have heard already as an executive of the Radio Engineers Association. This letter is in line with what Mr. Geiger has already submitted to the committee.

Mr. ADAMSON: He wants engineers included?

The CHAIRMAN: Yes.

Hon. Mr. MITCHELL: I think he had better take a crack at the Taft-Hartley Act.

The CHAIRMAN: Our next order of business, gentlemen, is a request by Mr. Knowles for the reopening for purposes of discussion of section 4, subsection (2) of the bill. I understand that Mr. Knowles has distributed to the members the motion that he wishes to make, but the question now is on his request for leave to reopen the discussion on section 4, subsection (2). I have already ruled that in a case like this he requires the unanimous consent of the committee. Is there any discussion of this before I put the question?

Mr. ADAMSON: May I say one word? I had not known that the first section of this had carried. I consider it one of the most important sections of the bill—I am speaking purely personally now—and certainly I had intended to move an amendment with regard to the definition of confidential employee. Certainly it was passed without my knowledge, and I was very definitely anxious to do something on that first clause. That is purely my own personal opinion.

The CHAIRMAN: You are referring to subsection (1)?

Mr. ADAMSON: I am referring to subsection (1), yes, of 4. I will be guided by the committee.

Mr. KNOWLES: May I say again, as I said a week ago, that the sole basis on which I ask the committee to give whatever consent is necessary is that it was impossible for me to be here the day the clause was before us. It happens I am a member of a committee that may have some value or may not, the committee on the revision of the rules of the House under the chairmanship of Mr.

Speaker. It was holding a meeting that day, and I simply had to be there. I had thought that clause might not be reached that day. That is the only reason. I asked it on the basis of courtesy.

Mr. LOCKHART: I think we want to be fair to every member of the committee. There may be other sections where it may be felt that they should be reopened for reconsideration. Personally I would be in favour of Mr. Knowles being allowed to reopen the matter. We have not seen a copy of his amendment. You said, Mr. Chairman, that we had been furnished with copies. I do not know what Mr. Knowles has in mind. If it is something diametrically opposed to the general principle of the section that would probably alter our opinion, or my own opinion, anyway, but I think if we had a copy of what Mr. Knowles is proposing—

The CHAIRMAN: If you will allow me, Mr. Lockhart, you will find the proposed amendment of Mr. Knowles at page 222 of the minutes of proceedings and evidence. That is the last one.

Mr. KNOWLES: I have copies here, too. I have enough to pass around.

Mr. TIMMINS: I think we will have to set a policy here. My friend, Mr. Dickey asked that section 2 (i) be reopened, and I joined with him in asking that that section be reopened in order that we might consider it, but you ruled that we were not in order, and it was passed by. Now we come to another section and it is asked that it be reopened in order that some new amendments may be considered. I suppose there will be others who will have other sections they would like to refer back to. I think in fairness to those of us who are interested in certain sections we should rule one way or the other. Personally I have not any objection to Mr. Knowles' amendment being voted on but on the other hand if he is allowed to have it reopened I am going to be opposed to it being considered for the simple reason he has had a separate bill in the House last year and again this year, and there are other features. Another thing is the company concerned is not allowed to make representations here, so that it is hardly pertinent we should deal with the matter. I am not speaking of the merits of the matter, but I do think we ought to have a ruling one way or the other as to whether or not we will reopen in respect of these matters.

The CHAIRMAN: Before I give you the floor, Mr. Dickey, if you will allow me, I should like to say to Mr. Timmins that I am trying to follow the ruling which I have given. I have based that ruling on the practice in the committee of the whole House. I think if such a proposition as that which we have before us this morning should come up for decision by the chairman of the committee of the whole House he would have to request the unanimous consent of the committee before reverting to a section of a bill which has already been carried. That is my conviction. That is why I have given that ruling, and now I have to abide by the ruling which I have given.

Mr. DICKEY: That is more or less what I want to say in fairness to you, that you had turned down my motion on the principle of unanimous consent, and in that instance unanimous consent was not given, presumably for very good reasons. I felt personally it was somewhat capricious, but in any event there was objection by certain members of the committee to reopening and unanimous consent was not given. If the committee wants to give Mr. Knowles unanimous consent I am certainly not going to stand in his way, but it may be that some other members of the committee will want to reopen other sections and will ask for unanimous consent, and I hope if that is the case the same courtesy will be shown to them as was extended to Mr. Knowles.

The CHAIRMAN: Are you ready for the question, gentlemen? Is there any opposition to the request by Mr. Knowles, any one opposing his request? Mr. Knowles, you have the floor.

Mr. KNOWLES: Mr. Chairman, as the members of the committee know I have been interested for some time, and many others are similarly interested, in protecting the pension rights of railway employees and others who might in the future be involved in a strike or a lockout. You all know that my interest in this matter stems from the experience of the employees of the Canadian Pacific Railway who were involved in the Winnipeg general strike of 1919. However, I wish to make it very clear, and I am sure that every lawyer in the committee will back me up, that what I now propose has absolutely no retroactive effect, has absolutely no bearing on the case of the men of 1919. My attempt now is to prevent that same sort of experience from being repeated in the future.

Mr. Chairman, you and the members of the committee are all aware of the fact that I have tried on two occasions to effect this kind of protection by means of a private member's public bill in the House. Last year that bill, Bill No. 24, was not given second reading, but rather the subject matter thereof was referred to this very committee. We had some discussion of it and passed a pious resolution to the effect that the principle commended itself to us but, of course, we were unable to take any other action. However, we did have before us the Canadian Pacific Railway, the Canadian National Railways and the New York Central, the Minister of Transport, and the representatives of the Railway Brotherhoods, all of whom gave their views with respect to that bill.

I want to come back in a moment to some of the objections that were raised at that time, along with other objections that have come up again this year. A few weeks ago you will recall I presented another bill this year, Bill 6, which is the same as Bill 24 of last year. We had a discussion on it in the House for one hour, and it is now down near the bottom of the list. The objections that were made in the committee last year were in part repeated in the hour's discussion we had in the House the other night. I have sought by means of this amendment to section 4, subsection (2) (*b*) of Bill 195 to meet literally all the objections that have been raised against my other bill. May I take them seriatim.

