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The Growth of White-Collar Unionism and Public Policy in Canada

La croissance du syndicalisme chez les cols blancs et la politique gouvernementale canadienne

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Résumé de l'article

INTRODUCTION

Cet article est une version révisée d'une étude faite pour l'Équipe spécialisée en relations du travail afin de valider dans ses recommandations concernant le syndicalisme chez les cols blancs au Canada. Il est évident qu'il s'engage que la responsabilité de son auteur et non de l'Équipe spécialisée. Nous ne considérons cependant que les aspects du problème auxquels les politiques gouvernementales semblent les plus applicables, à savoir la croissance du syndicalisme chez les cols blancs ainsi que les problèmes qu'elle crée.

Les syndicats sont nécessaires pour que les travailleurs aient voix au chapitre des décisions qui les affectent tant à l'intérieur de l'entreprise qu'à son sein de la société globale. À supposer que la prise de décision démocratique soit une bonne chose, il résulte que l'absence de syndicalisation chez les cols blancs et les cols bleus est un sujet qui prête à sérieuse réflexion. Tant et aussi longtemps que des groupes d'employés ne sont pas représentés dans la prise de décision, le processus et la structure démocratiques ne sont pas achevés. Il est alors logique de se demander comment aider à la croissance des syndicats dans ce secteur. Avant de tenter d'élaborer une réponse à cette question, il est nécessaire d'isoler les facteurs principaux favorisant ou retardant la croissance du syndicalisme chez les cols blancs.

LES CAUSES DE LA CROISSANCE DU SYNDICALISME CHEZ LES COLS BLANCS

Il y a plusieurs causes à la croissance du syndicalisme chez les cols blancs : a) certaines caractéristiques socio-démographiques des cols blancs, comme le sexe, l'origine sociale, l'âge et le statut dans la communauté ; b) certains aspects de leur situation économique comme le salaire, les avantages sociaux et la sécurité d'emploi ; c) certaines caractéristiques de leur occupation comme le degré de concentration de l'emploi par groupes, les chances de promotion, le degré de mécanisation et d'automatisation ainsi que le degré de proximité des travailleurs manuels syndiqués ; d) quelques caractéristiques du syndicalisme telles l'usage qu'en a le public, leur politique de recrutement et leur structure ; e) le degré auquel les employeurs sont prêts à reconnaître le syndicalisme de cols blancs ; f) la mesure dans laquelle l'action gouvernementale favorise la reconnaissance syndicale.

Il est cependant impossible d'attribuer ces facteurs qui existent chez chacun de ces facteurs et la croissance du syndicalisme chez les cols blancs. La recherche et l'expérience de plusieurs pays démontrent que trois des causes citées ci-dessus sont d'une extrême importance dans le problème qui nous préoccupe. Ce sont : le degré auquel l'emploi de cols blancs est concentré dans de grands groupes, la mesure dans laquelle les employeurs sont prêts à reconnaître le syndicalisme de cols blancs et la portée de l'action gouvernementale favorisant la reconnaissance syndicale.

Plus le degré de concentration de l'emploi est grand, plus grande est la possibilité de syndicalisation chez les cols blancs. Il semble que nous puissions expliquer cette affirmation en disant que plus les employés réalisent leur besoin pour le syndicalisme et plus les syndicats sont enclins à le recruter, plus leur mandat est concentré. Mais il n'est pas évident que ce besoin particulier ne soit pas rencontré soit parce que les employeurs refusent de reconnaître les syndicats, parce qu'ils établissent des politiques destinées à décourager ou à défendre à leurs cols blancs d'adhérer à ces associations. Généralement, les syndicats, surtout en Amérique du Nord, n'ont jamais été capables de forcer les employeurs à les reconnaître. Ceci a donc exigé l'introduction de politiques gouvernementales facilitant le travail des syndicats et rendant la résistance des employeurs plus difficile.

L'ENCOUAGEMENT DU SYNDICALISME CHEZ LES COLS BLANCS PAR LES POLITIQUES GOUVERNEMENTALES

Ce qui prouve démentir que même si la concentration de l'emploi crée un besoin pour le syndicalisme chez les cols blancs, il est improbable qu'il croisse à moins que l'opinion publique soit maîtrisée par les politiques gouvernementales. Nous avouons néanmoins que même si les politiques gouvernementales canadiennes prétendent annuler cette opposition patronale, elles sont loin d'être efficaces.

Il y a plusieurs facteurs qui rendent plus efficaces les politiques canadiennes sur ce point.

1. — les politiques gouvernementales en matière de relations industrielles pourraient contenir une déclaration quant à la valeur du syndicalisme et de la négociation collective et quant au désir d'encourager la croissance de ces institutions.

2. — au lieu d'exiger d'un syndicat de prouver qu'il représente la majorité des salariés employés dans une unité de négociation, on pourrait demander qu'il ait la majorité parmi les votants.

3. — on pourrait introduire un processus de vote rapide : ce moyen permettrait au syndicat de prendre un vote de représentation rapide à chaque réunion en assemblée. Ce vote pourrait permettre au syndicat de pouvoir compter, à la suite d'un rapide tour d'horizon, sur, par exemple, trente pourcent des travailleurs composant l'unité de négociation.

4. — un journal accélérer le processus de reconnaissance en rendant la législation existante beaucoup moins technique et rigide. Au lieu d'exiger, par exemple, que le syndicat prouve que la majorité des travailleurs dans l'unité de négociation sont des membres en règle de l'union (définissant « membres en règle » d'une manière extrêmement technique et légale), les droits des employés pourraient être plus facilement et plus justement déterminés en demandant simplement qu'ils fassent parvenir à la C.R.T. une pétition désignant le syndicat par lequel ils veulent se faire représenter.

5. — le syndicat devrait avoir toutes les chances de communiquer avec les employés que peut en avoir le directeur de l'entreprise. Si un employeur refuse à ses employés au sujet de la syndicalisation sur les heures et lieux de travail, on pourrait exiger que les syndicats aient les mêmes facilités. On encoure si la partie patronale communique avec les employés par la poste, on pourrait exiger que le syndicat ait accès à la liste d'adresses.

6. — on devrait enlever le droit à l'employeur de se présenter devant la Commission dans le but de s'opposer à une requête en accréditation ou d'y opposer à moins de révoquer l'accréditation syndicale.

7. — le fardeau de la preuve dans le cas de pratiques déloyales devrait incombent à l'employeur.

8. — on pourrait réduire l'efficacité des pratiques déloyales en défendant tout changement unilatéral dans les salaires et les conditions de travail et en plaçant un moratorium sur tout congédiement à partir du moment où les employés ont envoyé une pétition à la Commission pour la tenue d'une élection jusqu'au moment où celle dernière a lieu.

9. — là où ce n'est pas déjà le cas, la Commission, plutôt que les cours ordinaires, devrait avoir l'autorité de poursuivre dans le cas de pratiques déloyales sans l'approbation préalable du ministre du travail.

10. — si la Commission trouve un employeur coupable de pratiques déloyales, une des sanctions pourrait être l'accréditation automatique du syndicat.

11. — on pourrait forcer l'employeur à négocier de bonne foi en prohibant tout changement unilatéral des salaires et des conditions de travail après que le syndicat est élu. On pourrait permettre aux deux parties de demander l'aide d'un arbitre indépendant dans le cas de litiges pendant la période de non-maturité des négociations. Le tiers à cinq ans suivant l'adoption, le tiers à cinq ans suivant l'adoption, les professionnels ou confidentiels — sont couverts par les clauses de protection qu'elles émettent.

12. — un dernier moyen par lequel les politiques gouvernementales pourraient encourager la croissance du syndicalisme serait de s'assurer que tout — incluant ceux détenant des postes de direction, de supervision, professionnels ou confidentiels — sont couverts par les clauses de protection qu'elles émettent.

LES PROBLÈMES CRÉÉS PAR LA CROISSANCE DU SYNDICALISME CHEZ LES COLS BLANCS ET LES POLITIQUES GOUVERNEMENTALES

En faisant l'hypothèse que le syndicalisme canadien de relations industrielles ait été amorcé suivant les suggestions ci-haut mentionnées et qu'il en ait résulté une croissance significative du syndicalisme chez les cols blancs, il en suivrait une série d'implications sujettes à une prise de position de la part des politiques gouvernementales. Parmi ces implications, notons la nature de l'unité de négociation, la nature de l'agent de négociation, le contenu de la négociation collective et la méthode de règlement des conflits.

LA NATURE DE L'UNITÉ DE NEGOCIATION

Le fait d'exclure des personnes employées à des postes de direction, de supervision, à caractère professionnel ou confidentiel de la partie des lois du travail — la prévention des conflits d'intérêts — n'a pas tellement pour but de les exclure de toute unité de négociation, mais plutôt de s'assurer qu'elle ne soit pas partie de mêmes unités de négociation que les autres employés. Le fait d'exclure dans la même unité de négociation du personnel de cadre et des employés ordinaires peut créer de sérieux conflits d'intérêts, ce qui n'est pas à désirer.

La réponse n'est pas d'exclure le personnel de cadre, professionnel ou non, de la portée de la législation, mais de stipuler que toute personne qui dirige effectivement le travail d'un autre employé ne soit pas incluse dans la même unité de négociation que cet employé.

L'unité de négociation propre aux travailleurs professionnels est un point particulièrement délicat. Mais il semble être temps qu'on envoie un façon flexible de déterminer des unités professionnelles de négociation. Cet acte peut être dit en disant que les travailleurs professionnels peuvent décider, s'il y a lieu, du type d'unité de négociation dans laquelle ils veulent être inclus : l'unité de négociation s'applique par approbation par la Commission.

LA NATURE DE L'AGENT DE NEGOCIATION

Le fait d'avoir des superviseurs et des « supérieurs » dans la même unité syndicale crée des difficultés qui peuvent être surmontées si la législation stipule que pour qu'un syndicat de travailleurs puisse être accrédité comme représentant de cadres, il doit former des locaux séparés et s'assurer que ces derniers ne seront pas sous le contrôle des travailleurs du rang. En plus, on pourrait rendre les pratiques déloyales le fait qu'un syndicat de travailleurs applique une sanction à un cadre pour avoir fait une faiblesse que l'employeur aurait pu exiger de lui.

Un syndicat local affilié à une centrale plus vaste n'est souvent pas considéré comme agent de négociation approprié pour des catégories de cols blancs tels les surintendants et les policiers. Mais il est difficile de voir quels conflits d'intérêts pourraient naître de l'affiliation de cadres ou de policiers à des conseils de travail ou de métiers, à des fédérations provinciales ou au Congrès du travail du Canada. Ces organismes centraux n'ont aucun pouvoir d'ingérence dans les affaires internes de leurs unités. Leur fonction principale est de représenter les intérêts des employés à l'intérieur de la communauté. La consultation du monde du travail par les gouvernements au Canada signifie la consultation de ces centrales syndicales, à la fois les syndicats de cadres ou de policiers veulent participer à ce processus, il semble qu'il n'y ait aucune bonne raison les en empêchant. En fait, il est évident qu'il est de plus en plus valable de la prise de décision démocratique.

Le choix d'un agent de négociation pour les travailleurs professionnels pose un problème spécial. Quelques auteurs ont prétendu que les associations professionnelles devraient être autorisées quant aux permis de travail à accéder ne devraient pas agir comme agents de négociation parce que :

« Il serait le souhaitable de combiner la one body the public interest function of negotiating with the private interest function of bargaining. The possibility, however remote, of restricting numbers to improve self-interest is too great a public risk ».

