

# Termination of the "Protocol"

By Isaac A. Hourwich

THE famous "Protocol of Peace," the pet child of the uplifters, has been terminated by the Cloak Manufacturers' Protective Association. *The Independent*, whose editor-in-chief was one of the arbitrators under the protocol, thinks that it "is unquestionably the most important attempt yet made in the United States to substitute law for war in industrial relations. It ranks as a measure of industrial peace with the compulsory arbitration law of New Zealand and the compulsory investigation law of Canada. . . . The protocol has already been of inestimable benefit to both employers and employees. It has been the subject of numerous magazine articles and of a sympathetic investigation and report by the United States Government. It has been copied in other cities and trades. It has abolished the brutality of the lock-out and the violence of the strike. . . . It has bettered the condition of the workers."

A similar view is taken by *The New Republic*, one of whose editors has also served on the Board of Arbitration under the protocol. According to that exponent of the "graceful and calisthenic way to struggle against the established" (as Mr. Amos Pinchot has cleverly characterized it), the protocol "became one of the most significant and hopeful experiments in our whole industrial laboratory." Under it "wages (have been) raised, labor conditions improved, and thousands of grievances amicably settled."

And yet, turning to the official press of the Union, we learn that its meetings following the termination of that "hopeful experiment" were "made up of happy members. Happy at having got rid of an instrument that took from them the only method for getting redress without giving them anything in return for it. At the Joint Board the meeting seemed as though it were celebrating the delivery of the workers from the bonds of wage slavery. A holiday spirit prevailed, the delegates congratulating each other upon their newly regained industrial freedom. . . . Every mention of the death of the protocol caused such applause that the chairman asked that a letter of thanks be sent for it to the Association."

In the same issue of *The Ladies' Garment Cutter*, from which the preceding report is quoted, we find the following editorial comment, which radically dissents from the optimistic view taken by the friends of the protocol:

"As for *the protocol*, the Union does not shed any crocodile tears for the instrument that kept

*them in subjection for five years without improving their conditions one iota.*

"The cutters of Local No. 10 can especially testify to the fact that for the last 5 years their wages have not only not increased, but on the contrary decreased. There are more cutters to-day receiving wages below the scale than in 1911. . . .

"For nearly three years the organization clamored for an increase of wages to meet the shorter seasons and the increased cost of living, and with what result? An investigation, a compilation of statistics, a promise, but no money. . . . But statistics cannot be eaten, and therefore cutters, hundreds of them, were starving."

The only craft receiving an increase of wages, as a result of the statistical investigation, was the pressers, who constitute less than one-fifth of the total force employed in the industry.

On the other hand, however, the piece workers, who number about three-fourths of the whole force, complain that their wages have actually declined under the protocol. The reason for this decline can be gleaned from the editorial of *The New Republic*, quoted above.

"The manufacturers . . . . claim 'the right to discharge,' . . . . 'the right to reorganize their shops.' But all these phrases come down to a matter of dollars and cents and exploitation. . . . The difficulty is inherent in the industry as at present organized. Hundreds of shops make thousands of styles of garments. There is no one standard of wage payment for all these different styles, and each manufacturer is obliged to come to an agreement with his employees over the price which he is to pay for the making of each style. In these daily agreements his employees are represented by their committee. . . . If the manufacturer is to have the right arbitrarily to discharge such union representatives, all collective bargaining will cease. The employer would only have to state the price (which means the wages) he is willing to pay, and if his terms were not accepted, *he could throw the committeeman out of his job and oblige his employees to select a more amenable representative. Such a situation would be intolerable.*"

We further learn that under an award rendered "by the Board of Arbitration in its last session in January . . . . the employer enjoys the right to discharge, but such discharge is subject to review by a disinterested and impartial tribunal, and may be set aside if unfair, unreasonable or discriminatory. Administrative control within the factory is retained

by the employer, but safeguards are given to the union to prevent such control being used to break down collective bargaining."