In the first place there was no objection I was glad to have brought out. Mr. Maybank brought this out in the House, namely, if this is a good idea why restrict it only to railway employees? Why not extend its protection to as many employees as possible? In other words, Mr. Maybank said in the House on the 4th of May, and others said last year, and in this committee, and others have said from time to time, that this is the kind of thing that ought to be not in the Railway Act but in the federal labour code. So I am very happy to meet that objection and propose that instead of Bill 6, which I would be glad to withdraw, that we write this provision into the labour code.

On the other hand, there were some negative objections, and the most pointed and persistent one was made by Mr. Arthur Smith of Calgary West, an objection which I fully understood but felt it difficult to meet in my Bill No. 24 or my Bill No. 6. I am able to meet it categorically in this amendment. Mr. Smith's objection to my Bill 6 was that it seemed to provide protection of the pension rights of railway workers even if they were out on an illegal strike, even if they were out on a sympathetic strike. Whatever I may think about that I had to face Mr. Smith's objection, and there are others in the committee who have that objection. I felt it was impossible to meet that in the terms of Bill 6 because of an illegal strike not being defined, but when you come to try to write this protection into the labour code it is quite a different matter and that objection is quite easy to meet. My suggestion is that if we provide protection of the pension rights of those out on strike under Bill 195 then we provide clearly only for those who meet the conditions of Bill 195. In other words, if you write this amendment into Bill 195 it protects the pension rights of people who go on strike only if they go on strike after they have met all the conditions of Bill 195 or only if it is a legal strike. In that case, it would not help the strikers if their situation were identical with the

situation of the C.P.R. employees in 1919. Theirs was a strike which was entered upon against the wishes of their superior officers. Theirs was also a sympathetic strike.

I submit I have gone all the way in meeting Mr. Smith's objection and I think his colleagues on this committee share that objection; perhaps others share it as well.

Now, the other major objection to bill 24 of last year was that stated by Hon. Mr. Chevrier on behalf of the pension fund of the Canadian National. It was also stated by the Canadian National, by the Canadian Pacific and by the New York Central. Their objection was that my bill went further than strikes and lockouts and provided for the protection of pension rights in the case of dismissal followed by reinstatement. I think the members on the committee last year will all remember the argument which the railways advanced, that they now reinstate some men who have lost their rights on the railway without reinstating their pension right. I do not like the argument, but I am stating it. The argument was that, in some of these cases, if the company knew that on reinstating a man they would have to reinstate his pension benefit they would not reinstate him because it would upset the actuarial soundness of the plan. My present amendment does not bring that in at all.

I think, Mr. Chairman, I have covered the three major criticisms which have been made of my previous proposal: (*a*), Mr. Maybank being the spokesman for it, that it did not go far enough in that it covered only railway employees whereas it should cover all employees who come under federal jurisdiction; (*b*) there were objections made most pointedly by Mr. Arthur Smith that the protection should be limited clearly to a legal strike; (*c*) there were objections by the railway companies to the effect my bill went too far in respect of reinstatement following dismissal. Having stated that, I feel my amendment in its present form meets all these objections, may I say a word or two about it on the positive side.

My proposal is that this be effected by amending section 4 which deals with unfair labour practices and, in particular, that it amend subsection (2) (*b*) which reads as follows, abbreviating it;

> No employer shall impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act.

Now, I would point out that in the case of one company—I will mention the Canadian Pacific Railway because I know the situation there—if a person becomes an employee of the Canadian Pacific Railway under the age of 40, he must become a member of the pension plan. It is compulsory for all those employees under the age of 40. I am glad of that. I am not objecting at all, but I am pointing out that is one of the conditions of employment with this particular company. No doubt it is true of other companies as well which will come under federal labour jurisdiction. But also, in the Canadian Pacific pension plan, there is still the old clause 8 (*a*) which leaves it optional with the pension board which is 4 to 3 company and employees, to cut people off their pension right because of participation in a strike. It does not say it will be done. I hope, in society, we have moved such a long distance forward it would not be done under any condition, but the power is still there as a threat. The men in the Canadian Pacific in particular feel it hangs over their heads and it is a deterrent against exercising their rights under this Act.

Hon. Mr. MITCHELL: You mean the right to strike?

Mr. KNOWLES: The right to strike after they have complied with all the provisions of this Act. I am not trying to make any case for a sympathetic strike or an illegal strike.

Hon. Mr. MITCHELL: You are making a pretty good case for it.

Mr. KNOWLES: Any kind of strike? I am glad to know the minister thinks I could make a good case if I were seeking to do it. I know the temper of this committee. I am trying to get this committee to do something which practically all members have said they want. Practically all members have agreed with the principle of the legislation I sought to introduce on other occasions. They have made certain objections and I contend I have met them all. What I am asking for is implied in section 4, subsection (2) (*b*). I admit an employee's organization might have a difficult time establishing that in court, but it is implied.

> No employer shall impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act.

One of those rights is the right to strike after you have complied with all the conditions laid down in this Act.

If any employee of the Canadian Pacific knows it is possible for him to lose his pension rights if he goes on strike after complying with all the provisions contained in this Act, I submit that has the effect of restraining the employee from exercising that right. I have had a good many letters from railroad lodges recently and also last year when there were strike votes being taken with regard to this very matter. It is a deterrent. Some members might think that is a good idea, but it is hardly consistent with our passing an Act which does provide very definite rights.

My proposal is very simple. I contend it is implied in section 4, subsection (2) (*b*). I simply suggest we add these words,

> And without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

I ask you to note the very definite limitations which circumscribe that protection. This protects only those rights to which the employee is otherwise entitled; in other words, only those rights which he earns by meeting all the conditions of the pension plan. They are protected only when he ceases to work as the result of a lockout or strike and only when he is dismissed contrary to this Act. If an employee is dismissed properly within the provisions of this Act, he does not get the protection. If an employee puts himself beyond the pale of this Act by going out on a sympathetic strike or striking before the conditions of this Act are met, I submit he would not get the protection of this clause. If any members have any doubts on that score and feel it would be clearer if after the words, "any lockout or strike", some words were added to the effect, as provided in this Act, I am perfectly willing to accept that. I believe that is implied anyway. If Mr. Lockhart feels that has to be put in, I shall be glad to put it in. The only reason I did not do so was to keep the wording simple.

