II. CONCILIATION AND ARBITRATION IN GREAT BRITAIN, 1974–1975

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These two years have seen an overall change in the basic structure of industrial relations in Great Britain. These changes have occurred because of the dominance of trade-union thinking after the election of a Labor Government early in 1974. They are enshrined principally in two major statutes—the Trade Union and Labor Relations Act 1974 and the Employment Protection Act 1975. Although the last-named statute is not yet wholly in force, and it is estimated that it will be well over a year before all its provisions are brought into force, the new framework is clear. The two years have seen not only a basic change in ruling philosophy, but also considerable change in the supporting institutions. It has been a period of considerable uncertainty as the exact shape of the new provisions were determined. An amendment bill, entitled the Trade Union and Labor Relations Bill, was introduced into Parliament in November 1974 and has had a stormy course so far.

It must be emphasized that despite fairly radical changes, day-to-day industrial relations have continued without any undue disruption. Indeed, the full implications of the new law are not likely to be fully felt for some time. Important provisions, such as recognition of trade unions, will take some months to have an impact. There has been, however, a significant change in the general industrial relations climate. A debate on the merits of the Conservative Government's Industrial Relations Act 1971 would be out of place, but it must be said that it soured industrial relations at several levels. It was not alone in this; the various attempts at discussing a suitable incomes policy have had similar difficulties. But the sweeping away of the 1971 Act has had a significant effect on the general climate, and the improved attitude has given a much needed and somewhat surprising emphasis on the use of procedural settlement of disputes.

It may be recalled that the 1973 Report ended with the fall of the Conservative Government in February 1974, as a result of an

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Editor's Note: Professor Wood has been appointed chairman of the new Central Arbitration Committee, the direct descendant of the Industrial Court (an arbitration body) set up in 1918.

election called for the major reason that incomes policy was being challenged by a miners' strike. The return of a Labor Government meant the repeal of the Industrial Relations Act 1971 and a major restructuring of the legal framework of industrial relations. This had deep and emotional political motivation and is an extremely complicated move wider than the concern of this report. It was planned to take place in three stages. The first was the repeal of the Industrial Relations Act as an urgent and immediate priority. This was achieved by the end of July 1974 when the Trade Union and Labor Relations Act 1974 received the Royal Assent. Because the Labor Government was then in an overall minority position in the House of Commons, certain points in politically sensitive areas were included against their wishes. After the October 1974 election, reelecting the Government with a working majority, the Amendment Bill was introduced on these points. The slow progress of the bill has already been mentioned. The second stage was to propose a series of reforms. These were set out in a White Paper in November 1974 and formulated in the Employment Protection Bill published in March 1975. This was passed in 1975 and is being brought into effect in stages. Finally, it is anticipated that the Government, at a later date, will make proposals to further industrial democracy—often also referred to as worker participation. To this end, it set up a Committee of Enquiry under Lord Bullock in November 1975.

The repeal of the Industrial Relations Act meant the end of the National Industrial Relations Court. It also meant the end of the use of resort to law through the regular courts as the apparently normal means of regulating industrial relations. Many see this as a rejection of legal regulations upon a U.S.-type pattern and a return to a British-style voluntary system. Such a view is, however, a politically based generalization, and many of the new proposals of the Employment Protection Act have a clearly legal aspect. In U.S. terms, there is an emphasis much more akin to the NLRB than to the courts.

The key institution in the new system is the Advisory, Conciliation and Arbitration Service (ACAS). It was set up administratively in September 1974 and is the epitome of the new "voluntariness." It has been given statutory status and wider powers by the Employment Protection Act, from January 1976. Its name gives a good indication of its principal functions. Before considering these, it is worthwhile setting out briefly its composition. In

form it follows the traditional "tripartite" scheme. Its council is chaired by an independent person, Jim Mortimer, who has been both trade unionist (as an official of DATA—the draughtsmen's union which is now part of the AUEW, the engineer's union) and personnel director (with London Transport Executive, responsible chiefly for London's tubes and buses). The rest of the council comprises three nominees of the Trades Union Congress, three of the Confederation of British Industries, and three independent members (all professors). Its staff has been recruited largely from those already performing the various functions given to ACAS.

