APPENDIX D

REPORT OF OVERSEAS CORRESPONDENTS*

I. CONCILIATION AND ARBITRATION IN GREAT BRITAIN—1976–1977

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The last two reports have inevitably stressed the changes in framework and have therefore been tentative in offering judgment as to the principal features of the new system. Now perhaps it is easier to see and evaluate an emerging pattern. There is still, however, one important factor that clouds the real issues. From the election of the Labour Government in February 1974, there have been several important changes in pay policy. Immediately after the election, the Government relied upon an unspecified "social compact or contract." This failed to stem rapidly increasing pay settlements which quickly ran up from the region of 10 percent to 30–35 percent. In an attempt to deal with this, the Government introduced a formal pay policy, although one still structured through the voluntary Government-TUC "social contract" and not underpinned by legislation. The first period, which ran from the summer of 1975, provided for a ceiling of £6, the second which followed in 1976 is for a limit of 5 percent, with a minimum of £2.50 and a maximum of £4 per week. The third period followed with "guidelines" of not above 10 percent. This did not get TUC support. Their view was that there should be "an orderly return to free collective bargaining." Productivity deals could be struck outside the guidelines, but the Government during 1977–1978 took an increasingly firmer view of its guidelines. These details are set out here merely to underline the point that the possibility of pay disputes has been considerably narrowed; most of those leading to publi-

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cized strikes have been instituted by workers themselves against the policy and advice of their leaders. It follows that the pattern of conciliation and arbitration during this period must have been considerably affected by the current pay policy.

The focal institution for conciliation is the independent agency, established in 1974—the Advisory Conciliation and Arbitration Service. The second annual report covering 1976 is the latest published and it shows markedly increased use. The number of requests for collective conciliation (see below for an explanation of this term) was 3,460 compared with 2,564 in 1975. Analysis by subject matter shows an overall increase, but there was a marked upsurge in cases involving trade-union recognition. It will be realized that the Employment Protection Act of 1975 provided statutory machinery involving use of the services of ACAS. A total of 461 cases were raised under the machinery, as well as some 697 outside the formal machinery. Even allowing for overlap, this shows a major involvement in the area of recognition. It is one which readers will be well aware from NLRB experience raises exceptionally difficult problems. Indeed, at the time of writing, the work of ACAS in this field is being challenged in the high court on several instances, notably as a result of a much publicized stand taken by a film-processing firm, Grunwick. Yet still, despite pay policy, the largest group of cases requiring conciliation involve pay and terms and conditional questions—some 1,561 (1975: 1,184).

The term *collective conciliation* is used to denote cases in which the dispute is basically one involving the relationship between employer and trade union. It might involve an individual—for example, the dispute may concern an individual's pay entitlement or his dismissal, but it is characterized by being processed as an industrial relations dispute. This method indeed was the hallmark of the British system of industrial relations. Relatively rare were rights disputes processed as legal disputes through the courts, or indeed by way of arbitration. The last few years have shown a remarkable change. Since the Contracts of Employment Act 1963, there has been a steady building of the platform of individual rights. Longer basic periods of notice have been established; an entitlement to redundancy payment was first provided by the Redundancy Payments Act 1965. The Industrial Relations Act 1971 provided an enormous step forward with a right to take action for unfair dismissal. Although that act has been replaced, those provisions were reenacted in

the Trade Union and Labour Relations Act 1974. The Employment Protection Act 1975 has strengthened these rights and added to them—for example, maternity leave and maternity pay. Many of these rights are enforceable through a system of industrial tribunals set up in 1974. These tribunals take the usual form—legal chairman flanked by employer and trade-union nominees. The tribunals are linked to the regular courts, and since 1975 appeals on points of law go to a special branch of the high court—the Employment Appeals Tribunal. It has a high-court judge flanked again by employer and trade-union nominees. Their work has been dealt with by your correspondent last year.

This new feature of the legal system also provides for a "conciliation step." When a claim is made to the tribunal, it is referred to ACAS with instructions to attempt to settle the matter. This service is provided by specialist conciliation officers. The growth of work is phenomenal. In 1975 there were 24,367 cases dealt with by ACAS. In 1976 there were 36,562 on dismissal. In addition in 1976 there were 1,718 on equal-pay rights, 299 on sex discrimination, and a further 481. It will be seen that, counting cases passed to next year's figures, over 40,000 cases were dealt with. It is interesting to look at the sieve effect. In 1976, of 38,107 dismissal cases received, only 16,163 went on to a tribunal; 12,959 were settled, and 7,440 were withdrawn. The work of a conciliation step is thus dramatically established. This area of work is giving rise to a great area of "legalism." It is a growth perhaps unexpected in the British sense. Some feel it has overdone the recourse to formal, third-party, tribunal machinery. It may well in time begin to erode the great resistance in collective matters to such recourse. Certainly it is leading to the creation of a notable body of law, to which this correspondent might return in later reports.

