RESEARCH NOTE / NOTE DE RÉCHERCHE

A "Unique Experiment": The Ontario Labour Court, 1943–1944

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Introduction

The Ontario Collective Bargaining Act of 1943 created the first system of compulsory collective bargaining in the province, establishing a labour court presided over by justices of the Superior Court. This experiment in industrial relations lasted less than a year and has been described as a "minor institution."[1] However, while its existence was indeed brief, the Ontario Labour Court was nonetheless more than an unimportant "blip" in Canadian labour history: for the first time in Ontario's history, trade unionism was meaningfully legitimized through compulsory collective bargaining. In addition, for better or worse, the Ontario Collective Bargaining Act provided the framework for the industrial relations scheme that remains active to this day.

This paper examines the formation and operation of the Ontario Labour Court within the context of wartime labour relations and evaluates the court's legacy to labour relations in the province using a variety of archival sources.[2]

1. Bryan D. Palmer, review of *The Ontario Labour Court, 1943–1944* by John A. Willes, in *Labour History,* 21 (Fall 1980): 621.

2. Archival sources, whose use had previously been limited, include the Labour Court case files, correspondence files from the Court's Registrar, and press clippings collected by the Registrar as well as by the office of the provincial Minister of Labour, all housed at the Archives of Ontario. In addition, the Workers Educational Association (WEA) *Labour Court Survey,* published during the life of the court by anonymous pro-labour legal experts, proved to be an invaluable resource for evaluating the reactions of contemporary legal academics to the court's operations. While F.D. Millar notes that these publications are rare and scattered, one complete volume of all twelve issues (plus a supplement) is housed at the Metro Toronto Reference Library, where it was acquired in 1944. Frederick David Millar, "Shapes of Power: The

Katherine Munro, "A 'Unique Experiment': The Ontario Labour Court, 1943–1944," *Labour/Le Travail,* 74 (Fall 2014), 199–247.

It investigates the social and political circumstances that spurred the provincial government to pass legislation in many ways similar to the United States' Wagner Act, which preceded the Ontario labour relations innovations by almost a decade and created a court rather than a board.

The paper also assesses general trends in the court's functioning through specific case studies, with a special focus on two aspects of the court that garnered criticism. The first of these critiques was of the Ontario Labour Court's character as a branch of the common-law court system, which was viewed by some as an impediment to the administration of successful labour relations. The second was the Ontario Labour Court's inability or refusal to adequately deal with what union leaders termed "company unions." This analysis suggests that there was in fact some fuel for these two critiques, but that the variance in court decisions and the difficult context in which the court operated create a more complicated picture. For example, the court's legal identity led to mandatory representation by lawyers, which was highly unpopular with unions, but there is also evidence to suggest that the same legalism lent the court greater acceptance and therefore less employer backlash. Similarly, though there are unquestionably cases where the court aided, or at least did not sufficiently discourage, company-influenced employee associations, there were also times where the court's decisions and procedures allowed historic shifts from employee representation within company councils to bona fide international unions.

In addition, attention is paid to the people who inhabited the court: who they were, their perspectives, the way they interacted with the court, and how the existence of the court may have affected the expansion of careers available for them and their successors. Finally, based on such investigations, I argue that the Ontario Labour Court's creation was an important event in Canadian labour history, and that, while its work had mixed benefits, it nonetheless greatly influenced the kinds of labour relations that have remained with us ever since.

Context: Labour, Government, and the War

The well-known labour lawyer and academic Bora Laskin stated in 1944, "Today a man can speak favourably in public of union recognition and collective bargaining and still be considered respectable. Yet it is hardly open to dispute that we entered this war with a system of labour relations that showed little, if any, advance over that in vogue in 1914."[3] Created during turbulent times, the Ontario Labour Court was a product of the political, social, and economic climate on the home front during World War II.

Ontario Labour Relations Board, 1944–1950," PhD thesis, York University, 1980, 153.

3. Bora Laskin, "Recent Labour Legislation in Canada," *The Canadian Bar Review*, 22 (1944): 779.

When Canada entered the war, the federal government had control over most of Canada's industry due to the War Measures Act. Discrimination against union members and leaders was legal and widespread,[4] and often common-law remedies were still sought during labour disputes, especially by employers. When the government did intervene in such disputes, it was often to protect management's interests over workers' rights, as Premier Mitchell Hepburn's actions attest in response to the 1937 General Motors strike. As Laskin stated, labour disputes were regulated in the same manner as in World War I, relying on two particular pieces of legislation: the Defence of Canada Regulations, which detained "agitators" under the pretence that they threatened the war effort; and the Industrial Disputes Investigation Act (IDIA), whose conciliation efforts were seen by workers as primarily designed to delay strikes. The situation in Canada was in marked contrast to that in the United States, where the Wagner Act had been protecting union activity since 1935. This discrepancy inspired union demands for a Canadian version of American labour administration, which enforced the right of a union to be recognized as its members' exclusive bargaining agent responsible for creating binding collective agreements. Not surprisingly, Canadian businesses were afraid of such change. Meanwhile, the wartime economy enabled full employment and increased industrial demand, creating an economic milieu that bolstered workers' power. In response to such economic and political factors, trade union organization increased. The number of unionized workers in 1941, primarily in the war industries of mining and metal work,[5] surpassed the previous peak of 1919. These growing unions were also active. One-third of all union members had been involved in a strike in 1943.[6] Some of these industrial conflicts gained significant attention, such as the Kirkland Lake miners' conflict, which unfolded throughout the winter of 1942 and fought over the demand for union recognition, and the 1943 steelworkers' strike, where 9,000 employees from DOSCO and Algoma Steel protested wage controls. The expanding labour movement was now influencing both federal and provincial politics, with the Liberals losing support in federal by-elections and the Co-operative Commonwealth Federation (CCF) making gains as Ontario's official opposition after the 1943 election.[7]

4. The amendment to the criminal code s.502A made it illegal to refuse employment *solely* for being a trade union member. Since proving the existence of other factors was nearly impossible, the amendment was primarily considered symbolic. Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Toronto: Oxford University Press, 2004), 239–240.

5. *Labour Gazette,* 43 (March 1943): 386.

6. Laurel Sefton MacDowell, "The Formation of the Canadian Industrial Relations System During World War II," in J.L. Granatstein and Peter Neary, eds, *The Good Fight: Canadians and World War II* (Toronto: Copp Clark, 1995), 297.

7. MacDowell, "The Formation of the Canadian Industrial Relations System," 312.

Ignoring and repressing angry and dissatisfied workers was clearly not a viable long-term solution, so legislation that protected workers' interests was created to achieve "industrial peace." In light of social democracy's political gains and popular support, as well as striking workers' display of grassroots solidarity, it seemed necessary to make concessions to labour to ensure the nation's political and economic stability. However, the provinces were free to create their own labour relations policies (in part because King's government was averse to taking responsibility for labour relations and refused to act), and the rate at which the provinces adopted collective bargaining legislation, as well as the strength of such legislation, varied. Most provinces had passed some kind of legislation to improve labour relations and provide greater protection to unions by 1939; however, Ontario was a notable exception. These other provincial models were based more or less upon the Freedom of Trade Union Association Act draft prepared by the Trades and Labor Congress of Canada (TLC) Executive Council in 1937. While the draft was innovative for Canadian law, as it converted privileges conferred in a voluntarism model to legally protected rights, the legislation based upon it did not create much in the way of tangible gains for workers because the finished legislation was much watered-down, and even then was weakly enforced. The rights of property and contract, in contrast, were strongly defended.[8] In addition, "none of these schemes addressed the rising tide of industrial conflict resulting from the resistance of employers to the new wave of industrial union organizing," and the TLC itself had a history of excluding many industrial workers and marginalizing radical views.[9] Nonetheless, it is indicative of Ontario's political climate that as a highly industrialized province with conflict-ridden labour relations, it was the only province other than Prince Edward Island to refuse enactment of any version of the TLC's draft collective bargaining legislation.[10]

However, the pressure and influence of the growing labour movement in Ontario, as well as public dissatisfaction with continuous strikes caused the Hepburn government to make a U-turn on union demands. Hepburn had previously blasted union activity (such as the 1937 sit-down strike in Sarnia[11]) as unjustified and illegal, but his provincial labour minister Peter Heenan announced in 1942 that the Liberal government would introduce a collective bargaining act. The Conservatives jumped on the bandwagon, citing "comprehensive collective bargaining legislation" as part of their 1943 campaign.[12]

8. Fudge and Tucker, *Labour Before the Law,* 193–198, 215–216.

9. Fudge and Tucker, *Labour Before the Law,* 205.

10. Fudge and Tucker, *Labour Before the Law,* 211.

11. Irving Martin Abella, *Nationalism, Communism, and Canadian Labour: The* CIO*, the Communist Party, and the Canadian Labour Congress, 1935–1956* (Toronto: University of Toronto Press, 1973), 6–7.

12. MacDowell, "The Formation of the Canadian Industrial Relations System," 309.

After Mitchell Hepburn resigned as premier, his successor Gordon Conant began the task of establishing a collective bargaining regime in earnest.

Despite his conservative views, Conant secretly hired leading labour lawyer J.L. Cohen to draft a bill, providing him with a previous version of such potential legislation drafted by the Ministry of Labour's solicitor, J.C. Adams. Cohen lived up to his reputation as a respected expert on labour issues, and spent two months studying drafts, legal issues, and other provincial legislation before submitting his draft on 25 January 1943. However, he resigned after his drafts were not put into practice, even after revisions. Soon after, reports of his secret hiring became news, stirring outrage from several quarters. As a result, Conant and Heenan created a Select Committee to investigate legislation "to satisfy labour and give employers some input."[13] The committee held regular meetings throughout March 1943 to receive input from the public, union representatives, and business organizations.

After the hearings, the advisor to the committee, Jacob Finkelman, was asked to work on an analysis of the hearings and the resulting recommendations. However, in a "last-minute coup," the legal counsel W.H. Furlong, Ford company lawyer J.B. Aylesworth, and the Crown Attorney for Windsor drafted an alternate report, which was accepted by the committee's chairman J.H. Clark and presented to the House.[14] In an interview, Finkelman recalled that though he was able to make a few changes, such as adding a clause exempting unions from civil suits, "to a very large extent we were frozen by the Committee Report."[15] The process of drafting the bill had been a long one, from Heenan's first attempts in the summer of 1942 (before his announcement) to its passage in spring 1943.[16] The cause of the delay, Heenan argued, was that the bill received "greater democratic scrutiny than any other bill in the province's history."[17]

The Legislation: Ontario's Collective Bargaining Act

The final version of the Ontario Collective Bargaining Act (OCBA), enacted on 14 April 1943, provided for a labour court, a division of the Supreme Court of Ontario, to act as the administrator of the new legislation with the power to establish appropriate bargaining units, to certify unions that demonstrated that they had the support of the majority of employees in the unit and were free of employer domination, and to settle disputes arising out of negotiations between employers and unions. The act applied to all employers of more

13. MacDowell, "The Formation of the Canadian Industrial Relations System," 111.

14. MacDowell, "The Formation of the Canadian Industrial Relations System," 68.

15. Quoted in Millar, "Shapes of Power," 92.

16. Millar, "Shapes of Power," 69.

17. Millar, "Shapes of Power," 78.

than one person, with exceptions for farmers, domestic servants, police, and municipal corporations.[18] Thus, the OCBA "gave collective bargaining rights to a very large segment of the work force in Ontario, and included many employees that were excluded from collective bargaining by subsequent collective bargaining legislation."[19]

Generally, the act emphasized the right of employees to bargain collectively and to select their own bargaining agent without interference from employers. The legislation prohibited yellow-dog contracts, which built a promise not to join a union into the contract of employment, as well as employer discrimination against employees for union activity. However, employees were not entitled to engage in such activities on company premises or during working hours. The legislation also specified that the acts of employees and/or their unions would not be actionable in court, unless such acts would have been illegal "if done without any agreement or combination."[20] In addition, the act specified that the Labour Court would have exclusive jurisdiction over "matters and questions arising under this Act," and that there would be no appeals from decisions of the Labour Court, thus ensuring its independence.[21] Further, the court was given substantial leeway to deal with breaches of the act, including restraint of continued violation, reinstatement of wrongfully discharged employees, and the ability to "make such other or further order as it deems proper."[22] Finally, the Ontario Labour Court was given the task of making "such orders as appear to it just and agreeable to equity and good conscience."[23]

It is interesting to note that the OCBA of 1943 had many features that are considered standard in industrial relations legislation in North America today, such as the process of certifying the bargaining agent, the requirement that such a bargaining agent be at or below the individual employer level, and the obligation that employers recognize and negotiate with a certified collective bargaining agent. The duty to bargain in good faith, the illegality of discrimination against workers for union activity, the exclusion of management-dominated organizations from certifiable bargaining agents, and the exclusion of management-level workers from the provisions of the act are also features that have become standard in North American industrial relations.

In addition to certifying bargaining agents and requiring employers to negotiate with them, the court had "broad remedial powers," which could be

18. John A. Willes, *The Ontario Labour Court 1943–1944*. Research and Current Issues Series No. 37 (Kingston: Queen's University Industrial Relations Centre, 1979), 24–25.

19. Willes, *The Ontario Labour Court,* 27.

20. Ontario Collective Bargaining Act, 1943, Section 3 par 1.

21. Ontario Collective Bargaining Act, 1943, Section 15 par 1.

22. Ontario Collective Bargaining Act, 1943, Section 19 par 2, (d).

23. Ontario Collective Bargaining Act, 1943, Section 25.

implemented quickly, and which the subsequent Ontario Labour Relations Board did not have for many years after its creation. [24] It was not until 1960 that the board received the authority to order reinstatement with or without compensation, had a field officer to investigate complaints, or made provision for pre-hearing representation votes. Thus, for more than a decade, "outside of granting certifications and de-certifications, the Board's power was quite limited." [25] In contrast, the court enjoyed the possibility of fairly extensive powers, even though the short lifespan of the court meant that such powers remained mostly unexercised.

