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Book Review: Government Supervised Strike Votes, by F. R. Anton

Harry W. Arthurs
Osgoode Hall Law School of York University, harthurs@osgoode.yorku.ca

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Government Supervised Strike Votes. By F. R. ANTON, Professor of Political Economy, University of Alberta. Toronto: C.C.H. Canadian Limited. 1961. Pp. 179. ($9.00)

For Canadian labour relations lawyers, this book is at once an example and an embarrassment. It is an example because it demonstrates that the objective evaluation of evidence is far more useful in analysing controversy than the slogans and shibboleths hitherto employed; it is an embarrassment because a non-lawyer is the first to write upon the highly controversial subject of strike-vote legislation.

The author defines the object of his study as an evaluation of compulsory, supervised strike-vote legislation in terms of:

(a) Experience under the legislation, and under the union practices alleged to make necessary the legislation;
(b) The viewpoint of union members and leaders; and
(c) The arguments advanced in favour of the legislation.

He concludes that "questionable practices" in union-conducted votes are rare, that experience under the legislation holds little promise of improved industrial relations, and that the fundamental controversy between those who favour and those who oppose the legislation depends "to a substantial degree on their beliefs and attitudes regarding the functions of trade unions in the 'free enterprise' capitalist system and the significance of collective bargaining to employer-employee relationships".[1]

Available evidence, Professor Anton suggests, does not appear to support a "clear-cut *prima facie* case justifying the proposed extension of strike vote legislation . . . into the labour legislation of those provinces which are under pressure to adopt such a requirement".[2] This conclusion must be qualified in several respects. Firstly, as the author suggests, many arguments for or against the legislation cannot be empirically tested. Secondly, although he has analysed the legislation at work, the evidence available to him is fragmentary, being largely confined to the brief wartime experiment,[3] the truncated Michigan experience,[4] and that of two provinces (Alberta and British Columbia) whose industrial structure might be atypical. Thirdly, insofar as Professor Anton has premised his conclusions on an evaluation of practices actually followed by unions in Alberta and (partially) British Columbia, these conclusions may or may not be exportable to other jurisdictions.

Nonetheless, the technique employed by Professor Anton is

[1] P. 150. [2] P. 151.

[3] (1941), P.C. 7307 (Can.); War Labor Disputes Act (1943), 57 Stat. 163 (U.S.).

[4] State jurisdiction over labor relations being largely preempted by the passage of federal legislation.

basically sound: identify the evil sought to be cured by the legislation; by gathering evidence, determine its existence or non-existence; and assess the legislative remedy in terms of the disease. One might expect this technique to be the contribution of lawyers to labour relations, immersed as they are in an awareness of the value of evidentiary fact be it probative or legislative. Unhappily, detachment and objectivity do not seem to be the hallmarks of practice in this field.

So much for the book as an example. It is also something of an embarrassment for lawyers in that, as a legislative study, it lacks in several respects the sort of analysis that lawyers are uniquely equipped to make. For instance, assuming that union-conducted strike votes are undesirable, what legislative devices are available to be applied? Recent Ontario legislation[5] implicitly assumes what Professor Anton's study discloses: the virtually universal provision for a strike vote found in union constitutions. The Ontario legislation is addressed to the danger that zealous union officers or a vocal minority might coerce an indifferent majority, by social pressures or propaganda, into voting for a strike they do not favour. Accordingly, the remedy applied is not government supervision, but rather the secret ballot, internally conducted. Again, given compulsory strike vote legislation, what consequences attach to its breach? Obviously, failure to conduct the strike vote in compliance with the legislation is, in itself, an offence. Whether or not this illegality pervades the whole strike is a more substantial question. Not surprisingly, Ontario—with its minimal secret ballot requirement—has taken a much less serious view[6] of non-compliance than has, for instance, Nova Scotia.[7] If any trend can be ascertained from the few reported cases[8] in British Columbia, it is that absolute procedural rectitude is the price of legality. Professor Anton has not touched upon these problems, as perhaps a lawyer might have.

The author concludes by accidentally raising (but not pursuing) a basic problem in our labour relations legislation. He notes that "a number of the arguments are subjective and as such must therefore remain in the realm of value judgments where differences of view may be condoned".[9] Legislation is thus seen both by the opposing parties and by the public as a pro-management or pro-

[5] Now s. 54(3) of the Labour Relations Act, R.S.O., 1960, c. 202.

[6] *Industrial Wire & Cable Ltd.* and *Local 24825, Canadian Labour Congress*, March, 1961, Monthly Report, Ontario Labour Relations Board 451 (strike not illegal).

[7] *Keddy* v. *Regina* (1961), 130 C.C.C. 227 (N.S.C.A.) (strike illegal; conviction quashed on other grounds); *Jacobson Brothers* v. *Anderson* (1961), 30 D.L.R. (2d) 733 (N.S.S.C.).

[8] *R. ex rel. O'Keefe* v. *McRae* (1958), 27 W.W.R. 332 (B.C. Co. Ct.); *R.* v. *Hume & Rumble* (1958), C.C.H. L.L.R. P. 15,200 (B.C. Mag. Ct.).

[9] P. 151.

labour value judgment of the legislature rather than as an even-handed adjustment of competing interests. This image brings legislation into disrepute and if evasion is not actually condoned at least obedience to the law is achieved in an atmosphere unlikely to produce industrial peace. One wonders whether labour legislation might not better achieve its objectives if (on the Scandinavian model) it followed consensus between labour and management, rather than being imposed on one party at the behest of the other.

H. W. ARTHURS*

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*H. W. Arthurs, of Osgoode Hall Law School, Toronto.