

Collective agreements and industrial peace in Switzerland

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In 1987 Swiss employers and trade unions, as well as government circles, celebrated the 50th anniversary of the "peace agreements" in the watchmaking and metalworking industries. Since Switzerland has a reputation of being a country without strikes, it may be useful to examine its system of collective agreements and the causes of industrial peace.

I. Collective agreements

A. Historical background

Pre-1930s: Collective agreements in handicrafts and small-scale industry

Collective bargaining gained a very early foothold in Switzerland. Commonly cited as precursors of collective agreements are two schedules of wages for the printing industry – one adopted in Geneva in 1850 and the second in Saint-Gall in 1861. As early as 1900 the Canton of Geneva passed a law recognising the validity of agreements reached between workers' and employers' organisations. To our knowledge this was the first piece of legislation in Europe in this field.¹ In 1911 collective agreements were legally regulated at the federal level when the Code of Obligations was revised.²

Up to the 1930s collective agreements were concluded mainly in the handicrafts sector and in small-scale industry. The first agreement extending beyond the boundaries of a canton was the one concluded in the brewing industry in 1906; this was followed by others in the printing industry in 1907, the tinplate industry in 1911 and so on.³

It should be noted that, even at that time, collective agreements contained fairly detailed clauses governing conditions of work. They often included a peace obligation. The tinplate industry agreement of 1911 expressly provided that, during its life, the parties would abstain from strikes and lockouts.

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In the large industries employers continued to resist trade union pressures for collective bargaining. Admittedly, agreements had been concluded in the watchmaking industry since the beginning of the century, but only at the enterprise or cantonal level.⁴ At the national level employers refused to accept unions as bargaining partners.

For example, in February 1929 the Metalworkers' Union proposed to the employers' organisation a collective agreement for two years covering hours of work, wages and leave in particular. The draft agreement provided that an arbitration tribunal would settle rights and interest disputes and that a guarantee would be deposited in the National Bank to ensure observance of the agreement. The employers' association rejected the proposal the day it was made, declaring that "our committee considers that a collective regulation of conditions of work is not an appropriate means of promoting industrial peace".⁵

The turning point in the 1930s: Collective bargaining in the large industries

At the beginning of the 1930s the situation began to change. The Federal Department (Ministry) of the Public Economy adopted an increasingly positive attitude towards the Federation of Metalworkers and Watchmakers (FOMH, which in 1972 became the FTMH). It intervened a number of times to facilitate contacts between the Federation and the Swiss Machine-makers' and Metal Manufacturers' Association (ASM).

In addition, availing itself of institutional arrangements which will be described later, the Left began to exercise its political muscle. In 1933 it helped bring about the rejection by public referendum of a proposed reduction in the pay of public employees and in 1935 it mustered a very substantial minority of the electors in support of economic reform.⁶

Hence the trade union movement – and especially the most powerful of the workers' federations, the FOMH – could no longer be ignored. At the same time, however, the FOMH, which in 1933 had deleted the revolutionary goal from its statutes,⁷ no longer regarded strikes as the best means of obtaining concessions from employers. In 1935 its Chairman, Konrad Ilg, a Socialist MP, stopped opposing national defence expenditure. With the Nazis annihilating workers' organisations in Germany, Ilg thought it necessary to join the other democratic forces, bourgeois though they might be, in confronting the external dangers.⁸

On 27 September 1936 the Federal Council (Government) decided to devalue the Swiss franc and, in order to prevent wage rises generating price increases, decreed that collective disputes concerning pay were to be submitted to compulsory arbitration.⁹ From the political point of view this Decree was an extremely important one: whereas the State had previously held itself aloof from dealings between trade unions and employers, the risk that it might intervene now became real. The idea of compulsory arbitration

under the aegis of the Confederation appealed particularly to corporatist circles, which favoured the establishment of an economic and social system inspired by the ideology then prevailing in Germany and Italy (this was the case, for example, of the Conservative Catholic Party). Conversely, politically liberal employers in the large industries were opposed to the restrictions they saw behind this new intrusion by the State. The trade unions, for their part, were hostile to the move to substitute compulsory arbitration for strikes and boycotts which they regarded as weapons for demonstrating, where necessary, their strength and independence. Thus employers and unions, in their shared hostility to corporatism, found themselves so to speak in the same camp.

