Legislation on Labour Disputes in Norway

by

Paal BERG
President of the Norwegian Supreme Court

Some years ago the prominent Norwegian social politician Johan Castberg (who died in 1926) gave an account in this Review *of Norwegian legislation on conciliation and arbitration in labour disputes.*[1] *Since then various changes have been made in the relevant legislation, and in particular an important Act dealing with boycotts in labour disputes was passed in July of the present year. These developments are surveyed in the following article.*

It may be added that the writer of the article, who is President of the Norwegian Labour Court as well as of the Supreme Court, has recently been appointed Chairman of the Mixed Departmental and Parliamentary Committee which has been set up, in connection with the passing of the Act of July 1933, to consider the question of employers' and workers' organisations and their relations with each other and with the community. Its terms of reference, which are very wide, involve the examination of most of the problems connected with labour disputes, including existing and possible future legislation.

THE fundamental Norwegian Act on conciliation and arbitration in labour disputes is still the Labour Disputes Act of 6 August 1915. Technically, it has been replaced by a new Act of 5 May 1927[2], but in reality this is the same as the 1915 Act, with certain amendments.

Norwegian legislation has never placed obstacles in the way of the workers' and employers' right to organise freely, without need of State authorisation, for the protection of their economic and commercial interests. The right of association has always

---

[1] *International Labour Review*, Vol. XI, No. 1, Jan. 1925: "Compulsory Arbitration in Norway", by Johan CASTBERG.

[2] INTERNATIONAL LABOUR OFFICE: *Legislative Series*, 1927, Nor. 1-A.

been recognised. The labour movement in Norway has thus been spared the struggle that the workers in many other countries have had to wage in order to obtain legal recognition of their right to organise.

Similarly, the Norwegian workers have not had to fight for statutory recognition of their right to seek the improvement of their conditions of employment by means of stoppages of work. They have always had the right to strike.

The Labour Disputes Act of 1915

The 1915 Act did not interfere with the right of organisation, nor did it depart from the principle that the law cannot forbid a stoppage of work as a weapon in a labour dispute unless it also points to judicial remedies making the stoppage superfluous.

The underlying basic principle of the Act is that, in view of the great interest to the community of peaceful industrial relations, it becomes both the right and the duty of the State authorities to find serviceable means of preventing unnecessary strikes and lockouts.

The Act makes a sharp distinction between the two types of labour disputes : on the one hand, disputes arising out of the trade unions' demands concerning the regulation of conditions of employment and wages in a trade or undertaking, which are described as " disputes about interests "; and on the other, disputes of trade unions with employers and their organisations concerning rights and obligations under existing collective agreements, which are known as " disputes about rights ".

For the latter type of disputes, those about rights, the Act set up a special court with jurisdiction for the whole country—the Labour Court. It was believed that by thus affording a satisfactory means of rapidly settling any dispute about rights under a collective agreement, the Act would render recourse to a stoppage of work for the settlement of this kind of dispute superfluous. It accordingly prohibits unconditionally and absolutely all strikes and lockouts intended to settle a dispute concerning rights and obligations under a collective agreement. It makes it an obligation under public law for the parties to a collective agreement to refer their disputes about rights to judicial proceedings.

For disputes concerning the new regulation of conditions of employment, or disputes about interests, the Act imposes no such absolute prohibition of the attempt to settle them by a stoppage

of work. It requires, however, that neither party shall proceed to a stoppage as long as there is a possibility of settling the dispute by peaceful negotiation ; and it therefore prescribes that any proposed stoppage shall be notified to the conciliation authorities, so that they may have an opportunity of trying to settle the matter by consent. These conciliation authorities have power to convene the parties to attend conciliation proceedings, and can prohibit a stoppage of work as long as the proceedings are in progress. But the Act limits the duration of this prohibition ; that is to say, the parties are deprived during only a relatively short period of their right to engage in militant action. Once the time limit for conciliation fixed by the Act has expired, either party can demand the termination of the proceedings in order to embark on a stoppage of work.

Compulsory Arbitration

The 1915 Act contains no provisions on compulsory arbitration in the event of the failure of conciliation. But during the period 1916-1923 a series of provisional Acts was passed in Norway, empowering the Government to order compulsory arbitration if a labour dispute tended to prejudice important public interests.

The Liberal Mowinckel Government, which in July 1924 succeeded the Conservative Berge Government, took up the question of making compulsory arbitration a permanent feature of Norwegian legislation on labour disputes. A Bill was introduced in 1925 to empower the Government to require the settlement of certain important labour disputes by arbitration without a stoppage of work. This Bill was not debated in the Storting until 1927, when it was supported by the Liberal and Farmers' Parties, but was opposed by the Conservative and Labour Parties, whose votes led to its rejection.

