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Collective Bargaining in the Maritime Fishing Industry

Recent Developments

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and

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This paper summarizes recent changes in the Canadian fishing industry, with particular emphasis on the Maritime region, traces the rise of a new union seeking to represent inshore fishermen, and describes the resulting collective bargaining legislation in New Brunswick.

In an article¹ published in this journal in 1975, Steinberg argued eloquently for the right of Canadian fishermen to bargain collectively with buyers over price, stressing that the barrier to enabling legislation has been the erroneously held view that owner-operators are self-employed entrepreneurs who therefore cannot be classified as «dependent contractors». Much has happened since that time, not the least of which was the promulgation in September 1982 of the New Brunswick *Fisheries Bargaining Act*. This paper will provide an overview of some of the major recent events affecting the industry, background to and details of the New Brunswick legislation, and also present findings from a survey of inshore fishermen pursuant to the critical question of dependency.

THE FISHERY SINCE THE MID 1970s

It was the dramatic collapse of groundfish stocks in 1974, a result of overfishing, which led to a more activist stance in the management of the industry by the federal government. The jurisdictional responsibility of the

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¹ Charles STEINBERG, «The Economics of Bargaining Rights in the Fisheries of Nova Scotia and Atlantic Canada», *Relations Industrielles/Industrial Relations*, Vol. 30, No. 2, 1975, pp. 200-215.

federal government through the Department of Fisheries has long covered international trade aspects and processing plant inspection, and it had begun to place restrictions on fishing effort in the 1950s through gear and mesh size control, and through the introduction of licensing in the lobster and herring fisheries during the 1960s. However, the deteriorating state of the industry led to the imposition of quotas, arrived at in consultation with advisory committees representing interest groups in each species area and based upon the advice of the department's biologists. Licensing alone would have been an ineffective means of stock control since fleet capacity was already four times that required to fish the quotas. The issue of quota allocations was to become a divisive question between inshore and offshore interests².

Under Fisheries Minister Roméo LeBlanc, himself representing a New Brunswick fishing community, the federal government became actively involved in other facets of the industry. For one thing, the department was interested in enhancing the value of the resource. As a case in point, the Bay of Fundy Herring Seiners Marketing Cooperative was established, with government funding, to facilitate the switch from fishmeal to whole herring production. For another, the government sought to encourage co-management of the industry by independent fishermen. This was approached partly through a continuous lecturing by the Minister that fishermen needed to organize themselves in a more effective manner than they had in the past, and partly through structural changes in the department. In 1975 the position of Area Manager was created in an attempt to decentralize the functioning of the regional office in Halifax. Moreover, in the following year an experimental program was established involving Community Service Officers (CSO), whom LeBlanc called «social workers in rubber boots». The CSO's in reality performed a number of functions, but the primary objective was to provide a direct channel to the government from fishermen, thereby ensuring a counterweight to the advice emanating from the more organized and Halifax area-based processing companies. Another critical event, the extension of Canadian jurisdiction from the 12 mile to the 200 mile limit in January 1977, further enhanced the importance of prudent management of the industry from the government's perspective.

2 Inshore and offshore are commonly used terms referring to distinctive harvesting and processing sectors. Whereas offshore vessels are normally company owned and can remain at sea for a number of days, inshore vessels are virtually all independently owned, engage in day fishing, and are usually seasonal because of fish migratory patterns or icing conditions around the ports. Processors in the inshore have traditionally held spatial monopsony power. For more comprehensive background information on the structure of the industry, and the many problems facing it, refer to the Kirby Report of the Task Force on Atlantic Fisheries, entitled *Navigating Troubled Waters: A New Policy for the Atlantic Fisheries*, Supply and Services Canada, December 1982.

BACKGROUND TO THE NEW BRUNSWICK LEGISLATION

The declaration of the 200 mile limit, following quickly on the heels of the introduction of quotas, created a great deal of insecurity among inshore fishermen. What would be the significance of the extension of Canadian jurisdiction for the inshore quota for the buyers' reliance on the inshore catch given the lack of foreign competition facing the offshore fleet? In addition, the contemporaneous merging of the two largest processors in the Maritimes, placing control of 40 percent of processing capacity in the hands of a single company, signalled a genuine danger. Out of these circumstances the Maritime Fishermen's Union (MFU) was born in March 1977. It was certainly not the first fishing industry union in the Maritime provinces. Several thousand plant workers in Nova Scotia and New Brunswick are represented by the Canadian Seafood and Allied Workers Union. Moreover, the Canadian Brotherhood of Railway, Transport and General Workers has been legally recognized as the bargaining agent for the majority of company trawlermen in Nova Scotia since 1971 when amendments to the *Trade Union Act* in that province recognized sharesmen as employees. However, the MFU was the first union in the Maritimes established with the *specific* intent of organizing inshore fishermen on a regional basis³. It also began operating without the protection of collective bargaining legislation.

