

The Commission is expected to undertake a vigorous promotional campaign in an endeavour to bring to the notice of young people the advantages which apprenticeships offer. In fact it is required by this new Act "to encourage minors to enter into industries of apprenticeship and to encourage employers to employ apprentices and to equip themselves properly to train apprentices."

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*Special Issue—Reviews of the Report of the Vernon Committee
of Economic Enquiry*

- R. I. DOWNING: Summary of the Report
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 R. T. APPELYARD: Population and Work Force
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 Costs, Prices and Wages
 F. H. GRUEN: The Industrial Pattern: The Rural Economy
 HELEN HUGHES: The Industrial Pattern: Mining, Manufacturing, and Tertiary
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LEGISLATION AND DECISIONS AFFECTING INDUSTRIAL RELATIONS

"ADVOCATUS"

SOUTH AUSTRALIAN INDUSTRIAL CODE AMENDMENTS

SINCE the Commonwealth was forced for constitutional reasons in 1956 to divide the Commonwealth Arbitration Court into two separate tribunals so as to observe the distinction between the judicial function and the non-judicial, it has become fashionable for the States, although not subject to the same constitutional compulsion, to undertake a like fission of their arbitration tribunals. Mr. Bowers' note in this issue describes how South Australia has become the latest State to succumb to the blandishments of this new fashion, but just what the government hoped to achieve by the new amendments is far from clear.

The new legislation (unlike that of Queensland and Western Australia) does not oust lawyers completely from the arbitration tribunal, for the President of the Industrial Commission must have the qualifications required of a Supreme Court judge. The creation of an Industrial Court and an Industrial Commission with distinct functions does not achieve a real separation of the judicial and non-judicial, for the President of the Industrial Commission constitutes the Industrial Court, and the power of dealing with claims for unpaid wages is given to the individual members of the Commission and also to the Industrial Registrar, as an alternative jurisdiction to that of the local Courts.

Each Commissioner will have a dual role: as chairman of a number of Conciliation Committees (which are to replace the existing Industrial Boards) he is intended to act as a conciliator; in the event of the members remaining equally divided despite his efforts, he may decide the remaining matters, but the new Act makes it clear that he is then acting as a member of the Commission. It remains to be seen whether this dichotomy of role has any significance in practice.

There is provision, along the lines of that in the Commonwealth legislation, for reference of matters from a Committee to the Commission consisting of the President and the two Commissioners, and there is also a system of appeals which has several unsatisfactory features: since there are only three members of the Commission, and one of the Commissioners will have made the decision under appeal, it would be improper for that Commissioner to sit on the appeal from his own decision; accordingly, the appeal tribunal is to consist of the President, the remaining Commissioner and the Industrial Registrar. Now, the position of the Registrar in this situation is an unenviable one—his usual role is that of the chief administrative officer of the tribunal, and in this sense he is subordinate to the members of the tribunal, but on the hearing of the appeal he is made temporarily the equal of the other members sitting on the same matter, and the superior of the Commissioner whose decision is under review. This device bears the marks of a most inadequate improvisation, and it is not made any better by the fact that in every appeal the Commissioner whose decision is under appeal will be a person with previous association with trade union affairs, and one of the members of the appeal tribunal will be

a person whose previous association was with employers' affairs, or vice versa. The success of the appeal system will depend very much on the extent to which the Commissioners can shed their former allegiance to trade unions, or to employers, which will have developed in their old associations. The fact that they have tenure until the age of 65 does much to encourage an impartial outlook, but there have been occasional instances in other jurisdictions where this has not been enough.

The apparent confusion between principle and expediency which seems to have motivated the reform makes it difficult to see what purpose the new legislation was intended to serve. The Minister of Labour and Industry in his second-reading speech explained that "if South Australia is to continue to develop industrially, there seems to be no reason why we should not have our industrial tribunal constituted in a manner which is in accordance with current practices elsewhere": apart from the *non sequitur*, the new machinery in fact bears only a superficial resemblance to the practice in corresponding jurisdictions elsewhere.