In view of the prospect of an important dispute, however, the Conservative Lykke Government, which in the previous year had replaced the Liberal Mowinckel Government, found it necessary to call for the adoption of a Provisional Act on compulsory arbitration. Such a Provisional Act [1] was in fact passed, against the votes of the Labour Party, and remained in force until 1 August 1929. By that date, the then Liberal Government had

[1] *Legislative Series*, 1927, Nor. 1-B.

introduced a Bill for the provisional prolongation of the Act for two years ; but this Bill was rejected in the Storting by the votes of the Conservative and Labour Parties against the Liberal and Farmers' Parties.

As a matter of fact, by this time the general public had lost much of its faith in compulsory arbitration. The reason lay in the experience gained during a comparatively unimportant dispute in the building industry in the summer of 1928. The Government, acting in conformity with the Provisional Arbitration Act of 1927, had prohibited a stoppage of work and had ordered the settlement of the dispute by arbitration. The arbitration award given did not satisfy the workers, who went on strike to compel the employers to agree to certain changes in the award. The strike lasted for several weeks and in the end the employers made certain concessions in order to obtain the resumption of work.

In consequence of this strike against an arbitration award, the belief in compulsory arbitration lost ground in many quarters to such an extent that since then the arbitration idea has had little prominence in public discussion. It is significant that neither the Liberal nor the Farmers' Party included any item on compulsory arbitration in its election programme for the 1930 Storting election. It may be mentioned, however, that this year (1933) the Storting, on the proposal of the Liberal Mowinckel Government, has passed a Provisional Act on compulsory arbitration for all wage disputes in the State-owned company which has a monopoly of the trade in wine and spirits, while in its programme for the 1933 election the Liberal Party again drew attention to compulsory arbitration as a possible method of settling extensive labour disputes.

Demands for Revision

Thus the attempt to make compulsory arbitration a fixed and permanent judicial institution for the settlement of disputes about interests between capital and labour has failed. The position is different as regards the regulations contained in the 1915 Act that deal with compulsory judicial proceedings in disputes about rights and official conciliation in disputes about interests.

It is fair to say that for disputes about rights between trade unions and employers it is generally recognised that the judicial system created by the 1915 Act was a genuine improvement, and

that no one would benefit by its abolition and a return to the old state of affairs.

It is also no doubt generally recognised that, from the point of view of the community, official conciliation has been a gain. Conciliation has become a permanent institution in Norwegian industrial relations, and no one seriously thinks of its abolition.

The objection has been raised that official conciliation has meant that the parties' own negotiations prior to conciliation easily tend to become merely formal. It is alleged that during these negotiations the parties dare not set forth their true views for fear of being forced to make further concessions should the negotiations fail and recourse to official conciliation become necessary. There can be no doubt, however, that conciliation has in many cases proved of great value by reopening negotiations between the parties when they had reached a blind alley from which they themselves apparently could find no way out. Norwegian employers and workers have been spared many open conflicts because experienced and competent conciliators have succeeded in finding such settlements of the dispute as both parties could accept.

The demands for revision that have been raised have not been directed against the underlying principles of the Labour Disputes Act of 1915. The changes made in the Act have accordingly left its fundamental principles untouched.

As far as conciliation is concerned, the principal change is that, under an Act of 19 June 1931, it is no longer possible to place the conciliation proceedings in the hands of a joint board including representatives of the workers' and employers' interests involved. In actual fact, no use had been made of the right to appoint such a board. The technique of conciliation, as developed in practice, had shown that the most effective form of procedure was that of conciliation by an individual.

The changes in the 1915 Act with regard to disputes about rights arising out of collective agreements relate partly to procedure and partly to the substance of its provisions.

By an amendment passed in 1927 (Act of 5 May 1927) the membership of the Labour Court was increased from five to seven. Previously the Chairman had alone represented the neutral element in the Court, the other members being two representatives of employers and two representatives of workers. The 1927 Act provided that there must be two additional neutral members as well as the Chairman, one of whom, like the Chair-

man, must be a jurist and satisfy the requirements prescribed for judges of the Supreme Court.

The changes made in the substance of the provisions of the Act concerning rights and obligations under collective agreements were primarily due to complaints by employers that the Act did not adequately protect them against breaches of the obligation laid down in collective agreements to refrain from militant action, and in general against unlawful or wrongful action during the period of validity of collective agreements.

During the years following the world war various unlawful stoppages of work took place in Norway which it proved impossible to bring to an end in spite of the fact that the Labour Court gave awards declaring them to be patent breaches of the obligation laid down in existing collective agreements to refrain from militant action.

In order to compel the organisations to exercise stricter control over their members, the Amending Act of 1927 increased their economic liability in respect of their members. Under the 1915 Act an organisation could not be made liable for the failure of individual members to observe the obligation to refrain from militant action or other obligations under a collective agreement, unless the injured party could show that the organisation, as such, shared in the responsibility for the breach of the obligation or had failed to do its duty in securing respect for the collective agreement. When the Act was amended in 1927 the onus of proof was reversed, so that an association became liable for the breach by its members of obligations under a collective agreement, unless it could show that it had no responsibility for the unlawful conditions, and that it had endeavoured by all means in its power to prevent the continuance of these conditions. The object was to make the organisations liable for unlawful stoppages of work that were open to the suspicion of being supported by the responsible management of the organisation, without its being possible to produce decisive proof that this was the case.

