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TRADE-UNION LIBERTY AND THE I. L. O.

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THE commission of the Peace Conference of Paris in 1919 which drew up Part XIII of the Treaty of Versailles, over which the late Samuel Gompers presided, put at the basis of the ordinary functioning of the International Labor Organization the principle of trade-union liberty. The workers' and employers' delegates to the annual International Labor Conference are to be chosen, says the treaty, from the most representative organizations in each country. Yet no problem which the Organization has tried to solve by drafting international labor conventions has been more difficult than the issue of trade-union liberty, and its results in some respects so negligible.*

When in 1920 an unofficial mission was sent by the Labor Office to investigate trade-union conditions in Hungary, it was found that the report could not be published without fundamental alterations, owing to the political issues involved. The Governing Body of the Labor Organization felt helpless in the face of the Hungarian justification of antitrade-union policy which was based, according to that

* The International Labor Organization is composed of an annual conference consisting of two government delegates, and one employers' and one workers' delegate from each state in the Organization; a governing body composed of twelve government representatives (eight from the countries of chief industrial importance), and six employers' and six workers' delegates; and an International Labor Office located in Geneva. The labor section of the Treaty of Versailles is included in the other treaties of peace negotiated by the Peace Conference of Paris.

government, on the necessity of suppressing communism. In 1921 the Labor Office received complaints from the Spanish trade-union officials, among whom was the present Minister of Labor, Mr. Largo Caballero, that the Spanish government had resorted to a tyrannical and oppressive policy. The matter was discussed in the Governing Body in January, 1921, and the minutes of the debate published in the *Official Bulletin* of the Labor Office. While these two instances aroused considerable apprehension on the part of the governments concerned, they also demonstrated that the Organization was not able to insist on the liberty of association of workers which the Treaty of Peace guarantees. This was explained in part because there was no international convention establishing trade-union liberty upon which the Organization might act.

Certain characteristic conflicts have developed during the life of the Labor Organization in its relations with organized labor. The background of the situation is to be found in the fact that the International Federation of Trade Unions, from which the American Federation of Labor withdrew shortly after the war, has controlled the selection of workers' delegates and workers' policy in both the International Labor Conference and the Governing Body of the Labor Office. The leading workers' delegates have

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O. stubbornly fought to maintain this leadership, and so far they have had a measure of success.

Among the numerous discussions of the acceptance or rejection of the credentials on nongovernment delegates to the Conference, none have been so important as that concerning the Italian workers' delegate since the advent of Fascism. The Labor Conference has the right, under the treaty, to reject the credentials of any nongovernment delegate who is not nominated in accordance with the treaty, that is, from the most representative organization of his group in his country. The opposition to the Italian delegate began immediately after the Fascist revolution of 1922. The workers contended that the liberty of association was suppressed in Italy by fraud, force and violence, and that the real trade-union sentiment of that country was completely unrepresented in the Conference. While the workers have failed at every Labor Conference beginning in 1923 to secure the rejection of the credentials of the Italian workers' delegate, the fight was sustained until the Sixteenth Session. The Italian representatives insisted that the issue is purely political and had no place before the Conference. They have defended the Fascist theory of the closely organized state which involves in turn the regulation of all forms of liberty, including the liberty to form occupational and professional associations. It has been suggested by some who are in close contact with the European trade-union movement that the influence of Italian exiles has had much to do with keeping opposition alive.

The condemnation of the Fascist

unions has not been limited to objecting to the workers' delegate's credentials. The workers' group in the Conference has kept the Italian workers' representative from committee memberships, out of the Governing Body, and consequently from the committees of the latter. The Italian government has made various attempts to evade this organized ostracism. It has appointed the workers' delegate at times as substitute for the government delegate in Conference committees, and has tried various ways of altering the standing orders of the Conference to secure representation. Under Italian pressure the standing orders were revised so that any delegate may attend and speak in any Conference committee. This has enabled the workers' delegate of Italy to take part in the work of the committees, though not as a member.