In the spring of 1937 a major strike broke out in the watchmaking industry over wages and paid leave. Faced with the risk of state arbitration, the employers and workers preferred to submit their dispute to a private tribunal: in this they were helped by the Federal Councillor (Minister) responsible for the Public Economy, acting at the request of the trade union. The Minister himself drew up a draft agreement which provided for a return to work, a total ban on any form of industrial action and the setting up of a standing arbitration tribunal, whose members were to be appointed by the parties and not by the State, responsible for fixing wages and the duration of holidays in the various branches of the watchmaking industry. The parties signed the agreement on 15 May 1937. Originally concluded for a few months (up to the end of 1937), it was regularly renewed thereafter without interruption.¹⁰

A similar agreement was signed two months later, on 19 July 1937, in the metalworking industry. Preferring negotiation to state arbitration, the employers' association consented to conclude a procedural agreement whereby it recognised the trade union as a negotiating partner and undertook to submit wage disputes to arbitration; in exchange, the union agreed not to resort to strikes or boycotts.

The agreements in these two industries were limited to setting up arbitration procedures for certain interest disputes in return for industrial peace; they did not deal with conditions of work, which remained a matter for bargaining within the enterprise. The employers feared the uniform constraints that would result from agreements spelling out working conditions.

The FOMH, satisfied at being recognised as a bargaining partner, contented itself for the time being with this arrangement for settling disputes.

The post-war period: Towards industrial peace

The advances made by the trade unions in the two largest industries set a pattern for others to follow.

During the war years the number of industrial disputes declined, but immediately after the war was over it rose again as labour launched

campaigns to secure collective agreements. The period from 1945 to 1947 was marked by a particularly heavy rash of strikes. In 1946 there were more than in any of the 15 preceding years. In 1947, too, there was a remarkably high number of disputes, including several in the watchmaking and metalworking industries.¹¹ It was not until the 1950s (apart from a few exceptions) that the figures dropped to fewer than ten strikes a year (sometimes none).¹² Industrial peace thus dates in fact from the start of that decade and not, as has often been said, from the agreements of 1937.¹³

The often acute social tensions that had been building up during the war and the resurgence of strikes at its end were accompanied by a sharp rise in the number of collective agreements. This trend became even more pronounced after 1950 but the trade unions no longer needed to take industrial action in order to be recognised as partners. Whereas in 1938 there had been 417 collective agreements, the number rose to more than 1,000 in 1946, 1,500 in 1955 and 1,600 in 1960.¹⁴ The total number of registered agreements is now tending to decrease since in some instances regional or national agreements render local ones superfluous. The Swiss Federation of Trade Unions has estimated that there were some 1,100 agreements in 1983,¹⁵ as compared with nearly 1,400 in 1971.¹⁶

The agreements concluded after the war followed the more traditional pattern and thus differed from those in the metalworking and watchmaking industries. The unions were not content with procedural arrangements and demanded agreements spelling out working conditions in detail. What happened in the chemical industry proved to be significant. In 1942, in response to a petition from the workers, the employers' organisation in Basle declared itself ready to improve working conditions; nevertheless, it expressly declared that "as a matter of principle, it could not entertain a demand by the staff for the conclusion of a collective agreement".¹⁷ In 1943 it offered to sign a procedural agreement similar to those in the metalworking and watchmaking industries. The trade union refused the offer and in January 1945, after a stiff fight, won a complete collective agreement. Since it fixed working conditions for its term, the agreement did not provide for arbitration of disputes concerning wage fixing or leave.¹⁸ This was the first time that a detailed collective agreement had been concluded in a major branch of Swiss industry.

Meanwhile, supplementary clauses on working conditions (working week, leave, notice of dismissal, family allowances, etc.) were added to the procedural agreements in the watchmaking and metalworking industries. In the latter the clauses were integrated into the procedural agreement to form a complete collective agreement in 1961. In the metalworking industry this result was not achieved until 1970.

B. Industrial peace

The two categories of agreements

The structure of collective bargaining varies considerably from one industry to another. In some it is conducted centrally and in others at several levels: national, regional and cantonal. Most agreements, however, are concluded at the enterprise level.

The agreements currently in force fall into two broad groups. The first comprises those of the watchmaking and metalworking industries, which follow the 1937 model. These are not limited to regulating working conditions but provide for arbitration of certain interest disputes, particularly those relating to wage fixing. Such arbitration plays an important role: in the 1970s and 1980s, for example, a fairly large number of awards were handed down on cost-of-living adjustments, real wage increases and compensation for workers dismissed for economic reasons. Each award specified the amounts payable in the light of the enterprise's financial situation.

The other group comprises agreements that confine themselves to fixing working conditions but do not provide for arbitration of interest disputes. This is the traditional formula: having already existed in several trades in the nineteenth century, it gained wider currency at the start of the twentieth century and became firmly established after the Second World War.