Mais il est difficile de voir pourquoi le danger pour une association professionnelle de restreindre l'offre dans l'intérêt de ses membres ne serait soulevé qu'au moment de la négociation collective. Il y a peu de doute que la plupart des associations professionnelles restreignent déjà l'offre dans l'intérêt de leurs membres indépendamment du fait qu'ils s'engagent dans la négociation collective. Si c'est en considérant comme un problème, on ne le règlera pas en défendant l'accès des associations professionnelles à la négociation collective. Il n'y a qu'un moyen de régler ce problème : l'appartenance à une organisation publique d'être des permis de pratiquer et tout à l'organisation privée.

LE CONTENU DE LA NEGOCIATION COLLECTIVE

Certains auteurs ont prétendu que la loi devrait protéger les droits de grève en excluant certaines choses de la négociation collective. De tels arguments se basent sur le fait que les cadres ont certains droits exclusifs et rétrogrades, mais Chamberlain a démontré avec clarté et vigueur qu'il n'en était pas ainsi. Il semblerait alors qu'il n'y ait pas de raisons valables pour lesquelles la loi empêcherait les syndicats d'exiger de participer à la prise de décision sur des points tels les promotions et les mises-à-pied. En fait, suivant les valeurs de la prise de décision démocratique, il n'y a pas de raison pour laquelle la loi devrait prohiber de telles choses.

LA METHODE DE REGLEMENT DES CONFLITS

Il n'y a aucune raison valable pour laquelle le législateur traiterait les cols blancs différemment des travailleurs manuels en ce qui a trait à la méthode de règlement des conflits. Le fait que les travailleurs soient cols blancs ou cols bleus n'est pas pertinent. L'aspect important est à savoir si leur travail affecte un intérêt public vital. Si oui, il peut y avoir raison d'établir, par voie de législation, une méthode spéciale de règlement des conflits pour de tels travailleurs.

CONCLUSION

Nous croyons que le droit à la négociation collective pour tous les employés devrait être consacré dans une seule loi. Ceci éviterait aux gouvernements d'être exposés à une sorte de « maigriponnage » alors que chacun des groupes régi par une législation propre rivalise pour une position légale plus favorable. Cela rendrait également plus facile la présentation d'une politique intégrée de négociation collective avec des buts clairement définis. En plus, il est certain que dans un tel cadre, les associations professionnelles ne seraient pas en mesure de faire passer des lois de négociation collective qui ne seraient que des lois de négociation collective qui ne seraient que des lois de négociation collective. Ce qui est crucial, c'est qu'il devrait y avoir une législation permettant à tout groupe d'employés dans la société de s'engager dans le processus de la négociation collective et il le doit.

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The Growth of White-Collar Unionism and Public Policy in Canada

George Sayers Bain

The number of white-collar workers is rapidly increasing. If the trade union movement is to continue to play an effective role in the industrial relations system, it must recruit these workers. But so far, outside of the public sector of the economy, there is relatively little white-collar unionism in Canada. The major reason for this is that Canadian public policy on industrial relations is not very effective in curbing management opposition to white-collar unionism. The paper suggests several ways in which public policy might be made not only more effective in this regard but also deals with the problems arising from the growth of white-collar unionism.

Introduction

This paper is based on work done for the Task Force on Labour Relations with a view to ascertaining what observations and recommendations it might make regarding white-collar unionism⁽¹⁾. The paper would focus on those aspects of the subject to which public policy seem to be most relevant: the growth of white-collar unionism and the problems arising therefrom. There was not time in the four weeks available for preparing this paper to undertake any new basic research. It was only possible to draw upon the studies already done in this area for the

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⁽¹⁾ The views expressed in this paper are those of the author and do not necessarily represent those of the Task Force on Labour Relations or any of its members.

Task Force, ⁽²⁾ the author's own research in Great Britain, ⁽³⁾ and the work of other scholars in North America and elsewhere. ⁽⁴⁾

Perhaps it is best to make clear at the outset an assumption which underlies much of the reasoning in this paper, namely that it is desirable for employees, both manual and white-collar, ⁽⁵⁾ to belong to trade unions. ⁽⁶⁾ There is not room here to offer a detailed justification for this assumption, but only to indicate the general consideration upon which it is based.

Basically, the legitimacy and justification of trade unions rests upon a belief in the value of democratic decision-making. Regardless of how generous, fair-minded, or accessible to his employees an employer may be, he will not always be able to make decisions which are in their best

⁽²⁾ In addition to the present paper, the Task Force commissioned five studies in this area : Frances Bairstow, « White-Collar Workers and Collective Bargaining » ; Shirley B. Goldenberg, « Professional Workers and Collective Bargaining » ; J. Douglas Muir, « Industry Study-Teachers » ; Robert Rogow, « Supervisors and Collective Bargaining » ; and C. Gordon Simmons, « Collective Bargaining at the Municipal Government Level in Canada ». (Page references to these papers are not given because they will not coincide with the printed text when published. Ed.)

⁽³⁾ *Trade Union Growth and Recognition* (London : HMSO, Royal Commission on Trade Unions and Employers' Associations, Research Paper No. 6, 1967) ; *The Growth of White-Collar Unionism*, to be published in the autumn of 1969 by Oxford University Press ; and with David Coates and Valerie Ellis a forthcoming study, *Class, Status and White-Collar Unionism*.

⁽⁴⁾ There is a vast literature on white-collar unionism. For some of this see G.S. Bain and Harold Pollins « The History of White-Collar Unions and Industrial Relations : A Bibliography », *Labour History*, N° 11 (Autumn, 1965), pp. 20-65, and *Bibliography on Non-Manual Workers* (Geneva : ILO, 1959). Two recent sources are « Professional and White-Collar Unionism : An International Comparison », *Industrial Relations*, V (October, 1965), pp. 37-150, and Adolf Sturmthal, editor, *White-Collar Trade Unions* (Urbana : University of Illinois Press, 1966).

⁽⁵⁾ In this paper the concept of the white-collar labour force is used in its widest context, and the following broad occupational categories have been taken as composing the white-collar group : managers and administrators ; foremen and supervisors ; professionals ; scientists, technologists, and technicians ; specially « creative » occupations such as artists, musicians, and entertainers ; clerical and administrative workers ; salesmen, commercial travellers, and shop assistants ; and security personnel.

⁽⁶⁾ The word « trade union » is used in a generic sense throughout this paper to refer to any organisation of employees which participates in the process of job regulation either unilaterally or jointly (that is, by bargaining with employers). See Allan Flanders, *Industrial Relations : What Is Wrong With The System ?* (London : Faber, 1965), chaps. 2 and 3 for a discussion of the various forms of job regulation.

interests. The claimants upon the consideration of the employer-manager include not only the enterprise's employees, but also its suppliers of raw materials, its customers, its shareholders, and the Government. The employer-manager cannot govern entirely in the interests of any one of these groups, but must balance the claims of them all in such a way that the enterprise remains economically viable. For, as Peter Drucker has pointed out, the

main function and purpose of the enterprise is the production of goods, not the governance of men. Its governmental authority over men must always be subordinated to its economic performance and responsibility . . . Hence it can never be discharged primarily in the interests of those over whom the enterprise rules. (7)

Thus the very nature of the employer-manager's function will sometimes require him to act against the interests of his employees as they see them. On such occasions, employees require a trade union to present their views in a coherent form and to provide the countervailing power necessary to ensure that these views are fully considered by the employer-manager.

Trade unions are necessary to ensure that employees have an effective voice in decision-making not only within the firm but also within the larger society. Gunnar Myrdal has observed that Western societies are becoming « organisation societies » in which the only way an individual can effectively participate in national decision-making is through group representation. (8) Decisions on economic and social matters are increasingly being taken or at least influenced by bodies such as the National Economic Development Council and the National Board for Prices and Incomes in Britain, the President's Labor Management Policy Committee in the United States, and the Economic Council in Canada. It is extremely difficult, if not impossible, for an employee to be represented on these bodies or even to appear, before them in an attempt to influence their policies, except through the medium of a trade union.

Given that democratic decision-making is a good thing, it follows that lack of unionisation among large numbers of white-collar (and manual) workers is a matter for serious concern. (9) For as long as groups of employees are unrepresented in decision-making both inside and outside the firm, the process and structure of democracy is less complete.

(7) *The New Society* (London : Heineman, 1951), p. 81 (italics not in the original).

(8) *Beyond The Welfare State* (New Haven, Conn. : Yale University Press, 1960), pp. 43-46.

(9) Much of the analysis in this paper applies to both white-collar and manual unionism. But, in view of the paper's terms of reference, the analysis is set forth in terms of white-collar unionism only.

The question therefore arises as to how the growth of unionism among these workers can best be encouraged. But before this question can be answered, it is first necessary to isolate the major factors which promote or hinder the growth of white-collar unionism.

Factors Affecting the Growth of White-Collar Unionism

There are numerous factors which might affect the growth of unionism among white-collar workers. These include : (a) such socio-demographic characteristics of white-collar workers as their sex, social origins, age, and status in the community ; (b) such aspects of their economic position as earnings, fringe benefits, and employment security ; (c) such aspects of their work situation as the degree of employment concentration, the opportunities for promotion, the extent of mechanization and automation, and the degree of proximity to unionised manual workers ; (d) such aspects of trade unions as their public image, recruitment policies, and structures ; (e) the degree to which employers are prepared to recognize unions representing white-collar employees ; and (f) the extent of government action which promotes union recognition.

Limitations of time and space make it impossible to examine the relationship between each of these factors and the growth of white-collar unionism.⁽¹⁰⁾ But it is possible here to discuss briefly three of these factors which research and experience in several countries indicate are of overwhelming strategic importance. These are: the extent to which the employment of white-collar workers is concentrated in large groups, the degree to which employers are prepared to recognise unions representing white-collar employees, and the extent of government action which promotes union recognition.

There are several reasons why the degree of unionisation is likely to be higher among larger rather than smaller groups of employees. To begin with, the larger the number of employees in a group the more necessary it becomes to administer them in a « bureaucratic » fashion. In the present context, the essential feature of bureaucratic administration « is its emphasis on the office rather than upon the individual office-holder ». ⁽¹¹⁾ This means that employees are treated not as individuals but as members of categories or groups. Their terms and conditions of

⁽¹⁰⁾ The author has done this for Britain in *The Growth of White-Collar Unionism*, *op.cit.*

⁽¹¹⁾ R.M. Blackburn and K. Prandy, « White-Collar Unionization : A Conceptual Framework », *British Journal of Sociology*, XVI (June, 1965), p. 117.

employment as well as their promotion prospects are determined not by the personal considerations and sentiments of their managers, but by formal rules which apply impersonally to all members of the group to which they belong.⁽¹²⁾ The result is that the group's working conditions tend to become standardised.⁽¹³⁾

« Bureaucratisation » is the administrative answer to the problem of governing large numbers of employees. It makes for administrative efficiency in a business. But it is also likely to assist the growth of unionism. For, as Dubin has argued, making the rule for the work group rather than the individual worker is likely to affect him in the following ways :

He becomes aware of his personal inability to make an individual « deal » for himself outside the company rules and procedures, except under the circumstances of a « lucky break ». He tends also to view himself as part of a group of similarly situated fellow-employees who are defined by the rules as being like each other. In addition, uniform rule-making and administration of the rules make unionism easier and, in a sense, inevitable. It should be reasonably clear that collective bargaining is joint rule-making. It is no great step to the joint determination by union and management of rules governing employment from the determination of them by management alone. Both proceed from the basic assumption that generally applicable rules are necessary to govern the relations between men in the plant. Once a worker accepts the need for general rules covering his own conduct, he is equally likely to consider the possibility of modifying the existing ones in his favor rather than to seek their total abolishment.⁽¹⁴⁾

Since the rules apply to him as a member of a group rather than as an individual, the most effective way of modifying them in his favour is by collective rather than individual bargaining.

⁽¹²⁾ Bureaucratisation may also lead to a blockage of promotion prospects. With the bureaucratic emphasis on technical competency and formal qualifications, there may be direct recruiting to managerial positions from outside the organisation. In addition, the economies of administrative rationalisation may result in a reduction in the ratio of managerial to clerical functions.