At the same time as the civil liabilities were thus extended, the penal provisions of the Act were also altered in several respects. Under the 1915 Act any individual worker or employer who took part in an unlawful stoppage of work was liable to a penalty, as also were the members of the management and the officials of the organisations who had in any way participated in organising an unlawful stoppage, or had incited to, or tried to

support, such unlawful stoppage of work. The penalty under the 1915 Act was a fine of up to 25,000 kroner. The 1927 Act abolished the liability to penalty for individual workers who do no more than take part in a strike approved by their organisation. It was aimed rather at the leaders of strikes and lockouts, and in addition at any person inciting to an unlawful stoppage of work or seeking to keep it going by financial support. The penalty under the 1927 Act is a fine, or imprisonment up to three months, or both. Under the 1915 Act penal proceedings could not be taken unless the injured party, or the Government department concerned, demanded their institution. Under the 1927 Act proceedings are taken by the authorities irrespective of any demand. The 1927 amendments also included the insertion of a special penal clause to protect persons willing to work during an unlawful stoppage. During the same year, however, regulations were inserted in the general Penal Code for the protection of persons willing to work during *lawful* labour disputes, and as a consequence, the special regulations in the Labour Disputes Act for unlawful stoppages of work are of minor importance.

In its explanatory memorandum to the 1927 amendments the Government drew attention to the fact that in spite of the aggravation of the civil and penal liabilities, it was to be expected that there would still be unlawful breaches of the obligation to refrain from militant action under collective agreements, and that the authorities would not always be able to obtain a resumption of work. Under the 1915 Act the injured party to a collective agreement was in this case too deprived of the possibility of protecting himself by recourse to the ordinary weapons. He could only institute legal proceedings, even though these might prove ineffective.

The 1927 Act relaxed in some measure the unconditional prohibition in the 1915 Act of stoppages of work as a weapon for the settlement of disputes about rights. If the Labour Court takes a decision to the effect that one of the parties to a collective agreement has failed to observe its obligations under the agreement, and if the unlawful conditions are not set right within four days of this decision, the injured party may apply to the Court for exemption from the Act's unconditional prohibition of stoppages of work in connection with disputes about rights. The Court may agree to allow the injured party to use a stoppage of work as a means of obtaining respect for the decision given.

Among employers the new regulation contained in the 1927 Act as to the onus of proof in respect of the liability of the organisations for compensation was not considered sufficient. They demanded that the organisations, irrespective of their own responsibility, should be unconditionally liable for the economic effects of any breach by their members of obligations under a collective agreement.

The employers' demand for an increase in the economic liability of the organisations led the Storting this year to reformulate the relevant provision contained in section 4 of the Act in the following terms :

> A trade union or employers' association shall be liable for breaches of the collective agreements concluded by the union or association with binding effect for its members. Contracting out from this liability shall not be valid. . . .
>
> If the union or association forms part of a larger organisation with the same general aims, the superior organisation shall also be liable according to the same rules as prescribed in the first paragraph.

The adoption of these new regulations as to responsibility formed part of the compromise, discussed below, concerning the legislation adopted by the Storting this year on boycotts in industrial relations.

For a proper understanding of these new rules as to liability, it is necessary to consider a Government statement submitted to the Storting during the debate on the proposed compromise. It contains the following passage :

> The Ministry of Social Affairs considers that experience has shown that cases may occur of strikes contrary to agreements in which there can be no doubt that the superior organisation has done what was possible to prevent the outbreak or continuation of the strike. . . . That in such a case an organisation should be held liable for the damage done does not appear justifiable and may involve certain drawbacks.

Section 5 of the 1927 Act, however, contains the following provision :

> In assessing compensation for a breach of a collective agreement or for an unlawful stoppage of work, the Court shall take into consideration not only the extent of the damage but also the culpability established and any undue action on the part of the injured party. If special extenuating circumstances are present, compensation may be entirely forfeited.

Referring to this section, the Government observed that its objections to the new version of section 4 would disappear if it was intended that the provisions of section 5 should also apply

in full to section 4 in its new form. In other words, the Government wished to make it clear that in determining the economic liability of the organisations for actions of their members contrary to the law, account must be taken of whether the association itself has been guilty of any undue action.

During the debate in the Storting, the spokesman of the Government Party on this question expressly referred to this interpretation of section 4 in its new form. The correctness of the interpretation given to the section by the Government was not called in question during the debate.

Boycott Regulations

When the first Labour Disputes Act was passed in Norway in 1915 the boycott had not yet become widely used as an independent weapon in labour disputes. At that time, therefore, it did not appear to involve so serious a social problem as to call for legislative action in the same way as the strike and the lockout. The 1915 Act contains no mention of boycotts, nor does the amended Act of 1927.

