APPENDIX E

# REPORT OF OVERSEAS CORRESPONDENT*

## BRITISH INDUSTRIAL RELATIONS: ANOTHER TURNING POINT?

T. L. JOHNSTON**

At the turn of the year 1979–1980, the main focus for industrial relations discussion in Britain was the newly published Employment Bill. It takes up a limited number of specific issues which have been proving troublesome. Yet the bill, viewed in a broader setting, is simply another milestone, staging post, or turning point in the process of adjustment of British industrial relations which has been in train throughout the 1970s.

It seems appropriate, therefore, to use the occasion of this note on the developments of the last year of a decade to set the bill in the context of the next decade and to look back over the ten-year period. Of course there is no neat starting or cut-off point in these matters. Ten years ago, for instance, in 1970–1971, the country was in the throes of discussing the Industrial Relations Bill, leading to the Industrial Relations Act 1971, which the newly elected Conservative government at that time had placed before Parliament. That, in turn, had been preceded by the Donovan Royal Commission (1965 to 1968) and by the abortive attempt on the part of the then Labour government to introduce legislation which would, in its judgment, have promoted industrial peace "In Place of Strife," to quote the title of the controversial White Paper of 1969.

With all due recognition of the difficulty, indeed, impossibility, of corseting such a complex subject as industrial relations legislation into a temporal box of a decade, let us cast an eye over the highlights of the 1970s.

---

*Members of the Committee on Overseas Correspondents are Alan B. Gold, Eric J. Schmertz, John C. Shearer, David Ziskind, and Jack Stieber, chairman.

**Free-lance industrial relations work, Edinburgh, Scotland.

The first feature is that there has been a remarkable amount of industrial legislative enactment in Britain in that period. This makes utter nonsense of the curious myth that somehow or other British industrial relations is distinguished by "the voluntary principle." Commencing in the 1960s with the Contracts of Employment Act 1963 and the Redundancy Payments Act 1965, which did much to strengthen the contractual and property rights of employees, there has been quite a spate of legislation. In the area of central controversy concerning the "balance of power," the most comprehensive enactment was the controversial Industrial Relations Act 1971, which endured for three years. It identified a range of unfair industrial practices (a new concept in British industrial relations), provided for registration of unions and employers' associations, sought to provide standards for union rights, introduced the presumption of legally enforceable collective agreements, and, not least and most enduringly, gave birth to the concept of unfair dismissal. Much of this act was repealed by the new Labour government of 1974, by passage of the Trade Union and Labour Relations Act 1974. In part, this was a grand gesture of putting to the sword an act which had become the focal point for bitter political controversy.

Very sensibly, however, the 1974 act substantially reenacted the arrangements which the 1971 act had introduced for protecting employees against unfair dismissal. This has continued throughout the remainder of the decade as the one key area in which there is now a consensus. Criticism of unfair-dismissals principles and practices is now concerned largely with detailed worrying that the procedures are becoming too legalistic and, significantly, with the fear that the workload of cases on unfair dismissal is threatening to become excessive. This latter worry explains in part why the Conservative government, elected in 1979, has now extended the period of employment leading to entitlement of protection against unfair dismissal from six to twelve months. There is no doubt, however, that the concept of unfair dismissal has in the 1970s become a well-established and understood part of the British industrial relations scene.

There has been other legislation, too. The Employment Protection Act of 1975 contained a whole range of supplementary or additional measures aimed at shifting the balance of power in favor of employees. This approach was a quite explicit response by the new Labour government to the deal which it had

worked out with the trade union movement under the broad banner of "the social contract."

Apart from that, most of the remaining legislation was not controversial and aimed at the elimination of various types of discrimination; one thinks of the Equal Pay Act 1970, the arrangements to promote equality between sexes and races, and so on. Somewhat at a distance from the more controversial centers of labor relations, the 1973 Employment and Training Act incorporated the second stage (the first being the Industrial Training Act 1964) of a broadly based consensus aimed at developing in Britain an active labor market policy. Under the 1973 act, the Manpower Services Commission was established as the prime custodian of this range of work.

This new agency is but one of a number of developments in the 1970s which showed an emerging awareness in Britain of the wisdom of involving "the social partners" in the running of key parts of industrial relations and the labor market. Indeed, one of the most remarkable features of the 1970s has been the development of new institutions to undertake functions which were previously tucked under the skirts of the mainstream government department, the Department of Employment. That department has spawned the following agencies: the Manpower Services Commission, already mentioned; the Advisory, Conciliation and Arbitration Service (ACAS), established in 1974 and placed on a statutory footing by the 1975 Employment Protection Act; and the Health and Safety Executive, established under the Health and Safety at Work Act.