It thus appears that the employer not only "claimed," but actually "enjoyed" the right to discharge, and that prior to last January, i. e., for over four years from the adoption of the protocol, "such discharge" could not "be set aside if unfair, unreasonable or discriminatory." This being actually the case it follows by inference that whenever "his terms were not accepted, he could throw the committeeman out of his job." This "intolerable" situation existed under the protocol until last January, according to *The New Republic's* own testimony, and yet it makes a general claim that wages have been increased. This is an illustration of the "graceful and calisthenic way" of making public sentiment for the protocol, which the membership of the Union regarded as an instrument of oppression.

To be sure, the editorial opinion of a labor paper is open to suspicion of bias. Moreover, five years of training under the protocol have been too short a period to imbue the union membership with the idea of "social peace," based upon "partnership of capital and labor." We have, however, the testimony of one who stands above suspicion of partisanship, having been chosen by both sides to administer the protocol in the work-a-day relations between the employers and the employees. In a letter made public by the chairman of the Committee on Immediate Action, under date of May 27, 1914, we find the following analysis of "the dangers . . . . neither fanciful nor unreal," to which the protocol is exposed:

"Under the mechanism of the protocol, nearly every day brings us face to face with a new crisis; . . . . we escape from one danger only to be confronted on the morrow with another; and . . . . we have no logical or rational method given us to meet and solve these difficulties."

The source of all trouble is, according to him, the present method of settlement of piece work rates, which "arrays the interests of the employer and workers against each other constantly, so that a perpetual state of antagonism is engendered. And the price operation is a daily occurrence in many factories, so that the irritation is constant and price-making becomes a chronic running sore. . . . All of the complaints of discrimination, and most of those relating to unequal distribution of work and unjust discharge are directly traceable to it."

To the preachers who proclaim that the protocol was made to bring peace instead of war, he says that "good purposes are not enough to operate a mechanism intended to stand a great economic strain." The present "impossible situation begets constant strain and conflict":

"It generates strife instead of peace, conflict instead of co-operation. . . . It poisons the waters of amity at their source, and its toxic miasmas extend into all the ramifications of the stream, carrying its virulent and hate-breeding poisons into the remotest parts of the system."

It is quite evident that the protocol has failed of its purpose to establish peace, but on the contrary, we are told, it has converted "*otherwise genial and friendly natures into fighters.*"

Why has the protocol failed? If the mechanism originally provided by it for regulating the relations between the employers and the employees was imperfect, why was it not improved in the light of experience?

I am not prepared to maintain as a general proposition that from the date of these presents until the day set for the "ushering in" of the "Cooperative Commonwealth," there can be no other way of carrying on the class struggle between Capital and Labor, except through strikes, lockouts, etc. On the contrary, with the extension of State Socialism (or State Capitalism, which is synonymous with State Socialism), some method will undoubtedly have to be found to regulate the mutual rights and duties of the State, as employer, and the public servants, as employees. The doctrine of State slavery, promulgated by President Roosevelt in the case of the Government Printing Office thirteen years ago, will not be accepted as a final solution. No satisfactory solution of the problem is possible, however, without a frank recognition of the plain fact that the relation of employer and employee is a bipartite contract in which the interest of one party may eventually conflict with the interest of the other. The compulsory arbitration schemes so far tried attempt to provide a method for the settlement of such conflicts. The protocol, however, borrowed from those schemes only their compulsory feature, but not the machinery for arbitration. Strikes were prohibited, but the Board of Arbitration refused to arbitrate individual disputes. This attitude is justified by an original theory which is voiced in the editorial of *The New Republic* quoted above.

According to that theory, "the proceedings" before the agency for the consideration of grievances must "be rather in the spirit of mediation than in that of litigation." At the same time, however, "the right to strike a shop . . . . must . . . . be given up."

The editorial writer overlooks the fact that this ideal has been in practical operation during the five years of the existence of the protocol. The machinery for "mediation" was very elaborate, there were the Board of Grievances consisting of an equal number of representatives of each side, and the "clerks" of the Union and the Manufacturers' Association, but, as we have seen, according to com-

petent testimony, this scheme brought both sides "nearly every day . . . . face to face with a new crisis." In order that mediation may bring satisfactory results, each side must be at liberty to reject the offer of the mediators, in case it unduly favors the other side, and to resort to hostilities. But when the employees are prohibited from striking, while the employer is practically free to declare a lockout, provided he call it "reorganization of the system," mediation in practice helps only the employer.