But although the 1915 and 1927 Acts contain no regulations on boycotts in labour disputes, this obviously does not mean that under Norwegian law there were no legal restrictions on the right to make use of boycotts in these disputes.

In judicial practice it had become the accepted rule that boycotts in a dispute about interests between employers and workers, as in economic life in general, were unlawful if their object was unlawful or wrongful, or if it was sought to promote them by unlawful means, such as false or inaccurate information concerning the boycotted party. Further, the obligation under a collective agreement to refrain from militant action meant that the trade union or employer bound by such an agreement could not boycott the other party to the agreement with a view to obtaining an alteration of the conditions of employment and wages fixed by the agreement. To this extent boycotts were subject to the same regulations as strikes and lockouts.

But these rules, applying to the parties to a collective agreement, like the general rules as to boycotts developed in judicial practice, came under private law. Unlike the regulations on strikes and lockouts in the 1915 Act and the amended Act of 1927, they did not come under public law.

During the last few decades the use of boycotts as a weapon in industrial relations, and in economic life in general, has grown steadily.

The attention of the general public was first aroused by the danger to the community resulting from the fact that trusts and powerful economic bodies could make uncontrolled use of the boycott as a means of breaking their rivals. The legal situation resulting from judicial practice was held to be unsatisfactory. It is true that the courts—unlike those in Germany, for instance—had made no direct statement on the point whether a boycott should be considered unlawful if there was no reasonable relation between the object in view and the effects for the boycotted party. But to judge from their general attitude on the boycott problem, it seemed clear that without express legislative authority they would refuse to consider themselves competent to make the lawfulness of a boycott depend on their appreciation of the conflicting interests or the relation between end and means. The authorities therefore considered it necessary to intervene by enacting positive legislation for a certain measure of public control of the use of boycotts in economic competition. This legislation was contained in the Act of 12 March 1926 known as the Trust Act.

According to section 21 of this Act, a boycott is prohibited if it is intended to regulate competition and would either be unreasonable in relation to the boycotted party or be likely to prejudice the public interest or to be disproportionate to the end in view.

The Act set up an administrative Supervisory Board of five members, which has power by a final and binding decision to decide whether a boycott is of such a nature that it should be prohibited under the Act.

The boycott regulations in the Act of 1926 have not merely assigned new limits under private law for lawful boycotts. They also come under public law. On the ground that the community has an interest of its own in preventing trusts and other powerful organisations from killing free competition in economic life, the Act empowers the Supervisory Board to exercise autonomous supervision over the use of the boycott as a means of regulating competition. It has the right to intervene on its own initiative in the case of boycotts which it considers should be prohibited.

Boycotts in Industrial Relations

The Trust Act of 1926 does not cover boycotts in labour disputes. According to an express provision of the Act, it does not apply to that part of economic life which relates to work for wages in the service of another. Thus, it leaves untouched a trade union which boycotts unorganised workers as a means of creating a monopoly of work for its members and securing them against the competition of non-unionists.

Of late the demand that legislation should also regulate boycotts as a weapon in labour disputes has been more and more strongly pressed. An important reason for this is the increasing tendency to involve parties other than the actual opponent in the struggle. Outside third parties who wish to remain neutral are forced to take sides by a threat that otherwise they will themselves be boycotted.

In commercial circles, strong feeling has been created by the attempts of the workers' organisations to organise boycotts of persons who obtain their goods from an undertaking involved in a dispute with the organisations. These sentiments found expression in a resolution adopted by the Norwegian Commercial Association in 1931, which demanded legislation capable of securing "freedom of trade and of work for third parties not involved in labour disputes". A similar resolution was adopted in the same year by the national organisation of retail traders.

Among farmers, the movement of opinion has been even stronger, and the demand has been put forward that the State should take action against the way in which boycotts are used in labour disputes in agriculture and forestry.

It should be understood that during the last few years the trade union movement has also made progress among agricultural and forestry workers. It has been difficult, however, for the farmers to realise that their workers might be justified in following the example of workers in industry and demanding the regulation of their conditions of employment by collective agreement. Consequently, the trade union movement among these workers has been looked on with hostility by the farmers employing them. On the other hand, the newly created agricultural workers' unions in the different parts of the country have not always displayed that wisdom and moderation which might have reconciled the farmers to modern demands. The opposition between the two parties has therefore in many cases

been unnecessarily intensified, and in several places it has led to bitter and prolonged disputes in which violence has been used against unorganised workers willing to work. To this should be added the fact that owing to the general economic depression the forestry industry has been in low water, so that there is much unemployment among forestry workers. The forest owners have therefore had no difficulty in obtaining the labour they need, so that when the new organisations put forward their demands for collective agreements, the owners could reply that they had nothing to discuss with the organisations ; they had the workers they needed and had no quarrel with them as to conditions of employment and wages. In these circumstances the boycott has been the only weapon the organisations could use. But the individual farmer is defenceless and powerless against an organised boycott. Unlike employers in industry, he has no strong organisations to protect him. It is therefore natural that the farmers should have turned to the State and demanded the protection of the law against undue actions on the part of the trade unions.