WAGE FIXATION PRINCIPLES

It is common to speak of the principles of wage fixation under arbitration as if they were a discernible set of principles, clearly identifiable and applied uniformly to similar situations from time to time, but a comparison of decisions from tribunal to tribunal sometimes reveals a bewildering array of principles. While in most cases a tribunal will strive for consistency between its own decisions, the inconsistency between principles of different tribunals inevitably leads to doubt as to the validity of the principles applied by one or the other. A good example is seen in the persuasive value attributed by one tribunal to wage rates determined by another tribunal, or by agreement: this ranges from one end of the scale to the other.

In a recent Victorian case² fire brigade officers had been awarded a special allowance of £3.12s. per week, this being a carry-over from an earlier allowance for quarters when their working hours were much longer than they are today, and it seems that there is no longer any real justification for such an allowance; nonetheless, the Industrial Appeals Court held that the fact of this allowance alone justified a corresponding allowance of £2.2s. for lower ranks of the same service. In a decision given in March, 1966, Commissioner Winter of the Commonwealth Arbitration Commission awarded an increase to tradesmen employed in sugar mills in New South Wales on the basis of an increase awarded to similar employees by the Queensland Industrial Court in 1953.³ In another Federal case, the Commission awarded a special foundry allowance to Victorian railway employees, because private employers in that State had agreed to pay a similar allowance to their employees.⁴ A Western Australian decision on wages for pharmacists found that the rates formerly fixed by the local award were so far below the going rate in the industry as to make them quite unreal, and then proceeded to fix the new margins in the new award simply by averaging widely divergent rates fixed in awards of the other five States.⁵

For the most part, these decisions were quite uncritical of the background of the rates on which they relied, but it is just as common to find decisions in which rates of pay, otherwise comparable for the purpose of the decision, are excluded from the tribunal's consideration on the ground that it has not been shown that these rates have been based on principles acceptable to the tribunal. The New South Wales Industrial Commission, in fixing the salaries of specialist medical officers employed in public hospitals, rejected the relevance of an *ad hoc* Victorian committee on the ground that the committee was not an "experienced arbitration tribunal".⁶ The same tribunal

in a case heard a month or so later refused to accept as a proper valuation of the work the rates which had been fixed by an industrial agreement between the parties because the agreed rates were higher than the Commission itself had fixed.⁷ The President of the South Australian Industrial Court has said that "it would be inherently wrong" to increase award rates because of wages being paid under various agreements and schemes in the same industry in other States.⁸ In a case where the Federal award had been extended to cover the majority of employees in an industry within the State, his Honour had pictured the Court as being in the dilemma whether it should adopt the Federal award without considering the merits of the case or whether it should deny to the employees concerned the rates and conditions awarded to the majority,⁹ and he accorded the union the opportunity of showing that the terms of the Federal award were appropriate for the part of the industry still regulated by the State award.

That there are fundamental differences between the principles applied by different tribunals throughout Australia has been emphasized by McKeeon J. in the New South Wales Industrial Commission: "It is imperative that employee bodies and their members fully understand and appreciate that if adoption of Federal decisions be their chosen method of wage fixation for their industry they cannot expect to also have independent assessments of wages made by this Commission."¹⁰ Probably the ideal principle is to be found somewhere between the two extremes: except in the case of Victoria, where the legislation goes far towards requiring adoption in State determinations of provisions in corresponding Federal awards, each tribunal is established as an independent body, with a discretion of its own. Hence it is proper that it should determine for itself the appropriate principles to be applied, rather than to adopt uncritically principles applied by another tribunal operating under a different law, but rates which have been established in related areas should always be a relevant consideration, regardless of the background to those rates. The degree of relevance of the rates will vary, according to the nearness or remoteness of the two areas being compared, but they should never be dismissed as completely irrelevant.

