British Wages Councils[1] and Full Employment

by

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Great Britain has a long history of minimum wage fixing in the shape of the Wages Councils first set up under the name of Trade Boards in 1909. These have in the past played a very real part in establishing decent conditions in trades where industrial organisation was weak and unreasonably low wages and long hours would otherwise probably have prevailed. They have also helped to bring into existence effective voluntary negotiating bodies, which have eventually superseded them in some cases, as indeed was the intention of the legislator.

In the following pages Mr. Bayliss, who is Staff Tutor in Industrial Relations in the Department of Extra-Mural Studies of the University of Nottingham, traces the development of the relevant legislation up to the present day and, arguing that in the conditions of full employment that have obtained since the Second World War the need for statutory protection has disappeared in many trades—especially those in which adequate voluntary bargaining machinery now exists—examines the attitudes of British employers and workers towards wage regulation.

THE origins of statutory wage regulation in Britain are to be found in the revulsion of the public conscience against the gross underpayment of certain workers—popularly called "sweating"—in the 20 to 30 years before the passage of the Trade Boards Act of 1909. That Act sought to provide a legal minimum wage for workers who, when left to the mercy of the labour market, would receive a wage which was inadequate for subsistence. The Trade Boards Act of 1918 made it possible to extend legal protection of wages to workers who did not have their wages settled by voluntary

[1] Note on nomenclature. Since the Terms and Conditions of Employment Act, 1959, all statutory wage regulating bodies, with the exception of the Agricultural Wages Boards (which are not discussed here) have been called Wages Councils. In catering they were called Wages Boards from 1943 to 1959. The bodies set up before 1945 were called Trade Boards until that year.

collective bargaining, and who, as a result, were inadequately paid. This legislative protection, existing alongside voluntary collective bargaining, was necessary because economic conditions tended to push unorganised, unskilled workers down to a low wage standard. Unemployment was the chief economic condition making for " sweating ".

The essential feature of the machinery set up by these Acts was that the regulation of wages was to be carried out by employers and workers in the trade concerned, together with independent persons who held the balance of power. The objective of the system was to make statutory wage-fixing as similar as possible to voluntary collective bargaining, in the belief that as employers' associations and trade unions became stronger, voluntary bargaining bodies could supersede Trade Boards. The Boards were an inferior form of collective bargaining which would develop into a higher form under the guidance of the State.

In Britain a sustained period of full employment has removed the economic circumstances in which " sweating " took place. Moreover, an absence of voluntary bargaining machinery has become rarer with the greater power of the trade unions and the wide acceptance of voluntary bargaining as the proper means of wage determination. Since statutory wage regulation by Wages Councils continues in these different circumstances the purpose of legal minimum wages and the role of the Councils need re-examination. Certainly the traditional reasons for supplementing a system of voluntary collective bargaining with statutory bodies are no longer appropriate.

The temporary nature of Wages Councils has always been one of the strongest justifications of the British system. There has been general agreement that statutory wage-fixing is second best and that the form of the Councils encourages a transition to complete independence of state protection. In 1918 the Minister of Labour, Mr. George Roberts, following the views of the Whitley Committee [1], said that a Trade Board was " a temporary expedient facilitating organisation within the industry, so that, in the course of time, the workers or the employers will not have need of the statutory regulations ".[2] This opinion has been subscribed to ever since by the employers and the trade unions as well as by successive governments.[3]

[1] The Committee on Relations between Employers and the Employed, set up in 1916 under the chairmanship of John Henry Whitley.

[2] *Parliamentary Debates*, 5th Series. H.C., Vol. 107, Col. 70, 17 June 1918.

[3] See, for example, the remarks of Mr. Alfred Robens, the Parliamentary Labour Party's leading spokesman on industrial relations during the debate on the Terms and Conditions of Employment Bill, in ibid., H.C., Vol. 597, Col. 363, 10 Dec. 1958.

In spite of this agreement that Wages Councils should be temporary and although the period since 1945 has provided circumstances more favourable to the transition from statutory to voluntary wage settlement than those of any other period since 1909, the Councils have become more, not less, important in wage settlement and, so far from there being willingness to forego legal protection, there has been a determination to preserve the Councils.

The large amount of self-government given to the Councils was justified in the past on the grounds that the more closely they resembled Joint Industrial Councils [1], or other voluntary negotiating bodies, the quicker would be the transition to complete independence. The Minister's power over the Councils is slight and in the earliest days of the system the custom developed of the Minister never using his powers in a way which ran counter to the wishes of employers' associations and trade unions. The self-government of the system by employers and workers, assisted by the independent members, and the withholding of the Minister's power has brought the Council's wage determination even closer, in practice, to that of voluntary negotiating bodies. But it has not led to a diminution of the desire to have legal protection.

The central issue is a clear one. Wages Councils were primarily designed to protect workers against low wages, poor conditions and the lack of collective bargaining. But in the economic circumstances prevailing since 1945 these social evils have been largely removed by full employment and a strong trade union movement. Why then are over 3½ million workers still covered by Wages Councils ?

