Recent Trends in Collective Bargaining in Australia

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Introduction

AN OUTSTANDING FEATURE of Australian industrial relations [2] is the existence of an extensive and complicated network of legally constituted tribunals for the purpose of dealing with industrial disputes.[3] Although generally referred to as the " compulsory arbitration system ", an indication of the ultimate powers of the tribunals, they also use the processes of voluntary conciliation and arbitration. Furthermore, a number of " systems " exist. The tribunals operate under federal and state legislation and vary in name, form, composition, procedure and jurisdiction.

Collective bargaining is not formally precluded by the system. Indeed, one of the objectives of the Commonwealth Act of 1956 which regulates the federal tribunals is " to encourage conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes ". It is inevitable, however, that collective bargaining in an environment of compulsory arbitration tribunals should differ in extent, style and character from collective bargaining operating in other contexts.[4]

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[2] Among earlier articles to have appeared in the *International Labour Review* on various aspects of this theme are Orwell de R. Foenander: "The achievement and significance of industrial regulation in Australia ", Vol. LXXV, No. 2, Feb. 1957, pp. 104-118; idem: " Aspects of Australian trade unionism ", Vol. LXXXIII, No. 4, Apr. 1961, pp. 322-348; and Kingsley Laffer: " Problems of Australian compulsory arbitration ", Vol. LXXXII, No. 5, May 1958, pp. 417-433.

[3] See J. E. Isaac and G. W. Ford: *Australian labour relations readings*, Second edition (Melbourne, Sun Books, 1971).

[4] The purist may well deny the use of the term collective bargaining to describe the recent developments in Australia because of the constraints of the arbitration system. Instead of pursuing the finer definitional points of what constitutes collective bargaining, we propose to leave the reader to decide whether collective bargaining in some sense prevails in Australia.

In Australia, the existence of punitive sanctions against strikes and lockouts, the easy access of parties to compulsory arbitration, the difficulty for any party to opt out of the system completely and the readiness which most tribunals display to determine matters in dispute by compulsory arbitration, must necessarily affect the scope and nature of collective bargaining. More fundamentally, the ethos of Australian society and its institutions perceives industrial relations and the settlement of industrial disputes as being the responsibility of the Government. The entire socio-legal framework has been not only inappropriate for " free " and independent collective bargaining and fraught with formal barriers for those who prefer its operation, but also, in a very real sense, hostile to the values which underlie it. The egalitarian notion referred to as " comparative wage justice " traditionally underlined by arbitration authorities, runs counter to the " bargaining power " concept of collective bargaining.

However, from what follows it will be evident that, despite the constraints on collective bargaining, employers and unions in Australia do settle their differences by direct negotiation and agreement; that strike action in defiance of arbitration awards does take place; and that many disputes which are ostensibly settled by compulsory arbitration are in fact resolved by conciliation or a form of " accommodative " arbitration by which the terms of settlement are either substantially agreed to by the parties or in keeping with their power positions. The changes which have occurred in recent years in the direction of " freer " collective bargaining are due not so much to the parties' philosophical preference for collective bargaining as to the pressure of full employment on the viability of dispute settlement by compulsory arbitration *simpliciter*.

Our article will outline the various types of agreements, the framework within which they are negotiated, their status, and the issues they cover; it will analyse the structure of negotiated agreements in terms of the types of workers covered by negotiations, the levels at which negotiations are carried out and the bodies involved in them; it will also touch on aspects of the administration of agreements; and finally, it will discuss likely future developments in collective bargaining.

The setting

Before embarking on the subject-matter of this article, it may be helpful to set down a few of the basic facts about the workforce, trade unions, employers' associations and industrial tribunals in Australia.

Australia is a highly industrialised country. Out of a workforce of just over 5 million persons, less than 10 per cent are engaged in primary production and about 60 per cent are concentrated in seven metropolitan centres. The level of unemployment in the post-war period has been mostly in the vicinity of 1 to 1.5 per cent of the workforce. For most

of the last fifty years, at least half the wage and salary earners have been unionised. The proportion of union members has fallen from a peak of 61 per cent in 1954 to 50 per cent at present. There are over 300 unions and of these over 200 are small with less than 2,000 members, but 70 per cent of the total membership is concentrated in thirty unions. The central inter-union body is the Australian Council of Trade Unions (ACTU) to which some 100 unions are affiliated, including all the larger manual unions. At the state level, inter-union activities are conducted through the state branches of the ACTU known as the Trades and Labour Councils. These inter-union bodies play a leading part in arbitration and collective negotiations. The main white-collar and professional unions, comprising about one-sixth of the total union membership, are affiliated to a separate body, the Australian Council of Salaried and Professional Associations. There are about half-a-dozen important employers' associations concerned with industrial relations. Their industrial relations policy at the national level is co-ordinated by the National Employers' Policy Committee.

The development of Australian industrial tribunals dates back to the end of the nineteenth century, and although over the years many changes have taken place in the manner of their operation, their basic concepts have remained unchanged. Australia is governed as a federal system and industrial legislation is enacted by the Commonwealth (or Federal) Government and each of the six states. Actually, except in relation to its own employees, to employment in territories governed by the Commonwealth and to other special cases, the Commonwealth Government cannot legislate directly on industrial matters but may only set up tribunals for the purpose of settling inter-state industrial disputes by conciliation and arbitration. The states, on the other hand, are free to legislate directly on wages and working conditions, and although they have taken advantage of this power to determine a limited number of matters (hours of work, annual leave, long-service leave, etc.), they have also set up tribunals to deal with most industrial questions. The powers of the federal tribunals reflect the more limited powers of the Commonwealth Government as compared with those of the state governments. These tribunals can act only if an *inter-state industrial dispute* (each word having a special legal connotation) takes place; they must confine their decisions strictly to the terms of the dispute; and their decisions are binding only on the parties in the dispute. In contrast, the state tribunals can act even if no dispute exists and their decisions can be made a " common rule " to cover all those under state jurisdiction. However, in practice, because of the broad interpretation given by the High Court of the relevant sections of the Constitution, the powers of the federal tribunals have turned out to be far less restricted than might have been intended by those who framed the Constitution. The jurisdiction of the federal tribunals now extends to nearly half the total of wage and salary

earners. As may be expected, jurisdictional problems are an endemic feature of Australian industrial relations but it can be said that the state tribunals have generally followed the awards and standards of the federal tribunals. Thus, despite the diversity of tribunals a surprising degree of uniformity in awards prevails.

The differences in the form and manner of operation of the various tribunals make it difficult to give a succinct account of their characteristic features, but putting aside complications and fine points, the following brief observations may be made. There are three types of tribunals—the court or curial types, the tripartite board type, and a mixture of these two types.

The federal system (Commonwealth Conciliation and Arbitration Commission) and those of Queensland (Industrial Conciliation and Arbitration Commission) and Western Australia (Industrial Commission) fall into the first category. The Commonwealth Conciliation and Arbitration Commission is composed of legally qualified persons with the status of judges (presidential members) and laymen (commissioners), all of whom have powers of conciliation and compulsory arbitration. Generally speaking, the presidential members deal with matters of national interest while the commissioners are concerned with the more local issues. There are also conciliators who do not have powers of compulsory arbitration. The Queensland and Western Australian tribunals consist entirely of lay members.

The second type of tribunal consists of equal numbers of employers' and employees' representatives and an independent chairman. These tribunals, which operate in Victoria and Tasmania, are known as Wages Boards and are each assigned to a particular trade or group of trades. The wages board system is the earliest form of industrial tribunal in Australia, and although unlike the other types in that its original purpose was to legislate directly on wages and working conditions in order to prevent " sweating " rather than to settle industrial disputes, in practice these functions shade into each other. Boards perform substantially the same functions as the curial type of arbitration tribunals. The differences between them are mainly in their composition and in the greater informality of the board type.

Finally, the states of New South Wales and South Australia combine the characteristics of these two types—at the lower levels a system of the wages board type (known as Conciliation Committees), and at the higher level the curial arrangement (Industrial Commission).

The terms and conditions of employment as prescribed by tribunals in an arbitrated settlement of an industrial dispute are embodied in an " award " or " determination ". An award sets out in considerable detail the minimum obligations of the parties to each other. It is quasi-legislative rather than contractual in concept and its enforcement is quasi-criminal rather than civil in nature.

