TITLE THE POLITICAL APPARATUSES OF PRODUCTION: GENERATION AND RESOLUTION OF INDUSTRIAL CONFLICT IN CANADA AND BRITAIN

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SUMMARY

This study explores the subject of cross-national variations in industrial conflict, looking specifically at a 'matched set' of factories in Canada and Britain. The comparison between these two countries is intriguing.

Since 1943, Canadian governments have sought to regulate industrial conflict by a distinct formula whose three pillars are a) legally enforceable collective agreements meant to circumscribe disputable issues, b) the outlawing of strikes during the term of the collective agreement, and c) the substitution, for industrial action, of a well-defined grievance and arbitration procedure to settle the disputable issues arising during that term. Dispute resolution is formal, collective agreements are comprehensive and arbitral jurisprudence is encyclopaedic.

In Britain, on the other hand, dispute resolution has been left almost entirely to the parties themselves. Collective agreements are not enforceable and sketch the barest details of co-regulation. An ill-defined body of 'custom and practice' still governs in most day-to-day disputes. Strikes are legally possible for all groups of employees at any time on any issue related to the workplace. And arbitration, though available, is voluntary and widely shunned by both parties. Dispute resolution is highly informal.

While one might, from this comparison, predict a higher level of strike activity in Britain, Canada has equalled or surpassed Britain over the past twenty-five years in industrial conflict. Why might this be so?

The study reviews several sets of theories on cross-national variations in industrial conflict and finds that the Canada-Britain comparison does not fit any of them. Suggesting a synthesis of the "institutional" and "political economy" theoretical approaches, it proposes to concentrate on the political struggle over production at the shop floor in a "politics of production" approach.

Defining four "political apparatuses of production" (interests, rights, adjustments and enforcements), the study examines how these "microinstitutions" for conflict-handling articulate with three key loci on the frontier of control where conflict can erupt (discipline, the structuring of the internal labour market and job control).

Through the use of intensive interviews in four workplaces (two in each country) in the brewing and aluminium fabrication industries and the analysis of general data on industrial relations in the two countries, the analytical framework is applied to examine the generation and resolution of industrial conflict.

CONTENTS

CHAPTER I: INTRODUCTION

I. The Canadian Question

Canada has one of the most highly regulated industrial relations systems in the world. It also has among the highest levels of strike activity in the world. This is a paradox that should interest anybody in the field of industrial relations, human resource management or public policy. However, within Canada, few commentators have seriously attempted to hold the country up to international comparison to shed light on the relative seriousness or possible causes of the 'problem'. Likewise, few outside commentators on cross-national variations in industrial conflict have looked closely at the particular set of conditions within Canada to inform their analysis. Canada is invariably conflated into a 'North American' model of strike behaviour by model builders even though there is ample evidence that it differs considerably from the US in industrial relations characteristics and strike activity and that the divergence is rapidly increasing.

This thesis attempts to redress some of these omissions. It is submitted that as trade unionism in the U.S. plummets, it is Canada that increasingly takes on pride of place in the 'North American model' of union-management relations. Canada is well worth comparing with other countries for insight into variations in industrial conflict among nations, and into the link between regulation and industrial conflict.

In 1944, the Canadian federal government put into effect the Wartime Labour Relations Regulations, PC 1003, heralding the modern era of industrial relations in that country. Loosely inspired by the U.S. Wagner Act of 1935 (but far more restrictive[1]), the regulations were a response to a rising tide of strikes and the need, in the interests of wartime production, for labour cooperation and peace. The Regulations guaranteed trade union rights to organise and bargain collectively, providing for union certification and compelling employers to bargain 'in good faith'. Unlike the Wagner Act, they also banned strikes during the lifetime of a collective agreement, requiring that every

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1. Warren (1968) argues against the popular misconception that PC 1003 was "Canada's Wagner Act". He asserts that the Order was far more restrictive than the U.S. legislation which did so much to help U.S. unions gain a foothold against employer resistance. Only in the post-war wave of industrial conflict did Canadian unions gain true recognition and begin to grow.

collective agreement contain a "procedure for final settlement, without stoppage of work...of differences concerning its interpretation."[2] (See Woods, 1973).

In the wartime emergency, the Federal Government had seized jurisdiction from the provinces, where it constitutionally resided. When jurisdiction was returned to the provinces after the war, all of them enacted similar legislation[3]. And all imposed a similar prohibition against "mid- term" strikes.

Canadian public policy makers, like most of their post war Western counterparts, recognised that industrial conflict was an endemic part of capitalism. But with the pluralist optimism then prevailing they, like those in many of these countries (but significantly not in the the U.K.) also trusted that the state, with the proper regulatory tools, could reduce the conflict to manageable proportions. The Canadians hoped that the new system of regulation would do so—in three ways. First it would remove many legal obstacles that had previously impeded trade unions coming to the bargaining table and would provide for orderly collective bargaining. Second, it would confine such industrial conflict as did emerge to primarily economic issues and would ensure that this conflict occurred *only*[4] at regular and predictable intervals. Third, by legitimising trade unions and 'free' collective bargaining, the unions would be more responsible in policing the more militant tendencies of their members.

Implicit were two assumptions: that the process of arbitration would be an adequate quid pro quo for the loss of the right to strike on issues of interpretation of the collective agreement and that changes to pay and terms and conditions of employment, once agreed,

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2. Privy Council Order 1003, 1944, Section 1", quoted in Woods (1973).

3. No discussion of Canadian industrial relations would be complete without reference to the highly decentralised nature of Canadian politics. Canadian provinces have perhaps more control over their internal affairs than the subnational political units in any country in the world. Included in provincial jurisdiction is control over the vast majority of labour relations matters within its boundaries. Thus each province has its own industrial relations acts, labour relations boards, department of labour, conciliation and mediation services, arbitrators etc. While the boilerplate labour relations legislation has been inherited from the original wartime national legislation mentioned above and is roughly similar across the country, there are some important differences from province to province. Some provinces have first collective agreement interest arbitration; some have "anti-scab" laws; some have provisions for collective agreement "reopeners" in the case of technological change. Likewise, the body of decisions of the labour relations boards and arbitration boards have taken on a different character in different provinces. Wherever possible, in the body of this study, major differences are mentioned. With these caveats carefully in mind, however, it is possible to speak of a general Canadian industrial relations law.

4. As will be seen, while the Canadians banned strikes entirely during the term of collective agreements, the Americans merely structured the system of bargaining so as to discourage it.

could wait until the next round of negotiations. Over the past forty years, Canadian governments have further increased their regulation of industrial relations. Most jurisdictions have outlawed strikes entirely for government employees. Alberta, one of the last provinces to allow hospital workers to strike, made that illegal in 1982[5]. In all such case, compulsory interest arbitration was substituted for the right to strike. However the late 1970's and early 80's saw a rash of legislation (contrary to I.L.O. conventions Canada had signed) temporarily curtailing or removing collective bargaining in public services (see Panitch & Swartz, 1985), including access to interest arbitration. To some public policy makers, the idea seemed to be if regulation worked, more regulation worked even better.

But has the plethora of regulation worked? It is impossible to answer without looking outside Canada. Stepping back and making broad comparisons of trends in post war strike activity between industrialised countries, Canada certainly emerges as a world leader. But for reasons that will be explored shortly, such overarching theories raise more questions than they answer. In order to appreciate the subtleties of the variations in strike patterns, it is also necessary to make more limited comparisons, between sets of two or three countries. In the case of Canada, the choice of single other countries for comparison can vary in its illuminatory power.

On the one hand, a country with a very different set of industrial relations institutions, politics, industrial structure, and pattern of trade union organisation such as Sweden, Germany or France would perhaps present too broad a contrast to capture more than the most obvious and hence trite differences.

On the other hand, a country like the US may be too similar, especially in the legal regulation of industrial relations, for the comparison, per se, between them to throw up conspicuous insights in the first instance. While the conceptual separation of Canada from the US is imperative, it may best be accomplished by reflecting the two against a third country. The best pair of countries to choose are those where "the similarities are extensive enough for the differences to be instructive" (Phelps-Brown, 1986, p. 21).

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5. It should be noted, however, that the province of Ontario has recently been toying with the idea of allowing public service employees a limited right to strike.

Canada and Britain may well provide such a comparison. They have many similarities—in language, political structure, business practices, legal foundations and, as far as the concept can be operationalised, in culture (to be discussed in more detail presently).

The two countries also have more similarities in collective bargaining than is generally acknowledged. Union density (defined as percentage of employees represented by trade unions) in both countries (40-50%) is 'mid-range', ie. between the high levels of the Scandinavian countries and the low levels of the U.S..

The attitude of the unions in both countries toward the mixture of 'business' and politics is remarkably similar. While British trade unionists like to decry the 'business unionism' prevalent in North America, they, like their Canadian counterparts, have renounced the intermingling of the political and industrial spheres of activity (see Haiven & Terry, 1988). The vast majority of their activity as trade unionists consists of marginal amelioration of terms and conditions of employment. The relatively minor 'political' part of the activity of unions in both countries consists of supporting and advocating the election of social democratic parties of very similar political orientation.

In both countries, a largely adversarial system prevails , wherein unions and employers choose not to engage in extensive co-determination on the Northern European model but rather to settle major differences by periodic contests of economic power. Yet while unions in both countries hesitate to fully legitimise substantive work rules by negotiating them, they have cooperated with employers to the extent of developing a "semi-constitutional" (Gallie, 1978) system in the workplace, defining procedural rules in a fairly explicit, jointly accepted collective agreement, unlike, say, France.

While multi-employer bargaining was common in several important British industries until the 70's, Britain has now joined Canada in largely decentralised collective bargaining system centering on the workplace (see Chapter III). In both countries general and craft unions prevail over industrial unions. The central labour federations of both countries are more loose holding organisations or talking shops than coordinating bodies and neither has any role in carrying out or coordinating collective bargaining. And the

labour parties, while differing somewhat in political power attained[6], have both generally failed to erect an abiding social contract among government, unions and employers on the Scandinavian model.

Yet the two countries do differ in several marked respects. Perhaps the most striking industrial relations divergence is in the system of resolving day-to-day disputes in the workplace. The highly regulated nature of the Canadian system contrasts sharply with the 'hands off' British approach.

2. Two Systems of "Dispute Resolution"

An initial and cursory look at several characteristics of dispute resolution in Britain and Canada cannot help but compel the prediction of a much higher level of strike activity in Britain.

1. Most salient is the fact that while Canadian unions can legally strike only at the expiration of a collective agreement (usually every two or three years), British unions may do so at any time. Thus frequency of legal opportunity is greater in Britain.

2. For most public sector workers (ie. approximately 25% of all unionised workers in Canada[7]), strikes, even at contract expiry, are entirely forbidden by law. In Britain, public sector workers have not generally had the right to strike legally removed. Thus a far greater proportion of unionised workers have the opportunity to strike in Britain, unfettered by legislative ban.

3. Even where and when strikes are allowed, most Canadian jurisdictions impose several procedures such as conciliation, mediation, disputes inquiries and statutory "breathing spaces" as well as strike ballots, all of which delay or prevent strike action. In Britain, no such imposition existed until 1984 since when a strike ballot has been

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6. Most international studies of the electoral fortunes of the Canada's New Democratic Party fail to take account of the highly decentralised nature of Canadian politics and the power of the provinces (which possibly have more power than in any other federal system, West Germany, Switzerland and Australia included). While the N.D.P. has not formed a federal government, it has formed several provincial governments. Moreover crucial periods of the late 60's and early '70's, the N.D.P. held the 'balance of power' in federal minority-government parliaments.

7. This percentage was calculated from (Kumar et al., 1986, p. 307-40 and excludes teachers, who have generally retained the right to strike.

required". Thus there are far more hurdles for Canadian unions to leap before they can lawfully strike.

4. While the contract of employment of British workers is considered broken when they strike, British employers (despite a few recent notorious examples) have not generally used strikes as an opportunity to dismiss. Recent legislation has rendered unions liable to suit when they fail to ballot their members or engage in certain industrial actions outside the workplace, but again employers generally seem loath to use their power to punish. In Canada, while employers do not have the right to automatically dismiss employees engaged in "timely" strikes, they can and do dismiss workers who engage in "untimely" strikes and arbitrators have generally upheld this practice. Moreover, Canadian employers can and do sue unions for damages incurred in untimely strikes. Thus the practical penalties for striking at will are more onerous for Canadian workers and their unions.

5. In most unionised British workplaces, no definite system of resolving disputes, other than strikes or lockouts, exists when unions and management have failed to reach agreement. In Canada, a long-established, legally imposed, system of third-party arbitration exists to settle all disputes arising during the currency of all collective agreements. A contingent of highly experienced arbitrators have produced an almost encyclopaedic body of arbitral jurisprudence over the past 40 years. Thus, while Canadian workers can argue the merits of a grievance before a learned third party British workers have little option but to strike to gain equity denied them by employers.

6. Canadian collective agreements are much more detailed than British, making clearer what rights workers have, and by their silence, what rights they do not. In arbitration, save for demonstrable ambiguity in the collective agreement, past practice is not entertained. In Britain, the written collective agreement is much less detailed and is supplemented with a body of "custom and practice", a set of unwritten and often ill-defined "agreements" between management and unions. The very indeterminacy of custom and practice, combined with a convention that guarantees the 'status quo' when

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8. The Conservative government of 1971-4 tried to impose several restrictions, but for various reasons, these were largely ineffectual.

disputes arise, would seem to dictate a far higher number of opportunities for conflict to erupt.

7. Despite both being 'mid range' in union density at the present time, Britain has traditionally had a higher proportion of union members than Canada, with penetration not only greater in blue-collar and manufacturing work but also reaching well into private sector white collar, banking and finance and lower management sectors which Canadian unions have hardly touched (Bain and Price, 1980; International Labour Office, relevant years). If this measure acts as an indicator of intensity of collective bargaining activity in the two countries, then a greater number of opportunities for labour-management conflict potentially exist in Britain.

8. Although bargaining in both countries centres on the enterprise, compared to Canada, Britain's unions have devolved much more authority to lay representatives on the shop floor and full-time officials exert much less control on them. The power and organisation of shop stewards and their involvement in both shopfloor and establishment bargaining is the stuff of legend, and certainly (even in the 80's) greater than in Canada. The smaller degree of institutional control exerted by central union bodies on lower echelons and members would seem to bespeak (Clegg, 1976; Roomkin, 1976) a greater level of strike activity in Britain.

Finally, perhaps more emotively, while Canadians are aware of their high strike record, it is to Britain that they look as *the* model of conflictual labour-management relations. Pundits and politicians regularly wonder out loud whether Canada will catch "the British disease". And it is to Britain that they point when confronted with the heretical suggestion that deregulation might be extended to industrial relations.

And yet an examination of the actual strike statistics in the two countries suggests a different story.

3. A Comparison of Strike Activity

The comparison of cross-national variations in strike statistics as an end in itself is an exercise fraught with difficulty and much abused. First, as several commentators have pointed out, not all strikes signify industrial conflict and not all industrial conflict is signified by strikes. (Shalev, 1978; Edwards and Scullion, 1982). Second, countries differ in how they measure strikes. Although Canada and Britain measure them more

similarly than many other pairs of countries, the fact that strikes of short duration are not recorded can have a more distorting effect in Canada, especially when looking at "wildcat" or mid-term strikes which can often be shorter than a day. Even when longer, they may miss reporting because of their anomalous and illegitimate nature.

Third, the measurement of strikes involves several dimensions ie. number (frequency), workers involved (size), and number of working days lost (volume). Each says something different about the activity. Because of differences in population, union density and numbers of employers susceptible to unionisation, the best dimension for cross-national comparisons is volume, or more correctly working days lost per worker employed. However even this dimension can obscure important variations in the conduct of strikes.

Fourth, strikes can have somewhat different meanings in different countries. Shorter and Tilly (1974) attempt to show how most French strikes have a highly political flavour while those in other countries can have different meanings[9]. Some strikes which account for major surges in the statistics can have very special causes and consequences. The British miners' strike of 1984-85 and the Canadian 'day of protest' against wage controls in 1978 are examples.

Yet despite all these caveats, strikes are one of the few important phenomena whose social (rather than statistical) definition is virtually the same across countries: the cessation of work by paid employees. So compelling are variations in the general trends and patterns of strike activity, especially when viewed from an appropriate level of remove, that to ignore them entirely would be foolish .

The purpose here, it must be stressed, is not to treat the strike figures as definitive nor to engage in a sophisticated statistical exercise but rather to show *general patterns* of industrial conflict in the two countries and to use them punctuate the discussion of the regulation of such conflict. Moreover, when so many features of the two-country comparison seem to promise opposite intuitive conclusions, the figures fairly leap off the page.

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9. Snyder (1977) suggests that pre-World War II strikes in Canada and the U.S. were of a political nature while those after the war were of an economic nature.

Except for the 'size' dimension, Canada has long been among the world leaders in strike activity since the end of WWII. This is most evident in terms of working days lost relative to its working population. Canada stood highest among industrialised countries in the seventies and among the highest since the end of the War (see Table 1). Britain has stood only about mid-way in the league table, with as low as 25% and no more than 75% of Canada's loss in working days during Britain's conflictual 70's. Into the 80's, the divergence between Canada and Britain becomes even more pronounced (see Table 3) with the exception of the single year of the miner's strike, 1984.

One of the reasons cited for Canada's high number of working days lost is the greater length of strikes in that country, especially when compared to strikes in European countries. It is true that strikes, on average, involve fewer workers (see Tables 1 and 3) and last longer in Canada than most countries, including Britain. But in terms of sheer numbers of strikes relative to its working population, Canada *again* is among the highest (although France and Italy, which lead Canada in this regard, do so by a substantial amount). Compared to Britain, Canada averaged about the same in this dimension over the seventies, perhaps even a bit higher toward the end of the decade (see Table 2) and consistently ahead of Britain in the eighties.

One of the reasons traditionally given for Canada's high record of strike activity as compared to other countries is the inordinate reliance of the Canadian economy on industries subject to cyclical instability such as unprocessed or semi-processed natural resources (Jamieson, 1973). A recent refinement is Lacroix's (1986) information/joint costs approach which predicts that because of greater discrepancies of information about the relative power of the parties, "an economy that includes a greater number of exposed industries can therefore be expected to experience greater strike activity. Britain, whose economy is much less dependent on raw materials and has a more highly developed manufacturing sector presents an apt comparison. But what happens when strike activity in the two countries is compared in the manufacturing sector only, thereby removing the effects of primary industry strikes in Canada (and of mining strikes in Britain)? Canada clearly exceeds Britain in both incidence and volume (see Table 4).

Another of the reasons given for the greater strike activity in Canada over Britain is that although Canadian unions are legally prohibited from striking during the collective

agreement, they more than make up for the ban by walking out once the agreement is over. While there is undoubted truth in this proposition, *as high as 25% and seldom fewer than 10% of all strikes in any year have taken place within the term of the collective agreement, ie. unlawful 'wildcat' strikes*!

It is impossible to compare mid-term strikes in Canada to anything similar in Britain. But a brief digression to consider the situation in the U.S. can serve to further dramatise the above figures, help bring the inquiry into Canada and Britain into sharper focus and help illustrate the degree of divergence between Canada and the U.S. As seen in Table I, throughout the 60's and 70's, the US trailed Canada by up to 60% in work days lost per worker and by up to 40% in number of strikes per 1000 workers. Thus Canada seems more conflictual than the conflictual U.S.

But what of mid-term strikes? Unlike the Canada-Britain contrast, in both Canada and the U.S. strikes can be divided between those occuring at the end of a collective agreement and those occurring within its term. But the law on mid-term strikes differs in the U.S. and Canada. In Canada, as mentioned, all mid-term strikes are forbidden and grievance arbitration substituted. In the U.S., mid-term strikes are *not* forbidden by law. The parties are free to fashion the disputes resolution procedure that suits them and can, theoretically, choose to allow for strikes within the term of the agreement. U.S. Supreme Court precedent holds that where a grievance and arbitration procedure to resolve certain issues *exists*, strikes and lockouts are forbidden while *those issues* are in procedure. But strikes and lockouts are theoretically lawful on issues outside the procedure and on issues covered by procedure once the procedure has been exhausted. (See Wellington, 1968).

In practice, most U.S. unions and employers have chosen voluntarily to negotiate a peace obligation. Only about 1% of collective agreements *do not* contain a grievance procedure and corresponding no-strike clause at all. *Yet only 49% of collective U.S. agreements contain blanket prohibition of mid-term strikes.* The rest contain some provision, however small, *for the possibility of strikes in mid-term* (Rock, 1980). Thus, where there is virtually no possibility of mid-term strikes in Canada, such

possibility is widespread in the U.S.. And yet, as Table 5 shows, in the 1970's[10], over 30% more days were lost per worker in mid term strikes in Canada than in the U.S..

Bearing in mind the caveats about comparing strike statistics, it is nevertheless impossible to avoid the conclusion that the tight legislative constraints on Canadian strike activity and the substitution of arbitration are somewhat less than effective in achieving the goal of reducing industrial conflict by any standard of international comparison. As England puts it:

> "The relatively high incidence of illegal mid-term strikes, approximately 20% of all strikes per year for the last 20 years, demonstrates a cleavage between the theoretical assumption of pluralist 'order' in the system and the realities of the workplace. The system is 'disorderly' even within its own framework of 'orderliness'." (1983, p. 242)

In stark contrast to what might be intuitively predicted, compared to Britain, Canada has a serious strike 'problem'. What do theories of industrial conflict say about why this might be so?

4. Problems in Comparative Theory

As interesting and potentially fruitful as the inquiry into cross-national variations in industrial conflict is, that inquiry is bedevilled by the problem of what theoretical framework to use to make sense of the many factors that may contribute to the variations. The problems of theory within a single country are rendered even more problematic in the cross-national arena, for the question is: Can we really compare countries? Hickson et al. are optimistic that comparisons can be done by analysing

> "...a *unique pattern* (of scores) on a set of variables applicable across societies. The characteristic phenomenon of a given society are its positions on variables, not the variables" (1979, p. 27).

But which variables among the countries chosen will be considered? Will the analysis of these variables be taxonomic or will an effort be made to analyse their interaction and will causality be imputed? If the latter is done, which are, so to speak, independent and which are dependent variables? At what level of abstraction will the analysis be set? How many countries will be studied ?

The approach taken in this thesis is an admittedly eclectic one. No one theory or set of theories, no one level of abstraction, no sample size can provide a once-and-for-all definitive answer. The tasks here are modest and twofold—to attempt to find a way of

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10. Unfortunately, the U.S. ceased assiduous data collection on work stoppages in 1980.

synthesising (or perhaps a better word is 'emulsifying') the various theories and to add an empirical data that fills in another part of the jigsaw puzzle. Three approaches have concentrated on different sets of cross-national variables. Those theories concentrating on distinct national cultures can be grouped under the "cultural" school; those theories concentrating on the institutions that regulate relations between capital and labour, particularly collective bargaining, come under the "institutionalist" school; those concentrating on the political and organisational power and resources of capital and labour are often classified under the "political economy" school.

How do these broad-brush approaches fare in the face of the Canada-Britain comparison?

4.1 The 'Cultural' Approach

While not explicitly included in the major sets of theories, a nagging consideration is that something in the 'culture' of different countries is a major contributor to cross-national variation in industrial conflict. Culture in this sense is most closely defined as

> "an expression of value, norms and habits which are deep-rooted within the nation" (Child, 1981, p. 2)

or, to use an analogy,

> "Culture determines the identity of a human group in the same way as personality determines the identity of an individual" (Hofstede, 1980, pp. 25-26)

The human group in this consideration is the nation-state. It might be suspected that something in the German or Swedish or American culture (and in our case, Canadian and British culture) predisposes workers toward or away from industrial conflict.