Legislative Developments

The Catering Wages Act of 1943 and the Wages Councils Act of 1945 led to almost a trebling of the number of workers covered by statutory wage regulation outside agriculture.[2] During the inter-war period unsuccessful attempts were made to set up Trade Boards for both catering and retail distributive workers. In catering in 1931 the employers successfully challenged the Minis-

[1] These voluntary bodies, which exist for most of the main industries in the United Kingdom and consist of representatives in equal numbers of employers and workers, are based on the recommendations of the Whitley Committee. The Committee considered that an essential condition for improved industrial relations was adequate organisation on the part of both employers and workers ; it drew a distinction between industries where such organisation was strong, for which it proposed a system of Joint Industrial Councils, and those where it was weak, for which it recommended the institution of Trade Boards.

[2] The Agricultural Wages Boards cover about three-quarters of a million workers.

ter's right to create a Board on the grounds that the trade was not within the 1918 Act's definition of a trade. In retailing, discussions had been held from 1936 to 1939 between employers, trade unions and the Minister and by the end of them the employers and unions were pressing the Minister hard to set up Boards.

Ernest Bevin, as Minister of Labour, was determined to provide statutory wage-fixing bodies for both catering and retail distribution. He introduced legislation dealing specifically with catering—the Catering Wages Bill—because he knew that the resistance of employers in that trade to statutory bodies would be greater than in any other and he preferred to meet it head-on. The Wages Councils Act, while amending the Trade Boards Acts in certain important respects, was deliberately designed to make possible the establishment of Councils in the retailing trade. By 1945, therefore, legislation had been passed which brought within the statutory wage regulating system two large and important industries [1]; their inclusion within the system transformed its significance as a method of wage determination. The 1,300,000 workers covered by Trade Boards in 1939 had been employed in miscellaneous trades of which the most important was clothing and garment making. The catering trade brought about 750,000 workers into the system and retailing about 1½ million.

Although the Acts were passed before the end of the war the legal minimum wages set for catering and retailing workers did not come into operation until after 1945. The last Councils in retailing were not set up until 1953 and their legal minimum wages did not come into force until 1955.

Bevin's determination to provide legal minimum wages for catering and shop workers rested on a pessimistic forecast of the state of the post-war economy. He wanted to protect these workers and also to make the system more comprehensive and easily extendable because he feared a recurrence of the economic depression of the inter-war years of which, as leader of the Transport and General Workers' Union, he had such bitter memories. He feared that the gains which had been made in the extension of voluntary collective bargaining since 1940 would slip away should a post-war boom break and be followed by unemployment. Statutory wage-fixing bodies could provide a bulwark against the depressing effects of such a situation on wages and conditions. With this in mind the

[1] Retail pharmacy and meat distribution have Joint Industrial Councils and no Wages Councils. Although a Wages Board was established for workers in residential establishments not licensed to sell intoxicating drinks it never settled any minimum wages and ceased to function in 1949. The main purpose of the Terms and Conditions of Employment Act of 1959, in so far as it affected wages councils, was to provide statutory wage regulation for these catering workers.

1945 Act provided that a Joint Industrial Council, or any similar voluntary negotiating body, could apply to the Minister for a Wages Council " on the ground that the existing machinery for the settlement of remuneration and conditions of employment for those workers is likely to cease to exist or be adequate for that purpose ".[1] The Act also provided for the continuation of compulsory arbitration until the end of 1950 if the Defence Regulations under which the National Arbitration Tribunal existed were repealed before that time. Bevin's concern to guard the settlement of wages and conditions against the effects of economic depression pervaded the Act. His forecast of post-war conditions, in which he was not alone, have happily proved incorrect and consequently the Act has not had to fulfil the purpose for which he devised it. He believed that it could be used to prop up collective bargaining when economic circumstances tended to destroy the voluntary system, as they had done after 1921. But, as we can now see, what was needed instead was an Act whose objective was to stimulate the transition from dependence on statutory protection to the independence of voluntary collective bargaining.

The tenor of the 1945 Act can be seen in the criteria laid down for deciding whether or not a Council should be established and in the way in which they have been applied. Although the Minister has the power to set up a Council on his own initiative the 1945 Act allows him to appoint a Commission of Inquiry to make recommendations or, if a joint application for a Council is made by employers and trade unions in a trade, compels him to do so. All 12 Councils established since 1945 have been recommended by Commissions of Inquiry.

The Act sets a Commission of Inquiry three questions to answer. Is there existing voluntary machinery which is adequate or is likely to continue to be adequate ? Do existing voluntary agreements cover all aspects of wages and working conditions and are they observed throughout the trade ? If the answer to these two questions is " no ", the third one asks, is a reasonable standard of remuneration being, or is it likely to continue to be, maintained ? [2] Inadequate voluntary collective bargaining accompanied by unreasonable standards of remuneration are the grounds on which a Commission can recommend the establishment of a Council.

It is possible for a Commission to come to the conclusion that despite inadequate voluntary negotiating machinery the wages and

[1] Wages Councils Act, 1959, section 2 (1). The Wages Councils Act, 1959, consolidated all legislation affecting Wages Councils, i.e. the Wages Councils Act, 1945, and the appropriate parts of the Wages Councils Act, 1948, and the Terms and Conditions of Employment Act, 1959.