Until 1956 the main Commonwealth tribunal had arbitral powers to make awards in the course of settling industrial disputes as well as judicial powers to interpret and enforce these awards. In that year the High Court ruled that the federal parliament could not invest in the one body both arbitral and judicial powers. As a result, the Commonwealth Court of Conciliation and Arbitration which had been in existence since 1904 and had carried out both functions was superseded by two separate bodies—the Commonwealth Conciliation and Arbitration Commission concerned with arbitral matters, and the Commonwealth Industrial Court concerned with the judicial functions of interpretation and enforcement as well as the function of administering the laws governing trade unions and employers' associations registered under the Commonwealth Conciliation and Arbitration Act. The Industrial Court consists entirely of judges. The separation of these functions was also instituted in the Queensland system in 1961 and in Western Australia in 1963.

Unions play a vital part in the arbitration system, which would be impossible to operate if it had to deal with individual workers. If for no other reason, this fact ensured the growth and security of trade unions from the very beginnings of arbitration in Australia. The arbitration legislation makes provision for the registration of unions and employers' associations, both of which are thereby accorded full corporate status. From the unions' point of view this provision is extremely important because it entitles them, as registered organisations, to appear as a *party principal* in disputes, as distinct from being merely an agent or representative of workers, a fact which has enabled them to obtain awards binding on employers who may not even employ any union members. Furthermore, in the federal jurisdiction an award only binds the parties to a particular dispute; whereas a state award may be extended generally through the state. It is, therefore, necessary for a federal award to specify the parties which are bound by it—the particular unions and their members on the one side, and the organisation of employers and its members or individual employers on the other. It should be noted that while it is most unusual for an individual worker to appear as a party, it is quite common for individual employers, as distinct from employers' organisations, to appear as such particularly in the case of large employers or where the issues are local. Our discussion below will show that the parties in the case of negotiated agreements are little different from those in arbitrated awards—unions on the one side and employers' organisations or individual employers on the other.

The above remarks provide in outline the setting in which collective bargaining operates in Australia. In our discussion below we shall refer wherever appropriate to those elements in this setting which have affected the character and extent of collective bargaining.

Characteristics of agreements

1. The categories of agreements

There are three main categories of fully negotiated instruments which co-exist with or take the place of arbitrated awards in the Australian arbitration systems—consent awards, statutory agreements and common-law agreements. A consent award is the result of a settlement negotiated by the parties in compliance with the arbitration system and issued afterwards by the arbitrator as if it were an award resulting from his adjudication. Statutory agreements comprise two main types. First, there is the certified agreement, which is often used as an alternative to the consent award in the Commonwealth and which corresponds to it almost exactly except in the manner of its formalisation. Certification is hardly ever used in the state systems where the second type of statutory agreement, the (filed) industrial agreement is found. Such an agreement is negotiated independently of the arbitration systems; after settlement is reached, the parties bring it within the jurisdiction of the system by presenting it for registration [1] and filing. Finally, the common-law agreements are simply private agreements which are not only negotiated entirely independently of the arbitration systems but are never brought within their jurisdiction in any way.

Consent awards, statutory agreements or common-law agreements may either deal comprehensively with the terms and conditions of work in the particular workplace(s) or supplement existing comprehensive instruments by providing " over-award " payments or conditions or by providing for certain issues not covered in the main instrument.

2. The framework of collective negotiations

The nature of these various categories of agreements becomes more apparent when one considers the framework of collective negotiations in the Australian industrial relations system. It is convenient to distinguish between pre-arbitral negotiations, post-arbitral negotiations and negotiations in lieu of resort to arbitration.

Either party may bring a dispute within the scope of the appropriate arbitration system by notifying the tribunal of its existence, or the tribunal may act of its own motion. Only rarely, however, will the tribunal act to settle a dispute by adjudication without first ordering the parties to

[1] Whereas a settlement tendered for approval as a consent award or for certification may be rejected by the arbitrator on the ground of the public interest, the Registrars have no power to reject an industrial agreement as long as the technicalities of filing are complied with.

attempt to settle their differences by negotiation and assisting them to do so. Very often, of course, the parties will have already engaged in fruitless or partially successful negotiations before reference to the tribunal. Such pre-arbitral negotiations are nearly always successful in narrowing down the unresolved area of the dispute to some extent, and not infrequently they are fully successful, so that no arbitration at all is necessary. Where the settlement in such cases is fully negotiated, it is " rubber-stamped " by the tribunal as a consent award of a certified agreement.

Once an award has been made, it constitutes legally binding minima but there is nothing to stop parties affected thereby from negotiating over-award wages or some special conditions appropriate to their particular circumstances. Most of these supplementary agreements resulting from post-arbitral negotiations are kept outside the arbitration systems, but considerable numbers of them are brought within the state systems as industrial agreements.

Finally, parties may prefer to establish the rules of their workplace(s) entirely independently of the arbitration systems, without any request for intervention to an arbitrator. (It is only if the tribunal does not exercise its right to intervene or neither party decides to notify the tribunal unilaterally that this is possible.) Where settlement is reached in such a situation, two alternatives face the parties: the agreement may be filed as an industrial agreement in one of the state systems [1], or it may be kept outside the systems as a common-law agreement. In fact, very few of these private comprehensive agreements are kept outside the systems, those negotiated in the Broken Hill mining community, in the Melbourne newspaper printing industry and in parts of the tobacco and brewery industries constituting exceptions to the general rule.

Statistics are not available to show the relative importance of the number of awards, consent awards and certified agreements separately or the number of workers covered by each of them. A substantial increase in the relative importance of industrial agreements is revealed in the New South Wales jurisdiction, between 1960 and 1970. The numbers of industrial agreements and awards increased respectively from 521 and 731 to 966 and 847. The figures for the Commonwealth jurisdiction are less useful because consent awards and awards are lumped together. The numbers of certified agreements and all awards were respectively 58 and 270 in 1960 and 110 and 565 in 1970. In relation to the number of workers covered by the different instruments, the statistics are even less revealing. In 1968, for the whole of Australia, employees fell into the following composite categories:

[1] Technically, a settlement cannot be brought within the Commonwealth system unless its making has involved at least some conciliation: this requires that the machinery be complied with as described in the comments on pre-arbitral negotiations.

Commonwealth awards and agreements .	40.1 per cent
State awards and agreements	47.3 "
Unregistered collective agreements . . .	1.4 [1] "
Not covered by any of the above	11.3 "

These figures are much the same as those of earlier years.

3. The status of collective agreements

Like awards, consent awards and statutory agreements are of a quasi-legislative rather than a contractual nature, although they are binding only on the specified parties thereto. Consequently, their enforcement is a public matter and can be sought by a representative of the public as well as by the parties concerned. The proceedings being quasi-criminal, the appropriate sanction is the imposition of a penalty, although " compensatory " orders can also be made. Common-law agreements are probably " gentlemen's agreements ", binding in honour only.

The duration of a consent award or statutory agreement must be specified. It cannot be longer than either three or five years, depending upon the system involved. However, it is provided in all the arbitration systems that an award or agreement continues in operation after the expiry of the set term until a new instrument has been made or the original one has been varied or cancelled.

Provision for the variation and rescission of awards and agreements varies from system to system. In the Commonwealth system, a variation can only be made within the original ambit of the dispute, for which reason the log (or file) of claims is usually framed in unrealistically wide terms. In all cases, variations can be made by the agreement of both parties, although this requires the formal approval of the relevant tribunal to be effective with respect to consent awards and certified agreements. These instruments (and, in some states, industrial agreements as well) can be varied or set aside by the tribunal of its own motion or upon the request of one party: however, a tribunal is very reluctant where one side opposes it to vary a negotiated instrument during its specified term, and will only do so where " good and cogent reasons " exist.

Issues covered in agreements

1. Employee-oriented issues

The range of employee-oriented clauses in comprehensive agreements differs little from that in awards. They consist mainly of the numerous aspects of remuneration, hours of work, the various types of paid leave,

[1] This percentage indicates employees covered solely by unregistered agreements of a comprehensive nature. Numerous other unregistered agreements exist as supplements to awards and statutory agreements.

and a limited number of monetary fringe benefits. A noteworthy feature is that they reflect the tendency of Australian negotiations to " settle " nearly all issues by means of a money payment.