The growing movement of opinion among both farmers and traders found expression in the election programmes drawn up by the Conservative Party and the Farmers' Party for the Storting election in 1930.

The Conservative Party included the following item in its programme :

> The Conservatives will work for legislation which will safeguard the freedom of work by giving effective protection to persons willing to work and by measures against unfair boycotts and blockades.

The corresponding item in the programme of the Farmers' Party was as follows :

> The right to work must be safeguarded as a fundamental human right and persons willing to work must be secured the protection of the community against undue actions. The State authorities must intervene effectively against undue actions by organisations which are prejudicial to the interests of the community.

The Liberal Party gave expression to its principles on the point in a paragraph of its programme which runs as follows :

> Work for improved understanding of the common interests of labour and capital in industry. Official settlement of extensive labour disputes.

In 1930, in support of this principle, the Liberal Mowinckel Government appointed a committee of three members, called the

Industrial Peace Committee, which was to open negotiations with the central organisations of employers and workers. The object in view was to secure industrial and social peace by getting the organisations themselves to extend and supplement their institutions for negotiation and peace.

The Storting election in the autumn of 1930 gave no party a majority, and the political situation was such that the Mowinckel Ministry remained in power.

Immediately after the Storting assembled in 1931 both the Conservative and the Farmers' Parties introduced Bills concerning boycotts in industrial relations.

The explanatory memorandum to the Conservative Bill contained the following passage :

> By no means the least important necessity is that legislation should intervene against the far-reaching right under existing law to organise blockades and boycotts. Certain events have shown that boycotts and blockades are employed in a wholly unjustifiable manner. Thus there are various cases in which persons who have refused to take part in a strike have been persecuted and boycotted, even when the strike was unlawful, in such a way that they have had to give up their work without any prospect of finding employment elsewhere. In various other cases an undertaking has been boycotted or blockaded although it was not involved in any dispute with its own workers. By blockading certain goods, and in other ways, an attempt is made to involve third parties, although, being entirely outside the dispute, they have a just claim to carry on their occupation undisturbed. Threats of boycotts and blockades are recklessly hurled in the attempt to strike at all and sundry who refuse to bow to the commands of the organisations. In this connection reference should also be made to the events that have taken place in this sphere in agriculture. In these cases there is an undoubted need of protecting the rights of third parties, of defending the individual against abuse of power and economic ruin, and of securing the community against the injury of public interests.

These Bills were referred by the Government to the Industrial Peace Committee. In the spring of 1931, however, an extensive labour dispute broke out in consequence of the demand of employers for wage reductions. The immediate result was the breaking off of the Committee's negotiations with the organisations. The negotiations were resumed after the settlement of the dispute during the autumn ; but after a few months the workers' representatives withdrew, the reason being the change in the political situation due to the fact that in the summer of 1931 the Farmers' Party had come into power. The new Government, with first Kolstad and later Hundseid as Prime Minister, was bound by its programme to carry through a Boycott Act, and for this purpose appointed in December 1931

a new committee independent of the Industrial Peace Committee. The terms of reference of the new Committee were not only to enquire into the boycott question, but also to put forward proposals for new legislation on the liability for compensation in cases of unlawful disputes. The Committee was also instructed to enquire into the question of measures to prevent labour disputes in essential " key industries ".

The workers' representatives on the Industrial Peace Committee considered that the terms of reference of the new Committee were incompatible with their continued collaboration on the Industrial Peace Committee. They accordingly withdrew and refused to continue until they had seen the outcome of the work of the new Committee.

By February 1932 the new Committee had completed a draft Bill on boycotts in industrial relations, which also included regulations making the organisations unconditionally liable for breaches by their members of their obligations under collective agreements. The Committee proposed further that strikes and boycotts should be forbidden in certain public utility undertakings, and that it should be possible to require the settlement by arbitration of disputes in such undertakings, except those run by the State.

Finally, the draft contained a series of provisions intended to institute public supervision over ballots in the organisations concerning stoppages of work. According to these provisions, unorganised workers would have the right to vote side by side with organised workers.

The Hundseid Government Bill

On the basis of this draft the Hundseid Government introduced a Bill in the Storting in January 1933 for the regulation of boycotts as a weapon in industrial relations. This Bill also contained the provisions proposed by the Committee to establish the unconditional liability of associations for breaches of agreement by their members. On the other hand, it left out the proposal for compulsory arbitration and the prohibition of stoppages of work in public utility undertakings, and also the rules proposed by the Committee concerning public supervision of ballots on the organisation of stoppages of work.

Before the Storting could discuss this Government Bill, there was a change of Government. In February 1933 the Farmers'

Government was overthrown and the Liberal Party came into power. The new Liberal Mowinckel Government withdrew the Bill introduced by the previous Hundseid Government and brought forward a completely new Bill concerning boycotts.

The Hundseid Bill had proposed a general rule, to the effect that boycotts in industrial relations would be prohibited if they could be held likely to prejudice public interests or to be unreasonable in relation to the party against which they were directed.