Research into the impact of culture is more popular among those concentrating on business organisations and their management, that is scholars of 'organisational behaviour' and 'organisation theory' (eg. Hofstede, 1980; Hickson et al., 1979; Child, 1981; Sorge & Warner, 1986; McMillan et al., 1973) than among those investigating industrial relations. This could well be due to the strong institutionalist bias of industrial relations. Where the concentration is on union-management relations rather than on the organisation as a whole, well-defined concrete institutions such as employers' organisations, trade unions, collective bargaining, boards, tribunals and disputes procedures become reified and draw attention away from the more abstract questions of culture. In addition, much more than business organisations, state regulation and

national politics plays an important role in industrial relations. Thus even those industrial relations studies that do involve considerations of culture are unable to ignore institutional and political factors.

Naturally the question of culture in industrial relations becomes more salient when comparing countries whose cultures are quite obviously different. Nowhere is this more evident than in comparing Japan, with a culture uncontaminated by outside influence for over 300 years, to other countries. In fact, because of the success of Japan as a trading nation, a major point of debate is whether the 'so-called Japanese management style' is 'culture bound' or transferable (Gow, date unknown). Dore (1973), in his famous study of Japanese and British electrical engineering factories takes pains to explore the role of distinct cultural values in predisposing management, workers and unions in the two countries toward certain patterns of behaviour. Nonetheless, he also includes two important institutional and political factors common to all industrialised societies: the emergence of the large corporation and the compelling effect of notions of egalitarianism and democracy in the world outside the factory upon the world inside the factory.

A cultural approach of sorts is also applied by Gallie (1978, 1983) to a comparison of industrial relations in British and French oil refineries. Although the workplaces are in the same industry, with the same technology, of similar size and even owned by the same parent company, very different patterns of industrial relations prevail in either country. More than comparable workplace institutions or macro-political developments among employers, unions, political parties and the state, Gallie concentrates his attention in the first instance on the attitudes of individuals at the workplace, especially workers . Both French managers and the French working class, he submits, have different inherent dispositions toward control and the relationship between the classes than their British counterparts. Thus an objective affront by management which might pass without offence in Britain arouses feelings of tremendous hostility among workers in France. Likewise a collective bargaining initiative by workers which might not unduly disturb British managers may be regarded by their French counterparts as a major challenge to their managerial prerogative.

However, in the second instance Gallie does acknowledge the importance of institutions in shaping these attitudes. A major influence has been the role of French left-

wing parties on the labour movement and in turn of the labour movement in determining how French workers see their relationship with industrial authority. Likewise, the organisational resources and political power of trade unions and the Communist Party are of key importance.

While cultural considerations cannot be ignored, there are many problems in adopting, or even using aspects of, such an approach and especially in applying them to the study at hand. First, the concept is extremely difficult to operationalise. Confronted with cross national variations in sets of organisations matched in several contingencies, researchers have grabbed for aspects of culture to explain these variations. But these aspects have generally been extremely vague, such as McMillan et al.'s (1973) concept of "traditionalism" to explain differences in formalisation between British and North American (U.S. and Canadian) organisations. Hofstede (1980) has undertaken by far the most ambitious and exhaustive attempt, using factor analysis, to group sets of attitudes that define national culture. He comes up with four dimensions: "power distance" (a measure of the amount of inequality tolerated); "uncertainty avoidance" (a measure of the toleration for uncertainty); "individualism" (the extent to which individuals in a society avoid or crave collectivity); and "masculinity" (an ideologically loaded and provocative category which purports to measure pursuit of 'masculine' goals such as advancement and earnings or 'feminine' goals such as caring). But aside from problems of the sample from which his theory was derived (a relatively small group of mainly professional and managerial employees of a single company in 39 countries), there is the problem of the questions asked, which concentrate on "values". Rosenfeld (1987), in a similar, though less comprehensive survey, concentrates on "job satisfaction" and obtains quite different scores under a dimension similar to Hofstede's "Power Distance". Of Hofstede's preoccupation with values, Sorge and Warner say,

> "values are thus localised somewhere between loose preferences, *ad hoc* rationalisations after the act, and basic values which are morally charged and consciously referred to in actual behaviour. Values are devalued both morally and in their explanatory function through this ambivalence." (1986, p. 41)

The operationalisation of the concept of culture as as distinct area of research then, is still in its infancy.

Second, the study of culture, like most other inquiries that deal with business organisations, inevitably concentrates upon the individual. Culture at the level of the

nation is assumed to be a simple aggregate of the attitudes of the individuals that form the nation. The intervening variables of groups and organisations, and in this context work groups and business organisations, is ignored. Yet there is ample evidence (Olson, 1965; Crouch, 1982) that there is a "logic of collective action" or, more correctly "two logics of collective action" ie. of labour and capital (Offe & Wiesenthal, 1985) quite different than the logic of individual action. Thus the question is not only, for example "what is the orientation of Japanese workers towards authority" but rather "what is the orientation of the Japanese work group or collectivities of Japanese managers towards authority". While some of this may be captured in Hofstede's "power distance" dimension, his questions are asked of individuals in personal questionnaires. Briggs (1988) presents compelling evidence from a number of studies that Japanese workers express quite different attitudes as part of a group than they do as individuals. Moreover, if such a thing as a national culture can be specified, the characteristics therein contained have been derived from the mean of a sample. The size of the variance about the mean can be very important. How many Japanese, for example, exhibit "unjapanese" characteristics as opposed to Canadians exhibiting "uncanadian" characteristics.

Third, as mentioned above, culture will differ in its importance depending upon the specific cross national comparison made. Some sets of countries are closer to each other than other sets. Hofstede (1980), in integrating his dimensions presents clusters of countries with similar characteristics. For what it is worth as it applies to our study, he finds Canada and Britain very close in all dimensions, both countries having small power distance, high individualism and weak uncertainty avoidance, and both relatively mid way on the scale between masculinity and femininity. At best, this means that culture is, so to speak 'held constant' as between our two countries.

Fourth, the link between the input of cultural predispositions and the output of industrial conflict is not clear (if the causality invariably runs from the former to the latter in any case). Certainly the culture literature makes no pretensions of explaining industrial conflict. Does, for example, the combination of deference to authority, high individualism and risk attraction make for greater or lesser industrial conflict? In any society not in the throes of revolution or dictatorship, labour and capital do not simply fight it out no holds barred. They and the state have erected institutions to mediate

conflict. It is impossible then, to say whether a set of cultural attributes contributes to conflict without looking at those institutions .

Fifth is the problematic relationship between culture and institutions. A good working definition of institutions is

> "Collective designs for coping with basic societal problems...culture patterns consisting of norms and roles, embedded in certain paramount values and offering prescriptions for dealing with basic problems faced by every society." (Lammers & Hickson, 1979, p. 8)

If, in fact, institutions are reasonably close to being crystallisations or concrete manifestations of culture, then surely it is more useful to study institutions than culture. Culture is a very vague set of attitudes resident in individuals. There is no reliable way of observing culture and of tracing its development other than administering questionnaires to individuals, with all the methodological problems that that entails. Institutions on the other hand, as in the above definition, are the responses of culture to persistent problems, in other words behaviours arising from the response of attitudes to contingencies. Moreover they are collective responses. As behaviours, they can be observed and described. Their development can be readily traced. And if similar persistent problems in various countries can be selected, then the institutions that exist allow for comparison. In countries such as Canada and Britain, where institutions are so important in industrial relations, a study of them should be especially revealing.

4.2 Institutional Approaches

Institutional theories however, have their own set of problems. Though not coterminous with pluralism, they have tended to share a similar outlook.

While subjected to considerable scholarly criticism over the past ten years, the institutional approach is still the conceptual engine that drives the thinking of governments, practitioners and scholars in most Western industrialised countries who see the question as not one of "whether regulation" but "how much". Acknowledging the inevitability of conflict between workers and managers, it sees them generally accommodating to each other through the mediating effect of institutions such as collective bargaining, disputes procedures, trade unions, employer associations and labour law.

Earlier proponents such as Kerr et al (1960) and Ross and Hartman (1960) went so far as to predict that the convergence of such institutions in advanced industrialised

countries would lead to the withering away of the strike. These predictions were discredited by the dramatic rise in strike activity in all Western industrialised countries in the late sixties and early seventies and its persistence (Shalev, 1983) despite economic downturn. The early institutionalist theories were revealed as creatures of an era of unprecedented economic growth and stability which lent collective bargaining a false air of permanence and unimpeachability.

But other institutionalists sought to explain periodic outbreaks of industrial conflict in terms of the breakdown, or disfunctionality of institutions. Clegg (1976) suggests that cross-national strike patterns are closely linked to the various structural dimensions of collective bargaining (eg. extent, level, scope and depth) and disputes procedures in various countries. But when it comes to tracing the origins of differences in collective bargaining or their trajectory with references to economic and political developments, Clegg says little or nothing, paying the briefest lip service to the actions of employers without further elaboration. "The structure and attitude of employers associations and management are the main direct influences" (Clegg, 1976, p. 10)

Clegg's analysis fails to explain several major problems in the Canada-Britain-US comparison and is sometimes contradicted by it. He claims that 'dispute procedures which are intended to handle, as equitably and speedily as possible, all differences which arise during the currency of the agreement' (p. 74) will tend to reduce unofficial and unconstitutional strikes. Comparing the US with Sweden and West Germany, all of which have comprehensive disputes procedures, he cites plant-level bargaining and ensuing "factional competition" in US unions as a cause of higher numbers of unofficial strikes. But he does not explain why factionalism should be a necessary result of decentralised bargaining. While there may be some truth in his assertion, why would Canada, with a similar degree of plant bargaining and potential union factionalism have a higher level of such strikes than the US? Like all other theories, Clegg's does not bother to look for insights within the 'North American model'.

More importantly, though Canada has much more "comprehensive and efficient disputes procedures" than Britain, and both, especially as the 70's wore on, had a high degree of plant-level bargaining, why is this not associated with "(lower) numbers of unofficial and unconstitutional strikes" (p. 82) in Canada? Perhaps the answer lies in

Clegg's assertion that disputes procedures may not only be less comprehensive and efficient, but "defective" (p. 82). But to leave this phrase and the previous two so poorly defined is to render them meaningless since they become self-fulfilling prophecies. A disputes procedure is defective because it is ineffective. But it is ineffective because it is defective. And so on. In fact, this tendency to definitionalism is a major criticism of Clegg's entire approach. (Shalev, 1980).

But Clegg's approach cannot be dismissed out of hand, simply because the constraining power of institutions on the pattern of industrial relations and industrial conflict is undeniable, especially in countries like Canada and Britain where the major institutions have remained remarkably intact over at least the past forty years and their influence pervades right to the shop floor.

Ingham (1974), comparing Britain to Scandinavia, proposes to take a step back from institutions and explain their development by analysing several dimensions of the development of the two economies—the extent of industrial concentration, the degree of product differentiation and the complexity of the production system.

While Sisson and Jackson (1976) raise serious questions about Ingham's empirical assertions, his approach raises more fundamental problems. Relying only on his three variables, the theory does not travel well to other sets of countries. A relevant case in point is Canada, quite similar to Sweden in concentration and the other dimensions, yet with a completely different pattern of collective bargaining and a radically different pattern of strikes.

A key flaw here is the tendency to vulgar determinism, seeing a certain set of institutions as necessarily rising out of a set of infrastructural variables. Like many other comparative theories, its view of the state is also overly structuralist and one-dimensional. Such criticism darkens some otherwise laudable attempts to move beyond institutional description to a more radical position. A recent Glasbeek (1985) article, attempts to explain the development and current problems of Canadian industrial relations institutions by referring to the structure of industrial organisation of the economy. Although his conclusions are significant (the high number of Canadian strikes reflects the need of the Canadian government to pass on the high costs of running a weak,

resource and export-based economy to workers), they suffer from a mechanistic linking of industrial development, the 'needs' of capital, and the actions of government regulation.

All theories concentrating primarily on institutions *at the macro-level* are blind to the political dimension of trade union and employer activity. In several instances, especially Sweden, the rise and fall of strike activity simply cannot be explained in terms of the existence or effectiveness of institutions (Korpi & Shalev, 1979).

In fact the approach suffers from the problem of locating itself in the middle range of analysis, effectively ignoring both macro-political developments at the level of the state (as well as treating the state as unproblematic) and micro-political developments in production organisation and employer-employee relations at the level of the shop floor.

4.3 Political Economy Theories

The "political economy" approach seeks to explain strike activity according to the organisational capacities of labour and capital and their ability to mobilise and assert their interests in various spheres of struggle.

Shorter and Tilly (1974), taking France as their starting point, see the level and shape of strike activity as directly linked to variations in working class participation in the governmental process. The strike, they announce, is "an instrument of working-class political action" (p. 343) Hibbs (1976 & 78), Pizzorno (1978) and then Korpi and Shalev (1979) have built on Shorter and Tilly to suggest that at a certain point in the development of working class organisations in many countries, there is a shift in the locus or centre of gravity of struggle from the workplace and strictly industrial issues to the realm of national politics ("political exchange") through labour, socialist or social democratic parties. Where the working class has managed to transfer the struggle for equity and distribution to the political forum, conflict decreases in the industrial forum. To Shalev (1980), collective bargaining arrangements are nothing more than "intervening variables" that reflect "the distribution of power and the outcomes of conflicts between labour movements (unions and parties) and employers and the state at the time these arrangements came into being." (p. 29)

The "political economy" approach has its merits. It better explains explain why Northern European countries have less industrial conflict than others and sheds light on the causes of strike patterns in France and Italy. It also gives credit to workers and their

agents for developing goals and diverse strategies to achieve those goals rather than being mere reactive agents to exogenous influences. But the approach runs into problems when looking at countries in which the levels of working-class organisational power are not widely divergent and where workplace struggle is still the dominant form of working class self-expression.

In conflating Canada and the U.S., it virtually ignores the importance of Canada having a labour party where the U.S. has none and that the N.D.P. has had some input into the governing of the nation or its constituent parts. With the influence of the N.D.P. and the existence of a much more extensive 'welfare state' in Canada than the U.S. taken into account, the theory would surely bespeak far lower levels of industrial conflict in Canada than the U.S. This, of course, is not the case.

The higher level of strike activity in Canada than the U.S. seems to run against the theory. The theory would still hold to an extent, however, when comparing *levels of participation* in government between Canadian and British social democratic parties.

But certain key questions in this regard remain unanswered by Korpi and Shalev, especially about the link between worker behaviour and various macroeconomic outcomes such as low unemployment, economic distribution and social wage. What link is there between a labour party being in power and the fulfillment of working class goals? Is the organisational power of the working class directly reflected in the election of leftist parties to government?

Cameron, in an important refinement of the Korpi and Shalev theory, answers some of these questions. He does so in two main ways: First, he expands the definition of working class mobilisation. He measures the influence of labour parties not only by participation in governments but by access to portfolios. But, second, he also constructs a separate measure of working class power resources by concentrating on the trade union movements themselves (ie. their 'organisational unity', central collective bargaining power, density of collective bargaining coverage and participation in decision making at shop floor and company level). Cameron finds that

> "...economic militancy by labour, in the sense of high levels of strike activity and wage push--may derive less from the weakness (or non-existence) of Social Democracy and its frequent absence from government than from the organisational fragmentation of the labour movements, the multiplicity of confederations or the existence of single major confederations having very large numbers of affiliated unions organised by narrow craft and industry criteria, and finally, in the

absence of any institutionalised form of participation in decision-making within firms." (1984, p. 169)

But Cameron goes further. He compares levels of strike activity not only to the organisational power of labour or leftist control of government but to the actual macroeconomic payoffs that governments, influenced by these factors, can deliver to workers. These payoffs include lower unemployment, redistribution of income and higher social wage[11]. While he demonstrates that labour quiescence or militancy has little effect on redistribution of income between capital and labour, he does show a significant relationship between labour peace and the other two factors and especially unemployment. He concludes that where a strategy of political exchange has occurred, it has not transformed capitalism into socialism but has resulted in a significant victory by guaranteeing full employment.

In light of Cameron's restatement of the theory and his criteria, Canada and Britain are even more alike than in Korpi and Shalev. First, the labour movements of both countries are similarly weak in the sense that union federations are highly decentralised on the basis of industry and craft, bargaining is fragmented, and there is little or no institutionalised participation by labour in decision making at any level of the firm. Second, using Cameron's criteria for success of working class parties, those of both countries, while differing in their levels of participation in government, have more importantly both *failed to deliver the goods of low unemployment as their Scandinavian counterparts have done.*

In this light, the political economy approach takes us very little farther in explaining why Canada's pattern of strike activity should be significantly different from Britain's.

By treating institutions as mere intervening variables reflecting the distribution of forces between labour and capital (even when "they subsequently acquire a degree of 'functional autonomy'") (Korpi & Shalev, 1980, p. 29), the theory assumes an inordinate fineness of tuning between the balance of power among labour and capital and/or the state on the one hand and the institutions of their regulation on the other.

4.4 The Interplay of Politics and Institutions

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11. Weisskopff (1983) uses a similar approach, relating similar payoffs to productivity growth in two sets of countries: those following a 'class-conflict' model and those following a 'class harmony' model.

Yet it is undeniable that in many countries, institutions arose at a particular time and set of historical circumstances. While those circumstances cannot fail to reflect the balance of power between labour and capital, the connection is by no means simple. As in collective bargaining, institutions are the product of compromise. Compromise is often less than a perfect reflection of the interests of labour and capital, especially when the interests of a third party, the state, which itself has relatively autonomous interests (Edwards, 1986, pp. 143-182), are put into the equation. Moreover, institutions, once established, often take on a 'life of their own', constrained, but not determined, by the balance of forces among the parties. While the more powerful parties, especially capital and the state, will attempt to manipulate the institutions to their advantage, it is not always clear to those parties or to observers what that advantage is. Further, the parties will very often stick with the devil of an institution they know than they devil they don't. Moreover, it is not clear that the parties responsible for establishing the institutions can predict the functional consequences of their creations:

> "...neither state officials nor corporate managers have any secure means of knowing in advance the long-term consequences of any particular concession. Economic environments may change and established rules give rise to new interpretations in unpredictable ways that make existing agreements far more onerous for management than either party expected at the outset" (Zeitlin, NBS, p. 11)

And, it might be added, circumstances may also conspire to make the agreements more onerous for labour as well.

Edwards (1983) suggests, that at its worst, the rejection of institutionalism is not as decisive as the political economy approach claims, that in fact it falls into the same bind as the earlier approach by treating certain factors as unproblematic. Thus, where the earlier approach concentrated on collective bargaining and disputes procedures and labour law without teasing apart the dynamic of these institutions, the new approach treats the political process and participation in the state as given. The state is, in fact, treated as a neutral mediator among competing interest groups. The relationship of the working class to the state is left undeveloped. It is merely assumed that at a certain level of maturity, the working class gains entry to the polity. There are also problems of how the working class mobilises for collective action. Just because the working class has certain organisational and power resources, does not necessarily mean those resources are automatically mobilised.

Likewise, the political economy approach places too much emphasis on working class mobilisation and not enough on that of employers. It is necessary to look at both, recognising that there is a dialectical interplay between them (and the state). The exact way and reason they do so can only be understood by historical analysis of the development of employers, trade unions and the state.

Thus while the form of industrial relations institutions may be similar in several countries, the historical conditions for their development, the economic and political context in which they operate, the results they produce and, consequently, their future trajectory may be quite different. A case in point is Canada and the US. In both countries, the conduct of industrial relations is highly regulated by state or state-prescribed institutions which, at first, seem quite similar. But since the 1970's the industrial relations paths in the two countries have diverged significantly—in union density, in the vitality of collective bargaining, in the intensity of industrial conflict (Huxley et al, 1986; Rose & Chaison, 1984; Haiven, 1988b).

Unlike, many American observers, Huxley et al (1986) do not see the divergent paths of the two countries as due simply to pro- or anti-labour policies on the part of either government. Nor do they ascribe the differences simply to the way institutions operate—but rather to a complex interaction between the two. They suggest that the result of this interaction is two distinctive 'labour regimes' defining 'regime' as:

> "principles, norms, rules and decision-making processes around which the actor-expectations converge in a given 'issue-area' along with the constellation of power upon which the arrangement rests" (p. 115)

To be sure, the balance of power among the parties has affected the working of the institutions. But the very weakness or robustness of the institutions have differentially refracted the contest of power. The word "refracted" is used above, rather than "reflected" indicating the complex nature of the interaction between politics and institutions. So, for instance, while the labour relations boards in both countries do much the same sort of work (ie. certifying unions, deciding unfair labour practices), the success of unions in Canada in gaining and maintaining bargaining rights is presently greater than the US. This is partly because of a more vigorous employer offensive and weaker union resistance in the US. But it is also partly because labour law and board practice in Canada is less capable of being used by employers to pursue a strategy of outright union

busting To say that the relative strength of the institutions is merely a reflection of the balance of forces then, is much too simplistic, just as simplistic as saying that labour law or law in general is not affected by activity in the polity.

Canadian employers and the state are no less interested than their US counterparts in pressing their advantage against unions in a period of high unemployment. But they have been able to do so largely within the existing institutions (Panitch & Swartz, 1985; Glasbeek, 1985; Huxley et al, 1986). Likewise, changes in British labour law and economic recession since 1979 have made it possible for British employers to launch a wholesale assault on such institutions as the closed shop, the non-legally binding collective agreement and shop stewards. But, by and large, they have not done so (Millward & Stevens, 1986; Batstone, 1984, Terry, 1986; see also Chapter [6]). Many of the same institutions which abetted union power in the 60's and 70's, are of convenience or do not impede the growth of employer power in the 80's.

So the political economy approaches, too, are riddled with problems. In fact, macro theorisation in the field of comparative industrial relations and especially cross-national variations in industrial conflict seems to have sailed into a dead calm. New wind needs to be blown into the sails. But before this can happen, a new way of looking at the problem is needed. Ground must be cleared before macro-theorisation can resume.

5. A 'Politics of Production' Approach

First it is well advised to take a step back from overarching views, narrowing the field to interesting pairs or triplets of countries and examining them more carefully. Surprisingly few such studies have been undertaken (several starts in this direction are Edwards, 1986; Phelps-Brown, 1986). Admittedly the risk is run that such work will be so particularistic as to defy generalisation to larger sets of comparator countries. But only in so doing can the development of the balance of power among the parties, of the institutions and of state intervention be fully mapped out to truly combine the best of the institutional and political economy approaches.

Second, an area that has received scant attention in comparative studies—the workplace—should be explored. It has been indicated how *institutions* prescribed or described at a higher level may play themselves out in quite unpredictable forms at the point of production. And *political economy* attempts to specify the organisational

resources and capabilities of the working class and employers at a national level may ignore at peril the complexity of the balance of forces across sets of workplaces and sectors of the economy. Attempts have been undertaken at cross-national comparative case studies (Maitland, 1983; Gallie, 1978), cross-national comparative review of single country case studies (Burawoy, 1985; Edwards, 1986) and comparative single-country case studies (Lazerson, 1988; Edwards & Scullion, 1982; Armstrong et al., 1981). In reviewing several workplace studies in Britain and the U.S., Edwards warns that:

> "Given that these studies are generally focused on specific issues *and that there are no systematic comparisons of similar factories in the two countries*, drawing inferences about differing contexts and patterns of behaviour is necessarily risky." (1986, p. 187, emphasis added)

But not only workplace studies are required. What are needed are workplaces in different countries matched along several dimensions, including product markets, size of work force, labour markets, technology employed and organisation of production, and preferably 'real-time' studies done by researchers working from a similar set of guidelines and purposes. Burawoy's comparison of his experiences at the American "Allied" with Lupton's at the British "Jay's" (Burawoy, 1985), while ambitious, suffers greatly from the separation between the studies of several decades and differing authors with differing research agendas.