⁽¹³⁾ The terms « bureaucratic administration » and « bureaucratisation » have acquired a number of meanings in sociological writings. For a discussion of these see Richard H. Hall, « The Concept of Bureaucracy : An Empirical Assessment », *American Journal of Sociology*, LXIX (July, 1963), pp. 32-40, and C.R. Hinings, *et al.*, « An Approach to the Study of Bureaucracy », *Sociology*, I (January, 1967), pp. 61-72. It is important to note that these terms are used in a very restricted sense throughout this paper to refer simply to a method of administering the labour force.

⁽¹⁴⁾ Robert Dubin, « Decision-Making by Management in Industrial Relations », *Reader in Bureaucracy*, Robert K. Merton *et al.*, editors (Glencoe Ill. : The Free Press, 1952), p.234.

But the greater degree of bureaucratisation associated with larger groups of employees is not the only reason they are likely to be more highly unionised. Another reason is that trade unions tend to concentrate their recruiting efforts on such groups. It is fairly obvious why they should do this. Larger groups of employees are probably more favourably disposed towards trade unionism because of the bureaucratic manner in which they are governed on the job, and they are therefore likely to be easier to recruit. They are also likely to be less expensive to recruit. Trade union recruiting is characterised by economies of scale : in general, the larger the group recruited the lower the per capita costs. Similarly, larger groups of members are less expensive for unions to administer : the larger the group the greater the probability that one or two of its members will possess the qualities required for leadership at the rank-and-file level, and the easier it is to police the collective agreement and ensure that its provisions are observed. Moreover, collective agreements covering large groups of employees have a greater impact on the general level of salaries and conditions than a whole series of agreements covering small groups. Finally, the more members a union recruits the more power it is able to wield in negotiations with employers as well as within the labour movement.

This *a priori* reasoning tends to be supported by empirical evidence. In Britain, Lockwood has shown that the extent to which white-collar workers are unionised in national government, local government, banking, and private industry is partly determined by the extent to which their work situation is bureaucratised.⁽¹⁵⁾ Blackburn and Prandy found that the degree of unionisation in individual banks is partly accounted for by the extent to which their size forces them to administer their employees in a bureaucratic manner.⁽¹⁶⁾ The present author found that a considerable amount of the variation in the occupational and industrial pattern of manufacturing white-collar unionism in Britain can be explained by variations in the degree of employment concentration.⁽¹⁷⁾ In the United States, studies by the Bureau of Labor Statistics,⁽¹⁸⁾ Cleland,⁽¹⁹⁾ Meyers,⁽²⁰⁾

⁽¹⁵⁾ David Lockwood, *The Blackcoated Worker* (London : Allen and Unwin, 1958), especially pp. 141-150.

⁽¹⁶⁾ *Op. cit.*, p. 118, n. 17.

⁽¹⁷⁾ *The Growth of White-Collar Unionism, op.cit.*, chap. 6.

⁽¹⁸⁾ « Extent of Collective Agreements in 17 Labor Markets, 1953-54 », *Monthly Labor Review*, LXXVIII (January, 1955), p. 67.

⁽¹⁹⁾ Sherrill Cleland, *The Influence of Plant Size on Industrial Relations* (Princeton, N.J. : Industrial Relations Section, Princeton University, 1955), pp. 14-21.

⁽²⁰⁾ Frederic Meyers, « The Growth of Collective Bargaining in Texas — A Newly Industrialized Area », *Proceedings of the Industrial Relations Research Association*, IX (December, 1956), p. 286.

and Steele and McIntyre⁽²¹⁾ have demonstrated a strong positive relationship between the size of establishment and the extent to which they are unionised. Studies in Norway,⁽²²⁾ Sweden,⁽²³⁾ Austria,⁽²⁴⁾ and Japan⁽²⁵⁾ have shown that the level of unionism is higher in larger than in smaller offices. In reviewing the extent and nature of white-collar unionism in eight countries, Sturmthal found that its density is generally higher in the public than in the private sector of the economy, and concluded that this is primarily because public employees tend to be concentrated in large groups which are administered in a bureaucratic fashion.⁽²⁶⁾ Bairstow has also offered this as a partial explanation for the fact that government white-collar employees are more highly unionized in Canada than private white-collar workers.⁽²⁷⁾

But while the degree of employment concentration is very important in accounting for the growth of white-collar unionism, it is by no means the whole story. The attitudes and behaviour of employers towards white-collar unions are also important. The more willing employers are to recognise white-collar unions and the greater the degree of recognition⁽²⁸⁾ which they are prepared to confer upon them, the greater the growth of these unions is likely to be.

The explanation of this is threefold. First, workers, especially white-collar workers, tend to identify with management, and they are, therefore,

(21) H. Ellsworth Steele and Sherwood C. McIntyre, « Company Structure and Unionization », *The Journal of the Alabama Academy of Science*, (January, 1959), p. 38.

(22) Egil Fivelsdal, « White-Collar Unions and the Norwegian Labor Movement », *Industrial Relations*, V (October, 1965), p. 85, n.7.

(23) Arne H. Nilstein, « White-Collar Unionism in Sweden », *White-Collar Trade Unions*, Adolf Sturmthal, editor (Urbana: University of Illinois Press, 1966), pp. 275-276.

(24) Ernst Lakenbacker, « White-Collar Unions in Austria », *ibid.*, p. 53.

(25) Solomon B. Levine, « Unionization of White-Collar Employees in Japan », *ibid.*, pp. 222-223.

(26) *Ibid.*, pp. 379-380.

(27) *Op. cit.*

(28) It is often assumed that a union either possesses recognition or it does not. But, in reality, union recognition is a matter of degree. On the one extreme, the employer may oppose the union by force or by « peaceful competition » and there is little or no recognition. On the other extreme, the employer may bargain with the union on any matter it may wish to raise; meet any representatives that the union may appoint; accord the union the necessary facilities to collect dues, hold meetings, and publicise its activities; encourage his employees to join the union; and provide it with essential information for collective bargaining. Between these two extremes, there are many intermediate positions.

less likely to join trade unions the more strongly management disapproves of them. Second, the more strongly management disapproves of trade unions, the less likely workers are to join them in case they jeopardise their career prospects. Third and most important, unions are usually accepted on instrumental rather than ideological grounds, « as something to be used rather than as something in which to believe ». ⁽²⁹⁾ Many employees want to see « the proof of the pudding » before they join a union but « the proof of the pudding comes once the union has been recognised ». ⁽³⁰⁾ The less recognition an employer is prepared to give a union, the more difficult it is for the union to participate in the process of job regulation and thereby demonstrate to employees that it can provide a service for them. In such circumstances, not only are a large number of employees not likely to join the union, but many of those who have already done so are likely to let their membership lapse because the return they are getting on it is insufficient.

There is a considerable body of evidence in several countries which supports the argument that recognition is important in fostering union growth. In Britain, studies of white-collar unionism in mining, ⁽³¹⁾ banking, ⁽³²⁾ and retail distribution ⁽³³⁾ all attest to this fact. So does the work of the present author. It is not possible to present the supporting evidence here, but it very strongly indicates that, in addition to the degree of employment concentration, the major factor accounting for the variations in the occupational and industrial pattern of white-collar unionism in Britain are variations in the degree to which employers have recognised this unionism. ⁽³⁴⁾ At least one reason for the relatively high level of white-collar unionism in the American postal service and the railway industry is that the Lloyd-La Follette Act of 1912 and the Railway Labor Act of 1926 respectively gave white-collar employees in these areas the right to join unions and the unions the right to engage in collec-

⁽²⁹⁾ C. Wright Mills, *White Collar* (New York : Oxford University Press, 1956), p.308.

⁽³⁰⁾ Reply of Allan Flanders to Q. 10,005, *Minutes of Evidence 62 of the Royal Commission on Trade Unions and Employers' Associations* (London : HMSO, 1967).

⁽³¹⁾ Brian McCormick, « Managerial Unionism in the Coal Industry », *British Journal of Sociology*, XI (December, 1960), p. 367.

⁽³²⁾ R.M. Blackburn, *Union Character and Social Class* (London : Batsford, 1967), especially pp. 249-251.

⁽³³⁾ Robert E.L. Knight, « Unionism Among Retail Clerks in Postwar Britain », *Industrial and Labor Relations Review*, XIV (July, 1961), pp. 522-523.

⁽³⁴⁾ *Trade Union Growth and Recognition*, op. cit., chap. 5, and *The Growth of White-Collar Unionism*, op. cit., chap. 8.

tive bargaining.⁽⁸⁵⁾ The various contributors to Sturmthal's book also make it clear that the generally higher level of white-collar unionism in the public sector of the economies of various nations is partly explained by the greater willingness of public employers to recognise this unionism.⁽⁸⁶⁾ The Public Service Staff Relations Act in Canada and Executive Order 10,988 in the United States are the most recent examples of this tendency. Goldenberg feels that « the 'quiet revolution' in Quebec, which not only established collective bargaining rights for professional employees (Labour Code 1964) but seemed to encourage their organisation, particularly in the public sector » at least partially accounts for the « unique success in the unionization of professional workers » in this area.⁽⁸⁷⁾

The impact of employer attitudes and behaviour upon the growth of white-collar unionism is brought out even more clearly by the experience of supervisory unionism in North America. Dale and Raimon have argued that the fact that an estimated 80 per cent of supervisory and managerial employees on American railways are unionised is almost entirely attributable to the collective bargaining provisions of the various Railway Labor Acts.⁽⁸⁸⁾ Evidence presented in Rogow's paper indicates that the major factor explaining the decline of supervisory unionism in the United States after World War II was the « preventive programs » devised by management and made possible largely by the removal of legal protection for supervisory unionism.⁽⁸⁹⁾

Differences in the ease with which unions can obtain recognition is also important in explaining differences in the degree of white-collar unionism between North America and Europe. Kassalow has argued that

Under the National Labor Relations Act, the obtaining of union recognition is a highly legalistic and formal matter. For the most part, recognition rights must be won employer by employer, and each case may call for a special organizing campaign. And as white-collar employee units tend to be relatively small (especially in private manufacturing industry), this makes organization slow and costly.

The central role of employer associations in European industrial relations makes white-collar organizing easier . . . under an association pattern of bargaining, the union does not have to « prove » majority

⁽⁸⁵⁾ See Kassalow, *op. cit.*, pp. 329-330, 334-335, and 341.

⁽⁸⁶⁾ *Op.cit.*

⁽⁸⁷⁾ *Op. cit.*

⁽⁸⁸⁾ Ernest Dale and Robert Raimon, « Management Unionism and Public Policy on the Railroads and the Airlines », *Industrial and Labor Relations Review*, XI (July, 1958), pp. 551-571.

⁽⁸⁹⁾ *Op. cit.*

representation at any given plant. The employers' association usually bargains and signs agreements for all its members. Union campaigns need not be waged company by company. When recognition is won from the association, the white-collar union generally is automatically recognized for all affiliated firms.

.....

The more formal, less legalistic European method of winning union recognition also makes the union less vulnerable to later loss of recognition. In the United States, for example, concerted individual campaigns by several electronics companies and aircraft companies succeeded in knocking out engineering union majorities through decertification elections. ⁽⁴⁰⁾

The evidence which the present author has gathered for Britain strongly supports Kassalow's argument. It demonstrates that in almost every instance employers' associations granted recognition to white-collar unions long before they had sufficient strength to force the employers to do so, and generally even before the unions represented a substantial proportion, let alone a majority, of the employees concerned. ⁽⁴¹⁾

The importance of the third strategic factor in the process of white-collar union growth — government policy with regard to union recognition — has already been made clear to some extent in the preceding discussion. Where governments in their role as employer have adopted more favourable policies towards the unionisation of their employees, this has always been followed by a dramatic increase in the growth of unionism among them. American postal unionism and the Lloyd-La Follette Act, American federal civil service unionism and Executive Order 10,988, and Canadian federal civil service unionism and the Public Service Staff Relations Act provide examples on this continent. Foreign examples can be found in the civil services and nationalised industries of Britain, ⁽⁴²⁾ Sweden, ⁽⁴³⁾ France, ⁽⁴⁴⁾ Austria, ⁽⁴⁵⁾ and other European countries.

