

IN THE CANADIAN MOVEMENT

The State and the Trade Unions in Canada

(Continued from last issue)

The doctrine of Criminal Conspiracy was accepted in the early colonies of British North America. The historical details are of no great importance here. The arrest of twenty-four striking printers in Toronto in the seventies of the last century, on a charge of conspiracy, brought home to the workers that there was no law in the Dominion corresponding to the English Trade Union Act of 1871. In 1867 the British North America Act assigned the subject of criminal law to the Dominion and property and civil rights to provincial jurisdiction. Consequently, Parliament in 1872 passed a Trade Union Act identical in most respects with the English legislation of the previous year. It was laid down that the purposes of a trade union shall not by reason merely that they are in restraint of trade be deemed to be unlawful so as to render any member of such a union liable to criminal prosecution for conspiracy or otherwise. This is some sort of recognition of freedom of association.

Conspiracy and the Right to Strike

Section 590 of the Criminal Code deals with the right to strike in these terms: "No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman or for doing any act or causing any act to be done for the purpose of a combination unless such act is punishable by statute." Thus the trade unions in Canada are relieved of the incidence of conspiracy to a very limited extent. For, unfortunately for the trade unionist, nearly every important act "done for the purpose of a combination" in the course of a strike is "punishable by statute." The definition of a "trade combination" in the Code restricts it to the workers in the direct employment of the employer involved in the dispute. Picketing is punishable by the statute as "watching and besetting" the strike of workers in "public utilities" before invoking the conciliatory provisions of the "Industrial Disputes Investigation Act" is an indictable offence. A sympathetic strike may therefore become a wholesale violation of statutory prohibitions, and on top of that, a seditious conspiracy.

Sympathetic Strike Illegal

The case of the King versus Russell grew out of the Winnipeg General Strike of May 1919. The leaders were arrested and charged with seditious conspiracy. In their defence it was urged that the strike was the lawful act of a trade combination under section 590. But the Manitoba Court of Appeal ruled that: "The immunity provided by section 590 of the (Criminal) Code does not extend to a general 'sympathetic' strike. A conspiracy to bring about a strike involving no trade dispute between the strikers and their employers is illegal. The law in Canada applying thereto is the same as it was in England before the Trades Dispute Act of 1906, to which there is no similar enactment in Canada . . ."

Following the Winnipeg strike, the Trades and Labor Congress proposed that the government amend the definition of a "trade combination" by adding the words of the English Act (1906) "workmen means all persons employed in any trade or industry whether or not in the employment of the employer directly or involved in a trade agreement". The memorandum of the Department of Justice was solemnly stated "as a principle of the common law . . . that a combination of persons to do an unlawful act or to do a lawful act by unlawful means, is criminal, and it is moreover actionable civilly, if there be special damage. Compatible with this rule a sympathetic strike cannot practically be worked."

In other words, trade unions, which, finding the craft form utterly inadequate in the struggle with capitalist consolidations would parallel the latter by industrial unions, federations and alliances, are liable to be charged with conspiracy, if they engage in militant action in support of their members working in a given shop for a given employer. But that is not all. Only a strike growing out of a trade dispute within these narrow limits is "legal". A strike for any political purpose, for the release of class-war prisoners, against the transport of munitions, against intervention in the affairs of the Soviet Union, for social insurance, etc., would all be held illegal conspiracies. As to whether they can be "practically worked", if the Department of Justice lives long enough it will yet learn many things contrary to statutory provision.

The vulnerability of the trade unions to prosecution for illegal conspiracy has become more acute by virtue of the operation of Section 98 of the Criminal Code (its starting point was an order-in-council issued under the War-measures Act).

The section in question reads as follows: "98. Unlawful associations. Any association, organization, society or corporation, whose professed purpose or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence, or physical injury to person or property, or by threats of such injury or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose or which shall by any means prosecute or pursue such purpose

or professed purpose, or shall so teach, advocate, or defend, shall be an unlawful association."