The proposal of the Italian government was that the standing orders should include provisions for the complete rotation where possible of membership in the Governing Body. This would break the strong group control which has been remarkably effective to the present time. In addition to this the Italian government flatly refused to ratify the amendment to Article 393 of the Treaty providing for the enlargement of the membership of the Governing Body. As Italy is a member of the Council of the League, her ratification is necessary before the amendment can come into effect, according to the terms of Article 422 of the Treaty of Versailles. This amendment, proposed in 1922, was designed to give non-European states more representation, but the fight shifted to a conflict over the

nature of the form of trade union the Organization should recognize.

In the session of the Conference which met April 12, 1930, the Italian Government withdrew its proposal to change the proposed amendment to Article 393 (reform of the composition of the Governing Body) and agreed to ratify the 1922 amendment to that article of the Treaty in exchange for the adoption of the compromise standing orders. The new standing orders provide that if the Credentials Committee of the Conference is not agreed as to the receivability of a protest against the credentials of a delegate, the Conference shall decide the issue without discussion. This limitation of discussion does not apply to protests against credentials which have been received as worthy of consideration by the Credentials Committee. In addition, the new standing orders provide that the Selection Committee may add delegates to committees over and above the nominations of the groups, if the Selection Committee feels that the committee lists as proposed by the groups are not distributed fairly or are not as competent to deal with the subject as they might be in view of the composition of delegations to the Conference. This will enable the Italian delegate for the workers to secure committee membership, a thing which he has never attained since Fascism. It is doubtful, on the other hand, whether such provisions will be applied by the Selection Committee of the Conference on behalf of the member of the Christian Trade Unions who occasionally suffers some discrimination.

• The proposed Italian amendment

to Article 393 of the Treaty suggested that membership in the government, the workers' and employers groups on the Governing Body should rotate in order to give all the members of the Organization a chance at such memberships.

As an ally to the Fascist interest in labor representation, the Christian Trade Unions of Europe have also felt the sting of exclusion brought about by the control of the International Federation of Trade Unions. Just as the latter has refused to recognize the Fascist unions, so has it refused to grant recognition to the Christians. They have been generally excluded from Conference committees, though not with the same rigor as the Fascists, and from membership on the Governing Body. For the most part the Christians have also been unable to secure representation in the Conference by being appointed as advisers to the titular workers' delegate.

As a result of a protest against the Netherlands workers' delegate at the 1921 Conference, the Permanent Court of International Justice gave its first advisory opinion in 1922 which sustained in fact the thesis of the Christians and weaker unions of the Netherlands. This thesis is that when Article 389 of the Treaty speaks of appointing the workers' delegate from the most representative body of the workers, it does not mean that one organization, the one with the greatest membership, shall be consulted exclusively by the government. An unbroken warfare has been carried on since about the meaning of the advisory opinion. The workers of the International Federation stress the recognition given by the

court to the other membership of the sole actor.

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court to the factor of numbers, and the others stress the fact that the membership of a single organization is not the sole test of representative character.

Certain other problems are of general interest. Since Russia is not a member of the Organization, the question of recognizing in the work of the Organization the Russian trade unions has not arisen. But should Russia become a member, the problem of employers' representatives (who would represent under the present organization the big production trusts in all probability) would naturally arise. Then the employers would have on their hands the same sort of problem which the workers have in connection with Fascist unions. It must be said for the International Federation of Trade Unions that it has not adopted a wholly niggardly policy as to other workers. Its representatives (coming from states members of the Organization, of course) have defended the interests of professional and intellectual workers when they have been before the Organization, as they have likewise defended the interests of agricultural workers, and salaried employees. While organizations of disabled war veterans have sought recognition by the Organization, just as have the cooperatives, the workers' representatives have, in general, been opposed to formal recognition of either the veterans' organizations or of the cooperatives. The workers have felt a fundamental distrust of the cooperatives, and also that the problem of the veterans should be settled by national collective agree-

ments rather than an international action.