Third, an attempt should be made to link developments at the level of the state to developments in the workplace rather than assuming the relationship. This works in both directions. In the direction from state to workplace: If the state intervenes, for example, to impose strike ballots in order to moderate the power of workplace unionism (as it has in Britain recently), such intervention may or may not achieve its public policy goal in the workplace. From workplace to state: A large upsurge in workplace conflict (such as resulted in Canada both in the post World War I years and during World War II) may or may not result in state intervention. If intervention does result, it may take different forms, from brutal repression to 'progressive' reform, tempered by several contingencies. These contingencies must be carefully considered before explanation can be offered.

Fourth, it is important to explore the generation and resolution of so-called 'day to day' conflict between labour and management as well as the set piece battles over pay. In Britain, 'pay rounds' encompass only a small proportion of disputes. In Canada, lawful strikes which occur at collective agreement expiry, though covering a multiplicity of

issues, inevitably come down to a question of wages. Because of the standards of legitimacy (Armstrong et al., 1981), the pursuit of wages and wage-related claims will always be seen as more understandable.

> "A wage claim is readily comprehensible to negotiators on both sides and usually offers ample 'bargaining range' within which compromise is possible... Non-wage issues are often far less precisely formulable and may involve questions of principle on which compromise is difficult if not impossible". (Hyman, 1972, pp. 123-4)

In Canada, it is especially difficult to tease out the control issues in major rounds of collective bargaining. It is difficult to clarify the relative importance of non-pay issues raised since they are ravelled up with pay demands. In fact, it is often necessary for unions to 'bundle' pay and non-pay issues in a 'package' to prevent management from reducing everything to the lowest common denominator of pay. Further, it is almost impossible to determine to what exact extent the whole series of non-pay irritants and the attendant hostility generated comes to be expressed in militancy over seemingly clear pay issues.

Even outside of negotiations, what begin as grievances over non-pay issues in both countries may often come to be expressed and, indeed, settled, by economic means, by a 'buyout', to use a phrase well-known in workplaces on both sides of the Atlantic.

A theoretical point of departure in addressing all four issues is the work of Burawoy (1979, 1985). Since Braverman's (1974) resurrection of Marx's distinction between labour power and labour, a large body of debate has emerged about the 'labour process' ie. how employers go about getting workers to transform the former into the latter and to what extent workers have resisted (cite several sources here).

Burawoy turns the debate on its head by asking a somewhat different question: not how capitalists get workers to work harder but why workers work as hard as they do. He insists the workplace is a centre of reproduction as well as production, that workers produce not only commodities, not only their wages and surplus value, but also help produce the conditions for their own subjugation to capital. Thus the means of inducing the output of effort is not only coercion but consent, workers actively abetting their own exploitation.

He suggests (1985), that the history of capitalist development in different countries is one of movement from 'despotic' to 'hegemonic' production regimes, wherein management fiat decreases and workers' participation in their exploitation increases.

He contends that the state has intervened along two key dimensions in employment relations to weaken the despotic hold of capital but increase its hegemonic hold over workers: First, the state has intervened in the 'constitution of the social wage', that is in protecting employees from absolute reliance on the employer for their subsistence, by providing such things as unemployment insurance, medicare, welfare benefits etc.. Second, the state has intervened directly in the workplace to limit managerial discretion by, for instance, limiting the employer's ability to avoid unions, to discharge at will, to make workers redundant or to operate without regard to workers' health and safety.

Factory regimes also vary with the sector of the economy, asserts Burawoy, with the competitive sector tending toward despotism and the monopoly sector tending toward hegemony.

To begin to explain cross-national differences, he constructs a matrix using these dimensions of state intervention (p. 138). Britain has higher intervention in the reproduction of labour power and lower in regulation of factory regime. The US is opposite in both dimensions. The other two boxes are filled by Sweden and Japan. But this dichotomy is inelegant and breaks down when other countries are drawn into the analysis. Canada, for example, with a high degree of regulation in both dimensions, might improbably fit into the box with Sweden! While Burawoy's general theorisation breaks ground by developing new tools for the analysis of variations in industrial conflict, he is weakest when attempting to construct an overarching framework which can apply to all countries. As in other broad brush approaches, the resort to ideal-typical formulations and "variables" limits the applicability of the theory. Nevertheless, as will be seen, the twofold dichotomy is a useful one for examining the effects of state intervention upon the workplace.

Burawoy's work is especially useful for developing a reconciliation between the institutional and the political economy approaches. By situating the analysis at the level of the workplace and concentrating on the '*institutions* that regulate and shape struggles' (p. 87, emphasis added), the neglect of institutions is avoided. Yet at the workplace there *is* a fineness of tuning between the labour/capital balance of power and the institutions that we have indicated is lacking at higher levels of analysis. It is possible for the micro institutions of workplace regulation to very quickly mirror changes in the workplace

political economy. Burawoy's theoretical forays are bold ones but many are highly schematic. One of the most useful of his concepts but one which he treats almost cavalierly is that of 'political apparatuses of production'. While suggesting that they differ significantly in different production regimes, he makes only the most peremptory attempts to discuss how this may be so. Because of the breadth of the scope of his analysis, his view of these apparatuses is inevitably monolithic. They are treated almost as a black box. Burawoy effectively suggests that a certain set of inputs will result in a certain set of outputs. Almost invariably, according to Burawoy, the political apparatuses of production act to manufacture consent. To build upon Burawoy's undeniable contribution, it is necessary to attempt to open up the black box, to show that inputs are transformed in different ways, that conflict as well as consent are generated. This study attempts to do just that. To mention only one example, Burawoy attempts to demonstrate (1979 and 1985) that the highly-structured North-American-style "internal labour market" acts to reduce worker cohesion and hence union militancy. Our Chapter VIII, by carefully examining the structuring of the internal labour market in Canada and Britain, shows that the opposite may well be the case. The result, it is submitted, does not contradict Burawoy's contributions, but rather adds to them.

6. The Political Apparatuses of Production

The link between the politics of the state and the politics of the workplace can be made clearer by considering theories of the capitalist state. Huxley summarises the three main functions proposed by theorists:

> "The first function, that of *accumulation*, refers to the involvement by the state in policies aimed at ensuring favorable conditions for the long-term operation of capitalist enterprise (O'Connor, 1973:6). Second the *coercion* function refers to 'the use by the state of its monopoly over the legitimate use of force to[l] maintain or impose social order' (Panitch, 1977:8). These two functions are, in turn, supplemented by a third—*legitimation*—which refers to policies aimed at securing the legitimacy of the state." (1979, p. 226, emphasis in original; see also Offe, 1984 and Edwards, 1986 for discussions of the accumulation and legitimation function.)

In fact it can be said that in order to successfully carry out the *accumulation* function, the state must find the correct balance between the application of *coercion* and *legitimation*. Burawoy's concept of the generation of consent is, in reality, legitimation as it applies to the world of work.

The politics of the factory mirror, and interact with, the politics of the state in the following way: Employers need to get on with the business of *accumulating* capital. But

the process of production throws up innumerable opportunities for conflict with workers and consequently, for disruption of production. Under more despotic production and state regimes, naked market and employer *coercion* usually sufficed to ensure a minimum of such conflict episodes. In the move to more hegemonic production and state regimes, the *legitimation* function became more prominent. Workers and the trade unions that represent them now participate more fully in the running of the enterprise. Conflict episodes are often handled by a system of negotiation that establishes, monitors and enforces truces all along the frontier of control.

Notwithstanding this, not all nor even most of the actions of management in running the modern enterprise are subject to the system of joint regulation. Armstrong et al. (1981) and Storey (1977) show in that even in highly unionised workplaces, a large proportion of managerial action is unilateral, especially that which flows from technical or marketing decisions. Yet they take pains to point out that even such unilateral action is largely graced with an array of *legitimising* principals grouped under the general rubric of "managerial prerogative". It must be added that looming ominously behind the legitimacy of managerial prerogative is the ever-present possibility of more blatantly coercive measures which the employer (or employers, or employers and the state) can bring to bear if they need to:

> "Capital can, as it were, fight [against labour] with one hand behind its back and still achieve in most situations a verdict it finds tolerable...Only if labour were to challenge an essential prop of the structure would capital need to bring into play anything approaching its full strength." (Fox, 1974, p. 276-80)

Legitimation has also become important in the non-union sector. Even in the absence of trade unions, sophisticated workplaces mirror several important features of unionised locations in generating consent:

> "The rules which have developed with regard to selection, layoff and retention, promotion, and discipline and discharge have resulted in significant limitations upon the arbitrary exercise of managerial prerogatives and power. These limitations are not simply the result of trade union pressures through collective bargaining; they are more in the nature of *self*-restraint which managements have imposed upon themselves...[T]he very system and rules they have established have become commitments which have tended to bind the hands of the rulemakers themselves." (Vollmer, quoted in Feller, 1973, p. 740-1, emphasis in original; see also Jacoby, 1985)

But because employers often pursue individual or sectional as opposed to class interests and because the development of trade unions and the application of their power is tremendously uneven, it has been necessary for the state to intervene to universalise

legitimation (and, it should be added in the light of the early 80's, to universalise coercion if need be (see Holloway, 1987).

Burawoy's argument about consent can be rendered subtler by suggesting that the establishment of employer hegemony in the workplace is problematic (Edwards, 1986). In fact, managers and groups of workers differentially generate both consent and conflict in a complex amalgam. Further, this is a dynamic process in that at any particular controversial situation along the frontier of control, either order or disorder, truce or combat may result at different stages of the labour-management negotiation process. Brown (1984) suggests that:

> "formal procedures bestow at least temporary legitimacy on the truces achieved. These can prove very durable, for perceptions of fairness usually develop on the basis of what those concerned have grown accustomed to. Fairness for most employees is essentially a relative matter and a change in what they will accept as fair is usually associated with a change in their perception of their relative power. Fairness is negotiable." (p. 22)

Over and above, and perhaps more important than, the *substantive content* of the truces mentioned above, the *very procedure* of joint regulation is in itself a potential anodyne, a method of attenuating conflict. This is one of the major factors distinguishing union from non-union factory regimes. Joint regulation is a powerful tool in eliciting worker consent to management's running of the enterprise. As one Canadian brewery manager (not from one of our case study plants) candidly insists:

> "At least once in a while workers need to think they are equal to management; collective bargaining provides that opportunity. It's a chance to get off work, sometimes to dress up, to challenge and sometimes to insult management. It's quite therapeutic."

The procedure of collective bargaining can be therapeutic in three ways: First, it can obscure the image of the workplace as an arena of coercion, echoing (however faintly) the images of 'democracy' in society at large. Second, it can actually deliver a quantum of equity and economic improvement to workers. Third, the process can be a 'busymaking' exercise, consuming time and effort on the part of workers and their representatives which might otherwise be used in building up resentment or planning resistance.

But it should not be assumed that the procedure of collective bargaining is only a conflict *resolution* mechanism. It has a dual potential at all times: the power to *exacerbate* as well as reduce the conflict it purports to handle. In the same three ways it is potentially therapeutic, it can instigate conflict: First, the less it 'measures up' to images and notions of 'democracy' in society at large, the more potential it has to

disappoint and frustrate worker aspirations. Second, no mater how smooth the process, it will always be constrained by how well it is able to deliver equity and economic improvement to workers. Thus, it can break down in bad economic times. Third, though the 'busymaking' exercise can work to distract workers, the more formal and automatist it becomes, the more it removes problems from the real world of the shop floor and takes them into a rarified atmosphere unsuited to their settlement.

The processes discussed here about seem ill-served by the term "collective bargaining" which often implies merely the formal negotiation of the truces referred to above. A more appropriate term is precisely "the political apparatuses of production", mentioned above, which Burawoy defines as "the institutions that regulate and shape struggles in the workplace" (Burawoy, 1985, p. 87) ie. the whole panoply of mechanisms employed by unions and employers to manage the differences between them.

It has been suggested earlier that a major problem with institutional approaches to industrial relations is that they assume a permanence on the part of aggregate institutions and are blind to the political dimension of trade union, state and employer activity, especially in North America, where the institutions of labour regulation have misleadingly appeared to be frozen and immutable. It was also suggested that one reason for this shortcoming was that institutional approaches ignore industrial politics at the level of the state and, more importantly, at the level of the workplace. But a start can be made to 'unfreeze' institutions by examining how they live and breathe, how they are constructed, deconstructed and reconstructed at the point of production. In this micro view, the institutions of workplace politics are temporally and spatially close enough to the actual balance of power between labour and capital (at least in that workplace) to pick up on subtle changes in this balance. Yet they have enough relative autonomy and permanence that we need not despair of hitting a moving target.

Constructing a framework for comparative analysis of political apparatuses of production across our two countries is complicated. A framework is needed that allows cross-national analysis rather than mere side-by-side description while at the same time allowing the particularities of each system to be seen. Industrial relations scholars have used terms to classify and analyse disputes resolution appropriate for their own domestic situations. North American commentators have distinguished between disputes of

"interests" (over those substantive terms and conditions of employment which will appear in the collective agreement) and disputes of "rights" (over the interpretation, application and alleged violation of those terms and conditions, once the collective agreement has been negotiated). In Britain, the same distinction is seldom used because neither the law nor the practice of the parties divides disputes up so neatly. Yet there is much utility in starting with this distinction, if some care is employed in applying it in the comparative arena. Perhaps the word 'dispute' to indicate an institution of production politics is misleading here in that it presupposes overt conflict. The word 'apparatus' may well be more appropriate in this regard, as it indicates a mechanism or process by which the parties attempt to handle potential conflict and, importantly, presupposes in itself neither resolution nor exacerbation of the conflict, both of which are possible as outcomes of the process.

At the extremes, both interests and rights apparatuses can be easily identified in both countries. *Interests* apparatuses concern themselves exclusively with the setting of substantive terms and conditions of employment. In both countries, these apparatuses are fairly formal in that both parties set out deliberately to set such terms and conditions. A small example which can serve our discussion is the negotiation of a shift premium for workers on the night shift (12 midnight to 8 am) because of the inconvenience of working inhospitable hours. Employing a legal paradigm, the process here is analogous to making law.

At the other extreme, there are also *rights* apparatuses, which concern themselves exclusively with the *implementation* of those terms and conditions. These apparatuses may or may not be formal. An example would be a claim by a worker that he did not receive the shift premium when he worked one afternoon shift. The process here is analogous to a *judicial* one: first, discovering the *law* (have the parties agreed to a shift premium?); second, investigating to establish the *facts* (did the worker work the night shift?); third, applying the law to the facts. If the premium has been agree to and if it is established that the worker indeed worked the night shift, it must follow that the shift premium is implemented. Clean and simple.

A problem in both countries is that the distinction is not often so clear. For in between apparatuses of interests and rights, there lies a gray area, where the parties do

not start out formally, or with mutual intention, to establish terms and conditions, but end up doing so, to a greater or lesser degree. An example would be where a worker begins his shift at, say, 11 pm. The substantive agreement says nothing about this eventuality. Should the *letter* of the agreement be followed and the worker paid for one hour without the premium and the rest of his shift with the premium? Or should the *spirit* of the agreement be followed and the worker paid the shift premium for all hours worked, given that this slightly altered shift is no less inconvenient? Whatever the outcome, something new, something substantive, however trivial, has been added to the agreement. Another example of the grey area occurs where a prior agreement is unavailable for assistance in interpretation of a dispute but some sort of consensus is required on the spot for production to continue. For instance, a supervisor allows a worker to clock in a hour's overtime in return for her staying an emergency fifteen minutes after her shift concludes. The practice is repeated. Or a supervisor allows furnace workers a double coffee break to 'cool off' after a long 'pour' of metal. The practice is repeated. These latter examples are similar to what Gouldner (1954) calls "indulgency patterns". All of the above are examples of an apparatus which can be called "adjustments". The phrase is borrowed from Canadian arbitrator Harry Arthurs' description of what an arbitrator does when he seeks to reach

> "a result agreeable to both parties...a reasonable compromise" rather than "(apply) evidence to pre-determined and rational standards, as does a Court of law."[12]

It is in the area of adjustments that political apparatuses of production in the British workplaces differ most dramatically from the Canadian. The scope and level of activity of this apparatus is much greater in Britain. But it will greatly help our discussion of dispute resolution in both countries to employ the concept.

Thus far the apparatuses for the *establishment*, *interpretation*, and *implementation* of the truces along the frontier of control have been discussed. There is yet a fourth and final apparatus, separate and distinct from the others, and that is surely *enforcement*. Herding (1972, p. 104) makes the distinction and implies in it that the method of enforcement is so important that it may actually alter the substance of rights. To use the previous example of the midnight shift, assume, not that the employer fails to

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12. *Re. Building Service Employees Local 204 and Welland County General Hospital*, 1965, 16 L.A.C., 31-33

pay a single worker the appropriate premium on a single occasion, but that it is regularly remiss in paying several workers. Given the exact same provision in the collective agreements of two different workplaces, the combination of the vitality with which the claim is pursued by the union and the sanctions that it is able to apply (or threaten to apply) will have a tremendous effect upon whether the union (to borrow a phrase used in Canadian arbitration and in turn borrowed from the courts) 'stands' or 'sleeps' upon its rights. The union that is able to rigorously pursue violations of a negotiated right and/or apply effective sanctions will have a living right where the union that is able to do neither will have a dead or moribund right, which, in effect, is no right at all. The importance of this distinction will be seen in the discussion of the political apparatuses of production in our two countries.

7. Three Substantive Areas of Conflict Generation and Resolution

Disputes, both formal and informal, in both countries, are indicators of the areas where the frontier of control is under pressure to change, ie. where the truces are weakening. It is at that point on the frontier where change is imminent that the chain of conflict logic can be found. It is where bureaucratic procedure and accepted practice no longer suffice, where there is a need to redefine the control of the labour process by a new mixture of accord and discord.

Open conflict is not presupposed when the need to renegotiate occurs, though its probability increases. Whether such a situation breaks into formal disagreement or conflictual behaviour depends on the way two phenomena interact.

The first phenomenon is the political apparatuses of production, discussed above ie. the set of formal or informal mechanisms through which disputes are "handled". Certainly, major differences in procedure between countries are important in exploring the reasons for variations in industrial conflict. For instance, the fact that Canadian disputes which enter the formal grievance procedure are ultimately subject to third-party arbitration while British are generally not, is an important fact in itself. But, as seen earlier, this reveals little on its own and may in fact mislead about the consequent pattern of industrial conflict. It is all very well to compare general methods of dispute resolution. But how well do these methods operate when confronted with a set of similar substantive issues in each country?

Thus the second crucial aspect is the substance of disputes. This is the specific area on the frontier of control where the disputes arise. It is suggested that there are key loci of workplace struggle between management and labour where both consent and conflict are differentially generated . Further, the outcome of these struggles contributes in a large way to resulting levels of conflict across many workplaces.

The political apparatuses governing each substantive dispute area contain a mixture of consent and coercion. But in every area of contention, management is constrained to a greater or lesser extent between the two poles. If management allows too much consent, then it runs the risk of losing control in that area. If management imposes too much coercion, it runs the risk of inviting worker resistance and ultimately conflict. The exact amount of both consent and coercion allowable will depend upon the substantive area of dispute and upon certain conditions existing when a change in the frontier of control is necessitated. Those conditions would include the strategic position of the relevant groups of workers in the production process, the state of the national, industry and local labour market and their hospitality to industrial action, the profitability of the firm and the industry, the penalties which can be brought to bear for industrial action—in other words, all those factors which affect the relative ability of management and labour to bring about desired outcomes by force.

For our purposes, the frontier of control can be divided conceptually into three key loci of confrontation: ***discipline, the structuring of internal labour market and job control.***

By ***discipline*** is meant both discharge and disciplinary measures short of discharge, including suspension, written warnings, disciplinary demotion etc. The ability of the employer to discipline employees is at the heart of the power relationship and is the essence of coercion. But discipline is also at the heart of consent. For not only have unions forced employers to temper their rasher urges, but this is one area in which states have intervened most heavily in to (in Burawoy's words) "regulate the factory regime". Legislation in most industrialised countries has supplemented whatever initiatives unions have taken to prescribe disciplinary processes that promise equity and due process. Employees now cooperate to one degree or another in their own discipline. But the system is imperfect and does not always deliver. So it is most interesting to observe and

compare the generation and resolution of conflict around this key issue in the two countries.

The *structuring of the internal labour market* means the way that the majority of employers in industrialised countries construct a system of job allocation, training, labour pricing and promotion that is internal to the firm and how unions participate in the regulation of this internal market. This substantive area is in some ways linked to state efforts to intervene in (again in Burawoy's words) "the reproduction of labour power". Aspects of the structuring of the internal labour market include the policing of the interface between the external and internal labour markets, the way in which workers are placed into positions within the firm (promotion, horizontal transfer) and the way they are chosen for exit from the firm when the need arises (layoffs, redundancy). State intervention is most apparent in this last area.

By *job control* is meant regulation of the content of work itself ie. how workers are assigned to tasks within their job classification, how hard and fast they work, and the 'effort bargains' they make with the employer.

Obviously, these terms are not completely mutually exclusive. There is, for instance a gray area between placement in a position and the definition of the tasks appropriate to that position. Likewise, discipline may be applied to enforce decisions in the other two areas. But as will be discussed in Chapter IX, conceptual division is very important.

These substantive issues have been chosen for three reasons: First, they represent the major areas of dispute *within* countries and especially Britain and Canada. The first two issues, together, appear to comprise the vast majority (up to 80%) of disputes that arise in Canadian workplaces during the lifetime of collective agreements (Gandz, 1982). While it is more difficult to quantify the subject of disputes in Britain, the evidence that exists (eg. Thomson & Murray, 1976) suggests they are very important.

Second, they epitomise a key difference between Canada and Britain. Job control appears hardly ever to be the subject of a *formal* grievance in Canada, while it is a subject of major concern in Britain. But this is not because job control is not an issue of contention in Canada. Canadian collective agreements, by and large, do not contain any language on such issues. Because the grievance and arbitration procedure deal with issues omitted in the collective agreement, disputes on these issues must be buried or

surface elsewhere. The distinct and corresponding pattern of prominence and absence of these three issues in Canada and Britain suggests that they will be particularly relevant in comparing industrial conflict in the two countries.

Third, as mentioned above, each in its own way uniquely illustrates the dialectic between consent and coercion and between the generation and the resolution of conflict.

8. Conclusion and Plan of the Thesis

The plan of the thesis follows the development of the argument to this point (a more detailed discussion of the methodology and method employed is presented in Appendix A). It has been suggested that the essential focus of study must be the workplace. Chapter II explains the reasons behind the selection of the workplaces for this study. It also describes these workplaces in terms of certain key factors: labour markets, size, technology, product markets management organisation and structure and union organisation and power. As well as description, however, the chapter considers the impact of these factors upon the character of industrial relations in the workplaces in light of theory and literature available.

It has also been suggested that the regulation of relations between employers and unions is done via a set of mechanisms called "the political apparatuses of production". Some of these are prescribed by the state; some are developed between the parties themselves; and some are a mixture of both. In Chapters III to VI, the four sets of apparatuses are considered: interests, rights, adjustments and enforcements. The pattern followed is to consider the development of these apparatuses on an aggregate basis (including how they have been prescribed at state level, where appropriate), drawing from the available national literatures, and then to analyse how they *actually* operate at shop-floor level in the case study workplaces.

Finally, it has been suggested that the political apparatuses of production interact with three key loci on the frontier of control where conflict and consent are differentially generated. Chapters VII to IX consider these loci: discipline, structuring of the internal labour market and job control. The pattern in these chapters is to consider the theoretical literature to provide a framework for analysis, to consider the regulation of these substantive issues on an aggregate basis, drawing from the national literatures and

again, to test both the theory and the aggregate data against how these issues are *actually* handled on the shop floor of our workplaces.

