***Reconcilable Differences: New Directions in Canadian Labour Law*, Paul Weiler, Toronto: Carswell, 1980. Pp. *xi*, 335. $25.30 (cloth).**

Those interested in labour relations in Canada have waited in great anticipation for the publication of Paul Weiler's book reflecting on his experiences as Chairman of the British Columbia Labour Relations Board, a position which he held from 1973 until 1978. Following his term on the Labour Relations Board, Paul Weiler left to become the MacKenzie King Professor of Canadian Studies at Harvard Law School where he had time to reflect on his experiences and write what no doubt will become a reference source for anyone active in the labour field.

There is, of course, a danger when an audience anticipates the publication of a major work because of the different expectations which are created in their individual minds. Whether the reader will be pleased with what the author has produced will depend, to a large extent, on his own expectations. The lawyer who expected a legal review of major cases and a summary of the law as it stands today in British Columbia and the other provinces of Canada will, no doubt, be disappointed with this book. Those involved with reform of labour law will be encouraged by the innovative ideas which are discussed but may be disappointed by the lack of details. Those involved directly in labour relations in British Columbia in the 1970's should welcome the reflections of someone who has played a central role in the administration of labour law in the province.

Having indicated that some readers will obviously be disappointed because the book does not address their specific expectations, one must pay credit to the author for accomplishing what in his preface he indicates was his objective in writing the book. That objective was to "draw together and defend views about current issues in labour policy and law reform which I have gradually formulated over a period of fifteen years studying and working in the field".[1] There is a need for more books of this nature in Canada to act as focal points for discussion and development of law reform. I have used this book in an advanced labour law seminar class and although law students find it lacking in terms of case analysis, it is valuable in terms of taking the students beyond case analysis into a consideration of the objectives of labour legislation and areas for potential reform.

Some readers of the book used to a more impersonal approach to writing may find the personal comments of the author objectionable. Although the author indicates from time to time that he does not want to appear to be claiming credit for the reforms which took place in

[1]Weiler, at vii.

British Columbia, his writing style may lead one to this conclusion. This would seem to be an inherent danger when one tries to write about his own experiences in such a direct fashion. Some lawyers and academics in the legal community may object to the rather informal and very "off-hand" manner in which the author refers to the development of earlier laws and cases. Such references are often not footnoted and one is left to assume that the proper research and conclusions have been made.

As mentioned, the book will be of particular interest to those from British Columbia. This is not to say that it holds no attraction to those living in other provinces of Canada. It is only meant to suggest that the book could have been more national in its approach by making more references to what has occurred in the other provinces. The author does provide some references to developments in Nova Scotia, Ontario and Quebec but these are fleeting and, again, not well footnoted. For instance, in discussion the very innovative role which the British Columbia Labour Relations Board played in the implementation of cease and desist orders,[2] the author fails to mention the use and availability of this remedy in Ontario.

There are general criticisms which, depending on one's background, one may make about this book. They should in no way be seen as overriding the very positive comments which one must make in terms of its contribution to labour law materials in Canada. It might be useful at this point to summarize the contents of the book. The book is divided into nine chapters; each chapter deals with a specific and separate topic in which the author outlines his own philosophy on the topic and the legislative solutions proposed to these problem areas in British Columbia.

In Chapter I, the author outlines his views on why employees should have the right to organize. His philosophy on this issue is reflected throughout the book and is central to the approach which he takes to reform of labour law. The true value of unionization he contends can be found in the "democracy" which it brings to the work wite and the opportunity for the individual employee to feel he has some "say" in the terms and conditions governing his employment. This philosophy is reflected in the discussion in Chapter I on the attempt by the unions to organize bank employees. The author suggests that there is an onus upon the politicians and upon the Labour Boards to develop a system which encourages and promotes collective bargaining in all industries. There must be sufficient flexibility in the system to adapt to the needs and peculiarities of workers in every industry.

Two areas of particular interest in this first chapter are the comments about "representation ballots" and "first-contract arbitration."

[2] *Ibid.* at 299.