Limits and Consequences of Collective Bargaining Legislation

The Canadian trade union movement gained its official legitimacy during World War II, when it had the ability to exercise considerable economic and political power. However, it has been argued that strong and lasting trade union organization in Canada failed to meet its potential, largely because of the limits of the legislative frameworks that developed during the late wartime and postwar era.[26] The OCBA of 1943 contains many of the key features of such legislative frameworks and contributed to the industrial relations order that developed as a result. Organized labour gained greater legitimacy and legally supported powers but was also severely circumscribed as to how and when unions used such power. In addition, the foundations of capitalism generally and labour relations specifically were not questioned – property rights, contract law, and the separation of political and economic power were still fundamentally accepted as a given.

Collective bargaining legislation was eventually seen as justifiable in Canada partly because it promoted many of the same cherished values as contract law, such as individual freedom and the enforceability of freely made agreements.[27] As a result, collective bargaining schemes based on legislation such as the 1943 OCBA mandated that workers individually sell their labour to an individual employer. Thus, while the collective bargaining process was meant to create greater balance of power between employees and employers and assist workers in achieving some benefits, such gains were limited to those that they theoretically might have achieved without the legislation but were less likely to because of the unequal balance of power. The collective bargaining process did not create new types of benefits, such as materially greater

24. Ontario Labour Relations Board, "Ontario Labour Relations Board: History," Ontario Labour Relations Board, http://www.olrb.gov.on.ca/english/aboutus.htm (accessed 8 June 2014).

25. Ontario Labour Relations Board, "Ontario Labour Relations Board: History."

26. Harry J. Glasbeek, "Law: Real and Ideological Constraints on the Working Class," in Dale Gibson and Janet K. Baldwin, eds., *Law in a Cynical Society? Opinion and Law in the 1980's* (Calgary: Carswell Legal Publications, 1982), 199.

27. Glasbeek, "Law: Real and Ideological Constraints on the Working Class," 287.

political or economic control.[28] In addition, fundamental inequalities in the balance of power between employers and employees specifically and capital and labour generally were not addressed.[29] Further, legislation such as the 1943 OCBA continued to promote the "prerogative of management," whereby those with property rights (i.e., employers) could continue to exercise those rights, subject only to agreed-upon limitations such as those confirmed in collective agreements.[30] Finally, because of a deeply rooted Canadian perspective that the economic and political aspects of our society are and should remain separate, workers' right to freedom of association was limited to strictly defined economic matters, despite the influence that capital exercised within the political sphere.[31]

Another major critique of wartime and postwar legislation such as the 1943 OCBA is that it caused workers' power to be severely and permanently limited. In particular, workers' most effective tool – withdrawal of labour through a strike – would be illegal and a breach of the "compromise" between unions and employers unless it took place during contract negotiations. Thus, "the very same legislation that supported the right to recognition and guaranteed the right to strike, also constrained in a highly detailed manner the nature of bargaining and the exercise of union power."[32] Consequently, it can be argued that the coercion of workers continued, though it took a new form. Rather than police interference due to property-right or contract-law infringement, the rule of industrial law would keep workers in check, and the enforcers would be their own union leadership, which worked hard to keep the rank-and-file in line in order to maintain the union's hard-won legitimacy.

Finally, some scholars contend that the 1940s legislation had "adverse effects" on the Canadian labour movement by weakening its militancy and focus.[33] Fragmentation of the union movement occurred from the prohibitions against secondary boycotts, rotating strikes, the continued promotion of single unit bargaining, and the maintenance of provincial rather than federal jurisdiction. In addition, the labour movement's focus on legalism created a context "in which union rights appeared as privileges bestowed by the state, rather than democratic freedoms won, and to be defended by, collective struggle."[34] As Canadian workers and the public bought into the collective bargaining regime, they internalized the notion that this was the new natural

28. Glasbeek, "Law: Real and Ideological Constraints on the Working Class," 289.

29. Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms*, 3rd ed. (Aurora: Garamond Press, 2003), 13.

30. Glasbeek, "Labour Relations Policy and Law," 206.

31. Glasbeek, "Law: Real and Ideological Constraints on the Working Class," 295–296, 300.

32. Panitch and Swartz, *From Consent to Coercion,* 14.

33. Panitch and Swartz, *From Consent to Coercion,* 20.

34. Panitch and Swartz, *From Consent to Coercion,* 20.

order, necessary for maintaining much-prized "industrial peace." Thus, legal institutions not only continued to support the capitalist economy, but even "support[ed] the creation of a false consciousness" among workers.[35]

A Labour Court vs. a Labour Board

The OCBA of 1943 was drafted and debated by an "all-star legal cast" and, perhaps as a result, "the final outcome bore the mark of legalism."[36] While the idea of a labour court was relatively unusual, it had in fact been suggested by such varied sources as Cohen in one early draft (who believed that though a board system was best, a court was preferable to ministerial control),[37] the Australian ambassador, because of his familiarity with the Australian system, and General Motors executive Sam McLaughlin.[38] The Minister of Labour Peter Heenan favoured a board system and thought that unions would too. He was right: most leaders of organized labour were distrustful of the court system due to the legal system's treatment of unions in the past. Interestingly, Conservatives also favoured a board, with equal employee/employer representation and an independent chairman. According to Willes, even the judges were unhappy with the decision to make a labour court rather than tribunal and expressed doubts about the responsibility.[39] However, the establishment of the court went ahead, and, on 14 June 1943, it was open for business.

Why the court was chosen over a board is a question that remains unresolved, though several suggestions have been brought forward. In his analysis of the Labour Court, John A. Willes states that the Chairman and Counsel of the Select Committee, J.H. Clark and W.H Furlong, were greatly influenced after hearing the Australian ambassador speak, and subsequently "met and decided that a Labour Court would be a possible approach to suggest to the government."[40] He notes that those involved saw the commonalities between the two countries and the potential for such a system to work in Canada. However, he also observes that both Furlong and Clark envisioned a more informal court than what emerged.[41] Taking a more cynical position based upon information provided by Finkelman, the advisor to the committee, historian F.D. Millar argues that such leaders of the Select Committee were

35. Glasbeek, "Law: Real and Ideological Constraints on the Working Class," 301.

36. Fudge and Tucker, *Labour Before the Law*, 272.

37. Laurel Sefton MacDowell, *Renegade Lawyer: The Life of J.L. Cohen* (Toronto: University of Toronto Press, 2002), 110.

38. Millar, "Shapes of Power," 92; Willes, *The Ontario Labour Court,* 19; MacDowell, *Renegade Lawyer*, 110.

39. Willes, *The Ontario Labour Court,* 21–23.

40. Willes, *The Ontario Labour Court,* 16.

41. Willes, *The Ontario Labour Court,* 16–17.

closely allied to business interests represented by Windsor lawyers, who preferred a court to a board. Millar contends that this small group met secretly to create the draft bill and implies that it was accepted because of the inherent conservatism of most of the provincial government.[42]

Andrew Brewin, a prominent labour lawyer at the time, believed that in the face of employer hostility regarding compulsory collective bargaining legislation and an American-style board, the court option had been chosen to "exploit the prestige of the court to mollify opponents of collective bargaining."[43] Numerous examples of the difficulties new boards faced exist, notably the challenges faced by the administrative labour board in the United States, where the National Labour Relations Act passed in 1935 was a "dead letter" for two years after its enactment, because it was "flouted as unconstitutional and its administrators enjoined from its enforcement."[44] This difficulty was still present during World War II, when the chairman of the American National Labor Relations Board (NLRB) noted the decline but continued existence of litigation involving board decisions; such litigation was less likely if a court were to administer labour law.[45]

In his more general analysis of labour legislation trends during and immediately after World War II, Peter S. McInnis contends that "the war years were a period of active experimentation in the complex field of industrial relations," because of governmental need to increase productivity while maintaining social stability.[46] All analyses agree that timing was a factor, since by the time the Select Committee had filed its report the bill had to be rushed through the legislative process because further delay would result if the act was not finalized before the end of the legislative session. Given such perspectives, it seems likely that the creation of the Ontario Labour Court was due to a variety of factors: a desire by the provincial government to avoid making enemies of influential business interests who vehemently opposed a Wagner-style board, an attempt to dodge some of the difficulties that the Wagner Board experienced during its early years by taking advantage of the prestige of a court, a need to address a volatile labour situation quickly within a process that had already dragged on far too long, and a realization that the situation presented

42. Millar, "Shapes of Power," 68, 91–92.

43. Quoted in MacDowell, *Renegade Lawyer,* 117.

44. "The NLRB in Retrospect and Prospect," RG 7-46 file 49, Archives of Ontario [hereafter AO], 1.

45. Statement of H. A. Mills, February 1944, RG 7-46, File 49, AO, 5. See also "John East Iron Works v. Saskatchewan LRB" by Beth Bilson in Judy Fudge and Eric Tucker, eds., *Work on Trial: Canadian Labour Law Struggles* (Toronto: Irwin Law, 2010), 44–47, 49–57.

46. Peter McInnis, *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada, 1943–1950* (Toronto: University of Toronto Press, 2002), 184.

an opportunity to experiment with new institutions within an "atmosphere of improvisation."[47]

The legal rather than administrative nature of the court did garner criticism. One common complaint was that the legalistic Rules of Practice and Procedure of the Court hindered workers rather than aided them. For example, many unions attempted to apply to the court in the form of letters or telegrams before it had begun sitting or its procedures made clear. These applications were cast aside because they did not follow the required protocol: the requests were made directly by the union leadership or individuals rather than through a lawyer and without the proper submission of forms. As the *Globe and Mail* reported in June 1943, "it is understood that approximately 44 applications for hearing were received before the Labor Court became law. These will have to be filed again in the manner prescribed by the court."[48] Numerous examples of such application attempts can be found within the Registrar's correspondence files. This situation caused considerable delay in a volatile industrial relations context where time was of the essence.

Other differences between the traditional formality of the high courts and the nature of industrial relations administration also become apparent. For example, the gap between informal and formal procedures was evident when the Labour Court judges were rattled by the rowdy participation of workers at the hearings, which could include booing or cheering at the court's decisions.[49] In addition, much of the work of the Labour Court was administrative in nature, and as a result the judges delegated much of the work to its Registrar, Finkelman. Further, because the administration of the act was through a new institutional entity, there were limited personnel and no public relations department, which made the task of communicating the activities of the court to interested parties a difficult matter, an issue exacerbated by the Registrar's already extensive workload.[50]

A Canadian Labour Court in Action

The records of cases that came before the Ontario Labour Court, as well as their analysis in the Workers Educational Association (WEA) *Survey,* can shed light onto how various issues were handled through the work of the court. Because of the act's emphasis on certified collective bargaining agencies, the previous lack of an institutional mechanism to legitimate unions and the short life of the court, almost all the applications to the Labour Court were

47. McInnis, *Harnessing Labour Confrontation,* 184.

48. "Will launch proceedings against plants: Steelworkers union to institute action in Ontario Labor Court," *Globe and Mail,* 23 June 1943.

49. MacDowell, *Renegade Lawyer,* 117.

50. Finkelman to A.A. Desser, 20 September 1943, RG 7-46, File 48.1, AO.

for the certification of unions. However, some of these cases also brought other issues to light, such as mechanisms for reinstatement for employees, orders to employers to bargain with unions, the duty of a union to represent all employees, what constituted majority support of a union, and when an organization was deemed to be employer-dominated.

The first case, *Welland-Vale*, established some important principles regarding the interpretation of the act, such as the duty of the union to represent all employees (including non-union employees), as well as the jurisdiction of the union over day-to-day employee affairs, such as grievance disputes. In the first part of the case, the applicant union, the United Steel Workers of America (USWA), sought certification and because all parties agreed that the majority of employees were members of the union, the application was successful and certification granted. However, the second part of the case raised the issues of the duty to bargain in good faith, the scope of the act, and the responsibility of a certified union to represent non-union employees. The sections of the act in dispute were Section 1a, which required negotiations between the union and employer "in good faith with a view to the conclusion of a collective bargaining agreement and so to negotiate from time to time during the term and in accordance with the provisions of a collective bargaining agreement," and Section 6, which required the employer to bargain collectively with the representatives of a certified collective bargaining agency.[51] Justice Gillanders noted that the parties had already negotiated "in good faith" and that "the dispute arises out of an honest difference of opinion as to the effect of the relevant statutory provisions," thus emphasizing that neither party was seen to be at fault by the court. Significantly, Gillanders declared that "the statute does not require that the parties arrive at an agreement; it only requires that they 'negotiate in good faith'," an important perspective for future cases.[52]

Next, two questions arose regarding the interpretation of the act. First, how were day-to-day matters to be negotiated: by the union only, or could they be dealt with by a committee chosen by all employees (union and non-union alike)? In other words, what was the scope of a union's exclusive rights beyond negotiating a collective agreement in the first place? In this case, the issue was dealing with individual grievances. Justice Gillanders interpreted the act in agreement with the union's perspective:

> The negotiations leading up to a written agreement with the employer and the negotiation of the settlement of disputes and grievances of employees arising from day to day would seem to be all part of the general process of collective bargaining.
>
> It must be concluded that the function of the proposed Committee is to bargain collectively with the employer, and it follows by virtue of section 6 of the Act that the representatives for

51. Workers Educational Association (WEA), *Labour Court Survey,* 1 (1943), 3–4.

52. WEA, *Labour Court Survey*, 1 (1943), 4.

this purpose are designated as the duly appointed or elected representatives of the certified agency.[53]

It is interesting to note that Gillanders' interpretation gave unions greater control than the American equivalent in the case of *Clayton v. Lambert* in a 1941 NLRB decision, which sided with the employer's view that a separate grievance representative/committee could exist alongside a union, and the employer's relationship with/power over that committee would not be constrained by collective bargaining legislation.[54]

The second question to arise was whether the certified union had a duty to represent non-union members, and what exactly the rights of non-union employees in a workplace with a certified collective bargaining agency were. Justice Gillanders ruled that the certified bargaining agency is the agent for all employees, not just those who are members of the union, and, thus, non-union employees should be able to "avail themselves" of resources such as grievance committees as a union member would. This decision was criticized for placing an undue burden on the union members and committees, as it was argued that beyond basic negotiated wage rates and conditions of employment, "it would seem unfair that those who do not pay and work to maintain a union should derive benefits from it."[55] Nonetheless, an important precedent had been set in this regard.