Throughout the thesis, perhaps somewhat more attention is paid to the consideration of Canada than Britain. This is for a number of reasons. First, it is necessary to unpack Canada from the 'North American' model that scholars have stuck it in. The literature on Canada itself is meagre compared to that on the U.S., so more care must be taken to make clear how the Canadian system operates. Second, while there is copious literature on workplace industrial relations in Britain (including the excellent WIRS studies eg. Daniel & Millward, 1983, Millward & Stevens, 1986), there is comparatively very little on North America, not to mention Canada. The bulk of information available is at the level of macro- or aggregate institutions, of contents of collective agreements and of the decisions of arbitrators. These are useful, but *in themselves* can be misleading about what actually happens at workplace level. However, used in conjunction with case studies of actual workplaces, much new ground can be broken. Third, while the aim of this thesis is to puncture conventional wisdom about industrial conflict both countries, it is about Canada that the greatest amount of misconception exists.

CHAPTER II: INTRODUCTION TO THE WORKPLACES

I. Introduction

The four case study workplaces, in two countries and two industries, are not a random sample. In the last chapter, it was seen how comparative studies, whether cross-establishment, cross-industry or cross-national, are fraught with theoretical and logistical hazard. The subject factories were chosen deliberately on several a priori criteria to reduce the areas of difference between them and the theoretical considerations necessary, to a controllable number. As far as possible, those in the same industry would be comparable across the two countries. Of the workplaces, it was decided beforehand that:

1. They would be in the private sector because considerations of product markets, productivity and profitability are far simpler than in the public sector. Indeed, the products and product markets, being in competition, invite rather than defy cross-national comparison.

2. They would be in manufacturing because the international aspect mentioned above is even more pronounced in this subsector and because it is in manufacturing, with large numbers of smaller workplaces of different types where the 'industry effect' would be most avoidable. This effect is described by Bean:

> "Since there are substantial differences between industrial relations across industries which may be unrelated to the national context in which they operate, what is really an 'industry' effect could be misinterpreted as being a 'national' effect in a comparative study confined solely to the national level.....By comparing similar industries across countries the more industry-specific forces of technical and market contexts are held fairly constant". (1985, p. 13-14)

3. They would concentrate on manual workers. While non-manual workers in manufacturing are reasonably well unionised in Britain, they are not in Canada. In our discussion of industrial conflict in unionised settings, it is the manual workforces that are most comparable.

4. They would concentrate on *male* workers almost exclusively. Rather than take a masculinist perspective *by default* (Feldberg and Glenn, 1979), ignoring the important questions of gender in workforces of which women workers play a significant part, this question would be *purposely* sidestepped. Thus, women in the factories studied formed no more than about 4% of the workforce. While such a decision no doubt adds fuel to the complaint that work studies ignore women, it may avoid the complaint that the analysis

itself may be "distorted by sexist assumptions" (ibid., p. 524). By the same token, while the masculine pronoun is used throughout and often refers to male workers, the feminine pronoun should be substituted where appropriate.

5. The case study factories would be in 'stable' industries, whose basic technologies and product markets have not undergone fundamental changes in the past fifteen years. The researcher, looking at records of disputes and general industrial relations over a retrospective period, could have some confidence that essentially the same environment persisted over that period.

6. While plants within a single industry would be comparable across the two countries, the set of two industries would be chosen so that certain aspects of the "technical and market contexts" would differ significantly, furnishing contrasting industrial relations environments. The dimensions chosen for cross-industry variation were primarily a) technology, b) stability of product markets and labour costs, c) profitability and d) the attendant 'style' or militancy of trade unionism.

7. The case study factories would have closed shops and 100% union density for the manual workforce. Though not, strictly speaking, 'typical', it is not an abnormal situation in plants of this size in these industries, in either country[1]. Concentrating on plants with 100% union density would add another constant factor across the four workplaces. By the same token, multi-unionism would be a minor factor in the case study plants. This is not a problem in Canada, where unions, by law, hold exclusive bargaining jurisdiction over groups of organised workers. In Britain, however, it is more complicated[2]. Nevertheless the British factories are not atypical. One has a single union for manual workers. The

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1. Of all Canadian collective agreements in March 1986 covering 500 employees or more, 60% (covering 71% of employees) had compulsory union membership or dues deduction provisions. In manufacturing, the proportion of employees covered by such provisions was 44% (Kumar et al, 1986, p. 397). In the British Workplace Industrial Relations Survey of 1984, only 4% of all establishments surveyed had 100% union density. Of those with 200 to 499 employees, 7% had 100% density. However, in manufacturing, the average union density for manual workers was 72%. Thirty-three percent of all establishments and 27% of private manufacturing establishments surveyed had agreements compelling or "management strongly recommends" union membership for manual workers (Millward & Stevens, 1986, pp. 50-71).

2. The WIRS study indicates single-unionism for manual workers in 65% of all establishments and in 58% of manufacturing establishments (Millward & Stevens, 1986). But the survey does not indicate the relative strengths of the unions in the multi-union situation ie. what proportion of workers belong to the major union. It is suspected that in most cases of multi-unionism, one union clearly predominates. The survey also does not indicate how multi-unionism varies with size of establishment but Brown et al. (1981), in their survey, indicate a positive correlation between size and multi-unionism (p. 59). Thus, smaller plants such as ours would have less incidence of multi-unionism and greater impact of a single union than large ones.

other has three unions, but the single non-craft union dominates the others in size, in collective bargaining and dispute generation and resolution.

The two industries chosen, then, were brewing and aluminum fabrication. The Canadian and British breweries will be called CANBREW and BRITBREW respectively. The aluminum fabrication plants will be called CANMET and BRITMET. These names refer to the establishments only. Where reference is made to the parent company, it will be explicit. What follows is a general description of the workplaces, organised under a number of relevant subject areas ie. labour markets, size, technology, product markets, management organisation and structure, and union organisation and power.

2. Labour Markets

One potential problem affecting the comparability of the workplaces in any study is differences in local labour markets. At the time of the study, there were, naturally, differences in type of employment, level of unemployment and characteristics of the labour pool in the two countries and, within the two countries, between local labour markets. The purpose of this section is to discuss the importance of differences in local labour markets on industrial relations and to briefly describe the external and internal labour markets relevant to our case study plants.

Many commentators on both sides of the Atlantic have maintained that firms outside the strictly competitive sector (and, indeed, some in that sector as well) construct often elaborate *internal labour markets* (Doeringer and Piore, 1971; Blackburn and Mann, 1979; Nolan and Brown, 1983; Osterman, 1987, to mention only a few).

Far from being passive reactants to external labour market forces, many firms,

> "...have succeeded in redefining their relationship with the external labour market by pursuing creative employment policies which aim to secure and maintain the commitment and loyalty of their workers. Greater cooperation inside these firms is fostered not simply by ensuring that rates of pay are comparable with other firms in the locality, but rather through a package of different measures...screening and hiring techniques, internal job and promotion ladders and...the development of company-specific pay structures which try to embody employees' notions of relative fairness." (Nolan and Brown, 1983, p. 2[2])

In fact, Nolan and Brown make a strong case that the effect of local labour markets upon pay structures (and by implication other terms and conditions) in local firms is *very small*. They demonstrate substantial intra-occupational wage differentials among occupational groups within local labour markets despite strong similarities in job content and skill requirements across workplaces and conclude:

"These findings strongly suggest that employers do not respond passively to changing patterns of behaviour on the supply side of the market. Considerations other than those of the external labour market appear to affect the determination of employers' wage offers." (p. 281)

Although it is beyond the scope of this thesis to attempt to replicate Nolan and Brown's study for the labour markets in which our case study plants operate, the evidence available corroborates their thesis. The following is a brief consideration of the external and internal labour markets of our case study plants.

2.1 The Canadian Plants

The Canadian plants are situated about six or seven miles from each other in a large metropolitan area. Canada has a highly regionalised economy and labour markets can differ substantially between broad regions of the country. The area of concern has high concentration of manufacturing industry as compared to the rest of the country.

Canada experienced its longest and deepest post-war recession in 1981-82 when employment fell by a record 5 percent and unemployment rose to 12.8% (with a high of almost 20% in some regions and sectors of the economy and a low of roughly 10%) and real G.N.P. dropped by 6.5%. An uneven recovery began in December 1982. The recovery continued on through the period when these case studies were done. In the particular area where these plants are located, the 1987 unemployment rate was below 4% with real shortages in skilled manpower and in certain key service occupations.

At the time the case studies were done, the rate of year-to-year inflation in the area had dropped steadily to about 4% (about the same as the country as a whole). The average annual change in average weekly earnings had slowed from 9.2% (1975-81) to 4.6% (1985) and the change in real earnings had gone into negative numbers[3].

The employment market was heterogeneous, with employers of all sizes and industries available to job seekers. In the province of the case studies, union density was 33.7% with 37.6% of those employed covered by collective agreements (slightly lower than the national average on both counts.)[4] As regards the production employees of the industries concerned, 94% of brewery workers and 72% of metal fabricating workers across the

3. Much of the information on the local labour market of the Canadian plants was taken or calculated from Kumar et al., (1986).

4. However, the number is almost certainly higher in the particular region of our plants.

country were covered by collective agreements (and coverage in the particular region of our plants would be the same or slightly lower than this).

Both Canadian plants have strongly defined internal labour markets though CANMET, being in a less monopolised industry than CANBREW is somewhat more subject to the whip of the market. The joint regulation of the internal labour markets in the case study plants will be discussed further in in Chapter VIII so only a few remarks will suffice to sketch the nature of the internal labour markets:

In a moment of frustration over intransigence by the union, the personnel manager of CANMET offers that:

"We could shut this place down and open it back up again and pay $5 less an hour"

Such draconian measures are not unheard of either in Canada or Britain. But the evidence is solidly against him. The company has been unionised since just after World War II and had even before that practised 'creative employment policies' to preserve its workforce. Despite this outburst, the personnel manager tells of offering a handshake to an employee upon return from a long strike.

"The guy told me to fuck off. But I didn't discipline him because he's a really good worker."

The isolation of pay from external market influence was no more evident than when CANMET came to renegotiate the collective agreement with its union in late 1986. The company had access to information on 22 collective bargaining settlements in the previous seven months in the metal fabricating industry across the country (and 19 of these were roughly in the same geographic labour market as CANMET). Of the 19, the general labour rate paid varied between $7.25 and $12.00 per hour (or by 66% of the former figure). The skilled labour rate varied between $12.50 and $16.00 per hour (or 28% of the former figure). The average first year increase for the new collective agreements negotiated in these workplaces ranged between no increase and 5.3% with an average of 3.4% (calculated from Canada Labor Views, 1986, p. 2-3). At the time of negotiations, CANMET itself paid $12.74 to its electricians and 11.25 basic labour rate and settled with the union for 5% in the first year of the collective agreement. The above is not as rigorous a study of a local labour market as Nolan and Brown (1983), nor is it in time-series. But it gives some inkling of the wide disparities of pay by unionised employers within a single labour market in Canada.

As far as admittance to the internal labour market, CANMET has one basic entry level for non craft labour. The selection process is not formal. Most recruitment is done by word-of-mouth within the company or from 'walk-in' applicants. After an eyeball screening, applicants are interviewed and former employers phoned. When the need to recruit is urgent, even these peremptory measures are abandoned. A new operative enters just below the lowest pay level. After a 60-day probation period he attains seniority, the 'labour grade 1' pay level and the opportunity to proceed up an elaborate job ladder through 16 labour grades, ranked according to skill and difficulty.

Turnover is low, about 1% per year in voluntary quits and almost 30% of the employees have over 15 years seniority (and 5% have over 20 years seniority). In the occasion of a compulsory redundancy, an elaborate bumping procedure comes into effect to protect older employees and laid off employees have the right of recall for 18 months. After a major layoff in 1982-83, the employer recalled many employees, some of whom had been off more than 12 months and had technically forfeited both right to recall and seniority (a fine example of the strength of the internal labour market concept in action).

The internal labour market in CANBREW is even more elaborately constructed and is somewhat more complex. As at the aluminium plant, there are few workers who could not theoretically be replaced by others willing to work for $5 per hour less (and we shall see that the temporary workers are paid even less than that). Nevertheless, over the years it has come to be known as 'a good place to work', if only because pay and benefits are among the best in the entire country for manual workers. (Hourly wages are roughly 40% higher than the Canadian average and 16% higher than the Canadian average among unionised employees (Kumar et al., 1986)). The pension plan is said to be one of the best in the country for manual workers. Other perquisites include share options, a sick leave plan, semi-private hospital plan, drug plan, dental plan including orthodontia, an on-site pub and vouchers for free take-home beer . Thus there is tremendous incentive for both management and workers to preserve employment.

Since collective agreements at all major breweries in the province have been negotiated simultaneously for at least ten years, there is little difference in pay between them and other benefits have begun to converge. Yet despite this, there is virtually no movement of employees between the Canadian breweries. This is because a) seniority and

the attendant ability to move along the job ladder cannot be transferred, b) pensions and other benefits cannot be transferred and c) each brewery has is own 'culture' and differing 'patterns of indulgency' (Gouldner, 1954) which command employee loyalty.

In all the breweries, there is a very pronounced dual internal labour market, divided between permanent and temporary workers. Temporary workers (who comprised about 15% of the regular workforce at CANBREW and up to 50% during the summer at the time of the study) are hired for periods not exceeding 132 days in any 12 month period and "have no rights, benefits or access to the grievance/arbitration provisions under the Collective Agreement, except where specifically stated". They begin at 52% of the basic labour rate in the plant and advance a further five cents an hour after 22 days. They pay dues to the union but are afforded almost no protection by it. Both the personnel manager and the union convenor freely admit that the temporary employees are used as a 'buffer' against the layoff of permanent employees.

The entry procedure into the permanent internal labour market is fairly formal. According to the collective agreement, the company is required to "give preference to unemployed members of (the union) in good standing and competent to perform the work." Not much new permanent hiring has occurred for several years. But many of the permanent employees hired are chosen from among the best of the temporary workers. So the company has had the opportunity not only to check their background at leisure, but also to observe their work habits and attitude for almost twice as long as the norm for probationary employees across the country[5]. Once hired, non-craft operatives enter an extremely flat job ladder. There is basically one wage for all non-craft workers. Nevertheless, a hierarchy of sorts definitely exists, with packaging jobs at the bottom and brewing jobs at the top, and there is a formal posting and bidding procedure for vacancies, "based on seniority provided that the applicants are sufficiently qualified and considering the efficient operation of the Company." The agreement also commits the company to "arrange appropriate training wherever practicable".

As is to be expected, turnover is extremely low (less than 1%), and the union fights tenaciously against dismissals for all but the most egregious offenses. Although the plant

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5. Kumar et al. (1986) indicate that roughly 39% of collective agreements (covering 500 or more employees) have a probationary period of less than 3 months.

commenced production in 1970 (there had been a smaller old plant) and thus has a much younger workforce than the other breweries, over 25% of the manual workers have fifteen or more years seniority.

2.2 The British Plants

The British plants are located in different local labour markets, so they will be dealt with separately.

BRITMET. BRITMET is located in a large rural town within 40 miles of a major metropolitan centre. The town has a collection of light industry with only two or three employers the size of BRITMET. BRITMET is thus one of the major industrial employers in the town and has been since before the World War II. Its local labour market has been influenced by the automotive industry, since it is situated between two major automobile manufacturing centres, some of its production is for that industry and a significant number of BRITMET workers who started at the plant in the seventies came from employment in automobiles (and left that industry at a loss of over £20 per week because labour problems made steady work unreliable).

Unemployment in the BRITMET's region was 6.8% at the time of the study (having fallen by 1.6 percentage points from 1983), compared with 9.7% for Great Britain as a whole (having fallen by 1.8 percentage points from 1983).

While local figures are not readily available, the national rate of inflation (retail price increase on a year earlier) had slowed from double digits in 1981 to 4.5% in the period of study. Nationally, the average annual change in earnings had dropped from double digits in 1982 to 7.9% in the period of study, while in BRITMET's immediate county, the average annual change in earnings was somewhat lower. Nevertheless, BRITMET's region followed the national trend of significantly increasing real earnings for those in employment running right through the period of study[6].

Union density in the region, at 43%, was 15% lower than the national average (Millward and Stevens, 1986). Thus a lower intensity of union activity in BRITMET's labour market compared to that of the nation as a whole can be interpolated.

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6. All of the above figures on unemployment, inflation and fluctuations in real earnings are taken or calculated from Employment Gazette, HMSO, various months.

BRITMET had constructed an internal labour market of some complexity, though, as in the Canadian case, less complex than its British brewery counterpart. Hourly earnings in the standard production grade in the period studied were 7% *lower* than the average for manual workers in the county and 11% lower than the average for manual fabricated metal workers in the county. However, average *weekly* earnings for the standard production grade at BRITMET exceeded the county average by 23% and the fabricated metal figure by 18%. This is primarily because of the huge amounts of overtime worked by BRITMET operatives (average 12 hours per week compared with 4.5 in the county.) Thus, despite union attempts to convince them otherwise and occasional revolts, BRITMET workers do not generally consider themselves ill-remunerated in the local labour market.

Admittance to the internal labour market is quite similar to CANMET, with relatives and friends of workers occupying most of the vacancies that come up. Selection is also done in much the same way as CANMET.

Unlike its counterpart in Canada but like CANBREW, there is a pronounced dual internal labour market. Temporary workers comprise between 10 and 15% of the workforce and an agreement with the union allows the company to maintain them on temporary status for up to nine months. Unlike CANBREW, all but the worst temporary workers are usually taken on permanently. The temporary workers receive the same pay as permanent workers but receive none of the benefits, though they can join the sick pay scheme after six months.

There is one basic entry port to the non-craft work force and after a brief period on a training wage, workers can advance up a very shallow job ladder (three grades). Unlike at the Canadian plants, promotion decisions are not highly regulated and management has almost exclusive say.

Up to 1983, there was virtually no turnover, reflecting a stable, aging workforce. Since then, a fairly large group has retired and two patterns have emerged: almost zero turnover among the majority and up to 4% among newer employees. Despite the retirement, over 15% of the workforce has over 20 years seniority (but a full 40% has less than five years).

As is the norm in unionised British workplaces, there are few, if any, provisions to protect older employees from redundancy. However, as will be seen in more detail in Chapter °, there is an implicit agreement that there will be no compulsory redundancies, if at all avoidable. The company has a fairly generous scheme of voluntary redundancy payments which, combined with early retirement pension provisions, sees older workers comfortably and quietly out the door.

BRITBREW. The British brewery is located in a large metropolitan conurbation. Its labour market then, is very similar to that of the two Canadian plants ie. urban and industrialised. The employer market is heterogeneous, consisting of a mixture of light and heavy industry, with manufacturing accounting for about 43% of employment compared with 28% for Great Britain as a whole ([Local] Enterprise Board, 1987b). It should be noted, though, that over the last 15 years, the proportion of heavy industry, especially in the automotive trade, which dominates the region, has declined considerably here.

Unemployment in the region, as mentioned above, at 11.1% is higher than the national average at the time of the study (having fallen 3.2 percentage points from 1983). However, in the immediate vicinity of the plant, in the period *just preceding* the study, unemployment was as high as 16% ([Local] Enterprise Board, 1987a, p. 2). Thus, unlike the labour market of any of the other three plants, BRITBREW's region can be called 'economically disadvantaged', with pockets of considerable poverty and attendant inner city social problems and urban decay in the area immediately surrounding the plant. Within a mile of the plant, serious rioting occurred in 1985. In light of these conditions, the lack of impact of local labour market conditions on wages and terms of employment at BRITBREW is particularly striking. Real average annual earnings *for those employed* in BRITBREW's area (and, of course, at BRITBREW itself) were increasing faster the national average.

Union density in the region was 12% higher than the national average at 65% (Millward and Stevens, 1986). Thus we a higher intensity of union activity and a stronger union culture in this labour market than in that of any of the other plants can be interpolated.

Like its Canadian counterpart, BRITBREW has erected an elaborate and complex internal labour market. Unlike at BRITMET however, earnings among BRITBREW

workers vary enormously because of differing payment by results earnings. Average weekly earnings are between 15% and *104%* higher than average gross weekly earnings of male manual workers in the immediate vicinity[7]. A member of one of the staging unit crews can earn up to £380 per week. Benefits and pension plans are also considerably better than national or regional norms. In addition to the pay, there is a generous pension plan, private medical insurance (which the union negotiated despite the opposition, in principle, of the trade union movement to such plans for its members), a generous sick leave plan, share options, and, as at CANBREW, free beer vouchers and low cost beer in the canteens. Needless to say, BRITBREW is considered a very good place to work.

Since BRITBREW has been shrinking in workforce size for the past number of years (33% since 1979), admittance to the internal labour market is not a usual occurrence. When the company did recruit, it was done overwhelmingly by word of mouth within the plant. More than any of the other plants, BRITBREW is a paternalistic family ties are dense both at the upper management and the blue and white-collar employee level (though not as much in the middle management level). Thus BRITBREW had effectively isolated itself almost entirely from its local labour market, illustrated by the salient fact that despite the surrounding labour market being almost half non-white, there are virtually no non-white faces at BRITBREW.

When hiring was done, recruits were taken on as temporary workers for a 13-week period, especially at peak periods. However temporary workers never formed a significant part of the workforce except during summer holidays. There was little screening of recruits and the company, in its paternalistic way, overlooked the shortcomings of poor employees. Of the contraction period of the early 80's, however, a personnel manager indicates that much of the

> "bad and dead wood was cut out, but it was done within the culture of this place. Families were told to sort out their own problems and a lot of those let go resigned voluntarily rather be dismissed"

As at CANBREW, there is one main entry point to the non-craft workforce ie. an unskilled job in the packaging or staging unit. Though, like CANBREW, there is an exceedingly flat job ladder in basic pay, BRITBREW differs substantially in that there are

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7. Figures on wage comparisons were calculated from Employment Gazette, 1987, various months. Figures readily available do not allow comparison with earnings in other breweries, though they are expected to be similar.

many gradations in weekly earnings due to differential payment by results schemes and outcomes. Most unusually, skilled craft workers are at the middle level in the earnings league. Though there is little movement between work units now, what little there is, unlike in the Canadian plants, is not highly regulated and management has almost exclusive say.

Turnover is naturally extremely low and the workforce is probably older than the other three plants. Unlike at the Canadian plants, there is no bumping procedure to protect older employees from layoffs. However, company and union have negotiated an agreement which pledges to avoid compulsory redundancy if possible (and the union interprets to prohibit compulsory redundancy entirely). The company has a very generous scheme of redundancy payments, which it claims is among the best in the country. This, combined with early retirement provisions, sees workers even more comfortably and quietly off than the one at BRITMET.

2.3 Summary

To summarise this section on labour markets: There are differences in the external labour markets in which the four plants operate but these differences defy systematisation. Unemployment is higher around the British plants than around the Canadian and is considerably higher around BRITBREW than the other three. Yet real wages in the labour market around the Canadian plants are declining while real wages for employed people around the British plants are rising (and rising fastest in the disadvantaged area around BRITBREW!). All of the plants except BRITMET are located in an urban, industrialised labour market. BRITMET, although centred in a quieter, more rural setting, is not isolated. The economy surrounding all four plants has recently emerged from severe recession and all the plants had sizable layoffs in the early 80's. Though the economies in both countries are in recovery, both employers and workers can remember considerably harder times not long ago. Yet the overall effect of external labour markets is indeterminate.

