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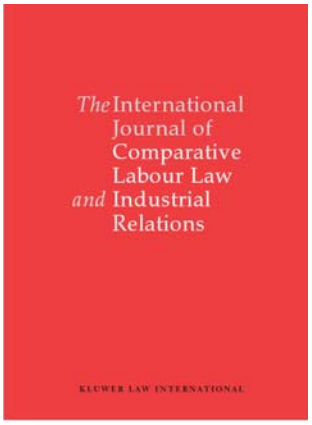

Il lavoro nell'edilizia: un cantiere aperto

Dossier a cura di Simona Lombardi

L'ordinamento giuridico delle costruzioni
Brevi riflessioni a proposito del lavoro in edilizia

di Antonio M. Orazi

Il sistema delle relazioni intersindacali che si è sviluppato nel settore delle costruzioni italiane nella seconda metà del novecento, non senza retaggi nella prima metà, può essere definito un ordinamento giuridico, sia che ci si voglia riferire alla lezione di Santi Romano, sia che ci si riferisca agli echi che di essa si sentono, dopo la parentesi dell'ordinamento corporativo, in altri autori che, come Gino Giugni, si sono espressamente occupati di questioni sindacali e del lavoro.
E, per quanto un riferimento a quel capitolo della filosofia del diritto intitolato all'istituzionalismo o, meglio, al realismo italiano, possa sembrare eccessivo, se non proprio inutile, serve a dire che quella di cui parliamo è una vicenda italiana, in tutto e per tutto, un frutto del *volksgeist* nostrano. Uno spirito benevolo e concorde che, in tutte le stagioni del secondo novecento, ha informato le parti in gioco e continua ad informarle e che, recentemente, ha destato l'interesse non soltanto degli studiosi ma anche degli operatori degli altri settori, tradizionalmente più legati alle logiche della contrapposizione, con le connesse venature, sempre più sbiadite, di lotta di classe.
Del resto nelle costruzioni la catena di montaggio non c'è mai stata, anche perché i sistemi di prefabbricazione non hanno mai avuto molto spazio da noi; ogni lavoro è un capolavoro, nel senso di prova d'autore; l'operaio massa non è mai stato presente nei nostri cantieri e, presumibilmente, non lo sarà più.
Infatti i muratori non prestano mai soltanto le loro braccia ma, essendo tutti, chi più chi meno, in possesso di un mestiere, prestano sempre anche la loro intelligenza e lo sanno: è questo che fa la differenza.
Non a caso di recente si poteva leggere, dalle confessioni di un metalmeccanico, da poco pensionato, anzi prepensionato, di una azienda presumibilmente fordista: per trent'anni mi hanno pagato soltanto per le mie braccia mentre, allo stesso prezzo, avrebbero potuto avere anche il mio cervello.
Nelle costruzioni questo non succede, non può succedere.
Anche sociologicamente parlando un imprenditore edile è, ed è sentito dai suoi operai, pur quando sia diplomato o laureato, molto più vicino di qualunque altro imprenditore, salvo i rari casi di grande impresa, senza contare che molti sono gli operai divenuti imprenditori edili.
Forse se, nel 1919, coloro che dettero vita alla prima cassa edile non avevano letto "l'ordinamento giuri-

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dico" di Santi Romano, pubblicato inizialmente nel 1917 dal Bollettino della Scuola Normale di Pisa, per quanto preoccupati dalle prime leghe operaie erano forse guidati da una idea ontologicamente corporativa, di salvaguardia del mestiere.

Vigilanza sul lavoro degli operatori

E con la stessa idea le casse edili riprendono ad operare nel dopoguerra con lo scopo di erogare un trattamento di disoccupazione, che poi sarà sussunto dallo Stato.

E questa idea, va detto a merito di tutti i sindacalisti che, nel tempo, a vario titolo e a vari livelli hanno gestito le relazioni sindacali nel settore, è sempre stata un'idea comune a tutti.

Dagli anni cinquanta, quando le casse edili, poi le scuole edili, poi anche i comitati per la sicurezza e l'ambiente di lavoro sono diventati istituti contrattuali, attraverso la istituzione e la gestione a livello locale di tali enti è cominciata una storia che continua ancora oggi, una storia del diritto vivente, quasi un romanzo di tante persone diverse, ma tutte protagoniste.

Una storia con molti capitoli; una storia in cui, come nella storia dell'architettura, taluni schemi costruttivi nascono al nord e poi si diffondono al centro e al sud in un certo arco di tempo; una storia che non può essere ridotta nelle poche righe di un articolo ma che, semmai, andrebbe esplosa in tutte le oltre cento realtà provinciali in cui, oggi, si articola il sistema, anche recuperando i contributi che molte di queste realtà hanno raccolto negli anni scorsi, celebrando i loro quarantennali.

Una storia comunque autentica e, per certi versi, curiosa anche dal punto di vista giuridico, inteso nel senso di diritto positivo, che ha portato una associazione non riconosciuta, come può essere definita la cassa edile, in base al codice civile, ad essere citata dapprima dall'art. 18 della legge n. 55/1990, relativo al subappalto nei lavori pubblici, come destinataria di denunce obbligatorie, da cui derivava la regolarità della posizione del subappaltatore e dell'appaltatore nei confronti della stazione appaltante.

E, oggi, è questa stessa associazione non riconosciuta che, in base alla legge nazionale, è deputata al rilascio, anche in nome e per conto di INPS e INAIL, di quel documento, il DURC (documento unico di regolarità contributiva, introdotto in termini generalizzati dalla riforma Biagi), da cui dipende la stessa regolarità urbanistica della costruzione e, in base a talune leggi regionali, tra cui quella toscana, l'agibilità della costruzione realizzata.