[2] Wages Councils Act, 1959, sections 3 (2), 3 (5) and 3 (4).

conditions of work being provided are reasonable and likely to remain so. However, only one Commission [1] has refused to recommend a Council because, although voluntary machinery was inadequate, remuneration and conditions were reasonable. The Commission's conclusions are instructive. They were that—

> notwithstanding the absence of adequate machinery, the standard of remuneration in the industry before the last war was not unreasonable having regard to the economic conditions of the time. In using the experience of the past as the best means, in this instances, of assessing possible happenings in the future we find ourselves unable to say that as a result . . . a reasonable standard of remuneration will not be maintained.

The implication was that, had wages been unreasonable before 1939, the Commission would have recommended the establishment of a Council in 1948 without reference to the post-war situation.

The term " reasonable standard of remuneration " was undefined in the Act. The Commissions have given it an interpretation which threw them back to the first and second questions. For example, the Commission of Inquiry into the hairdressing trade said—

> The Act gives us no guidance on the question of what a reasonable standard of remuneration will be, but we take the view that in the absence of special circumstances, a rate freely negotiated by the organisations of employers with the knowledge that it would not be binding on unorganised employers is unlikely to be excessive, and that, conversely, the fact that the organisations of workers have freely agreed to a rate gives some assurance that it is not unduly low.[2]

On this interpretation the absence of voluntary negotiations and of " a rate freely negotiated " was taken as proof that wages were not reasonable. If the answer to the question, " Is existing voluntary machinery adequate ? ", was " no " then the answer to the question " Are the wages paid reasonable ? ", was bound to be " no " also. The Commissions tended to judge whether or not a Council was appropriate on the sole criterion of the adequacy of voluntary collective bargaining machinery.

Even so the Commissions had to acknowledge that in some trades wages were reasonable, although there was inadequate collective bargaining, because workers were being paid as much,

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[1] Commission of Inquiry on an application for the establishment of a Wages Council for the basket making industry, 1948. Its report was not published because until the Wages Councils Act of 1948 the Minister was only obliged to publish the reports of Commissions which led to the establishment of a Council. See 1945 Act, section 5 (5) and 1948 Act, section 5 (1). The conclusions of the report are, however, available.

[2] *Report of a Commission of Inquiry on an Application for the Establishment of a Wages Council for the Hairdressing Trade* (1947), p. 8.

and sometimes more, than was provided by the few collective agreements which did exist. In these cases, they argued, the reasonableness of wages depended on temporary factors ; essentially they said that full employment, which made these wages reasonable, would not be maintained. The inter-war experience loomed large in their minds. For example the Commission on the drapery trade reported that " it cannot be assumed that, in the absence of effective wage regulating machinery, the conditions which gave rise to low wages and long hours of work in the retail trades before the war will not recur " [1]; and the food trades Commission said that " to rely exclusively upon the state of the labour market to maintain a reasonable standard of remuneration in the retail food trades is not sufficient, and we recommend the establishment of a Wages Council ".[2] The Commissions believed that the post-war circumstances were abnormal and that a weaker demand for labour, which would cause the wages of retailing workers to become unreasonably low in the absence of statutory regulation, was to be expected.

When the Commission into the bread and flour confectionery trade reported in 1950 it said that " there has been for many years now a relative shortage of labour in many industries compared with pre-war and we were informed that this shortage has had its effect on wage rates " but " the evidence we have received [of voluntary agreements] is not sufficient for us to say whether a reasonable standard is at present being maintained ".[3] In times of less than full employment a lack of effective voluntary collective bargaining was almost always associated with a low standard of wages. The Commissions were encouraged by the provisions of the Act and by the desire of the employers and trade unions to have Councils created to assume that even if the two were not associated in the immediate post-war years they would be in the future " when normal trading conditions return and the supply of labour becomes more nearly equal to demand ".[4] The extension of the British system of statutory wage regulation has been based on the assumption that the low levels of unemployment experienced in the late 1940s were temporary.

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[1] *Report of a Commission of Inquiry on an Application for the Establishment of a Wages Council for the Drapery, Outfitting and Footwear Trades* (1947), p. 7.

[2] *Report of a Commission of Inquiry on an Application for the Establishment of a Wages Council for the Retail Food Trades* (1947), p. 12.

[3] *Report of a Commission of Inquiry on the Question of the Establishment of a Wages Council for the Wholesale and Retail Bread and Flour Confectionery Distributive Trades* (1950), p. 6.

[4] *Report of a Commission of Inquiry . . . for the Retail Food Trades*, op. cit., p. 10.

The Abolition of Wages Councils

Most Wages Councils were established as Trade Boards before the end of 1921.[1] Industrial developments since that time and the stimulus given to voluntary negotiations after 1940 clearly make it false to assume that a trade which needed statutory wage regulation when the Board was founded still needs it. Moreover, if one purpose of the Boards and Councils is to foster the development of voluntary negotiations to the point where they are sufficient it should be possible to abolish some of the longest established Boards.