The first group only covers 7 per cent of the country's labour force whereas the second takes in the vast majority (for example, in chemicals, building, textiles and printing).

Contrary to what is generally believed, the arbitration procedures for settling wage disputes in the watchmaking and metalworking industries are not at all representative of the 1,300 or so collective agreements in Switzerland: in fact, they are the exception. Usually, when an interest dispute arises, the parties arrive at a compromise through traditional bargaining or within joint committees. If necessary they can take the dispute to the conciliation authorities at either the cantonal or federal level. Recourse to official conciliation procedures is rare, however.¹⁹

Whichever group they belong to, the collective agreements impose a peace obligation on the parties. This calls for a few words of explanation.

The peace obligation

Under the Code of Obligations a collective agreement legally binds the parties. During its life they may not attempt to modify any of its terms through coercive action (strikes, lockouts, boycotts). The obligation to preserve industrial peace is not regarded as absolute since it applies only to the matters regulated by the agreement.²⁰

Nevertheless, the parties may agree on an unlimited peace obligation prohibiting any industrial action, whatever the subject of the dispute. Most

employers are not willing to conclude an agreement unless it contains an absolute peace obligation and the majority of collective agreements (approximately two-thirds) do include such a clause.²¹

As mentioned earlier, bargaining is conducted in some industries at two levels: the agreement concluded at the national level regulates all conditions of work with the exception of wages; these are the subject of negotiations at a lower level conducted in widely differing forms. Sometimes wages are fixed in an agreement between each employer and the works committee for an unspecified duration which does not correspond to that of the national agreement (metalworking industry); sometimes in supplementary clauses agreed upon in the various branches of the industry, also for a period differing from that of the national agreement (watchmaking); and sometimes in cantonal or regional supplementary clauses signed by the local employers' and workers' organisations at the same time and for the same duration as the national agreements (building industry). It should be noted, however, that in watchmaking and building negotiations on cost-of-living adjustments are conducted at the central level.

In these cases the national agreements contain an absolute peace clause which applies to both levels for the life of the agreement. On the expiry of the industrial agreement the peace obligation ceases at both the central and the local level since it derives from the national agreement.

What happens if wage negotiations at the lower level break down during the period covered by an agreement? In the watchmaking and metalworking industries the wages will be fixed by the arbitration tribunal. In the building industry the local supplementary clauses are supposed to be valid for the same period as the national agreement; if new demands arise during its life they can be settled only by common agreement since there is no provision for arbitration of wage disputes. Failing such agreement, two courses of action are possible according to the case. If the parties are in dispute over cost-of-living adjustments and no agreement is reached at the national level, the unions have the right to denounce the agreement before its expiry date. On the other hand, if the dispute is over an increase in real wages, the unions have to content themselves with conciliation proceedings since they are not allowed to resort to coercive action. In practice these arrangements have not proved satisfactory. At the cantonal level the parties sometimes submit pay disputes to arbitration but this practice is not widespread. The principal building union (FOBB), as we shall see, has adopted a critical attitude towards absolute peace clauses; some of its sections, despite the peace obligation, have recently called brief work stoppages with a view to obtaining a general increase in real wages.

To ensure observance of the agreement the parties usually provide for the appointment of an arbitration tribunal empowered to interpret the agreement and punish any violation of its provisions.

Here again there are differences between the various industries. In watchmaking and printing the arbitration tribunal is established for the entire

duration of the agreement; at the central level in the building industry only the chairman is appointed beforehand for the duration of the agreement, the assessors being designated as each case arises; in the metalworking industry the whole arbitration tribunal is established afresh for each individual case. As a general rule, the tribunals are presided over by professional judges; the other members are sometimes judges too and sometimes personalities known to the parties.

In watchmaking and metalworking it is the same tribunal, applying the same procedures, that settles both rights and interest disputes. There are certain differences in practice, however, in the case of interest disputes. For example, the arbitration tribunal in the watchmaking industry can call in an economist to act as an expert; and the tribunal in the metalworking industry is composed of a single judge (instead of three) assisted by two assessors familiar with collective bargaining.

Initially the arbitration tribunals set up under collective agreements settled disputes very quickly. Over the past 20 years, however, in order to give these tribunals more prestige employers' and workers' organisations have tended increasingly to nominate judges of the Federal Court rather than cantonal judges as arbitrators. In view of the heavy demands made on these judges, delays have been inevitable. The parties are making efforts to find a solution and, in the watchmaking industry, they have set up a preliminary mediation procedure, under which the mediator may even arbitrate the dispute.