⁽⁴⁰⁾ Everett M. Kassalow, « The Prospects for White-Collar Union Growth », *Industrial Relations*, V (October, 1965), pp. 41-42.

⁽⁴¹⁾ *Trade Union Growth and Recognition*, *op.cit.*, chap.4. See also Knight, *loc.cit.*

⁽⁴²⁾ O. Kahn-Freund, « Legal Framework », *The System of Industrial Relations in Great Britain*, Allan Flanders, and H.A. Clegg, editors (Oxford : Blackwell, 1954), p.54, and B.V. Humphreys, *Clerical Unions in the Civil Service* (Oxford : Blackwell, 1958).

⁽⁴³⁾ Nilstein, *op.cit.*, pp. 270-271.

⁽⁴⁴⁾ Michel Crozier, « White-Collar Unions — The Case of France » in Sturmtal, *op.cit.*, p.115.

⁽⁴⁵⁾ Lakenbacher, *op.cit.*, pp. 58-59 and 67.

Government policies, by tending to neutralise or at least contain the attitudes and behaviour of employers towards trade unions, have also had a profound effect upon the growth of unionism in the private sector of the economy. The Railway Labor Act and the Wagner Act in the United States as well as P.C. 1003 in Canada testify to this. It is also noticeable that the degree of white-collar unionism is highest by a considerable margin in the two Canadian provinces — Saskatchewan and Quebec — which have legislation the most favourable to it. ⁽⁴⁶⁾ There is not room here to give the supporting evidence, but Rogow ⁽⁴⁷⁾ and Ross ⁽⁴⁸⁾ make it clear that fluctuations in the membership of the Foreman's Association of America between its birth in the late 1930's and the passage of the Taft-Hartley Act in 1947 are almost perfectly correlated with fluctuations in the rulings of the NLRB as to whether or not foremen were covered by the provisions of the Wagner Act. Most students of the FAA are also agreed that its decline after 1947 can be almost wholly attributed to the provisions of the Taft-Hartley Act which relieved employers of their obligation to recognise and bargain in good faith with foremen's unions and to refrain from engaging in unfair labour practices against them. ⁽⁴⁹⁾ Nilstein and Johnston point out that the high level of white-collar unionism in the private sector in Sweden (50 per cent) is very largely a product of the Rights of Association and Negotiation Act of 1936 which broke employer resistance to organisation among white-collar workers. ⁽⁵⁰⁾ Even in the voluntaristic environment of the British industrial relations system, a great deal of white-collar union recognition and growth in private industry can be attributed to government policies necessitated by war which made it easier for unions to exert pressure for recognition and harder for employers to resist it. ⁽⁵¹⁾ In fact, the Donovan Commission has recently come to the conclusion that if the amount of white-collar unionism in private industry in Britain is to be increased significantly, further government action to encourage trade union recognition will be required, and it

⁽⁴⁶⁾ Bairstow, *op.cit.*

⁽⁴⁷⁾ *Op.cit.*

⁽⁴⁸⁾ Philip Ross, *The Government as a Source of Union Power* (Providence, R.I. : Brown University Press, 1965), pp. 260-262.

⁽⁴⁹⁾ Rogow, *op.cit.*; Charles P. Larowe, « A Meteor on the Industrial Relations Horizon : The Foreman's Association of America », *Labor History*, II (Fall, 1961), p.294; David Levinson, « Wartime Unionization of Foremen » (unpublished Ph.D. thesis, University of Wisconsin, 1949), p. 437.

⁽⁵⁰⁾ Nilstein, *op.cit.*, p.270, and T.L. Johnston, *Collective Bargaining In Sweden* (Cambridge, Mass. : Harvard University Press, 1962), p.94.

⁽⁵¹⁾ See *Trade Union Growth and Recognition, op.cit.*, chap.4.

has recommended the establishment of an Industrial Relations Commission to deal, among other things, with recognition disputes. ⁽⁵²⁾

This section of the paper has tried to indicate the major factors which affect the growth of white-collar unionism — the degree of employment concentration, the degree of union recognition, and the extent to which public policy promotes union recognition. The greater the degree of employment concentration the greater the density of white-collar unionism. The explanation for this would seem to be that employees are more likely to realise the need for trade unionism and trade unions are more likely to be interested in recruiting them, the more concentrated their employment. But this particular need may not be met because employers refuse to recognise unions and pursue policies designed to discourage or prohibit their white-collar employees from joining them. Unions, especially in North America, have generally been unable by themselves to force employers to concede recognition. This has also required the introduction of government policies which have made it easier for unions to exert pressure for recognition and harder for employers to resist it. It is not claimed that these are the only factors affecting the growth of white-collar unionism, but only those which research in several countries suggests are of overwhelming strategic importance.

The Encouragement of White-Collar Unionism by Public Policy

Now that the major determinants of the growth of white-collar unionism have been indicated, an attempt can be made to answer the question of how it can best be encouraged. The preceding discussion has demonstrated that even where employment concentration creates a need for white-collar unionism, it is unlikely to grow significantly unless management opposition is effectively curbed by public policy. It is this paper's contention that although public policy in Canada claims to do this, it does not. To demonstrate this conclusively, it would be necessary to undertake a comprehensive survey of employer policies and practices with regard to the recognition of white-collar unions. Unfortunately, this has not been done for the Task Force, and there is not sufficient time available to do this now. ⁽⁵³⁾

⁽⁵²⁾ *Royal Commission on Trade Unions and Employers' Associations* (London : HMSO, 1968), pp. 61-65.

⁽⁵³⁾ The author has done this for Britain in *The Growth of White-Collar Unionism*, *op.cit.*, chap.8.

But at least some evidence for the contention that Canadian public policy is ineffective in curbing management opposition to white-collar unionism is contained in Bairstow's paper.⁽⁵⁴⁾ Five of the ten companies which she approached refused to allow her to interview their white-collar employees regarding trade unionism. It is worth quoting at some length from the reply of one of these companies to Bairstow's request :

. . . [our] management has never actively opposed union organizational efforts among manual production employees On the other hand, we have actively opposed organization of salaried office employees. The company has, consistently with applicable legislation and regulations, actively opposed the union organization of our office people. The UAW has made several attempts to organize our office employees in These were all full blown organization campaigns. (They have also made halting attempts in) Our response was to mount an active program « to communicate management views on industrial relations issues ». This involved letters to employees and a series of a meetings with employees. We used visual aids, discussion groups — the lot. (One of the admirable features of the U.S. industrial relations system is the freedom of such communication accorded management.) I am glad to say that, so far, we have successfully and overwhelmingly defeated the union in its organization drive.

It is our intention to continue this approach. We shall continue to do everything that is possible within the law to persuade our salaried employees to our conviction that their unionization serves neither their interests nor those of the company.

Even some of the companies which allowed Bairstow to interview their white-collar employees admitted to discouraging them from joining trade unions. One manager informed her :

I'll do everything I can to stop my office employees from unionizing. Whenever I hear of a union coming around here, I call all my employees in and tell them what I think of unions and why they don't need one. No union has ever got a toe in the door here. As long as I am a manager, no union ever will.

A manager in another firm was less subtle :

Of course, we don't let a fired employee know that we fired him for union activity. If we want to fire him for that, we watch him until he slips up and then get him for coming in late or smoking in a « no smoking » area, or something. We can always find something.

The fact that these and no doubt many other Canadian companies are able actively and successfully to oppose the unionisation of their white-

⁽⁵⁴⁾ *Op.cit*

collar employees and still stay within the limits of the law suggests that Canadian public policy is not very effective in curbing management opposition to unionism.

There are several ways in which Canadian public policy might be made more effective in this regard. In surveying « informed opinion » regarding public policy on industrial relations in Canada for the Task Force, Christie could find no general agreement that one purpose of this policy was the encouragement of union organisation.⁽⁵⁵⁾ Perhaps this is not surprising since this purpose is not explicitly stated in any Canadian legislation. Any improvement in Canadian public policy on industrial relations might therefore begin with a clear statement of the value of trade unionism and the collective bargaining which it makes possible, and of the desirability of encouraging the growth of these institutions by means of public policy. Such a statement would be useful in setting the tone for industrial relations in Canada. More important, « informed opinion » believes that the effectiveness of industrial relations public policy is very largely a matter of the approach of the administering board,⁽⁵⁶⁾ and such a statement should remove from the minds of those who administer this policy any uncertainty as to what its purpose is.⁽⁵⁷⁾

But this improvement would not be sufficient by itself to bring about a significant expansion of unionism among white-collar workers. The major criterion that Labour Relations Boards take into consideration in granting recognition to a union is whether it is representative of the employees concerned, that is whether a majority of them are members of the union. The discussion of the factors affecting the growth of white-collar unionism made it clear that representativeness and recognition are not independent phenomena, but are closely related and interact. In short, the one reinforces the other. Thus regardless of how judiciously the criterion of representativeness is applied, it will always work to the disadvantage of the union, for the absence of recognition is itself one of the major factors impeding the growth of union membership. This is not an argument for completely abandoning this criterion and for granting recognition to a union before it has any representativeness whatsoever. But it is an argument for giving the union a better chance of becoming representative.

⁽⁵⁵⁾ Innis Christie, « An Exploratory Study of the Efficacy of the Law of Unfair Labour Practices in Canada ».

⁽⁵⁶⁾ *Ibid.*

⁽⁵⁷⁾ Of course, other purposes of Canadian industrial relations legislation such as the promotion of industrial peace could also be explicitly stated.

There are several ways in which this might be accomplished. First, rather than require a union to demonstrate that it has a majority among all those employed in a bargaining unit, it could be required to demonstrate that it has a majority only among those actually voting. At the moment, in all jurisdictions except Nova Scotia, all the employees in a unit who do not vote are assumed not to want the union. There seems to be no good reason for this assumption, especially since, as was argued above, the criterion of representativeness already places the union at a disadvantage.

Second, given the interdependence between union membership and recognition, it seems unfair that unions should be required to demonstrate such a high level of membership before being allowed a representation vote. For example, in Ontario a union must be able to demonstrate 45 per cent and in Manitoba 50 per cent membership before such a vote is allowed. Christie found that there was a substantial body of opinion drawn from both sides of industry as well as from the uncommitted experts and administrators favouring a « quick vote » procedure which would entitle the union to a vote on every certification application upon a *prima facie* showing that it could command the support of, say, thirty per cent of the bargaining unit. ⁽⁵⁸⁾

Third, the recognition process could be speeded-up. The longer it takes a union to obtain recognition the more likely members are to lapse, partly because they feel the union is not obtaining any concrete results and partly because of high labour turnover in many areas of white-collar employment. Both Bairstow and Christie have found some evidence which suggests that delay through over-concern with technicalities and over-use of any legal proceedings available is the principal way in which management abuses existing labour relations legislation. ⁽⁵⁹⁾ The most obvious way to solve this problem would be to make the existing legislation much less technical and legalistic. For example, there seems to be no reason (except that it gives employers a number of grounds upon which to oppose the certification of a union) for requiring a union to demonstrate that a majority of employees in a unit are « members in good standing » and defining this in an extremely technical and legalistic manner. What is important is not whether a majority of the employees are « legally » members of the union but whether they wish the union to represent them. The wishes of the employees could be more easily and accurately determined by simply requiring them to petition the Board that they

⁽⁵⁸⁾ *Op.cit.*

⁽⁵⁹⁾ Bairstow, *op. cit.*, and Christie, *op. cit.*

wish to be represented by a certain union.⁽⁶⁰⁾ No doubt those who are more familiar with the operation of Canadian industrial relations legislation could think of several other ways in which it might be simplified and the opportunities for legal proceedings reduced.