The Acts of 1909 and 1918 made the barest provisions for the abolition of Trade Boards [2] and in fact no Boards were abolished under them. The 1945 Act [3] made more detailed provisions and these were amplified in the Acts of 1948 [4] and 1959.[5] The Minister retained from the earlier Acts his power to abolish a Council on his own initiative, but employers and trade unions who engaged in voluntary negotiations in a Council trade were given the right to apply to the Minister for its abolition. The Minister, as in the case of a joint application for the establishment of a Council, had either to accede to the request or refer it to a Commission of Inquiry. He may also appoint a Commission without receiving such an application if he believes that the abolition of a Council should be considered.

Five Councils have been abolished since 1945.

The Chain Wages Council, a former Trade Board founded in 1909 which had automatically been turned into a Wages Council by the 1945 Act [6], was abolished in 1956 ; it had never been constituted under the 1945 Act and no members had ever been appointed to it. The making of chain by hand, to which the Board applied, had almost disappeared by the time it last met in 1939 but its formal existence dragged on until, after consultation with the remaining employers and the chainmakers' trade union, the Minister " decided

[1] Of the 63 existing Councils eight were established between 1909 and 1917 and 32 between 1918 and 1921.

[2] Trade Boards Act, 1918, section 1 (3) : " If at any time the Minister is of opinion that the conditions of employment in any trade to which the principal Act applies have been so altered as to render the application of the principal Act to the trade unnecessary, he may make a special order withdrawing that trade from the operation of the principal Act."

[3] Section 6.

[4] Wages Councils Act, 1948, section 4.

[5] Terms and Conditions of Employment Act, 1959, section 3. The consolidated provisions governing abolition are found in the Wages Councils Act, 1959, sections 4, 5 and 6.

[6] Section 20 (2).

that the statutory wage-regulation machinery was no longer needed and was not likely to be needed in the future ".[1]

The tobacco industry, for which a Board was established in 1919, was able to make voluntary agreements on wages in 1920 and 1921 but they collapsed when unemployment increased in the wake of the post-war boom. The Trade Board stood the industry in good stead for the rest of the inter-war period. As was the case in other industries a national negotiating body was formed during the Second World War. By 1948 the National Joint Negotiating Committee for the Tobacco Industry was strong enough for the Wages Council to fall into disuse and it never met again after that date. Yet it was not until 1953 that the Minister received from the organisations represented on the Committee a joint application for the Council's abolition, which he accepted. The employers took longer than the trade unions to come to the conclusion that the Council should be abolished, despite the fact that the industry is dominated by a small number of firms whom one could expect to have confidence in their ability to make a voluntary negotiating body work successfully.

The other three Councils which have been abolished since 1945 have had quite different histories from the old Trade Boards. They were the Councils for furniture making, rubber manufacture and rubber reclamation and, because they were set up in 1939 and 1940, none had legal minimum wages in operation before the outbreak of war. The Rubber Reclamation Council was of minor importance. Although the reclamation of rubber developed into a sizeable industry in the special circumstances of the war economy, it had declined by 1955 to fewer than 30 firms. There had been voluntary negotiations during the war, as well as Trade Board Regulations, and in 1946 a National Joint Industrial Council was set up. Nine years later a joint application was made to the Minister asking him to abolish the Wages Council because the Joint Industrial Council " regulated the wages and conditions of the great majority of workers ".

The abolition of the Furniture Wages Council and that of the Rubber Manufacture Wages Councils, however, represent the most important withdrawals of legal protection of wages so far. These cases provide marked contrasts in the way in which a Wages Council can develop.

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[1] *Annual Report of the Ministry of Labour and National Service for 1956* (London, 1957), p. 111. One other Council, the Drift Nets Mending Council, which was set up in 1925 to protect women homeworkers in that trade, has never had any members appointed to it under the 1945 Act. Its continued formal existence serves to show how wary the Minister is of abolishing even redundant Councils.

The Furniture Trade Board was accompanied from its foundation in 1940 by a voluntary negotiating body, for the joint conference of employers and trade union representatives which had discussed the setting up of the Board with the Minister turned itself into a Joint Industrial Council when the Minister announced his intention to create a Board. The existence of the statutory body aided the creation and development of the Joint Industrial Council, whose " consolidation was undoubtedly facilitated both by the ' national outlook ' and the effective national organisation which the Board helped to foster. The Council and the Board thereafter interacted to their mutual advantage." [1] Circumstances favoured this development. The economic conditions which had produced the " sweating " of labour in the 1930s and had made the Board necessary disappeared as the economy moved to full employment. Many other trades formed J.I.Cs. at the beginning of the Second World War and, although the creation of the Board no doubt helped the development of the Furniture J.I.C., some effective voluntary negotiating body would have been set up in any case.

Indeed the Board ceased to settle minimum wages and conditions after the end of 1942 and " as confidence in the J.I.C. grew, so did the union begin to think in terms of getting rid of the Trade Board ".[2] The employers were slower than the trade unions to press for abolition because they feared that without legal minimum wages unorganised employers would under cut their wages. However, compulsory arbitration and the maintenance of " recognised terms and conditions " seemed to them to give sufficient protection and early in 1947 a joint application was made for the abolition of the Wages Council. Compared with its position in 1940 the industry was well equipped to sustain voluntary collective bargaining: in 1946 a comprehensive National Labour Agreement had been made by the Joint Industrial Council, there was a national employers' organisation which dated from 1940, and in 1947, by an amalgamation, a national union for the industry was formed.