Infringements of the peace obligation are frequently punished by fines imposed on the party at fault. These fines are not intended to compensate for damage caused but to re-establish the authority of the agreement. The amounts, without being negligible, are basically symbolic. For example, the Building and Woodworkers' Union (FOBB) was fined 20,000 Swiss francs (approximately US\$13,000) for having organised a three-hour stoppage by some 6,000 workers in 1987.²²

The effects of a violation of the peace obligation on the contract of employment are less clear. A recent judgement of the Federal Court left open the question whether a strike constitutes a breach of the individual contract or whether it only suspends the contract's effect. It declared that in any event a simple suspension of the employment contract could be accepted only if the dispute had been preceded by proper conciliation and if it had not infringed a peace obligation. When it violates this obligation a strike assumes an unlawful character and justifies immediate dismissal without compensation.²³

II. The causes of industrial peace

The preceding section has described the development of the legal framework surrounding the obligation to preserve industrial peace. What now has to be explained is why these agreements are generally respected and

why the parties prefer compromise to confrontation when the time comes for their renewal.

There is of course no single easily identifiable cause. Various factors play a part to a greater or lesser extent, including the work ethic, the presence of numerous foreign workers, economic conditions and the political system.

A. The work ethic

It has often been noted that the Swiss attach great importance to work. Lacking in natural resources, they have always had to rely on their labour alone to survive and prosper (particularly as they have never had any colonial possessions). Was not Switzerland for centuries the principal supplier of mercenaries in Europe? Work as such therefore assumed a special virtue in the eyes of the population, with the result that strikes would be seen as a squandering of the principal national resource.²⁴

There is undoubtedly some truth in this explanation. However, it must not be forgotten that from the early days of its industrialisation up to the 1940s Switzerland frequently experienced serious industrial disputes involving losses of countless working days. As a recent study shows, workers at the turn of the century did not hesitate to call strikes as often as their counterparts in neighbouring countries. Hence the work ethic is far from being the only explanation.²⁵

B. The presence of numerous foreign workers

It must also be borne in mind that foreigners account for a quarter of the labour force.²⁶ Immigrants are particularly numerous in industry (approximately 30 per cent in metalworking and 50 per cent in building and textiles).²⁷ If they keep the industrial peace it is certainly not as heirs to the local mentality.

Some play an important part in collective bargaining. A few, following attitudes or methods common in their own countries, are quick to reject the practice of consensus. But most assimilate fairly rapidly.

Half of these workers are in an insecure position: their residence permit is annual or seasonal and is subject to employment. If they lose their job they risk losing the permit. Immigrants must remain in the country from five to ten years in order to obtain a permit giving them the same economic rights as nationals (permanent residence permit). If a dispute arises, most of these workers are therefore unwilling to run the risk of losing their job.

The other half, who hold permanent residence permits, can change jobs freely, and it is fairly easy for them to do so because of the labour shortage. Coming mostly from countries where unemployment is high, they enjoy a standard of living which they value. Since many of them also want to acquire Swiss nationality, they seek integration rather than confrontation.

C. The economic conditions

On the economic plane two factors should be singled out: the country's dependence on foreign trade and the continuous prosperity it has enjoyed since the war.

In order to procure the raw materials that nature has denied it, Switzerland has to export a large part of its industrial production. Hence its heavy dependence on foreign trade. The relative fragility of the export industry tends to encourage moderation among workers. In some 15 years, for example, the watchmaking industry has lost two-thirds of its jobs but, apart from a few scattered exceptions, that collapse has created virtually no industrial strife. Workers appear to be aware of the inevitability of these retrenchments given the market situation.

It could be argued, however, that every country in Europe has been faced with restructuring problems as a result of industrial expansion in South-East and East Asia. And these have sometimes led to bitter strife despite their equal inevitability.

The second explanation is the continuous growth Switzerland has experienced since the war, combined with full employment (the unemployment rate has generally remained below 1 per cent). Thanks to that growth, employers have been able to make sufficient concessions to "buy" absolute peace clauses when collective agreements come up for renewal. When submitting the agreements to their members for approval, trade union representatives have been able to show that they obtained considerable benefits (higher wages, longer holidays, reduced hours of work, etc.) in exchange for those clauses.

Here again it can be argued that the prosperity of the 1950s and 1960s was not confined to Switzerland: it was a boom period for all the industrialised countries, and yet this did not invariably result in an almost total disappearance of industrial strife. At all events, as the economic situation has worsened in recent years employers have not been able to make concessions of the sort they made in the past and industrial relations have accordingly deteriorated somewhat. For example, the peace agreement renegotiated in the metalworking industry in 1988 was approved only by a tiny majority of the local delegates belonging to the main trade union, many of whom considered the results of the negotiations to have been far too meagre.