The author reaches the conclusion that representation ballots would be a superior method of determining union support through membership cards if the representation vote could be taken before the employer had an opportunity to influence its employees. This he does not think is possible in provinces such as British Columbia where the volume of certifications would put a very heavy onus on the resources of the Labour Board. One is left with the impression, however, that no formal attempt was ever made to determine the resources that would be required to conduct such votes. It also would have been interesting to have seen some further discussion at this point in the book on whether the author feels some alternative combination of the two systems of determining union support might be possible. With respect to first contract arbitration, it would appear that its value is the incentive effect which the provision has in encouraging the parties to bargain in good faith and reach an agreement on their own rather than have some unknown factor imposed upon them by the Board.

Chapter II, entitled "Industrial Conflicts in Canada," is concerned with the always current theme of strikes. This chapter should be read in conjunction with Chapter vii which deals with strikes in the essential service sector. The historical summary of the development of the right to strike in Canada is interesting and serves to help one understand the logic f the strike in our free collective bargaining system. Central to the discussion on the right to strike is the concept that the "adversarial system" of interest dispute settlement in Canada is based on the fact that both parties have certain weapons which they can use to place pressure on the other party to move toward a settlement. It is Paul Weiler's views that these powers or weapons given to each side must be relatively equal in terms of their effect to ensure that one side does not have a distinct advantage. This theory carries over into his philosophy of secondary picketing and his support of the "ally doctrine."[3] It would appear that his concept of equalizing powers is a very subjective determination and one which can never take into account all the necessary factors. For instance, he fails to consider the possibility that although the employer may gain some assistance from an "ally" this assistance may be balanced on the union side through financial or other assistance from other unions.

Chapter III is entitled "The Labour Arbitrator and the Labour Agreement." In this chapter the author summarizes very well the philosophy of labour arbitration and the arguments favouring the settlement of contract disputes outside of the jurisdiction of the courts. The procedure which has been developed in British Columbia of referring grievances to the Labour Relations Board would appear to have been a very successful and attractive method of efficiently dealing with some of the less difficult disputes. It is a process which would appear to have preserved the best aspects of the arbitration system and

[3] *Ibid.*, at 80.

answered many of the criticisms made about it. The author does include in this chapter a discussion on the remedial authority of the arbitrator. The summer of how the courts have treated this subject would appear to be incomplete. In particular, there is a lack of any reference to or discussion of the *Heustis* case[4] in which the Supreme Court of Canada indicates that the courts are willing to recognize the remedial powers conferred upon the arbitrator by the legislature.

Although Chapter IV of Paul Weiler's book is a very short chapter, it is one of the best. It is entitled "The Individual Employee and the Trade Union" and deals with the problems of guaranteeing protection of the individual employee right's from unfair actions by a trade union.

In Chapter V which is entitled "The Structure of Collective Bargaining" the author explores the difficulties encountered by labour boards in determining the appropriate bargaining unit. It would appear that the author favours the creation of larger bargaining units than has been the practice of labour boards in the past. The creation of larger bargaining units (and, therefore, less fragmentation) places a heavier onus on the union itself to resolve disputes amongst its membership as to the salary ranking for jobs done by its members. The advantage of larger bargaining units is seen in terms of fewer disruptions from strikes which, when they occur, tend to affect other groups outside the bargaining unit. It is noted, however, that the size of the bargaining unit must always take into consideration the possibility of the union being able to realistically organize the employees in the bargaining unit envisaged as appropriate.

The discussion of the size and appropriateness of the bargaining unit is followed quite logically in Chapter VI by a discussion of "Labour Relations in Building Construction." In this chapter the author points out the characteristics of the construction industry which make it unique in terms of its need for an industrial relations system which recognizes these differences. In the construction industry, as the author points out, "There is no footing for the kind of tenured status which employees now enjoy under most collective agreements." As well, there is no enduring association which a group of employees can develop in an industrial bargaining unit. As well there is no basis for the kind of enduring association which a group of employees can develop in an industrial bargaining unit. Any one job for the construction worker is short and fleeting, and he must be prepared to be highly mobile, shifting from project to project across a wide geographic area."[5] Having established these special needs, the author goes on to point out how the British Columbia Labour Code addressed the problem. In particular, he

[4]*Heustis* v. *New Brunswick Electric Power Commission* (1979), 98 D.L.R. (3d) 622 (S.C.C.).

