APPENDIX B

REPORTS OF OVERSEAS CORRESPONDENTS*

WAGE FIXING—CHANGES IN THIRD-PARTY INTERVENTION IN THE U.K.

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Introduction

It has always been a notable difference between English and American labor relations practice that interest arbitration and similar methods of third-party intervention in wage fixing has been extensively relied upon in the United Kingdom. Indeed, it looked for a while as if Schedule 11 of the Employment Protection Act 1975 was going to give the process a central role—that of extending the standards achieved in collective bargaining to other employers through the concept of an enforceable general level.

The advent of the Conservative Government in 1979 has brought a considerable change, in this as in much else. This wind of change (blowing, it is generally accepted, across the Atlantic) has already had a major impact and more is promised. The government is now a firm supporter of unfettered collective bargaining. The labor market is regarded as the best regulator of wages. Outside interference is unwelcome, save perhaps for government exhortation to accept "modest" and "reasonable" pay increases. Factors which adversely affect free collective bargaining, which in the government's view includes features such as the closed shop and weak trade union democracy, are also being given or are being promised legislative attention.

The ideology underlying government action is clear. The ef-

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fect of the changes is less easy to assess. Before attempting to do so it might be beneficial to set out a brief description of the various processes that have been changed and of those for which change is proposed.

Reforms Since 1979

1. Repeal of Schedule 11

The Labor Government, in the Employment Protection Act 1975, built upon two existing methods of third-party intervention. The oldest of these was the Fair Wages Resolution, first established in 1891. It provided that the government should not place contracts with an employer failing to pay fair wages. The other basis was the Regulations dating from the Second World War which provided that, where terms and conditions of employment were established in an industry by the majority of employers and trade unions, those levels could be enforced, by means of unilateral arbitration, against individual employers. Schedule 11 merged the two systems, applying the Fair Wages "general level" of fairness over all employers.

Schedule 11 was put into force during the 1975–1979 period when the government's pay policy limited trade-union negotiated increases. It was attractive to unions, and to many employers, too, as it became an exception to the strict rules of the pay policy. It was repealed by the Employment Act 1980. One result was that industrywide collective bargains can no longer be enforced against employers not complying with them.

2. Recission of the Fair Wages Resolution

The next step was far more controversial. The principles underlying the Fair Wages Resolution are enshrined in I.L.O. Convention No. 94. The government told the I.L.O. that it was denouncing the Convention which had previously been ratified. As a result, that ratification will cease to have effect in September 1983. In the meantime the House of Commons has decided to rescind the resolution, also from that date. It is possible to argue that during the period of pay policy the resolution was misused or over-used. That alone, however, cannot justify the removal of protection against unfair employment practices. The action is consistent with the desire to remove interference with labor market forces. Certain statutes dealing with particular in-

dustries (e.g., road transport) also enshrined the fair wage principle. Most of these, too, have been repealed.

It will be appreciated that each of these processes depended for enforcement on unilateral arbitration machinery. That is to say, the cases could be raised by one party, usually, of course, the trade unions concerned, and would go for adjudication to the Central Arbitration Committee. Its findings would, in the case of Schedule 11, become by law part of the contracts of service of the individuals concerned. Although the position was slightly different from that under the Fair Wages Resolution, the effect was similar.

The next process to be discussed is not arbitration, but has many of the features of that process. It was a child of pay policy—one of a large number of such bodies that are created as part of pay policy, only to be killed off as the policy falls into disfavor.

3. Standing Commission on Pay Comparability

This body, often referred to as the "Clegg Commission" after its first chairman, consisted of a small group—six members from trade unions, business, and academic life. It was set up to examine the terms and conditions of employment of groups of workers referred to it by the government. The idea was to use the method of comparisons for groups of workers for whom the government was directly or indirectly responsible. It was set up in March 1979 and lasted until March 1981—another case of infant mortality.

The aim was to bring a more orderly approach to that section of pay fixing and to relieve the government of direct responsibility. The method adopted combined submissions by the parties combined with investigation and as sophisticated a process of pay comparison as was possible.

That basis was, of course, directly in conflict with the attitude of the present government which is more ready to take responsibility. It also has doubts about many of the underlying principles—for example, the rate for the job and comparison generally. Fourteen studies were completed, including important ones of local authorities' ancillary workers and teachers.