ILLEGAL STRIKES

A rather novel form of order, and one which begs the real issue in question, was made in the Industrial Commission of New South Wales in connection with a dispute between the Australian Workers' Union and Australian Oil Refining Pty. Ltd.¹¹ The company was insisting that four men working on each shift of operation of a polymer plant at its Kurnell refinery should also operate several other pieces of plant which were being brought into production; it claimed that even with the additional work the men's time would not be fully occupied during the shift. The men were resisting this demand, and the union contended that the industrial agreement covering the refinery did not entitle the company to require the men in question to do work other than that associated with the operation of the polymer plant; if the men were to operate additional plant, the agreement should be renegotiated, and it appeared that the union would ask that additional men be assigned to the team of men in question. The company disagreed with this interpretation of the agreement, but in any case invited the Commission to investigate the facts.

McKeeon J., without making any investigation as to the work loads involved or deciding on the interpretation of the agreement, since this would have required investigation of the facts, suggested that the men might operate the plant as required by the company for a month, during which time the parties could check the amount of work involved, and after which the

placement which might occur. It seems implicit in the Commissioner's reasons that removal of the aborigines from the cattle stations to the special settlements was considered, at least, not undesirable: "From the wealth of material presented to us. . . we conclude that at least a significant proportion of the aborigines employed on cattle stations is retarded by tribal and cultural reasons from appreciating in full the concept of work." In settlements and towns, children are likely to be better educated and less susceptible to tribal influences than children on cattle stations and therefore more able to enter fully into the Australian way of life.

It is a sad reflection on the governmental sense of responsibility that the improvement of the lot of the aborigine was left to a tribunal which was never intended to resolve social problems of this nature, and hence is poorly equipped for the task. To develop in such people a proper appreciation of the concept of work, by a means which is calculated to destroy their tribal traditions and their culture, poor and primitive though these may seem to the white man, may in the end make them effective units in the Australian work force, but is not likely to rank as one of Australia's foremost sociological achievements.

THE MELBOURNE ONE-MAN BUS DISPUTE

For the third time in four years the Melbourne and Metropolitan Tramways Board has frustrated an attempt by the Australian Tramways and Motor Omnibus Employees' Association to obtain an award which will regulate the Board's policy of more extensive operation of its services with buses operated by a driver only, without a conductor. In 1962 the High Court held that disputation between the union and several State transport authorities over this issue was no more than a series of local disputes and did not constitute a single, interstate industrial dispute.¹⁷ Last year, the High Court again held that a claim made by the union could not be the basis for a Federal award, one of the reasons being that the claim was in ambiguous terms, so that the Board could not be taken as understanding it in any certain way and hence there was no dispute.¹⁸ Now, within the last few weeks, the High Court has again held that a claim by the union on the various State employing authorities, that no two-man bus service shall be converted to one-man operation, did not pertain to the relations of employers and employees, and hence was not capable of giving rise to an industrial dispute.¹⁹

The Chief Justice pointed out that the union's demand had been that a service which the employer was providing for the public should not be converted into another kind of service, and this was a demand that directly concerned only the management of the transport system; hence it was not an industrial demand, although, were it to be granted, it might have indirect or pedantic interpretation: "There is a world of difference between a demand that no one-man buses shall be used to operate a service and a demand that a conductor as well as a driver shall always be employed upon buses constructed for one-man operation. It is clear to my mind that the union did not wish to make a demand of the latter kind and sought to avoid such a situation by making a demand which in substance was of the former kind." His Honour highlighted the dilemma in which the union finds itself by distinguishing between a claim as to the nature of the work which the employer shall provide, and a claim dealing with what an employee, in doing work which is provided, shall be required to do in his employment. The latter may give rise to an industrial dispute, but it seems that the former will not.