So while economic circumstances have undoubtedly contributed to the preservation of industrial peace over the past 40 or so years, they do not appear to be the principal cause of the absence of strikes. Perhaps the political system can offer a more convincing explanation.

D. The political system

Political relations in Switzerland are founded entirely on respect for the minority: because of the deeply held conviction of the value of compromise

the majority shares the daily exercise of power with the minority. As evidence of this, we shall examine the role of employers' and workers' organisations in the drafting of legislation, the composition of the federal and cantonal governments and, finally, the functioning of direct democracy.

The drafting of legislation

Employers' and workers' organisations are closely associated in the lawmaking process. Since the 1940s they have always been represented on the committees of experts responsible for drafting social and labour legislation. When the Bills are published the organisations are again consulted and can put forward proposals and objections. Finally, their leaders (currently, for example, the Director of the Central Union of Swiss Employers' Associations and the Chairman of the Swiss Federation of Trade Unions) have seats in Parliament and play a prominent role.²⁸

The participation of the unions in the lawmaking process is especially significant, as we shall see, because of their power to initiate a referendum, i.e. to demand that such and such a Bill be submitted to a popular vote. The threat of a referendum that hangs over the lawmakers' heads is a powerful incentive to compromise.

The composition of political bodies

In the cantons the parliaments are elected by a system of proportional representation. At the federal level the National Council (the lower chamber of Parliament) is elected in the same way.

The cantonal and federal governments are elected by majority vote (in the cantons by the people and at the federal level by Parliament). Despite this method of election, it is accepted in political circles that all the major forces must be represented in these governments. Thus, despite being in the minority, Socialist members of Parliament have had seats in the cantonal governments since the 1930s. At the national level, from 1943 to 1953 one of the Federal Councillors was a Socialist; there followed six years without any Socialist representation but since 1959 there have always been two Federal Councillors (among the seven members of the Government) drawn from this party. The portfolios held by the Socialist ministers are certainly not consolation prizes (at the moment the Ministries of Finance and Foreign Affairs). This distribution of seats is often referred to as a "magic formula".

Direct democracy

Finally, one cannot overestimate the role of direct democracy. Any group that collects 50,000 electors' signatures can obtain a referendum on a Bill adopted by Parliament.²⁹ This procedure also exists, *mutatis mutandis*, at the cantonal level. Needless to say, the right of referendum gives employers' and workers' organisations considerable leverage.

It cannot be said that referendums have been used more by the Left or by the Right. Any Bill oriented excessively in one direction or the other that does not reflect a political consensus runs a risk of being rejected by popular vote. Two examples, one old and one recent, will serve to illustrate this.

Following a general strike in 1918 hours of work were reduced. Some years later the employers succeeded in obtaining a partial reversal of that reduction from Parliament. In 1924 the trade unions initiated a referendum that resulted in annulling the Parliament's decision. This demonstration of force gave a considerable boost to the Left, despite its habitually minority position.

The right of referendum has also been used by employers' organisations when they regarded a Bill as being too "progressive". In 1986, for example, a referendum was held on a federal Bill to introduce maternity insurance financed by levies on the wage bill; small- and medium-sized enterprises, being against an increase in social security contributions, opposed this Bill and the people rejected it.³⁰

The role of consultation in the drafting of legislation can thus readily be understood: by seeking the views of all the major organisations right from the start, the Government endeavours to obtain their consent in order to avoid wherever possible the hazards of a referendum.

Another right enjoyed by the Swiss is the right of constitutional initiatives. Any group able to collect 100,000 signatures may request an amendment to the Federal Constitution, thus compelling Parliament to legislate on a given subject.³¹ This procedure also applies, *mutatis mutandis*, in the cantons.

During the Great Depression of the 1930s the trade unions launched an initiative with a view to obliging the Confederation to intervene in the management of the economy and try to revive it. The initiative failed in 1935, but only just: the large number of votes mustered by the Left made a very strong impression in political circles.⁶

Other initiatives had been launched by the Left before that, and others followed. Initiatives to have the right to work included in the Federal Constitution were twice rejected, in 1894 and in 1946, as were those to establish a 44-hour week, in 1958, and then a 40-hour week, in 1976 and again in 1988.

More often than not the proposals launched by the Left have failed, but they have almost always made an impact. To take account of the needs they express (but also to cut the ground from under their supporters' feet), Parliament has frequently adopted a compromise law responding to the same concerns but without going so far. The authors of the initiative have sometimes then withdrawn it, contenting themselves with the results obtained; where they have decided to press ahead with it, it was at the risk of seeing it rejected.