The union signed up 900 of the approximately 1200 full-time captains between Caraquet and Cape Tormentine (i.e., the coastline between the Baie de Chaleur and the Nova Scotia border). With financial assistance from the Canadian Labour Congress, seven locals were established in New Brunswick, Nova Scotia, and Prince Edward Island. The overriding objective of the union was the passage of enabling legislation in the three provinces. The absence of such legislation did not preclude isolated cases of success in raising prices through tie-ups or in signing voluntary contracts with three small companies in north-east New Brunswick between 1977 and 1980. It should be noted, however, that the MFU has not been alone in arranging voluntary agreements. The Fundy Weir Fishermen's Association (formed in 1973 following gear conflict problems with the offshore seiners)

³ The 1970 Canso strike, led by the Vancouver-based United Fishermen and Allied Workers' Union, was supported by many inshore fishermen in that area. Nonetheless, the original purpose of the strike was to secure voluntary recognition of the U.F.A.W.U. as the bargaining representative of company crewmen. Had the union prevailed, it no doubt would have actively signed up more inshore fishermen as members. However, the Canadian Food and Allied Workers' Union, which subsequently raided the U.F.A.W.U. locals with C.L.C. blessing, did not pursue the «independents». For a fascinating account of the Canso strike, see Silver Donald Cameron, *The Education of Everett Richardson — The Nova Scotia Fishermen's Strike: 1970-71*, McClelland and Stewart, Toronto, 1977.

concluded an initial agreement in May 1979 with that region's largest buyer of sardines. This agreement on payment specifications and buying policy has since been renewed annually. It should also be pointed out that a decline in retail market prices, such as occurred after 1980, in conjunction with better coordinated resistance on the part of buyers, can serve to wipe out many of those union gains. Consequently, MFU organizers lobbied strongly for new legislation, particularly in New Brunswick where they could demonstrate impressive support. The Hatfield administration, more oriented to the interests of the companies and the creation of on-shore employment than was Ottawa, was widely perceived to have been procrastinating since 1975 on its promise to introduce right to bargain legislation. Pressure was exerted on the government through street demonstrations in Fredericton and through a concerted union campaign during the 1978 provincial elections which contributed to the defeat of the minister responsible for fisheries.

Following the election, a commission was appointed by the government to study the matter of collective bargaining rights. The commission, made up of three eminent persons unaffiliated with the fishery, submitted its report in December 1979. Without going into great detail, it nonetheless recommended that the government proceed with such legislation. In September 1980 a Joint Committee on Primary Relations in the Fishing Industry was established to review the question in more depth. The Joint Committee was chaired by the former Deputy Minister of Fisheries and included representatives from the union, two other fishermen's associations, National Sea, Connors, and a smaller fish buyer. After extensive hearings, the Joint Committee submitted its report in June 1981, a report which recommended legislation modeled on the New Brunswick *Industrial Relations Act*. In the meantime, however, the government, under pressure from cooperative movement administrators opposed to the inclusion of their members under collective bargaining legislation, and anxious to meet an earlier commitment to submit legislation during the 1981 sitting, directed Department of Labour officials to draft an alternative piece of legislation. This 1981 Act (known as Bill 94) was to be rejected by the Legislative Assembly because of dissatisfaction within the industry over a number of its provisions, not least among members of the Joint Committee who had already invested a great deal of time in their own evaluation. Premier Hatfield then returned to the Joint Committee report and this was to become the basis of the *Fisheries Bargaining Act* passed into law in September 1982.

FEATURES OF THE FISHERIES BARGAINING ACT

Whereas the 1981 version read more like a commercial contract and was a credible attempt by bureaucrats to take into account the idiosyncracies of the industry (e.g., Bill 94 proposed that to be certified a bargaining agent prove that its members supplied at least seventy-five percent of one or several species of fish; also that the vote in representation elections be weighted, based on the proportion of the previous year's catch supplied to the primary purchaser), the enacted legislation is a much more traditional piece of labour law. The following features are included in the Act:

- incorporation in the bargaining unit, along with self-employed fishermen, of sharesmen, part of whose remuneration is paid on a share-of-production basis,⁴ but not of wage-earners who can avail themselves of the *Industrial Relations Act*. (Interestingly, the MFU extended membership to wage-earning fishermen in 1980. While this action may have made it look more like a traditional union than one representing commercial interests, some internal organizational conflicts can be expected in the future between these groups)
- the bargaining agent merely has to show that it has the support of the majority in the unit
- a one-man, one-vote formula in representation elections in which at least sixty percent of unit members must vote
- encourages fish buyers to act in a collective fashion, in that the Act gives equal weight to the accreditation of a buyers' organization as bargaining agent, and in that a certification order applies to all buyers in that geographic area. (This feature suggests the influence within the Joint Committee of the major processors who could draw on their experience in Newfoundland where similar legislation had not provided for collective action and where «divide and conquer» strategies had led, so it was said, to unrealistic prices and bankruptcy for even the largest companies.)
- check-off clause permitted
- closed shop permitted
- the right to strike (the term «boycott» is used in the legislation)

⁴ In British Columbia, where there is extensive unionization in the fishery, owner-operators and sharesmen are currently excluded from the protection of the provincial trade union act. In a landmark case in 1972, the B.C. Court of Appeal ruled that the crew of trawlers were in fact co-adventurers and thus could not be defined as employees or dependent contractors. (Mark Fishing Co. Ltd. and the U.F.A.W.U. (1972), 24 DLR (3rd) 585).

THERE ARE ALSO SOME UNUSUAL ASPECTS

- one section, copied almost word for word from the *Industrial Relations Act*, states that «A fishermen's organization and the acts hereof shall not be deemed to be unlawful by reason only that one or more of its objects are in restraint of trade». What makes this so significant is that a series of strikes in the British Columbia fishery in both 1975 and 1978 led to investigations under the *Combines Investigation Act*. Either the courts will have to resolve the constitutionality of the protection from restraint of trade action provided by this section or the federal government will have to clarify the competition legislation to remove any doubt that exists about the validity of collective bargaining by fishermen.
- unit determination is mandated to be (i) by geographic region, corresponding to zones created by the Department of Fisheries for management purposes (Northeastern New Brunswick, Southeastern New Brunswick, and the Bay of Fundy), and (ii) by species of fish. At the time of writing, hearings are being held on MFU applications to be certified as the agent representing those fishing seven different species in the North-East and nine species in the South-East. A succession of adjournments has been encountered as a result of turnover among members of the Fishing Industry Relations Board and because of a request from the Lameque Cooperative for exclusion from the Act on the grounds that coop membership and union membership are incompatible.

THE TEST OF DEPENDENCY

The absence of collective bargaining legislation has long bedevilled and frustrated fishermen's organizations in North America. Reasons for the lack of such enabling legislation can be said to revolve around the dependency issue. In other words, are fishermen self-employed entrepreneurs who can establish a price for their product with any buyer, or are they for all intents and purposes «dependent contractors» selling to buyers who exert spatial monopsony power⁵? If it is the former, then any mutually arrived at collective agreement is always subject to the unwelcome attention of the *Combines Investigation Act* in Canada or the *Sherman Antitrust Act* in the United States. The sparse literature on industrial relations in the fishery, in the U.S. as well as in Canada, has locked horns with this

⁵ For some useful operational examples of this dependency upon buyers, see Charles STEINBERG, *Collective Bargaining Rights in the Canadian Sea Fisheries: A Case Study of Nova Scotia*, Ph.D. dissertation, Columbia University, 1973, especially pp. 172-181.

dilemma⁶. These authors, based on the reality of the industry's structure and the relationship between fishermen and buyers, have come down on the side of the fisherman's right to bargain, for both humane and industry stability reasons. After a long time lag, this perspective is now enshrined in the New Brunswick Act. Yet the earlier arguments were based upon thoughtful assessment of the legal and practical issues by academics rather than upon the participants' own assessment of their situation. The remainder of this paper will attempt to fill some of that void, presenting original survey data which capture the fisherman's views of himself and his world. We want to emphasize that it is not our primary intention to present definitive proof for a particular legal position, nor to go over well-worn case law; rather, it is to present the sentiments of New Brunswick fishermen at one point in time. Still, if perceptions and attitudes are at variance with the legal semantics, then such information may be of importance for organizational and public policy purposes.