I may say I consulted the highest authority around this building when it comes to drafting legislation. You will note, also, those words are taken from another place in the Act itself. On page 3 of the bill, subsection (2) reads,

> No person shall cease to be an employee within the meaning of this Act by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

Now, the concluding words of my amendment are precisely those words. I am willing to submit to any change in the wording any member feels is necessary to make it definitely conform to what the committee wishes. However, I do submit I have met the objections which have come from all sides. I have boiled this down to the basic principle which all members have said they support.

Mr. McIvor: I should like to ask a question. If this amendment is not passed, is there anything in the Act which will protect men and allow them to have their pension if they go out on strike? If these men do go out on strike, do they lose their pension?

Hon. Mr. Mitchell: Mr. Chairman, that is the point. Mr. Knowles says this whole question was raised by an illegal strike in Winnipeg in 1919. I knew some of the actors in that show. I know some of the directions given by the trainmen to members of their organization. I know the steps which were taken by that organization because they broke their contractual obligations. They were prepared to bring men in to take their places. I still go back to what I consider the fundamental point in this type of legislation. I do not think you should try to write into the law something which is taken care of by collective bargaining.

It may be all right for a rich corporation like the C.P.R. or the C.N.R. which is backed by the state, but you cannot guarantee the pension rights of these people right across the board after a lockout or a disastrous strike because the industry may go bankrupt in the process; that has happened quite often.

Now, I think this is the soundest thing to do. The C.P.R. and the C.N.R. because of their experience, put all the necessary money into the fund to pay pensions. You have a pension fund which is administered jointly by the railways and their employees. I consider that to be the best way to administer a pension fund. I think this idea, Mr. Chairman, of writing into legislation things which are normally covered by negotiation and collective bargaining is bad legislation; that is my sound view. I am convinced of that. I should not like to lead these working people up a blind alley and sandbag them. I am not saying my honourable friend is trying to do that. I should not like to guarantee them something by law which, at the time it is placed in the statute books, you know you cannot guarantee them. I think it is far better for the people concerned to sit down and work out these different kinds of pension schemes, some on a contributory basis and some on an un-contributory basis.

Let me say this: I think we are rendering a disservice to the working people of this country by the passage of such legislation. I believe that for this reason; faced with legislation of this kind, I think the average employer would be a little diffident about establishing a pension plan when he knows he is tied up by law, even if he has a disastrous strike or a lockout. I think he would be very diffident towards establishing a plan of that description.

Take the case of the Ford people who worked out a pension plan in connection with that great industry in the United States and Canada. The employees, in their wisdom, turned it down. It was going to be administered jointly by the employers and the employees. I think that is the soundest method of working out a pension plan, with the employers on one side and the employees' organizations on the other.

Mr. MacInnis: I just want to say a very few words in support of the amendment. I am sorry that the minister gave it a wrong twist. There is nothing in the amendment moved by Mr. Knowles to indicate, in the slightest way, we are guaranteeing pensions under all circumstances. There is absolutely nothing at all to indicate that and it is the most far-fetched argument I have heard during the discussions in this committee which, by the way, were carried on on a very high plane.

The amendment provides for protecting the rights to pension in case of a strike. Well, a strike under this Act is a legal strike as is made quite clear in section 21 of this Act which provides the conditions under which a strike may take place.

What Mr. Knowles is trying to do is to make sure there will not be other factors injected which would constitute an unfair labour practice. After the employees have fulfilled all the conditions, an employer should not be able to say, "If you go on strike now you will lose your pension rights." Surely, an

employee who is put in that position because of his pension rights is much better without a pension. Perhaps I should not say this. In any case, it has not much weight since I have not the legal training to make it important, but I believe the section as already drafted indicates that if an employer were to even suggest you would lose your pension rights if you went on strike it would constitute an unfair labour practice under section 4 of the Act.

In order to make sure or, as a lawyer would say, to use an abundance of caution, we should include this section. It is very simple. Let us be reasonable about it. The section means exactly what it says. It comes within the terms of this Act and the terms of this Act make provision for a legal strike after the employees have complied with the provisions of the Act. The employees are then on a legal strike and there should be no other prohibition at all.

Mr. CROLL: Mr. Chairman, I think it has been covered. It strikes me there is no question but that the bill provides for adequate facilities for anyone to strike if he complies with the Act. There is no question at all but that lockouts are illegal. Now, there is a third question, the question of dismissal.

I have just been looking at section 40 of the Act which provides for reinstatement at such date as, in the opinion of the court or judge, circumstances may warrant. Now, under those circumstances, subsection (*b*) of section 4 means exactly what this section intends to convey. The only thing it does, I agree with Mr. MacInnis, is to clarify it and tie it down. Once upon a time, we bargained for wages and hours and employment; today, one of the things for which we usually bargain is a welfare fund or a pension fund. It is becoming part and parcel of the contract or of the agreement; sometimes it is on a contributory basis and sometimes on the non-contributory basis, but it is far more general than people ordinarily assume. It applies to small as well as large industries. It is one of the inducements to employees to go into an industry. Most of them will want to know where they are headed for and what they have to look forward to in ten or twenty years time. If we can in any way clarify their rights—and I think they are all there in subsection (*b*)—I am all for it. However, I think this is well covered under the Act and it can well be construed in the four corners of this Act. I do agree with Mr. Knowles that his amendment does clarify this matter, and it expresses in one paragraph exactly what this Act expresses in the whole. I do not see any reason why we should object to it.

Mr. JOHNSTON: Does the minister agree with Mr. Croll that it is covered by subsection (*b*)?

Hon. Mr. MITCHELL: I do not think you can give a guarantee.

Mr. KNOWLES: This is not a guarantee.