Observe the neighborly conjunction of the words "force" and "terrorism" with "industrial or economic change". Does it require an undue stretch of imagination to conceive that in the electric atmosphere of any considerable "trade dispute" the word "force" may be construed to embrace forms even of slight moral pressure? Thus in his charge to the jury Judge Metcalf in *The King versus Russell* declared that "sometimes it has a deterring effect upon peoples' minds by exposing them to have their motions watched and to encounter black looks". The same judge, commenting on section 132 of the Criminal Code which defines "seditious words" as "words expressing a seditious intention", added that "seditious" is a comprehensive term embracing all those practices whether, by word, deed, or writing which are likely to disturb the tranquility of the State, and to lead ignorant persons to endeavor to subvert the government and the laws of the Empire". The statement of objects not only of a union which subscribes to a socialist aim which as the abolition of the wage-system, but even of an organization which adheres to the conservative slogan "a fair day's pay for a fair day's work" may in the course of any dispute of consequence become "words, deeds, or writings, likely to disturb the tranquility" of the employing class, their police and their courts.

Picketing is a Crime and a Tort

The right to strike, if at all effectual, must carry with it the corollary right to organize the unorganized and persuade them to join the strike. In this connection, Section 501 of the Code makes it an indictable offence for anyone who "wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain . . . (f) besets or watches the house or other place where such other person resides or works or carries on business or happens to be". If, moreover, the "watching and besetting" amounts to a common-law nuisance, it is within the prohibition of the statute (Section 221) as "an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all his Majesty's subjects".

Reynes versus The King, a decision of the Supreme Court of Canada practically decided that "peaceful picketing was without legal sanction, there being no legislation in Canada corresponding to Section 2, subsection of the British Trades Dispute Act of 1906."

As a "common-law nuisance", picketing is subject to be restricted by injunction. In *Canada Paper vs. Brown*, the court declared that "our Criminal Code fully reorganizes the right of a man to carry on his business without interference, let, or hindrance". Occasionally a court has said "Government by injunction is a thing abhorrent to the law of England and of this province." But abhorrent or not, the number of injunctions that issue to break strikes is on the increase.

"Incitement to Breach of Contract"

In the Dominion, the unions are subject to the doctrine of the courts that "for a number of persons to combine together to procure others to break contracts is unlawful, and if such others are induced to break and do break, their contracts, this constitutes an actionable wrong" and the unions will be mulcted in heavy damages". It is cold comfort for the trade union militant that the law on this subject is in a state of "chaotic uncertainty" and that many of the noble and learned law lords have confessed themselves baffled to draw a definite line between "acts whose real purpose is to advance the defendants' interests and acts whose real purpose is to injure the plaintiff in his trade." The British Act of 1906, as an aftermath of the famous *Taff-Vale Judgment*, and as a result of political pressure, provided that "an act done by a person in contemplation of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business, or employment of some other person . . ." A further provision at that time relieved the unions of liability under the doctrine of "civil conspiracy."

The Criminal Code further makes certain statutory breaches of contract indictable offences. The worker connected with the supply of power, light, gas, water, or railroads who "willfully breaks any contract made by him" etc., that is who may desire to strike without the preliminaries of notice, negotiation, or "conciliation" is subject to fine or imprisonment.

III.

This bare outline of the legal vulnerability of the trade unions in the Dominion, should indicate how fatal on their part would be a policy of "neutrality", of indifferently passing by, like the Biblical Levite, on the other side of the road, while the Government is throttling the revolutionary vanguard. The Trades Congress officialdom has on several occasions, under rank and file pressure, made "representations" to the government for the repeal or "amendment" of the obnoxious sections of the Code. But something more is required than a legal brief, read to a cabinet minister by a bureaucrat deputation. Whatever concessions have been wrung from the capitalist class in the past have been along the way of mass struggle and political action. Unions which abandon their

militant functions for defensive or offensive purposes, invite legal and governmental strangulation at the hands of a capitalist class which in the epoch of imperialism can less than ever afford to yield concessions from sheer "liberalism".