In the special circumstances of 1940 to 1947 the Furniture Wages Council had performed the classic function of a statutory wage regulating body. It had done what it was claimed all Councils should do: " it had helped considerably in bringing the improvements in organisation, in voluntary bargaining machinery and in industrial relations generally which alone made [abolition of the Council] possible." [3]

[1] N. ROBERTSON: *A Study of the Development of Labour Relations in the British Furniture Trade* (1955), unpublished B. Litt. thesis in the Bodleian Library, p. 290.

[2] Ibid., p. 284.

[3] Ibid., p. 296.

Yet in circumstances almost identical to those experienced in furniture-making the rubber industry developed in quite a different way. The Furniture and the Rubber Manufacture Trade Boards were set up at the same time ; in both, the establishment of a Joint Industrial Council accompanied the setting up of the Board ; in both, after the latter had settled the initial national wage rates, the former became the effective body for wage settlement. But, while these developments led to the abolition of the Furniture Wages Council, in rubber manufacture they became the means for obtaining legal enforcement of the rates settled by the J.I.C. Since its establishment in 1940 the Joint Industrial Council " has become the body which determines national wages and conditions, and on the [Wages Council] a group of employers' and workers' representatives, hardly differing from the members of the J.I.C., meet with independent members to recommend to the Minister that the rates thus voluntarily agreed should be made obligatory on all employers in the industry ".[1] The meeting of the Wages Council became a formality. Once wages and conditions had been negotiated in the Joint Industrial Council, a motion agreed between the employers' and trade union representatives was presented to the Wages Council and passed, whatever might be the opinion of the independent members. The Wages Council thus became a convenient means for securing the legal enforcement of a voluntary agreement.

The unions represented on the Joint Industrial Council favoured the abolition of the Wages Council from the early 1950s, but the employers resisted the suggestion that a joint application should be made. Eventually, the Minister got the employers to agree to its abolition, although he could have abolished it earlier against their wishes, and it ended in August 1958.

Although it is the developments in the furniture industry which should be the pattern for other Wages Councils, the experience in the rubber manufacturing industry is more typical. In industries for which a Wages Council exists and where voluntary bargaining has developed there is an inclination to use the Council to obtain legal backing for voluntary agreements rather than to work towards its abolition.

In the Scottish baking industry, for example, there is evidence that the Wages Council could be abolished because the voluntary machinery is sufficiently strong to stand alone. In 1944 the National Joint Committee for the Scottish Baking Industry was set up and its National Agreements superseded the local agreements. A Trade Board had been established in 1939. In 1948 the Committee was

[1] H. A. CLEGG : *General Union : A Study of the National Union of General and Municipal Workers* (Oxford, Basil Blackwell, 1954), p. 242.

able to make an agreement abolishing continuous night work in bakeries.[1] Night work in the industry has been such a persistent problem that it has had to be regulated by law and the Baking Industry (Hours of Work) Act of 1954 came into force at the beginning of 1958. Yet the voluntary agreement in Scotland is of such a high standard and is so effectively operated that employers who are parties to it have been exempt from the Regulations issued under the Act. A voluntary negotiating body which is strong enough to control hours to the satisfaction of the law in such an industry is surely strong enough to regulate wages without legal support.

But again the Wages Council is used to give legal force to the voluntary agreement on wages. The Minister of Labour, in October 1952, disapproved of the practice and told the General Council of the Trades Union Congress that the Scottish Baking Wages Council's proposed wage increase " involved a point of principle since they sought to extend through the Wages Council the application of a voluntary agreement entered into by the two sides of the industry ". When replying the General Council " questioned whether the proposals concerned did in fact involve a matter of principle, since a similar procedure had been followed for a considerable period, in a number of trades in which Wages Councils existed ".[2] But although this practice has become customary it is nevertheless an abuse of the system.

The existence of a Joint Industrial Council or other voluntary negotiating body does not necessarily mean that the Wages Council is being used to make the voluntary agreements legally enforceable. The members of the J.I.C. may not wish to use the Wages Council for this purpose and, in any case, they can only do so if they form a majority of both sides of the Council. The more comprehensive the voluntary machinery becomes, however, the more likely it is that this essential condition will be fulfilled. Nor need the voluntary bargaining body use the Wages Council to make all its agreements legally enforceable. In the clothing industry, for example, the National Joint Committee for the Wholesale Clothing Trade settles one rate which is to be taken to the Council and made obligatory on all employers, and another higher rate which is to be paid by employers who are parties to the voluntary agreement. The agreement in wholesale clothing is followed by all the Councils in the clothing trade.

This use of Wages Councils to give legal force to voluntary agreements, which is denied to trades without Councils and which

[1] *Report of the Committee on Night Baking (Rees Committee)*, Cmd. 8378 (London, 1951), p. 8.