Hon. Mr. MITCHELL: I think this is unfair. I am not suggesting that any of the members who have spoken to it are unfair, but I think it is unfair to guarantee something by law that you know very well can not be done under certain circumstances. I think you are giving the average working man the wrong steer when you are doing that. I think I know what is in their minds, it is the big corporations. I have seen so many of these things go on the rocks in the past. Take, for instance, the trade union movement. In my own organization a good many years ago they established an insurance scheme inside the organization and at the conference I said—I don't know why I said it—"You are misleading the membership because this is not actuarially sound." It turned out that way. I sincerely believe I would rather have it operated the way it is in the C.N.R. and the C.P.R. and other industries in this country, where grown-up and honest men sit around a table and administer after an agreement with one another. You cannot guarantee this.

Mr. DICKEY: Mr. Chairman, I should just like to say a word. I agree with the minister in what he has said about the impossibility of enacting in this Act any kind of a guarantee for a pension scheme. I do think both Mr.

Knowles and Mr. MacInnis have put their fingers on the real objection to our accepting the amendment by pointing out the provision of subsection 2 (*b*) of this same section. My approach to this is that we are to all intents and purposes enacting new legislation. The inclusion of a clause in legislation beginning with the words "and without restricting the generality of the foregoing" in certain circumstances such as this, generally is an amendment to old legislation which is attempting to deal with a particular difficulty that has arisen. It seems clear to me that the particular difficulty that Mr. Knowles has in mind—and I think we are all in sympathy with it—is a difficulty that arose in 1919 when this legislation was not even thought of. My opinion is that the rights of an employee who has not participated in anything illegal under this act are fully protected.

Mr. JOHNSTON: Are his pension rights protected?

Mr. DICKEY: I would say so.

Mr. JOHNSTON: The committee does not think so.

Mr. DICKEY: I would say they are fully protected insofar as this legislation can go without raising difficulties in the minds of people who are bound to be involved, which will, I am quite sure, restrict the expansion of proper plans for the protection of workers, particularly in small industries. Mr. MacInnis made reference to a well-known and well-termed phrase, "abundance of caution". Lawyers sometimes are criticized for applying "abundance of caution" too often and too severely, but I do think it is wise to go carefully. My frank opinion is that due regard to the term "abundance of caution" should be given in this instance to see that we do not spoil an already satisfactory provision of the Act by putting in something that will have a restricting influence to the establishment of a proper pension fund.

Mr. SINCLAIR: I should like to support this amendment. I find it impossible to agree with the minister. All this does is to protect the rights of men who may be on strike. I would say one of the greatest deterrents an employer could possibly have to restrict the freedom of his men is to say, "You may go on strike, but I will fix you. You will not get your pension". In such a case the man would not go out on strike. The minister suggested that this might result in bankruptcy. I do not think that statement shows a very good knowledge of how the ordinary company pension scheme works these days. The money is not put into the consolidated revenue of the company, but in a separate trust fund. This is so, even in companies of a national scope. Each year out of their revenue they put aside the necessary money for the employees' pensions. A long strike may put a company in a state of bankruptcy, but not the trust fund. In connection with most of these small companies, these funds are invested in Dominion government annuities by those men. After listening to Mr. Knowles this morning, I would say that his explanation has gone a great way in meeting the objections which were made last year. I think this amendment states very clearly what is really meant and it will give the men a better idea of what their rights are. If you are going to say that this should be left to the good judgment of the employers and employees, let us go to the full extreme and say, "Let us not have anything here at all".

Hon. Mr. MITCHELL: I appreciate what you say, but in my judgment—and it is a matter of judgment, which I am frank to admit—instead of rendering a service to the working people in this country you would be rendering a disservice by adopting this amendment. I gave my reasons for taking this view. In some countries of the world in connection with bargaining conditions, the bargaining is done by the state. That is the danger in my judgment—getting the state mixed up in matters of this kind. The Wagner Act swung too far to the left and the Taft-Hartley, in the opinion of some people, swung too far to the right. Then you have what took place in Queensland in Australia, and now what is taking place in New Zealand. That is why I say there is no substitution for collective bar-

gaining between grown-up men. You cannot pass a law to stop it from raining or to stop a firm from going bankrupt because of an industrial dispute. Somebody will say that that is a club over your head. No one can accuse me of being a friend of the C.P.R., but I think the C.P.R. would not hold a club over anybody's head. Mr. Chairman, that is my view and it is based on what I consider to be taking a long view in the interests of the people whom we are trying to protect under this legislation.

Mr. McIvor: Probably I am putting it too strongly when I say that I know as much about the 1919 strike as does anybody in this committee, but the strike was very popular up to a point until the strike committee made their mistake in going too far. But the thing that has bothered me ever since is that hundreds of men were denied their pensions after this strike, and, it seems to me, through no fault of their own except that they voted for the strike. If the minister says that this applies from now on, that makes a big difference. We are not going back. I have some reason to think that the big corporation has not always a lot of heart in it for the men with the small income. That is my attitude, and if there is anything in the Act to protect the men who go out on strike to receive their pension, that is all right; but if there is not, then I would support this amendment because it clarifies a good deal.

Mr. MacInnis: I should like to discuss two or three points that have been raised in respect to this motion. It has been suggested that to put in this amendment we might be restricting the section as it now stands. I would say that the very wording of Mr. Knowles' amendment prevents anything of that kind. It makes it wider, "without restricting the generality of the foregoing." The last time the Minister of Labour was on his feet he seemed concerned about the state becoming, in time, involved in collective bargaining. There is nothing in that argument. What are we doing now except bringing the state into collective bargaining? If a situation were to develop tomorrow to necessitate the state coming into it to a greater extent, then the Minister of Labour would bring that legislation here. If he did not do it that way he would do it by order in council. That is what he is there for. Now, judges when dealing with a case of this kind will try and get the opinion—I think it is usually done—of the legislators. From the statements of the minister this morning it would seem implied that he does not believe that employees who go out on strike have any claim to their pension which means in other words that the employer may hold this as a club over them.

Mr. Croll: I do not think he said that. Let us not get on record something he did not say.

Mr. MacInnis: I am quite willing to leave it to the record. If he did not say that he came so close to it that it could be read into it.