For example, in 1979 an initiative was submitted to Parliament proposing that annual paid leave be increased from three to four weeks, and

to five weeks for workers over 40 years of age. Parliament amended the relevant legislation, fixing a minimum of four weeks for all workers regardless of their age.³² The authors of the initiative were not satisfied with this and maintained their proposal. They were defeated in a popular vote in 1985.

Another example concerns the law governing dismissals. The Christian trade unions launched an initiative in 1981 aimed at securing greater protection for workers against dismissal. Although calling for the rejection of this initiative, which would have enabled Switzerland to ratify the ILO's Termination of Employment Convention, 1982 (No. 158), Parliament revised the law in 1988; it strengthened the protection enjoyed by workers but not to anything like the extent desired by the authors of the initiative.³³ Satisfied with this gain and uncertain of their chances in a popular vote, the unions withdrew their proposal in 1988.

The mechanisms of direct democracy have an appreciable impact on collective bargaining. Employers prefer to have working conditions regulated under agreements rather than by rigid and uniformly constricting rules; their consequent willingness to make concessions means that collective agreements, being far more detailed, are usually much in advance of the legislation. Conversely, employers are often able to block laws they dislike since they can count on the economic liberalism of a large part of the electorate.

While the popular initiative is an important weapon in the trade unions' armoury, there are definite limits on its use. As we have seen, the people do not always automatically support their proposals, far from it. Moreover, unions would be ill-advised to launch widespread industrial action to try to obtain what a popular vote would probably not be prepared to grant them.

III. Conclusion

The ambiguities of an anniversary

Numerous criticisms of the 1937 agreements were voiced on the occasion of their 50th anniversary.³⁴ The absolute peace obligation is the subject of controversy within the trade union movement, which can be divided into two camps. On the one side, the Federation of Metalworkers and Watchmakers is continuing to uphold its traditional policy of arbitration and industrial peace. On the other, the building, textiles, chemicals and printing unions are adopting a more questioning attitude. However, this does not go as far as an outright challenge to the system: while expressing its reservations about the absolute peace obligation (and after organising a symbolic work stoppage in 1987 in clear defiance of it), the Building and Woodworkers' Union has recently signed a new national agreement leaving this obligation unchanged.

These two camps correspond to the two types of peace agreements. The unions which have signed an agreement instituting arbitration for certain disputes are maintaining their traditional line. Those which have signed the conventional type of agreement are voicing dissatisfaction; they attack the 1937 agreements without publicly acknowledging that these are more advanced than their own agreements as regards arbitration of wage disputes. Since circumstances have changed since 1937, they are no longer in a position to get employers to agree to institute similar arbitration procedures.

For their part, employers in general, convinced of the usefulness of industrial peace, are extolling the virtues of the 1937 agreements. They tend to forget that those historic agreements, which included binding arbitration clauses, were not due to their initiative. They show little willingness now to agree to such clauses where they do not already exist. The 1987 work stoppage in the building industry could certainly have been avoided if there had been a provision, as there is in the metalworking and watchmaking industries, for submitting wage disputes to an arbitration tribunal. While accusing the trade union of ignoring the spirit of industrial peace, employers in the building industry nevertheless reject the idea of any such arbitration.

Contrary to the general view, therefore, industrial peace is not one and indivisible but depends primarily on the type of agreement concluded. There is good reason to believe that it is less firmly rooted in the sectors which have not provided for extensive arbitration.

Future prospects

The 1937 agreements marked a notable stage in the development of collective bargaining and, in particular, the end of employer resistance in the large industries to co-operation with the trade unions. Since they differed from most other agreements and applied only to a small proportion of the workforce, however, they cannot be said to have laid the foundations for industrial peace (which at all events, as we have seen, dates only from 1950).

The Left in Switzerland has never been in the majority. In view of the staunch conservatism of the electorate it is hardly likely to become so in the near future. Nevertheless, the level of trade union membership is fairly high and nearly constant, at some 30 per cent.²⁷ In the context we have described the employers' organisations cannot ignore such a sizeable minority and, in the event of a dispute, are compelled to negotiate a compromise. Stimulated by the involvement of the trade union movement in running public affairs (consultation machinery, Socialist participation in government, direct democracy), social consensus is advancing hand in hand with political consensus.

It is hard to imagine the Centre and the Centre Right, which currently form the majority in Parliament, sharing power with a Left determined to wage war against them in industry. But it is also hard to imagine the Left

accepting the rule of compromise if it did not feel it was deriving sufficient benefits on the social and labour front by doing so.