[2] *Report of Proceedings at the 85th Annual Trades Union Congress, 1953* (London, T.U.C.), p. 178.

is contrary to the accepted principles of collective bargaining, has attractions for both employers and trade unions. It is, of course, different from the enforcement of " recognised terms and conditions " through compulsory arbitration performed by the Industrial Disputes Tribunal until March 1959 and since 30 May 1959 to be carried out by the Industrial Court.[1] The Industrial Disputes Tribunal made awards giving a voluntary agreement the status of implied terms of contract in particular cases and they were upheld in the civil courts. A Wages Regulation Order is enforced by the criminal as well as the civil law, a Wages Inspectorate employed by the Ministry of Labour sees that it is applied, its scope is clearly defined, its application is not confined to aggrieved workers who are members of a trade union and its enforcement by the courts is very much simpler than the procedure for the arbitration of " issues ".

Employers who resist the abolition of Wages Councils fear that their rivals who are not parties to the voluntary agreement will undercut their wages if they are not compelled to pay the same rates. But in a period of full employment there is little scope for competition by undercutting rivals' wage rates. Moreover, in some trades the larger employers could not possibly be harmed by small, unorganised rivals. In both the tobacco and rubber manufacturing industries the employers claimed that they feared wage competition and so resisted the abolition of the Wages Councils for some time. Yet 87 per cent. of the operatives in the tobacco industry in 1954 were employed in only 28 establishments with over 400 operatives each and there were a mere 25 establishments with 10 or fewer operatives employing only 122 operatives (0.3 per cent. of all those in the industry). In rubber manufacture, in the same year, 71 per cent. of the operatives were in 58 establishments with over 400 operatives and the 223 establishments with 10 or fewer operatives had only 1,236 operatives (1.4 per cent.) Of course there are some Council trades where the number of unorganised employers is large enough to constitute a real threat to any voluntary agreement. But, since it is the custom for the Minister only to abolish a Council if employers and trade unions agree, the employers are never forced to justify the need for it. They can keep it as long as they feel it provides some insurance against remote possibilities.

The use of a Wages Council by the organised employers may go further. The employers on the voluntary negotiating body, who are likely to represent the larger firms, are able to determine the wage rates paid by the unorganised, and usually smaller, employers. Since the larger employers are likely to be more

[1] Terms and Conditions of Employment Act, 1959, section 8.

efficient they can use the Council as a weapon against the small employers. In the knowledge that the Council can be used to force all employers to pay the higher rates the organised employers may be prepared to settle with the unions for a higher wage increase than they would if the Council were not there. The smaller firm has its labour costs raised by its larger competitors and its competitive position is worsened.

For the trade unions this use of Wages Councils means that their ability to protect their members' basic wage rates does not depend on the extent of their organisation. In a Council trade the existence of unorganised workers does not constitute a threat to the standards of the organised, provided that the voluntary agreement can be given legal force. Unions in these circumstances can decide whether or not to try to increase their membership in areas of a trade where organisation is difficult to achieve. They may decide not to do so either because they are lazy or because the cost would seem to be too high.

To employers and trade unions these may be sound arguments for preserving a Wages Council, but to the community they are incompatible with the purpose of statutory wage regulation within a predominantly voluntary system of collective bargaining. The use of legal sanctions to compel employers to pay minimum wages and provide minimum conditions of employment should be limited to cases where voluntary collective bargaining can only develop behind a shield. The shield will be most necessary in conditions of unemployment where the wages of the weakest and most unskilled workers would otherwise be bid down to a very low level or where there is such an absence of organisation among both employers and workers that national standards can be obtained in no other way. In a sustained period of full employment those Councils which previously met these criteria should be examined to see if they continue to do so, for their existence may be satisfying the interests of employers and workers at the cost of the community's interest.

Attempts to Restore the Minister's Initiative

The provisions for the abolition of Wages Councils depend essentially on employers' and workers' making joint application for abolition although the Minister can now set up a Commission of Inquiry on his own initiative to examine the case for the abolition of a Council.[1] However, the development of voluntary

[1] Terms and Conditions of Employment Act, 1959, section 3.

bargaining in Council trades, supported by full employment, has led one Minister of Labour to seek the agreement of employers' associations and trade unions to a deliberate attempt to get rid of Councils.

In March 1952 Sir Walter Monckton wrote to the General Council of the Trades Union Congress inviting it to take part in discussions on the possibility of extending voluntary machinery for regulating wages as an alternative to the statutory machinery of Wages Councils. At this stage the Minister was concerned to speed up the abolition of Councils by suspending for a period those which voluntary negotiating bodies could reasonably be expected to displace ; the Joint Industrial Council, or other body, was to be given a trial run alone in the knowledge that if it failed the Wages Council could resume. The competent organ of the T.U.C. (its Wages Councils Advisory Council) cautiously recommended in January 1953 that the proposals should be discussed, but by October the Minister, having had parallel discussions with the British Employers' Confederation, told the General Council of the T.U.C. that the response to his suggestion had been insufficient to warrant the introduction of the necessary legislation.

The Minister then produced his second suggestion which was that the unions should consider " whether the voluntary machinery in any Wages Council trade with which they were concerned was sufficiently developed to allow the Wages Council in that trade to be left experimentally in abeyance ".[1] This proposal was designed to get employers and unions in trades where the Wages Council was being used to obtain the legal enforcement of voluntary agreements to rely on their voluntary machinery. The suggestion was discussed at the Minister's National Joint Advisory Committee in March 1954. The General Council of the T.U.C. accepted the view of its Advisory Council that the experiment should be opposed ; the British Employers' Confederation concurred.[2]

The Minister was bound to be defeated on this issue so long as he conformed to the traditional policy of allowing the interested parties to determine what happened to the Wages Council system. The weakness of his position is shown by his inability to bring about any change in the dog-in-the-manger attitude taken up by both employers' associations and trade unions. He had the right

[1] *Report of Proceedings at the 86th Annual Trades Union Congress, 1954* (London, T.U.C.), p. 192.