Each of these bodies has responsibility on an agency basis for the broad range of work indicated by its title; each has the image of an active, managing agency, quicker on the draw than a traditional government bureaucracy; and each, not least, is governed by a commission, council, or executive composed of representatives of trade unions, employers, and independent members. Here, too, we have a developing sense of consensus, and students of industrial relations, not to mention constitutional history and law, will increasingly find these agencies interesting examples of new, and so far successful, forms for policy-making and practice. They have demonstrated, perhaps to the surprise of the British themselves, that institutional change is still possible in our society.

What, however, of the explosive issues on which controversy still rages? Three main hard areas come to mind. First, there is

the perennial problem of incomes policy, of which the sensitiveness of the trade union movement to the legal enforceability of collective agreements may be viewed as part. It is hardly an indictment of the British industrial relations system to conclude that the decade now ended produced no permanent solution to the pay and prices dilemma. Who, if anyone, holds the key to that particular castle? But we cannot be accused of lack of effort, or of pragmatic ingenuity. The decade began with the ceremonial execution of the Labour government's Prices and Incomes Board by the new Tory administration, committed to the free market. The decade ended with a new Tory government similarly convinced that no government or proxy for it can control labor markets, at least over a lengthy period. In between, the 1970 Conservative government had itself been forced to intervene substantially, while the period from 1974 to 1978 saw the Labour government's social contract with the unions succeeding in bringing some understanding, based on consent, into pay bargaining. Even that proved ephemeral, however, for the death of the Labour government in 1979 was due in fair measure to its inability to persuade the unions to "hold the line" for a fourth phase (year) and to the subsequent winter of discontent and industrial chaos, not least in some public-sector industries.

As was hinted above, the unions remain neurotic and suspicious about legalized intervention in collective bargaining, and they have succeeded in resisting suggestions that there should be a legal underpinning to negotiated agreements. To that extent, Britain remains a maverick among nations.

A second area of controversy concerns industrial democracy, or participation. Ten years ago this was a nonissue, treated in 1968 by the Donovan Commission, for example, with the barest civility. Again, however, in the context of the social contract, the labor movement by the mid-1970s was bent on shaking the established tree of boardroom bureaucracy and infiltrating its "worker directors" into boardroom power situations. Hence, the Bullock Report on Industrial Democracy, published in January 1977. At the time this generated furious passions about principle and practicability of having workers appointed as members of company boards. By the end of the decade, the heat had gone out of the debate, not only because of the change of government in 1979, but because the Labour government, which was in power in 1977, could not generate an internal agreement as to what should be done with Bullock. The prob-

lem remains, and the EEC continues to talk of "the democratic imperative" of participation. As we enter the 1980s, the Conservative government is content to pursue a "bottoms-up" approach to the problem, allowing participation to "broaden out from precedent to precedent," supporting, via tax concessions, etc., efforts which industry may initiate to promote employee shareholding. The Confederation of British Industry (CBI) has all along favored gradualism, backed as appropriate by some pressure to make progress toward a more participatory style of industrial relations involvement. During the remaining term of the Conservative government (which could take us to 1984), it is unlikely in the extreme that any bold new initiatives will be taken to match the grand design proposed by Bullock. Participation will creep, Fabian-style.

The third controversial area is the most fundamental of all in terms of enduring controversy. It concerns the way in which an acceptable "balance of power" is to be attained and maintained. As we have seen, implicitly or otherwise, much of the controversy of the 1970s has been about the balance of power. As a broad generalization, there is no doubt that this balance swung in favor of the worker, the employee, the trade union, in the course of the decade, particularly after the passage of the Employment Protection Act of 1975. Yet there is clearly dissatisfaction with the balance, a desire to shift the pendulum, certainly on the part of the employers. Significantly, the CBI now has a steering group hard at work on identifying the shortcomings of the British system, with a view to promoting an improved set of arrangements.