The substance of employee-oriented clauses often foreshadows the liberalising of award conditions. This has been the case, for example, with arrangements for four weeks' annual leave, and limited and unlimited accumulation of sick-leave. It is, of course, a common practice for unions to secure favourable conditions with individual companies by agreement, and then, when a sufficient number of such agreements exist, to use them as a lever in obtaining similar provisions in an award, by showing that such conditions are becoming the custom in industry. For this reason, the employers' associations generally have adopted a very firm policy that negotiations for over-award agreements will be restricted solely to above-minima money payments and domestic issues. Such over-award payments have thus been the subject-matter of the vast majority of supplementary agreements in recent years. Until the 1950s they were relatively rare, award minima being usually the rate actually paid. Under the pressure of full employment, many employers found it advantageous to pay an over-award rate in return for stability of costs and guaranteed production. Other employers were forced, by union and market pressures, to follow suit and in recent years over-award pay has become universal practice.[1]

Traditionally, unions have relied on government legislation for welfare provisions (pensions, and sickness and accident benefits). Although a number of agreements and awards contain these provisions by way of fringe benefits, some of the larger unions are only now showing a greater interest in securing these benefits to supplement the legislative provisions. It is important to note too the lack of interest shown by the unions with regard to what might be termed " employee rights " as opposed to material benefits. For example only a few agreements [2] contain substantial provisions concerning the application of the seniority principle to promotion, demotion and retrenchment. Again, managerial discretion in hiring and firing—as long as union preference rights are observed—goes virtually unchallenged in Australia. This lack of interest probably reflects the prevailing view concerning management prerogatives: a dispute on a matter infringing what management regards as its

[1] Often a union agreement with a key employer will force other employers to pay similar over-award rates as attraction and retention money. Many of the actual agreements, moreover, are mere informal understandings rather than formally documented instruments. A survey in 1965 by the Commonwealth Statistician showed that about 10 per cent of earnings were in the form of over-award pay. But this figure understates the position for two reasons. First, it does not include over-award pay in consent awards; and second, the influence of over-award pay in forcing the pace of award increases is not revealed.

[2] These include the airline pilots' agreements where the seniority principle is the basis of rostering, promotions and retrenchment, and the meat industry where supplementary agreements exist to give effect to the seniority principle in retrenchment and re-engagement.

prerogatives can easily be referred to the appropriate arbitration tribunal which will almost invariably order that the matter is one for managerial discretion. Nor have the unions made any strenuous efforts to change this state of affairs, which may be one indication amongst many others of the fact that in the protected environment of a compulsory arbitration system, and given their particular history, Australia's unions are only slowly developing a real " business " orientation with its primary emphasis on job control and the use of industrial strength rather than looking to the State for assistance. None the less, considerable inroads have been made in recent years on total managerial discretion in the case of retrenchment.

The provisions in the few comprehensive agreements which deal with redundancy are mainly limited to the application of the seniority principle, preferential treatment for unionists or, occasionally, long periods of notice. In the late 1960s [1] special supplementary agreements providing for severance pay were concluded in a number of industries, one of the most generous being that negotiated in 1966 with the Gas and Fuel Corporation (a state government agency) to provide for the effects on employment of the introduction of natural gas and the need to retain employees until the Corporation was ready to release them.[2]

2. Union-oriented issues

Unions in Australia have considerable legal protection of their rights, ranging from protection against competing unions by the registration process, arbitral grants of employment preference rights to unionists, legislative guarantees of the rights of union officials to enter and inspect premises and interview members, and so on.

Not surprisingly, perhaps, there has been little emphasis on expanding or developing these rights by negotiation. For example, the check-off principle operates in some areas of public employment, but it does so as a matter of government policy, not as the result of hard union bargaining; disputes over the use of non-union labour and the like are not infrequent, but they tend to be handled on an ad hoc basis and not as bargaining issues in the negotiation of collective agreements. Partly this may be explained by the security of legal protection, but it probably stems also from a lack of awareness on the part of both managements and unions in Australia of the possibilities for using union-oriented issues as bargaining tools.

[1] In the late 1950s and even earlier certain special redundancy agreements were made in parts of the mining industry, in the iron and steel industry (over the introduction of electrical furnaces) and in the railways (over dieselisation).

[2] The unions have had some success in using this agreement as a pattern. Mostly, such agreements have been made on an ad hoc basis only where redundancy seems imminent, probably because inadequately staffed unions prefer to concentrate on immediate benefits (particularly when full employment enables their members to be casual about the prospects and consequences of retrenchment).

3. Management-oriented issues

The general " management rights " clause found in American contracts—that is to say, a clause reserving as management prerogatives all rights not specifically defined by the terms of the agreement or some other instrument—is almost never seen in Australia. In view of the management rights policy of the arbitration tribunals, managements are unlikely to see the necessity of such a clause. Not infrequently, however, a statutory agreement stipulates that an employer shall have the right to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown in machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible. Other specific rights clauses are rare.

While managements in Australia have rarely been forceful about gaining a *quid pro quo* from the unions in return for the concessions they have been compelled or persuaded to make, the disputes or grievance procedure [1] has been receiving much more attention in the last few years. This trend has been accompanied by the increasing significance which the term of the agreement [2] is assuming for management in Australia. Both will be discussed further at a later stage of this article.

Rarely does the *quid pro quo* for management go as far as a productivity bargain in Australia. In a few areas, particularly in the Broken Hill mining industry and in agricultural implement manufacturing, where management has been engaging in hard and skilful bargaining for some years, the relaxation by the unions of their control over certain work practices has been a definite and often disputatious bargaining issue in a number of predominantly employee-oriented agreements. However, instances of productivity agreements, where the primary purpose of the agreement is to gain a concession from the union with regard to work practices, are very few and far between.

Notable among the few attempts that have been made are the agreements in the shipping industry which rationalise manning requirements on the new container ships in return for considerable benefits in terms of wages, hours and other conditions. In the airlines, agreement on a " bidding system " for manning aircraft has provided management with the opportunity of obtaining increased utilisation of aircrew and a more flexible roster in exchange for earnings above a minimum guaranteed

[1] In most cases in Australia the disputes procedure is still regarded as a concession by the union, rather than as an administrative device of mutual benefit.

[2] Practically speaking, awards and statutory agreements are of indeterminate life, since they continue in being until varied, rescinded or replaced after the expiry of the specified term. However, in those areas where the rules of the workplace have traditionally been determined by collective negotiations, such as the Broken Hill mining industry and the Melbourne newspaper printing industry, the term of an agreement has always been regarded as an important bargaining issue, and new agreements have been negotiated promptly at the expiration of the term.

salary for those who, subject to seniority, are willing to fly in excess of the hours for which the minimum guaranteed salary is fixed. A Department of the Navy agreement involving the relaxation of demarcation and other practices in shipbuilding, in return for wages approaching those paid in private industry, shows the interest that is beginning to be shown in productivity bargaining in areas of government employment. Sectors of the oil industry are currently attempting job enlargement of semi-skilled work to take advantage of technological changes to plant.

However, these and other instances are fairly isolated and seem likely to remain so for some time. The major barrier to productivity bargaining in Australia would seem to be the lack of awareness of its nature and potential. Moreover, the constraints imposed on ordinary negotiation by the attitudes and characteristics of the parties and the nature and availability of the arbitration system are likely to be even more inhibiting in the case of productivity bargaining, so that greater awareness alone is unlikely to herald many significant experiments. Briefly summarised, these inhibiting factors include management's customary conservatism regarding negotiations, its dependence on employers' associations, the prevailing notion of management rights, the lack of negotiating experience and skills on both sides, the weaknesses of union structure and leadership and union-member relationships, the ready availability of arbitration, and the emphasis on wage uniformity and maintenance of wage relativities which would lead one to expect very strong pressure for a " flow-on " (i.e. an agreement based on a previously arbitrated " master " settlement).

The structure of negotiations in Australia

What categories of employees are covered by collective negotiations in Australia? At what level are the negotiations carried out? What bodies and institutions are involved in the negotiations? The answers to such questions form elements making up the complex and widely varying structure of negotiations in Australia.

1. The coverage of negotiations

In every sector of the Australian economy, at least some elements habitually engage in collective negotiations, and in some cases this represents the preferred practice of entire industries. Space precludes all but a brief consideration, however, of some of the most significant areas. It is convenient to categorise our comments according to the type of employees affected, whether in manual or white-collar (including administrative, technical and professional) employment. A few of the special features of collective negotiations in public employment are also noted.

THE MANUAL SECTOR

The industrial relations system of Broken Hill is usually cited as the purest example of collective bargaining in Australia. Since the mid-1920s and, in particular, the 1930s, negotiations have been carried on in a highly institutionalised manner between the mining companies, represented by their association, the Mining Managers' Association, and the various unions, co-ordinating their approach through their local inter-union organisation, the Barrier Industrial Council. The resulting Mines Agreement is used somewhat as a model in this single industry community, where the Council also negotiates with the various utilities, services and commercial institutions. All the agreements are made—and strictly observed—for a three-year period, with the result that Broken Hill has enjoyed a quite exceptional record of industrial peace and stability. Fears of the limited life of the line of lode in certain mines led to the negotiation in 1969 of a generous supplementary redundancy agreement.