Non so se gli studiosi del diritto pubblico si siano occupati dell'inquadramento dogmatico di una simile fattispecie, ma posso capire bene il loro imbarazzo; i privati esercenti pubbliche funzioni li conoscevamo bene, ma nel nostro caso il legislatore è andato oltre la tradizione, lo ha fatto opportunamente, ma lasciandosi dietro qualche falla.

vigilanza sulla sicurezza e l'ambiente di lavoro dei cantieri

Obiettivamente va detto che, seguendo ancora una volta la lezione di Santi Romano, dovrebbe essere inammissibile pensare ad una lacuna dell'ordinamento giuridico ma, considerando che la nostra Costituzione è, diversamente dallo Statuto albertino, rigida e contiene uno specifico articolo sulla estensibilità *erga omnes* della contrattazioni sindacale, inapplicato per ben note ragioni e il cui tentativo di aggiramento è già stato sanzionato dalla Corte Costituzionale, ai tempi della legge Vigorelli, qualche dubbio sorge.

Anche se tutto il D. Lgs. n. 276/2003 è stato costruito sul rinvio alla contrattazione sindacale, per la definizione di una ampia serie di schemi operativi dei nuovi istituti, e ciò non ha dato adito, malgrado tutta la preconcetta ostilità riguardo alla legge Biagi, ad eccezioni serie di incostituzionalità, anche perché non si tratta di una novità, nel nostro caso la cassa edile è assunta dall'ordinamento giuridico nazionale come entità in sé, non meglio qualificata, il che è stato, forse, un po' ardito sul piano della tecnica normativa.

Sul piano della prassi, peraltro, a livello sindacale, si richiama spesso l'attenzione sulla destrutturazione del sistema costruttivo e, correttamente, si pone il problema della qualificazione degli operatori autonomi, ora anche extracomunitari, senza rammentare che l'edilizia è il settore produttivo in cui il cuneo contributivo è più ampio, come pure che le imprese edili hanno creato e mantengono a proprie spese organismi dedicati alla formazione e alla sicurezza del lavoro.

Mentre andrebbe ricordato che, già anni fa, ben prima della scomparsa dell'albo nazionale dei costruttori per i lavori pubblici, l'Associazione nazionale dei costruttori edili-ANCE aveva proposto la creazione di un albo dei costruttori per i lavori privati e, di recente, le stesse associazioni artigiane hanno riproposto il tema della qualificazione dei costruttori, per una migliore tutela del mercato, oltre che dei lavoratori.

A livello sindacale, inoltre, ci si compiace ampiamente dei frutti della recente stagione contrattuale o, meglio, di concertazione che, come il DURC, hanno avuto operatività nel 2006, dopo una faticosa coltivazione resa più difficile dalle reticenze e dalle inefficienze di INPS e INAIL, oltre che, per la verità, di alcune casse edili.

Tutto ciò senza però sottolineare che tali frutti non matureranno completamente finché i committenti, i tecnici, le amministrazioni territoriali, non avranno compreso

Lavoro nell'edilizia

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del tutto la loro funzione e, anche, finché gli operatori della vigilanza non si sentiranno, a tutti gli effetti, parte di un sistema, come testimoniato dalla inefficacia della c.d. "circolare Sacconi", relativa alla priorità dei controlli delle imprese non iscritte alla cassa edile.
Infine, la parte sindacale oggi, contraddittoriamente, approva lo strumento della solidarietà, così come ridisegnato – con l'influenza di Visco - dalla legge Bersani, senza considerare che, con la piena operatività del DURC, non dovrebbero neppure esserci i presupposti della solidarietà, perché la sanzione massima, ancora incompresa, del DURC sta nell'abusivismo della costruzione e nella sua incommerciabilità, anzi nella vocazione della stessa alla demolizione.
Mentre nulla si dice su quelle che potrebbero essere le soluzioni del problema della regolarità nel settore edile e, contemporaneamente, dell'abusivismo edilizio: da un lato la semplificazione di una normativa, come quella urbanistica, di rara complessità, recentemente aggravata dalle disposizioni sulle costruzioni in zona sismica, da quelle sul risparmio energetico e sulla tutela dal rumore e, dall'altro lato, il puro e semplice controllo del territorio.
Tuttavia è forse giunto il momento che gli attori principali dell'ordinamento giuridico delle costruzioni riprendano il confronto per realizzare una nuova, più organica articolazione del sistema, definendo meglio il quadro generale; sviluppando completamente i punti già individuati; declinando completamente il nome dell'autonomia; così ponendo le premesse per un nuovo, più alto e più ampio livello di governo del sistema stesso.
A tali fini le parti sociali delle costruzioni dovrebbero proporsi di:

Attivare servizi per l'impiego

- recuperare l'unità del sistema degli organismi paritetici, chiarendone la valenza *erga omnes;*
- porre il sistema degli organismi paritetici al centro del settore edile e affini, con il compito di formare i nuovi lavoratori e gestire la formazione continua, del mestiere e della sicurezza;
- vagliare i titoli professionali dei nuovi operatori imprenditoriali;
- svolgere una (prima) vigilanza sulla regolarità degli operatori;
- svolgere una (prima) vigilanza sulla sicurezza e l'ambiente di lavoro dei cantieri;
- attivare servizi per l'impiego;
- gestire direttamente gli ammortizzatori sociali;
- gestire una mutualità ampliata, che tenga conto delle peculiarità del settore;
- gestire una previdenza veramente integrativa, che tenga conto del settore e dei suoi attori.