Mr. Croll: That would be unfortunate.

Hon. Mr. Mitchell: Mr. Chairman, I can clear that up right away. That was not my intention and I am sure my good friend Mr. MacInnis knows that. My friend knows about his own organization in the United States under the Taft-Hartley law. If you want a yardstick for sensible labour relations with regard to both employers and employees, I think this country stands out in bold relief more than any other country. I want to say, Mr. Chairman, that no one wishes for the establishment of this pension plan more than I do myself, but Mr. MacInnis will remember when his organization would not think of taking a pension plan of an employer. They said, "We will establish our own pension plan and our own insurance plan. Give us the money in the pay envelope. That is where we want it." But, to guarantee, which this does in effect, everybody a pension for life—

Some Hon. MEMBERS: No, no.

Hon. Mr. MITCHELL: All right, give me a chance now. To do this would be unfair to the average employee. That is my view and I hold it strongly. You cannot write into legislation something that should normally be directly negotiated between employee and employer. It is bound in the long run to act to the disadvantage of the trade union and the members of the trade union. That is as clear as history itself. It is just as clear as your hand in front of your face, and I would rather see us carry on as we have done in this country in the past and leave such matters for discussion between employees and employers.

Mr. KNOWLES: May I just answer one or two points, and I shall be very cool and calm about it.

Some Hon. MEMBERS: And brief too.

Mr. KNOWLES: Thank you, I shall be very brief. The minister has referred quite often to the well-being and interest of the employees. I think the answer to that is that a good many members have had communications from railroad lodges right across this country, and they know that the railroad lodges want even more—they want Bill 6. I am prepared to settle for this amendment. Secondly, I agree with the minister for the desirability of having free collective bargaining and that it should be done by the employees and the employers and not by the state for them. But we have got to the place where we realize that the state has to do some of the umpiring and lay down some of the rules. This whole Act provides that under collective bargaining you cannot go out on strike unless you have gone through certain conditions. I am now saying that in collective bargaining the pension and rights must not be in jeopardy at all. My third point has to do with the whole question of this amendment supposedly guaranteeing a pension for life or a pension fund. It obviously does not do that at all. Let us boil this down to the simple thing that it does. It does so little I do not think it should occasion this discussion at all. All it does is to make an attempt of an employer to deny pension rights because of a legal strike an unfair labour practice. Suppose an employer does the thing that this amendment says he shall not do. All that happens is he has committed an unfair labour practice, and you therefore make it possible for the employees to try to take their employer to court. It does not guarantee the fund; it does not even guarantee that the employees will win their case when they get to court. As it now stands, if you do not write this amendment in, and the employee organization trys to take it to court under section 4 (2) (*b*) I am afraid, after the intent having been made clear by the minister this morning, that the court would say that it is going a little too far to say it is there and the employees would lose. I that intent is made clear simply by spelling out something Mr. Croll and Mr. Sinclair and some of the rest of us think is all right then the court would be in a position to judge more favourably for the employees, but get it clear that it does not have any bearing on pension funds as such. It merely states that this particular action would be an unfair labour practice and would be dealt with in the same manner as other unfair labour practices.

Mr. LOCKHART: I have one brief comment to make. This shows how, by raising hypothetical issues, you get yourself involved. I cannot see where there is any improvement at all. I tried to follow Mr. Knowles' argument as carefully as I could, and I say I am convinced when you start to write these more or less ambiguous, hypothetical things, into a legal document you immediately find yourself in this position where we are disagreeing on details. I certainly do not want to see Bill 195 tied up with a lot of hypothetical stuff, and I think that is the type of thing that is being raised here.

Mr. DICKEY: There is just one small point which has been brought to my mind by Mr. Knowles' last remark. This is going to be a sort of offhand legal opinion, but I should like to point out to Mr. Knowles if his amendment is adopted and is included in the Act, and an employer does something which is in contravention of the Act with respect to pension funds, that offhand I would say that the union, in considering some sort of legal action, would in all probability be advised to proceed under subsection (2) (*b*) rather than under his amendment because it is quite clear that under his amendment what has happened is an unfair labour practice, and the result would be the imposition of a fine, but if they proceed under subsection (2) (*b*) there would be no question of a fine, and if an employee or the union was entitled to any relief it would be relief against the action that has been taken. In other words, the provision of the pension plan which was in contravention of the Act and permitted the employer to act as he did would be held to be ultra vires because of the provisions of section 2 (*b*).

Mr. JOHNSTON: I am getting a little confused now. I listened very carefully to the minister telling us what the intent of the Act was. Then we have had two or three lawyers get up here and say just exactly the opposite. I am becoming more convinced we should adopt this amendment moved by Mr. Knowles for that very reason, for a little clarification. The minister went to some length to say that you cannot write into legislation that which should be done by conciliation, and I recall that the other day he did express the view that he was in very great sympathy with the British method where they do not have a labour code at all. That is what he would like to see, but we have not taken that same attitude here. We have very definitely gone into the field of writing a national labour code. I do not think we can get away from that. Then I was impressed with what Mr. Sinclair had to say here about pension funds being set up as separate funds which would in no way conflict or be affected by a company going into bankruptcy.

Then let us turn to section 4 (2) (*b*). Some of us were a little bit inclined to agree at first that section 4 (2) (*b*) would cover almost any unfair labour practice, but Mr. Dickey has said now that he thinks that section 4 (2) (*b*) is more inclusive than Mr. Knowles' amendment. There again he is going directly opposite to what the minister himself interpreted section 4 (2) (*b*) to mean. It seems to me that a pension fund, once it is entered into by agreement and the fund is set up, is just as important to the employee as wage rates are. I do not believe that either wage rates or pension funds should be interfered with on behalf of the company once an employee is acting fully within his rights as set out by this Act. This Act gives him the right legally to go on strike. This Act definitely defines what a strike is, and as long as that man is complying with this code passed by this government then I do not think any company has the right to interfere with the privileges set down in this Act for the employee, or to interfere with the pension rights that have been entered into by agreement between the company and the employee.