All four companies, together with the unions, have constructed internal labour markets isolating them more or less from the external labour market. The breweries have done so in an especially elaborate and comprehensive way. The methods used are: independent pay and benefit determination and compensation exceeding external norms;

procedural barriers to instant discharge and cushioning mechanisms against redundancy; single entry ports for non-craft workers and internal job ladders (whose structure and regulation are especially sophisticated in the Canadian plants). Differences *in the regulation* of these internal labour markets will be analysed in Chapter VIII.

3. Size

The workplaces chosen had an average of about 425 manual employees (BRITMET, 550; BRITBREW, 480; CANBREW, 350; CANMET, 318). This workforce size may seem small in comparison with most of the workplace study literature (eg. Edwards & Scullion, 1982; Gallie, 1978; Batstone et al., 1977). While it may be seductive to study large, well-functioning union organisations, smaller plants are more 'typical' of actual workplace sizes (and the trend toward smaller sizes) in the two countries. The mean manufacturing workplace size in Canada in 1984 was 34 production employees with breweries at 213 and fabricated metal plants at 19 (calculated from Statistics Canada, 1984). In Britain, in 1985, mean manufacturing workplace size was approximately 24 operatives with breweries at 88 (with only 7% employing more than 500) and fabricated metal plants at 10 (with only .1% employing more than 500) (calculated from Department of Trade and Industry, 1985). In both countries there has been a distinct downward trend since 1970.[8] So the workplaces in the study are actually larger than the norm[9].

Nevertheless, there is a *lower* limit on the size of workplace capable of study in this type of exercise: below a certain size, the volume of union-management 'business' carried on is simply too small to yield significant insight. To carry out a study, it is essential to have access (in records and/or the memories of participants) to an adequately-sized chronicle of disputes and their resolution.

But a second, more important, consideration was present in the choice of size. Somewhere between 300 to 800 manual employees, there lies a threshold where a key qualitative transformation in union power takes place. For it seems that in this area a stable union organisation (with continuity of shop stewards, organised and regularly-

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8. Mean manufacturing plant production workforce size in Canada in 1970 was 37, which had dropped by 8% by 1984. Mean mining, manufacturing,gas and electricity plant production workforce size in Britain in 1970 was 71, which had dropped by 66% by 1985. (calculated from Department of Trade and Industry, 1985; Department of Industry, Business Statistics Office, 1976; Statistics Canada, 1974, 1984)

9. Although statistics are not available, it is probable that the mean size of unionized plants is larger, making the plants chosen somewhat more typical.

convened shop steward committees, full-time convenors, branch and local secretaries and an attendant bureaucratisation) emerges.

Turner et al. (1977), looking at facilities for shop stewards, find the greatest variation in provision of those facilities, not in the largest or smallest plants (where they are provided in the former and withheld in the latter), but in those of intermediate size, "where hostility and acceptance...[toward stewards] are still contending" (p. 330)

So it is in our size range that key struggles seem to occur over how unions will exercise their power. At lower and higher sizes, the weakness or strength of the union respectively, are taken for granted.

Boraston, Clegg and Rimmer (1975) demonstrate how British workplace union branches become less dependent upon external union full-time officials as workplace size increases but it is Brown et al. (1978), in their study of the factors shaping shop steward organisation in Britain, who most carefully refine consideration of the threshold:

> "It seems fair to deduce that there may...be a critical size of workplace for steward continuity, with workplaces of under 500 manual employees having a significant tendency to have less continuity of service. (p. 142)

These authors suggest that 500 is also the magic number for such factors as senior stewards, executive committees, a full-time steward, regular meetings, a written constitution and the taking of minutes at meetings. (Marginson, 1984, confirms the effect of plant size on several of these dimensions and Brown, 1981, pp. 62-67 refines the above proposition).

To place the threshold at a specific number is somewhat crude. Where it actually lies is subject to a number of factors specific to the workplace and the industry, including technology, product markets, profit margins, and strategic location of workers in the production chain. While similar studies to those above have not been done in Canada, it is probable that the threshold there lies a bit below Britain's because the highly formalised nature of Canadian industrial relations builds bureaucracy more firmly into the local union, with less regard to its size.

The other important factor determining where the threshold lies is the attitude and practice of management toward the union and collective bargaining. And plant size has been shown to be a significant determinant here. A wide literature (eg. Pugh et al., 1968; Child, 1973) has shown a connection between size and dimensions of bureaucracy such as

specialisation, standardisation, formalisation etc. for business organisations. Turner et al. (1977) demonstrate that these dimensions of bureaucracy extend beyond general management to the management of industrial relations, with size affecting such factors as "formalisation in industrial relations" and the number and degree of specialisation of industrial relations managers. Godard and Kochan (1982), in a Canadian study, indicate:

> "Size (of labour relations staff) and specialisation are...closely related to the number of unionized workers in the firm, but these relationships are by no means perfectly linear, tending to be characterized by economies of scale and threshold effects." (p. 13d, emphasis added).

The exact interaction among workplace size, managerial bureaucracy and threshold of union strength has not been well explored although the previously mentioned Turner et. al (1977) study indicates a connection. Marginson (1978) suggests that company size may be a stronger determinant in management standardisation and specialisation in industrial relations than plant size, given that larger companies encourage such bureaucratisation more than smaller ones. But again, Brown et al. (1978) make a most interesting (and quite complicated) observation. They suggest that it is at the 500 workforce size threshold that the degree of management resistance to the trade union becomes a key determinant of union strength, especially the existence of a full-time steward. Where management displays continued resistance, the development of union strength is impeded considerably. Where management does not display continued resistance, the union makes a dramatic leap in strength.

Our four case studies bear out these previous observations. Although there was little difference in workforce size among them (in fact, the greatest difference in size was within the same industry but across countries), the most dramatically different patterns of union vitality were evident *across the two industries*.

As will be seen later, while the aluminum plants in both countries had long-established workplace union organisations, these organisations were underdeveloped, struggling for basic structural stability and frequently unable, under their own steam, to initiate and carry through disputes or to make significant gains in collective bargaining, or more significantly, having made such gains, to consolidate them. Neither organisation had the key advantage of a full-time steward, nor a regularly convening shop steward committee and facilities such as an office and equipment for stewards were rudimentary

or non-existent. The state of record keeping by the union was primitive and the performance, nay the availability, of shop stewards spotty.

By contrast, the breweries in both countries, with roughly the same number of employees, had well-developed, vital and structurally stable workplace trade union organisations. Both had full-time convenors and permanent offices with reasonably well-organised records. Compared to the aluminum plants, there was a qualitatively higher degree of steward continuity and experience.

Although there were important differences between the brewery unions in the two countries, both were far better able than the aluminium plant unions to initiate, pursue and carry through disputes, to make gains in collective bargaining and to consolidate those gains.

At this point, it should be stressed, no simple connections between size and levels of industrial conflict are postulated. The aim is merely to underline that in the *workforce size* domain of the plants studied, certain very dramatic differences in union organisation and strength (and in employer attitudes and policies to trade unions) begin to emerge. Next to be examined are some of the other factors that may impinge on where the threshold lies.

4. Technology

4.1 Introduction

By technology is meant *both* the level of automation of work *and* the technical organisation of work (ie. the placement of workers and decisions as to what work they will do), bearing in mind that both aspects of technology are essentially "human products in the sense that they have been consciously designed" (Hill, 1981, p. 86).[10]

It is undeniable that the type of technology employed in a workplace will affect the relations between management and labour. Industrial relations between ditch diggers and their bosses will differ substantially from industrial relations in computer software development. A more important question is, just how important is technology in determining the type of industrial relations? Authors such as Blauner (1964), Mallet (1963) and Woodward (1965) and, to an extent, Braverman (1974) see a trend to ever

10. To Hill's contention, however, it must be added that managers are not necessarily fully aware of the consequences of the technology they introduce.

increasing sophistication of technology (as defined above) in the hands of management. While they differ as to whether such trend will have a salutary or malign effect on industrial relations and worker freedom and dignity, they all see this trend as exercising an inexorable effect upon worker-employer relations, especially on the nature of the control system within the factory.

Gallie (1978), on the other hand, suggests that technology is highly overrated as a determinant of the industrial relations climate. In his study of "high technology" petroleum refineries in Britain and France (two in each country), he finds large differences in managerial control systems and worker attitudes despite virtual similarity in technology across his case studies. He suggests that historical patterns of workers' aspirations and institutional patterns of power among unions and management in the two countries hold the key. Certainly Gallie's effort erodes notions of technological determinism in industrial relations. But his case is only suggestive, not conclusive. A key fault is that Gallie concentrates on one particular technology and does not compare industries of quite different technology in the two countries to see whether managerial control systems and worker attitudes vary more *across industry and technology* than they do *across country*. He does admit that employers in both countries in this advanced sector "represent relatively progressive versions of two quite distinct national patterns." (p. 315) As compared to *less advanced sectors* in both countries, technology may well have played a significant part in this.

It is as erroneous to speak of technology as a relentlessly wielded tool of management control (Braverman 1974; Marglin, 1974) as it is to employ technological determinism or treat technology as value free (Woodward 1965; Blauner, 1963) as it is to imply that technology is "of very little importance....for the social integration of the work force within the capitalist enterprise" (Gallie, 1978, p. 295) As in all other questions of social factors and outcomes that are not quantifiable, it is somewhat sterile to talk of *whether* or *to what extent* factors *determine* outcomes or, in fact, whether the causation is unidirectional in any case. It is far more useful to talk of how factors *constrain* or *shape* outcomes. In discussing technology, it may be more useful to accept that management control imperatives both affect and are affected by the technology employed and that technology plays a part in constraining industrial relations outcomes and that some types

of technology constrain the industrial relations outcomes more than others. It may well be that in Gallie's advanced sector, more than in less technically complex sectors, the outcomes were affected by factors other than technology.

This appears to be borne out in our case studies. In the 'less advanced' technology sector (the aluminum plants), the industrial relations outcomes varied far less than they did in the 'more advanced' sector (the breweries), allowing other factors to impact upon industrial relations to a greater extent.

Unlike the neat theories, the case studies (and in fact most manufacturing plants in the real world) comprise a multiplicity of technologies since the manufacturing process in all of them consists of a number of distinct stages. Nevertheless, the *bundle* of technologies within each industry studied varies about a central core and is distinct from that of the other industry. What is more, each industry contains what can be called a *driving* technology, which is the key aspect of its technology that impinges on its character. Technologies employed other than the driving can be called *ancillary technologies*. The production stage using the driving technology may not employ the most workers nor may the most strategically placed workers be employed here. Nor may it be the locus of most industrial conflict. It is, however, the stage where the specific quality of the *product* that makes it unique is most highly defined and it is the stage where the company makes its highest investment in equipment and production control. It determines, as in Woodward (1965, pp. 125-181), the overall sequence and weightings of the manufacturing functions of development, production and marketing. It also has the greatest overall impact upon industrial relations.

In addition to the driving technology, the *range of variation* between the driving technology and the ancillary technologies is an important factor affecting industrial relations, as can be seen in the description of the case study plants below.

The technology used at each of these stages (or 'units' of production) will be described by a) employing Woodward's (1958) classification of systems of production, b) gauging the control system somewhere along the continuum between 'responsible autonomy' and 'direct control' (Friedman, 1977)[11], c) stating the span of control (ratio of supervisors to

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11. Edwards' (1979) taxonomy of simple, technical and bureaucratic control is too historically periodized to be useful here. Also, his types of control can and do coexist in the same workplace at the same time.

workers), d) indicating how quantity, quality and pace of work are set, and e) outlining the potential discretion available to manual workers within each unit.

4.2 The aluminum plants

In both aluminum plants, the span of control across all stages of production is fairly constant, with an average of about 20 workers per supervisor. The aluminum fabricating plants in both countries have four distinct stages of production.

Casting. The first or *casting* stage is where aluminum ingots and scrap are melted down in furnaces, sometimes mixed with other chemicals to form alloys and then cast in a form (billets or sheets or rolls) which can be used in the next stage. In both plants, the third greatest number of manual workers is employed at this stage.

The system of production can be classified as between large batch and mass production. The quality and quantity of the pieces produced are built into the process primarily by the expertise of the professional metallurgists (and the procedures they have devised) and the design, maintenance and repair of the furnaces and machines by the few craft workers who service them. Yet molten metal is a volatile substance. There is a occupational hazard of occasional disastrous explosions. Also, once the furnace is tapped and the metal is flowing, disruption in the casting process can result in great messes and losses. So the manual workers need no small amount of training and experience and must exercise no small amount of care to avoid such eventuality.

In the casting units, the ratio is slightly lower than average and the control system is just past the midway point of the control continuum toward 'responsible autonomy'. Yet despite the quantity and quality being built into the process, where the casting machinery and furnaces are old, experienced workers learn how to 'coax' them into performing at higher efficiency.

Unique to this stage in both plants is a very distinctive mystique, which can be called the culture of 'men of molten metal'[12]. Compared to workers at other stages, it comprises an attitude of pride in dealing with a dangerous substance in infernal conditions, a sense of being different than all other workers, a strong sense of comradeship among workers and a cameraderie between workers and supervisors. Once employed at this stage,

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12. The name of one of the early steel-making unions in the United States, "United Sons of Vulcan" (Elbaum & Wilkinson, 1979, p. 283) reflects this culture

workers seldom transfer out and are certainly not helped by management if they do. An experienced worker in the Canadian casting area who attempted such a transfer was refused by management 'until such time as another employee (can) be trained.

The pace of work is determined primarily by machine in that the furnace takes a specified amount of time to prepare the proper amount and chemical composition of the alloy. The workers, then, work on a cycle determined by 'pour' times, over which they hold some control.

Fabrication. At the second or *fabrication* stage, the aluminum cast at the first stage is either milled, stamped, formed or extruded (or a combination of these processes and then sometimes annealed or heat treated) into an almost-finished product. In both plants, the greatest number of manual workers is employed at this stage. It is also the *driving stage* of technology in these plants. The move is further back in the scale of technical complexity to somewhere between small and medium batch production.

In the British fabrication unit, all the work is done by teams of seven workers centred around seven extrusion presses. Each press produces a certain range of product sizes and complexities and press runs vary in quantity but most last no more than a few hours.

The quality and quantity of product extruded is mainly determined by the shape of the product and corresponding complexity of the die required and the extrusive qualities of the alloy used. The quality can vary somewhat depending on the requirements of the product market. The range of discretion available to the workers once a job is up and running is minimal. But because job lots change so often, giving rise to dead cycle time, and because there is a certain amount of handling necessary after the product is extruded, there is some discretion available. As with the casting machinery, special worker skills can help 'coax' the process along. Nevertheless, because the machine is the centre of this stage, it can be and is electronically monitored for down times. Also, defective product can be traced back quite readily to the press crew. Management finds control of the fabrication process relatively easy.

The Canadian fabrication unit is somewhat more diverse. There are four distinct subunits, ranging from a custom assembly of single orders to medium batch production of 'commodity' (almost undifferentiable) objects.

However, the heart of the fabrication unit (employing the most workers) produces medium size batches of a distinctive product through a patented process to which few other firms in the country or the world, have access. Clusters of workers guide the material through a sequence of mills, furnaces and presses, some of which are engineered together to form a more continuous assembly process (the management would like to standardise the product and the technology to move the process more toward an assembly line). Much of the quality and quantity is built into the process by the company engineers and the mechanical craftsmen. But there is still a certain degree of discretion which can be exercised by the workers precisely because production process is in a state of flux and there are so many discontinuities. It is difficult to trace scrap problems back to particular workers or machines so management must rely more on worker motivation and/or good supervision. While the pace of discrete substages may be controlled by the particular machines used, work is still frequently transported from one work station to another as it wends its way to completion and processes must be started and stopped. Thus the pace of the production process can be subject to dispute. During a long strike at the plant, in order to maintain production of this particular product, staff and supervisors performed the jobs of manual workers. As well as experimenting with new methods, managers jacked up the speed of the process and discovered that previous calculations of upper limits were incorrect. Some of the increase in pace was undoubtedly due to a sense of novelty and adventure. But even when the workers returned from the strike, the pace was set higher and continued higher than pre-strike with commensurate leaps in productivity.

While the British and Canadian fabrication units have many overall similarities in technology, the central Canadian process, as described above, does allow somewhat more potential worker discretion in the quality and pace of work. As will be observed later, this does not necessarily translate into a higher degree of worker control.

Finishing. At the third stage or *finishing* stage, the almost-finished products are prepared for packaging. There can be some minimal light assembly here but the operations performed are mostly painting (or other treatment of the surface) of the products. In both plants, the second greatest number of workers is employed at this stage (and the number is close to those employed at stage two).

The finishing stage in both plants is somewhat similar to the fabrication stage, except that even smaller batches of product are processed. Sometimes a semi-automated process is used (such as painting lines); sometimes short run assembly. At this stage there is less standardisation as individual customer preference is taken into consideration in the type of finishing and final assembly (if any) applied to the product. The span of control is somewhat shorter than the plant average and workers can have a fair amount of potential discretion, especially in the assembly areas (the painting process, being semi-automated is more routine and machine-paced).

Packing. At the fourth or packing stage, the finished products are packed and prepared to be transported to the customer. In both plants, the fourth greatest number of manual workers is employed at this stage. In neither aluminum plant do direct employees play a major part in transporting the product to the customer (although BRITMET had a crew of transport drivers up to a few years ago and they do figure in a major dispute which will be discussed later).

In both plants this stage involves the least technical complexity and is most labour intensive. Here the batches prepared are very small, basically individual customer orders and the work is mostly manual, with very few machines (other than hand-held simple ones) used. The amount of potential discretion available to the individual worker is high. The packing unit is not of great importance in the overall production process of the Canadian plant. But it is of some importance in the British plant, especially where the product market requires a high quality of finish. In this case, the product must be handled and packed quite carefully, often employing special packing material.

It is in this area that many control problems emerge because it is difficult for management to pin down the source of problems. Management is not sure whether the workers are not working fast enough whether the cause is the mismanagement of materials. The plant was not designed for its present function and so there are logistical problems with throughput. In fact, on occasion, batches of material from fabrication simply disappear, forcing a rescheduling of fabrication runs. Then, after the second run has been shipped, the original batch reappears and must be scrapped.

Craft Work. In addition to the workers directly involved in these four stages, both aluminum plants have a body of *skilled mechanical and electrical craftsmen* who

service, repair and sometimes participate in building plant, equipment and machinery. In both plants a small number of skilled craftsmen also work on designing, building and repairing tools, dies and jigs used in some of the machinery. (Many of these latter are considered 'manual' workers in the British plant and thus are in a manual union while those in the Canadian plant are all considered 'non-manual' and are non-union).

Not much needs be said of the technology involved in their work, which is close to the lower end of technical complexity (unit production). They produce very small units, determining the quality, quantity and pace themselves or in a collegial manner with their supervisors. The span of control is small (one supervisor to about 10 workers) and, naturally the system is one of responsible autonomy. At the time the study began, there were demarcations between mechanical and electrical craftsmen in both plants. As the study was ending, however, there was a move at BRITMET toward multi-skilling of craftsmen. All in all, the craftsmen played a much more important role in the industrial relations of the breweries than in the aluminum plants.

Finally, in both plants, a very small number of employees perform unskilled maintenance, cleaning and miscellaneous tasks.

In summary, then, the driving technology of the two aluminum plants is small to medium batch production, with a span of control of about 1 supervisor to 20 workers, machine-paced, with little potential discretion afforded to the workers and a control system about midway on the continuum between direct control and responsible autonomy. The ancillary technology varies only slightly from this norm.

4.3 The breweries

The breweries in both countries have four distinct stages of production.

Brewing. The first stage or *brewing* stage is similar in the two countries, consisting of three substages: brewing, fermentation and conditioning/filtration. For our purposes it is not necessary to go into great detail about the process of beer-making. It is reasonably well-known and has been well-described in several recent industrial relations studies (Batstone et al., 1987; Ghobadian, 1986; Davis, 1986) Various natural products are combined and then put through a process of cooking, mixing, fermentation, and filtration to produce an alcoholic beverage. This beverage is stored in large quantities, ready for

packaging. The brewing stage houses the driving technology of the industry, yet a very small percentage (about 8% in both countries) of the brewery workforce works here.

The technology employed is process production of large batches ie. extremely large batches of product are produced and the entire process is mechanised but there is starting and stopping while different ingredients are added to make up discrete batches (it is difficult to make brewing a completely continuous process because dry ingredients must be added in discrete amounts).

The quality and quantity of the batch is determined by a fairly complicated combination of factors: a) a written recipe prepared by the head brewer, b) electronic monitoring devices, sometimes feeding into a central computer, which can be programmed to direct or stop flow of product, detect faults and even intervene in specified situations, c) skilled craftsmen who maintain the machinery, d) a combination of supervisors, process workers and quality control workers who intervene at key points in the process and/or override the electronic monitors to add ingredients, drain the batch from one substage to another, take samples and test the product. As Woodward (1965) says of this type of technology, there is "a close association of planning, execution and control elements in the production function" (p. 161).

The impetus in both countries over the past fifteen years has been to remove, as much as possible, the fourth factor (human intervention) mentioned above. Woodward (1958) describes this imperative as an attempt to increase

> "...the extent to which the production process is controllable and its results predictable. For example, targets can be set more easily in a chemical plant than in even the most up-to-date mass-production engineering shops, and the factors limiting production are known more definitely so that continual productivity drives are not needed." (p. 12)

Yet neither brewery has been able to to make the production process entirely controllable and a fairly high amount of discretion still resides in the hands of the process workers (and their supervisors). While they need not watch the process continuously, they *must* be ready to intervene or summon more skilled intervention in crises and to intervene in non-crisis situations (to add ingredients or drain product) or they may themselves precipitate a crisis. Occasionally, automatic systems break down and manual work is necessary.

Workers in both countries are better-trained and more highly motivated here than the norm and there is more comradely interplay between and their supervisors than in the

rest of the plants, because they share a set of skills and commitment to product quality. The working conditions are not onerous (noise, warmth and humidity being the major complaints) and the pace is fairly mild. The span of control in both countries is much lower than the plant average, with roughly 1 supervisor to 3.5 employees. The type of control is far toward the 'responsible autonomy'.

Packaging. At the second or *packaging* stage, the alcoholic beverage is decanted into various smaller containers for distribution to customers. A large proportion of both brewery workforce (40% in Canada and 17% in Britain) works in this unit.

The technology in both countries can be characterised as production of large batches in assembly line operation. The main difference between the countries is in the package used. In Britain, the vast majority of beer is decanted into aluminium barrels of different sizes. In Canada, the vast majority of beer is decanted into bottles holding approximately 1/2 pint.

At CANBREW, the packaging unit is somewhat more mechanised than its British counterpart[11]. Bottles move at a feverish pace (the most high-tech bottle line churns out 1400 bottles per minute). As the bottles progress through the machines, they are recycled: unloaded from used cartons, washed and sterilised, inspected for flaws, filled with beer, inspected again, crowned with a cap, labelled, packed into cases of different configurations, the cases sealed and then moved on to the staging area. Workers sit or stand at key points in the process and intervene occasionally to ensure the line runs smoothly. A few engage in more physical labour (unpacking cases, picking out filled bottles which don't pass inspection). But the quality, quantity and pace of the packaging is primarily machine-led. And the quality of the machines is determined by the engineers who designed them and the skilled craftsmen who maintain them.

The span of control in CANBREW's main packaging area is roughly 1 supervisor to 35 workers and veers distinctly toward direct control. Workers have virtually no individual discretion for both workers and supervisors are at the mercy of the machines and constantly under pressure. One supervisor describes the situation:

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11 There are two small, peripheral 'low-tech' subunits off to the side of the main packaging unit at CANBREW: a carton makeup unit and racking room where metal kegs are filled for distribution to taverns. Both subunits have medium batch production.