Fourth, a union would have a better chance of becoming representative if it had the same advantages as an employer in communicating with employees. An American labour lawyer has noted that

In an organizing drive, the advantages of communication are markedly with management. Labor has to rely pretty much on appeals via established media of communication, circulars distributed at the place of the employer, home solicitations, and meetings at a hired hall. Management has available to it a complete and accurate mailing list of employees, together with the plant itself, wherein employees can be addressed as a captive audience, or on their own time. Furthermore, during working hours other than for relief and rest periods, management contacts with employees are more frequent and more sustained. This is a matter about which one could comment at length.⁽⁶¹⁾

In order to help the union overcome this inherent disadvantage, public policy might ensure that as much as possible the union is given an equal opportunity to communicate with employees. Thus if an employer addresses his employees regarding unionisation on company time and property, he could be required to make the same facilities available to the union. Or, if he communicates by mail with his employees regarding unionisation, he could be required to make the mailing list available to the union. Other examples could be given.

The changes described above would certainly give a union a better chance of demonstrating its representativeness. But they would do little or nothing to curb employer opposition to unions. One way in which public policy could be made more effective in this regard would be by removing an employer's right to appear before the Board in opposition to an application for certification. It is obviously of some consequence to an employer whether a union is certified to represent his employees and which union this is to be. But it does not follow that he has a right to have a say in this matter. The employees' choice of a union is similar to an individual's choice of a lawyer. It is obviously of some interest and concern to the plaintiff who, if anyone, will represent the defendant, but

⁽⁶⁰⁾ If 30 per cent of them did this, then this could be taken as the *prima facie* evidence for holding a « quick vote » as was described above.

⁽⁶¹⁾ Robert J. Doolan, « Attitudes of White-Collar Workers Towards Unionization », *Addresses on Industrial Relations* (Ann Arbor: University of Michigan, Bureau of Industrial Relations, 1959), p.11.

there would obviously be a conflict of interest in allowing the plaintiff to have any say as to who this should be. Similarly, the choice of a union is a matter for the employees alone to decide. In any case, the employer's appearance before the Board is superfluous, for the Board already examines those matters on which employers challenge a union's application for certification. In an application for certification, the employer's role before the Board should be restricted to providing it with a list of his employees and his views as to the desirable shape of the bargaining unit.

There is also a conflict of interest in allowing an employer to make or support an application for revocation of a union's certification. It is also unnecessary. For if the employees feel so strongly that the incumbent union is not representing their best interests, they will presumably make their own application for revocation to the Board (perhaps with the help of another union). But if it is felt that employee interests in this regard require additional protection, then it could be laid down that a union would automatically lose its certification, in the first instance, if no attempt had been made to negotiate a collective agreement within twelve months of certification, and after that, within twelve months of the expiry of the last agreement.

Public policy could also be made more effective in curbing employer opposition to unionism by strengthening the provisions concerning employer unfair labour practices.⁽⁶²⁾ It is clear from Christie's interim report that many of the unfair labour practices are extremely difficult to enforce against « a subtle and well-advised employer » primarily because of the difficulty of ascertaining employer motives.⁽⁶³⁾ This might be remedied by placing the onus of proof in unfair labour practice cases upon the employer. This has already been done in Quebec. In addition, the scope for employer unfair labour practices might be reduced by prohibiting any unilateral change in wages and working conditions and placing a moratorium on all firings from the time the employees petition the Board for an election until it is held. Where this is not already the case, the Board rather than the courts could be given the authority to prosecute unfair labour practices without the prior approval of the Minister of Labour.⁽⁶⁴⁾ There may even be a case for giving the Board's field officers the power to make binding decisions on unfair labour practices,

⁽⁶²⁾ There may also be a case for strengthening the provisions regarding union unfair labour practices, but this subject is outside the scope of this paper.

⁽⁶³⁾ *Op.cit.*

⁽⁶⁴⁾ On this point see *ibid.*

with appeal to the Board, but a more definitive judgment on this question will have to await Christie's final report.⁽⁶⁵⁾ Finally, if the Board convicts an employer of an unfair labour practice, one of the penalties might be the *automatic* certification of the union.⁽⁶⁶⁾ If an employer is convicted, for example, of firing an employee during an organising campaign because of his union activity, it may be of some help to this employee to be reinstated or compensated. But it is not all that helpful to the union. For the dismissal of this one employee may have caused several others who would otherwise have joined the union not to do so, and thereby have made it more difficult for the union to demonstrate its representativeness.

Many of the suggestions which have been made above have been synthesised into an integrated recognition procedure by Michael Gordon in his follow-up study of Section 65 applications.⁽⁶⁷⁾ Although it will involve a certain amount of repetition, it is worthwhile outlining his plan not only because it summarises a great deal of what has already been said, but also because it « was put to many individuals from both management and labour, almost all of whom reacted favourably to the proposals ». ⁽⁶⁸⁾ Gordon suggests that the union should be required to notify management and the Board of its intention to organise a particular plant. At this point there would be an immediate « freeze » on all terms and conditions of employment; management would be required to provide the union with a list of all employees; and the Board would appoint an arbitrator or field officer to act as a referee on any disputes arising out of the organising campaign. Both management and the union would be given an equal opportunity to address the employees on company time and property. Both sides would be limited in what they say only on the basis of attempted coercion and intimidation. The company would also be required to make time and space available before the vote, for the arbitrator or field officer to explain to the employees their rights and privileges and the voting procedure. There would be no necessity for the union to demonstrate that a certain proportion of the employees were

⁽⁶⁵⁾ His interim report suggests that « informed opinion » is generally not in favour of this course of action, although there are some significant exceptions to this.

⁽⁶⁶⁾ The *quid pro quo* if a union was convicted of an unfair labour practice, might be to prohibit it from applying for certification for, say, six months. This seems to generally be the position at the moment.

⁽⁶⁷⁾ This study forms Appendix D of Christie, *op.cit.*

⁽⁶⁸⁾ *Ibid.*

members or supported it before a representation vote was taken.⁽⁶⁹⁾ Such a vote would follow automatically after the various addresses had been made, with the issue being decided on the basis of a simple majority of the ballots cast.

Even if all the suggestions advanced in this section of the paper were implemented, they might still not be sufficient to bring about a significant expansion of unionism among white-collar workers. Christie found that

Several of the most highly respected people in the field agreed that management could, within the ambit of present legislation as enforced, « kill » a weak union by refusing to bargain or by engaging in a pretense of bargaining or simply by procrastinating. It was felt, however, that at some point the relationship had to become a test of strength, or, alternatively, that a cumbersome legal remedy for failure to bargain in good faith would be as time consuming as any management delaying tactic and would therefore equally effectively destroy a weak union.

Generally, the law was not considered to be particularly effective at this stage.⁽⁷⁰⁾

But there would seem to be at least some ways in which the law could be made more effective at the post-certification stage. The employer could be encouraged to bargain in good faith by prohibiting any unilateral change in wages and working conditions once the union is certified. In addition, during the period when the bargaining relationship is not very mature, say the first three to five years following certification, either side might be permitted to request the help in negotiations of an independent arbitrator whose decision would be binding. During this period, the union could consolidate its position by showing the employees that it could do something for them, and as a result of being exposed to trade unionism management might come to view it as something less than an unmitigated evil.

A final way in which trade union growth might be encouraged by public policy is by ensuring that *everyone* is covered by its protective

⁽⁶⁹⁾ Gordon's scheme would not require a union to demonstrate even *prima facie* 30 per cent support before holding a representation vote. This would obviously make it even easier for the union to obtain recognition. But it might be argued that lack of a « screening device » would lead to a rash of unsuccessful representation votes and place an unbearable administrative burden on Labour Relations Boards. Whether or not this would actually be the case, could be better determined by those who have some practical knowledge of the Boards' present workloads.

⁽⁷⁰⁾ *Op.cit.*

provisions. As Rogow has noted

Coverage by protective legislation, or the absence of coverage, strongly affects the fortunes of most employee groups seeking self-organization. For countries like Canada and the United States exclusion of a group from the basic labor laws' definition of « employee » means that employers are not under a legal compulsion to bargain, and may mean that employer self-help weapons against employee organization otherwise barred by law are permitted. ⁽⁷¹⁾

At the moment, persons employed in a managerial, supervisory, or confidential capacity are not covered by these provisions in any jurisdiction. Saskatchewan and Quebec are the only jurisdictions in which all professional personnel are covered by labor legislation. In all other jurisdictions certain groups of professionals are specifically excluded. ⁽⁷²⁾ Teachers do not have the statutory right to bargain in New Brunswick, ⁽⁷³⁾ Prince Edward Island, Newfoundland, and Ontario. ⁽⁷⁴⁾ Most of the Acts also exclude certain other categories of personnel such as domestic servants and those employed in agriculture.

The research done for the Task Force does not offer any overwhelming support for either including or excluding these categories of personnel from the coverage of labour legislation. Simmons found that in many areas of municipal government supervisory personnel belong to unions and participate in their activities, and he feels that this situation should be « corrected ». ⁽⁷⁵⁾

Goldenberg notes that for professionals « the opposition to collective bargaining has been argued mainly in terms of *status*, professional *ethics* and public *service*, and the protection of the *individualism* traditionally associated with professional practice ». ⁽⁷⁶⁾ But she goes on to point out that

Proponents of collective bargaining... maintain that changing social and economic conditions have overtaken and invalidated many of the traditional ideals and images. They contend that it is not collective bargaining, *per se*, but the impersonal employment relationships in large scale bureaucratic enterprises that are eroding individual initiative and undermining the sense of personal dignity and professional status. ⁽⁷⁷⁾

⁽⁷¹⁾ *Op.cit.*

⁽⁷²⁾ While the number of these excluded categories varies between jurisdictions, there is a fairly consistent pattern of excluding the « traditional » and « closed » professional groups. See Goldenberg, *op. cit.*

⁽⁷³⁾ This matter is under consideration here.

⁽⁷⁴⁾ But this right has been granted voluntarily in Ontario.

⁽⁷⁵⁾ *Op.cit.*

⁽⁷⁶⁾ *Op.cit.* (italics in the original).

⁽⁷⁷⁾ *Ibid.*

She summarises the proponents' case in John Crispo's words : « They do not feel that they are treated as individuals so they don't react as individuals and they are beginning to think in terms of collective action ».⁽⁷⁸⁾ She also cites Professor Cardin to the effect that a rigid definition of employee status under existing labour legislation fails to take account of the particular nature of professional functions and results in an unduly high proportion of management exclusions from professional bargaining units.⁽⁷⁹⁾ Goldenberg herself comes to the conclusion that « the variety of professional roles, the degree of responsibility they entail, and the different circumstances of employment in government, industry and other institutions makes it virtually impossible to establish an unequivocal standard of appropriate management exclusion ».⁽⁸⁰⁾ She also believes that collective bargaining is compatible with professional ethics.

While some of the liberal professions have objected to collective bargaining on the grounds of its incompatibility with professional ethics, these same professions have set precedents of collective action to protect the income of their self-employed members. Any scale of tariff or fees agreed to by a professional group does precisely that. If members of a professional group can act in concert, as they do, to protect their income as self-employed persons, it seems illogical that employed members of the same profession should be denied similar rights to secure their income and working conditions.⁽⁸¹⁾

Thus it would seem that at least by implication Goldenberg feels that professionals should be covered by the protective provisions of labour legislation.