The deep-going economic crisis must work a molecular radicalization in the ranks of "organized labor". The Communists should throw overboard the self-stultifying Stalinist approach to the old unions as "social Fascist". That policy has only succeeded in wreaking the havoc of isolation, at a time when every

point of militant support in the mass organizations was necessary in defence of party legality. At that, despite the defeatist attitude to work in the reactionary unions, dozens of the most conservative locals and Trade Councils adopted the resolution circulated for the repeal of Section 98. The past has shown, proved, that where the charters of the A. F. of L. run up against the iron exigencies which impel the masses to action, such charters have the worth of a treaty guaranteeing Belgian neutrality.

—MAURICE SPECTOR.

Press Drive Under Way--2nd. Week

Although figures for the first week of the final month of the drive are not complete as we go to press (Thursday) we are able, on the basis of preliminary reports, to say that the drive has opened very encouragingly with \$100.00 towards our goal realized in less than a week. Our comrades and sympathizers all over the country are beginning to respond to our appeal for their assistance in making this drive a success. A comrade from Los Angeles writes, in renewing his subscription: "Just a few words about *The Militant* from an old party member. In the literature of the official party press of this country, each number of *The Militant* is like an invigorating breeze over a stagnant pool. Though disagreeing with the party on a number of questions *The Militant* is blasting its way to the hearts and minds of many party members and sympathizers by introducing healthy discussions among the radical workers."

Another comrade, from Chicago, writes: "Just a few minutes after reading the appeal for funds in *The Militant* I found the enclosed bill being waived in the breeze down Michigan Boulevard. The Chicago branch gets credit for this I understand." You bet!

Against our goal of \$1,000, we have already realized \$100. This is due principally to the splendid showing made by the New York and Minneapolis branches. The quotas and results which we give below tell a story more eloquent than words.

	Quota	Reported
New York	\$25	\$58
Minneapolis	\$200	\$27.50
Chicago	\$100	\$ 3.00
Toronto	\$70	
Philadelphia	\$40	
Cleveland	\$40	
Boston	\$40	
Newark	\$35	\$ 2.00
Kansas City	\$30	
St. Louis	\$25	
Los Angeles	\$25	\$ 2.00
Youngstown	\$10	
New Haven	\$10	
Montreal	\$10	
Duluth	\$10	
Springfield, Ill.	\$10	
W. Frankfort, Ill.	\$10	
Trenton	\$ 5	
Miscellaneous		\$7.00
	\$1,000.00	\$100.00

The good showing made by New York is the result of its successful affair held April 30 with which it opened the final month of the drive. As previously reported the admission price of 25 cents entitled the holder to an 8 issue sub to

The Militant. This unique idea conceived and carried thru by the captains of the New York teams, comrades Craine and Bord, resulted in 29 new subs being added to New York's total. These 29 trial subs together with 4 others which the branch accounted for during the past week make its total to date, 71 and place it at the head of the standing once more. Will it be able to maintain its lead in face of Minneapolis' determined drive is the question everyone is asking.

Minneapolis continuing its powerful drive accounted for fifteen subs to *The Militant*, 4 to *Unser Kampf* and 2 to *Young Spartacus*. But what subs? They amount to \$27.50. One is a sub comrade Hedlund, our leading *Militant* builder, got for two and a half years. Another is one comrade Curran got by persuading a member of the opposing team, comrade Zalmanoff, to sign on the dotted line. Comrades, this method should not be overlooked!

Comrade Coover's report bodes no good for the other branches. "The April *Militant* drive in Minneapolis is closed. The No. 1 Team, M. Dunne, captain, scored a total to April 30, of 51 1-4 points. Not bad. But the No. 2 Team, Bill Curran, captain, scored a total of 56 1-2 points, giving it a lead of 5 1-4 points. The No. 2 Team should be the guests at the press entertainment but it looks now as if it will take all the members of both team to do the honors for the guests at the entertainment when it is finally pulled off. We are going to give the other branches a trimming in the question of the quotas as well as the final stage of the drive. I think the above figures will take care of New York to date on the sub drive in spite of their excellent idea of giving an 8 issue sub with each 25 cents admission. You will hear more from Minneapolis in the future."

