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COMMENT

Britain's Industrial Relations Act 1971

*Edwin R. Teple**

B RITAIN HAS ENACTED its first legislation dealing with labor relations generally.¹ The bill was introduced in 1970 and after extensive amendment in committee, it passed the House of Commons last spring, was further amended in the House of Lords, and was finally passed on August 5th. The registration provisions of the Act took effect in October, while the effective date of other provisions will be delayed until next spring.

As described by its sponsors, the Act provides a legal framework to buttress the essentially voluntary system which had been in effect in Great Britain for over 50 years. The earlier voluntary system which had existed in Britain is analogous to the public sector in America today where only limited labor legislation has been enacted. Britain's Act specifically applies to workers in both the private and public sectors — in direct contrast to our National Labor Relations Act² (NLRA), which applies only to the private sector.

The new Act is not only a notable landmark in the development of British Labor Law, but a sizable one as well. It is divided into nine parts with nine schedules included in the appendix and covers 187 pages. As Professor Ben Aaron recently remarked, by comparison, the Taft-Hartley Act (NLRA) is a model of brevity and clarity. Because of the newness of the Act, only a brief, general description of some of its more significant terms and procedures can be undertaken at this time.

The Act creates a National Industrial Relations Court in Part VI to handle complaints alleging unfair industrial practices and other matters. The industrial tribunals used under prior Acts are retained and the standing Industrial Court, established under the Act of 1919, is to continue, but will now be known as the Industrial Arbitration Board.

A Commission on Industrial Relations is created to consider

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¹ Industrial Relations Act 1971.

² 29 U.S.C. §§ 141-87 (1970).

questions relating to such matters as the manner in which employers or workers ought to be organized for purposes of collective bargaining, and the review of questions relating to procedure agreements, recognition, and negotiating rights. There is no provision for an administrative agency equivalent to our National Labor Relations Board.

Certain general restrictions on legal proceedings are contained in Part VII. For example, no court may issue an order or injunction which would have the effect of compelling an employee to work or take part in any industrial action. The Act reserves for the Industrial Court jurisdiction over all proceedings involving the construction or effect of a collective agreement, the enforcement thereof, or any claim for damages thereunder; and imposes limitations on certain tort and criminal proceedings, the latter, for instance, designed to protect peaceful picketing.

Part VIII of the Act provides for emergency procedures upon application by the Secretary of State to the Industrial Court. A 60 day cooling off period can be ordered, but it is not clear what will happen after that since the Secretary is provided with no further weapons in his rather meager arsenal.

It is contemplated that bargaining units will be provided with some sort of dispute settlement procedure as part of a collective agreement. The Secretary of State or one of the parties (employer or trade union) may apply to the Industrial Court for assistance on grounds that no procedure agreement exists for settling disputes or grievances promptly or fairly, or that the existing procedure agreement is either not suitable or has been breached by recourse by one of the parties to industrial action. When this occurs the Court may refer to the Commission on Industrial Relations the question raised and the remedy to be recommended. By definition, industrial "disputes" include differences over terms and conditions of employment, or the physical conditions in which workers are required to work, and would extend to problems not covered by an existing collective agreement. In effect, "new terms" are subject to arbitration.

The rights of workers are outlined in the first part of the Act. Workers may join or refuse to join a trade union, subject to the provisions for agency shops and approved closed shop agreements. Under the Act, preentry closed shop agreements are rendered void. Workers are also protected in their right to engage in union activities as well as their right to disaffiliate from the union at certain

times. The concept of unfair industrial practices, borrowed from Section 8 of the Taft-Hartley Act (NLRA), is introduced in this part of the Act by making it a violation for an employer to prevent or deter a worker from exercising the rights conferred on him by the Act, or to dismiss, penalize, or discriminate against a worker on the basis of his exercise of those rights.

Part III of the Act provides for the determination of appropriate bargaining units, and for recognition of a sole bargaining agent. However, these provisions do not necessarily have the same effect or carry the same responsibilities as under the Taft-Hartley Act (NLRA). Collective bargaining agreements are legally enforceable unless they contain a provision that such was not intended, but no general duty to bargain is imposed. It is an unfair industrial practice to break a legally enforceable agreement. Likewise, for the first time, the arbitration of grievances, if the agreement so provides, is specifically sanctioned and may be enforced.

Provision is made for the disclosure by employers of pertinent information to trade union representatives for collective bargaining purposes. There is also provision for furnishing written particulars concerning rights and the terms of employment, as specified, to individual employees, as well as (in the case of larger employers) certain procedural and other information as may be required by regulation.