The « great debate » over supervisory unionism is summarised by Rogow.⁽⁸²⁾ He demonstrates that the case against supervisory unionism can be reduced to two basic arguments — supervisory unionism is unnecessary and that it has certain harmful effects such as restricting management's decision-making freedom, producing dissension and conflict which lead to a decrease in morale and to divided loyalties, and promoting practices which restrict productivity and encourage mediocrity. After reviewing the arguments of both sides as well as the work of various scholars such as Levinson and Ferguson,⁽⁸³⁾ Rogow concludes that « evidence of harmful economic and social effects of supervisory unionism

⁽⁷⁸⁾ *Ibid.*

⁽⁷⁹⁾ *Ibid.*

⁽⁸⁰⁾ *Ibid.*

⁽⁸¹⁾ *Ibid.*

⁽⁸²⁾ *Op.cit.*

⁽⁸³⁾ See n.49.

is scanty (although part of the explanation for this is neglect by researchers of this complex problem rather than conclusive research findings proving the absence of adverse effects) ». ⁽⁸⁴⁾ His study of supervisory unionism also leads him to conclude that

Public policy in North America is consistent — perhaps too consistent — in denying protection of the labor relations laws to the primarily supervisory employee. The enormous range of variation by industry, by skill, and by location in the objective and subjective manager-managed relationships suggests that the conflict-of-interest fears underlying the managerial exclusion legislation cannot be assumed *a priori*. Only a case-by-case inquiry can determine the probabilities here. ⁽⁸⁵⁾

Although the research done for the Task Force does not offer any clear-cut guidance on the subject, there would seem to be a strong case for everyone being covered by the protective provisions of labour legislation. To begin with, much of the argumentation against unionism for certain groups of employees and for excluding them from the coverage of the legislation is, as Rogow has noted, « conjectural, hypothetical, and extremely difficult conclusively to prove or disprove, especially before the fact ». ⁽⁸⁶⁾ But the fact has already been established among most categories of white-collar workers in Britain (and other European countries), ⁽⁸⁷⁾ and the author's research for the Donovan Commission suggests that the « dire consequences » which employers predict generally fail to materialise. ⁽⁸⁸⁾ Second, there are a number of precedents not only in Europe but also in Canada for covering some of these excluded groups by labour legislation. All professional employees enjoyed collective bargaining rights under P. C. 1003 between 1944 and 1948. ⁽⁸⁹⁾ At the moment, all professional personnel in Saskatchewan and Quebec as well as in the federal civil service have the statutory right to bargain. Third, Bairstow's research reveals that most of the union leaders she interviewed claimed that much of the delay in certification proceedings resulted from employer arguments

⁽⁸⁴⁾ *Op. cit.*

⁽⁸⁵⁾ *Ibid.*

⁽⁸⁶⁾ *Ibid.*

⁽⁸⁷⁾ In these countries, professional, managerial, confidential, and even industrial relations personnel all engage in collective bargaining. In Sweden, even the clergy are unionised.

⁽⁸⁸⁾ *Trade Union Growth and Recognition, op.cit.*, pp. 74-82.

⁽⁸⁹⁾ But strong representations from professional associations resulted in their exclusion from the existing legislation which was passed in 1948. This change in policy would seem to be unjustified inasmuch as the legislation would not have forced professionals to engage in collective bargaining, but only enabled them to do so if they so desired.

over who was properly classified as a supervisor or was employed in a confidential capacity and therefore to be excluded from the bargaining unit. In one instance cited by a Montreal union leader, certification was delayed nearly a year in a large bank by an argument over 77 exclusions.⁽⁹⁰⁾ Finally and most important, given the value of democratic decision-making and the desirability of making the process and structure of democracy as complete as possible, it follows that any group regardless of the functions it performs in the process of production should be allowed to participate in the making and the administration of the rules by which it is governed on the job.

Public Policy and the Problems Arising From the Growth of White-Collar Unionism

Assuming that Canadian industrial relations policy was amended along the lines suggested above resulting in a significant growth of white-collar unionism, this would pose a number of issues upon which public policy might be expected to pronounce. These include the nature of the bargaining unit, the nature of the bargaining agent, the content of collective bargaining, and the method of dispute settlement.

THE NATURE OF THE BARGAINING UNIT

The case which is made for excluding persons employed in a supervisory, managerial, professional, or confidential capacity from the coverage of labour legislation — the prevention of conflicts of interest — is not so much an argument for excluding them from all bargaining units as it is for ensuring that they are not included in the same bargaining unit as other types of employees. Including supervisory and non-supervisory personnel in the same bargaining unit obviously could give rise to conflicts of interest, and is therefore undesirable. The answer is not to exclude supervisory and managerial personnel, whether professional or otherwise, from the coverage of the legislation, but to ensure that it stipulates that any person who effectively supervises the work of another employee should not be included in the same bargaining unit as that employee. Such a provision would respect the hierarchical structure of authority in industry by ensuring that supervisors were not subject to a conflict of interest with respect to those they supervise, while at the same time recognising the bargaining rights of all employees.

⁽⁹⁰⁾ *Op. cit.*

The Public Service Staff Relations Act recognises the logic of this principle by providing separate bargaining units for supervisory and non-supervisory personnel in the same occupational category in the federal public service. But by excluding persons discharging significant managerial and confidential functions from all bargaining units, it fails to carry this principle to its logical conclusion. The fact that a person performs significant managerial and confidential functions is a reason for ensuring that he is not included in the same bargaining unit as those who do not. But it is not a reason for excluding him from all bargaining units. Many of those who perform significant managerial and confidential functions in the public service are not in a position to strike individual bargains with the Treasury Board. In spite of their functions, their terms and conditions of employment are determined by formal rules which apply impersonally to all members of the group to which they belong. They are, therefore, just as likely to feel a need to belong to a union and engage in collective bargaining as those who do not perform such functions.

The proper bargaining unit for professional workers is a particularly delicate issue. Should professional and non-professional workers be placed in separate bargaining units? Given that the interests of these two groups with respect to their duties and their terms and conditions of employment are sufficiently dissimilar to indicate an affirmative answer to this question, should there be one professional bargaining unit or one for each profession? It is doubtful if either of these questions can be answered unequivocally in labour legislation. Goldenberg argues that the protection of craft and professional rights is

to a large extent, a function of size. While there is undoubtedly a legitimate case for protecting the distinctive interests of organized professional groups where they are employed in significant numbers, care must be taken that this does result in an unmanageable proliferation of bargaining units.

Rigidities in the law may be criticized — whether they restrict the bargaining unit to members of a single profession or whether they force professional workers — against their will — into multi-professional or all inclusive units. ⁽⁹¹⁾

A flexible system of determining professional bargaining units is required. This could be achieved by stipulating in the legislation that professional workers may decide, subject to the approval of the Board, the type of bargaining unit, if any, they wish to be included in. Such a provision was inserted in the Saskatchewan Trade Union Act in 1966. ⁽⁹²⁾

⁽⁹¹⁾ *Op.cit.*

⁽⁹²⁾ See *ibid.*

THE NATURE OF THE BARGAINING AGENT

It is commonly argued that just as supervisors should not be included in the same bargaining unit as those they supervise, so they should not be members of the same union as those they supervise. Several reasons are advanced in support of this position. If supervisor and supervisee are members of the same union and one has a grievance against the other, it will be most difficult, if not impossible, for the union to represent them both effectively. It is also possible that the supervisory members may control the union, or at least certain locals, and subordinate rank-and-file interests to their own. Even more likely, control will be in the hands of the rank-and-file, and action taken by supervisors in the course of their duty will be called into question by the union. It is not difficult to find examples of foremen being disciplined by the rank-and-file for « conduct detrimental to the union ». ⁽⁹³⁾ Most of the opposition to supervisors being members of rank-and-file unions derives from this difficulty.

Having supervisor and supervisee in the same union obviously creates difficulties. Sweden has tried to eliminate these by including in its labour legislation a provision which permits employers to require their foremen to refrain from membership in rank-and-file unions. ⁽⁹⁴⁾ Leaving aside the question of whether it is desirable for the state and the employer to interfere in this way with the employees' right to join unions of their own choosing, it is very doubtful if such a solution would be desirable in Canada. Employees often wish to retain their membership in a union when they are promoted to supervisory positions in order to maintain their right to accumulated benefits and in case they are demoted to the tools, and they might be placed at a serious disadvantage if they were no longer able to do this. In addition, there are certain areas — for example, printing, construction, and railways — where the practice of supervisors being members of rank-and-file unions has a long history, and any change would upset well-established and generally accepted bargaining relationships.

But this does not mean that the problem has no solution. Legislation could stipulate that before a rank-and-file union could be certified on behalf of supervisors it must form separate locals for them and ensure that

⁽⁹³⁾ Rogow, *op. cit.*, cites examples in the United States and Canada, and examples could also be given for Britain and other countries.

⁽⁹⁴⁾ See Nilstein, *op. cit.*, pp. 279-280. But unlike North America, public policy in Sweden does give protection and encouragement to the foremen-only union.

these are not subject to rank-and-file control.⁽⁹⁵⁾ In addition, it could be made an unfair labour practice for a rank-and-file union to discipline a supervisory member for carrying out any duties which an employer may assign him.

A union which is affiliated to the wider labour movement is often not considered to be an appropriate bargaining agent for certain categories of white-collar personnel. Goldenberg asks whether there is any incompatibility in supervisory and non-supervisory unions being affiliated to the same central labour organisation? She feels that « at present the question is an academic one, but its implications merit consideration ». ⁽⁹⁶⁾ Alberta, Manitoba, Ontario, and Quebec prohibit municipal police from becoming members of an association which is a branch or local of, or is affiliated with, any provincial, national or international trade union or association of trade unions. Simmons feels that other provinces should include such a provision in their labour legislation to eliminate the possibility of conflicting loyalties in the police's responsibility to the public. ⁽⁹⁷⁾

Inasmuch as the police are expected to maintain law and order during industrial disputes, there is obviously a risk of conflict of interest if they are in the same union as other employees. Simmons' recommendation that policemen should not be allowed to join unions which have members employed outside the police service would therefore seem reasonable. But it is difficult to see what conflicts of interest arise in having unions of policemen or supervisors affiliated to trades and labour councils, provincial federations of labour, or the Canadian Labour Congress. These central labour organisations have no power to interfere in the internal affairs of their affiliates. Their major function is to represent the interests of employees within the community. Consultation by governments with « labour » in Canada means consultation with these central labour organisations. If unions of supervisors and policemen wish to participate in this process, there seems no good reason why they should not be allowed to do so. In fact, as was argued at the beginning of this paper, it is most desirable that they should participate.

The choice of a bargaining agent for professional workers presents a special problem. Goldenberg argues that professional associations with licensing authority should be precluded from acting as bargaining agents

⁽⁹⁵⁾ This is sometimes achieved in Britain by making supervisory locals or branches responsible directly to the union's national executive.

⁽⁹⁶⁾ *Op. cit.*

⁽⁹⁷⁾ *Op. cit.* But he notes that affiliation with other trade unions has been the general practice among firemen and recommends that this should not be prohibited.

on the grounds that

it would be undesirable to combine in one body the public interest function of licensing with the private interest function of bargaining. The possibility, however remote, of restricting numbers to improve self-interest is too great a public risk. ⁽⁹⁸⁾

She feels that this problem could be resolved if labour legislation required professional associations to restrict themselves to professional matters and a separate organisation to be established for collective bargaining purposes. This is, in effect, the system in Quebec.

While it may be undesirable for professionals to be able to improve their position both by restricting supply and by collective bargaining, it is most doubtful if this should or could be rectified in the manner suggested by Goldenberg. To some extent, such legislation would discriminate against professional workers, for their position in this regard is not altogether unique. Many craftsmen are also able effectively to control labour supply by means of apprenticeship regulations, union security arrangements, or other devices, while at the same time engaging in collective bargaining. Moreover, as Goldenberg herself points out, « In some provinces . . . historical practice has entrenched the position of certain professional associations (notably nurses and teachers) as bargaining agents and any change at this time would . . . upset a well established and generally accepted pattern of bargaining relationships ». ⁽⁹⁹⁾ Most important, the fact that the public interest function of licensing is lodged in one body and the private interest function of bargaining in another is no guarantee that they will not collude and that, in practice, the two functions will be kept separate.