[2] The T.U.C. responded to the Minister's minimum suggestion that there should be an inquiry into the extent of voluntary collective bargaining in Council trades by replying that " while confirming that it must always be the aim of trade unions to establish effective voluntary negotiating machinery the General Council doubted whether any useful purpose would be served by making a general inquiry ". Ibid., loc. cit.

to take the initiative and abolish a Council or to introduce amending legislation but the customary withholding of the Minister's power had itself become part of the system.

"Reference Back" by the Minister

The tradition of self-determination in the Wages Council system stems from the unwillingness of Parliament to give the Minister the power to determine wages. An outstanding feature of the British system of statutory wage regulation has always been the restriction of the Minister's power over wages to a limited right of veto. A Wages Council decides, by voting if necessary, what legal minimum wages to propose; the Minister has no power to alter these proposals. He can either ratify them or refer them back to the Council with his comments for their reconsideration. In practice the Minister very seldom refers back any Council's proposals. If he uses his power in order to draw a Council's attention to technical faults in its proposals which prevent them being cast as a Wages Regulation Order, he is acting as a legal adviser and no issue of interference in wage settlement arises. On almost all occasions the Minister finds that the same proposals come forward after his "reference back" and, as a rule, he then accepts them. There have, however, been two notable occasions since 1945 on which the Minister has referred proposals back to Councils with the recommendation that they should reconsider them in the light of the Government's wage policy. On both occasions the Minister sought to use his power to secure reductions in the proposed wage increases, but the Councils resubmitted the same proposals which the Minister then ratified. All he had achieved was a delay in the payment of the wage increase.

Since the legislation places no limit on the Minister's power to refer back Councils' proposals he is clearly entitled to do so if he believes they conflict with the Government's policy. But to declare that the needs of government policy should over-ride the decisions of Wages Councils would be a breach of the Council's customary rights to settle wages on the same basis as do voluntary collective bargaining bodies. Unless a Minister is prepared to assert the paramountcy of government policy he is bound to accept the Councils' proposals even when he believes them to be against the public interest.

In 1948 the publication of the Government's White Paper on personal incomes, costs and prices [1] calling for wage restraint was followed by a letter to Wages Councils which gave them the

[1] *Personal Incomes, Costs and Prices*, Cmd. 7321 (1948).

impression that the Minister would refer back all proposals which, in his opinion, conflicted with the Government's policy. The Minister refused to publish the letter but it is possible to infer its contents from subsequent events. The General Council of the T.U.C. decided that the Minister must be made to withdraw the letter as a condition of its willingness to commend wage restraint to its affiliated unions. With that objective it sent a deputation to meet the Prime Minister, the Chancellor of the Exchequer and the Minister of Labour. The following day, during the Conference of Union Executives called to approve the Government's wage policy, it was announced that the letter had been withdrawn.

The Minister then sent out a second letter which said that " the Government, where wages boards and councils are concerned, do not wish to derogate from their authority as bodies charged with considering and negotiating proposals relating to the terms and conditions of employment of workers ".[1] It also pointed out that the White Paper was not a legal pronouncement or directive. However, the letter went on to say: " As an administrative measure it would assist the Minister, in the discharge of his statutory responsibility for confirming proposals, to be informed that in their deliberations councils and boards have taken the White Paper into account." [1] The Councils—not the Minister—were to be the judges of whether or not their proposals conformed to the Government's policy. The Minister had received four sets of proposals before the White Paper was issued and he referred them back to the Councils ; when they were resubmitted without amendment and with the assurance that the principles of the White Paper had been observed, he ratified them.

The Labour Government and the trade unions did not discuss their differences openly in 1948, but in 1952 when a similar issue arose the unions felt under no obligation to the Government to conduct the dispute in private. At a meeting of the Minister of Labour's National Joint Advisory Committee in May 1952, the Chancellor of the Exchequer stated that, in view of the inflationary effect of wage increases, wage claims should be moderated in the national interest. Later that month and in early June the Minister referred back 12 sets of proposals from Councils in the retail trade for reconsideration in the light of the Chancellor's statement. The Minister said : " When I am asked to approve statutorily enforceable minimum rates of remuneration I cannot take the view that the making of an order is a formality." [2] The unions claimed that in practice it had become a formality, and they proceeded to make the Minister accept their view.

[1] *The Times* (London), 9 Apr. 1948.

[2] *Parliamentary Debates*, 5th Series. H.C., Vol. 504, Col. 37, 21 July 1952.