Mount Isa, another mining community, repaired its industrial relations, shattered in 1964-65 by a bitter seven-month stoppage, with the adoption in subsequent years of regular collective agreements bringing excellent results for both sides. More recent mining ventures in remote and underdeveloped areas of the continent have thrown upon management a whole range of issues not normally encompassed in negotiations—housing, provisions, social amenities, schooling, medical and welfare facilities, etc. The isolation of workers and management from official union leadership, employers' associations, industrial tribunals and government departments has forced an independence of action on management and the rank-and-file workers in dealing with these local problems by direct negotiation with each other.

The construction industry has expanded enormously in the last two decades with the development of new natural resources. The demand for skilled labour on such projects and also on construction in the cities tends to exceed the supply, and the unions have made full use of their bargaining strength to put in demands for very high over-award rates, which factors such as the cost of delays, the short-run nature of the construction work and the over-all profitability of the construction projects have encouraged the employers to meet. In Western Australia, in particular, the vigorous and militant unions engage in an effective combination of arbitral techniques and strongly executed negotiations.

The shortage of skilled labour is also the main factor behind the high over-award rates negotiated in the metal trades generally [1]; rare until the 1950s, opposed strenuously by employers until the beginning of the 1960s, the negotiation of over-award rates now constitutes a major part of the work of employers' representatives in this industry.

[1] The pressure to maintain traditional differentials has caused over-award amounts to be paid also to semi-skilled and unskilled labour.

In the oil industry, over-award payments dating from the employment market position at the end of the Second World War were first negotiated to supplement arbitrated awards on an individual company basis. The major companies took the lead in the mid-1950s in the formation of a committee for the exchange of information and co-ordination on industry matters generally, which rapidly led to a unified approach to the quantum of over-award rates, followed by the substitution of near industry-wide negotiations on over-awards for the previous company-level agreements. In the late 1950s the practice began of negotiating all the conditions of employment in regular rounds culminating in industry-wide consent awards covering nearly all the major oil companies. There is a distinct possibility that the events of 1970 in this industry, which we mention below, may change this pattern once again, but it is too early to make concrete predictions.

The printing industry has always been one of the most important areas of collective negotiations, the tightly organised and managed unions pursuing these channels in preference to arbitration wherever possible. One of the most successful examples, at least from 1910 until 1968 when the hitherto unbroken record of industrial peace and co-operation began to show signs of strain [1], is the Melbourne newspaper printing industry, where some of the most generous agreements in Australia, outside the construction industry, are regularly negotiated on a fixed-term basis.

There were several pre-Second World War agreements negotiated individually with the various major companies in the pulp and paper manufacturing industry by the appropriate unions. In 1948 the companies co-operated in seeking a partly arbitrated federal award on a near industry-wide basis, and in 1951 they jointly negotiated the first of a long series of agreements, certified in the Commonwealth system, each covering most of the major companies and both production and maintenance employees. In 1968, while the maintenance employees' unions continued to negotiate agreements on their own, the various production employees' unions reached a deadlock over pay rates which was eventually resolved by arbitration. Currently, they take a pragmatic approach, being prepared to use negotiations or arbitration according to which channel looks the more favourable at the particular time.

A surprising development in the direction of collective bargaining has occurred recently in inter-state shipping and stevedoring, two industries with a tradition for poor industrial relations and the dominance of compulsory arbitration as a method of dispute settlement. The substantial reduction in employment opportunities during the 1950s, arising from technological innovations and increased capital intensity in the face of

[1] A two-day strike took place when the unions covering skilled tradesmen tried to obtain increases on a par with the substantial benefits awarded to metal tradesmen after a work value inquiry.

severe competition from road and rail transport, created a situation in which the Seamen's Union became receptive to arrangements which would provide greater employment and income security for its members, while the employers, conscious of the need for work continuity to spread overhead costs and to speed up the turnaround of ships to meet competition from road and rail transport, were willing to offer such security. In these circumstances productivity bargaining took place and resulted in the rationalisation of manning requirements in 1964. Although pay and certain conditions of work are determined mainly by the Commonwealth Conciliation and Arbitration Commission, the union has been successful in negotiating separate and improved wage agreements with a number of employers. But the heart of the terms of employment, involving regular and stable employment, was achieved by the 1964 agreement. Since 1964 strikes have declined dramatically in this industry and the turnaround of shipping has improved markedly.

In some ways, the problems of dockworkers in the stevedoring industry resemble those of the seamen. In recent years, container shipping, roll-on roll-off and other developments for reducing labour handling of cargo foreshadowed a serious displacement of labour in what was basically a casual system of employment. The prospects of greater insecurity produced increased industrial unrest and demands for redundancy pay and pensions. In an attempt to meet these problems, the Commonwealth Government set up in 1965 the National Stevedoring Industry Conference comprising representatives of the unions, employers' associations and the Department of Labour under an independent chairman. Negotiations resulted in a consent award on the principle of permanent employment, pension, redundancy pay, retirement and transfer schemes. However, despite early hopes for a reduction in strikes, the last year has seen a return to the high strike loss of the years prior to 1965. In the middle of 1970 a new comprehensive agreement was concluded on wages and conditions of work including a no-strike clause on the issues in the agreement. It should be noted that in addition to the general agreement negotiated under the National Conference, separate and more favourable agreements have been concluded between the union and a number of employers which operate fully containerised or roll-on roll-off terminals using different stevedoring methods and hours of work from the normal stevedoring arrangements.

WHITE-COLLAR EMPLOYMENT

The Clerks' Union, which has members in nearly all industries in both the private and the public sector of employment, has found that the propensity of employers to negotiate has waned and increased in distinct cycles over the last two decades, regardless of the industries or employers concerned. Thus it reports that in the early 1950s the employers evinced a hard-line preference for arbitration, while the years 1955

to 1957 saw a considerable increase in negotiated settlements; from 1958 to 1963 negotiations tended to be fruitless; from that time on, however, the proportion of negotiated settlements increased and there appears to have been a very strong trend in favour of agreements and consent awards in the last three or four years. Certainly a distinct preference for negotiations has been evidenced by many important white-collar unions in the last decade, accompanied by a dramatic reversal of the traditionally passive attitude to direct action and political comment.[1] While this is by no means universal, it has affected such customarily conservative occupational groups as professional engineers and banking staff and has even penetrated the ranks of ballerinas and nurses.

One of the most militant occupational groups in this area is that of the airline pilots. Their attempts to handle their industrial relations by collective bargaining constitute a clear example of the difficulties involved in trying to avoid arbitration if one party is determined not to negotiate. Expensive and lengthy resort to arbitration having failed in 1954 to win acceptance of their argument that their salaries should reflect the high ranking which pilots' salaries enjoyed overseas, the pilots tried to win their case by militant negotiations. The airline operators countered with constant insistence on arbitration and successfully sought the imposition of fines to penalise the pilots' strikes. In an attempt to thwart this, the pilots resigned from their federation in 1959 and formed another association not registered within the arbitration system. The High Court ruled in 1961 that although the new association was outside the arbitration system, the individual pilots could be parties to disputes brought within its jurisdiction and could be made subject to the sanctions available in the system. None the less, negotiated agreements held sway for the next few years, while the airline operators pressed for new legislation to tie the new association to the system. Fearing a crippling confrontation with the pilots, the Commonwealth Department of Labour instead masterminded a procedural agreement for the processing of industrial claims.[2] In 1966 and 1967 the procedure was the basis of negotiations which introduced the North American-style bidding contracts into the Australian airlines. However, a twenty-eight-day strike in breach of the agreement which preceded settlement with the overseas airline on this issue led to the introduction of special legislation requiring the association to submit to arbitration by a specially appointed tribunal, even though it was not a registered organisation. The Flight Crew Officers' Industrial

[1] R. M. Martin offers some interesting analysis of this trend and its causes in " Class identification and trade union behaviour: the case of the Australian white-collar unions ", in Isaac and Ford, op. cit.

[2] This seems to be the only important example of such a procedural agreement, other than grievance procedures which are discussed below. Under the agreement, based on procedures in the United States Railway Labour Act, the pilots undertook not to resort to direct action until various stages involving negotiations, mediation, independent inquiry and, finally, a cooling-off period had been observed.

Tribunal, as it is called, has strongly encouraged negotiations and conciliation in preference to arbitration.

Between 1917 and 1955 the terms and conditions of employment of journalists were fixed almost entirely by negotiations. Since this time, negotiations have been successful on many occasions, but on others the union has resorted to arbitration to press its claim, its approach being an entirely pragmatic one. Thus its major or " parent " instrument covering the metropolitan newspapers in all states is either an award or consent award at any particular time, and is supplemented by several minor federal or state statutory agreements which substantially apply the provisions of the major instrument to such groups of employers as the press agencies and the provincial daily newspapers.