In any case, it is difficult to see why the danger of a professional association restricting supply in the self-interest of its members should only arise when it engages in collective bargaining. There can be little doubt that most professional associations already restrict supply in their members' self-interest regardless of whether they also engage in collective bargaining. If this is considered to be a problem, it will not be solved by

⁽⁹⁸⁾ *Op. cit.* She also objects to the professional association being the bargaining agent on the grounds that supervisory and non-supervisory personnel would be members of the same organisation and therefore subject to a conflict of interest. This point has already been dealt with above. John Crispo (ed.), *Collective Bargaining and the Professional Employee* (Toronto: University of Toronto, Centre for Industrial Relations, 1966), p. 120, also argues that the licensing and bargaining functions should be kept separate.

⁽⁹⁹⁾ *Op. cit.*

prohibiting professional associations from engaging in collective bargaining. There is only one way to solve this problem and that is to put the « public interest » function of licensing in the hands of a public rather than a private organisation.

THE CONTENT OF COLLECTIVE BARGAINING

Some of the Task Force's researchers have commented on the content of collective bargaining for white-collar workers. Simmons feels that « management rights » should be protected by law and recommends that collective bargaining for police, firemen, and other municipal employees should exclude matters concerned with probationary requirements, examinations, appointments, promotions, or dismissals as well as any matters which would require legislative action for its implementation.⁽¹⁰⁰⁾ Goldenberg argues that there is a conflict between « professional prerogatives » and « management rights », but she does not go so far as to suggest that it should be regulated by law.⁽¹⁰¹⁾

Such statements, particularly those by Simmons, imply that employer-managers have certain exclusive rights or prerogatives. But Chamberlain has very clearly and forcefully shown that they do not. There is not room here to give the details of his analysis, but it demonstrates that

there is no barrier except relative bargaining powers to the scope of the subject matter in which the union may interest itself. It can seek to bargain on any matter which is of sufficient importance to its membership to permit it to array a bargaining power adequate to the objective.⁽¹⁰²⁾

Nor should such a barrier be erected by the law. If employees feel that their interests can be profoundly affected by decisions on such matters as examinations, promotions, and dismissals, then there seems to be no valid reason why the law should prohibit their union from trying to participate in the making of such decisions. In fact, given the value of democratic decision-making, there is every reason why the law should not prohibit this.

Goldenberg also claims that there is a problem of recognising individual merit for professional workers, and notes that the Draft Professional Negotiations Act of the Ontario Steering Committee seeks to

⁽¹⁰⁰⁾ *Op. cit.* The Public Service Staff Relations Act contains a similar provision.

⁽¹⁰¹⁾ *Op. cit.*

⁽¹⁰²⁾ See Neil W. Chamberlain, « Union Impact on the Management Function », *Labor* (New York : McGraw-Hill, 1958), chap. 12. The quotation is taken from pp. 231-232.

obviate this problem by providing for the negotiation of individual contracts within the framework of a basic collective agreement. ⁽¹⁰³⁾ If professional workers are as concerned with the recognition of individual merit as Goldenberg implies, then it is highly probable that in their own self-interest they will ensure that their associations or unions negotiate collective agreements which will allow individual merit to be recognised. There is some evidence in Goldenberg's paper ⁽¹⁰⁴⁾ that those professionals who already engage in collective bargaining have done just this. There seems little justification or need for the law to interfere here.

THE METHOD OF DISPUTE SETTLEMENT

The method of dispute settlement which white-collar workers use or should use has also received some attention from many of the scholars the Task Force commissioned to do research on white-collar unionism. Most of Simmons' recommendations are concerned with the method of dispute settlement which municipal employees should be made to use. In short, he feels that strikes for such employees should be outlawed, and all disputes should be submitted to compulsory binding arbitration. ⁽¹⁰⁵⁾ Goldenberg feels that

Because the potential impact of a withdrawal of services varies both between and within professional groups, the question of professional responsibility in re dispute settlement — and of public intervention when negotiations reach an impasse — must be related to the *public interest* aspect of a given professional function. While recognising the right to strike as an essential ingredient of the bargaining process, some restrictions are indicated — by private restraint or public intervention — where a *vital public interest* is involved. Assuming that a work stoppage by a professional group would be contrary to the public interest, the moral or ethical question, as Professor Carrothers has observed, is « not whether collective bargaining as such is improper but *whether a reasonable substitute can be devised for the sanction of the right to strike*”.

Where, on the other hand, the withdrawal of professional services would *not* jeopardize a vital public interest, no legal or moral restriction on the right to strike is indicated. ⁽¹⁰⁶⁾

Muir argues that teachers should be allowed to strike, and recommends a procedure which he feels would protect the pupil's right to an education, while at the same time respecting the teacher's right to strike. ⁽¹⁰⁷⁾

⁽¹⁰³⁾ *Op. cit.*

⁽¹⁰⁴⁾ *Op. cit.*

⁽¹⁰⁵⁾ *Op. cit.*

⁽¹⁰⁶⁾ *Op. cit.* (italics in the original).

⁽¹⁰⁷⁾ *Op. cit.*

There is no valid reason why the law should treat white-collar workers any differently from manual workers with respect to the method of dispute settlement. Whether the workers are white-collar or manual is irrelevant. The important consideration is whether their work affects a vital public interest. If it does, then there may be a case for legislating a special method of dispute settlement for such workers. But this is a subject which is far too complex to be examined within the scope of this paper. In any case, this has already been done for the Task Force by Professor Arthurs.⁽¹⁰⁸⁾ What Muir, Simmons, and Goldenberg have to say regarding methods of dispute settlement for various categories of white-collar workers could be better considered in relation to Arthurs' paper on dispute settlement than in relation to this paper on white-collar unionism.

Conclusions

This paper has shown the role which public policy might and, in the opinion of the author, should play in encouraging the growth of white-collar unionism and in dealing with the problems arising therefrom. The final question to be considered is whether this policy should be expressed in a single piece of legislation or several.

Simmons has recommended that policemen and firemen should each have their own collective bargaining legislation in every province.⁽¹⁰⁹⁾ He justifies this recommendation on the grounds that it would ensure that policemen and firemen would not be subject to conflicts of interest with other employees, they would be treated consistently throughout each province, their morale would be improved, and they would not be so likely to claim the right to strike which other employees enjoy. This case for separate legislation is very weak. It is difficult to see how conflicts of interest between policemen and firemen and other employees can arise simply because the collective bargaining provisions for all employees are contained in a single piece of legislation. Consistency of treatment throughout a province would also be guaranteed if the collective bargaining provisions for policemen and firemen were contained in general labour legislation. It is highly doubtful that the morale of policemen and firemen would be significantly improved simply because they had their own legislation. If Professor Arthurs' essential industry dispute scheme were

⁽¹⁰⁸⁾ See the Report of Task Force Project No. 31.

⁽¹⁰⁹⁾ But he suggest that general municipal employees should be covered by the existing Labour Relations Acts.

adopted, presumably other groups of employees besides policemen and firemen would have certain restrictions placed on their right to strike. ⁽¹¹⁰⁾

Some professional groups would like to have collective bargaining provisions written into their own professional Acts, while others would like to have a single professional negotiation Act covering all professional workers. ⁽¹¹¹⁾ Goldenberg doubts if either of these alternatives can be justified.

It remains questionable . . . whether professional workers constitute such a distinctive entity, with such divergent needs from the rest of the labour force, as to require a separate collective bargaining statute. General labour legislation, incorporating some special provisions for professional workers (including the right to *opt out* of collective bargaining, or to do so as a separate group) may be sufficient. ⁽¹¹²⁾

This is already the situation in Saskatchewan. ⁽¹¹³⁾

In the author's view statutory collective bargaining provisions for all employees should be contained in a single piece of legislation. This would prevent governments being exposed to a form of whipsawing as each group with separate legislation vied for a more favourable statutory position. It would also make it easier to present an integrated collective bargaining policy with clearly stated objectives. In addition, it would prevent the idea developing that certain groups such as professional workers have a higher or at least special status in the eyes of the law. But it is not really crucial whether there is one piece of legislation or several.

⁽¹¹⁰⁾ Simmons also claims that because police unions would not have the right to affiliate to the wider labour movement, jurisdictional disputes would not occur, and therefore certification of police unions to ensure the right to exclusive representation is not required. But it does not follow that because police unions are unaffiliated, jurisdictional disputes could not arise. Two unaffiliated unions might both claim jurisdiction over the same police force or a breakaway organisation might claim jurisdiction from the incumbent union. It would therefore be advisable for police unions, like other unions, to be certified, and this is an additional reason for having them covered by general labour legislation and the various Labour Relations Boards.

⁽¹¹¹⁾ See Goldenberg, *op. cit.*

⁽¹¹²⁾ *Ibid.*

⁽¹¹³⁾ Goldenberg *ibid.*, does feel, however, that there is a case for ensuring special professional representation on Labour Relations Boards. But it is debatable whether there should be any « committed » representatives on Boards. In addition, special professional representation could give rise to special pleading by other groups of employees. For example, does a craft unit require a craftsman on the Board to define it? In any case, since the Chairmen of Labour Relations Boards are generally lawyers, in a sense professional workers are already represented.

What is crucial is that there should be legislation which would enable any group of employees in society to engage in collective bargaining if it so desired.

LA CROISSANCE DU SYNDICALISME CHEZ LES COLS BLANCS ET LA POLITIQUE GOUVERNEMENTALE CANADIENNE

INTRODUCTION

Cet article est une version révisée d'une étude faite pour l'Équipe spécialisée en relations du travail afin de l'aider dans ses recommandations concernant le syndicalisme chez les cols-blancs au Canada. Il est évident qu'il n'engage que la responsabilité de son auteur et non de l'Équipe spécialisée. Nous ne considérons cependant que les aspects du problème auxquels les politiques gouvernementales semblent les plus applicables, à savoir la croissance du syndicalisme chez les cols-blancs ainsi que les problèmes qu'elle crée.

Les syndicats sont nécessaires pour que les travailleurs aient voix au chapitre des décisions qui les affectent tant à l'intérieur de l'entreprise qu'au sein de la société globale. À supposer que la prise de décision démocratique soit une bonne chose, il s'ensuit que l'absence de syndicalisation chez les cols blancs et les cols bleus est un sujet qui prête à sérieuse réflexion. Tant et aussi longtemps que des groupes d'employés ne sont pas représentés dans la prise de décision, le processus et la structure démocratiques ne sont pas achevés. Il est alors logique de se demander comment aider à la croissance du syndicalisme dans ce secteur. Avant de tenter d'élaborer une réponse à cette question, il est nécessaire d'isoler les facteurs principaux favorisant ou retardant la croissance du syndicalisme chez les cols blancs.

LES CAUSES DE LA CROISSANCE DU SYNDICALISME CHEZ LES COLS BLANCS

Il y a plusieurs causes à la croissance du syndicalisme chez les cols blancs : a) certaines caractéristiques socio-démographiques des cols blancs, comme le sexe, l'origine sociale, l'âge et le statut dans la communauté ; b) certains aspects de leur situation économique comme le salaire, les avantages sociaux et la sécurité d'emploi ; c) certaines caractéristiques de leur occupation comme le degré de concentration de l'emploi par groupes, les chances de promotion, le degré de mécanisation et d'automatisation ainsi que le degré de proximité des travailleurs manuels syndiqués ; d) quelques caractéristiques du syndicalisme telles l'image qu'en a le public, leurs politiques de recrutement et leurs structures ; e) le degré auquel les employeurs sont prêts à reconnaître les syndicats de cols blancs ; f) la mesure dans laquelle l'action gouvernementale favorise la reconnaissance syndicale.