Most parties felt it was desirable for the Labour Court, though technically a division of the Supreme Court of Ontario, not to act as a high court usually did. Rather than long, drawn-out and technical proceedings, it was hoped that the Ontario Labour Court would be able to reach quick, efficacious decisions. As Justice Barlow said during the *Massey-Harris* case:

The procedure set up under the Collective Bargaining Act and the Rules of Practice and Procedure made in accordance therewith are of a summary nature and for the purpose of dealing summarily, without undue delay or expense, with specific matters set out in the Act arising between employers and their employees or the Unions representing such employees.[56]

There were potential hazards as well as benefits to such a "quick and dirty" approach, however. For example, while the *Chatham* case demonstrated speedy decision making, it also served as a warning of the dangers of the certification process to the international trade union movement. In *Chatham*, an employees' association applied for certification, filing all the required paperwork including a sworn affidavit stating that the employer did not dominate the association. Neither the company nor an intervener was present to object. As a result, the court summarily certified the association without calling for

53. WEA, *Labour Court Survey,* 1 (1943), 4.

54. WEA, *Labour Court Survey,* 1 (1943), 4–5.

55. WEA, *Labour Court Survey,* 1 (1943), 5.

56. WEA, *Labour Court Survey,* 5 (1943), 10.

additional evidence, as regular procedure dictated. However, in its description of the case, the WEA authors warned:

> Certainly, under the Act, it is not the duty of the judge to go behind uncontested material containing the essentials required by the Rules and Act, or to question sworn unopposed affidavits. Since there are still many plants where few if any of the employees belong to any union there is a serious danger that the Act may come to be used to establish and protect company unionism through this device of unopposed certification unless the trade union movement exerts sufficient pressure to have the rules changed so the recognized representatives of organized labour in the province can intervene in these company union cases in the interests of the trade union movement.[57]

Thus, trade unions feared that their potential gains would be blocked by the procedure the court was establishing. As long as a trade union was not already established in a workplace, a more employer-friendly committee could be certified and therefore block the trade union from being certified until a collective agreement had come to an end. The WEA author compared this situation unfavourably to that in the United States:

> Unions should bear in mind that this is a Court. In the United States the Act is administered by the National Labour Relations Board, directing a large staff, whose duty it is to ferret out the facts and report to the Board. But in Ontario the Court is not an investigating tribunal. It is not the duty of the judge to compel witnesses to be brought for interrogation by him as to the status of any Employees' Association any more than if a local of an international union were applying. Until we have some such fact-investigating tribunal or staff in Ontario, the burden must be borne by those who stand to lose the most – international unions.[58]

Another case that warrants a detailed analysis is *York Arsenals*, which highlights how the court functioned within the context of wartime industrial relations. In the first part of the case, the United Electrical Radio and Machine Workers of America (UE) applied to be certified, unopposed, claiming that about 25 per cent of the employees were members of the union. However, the act required that only a collective bargaining agency "claiming to represent the majority of the employees of an employer or of a unit thereof" could apply to be certified.[59] Justice Roach decided that 515 out of 2,200 workers was too small a number to make a case for majority without other evidence, and that therefore UE did not make out a *prima facie* case that it represented the majority of the employees. As a result, he refused to order a vote and the applicant was dismissed. In his decision, Justice Roach stated:

> The Court does not make the law. The law is made by the Legislature and the Court discharges its duty when it interprets and applies that law. That being so, the court is not concerned with how meritorious the suggestion may be, as put forth in argument by counsel, that because a substantial part of the total number of employees belong to the

57. WEA, *Labour Court Survey,* 3 (1943), 10.

58. WEA, *Labour Court Survey,* 3 (1943), 9.

59. Ontario Collective Bargaining Act, 1943, Section 13 par 1.

applicant union a vote should be directed to make certain, beyond peradventure, as to the opinion of others.[60]

However, in its analysis of the case, the WEA authors argue that Roach's reasoning was incorrect, since nothing in the act or the Rules of Practice and Procedure of the Court stated that the applicant was required to make a definitive case before being entitled to a vote, arguing that

This is judge-made law – made in the course of carrying out the administration of the statute – and in interpretation of the meaning of the statue. And we would submit that in such administration and interpretation, where there are two courses open, that the Court should be 'concerned with how meritorious the suggestion may be'. Whichever of the two courses are taken, surely a weighing of the comparative merits is of the highest importance.[61]

Despite the validity of this argument, it appeared that the case was over. It was not.

In the second instalment of the case, UE made a separate application a few months later, after having engaged in an intense drive to increase union membership. The union had made support cards, which employees signed, stating that they wanted UE to represent them in collective bargaining. These cards were not exactly membership cards, and while the signers paid a fee of one dollar, they did not have to be members in good standing of the union (i.e., having paid membership dues). An affidavit presented to the court swore that there were 1,410 employees represented by the union (UE), and that the present proceeding was a new application because there was no evidence to show that any of the employees were the same ones who had previously supported the union. Justice McFarland maintained that the evidence, the cards stating that the employee wanted the union as his/her bargaining agent, did not show union membership, since they involved "no liability to the applicant, not even the payment of dues" and there was "no proper proof of the signature."

Justice McFarland also emphasized that the most important part of the case was that it could establish the principle that an applicant could apply in succession multiple times, "thereby keeping an industry in a continual state of turmoil, while the employer, except in case of fraud, is prevented by the Statute from taking any action within one year." He went on to state that "it is a well established principle that 'actions which are absolutely groundless are frivolous and vexatious. A stay of such proceedings may be granted, not as a substitute for an injunction, but under the inherent jurisdiction of the court to control its own procedure and prevent abuses of its process'," in a quote from a previous common-law case (*Ross v Scottish, etc., Insurance Co.*, 1920).[62] He

60. WEA, *Labour Court Survey,* 6 (1943), 9.

61. WEA, *Labour Court Survey,* 6 (1943), 9.

62. WEA, *Labour Court Survey,* 8 (1943), 7.

dismissed UE's application, and made an order stating that the union could not reapply to the court for a further ten months.

It seems that the judge's desire to set what he believed were appropriate legal precedents outweighed the need to face industrial realities. Regrettably, the legal arguments Justice McFarland used to support his decision were not even accurate. For instance, the argument that the union needed to demonstrate a *prima facie* case for majority membership, which its support cards did not do, was not strictly true. As the WEA *Survey* argued, the fact that the cards signed by employees did not involve liability was immaterial, since according to the act the bargaining agency must *represent the majority of the employees*, rather than that *the majority of the employees must be members* of the union.[63] Further, denying certification to a plant where 1,400 out of 2,200 have stated their desire to be represented by a certain agency would not be likely to reduce the "state of turmoil" that the judge had said he wanted to prevent. The situation would be quite different if the applicant had lost a vote and then reapplied – here they were not given the option of a vote in the first place. As a result, the decision was seen as "a warning to unions not to take their case to the Court unless they feel sure of proving a majority or near-majority membership or authorization."[64]

The main issue in this case was that of the court establishing precedent versus weighing the impact of its decision on the actual employees. The court's concern over creating a precedent that allowed agencies to repeatedly apply for certification, therefore wasting its time and resources, makes sense. However, given the court's brief existence at that point, the backlog of employees wanting collective bargaining representation, and the way that unions were only then learning the procedures of the court and how they would be treated as they went along, it was unfair of the justice and not "in the spirit of the act" to have denied UE a chance to be certified, when in fact the union attempted to meet the justice's earlier requirements.

"Freedom of Association": Employee Associations and Company Unions

In addition to critiques of formality and legalism, one of the major criticisms lobbed against the Ontario Labour Court was its acquiescent relationship with non-affiliated employee organizations. It has been suggested that "despite some of the strongest statutory language outlawing employer interference with unions, in practice the Ontario Collective Bargaining Act opened the way for independent company unions, otherwise known as employee committees."[65] The Canadian system of labour relations was

63. WEA, *Labour Court Survey,* 8 (1943), 8.

64. WEA, *Labour Court Survey,* 8 (1943), 8.

65. Fudge and Tucker, *Labour Before the Law,* 272.

unique because while it favoured collective bargaining and unions it "did not totally exclude other forms of representation."[66] According to the Collective Bargaining Act, employee representative bodies were not supposed to have "improper" employer influence, but in practice this was difficult to determine. In cases where both an employee agency and a trade union sought certification, a somewhat adversarial process ensued, where the competing agencies contested each other's claims (for instance that they were or were not an "appropriate" agency, "company-dominated," or represented a majority of the employees). Nonetheless, it was difficult to find enough satisfactory evidence to prove employer domination. As a result, responsibility was often shifted onto the employees themselves through the use of a vote.[67]

The context of the court's actions in this regard was heated debate about the legitimate forms of employee representation. Parties for and against independent employee associations were organized and vocal. Labour activists argued that many companies existed where management did not want to recognize a union, and a frequent method for avoiding or defeating them was "by soliciting support among their employees for an alternative mechanism in competition with a union already on the scene."[68] During the hearings for the federal National War Labour Board (NWLB) inquiry in 1943, many examples of this union-avoidance strategy were heard. Of particular notoriety were two cases in 1941: at National Steel Car Corporation (NASCO) in Hamilton, and at the Kirkland Lake gold mines in northern Ontario. C.S. Jackson, the representative of UE, testified before the NWLB in 1943, and cited numerous other cases where employers had attempted to thwart his union's organizing attempts in a similar fashion, including at Westinghouse in Hamilton and Canadian General Electric in Toronto, Taylor Electric in London, Sawyer Massey in Hamilton, Robbins and Myers in Brantford, Parker Pan in Toronto, and Atlas Steels in Welland. He testified that

> we can cite examples where employers daily disrupted the harmony of their plant, spent huge sums of money directed from the war, to fight their employees legitimate right to self-organization; where companies attempted to foist on their employees ... company unions, plant councils and so-called independent unions in the hope of being able to turn the employees away from *bona fide* trade unionism and full labour management co-operation.[69]

Similarly, a September 1943 letter in Finkelman's correspondence file from the regional director of United Gas, Coke and Chemical Workers of America demonstrates a similar situation. The director wrote of the creation of a company

66. Laurel Sefton MacDowell, "Company Unionism in Canada, 1919–1948," in Bruce Kauffman and Daphne Taras, eds., *Non-Union Representation: History, Contemporary Practice, and Policy* (Armonk, New York: M.E. Sharpe, 1999), 96.

67. Willes, *The Ontario Labour Court,* 29–30; my archival research supports this as well.

68. Willes, *The Ontario Labour Court*, 110.

69. Quoted in MacDowell, "Company Unionism in Canada," 112.

union at Consumer's Gas in the week between meetings with the United Gas union's representatives, even after a board of conciliation report had recommended the company negotiate with that union. In a call for help, the author stated that the workers in the union local "urge in the interests of industrial peace that unfair labour tactics of Company be stopped."[70] As can be seen from such testimony, the idea of non-affiliated collective bargaining agencies was one that angered most unionists, since such agencies could easily be used to thwart the organization of workers into *bona fide* unions.

A memorandum from the Canadian Congress of Labour (CCL) to the Ontario Select Committee on Collective Bargaining argued against such employee associations at length, stating that "company unions" could be known as "shop committees, plant councils or other associations of employees," but whatever their name, they were not appropriate organizations for collective bargaining since they were "almost always dominated by the employer, directly or indirectly, and it is axiomatic that an employer cannot bargain with himself; he cannot sit on both sides of the table at the same time." While the memo acknowledged that the government or labour administration could not stop such associations if they were chosen by the majority of the employees, it argued that legislation should prevent employers from "encouraging the formation of company unions, or interfering in any way with the freedom of their employees to establish whatever collective agency they choose."[71] In an example of the stauncher rhetoric directed at the rank-and-file, a USWA flyer that advertised a speech by Canadian director C. H. Millard stated that if workers were to "shake off the shackles of indifference and crawl out of the shell of senile servility and scoff at the attempts of company-dominated associations to sell them on rosy picture of sick benefits and line their pockets with money collected chiefly from female workers we might get somewhere."[72]

However, activism and rhetoric also existed on the other side of the debate. For example, after Ontario's Minister of Labour Peter Heenan promised to introduce collective bargaining legislation, 55 Hamilton employers addressed an open letter to Premier Conant "to express concern for the fate of 'independent unions'."[73] A group called the Amalgamated Unions of Canada, centred in Hamilton, claimed to be a national union, but one comprised of independent locals that had nominal ties to the national and did "not have to take orders from the parent body."[74] A similar group, the Associated Workers' Organization, was established in November 1942 to represent non-union employee associations, and in February 1943 co-presented a memo to the Ontario government

70. William Edmiston to Finkelman, 24 September 1943, RG 7-46, File 48.1, AO.

71. *Canadian Unionist,* (April 1943): 267–268.

72. RG 7-46, File 48.1, AO.

73. MacDowell, "Company Unionism in Canada," 112.

74. Quoted in MacDowell, "Company Unionism in Canada," 111.

with the Canadian Federation of Labour (a conservative organization which had broken away from the All Canadian Congress of Labour in 1936), expressing concern that new legislation might "impede or prevent the formation and operation of free labor unions."[75] The existence of such organizations demonstrates that a business-supported alternative to unions had a strong presence in Ontario, and that employers, and even some workers, felt strongly about maintaining an unaffiliated option for representation.

The main issues raised by supporters of employee associations were fears of large, international unions gaining control of the economy, and the subsequent loss of individual rights where unions were able to gain security through such provisions as the closed shop, which would mean that in order to work at certain companies the worker would be obliged to join the union. In the early part of 1943, the Ontario Workers' Association put advertisements in the *Globe and Mail* that used scare tactics to encourage people to protest the proposed labour legislation. Describing itself as a "group of small and large manufacturers, retailers and Free and Independent Employees' Organizations and Associations," it created full-page advertisements with titles such as "Labour Beware" and "Is this Democracy? Check the Facts Concerning the Compulsory Bargaining Bill!"[76] In these advertisements, readers were warned that the OCBA would "force all industrial employees into the C.I.O. [Congress of Industrial Organizations] or the A.F. of L. [American Federation of Labour]" would "forbid workers to negotiate with employers through organizations of their own free choice," and "prevent any one who is not a member of one of these unions from earning a living in industry." The advertisement also warned of the act's effect on wage and price ceilings and thus inflation, the war effort (which would be compromised because of "class strife and class hatred at a time when all Canadians must pull together"), and in an almost amusingly naive statement, argued that the act "implies complete breakdown of friendly individual relations between management and employees."