In addition to this general prohibition, the Bill proposed a series of absolute prohibitions of special forms of boycott.

In conformity with existing judicial practice, the Bill laid down that boycotts should always be prohibited if the object in view was contrary to law, or if the invitation to boycott was based on incorrect or misleading information. The Bill was no doubt also in agreement with existing judicial practice in its declaration that boycotts were unlawful if organised in an unnecessarily provocative or offensive manner. It further proposed the unconditional prohibition of a boycott :

when undertaken because the person against whom it is directed has taken part in or supported either of the parties during a terminated labour dispute involving a lockout, strike, or boycott ;

or because he or a person whom he employs or with whom he has economic relations belongs or does not belong to a trade union or employers' association ;

or to compel an employer or worker to join or leave an employers' association or trade union, or to conclude or work for the conclusion of a collective agreement which none or only a minority of the workers in the undertaking concerned have demanded, or to agree to the inclusion in a collective agreement or contract of employment of provisions which in respect of the termination of an employment place one of the parties in a more unfavourable position than the other ;

when it is organised or continued by . . . the assembling of large gatherings at or near the place where the boycotted party's activities are carried on ;

when it takes place without timely notice by telegram or registered letter to the party against whom the boycott is directed and to the persons who are to, or are invited to, take part in the boycott, giving adequate information on the reasons for the organisation of the boycott ;

when, in support of either of the parties to a labour dispute, it is directed against a third party who is not involved in the dispute and has not taken economic measures in support of either of the parties on account of the dispute ;

when it is directed against a public utility undertaking, irrespective of whether the boycott is organised in consequence of the conditions of employment of persons not covered by this Act.

For all these cases of boycott, the draft Bill established an absolute legal presumption that the boycott was injurious to the community, or would prove unreasonable as regards the party affected.

The boycott prohibition was to cover not only the act of boycott itself and the invitation to boycott, but also a purely passive attitude on the part of a person who, either on invitation or on his own initiative, refrained from business relations with another if the object was to prevent or to impede the latter's business relations with others.

The Mowinckel Government Bill

The Mowinckel Government Bill did not depart from the fundamental conception of the Hundseid Government Bill that the community needed statutory regulation of the boycott as a weapon in industrial relations. From the point of view of legislative policy, the new Bill based this conception on the argument that the special nature of the boycott makes it a particularly dangerous weapon. The explanatory memorandum to the Bill contained the following passage on this point :

> Strikes and lockouts must always represent a personal sacrifice for those who make use of this weapon. The striker leaves the work on which he and his family depend for their livelihood. He knows that the strike will mean privation and often want ; he also knows that he runs the risk of his job no longer being open to him when at the end of the strike he wishes to return to work. The position of an employer who declares a lockout is similar. He has to take into account the risk of putting his undertaking out of action. A strike or lockout therefore presupposes a certain weighing of personal gains and personal risks. This affords some guarantee against unconsidered and aimless strikes and lockouts. In addition, the bigger the strike or lockout, the greater the cost ; the more persons the strike leaders send on strike, the greater will be the strain on strike funds. The effect on the employers' fighting fund is similar ; the larger the number of undertakings included in the lockout, the larger will be the number in need of assistance. Here, again, is a reason tending to produce a certain caution in the use of the weapon of the strike or lockout.
>
> A person who incites to a boycott is in a different position. He is not himself involved in the struggle and does not assume the risks and sacrifices entailed. He invites others to fight for his interests, but himself remains outside. Further, the extension of the boycott involves no additional risk for him. On the contrary, the greater the movement he sets going and the more ruthlessly he acts, the greater will be his chances of attaining his ends.
>
> What makes the boycott so dangerous is precisely the fact that the person who issues the invitation to boycott is not subject to those checks which private interests create when it is a question of going

on strike or declaring a lockout. He personally has nothing to restrain him from exploiting his power over others to obtain their agreement to a ruthless and brutal boycott of an opponent. It may therefore be necessary for the community to create a legal safeguard against abuse of the dangerous weapon constituted by the invitation to boycott. The law must counteract the temptation to engage in an untimely boycott by making it quite clear to the person inciting to boycott that if he oversteps the limit of what is fair and reasonable he will incur certain liabilities. Even though the end in view may be unobjectionable, there should be certain limits to the method by which the struggle is carried on. This applies to war between nations, and it should apply all the more to struggles within nations between citizens. It involves no muzzling of the combatants in their legitimate fight for their interests.

These grounds for the legal regulation of the boycott as a weapon in industrial disputes also served in the new Bill to define the natural limitation of the scope of the regulations.

It is the invitation to boycott which in the first place is the dangerous act. On this point the explanatory memorandum contained the following statement :

> The invitation to boycott is an active and positive intervention in the opponent's sphere of interests which is intended to inflict injury. A person who goes too far in this respect must accept the consequences of overstepping the limits placed on his freedom of action by the general sentiment of what is right. Because the actual invitation is an action whose immediate aim is to injure another, the law must be in a position to call for caution.

