APPENDIX E

REPORT OF OVERSEAS CORRESPONDENT*

INDUSTRIAL ARBITRATION: ONE BRITISH GROWTH INDUSTRY

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A few years ago industrial arbitration in Britain was in rather low repute, in part because the trade unions thought that the machinery of arbitration was being used to reinforce government attempts to operate pay-restraint policies. Now arbitration is experiencing something of a revival. The following report is divided into three sections: the first comments on what is now a well-established new institution in British industrial relations, the Advisory Conciliation and Arbitration Service (ACAS); the second draws attention to a new range of work for the recently established Central Arbitration Committee (CAC); while the third looks at one rather high-flying kite that has been launched into the debate about "industrial democracy."

The Advisory Conciliation and Arbitration Service—ACAS

Since it was established in September 1974 as an agency governed by a tripartite council and divorced from the control of a government department, the ACAS has established a sound reputation, and business is brisk. Many of the officials who ran the previous conciliation and arbitration service and the "independents" who acted as arbitrators have simply moved over to the new arrangements. But at least the trick of reestablishing confidence seems to have worked, possibly because the unions and employers are represented on the governing council. Arbitration and advisory work have expanded steadily, and some experimentation with mediation has been carried out. There has been an almost explosive growth in

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certain areas of conciliation in which the ACAS has an explicit role under various statutes, dealing with claims for unfair dismissal (under the Employment Protection Act 1975), and under equal-pay and sex-discrimination legislation. The ACAS is also required to produce Codes of Practice on (1) the disclosure of information by employers to trade-union representatives for the purpose of collective bargaining, and (2) time off for trade-union duties and activities. Draft codes of practice on these themes were circulated for comment in the course of 1976, as was a draft code on disciplinary practice and procedure. Such work fits into the broad responsibility of the ACAS to promote the improvement of industrial relations.

The Central Arbitration Committee—CAC

Long-suffering students of British industrial relations will be aware that the original Industrial Court, established under the Industrial Courts Act 1919, was renamed the Industrial Arbitration Board by Clause 124 of the Industrial Relations Act 1971. Under Section 10 of the Employment Protection Act, that board has in turn been replaced by the Central Arbitration Committee. These successive changes do not simply reflect fashions in names, but were in turn part of the wider changes taking place in the content and mechanisms of industrial relations machinery. The new CAC has carried forward some functions obviously exercised by the court and the board, as well as acquiring some new ones.

The area of activity to which attention is drawn here concerns the work that the Industrial Court used to carry out under Section 8 of the Terms and Conditions of Employment Act 1959—the extension of recognized terms and conditions of employment. In certain circumstances, the Industrial Court could be asked to give a compulsory ruling where negotiated agreements existed between parties and a claim was raised against an individual employer in the industry who appeared to be observing terms and conditions of employment less favorable than the negotiated terms and conditions.

Schedule 11 of the 1975 Employment Protection Act has now come into force, and it appears to be opening a wider door to the pursuit of claims about terms and conditions. As one of its commitments to the trade unions under the Social Contract, the Labour Government is seeking to eliminate pockets of low pay. Schedule 11 claims are one avenue for achieving this objective. On the face of it, the schedule is broader in application than Section 8 of the 1959 act. A claim may be raised that where any employer is observing

terms and conditions of employment less favorable than the recognized terms and conditions, or where (or so far as) there are no recognized terms and conditions, that the general level of terms and conditions should prevail. "Recognized terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or a section of it, in which the employer is engaged, either generally or in the district. How is "generally" to be interpreted? Again, "the general level of terms and conditions" appears to relate to comparable workers in the district and to employers whose circumstances are similar.

Employers have already expressed concern that Schedule 11 will inspire inflationary pay claims. Certain unions have indicated that they intend to test the meaning of the schedule on a wide front of terms and conditions, for example, relating to manning levels, holidays, job grading, etc. The National Union of Bank Employees is concerned with pressing for the introduction of profit-sharing schemes in banks which do not have them, under this schedule's provision. The ACAS is expected to seek to resolve any claims; if it cannot do so, the CAC is to hear and determine the claim. The stage is set for some interesting CAC business in the course of 1977, particularly since the committee has to give consideration to the *whole* of the terms and conditions observed by the employer with respect to the worker to whom the claim relates.

Arbitration as a Pressure Toward "Industrial Democracy"

A committee of Inquiry on Industrial Democracy (the Bullock committee) reported in January 1977. Appointed in 1975, the committee had its main thrust directed by its terms of reference to representation of employees on boards of company directors. A majority of the committee supported a recommendation which uses a "$2X + Y$" formula as a proposed structure for reformed company boards in firms employing more than 2,000 people, where the staff has voted in favor of a changed board structure. Under the formula, X means directors appointed by the shareholders and by employees (through their unions), and Y refers to a minority group of outside co-opted directors.

A minority report, prepared by the three industrial members of the Bullock committee, considers that the main weight of development of industrial democracy should not be placed on board-room representation, but on the substructures below board level. Reluctantly, this minority group accepted that a law should be enacted

that requires companies employing more than 2,000 persons to conclude an agreement or agreements for some kind of internal participation below board level within a period of four years. This arrangement should be flexible in order to ensure effectiveness, but it should also conform to certain criteria contained in a Code of Practice. The criteria should include the right of appeal to arbitration in cases where any party failed to cooperate, for example, "by withholding information or acting unilaterally in a way contrary to the general good of the company."

The precise role for arbitration and the content of this Code of Practice are regrettably, or temptingly, vague as the minority describes them, for little detail was provided in its proposal. However, some further insight into this intriguing vista may be obtained from the Confederation of British Industry (CBI). While the minority report is not identical to the CBI view, nevertheless the CBI, in its written evidence to the Bullock committee, did stress the approach which the minority took—of promoting participative agreements within a legal framework.

The CBI proposed that if such agreements could not be reached within four years, the employer or employees concerned could refer the matter to special tribunals which could, in turn, refer the case to an associated tripartite arbitration agency for decision. This agency would be obliged by statute to ensure that any agreement which it imposed by arbitration complied with the objectives and criteria in the statute. Before such an arbitrated agreement could be enforced, a majority of employees would have to affirm their support for it in a secret ballot. In no circumstances could such an arbitrated participation agreement introduce board-level representation for employees. The CBI took the view that to impose such an arrangement would be to destroy the close harmony necessary for the efficient functioning of a board of directors.

The CBI suggested various objectives and criteria for inclusion in the statute, and presumably it is to these that the arbitration agency would have to have regard. The criteria included such matters as safeguards for collective bargaining; for efficiency, profitability, and prosperity; for commercial secrecy; and for the executive function of management.

In a brief comment, the majority Bullock report described these criteria as "very general," but it did not discuss the proposal for this new arbitration device in detail. This was understandable. What the CBI was seeking to do was to devise mechanisms that enabled participation to develop, if necessary through the pressure of arbi-

tration, below the level of the board. Bullock, on the other hand, was clearly committed from the start to presenting the case for employee representation at the board level.

It is by no means clear what action the Government will take on the Bullock report. Some form of employee representation on boards of directors, whether unitary (as Bullock purposes) or two-tier (as in Germany and under European Economic Community draft proposals for company structures), is clearly what the trade unions want. Nevertheless, the idea that arbitration might be invoked to ensure minimum standards over a very broad range of company operations is certainly an intriguing one. It might prove a very useful weapon with which to persuade employers and employees to devise their own solutions! Perhaps arbitration in Britain is in danger of becoming too popular.