While such warnings were in most cases totally incorrect, they reflect some of the prevalent arguments and in some cases genuine fears that helped to create the system in which the Labour Court operated. While the act was far from requiring certified bargaining agencies to be affiliates of only the CIO and AFL, the closed shop, while not ensured, was not forbidden by the act, and did indeed become an issue in labour management disputes soon after. In addition, such arguments help to explain the Labour Court's tendency to refrain from determining the extent of an agency's independence from management, or to allow only affiliated unions, and leave the issue to be decided by secret ballot. It seems likely that these procedures were an attempt to assuage criticism such as that found in the advertisements, since if the employees "freely

75. MacDowell, "Company Unionism in Canada," 111–112.

76. *Globe and Mail*, 2, 6 February and 10 April 1943, in RG 7-114, File 8, AO.

chose" an affiliated union, it could not be argued that the court had "forced" employees into anything.

The Ontario Labour Court and Company Unions

The Ontario Labour Court frequently certified employees' associations that it considered "independent," even if unions viewed them as employer-dominated company unions. In cases with only one applicant, often the issue was not even addressed, and the "check" of a competing union was absent.[77] The fact that a collective bargaining agency was supported by a majority of the employees was considered more significant than the legitimacy of that organization.[78] In general, it was highly unusual for an allegedly dominated agency to be struck off the ballot, since the justices believed that the issue was best determined through a vote. Thus, Cohen noted that he was hesitant to allege employer interference or domination unless he felt he had proof.[79]

In one of the most notorious cases to be decided in the Labour Court, *Atlas Steels Ltd.*, the United Electrical, Radio, and Machine Workers of America did argue that the intervener, the Atlas Workers Independent Union (AWIU), was company-dominated. The attempt was spectacularly unsuccessful. The AWIU had negotiated a collective agreement with the Atlas management in April 1943, which was subsequently ratified by only 70 of the 2,000 employees, at a meeting held at a restaurant where it would have been impossible to accommodate the majority of the workers. Because the Labour Court was not yet operational, UE, which had already been organizing a union drive at the company, contacted the Ontario Minister of Labour to have the situation mediated by a Board of Conciliation and Investigation. A vote was ordered to determine the bargaining agency, and even though the vote was unpopular with all parties, UE won the support of the majority of workers who voted, but only a minority of workers who were eligible to vote, since not all exercised that right.[80] The company did not act upon the results and instead held their own vote to determine if employees were satisfied with the collective agreement already signed with AWIU. Despite UE's protests and urgings for a boycott, the vote went ahead: this time those in favour of the AWIU received the majority of votes cast, while once again not the majority of eligible votes.[81]

When the case came before the Labour Court in August, these two previous votes were used as evidence. In early September, Justice Kelly gave his decision: in view of the company-held vote, where a majority of votes cast were in favour

77. Willes, *The Ontario Labour Court*, 45.

78. Willes, *The Ontario Labour Court*, 32.

79. Willes, *The Ontario Labour Court*, 30.

80. RG 7-60, File 12, AO

81. RG 7-60, File 12, AO.

of the agreement, that agreement was a bar to the certification of UE. However, he would certify neither party, but decided that either or both could reapply after six months. This decision was reached through the use of an inconsistent definition of majority favouring the AWIU, negative evidence (i.e., that "those refraining from voting were either in favour of the agreement or were ... indifferent as to the result of the vote")[82] and the judge's own bias: he stated that the actions of the company were above-board, but that he did "not think it *equitable* that the employees, having *taken advantage* of an agreement negotiated on their behalf ... should now be *heard to complain* and ask that another Union be certified so that they could *get further advantages* to those already secured for them [emphasis added]."[83] This decision completely ignored many aspects of the case, such as the timing of various events, allegations of misconduct, and the results indicating substantial support for UE at the government-supervised vote. Here was an example of flagrant anti-union bias.

Even worse than letting down the Atlas workers, the case set a dangerous precedent. Although the idea of a contract as a bar to certification had been set down by Gillanders in a previous *Inco* decision, "such a doctrine, coupled with the difficulty under the Act of showing employer domination of a company union, might well be the pivot point on which the Act would destroy bona fide collective bargaining instead of fostering it."[84] Thus, a type of formula had evolved whereby an employer who wished to keep an international union out of his/her plant could organize a company union, create a collective agreement that would be signed, then ratified with a vote at which the employer made clear his/her preference. After this "ritual" had been completed, the company could certify the association, protected by the *Atlas* case, and thus thwart international unionizing attempts.

However, even relatively early in the court's existence, there were labour-friendly developments as well. First, the court's procedures were being used in what were termed "consent votes," where both the union and the company agreed to have the Registrar conduct a vote to determine the wishes of the employees to be represented by a collective bargaining agency, such as in the *Canada Electric Castings* case. The WEA *Survey* highlighted such positive developments, noting that "it is in cases like these that the future of the Act lies. Its function is the achievement of industrial peace and this is one method of amicably settling the claim of a union that it represents the majority of the employees."[85]

Further, in cases where the applicant union was contested, the decision by Justice Barlow in the *Massey-Harris* case suggested that the court might

82. As transcribed in Willes, *The Ontario Labour Court*, "Decisions," 118.

83. As transcribed in Willes, *The Ontario Labour Court*, "Decisions," 118–119.

84. WEA, *Labour Court Survey*, 4 (1943), 9.

85. WEA, *Labour Court Survey*, 4 (1943), 10.

indeed help employees and their unions. Justice Barlow, who had already certified UE locals, "asked searching questions about the company union," such as from where it received its funding, its origin as an industrial council, whether it was designed for bargaining purposes, "and whether workers had been asked to vote on the sweetheart contract."[86] Laskin suspected that Barlow was reacting to the practice of hastily organized employee associations that were voluntarily recognized by employers in the shadow of union drives and that "rushed into the court for certification" after the *Atlas* decision.[87]

Whatever the impetus, the *Massey-Harris* decision was important because it was the first in which an intervening company organization was disqualified as a collective bargaining agency under the act for being company-dominated. After disqualifying the intervener, Justice Barlow ordered a vote to determine if the employees wished to be represented by the United Automobile Workers of America (UAW). They did. Despite the fact that this was an obvious case, since a hastily created employee branch of an employee/employer representation council was applying to be certified, the *Survey* noted that "it is heartening, at last, to see some recognition by the Court of industrial realities."[88] But the work was not done, since "the Labour Court still has yet to nullify the more subtle form of employer domination – the distinctly employee company organization, but which is dominated by the employer. The main effect of this case will probably be the replacement of employer-employee councils by so-called 'independent' unions."[89] However, the employees of Massey-Harris benefitted, and, in January 1944, the *Canadian Unionist* reported that the UAW had got its first Massey-Harris agreement between local 439 and the Toronto plant, which was also the first UAW contract with the company.[90] As one scholar noted, "in this historic changeover, the union replaced an industrial council, which had negotiated agreements with the employer intermittently for twenty-four years."[91]

Another historic case watched with great interest was *Lakeshore Mines*. Lakeshore Mines was one of the mines in the Kirkland Lake area that had gained national attention in 1941 when a violent and lengthy industrial conflict erupted over Mine-Mill's unionizing drive. The applicant in the case was Lakeshore Mine's Workmen's Council, with Mine-Mill Local 240 intervening. Justice Roach heard the case over a lengthy period, with five instalments. In the first part of the case, Mr. Justice Roach dismissed Mine-Mill's contention that the council was employer-dominated, stating:

86. Millar, "Shapes of Power," 124.

87. Millar, "Shapes of Power," 124.

88. WEA, *Labour Court Survey,* 5 (1943), 5.

89. WEA, *Labour Court Survey,* 5 (1943), 5.

90. *Canadian Unionist* (January 1944): 199.

91. MacDowell, *Renegade Lawyer*, 119.

> I do not think that the evidence establishes that the applicant is dominated by the Company. That the Company preferred the applicant to the union there is no doubt. Through its officers, it openly and, indeed, vigorously, indicated that preference. What is 'improper influence' is a question of fact in each particular case, but ... [must] be such that, either individually or collectively, they interfered with the decision, judgement or action of the members of the bargaining agency....[92]

However, because the agreement already in effect was not properly ratified by a majority of the employees, Justice Roach ordered a vote with a three-way ballot, whereby the employees would register whether they wished to be represented by either agency or none at all.

The *Labour Court Survey* noted several key aspects of this decision including that it was the first case to attempt to properly define what "improper influence" might mean, but, as in other cases, the obvious preference of an employer for one agency over another did not count as such: "it might be noted that such openly expressed preference is deemed to be an unfair labor practice under the Wagner Act....We would submit that such preference should be deemed 'improper influence' under the Ontario Act."[93] It was also the first case where a vote was ordered even though neither the applicant nor intervener claimed majority representation. The difference, compared to *York Arsenals* or *Canadian Furnace,* for example, is that the evidence proved "conclusively that a very large majority of the employees at the respondent's mine want to be represented for collective bargaining purposes by some collective bargaining agency."[94] In addition, silence was not being interpreted as consent – the fact that the council had been elected by a majority of employees did not signify that the employees ratified the agreement that the council had negotiated. This was a wise interpretation since when the employees had limited options, "half a loaf might be better than no bread."[95] Thus, this decision by Roach contrasts positively with Justice Kelly's decision in the *Atlas* case to interpret silence as assent.

The second part of the case occurred after the vote was conducted with a three-way ballot, in which of 489 eligible voters, 20 voted for neither bargaining agency, 222 for Local 240, and 217 for the workmen's council. J.L Cohen, representing Mine-Mill, argued that the wishes of the few employees who had voted against any representation should not counteract the wishes of the vast majority who had shown preference for some form of collective bargaining and that since Mine-Mill had received a greater proportion of those votes, it should be certified. The council argued that Mine-Mill still had a minority of total votes, and the company argued that neither agency had proved it represented a majority, and therefore neither should be entitled to a run-off vote. The justice

92. WEA, *Labour Court Survey,* 7 (1943), 3.

93. WEA, *Labour Court Survey,* 7 (1943), 4.

94. WEA, *Labour Court Survey,* 7 (1943), 4.

95. WEA, *Labour Court Survey*, 7 (1943), 5.

ordered a second vote to decide between the agencies, with only two options on the ballot, since he agreed with Cohen that if neither agency were certified then "that would mean that the wishes of the twenty employees who voted for 'neither' would thwart the wishes of the other 439 employees who voted for the applicant or the intervener. That result should not be permitted to prevail."[96] The WEA had a positive interpretation of this development, stating that, "The Court, in this case, has looked at industrial reality.... The present decision is an example of judicial law-making designed to carry out the spirit of the Collective Bargaining Act. Perhaps it is fortunate that the central issue came up in a case like the present with its turbulent background of industrial strife – so that some solution had to be found."[97]

In the third part of the case, allegations of contempt of court were brought forward. It was alleged that a poster sent to Upper Canada, Wright-Hargreaves, Kirkland Lake, Toburn, and Lakeshore Mines, inviting them to a meeting of Mine-Mill Local 240, contravened an order by Justice Roach that there was to be no "electioneering" before the vote. The poster showed a Canadian soldier standing in front of a company man who holds a dagger labelled "anti-union" behind his back, a paper labelled "the Law" ripped up and in a waste bin, and the tagline "use your ballots to back his bullets." (See Figure 1) The poster had been sent to the printer on 17 November, before the case had been heard (on 19 November, with the judgement ordered on 23 November). The justice postponed the vote to 1 February. In his decision, he differentiated between education and propaganda, and cautioned parties from using propaganda. In a paragraph on the significance of the judgement, the WEA authors wrote that

> The gist of the reasons would seem to be that it behooves unions to watch their step once their matter is before the Court. It is difficult, however, for the writer to see how a Court order can be infringed before it is made – since that is the effect of the decision, as any attempts by the union to gather up the circular would not have wholly repaired the damage. Surely a party to proceedings in the Labour Court is not bound to anticipate a judicial order so that he must regulate his conduct before any order is made. Apparently any notice or dodgers circulated in the future while a proceeding is before the Labour Court should be strictly 'educational'.[98]

In the fourth part of the case, heard before Justice Roach on 3 March 1944, it was argued once again that objectionable posters had been left up. Sensibly, Justice Roach dismissed these further arguments regarding the infringement of an order that no propaganda or electioneering should take place, acknowledging that the supporters of both parties were very "enthusiastic" and that this enthusiasm might cross the line the longer they were left to wait. He asserted that

96. WEA, *Labour Court Survey,* 8 (1943), 3.

97. WEA, *Labour Court Survey,* 8 (1943), 4.

98. WEA, *Labour Court Survey,* 8 (1943), 6.

Figure 1. One of the posters found to have broken the court's anti-electioneering order.
RG 7-60, File 26, AO

Having regard to the history of events at this mine, it is, perhaps, a reasonable conclusion that the present is just as opportune and safe a time to take a vote among the employees as some later date. Having regard to a very apparent desire of the employees to have some collective bargaining agency representation, and, having regard for the spirit of the Act, I direct that a vote of the employees be taken....[99]

The WEA author applauded this decision: "This is the fourth proceeding in this case. At long last, the court realizes that the flames of industrial strife cannot be completely extinguished by judicial fiat," and applauded the judge's acknowledgement of the "human" aspects of the people involved, and therefore their inevitable "frailties."[100]

In the fifth and final instalment of the saga, heard before Justice Roach on 8 April 1944, the results of the vote were made official: Local 240 of Mine-Mill

99. WEA, *Labour Court Survey,* 11 (1944), 10.

100. WEA, *Labour Court Survey,* 11 (1944), 11.

received a majority of votes cast, but not of eligible votes. However, in a historic moment, despite last-ditch attempts to disqualify the vote, Justice Roach certified Mine-Mill Local 240 as the collective bargaining agency of the mine. After years of trials and tribulations, Mine-Mill was finally acknowledged at a Kirkland Lake mine.