The Bill further pointed out that the necessity of making the special measures contained in a Boycott Act applicable also to a person who acts on the invitation was not so strong as the grounds in legislative policy for intervening in the case of invitations to boycott. Unlike the person issuing an invitation to boycott, a person acting on it is always faced with a certain choice between the advantage he may gain from supporting the boycott, and the sacrifice he may have to make by refraining from business relations with the boycotted party. To this extent he is in the same position as a worker on strike or an employer in a lockout. His passivity as regards the boycotted party tends in fact to become a sort of strike—a strike against buying or against selling. His position under the law should therefore be based on the principles applying to strikes and lockouts rather than to boycotts.

In view of these considerations, the definition of the boycott given in the new Bill was such that the regulations would cover only the active operation, namely, the invitation to boycott.

The Bill did not include in its scope the execution of the boycott by a person acting on the invitation to boycott and refraining from business relations with the boycotted party.[1]

Both Bills agreed that strikes and lockouts should be untouched by the new boycott regulations. For this reason the Mowinckel Government Bill included an express provision that it should not apply when workers during a regular stoppage of work blockade the workplaces, or when an employer tries to prevent the workers opposed to him from obtaining work elsewhere.

For the formulation of its regulations as to the occasions on which boycotts should be prohibited, the Mowinckel Bill adopted as its starting-point the fact that the community has a great interest in industrial peace and therefore has a right to demand that settlement of a dispute shall not be sought by way of open conflict—whether a stoppage of work or a boycott—until attempts have been made to solve it by peaceful means.

The regulation in the 1915 Act concerning official conciliation in disputes about interests was to apply under the new Bill not only to strikes and lockouts, but also in cases where either party seeks to settle the dispute by means of a boycott instead of a stoppage of work. The new Bill thus extended the conciliation regulations under public law so as to apply not only to strikes and lockouts, but also to boycotts as an independent weapon in labour disputes. As regards time limits and certain other details, however, the new regulations were formulated in terms differing somewhat from the corresponding provisions of the 1915 Act.

Side by side with these conciliation provisions, involving a prohibition under public law of boycotts until conciliation has been tried, the new Bill—like the Hundseid Government Bill—also contained regulations of the nature of private law concerning the occasions when boycotts should be prohibited.

The principal regulation concerning unlawful boycotts was worded as follows in the new Bill :

> A boycott arising out of conditions of employment shall be unlawful when . . . it has undue effects or there is no reasonable relation between the interests it is intended to promote and the damage it entails.

In principle, there was no difference between the formulation of the main general regulation in the two Bills. Both left it to

[1] Cf. for German law, KASKEL : *Arbeitsrecht*, third edition, p. 397.

the discretion of the court in each individual concrete case to define the limits for an unlawful boycott. But the Mowinckel Government Bill was to some extent more of a guide in that it expressly pointed to the important principle that there must be a certain reasonable relation between end and means, between what the boycott is intended to obtain and the damage it may do.

Like its predecessor, the Mowinckel Government Bill also expressly declared boycotts to be unlawful in all cases where existing judicial practice and conceptions showed that they were already considered to be so. It further reproduced from the Hundseid Bill a provision that boycotts would be unlawful if undertaken without reasonable notice having been given to the boycotted party, or without adequate information being given in the invitation on the reasons for boycott.

The new Bill did not take over the other absolute prohibitions of boycotts contained in the Hundseid Bill. The reason was that the Hundseid Bill had gone too far in establishing an absolute legal presumption that in all cases covered by the unconditional prohibitions a boycott must always be unreasonable and prejudicial to the community. The new Bill accepted the view that in such cases, too, circumstances might make the boycott the only possible weapon of defence in a fight to protect legitimate interests against unreasonable attacks by an unfair opponent. An unconditional boycott prohibition might therefore mean that in a dispute about interests the weaker party would be deprived of his only means of defence, without being given any indication by the State of other lawful remedies for the protection of his interests. The unconditional prohibitions in the Hundseid Government Bill would also make the boycott weapon in labour disputes subject to special regulations which were not applied to corresponding conditions in economic life in general. This would mean an inequality before the law that could not be defended on grounds of social ethics or legislative policy. The Trust Act of 1926 contained no absolute and unconditional prohibition of boycotts during disputes about interests in economic life in general. This was left to specific consideration in each individual case of the question whether reasonable limits for freedom of action had been exceeded. The new Bill held that the same principle should apply also to boycotts in disputes about interests in industrial relations. One exception was made, however. In the case of employers who employ only members of their own family, the trade unions were to be forbidden to

seek the enforcement of their demands by means of a boycott. The exception was to apply also to employers with not more than five workers, unless the special court for boycott cases had agreed to the boycott. Further, during a dispute about interests, a subordinate trade union could not declare a boycott without obtaining the agreement of the superior organisation.