In maniera più enfatica si potrebbe proporre di affidare al sistema degli organismi paritetici il ruolo di sportello unico dell'edilizia, tanto unico da essere agente di tutela della concorrenza nel mercato; da poter realizzare un efficace raccordo con il mondo della scuola, da poter gestire il mercato del lavoro e da poter svolgere anche un ruolo di mediazione interculturale, resa necessaria dal livello già elevato, ma destinato a crescere ancora, del multiculturalismo presente nel nostro settore e nella nostra società.

Antonio M. Orazi

Funzionario Assindustria Lucca

International Journal of Comparative Labour Law and Industrial Relations

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Bollettino Adapt - Centro Studi Internazionali e Comparati "Marco Biagi"

Al sito www.csmb.unimo.it, sezione Newsletters, è possibile consultare l'archivio storico dei Bollettini Adapt, attivo dal gennaio 2004, e il nuovo archivio Dossier Adapt/ Csmb.

When Labour Relations Deregulation is not an Option: The Alternative Logic of Building Service Employers in Quebec

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Introduction

How can employers take advantage of labour relations regulation?[1] Globalisation theories take for granted "a universal move on the part of the employers to deregulate labour relations"[2]. The underlying simplistic logic of this employer opposition is that regulation of labour relations imposes costs on the employer that its counterparts in other regions of the world may not incur, making its products and services less competitive. One can easily understand why the competitiveness of firms has increasingly become the relevant criterion for the evaluation of labour policies in a context of globalisation[3]. Thus, it is assumed that employers are against labour relations regulation since it impedes economic performance and, as a result of economic integration, that industrial relations systems around the world will be forced into convergence in a common market model[4]. This thesis is called into question by the varieties-of-capitalism approach, according to which an economy's performance depends not on whether it adheres to any singular, universally superior logic, but rather on how well it has succeeded in developing complementarities in accordance with its own logic[5]. This approach is used in this paper in order to fully understand the logic developed by employers in the building services sector in Quebec to maintain the decree system, a working conditions extension mechanism which is unique in North America.

In this paper, we will first examine the principle of the extension of working conditions as experienced in Quebec, where it forms the basis of the collective agreement decree system. We will then relate the experience of applying this system in the building services sector in Quebec, describing its main features (negotiating parties, extended working conditions, parity committee responsible for supervising the decree application). Finally, we will analyse the effects of this employment relations system on the industry and identify its advantages for employers, which explain why they support this particular labour relations regulation.

Theoretical Approach and Empirical Setting

In contrast with the convergence thesis, the new institutionalism literature demonstrates that economic and technological pressures do not necessarily compel a national IR system to adopt one universal set of rules; it is instead the institutional arrangements characteristic of this IR system that will determine in which ways these pressures will be reflected in IR rules[6]. In this stream of literature, the varieties-of-capitalism approach as formulated by Hall and Soskice[7], built on the distinction between two ideal types of economic systems, each at either pole of a continuum, may help to account for the actual diversity observed in national IR systems. Thus, at one extremity are: the liberal market economies, best characterised by the US and UK, and at the other, the coordinated market economies, best characterised by Germany. It is argued that liberal market economies (LMEs) rely on decentralised wage bargaining, limited vocational training, the limited role of unions and collective bargaining, no job security, competitive inter-firm relations and market-based standard setting. In contrast, coordinated market economies (CMEs) are characterised by centralised wage bargaining systems, the central role of unions, cooperative industrial relations, considerable job security, inter-firm cooperation in education/training, and the important role of business associations.

What is central in this approach is that, in any type of economy, firms take advantage of the institutional support available. Different logics may help them to develop distinctive business strategies and competitive advantages[8]. The varieties-of-capitalism approach highlights the important role of social policies in supporting the strategies of firms. While social policies are traditionally seen as a constraint on firms, in terms of both higher costs and labour market rigidities, supporters of the varieties-of-capitalism theory see them as potential ways to improve firm operation and performance. For example, unemployment benefits can improve the ability of the firm to attract and retain a pool of skilled workers in which it has invested, while early retirement can help the firm to avoid dismissals during economic downturns[9]. Besides welfare regimes, are there other types of social policies such

as labour relations policies that help employers to create a competitive advantage? Does labour relations regulation merely generate unnecessary costs and rigidities or can it provide employers with concrete advantages? In this paper, we seek to identify the institutional advantages that result from a labour relations policy and determine whether the benefits provided by this particular type of social policy outweigh its costs.

Quebec provides a particularly interesting case for those who wish to compare LME labour policies with CME labour policies since this Canadian province is at the confluence of the USA and Europe in many respects. Even though located in a country classified as a liberal market economy and on a continent dominated by the USA, which represents the archetype of this type of economy[10], Quebec has a strong tradition of state intervention in the economy and some of the most progressive labour laws in North America. Both of these reinforce the idea of a distinctive form of capitalism in Quebec, one that is closer in many respects to a CME. Because the decree system is so unique on the North American continent, many people in Quebec had concerns about the competitiveness of this regime. The globalisation argument has put a lot of pressure on the decree system, which led the government to abolish decrees in the manufacturing industry[11], but not in the building services where employers were more prone to support the system. In this article, we will examine this alternative logic of employer strategies in a liberal market economy, an issue that, according to Thelen, has not received sufficient attention in the literature[12]. Above all, the most interesting finding of this case study is that, in spite of stringent working conditions regulation, the building services industry in Quebec is growing, dynamic and competitive. As will be demonstrated in this article, the explanation for this lies in the fact that employers have taken advantage of the labour relations regulation. The particular case of labour relations regulation presented here fits in precisely with the theoretical perspective that we propose.