A review of the three cases shows how difficult it will be for the union to create a dispute which will be a real dispute, will extend beyond the limits of any State, and will clearly relate to the relations of employers and employees. Over the years the union's dispute has been, now with an employing authority in one State, now with one in another State, and even then the issue has not really spread over the broad question whether all buses should carry a conductor; rather it has been whether a conductor should be carried on a particular route at a particular time. Hence the disputes have all had a peculiarly local character about them. To avoid this characterization, the union more recently has turned from the more pugnacious approach of holding or threatening a strike over a particular contention, to the device of the paper dispute, in which the identical claim is served simultaneously on the various employers. But the adoption of this device immediately invites minute scrutiny of the literal words of the formal claim, and diverts attention from the specific and immediate issue; it is of course intended to do this, but the mere fact that the claim has become more general increases difficulty of framing the claim in such a way as to maintain a demonstrable link between the claim and the employer-employee relationship. Even if it is possible to frame a general demand, while preserving this necessary link, there still remains the objection that it relates to a series of interstate issues rather than to a single interstate issue; this was the objection voiced tentatively by Menzies J. in the 1965 case, and by no means disposed of in the 1966 case.

FOOTNOTES

1. See pp. 182-188.
2. *Re Firefighters' Determination* (7th March, 1966), 1966 *Australian Industrial Law Review* Rep. 45.
3. 1966 A.I.L.R. Rep. 88.
4. *Railway Metal Trades Grades Award* (22nd February, 1966), 1966 A.I.L.R. Rep. 28.
5. Commissioner Flanagan, 9th May, 1966.
6. *Medical Officers, Hospital Specialists, Award* (5th April, 1966), 1966 A.I.L.R. Rep. 66.
7. *Crown Employees (Works Clerks—Metropolitan Meat Industry Board) Award* (12th May, 1966), 1966 A.I.L.R. Rep. 132.
8. *Plasterers and Terrazzo Workers Case* (25th March, 1966), 1966 A.I.L.R. Rep. 60.
9. *Draughtsmen's Case* (11th February, 1966), 1966 A.I.L.R. Rep. 25.
10. *Maritime Service Board (Cargo Handling Operations) Award* (4th April, 1966), 1966 A.I.L.R. Rep. 77.
11. 26th May, 1966.
12. *Maritime Services Board (Cargo Handling Operators) Award*, 1960 *Arbitration Reports* 3 434, at p. 440; *Steel Works Employees (B.H.P. Co. Ltd.) Award*, 1948 A.R. 544, at pp. 589, 623.
- 12a. Two further orders have been issued since the above note was written. After the company had required the men to operate the additional plant they went on strike, and on June 4 McKee J. ordered them to report for work at their usual starting time on the next shift and at the usual place, and to commence work and to continue working according to the lawful orders of the employer. The strike continued notwithstanding this, and at a further hearing a few days later the union raised, apparently for the first time, a safety issue; this and the growing shortage of petrol supplies gave his Honour ground for saying that something practical should be done. The ensuing order required the employment of an additional man on each three-man shift operating the polymer plant.

13. S. 88F, enacted by the Industrial Arbitration (Amendment) Act, 1959. The section relates to contracts or arrangements for the performance of work in an industry where the contract or arrangement is (a) unfair, (b) harsh or unconscionable, (c) against the public interest, (d) provides remuneration less than would have been received by an employee doing the same work, or (e) avoids, or was designed to avoid, the operation of an award or industrial agreement. The Industrial Commission or a Conciliation Committee may declare such a contract or arrangement, or any part of it, void, or may vary it in whole or in part.
14. *Shaw v. Sampson* (19th April, 1966), 1966 A.I.L.R. Rep. 108.
15. *Agius v. Arrow Freightways Pty. Ltd.* (2nd April, 1965), 1965 A.I.L.R. Rep. 438.
16. *Cattle Industry (Northern Territory) Award* (7th March, 1966), 1966 A.I.L.R. Rep. 36.
17. *R. v. Commonwealth Conciliation and Arbitration Commission; Ex parte Melbourne and Metropolitan Tramways Board* (1962), 108 C.L.R. 166.
18. *R. v. Commonwealth Conciliation and Arbitration Commission; Ex parte Melbourne and Metropolitan Tramways Board* (1965), 39 *Australian Law Journal Reports* 216. It is not easy to establish a clear ratio decidendi in this case: the Board had put forward five grounds for invalidity; of the five justices of the High Court participating in the case, only three supported the contention of the Board, but there were substantial differences in the reasons for their decisions.
19. *R. v. Commonwealth Conciliation and Arbitration Commission; Ex parte Melbourne and Metropolitan Tramways Board* (18th May, 1966).