To this honor roll must be added comrade Sacharow's report of the doings of the Chicago branch. "The branch has been divided into two teams and we may yet finish the sub campaign with a bang." Go to it, Chicago!

The standing of the branches reads as follows:

New York, 71; Minneapolis, 64; Chicago, 12; Newark, 4; Boston, 4; Youngstown, 4; Miscellaneous, 25.

St. Louis, Philadelphia, and Montreal remain where they were last week at \$1 each. The total has risen to 187, an increase of 60 over last week. Excellent! But not enough! The other branches should snap into it. It is not late. Let us hear from them!

Now everybody into the second week of the drive! This is collection week. Let us see what can be done!

LETTERS FROM THE MILITANTS

A. F. of L. Fakers Betray Sign Writers

NEW YORK, N. Y.—

The strike conducted by Sign Writers' Local 230 of the Brotherhood of Painters, Decorators and Paperhangers of America has ended in defeat for the workers. The union instead of renewing its agreement with the bosses which expired on March 30th was forced to grant a ten per cent cut. The rank and file of the union was persuaded by its bureaucratic leadership against its own interests to give the bosses the right to hire and fire and lay off at will. The union has also relinquished its control over overtime work. The bosses no longer need the union's permission to order the workers to work longer than the eight hours which now constitute the working day. There is now no practical difference in essentials between the unionized and non-union shops.

The union bureaucrats succeeded in putting through a change in the agreement: the bosses agreed to allow helpers to do apprentices' work and vice versa. This practically wipes out the difference between these workers. The helpers are a large majority of the workers in the trade. With unemployment at about sixty per cent, the bosses will give work to the helpers at the expense of the apprentices, satisfy temporarily and to some extent the dissatisfaction of the helpers, and enable the union officials to maintain their highly paid positions and the fiction that they serve the workers' interests. It is an old trick. Only workers ignorant of the fathomless corruption and treachery of A. F. of L. bureaucrats could be taken in by so palpably treacherous a maneuver.

In a union controlled by the workers in their own interests the formal elimination of the difference between helpers and apprentices already accomplished in reality, would be made a progressive step. Wide awake class conscious workers would fight to make this step conditional upon the introduction of the six hour day without reduction in pay and upon the same wage scale for apprentices and helpers.

The strike failed principally because the bosses were able to keep their shops running full blast without any difficulty. Scabbing by unemployed open shop workers and by members of the union was prevalent. To add their treacherous bit the union bureaucrats fooled the workers into picketing—not the shops where the scab displays were made—but the Broadway moving picture theatres where some of the signs were displayed!

To consummate their treachery the bureaucrats called upon a representative of the district council of the Brotherhood to put over the wage cut. This professional betrayer with a face as white as a cheese mouthed phrases about militancy, fighting, the working class, ad nauseam. His conclusion was—a ten per cent cut! The workers harried by the fear of permanently losing their jobs by trying to maintain an ineffective strike, and bamboozled by the district council representative's demagoguery, voted without dissent for the cut and the elimination from the agreement of the clauses demanded by the bosses.

Against the future attacks which their present victory will embolden the bosses to make, the workers must prepare. They must seriously undertake a campaign to organize the trade. As a prerequisite condition for this they must drastically reduce the enormously high initiation fees which is \$500 for helpers. (In our letter in *The Militant* of April 16th we used in this connection, the incorrect formulation: "they must abolish the initiation fees.") The workers must propose the same wage scale for apprentices and helpers. The division into apprentices and helpers no longer corresponds to any real difference between them and serves only the interests of the bureaucrats by enabling them to play off the helpers against the apprentices or the other way around. The workers must also set up as one of their demands the six hour day with no reduction in pay. The six hour day is entirely practicable in the trade and can put back to work many workers now vainly looking for jobs.

These demands are the essentials of a program for which the workers can fight in resisting the attacks on the bosses. In trying to realize these demands they will have to fight the enemy in the union—the bureaucratic misleaders. This should not deter them. It is the road all workers in the A. F. of L. have to travel in fighting for their interests.