Let us turn from these internecine labor conflicts to the attempt to guarantee freedom of trade association by an international labor convention. It was thought at first that there would be no difficulty in adopting a convention guaranteeing freedom of association. However, such has been far from the case. In 1921 the Labor Conference adopted a convention stating that each member who ratifies the convention should give to agricultural workers the same liberty of association as is given to industrial workers. This was comparatively simple, since the real issue is the liberty of association of industrial workers. The workers' representatives, in view of the constant violation of trade union liberty in certain European countries, demanded a draft convention assuring this liberty to industrial workers, as they had found by experience that the provisions of the Treaty meant nothing without a convention. The proposal to adopt a convention on the freedom of association for industrial workers came before the Conference for the first time in 1927. Now it must be borne in mind that the Conference was just then trying out the new "double-discussion" procedure, by which a first Labor Conference adopted a questionnaire and a second Conference would, on the basis of the replies to this questionnaire, adopt a draft convention or recommendation. This procedure was not only designed to secure more careful preparation of conventions, but also to formulate conventions which would be more widely

ratified than had been the case with those previously adopted.

The debate in the Conference of 1927, therefore, centered on the formulation of a questionnaire on the subject of freedom of association. Ostensibly this should be an easy task. But the fact is that whatever went into the questionnaire on the freedom of association was likely to come out again next year as a provision in the draft convention. While the Office insisted that the questionnaire should merely be complete, it was admitted on certain occasions that the draft questionnaire submitted to the Conference by the Office as a basis of discussion had been drawn up with extreme caution, thus in a sense justifying the stubborn position taken by the workers against certain questions. The upshot of the matter was that the questionnaire satisfied neither the workers nor the employers, and it was defeated in the Conference.

The issue was drawn on somewhat the following lines. The workers insisted that the proposed convention was merely in application of the provisions of Article 427 of the Treaty. The second point of the General Principles laid down in Article 427 declares for "The right of association for all lawful purposes by the employed as well as by the employers." All the groups recognized this principle, but the employers wished a series of questions inserted in the questionnaire dealing with limitations on the freedom of association, such as the issues of general interests, public order, etc. While it was recognized also that the question of the right to strike was not on the agenda of the Conference, the workers insisted that

these questions were making of the questionnaire a study of the limitations on freedom of association, and that the employers were in fact injecting a negation of the right to strike into the questionnaire. When the questionnaire came before the Conference, the workers group voted against it and thus brought about its defeat.

It is difficult to say whether the workers made a mistake in 1927 in securing the defeat of this questionnaire. Many friends of labor feel this to be the case, on the ground that a convention, though of limited value, is better than none at all. Others assert that the leaders of the International Federation of Trade Unions now regret their opposition. In 1929 and 1930 when the Conference was discussing the question of forced or compulsory labor the workers' group tried to secure in the questionnaire the recognition of the right of association of native labor; failing in this, they did secure a partial recognition of the right of native labor to be consulted in the transitional forced labor allowed by the convention.

Thus we may say that the consideration of the question of freedom of association by the Labor Organization, after nearly fourteen years of discussion, has really only begun. A new policy has been developed by the Office in relation to this question: it is now proposed to divide the question into a number of different sections, and instead of attempting a comprehensive draft convention, a number of them dealing with freedom of association are planned. The Governing Body is now discussing the problem

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of dividing trade-union liberty into various proposals for the agenda of the Conference. It is probable that by 1934 or 1935, the agenda of 1933 having already been established, the problem will again be found before the Labor Conference. Actually, to the present time the problem of freedom of association has been more of a national question than an international one. Yet it must be recognized that the workers' group is burdened with the responsibility of the defeat of the proposal for a convention which was before the Conference in 1927.