The System of Working Conditions Extension in Quebec

In Canada, as in the United States, collective bargaining takes place at the level of the establishment[13]. Thus, working conditions are negotiated between a local union and an employer and apply directly to the employees of this establishment, which is part of the union certification unit. Working conditions concern, among other things, wages, employee benefits, working hours, staff movements, and grievance resolution procedure, and are recorded in the local collective agreement. In Quebec, the current mechanism for extending the provisions of collective agreements is thus a remarkable exception to the prevailing employment relations system since, through an extension, the provisions of a collective agreement concluded between private parties are extended to third parties, making these working conditions obligatory for employers and workers who otherwise would not be subject to them. Quebec is the only place in North America with a strict extension mechanism. In contrast, a recent review of 20 European countries by Traxler and Behrens[14] showed that 15 of them have some type of strict extension mechanism.

What are the characteristics of the extension mechanism in force in Quebec? The Act respecting Collective Agreement Decrees[15] – or the Decrees Act - came into force in 1934 at a time when there was heavy unemployment and limited state regulation of working conditions. The Act was a product of social corporatism, a doctrine defended by the Catholic Church, under the terms of which Catholic employers and employees are not enemies and must develop harmonious relations[16].

Essentially, the Decrees Act allows the Quebec Minister of Labour to issue a decree extending the conditions of employment negotiated in a collective agreement to all employees in other firms within the same sector. In practice, this system allows for the extension of wages and certain conditions of employment to a given sector, not the extension of all provisions contained in the collective agreement. Any party to a collective agreement may request a juridical extension of the collective agreement. The conditions for extension are related to the scope of application and the provisions of the agreement. Section 6 of the Decrees Act thus specifies that the Minister may recommend that the government pass a decree for the extension of the agreement if he deems that:

1. the proper field of activity is defined in the application;
2. the provisions of the agreement:
   a. have acquired a preponderant significance and importance for the establishment of conditions of employment;
   b. may be extended without any serious inconvenience for enterprises competing with enterprises established outside Quebec;
   c. do not significantly impair the preservation and development of employment in the defined field of activity;
   d. do not result, where they provide for a classification of operations or for various classes of employees, in unduly burdening the management of the enterprise concerned.

The geographical territory to which the decree applies depends, among other things, on competition. Thus, if the competition is local or regional, that is, because the service can only be produced and consumed on the spot, for example, in the field of building services, the decree will have an equivalent scope. If, on the other hand, the competition takes place on a broader national or international scale, as was the case of the clothing industry, the decree will apply to Quebec as a whole.

By making the standards of working conditions obligatory in firms other than those that are signatories to the collective agreement, this labour relations system not only improves the working conditions of non-unionised workers, but also

Diritto delle Relazioni Industriali

Si segnala che i profili legati al lavoro in edilizia, con particolare riferimento agli strumenti di lotta al lavoro nero, saranno oggetto di approfondimento in **Diritto delle Relazioni Industriali**, nell'**Osservatorio di legislazione prassi amministrative contrattazione collettiva**, che si occuperà delle disposizioni contenute nel c.d. **Decreto Bersani**.

Tra i commenti in corso di pubblicazione la versione provvisoria del contributo di C. Santoro, *Il Provvedimento dell'ispettore del lavoro di sospensione dei lavori in edilizia* è stata anticipata in Boll. Adapt, 2006, n. 44.

Si ricorda che i Soci Adapt e gli Abbonati al Bollettino Adapt hanno diritto al 10% di sconto sul costo annuale dell'abbonamento alla Rivista.

protects employers from unfair competition[17]. It is easy to understand that, in a fiercely competitive market, an employer who wants to provide more advantageous working conditions to his employees will literally be knocked out of the market because he is not in a position to compete with other employers who provide less favourable working conditions. This is all the more true of an employer who must deal with a collective agreement and a union. The stated goal of the Act was to ensure that unionised and non-unionised firms would not compete solely on the basis of wages.

During the 1990s, strong pressures to abolish decrees in the manufacturing industry led the government to amend the law, leading to the abolition of many decrees[18]. The number of decrees went from 34 in 1990 to 17 today: metalwork, building materials industries, garage (7 regions), cartage (Montreal and Quebec), installation of petroleum equipment, solid waste removal (Montreal), security guards (Montreal), hairdressing (Hull), and building services in Montreal and Quebec. The number of employees and employers covered also decreased by about half. Around 9000 employers and more than 77,000 employees are currently covered by a decree. Over the decades, the number of workers covered by a decree has fluctuated between 5% and 10% of the Quebec labour force, but today it is about 3%.

Application of the Decree System in the Building Services Sector

The Decree respecting building service employees in the Montreal region was first adopted in 1974. The Decree is the regulation adopted by the Quebec Government that applies certain sections of a collective agreement to all employees in the building services sector. The contracting parties who petitioned the Minister of Labour to render their labour agreement obligatory are, on the one hand, the *Association des entrepreneurs de services d'édifices publics Inc*. and, on the other hand, the Service Employees' Union, Local 800, affiliated to the Quebec Federation of Labour, the largest union in the province.

The *Association des entrepreneurs* has 16 members, 11 of whom have a union certification. The contractors represented by the *Association* are among the sector's largest employers since they alone employ 51% of employees covered by the Decree. The union, for its part, has 50 or so certification units and represents 5232 employees, or approximately 50% of employees in the sector.

The Decree's field of application has two dimensions, one industrial and the other territorial. The Decree concerns employers in building services, that is, contractors who provide maintenance services to customers or, in other words, who perform maintenance services for others (section 2.02). Generally, all buildings are covered by the Decree, with the exception of private homes. It covers any work related to washing, cleaning and sweeping performed inside or outside a building. The building services sector is clearly a low-tech and low skills industry. As regards the territorial dimension of the Decree jurisdiction, the Decree applies to employers whose operations are located in the Greater Montreal Region (section 2.01). In 2004, the Decree in this industry covered 891 employers and 10,342 employees who worked approximately 275,500 hours for a wage bill nearing CAD$193 million[19].