—T. STAMM.

To the Greek Party Members and Sympathizers

As you know from our reply to the Greek Stalinist bureaucrats which we printed in No. 4 of *Communists*, we still maintain that the *Empros*, one sidedness with regard to the local Greek press is very detrimental to the Communist movement because it creates fatal illusions among the workers that it is possible for some capitalist newspapers to support the interests of the working class.

Thanks to our vigilance and the Bolshevik criticism of the rank and file workers, the Stalinist bureaucrats were forced to change slightly their one sidedness and to attack the *Atlantis*. But at the same time we warned you that only through your constant vigilance and criticism we will succeed to force the Greek Stalinists to occupy themselves against both the *Atlantis* and the *National Herald* and also to utilize the precious columns of the *Empros* for the most burning questions of the class struggle.

The Stalinist editor in a signed statement attempts to justify himself with petty arguments which have nothing in common with Communist principles and thus he commits the worst blunders.

He froths at the ignorance of the party members of New York City and of a certain leading comrade outside of New York—whose letter and name are wisely withheld from the comrades—because they are blind and therefore can't see his brilliant scheme of capturing the Greek workers from the optimum of the capitalists.

His wisdom revealed to all the ignoramuses that the *National Herald* is an anti-Soviet sheet and supporter of Tammany Hall and as such should be attacked and destroyed, but he is unable to attack the *Atlantis* because he lacks the documents.

You very well know that *Atlantis* is a monarchist paper and a supporter of the Republican party and therefore no different in any degree as a class enemy from the *National Herald*.

Ironically enough, the *Atlantis* of April 30th, in an editorial, attacked the Soviet Union for its friendly attitude towards the "barbarians of the Near East, the Turks", and lamented the fall of the Romanoffs who have always supported the Greeks and the Greek Orthodox Church while the Bolsheviks supported Kemal Pasha to defeat the Greeks in Asia Minor. No comment is needed.

Every capitalist newspaper, without exception, is either an open or a concealed enemy of the working class and as such should never be spared from the attacks of a Communist organ.

To every genuine Communist there is no difference between a Tammany of a Republican organ and therefore any leniency or preference is detrimental to the movement.

Demand from the bureaucrats for explain in detail the reasons for the pseudo-radical attitude of the two newspapers as we did in our thesis: Although at present they have lost the confidence of the workers this fact should not deceive us and put us to sleep, but ought to keep us alert in order to fight effectively every new attempt of the capitalists to organize new (types) forms of organizations and it is not at all improbable (in order to arrest the radicalization of the workers) that they may adopt a progressive (socialist) program.

Comrades: Do you expect the high priests of Stalinism to correct this petty bourgeois editor. Only through your Bolshevik insistence some changes can be effected. The bureaucrats may undertake the usual task of making the editor a scapegoat but this does not whitewash their responsibility. The appointment of another mercenary without your consultation and freedom of criticism will not cure the evil.

It is your duty to demand freedom of discussion without fear of expulsion. The fact that the editor himself admits that many comrades share our opinions in this specific question proves that our criticism is healthy and unmask the standers and calumnies of the appointed leaders.

Read *The Militant* every week for new developments.

—EDITORIAL BOARD

OF COMMUNISTS.

(Continued in next issue)

The Negro and the Class Struggle

(Continued from last issue)

Revolutions and civil wars are always followed by "counter revolution" (reaction, terror, etc. against the exploited) unless the workers are able to carry the civil war over to the point where they seize power for themselves. During the struggle, concessions are necessary to gain the support of the exploited for the exploiters' war. But once the former makes haste to bring about a new alignment with the former enemy, under the hegemony of the new exploiter, against the exploited. The results of the civil war only confirmed this truth again.