One successful and substantial approach to this question has been made by the Labor Organization. A draft convention or recommendation is in no case a rigid document; there must be exceptions and derogations to the general legal principle laid down. In dealing with the exceptions to conventions and recommendations the Organization has included in a large number of the thirty-one draft conventions and thirty-nine recommendations, adopted by the end of the 1931 Conference, provisions requiring organizations of workers and employers to be consulted in drafting special regulations or establishing exceptions to the conventions and recommendations. One fundamental principle of the international labor code is, therefore, the consultation of organizations of workers and employers in establishing the exceptions to the principle laid down. In certain of the conventions collective agreements as to these exceptions are recognized and encouraged, but contrary to the British and American view, the Office has tended to support the

continental theory that a collective bargain should be a contract enforceable before the courts and valid only under approval by the government. A provision of this nature has had much to do with the British refusal to ratify the 1919 convention establishing the eight hour day and forty-eight hour week in industrial undertakings.

It is quite true that the workers value highly the provisions in conventions requiring consultation of workers' organizations, for they mean that the governments, if they carry out the conventions, must recognize indirectly the principle of trade-union liberty, though if, as in Italy, the worker may not choose his labor organization, this is not necessarily the case. The collective agreement, the immediate and direct fruit of trade-union liberty, thus has received important support from the Labor Organization. In fact, it may be said that strong trade-union organizations, as in England, Belgium, France and Germany, may be more interested in the actual drafting of the convention or recommendation than in its legislative application, for it is possible to take the convention as a standard for collective agreements. By and large, the employers have not objected to provisions in conventions urging collective agreements and consultations of the workers (their own organizations being recognized also), though they have objected, especially the British employers, to executive or legislative supervision of the collective agreement. The workers have, it seems, seen in government supervision an additional guarantee of the validity of trade-union bargaining.

However, in one phase of the work of the Conference the employers have objected strenuously to provisions requiring the consultation of workers, and this is in the field of factory inspection. The Conference has adopted, following the suggestion of Part XIII of the Treaty of Peace, recommendations dealing with the general principles of factory and seamen's inspection. The workers have not only demanded that workers' organizations should be consulted in inspection and in the field of accident prevention, upon which the Conference has adopted a recommendation, but that workers should be appointed as inspectors. The employers and certain governments, *e. g.*, the British government, have on the whole insisted that workers are ineffective or incompetent as factory inspectors. The 1923 recommendation on factory inspection is virtually silent on this question, but in 1926 the recommendation dealing with the inspection of seamen included definite provisions that workers (or seamen in this case) should be appointed, or at least have the chance of being appointed inspectors. It now seems clear that the recommendations adopted by the Conference contain the permanent recognition of both the consultation of the workers' organizations and the appointment of workers as factory inspectors.

In conclusion we must point out again the fundamental character of the issue of trade-union liberty for the International Labor Organization. Only so long as the workers'

representatives are chosen in genuine consultation with freely formed trade-union organizations can the Labor Conference and the Governing Body reflect the wishes and feelings of the labor movement. The course of the Organization is similar to that followed by various governments. Trade unions exist, and struggle to exist, in many cases without clear legislative support or approval, and yet at the same time the results of their activity may be continually translated into public policy. So the demands of the organized labor movement are continually reflected, though sometimes a little dimly, in the conventions and recommendations of the Labor Conference, and yet at the same time the Organization has been unable to announce a clear, direct and affirmative policy as to trade union liberty.

The International Labor Office itself, though supporting the guarantees of the Treaty of Versailles, must steer a neutral course and perform frequently the function of arbiter between the employers and workers. The annual "Report of the Director," Mr. Albert Thomas, to the Labor Conference contains an exhaustive analysis of the relations between the Office and employers' and workers' organizations, and certain members of the Office staff are delegated to maintain relations with such organizations. It may seem at times that the official impartiality of the Office is a little exalted, but in international cooperation it is difficult to choose one's friends.

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