The Decree determines the minimal conditions of labour that all employers in the building services sector must grant their employees. These minimal conditions relate to: wage rates; working hours; meal and rest periods; call-back and call-in; paid general holidays; paid vacations; special leave of absence; payment of wages; uniforms; sick leave; notice of termination of employment or layoff. Though they essentially cover the same working conditions, the Decree's standards are often higher than those provided for in the Act respecting Labour Standards[20] which applies to non-unionised workplaces without a decree. It should be mentioned that the Decree establishes minimum working conditions and there is nothing to prevent an employer from providing more advantageous working conditions to its unionised or non-unionised employees.

One particularity of the decree system is that it makes the parties themselves responsible for administering and enforcing the Decree. The Parity Committee is an organisation put in place to ensure the application of the Decree. It is administered by both union and employer representatives. The fundamental principle that underlies the creation of the Parity Committee is that nobody but the contracting parties can more effectively monitor the application of the Decree[21]. A board of directors made up of five persons representing the contractors and five persons representing the employees and the union governs the Parity Committee. The Board meets every month and discusses employers and employees' concerns in order to find concrete solutions to the problems of the building services industry. The Committee appoints a general manager, a secretary and inspectors.

Under the law, four general powers are granted to the Parity Committee. First, the Committee advises and informs the employees and professional employers of the conditions of employment determined in the Decree. Second, since the Parity Committee does not receive any funding from the Government, it finances itself with a levy of 1% on all wages: 0.5% deducted directly from the employee's pay, an amount that is matched by the employer. Third, the Parity Committee has the right to bring proceedings on behalf of employees with respect to any claims (called recourses in the Act) arising under the Decree or the Act. The Committee can bring any proceedings to the ordinary courts (Section 22 a - Act respecting Collective Agreement Decrees). It also has the right to impose a 20% fee on all amounts claimed and to make any settlement, compromise or transaction deemed expedient (Sections 22 a, b, c, d, e – Act respecting Collective Agreement Decrees). Fourth, since the Committee is responsible for overseeing and ascertaining compliance with the Decree, it must have powers to achieve this goal efficiently. Two types of inspection are conducted by the Parity Committee inspectors: inspection of accounts, and specific inspection as a result of complaints from employees or employers about non-compliance with the Decree. The function of surveillance of the application of standards is essential for the decree system to operate according to its underlying logic, that is, to ensure that all employers comply with the Decree so that there is no unfair competition based on working conditions. One can see that the Parity Committee provides an efficient way to sanction deviant behaviours among employers and therefore helps to achieve cooperation among firms and other actors[22]. This may be a particular advantage for unionised employers that are generally larger and more vulnerable to the cost-cutting strategies that smaller firms might use in order to win contracts.

Advantages of the Decree System for Employers

Several advantages and problems associated with Quebec's decree system emerged from the literature over the years. Unlike the approach adopted here, the general assessments of the system made in these studies are not always based on empirical data and relate to all decree sectors rather than to a particular sector. The reduction in wage-based competition practised "on the backs of employees" is the advantage most often cited and corresponds to the prime objective of the system[23] (Hébert 1992; Bernier 1993). The system also makes it possible for the particularly vulnerable employees – a largely female and multi-ethnic low-skilled work force in the case of the building services sector – of small and medium-sized firms to enjoy favourable working conditions and to participate in their determination in some parts of the private sector where it is difficult for them to unionise[24]. Some authors have highlighted the advantage of consultation within a system based on a collective bargaining approach that is less conflictual than the traditional approach based on the certification process[25]. The system favours ongoing communication between employers and unions, resulting in considerable consultation between the major actors, including the government, in a particular sector[26]. This system also implies that employers consult each other and form an association in order to fully participate in the process and better defend their collective interests[27]. This type of employer association is a step in the direction favoured by European employers, but runs counter to the North American approach which advocates complete freedom for employers to organise labour relations in their firms with their employees[28].

A problem raised by some employers and even by the government was that the decrees would prevent industries from being competitive, in particular at the international level, because of higher wages and other labour costs[29]. Besides, the importance of the competitiveness of Quebec firms in relation to those located outside the province is now explicitly stated in the Decrees Act. In an industry like building services where the competition is local, the employers and the government are worried about the impact of the Decree on the intensity of competition within the local market as assessed by the number of employers in the industry or the presence of entry barriers. Finally, some also maintained that the system was a substitute for

collective bargaining and thus was detrimental to unionisation, but this hypothesis does not seem to be borne out when subjected to factual tests[30].

In addition to the specialised literature, the varieties-of-capitalism approach helps us to appreciate the expected effects of this type of labour regulation policy. Since it implies collective regulation of the labour market through negotiations between an employers' association and a workers' union, under this approach, the decree system could be labelled a collectivist strategy to labour market governance, which is typical of CMEs. For employers, the expected results of this type of strategy, are, among other things, competitive and low-inflation wage settlements, reduced competition among firms for labour, and less poaching[31].

In order to assess the advantages obtained by employers from the decree system, we looked at the industry's economic indicators as well as the evolving and comparative state of wages in the sector. In addition to examining secondary data, we interviewed employers and major actors in the sector on their perceptions about how the employers have taken advantage of the labour relations regulation[32].

Economic and Wage Data

What first emerges from our contacts with the actors, as also observed by Bernier and Hébert[33], is that there is generally a high level of satisfaction with the Decree among the most involved actors. Economic performance indicators of the building services industry give employers reason to be satisfied with the decree system. The industry's economic activity indicators (number of employers, number of employees and wage bill) from 1992 to 2004 are quite revealing, since all of them show that this sector experienced considerable growth during this period.