This balance could of course be upset by the economic situation, as in fact happened to some extent in the mid-1970s when the recession began. It was also shaken on other occasions, especially when employers sought an extension of shift work in order to make the most of costly equipment and withstand foreign competition. Such sporadic incidents, however, do not seem to pose a serious threat to the industrial relations system. After all, in the watchmaking industry the system has endured a restructuring that did away with many thousands of jobs.

Industrial peace is thus not an immutable feature of the Swiss labour scene, rooted in documents signed 50 years ago. It retains its hold thanks to a constant political will. The search for political and social compromise with a Left that is probably doomed to remain in the minority for a long time to come presupposes mutual concessions: it is a policy that is viable only if both sides are convinced that it offers them more advantages than they might obtain through confrontation.

Notes

¹ H. P. Tschudi: *Geschichte des schweizerischen Arbeitsrechts*, Basler Studien zur Rechtswissenschaft, Reihe B: Öffentliches Recht (Basle, Helbing & Lichtenhahn, 1987), pp. 30 ff.; M. Battelli: "Les lois genevoises de 1900 et de 1904 sur les tarifs d'usage et les conflits collectifs de travail", in *Mélanges d'histoire économique et sociale en hommage au Professeur Antony Babel à l'occasion de son soixante-quinzième anniversaire* (Geneva, University of Geneva, 1963), Vol. II, pp. 343 ff.

² In continental law the Code of Obligations corresponds to the law of contract and tort.

³ E. Eichholzer: "Aus der Geschichte der schweizerischen Gesamtarbeitsverträge", in *Revue de droit suisse* (Basle), 1964, Vol. 83, pp. 77 ff.

⁴ See Fédération suisse des travailleurs de la métallurgie et de l'horlogerie (FTMH): *Notre avenir a une histoire. Un siècle de lutte syndicale contre la pauvreté – pour plus de justice et de respect de l'être humain* (Berne, Bubenberg Druck- und Verlags-AG, 1988), p. 166.

⁵ See G. Aubert: *L'obligation de paix du travail*, Etude de droit suisse et comparé (Geneva, Georg, 1981), p. 172.

⁶ FTMH: *Notre avenir . . .*, op. cit., p. 87.

⁷ Namely "paving the way, in co-operation with the international proletariat, for taking production into the hands of the workers and eliminating class domination", *ibid.*, p. 85.

⁸ *ibid.*, pp. 93-94.

⁹ Decree of the Federal Council on measures relating to the cost of living, dated 27 September 1936, in *Recueil officiel des lois fédérales* (Berne), Vol. 52 (1936), p. 766.

¹⁰ R. Joseph: "La genèse de la paix sociale", in *Une convention collective de travail: pourquoi?* (La Chaux-de-Fonds, Convention patronale de l'industrie horlogère suisse, 1987), pp. 51 ff.; FTMH: *Notre avenir . . .*, op. cit., pp. 88-89.

¹¹ In 1934 there were 20 disputes and 33,309 days lost; in 1935, 17 disputes and 15,143 days lost; in 1936, 41 disputes and 38,789 days lost; in 1937, 37 disputes and 115,648 days lost; in 1938, 17 disputes and 16,299 days lost. Far from diminishing, the figures increased again in 1945 (35 disputes and 37,181 days lost) to reach a peak in 1946 (55 disputes and 184,483 days lost); they stayed high in 1947 (29 disputes and 102,209 days lost). Bureau fédéral de statistique: *Annuaire statistique de la Suisse 1950* (Basle, Birkhäuser), 1951, p. 346.

¹² In recent years, for example, the records cite one strike in 1981 (15 days lost), one in 1982 (550 days lost), five in 1983 (4,438 days lost), two in 1984 (662 days lost), three in 1985 (also 662 days lost), one in 1986 (72 days lost) and none in 1987 (having lasted only three hours, the 1987 stoppage in the building industry was not officially recorded). Office fédéral de la statistique: *Annuaire statistique de la Suisse 1989* (Zurich, Verlag Neue Zürcher Zeitung), 1988, p. 81.

¹³ See for example R. Décosterd: "La paix du travail en Suisse a 50 ans", in *Journal des associations patronales* (Zurich), 1988, 31/32, pp. 611 ff.

¹⁴ Aubert, op. cit., p. 175.

¹⁵ J. N. Rey: "Les attitudes des travailleurs syndiqués et les relations industrielles", in C. Roig, H. Schmid, U. Ayberk and J.-N. Rey (eds.): *Syndicalisme au futur. Etude comparée des comportements, des structures et des revendications syndicales* (Lausanne, Loisirs et pédagogie SA, 1986), p. 49.