A large variety of activities designated as unfair industrial practices are scattered throughout the Act and may be made the subject of complaint to the Industrial Court. These include the following: (1) Engaging in or financing a lockout or strike in furtherance of the dispute while a question concerning recognition as sole bargaining agent is pending before the Industrial Court, or threatening to do so; (2) Bargaining with any other organization of workers where an order requiring recognition of a trade union or joint negotiating panel as sole bargaining agent is in force, or by failing to take all reasonable action to carry on collective bargaining with the union or panel designated; (3) Knowingly inducing, or attempting to induce, an employer named in a court order to commit an unfair practice or to not comply with the order; (4) Taking or threatening to take any action against a member in contravention of the principles set forth for the conduct of organizations of workers or employers; and (5) Taking or threatening to take industrial action in support of an unfair industrial practice by another person or against an extraneous person.

The Act also makes it an unfair industrial practice for an employer to dismiss an employee unfairly, but reinstatement is at the option of the employer. If an employee claims that he has been unfairly dismissed, the burden is placed upon the employer to prove the reason for the dismissal and that it was, in fact, justified. An industrial tribunal or the Industrial Court may recommend reinstatement, and if the employer unreasonably refuses or fails to comply, the worker's damages will be increased to the extent considered just and equitable. Otherwise, damages may be limited to the employer's common law liability, namely, the wages the employee would have earned during the period of his required notice from the employer. In any event, an absolute limit of two years' wages on back pay awards is imposed by the Act.

Part IX contains a number of miscellaneous and supplementary provisions including: (1) Provision for the appointment of conciliation officers by the Secretary of State to promote settlement of complaints before or after presentation to an industrial tribunal, upon request or referral, as well as claims relating to unjust dismissal; (2) Indication that notice by an employee of his intention to take part in a strike shall not (unless otherwise specified in the notice) be construed as a notice to terminate his contract of employment or a repudiation of that contract; (3) Special terms relating to proceedings against unregistered organizations; (4) Immunity of certain confidential information and protection of national security; (5) Restrictions on agreements which purport to exclude anyone from presenting a complaint or bringing proceedings before the Industrial Court or an industrial tribunal; and (6) Extension of the provisions of the Act to employees of the Crown, other than naval, military, or air forces.

Part IV contains the controversial provisions concerning the registration and conduct of trade unions and employers' associations. Rules, periodic accounts, and reports must be submitted to and approved by the Registrar. Tax status, namely the exemption from the income tax, will be lost by those who do not comply. These provisions, which are quite detailed, have been the subject of extensive debate and considerable opposition. The extent to which registration will actually occur, as contemplated by the Act, is still very uncertain.

The Act directs the Secretary of State to prepare a code of practice containing "practical guidance," a draft of which is to be submitted to Parliament within one year of the date of enactment. He

is also empowered to make regulations or rules as authorized or required under the Act.

Prior to its enactment, the Act was opposed by many of the most respected labor law authorities in Britain. At the conference of the British Industrial Law Society in November 1970, Professor K. W. Wedderburn commented on the effect it would have on two of the three basic features of the existing system:

[It] proposes that the Law be used for the first time to control the structures of bargaining and to jettison the old methods of conciliation. [It] purports to agree on an extension of the floor of rights, for example to include protection from unjust dismissal. But on this it is an ambiguous if not fraudulent prospectus. Although concessions have been made today by the Solicitor-General in regard to the burden of proof and the specific grounds for dismissal, [it] will apparently apply common law principles as to the measure of damages. Together with the absence of a remedy for reinstatement this makes the proposals almost valueless.³

Professor G. de N. Clark, in his monograph *Remedies for Unjust Dismissal*, published in June 1970, had proposed that reinstatement be granted unless the employer could prove that this would be impossible or there was some compelling reason which militated against it. During the discussion at the Conference, Professor Otto Kahn-Freund also indicated his regret that reinstatement was not to be the primary remedy.

Sir Geoffrey Howe, the Solicitor General and chief architect of the Act, claimed that the major part of the proposals incorporated in the Act were directly in accord with the recommendations of the Donovan Report issued in June, 1968. Professor Wedderburn, however, felt that they took a fundamentally different direction from the Donovan Report.

Professor Kahn-Freund, in a conversation with this writer a number of years ago, pointed out that his countrymen had utilized arbitration to settle disputes over new contract terms, usually by Government appointed boards or commissions, whereas the United States was committed to the use of arbitration only in the construction and application of terms in existing collective bargaining agreements. He expressed the view that both countries might be well advised to utilize arbitration for both purposes. His country has now given legislative recognition to the settlement of grievances by this method. If the possibilities for the broadened and more effective

³ See K. WEDDERBURN, *THE WORKER AND THE LAW* (2d ed. 1971). The Consultative Document which outlined and explained the Government's proposals for the Industrial Relations Act, appears in the appendix to this book.

use of arbitration should be accepted in Britain, this may become one of the Act's most significant achievements. To match this advance in the field of industrial relations, the United States would have to give wider recognition and acceptance of arbitration as a means of settling disputes over new contract terms, a possibility which has been receiving more attention of late.

Finally, the experience in Britain under the new Act may be of special interest to United States' observers interested in handling labor problems in the public sector. Developments under the Act may provide empirical data upon which to predicate labor legislation in the United States which will be applicable to the public sector.

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