"A Picnic for Lawyers"

Another major critique of the Labour Court, particularly by unions, was the fact that all parties had to hire legal counsel rather than having the option to represent themselves.[101] The OCBA had not been specific about requiring legal representation of the parties, but the justices involved chose to create a system similar to the one they were used to and thus created the necessity of lawyers through their rules of practice and procedure.[102] The CCL was not impressed by the act, finding it "an extremely disappointing piece of legislation, particularly because of the requirement that only lawyers are permitted to appear before the Ontario Labour Court."[103] To further show their displeasure, in a memorable turn of phrase, two prominent unionists with the CCL, Aaron Mosher and Pat Conroy, complained that "the whole procedure connected with the Labour Court is nothing more than a picnic for the lawyers."[104]

Though perhaps not a "picnic," the Labour Court was indeed important for the careers of several lawyers. The formation of the OCBA and the work of the Ontario Labour Court created an opportunity for the growth of careers in labour law and administration, which had previously been rare. As MacDowell notes, in the mid-1940s "labour lawyers were few and identified with [either labour or management]."[105] However, the Labour Court was in many ways the first step in the creation of a new market for experienced experts in labour relations, who could be counted on to represent the needs of the various parties involved in the collective bargaining and grievance processes. The names of the people involved with the Ontario Labour Court's creation and operation shows that the best of Canada's labour law experts saw the opportunity and took part with gusto.

A lawyer whose career peaked in tandem with the short life of the Ontario Labour Court was J. L. Cohen. As his biographer notes, "between the 1937 Oshawa strike and his appointment to the National War Labour Board in 1943, Cohen was involved in virtually every major industrial dispute except

101. Willes, *The Ontario Labour Court,* 66.

102. Willes, *The Ontario Labour Court,* 66–67.

103. "A Year's Progress in Retrospect," *Canadian Unionist* (September 1943), 81.

104. Quoted in Fudge and Tucker, *Labour Before the Law*, 272.

105. MacDowell, *Renegade Lawyer,* 112.

the 1943 steel strike. He was the foremost labour lawyer on the union side in Canada," and because of his work helping trade unions, associating with political radicals, and being an "outspoken critic of the federal government's labour policy" he gained notoriety in the country.[106] By the time he worked in the Ontario Labour Court, Cohen had already enjoyed a substantial legal career. He was intelligent and passionate, and "viewed the law as a body of principles that was influenced by socio-economic factors and was subject to change and that could be an instrument for reform."[107] Cohen was linked with the Ontario Labour Court from the beginning, not least by suggesting a labour court in one of his draft proposals. Not long after, he represented labour interests in the court itself. Between July 1943 and October 1944, Cohen "represented various unions that reflected the range of his practice during the war," acting for unions before the Ontario Labour Court more than any other lawyer, aggressively advocating on behalf of trade unions and their members.[108] In one case, he "aroused the ire" of Justice Roach by writing to the Ontario Regional War Labour Board directly, asking them to delay an action until the certification vote had been held.[109] A contemporary of Cohen's recalled that the Toronto establishment disliked Cohen because of his outspoken critiques of the government and his politics, and perhaps because of his talent as well: "there is a little jealousy in every profession. Cohen stood out. The Labour Court is where they really got to hate him" because "he made asses out of [the employers' lawyers] and they didn't like it."[110]

Union lawyer Andrew Brewin was also involved with the Labour Court from the beginning. He drafted a potential collective bargaining bill on behalf of the CCF, published in the CCL's *Canadian Unionist*, which Cohen examined when he was creating his own draft bill for the Ontario government.[111] He was a civil libertarian, "outspoken about labour policy," and helped to draft Saskatchewan's Trade Union Act in 1944.[112] Brewin represented USWA in most of their certification cases, many of which were successful, including the Stelco case where the constitutionality of the act was challenged. Ted Jolliffe, a labour lawyer and soon-to-be politician, was also a frequent sight at the Labour Court on behalf of USWA. A Rhodes Scholar and a socialist, he acted as the USWA's lawyer until he became the CCF leader in Ontario in 1942, and then the leader of the Official Opposition in 1943. After the war, Jolliffe practiced with David Lewis, the national secretary of the CCF, and John Osler. Later, he also acted as

106. MacDowell, *Renegade Lawyer,* 107–109.

107. MacDowell, *Renegade Lawyer,* 123

108. MacDowell, *Renegade Lawyer,* 118, 120.

109. MacDowell, *Renegade Lawyer,* 119.

110. Bob Carlin quoted in MacDowell, *Renegade Lawyer*, 120.

111. MacDowell, *Renegade Lawyer*, 110, 112.

112. MacDowell, *Renegade Lawyer,* 132.

a labour arbitrator.[113] He represented the USWA during the much-watched Galt cases and occasionally other unions such as International Union of Mine, Mill and Smelter Workers (Mine-Mill).

Another union lawyer who appears frequently in the Labour Court's records is David Goldstick, who acted as counsel for United Electrical, Radio and Machine Workers of America. He was a left-wing politician-lawyer, elected to the Toronto City Council in the 1940s, and was a member of the Civil Liberties Association of Toronto. During World War II, Goldstick worked with the association and colleague Cohen to help a Ukrainian organization whose property was seized as an anti-communist measure by the federal government, which demonstrates his participation in the community of Socialists of the time.[114]

Bora Laskin was another prominent jurist who was involved with the Ontario Labour Court. Laskin did not grow up in a politically leftist household, nor was he raised within a context of trade unionism, but rather came from a comfortable and conservative family. This conservatism remained with Laskin in the sense that he searched for order and discipline, "but it was tempered by his passionate concern for civil liberties, for enlarging the sphere of individual aspiration, action, and fulfilment."[115] Generally, Laskin was moderate in his views. For example, he did not support the closed shop above other considerations, such as individual rights. Laskin did believe that the US model of labour legislation with labour boards administering the law should be adopted in Canada, since it represented "an advanced step in defining more rationally, in the light of experience, the relations of capital and labour," and would help to ensure the survival of democracy.[116] One of Laskin's most noteworthy views was that judges, rather than representing the pinnacle of independent and unbiased decision making, had an "unconscious partiality," which could be observed through the use of injunctions against trade union activity.[117] As a result of this conviction, Laskin wanted to ensure that the separation between the old system of individual employment contracts and the new system of collective bargaining was absolutely secure. Noting that Laskin's "engagement with labour was very much within a liberal rather than socialistic framework," Laskin's biographer Philip Girard nonetheless emphasizes that this "was unusual enough at a time when the vast majority of lawyers had little use for unions" and when legal academics "aside from Jacob Finkelman, seldom wrote

113. MacDowell, *Renegade Lawyer,* 132

114. MacDowell, *Renegade Lawyer,* 339 note 159. Also Upper Canada Law Society's online project "Diversifying the Bar: Lawyers Make History," under the year Finkelman was called to the bar (1924). http://www.lsuc.on.ca/diversifying-the-bar-lawyers-make-history/.

115. Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005), 117.

116. Girard, *Bora Laskin*, 112.

117. Girard, *Bora Laskin*, 115.

on the topic."[118] Through his work in radio broadcasts, teaching, and writing, Laskin "attempted to popularize the idea that the imposition of compulsory bargaining on the employer, while leaving employees the right to strike, aimed only to redress a prior situation of inequality between capital and labour, and portrayed it as a necessary step in the progress of humanity."[119]

One indication of the close ties within the group of pro-labour lawyers and academics of this era was Laskin's mentor, Finkelman, the Registrar of the Labour Court.[120] Born in 1907 in Russia, Finkelman moved to Canada the same year. He grew up in Hamilton, and then attended the University of Toronto, with which he had strong ties throughout his life. There, he received his BA, MA, and LLB, and became the first Jewish full-time professor to be hired by the university, teaching there until 1967. In 1943, he acted as Advisor to the Select Committee on Collective Bargaining, which drafted the final OCBA. Soon after the committee had filed its report, Premier Conant asked Finkelman to become the court's Registrar, a position it was clear would be an important one and difficult to fill with a person acceptable to both unions and employers. Because of his past work as Advisor to the Select Committee of the Ontario Legislature on Collective Bargaining and head of the Industrial Research Institute of Canada, as well as his professorship teaching Administrative and Industrial law at the university, he was well regarded for the position. Finkelman was reluctant to accept, but after the combined pressure of Conant's threat to have him drafted under the Selective Service operation, and telegrams of support from labour leaders, he accepted.[121] The position of Registrar was important because the judges delegated much of the administrative work to him, including such important aspects as determining the bargaining unit and eligible employees, and overseeing representation votes. In addition, he corresponded with politicians, labour leaders, management of companies, and even the American NWLB in his position as Registrar. When the Labour Court was replaced by a board, he became the first chairman, a position which he kept for many years. Finkelman was "well-known for his genuine desire to resolve conflicts,"[122] and continued to develop his reputation and expertise through teaching and further work within the growing field of labour relations.[123]

118. Girard, *Bora Laskin*, 116.

119. Girard, *Bora Laskin*, 116.

120. Girard, *Bora Laskin*, 226.

121. Willes, *The Ontario Labour Court,* 24 notes 12–13.

122. Public Service Labour Relations Board. "Jacob Finkelman, O.C., Q.C., L.L.D, 1907–2003." http://pslrb-crtfp.gc.ca/library/finkelmanbio_e.asp.

123. Finkelman acted as chair of the Ontario Labour Relations Board from 1944–47 and from 1953–67, after which he became chair of the Public Service Staff Relations Board from 1967–76. In addition, he continued to teach, write, and act as a leading arbitrator. Finkelman's

In addition to such pro-labour lawyers, respondent companies, as well as employee associations, needed representation before the Labour Court. For example, J.J. Bench was involved in the Labour Court through his firm with J.L.G. Keogh, which represented the company's position in several cases before the court. Bench was known in the labour relations community from his participation on the NWLB, representing the employers' position. He was also a senator (the country's youngest), and worked as a corporation lawyer in St. Catharines, specializing in employment law.[124] In addition, he was a founder of the Niagara Industrial Relations Institute, which was supported by companies such as Atlas Steels Ltd., which had a poor track record regarding labour relations.[125] Despite representing employers, Bench believed that collective bargaining was necessary and even beneficial to industrial relations, though he held that freedom of association would allow workers to represent themselves through non-union agencies.[126]

Another company lawyer, John Stewart Donald Tory, represented the respondents in a few important cases, such as the *Moffat's* and *Massey-Harris*. He also submitted the Toronto Board of Trade's brief to the NWLB inquiry.[127] Born in 1903, he attended University of Toronto Schools, then Harvard University and University of Toronto. He founded a law firm in 1941 and specialized in business and corporate law – as did his sons.[128] The renowned J.J. Robinette represented both companies and employee associations before the Labour Court with his firm Rowan & Robinette. He later became famous through his work as both a prosecutor and defence lawyer in notorious cases such as the Gouzenko, Boyd Gang, and Evelyn Dick trials. In contrast to such high-profile lawyers, J.F. Easterbrook appears in the court records representing employees' associations more than any other legal counsel, but unfortunately his biographical records have been difficult to locate.

While many lawyers who represented companies and employees' association were likely simply interested in taking cases as part of their career, at least one management lawyer was as motivated by political reasons as those

correspondence and interviews were important to both Millar's and Willes' writing. As well, Finkelman's contributions to Canadian law and labour relations have been honoured several times: he became an Officer in the Order of Canada in 1976, received an honorary LLD in 1977 from York University, and as tributes after his death in 2003 the University of Toronto created the Jacob Finkelman prize in labour law and the library at the Public Service Labour Relations Board was named in his honour.

124. MacDowell, *Renegade Lawyer*, 122, 123.

125. Millar, "Shapes of Power," 84.

126. Millar, "Shapes of Power," 84.

127. Memo from J.S.D. Tory on behalf of the Board of Trade of the City of Toronto, 21 May 1943, RG 7-46, File 52, AO.

128. Torys LLP, "About Torys: History," http://www.torys.com/AboutTorys/History/Pages/default.aspx.

representing unions. One of the lawyers representing the intervening employee association in the Stelco (Hamilton) case, G.A. Gale,[129] not only chose to represent the association but was responsible for some of its funding! As the WEA *Survey* reported, "he felt it was his privilege and duty as a citizen to combat such organizations as the applicant."[130] In 1945, Gale was made King's Counsel and the following year was appointed to the High Court of Ontario as a judge. Later in his career, he became Chief Justice of Ontario, received honorary degrees, and had a sports trophy named for him.[131]

Even more than the lawyers, the judges involved in the court were of prime significance in determining the role that the Labour Court would play in labour relations of the time. Perhaps the most influential of the judges on the court's operation was Justice J.G. Gillanders, "an experienced labour arbitrator," who had fought and "quashed" convictions of strikers for union rights at Toronto's General Electric in 1941, chaired an IDIA board at Brantford Coach in 1942, and after his work with the Ontario Labour Court ended, headed Ontario's Board of Arbitration in the 1945 packinghouse workers' strike.[132] As such actions can attest, he demonstrated a keen interest in labour matters. Justice Gillanders agreed to be the first judge to serve on the Labour Court, and for a period of a full month rather than the two-week period required of most judges. Based on his interviews with Finkelman, Willes asserts that Gillanders "had the respect of not only employers, but the labour movement as well. Those who were associated with him were impressed with his legal mind, his knowledge of labour relations, and his humanitarian outlook on life."[133]

Another judge with experience in labour matters was Justice F.H. Barlow. Barlow chaired a commission created by PC 8267 on 14 September 1942, which investigated labour unrest in the steel industry, then threatening strikes at the DOSCO and Algoma plants. Although his majority report, which took a narrow view of the commission's jurisdiction, was "a great disappointment to the union," his actions in the Labour Court tended to be favourable to unions.[134] Justice Barlow was less lenient than other judges regarding the use of legal technicalities by company lawyers, which had been arousing protest. For example, he dismissed a motion by company lawyers to cross-examine

129. It is possible it was N.W. Byrne, who also appears on the record representing the intervener at one stage in the case, but for whom no additional information is available.