It is no wonder then, that this is the area of the plant with the worst industrial relations problems.

At BRITBREW, the assembly line is less infernal. The individual containers are physically much larger than bottles and the machinery and technology is fairly old and cumbersome. Used kegs are received, sorted and stored for short periods of time. Then they are recycled: washed, sterilised, filled, labelled, inspected and then passed on to the staging unit.

The span of control in the BRITBREW packaging unit is roughly one supervisor to 20 workers and, though much more direct than brewing, a bit farther toward responsible autonomy than the Canadian packaging unit. Though the quality, quantity and pace is set by machines on the keg line, the machines are not relentless and the process often needs to be 'coaxed' by the workers.

Staging. In the third or *staging* stage, the containers are assembled for shipment. A smaller percentage of the workforces (Canada 16%, Britain 5%) work here. In both countries, the technology is medium batch production. The containers (or containers of containers in Canada) are collected from packaging, put onto pallets for ease of storage and movement, stored for short periods of time and then moved up to be loaded on lorries. The main instruments used are fork lift trucks, hand trucks and muscles. The muscle aspect is more prominent at BRITBREW because the barrels are depalletised before they are brought up to the lorries. The quantity, quality and pace of the work is determined by the workers and their supervisors. The span of control in both plants is about 1 supervisor to 20 workers and tends toward direct control.

The staging units would seem like insignificant backwaters in the production process except for a major fact: the perishability of the product. Because the life of the product is so short, stock cannot be inventoried. The staging process is a highly logistical operation, in which batches of product are assembled and routed continually to keep distribution outlets freshly stocked. So the turnover of product must be quick. Control is of the essence yet lead times are short. Yet, unlike previous stages, there is much less controllability by management of the production process. It is the bottleneck of production throughput and the workers concerned are concentrated in discrete locations (two, at CANBREW, which has a remote as well as onsite warehouse; three, at

BRITBREW, which has separate warehouses for casks, kegs and bottles/cans). Because of their strategic placement in the product flow, workers here in both countries can potentially exercise a great amount of control.

Distribution. In the fourth or *distribution* stage the containers of beer are carried by lorry drivers (called truck drivers in Canada and draymen in Britain) to downmarket dispensers of the product. The lorry drivers make up the greatest proportion of the British workforce (42%) and a significant proportion of the Canadian (12%). In Canada, the company ends its direct control of the process here. In Britain, the company may continue direct involvement in the process of distribution of the product to the public but the workers at this further stage are members of a different bargaining and financial control unit and thus irrelevant to this study.

The technology at this stage can best be described as small batch production. Directed by a system of load summaries prepared by a dispatch or forwarding office, drivers (sometimes with the help of staging employees) load predetermined quantities of various products onto their lorries. They drive the product to various delivery points within the geographical area served by their depot. Then, mixing groups of products according to waybills (also prepared by the dispatch or forwarding office), they make the delivery to the distribution outlet.

The distribution outlets differ somewhat in the two countries. In Britain, they are mainly individual pubs and clubs, and secondarily, 'off-licence' retail shops and supermarkets. In Canada, distribution outlets are either state-run or regulated retail beer stores. The greater number of distribution outlets in Britain accounts for the larger workforce in this unit.

Because the Canadian loads remain palletised and because distribution outlets are purpose-built to receive the pallets where the lorry backs into a shipping bay, a single driver, using a hand truck, can do the job himself in a relatively short time with a moderate amount of effort. In Britain, most pubs are quite old and kegs and casks are stored in cellars. In crowded urban areas, the lorry must often be parked at some distance from the pub. The barrels required are then heaved over the side of the lorry onto rope cushions, transported manually from the lorry to the cellar door, lowered by a primitive system of ropes to the cellar, moved to the racks and finally loaded into the rack for

tapping. The work is demanding physically and thus a crew of draymen (2 or 3) man each lorry.

In both countries the quality and pace of production at this stage is very much in the hands of the individual workers. They have a considerable degree of control over quantity but this is constrained by the loads they are assigned. A process of explicit or implicit negotiation and a sense of 'fairness' determines the loads. The span of control is extremely large, with one supervisor 'supervising' all of the deliverymen (at BRITBREW, the supervisor is assisted by several functional staff in charge of such things as driver training, customer relations etc.). The control system is quite definitely 'responsible autonomy'.

In both countries, a distinctive culture exists among brewery driver/deliverymen and is especially pronounced in Britain. According to a BRITBREW personnel manager:

> "There's a great aura perceived in the job. It's the culture of rippling muscles and the uniform is a badge of office. It can also be a message of intent to the opposite sex. But they have tremendous loyalty to the company."

This occupational pride and ethos of public service is also strong among Canadian drivers. For over half a century, Canadian brewery lorry drivers have been trained in first aid and simple automobile mechanics, furnished with equipment to assist motorists who are injured or whose vehicles have broken down, and paid a bonus for doing so.

In both countries, however,these workers insist that the culture has been slowly dying out as the beer industry declines, and as 'modern management' techniques take over. Nevertheless, it is as strong or stronger than the molten metal culture.

Craft Work. In addition to the workers directly involved with the four stages above, both breweries have a good sized body of skilled craftsmen (14% at BRITBREW, 16% at CANBREW). The technology here is obvious. However, because of the technical complexity of the driving technology in the breweries, the engineering units are larger than in most manufacturing plants. Most of their efforts are spent at the first two stages of production, with the emphasis on brewing in the British plant and the emphasis on both brewing and the high technology packaging lines in Canada. As in the aluminum plants, we move from technologies of greater to lesser technical complexity and the pace and flow of work becomes ever less dependent upon machines.

As in the aluminium plants, there is a small body of unskilled maintenance and service workers in both countries.

To summarise the breweries, then, the driving technology is continuous process production in batches , with a small span of control and control system responsible autonomy. However, the ancillary technologies vary greatly from this norm. Although millions of Pounds (and Dollars) are spent in improving technological complexity to achieve control of the production process at the top end, a small group of workers operating with simple machines and muscle power sit at the bottleneck of production flow, at the bottom end.

4.4 Summary

To summarise the consideration of technology in our case studies: it can be said with some confidence that despite a few differences, the bundle of technologies employed in each industry is very comparable across the two countries. Within each country, the demarcation in the bundle of technologies between the industries is clear and wide and some of the industrial relations implications of this demarcation can already be drawn together.

Moreover, the range of variation between the driving and the ancillary technologies differs quite substantially between the two industries in both countries. From our modest case study observations, some speculation about the industrial relations implications of this is in order.

The effect of size upon union organisation and strength and industrial relations climate of a workplace has already been discussed. It has been suggested that in the workforce size domain of the workplaces studied here, dramatic differences occur. It was proposed to look at other factors that might impact upon where the threshold lies. In studies of the relationship between size and technology and their differential impact upon organisation structure, Hickson et al. (1969) have concluded:

> "The smaller the organisation, the wider the structural effects of technology" (Hickson et al., 1969, p. 395)

In other words, the larger the organisation, the more difficult it is to define an overall technology and to read off structure from technology. This may help explain why attempts by industrial relations commentators to link industrial relations outcomes with the technology of large organisations raise so many problems. Rather than concentrate the

discussion of technology on the organisation as a whole, it may be best to concentrate, at the outset upon the work units within the organisation. The technology employed in any work unit does have great implications for the control of labour in that unit. Each distinct type of technology in a work unit has its own system of labour control or industrial relations 'culture' built around it. To borrow a concept from Lawrence and Lorsch (1969), a *differentiation* between the cultures of production units occurs. The greater the degree of differentiation across a workplace, the more difficult it becomes to *integrate* the overall industrial relations culture of the workplace.

Because the amount of investment in equipment and production control is greatest in the driving technology, its industrial relations 'culture' will naturally exert the strongest magnetic force upon the industrial relations 'culture' of the entire workplace. Managers will become more adept at applying that style of labour control to the entire workplace. This is not a problem where the variation in cultures is small. But if the ancillary technologies vary greatly from this norm, then it will be more difficult for management to coordinate a particular 'style' of labour control on the operation. This will be especially exacerbated if groups of workers in ancillary units can exert undue pressure on the whole production process, as is the case in the breweries.

As with size, no simple connections between technology and levels of industrial conflict are postulated. But at the beginning of this section, it was suggested that technology constrains industrial relations outcomes more than others. Certainly the industrial relations outcomes varied more between the breweries than between the aluminum plants. What is being suggested in the context of these case studies, is that the high differentiation apparent in the breweries makes technology less constraining a factor in industrial relations than in the aluminum plants, that is, it allows other factors, and perhaps distinctive national factors, to have more impact.

5. Product Markets

Unfortunately, there is no plethora of theoretical frameworks to analyse the effect of product market variations on industrial relations as there is for size, technology or labour markets. Brown (1973) suggests that five aspects of the product market combine with several aspects of production technology to affect the degree of management control exercised at a workplace. Yet as seen, technology can not so easily be defined over an

entire workplace. The impact of the product market, however, does remain constant over the workplace. The five aspects of product market Brown looks at are: a) the importance of price competition, b) the relative importance of production being on schedule, c) the relative importance of quality vs. price, d) the fluctuation of demand and/or costliness of inventory and e) labour cost as a proportion of value-added (1973, p. 170). While these factors might suffer somewhat from multicollinearity if put to a rigid statistical test, and Brown cautions that they are impressionistic, he seems headed in the right direction. He suggests that relative unimportance of price competition, production being on schedule, quality vs. price and relatively low labour cost as a proportion of value-added may all contribute to hinder strong management control. But Brown is looking only at engineering plants. In comparing quite different industries, the significance of the first three might be modified somewhat to inject the element of *control*. Thus the difference between the aluminium plants' and the breweries' product markets lies not so much in the *importance* of price competition, scheduling of production and quality vs. price as in the *controllability* of these things. Thus the aluminium plants have more problems in controlling, standardising and basically getting the pricing, product quality and product delivery schedules right. The breweries have much more control over them.

Woodward (1965) gives a hint in the same direction when she looks at the relative importance of the three phases of manufacture: marketing, development and production, in her three broad types of production system. Given our caveats about imputing technologies over entire workplaces, her production systems might be redefined as special features of the product embedded at the stage of the driving technology. Woodward argues that for each production system, one of the three (marketing, development or production) is the "critical function". In unit and small batch production, *development* is critical (because the product is made to order and must meet customer specifications *before* it is produced); in large batch and mass production, *production* is critical (because a demand for the product is assumed and the concentration is then on how to coordinate the manufacture of *many* of the the items); in process production, *marketing* is critical (because the product is produced so efficiently and because of difficulties in storing or perishability of the product, markets must be secured).

Simplifying Woodward's analysis somewhat, in analysing our case study plants, they can be divided clearly into *production driven* and *market driven* depending on the nature of the product market. The aluminium plants, producing medium batches of goods mainly to specification are definitely production-driven. The breweries, producing continuous large batches of a perishable substance, are market-driven. As the production coordinator of the Canadian brewery puts it:

"This business is 20% consistency and quality of product and 80% marketing"

As with Brown, above, the key issue becomes *control*, but control of four key variables that impact upon industrial relations: the production process, labour costs, pricing, and secular demand. Greater control of the first two frees management (and the workers) from high degrees of vigilance; greater control of the second two allows for more stability, more evenness of profit flows, which, in turn provide for higher wages and benefits and greater leeway for *indulgence*.

Between our case study industries, there are quite dramatic differences in control of these variables.

5.1 The breweries

The product market story is remarkably similar in Canada and Britain. Beer producers combine in a classic oligopoly (with only three major, and few minor brewers in Canada and ten major and several more minor in Britain, although the long-term trend in Britain is to further concentration). While producers may attempt to differentiate their product and may succeed through advertising and packaging, in creating an 'image' of their drinker, the products are really substitutes of each other, with a high cross-elasticity of demand.

Consumer loyalty to a particular brand is volatile, especially in Canada, where brands are national and taste differences less acute. Somewhat more than in Britain, a change in price (without a corresponding change in quality) or temporary unavailability of one brand, will mean a long-term desertion of that brand. Before Canadian brewers teamed up in an industrial relations cartel, a strike of more than a week against one brewery could mean an almost instantaneous drop in its market share which would take

many years to recoup[14]. Likewise, a long strike and subsequent plant closing at one of BRITBREW's regional competitors led to its almost total annihilation in that market within a short time.

Up until recently, brewers in both countries, acutely aware of this volatility, have colluded in reducing the ferocity of their competition and a sort of 'gentleman's club' grew up. In Britain, price, though unregulated, has varied little. In Canada, government has closely regulated the price of beer. In fact, in both countries, governments have a high financial stake in beer sales, with about a third of the price of beer in Britain and over half in Canada being taxes (ICC Business Ratios, 1985; Brewers Association of Canada, 1983). In both countries, brewing companies have formed highly professional and cohesive industrial associations for lobbying (and, in Canada, less formally, for industrial relations) purposes. Like all oligopolies, the pressure to cartelise prices is almost irresistible. Customers are so atomised that they have no control over the price of the product as a whole. For all the above reasons, then, in brewing, the 'price is right' ie. there is a high degree of control over pricing the product.

The collusion was possible first, because, like mafia families, the consequences of all-out war were unthinkable, not least to government revenues, and second, because the market seemed ever growing. For despite the volatility between brands, the market as a whole was marked by profound stability. For many years, in both countries, "drinking, for many people, [has been] social activity which has a high claim on available funds, come what may" (ICC Business Ratios, 1985). Beer has been primarily a 'working-man's' drink in both countries, and beer consumption has traditionally been among the last to fall in a recession and the first to recover. In a classic Galbraithian formula (Galbraith, 1958), the brewing industry has been among the biggest spenders on advertising and marketing, to stimulate and regularise demand.

After a long and steady increase, however, the market peaked around 1979, stagnating during the early 80's recession and has not recovered . Industry experts now

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14. While brewing companies are loath to reveal figures, the full-time officer of the union at CANBREW estimates that a strike against another Canadian brewing company in another province in 1971 led almost immediately to its relegation from top to bottom in market share and that it took 10 years for it to regain the pre-strike volume of sales. A senior brewing executive cites a five month strike in another province in 1976 which resulted in a 15% drop in market share for the company. The company has not made a profit to this day.

predict a slow worldwide secular decline in beer consumption for a number of reasons, primarily industrial and social demographics.

Because of this decline, brewers in both countries have embarked on a number of protective strategies: 1. They have moved to buy up smaller breweries in their own countries and are looking abroad to purchase brewers or brewing groups in other countries and they have diversified into a wider range of companies and products, including foods, other alcoholic beverages and leisure services; 2. They have taken the gloves off in the search to increase market share. They have done the latter by a number of means, including a) further segmenting the market by developing premium and discount brands and distinctive containers, b) increasing the already high intensity of media advertising, c) developing 'national brands' where the opportunity exists, and also developing 'international brands' which can sell in many countries. Coincidentally, the development of international brands is especially salient in both Canada and Britain, as free trade looms on the horizon, in the former case with the US, in the latter case with the EEC.

The above tactics and exigencies have resulted in an imperative to rationalise, including riding the wake of a consumer trend to the more-easily produced lagers[15], increasing the pace of technological change in brewing and packaging, and belatedly following international trends to tighten organisational slack in all areas, and especially industrial relations.

Despite the recent changes in the product market, brewing has been remarkably consistent in a number of key business ratios. Wage and salary costs as a percentage of value added are remarkably low and stable (Department of Trade and Industry, 1986). Profit margins (profit before tax as a percentage of sales) and return on capital are high and, more important, strongly consistent (ICC Business Ratios, 1985).

Thus it can be seen that breweries exercise a high degree of control over the production process, labour costs, pricing and secular demand. The aluminium plants fare less well in this regard.

5.2 The aluminium plants

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15. Despite the general trend to standardisation, British brewers have responded to a small but vocal consumer uprising and are making money producing 'real ale'. Exploiting a small market segment while pursuing a general rationalisation strategy is not at all unusual in the annals of marketing.

Somewhat the reverse of the brewery product market situation characterises metal fabrication. While competition *between companies* within the market is not as volatile as in brewing, *the market as a whole* fluctuates much more . It is to the *end user* that the bulk of the breweries' marketing drive is directed. The aluminium plants, on the other hand, sell almost exclusively to industrial customers, who process the product further (and may in turn pass the product on to another industrial customer) before it reaches the end user. Thus production, not marketing becomes key.

The market here is closer to monopolistic competition. While the barriers to entry are not insubstantial, they are a great deal lower than in the breweries. The products are more highly differentiated from firm to firm. Cross elasticity is much lower than in brewing and customers will remain loyal for longer in a supply crisis and return more readily afterward. Strikes at both CANMET and BRITMET did not as quickly become disastrous affairs as those in brewing generally do. Customers either stockpiled inventory before the strike, or looked for supply elsewhere temporarily, and in many cases, returned after the strike was over. Long-term relationships between the aluminium plants and their industrial customers are highly valued and not easily abandoned (although business is business and this bond has its limits).

Accordingly, relationships between the aluminium plants and their competitors is not nearly as close as among the brewers.

The demand for fabricated aluminium products *as a whole*, however, follows a volatile pattern and is highly sensitive to economic conditions. Since most of the products of both CANMET and BRITMET are destined for the building, transportation or consumer durables trade and the products of all these industries are highly income elastic, demand for the products of our case study plants is greatly affected by the state of the economy. But the effects of the economy cannot be read off easily. There are lags and complex ambushes that make it difficult to predict demand even when the state of the economy can be predicted.

Pricing is also very difficult to control and get right. This is partially because of the volatile nature of the aluminum commodity market, so that the cost of the main component fluctuates.

The difficulty in achieving price control is also partially because the aluminum plants deal with a discrete number of larger customers. When the number of customers for a product is small and the orders large, the customer becomes a price setter. This fact makes it difficult to read off profitability from productivity[16].

Like beer, fabricated aluminum goods are a mature product in terms of market growth. Nevertheless, both the aluminium marketers and their downmarket customers are developing new uses for the product which seem to regularly revive the fortunes of the product when they are flagging.

Unlike brewing, the metal fabrication industry is marked by wide fluctuation in key business ratios. Wage and salary costs as a percentage of value added appreciably higher and more inconsistent compared to brewing (Department of Trade and Industry, 1986). Profit margins and return on capital also swing wildly (ICC Business Ratios, 1986a, b, c, 1984).

5.3 Summary

In summary then, there are dramatically different patterns *between the two case study industries in both countries* yet strong similarities between Canadian and British plants *within the same industry.*

While breweries can exercise a high degree of control over the production process (quality and delivery time), labour costs, pricing and secular demand, the metal fabrication industry cannot. The effect of these constraints upon industrial relations will emerge in discipline, in structuring of the internal labour market, and especially in the amount of job control which work groups can have.

6. Management organisation and structure

To a surprising extent, management organisation and structure in all four case study plants was similar. All are part of larger, multi-divisional companies so it is within that

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16. For instance, BRITMET's main Italian competitor is far more productive than BRITMET. One reason for this productivity differential is the fact that the Italian plant produces a much smaller variety of items (necessitating less numerous switches of dies and subsequent down time on presses). Yet this smaller variety is destined for a smaller array of customers than is the case at BRITMET. Because of the reliance upon these few customers, the Italian plant is subject to a high degree of customer dictation of prices. Because the prices are lower than they might otherwise be, the Italian plant, *though more productive, is less profitable than the British.* But the BRITMET managers admit that they also find it difficult to price correctly. Likewise, although CANMET has censored the technology for its main product and has few competitors in the world, it is limited in its ability to exploit this factor by the large size and small number of its customers for the product.

context that management organisation and structure is discussed. Corporate concentration is a way of attempting to exercise control over an uncertain external environment. In our discussion of our cases studies so far, it has been seen that vertical integration within a company of the various stages of production can reduce uncertainties in the price and supply of strategic inputs at one end and of markets at the other. But there is a further way of dealing with uncertainty: Horizontal integration within a company across a range of different products and even industries provides a portfolio of intracorporate investment to reduce uncertainties in the employment of and return on capital. The key questions for industrial relations will be the relationship between the highest authority of the company and the lower divisions and manufacturing units—in decision-making on both production and collective bargaining issues. A constant theme among multi-divisional companies is the dialectical interplay between the the efficiencies obtained by central control and the flexibility obtained by autonomy of the divisions and units, between the looseness and tightness of the organisation and structure of management.

There are many similarities among our case study plants in this regard. Encouraged by the recent recession in both countries, the imperative has been toward a reduction in number of vertical levels between headquarters and the divisions and toward greater autonomy in production and industrial relations decision-making (and greater responsibility for profit) of the peripheral units. Yet paradoxically, the move toward autonomy has been accompanied by greater efforts by head offices (and the units themselves) to coordinate their activities and closely monitor results. What once may have been a directive from on high is now a strong recommendation or persuasive pull from the majority of one's colleagues. And the 'new regime' may, in fact, be even more compelling than the old.

Edwards (1987) indicates that this is a general trend among British firms according to his survey of factory managers:

> "Autonomy... was far from illusory. Not only was the actual running of the plant, a duty whose responsibilities should not be minimized, left to them with little outside interference. They were also able to take decisions which potentially had important ramifications for the rest of their firms. It is very unlikely that they would have taken such decisions without reference to what was going on elsewhere or to company guidelines, but it is also true that they were not merely following out orders from above." (Edwards, 1987, p. 111)

Yet Edwards cautions that the degree of autonomy was constrained by certain limits:

"The monitoring of the plants' performance was substantial and the results of the monitoring are likely to have affected corporate perceptions of a plant and hence its ability to attract investment funds and even its chances of remaining open. This fact must have had a powerful affect on how the factory managers conducted themselves." (p. 111)

This phenomenon was visible in all four case study plants, but BRITMET provides a good example of how it operates. Its parent company holds a mid-year personnel conference where the company's chief executives and its small corporate personnel team meet with personnel managers of all plants. The personnel officers give reports on their collective bargaining activities and upcoming negotiations. The information from this meeting is distilled into a report for the corporate board (the corporate managing director and the managing directors of the divisional companies), who, after consideration and perhaps some change, endorse it.

While the majority of units in the group have autonomy, some are 'controlled' more than others. The degree of control exercised depends upon whether there are "significant departures from the norm in the corporate review process[17]". These departures may be in the areas of economic performance, capital investment, compensation and the possibility of industrial conflict. If, for example, a plant is performing poorly, or proposes to spend a large amount of money on plant or equipment, or foresees a major strike on the horizon or predicts it will not be able to avoid a strike without a massive increase in pay, then that plant will be monitored much more closely. But chances are high that its management will already have (and is expected to have) voluntarily flagged these issues to colleagues and higher management at the communal meeting(s). If local management foresees a strike and presents a good argument as to why the company should 'take on' the strike, it is very likely to receive the funds or allowances sought from head office.

On the other hand, the BRITMET's parent company's personnel group will, on occasion, attempt initiatives in bringing the plants into compliance with legal or industrial relations standards. In areas such as equal opportunities, health and safety, recruitment and 'good' or 'best' personnel practices, head office will conduct audits of existing provisions in the plants and then circulate guidelines on these issues.

In all our case studies, the loose-tight relationship between headquarters and divisional units operates in a remarkably similar way to that described above.

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17. Conversation with a senior manager of BRITMET's parent.

All of our case study plants have discrete personnel departments with small staffs (usually 1 or 2 senior personnel managers who oversee personnel as a whole as well as conduct negotiations with the trade unions; and 2 or 3 staff assistants who specialise in combinations of areas such as pay and benefits, selection, recruitment, training, health and safety). Perhaps the greatest difference between the two countries is in the length of job tenure of personnel managers. The personnel managers and their predecessors in the British plants had been or were expected to be in that position for upwards of ten years. In neither of the Canadian plants had the personnel managers been in the job more than three or four years.