The underlying attitude of the government which led to the abolition of the Clegg Commission also meant that the government looked unfavorably on those areas of the public sector

where arbitration clauses formed part of the industrial relations structure. In an attempt to avoid open industrial conflict, these systems often included a provision that a trade union, dissatisfied with the "last offer," could insist upon arbitration. The government energetically pursued a policy of removing such provisions from collective agreements wherever possible. This led, in 1982, to two interesting and diverse examples of possibilities for arbitration where the government's position, especially of upholder of an unofficial pay policy and employer, or at least paymaster, of a group of public servants, had a significant influence. In a health service dispute, where submission could be only by agreement, the government stood firm against its use. The result was a long and disturbing strike. Many commentators feel that the final outcome was almost precisely what an experienced arbitrator would have awarded. The other dispute, which was equally worrying, affecting as it did public health, was in the water supply industry. The employers in this case (the water authorities) get their income from directly levied rates, and the government obviously felt a close interest. Here there was the possibility of arbitration, but the trade unions refused to submit themselves. They were criticized by government ministers for that attitude. This illustrates how interest arbitration, unless firmly entrenched in procedures and respected by the parties (as it is, for example, in teaching), becomes a political football.

The pace of change continues, and one of the traditional ways of wage fixing, used in areas with weak trade unions, is under increasing criticism and threat of abolition. This is the system of Wages Councils.

4. Wages Councils

These bodies were first set up in 1909 as trade boards. They were established in "sweated trades"—that is to say, employment where very hard work was demanded for low wages. The system was steadily extended until about 1930. Since then the number of councils has declined as a result of abolition and amalgamation. There are now in the region of 30.

The system provides a bargaining forum comprised of three sides: employers, from the principal employers' bodies; workers, usually for trade unions with a presence in the industry; and three independent members. Bargaining takes place, though of a somewhat formal nature. Interestingly, the final outcome is by

voting, giving the independent "side" the crucial vote when those representing the industry fail to agree. The settlements made by councils are enshrined in legislation—by statutory instrument—and are by law written into the contracts of the workers in scope. This allows a civil action for recovery of proper wages to every employee, and his position is also protected by a wages inspectorate, who can examine employers' records and identify underpayments. In appropriate cases—where the action is felt to be deliberate—it is possible to prosecute the employer in the criminal courts.

This is not the place to analyze in detail the procedures and effectiveness of these interesting bodies. They in effect provide for industry minimum wages; the U.K. system has no national minimum wage. While trade unionists regard the wage levels achieved as deplorably low, it is now an increasingly held view that these minima adversely affect employment opportunities for the least skilled sector of workers when unemployment levels are highest. There is an argument at the political level which engenders considerable heat. The one side stresses the low rates (now in the £60–£65 range); the other points to small businesses closed because of these enforceable levels.

It appears likely that the present government, now returned for a further period of office, is minded to abolish the councils. Not all employers will welcome this, since competition based on wage costs can be difficult to control, especially where there is a large pool of unemployed. As with the Fair Wages Resolution, the system is underpinned by an I.L.O. Convention—in this case No. 26. No doubt this will be denounced if abolition is decided upon.

Summary

The central feature of the U.K. position in respect to third-party intervention is its instability. The pattern changes with remarkable rapidity. Government, employers, and trade unions alike find it difficult to formulate and adhere to a strategy. As soon as a method of intervention appears to be running against them, they agitate for change without much thought for the medium term. The result is that in the areas reviewed—low pay, pay policy, and interest arbitration—the scene is continually changing. This is extremely damaging to the institutions concerned which, in the pay policy area at least, are often abol-

ished, only to be replaced by other bodies with similar characteristics. Experienced and effective organizations—the key to success—are never allowed to develop by the politicians.

SOME RECENT DEVELOPMENTS RELATING TO LABOR DISPUTE RESOLUTION IN FRANCE DURING 1982

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French labor law has undergone some important changes in the past two years, since the elections of May and June 1981 which brought to power a new left-wing majority. During the single year 1982, four statutes were voted by the National Assembly with the largely politicized purpose of granting "new rights to workers." These statutes concern such important subjects as the rights of workers within the enterprise (law of August 4), employee representation at the plant level (law of October 28), collective bargaining and settlement procedures (law of November 13), and health, safety, and labor conditions committees (law of December 23).

As it is impossible to cover such broad items in a brief survey, we shall restrict the present observations to provisions dealing with the role of courts, arbitrators, and other bodies in the resolution of labor disputes. Such provisions are of two kinds: some relate to the settlement of employee grievances following upon a disciplinary action of an employer, while others affect more generally the so-called "procedures for the settlement of collective labor disputes."

I.

Until recently, an employee who allegedly had been unfairly disciplined by his employer had no claim of any sort and no legal procedure was available to him. Only in two particular situations could he bring his case before a court: (1) when he could provide evidence that he had not committed the act for which he had been disciplined—the question at issue then being one of fact; and (2) when the employer could be charged with a *"détournement de pouvoir"*—that is, with having used his right to discipline the

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