In the spring of 1982, questionnaires in English and French were mailed out to every licensed vessel operator in the New Brunswick inshore fishery who was listed in provincial government records. It was stressed in a covering memorandum beneath university letterhead that the study was privately funded and was not being conducted on behalf of a government agency or any other organization connected with the fishery. In all, 552 completed questionnaires were returned, a response rate of 30 percent. We regard this as an excellent response considering the average fisherman's level of education and his notorious distrust of written documentation. Judging by comments that were added to the questionnaire, it is evident that many fishermen saw the survey as an opportunity to put their case before a segment of the general public. To give a brief profile of the respondents, 83 percent were at least second generation fishermen, 95 percent had been involved in the fishery for five or more years, 23 percent have at some stage been employed in a fish processing plant, and 46 percent of those married have a spouse working in the industry.

The legal image of fishermen as it relates to the issue of bargaining rights has been based on the objective fact of boat ownership and on a

⁶ James CRUTCHFIELD, «Collective Bargaining in the Pacific Coast Fisheries: The Economic Issues», *Industrial and Labor Relations Review*, Vol. 8, No. 4, July 1955, pp. 541-556; Stuart JAMIESON and Percy GLADSTONE, «Unionism in the Fishing Industry of British Columbia», *Canadian Journal of Economics and Political Science*, Vol. 16, No. 1, February 1950, pp. 1-11, and No. 2, May 1950, pp. 146-171; Roger RANDALL, «Labor Agreements in the West Coast Fishing Industry: Restraint of Trade or Basis of Industrial Stability», *Industrial and Labor Relations Review*, Vol. 3, No. 4, July 1950, pp. 514-541; Charles STEINBERG, «The Legal Problems in Collective Bargaining by Canadian Fishermen», *Labor Law Journal*, Vol. 25, No. 10, October 1974, pp. 643-654.

prima facie «right of control» test. Nonetheless, to what extent is the sale of fish in the port market really a transaction between independent businessmen? To generate an answer to this question, we will draw on fishermen's own perceptions, firstly concerning their relationship with buyers, secondly concerning their own self-image. Before presenting these findings, however, it is important in interpreting these results to be aware of certain membership and regional classifications to which we will be referring. Each respondent was asked to indicate whether he was a member of the MFU ($n = 216$), and/or a local cooperative ($n = 126$), and/or an association ($n = 168$). Several dozen held multiple memberships in various combinations. On the other hand, 139 fishermen specified that they were not affiliated with any organization. We will also be distinguishing between the three regions referred to earlier — the North-East ($n = 271$, a response rate of 36 percent), the South-East ($n = 209$, 26 percent), and the Bay of Fundy ($n = 72$, 28 percent).

Relationship with Buyers

In terms of their relationship with companies in the local area, 31 percent of those surveyed said fishermen were more dependent, 23 percent said companies were more dependent on fishermen, with 46 percent opting for a balanced mutual dependency. There were, however, interesting variations among regions and groups. There was more consensus in the Fundy that the relationship was balanced (62 percent, which is significantly different compared to the other regions at the .005 level). There was a stronger belief among union members than among non-members that companies were more dependent (30 percent compared to 17 percent, significant at .005). Conversely, 39 percent of the non-affiliated felt more dependent compared to 28 percent of those affiliated with some type of fishermen's organizations ($p < .01$). This finding appears to be related to the presence or absence of other sources of household income. Among those whose wives earned more than one-quarter of household income, 32 percent felt that the companies were more dependent compared to 14 percent of those whose wives brought in no income ($p < .05$). It is interesting that half the union members reported wives working in the industry in contrast with only a third of association members and of those not affiliated with any organization. It is open to speculation, therefore, whether lessened feelings of dependency among union members are a consequence of the sense of solidarity provided by the union or of the greater freedom provided by multiple and varied sources of income.

In response to a more specific question concerning personal dependency on the catch's buyer for supplies and bait, there was also a fairly even distribution, with 43 percent stating that they were totally or fairly dependent and 46 percent describing themselves as totally or fairly independent. There is less of a feeling of total dependency in the Bay of Fundy (10 percent) compared to 19 percent in the North-East and 22 percent in the South-East ($p < .001$). This is partially explained by the fact that the length of the fishing season is longer in the Bay of Fundy since ports are not iced in. Self-reported fishing activity averaged 9.7 months in the Bay of Fundy, 7.5 in the North-East, and 5.9 in the South-East. Moreover, many fishermen in the South-East would appear to be especially strapped financially. Not only is their time involvement curtailed, but they have received more federal subsidies for new vessels than have those elsewhere in the province (61 percent versus 40 percent) which suggests additional repayments on associated loans.