At a meeting with the Prime Minister and the Minister of Labour the Economic Committee of the T.U.C.'s General Council obtained the concessions it sought. The Prime Minister described Sir Walter Monckton's actions as " a gesture of the Government's resolution to strengthen the country's economic position " and the Minister said that he was prepared " to issue a statement making it plain that he had no intention of interfering with any of the functions of Wages Councils ".[1] In his Presidential address to the Trades Union Congress, Arthur Deakin, General Secretary of the Transport and General Workers' Union, described what the Minister had done as " a dangerous form of Government intervention in the settlement of wage claims ". He described the trade union view of the Minister's powers in the following terms : " It was never intended to invest a Minister with authority to withhold an Order for wage increases made after due consideration in tripartite negotiations. . . . To call upon Wages Councils to re-examine their recommendations casts a reflection upon people who know their job, and, in our view, is contrary to the spirit if not the letter of the law." [2]

Unless the Minister was prepared to say that he would continue to refer proposals back until they conformed to government policy he was bound to be defeated by the unions. But such a stand would have been a break with the traditions of the system and, in the event, he was not prepared to make it. All the proposals which he had referred back were resubmitted without amendment and he ratified them.

Conclusion

The main purpose of statutory minimum wage regulation is to provide a socially acceptable wage for workers who are in a weak bargaining position because the state of the labour market exposes them to harsh pressures. Such workers are in greatest need of legal protection in periods of unemployment. The British system was evolved when the wages of the protected workers would have been lower had it not been for the legally enforceable minimum wages settled by the statutory bodies. Its underlying principles, its procedures and the role of the Minister were determined in circumstances which denied the weakest workers effective bargaining power. The circumstances of full employment are radically different and the place of statutory wage regulation, as an appendage of voluntary collective bargaining, has consequently changed. Yet Wages

[1] *Report of Proceedings at the 84th Annual Trades Union Congress, 1952* (London, T.U.C.), p. 294.

[2] Ibid., p. 81.

Councils continue to be treated as if the economic setting in which they operate had not altered.

The idea that Wages Councils are a means of establishing national negotiating machinery in industries which have proved incapable of voluntary organisation among employers and workers is still a valuable one. Workers who are not employed under a settled agreement covering their remuneration and conditions of work lack rights of representation and self-government which should be available to them. Catering, agriculture and parts of retail distribution are the major areas of employment where the community still has a responsibility for providing statutory wage regulation on these grounds. Moreover, particularly in catering, there are certain conditions of employment other than wages, like hours of work, where " sweating " in the traditional sense would still be possible if there were not statutory regulation. But, if the chief criterion of need for protection is the inability to organise voluntary collective bargaining, the method of deciding whether or not Wages Councils are still appropriate needs to be made more explicit, and the means for abolishing them more effective.

The freedom of a Council to govern its industry in the knowledge that its decisions will be imposed on all employers carries with it the duty to forego as soon as possible the legal backing which the community provides. When there was no likelihood of voluntary collective bargaining developing because of unemployment there could be no doubt of the right of a Council to continue. But as collective bargaining has developed and the opportunities for extending it have increased the implied obligation to throw off statutory protection needs to be honoured.

The assertion of the right of Councils to be free from government interference in the settlement of wage increases in all circumstances is entirely justified. But it cannot be securely upheld in the long run unless it is accompanied by an equally strong assertion that the unions and the employers should continually strive to do without the protection which the Councils give them. A Council is entitled to decide what the legal minima should be, without hindrance from the Minister, if the public is assured that the existence of the Council itself is absolutely necessary. The use of some Councils to obtain legal enforcement of voluntary agreements and the unwillingness of employers and unions to consider methods which would speed up the abolition of Councils denies the public the opportunity of judging what legal minimum wage regulation continues to be necessary in a period of full employment. There is a tendency for employers and unions to claim a right to protection without making a sufficient attempt to fulfil their obligations to the public for providing it.

One solution would be for the Minister to take advantage of the power given him in the 1959 Act [1] to appoint Commissions of Inquiry to examine whether Councils should be abolished, or even to abolish them without such inquiries. The danger here is that it would be such a breach of the traditions of the system that it might damage the work of those Councils which are absolutely necessary. The system is built on the assumption that the initiative lies with the employers and workers covered by it. To over-ride their wishes, no matter how certain the Minister is of the need to abolish a particular Council, would be interpreted as an attack on the whole system. Alternatively the Minister could endeavour to persuade employers' associations and trade unions to be more willing to experiment with new methods for speeding up the transition to voluntary bargaining, but as we have seen Sir Walter Monckton's attempts to do so between 1952 and 1954 were unsuccessful. Intermediate stages to abolition, like suspending a Council for a period, find no support yet, but it is the acceptance of precisely this sort of suggestion which would show that employers and unions were aware of the changed role of statutory wage regulation in contemporary circumstances.

Wages Councils still carry with them the overtones of a policy for the amelioration of social evils. Their acceptance has rested on the belief that through them the community protects its weaker members. The strength of this impression has tended to obscure the inevitable change which has come over the role of statutory wage-fixing bodies during full employment. If the power of employers' organisations and trade unions is socially justifiable because they jointly provide a voluntary method of wage settlement, they should recognise that their position in society is made suspect unless they are willing to give up forms of legal protection which the community extended to them when they were weak.

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[1] Terms and Conditions of Employment Act, 1959, section 3, and Wages Councils Act, 1959, section 6.