Since at least the early 1950s wages and conditions in banking have been settled virtually entirely by negotiations. The major negotiations take place with the group of free enterprise banks, the settlement receiving the *imprimatur* of the Commonwealth Commission as a consent award. This settlement is followed in a number of minor industrial and certified agreements with other banks. Banking also constitutes something of a lead sector in this regard for insurance officers and, on a lower rung in the over-all white-collar pay structure, the various categories of clerks.

The first major industry award for " indoor " clerical staff in the insurance industry was handed down in the early 1920s; from this time, the parties have moved steadily towards more negotiations until now it is customary for consent awards to be made in this area, supplemented by other consent awards for other types of employees, and certified and industrial agreements covering certain individual employers.

The highly integrated combination of arbitration and negotiations through which the professional engineers press their claims illustrates the close interplay between the two channels in this country. Having established satisfactory salary standards in important areas of employment by costly and imaginatively conducted arbitral cases from 1957 to 1962, the engineers' association spent the next six years in widespread and vigorous negotiations in private industry (mainly on an industry or near-industry basis) and in public employment (mainly on a single department or local government level), which were successful in persuading most other employers of professional engineers to sign agreements adopting or bettering these standards. It is interesting to note that conditions of employment other than salaries were negotiated only in the public sector, being left to the individual contract of employment in private industry. Since 1968 the association has largely devoted its attention to the arbitral adjustment of the now eroded salary standards, after which it may be expected that further rounds of negotiations will follow.

A large number of statutory agreements and some consent awards have been made by municipal officers with individual local government authorities and government agencies. The union covering these officers

has often stated publicly its preference for collective bargaining, but has none the less been very skilful in processing claims through arbitral processes where it has not been able to achieve satisfactory results by negotiations. Its officers in the State Electricity Commission of Victoria, one of the most militant of the white-collar groups, often act as a lead sector for other municipal officers and white-collar groups. The difficulties they have encountered in using their militant strength in negotiations are, however, typified in the constraints on negotiations in the public sector, to which we now turn.

PUBLIC EMPLOYMENT

Public employment in Australia comprises roughly a quarter of total civilian employment.[1] The division of public employment into those areas subject to the regular arbitral tribunals and those falling within the jurisdiction of special machinery lacks any easily ascertainable basis, and the formal framework of industrial relations in this sector is both varied and complex. In nearly all cases, however, there is scope for pre-arbitral negotiations, and in New South Wales and Western Australia the procedural arrangements affecting the public service emphasise negotiations to the total or near-total exclusion of arbitration. Many settlements in the field of public employment are thus fully negotiated. However, figures such as those showing that agreed settlements affecting the Commonwealth public service outnumber arbitrated settlements by roughly ten to one, can be misleading. Such agreements are frequently no more than " flow-ons " from an arbitrated " master " settlement, where further resort to arbitration would be merely a formality. Again, such are the constraints on meaningful negotiations in public employment, that some agreements represent little more than a resigned accommodation to this fact. Both the constraints and other features of public employment negotiations vary according to the type of employment and the government concerned.

The use of employee bargaining power is severely curbed by substantial or total strike restrictions. None the less, as we have noted, resort by government employees to direct action in recent years has increased significantly mainly, but not only, in industrial-type employment and in the semi-independent bodies. The Government's reaction to such pressures is rarely one of economic rationality. Partly, perhaps, because of the constraint imposed on Government-union negotiations by their continued subjection to public and political scrutiny and partly, in some cases, because of an insulated economic status, the Government has tended to adopt authoritarian and costly postures based on " moral principles " rather than a purely costs-versus-gains approach. These

[1] The degree of unionisation in this area tends to be very high, and the public service unions, in particular, are well staffed and financed by Australian standards.

reflect, very often, not only an abhorrence of the strike weapon but a rigid adherence to the virtues of arbitration. Nor have the prospects for meaningful negotiations been enhanced by the readiness of politicians to become embroiled in these disputes and to make public statements on their merits. It is in keeping with the equitable values of a system which adopts compulsory arbitration that the Government should see itself as having to be even-handed to different groups of employees in terms of concessions and benefits, regardless of the disparities in their market position; and, on the whole, this approach has the support of the unions concerned provided, of course, that any inconsistencies are corrected by *upward* adjustments. The principle of consistency has extended, in some cases, to the observance of a monolithic wage structure in which the relativities between the widely varying groups and classifications employed by any particular government are rigidly maintained. A further reflection of this perceived need for uniformity is the strong co-ordinating and controlling role played by the bodies responsible for over-all industrial relations policies in government employment, such as the Departments of Labour, often operating under additional constraints imposed by the Treasury Departments.[1]

The policies of the Government on negotiations place it at a considerable disadvantage in the employment market vis-à-vis private enterprise. Not only does the Government typically regard itself as unable to be a lead sector in the negotiation of employment conditions but, in fact, it has failed in a number of areas to match the actual wages established by post-arbitral negotiations in private employment, regarding itself as " unable ", as a matter of principle, to pay over-award rates. However, as a matter of industrial expediency, this attitude has been modified considerably in recent times.

2. The levels of negotiations

As can be seen from the foregoing, no one level of negotiations presents itself as the norm in Australia. Parties often operate, of course, on two or more levels: a formal basic agreement may be reached, for example, on a near industry-wide level, supplemented by informal company and plant agreements made by its signatories, and accompanied by single company agreements made by those employers who prefer to act independently, as is usually the case in the pulp and paper manufacturing industry. Moreover, this aspect of negotiations is extremely variable: while systems such as that of Broken Hill have largely followed the same

[1] Such controls prevent " whipsawing " (leapfrogging) tactics being used by the unions but the inevitable consequence is the centralisation of decision-making authority on major industrial issues and even, sometimes, on minutiae. Since negotiations normally take place at the individual department level, this remoteness of authority places substantial obstacles in the path of smooth and responsible negotiations and the satisfactory resolution of individual sources of conflict according to the particular circumstances.

pattern in round after round of bargaining, and norms can already be identified in the negotiating rounds of, say, the Victorian building industry, the majority of negotiating relationships in Australia are too recent in origin or too vulnerable to the constraints on negotiations in this country to have become ritualised. Thus the following comments are only indicative in nature.

National-level economy-wide bargaining on substantive issues is very rare [1], although tripartite consultation takes place on a number of issues—such as economic trends, technological change and, recently, penal provisions and grievance procedures—through a body known as the National Labour Advisory Committee. National-level industry-wide or near industry-wide bargaining has taken place at times, or even regularly in some cases, in such industries as the waterfront, maritime, oil, and pulp and paper manufacturing, though agreements reached at these levels are usually supplemented by company or plant agreements. Also common is regional (usually but not always at the level of the state) multi-employer bargaining, on an industry-wide basis, such as occurs in parts of the printing, mining and building industries, amongst others. Department-level or local government-level bargaining is common in the public employment sector, as is company-level bargaining in all areas of private industry. Plant-level negotiations take place frequently in all industries, particularly with respect to over-award and other supplementary agreements.

3. Involvement in negotiations

Managements acting on a multi-employer basis usually co-ordinate their approach by means of a small industry-based employer group, such as the Mining Managers' Association of Broken Hill, the Melbourne Newspaper Proprietors' Association, or the Airline Operators' Association, in which case they are normally represented in negotiations by their own industrial relations executives; alternatively, they may be represented or assisted by the full-time industrial officers of a broader-based employers' association, such as the Metal Trades Industry Association or the Chamber of Manufactures. The dependence of large numbers of employers in Australia on their employers' associations in industrial relations matters means that managements often seek advice or actual representation even in plant-level negotiations.

Multi-unionism is rife in Australia, at least in the manual sector, although certain big amalgamations of major unions are scheduled for the early 1970s. Even with such amalgamations, bargaining at almost any level involves several unions. These may negotiate separately, reaching

[1] The only major instance, relating to a long-service leave code, broke down at the point of ratification when the unions, refusing to regard the code as uniform, wanted to reserve the right to apply more favourable terms under state legislation.

individual agreements as did the five major unions in the Melbourne newspaper printing industry until 1968, when they persuaded the reluctant employers to meet the joint unions. More frequently, they engage in composite bargaining by all unions, as in the Victorian building industry, or in functional groups, as seems to be the practice developing in the pulp and paper manufacturing industry with the recent separation of maintenance and production workers.