The issue of price is critical to any fisherman, for not only does he have to generate a living income but he also must accumulate sufficient capital to maintain or replace vessel and equipment. In the absence of a preseason agreement, an individual's bargaining power over price is weakened by the perishable nature of the product. It is not possible to withhold a catch until the price goes up nor is there time for an extensive port market search. This is reflected in our finding that 71 percent of respondents stated it was virtually impossible or at least quite difficult to play off one buyer against another in order to get a better price. This feeling was uniform across all regions. Yet there was a considerable difference between regions when the question was posed as to whether the individual was satisfied with the way in which the price is decided. 38 percent of those in the Fundy answered in the affirmative compared to only 13 percent in the North-East and 17 percent in the South-East. This suggests that while there is no more flexibility in outlets for the catch in the Bay of Fundy, the fishermen there feel more fairly treated. The fact that the species fished in that area are intrinsically of greater value also has an impact.

To pursue the issue of fairness, it is obvious from speaking with any group of fishermen that they have felt or still feel exploited by the companies. 67 percent of those located in the North-East reported that processors and buyers in their area had had a reputation for exploiting fishermen, while 54 percent in the South-East and (only) 44 percent in the Fundy region felt this way. There was a somewhat stronger belief among union members (69 percent) than among others that this was so. Concerning the regional differences, it is impossible to assess to what extent antagonism towards the companies is based on ethnic factors. It plays some role,

however. In the Acadian areas of the Northumberland Strait, the companies did become identified with *les Anglais*, and although many companies are now owned or managed by Acadians, the distrust of employers is deeply ingrained. In the Fundy there is not the same sense of exploitation by a «foreign» element within the community, and for this reason, one suspects, both the union and the federal government are viewed there, not as protectors of the local heritage, but as unnecessary constraints upon individual freedom. It is fascinating that while the majority in the strongly Acadian regions support the concept of the government (rather than corporate) administration of the marketing of fish products, only one in eight in the Bay of Fundy backed the idea ($p < .001$).

In summary, while there is undoubtedly less dependency on the companies than there was in the 1920s and 1930s, especially in terms of loans, the survey manifests enough sense of dependency, and a sufficient consciousness of separate interests, to warrant the existence of collective bargaining and supporting legislation. From an organizational point of view, however, it is clear that the conditions are not favourable for the MFU to generate much support in the Bay of Fundy⁷.

Self-Image

On the face of it, the inshore fisherman has full or partial equity in his means of production. Yet it is a rather unusual self-employed person who also draws unemployment benefits⁸. How, then, do the fishermen view themselves? A good starting point is to examine the semantics used by the various fishermen's organizations. The management of the United Maritime Fishermen, the central processing and marketing agency for the cooperatives, prefers to speak in terms of the fisherman as a small businessman. Spokesmen for the various associations also convey an image of the fisherman as an entrepreneur and as a professional. On the other hand, MFU officials contend that the idea of the fisherman as a small businessman is an illusion. In fact, the early organizing literature of the

7 The M.F.U. is well aware of the difficulties which it faces in the Bay of Fundy. It is currently putting its energy into trying to organize the English-speaking fishermen in southwest Nova Scotia, not only because success there would place pressure on the Nova Scotia government to introduce legislation on behalf of the vessel operators, but also because it would provide a model, in terms of a cohort of fishermen and a common fishery, with which the New Brunswick fishermen could identify.

8 The Fishermen's Unemployment Insurance Program exists to supplement and stabilize incomes in the industry, to raise the floor level of the average fisherman's relatively low income. Benefits are paid between November 1st and May 15th and are based on the average value of weekly catches during the fishing season. Under existing regulations fishermen who are active during the winter months are denied coverage.

union dealt in class terms and used such phrases as «Fisherman and Workers Unite». Which of the representative groups is more correct in its assessment? One open-ended question casts some, though not totally conclusive, light on the debate. Respondents were asked to «name another occupation to which you would compare yourself on a fairly equal basis». Slightly over half of the fishermen (n = 293) inserted one sort of comment or another. Putting aside those which defy categorization, it was possible to identify five major groupings. In rank order they were farmer (115), none (66), outside labouring, such as lumbering or construction (38), skilled craftsman, such as mechanic or carpenter (18), and inside labouring, such as plant worker (9). Two individuals mentioned a store-owner as a comparative occupation and another identified a small business, hardly sweeping support for the official positions of the associations and coops. In the context of the other categories mentioned, many fishermen would seem to view themselves as proprietors who perform arduous manual labour.