[5]Weiler, at 183.

elaborates on the need for collective bargaining to take place on a larger scale, a theme which was started in the previous chapter.

Chapter VII, as mentioned earlier, deals with the question of strikes of essential public service employees. The author begins this chapter by discussing the strike which occurred at the Vancouver General Hospital and the steps which the British Columbia Labour Relations Board took to designate essential employees who would be prevented from striking. His description of this strike sets the scene for the very interesting and provocative comments which follow and which reflect his very strongly held views that civil servants should be entitled to the right to strike. His discussion of the British Columbia legislation leaves one with the impression that it is unique when, in fact, it appears to be very similar to the federal system and the system in place in other provinces such as New Brunswick. If there are distinctions to be drawn between the systems then the book is lacking in its failure to point out what these significant differences may be. This will not make any less relevant the very cogent comments which follow as to why public servants should, wherever possible retain the right to strike. The author provides a particularly useful list of government services segregated in terms of the type of service provided and the garm that might flow from a strike in that area.[6] His suggestion that an "Essential Services Dispute Commission" should be created to act as an independent third party in determining when a government should be permitted to put an end to strikes through legislation seems to be very appropriate. The fact that the government which proposes to end the strike through legislation is also a party to the bargaining impasse would seem to make it necessary for such an impartial third party to provide the objective assessment which is necessary if the system is to be respected.

Chapter VIII is entitled "Collective Bargaining Under Wage Controls" and provides a good historical summary of what happened when wage and price controls were introduced in the mid-70's. Such comment may, of course, become of even more interest should developments in the economy motivate the Government to once again impose such a system of wage and price controls.

In his final chapter, Paul Weiler provides some concluding observations on "Collective Bargaining, Legal Administration, And The Co-Determination Alternative." As a concluding chapter for the book, it is a bit disappointing when compared with the previous chapters. If one treats it simply, however, as another semi-independent essay not intended to pull together all of what has done previously, one can view it in a more favourable light. The most interesting aspect of his concluding chapter is the description of the British Columbia Labour Relations Board which developed under his guidance during the 1970's. Those who have always been apprehensive of the involvement of lawyers

[6] *Ibid.*, at 238.

in the labour field will find solace in his comment that one of the reasons for the success of the Board was the insurance that it was not dominated by lawyers.[7] In fact, he points out that by mid-1978, there were only three lawyers on the Board which had a total membership of twenty-one. Lawyers, of course, will be quick to point out that Paul Weiler is himself a lawyer. The authors stresses that labour disputes generally occur between parties which usually will continue to be closely associated with one another following resolution of the particular dispute. Whoever is involved in resolving the dispute must be aware of this continuing relationship and the need to deal with the dispute in a manner that will make it easier for that relationship to continue on a positive note.

The final section of this concluding chapter addresses the co-determination alternative which has been developed in West Germany. Perhaps because it is such a divergence from the previous parts of the book, it appears somewhat out of place and it is not addressed in sufficient detail to leave one with any feeling that the author has reached any well founded conclusions in his own mind as to how this system might be adapted and implemented in Canada.

In spite of the criticisms one might wish to make respecting this book, it must be viewed as a very important addition to the resource material available in Canada which assists discussion and development of labour law reform. It is particularly welcome because it has been written by someone so directly involved in the day-to-day application of the labour laws. As pointed out earlier, it is important in labour law for the law to appreciate the continuing relationship which there must be between the parties and it would seem that few are better able to appreciate this factor than someone like Paul Weiler who has been Chairman of the British Columbia Labour Relations Board. From the selfish approach of a labour lawyer, one might now only wish that he would write a separate book on each chapter documenting and discussing at greater length the interpretation which has been placed on labour legislation by the boards and the courts.

BRIAN D. BRUCE*

---

[7] *Ibid.*, at 294.

*B.A. (Mt.A.), LL.B. (Dalhousie), LL.M. (London). Associate Professor, Faculty of Law, University of New Brunswick.