In Australia the inevitable problems of communications and co-ordination and the balancing of conflicting interests take on an extra dimension with the difficulties sometimes encountered in reconciling a labour movement split by widely opposed political ideologies. Some of the problems are overcome by the practice of acting through informal federations, such as exist in the metal trades and building trades, although unions of an opposing political hue tend to be excluded. Very often, the unions co-ordinate their approach through the ACTU or through the state Trades and Labour Council, an officer of whom may act as the official spokesman. Sometimes the unions use such an organisation because of the convenience; on occasions, as in the Victorian building industry, they do so because they share the employers' belief that more peaceful negotiations and greater observance of the resulting agreement may ensue where the inter-union organisation is involved; at other times, the organisation is automatically involved because of the rules of affiliation which stipulate that any dispute threatening to affect other unions in a stoppage must be referred to the Disputes Committee that is set up in each such organisation to control the power of any one union in far-reaching disputes.[1] A compromise operates in the Broken Hill mining negotiations, where the unions jointly negotiate all matters of common interest but hold separate conferences with the mining managers on matters affecting individual unions.

Finally, third parties, in the form of the conciliators appointed by the arbitral tribunals or members of the tribunals themselves in a conciliatory capacity, may participate in the negotiations; as yet, the use of private mediators in Australian negotiations is extremely limited.

It is important to note that although there are many cases in which individual employers deal at the plant level directly with individual workers by offering extra pay and better conditions in order to retain or attract their services, it is unusual, where a union exists, for an employer to negotiate with groups of workers independently of the appropriate union official or the elected shop steward even if the latter is acting without proper authority from the union branch officials. There are no statistics to show the extent of formal joint consultation committees but

[1] The Australian Council of Salaried and Professional Associations, the highest inter-union organisation for white-collar unions, differs from its blue-collar counterpart in having only advisory and consultative functions; it has no power to intervene in the disputes affecting its affiliates and has not as yet been involved in their negotiations.

in many of the larger establishments such committees exist and operate with varying degrees of success. However, these committees are careful to avoid trespassing on recognised union functions directly or indirectly connected with awards. Most of the matters dealt with by the committees relate to welfare amenities, labour efficiency, quality control, safety and the like.[1] The virtual absence of direct employer-employee negotiations on substantive terms of employment reflects the general acceptance of unionism by Australian employers.

Administration of collective agreements

1. Disputes procedures

Before and during the 1950s in Australia there were only isolated instances of disputes procedures other than the provision in statutory agreements for a Board of Reference—a tripartite committee chaired by a representative of the tribunal—to handle questions arising out of the application of the instrument, as a sort of " minor tribunal ".

The indeterminate life of awards and statutory agreements blurs any clear distinction between " rights " and " interests " so that any type of dispute may be referred to arbitration. Moreover, the scope for grievance handling is narrowed in that awards and agreements tend to be very detailed, leaving fewer doubtful issues to be handled by management than would be the case, say, in the United States [2]; again, many contentious issues in that country tend to be regarded as managerial prerogatives in Australia. In the circumstances, grievances are more likely to be confined to such issues as the application of the award to particular situations and the handling of matters which the award does not cover. Given these factors, the dependence of the parties on arbitral tribunals and the legalistic nature of the system, it is not surprising that formal procedures for the handling of grievances by union-management negotiations were very few and far between until the 1960s.

Only limited use was made of the Boards of Reference, and thus grievances which did arise at the plant level were handled, if at all, on an informal basis by management with little union consultation. Nor were (or are) the unions sufficiently well organised, at the plant level, or sufficiently well staffed, to play an effective part in shop-level grievance

[1] See L. R. Wall and W. P. Butler: " Management-employee committees—the results of Australian research ", in *Personnel Practice Bulletin* (Melbourne, Commonwealth of Australia, Department of Labour and National Service), Vol. XV, No. 1, Mar. 1959; and W. P. Adkins: " Joint consultation—a case study ", ibid., Vol. XXII, No. 1, Mar. 1966.

[2] F. T. de Vyver: " Settling plant disputes—the Australian experience ", in *Labour Law Journal* (Madras), Oct. 1961.

handling. The result was neglected and badly handled grievances which accounted for a substantial proportion of Australia's high incidence of short protest-type strikes.[1]

The use of the short stoppage was extended in the 1950s to back demands for over-award wages. An American company, the Braun Transworld Construction Company, negotiated with the building trades unions in 1952 to pay over-award wages but insisted in return on a formal disputes procedure being established.[2] This agreement was the forerunner of the Victorian Building Industry Agreement of 1956, in which industry the success of the procedure in grievance handling and the satisfactory nature of the substantive terms of the agreement produced results that were nothing less than spectacular in terms of industrial stability for a number of years. Other companies, mainly but not all in the construction and oil industries, followed suit, experimenting with their own disputes procedures. By the beginning of the 1960s the most reluctant of employers' associations were unable to deny the negotiation of over-award payments, particularly in the metal trades and construction industries, and during the 1960s it became quite common, at least in these areas, to require a disputes procedure in return. The procedures vary considerably as to their nature and the involvement in their various phases of union and management personnel and, sometimes, representatives of the arbitration system. The inclusion or otherwise of a " peace obligation "—either in a blanket form or until the procedure is exhausted —also varies from agreement to agreement.

However, after their initial interest, a number of important employer representatives have announced themselves as being disenchanted with the results, mainly because they are rarely observed. Even the highly encouraging Victorian Building Industry Agreement has been endangered in recent years by the readiness of employees to resort to stoppages before exhausting the disputes procedure.[3] Most often the procedures—in the building industry and elsewhere—are broken by stop-work meetings called on the job by the shop steward, often without the knowledge of the union officers, who nevertheless generally choose to ratify the stoppages at a later stage. In some cases, mainly in the metal trades where strong shop stewards' committees have been formed, the stoppages are unofficial, and have been strongly condemned by the official union leaders. The ACTU executive has repeatedly stressed its conviction that

[1] J. W. Kuhn: " Grievance machinery and strikes in Australia ", in *Industrial and Labor Relations Review* (New York), Vol. 8, No. 2, Jan. 1955.

[2] This involved a " cooling-off " period being observed while attempts were made to deal with the dispute by a union-management conference on the spot, culminating in the meeting of a Conciliation Committee consisting of representatives of both sides (including representatives of the Trades and Labour Councils and employers' associations) in an endeavour to settle the dispute without resort to a statutory tribunal.

[3] F. T. de Vyver: " The Melbourne Building Industry Agreement ", in *Journal of Industrial Relations* (Sydney), Vol. 12, No. 2, July 1970.

agreements must be observed and that grievances must be processed through the " proper channels ", and has, in the past, mounted campaigns aimed at weakening and controlling the power of shop stewards' committees.

This is an area where empirical research is badly overdue; at present, one can only surmise as to the reasons underlying the ineffectiveness and lack of acceptance of disputes procedures. It may well be that the procedures are insufficiently dovetailed to the needs of the particular organisation; almost certainly they are inserted into agreements without adequate shop-floor communications, preparation and involvement. The problems of union structure and organisation, particularly those concerning the role of the shop steward, remain unresolved in many unions. There are grounds for suspecting too, that many industrial relations departments are still unable to shoulder the responsibility for resolving disputes. Whatever the reasons, disputes procedures have recently received a solid endorsement from national employers' associations, the ACTU and the Federal Government. Tripartite consultations during 1970 led to recommendations as to the form such procedures might take, based on a series of conferences at different levels, with safeguards built in against undue delay in the processing of grievances on either side. At any stage in the procedure, it was suggested, the parties might seek the assistance of a Conciliator, a member of the Commission or some mutually acceptable person, but should not have recourse to the formal processes of the arbitration system until they had tried to resolve the issue in full accordance with the procedure. The recommendations are no more than guidelines: it remains for individual unions and employers to adopt them, if they choose, and to adjust them, if necessary, to meet their particular needs. The biggest barrier to their success continues to be the lack of attention paid to the contextual problems which, it seems valid to suggest, very largely dictate whether even the best-designed procedures will thrive or falter. The widespread publicity given to the recommendations is an excellent sign, but the mere endorsement of a disputes procedure by individual parties, without sufficient preparation and investigation of their particular difficulties, seems unlikely to guarantee its successful operation.[1]

[1] It is important to note that the use of a grievance procedure with a " no-strike " commitment is not generally taken by the unions to exclude strike action for sympathy or political reasons or in support of campaigns called by the ACTU or Trades Hall Councils. Part of the reason for this attitude is the assumption that such stoppages are beyond the scope of an individual plant's dispute procedure and that the workers in a plant cannot be expected to refuse to support such a campaign. This attitude also reflects the absence historically of any strong feeling of obligation on the part of unions to refrain from strike action against " innocent " employers. This feeling may have been promoted by the system of compulsory arbitration which, because it imposes awards on unions, enables their leaders to disown any responsibility for ensuring that stoppages will not occur during the currency of an award. The legitimacy of penal sanctions has, of course, been denied traditionally by unions.