Respondents were also asked which social class they regarded themselves as belonging to, and they were given four options. Overall responses were working class 42 percent, lower middle class 20 percent, middle class 5 percent, and 33 percent who did not believe that there are separate classes. What is particularly interesting is that there was no difference at all between members of the different fishermen's organizations, nor were there appreciable differences between the regions. (English-speakers, in fact, showed more of a tendency to see themselves as working class). These findings⁹ suggest lessons for all organizations. The MFU will need to tone down some of its more radical rhetoric, and there is evidence that it has begun to be more sensitive to the expectations of some of its members and potential members. On the other hand, association officials and coop management will have to be conscious of the fact that many of their respective members hold a class view of the world and the industry.

INAPPLICABILITY OF THE TRADITIONAL INDUSTRIAL MODEL

The above evidence, we believe, attests to the propriety of and need for collective bargaining in the North American fishing industry. On the other hand, we would warn against any attempt by a union to impose an in-

⁹ Other related findings: Those whose wives are not employed have somewhat less of a tendency to view themselves as working class. This suggests that many of these fishermen are doing well enough not to need a second income. It is also apparent that those who are engaged in another occupation during part of the year or simultaneous with fishing, particularly those who spend more time in the other occupation than in fishing, are less inclined to see themselves as working class.

dustrial model upon the fishery. This would be unwise for three major reasons. First, there is an inordinate fear of strikes among fishermen which has provided a banner under which association officials in the Maritimes have opposed further organizing incursions by the MFU. Even the majority of union members do not support the idea of a strike. In our survey only 36 percent of unionists were in favour of a strike «if the situation demanded it». There are several very practical concerns — the seasonality (migratory and regulated) of the stock, the substitutability of many species from the off-shore sector, the fact that the inshore processing plants to be struck employ large numbers of family members, the jeopardizing of winter unemployment benefits, and the difficulty of enforcing a boycott given the length of the coastline. Second, there has been an apparent improvement in perceived self-image. Of those surveyed, 43 percent felt that the status of fishermen in the eyes of the public had increased in recent years, 40 percent felt it to be the same, and only 17 percent felt it had decreased. What is significant is that over half of the Acadian fishermen perceived an improvement in their public image. The irony is that this enhancement in occupational stature¹⁰ is associated with the rise of the MFU and the feeling of collective strength provided, but it also may explain why Acadians feel less working class than their English-speaking colleagues. A third reason is that a union, along with other agencies speaking for fishermen, must be concerned with actively influencing the management of the industry. This is in part a consequence of the difficulty in negotiating prices as distinct from bargaining over wages in less volatile economic sectors, in part because of the financial investments made by fishermen in their vessels, and also because of the pervasive impact of regulations, especially licensing and quota restrictions. Indeed, according to the MFU's president, the *main* benefit of a union «is having a voice in the management of the fish stock»¹¹. This might, at first glance, appear to be an odd statement coming from a union leader. It should be remembered, however, that such co-management is encouraged by the federal government and is manifested in the existence of trilateral advisory boards. Moreover, a concern with the distribution of quotas or with improving the quality of the landed catch is perfectly appropriate given the implications for income level.

¹⁰ It should be noted that the actual labour market is much larger for the English-speaker. Many who left the fishery during the past two decades also left the region, emigrating to Ontario or Alberta. There was no such safety valve for the Acadians. They had to make the best out of the local conditions. Any improvement in their sector of the industry was thus more keenly felt and more meaningful.

¹¹ Interview with Guy Cormier. Cap Pele, New Brunswick. August 13, 1980.

CONCLUSION

In his 1975 article, Steinberg challenged the traditional assumption found in the economics literature that collective bargaining in the fishery was pointless since open access, common property resources yielded no rent, countering that this view ignored processor and buyer monopsony in Atlantic Canada¹². We would add that the «no rent» argument is inapplicable anyway, especially to the Canadian fishing industry in which the licensing and quota policies developed in more recent years have restricted entry and reduced total effort. In other words, the government itself has performed the role that Selig Perlman contended was the *raison d'être* of a trade union¹³. The effect of regulatory policies has been to reduce the competition among labour so that the marginal enterprise does not set wage standards. With fewer units of «labour» in the fishery, it thus becomes possible for an organization representing those fishermen to exact a higher price for that labour.

Not only can a theoretical case be made that collective bargaining ought to be allowed as a mechanism for distributing the benefits of the industry, but empirical evidence has been presented in this paper which suggests that it is also a practical necessity. There is every indication that an adversarial relationship does, in fact, exist in the New Brunswick fishery. There is widespread dissatisfaction with the methods by which price is determined and nearly a third of those surveyed saw fishermen in a vulnerable position in their dealings with buyers. There are no earlier studies against which we can compare these findings, but anecdotal information suggests that fishermen are somewhat less dependent on the companies than in the past. This may, however, reflect the expansion of plant work and the existence of additional sources of household income including government transfer payments, rather than a change in the basic relationship between the primary and secondary sectors. The length of the fishing season, and associated higher income levels, serves to free some from a sense of dependency, and helps to explain why there is no perceived need for collective bargaining legislation in the Bay of Fundy. Many others, nonetheless, whether unorganized or already organized, do deserve the protection of the law.