Il est cependant impossible d'étudier ici les rapports qui existent entre chacun de ces facteurs et la croissance du syndicalisme chez les cols blancs. La recherche et l'expérience de plusieurs pays démontrent que trois des six causes ci-haut mentionnées sont d'une extrême importance dans le problème qui nous préoccupe. Ce sont : le degré auquel l'emploi de cols blancs est concentré dans de grands

groupes, la mesure dans laquelle les employeurs sont prêts à reconnaître les syndicats de cols blancs et la portée de l'action gouvernementale favorisant la reconnaissance syndicale.

Plus le degré de concentration de l'emploi est grand, plus grande est la possibilité de syndicalisation chez les cols blancs. Il semble que nous puissions expliquer cette affirmation en disant que plus les employés réalisent leur besoin pour le syndicalisme et plus les syndicats sont intéressés à les recruter, plus leur emploi est concentré. Mais il se peut que ce besoin particulier ne soit pas rencontré soit parce que les employeurs refusent de reconnaître les syndicats, soit parce qu'ils établissent des politiques destinées à décourager ou à défendre à leurs cols blancs d'adhérer à ces associations. Généralement, les syndicats, surtout en Amérique du Nord, n'ont jamais été capables de forcer les employeurs à les reconnaître. Ceci a donc exigé l'introduction de politiques gouvernementales facilitant le travail des syndicats et rendant la résistance des employeurs plus difficile.

L'ENCOURAGEMENT DU SYNDICALISME CHEZ LES COLS BLANCS PAR LES POLITIQUES GOUVERNEMENTALES

Ce qui précède démontre que même si la concentration de l'emploi crée un besoin pour le syndicalisme chez les cols blancs, il est improbable qu'il croisse à moins que l'opposition patronale soit maîtrisée par les politiques gouvernementales. Nous avouons néanmoins que même si les politiques gouvernementales canadiennes prétendent annuler cette opposition patronale, elles sont loin d'être efficaces.

Il y a sûrement plusieurs façons de rendre plus efficaces les politiques canadiennes sur ce point.

1. — les politiques gouvernementales en matière de relations industrielles pourraient contenir une déclaration quant à la valeur du syndicalisme et de la négociation collective et quant au désir d'encourager la croissance de ces institutions.
2. — au lieu d'exiger d'un syndicat de prouver qu'il représente la majorité des salariés employés dans une unité de négociation, on pourrait demander qu'il ait la majorité parmi les voteurs.
3. — on pourrait introduire une procédure de vote rapide : ce moyen permettrait au syndicat de prendre un vote de représentation rapide à chaque requête en accréditation. Ce vote pourrait permettre au syndicat de pouvoir compter, à la suite d'un rapide tour d'horizon, sur, par exemple, trente pourcent des travailleurs composant l'unité de négociation.
4. — on pourrait accélérer le processus de reconnaissance en rendant la législation existante beaucoup moins technique et légale. Au lieu d'exiger, par exemple, que le syndicat prouve que la majorité des travailleurs dans l'unité de négociation soit des membres en règle de l'union (définissant « membres en règle » d'une manière extrêmement technique et légale), les désirs des employés pourraient être plus facilement et plus justement déterminés en demandant simplement qu'ils fassent parvenir à la C.R.T. une pétition désignant le syndicat par lequel ils veulent se faire représenter.

5. — le syndicat devrait avoir autant de chances de communiquer avec les employés que peut en avoir la direction de l'entreprise. Si un employeur s'adresse à ses employés au sujet de la syndicalisation sur les heures et lieux du travail, on pourrait exiger que les syndicats aient les mêmes facilités. Ou encore si la partie patronale communique avec les employés par la poste, on pourrait exiger que le syndicat ait accès à la liste d'adresse.
6. — on devrait enlever le droit à l'employeur de se présenter devant la Commission dans le but de s'opposer à une requête en accréditation ou d'appuyer une demande de révocation d'accréditation syndicale.
7. — le fardeau de la preuve dans les cas de pratiques déloyales devrait incomber à l'employeur.
8. — on pourrait réduire l'étendue des pratiques déloyales patronales en défendant tout changement unilatéral dans les salaires et les conditions de travail et en plaçant un moratorium sur tout congédiement à partir du moment où les employés ont envoyé une pétition à la Commission pour la tenue d'une élection jusqu'au moment où cette dernière a lieu.
9. — là où ce n'est pas déjà le cas, la Commission, plutôt que les cours ordinaires, devrait avoir l'autorité de poursuivre dans les cas de pratiques déloyales sans l'approbation préalable du ministre du travail.
10. — si la Commission trouve un employeur coupable de pratiques déloyales, une des sanctions pourrait être l'accréditation automatique du syndicat.
11. — on pourrait forcer l'employeur à négocier de bonne foi en prohibant tout changement unilatéral des salaires et des conditions de travail après que le syndicat eut été accrédité. En plus, on pourrait permettre aux deux parties de demander l'aide d'un arbitre indépendant dont la décision lierait les parties, et ce durant la période de non-maturité des négociations, i.e. trois à cinq ans suivant l'accréditation.
12. — un dernier moyen par lequel les politiques gouvernementales pourraient encourager la croissance du syndicalisme serait de s'assurer que tous — incluant ceux détenant des postes de direction, de supervision, professionnels ou confidentiels — sont couverts par les clauses de protection qu'elles émettent.

LES PROBLÈMES CRÉÉS PAR LA CROISSANCE DU SYNDICALISME CHEZ LES COLS BLANCS ET LES POLITIQUES GOUVERNEMENTALES

En faisant l'hypothèse que la politique canadienne de relations industrielles ait été amendée suivant les suggestions ci-haut mentionnées et qu'il en ait résulté une croissance significative du syndicalisme chez les cols blancs, il s'en suivrait une série d'implications sujettes à une prise de position de la part des politiques gouvernementales. Parmi ces implications, notons la nature de l'unité de négociation, la nature de l'agent de négociation, le contenu de la négociation collective et la méthode de règlement des conflits.

LA NATURE DE L'UNITÉ DE NÉGOCIATION

Le fait d'exclure des personnes employées à des postes de direction, de supervision, à caractère professionnel ou confidentiel de la partie des lois du travail —

la prévention des conflits d'intérêts — n'a pas tellement pour but de les exclure de toute unité de négociation, mais plutôt de s'assurer qu'elles ne font pas partie des mêmes unités de négociation que les autres employés. Le fait d'inclure dans la même unité de négociation du personnel de cadre et des employés ordinaires peut créer de sérieux conflits d'intérêt, ce qui n'est pas à désirer.

La réponse n'est pas d'exclure le personnel de cadre, professionnel ou non, de la portée de la législation, mais de stipuler que toute personne qui dirige effectivement le travail d'un autre employé ne soit pas incluse dans la même unité de négociation que cet employé.

L'unité de négociation propre aux travailleurs professionnels est un point particulièrement délicat. Mais il semble être temps qu'on exige une façon flexible de déterminer des unités professionnelles de négociation. Ceci peut être fait en stipulant que les travailleurs professionnels peuvent décider, s'il y a lieu, du type d'unité de négociation dans laquelle ils veulent être inclus : leur décision serait sujette à approbation par la Commission.

LA NATURE DE L'AGENT DE NÉGOCIATION

Le fait d'avoir des superviseurs et des « supervisés » dans le même syndicat crée des difficultés qui peuvent être surmontées si la législation stipule que pour qu'un syndicat de travailleurs puisse être accrédité comme représentant de cadres, il doit former des locaux séparés et s'assurer que ces derniers ne seront pas sous le contrôle des travailleurs du rang. En plus, on pourrait traduire en pratiques déloyales le fait qu'un syndicat de travailleurs applique une sanction à un cadre pour avoir fait une tâche que l'employeur aurait pu exiger de lui.

Un syndicat local affilié à une centrale plus vaste n'est souvent pas considéré comme agent de négociation approprié pour des catégories de cols blancs tels les surintendants et les policiers. Mais il est difficile de voir quels conflits d'intérêt pourraient naître de l'affiliation de syndicats de cadres ou de policiers à des conseils de travail ou de métiers, à des fédérations provinciales ou au Congrès du travail du Canada. Ces organismes centraux n'ont aucun pouvoir d'ingérence dans les affaires internes de leurs affiliés. Leur fonction principale est de représenter les intérêts des employés à l'intérieur de la communauté. La consultation du monde du travail par les gouvernements au Canada signifie la consultation de ces centrales syndicales. Si les syndicats de cadres ou de policiers veulent participer à ce processus, il semble qu'il n'y ait aucune bonne raison les en empêchant. En fait, il est désirable qu'il le fasse en vertu des valeurs de la prise de décision de façon démocratique.

Le choix d'un agent de négociation pour les travailleurs professionnels pose un problème spécial. Quelques auteurs ont prétendu que les associations professionnelles détenant une autorité quant aux permis de travail à accorder ne devraient pas agir comme agents de négociation parce que :

« It would be undesirable to combine in one body the public interest function of licensing with the private interest function of bargaining. The possibility, however remote, of restricting numbers to improve self-interest is too great a public risk ».

Mais il est difficile de voir pourquoi le danger pour une association professionnelle de restreindre l'offre dans l'intérêt de ses membres ne serait soulevé qu'au moment de la négociation collective. Il y a peu de doute que la plupart des associations professionnelles restreignent déjà l'offre dans l'intérêt de leurs membres indépendamment du fait qu'ils s'engagent dans la négociation collective. Si ceci est considéré comme un problème, on ne le règlera pas en défendant l'accès des associations professionnelles à la négociation collective. Il n'y a qu'un moyen de régler ce problème : il appartient à une organisation publique d'émettre des permis de pratique et non à une organisation privée.

LE CONTENU DE LA NÉGOCIATION COLLECTIVE

Certains auteurs ont prétendu que la loi devrait protéger les droits de gérance en excluant certaines choses de la négociation collective. De tels arguments se basent sur le fait que les cadres ont certains droits exclusifs et prérogatives, mais Chamberlain a démontré avec clarté et vigueur qu'il n'en était pas ainsi. Il semblerait alors qu'il n'y ait pas de raisons valables pour lesquelles la loi empêcherait les syndicats d'essayer de participer à la prise de décision sur des points tels les promotions et les mises-à-pied. En fait, suivant les valeurs de la prise de décision démocratique, il n'y a pas de raison pour laquelle la loi devrait prohiber de telles choses.

LA MÉTHODE DE RÈGLEMENT DES CONFLITS

Il n'y a aucune raison valable pour laquelle le législateur traiterait les cols blancs différemment des travailleurs manuels en ce qui a trait à la méthode de règlement des conflits. Le fait que les travailleurs soient cols blancs ou cols bleus n'est pas pertinent. L'aspect important est à savoir si leur travail affecte un intérêt public vital. Si oui, il peut y avoir raison d'établir, par voie de législation, une méthode spéciale de règlement des conflits pour de tels travailleurs.

CONCLUSION

Nous croyons que le droit à la négociation collective pour tous les employés devrait être consacré dans une seule loi. Ceci éviterait aux gouvernements d'être exposés à une sorte de « maquignonnage » alors que chacun des groupes régi par une législation propre rivalise pour une position légale plus favorable. Cela rendrait également plus facile la présentation d'une politique intégrée de négociation collective avec des buts clairement cités. En plus, l'idée que certains se font quant au statut spécial ou plus grand des travailleurs professionnels aux yeux de la loi pourrait être dissipée. Mais en fait, ce n'est pas un point crucial qu'il y ait une ou plusieurs lois. Ce qui est crucial, c'est qu'il devrait y avoir une législation permettant à tout groupe d'employés dans la société de s'engager dans le processus de la négociation collective s'il le désire.