First, the number of employers increased by 61% during the period, which indicates that competition is intensifying in this industry. It is interesting to note that the rise in the number of firms is mainly due to the growth of small firms, that is, those with less than 50 employees. Their number grew by nearly 67% during the period. Thus, in 2004, these firms represented 95.1% of firms in this business, compared with 91.6% in 1992. During the period, there was also a high turnover among the sector's firms: on average, 157 new firms began operations each year whereas 138 closed down. Overall, the great number of entries and exits observed[34], the growth in the proportion of small firms and the growth in the total number of firms indicate that there are no major obstacles to entry into this sector, despite it being governed by a collective agreement decree.

Second, both the number of employees and the wage bill increased by 30% during the period. The number of employees rose from 7943 in 1992 to 10,342 in 2004, which means that nearly 2400 net jobs were created. It seems that, as stipulated in the Decrees Act, the Decree did not "significantly impair the preservation and development of employment" in the sector. Third, the increase in the wage bill must be linked with the wage evolution during the period. It is generally agreed that the Decree contributes to increasing wages in the industry, especially those paid to the non-unionised work force. However, the wage levels only take on their real value when put in a comparative context.

We compared the evolution of decree wage rates with that of the consumer price index for Montreal and the legal minimum wage in force in Quebec. During the 1992-2004 period, the increase in wages specified in the Decree[35] was considerably lower than the increase in the price of goods and services, that is, 13.1% compared to 20.7%. Furthermore, the increase in the minimum wage, 30.7% for the period, was substantially greater than the increase in decree wages. In absolute terms, the minimum wage is still considerably lower than the decree rates (CAD$7.45 compared with CAD$12.95). The relative increase in decree wages during the period was clearly lower than the increase in the minimum wage and the consumer price index. Thus, during this period, there was a proportional decrease in the gap between the decree rates and the market minimum wage rate and a loss of purchasing power for workers.

The decree wage rates were also compared with the rates paid by firms with in-house maintenance for similar jobs in terms of tasks, responsibilities and qualifications. The comparative data come from the *Institut de la statistique du Québec*'s annual survey of Quebec firms with 200 or more employees[36]. In 2004, the decree rate was CAD$13.15 for heavy maintenance and CAD$12.75 for light maintenance. The mean wage rates paid to private and public firms for similar jobs were, respectively, CAD$16.11 and CAD$13.28, which means gaps of 22.5% and 4.2%. This means that the decree wages are lower than those paid in large Quebec firms. This wage differential is hardly surprising given that larger firms generally pay higher wages than those paid by smaller firms. It was shown previously that the building services sector is made up mainly of very small firms that do not have the same capacity to pay as the larger firms.

Although the decree system reduces their managerial freedom in wage determination, employers have neither lost control of labour costs nor granted completely out-of-the-market wages for similar jobs. On the contrary, even if decree wages are higher than the minimum wage, employers exert significant control over labour costs. Not only were wage increases lower than the cost of living and the increase in the minimum wage, but wages also remained lower than those paid in large firms. As expected by the varieties-of-capitalism approach, industry-level wage coordination produced low-inflation wage settlements that are not out of proportion with the economic context and what is paid elsewhere on the market[37]. In many respects, the Decree seems to control wages better than if

they were market- or State-regulated.

Even though decree wages are competitive in relation to wages paid in Quebec, another way to test for competitiveness is to compare these wages with those paid elsewhere in Canada where no decree is in force. The Building Owners and Managers Association surveys its North American members annually and publishes figures on the annual cost of building services paid per square foot, which is a labour efficiency indicator[38]. For private-sector buildings, in 2002 (latest year for which data were available), the building services cost in Montreal was CAD$1.19 per square foot, while the cost in Toronto was CAD$1.36. For public-sector buildings, the cost in Montreal was also less than in Toronto: CAD$1.02 compared to CAD$1.11. Although the data are volatile from year to year (because of the small number of respondents to the BOMA survey), the building services cost in Montreal can be considered to be lower than that of Toronto, for private-sector or government buildings. The higher wages paid in Quebec compared to those paid in Toronto because of the decree system do not seem to penalise clients.

Interviews

These figures raise the following question. What exactly accounts for the performance and efficiency of the building services sector? The controlled wages evolution is an important factor in the industry's performance but it does not explain it completely since cost control is not the only determinant of efficiency. We therefore investigated the explanatory factors and mechanisms at work, especially those related to the decree system, during the interviews conducted with employers. Employers' reactions to the Decree range from an overtly "pro-decree" attitude to one that can be characterised as "the worst," that is, a decree is seen as only slightly better than having to battle "wall-to-wall" unionisation. But every employer interviewed spontaneously identified concrete advantages of the decree system. From these interviews, we derived four institutional advantages of the decree system labour relations policy, besides industry-level wage coordination: a stable work force, enhanced productivity of factors, a pool of valuable workers and constructive relations with employees' representatives.

The first advantage identified by employers is that the Decree helps to reduce employee turnover. Indeed, since all firms must provide similar working conditions, such conditions no longer constitute a valid reason for an employee to leave. Among the employers interviewed, those also doing business in the neighbouring province of Ontario stated that the turnover rate they experienced there was three to four times higher than that observed in their Quebec operations. According to them, work force stability has many definite advantages. First of all, a stable work force is more productive and performs better quality work since the employees are familiar with the firm's work methods as well as clients' needs and can thus provide a better service. A more stable work force also helps to generate savings in hiring, training and supervision costs. It is certainly more worthwhile for employers to invest in training employees who will remain in their employ rather than leave to work for a competitor at a higher wage. By equalising wages across the industry, the decree system therefore makes it difficult for employers to poach skilled workers. The decree system is clearly serving the employers' interest in labour market stability[39].