¹² STEINBERG, pp. 213-214.

¹³ Selig PERLMAN, *A Theory of the Labor Movement*, Macmillan, New York, 1928.

We can now expect other coastal provinces to examine the experience with the New Brunswick legislation very closely¹⁴. One aspect that outside observers will want to monitor is the workability of the dispute resolution procedure. The formal sequence of conciliation officer, conciliation board, and (if agreed to in advance by both parties) binding arbitration, was taken directly from the New Brunswick *Industrial Relations Act*. Yet even under the operation of this general piece of labour law, the three-step process has proven to be cumbersome and time-consuming. As a consequence, applications for conciliation board hearings are usually turned down by the Minister of Labour who, having the option to utilize mediation at any time, appoints instead a mediator, often the original conciliation officer. Our position is that the conciliation board stage is completely inappropriate when applied to the fishery where the season for a particular species can be as short as two weeks or two months. Under these special circumstances it would make more sense to go straight to mediation, even as the first step, and we will probably begin to see this in the actual administration of the Act. Whatever happens in the future, we have already witnessed a radical departure from past practice in the Maritimes. While there will continue to be different mechanisms for representing the aspirations of fishermen, the existence of the Maritime Fishermen's Union, and its success in shaping the conditions necessary for the passage of collective bargaining legislation, has markedly altered the structure of the relationship between the primary and secondary sectors of the fishing industry.

14 Granting fishermen the right to bargain collectively appears to be firmly the domain of the provinces. A 1976 case taken to the Federal Court of Appeal — B.C. Packers and the U.F.A.W.U. (1976), 64DLR (3rd) 522 — found as unconstitutional Section 107 of the Canadian Labour Code which had extended to fishermen the right to bargain. Although some have found fault with this interpretation (e.g. STEINBERG, *A Contribution to the Development of a Social Policy for the Maritimes Fishermen* Discussion Paper, Task Force on Atlantic Fisheries, September 1982), it seems that, in the short run at least, collective bargaining rights will have to be achieved through provincial action. Reviews of the issue have been conducted by the Nova Scotia Department of Fisheries in 1980 and by the Weeks Commission of Enquiry in P.E.I. which made its report in 1981. The fact that no legislation has yet eventuated in these two provinces has more to do with the relative weakness of the M.F.U. and the relative strength of the various associations than it has with any doubt over the legitimacy of provincial legislation.

La négociation collective dans l'industrie de la pêche dans les Maritimes: développements récents

La débâcle de l'industrie de la pêche en 1974 et l'extension de la compétence canadienne à la limite de 200 milles des côtes en janvier 1977 ont été les événements majeurs qui ont conduit à une participation plus active de la part du gouvernement fédéral. Des quotas et une politique de permis plus rigoureuse ont été instaurés, le ministère des Pêcheries fut décentralisé par la nomination d'administrateurs régionaux et de fonctionnaires préposés aux services communautaires afin de permettre aux pêcheurs d'obtenir un rendement accru au niveau local et, enfin, le ministre Leblanc encouragea la syndicalisation comme moyen de donner une voix plus forte aux pêcheurs dans les questions se rapportant à l'industrie. Le Syndicat des pêcheurs des Maritimes (Maritime Fishermen's Union) fut formé en mars 1977 dans le but précis de syndicaliser les pêcheurs côtiers. Le Syndicat obtint l'adhésion de 900 des 1 200 capitaines à plein temps entre Caraquet et Cape Tormentine et il implanta des sections locales dans les trois provinces Maritimes. Il réussit aussi à signer quelques ententes de gré à gré en matière de fixation des prix, mais ses efforts portèrent surtout sur l'obtention d'une législation relative à la négociation collective. De fait, la *Loi sur la négociation collective dans l'industrie de la pêche au Nouveau-Brunswick* (New Brunswick Fisheries Bargaining Act) fut promulguée en septembre 1982. Elle s'inspirait de la *Loi sur les relations du travail provinciale* (Industrial Relations Act), quoiqu'une de ses caractéristiques inusitées soit l'établissement obligatoire d'unités de négociation par entité géographique correspondant aux zones d'administration du ministère des Pêcheries (Nord-ouest du Nouveau-Brunswick, Sud-est du Nouveau-Brunswick et la baie de Fundy), et aussi par espèce de poisson. Le Syndicat a demandé l'accréditation pour représenter les pêcheurs de sept espèces différentes dans le Nord-est et de neuf espèces dans le Sud-est.