The minister said, "Well, you might put this amendment into the Act and it would result in the refusal of companies to build up pension funds". It seems to me that there again that would be a matter of agreement between the company and the employees, and the employees will insist that a pension fund be set up. Once that pension fund is set up and your agreement is concluded then, of course, they are acting within the confines of the Act and of this amendment. Once the company and the employees agree to abide by the terms of this Act then each of them is compelled to carry out the terms as outlined in the Act. I cannot see for the life of me why there should be any objection to this, and I have listened very carefully to both sides and have tried to come to a conclusion. My conclusion is that it would be of great assistance both to the companies

and to the employees to have this amendment put in here which clearly defines the rights of the employees in regard to a pension fund. For that reason I must support it.

Hon. Mr. MITCHELL: I just want to say a couple of words.

Mr. GILLIS: You will start the argument all over again.

The CHAIRMAN: Are you ready for the question? It is moved by Mr. Knowles that section 4, subsection (2) (*b*) be amended by changing the period after the word "Act" to a comma, and adding thereafter the following words:

> And without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

All those in favour of the motion will please raise their hands? Those against? The motion is defeated.

I understand that Mr. Arthur Brown, the solicitor of the department, wishes to make some recommendation as to the phraseology of the new subsection (5) of section 4 which the committee has adopted. I would ask Mr. Brown to give us his views.

Mr. BROWN: Mr. Chairman, I would suggest that the language of Mr. Croll's amendment be modified to conform to the language of the Act itself. I also suggest that the provision might better be inserted as subsection (3) of section 6 rather than in section 4 because it is a matter dealing with union security, and section 6 does deal with matters of union security. With the change in the language that I would suggest the subsection would read this way:

> (3) Upon request of a trade union entitled to bargain collectively under this Act on behalf of a unit of employees and upon receipt of a request in writing signed by any employee in such unit, the employer of such employee shall, until the employee in writing withdraws such request, periodically deduct and pay out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee; and the employer shall furnish to such trade union the names of the employees who have given and withdrawn such authority.

Those are purely drafting changes and do not change the substance.

The CHAIRMAN: Is the committee agreeable to this recommendation?

Mr. CROLL: I agree.

The CHAIRMAN: Is it carried?

Carried.

We are now on section 1 of the bill. Is section 1 carried?

Mr. DICKEY: My request the other day had to do with section 2 (i) (1).

Mr. JOHNSTON: That was carried.

The CHAIRMAN: Have you any request to make?

Mr. DICKEY: My request the other day was that section 2, subsection (i), clause (1), be opened for redrafting for the purpose of a full discussion of all the points involved. I had no intention at that time, nor have I now, of moving an amendment. I understand that Mr. Adamson has an amendment which he would like to move. I did want to reiterate my opinion that this clause (1) was carried under a misapprehension by some members of the committee as to exactly what was happening, and it would be to the advantage of

everybody to see that any matters arising under that clause are fully discussed, and the most thorough consideration given to them by the committee, because after all we have tried to do that throughout our consideration of this bill.

The CHAIRMAN: I may say there is something particular about your request that we have to bear in mind, that your request, in exactly the same wording as you have placed it today before the committee, has already been turned down by the committee, so would it be in order to reconsider a request which has already been decided on by the committee? I am just pointing that out.

Mr. TIMMINS: It was turned down at that time because a similar request had been turned down but now that we have permitted Mr. Knowles' application for reopening I think we have created another precedent, and I think we ought to follow that.

The CHAIRMAN: It was the same committee which acted last time on Mr. Dickey's request.

Mr. JOHNSTON: I do not see how we can reopen the section.

Mr. MACINNIS: I think we ought to be perfectly fair in this. We opened a section today for Mr. Knowles on a specific point for the insertion of a certain amendment to the section which was clearly defined. If Mr. Dickey has a particular point that he wishes to insert in the Act or he wishes to take out of the Act I will be glad to support him, but I do not think we should support him for a general discussion of the Act itself.

Mr. CROLL: May I point out to the chairman that I have looked up the proceedings of Thursday, April 29, when this matter came up, and I asked that it stand. The record so reports at page 86.

Mr. JOHNSTON: It was later passed.

Mr. CROLL: Because I had some objection to make to it, and my notes indicate to me I was going to talk about foremen and people in confidential capacities. I think that is what Mr. Dickey had in mind. Then the matter came up later on and someone raised it and it was passed, and I did not have an opportunity and I let the matter go. That is altogether different from what Mr. Knowles put before us. He never had an opportunity to present it at all, and it was granted to him by unanimous consent. I do not think we can keep going back on this all the time.

Mr. ADAMSON: I had something quite specific to bring up, and it is a very simple matter, although I think it is rather far reaching. It deals with clause (1) of subsection (*i*). Mr. Skey has suggested an improvement on what I had originally suggested which was that the words, "in matters relating to labour relations" be struck out. I will move this if I may, that the word "or" be inserted after the word "capacity" in line 19 of the bill, so that the section will now read:—

> A manager or superintendent, or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity or in matters relating to labour relations.

I do this for the reason I suggested to the committee before, that certain people employed by industrial concerns are entrusted with secret formulas of production, secret methods of production, employed in laboratories or in other ways, and I feel that they should not be included in the bargaining unit. Anybody who is in a very confidential capacity, such as the people I have mentioned, I believe should be excluded.

The CHAIRMAN: Before I allow discussion on this point I should like to seek the opinion of the committee as to whether we should reopen the discussion under this clause.

Hon. Mr. MITCHELL: I think we did it for Mr. Knowles and it is only fair we should allow Mr. Dickey to proceed.

Mr. DICKEY: I would not like there to be any misunderstanding about this. I think it will have to be with unanimous consent. It seems to me in fairness it should be said that the amendment suggested by Mr. Adamson is in effect a very sweeping amendment and will require a very full discussion of all the circumstances involved.

The CHAIRMAN: Is there any opposition to the request made by Mr. Dickey? If there is no opposition to his request then I will invite Mr. Dickey to proceed.