Moreover, work force stability is reassuring for clients in terms of safety, which is a major concern in the sector. Being in a position to reassure clients that the same employees will service their premises for the entire duration of the contract will enhance clients' confidence. They can thus better control the use of their premises outside business hours. According to the employers interviewed, this aspect may even make a difference between winning and losing a contract. The importance of safety considerations may lead a client to not necessarily choose the lowest bidder. In this context, the decree system comes to support the firms in the development of corporate strategies oriented toward security considerations.

According to employers, another advantage of the decree system is that it helps to maintain a large and valuable pool of workers, thus reducing the competition for skilled labour that the sector is facing. Working conditions are of capital importance in attracting the work force to a sector or a firm. As was seen in the case of wages, the working conditions provided for in the Decree are better than the government-established minimum standards with which Quebec workplaces must comply. With this advantage, the building services sector is in a better position to attract labour than many other sectors that do not have a collective agreement decree, in particular the services sector. The interviews revealed that these over-the-market wages mean that maintenance work and the people who perform it are valued, thus inducing them to envisage making their career in this sector instead of working in it in a transitory way. Employers also have a greater choice of candidates, which makes hiring easier, that is, they can choose the best candidate and are not obliged to merely choose whoever shows up. Access to a large and valuable pool of workers is ultimately an undeniable competitive advantage for the building services sector as compared to the other sectors.

Another institutional advantage of the decree system underlined by employers is the improvement in productivity factors other than labour costs alone. As was seen previously, the Decree has the effect of considerably reducing the importance of labour costs as a competitive factor, which is a great challenge in a labour-intensive and low-tech industry. This situation forces employers, whether they like it or not, to rely on other factors so as to increase their productivity and enhance their competitiveness[40]. The reduction in wage-based competition practised "on the backs of employees" can have a "shock

effect" on firms which, in order to remain competitive, are obliged to review their management practices and work organisation, which is likely to produce productivity gains. According to the employers interviewed, this requires continuous adaptation of work methods, adequate supervision, investment in equipment and training of employees.

Moreover, by paying more, employers expect their employees' output to be higher than if they were paid the minimum wage and they want to get their money's worth. Employers' expectations are higher in terms of productivity and work quality. More structured work methods and specific and carefully-timed work loads oblige employees to adopt a faster work pace, resulting in greater productivity. Moreover, according to employers interviewed, the effect of favourable working conditions on employee motivation and productivity should not be underestimated.

Finally, union-management consultation fostered by the existence of a decree is another competitive advantage that possibly explains the economic performance of the industry. Whether at meetings of the Parity Committee board of directors, or during the negotiation of the agreement to be extended, the parties meet on a regular basis, thereby developing relations of trust and cooperation. According to the principal stakeholders, regular contact with and access to decision-makers of both parties create communication channels that help to break the deadlock over files, to solve urgent problems and to save time. The ongoing communication between union and management representatives contributes to the establishment of a healthy labour relations climate, which inevitably has a positive effect on workplaces[41]. This type of relations between the parties' representatives certainly has an impact on the industry-level wage coordination process and its outcomes. Finally, by facilitating discussions between actors, exchange of information, monitoring and enforcement of agreements, the Parity Committee plays the role of what Hall and Soskice[42] call a "deliberative institution" in this industry, which can enhance the capacity of actors for strategic action.

Conclusion

This paper shows that employers do not automatically support labour relations deregulation, and adopt another logic of competition not solely based on low wages. As predicted by the varieties-of-capitalism approach, the stance of employers operating in the building services industry in Quebec was motivated by the fact that they benefit from the institutional characteristics of the labour relations system in place, the collective agreement decree system. At first sight, the system's resolutely distinctive character in North America, its underlying regulation and state intervention, the higher-than-labour-standards wages and working conditions it implies, and its constraint on the freedom to manage labour relations locally were not exactly appealing for employers. In general, employers come to terms with this labour relations system and adopt another competition logic based on factors other than wages and working conditions. This was possible because, over the years, they realised that costs associated with the decree system do not outweigh the benefits they derive from this labour relations regulation: industry-level wage coordination, a stable work force, a pool of valuable workers, enhanced productivity of factors, and constructive relations with employee representatives. The presence of these comparative institutional advantages explains the adoption of this alternative logic of competition by employers and their satisfaction with this labour relations regulation, which leads to attractive results like labour market stability and low-inflation wage settlements. In addition, the economic performance of the industry also shows that it is dynamic and expanding. The direct evidence available also shows that Quebec's firms are actually more efficient than Toronto's firms. This seems to indicate that labour relations regulation and economic performance are not necessarily incompatible, contrary to what the deregulation thesis predicts. It is clear that employers in this case study do not believe that deregulation is the best route to get what they need.

The local nature of the market in the building services industry may also partly explain the results achieved under the decree system and its viability in this industry in Quebec. This thesis is supported somewhat by the comparison of this industry's experience with the very different situation observed in the manufacturing sector during the 1990s. During the process that led to the repeal of numerous decrees in the manufacturing sector, it was obvious that the government and employers considered the decrees to be impediments to the competitiveness of Quebec manufacturers since firms outside the province did not have to comply with the decree regulation[43]. The increasingly global nature of the competition and the consequent need for Quebec firms to remain competitive in such a globalised market represented major arguments supporting the abolition of the decrees in manufacturing, especially in the clothing industry, probably one of the most internationalised industries[44]. By contrast, in the building services sector, foreign competitors that want to compete with Quebec firms in the local market have to respect standards established by the Decree. In such a market, it seems easier to implement and enforce labour relations regulation seeking to reduce wage-based competition practised "on the backs of employees." Further research is nevertheless needed to explain more thoroughly the different fate of the decree system in each of these sectors, and the role played by the nature of their respective markets in the observed lack of convergence between their respective IR systems.