Des stipulations juridiques relatives à la situation de dépendance des pêcheurs ont longtemps privé les associations de pêcheurs de négocier au nom de leurs membres parce que, considérés comme des commerçants aptes à vendre leurs prises à n'importe quel acheteur, ils ont toujours été exposés à l'accusation de restreindre le commerce en vertu de la *Loi relative aux enquêtes sur les coalitions* (Combines Investigation Act). Pour déterminer s'il s'agissait là d'un fait juridique ou d'une simple fiction, on peut soumettre les constatations révélées par une enquête faite en 1902 chez tous les capitaines de bateaux côtiers inscrits au répertoire du gouvernement du Nouveau-Brunswick. Le questionnaire a été adressé tant en français qu'en anglais et 552 d'entre eux furent remplis et considérés comme valables. Il en ressort ce qui suit. 83 pour cent d'entre eux exerçaient le métier de pêcheurs depuis au moins deux générations, 95 pour cent étaient engagés dans la pratique de la pêche depuis cinq ans ou plus, 23 pour cent avaient travaillé à un titre quelconque dans une usine de traitement de poisson et 46 pourcent étaient des pêcheurs mariés et ont déclaré que leur épouse travaillait dans cette industrie, 216 étaient membres du Syndicat, 126 d'une coopérative locale et 168 d'une association quelconque. Quelques-uns étaient mem-

bres de plusieurs groupements et 119 indiquaient qu'ils n'appartenaient à aucune organisation. La région du Nord-est a fourni 271 réponses, le Sud-est, 209 et la baie de Fundy, 72.

Une série de questions traitaient du type de relations avec les acheteurs. 31 pour cent avaient l'impression que les pêcheurs étaient subordonnés aux entreprises au niveau local, 23 pour cent estimaient que c'était les entreprises qui dépendaient des pêcheurs, tandis que 46 pour cent considéraient que leurs rapports étaient équilibrés. Dans la région de la baie de Fundy, on était plus d'accord sur l'opinion qu'il y avait égalité de pouvoir entre les deux groupes, en partie parce que la saison de pêche est plus longue et parce que un plus grand nombre d'espèces utilisables sont disponibles, en partie parce qu'on y ressent moins le poids de l'exploitation passée. De plus, tandis qu'il existait un grand mécontentement touchant la façon dont les prix sont fixés d'une manière générale, cette insatisfaction était moins marquée dans la région de la baie de Fundy. En réalité, les sentiments d'opposition envers le gouvernement et le syndicat semblaient être plus prononcés que l'antagonisme contre les entreprises. Enfin, les pêcheurs qui n'étaient pas membres du syndicat donnaient l'impression d'une plus grande dépendance que ceux qui en faisaient partie. Toutefois, l'étude ne permet pas de conclure que l'appartenance à une organisation renforce le sentiment de contrôle. Le contraire peut être aussi vrai.

Une deuxième série de questions portaient sur la perception que se font les pêcheurs de leur propre image. En résumé, ils se considèrent comme des propriétaires qui accomplissent un travail manuel pénible. Une minorité importante d'entre eux estiment qu'ils font partie de la classe ouvrière, bien que plusieurs notent une amélioration récente de leur image dans la population et de leur statut professionnel (surtout chez les Acadiens) et considèrent le recours à la grève inapproprié et impossible. Une des conséquences en est que le Syndicat doit modifier sa rhétorique radicale et continuer à s'impliquer activement comme partenaire important dans la gestion de l'industrie. D'autre part, les dirigeants d'associations et les gérants de coopératives ont besoin d'être sensibilisés au fait que beaucoup de leurs membres conçoivent le monde et l'industrie selon l'esprit de classe et que, en conséquence, l'utilisation des termes «professionnalisme» et de «petite entreprise» peut s'avérer illusoire.

On peut conclure que cette enquête, la première du genre, fait assez ressortir un sentiment de dépendance parmi les pêcheurs et une prise de conscience suffisante de leurs intérêts distincts pour justifier le gouvernement de développer les droits de négociation. D'autres provinces côtières devaient étudier soigneusement l'expérience de la loi du Nouveau-Brunswick afin de mettre au point leur propre législation.