The legal forms of capitalist rule were not sufficient for the needs of the plantation owners of the south. Lynch law was added—a necessary measure used against the whole exploited class whenever the formal legal means do not suffice to keep them in check. Lynch law exists for the Negro every minute of the day and night. But it is not the elimination of the lynch law that will free the Negro. Rather lynch law, as such, can only be done away with by the overthrow of capitalism. In the struggle to overthrow capitalism a necessary part is the constant struggle against lynch law and all forms of discrimination (discriminating law prohibiting admittance to public and private buildings, schools, universities, parks, etc.; restrictions regarding jury service and civil service; disfranchisement; prohibition of intermarriage; lease system, chain gangs, etc., and admittance to working class organizations, trade unions etc.)

The Negro in America—bourgeoisie, petit-bourgeoisie, farmer and worker—stands as an oppressed racial minority, a national minority. Of course they are a minority of the nation; and in this sense, a mechanical one, they are a national minority. But in the political sense it is not so. A national minority are a people not only with racial differences, but a people with special differences of language, custom and religion, or with a separate national character or national interests. Politically speaking, national minorities always have the integral element of racial minority (race or branch of race). But a racial minority, in the hodge-podge of capitalist

society, does not necessarily signify a national minority. On the other hand, racial oppression does not always mean the oppression of a national minority. This oppression may be inflicted on a national majority, as in the case of China and India. One could give countless examples of this kind in the past history.

America, the outstanding representative of Capitalism, is the best example to show the differences between a racial minority and a national minority. America is now a nation and its people take pride in their nationality, regardless of the descent, especially those Americans of the second and third generation of foreign descent. In the United States we find many racial groups making up the nation as "Americans". The Swedes, English, Spanish or French born in America, who may still have the "pure blood" of their race, can be considered as a racial minority (races of Europe) of the population of the United States. In this way they are catalogued mechanically as part of a national group. But, in spite of this, they cannot be considered as a national minority in the political sense.

The Negro was brought from Africa, from a system of Barbarism where nations as political states were only in the process of formation. He was hurried through the process and now is part of Capitalism. He brought with him racial characteristics, as well as traditions and modes of the past. However, his life in America has overbalanced that which was brought from the past, has modified it, has changed it. Capitalist America as forced him to adopt the language and religion and modes of the country and of the economic system as the DETERMINING FACTORS of this part of his make-up. The more complicated economic structure here in America has swallowed up the past. And, although it cannot be eliminated and expressed itself in the new make-up, it is not the determining factor of the American Negro.

As an oppressed racial minority it is one question, and the question is the race form of the class struggle. As an oppressed national minority it is another question. The attempt to construe the Negro question this way can only result,

not in nationalism for the Negro, but in national reformism for the "Marxist". The idea of Self determination for national minorities (which include races or racial groups) is a compromise and concession; it is a transitional measure, a weapon against capitalism, providing it is used at the proper time, where, no other road out is possible. This is not the situation in America with the American Negro, as the Stalinites contend.

Objective conditions are still on the move for the Negro, and particularly since the world war. The shortage of labor in the War period, the stoppage of the immigration flow, and the development of capitalism at a faster pace in the South—all this moved the Negro into the stream of class struggle. The racial expression of the oppression of the Negro is no reason for a revolutionist to see the form (racial oppression) and enlarge this out of its true relation to the content of the class struggle.

The decisive section of the Negroes, in relation to the problem considered, is no longer the one which is "half slaves-half serfs", it is not petty bourgeois Negro. The decisive section in the class struggle, in the North as well as the South—in America as a whole, which is the proper way to look at the problem—is the Negro proletariat. His weight as a proletarian, if it is the decisive part (and even Stalinism does not deny this in words), will make up for his weakness in the "South" where Stalinism says the slogan of Self Determination is necessary.

The complicated race form of the class struggle for the Negro lays the main burden upon the Negro proletariat in relation to the rest of the Negroes, but not in relation to the white proletariat. The main burden of the relation of the Negro to the white proletariat rests upon the shoulders of the latter. The white worker must be ready to meet the Negro more than half way. He must go to the point—no matter how far—for the victory of the workers over capitalism. The Negro worker is necessary part of this problem for the victory not of the white workers but of the WORKERS regardless of their race.