The last aspect to be addressed here relates to the main objective of the decree system, which is to give employees access to favourable wages and working conditions through participation in their determination in parts of the private sector where it is difficult for employees to unionise. Since the employers clearly benefit from the decree system in this industry, one can ask: what's in it for workers? Wage increases provided for in the Decree were not

enough to compensate for the increase in prices and services, indicating that the sector's employees have suffered a purchasing power loss during the period studied. Also, wage levels are notably lower than those paid in large firms in Quebec. One can thus wonder if the failure of the system to generate better wages and working conditions for workers will undermine the viability of the decree industry. Maybe there are other advantages of being covered by a decree for employees that we were not able to measure in this study. The workers are probably in a better situation with a decree than without since they earn more than the minimum wage, which could be the standard without the decree, given their low level of skills. But one can certainly call into question a labour relations system that fails to significantly improve the working conditions of employees while contributing to a firm's competitiveness and economic performance. The threat of a repeal of the Decree in the building services industry in the future may come from its inability to serve the interest of employees and not only from pressures exerted by the deregulation lobbies which, for ideological reasons, want Quebec to make the transition to an LME.

Notes

[1] The author wishes to thank Guylaine Vallée and Jean Charest from the École de relations industrielles who provided sound comments and valuable suggestions after reading a preliminary version of this paper.
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[3] G. Vallée and J. Charest, 'Globalization and the Transformation of State Regulation of Labour: The Case of Recent Amendments to the Quebec Collective Agreement Decrees Act', *IJCLLIR,* Vol. 17, 2001, pp. 79-91.
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[6] J. Godard, *op.cit.*, note 4.
[7] *Op. cit.*, note 5.
[8] P. A. Hall and D. Soskice, *op. cit.*, note 5.
[9] I. Mares, 'Firms and the Welfare State: When, Why and How Does Social Policy Matter to Employers?', in P. A. Hall and D. Soskice (eds.), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage,* New York: Oxford University Press, 2001, pp. 184-212.
[10] P. A. Hall and D. Soskice, *op. cit.*, note 5.
[11] G. Vallée and J. Charest, *op. cit.*, note 3; P. Jalette, J. Charest and G. Vallée, 'Globalisation and Labour Regulation: The Case of the Quebec Clothing Industry', *Employment Relations Record*, Vol. 2, 2002, pp. 33-46.
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[13] For a comprehensive view of industrial relations in Canada, see: M. Gunderson, M. A. Ponak and D. Gottlieb Taras, *Union–Management Relations in Canada*. 4th ed., Toronto, Addison Wesley Longman, 2001.
[14] F. Traxler and M. Behrens, *Collective Bargaining Coverage and Extension Procedures: Comparative Study*, European Industrial Relations Observatory On-Line, European Foundation for the Improvement of Living and Working Conditions, December 2002.
[15] R.S.Q., c. D-2.
[16] J. Rouillard, *Le syndicalisme québécois: deux siècles d'histoire*, Montréal: Les éditions du Boréal, 2004.
[17] G. Hébert, *Traité de la négociation collective*. Montréal: Gaëtan Morin Éditeur, 1992.
[18] G. Vallée and J. Charest, *op.cit.*, note 3.
[19] These and other data on the decree cited in this paper are drawn from the *Rapport annuel 2004 des comités paritaires*. Other data were provided to us directly by the building services Parity Committee.
[20] *R.S.Q., c. N-11.*
[21] G. Hébert, *op.cit.*, note 17.
[22] P. A. Hall and D. Soskice, *op. cit.*, note 5.
[23] G. Hébert, *op.cit.*, note 17; J. Bernier, 'Juridical Extension in Quebec, A New Challenge Unique in North America', *RI/IR*, Vol. 48, 1993, pp. 745-761.
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[29] G. Hébert, *op.cit.*, note 17; G. Vallée and J. Charest, *op.cit.*, note 3.
[30] G. Hébert, *op.cit.*, note 17; J. Bernier, *op.cit.*, note 23.
[31] K. Thelen, *op.cit.*, note 2.
[32] Interviews were conducted in 2004 with individual employers, representatives of the employer association, a union leader, Director of the Parity Committee as well as other stakeholders (e.g. consultants).
[33] G. Hébert, *op.cit.*, note 17; J. Bernier, *op.cit.*, note 23.
[34] It goes without saying that the decree is not the only factor likely to influence entries to and exits from this sector. Economic cycles, low equipment costs, low skills requirements for labour, short-term contracts (with 30 days' prior notice) as well as request for leasing and use of commercial buildings are other potential influences.
[35] We used the mean of the two wage rates stipulated in the Decree: heavy maintenance rate and light maintenance rate. Since the evolution of each rate was almost exactly the same, it was not easy to distinguish each other in the figure and that is why we used the mean.
[36] Institut de la statistique du Québec, *Rapport de l'enquête sur la rémunération globale 2003*, Montréal, 2004.
[37] P. A. Hall and D. Soskice, *op. cit.*, note 5; K. Thelen, *op.cit.*, note 2.
[38] Building Owners and Managers Association, *Experience Exchange Report*, 1984.
[39] P. A. Hall and D. Soskice, *op. cit.*, note 5; K. Thelen, *op.cit.*, note 2.
[40] An employer said that the Decree is constantly keeping employers "on their toes".
[41] J.-G. Bergeron and D. Veilleux, *op. cit.*, note 24; G. Hébert, *op.cit.*, note 17.
[42] P. A. Hall and D. Soskice, *op. cit.*, note 5, p. 12.
[43] G. Vallée and J. Charest, *op. cit.*, note 3.
[44] P. Jalette, J. Charest and G. Vallée, *op. cit.*, note 11.

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