As regards procedure in boycott cases, the Mowinckel Government Bill provided that these should be referred to a special court set up for the sole purpose of dealing with them. The court would be organised in the main on the same lines as the Labour Court set up by the 1915 Act, but with only one representative of the employers and one of the workers, so that the total number of members would be five, instead of seven as in the Labour Court. The representatives of the employers' and workers' interests would be appointed by the Crown in the same way as the remaining members, the central organisations of employers and workers not being allowed any such right of nomination as they enjoy in respect of the Labour Court under the Act of 1915.

The New Act of 6 July 1933

When the question came before the Storting, the Conservative and Farmers' Parties again put forward the Hundseid Government Bill, and declared that if it was rejected they would be unwilling to vote as an alternative for the new Government's Bill. The Government Party in turn held that it could not as an alternative accept the Hundseid Bill. As the Labour Party was definitely opposed to both Bills, the political situation might have led to the adoption of neither. But negotiations for a compromise were opened between the Government Party, the Conservatives, and the Farmers' Party, and the result was the Act of 6 July 1933, which is based on the Mowinckel Government Bill, though with several important changes.

The final Act contains in unchanged form the provisions concerning the new Boycott Court and official conciliation. The changes are in the substance of the regulations concerning boycotts.

The first point to note is the new definition of boycotts, which is as follows :

> Boycott — an invitation, incitement, joint decision, or other measure which, in order to coerce, injure, or punish someone, aims at preventing or impeding the economic intercourse of a person or an undertaking with others.

The inclusion in this definition of " incitement " and " joint decision " does not mean a departure from the conception of the boycott contained in the Mowinckel Government Bill. The word " incitement " is completely covered by the word " invitation ", and it was expressly stated in the explanatory memorandum to the last-mentioned Bill that any decision by several persons jointly to boycott another *ipso facto* involves an invitation to the rest from each of those taking part in the decision.

The addition " other measure " has created some confusion as to the scope of the definition. According to the report of the competent Storting Committee, the object of this addition was to " make it clearer that it was the active operation, whatever its form ", at which the regulation aimed. But the report does not indicate in more detail what this statement implies. During the debate in the Storting, the Chairman of the Committee affirmed that the new wording did not conflict with the principle expressed in the Mowinckel Government's definition ; in his view, the new version was a formulation of the same principle. At the same time, however, he stated that the substance had " to some extent " become different. During the debate, various Conservative members expressed the view that the new version had given the conception of the boycott another and wider scope than that understood by the Chairman of the Committee.

The obscurity created by the new version will mean that in actual fact it will be the new Court that will have to give more precision to the Act's conception of the boycott.

The discussion in the Storting also resulted in the express addition to the general boycott prohibition of a provision that boycotts are also unlawful when prejudicial to important public interests.

It is of special importance that, unless the previous approval of the Boycott Court has been obtained, boycotts are prohibited when they are undertaken :

because the person against whom the measure is directed has taken part in or supported either of the parties during a terminated labour dispute involving a lockout, strike, or boycott ;

or because he or a person whom he employs or with whom he has economic relations belongs or does not belong to a trade union or employers' association ;

or to compel an employer or worker to join or leave an employers' association or trade union, or to conclude or work for the conclusion of a collective agreement which none or only a minority of the workers in the undertaking concerned have demanded ;

or when, in support of either of the parties to a labour dispute, it is directed against a third party who is not involved in the dispute and has not taken economic measures in support of either of the parties on account of the dispute ;

or when it is directed against a timber-floating undertaking of essential importance for the supply of timber to industrial undertakings.

The provisions of the Mowinckel Government Bill concerning boycotts of small undertakings were also altered and made stricter. The Act absolutely and unconditionally prohibits boycotts of employers who in addition to members of their family employ not more than ten workers.

Further, it should be added that the Act in its final form has rejected the Mowinckel Government's proposal that its boycott regulations should not apply to workers' blockades of workplaces during a regular stoppage of work or to corresponding employers' boycotts of workers involved in an open dispute.

One factor in the compromise which led to the final formulation of the boycott regulations was the new version, already mentioned, of the section of the Labour Disputes Act concerning the liability of associations for breach by their members of obligations under collective agreements.

Like all other compromises, the new boycott regulations suffer from the defects of compromise. The lack of clearness on certain important points which is a feature of the Act masks the fact that full agreement was not always reached.

The new regulations give expression to the valuable legal conception that power must be used with responsibility and moderation. In several respects, however, they go rather far. After the adoption of the Act, the organ of the Norwegian Employers' Federation wrote that with this Act Norway was now ahead of the rest of the world, and this may in fact be said to be the case.

It is too early to express an opinion on how the Act will work. Not until some years have passed will it appear what importance it may have as a means of securing industrial peace in Norway. The above-mentioned article in the organ of the Employers' Federation observed that for industrial relations as a whole it would be better to have fewer laws and greater self-control on the part of the organisations and their individual members. This is undoubtedly true. Ultimately, what creates genuine industrial peace in a country is not the letter of the law, but the attitude of mind of workers and employers towards each other and their power and will to understand one another.