130. WEA, *Labour Court Survey*, 10 (1944), 2.

131. A.L. Tunnell, *The Canadian Who's Who: A Biographical Dictionary of Notable Men and Women, Volume XII, 1970–1972* (Toronto: University of Toronto Press, 1972), 384.

132. Millar, "Shapes of Power," 118–119.

133. Willes, *The Ontario Labour Court,* 24 note 14.

134. Laurel Sefton MacDowell, "The 1943 Steel Strike Against Wartime Wage Controls," *Labour/ Le Travailleur,* 10 (Autumn 1982): 72.

union witnesses and refused to expose union finances.[135] As a result of such decisions, the "first step had been taken towards the confidentiality and efficacy of later Boards."[136]

Justice Roach perhaps best represents the complexity of the Labour Court: his decisions seemed to be anti-labour at times, while cognizant of industrial realities and the aims of unions at others. Roach has been described as "a Hepburn stalwart in the 1930s" who "showed his true colours in later cases," such as during his work as chairman of the 1946 Stelco Industrial Disputes Inquiry Commission, when he refused national status for the union and revived the "shop committee formula" demanded by the company.[137] While presiding in the Labour Court, Justice Roach ruled that "voluntary resignations" were equivalent to striking and thus made such workers ineligible to vote, and his decision in *Canadian Bridge* "may have initiated the Ontario practice of excluding white-collar employees from union rights."[138] However, he also eventually provided decisions in support of labour, such as during the *Lakeshore Mines* case in the troubled Kirkland Lake mining area. In that case, he dismissed a claim that Mine-Mill had broken the terms of an order, instead acknowledging the human element of the situation and the tumultuous history of the area, certifying a militant union that had struggled to achieve recognition for years.[139]

While many lawyers may have been reluctant to openly criticize judges and their decisions, an exception existed through the anonymous legal analysis of the Labour Court decisions found in the WEA's *Labour Court Survey*, which published twelve issues and one supplementary issue over the lifetime of the court. [140] The WEA in Ontario was an offshoot of the British Workers Educational Association, founded in 1903 by Albert Mansbridge, and was meant to provide "a link between labour and learning."[141] The association gained momentum within the context of the union movement, which was seeking to gain respectability and become part of the public debate about its own status. [142] The WEA had strong connections with the University of Toronto, although at times this relationship became stormy, and the links (and funding) between them tenuous. In the 1930s, the WEA grew in size and support, and

135. Millar, "Shapes of Power," 125.

136. Millar, "Shapes of Power," 125.

137. Millar, "Shapes of Power," 127.

138. Millar, "Shapes of Power," 127, 157.

139. RG 7-60, File 26, AO.

140. Millar, "Shapes of Power," 124.

141. Ian Radforth and Joan Sangster, "'A Link Between Labour and Learning': The Workers Educational Association in Ontario, 1917–1951," *Labour/Le Travailleur*, 8/9 (Autumn/Spring 1981–82): 42.

142. Girard, *Bora Laskin*, 111.

by the latter years of the decade, "the WEA was a force to be reckoned with."[143] It had grown from 230 members in 1929–30 to 2,200 members across Canada by 1937–38 and reached many more Canadians through courses, films, and radio broadcasts.[144]

Drummond Wren, the organization's Secretary-General, insisted that the WEA was an independent organization, "non-partisan, non-denominational, and not the creature of any particular union or group."[145] Ian Radforth and Joan Sangster describe the Ontario WEA in the following terms:

> Here were working-class people meeting together in their own organization, expressing and perhaps reinforcing their class consciousness, but determined to see a subject from all perspectives. The working-class leaders of the WEA throughout the organization's history in Ontario had always insisted on an unbiased search for truth. To this end, they relied on university faculty to direct this quest, even while attacking the university itself for class bias.[146]

Despite this interest in non-partisanship, in 1937 the WEA attempted to bring its relationship closer with trade unions through consultation with union leaders regarding their educational programs, and with the development of special programs with instruction in trade union issues and leadership skills. This resulted in close connections with the International Ladies Garment Workers Union, United Mine Workers of America, as well as CIO affiliates such as the United Auto Workers and United Rubber Workers. "It appeared that the WEA was on its way to becoming an important part of the new labour movement," conclude Radforth and Sangster.[147]

Legal information services also developed through the WEA's work. In 1935, the Industrial Law Research Council (ILRC) was formed as a committee of professors, lawyers, and trade unionists, and grew out of the work of Toronto law professors Finkelman and F.C. Auld, who had previously worked for the WEA.[148] The group held seminars and prepared many pamphlets, hiring a full-time researcher. Research expanded during the early 1940s, since "unionists needed information about the many new regulations and acts affecting labour." [149] By the end of World War II, "it was clear the WEA had asserted its independence and allied itself more closely with labour."[150]

143. Girard, *Bora Laskin,* 111.

144. Girard, *Bora Laskin,* 111.

145. Girard, *Bora Laskin,* 112.

146. Radforth and Sangster, "Labour and Learning," 41.

147. Radforth and Sangster, "Labour and Learning," 65.

148. Radforth and Sangster, "Labour and Learning," 65.

149. Radforth and Sangster, "Labour and Learning," 68.

150. Radforth and Sangster, "Labour and Learning," 68.

The first issue of the WEA's *Labour Court Survey* states that the publication was designed to meet the need of Ontario unions to have regular reports on the operations of the court, including issues raised, arguments used, judgements given, procedures and precedents established, and that it would welcome suggestions and comments from Ontario unions.[151] While the *Labour Court Survey* was written anonymously, it is likely that Brewin and Laskin had a hand in its production. Laskin became involved with the WEA through his association with the ILRC, where Wren, the General Secretary of the Association, was also active. Laskin began teaching at the WEA's summer school in August 1936. Finkelman was also active with the WEA, and Finkelman and Laskin together wrote a number of reports on new labour legislation.[152] Through his activities, writing, and teaching, "Laskin began to develop a profile within the labour movement."[153] Like Wren, Laskin believed in maintaining a professional and independent, relatively neutral stance in his involvement with the labour movement. In fact, he even rewrote a book for the WEA when the organization felt that the original version, written by Leo Warshaw, was "too strident in tone and insufficiently objective."[154] However, some observers thought that Laskin leaned too decidedly in activist directions, sacrificing ostensible academic objectivity. This was especially the case when Laskin participated in a CBC radio series sponsored by the WEA, the Workers' Educational Series. In his broadcasts, Laskin "undertook a spirited advocacy of the legitimacy of the trade union movement."[155]

When the Ontario Labour Court was created, collective bargaining was still in the early stages of being legitimized, and the number of pro-labour academics and lawyers was limited, as were the opportunities for them to build careers in this area. As the list of prominent lawyers, judges, and academics who were involved with the Ontario Labour Court attest, this short-lived body created one of the first opportunities for people to combine their politics, education, and expertise in a career in labour administration. This experience became much desired after the war, when the need to fill positions for grievance arbitration grew: "It was not easy to find parties acceptable to the captains of both labour and industry, and the demand for arbitration rose quickly during the postwar boom...."[156] Some county court judges would serve as arbitrators, as would some university professors interested in labour relations, but there were still not many to choose from, and figures such as Laskin and Finkelman continued to appear regularly. Thus, the Labour Court experience

151. WEA , *Labour Court Survey,* 1 (1943), 1.

152. Girard, *Bora Laskin,* 111.

153. Girard, *Bora Laskin,* 111.

154. Girard, *Bora Laskin,* 112.

155. Girard, *Bora Laskin,* 113–114.

156. Girard, *Bora Laskin,* 232.

provided much of the foundation such labour experts brought to the expanding field, significantly influencing Canadian labour relations even after the court's dissolution.

Labour Court Certification Trends

Based on my archival research, it appears that the Labour Court dealt with a total of approximately 145 cases.[157] (See Appendix) Because of the short life of the court, and the lack of a prior institution that could certify unions, these cases were almost exclusively applications for certification (especially since the few applications for other issues such as reinstatement or enforcing negotiations were combined with certification applications).[158] Of all the applications to the Labour Court, 122 certifications were granted, meaning that about 84 per cent of applications for certification were granted either to the applicant or intervener. Of these Labour Court certifications, a total of 52 were granted to non-affiliated unions, such as employees' associations, often referred to as company unions by the labour movement. Accordingly, 70 certifications were granted to affiliated unions, such as USWA, which received 18; UAW, which was granted 12; UE, which won 9; and Mine-Mill with 5, as well as various other unions, which won 21 certifications. A greater number of *bona fide* versus "company" unions were certified by the Labour Court, although the difference is not great. In total, ten cases were dismissed, not including the dismissal of one party in contested cases where the other party was subsequently certified. About eight per cent of the cases were dismissed. Of note is the fact that not one of these dismissals was of an unopposed employees' association, though UE was dismissed unopposed, as was the USWA. Most of the cases involved competing associations, often one affiliated and the other unaffiliated. Finally, eleven cases were withdrawn through a notice of discontinuance, not including the withdrawal of one party in contested cases.

Thus, according to the Labour Court's totals, the certification of affiliated unions was slightly more common than the certification of non-affiliated organizations. However, in contrast to the procedures in the United States under the NLRB, where 205 "company-dominated unions were disestablished," the Ontario Labour Court only rarely struck an employee association off a ballot, and it never directly "disestablished" such an organization.[159]

157. This number is arrived at by combining the 131 cases noted in a letter from 16 February, which corresponds with the case files housed at the AO, plus 13 that do not have files but have orders for certification in the order book. The number is approximate because it depends on the way multiple applications and/or orders for the same company are combined.

158. Cases where applicants alleged discrimination of employees included *Dominion Glass*, *Babcock-Wilcox & Goldie-McCulloch*, and *Toronto Ship-Building*. Cases that raised the issue of the duty to bargain in good faith included *Welland-Vale* and *Electric Auto-Lite.*

159. Finkelman's correspondence with NLRB in the United States, RG 7-46, File 49, AO.

However, while this information is useful in illuminating the practices of the court, I suggest that basing judgement about the Labour Court on these statistics alone is an oversimplification. The company union issue was complex and one that raised hackles on both sides. On the one hand, company-dominated organizations could and were used to thwart the organizing attempts of international union leaders. On the other hand, there was a genuine difference of opinion about the desirability of plant-based bargaining agencies versus powerful international unions and, with propaganda and fear of CIO-affiliated unions, this may have influenced some employees' own opinions – since in government-supervised votes that appear to have been well-carried out, employee associations did triumph over international unions. It is possible (and indeed likely) that employer influence helped create such situations, but it is equally possible that some of the employees bought into the arguments made against large international unions.

One area where the OCBA did seem to favour company unions was in its affirmation of previous common-law perspectives, such as that union members did not have the right to pursue union activities on company property or during working hours. In contrast, the act, as interpreted by Labour Court judges, held that management could allow such activities by employee associations or councils, but simultaneously refuse to permit affiliated unions to do the same, and that this did not constitute unfair practices or domination of an agency. This lends further support to the notion that despite legislative gains, collective bargaining was simply a modification of common-law practices rooted in concepts of property rights, not a fundamental shift of perspective or power.

The Ontario Labour Court received criticism for its failure to tackle the issue of company unions head-on, relying instead on representation votes to settle the matter. There were a few reasons for this position, which, given the context within which the court was operating, are quite valid. First, as the WEA *Survey* authors noted, "it will be in rare cases that company domination can be proved as conclusively as required in criminal cases," and coming from a legal tradition that stressed the presumption of innocence, the judges were wary of prematurely limiting the choices available to employees.[160] Correspondingly, the judges felt that the individual choice of the employees should be of the prime importance. As Justice Roach put it, "the greatest importance should be attached to the wish of the majority.... What can the Court do other than certify the agency the majority want?"[161] Further, as even the WEA *Survey* author admitted, it was "not the duty of the judge to go behind <u>uncontested</u> material containing the essentials required by the Rules and Act, or to question sworn unopposed affidavits," and as a result many plants brought forward

160. WEA, *Labour Court Survey,* 4 (1943), 10.

161. WEA, *Labour Court Survey,* 6 (1943), 2.

employee associations which were unopposed by a trade union, and consequently certified.[162]

My research suggests that the impact of a competing union was indeed significant. Of the cases where an agent was certified, 52 per cent were uncontested, and of those the split between affiliated and non-affiliated organization was close – 44 per cent went to affiliated unions while 56 per cent went to unaffiliated unions. However, in the 48 per cent of certifications that occurred in contested cases, affiliated (or *bona fide*) unions were more successful, receiving 72 per cent of the certifications while unaffiliated unions received only 28 per cent. Thus, when a case was contested, the chances were significantly greater that an affiliated union would be certified, quite probably because a vote was more likely to be ordered than in an uncontested case.

While plant-based agencies usually did not have the independence or power of international unions, neither were they merely the pawns of employers. Workers challenged their employers "from within institutions designed to contain their militancy," such as industrial councils and employees' associations.[163] For example, steelworkers at Hamilton and Sydney created connections between trade unions and plant associations by organizing the committee members and making greater demands.[164] In addition, after World War II ended, a strike wave rocked the country and within this context of union militancy the employee associations' popularity faded. Many of these associations evolved into trade unions or were replaced by certified unions, "which in the 1950s developed mature bargaining relationships with employers and won real gains for their members."[165] It seems that although in some individual cases, such as *Atlas Steels*, bias was shown by the presiding judge in favour of employee associations rather than unions, the damage of this bias may have been partially mitigated by the comparable gains such organizations won in their agreements.