2. The duration and modification of agreements

Not only have the employers been disappointed with the results of dispute procedures, they also have qualms about the unions' approach to the life of agreements. Major disputes occurred on the waterfront and in the railways during 1970, when unions were alleged to have put pressure on managements to vary substantially the over-award payments set down in agreements before the fixed term of the agreements expired. This is another area where the ACTU has guaranteed its support for the observance of agreements; it is also one in which management has to gain confidence in the unions' ability to maintain observance against rank-and-file impatience before collective negotiations will be fully acceptable.[1] The growing practice of staggering increases paid under an agreement over, say, six-monthly or yearly intervals may prove useful in this regard.

The modification of agreements during their term poses considerable problems in Australia, apart from the legal issues indicated earlier. Agreements made on construction sites often specify that they are to operate for the duration of the building project in question; others are usually made for periods ranging from one to three years. During this time, National Wage Cases [2] take place and increases decided upon have general implications for the whole workforce. Reviews also take place with regard to the rates paid under the Metal Trades Award, which has been used as a yardstick for other industries for many years. Agreements which fail to provide for adjustments in line with such increases can often cause disputes. Many agreements now specify that the rates stipulated therein will be varied in accordance with increases awarded on economic grounds for general application in National Wage Cases. Certain others, where parity with tradesmen covered by the Metal Trades Award has been customarily maintained, also provide for automatic variation to maintain this parity in the event of increases being granted under this award (other than those granted solely on the basis of increased work value in the categories of work specified).

Then there is the special problem which affects the negotiation of over-award agreements, namely the relevance of variations made during the term of those agreements to the particular awards which cover them.[3]

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[1] This point has an important bearing on the proposals put forward by the Australian Council of Employers' Federations on possible reforms to the system (outlined in a later footnote).

[2] An annual review by the Commonwealth Conciliation and Arbitration Commission, based on general economic considerations, of the national basic wage and associated factors. For fuller information see " Wage determination in Australia: basic wage and total wage inquiries, 1964 ", in *International Labour Review*, Vol. 92, No. 2, Aug. 1965, pp. 128-140.

[3] In the negotiation of the Victorian Building Industry Agreement, the question whether such variations in the various instruments covering plumbers, carpenters and labourers and

(Footnote continued overleaf)

This problem caused numerous hours to be lost in the metal trades industry in 1967 and 1968, where in many cases no prior arrangements covering this point had been made. The Commonwealth Conciliation and Arbitration Commission, having awarded substantial increases to certain classifications covered by the Metal Trades Award, suggested that employers might choose to " absorb " some or all of the increases in the substantial over-award payments being paid in that industry. The ensuing industrial action proved to the employers that this was not a feasible proposition, and emphasised the need for some provision to be made in over-award agreements as to the practice to be observed.

The future

The last twenty years have witnessed a significant movement in the direction of collective bargaining in Australia. There are no statistics to show the number of workers affected by this development and our evidence is confined to references to those industries and sections of industries which have entered in recent years into collective agreements and consent awards. Although the proportion will have declined in the last ten years, our judgment would be that at least half of all workers are still covered mainly by awards (excluding consent awards) of tribunals. But the importance of collective agreements and consent awards is not measured sufficiently by the proportion working under them because these agreements and awards tend to set the pace and the pattern of awards prescribed by tribunals.

A combination of factors, some of which are inter-related, have contributed to this development. First, the environment of full employment has profoundly affected the relative industrial power positions of labour and employers. Unions have been quick to realise the capacity of employers in certain industries to concede wages and conditions of work better than those provided in the awards of tribunals. The strategy of unions has been to obtain as much over-award benefits as possible by negotiation and strike pressure and to persuade tribunals to incorporate this higher standard in awards, at the same time resisting successfully any attempt by employers to absorb subsequent award increases in over-award benefits. The over-award elements not only stick but grow larger as, round after round, awards are revised upward. Full employment has thus enabled the unions to use both the market and the tribunals for a succession of inter-acting rounds of benefits. Secondly, the punitive powers of the system have become increasingly ineffective in restraining

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so on should be absorbed in the over-award payment or paid in addition thereto has been very much a bargaining issue: it is usually agreed that the variations will be absorbed, this factor being taken into account in fixing the amount of the over-award payment and the term of the agreement.

strike action.[1] After repeated statements of its opposition to penal sanctions, the union movement reached the limit of its tolerance in 1969 with a demand for their total repeal and a refusal to pay outstanding fines. To avoid a headlong collision with the risk of widespread rejection of the arbitration system, the Government compromised by amending the Act to meet some of the unions' objections. It is too soon to say how these changes will be applied but in principle they provide the basis for a delay in the availability of sanctions and an opportunity for an extension of the conciliation and arbitration processes.[2] The application of this principle is likely to strengthen the unions' ability to press their claims through negotiations, with the tribunals acting more in the role of conciliators and, if forced to arbitrate, to accommodate the demands of the unions in a way acceptable to them. Thirdly, employers are becoming increasingly aware of the narrow limits within which they can rely on arbitration tribunals to make and enforce awards (which unions frequently believe they can improve upon by resort to strike action). While the unions appear to be able to have the best of both worlds—to rely on the arbitration system where they are weak and to defy the system where they are strong—the employers cannot. This realisation has tended to encourage many employers to believe that collective bargaining may well be the lesser of two evils. They see collective bargaining as at least providing an opportunity for securing a reasonable *quid pro quo* from the unions in the form of a no-strike clause during the life of an agreement or consent award. Fourthly, mention should be made of the influence of an increasing number of American companies in Australia which have successfully applied collective bargaining techniques. And finally, in recent years the formation of industrial relations societies has provided a means for bringing together management, union officers, arbitrators, industrial lawyers and academics for a critical review of industrial relations in general and the arbitration system in particular.[3] It is not an exaggeration to say that these discussions have produced a fundamental change in the standard of perception and sophistication regarding industrial relations problems among these groups.

[1] In the ten years to 1967 a yearly average of thirty-nine fines were imposed in the Commonwealth jurisdiction amounting to $18,000. In 1968 alone the unions incurred 454 fines totalling $104,000. Excluding two highly strike-prone but small and atypical industries (stevedoring and coalmining), there has been a steady increase in the number of strikes over the last ten years—508, 867 and 1,488 in 1960, 1965 and 1969 respectively. But even in 1969, the peak of strike activity, only two-fifths of a day per man-year was lost through strikes. The annual average time lost for the preceding ten years was about one-sixth of a day. The relatively small amount of time lost in conjunction with the high frequency of stoppages reflects the short duration of strikes in Australia which, for the last ten years, has averaged one-and-a-half days per worker involved.

[2] See C. P. Mills: " Legislation and decisions affecting industrial relations ", in *Journal of Industrial Relations*, op. cit., Vol. 12, No. 3, Nov. 1970.

[3] See, for example, some of the papers delivered at the 1970 Convention of the Industrial Relations Society of Australia in the *Journal of Industrial Relations*, op. cit., Vol. 12, No. 2, July 1970.

All this should not be taken to imply that in the foreseeable future the arbitration system might be abandoned in favour of a system of " free " collective bargaining. The most that can be expected is an extension of collective bargaining wherever expedient *within* the present system, with suitable changes in the manner of operation of the system. The notion of public responsibility in the settlement of industrial disputes, big and small, is so deeply ingrained in the Australian public mind that it has engendered a wariness of free negotiations and the use of economic coercion. If public opinion polls are a reliable guide, there is strong support still for the retention of compulsory arbitration. Similarly, the official government attitude seems to be one of total support for the retention of arbitration, the " rule of law " in industrial relations, and an anxious disapproval of collective bargaining particularly when strike action succeeds in securing gains for the unions in excess of those indicated by national productivity increases. The hope cherished by some that the restraining hand of the arbitration system, despite its constitutional and procedural weaknesses, might be the means for implementing some sort of incomes policy appears virtually doomed with the extension of collective bargaining.

However, in the long run, much more important than current public opinion and the attitude of the Commonwealth Government [1], are the attitudes of the parties directly involved in industrial relations—the tribunals, the employers and the unions.

There are two aspects in the attitude of the tribunals to be distinguished: their attitude on conciliation as against compulsory arbitration, and their attitude on the basis on which arbitration decisions are made whenever necessary. On the former, in connection with national issues (the national minimum wage, national wage adjustments, standard hours of work, annual leave and long-service leave) we may expect tribunals to continue to determine these issues by arbitration largely because both employers and unions would want them to be so determined. In industry and local disputes, it may be said that, in general, tribunals are showing an increasing preference for conciliation. It is likely that, in the spirit of the new penal provisions, conciliation will be pressed even harder by the tribunals [2] but their success will depend very much

[1] The industrial spokesman of the Labour Party, which is the Opposition in the present Commonwealth Parliament, is reported to have said that a Labour Government would recast the arbitration laws to permit a system of fixed-term industrial agreements enforceable on both employees and management as binding contracts. These agreements would be based on the minimum standards of wages, hours, leave, etc., fixed by the arbitration tribunals. However, penalties against strikes concerning these minimum terms would be abolished. The application of this policy would, of course, encourage the tendency towards collective bargaining arrangements. (*The Australian*, 30 Nov. 1970.)