In theory, the correctness of this conclusion was recognized by the patron saint of the protocol, Mr. Louis D. Brandeis. In an interview by Mr. Treadwell Cleveland, which was published in *La Follette's* of May 24, 1913, he was quoted as follows:

"Do you think the trade unionists are justified in their uncompromising demand that the right to strike shall under no circumstances be either abridged or suspended?"

"They are entirely justified. *Labor cannot on any terms surrender the right to strike.* In last resort, it is its sole effective means of protest. The old common law, which assures the employer the right to discharge and the employee the right to quit work, for any reason or for no reason in either case, is a necessary guaranty of industrial liberty."

"You are, then, opposed to compulsory arbitration, since it involves penalizing the striker?"

"Absolutely. Not only that, but *I do not approve even of compulsory investigation, with a penalty for a walk-out during the period of inquiry.*"

Still, as the chairman of the Board of Arbitration under the protocol, he himself has firmly upheld the rule that under no circumstances may the employees of a shop quit work in a body,—“not only that,” but “a penalty for a walk-out” has been devised by him, in the form of an amendment to the protocol, which prohibits an inquiry into the dispute so long as the strikers are out.

When the patience of the workers in some shop was exhausted by a long series of wrongs which could not be redressed by mediation, and they were provoked into a strike, it was the duty of the Union officials under the protocol to break the strike.

A year and a half ago the rank and file of the Union rose in revolt against this “organized scabbery,” to use the phrase coined by the late Daniel De Leon. To save the protocol, the Board of Arbitration grudgingly conceded the workers’ demand—which it had shortly before that denied by a unanimous decision—for a tribunal vested with the authority to make awards in individual disputes. A Committee on Immediate Action was created, with an umpire as presiding officer, for the hearing and determination of disputes involving only questions of fact. Questions of “Protocol Law” were to be passed upon by the Board of Arbitration, whenever,

in its opinion, they affected the interests of either organization as a body. Discussing this plan before it went into effect, I ventured the opinion that “in the most important cases . . . . the reform granted by the Board of Arbitration will bring no relief,” for the reason “that a technical lawyer can raise some point of law in nearly every case, and then the Committee on Immediate Action will be without jurisdiction to try the case.”<sup>1</sup>

The experience of the Chairman of that committee has fully justified this forecast.

It is worth noting that the language of the Protocol indicates no intention of the parties to confine the methods of adjustment of disputes solely to mediation. Section 16 expressly invests the Board of Arbitration with jurisdiction in “any differences . . . . between any of the members of the Manufacturers and any members of the Union.” But the bias of the Board in favor of mediation prevailed over the letter and the spirit of the Protocol: the Board held the nature of its authority to be quasi—legislative, not judicial. “Raise no issues!” became the slogan of Protocol diplomacy, which did not prevent the mediators for the Manufacturers’ Association, however, from raising an issue of principle whenever the Union complained of discrimination, wrongful discharge, etc. The absence of a judicial tribunal for the determination of such issues barred the way to peaceable improvement of the Protocol by a body of precedents which might have grown out of the daily controversies between employer and employee in the shop. The legislative board, on the other hand, being an “honorary” body, whose members were busy men dividing their time among a variety of public and private activities, could not give prompt attention to the most urgent problems of the Union. By way of illustration, I shall cite one example.

Payment under the Union scale was by no means uncommon in Protocol shops. This fact has been established by the statistical investigation ordered by the Board of Arbitration.<sup>2</sup> On August 3, 1913, the Union submitted to the Board the demand that in such cases the employer should be required to refund to the Union the full amount of the deductions from the wages of his employees. Up to the end of January, 1914, this question had not been decided by the Board, and as far as I am informed, it was still pending last month, when the Protocol was terminated by the Manufacturers’ Association.

What then induced the Union leaders to put up with these conditions? It was the belief that the Protocol was maintaining the Union. It was claimed by the leaders that the majority of the cloakmakers did not recognize the advantages of organization, it was therefore necessary to coerce

<sup>1</sup> *The New York Call*, February, 15, 1914.