Mr. DICKEY: I am afraid I have explained this two or three times, but I did feel that we should have a discussion on the particular wording of clause (1) of subsection (*i*) of section 2. The thing that I found particularly revealing was that in the discussion of subsection (2) there was a general assumption on the part of practically every member of the committee that certain people in confidential capacities would not come under the Act. That phrase was used on several occasions to myself, people saying it would not apply because they were employed in a confidential capacity or were much too close to the employer, or something of that kind. That may have been true under the legislative provisions prior to this Act, but my view is if clause (1) of subsection (*i*) is passed in its present form that will no longer be true. I think this committee should consider exactly what the position will be under the provision as it stands, and whether or not that is what the committee wants and whether that will make a contribution to industrial peace and to the solution of our employee-employer problems.

It seems to me there are certain people who are employed in various industries in a confidential capacity which is in no way connected with labour relations, and where it is not in the interests of either the employer or the employees' organization to have them entitled to membership in the union. It seems to me that under the section as it now stands any person in the unit will be able to claim membership in the union in spite of the fact that he is employed in some particularly confidential capacity. From the point of view of the union they might consider it would be detrimental to their interests to have them in the union or to have any specific large group of people in this particular confidential capacity in their union. I do feel we should give full consideration to all the circumstances involved.

The CHAIRMAN: Before I give you the floor, Mr. Skey, I would ask Mr. Adamson, since he has given us notice of a motion, to place it before the committee at this time.

Mr. SKEY: To crystallize the discussion I should like to move that in line 19, page 2 of the bill, the word "or" be inserted after the word "capacity."

The CHAIRMAN: Are you ready for the question?

Mr. CROLL: Let us see what it means.

Hon. Mr. MITCHELL: I want to say that we have given a lot of thought to this clause, and we do not know of any better language. What I would not like to do is to exclude large bodies of people who already have collective bargaining agreements. There is always that danger when you make it restrictive. If you put the word "or" in there—and I took a look at this yesterday after somebody suggested it—you will have the supervisors, the confidential employees, and those who are dealing with labour relations. That might be anybody on either side. It might be a trade union secretary, and that wording might exclude him from the Act. I agree that is hypothetical. Take, for example, the conductor of a train who is in charge of a train, or a section foreman out here on the road. He is a foreman but is not a foreman in the accepted sense that one sees in some industrial establishments. I come back to the point again that, having in view the set-up of the board, they are quite capable of saying who are confidential and

supervisory employees because of the cross-section of the board, and we should let the board make that decision. I have not any strong views on it except I think it is only fair to the board to give them as much jurisdiction and discretion as you possibly can in this matter. It has worked all right up to now. We have had no difficulty whatsoever in the national field. The only change in the wording from order in council 1003 is that these few words were put on the end, "in matters relating to labour relations." Frankly I do not think there is any danger at all.

Mr. GILLIS: It is all right as it is?

Hon. Mr. MITCHELL: Yes.

Mr. ADAMSON: Does this addition make it more general and easier for the board and give the board a fuller hand in dealing with the things that it does as it now stands? As it stands now it is very restrictive. These extra words make the clause extremely restrictive, and I believe—and I agree with the minister here—that the board should have a freer hand in its dealings. For that reason I support the amendment.

Mr. SKEY: I do not agree with the minister's argument that some people might be excluded by this amendment because, an employee employed by an employer on confidential matters in relation to labour relations is in quite a different capacity to an employee who is a member of a union and carrying on in a confidential position. This would merely be for the board of labour relations to rule one.

Hon. Mr. MITCHELL: What you have to do is a most difficult thing. Under P.C. 1003, it worked admirably. We had no difficulty whatsoever to my knowledge. If you would like us to take the words out for the sake of harmony I would be prepared to do it, but I am still convinced that it is a good section as it is. If you were to put "or" in there, you would run into all kinds of trouble. We can only go in the light of experience of the past, and up to date we have had no difficulty. As I said before, this is the longest continuing board in North America. Nobody has resigned because of a difference of opinion, and both the members and the employers have remained on the board ever since its inception. I am prepared to take the wise judgment of the board established for this purpose.

Mr. SKEY: If the minister is convinced that these people would not be excluded, I would like to withdraw my amendment. When I discussed it yesterday I thought it was otherwise. I would certainly not want this to go on the record or to be even voted on, but I thought I would improve or broaden and strengthen the board's position.

Hon. Mr. MITCHELL: I thought this over last night myself and yesterday afternoon I was of the same opinion as yourself. It is not a question of trying to exclude anybody, but I think "or" makes it more difficult.

Mr. SKEY: I move to withdraw my amendment.

Mr. ADAMSON: As the minister has stated he saw no objection to the working of P.C. 1003, would he take objection to striking out these words, which would unquestionably give the board far wider power? Mr. Chairman, I would move that these six words—

The CHAIRMAN: Before you do that, I should like to know if the committee is agreeable to letting Mr. Skey's motion be withdrawn.

Agreed.

Mr. ADAMSON: Then I move, Mr. Chairman. that these six words, "in matters relating to labour relations" be struck out.

The CHAIRMAN: It has been moved by Mr. Adamson that the words "in matters relating to labour relations" be struck out from clause 1 of subsection (i).

Mr. KNOWLES: Would the minister give the reason why they were put in.

Hon. Mr. MITCHELL: They were asked to be put in, but frankly, in my opinion they do not mean anything.

Mr. CROLL: Is this not what it means? If you have an employee in a confidential capacity and he appears before the board and the question is asked about a bargaining agency the employer, who has an opportunity to appear before the board, says, "No, this is a confidential person." He says that it is the secretary or somebody else. Now, on the other hand, in respect to "matters relating to labour relations", that refers to a new group which has grown up in this country in recent years, and refers to personnel men who devote their time to labour relations. You exclude them and there is good reason for that, but if you strike out the words "relating to labour relations" it would mean exactly what it would have meant if Mr. Skey's motion had carried. I asked about these words when they originally came in. I think they are very important because they recognize the people in the real confidential capacity—the personnel men in charge of labour. You exclude them for a good reason. On the other hand, if you leave open the matter of confidential capacity you may include the office staff. They may come before the board and claim that the office staff is a confidential staff.