[2] There is considerable support for the proposition that resort to arbitration be limited (except in national cases) to situations where a conciliator certifies that the parties have bargained in good faith and that further negotiations are unlikely to be justified. See A. E. Woodward: " Industrial relations in the '70s ", in *Journal of Industrial Relations*, op. cit., Vol. 12, No. 2, July 1970, p. 120.

on how determined one party or the other is to force the matter to arbitration.[1]

This leads to the second aspect of the tribunals' attitude: the basis of their award when conciliation has failed. Arbitration may be based on a " judicial " or " normative " type of approach in the sense that the tribunal determines the matter on the merits of the argument put before it; or it may be based largely on the power positions of the parties. In the latter, which may be called " accommodative arbitration ", the tribunal may take a " realistic " view of the situation and may be inclined to grant an award which would be acceptable, even if grudgingly so, to the union. The judicial approach may be proper in determining the rights of parties; but arbitration on interest is more akin to legislation and the power position of the parties can only be ignored at the cost of having the decisions of the arbitrators frustrated. What has been said makes it clear that the tribunals' traditional view that the system is a method of " industrial justice " is only viable in today's climate in the case of employers and unions unable or unwilling to defy awards. Australian employers are generally unorganised for lockouts, and even if they were well organised they would probably pass on any " excessive " awards to consumers (and seek government assistance by way of tariffs or subsidies if necessary) in preference to incurring public disapproval by declaring a lockout. In general, employers have an escape route not open to the unions. Thus the relaxation of the penal provisions may be expected to persuade tribunals into accommodative arbitration whenever necessary simply as a matter of industrial expediency. The approach taken by the Commonwealth Conciliation and Arbitration Commission in a recent dispute in the oil industry may well set the pattern for collective bargaining-type solutions in industrial disputes. When negotiations on a new agreement in 1970 failed amidst a strike, the unions took the matter to the Commission which determined the main issues by an award which approximated the terms to which the parties were close to agreeing in their negotiations. The Commission remarked by way of guidance in future cases that " if conciliation fails, any subsequent arbitration would be more realistic if the arbitrators are able to put themselves in the position of the negotiators and to regard the arbitration as a prolongation or extension of the negotiations ".[2] In recent years, even national wage decisions have clearly been made with an eye on the acceptability of the decisions to the trade unions, and economic arguments relating to the

[1] For example, a union determined to press for an arbitration award on the assumption (usually correct) that it would not be less favourable than the employer's last offer, makes arbitration inevitable, unless the tribunal is prepared (which it is generally not) to allow a strike to take its course. This was the situation in the recent oil industry dispute which was taken to arbitration after protracted negotiations had failed to persuade the unions to accept the offer of the companies.

[2] Decision in the matter of C No. 1249 of 1970 (mimeographed), p. 5.

inflationary effects of such decisions have taken a secondary position in the considerations of the tribunal.

Another factor affecting the operation of accommodative arbitration is the legal difficulty of distinguishing between interest disputes and rights disputes in Australian awards because of the effectively indeterminate life of such instruments. For accommodative arbitration to operate in the same way as an American contract (with a no-strike provision and a grievance procedure likely to be honoured by the union during the life of the contract) requires either that the law be amended or that the tribunal and the parties firmly accept the award for a stated term only. Furthermore, the unions would have to reject their traditional approach of regarding an award as merely prescribing minima which may be raised during its currency by strike pressure. It is an open question whether many unions would be able to honour such an undertaking.

The attitude of employers, particularly the smaller ones, depends to an important extent on the attitude of the employers' association to which they belong and on which they tend to rely for advice and personnel in dealing with industrial matters. Employers' associations, while opposing the abolition of compulsory arbitration and doubting the unions' ability to handle bargaining and the administration of their agreements, none the less range all the way from those which strongly favour an extension of collective negotiations [1] and advocate changes in the system including a drastically reduced role for tribunals, to those, mainly concerned with the metal trades, where the unions have been most militant, which believe that negotiations outside the compulsory arbitration system are an unfortunate development best described as " industrial anarchy ".

The trade union movement has frequently advocated increased reliance on collective negotiations, particularly after disappointments in major wage cases. With the exception of a few strong and militant unions, this stops short of calls for the abolition of the arbitration system. It is generally submitted by the unions that the arbitration system should remain, at least for the purposes of national issues, to set minimum stan-

[1] An important recent paper discussed by the Executive Council of the Australian Council of Employers' Federations, a leading employers' body, deserves special mention. The paper proposed that the Commission should retain the power to arbitrate only in National Wage Cases and on applications for changes in standard hours and paid absences from work. Other matters, it was suggested, could be directed by legislation to be completed by way of direct negotiation between the parties, with the final agreement having to be brought back to the Commission for certification. Arbitration would not be available on such issues unless the parties agreed voluntarily or unless a conciliator issued a certificate that negotiations had failed to produce an agreement. Negotiations between the parties would thus be the formally approved process for resolving issues. Conciliation as it is now practised under the Act would be abandoned, and, to facilitate the negotiation process, a conciliation and mediation service, which would have no power to arbitrate, would be established on a basis independent of the Commission. An agreement would have a fixed life and would be re-opened only where it contained a specific re-opening clause. Enforcement against unions and employers' organisations would be by way of damages.

dards and also to protect the weaker unions (which totally oppose its abolition).[1] However, they argue, unions should have greater freedom to bargain for extra wage and other benefits and they criticise strongly those employers, including governments, which rely on the arbitration system and refuse to bargain in good faith. As has been stressed above, their strategy is that the stronger unions should have the freedom to bargain and to use their economic power to raise the pay and other benefits above the standard prescribed by tribunals in national cases; and then to press the tribunals to apply these higher standards to the awards covering the weaker unions.

Finally, there are certain characteristics of both employers and unions which inevitably inhibit the prospects for collective bargaining. Both sides tend to lack the skills involved in negotiations, being accustomed to the simpler semi-forensic approach of arbitration. The union's approach on over-award payments is often not to negotiate at all, but to demand, with immediate threat of the strike. As often, employers retort by making a firm offer about which they are not prepared to bargain. And when confronted with determined union strike pressure, they frequently refuse to negotiate and run to arbitration immediately or concede the claim. Too frequently, parties who are willing to negotiate assume that all that is involved in negotiations is a round-table discussion; they do little homework on their negotiations and rarely bother to formulate mutually acceptable procedures. Another characteristic of many employers and unions is a reluctance or inability to make decisions and to bear the responsibility for them, a requirement of which they have been relieved by the availability of arbitration, employed both as a crutch and a scapegoat. This is aggravated by the fact that employer representatives often lack the status and authority necessary for effective negotiations and are required to refer to their principals frequently before they can make any concessions. On the unions' side, it is reinforced by the inability of many officials to guarantee observance of an agreement because of their lack of authority over the rank and file, which is partly due to poor communications and the inadequacies of union staffing and structure. The problems of composite union bargaining have already been mentioned.

Most of these characteristics of unions and employers have been nurtured by many years of compulsory arbitration. A determined move by tribunals to refrain from readily making awards on interest matters but to press for conciliation even in the face of stoppages, could well force employers and unions to make the necessary adjustments in their organisation, personnel and attitudes for more effective collective bargain-

[1] The arbitration system has spawned and succoured a large number of unions so weak, so poor and so badly led that they are utterly dependent on the system for survival. These unions, whose voices count in the policy decisions of the ACTU, have a vested interest in the system.

ing. There will no doubt be a learning period during which stoppages may become more numerous. What could help the learning process is for the Government at this stage to set up a committee of inquiry to examine thoroughly the state of Australian industrial relations and the institutional and procedural changes which may be necessary for improvements in the system. For the circumstances that surrounded the inception of the system of compulsory arbitration nearly seventy years ago have changed profoundly. What has evolved under the pressure of full employment in the post-war period is an industrial relations system with diverse elements: pure compulsory arbitration working effectively at one end of the spectrum and free collective bargaining at the other; and in between, a peculiar hybrid of quasi-collective bargaining, which could well become the dominant feature of industrial relations in Australia, has succeeded in taking root but is still in the process of defining its features.