The End of an Experiment

Only months after the court had begun its work, its efficacy was questioned. In November 1943, the new minority Conservative government in the province was aware of dissatisfaction with the system and its decisions, and so Labour Minister Daley stated that he would abolish the court, since he was "personally satisfied that it does not render the service it was set up to

162. WEA, *Labour Court Survey,* 3 (1943), 10.

163. Craig Heron, *The Canadian Labour Movement*: *A Short History* (Toronto: Lorimer, 1996), 60.

164. Craig Heron, *The Canadian Labour Movement*, 60.

165. MacDowell, "Company Unionism in Canada," 97. Jacob Finkelman agreed with this analysis, maintaining that many employee associations later became genuine unions (Millar, "Shapes of Power, 120).

do."[166] However, the OCBA had increased pressure on the federal government to create its own legislation, and its NWLB had inquired into labour relations in the country and soon published its report.[167] Not long after, draft legislation of the federal order-in-council PC 1003 began to circulate. As a result, political leaders in Ontario began to think of a replacement for the court. In February 1944, the federal government created its new labour legislation, in many ways similar to the OCBA, though with the significant difference of instituting a board system for administering the act rather than a court. All the provincial governments, except for Prince Edward Island and Alberta, passed legislation enabling the federal order to have jurisdiction over industries not automatically covered by the Dominion act.[168] Thus, while applications previously made to the Ontario Labour Court would still be heard and such cases finished, all new applications were to be made to the Ontario Labour Relations Board, and the short life of the Ontario Labour Court was over.

Conclusions

Harry Glasbeek has declared that

> Conventionally, the tale of the movement toward our contemporary collective bargaining scheme is seen as a progressive one. There is a widely shared belief that, as liberal capitalism matured, it became imperative to engineer statutory interventions with the preceding reign of the common law.... In this telling of the tale, the guardians of the common law, the courts, tend to be cast as the villains of the piece, with legislators and their administrators as the rescuers of the imperilled.[169]

Recent additions to legal and labour history have suggested "that the picture is far more complicated." [170] This investigation into the short life of the Ontario Labour Court confirms such an assessment.

The court was an improvement over previous systems of labour relations, such as the delaying and unenforced actions of the IDIA system, or common-law remedies. The court also aided employees in their fight for collective bargaining rights. As Finkelman stated, "the contribution of the Labour Court to the establishment of a scheme of industrial jurisprudence in Ontario is of the highest significance," since it spared its successor, the OLRB, "the onerous task of breaking new ground" and made collective bargaining more "readily accepted by industry as a normal feature of industrial relations in Ontario."[171]

166. Speech made to Hamilton District Trades and Labor Congress of Canada, 20 November 1943, quoted in Millar, "Shapes of Power," 132.

167. MacDowell, *Renegade Lawyer*, 122

168. McInnis, *Harnessing Labour Confrontation*, 41.

169. Harry Glasbeek, "Afterword: Looking Back," in Fudge and Tucker, *Work on Trial*, 393.

170. Glasbeek, "Afterword," 393.

171. Quoted by Millar, "Shapes of Power," 126.

Laskin was similarly positive, asserting that "the Ontario Act marked a notable advance over previous legislative efforts to guarantee freedom of association and enforce collective bargaining as a working principle of employer-employee relations."[172] In addition, he declared that

> It is no secret that in the nine months of its existence the Court established through its decisions a body of labour law which was, on the whole, acclaimed both by employers and employees alike as a significant contribution to industrial peace. Save for lingering attempts by some employers to promote dummy unions, it may be said that the battle for collective bargaining, for the opportunity of employees to share in the determination of the conditions under which they will work, is on the way to being won in Ontario.[173]

The fact that the Ontario Labour Court fulfilled a need that had previously been sorely neglected seems indisputable. In addition, the court was important to the future of labour relations in Ontario because it set important precedents, such as the principle of fair representation in the bargaining unit, guidelines for the identification of employees eligible for collective bargaining, the principle of the collective agreement as a bar to certification, and rules for identification of legitimate bargaining agencies.[174] Further, it gained experience in several areas, such as union jurisdiction and procedures for determining representation, including issues regarding what constituted a majority.[175]

Much of what the court did or did not accomplish was the result of individual judges' decisions. It has been argued that during the gradual transition from the contract of employment tradition of the common law to the collectivism of labour boards, "repression had to give way to tolerance, but it did not do so in any linear form. Inevitably, this schizophrenia led to haphazard decision making in the courts."[176] While this particular reference is to cases outside the Labour Court, the observation remains equally true in this context. For example, while Justice Gillanders made several decisions that were applauded by pro-labour critics, such as refusing the argument that CIO unions were not appropriate and dismissing the foreign agitator theory of union organization, some of his other decisions were less popular with unionists, such as his ruling that unions had a duty to represent non-union employees (which some observers felt was unfair since non-union employees were reaping benefits without paying dues), rulings against striking employees, his insistence that employees had the responsibility of disqualifying an employees' association through a vote when evidence of employer influence was inconclusive, and especially his ruling that employees who switched their support from an employee association to a trade union were not acting "in good faith," would be barred from

172. Laskin, "Recent Labour Legislation," 782.

173. Laskin, "Recent Labour Legislation," 783.

174. Willes, *The Ontario Labour Court*, 75.

175. MacDowell, *Renegade Lawyer*, 118.

176. Glasbeek, "Afterword," 396.

voting and even counted to have voted against the trade union.[177] Gillanders demonstrated that he was clearly from the common-law tradition in his rulings and was not a radical, yet it seems he truly was trying to work with the spirit of the act by promoting industrial peace through the difficult task of balancing individual and collective rights. Through such varied decisions, Gillanders exemplified the court's stance, which neither radically promoted unions' interests, nor denied them through the traditional perspective of the common law. This work was "a manifestation of the interest the judiciary shared with the other branches of the Capitalist State in the maintenance of labour peace and productivity," which acknowledged that administrative alternatives made more sense than "the pure common law of contract … in the emerging political economic circumstances."[178] Thus, an important step had been taken in the transition to the state regulation of collective bargaining and industrial relations.

Given the opposition to unionization and collective bargaining by some of the public, members of government, and especially business powers, the Labour Court aided many employees in gaining the right to negotiate agreements with their employers and minimized opposition to this new system of industrial relations. In this way, it was perhaps more successful than the (NLRB) Wagner Board in the United States during its first year in operation, since the format of the court helped shield its decisions and even existence from attack. However, it is also undeniable that in several cases, the decisions reached by the justices of the Labour Court were at least questionable and likely encouraged employers to continue unfair practices discouraging the unionization of their plants. In addition, important limits to union power were becoming entrenched by the postwar compromise represented by the OCBA, and later by PC 1003. The many constraints placed on legal striking and the fragmentation of the union movement meant that workers were paying a significant price for their increased legitimacy. This decision has continued to affect the labour movement to this day.

In conclusion, though its existence was relatively brief, the Ontario Labour Court was an important development in Canadian labour history. While plagued with criticism from all quarters, it mediated between the opposing pressures of business and union interests and gained the approval of noted experts of the time. The Collective Bargaining Act, which created the court, gave employees greater legal protection against unfair labour practices than they had previously enjoyed, helped make collective bargaining more palatable to the general public, and certified a collective bargaining agency in the vast majority of applications it received. Though individual judges at times made questionable decisions and aspects of the act were weak, its existence nonetheless benefitted great numbers of employees, not least because of the influence

177. RG 7-60, File 14, AO.

178. Glasbeek, "Afterword," 399.

the Ontario experiment had on the federal legislation which followed, and on the key players in the field of labour relations, which flourished afterward.

Appendix

Company	Applicant	Interveners	Justices	Order/Result
Welland Vale Manufacturing Co. Ltd.	USWA Local 2853	n/a	Gillanders	USWA certified
Hamilton Bridge CO. Ltd. (West End Plant)	USWA Local 2537	General Shop Com. West End Plant	Gillanders/ Barlow	USWA 2537 certified
Hamilton Bridge Co. Ltd. (West End Plant)	Association of Technical Employees	General Shop Com. West End Plant	Gillanders/ Barlow	Assoc. of Technical Employees certified
Hamilton Bridge Co. Ltd. (East End Plant)	Workers' Independent Union	n/a	Gillanders/ Barlow	Workers' Indepedent Union. Certified
Toronto Ship-building Co. Ltd.	USWA Local 2999	n/a	Gillanders	Allegation of discrimina-tion denied
Dominion Glass Co. Ltd. (Wallaceburg)	Glass Bottle Blowers' Association	American Flint Glass workers U of N.A., UAW	Gillanders	USWA certified for one unit
Dominion Glass Co. Ltd. (Wallaceburg)	Glass Bottle Blowers' Association	American Flint Glass workers U of N.A., UAW	Gillanders	American Flint Glassworkers certified for another unit
Dominion Glass Co. Ltd. (Wallaceburg)	Glass Bottle Blowers' Association	American Flint Glass workers U of N.A., UAW	Gillanders	Application for reinstate-ment of Floyd Jones Dismissed
Dominion Glass Co. Ltd. (Hamilton)	Canadian Brotherhood of Glass Workers, Local 3	Glass Blower's Assoc. of the U.S and Canada Local 140	Hope	Applicant certified
Babcock-Wilcox and Goldie-McCulloch Ltd.	USWA Local 2859	Employees' Assoc.	Gillanders	Employees' Assoc. certified
Galt Metal Industries Ltd.	USWA Local 2894	Employees' Assoc.	Gillanders	Workers' Independent Union certified
Galt Malleable Iron Co. Ltd.	USWA Local 2899	Independent Workers' Union	Gillanders	USWA Local 2899 certified
Galt Brass Co. Ltd.	USWA Local 2903	Employees' Assoc.	Gillanders	Employees' Assoc. certified
R. McDougall C Ltd. (Galt)	USWA Local 2890	Employees' Assoc.	Gillanders	USWA Local 2890 certified
Canada Machinery Co. Ltd. (Galt)	USWA Local 2905	Employees' Assoc.	Gillanders	Employees' Assoc. certified

Company	Applicant	Interveners	Justices	Order/Result
Shurly-Dietrich-Atkins Co. Ltd. (Galt)	USWA Local 2895	Shurly-etc. Employees' Assoc.	Gillanders	Employees' Assoc. certified
Atlas Steels Ltd.	UE	Atlas Workers Ind. Union	Kelly	Both Dismissed
York Arsenals Ltd. (Township of York)	UE local 505	n/a	Roach/ McFarland	Dismissed (twice)
International Nickel Co. of Canada Ltd.	Mine-Mill Local 637	Port Colborne "Inco" Employees Welfare Assoc. (R2)	Gillanders	Mine-Mill certified
Canadian Locomotive Co. Ltd. (Kingston)	UE	n/a	Barlow	UE certified
Pedlar People Ltd. (Oshawa)	USWA Local 2784	n/a	Kelly	USWA Local 2784 certified
Universal Fur Dressing and Dyeing Co. Ltd. (Toronto)	Int'l Fur and Leather Workers of U.S and CAN	Fur workers Union, A.F. Of L.	n/a	Discontinued
Canada Electric Castings Ltd. (Orillia)	UE	n/a	Barlow	UE certified
Fahralloy (Canada) Ltd. (Orillia)	UE	Employees' Assoc.	Gillanders	UE certified
Guelph Carpet & Worsted Spinning Mills Ltd.	Textile Workers' OC Local 10	n/a	Roach	Applicant certified
Anglo-Canadian Leather C. Ltd. (Huntsville)	Int'l Fur and Leather Workers of U.S and CAN	Employees' Assoc.	Roach/Kelly	Employees' Assoc. certified
Massey-Harris Co. Ltd. (King St. Plant)	UAW	Employees' Section of Industrial Council	Hope/Barlow	UAW certified
Massey-Harris Co. Ltd. (Weston)	UAW	Massey-Harris Industrial Council	Roach/Hope/ Barlow	UAW certified
Massey-Harris Co. Ltd. (Brantford)	UAW	Massey-Harris Industrial Council	Roach/Hope/ Barlow	UAW certified
Chatham Malleable & Steel Products Ltd.	Chatco Employees' Assoc.	n/a	Gillanders	Employees' Assoc. certified
Lakeshore Mines Ltd.	Lakeshore Workmen's Council	Mine-Mill Local 240	Gillanders/ Roach	Mine-Mill certified
Bidgood Kirkland Gold Mines Ltd.	Workmen's Council of...	n/a	Kelly	Council certified
Federal Wire & Cable Co. Ltd. (Guelph)	USWA Local 3021	n/a	Barlow	USWA certified

Company	Applicant	Interveners	Justices	Order/Result
Canadian General Electric Co. Ltd. (Toronto)	Int'l Moulders and Foundry Workers Local 28	UE Local 507	Plaxton	UE Local 507 certified (after Moulders withdrew)
Wright-Hargreaves Mines Ltd. (Kirkland Lake)	Employees' Council of...	Local 240 Mine-Mill	Kelly	Withdrawn, allowed to apply to Board
Leland Electric (Canada) Ltd. (Guelph)	UE Local 508	Leland Electric Employees' Union	Barlow	UE certified
MacLoed Cockshutt Gold Mines Ltd.	Employees' Union of...	Congress of Industrial Labour Assoc. with CIO	McFarland	Withdrawn, allowed to apply to Board
Canners' Machinery Ltd. (Simcoe)	UAW Local 257	Canners Machinery Mutual Club	Roach	UAW (CIO) Local 257 certified
Taylor Electric Manufacturing Co. Ltd. (London)	Taylor Electric Employees' Assoc.	USWA	Barlow	USWA certified
Canadian General Electric Co. Ltd. (Toronto)	UE Local 507	n/a	Plaxton	Applicant UE certified (different unit than previous)
Addison Industries Ltd. (Toronto)	UE Local 516	n/a	n/a	Discontinued
Macassa Mines Ltd. (Kirkland Lake)	Macassa Mines Employees' Committee	Local 240 Mine-Mill	Kelly	Withdrawn, allowed to apply to Board
Toburn Gold Mines Ltd. (Kirkland Lake)	Toburn Employees' Assoc.	Local 240 Mine-Mill	Plaxton/Kelly	Toburn I.U certified
Kirkland Lake Gold Mines Ltd. (Kirkland Lk)	Kirkland Lake Gold Workers' Council	Local 240 Mine-Mill	McFarland	Withdrawn, allowed to apply to Board
Canadian Automotive Trim Ltd. (Windsor)	UAW Local 195	n/a	Kelly	UAW certified
Ottawa Car & Aircraft Ltd.	Ottawa Car & Aircraft Workers' Assoc.	Canadian Aircraft Workers' Assoc., Local 2	Kelly/Greene	Intervener certified
Steel Company of Canada (Hamilton)	USWA Local 1005	Independent Steelworkers Assoc.	Barlow	Motion to cross-examine Cecil Stanley Young Dismissed
Steel Company of Canada (Hamilton)	USWA Local 1005	Independent Steelworkers Assoc.	Mackay	USWA certified
Steel Company of Canada (Hamilton)	USWA Local 1005	Independent Steelworkers Assoc.	Mackay	Constitutional challenge Dismissed