In all four plants, the role of the personnel managers vis-a-vis the production managers suffered from the same types of problems of ambiguity. As experts in industrial relations, the former would be looked to by production managers to play a major role in disciplining, providing information to, and solving disputes from, the workers. In Canada a body of law has long affected relations between workers and their superiors; in Britain, that body of law, once small, is growing. The body of law has been supplemented by intraenterprise regulation to protect the company. Production supervisors and managers in both countries tend to lack confidence in their ability to deal with this body of regulation. If allowed, they would abdicate these matters to personnel.

But the personnel managers can only perform their role effectively if they are seen, to some extent, as 'honest brokers', sometimes intervening on behalf of the beleaguered employee against the supervisor. The Canadian personnel managers seem slightly better at this, partially because the grievance procedure is so formalised and simplified and partly because Canadian shopfloor supervisors are used to exercising more discretion in disciplinary matters than their British counterparts.

7. Union Organisation and Power

7.1 Introduction

The purpose thus far has been to examine several important *contextual factors* which may divide or homologise our case study plants across industry or country. In this section, an attempt is made to tackle a more *intrinsic factor*. Before launching into detailed discussion in the coming chapters, the beginnings of an analysis of differences in industrial relations is assayed by comparing union organisation and power among the

plants. This will also serve as a general introduction to the climate of industrial relations in the plants.

Up to this point, it has been possible to group the case study plants together, either by country or by industry, for discussion of each topic. In union organisation and power, however, the field widens. There is a clear hierarchy among the unions studied in the degree of power they are able to wield.

Strangely, there is one common complaint that the managements in each of the four plants have about the unions they deal with. Despite differences in union power conspicuous to the outside observer, all the personnel managers interviewed wished that the the union representatives in *their* plant could exhibit more 'leadership' over the workers. What does this mean?

It is important to remember that in all four plants, management has, to a greater or lesser extent 'accepted' the union and incorporated this acceptance into its management style. It has done so partly because the costs of operating union-free are judged too high, but also because the union can potentially be very useful in expressing the complaints, desires and aspirations of the work force. Management wants the union to be able to express this unrest in a coherent, authoritative way, to suggest possible solutions, to negotiate and then to 'strike a deal' that will settle the unrest, if not permanently, then at least long enough that management can get on with the business of managing. It wants the union to be able to 'deliver' its members. For this ability to 'deliver', all the managements indicated their willingness to pay a higher price. As General and Municipal Workers General Secretary John Edmonds says:

> "Most employers want a quiet life. They want negotiations about pay and conditions to be completed quickly with little or no trouble....If a negotiator can offer an employer a quiet life often that negotiator, whatever his or her accountability, can get a little bit more in terms of the offer" (Edmonds, 1986, p.2)

But union leaders cannot always deliver so easily, because they must deliver not only to management, but to the workers as well. And they must not only deliver to the workers but 'be seen' to deliver. The two delivery systems are inseparable and mutually additive.

> "A strong bargaining relationship rests upon a broad balance of power between the two persons involved. Unless the other person has a degree of power, there is little attraction in giving him confidences and support, for little will be gained in return...For, if a strong bargaining relationship fails to bring advantages to both parties, then there is little attraction in maintaining it." (Batstone et al., 1977, p. 171)

In order to establish some sort of ordinal ranking of union power, it is necessary to look not only at how leaders persuade members to follow, how they initiate and direct issues for the members and how they establish a dominant perspective among those members (Batstone et al., 1978), we must also look at how they can effect compromise and make the compromise stick.

So union power in our workplaces will be analysed by examining the unions' capabilities to not only: control and direct the effort bargain, defend its members against arbitrary measures, wage bargain successfully, articulate its members' interests coherently and mobilise discontent; but to also: 'sort its members out', obtain cohesion among disparate interest groups, contain the centrifugal forces that can scuttle deal-making and exert control over the timing of disruption and industrial action.

According to this set of indices, the ranking of our case study plants clearly has the breweries far ahead of the aluminium plants. At the top of union power is BRITBREW, followed by CANBREW. The Canadian brewery is followed by the Canadian aluminium factory CANMET. And lowest in union power comes its British counterpart BRITMET. Each will be discussed in turn, contrasting the two extremes first[18].

7.2 BRITBREW

All the manual workers in this plant are represented by a large general union, which has been the active bargaining agent for some thirty years[19].

The convenor works full time in his position[20] and is paid by the company at a salary commensurate with that paid in his former department (in the packaging unit)[21]. Both the assistant convenor and the branch secretary are paid by the company for what amounts to permanent part-time work for the domestic organisation. The union is afforded a suite of

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18. To denote the union as it exists at the workplace, the term 'domestic organisation' (Batstone et al., 1977) or 'union' will be employed. To denote the union as it exists outside the workplace, the term 'external organisation', 'external union' or 'parent union' will be employed. For convenience, the top union official in the domestic organisation is always referred to as the 'convenor' (though that term is not used in Canada). Full time officers from the external union servicing the domestic organisations will be referred to as 'staff officers'.

19. The single general union represents everyone at BRITBREW, including skilled crafts workers. While these workers were at one time members of craft unions, and some still retain membership in those unions, the craft unions were supplanted in the early 1960's by a vigorous organising campaign on the part of the general union.

20. Full time convenors are present in approximately 56% of the British establishments in BRITBREW's size range and in only 5% of private manufacturing establishments (Millward & Stevens, 1986, p. 79-80).

21. The salary paid to the convenor also rises, within its flat rate, to take account of the bonus and overtime earnings current in his former department.

offices on the plant premises and has access to telephones on the plant system, photocopying and other services at the expense of the company[22]. At the time of the study, there were fourteen stewards recognised by the company (on average one for every 34 workers)[23]. However, discounting the transport steward, who represents all 209 draymen[24], there is one steward for every 21 members, slightly lower than the average for that size of British establishment. The stewards are reimbursed for time lost on union business, including monthly shop stewards' committee meetings. While some stewards spend very little of their work time on union duties, others (such as keg staging unit steward) spend a majority of their work day on union affairs. The amount of time spent depends upon the climate of industrial relations in the department and management indulgency.

Monthly shop stewards' committee meetings are held in the company social club and generally last half a day. They are well organised, with a prepared agenda, including a report from each steward on activities in his area, followed by critical comments from the other participants. Other than a very general provision in the collective agreement recognising shop stewards, all of the above facilities and provisions for domestic union officials are by unwritten agreement between company and union, ie. custom and practice.

Records of the domestic organisation are extensive but in disarray, reflecting not so much poor organisation but rather the reliance on the 'savvy' of the convenor and the shop stewards in conducting their relations with management. The domestic organisation chooses to seldom, if ever, conduct mass meetings of its memberships, preferring to rely on a combination of representative democracy (members meet informally with shop stewards who report to steward committee meetings) for day to day business and ballot referenda for key decisions.

Since the external union represents most of the brewery workers across the country, intraunion organisations of plant representatives exist to coordinate the union's activities

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22. The union representing staff is a branch of an autonomous section of the general union. This branch is also afforded an office, and similar facilities, in the same building as the manual workers' general union.

23. In British establishments of BRITBREW's size, there is an average of 29 manual union members per steward (Millward & Stevens, 1986, p. 87)

24. In recognition of the heavy representation load for the transport shop steward, the company, somewhat reluctantly, allows that steward to consult with a 'fleet committee' of five drayman representatives every six to eight weeks.

in this industry generally and in the network of plants owned by BRITBREW's parent company in particular. While bargaining is conducted at the establishment level across the industry, the officials taking part in these organisations have erected a fairly sophisticated but informal system aimed, in the event of a strike at one plant, to prevent or slow down supply in the area by neighbouring plants. The system works better in those parts of the country with stronger union culture (such as that near BRITBREW) and where 'national brands' are not involved (where beer can be brought from very far away). Such tactics (secondary action and blacking) are technically illegal according to the Employment Act 1982, but strikes in the industry are generally so short that they are over before employers can reasonably take any action and before the union can mount a recognisable campaign of blacking.

BRITBREW is serviced by a staff officer working out of the union's regional office, who is responsible for branches involving brewery and pub workers. Although he is formally supposed to be involved at the last stage of every grievance and pay negotiation (ie. prior to a strike), he is seldom involved in union-management affairs at BRITBREW. Work stoppages frequently occur without his prior involvement and sometimes without his involvement entirely (though this is not the case in longer disputes where the external organisation is dragged into the matter by legal considerations). This is partially because the convenor prefers to keep the officer at arm's length and partially because grievances and pay negotiations so seldom *formally* reach the last stage, as will be seen in later chapters. Nevertheless, the convenor cannily involves the officer in disputes on an instrumental basis, such as when a particular dispute threatens to prove embarrassing for the convenor[25].

The convenor had, at the time of the study, been in his position for six years, with some three previous years' experience as a shop steward. He has more education (to 18 years of age) than the average manual worker (though this phenomenon is less unusual in breweries). Much of his time is spent in informal meetings with shop stewards and individual workers and with the personnel managers (he estimates that he spends an

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25. Examples of such occasions are: when branch politics put the convenor in a position of choosing one group against another; when union members disagree with the convenor; when the convenor feels may lose credibility with the company or his members by adopting a position.

average of two hours per day in discussions with the personnel managers). The personnel manager indicated respect and admiration for the convenor, which is reciprocated.

Immediately striking, compared to the other three case study plants, is the immense self-confidence of the convenor and many of the shop stewards at BRITBREW in their ability to accomplish *both* systems of delivery. They form what Batstone et al. (1977) call a "quasi-elite" and conform to the "leader" type of shop steward depicted in that book.

In addition to the union's confident assertiveness toward the company, it also is confident in 'sorting out' its members and has a strong sense of what is and is not 'fair'. If the union feels a member has misbehaved and deserves the discipline imposed, it will simply refuse to carry his case further, sometimes attempting to persuade him to accept the discipline. And the convenor admits readily that "a deal can and will be often be struck over the head of the individual worker who, for example is caught fiddling. Someone has to take a decision in the best interests of the branch". Fights between members and jurisdictional disputes are handled by the union exclusively:

> "Somebody's got to make a decision in these matters. Better the union than the company. That's acceptable to the members".

Finally, the union has the confidence to suggest that

> "In disputes, we don't always insist on winning; we sometimes look to give management an out"[36]

Whether the above is absolutely true or not, the attitude expressed suggests that the union feels secure enough about its power in the workplace to be open about compromise. In none of the other case study plants is the union nearly so secure.

7.3 BRITMET

In contrast to the strength and self-confidence of the BRITBREW union, that at BRITMET displays incertitude and obstinacy and a serious failure in delivering 'the goods' to either its own members or to management.

The majority (84%) of the manual workers at this plant are represented by a large general union (different than the one at BRITBREW) which has been the active bargaining agent at least since the War. Mechanical tradesmen (13%) and electrical tradesmen (3%) are each represented by their own craft unions. From hereon, comments will be directed at the general union, unless otherwise specified.

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[36] Conversation with deputy convenor

The convenor is not full-time and works three shifts in rotation in the packaging unit of the plant. Although management allows him fairly liberal paid time off for union business (and allows him to assume the day shift for this purpose when working shifts), his availability for union business on a particular shift is not assured unless he has advance notice of being required. Likewise, because he is a regular member of the production team, his supervisors sometimes are reluctant to release him on short notice. Though theoretically able to get all the time necessary for his position, the difference between his freedom to do the convenor's job and that of the BRITBREW convenor is enormous.

Although the deputy convenor works on a different shift, the company refuses to formally recognise him in this position unless the convenor is away from work entirely (on vacation or ill). Even then, the deputy convenor is not afforded the time off available to the convenor. Both craft unions have their own convenors but they are afforded few more privileges than ordinary stewards.

Despite several requests over the years, the company has refused to afford the unions dedicated office space, filing cabinet or telephone (although upon request, it will allow the unions to use rooms for specific meetings, access to company telephones and photocopying facilities). Though such facilities are usually available if, when and for the time requested, there is again an enormous difference from the situation at BRITBREW.

At the time of the study, there were 20 stewards for the general union (1 per 27 workers), higher than the national average, and nine and two respectively for the craft unions (roughly 1 per 8 in both cases). The craft stewards are reimbursed for work time spent on union business and allowed to assume the day shift on the same basis as the general union convenor but with absence more tightly controlled. There are few, if any, regular shop stewards' committee meetings (in the sense that they exist at BRITBREW) or mass membership meetings except for the period immediately surrounding annual pay negotiations. What facilities and provisions exist for union activities are by unwritten agreement.

BRITMET is serviced by a staff officer working out of a sub-regional office in the same town, who is responsible for a wide array of industrial establishments in the vicinity. As at BRITBREW, though formally required at the final stage of procedure and negotiations, he is seldom involved in union-management affairs. But this is not due to as

conscious a decision on the part of the convenor as is the case at BRITBREW. In general, British union staff officers simply do not intervene unless called upon to do so. And he is not called upon to do so very much at BRITMET. As much as possible, personnel officials attempt to keep their dealings with the union to the domestic organisation. At one point, they refused to allow an external union safety officer on the premises for inspection in a matter which they felt had been handled adequately in plant. Domestic union officers themselves do not have a high regard for staff officers:

> "The last four organisers have been no good. Once you call the union official in, you've lost. The main reason for the final stage is so you can blame somebody else. I guess that's what's called passing the buck."

The convenor, at the time of the study, had worked at BRITMET since 1956 and had been involved in the union for most of that time. He had been convenor for all but one of the previous seven years. He is a dedicated but not aggressive trade unionist, a smoother rather than a confronter, who readily fits the image of the "populist" steward (Batstone et al., 1977). An example of his attitude is evidenced in his preference for the night shift:

> "Fewer people bother you. I don't rush off looking for trouble—it comes to you. If you cause unnecessary problems, some day you get your right arse kicked"

Union members at BRITMET seemed to look upon the convenor with some affection but realism:

> "He's not bad. He tries to do his best, more like a minder than anything else."

While company personnel officers make a pro forma attempt to hear the convenor out when he presents his (admittedly somewhat rambling and convoluted) complaints, it is clear they are impatient with him. They are positively annoyed at the deputy convenor. If the company is looking for 'leadership' from domestic union officers, he is BRITMET's manifestation of it. Yet he is anathema to management. More in the mould of the "leader" type of steward (Batstone et al., 1977), he is a much more aggressive trade unionist than the convenor. He goes looking for trouble and, finding it, attempts to mobilise discontent around the issue. But, because the workforce and the other stewards are less aggressive than he, these mobilisation attempts frequently flounder. The culture of the place simply does not support his style.

The only other centre of union aggressiveness in the plant is in the casting unit. But because of their distinct culture of 'men of molten metal', the workers and their stewards have as little to do with the domestic organisation as possible, preferring to settle matters

with their supervisors and then report back to the central union and management authorities.

Just as at BRITBREW, one is struck by a lasting impression of the domestic organisation at BRITMET. Both management and workers, from different perspectives, seemed disappointed with the union's inability to deliver what they think it should.

Several workers express this disappointment, not only in the union, but in the lack of solidarity among the workers:

> "The union is not militant enough. The firm manipulates the union... When they had the ballot on the pay offer, the union didn't explain anything. In the past two or more years, the union's only had two meetings, both on Saturday mornings but people are too busy working overtime."

> "We get poor representation. We might as well not even have the union for the good it does"

> "I believe in a moderate union but this one isn't even moderate; it's very slack."

Despite the self-deprecation, the work force has not been quiescent. In the 70's, the union was considerably stronger. Notwithstanding union strength, management avers that for years the workforce has been obstinate and unpredictable, with quiet periods jarred by short but acrimonious bouts of industrial action. Paradoxically, while the workers often are indifferent, as above, to exhortations to action by union officials, sometimes the opposite occurs—as when the workers rejected a recommendation for acceptance of a pay settlement to the surprise of the negotiating committee. Management representatives express concern that the union is

> "out of touch with its members. The union is represented mainly by older workers but there's a growing group of younger workers out there. It's bad enough when management doesn't know what's happening on the shop floor; it's worse when the union doesn't know".

Management also frets about the inability to *engage* with the union domestic organisation about any kind of change. Unlike the BRITBREW union which has some idea of the consequences of and readily negotiates payment for change, the BRITMET union resists engagement.

> "We can never get into a constructive decision with the union. They always say 'no' to cover themselves. The union is not confident, so they simply say 'no' in the hope that it will mean no change, and no change is more comfortable."[47]

Worst for the union, management suggests that because of their incompetence and lack of feeling for the membership, union negotiators regularly come away from

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47. Conversation with senior production manager

negotiations with several percentage points less in wage rises than the company is prepared to concede, if pushed.

BRITMET's management is in an uncomfortable position in managing its industrial relations. Because the workers are not quiescent, management can take nothing for granted about the way it handles them. But because it is so ineffectual, the union is a highly imperfect channel through which to obtain peace and predictability, even at a price. To a certain extent, then, management must grope its way around as if it were blind, hoping that it has got things right.

These then, are two extremes along the continuum of trade union power in our case study plants. The unions in the Canadian plants, though they differ between themselves in power, are firmly situated mid-range in this continuum in that they can both deliver 'the goods' with some predictability to both the employer and their members but are severely limited in so doing.

7.4 CANBREW

All the manual workers in this plant (with the exception of the 14 power engineers, who belong to their own craft union) are represented by a general union. All of further remarks are addressed to this group.

The parent union has been riven by political turmoil throughout its history. The domestic organisation, though affected by this turmoil, had not been unduly affected over the fourteen year period except for the relative absence of strong higher syndical authority . The convenor is full time and is paid by the company at the salary he would have received in his old job in the packaging department (with some compensation for loss of overtime). There are no other full-time officers. The domestic organisation is afforded an office with a telephone on the plant premises and access to photocopy facilities at the expense of the company.

At the time of the study, there were eight stewards recognised by the company, with alternate stewards recognised in their absence (an average of one steward for every 44 workers[28]. The stewards are reimbursed for "reasonable time off from their regular jobs....providing that they receive permission from their Supervisor". Such permission "will not be unreasonably withheld". This includes time off for regular stewards

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28. Figures on number of members per steward are not available for Canada.

committee meetings which are held on an irregular basis. The amount of time taken off by stewards is negligible compared to their British brewery counterparts. Time off provisions for the stewards are written into the collective agreement. But full-time status for the convenor, office and other facilities and the exact amount of steward time off considered 'reasonable' are all by unwritten agreement.

There are few, if any, mass membership meetings except immediately surrounding the triennial collective agreement renegotiations. Few CANBREW workers attend the monthly membership meetings of the composite branch (where little business specific to CANBREW is discussed). Most of the communication between the union and the members is done through shop stewards or newsletters.

As mentioned earlier, an informal employer industrial relations cartel pulls all of the major brewery plants in the province into coordinated negotiations. In contrast to the unity of the employers in this setup, the unions are divided by their history. Nevertheless, there is some coordination evident among the disparate unions and attempts are being made to increase cohesion.

CANBREW is serviced by one main staff officer (and his absence, one of the other two staff officers) working out of the branch's business office in the same city. The staff officer (as is the Canadian norm) plays a major role in the affairs of the domestic organisation. Not only does he attend all of the grievance procedure final step meetings and act as spokesman in negotiations, he also presents the union's case at arbitration hearings. His relationship with the convenor is very close, almost symbiotic (as is the Canadian norm). The convenor is in touch with him nearly every day by phone and several times a week in person (either at the plant or at the union's external office). The staff officers are proactive and aggressive at testing the limits of the collective agreement. Nevertheless, the CANBREW union membership is volatile and can give staff officers a rocky time

The convenor had, at the time of the study, been working at CANBREW for 11 years, with four years as a shop steward and five subsequent years as convenor. Like a high proportion of Canadian trade union activists, he is an immigrant from the British Isles, with trade union experience in his native country. Known as a plant militant, he supplanted a more conciliatory convenor. Though not as self-assertive, subtle and

tactically versatile as the BRITBREW convenor, he is a tenacious businesslike and laconic and is well-respected by the plant management.

Among domestic organisations in brewing, that at CANBREW is known as one of the most militant, having been responsible for 'shutting down' the industry in the past two sets of negotiations and having been responsible for several wildcat walkouts or threats of such in previous years. This domestic organisation had a high degree of self confidence though in a class far below BRITBREW. Evidence of the self confidence is the way in which the domestic organisation, despite its militant reputation, boldly took part in an employee survey, in the firm belief that it would not co-opt its members but rather underline complaints that the union had been making for years.

The records of the domestic organisation are well-kept, with documents and correspondence relating to all disputes in files and with a careful system to keep track of the progress of disputes (failure to observe time limits can be fatal to a grievance). As at BRITBREW, the convenor and stewards claim to handle on their own most fights between members and complaints of racial and sexual harassment.

Yet the union is more hesitant to 'straighten its members out' when they are disciplined by the company. Nearly all cases are put into the grievance procedure and seldom conceded by the union before the final step (a meeting attended by the union staff officer and a high company official) and some 'losers' are taken to arbitration. As will be seen in Chapter VII, the union employs more devious methods of abandoning a member's cause than is the case at BRITBREW. *In the Canadian context* then, for its size, the domestic organisation is a powerful one.

7.5 CANMET

All the manual workers in this plant are represented by a large "international" union with headquarters in the US, and have been since before the War[29].

The convenor is not full-time in his position. Though the fabrication unit in which he works operates on a multi-shift system, he is assigned, as per the collective agreement, to

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29. Up to 1975, more than 1/2 of the unionized workers in Canada were members of US-based unions. The trend, however, has been reversing so that US unions in 1983 claimed only 39.6% of union members in Canada (Kumar et a., 1986, p. 291). The Canadian section of this 'international' union has a certain degree of functional autonomy, including a Canadian director, Canadian publications, research, education and organization departments and an annual Canadian policy conference to set collective bargaining agendas. The strike fund is housed in the US headquarters and the parent union retains the right to withhold these funds, discipline members and impose trusteeships on branches.

day shifts and is allowed time off for union activities. When approached by a steward or worker with a problem, he is expected to notify the appropriate foreman or lead hand. He estimates the average time per day spent on union business as two hours. Nevertheless, several managers indicate they feel he takes too much time for union business. The convenor too suspects that the company will be cracking down.

The union is afforded a rudimentary office with a telephone and a filing cabinet on company premises. While the office is supposed to be private and does have a lock, it is very noisy and is on a route to a storage area so that company staff wander through on a regular basis. At the time of the study, there were five stewards recognised by the company (on average one for every 63 workers). The stewards are reimbursed for time spent on union business. They spend quite a bit less time than the convenor. The stewards and convenor meet with each other on an irregular and informal basis. The amount of time spent on union activity and the office and facilities provided are by unwritten agreement. Fearful of changes in management's attitude to the trade union, the convenor intends to attempt to get these provisions into the collective agreement on the next bargaining round. The domestic organisation holds regular mass membership meetings but fewer than 3% of the members attend, save for the period immediately surrounding collective agreement negotiations. Nonetheless, the branch has a fairly sizable executive, the convenor claiming about 7% participation in active positions.

Since the parent union represents the greatest number of workers in the metal fabrication industry, several loose and informal committees of branch representatives exist to exchange information. The convenor is in the aluminium council.

CANMET is serviced by a staff officer working out of a regional office in the same city, who is responsible for a large number of small manufacturing plants similar to it. The staff officer's relationship to the domestic organisation is similar to that in effect at CANBREW. However, the parent is a long-standing, stable industrial union unlike that at CANBREW, and the staff officers display a heavier hand if need be. During a long strike, intervention by top regional officers with company officials was instrumental in bringing the strike to a conclusion. While this intervention was subtle and sophisticated and no compulsion was employed, it was effective nonetheless. The convenor and his shop steward committee are strong-willed and the staff officer (at the time of the study) was

less aggressive than the norm, so the domestic organisation had a fair amount of autonomy. Nevertheless, the convenor tells of many domestic organisations at other plants (especially in composite branches) who are bullied by their staff officers, especially when it comes to the internal politics of the external union:

> "In smaller plants, the reps have complete control of the local leadership ... they intimidate the union executives, the staff man attends all the local meetings and tells you who to endorse. There's even some physical violence. They use union schools and seminars to put pressure on the rank and file".