BRITISH JOURNAL OF INDUSTRIAL RELATIONS

VOLUME IV, NUMBER 2

JULY 1966

CONTENTS

Personnel Specialists—A Count by Employers A Report on a Survey Made in South Wales in 1964	Anne Crichton & R. G. Collins
Shop Steward Combine Committees in the British Engineering Industry	Shirley W. Lerner & John Beesoby
Interest Groups and Incomes Policy in France	J. E. S. Hayward
The Educational Profiles of Management in Two British Iron and Steel Companies with Some Comparisons, National and International	P. W. Musgrave
Wages in the Soviet Union: A Comment on Recently Published Statistics	A. Nove
Educational and Occupational Characteristics of Manpower: An International Comparison	P. R. G. Layard & J. C. Seligal

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THE UNSKILLED WORKER

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THE views of samples of workers in skilled blue collar (carpenters and metal tradesmen) and white collar (clerical) occupations in the Perth metropolitan area of Western Australia have been reported in this journal on previous occasions.¹ The results of a wider survey of white collar unionists has been reported elsewhere.² In the investigation reported here a sample of unskilled workers was taken and interviewed, the methodology being the same as that used in previous studies.

The term "skilled worker" can be defined as applying to workers in occupations requiring a formal apprenticeship. Clerical and sales occupations are easily identified as "white collar." The term "unskilled" is less easy to define, as in the strict sense of the word all work demands some degree of skill. In the study reported here the sample consisted of 91 workers employed as cleaners, 20 of them being women. This particular occupation was selected as one normally regarded as calling for little skill and one not located on a clear ladder of occupational progression. For purposes of comparison a further sample of 40 males was drawn from the group generically termed "labourers."

SAMPLE CHARACTERISTICS

As would be anticipated, the cleaners were largely in the upper age group, two-thirds of them being over 40. Less than half the labourers were in this age group, presumably due to the greater physical demands of this class of work compared to the work of cleaners. A quarter of the cleaners and a fifth of the labourers were born in the United Kingdom and about one in seven in both samples elsewhere in Europe. The remainder were Australian-born, a quarter of the cleaners and two-fifths of the labourers being born in Perth. Three-quarters of the workers in both samples were married; the median number of children was two for the cleaners and three for the labourers. A third of each sample were Roman Catholic, two-fifths of the cleaners and half the labourers were Anglican, the remainder being Protestants. The parents of a fifth of the total sample were European-born; the birthplaces of the parents of the remainder were evenly divided between the United Kingdom and Australia. As might be indicated by the age and occupational level of the respondents, their level of education was low, below Junior Certificate (three years of high school) in over four-fifths of the cases. The fathers of two-fifths of the cleaners and over half of the labourers were unskilled workers. Two-thirds of the workers in both samples were members of a trade union, mainly the Australian Workers' Union or the Miscellaneous Workers' Union in the case of the labourers, and in the case of the cleaners the Cleaners, Care-takers, Lift Attendants, Window Cleaners, Attendants and Watchmen's Industrial Union.

THE WORKER AND HIS UNION

About two-fifths of the workers in each sample felt that their union had accomplished little or nothing; a third of them mentioned improved working conditions, but less than one in eight mentioned better pay. This was