The advisory work was previously performed by the Department of Employment through staff based in London and at regional centers. This staff has been absorbed by the new service, and the work has continued almost without interruption. It concerns advice on all matters of a personnel or an industrial relations character. The amount of this work can be illustrated with a typical month—March 1975. During that month there were 12 large-scale surveys, 90 major projects current, and a total of some 436 contacts. Obviously a good proportion of the work is in the smaller or medium-sized firms. It is notable that it is almost invariably undertaken with the full support of both trades unions and managements.

It would be true to say, however, that the crucial work is the conciliation function. Again this has been taken over from the Department of Employment. It too is organized with the same central office and regional network. The work of the Department of Employment in this field has become rightly recognized as most successful. The advent of various incomes policies after the mid-1960s, however, tended to confuse the settlement-seeking on the part of the conciliator and the aim of a controlled level of incomes on the part of the Government. The tension on this point led to a publicly expressed dissatisfaction on the part of the trades unions. Indeed, they could point to instances where, in well-publicized disputes, the Government ensured that conciliation was subordinated to incomes policy. Despite this, there was a continuing use of conciliation at many levels. It was the desire to insulate conciliation more clearly from Government, and particularly Treasury, pressures that led to proposals to establish the independent ACAS. The new service was again fortunate in taking over a good proportion of the old staff; this provided an essential reservoir of experienced conciliators. The change seems to have

produced added confidence and use. In December 1975, for example, there were 268 cases compared with 98 in March 1974. The first quarter of 1975 saw 586 cases, whereas there were 230 in the same period in 1974. There can be no doubt that both employers and trades unions have welcomed the setting up of the new service and have shown this support by using its services. The whole of 1975 showed a 75-percent increase on the figures for 1974.

Arbitration has never been a major feature of the British industrial relations scene. Again a valuable service providing arbitration was offered by the Department of Employment. This too has been taken over by ACAS, and there has been a significant rise in the use of this facility. In March 1975 there were 32 cases heard. The whole of the 12 months prior to the establishment of ACAS saw only 94 such cases. So even though the overall numbers are still not large, 306 for the full year of 1975, the increase is impressive.

Finally, ACAS has taken over a wider investigatory role that was given after the Donovan Report in 1968 to a new body called the Commission on Industrial Relations. The body was incorporated into the new framework by the Industrial Relations Act 1971. For reasons that were more emotional than rational, the TUC refused to cooperate, and so its work load and overall effectiveness were severely limited. Nonetheless, the functions have been passed on to ACAS. It already performs the task of undertaking in-depth, long-term investigations. Now that the Employment Protection Act has become law, it will be given other functions of a similar general nature. These will include drafting codes of practice on several matters and important investigations in areas where trade-union recognition is in issue. Again, ACAS is fortunate in that it has secured the services of a nucleus of CIR staff.

An area in which a new form of conciliation is growing has also been included in ACAS. The Industrial Relations Act 1971 created a new and much-needed action for unfair dismissal. Prior to that Act, only dismissal with inadequate notice was actionable. Since then it has been possible to challenge an unfair dismissal and seek compensation. It is interesting to note that the new system, which involved an action being taken to an industrial tribunal, incorporated a prehearing conciliation step. In the past two years just under and then just over 50 percent of cases were dealt with in this way and did not need to proceed to a hearing.

The rules about unfair dismissal, which originated in the Industrial Relations Act, were reenacted in the Trade Union and Labor Relations Act 1974 (Schedule 1). Improvements were made, and the period of qualification which had been in general two years was reduced to one year in September 1974 and to six months in March 1975. This has led naturally to a buildup of cases. Conciliation officers are now dealing with around 700 cases a month. The work is important, and the use of conciliation in what might otherwise have been structured directly as work for the tribunal is of great interest. The tribunals have been given a further source of work under the Sex Discrimination Act 1974, and it is proposed that they should similarly deal with complaints under the revised law of race relations. The subject of tribunals will be dealt with specially in a later report.

This report must be regarded as transitional. During this period, the old framework has been reformed. Emphasis has shifted to voluntary settlement of disputes. ACAS has been established as a key new institution. So far the change has proved to be highly successful, and the Conservative Party in opposition has stated its intention of not disturbing the new arrangements. The Employment Protection Act has introduced further changes yet to be operated. It will be some time before the exact effect of the new scheme is known. It will be even longer before its importance can be evaluated.