<sup>2</sup> Wages, &c., in the Cloak, Suit and Skirt Industry. Bulletin of U. S. Bureau of Labor Statistics, No. 147, p. 29.

them into joining the Union, which would have been impossible without "the friendly cooperation" of the Manufacturers' Association. In return for this cooperation the machinery of the Union was used by the manufacturers to repress every spontaneous manifestation of protest in the shops. Is there any wonder that the workers lost faith in the ability of the Union to improve their condition? The official organ of the Union complained that the members displayed no interest in Union affairs. The Union meetings were not attended. At the last election for secretary of the Operators' Local, with a membership exceeding 10,000, only 62 votes were cast.

It should have been clear to the leaders, who stand high in the councils of the class-conscious Socialist Party, that a labor union which existed merely through the "friendly cooperation" of the employers could not endure. Indeed, when the rebel spirit in the shops appeared to have been thoroughly curbed, the usefulness of the Protocol to the employers came to an end. The sensation produced by the indictment of a number of union officials on the charge of association with gansters furnished the manufacturers the welcome opportunity to rid themselves completely of "union interference."

It goes without saying, the union officials and advisers who have upheld the Protocol to the last, have a different explanation for the action of the Manufacturers' Association. They claim to have inside information that the Board of Arbitration was about to render a decision taking away from the employer the right of arbitrary discharge, and that the Association having been tipped off to that effect hastened to terminate the Protocol. Bearing in mind Mr. Brandies' views, quoted above, on the right of discharge, one may well question the accuracy of that advance information. Only last January the Board of Arbitration decided that no "regular" employee could be discharged without cause. The Association immediately raised the issue that this decision by implication recognized the authority of the manufacturer to discharge at pleasure all irregular employees, who are in the majority. The Union strongly objected to this idea, because it was bound to engender antagonism of interests within the Union, which would lead to its ultimate disruption.

Still, if we are to take the apocryphal story whole, the moral of it is that the Protocol was maintained by the Manufacturers' Association only so long as it did not interfere with the autocratic power of the employer in the shop—the moment it attempted to restrict his autocracy it came to an end. This seems to me to carry the strongest condemnation of the whole scheme.

A characteristic explanation of the failure of the Protocol was given by President Schlesinger of

the International Ladies' Garment Workers' Union to the reporter for the Yiddish "Forward" (a paper supporting the S. P.). According to this official, the whole trouble is due to a change in the leadership of the Manufacturers' Association. In the beginning its leaders were "men with a broader outlook, with what may be called 'capitalistic fairness,' men who understand, indeed, their own interests and defend their own interests, yet are at the same time possessed of dignity and self-respect; their word is a word, an agreement with them is an agreement. Those are men who are ready to sacrifice their interest, if they believe that their honor demands it. In those first years, the atmosphere of the Association was freer and clearer. The counsel for the Association, Mr. Julius Henry Cohen, at that time viewed the Protocol with other eyes, he interpreted it more honestly, more fairly, in the same spirit as those leaders of the Association. Lately, however, great changes have taken place in the Association. The administration has passed into the hands of other manufacturers with whom the Union has always had trouble."

In point of fact, a cursory inspection of the records of the Union would show that all the issues upon which the Protocol was wrecked date back to the good old times when those benevolent manufacturers were in full control. Yet if the praises sung to them by the Union president were not mere diplomatic flattery for a purpose, what would they prove? That the success of the Union under the Protocol depended upon the pleasure of the Manufacturers' Association. Admission to the Association, however, being open to any solvent manufacturer, the hostility of its present leaders to the Union merely reflects the attitude of the majority of the manufacturers. If the Protocol worked well only because the former leaders of the Manufacturers' Association were "ready to sacrifice their interests" for the good of their employees, it must be clear that it was built on sand.

Mr. Schlesinger would feel offended if he were classed with the Gompers type of trade union leaders. He was for many years a devout member of the S. L. P., and has been an active member of the S. P. since its organization. He is not tainted by any Revisionist heresy and always votes a straight ticket. Yet, with all his orthodoxy, he is quite unconscious of the true Civic Federation ring in his utterances on the relations between the Union and the Manufacturers' Association. I should not have quoted him if he stood alone with his views. But he is representative of a new type of labor leaders who, after learning their catechism in the S. L. P., the S. P., the I. W. W., or in some Anarchistic group, have taken a practical course in the training school of the Protocol.