The majority of arbitrations are arranged by the staff of ACAS who provide a free service. Readers will recall that there are no statistics of other arbitrations, but whenever researchers look they cannot find very many. Certainly 100 would seem to be an overestimate. In 1975 ACAS sponsored 292 arbitrations. In 1976 the figure was almost identical—296. The 1977 trends look similar. The largest number of both these figures were single arbitrations—smallish issues entrusted to one arbitrator. Boards, the traditional independent flanked by employer and trade-union nominees, numbered in both years only 30 or so. It is noteworthy that whereas the pattern of ACAS work shows

a continued increase, the figures for arbitration are static. There is really no readily apparent reason for this. One point must be stressed. In the United Kingdom, arbitration is to some extent regarded by conciliators as a failure. Their aim is to settle the problem without there being further processes. In this area arbitration is far from being the accepted and easy method of settling a dispute. Perhaps a change will occur. Certainly 1976 figures indicate that despite the progress in 1975–1976, it is not going to be rapid.

The Central Arbitration Committee, set up by the Employment Protection Act 1975, took over the work of the old Industrial Court early in 1976. The Industrial Court has a long history. It was set up in 1918 and for many years was used quite considerably for wage-fixing and other disputes, especially where bargaining procedures had not been well developed. Its work declined, but there was a revival in the period after the war in 1946 when legislation limited strike action and provided for arbitration. Once this phase was over, its work declined again. In 1971 it was renamed the Industrial Arbitration Board—incidentally, the best descriptive title. By 1975 it received only some 30 applications and dealt with 18 in that year.

The new Central Arbitration Committee was given a considerably widened jurisdiction by the Employment Protection Act 1975. The work it took over included voluntary arbitrations where parties decided to use the committee; two provisions dealing with low pay (§ 8 of the Terms and Conditions of Employment Act 1959 and the Fair Wages Resolution of the House of Commons); certain functions in the move to equal pay, restricted to collective agreements; and several minor matters. Added to these functions in 1976 were a wider provision on low pay (Schedule 11 of the 1975 act), arbitration on claims where an employer has refused to accept a recommendation by ACAS that a trade union be given bargaining recognition, and decisions in the disclosure of information for bargaining purposes.

The progress during 1976 was remarkable, but the reasons for it need cautious assessment. Some 132 cases were received and 71 dealt with. Although they covered a wide spectrum of the jurisdiction, the vast majority (89) of the 132 were on low-pay claims. It would need a great deal of space to explain fully the reason for this. Put briefly, the low-pay provisions were specifically exempt by the Government from the rigid norms of pay policy. Low pay is a concept that was not confined to absolute

low pay: a well-paid worker could succeed by showing that his pay was relatively low and so unfair. These "gates" through pay policy had an obvious attraction. It is debatable whether this is the sort of task a national arbitration body should do. If it is truly remedying anomalies not otherwise settled by negotiation, the function appears both useful and appropriate. If it is becoming an institution of pay policy, then the dangers are apparent. Its closeness to a temporary set of rules, dictated by political considerations, may serve to injure its standing in the long run. Certainly it is a danger to be watched. The putting into force of Schedule 11 of the Employment Protection Act 1975 at the beginning of 1977 has released a flood of cases. Torrent is a better word, since there were 1,030 cases received in 1977—nearly a ninefold increase.

Two features stand out in the ever-changing picture of industrial relations. There is a firm commitment to joint settlement of disputes whenever possible. This feeling has successfully underpinned ACAS which has been able to show excellent results. At the same time there are signs of increasing legalism. The greater use of tribunals has tended to break down long, steady refusal by some unions (the AUEW, the engineers' union, is the best example) to accept third-party help. Possibly it marks the beginning of a significant change in attitudes. The next five years should show whether we are slowly moving toward attitudes more familiar in the United States. Indeed, there are two major factors that dominate the English scene in the period under review—the vast growth of cases resulting from pay policy and the increasing involvement of lawyers in appeals to the courts. This last point will be taken up in a subsequent report.