It is the broad equity or balance of the system which the present government is also seeking to appraise and redress in the kinds of legislative proposals such as those contained in the Employment Bill mentioned at the beginning of this note. Having learned from its experience in 1970 and 1971 that it may make sense to pursue industrial relations reform step-by-step, rather than through a comprehensive enactment such as the Industrial Relations Act 1971, the government has selected a number of themes on which it proposes to enact changes. The Employment Bill seeks to encourage the use of secret ballots in union elections and in voting on industrial action by making public funds available to unions for the costs they have incurred in such balloting; it endeavors to extend the protection afforded to individual "objectors" in union-membership situations; and

it has also endeavored to grasp the nettle of secondary picketing by proposing that lawful picketing should be restricted to one's place of employment.

This last has already begun to prove a Pandora's box, not only because of the difficulties and controversy inherent in the proposal, but because the current state of the law has been thrown in doubt through judgments handed down by the highest court in the land, the House of Lords.

In *Express Newspapers Ltd.* v. *McShane,*[1] a case involving journalists who had "blacked" a newspaper that was not a direct party to the dispute they were pursuing, the Lords interpreted the protection which the unions enjoy under the law in a very broad way. They declared that acts of trade union officers done "in contemplation or furtherance of a trade dispute" had to satisfy a subjective test. If the doer of the act honestly thought at the time that the act or acts would assist it to achieve its objectives in a trade dispute, the party enjoyed protection under the law. The expressions "in . . . furtherance of a trade dispute" refers to the subjective state of mind of the person doing the act and means that he so acts with the purpose of helping parties to the dispute to achieve their objectives in the honest and reasonable belief that it will do so.

This judgment in itself was enough to raise eyebrows. Come now over the threshold into the new decade, however, and in particular to the industrial dispute involving the nationalized steel industry for the first three months of the year 1980. After failing to make speedy progress with their claim via direct pressure on the British Steel Corporation, the unions resorted to strike action against the private sector of the industry, as a means of widening the dispute, staunching the flow of steel, and thereby bringing the corporation to an agreement.

Private steel employers appealed successfully to the Court of Appeal against this "secondary industrial action," the appeal court taking the view that the unions had gone beyond acts in furtherance of a trade dispute. They were trying to put pressure on the government, the ultimate paymaster. The House of Lords subsequently reversed this judgment, following the views expressed in the *McShane* case referred to above: the unions were satisfying the subjective test of honestly thinking that their

[1]Industrial Case Reports Part 2, February 1980, at 42 et seq.

action might serve to bring the original dispute to a successful conclusion.

The House of Lords did, however, make it clear that, while it had to interpret the law as it stands, it was not especially happy with the broad protection which the legislation, dating from 1906, does give to trade unions. One of the law Lords, for instance, said that such protection could mean that "almost any major strike in one of the larger manufacturing or service industries, if sufficiently prolonged, might bring the nation to its knees." It gave the unions great industrial muscle. (Connoisseurs of the Industrial Relations Act 1971 will recall that Sections 138 to 140 provided procedures for dealing with what, more popularly, are known in the trade as emergency disputes.) The Lords went on to make the point that if the national interest did require that some limits should be placed on the use of such industrial muscle, the law as it stands must be changed—and only Parliament can do that.

As we have noted, the Employment Bill now before Parliament represents the first stage in the efforts of the 1979 Conservative government to "redress the balance of power" by a step-by-step process, taking up particular problems which have caused difficulty in the past. But the House of Lords' decisions have demonstrated that the attempt in the bill to look first at secondary action in the form of secondary picketing is not going to be contained readily in the ongoing debate. Already the Government has had to widen out its perspective and to have regard for the wider range of secondary action, such as "blacking" and strikes, for which the present law provides immunity. The Government, accordingly, published a working paper, a consultative document, on the theme of secondary industrial action in February 1980. The scene is therefore set for an important legal, but also a technically difficult, industrial relations debate about the scope of secondary industrial action in Britain.

This note has suggested that in two important areas of industrial relations arrangements, the apparently turbulent decade of the 1970s did produce important new and agreed arrangements dealing with (a) unfair dismissal, and (b) major matters of conciliation and arbitration, health and safety, and manpower training and development, via the new agencies established to manage these parts of the national policy. In other matters, however, there is much still to be done before a balance has been struck which is regarded as equitable, particularly with respect to in-

dustrial action and the powers that may be deployed in pursuit of it. This is likely to be the topic that dominates the early years of the 1980s, and which will certainly cause the unions greatest concern. On other topics, such as participation, change is likely to occur slowly but, one may hope, with some awareness of "the democratic imperative."