Mr. TIMMINS: It seems to me that by the words "or is employed in a confidential capacity" you are leaving the board free to use its discretion and judgment as to the sort of people that should be excluded from bargaining agencies under the Act. When you put in the words "in matters relating to labour relations" you make it far more specific and you cut away from the board its general authority in respect to decisions as to who shall and who shall not come in. It seems to me that we are restricted, and having regard to the fact that P.C. 1003 worked very well for quite a long time and we know exactly what it means, I think we ought to leave well enough alone.

Mr. DICKEY: I just want to say that I am prepared to go along with the minister. I wondered why these words were added, but if P.C. 1003 has worked well, and the minister says it has worked well, unless there is some very cogent reason why this restriction is necessary in the Act, I am certainly prepared to go along with the minister.

Mr. MACINNIS: Mr. Chairman, I just want to say a word here. I imagine that these words were put in after very considerable discussion in view of the way the section was in P.C. 1003. I should like to draw attention to the beginning of section (*i*) and the definition of employee:

> A person employed to do skilled or unskilled manual, clerical or technical work.

As to the who would ultimately be excluded because of being in a confidential capacity would depend largely, I think, on the request of the employer that certain persons should be excluded. Now, then, the employer could take the position that any stenographer that took a letter from the manager is in a confidential capacity and consequently is not entitled to the protection that she or he can get from the organization. Well, I think that would be carrying the definition of confidential capacity too far. I think as it is now it will leave it to the board to decide, and I think we would be well advised to leave it as it is.

The CHAIRMAN: Are you ready for the question?

Hon. Mr. MITCHELL: Before the question is put I want it clearly understood, Mr. Chairman, that I do not care which way the motion goes. I do not think it makes much difference. That is my own view. If I thought that this was going to restrict the organization I would leave it the way it is. If I were an employer the only person I would not let them organize would be my secretary.

I would let them organize everybody else. But I do not think Mr. Chairman, that whatever language is used it will make much difference. That is my conviction.

Mr. ADAMSON: As to my amendment, I want to reply to something Mr. MacInnis has said. First of all, I think it worked very well in PC 1003 with these words in it. I disagree, however, with the minister because I think they put a very restrictive meaning to the clause, and I think that is unwise. I think if the boards are fair—and we have heard that the boards are fair—that they will have a freer hand and be able to administer the Act better with this clause deleted. Now, with regard to the secretary dealing with confidential records and being considered as a confidential employee, he may have knowledge of the financial structure of the company which may be most harmful. I also think that people who are engaged in fire protection should be excluded, and, in cases where companies have hydro electric development, I think the people in charge of the switches that provide the continuity of power should be excluded from this Act.

Mr. KNOWLES: As this argument goes on it seems to me not to remain a matter of indifference but that it becomes important to leave the words in. Let me put it this way. It says: "matters relating to labour relations". Now, the things these personnel men do are matters in issue between employees and employers, and I can see the logic in such persons not being included in the collective bargaining units. However, as to those matters to which Mr. Adamson has referred —company secrets and so on—I would say that you do not protect the company secrets by keeping those who know the secrets out of any particular organization. Those secrets depend on the discreteness of the employees themselves, and there are other ways for employers to deal with such matters. What Mr. Adamson suggests in this Act is to keep out as many people as possible. The purpose was not that; it was to provide for the protection of as many people as possible. I think that this idea of certain confidential people being kept out applies only with reference to the matters that are at issue between employees and employers, and these are matters relating to labour relations.

The CHAIRMAN: The question is this: Moved by Mr. Adamson that the following words be deleted from clause 2 section (*i*) subsection 2: "matters relating to labour relations." All those in favour of the motion please raise their hands. Those against.

The motion is carried.

Section 1. Is that section carried?
Carried.

Is the preamble carried?
Carried.

Is the title carried?
Carried.

Shall I report the bill as amended?
Carried.

Gentlemen, I wish to add a few observations at this time. This has been a committee where the attendance has been the largest in the experience which I have had since sitting in this House. The average attendance of the committee has been twenty-five out of a total number of thirty-five members.

Mr. TIMMINS: That is because we have had a good chairman.

The CHAIRMAN: I wish to congratulate you gentlemen and to thank you very sincerely for the co-operation you have given me and the friendly way you have handled the discussions throughout the sittings.

Mr. McIvor: I should like to express appreciation to the chairman of this committee and to his helpers, and also to the Minister of Labour and his officers. They have given us a good deal of information and in a way which even I could understand. This committee has been a real treat to attend.

Mr. Adamson: I should like to second Mr. McIvor's motion and I want particularly to congratulate the chairman in having kept the matters before the committee relative to the bills. I have seldom sat on a committee where the arguments have been so relevant to the case at issue.

Mr. MacInnis: I would be very glad to go along with Mr. McIvor so far as the chairman and his assistants are concerned. This was a very interesting committee and the discussions were emphatic. They could easily have been more emphatic and less constructive had it not been for the nice easy handling of the chairman. This is the second opportunity I have had of being on a committee of which Mr. Cote was the chairman, and I think they could very well give him the position of permanent chairman of standing committees.

Hon. Mr. Mitchell: I was not going to say anything. I have been the corpse that you have operated on most of the time, but I join my good friend the member from Fort William (Mr. McIvor) and my good friend Mr. MacInnis in their motions. I think the way that this committee has conducted itself exemplifies the common sense of our people as a whole. We have discussed our questions without unpleasantness or hard feelings, and I think it can be said of us, Mr. Chairman, that we have endeavoured to lay down a document that will have the purpose of stabilizing labour relations between employer and employee. I think it may be said of us in the years to come that we built this better than we knew. I should also like to pay tribute to all the employee organizations and to the employers in the suggestions they have made to us. Ours is the form of government where we are governed by discussion and everybody has the right to go to the foot of the throne. I think we have embodied what I consider to be the most constructive suggestions put by both sides. I want to thank you, Mr. Chairman, and the members of this committee for the very kind way they dealt with the Minister of Labour during the discussions of the last five weeks.

Some Hon. Members: Hear, hear.

The Chairman: Gentlemen, this concludes our hearings.

The committee adjourned.

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