¹⁶ Bureau fédéral de statistique: *Annuaire statistique de la Suisse 1973*, p. 390.

¹⁷ B. Degen: *Das Basel der Andern, Geschichte der Basler Gewerkschaftsbewegung* (Basle, Z-Verlag, 1986), p. 161.

¹⁸ *ibid.*, p. 176.

¹⁹ A. Berenstein: "Le règlement des conflits collectifs du travail en Suisse", in *Etudes de droit du travail offertes à André Brun* (Paris, Librairie sociale et économique, 1974), pp. 51 ff.

²⁰ See article 35 (a) (1) of the Code of Obligations; Aubert, op. cit., pp. 212 ff.

²¹ See article 357 (a) (2) of the Code of Obligations; Aubert, op. cit., pp. 224 ff. For further details on the peace obligation in general, *ibid.*, pp. 155-277; F. Vischer: "Gesamtarbeitsvertrag und Normalarbeitsvertrag", in *Das Obligationenrecht, Kommentar zum schweizerischen Zivilgesetzbuch* (Zurich, Schulthess, 1983) concerning article 357 (a); H. P. Tschudi: "Die Sicherung des Arbeitsfriedens durch das schweizerische Recht", in *Festgabe zum siebenzigsten Geburtstag von Erwin Rück*, Basler Studien zur Rechtswissenschaft, Heft 33 (Basle, Helbing & Lichtenhahn, 1952), pp. 105 ff.; *Beiträge zum Arbeits- und Sozialrecht* (Berne, Stämpfli, 1983), pp. 233 ff.; Ph. Bois: "Conflits collectifs de travail et condition du salarié", in *XVIII^e journée juridique*, Mémoires publiés par la Faculté de droit de Genève, No. 60 (Geneva, Georg, 1979), pp. 79 ff.

²² Decision of the Building Industry Arbitration Tribunal, 15 January 1988 (unpublished); Aubert, op. cit., pp. 261 ff.

²³ *Recueil officiel des arrêts du Tribunal fédéral* (Lausanne), Vol. 111 (1985), Part II, p. 245.

²⁴ For the recent period, see C. Lalive d'Epinay and C. Garcia: *Le mythe du travail en Suisse. Splendeur et déclin au cours du XX^e siècle* (Geneva, Georg, 1988), pp. 137-154.

²⁵ A. Balthasar, E. Gruner and H. Hirter: *Arbeitschaft und Wirtschaft in der Schweiz 1880-1914* (Zurich, Chronos, 1988), Vol. II/2, pp. 855 ff.

²⁶ Office fédéral de la statistique: *Annuaire statistique de la Suisse 1989*, p. 68.

²⁷ See H. Anderegg: "Evolution des effectifs des syndicats suisses en 1987 et depuis la seconde guerre mondiale", in *Revue syndicale suisse* (Berne), 1988, No. 4, p. 109.

²⁸ J.-D. Delley and C.-A. Morand: "Rôle et statut constitutionnel des centrales syndicales en Suisse", in *Recueil des travaux suisses présentés au X^e Congrès international de droit comparé* (Basle, Helbing & Lichtenhahn, 1979), pp. 175-199.

²⁹ See article 89 of the Federal Constitution.

³⁰ In fact, the law suffered from other defects in the view of the electors, particularly the measures envisaged for controlling the explosion of medical care costs.

³¹ See article 121 of the Federal Constitution.

³² See the new articles 329 (a) ff. of the Code of Obligations, which followed long after similar provisions had been won in collective agreements; *Feuille fédérale* (Berne, Chancellerie fédérale), 2 Nov. 1982, pp. 177 ff.

³³ See the new articles 334 ff. of the Code of Obligations; *Feuille fédérale*, 19 June 1984, pp. 574 ff.

³⁴ Of the many articles and books published to mark this anniversary see for example Décosterd, op. cit.; *Paix du travail, concertation, confrontation* (Lausanne, Rencontres suisses, 1987); K. Humbel: *Treu und Glauben* (Zurich, Partnerschaftsfonds der Maschinen- und

Metallindustrie, 1987); *Arbeitsfrieden – Realität eines Mythos* (Zurich, Widerspruch, 1987); “La paix du travail: hier, aujourd’hui, demain”, in *Revue syndicale suisse*, 1987, pp. 225 ff. For an analysis of workers’ views on industrial peace (based mainly on opinion polls), see Rey, op. cit., pp. 49-81.

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