Company	Applicant	Interveners	Justices	Order/Result
Hard Rock Gold Mines Ltd.	Hard Rock Mine Employees' Union	Organizing committee assoc with Mine-Mill	Kelly	Withdrawn, allowed to apply to Board
C.Lloyd & Son Ltd.	National Union of Woodworkers, Local 3	n/a	Gillanders	Nat'l Woodworkers certified
Canadian Furnace Ltd.	Victoria Employees' Independent Union, Cdn Furnace Ltd.	USWA Local 1171	Barlow	Both Dismissed
Canadian Bridge Co. Ltd.	National Assoc. of Tech Employees	n/a	Roach	Applicant certified
Dominion Bridge Co. Ltd.	T.O Structural Branch, Nat'l Assoc. of Tech Employees	Individuals! AND Professional Engineering Unit	n/a	Discontinued
Military Clothig Manufacturers Co. Ltd.	Toronto Joint Board In'l Ladies Garment Workers U	n/a	Kelly/ Barlow	Applicant certified
Aluminum Co. of Canada Ltd. & Aluminum Goods Ltd.	Aluminum Workers of America Local 34	Employee Council	Roach	Employee Council certified
Aluminum Co. of Canada Ltd. (Kingston Works)	Employee council	Aluminum Workers of America AND Int'l Assoc. of Machinists	McFarland	Employee Council certified
Aluminum Co. of Canada Ltd. (Kingston Works)	International Association of Machinists Local 54	Aluminum Workers of America	McFarland	Dismissed
Canada Coach Lines Ltd.	Canada Coach Lines Ind Employees' Union	n/a	Barlow	Applicant certified
Kelvinator of Canada Ltd.	Kelvinator Workers' Assoc. of Canada Ltd.	n/a	Barlow	Applicant certified
Sylvanite Gold Mines Ltd.	Sylvanite Gold Mines Employees Assoc.	Mine-Mill Local 240	Kelly	Withdrawn, allowed to apply to Board
Somerville Ltd.	Plant Council of Plant no.1, Somerville Ltd. .	n/a	Roach/ McFarland	Applicant certified (for more than one unit)
Sutton-Horsley Co. Ltd.	Association of Technical Employees	n/a	Mackay	Dismissed
Hamilton Gear and Machine Co.	Hamilton Gear and Machine Co. Employees' Assoc.	n/a	Barlow	Employees' Assoc. certified
Ford Motor Co. of Canada	UAW Local 240	Foreman Employees' Assocation	Mackay/ Greene	UAW certified
International Nickel Co. of Canada Ltd.	Sudbury Mine-Mill Local 598 affil with Int'l Mine-Mill	United Copper Nickel Workers	Hope	Mine-Mill certified

Company	Applicant	Interveners	Justices	Order/Result
Cockshutt Moulded Aircraft Ltd.	Employees' Assoc.	UAW	Greene	Employees' Assoc. certified
Brown's Bread Ltd.	Brown's Bread Salesmen's Union	n/a	Mackay	Applicant certified
Collingwood Shipyards Ltd.	Industrial U.of Marine and Shipbuilding Local 4	n/a	n/a	Withdrawn
Stewart-Warner Alemite C of Canada Ltd.	UAW Local 426	Swaco Employees' Guild (respon-dent 2)	Greene	Dismissed
Cockshutt Plow Company Ltd.	Employees' Assoc.	UAW	Greene	UAW certified for two units
Commonwealth Electric Corp. Ltd.	Independent Union	n/a	Chevrier	Independent Union certified
Electric Auto Lite Ltd.	UAW Local 456	n/a	Mackay	UAW certified
Cdn John Wood Manufacturing Co. Ltd. and Service Station Eq't Co. (listed separately in Survey, i.e. No9 p8)	USWA Local 3062	Employees' Assoc.	McFarland	USWA certified
A.R. Clarke & Co. Ltd.	Employees' Council	Int'l Fur and Leather Workers Local 280 (CIO)	McFarland	CIO withdrew, Applicant certified
Fruehauf Trialer Co. of Canada Ltd.	UAW Local 252	Employees Union	Greene	Employee Union certified after withdrawal of UAW
Hobbs Glass Ltd.	The Hobbs Welfare Association	n/a	McFarland	Welfare Assoc. certified
Sawyer Massey Co. Ltd.	UE Local 520	n/a	Rose	Uncertain, attempted withdrawal
N.A. Cyanamid Ltd.	United Gas, Coke and Chem. Workers of A. Local 175	Brotherhood of Locomotive Firemen and Enginemen	Mackay/ Greene	Brotherhood of LFE certified for one unit
N.A. Cyanamid Ltd.	United Gas, Coke and Chem. Workers of A. Local 175	Brotherhood of Locomotive Firemen and Enginemen	Mackay/ Greene	Brotherhood of Railroad Trainmen certified for another unit
N.A. Cyanamid Ltd.	United Gas, Coke and Chem. Workers of A. Local 175	Plant Committee, and Brotherhood of Railroad Trainmen	Mackay/ Greene	General Plant Committee Certified for one unit

Company	Applicant	Interveners	Justices	Order/Result
B. Greening Wire Co. Ltd.	USWA Local 2950	Workers' Independent Union	Plaxton	USWA certified
Coleman Lamp & Stove Co. Ltd.	Employees' Assoc.	n/a	Chevrier	Employees' Assoc. certified
P.D. Bates Co. Ltd.	Federation of Industrial Workers	n/a	Chevrier	Employees' Assoc. certified
Link-Belt Ltd.	Shop Employees' Union	n/a	Plaxton	Shop union certified
Donnell & Mudge Ltd.	Employees' Assoc.	Int'l Fur and Leather Workers (CIO) Local 330	Mackay	CIO Int'l Fur Local 330 certified
National Electric Man Co.	UE Local 516	n/a	Chevrier	UE certified
Muskoka Wood Man. Co. Ltd.	Nat'l Union of woodworkers #4	Employees' Assoc. of..	Plaxton	Nat'l Union Woodworkers #4 certified
Meretsky, Burnstine and Meretsky	UAW Local 195	n/a	McFarland	UAW certified
Steel Company of Canada Ltd.	Stelco Employees' Assoc., Swansea works	n/a	Kelly	Employees' Assoc. certified
John Duff and Sons Ltd.	The Coll Barg Com of Plant Employees of...	n/a	Roach	Committee certified
International Nickel Co. of Canada Ltd.	Brotherhood of Locomotive Firemen and Enginemen	United Copper Nickel Workers	Greene	Dismissed
Corporation of the City of Toronto	Toronto Firefighters' Assoc, Local 113	n/a	Plaxton	Applicant certified
Brown's Bread Ltd.	Brown's Bread Bakery Employees' Assoc.	n/a	Plaxton	Applicant certified for 6 branches/locations
Gurney Foundry Co. Ltd.	Employee Council.	n/a	Roach	Employee Council certified
E. Long Ltd.	Industrial Council of...	n/a	Chevrier	Applicant certified
John Inglis Co. Ltd.	USWA Local 2900	Int'l Assoc. of Machinists and Int'l Broth of Boilermakers Lodge 637	Kelly	USWA certified
Christie Brown and Co. Ltd. Christie's Bread Ltd.	Employees' Assoc.	n/a	Plaxton	Employees' Assoc. certified
Leonard M. Hammond, Roy S. Hammond etc. Co.	Employees' Assoc.	n/a	Roach	Applicant certified
Upper Canada Gold Mines Ltd.	Mine-Mill Local 240	Employees' Assoc.	Kelly	Mine-Mill certified
Corporation of the City of Toronto	Civic Employees' Union, 43	n/a	Plaxton	Applicant certified
Munic. Corporation of the City of Toronto	Toronto Mun Employees' Assoc. Local 79	n/a	Plaxton	Applicant certified

Company	Applicant	Interveners	Justices	Order/Result
W.F. Craig Machines Ltd.	Craig Machines Union	n/a	Chevrier	Applicant certified (no respondent present)
Holman Machines Ltd.	Holman Machines Union	n/a	Chevrier	Applicant certified (no respondent present)
Universal Moulded Products Co. Ltd.	Universal Employees' Guild	UAW (as second Respondent)	Roach	Employee Guild certified
Lake of the Woods Milling Co. Ltd.	Cdn Flour Millers' Union Assembly #1	n/a	Roach	Applicant certified
Canadian Furnace Ltd.	USWA Local 1177	Victoria Employees' Independent Union Cdn Furnace	Roach	Dismissed
Leitch Gold Mines Ltd.	Mine-Mill Local 669	n/a	McFarland	Withdrawn, allowed to apply to Board
Moffat's Ltd.	USWA Local 3129	Employee Council of Moffats' Ltd.	Kelly	Dismissed, must wait until October 1, 1944
Silverwood Dairies Ltd.	Windsor Milk Drivers' & Dairy Workers' Union	Silverwood Employees' Assoc..	n/a	Discontinued
Burgess Battery Co.	United Gas, Coke and Chem. Workers of A. Local 173	n/a	Greene	Dismissed after vote failed to show majority
Wilson Publishing Co.	Toronto Sterotypers' and Electrotypers' Union 21	n/a	Plaxton	Applicant certified
C(l)ub Aircraft Corp. Ltd.	Workers' Independent Union	n/a	Hope	Applicant certified
J.A.M. Taylor Tool Co. Ltd.	Employees' Assoc.	n/a	Roach	Applicant certified
Frost Steel and Wire Co. Ltd.	E.W. Council	n/a	Roach	Applicant (Employee Council) certified
Presto-Lite Storage Battery Co. Ltd.	Employees' Assoc.	n/a	Roach	Employees' Assoc. certified
General Steelwares Ltd.	USWA Local 2771	TLC Local 25	Kelly	USWA certified
Deloro Smelting and Refining Co. Ltd. and Cyril Tandy	Employee Council	Federal Union No.22788 AFL	Hope/ Plaxton	Employee Council certified
Steel Co. of Canada Ltd.	Stelco Employees' Assoc., Brantford works	n/a	Kelly	Stelco Employees' Assoc. certified
Mueller Ltd.	UAW	n/a	Roach/ McFarland	UAW certified
Dominion Electrohome Industries Ltd.	Cdn Aircraft Workers' Assoc.	Amalgamated Workers Union	n/a	Discontinued

Company	Applicant	Interveners	Justices	Order/Result
Breithaupt Leather Co. Ltd.	Int'l Fur and Leather Workers Local 300	n/a	Hope/Greene	Fur and Leather (CIO) certified
Bloor Street Factory of Canada Bread Co. Ltd.	Bakery Employees' Assoc. Toronto	Amalgamated Bakers and Confectioners of Toronto	Kelly	Amalgamated Bakers certified
Frost and Wood Co. Ltd.	Employees' Assoc. No. 2 plant	n/a	Roach	Employees' Assoc. certified
Frost and Wood Co. Ltd.	USWA Local 3140	n/a	McFarland	USWA certified (no.1 plant)
Medcalf shoe Co. Ltd.	Employees' Assoc.	n/a	Kelly	Employees' Assoc. certified
Thompson Products Ltd.	Employees' Assoc.	n/a	Kelly	Employees' Assoc. certified
Royal Knitting Co. Ltd.	Employees' Assoc.	n/a	Kelly	Employees' Assoc. certified
Sunshine Waterloo Co. Ltd.	Workers' Independent Union	n/a	Plaxton	Workers' Independent Union certified
Cdn Westinghouse Co. Ltd. (Hamilton)	UE	Ind. Union	Hope	UE certified
Cdn Westinghouse Co. Ltd. (Toronto)	UE	Ind. Union	Hope	UE certified
Craig Bit Co. Ltd.	Employees' Assoc..	n/a	Chevrier	Employees' Assoc. certified
A. Davis & Son Ltd.	Davis Leather Employees' Assoc.	Employees' Assoc.	Hope	Employees' Assoc. certified
Standard Tube Co. Ltd. and Metal Fabricators Ltd.	Stansteel Union	n/a	Hope	Stansteel certified
Gair Co. of Canada Ltd.	UAW Local 195	n/a	Plaxton	UAW certified
Beardmore and Co. Ltd.	Shoe and Leather Workers OC Local 26	n/a	Barlow	Local 26 Shoe and Leather Workers OC certified
De Vilbiss Man. Co. Ltd.	Employees' Assoc..	n/a	Plaxton	Employees' Assoc. certified
Ingersoll Machine and Tool Co.	USWA 2918	Employees' Assoc.	Barlow/Hope	USWA certified
Aircraft Hydraulic Supplies Ltd.	UAW (CIO) Local 195	n/a	Barlow	UAW certified
Steel Company of Canada (Gananoque Works)	USWA Local 3208	Stelco's Employees' Assoc. (R)	Kelly	USWA certified
Steel Company of Canada (Canada Works/Hamilton)	USWA Local 3250	Canada Works Employees' Assoc. (R)	Barlow	USWA certified
Barrymore Cloth Company Ltd.	Textile Workers' OC Local 15	Mill Committee of... (R)	Barlow	Textile W.O.C #15 certified

Company	Applicant	Interveners	Justices	Order/Result
Toronto Carpet Manufacturing Co. Ltd.	Textile Workers O.C. Local #15	Mill Committee of... (R)	Barlow	Textile W.O.C #15 certified
Ontario Steel Products Co. Ltd.	USWA Local 3209	n/a	Chevrier	USWA certified
Toronto Terminals Railway Co.	Cdn Assoc. Of Railwaymen	Brotherhood of Railroad Trainmen	Chevrier	Cdn Assoc. of Railwaymen certified
F.W. Fearman Co. Ltd.	Independent Union	United Packinghouse Workers of America	Unknown	Independent Union certified

* Information compiled from Labour Court Case Files (RG 7-60) and Labour Court Order Book (RG 22-437) at Archives of Ontario, also Willes "Case Table," and information from WEA Labour Court Survey, nos. 1–12, 1943–4

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