The convenor, at the time of the study, had worked for CANMET for 15 years and had been a shop steward and member of the branch executive for some seven years before becoming convenor for a short time. Defeated by a more conciliatory opponent, he stood again two years later and won. At the time of the study he had been convenor for one and a half years.

The convenor is highly politically motivated and unlike any of the other case study convenors, sees his union leadership position as means to the end of radical politics. Managers would complain that he used grievance and other meetings to inveigh against imperialism, racism and the capitalist system rather than the business at hand[30].

The convenor and all of steward committee are "leader" stewards who form a "quasi-elite" as in Batstone et. al (1979). Significantly, the convenor and a majority of the stewards are non-white in a domestic organisation whose members are about 90% white. Yet despite the assertiveness of the convenor and his steward committee, and despite their ability to run a four month strike with an impressive degree of solidarity, the work force is not particularly militant and the domestic organisation has several weaknesses in delivering the goods.

While the strike built up an esprit de corps and a new level of participation among the workers, this had already begun to dissipate a few months after the strike had ended. Having risen to the occasion in the crisis of the strike, the convenor was finding it much harder to handle the day to day industrial relations of the shop. Left with a legacy of

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30. It is suspected that managers exaggerated the convenor's radical political preoccupations while performing union duties. In conversations with the author, a more hospitable listener, he kept such talk to a minimum. Management attitudes toward the convenor are mixed but most regard him with unease, unsure of his motivation and political agenda. They know the workers voted him in, conscious of his political stance. Having gone through a long strike in which the convenor was the prime driving force, managers respect his idealism and ability to lead the workers. But some express a desire to 'break' him and make way for a more conciliatory convenor, if the opportunity arose.

many years of union slackness and lacking full-time status, he is at a disadvantage. The housekeeping and record keeping is rudimentary compared to that at CANBREW. There are several outstanding grievances or grievable situations languishing in limbo which the union does not push or take up because of apathy, ignorance or simply because of lack of time. The union also does not have the self-confidence to participate fully in consultations with management outside the rigid boundaries of collective bargaining or the grievance procedure. In fact, it does not press its advantage where it can. The external organisation is little help here.

In short, the domestic organisation at CANMET has the desire to assert itself but not the tools.

7.6 Summary

To summarise the comparison of trade union organisation and power in the case study plants, it has been suggested that the indices of union power include the union's ability to deliver to both the company and its own members and that the two delivery systems are synergistic. In this sense, the British plants lie at opposite extremes of the continuum while the Canadian plants lie at mid range. Why might this be so?

8. Concluding Remarks

One purpose of this chapter has been to provide background information on the external and internal environments of our case study plants to assess the "comparability" of the plants across countries and the extent of differentiation in the climate of industrial relations across industries. And indeed, it has been seen that the plants within the same industry are, for our purposes, comparable and that significant differences in industrial relations climate exist between the industries in the countries.

While all of the plants are of the same size range, it is within this range that qualitative differences in union strength and power can emerge. Several factors which contribute to the union power differential have been explored. While it is argued that technology is not a determining factor in the climate of industrial relations, technology does act to constrain and shape this outcome. A neglected issue in discussions of technology to date is the fact that a "bundle" of technologies characterises most workplaces and that the variance between the "driving" and "ancillary" technologies may affect the scope for variation in industrial relations climate. Our breweries have a far

wider variance in this regard than our aluminium plants and it is postulated that this, as much as the technology itself, contributes significantly to differences in that climate which exist between breweries in the two countries. Another feature of both technology and product markets that emerges as important is the extent of *controllability*, the ability of the industry to maintain a degree of technical control over the labour process and control over labour costs, secular demand, interfirm competition, pricing and profits. The higher the degree of controllability over these factors, the greater the *potential* for indulgence of workers and their trade union. But, it is suggested, the above factors merely set the stage for different types of factory regimes.

Accordingly, a tentative suggestion about the effects of national systems of labour regulation might be made. In the British system, despite recent legislation, there seems to be far fewer and far less powerful external influences constraining the exercise of union power. Industry by industry, union and management themselves seem to be almost the sole determinants of how efficiently the union will be able to deliver to the employer and to its members. So in some industries, like brewing, union power can be very high; in other industries, like metal fabrication, it can be very low.

But in Canada, the state-prescribed and rigid system of work regulation forms a grid within which the parties must operate. They cannot operate outside of it. ***And it is the system itself and not the union which delivers.*** It is the tightly constrained system of interest mediation, allowing strikes at definite times and the grievance and arbitration system, allowing disputes to be framed in precise and cataloguable form, that ***delivers*** predictability and labour piece to the employer, ***not the union.*** It is the same system which ***delivers*** a measure of protection, equity and financial remuneration to the workers, ***not the union.*** Accordingly, the leeway for the exercise of union power is greatly reduced.

It is to these differing national systems of job regulation or 'political apparatuses of production' that we now turn.

CHAPTER III: INTERESTS

1. Introduction

In the previous chapter, the process involved in the interests apparatus was compared to the making of law. Clegg sets out two models of collective bargaining, a *statute law* model and a *common law* model (1979, pp. 116-117) and places collective bargaining styles along a continuum between these two. While the Canadian style would approximate the former model and the British style the latter, in fact the systems in both countries have elements of both in differing proportions. It is certain, however, that the making of "statutes", or the formalised setting of terms and conditions of employment into documentary form is an important part of joint regulation in both countries.

In both countries and in all four plants, employers and unions meet after distinct and regular intervals, between one and three years, with the intention of negotiating to establish or modify terms and conditions which they expect to remain in effect until the next such round of negotiations.

2. The Canadian plants

The essential point about interests bargaining in Canada is that the collective agreement that emerges from it is designed to contain the sum total of terms and conditions to which the parties mutually agree. This includes both substantive issues (pay and non-pay) and procedural issues (such as the grievance and arbitration procedures).

The collective agreement is for a fixed term, usually two or three years[1] (CANMET's are two years, CANBREW's are three). In Canada, it is legally impossible for one party to force the other to sit down at the bargaining table at any time except the expiry of the collective agreement. This set of negotiations will be called *expiry negotiations* and the strikes associated with them *expiry strikes*. So, in the runup to expiry negotiations, the parties do a complete review of the old collective agreement, to decide which terms and conditions invite revision and also review current economic factors and industrial surveys to determine the range in which to 'pitch' their proposals on 'pay issues'. The more

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1. Of Canadian collective agreements covering 500 employees or more surveyed in 1984, 67% were of three years', 31% were of two years' and 3% were of one year's duration (Kumar et al., 1986, p. 403). During times of high inflation, such as the late 1970's, Canadian agreements revert revert to shorter terms.

diligent among unions will review lost grievances to see if collective agreement language can be improved.

At collective agreement expiry, once either side (but, in practice, usually the union) 'gives notice' that it wishes to amend the collective agreement, the parties are legally obliged to "bargain in good faith and make every reasonable effort to make a collective agreement"[2]. This obligation can be enforced at the labour relations board and subsequently in the courts. Although its definition is not precise, it basically forces the parties to meet and exchange information and enjoins them from deliberately avoiding collective bargaining[3]. It is important to note, however, that this Canadian legislative encouragement, as in the U.S., supports only the *procedure* of collective bargaining. Courts and labour relations boards, in Canada, as in the United States, have obsessively prevented the use of this provision to further any particular *substantive* content of collective agreements in the furtherance of public policy. Some argue that this has caused a deradicalisation of collective bargaining and the preservation of the status quo (Klare, 1978; Stone, 1981) in North American industrial relations. While the contention has merit, these authors probably overstate the contribution of the courts and understate the contribution of large employers and conservative trade unions in bringing about this state of affairs.

Another legislative emollient to expiry negotiations is a freeze on all terms and conditions of employment, jointly negotiated or otherwise, until a new agreement is reached or until a strike or lockout is in effect.

In practically all collective agreement negotiations in Canada, including those of the largest bargaining units, staff officers are the major spokespeople for the union from beginning to end. They are present at meetings to draw up bargaining proposals and usually draft them for forwarding to the employer. At negotiations, they are 'backed up' by a negotiating committee of elected worker representatives, usually shop stewards, who say very little. Because of his heavy involvement in expiry negotiations and because so much rides on their outcome, the staff officer takes a highly partisan role in 'selling' the

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2. Labour Relations Act of the province where the two Canadian plants are located.

3. For more information on this, see Carter, 1983. The good faith obligation does not enjoin 'hard bargaining' by either side. The distinction between the two is continually being challenged and redefined labour relations boards and the courts across the country.

results of expiry negotiations—pushing either ratification of a settlement or rejection of an unacceptable employer offer and a positive strike vote. The 'best' staff officers, then, are manipulative politicians. Nevertheless, because of their 'otherness' from the workplace, they often meet resistance and resentment from the shop floor and rowdy meetings are frequent at expiry time.

Though most bargaining is plant-level, the union-management negotiating sessions, for even the smallest bargaining units, are fairly formal affairs. They generally take place off employer premises, usually at a hotel. The atmosphere is far removed from 'work'. At these meetings, comprehensive positions are read out to the other party and some minimal proforma debate goes on. But it is at the 'caucus' meetings of both parties, where these formal positions are hammered out, that the real 'bargaining' takes place ('interorganisational bargaining' in the words of Walton & McKersie, 1965). The latter take up a far greater proportion of negotiating time than the former. As they negotiate, the parties move in a step-like fashion from their initial bargaining positions to a strike and/or to ultimate settlement, both ceding demands and proposals in an orderly and reciprocal fashion until a settlement is reached. Negotiations usually take place over several months as the parties work their way laboriously through the items in dispute.

Having bargained, presumably in good faith, the parties eventually settle all issues in dispute and customarily sign a *memorandum of settlement* outlining the terms agreed to and obliging each party to seek ratification by its principles (its members, in the case of the union and its board of directors, in the case of the employer). If ratified, the memorandum and the consequently revised collective agreement become legally binding.

If the parties reach an impasse and cannot achieve a memorandum, or having achieved one, cannot obtain ratification, either party can set in motion a series of legally-prescribed procedures, informally known as the 'countdown', leading to a legally-sanctioned strike or lockout (to be discussed in more detail under 'enforcements'.

By far the vast majority of collective bargaining of this type in Canada takes place at *plant level* between a single company and a single union which, by law, has been certified as the exclusive bargaining agent for a standard 'bargaining unit', typically all manual employees in that plant (Thompson, 1987, p. 89). Our two Canadian plants are no

exception. All interests issues at CANMET are negotiated between representatives of local management and the local union.

Interests negotiations at CANBREW, are somewhat more complicated. Because of the problems of interfirm market volatility, the three major Canadian breweries have formed an industrial relations cartel, a voluntary agreement to negotiate and settle agreements in each province jointly, so that no brewery will suffer industrial action on its own.

Bargaining proposals are formulated and discussed initially at plant level. They are divided into 'local issues' (those pertaining to the plant alone) and 'central issues' (those that affect all breweries, primarily compensation-related). Local issues are handled by local management plant by plant. Failing resolution, they become 'central' issues.

However, it would be incorrect to classify the negotiation of central issues as 'multi-employer' or 'company-level' bargaining. They might be called, rather, 'coordinated plant-level bargaining'. Formally, plant-level negotiations continue, but at the same place and within the same time period as those of all other plants of the three major breweries in the province. A single person (usually a lawyer jointly hired by the breweries) speaks for management in all these sets of negotiations, assisted by the national corporate industrial relations managers of the breweries (with selected plant-level managers on hand nearby for consultation). All of these negotiations are coordinated carefully by management so that virtually the same offer is made to all the participating unions and the companies sign no memorandum of settlement until all the participating unions individually sign, agreeing to recommend acceptance to their members.

If a memorandum is not achieved, the companies shut down all of their plants across the province, locking the workers out and drying up the beer supply. If a memorandum is achieved, ratification by workers is carried out plant by plant. If ratification in every plant is not achieved, a lockout, as above, ensues[4]. The above procedure is followed sequentially, and in a deliberate manner, province by province across the country.

Though the above process of interests bargaining is somewhat anomalous in Canada, the exception here proves the rule. Though the circumstances favour multi-employer,

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4. If only a few plants refuse to ratify, and the employers feel they can maintain sufficient production at the remaining plants, they may lock out or allow a strike at the dissenting plants only, thereby 'hanging them out to dry'. This has happened on a couple of occasions, both involving CANBREW.

company-level bargaining (the multiplicity of unions, though a hindrance, could be overcome if the desire on both sides of the table were great enough), *the companies have studiously avoided the abandonment of plant-level bargaining.* In essence, they have 'finessed' the loose-tight paradigm in multi-divisional companies examined in the last chapter, modifying it to meet the particular needs of their industry.

While collective agreement negotiations are by far the dominant interests apparatus in Canada, there are other methods of achieving interests agreements. a) It is not unknown for the parties to agree to a 'wage reopener' or some other provision to discuss substantive terms and conditions while the agreement is in force. But the strike/lockout ban proscribes work stoppage as a sanction, rendering this method almost meaningless and hence unpopular. b) The labour relations law in several jurisdictions allows the union, upon the introduction of 'new technology' by the employer during term, to open negotiations and, failing agreement, to submit unsettled issues to arbitration. But none of these jurisdictions allows a strike or lockout to ensue. To date, trade unions have had many problems in using these provisions to deal with technological change introduced during the term of the agreement (see McDermott, 1987). c) Occasionally agreements contain provisions for the parties to discuss novel situations introduced during the term of the collective agreement such wage rates for new work classifications, and failing agreement, to submit the substantive issue to arbitration. However, such provisions are highly constrained and specific. d) Sometimes, faced with an issue unforeseen in expiry negotiations, the parties simply negotiate a new provision. CANBREW and its union negotiated an agreement regarding an apprenticeship programme in this way. But such agreements rely entirely upon the good will of the employer. If the parties reach an agreement, arbitration is only possible if mutually agreed and strikes, of course, are illegal. Finally, d) parties sometimes find it impossible to continue during term without agreeing to add something to the collective agreement or clarify an unworkable provision in it. This is usually done by way of a 'letter of understanding' from the company, countersigned by the union. But arbitrators differ on whether such documents are

enforceable after the expiry of the collective agreement during whose term they were signed[5], on the principle

> "that a side agreement or letter of understanding does not continue from collective agreement to collective agreement unless in some way incorporated into or attached to the subsequent collective agreement"[6]

Thus letters of understanding are ephemeral unless formally incorporated into the agreement at expiry. The CANBREW collective agreement current at the time of the study contained eight letters of understanding. The letters were agreed to within the term of the previous agreement and would have expired had they not been incorporated by explicit negotiation.

It should be clear, however, that the above ancillary interests apparatuses form *only the most marginal adjuncts to traditional expiry negotiations.*

Because expiry negotiations are almost the only opportunity for the parties to set major terms and conditions, they are heavily burdened, volatile, and ominous in their significance to industrial relations. Unions inevitably carry a great number of proposals for change into negotiations, not to mention all the residual frustration built up over two or three years of not being able to strike. For instance, in the set of negotiations most recent to this study (1986), the CANMET union, whose collective agreement is a 'mature' one (over 40 years old), still tabled no fewer than 50 proposals for its amendment including, to mention a few: 'a substantial wage increase'; increases to other 'monetary' provisions such as shift premia, relief premia, overtime meal subsidies, overtime premia, vacation entitlement, tool allowance and welfare benefits; and 'non-monetary' improvements in such areas as seniority, leaves of absence, bulletin boards, the use of disciplinary records against employees, and health and safety. The memorandum of settlement was 13 pages long, with more than 30 items. This submission did not include any attempts to 'clean up' the several 'time bombs' (ambiguous and clumsily worded clauses in the collective agreement, to be discussed later), any changes to the grievance procedure or any bid to clear up residual grievances remaining from the life of the

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5. During the life of the collective agreement, such letters may be enforceable by way of the doctrine of estoppel (see the discussion of 'past practice').

6. *Hobart Manufacturing Co. Ltd.* (1978), 21 L.A.C. 141 (Johnston) at p. 145. Also see Brown and Beatty (1984), pp. 170-173 for a discussion of this issue.

collective agreement (which Gandz, 1978, in his survey, indicates up to 40% of negotiating parties do).

Yet the major issue in the negotiations, which eventually pushed all others to the side, confronted the union when it reached the table. The employer proposed changing the standard work week (eight hours a day, five days a week) to a more flexible schedule, to overcome the problem of overtime in excess of statutory limits in several overtaxed departments. This proposal became the focal point of union resistance at the bargaining table and eventually of an 11-week strike.

Here is another example of an exception proving the rule. Canadian companies seldom table proposals at negotiations, preferring to rely on their managerial prerogative to effect changes in the course of the agreement. But so important to the company was the extended work week that it dared not leave the issue to the period outside negotiations. One manager describes the problem:

> "We consulted our lawyer and asked him if we could introduce the new working week within the term of the agreement. He said there was a possibility of doing so but a risk that the union could seize on some clause in the agreement to take the case to arbitration. We couldn't take that risk, no matter how small, because of the high costs of a negative arbitration decision... a union win at arbitration would have made them harder necked. We decided to have it out with the union at negotiations."

Bringing such a contentious issue to a negotiating table already loaded with contentious issues, in retrospect, made a strike almost unavoidable. But the company had no choice if it wished to exercise some control over the outcome of the issue. The presence of such an important issue at the bargaining table meant that other important issues were not fully discussed, not settled and presumably left to fester for another two years. Yet in Britain, as will be seen, such an issue would almost certainly have been raised as a separate issue outside of the main set of negotiations and probably only with employees of the direct departments concerned. While perhaps no less contentious in the British setting, the issue could have been isolated more effectively and freed from the complicated baggage of other issues.

The negotiations most recent to the study at CANBREW (1985), followed a similar logic. In addition to the usual multiplicity of proposals, the union introduced a proposal for a radical job security and redundancy package to safeguard its members against the expected substitution of canned for bottled beer (the union doomsday estimate of the effect of cans was a 50% slash in its membership). The highly emotive nature of this issue made

a work stoppage almost inevitable. The CANBREW union bargaining committee barely agreed to sign the memorandum and the membership raucously rejected ratification, plunging the entire province into a lockout.

But these particular strike-provoking issues are by no means anomalous in our Canadian plants. The CANBREW workers struck in the preceding set of negotiations on another set of issues and the CANMET workers have struck about once every decade on a variety of issues. The point, however, is not the *issues* over which the strikes occur in this forum but the *interests apparatus itself* which first, like a too-small vessel, invites overloading so that a few crucial issues can tip it over entirely into the sea of industrial conflict, and second, leaves many important issues to fester unresolved.

The 'deal' that eventually settled the CANMET dispute over extended working hours (a deal that made both parties very happy) had actually been bruited about the bargaining table *before* the strike. But the solution was not 'taken seriously' by the parties until after a strike had begun. Both union and management admit that there were other, residual, issues, most of which were not on the table, nor could hardly be given concrete expression, issues relating back to the hurly burly of the shop floor, that lurked behind the hardening positions of the parties in negotiations and their refusal to grasp at obvious solutions.

Likewise at CANBREW, much of the animosity behind both the 1985 and the 1983 strikes traces back to a wildcat walkout in 1980 by workers in the packaging and staging units and the subsequent suspension of 25 of them. This walkout in turn related farther back to the volatile industrial relations climate of these units. Both the convenor and the staff officer indicate that these disciplined workers and their friends have acted as a core ginger group in inciting subsequent industrial action.

With so many items on the table at expiry negotiations and so much at stake, it is hardly surprising that they are highly conflictual. Among the union demands are many dear to the hearts of the workers in one department or another. It is inevitable that many such cherished demands are 'traded away' in the rundown to a settlement, not because they are unworthy for the union or unawardable for the employer, but simply out of a sense of priorities. In addition, in an overloaded process, many of the particularistic, non-monetary, proposals tend to be 'bought out' with the general, but short-lasting.

palliative of a few cents more money. It is the steel-nerved and often politically naive staff representative who will even attempt to hold up a settlement for some piece of contract 'language' or for a pay rise for one small group of workers. Thus, there is much inherent in the Canadian interests apparatus itself, over and above the specific issues it purports to handle, that invites conflict as much as dissipates it, especially in comparison to the British interests apparatuses, to which we now turn.

3. The British plants

In contrast to the Canadian interests apparatuses, so highly dominated by the collective agreement and the negotiations at its expiry, the British apparatuses are looser and more diverse. The plant-wide collective agreement is much narrower in scope than its Canadian cousin, its impact much more amorphous, and negotiations for its amendment much less important among all the political apparatuses of production operating in the plant.

British collective agreements do not have a fixed term and generally continue from year to year unless specifically amended. Unlike in Canada, British law contains no prescription for the procedure of collective bargaining. There is no legal obligation for the employer to bargain with the trade union in good faith or otherwise. But by mutual agreement the parties meet (usually once a year, a custom which our British plants follow) in the 'pay round'.

The issues discussed here are far fewer than in Canada, relating mostly to pay, but may include a few non-pay issues as well. In contrast to the multiplicity of issues in the CANMET expiry negotiations, at the BRITBREW pay round most recent to the study (1987), the union tabled a mere *seven* proposals, *all* of them monetary. The company, in a rare display of initiative (like the Canadians, British employers prefer only to respond to union proposals) tabled three proposals, all but one of them monetary. The non-monetary proposal was a long overdue overhaul of the grievance and disciplinary procedure, which was eventually settled after and *outside* the pay round).

At the shop stewards' committee meeting preceding negotiations, the seven union proposals were distilled from a mere thirteen suggested. Yet despite this paucity of proposals, several shop stewards complained that the company was forcing the union to

"bring too many issues to the central table where we used to be able to negotiate them ourselves [between stewards and managers, by department]".

Plant-level pay bargaining for manual workers is now more and more the norm in Britain, especially in the size range of our plants and beyond (Millward & Stevens, 1984) and our plants are no exception. Pay round negotiations at both plants are much more informal than at the Canadian plants. They invariably take place on employer premises between plant management and a domestic union committee (usually shop stewards, led by the convenor). With so few issues on the table, the parties do not tend to spend as long a time on pay rounds as their Canadian counterparts do in expiry talks. Negotiations at BRITBREW last a few weeks. Though those at BRITMET have been known in the past to drag on for several months (mainly because of the stubborn passiveness of the union), the negotiations most recent to the study (in 1987 for 1988) were concluded in one week.

Unlike Canadian negotiations, where both management and union proceed in an orderly step-wise process of reciprocal concessions, British unions tend to keep their list of demands intact until the eleventh hour. Up to that point, negotiations usually consist of management making successively more generous offers. Only at the final stages, are serious concessions made by the union.

The process of agreement and ratification is somewhat similar to that in Canada, except that it is less formal. Because so few items are in dispute, elaborate memoranda of settlement are not prepared. The union negotiating committee is less emphatic in its recommendation to the union members than its Canadian counterpart. Management at both BRITMET and BRITBREW insist, as a condition of their agreeing to a final pay settlement, that the union committee promise to recommend acceptance to their members. And the committees comply. But they do not set out to 'sell' acceptance in the same partisan way as the Canadians. And they are even more reluctant to 'sell' to the membership rejection of an unacceptable employer offer, preferring merely to 'present' it without recommendation. The process of ratification is an altogether less straightforward, more devious affair in the British plants than in the Canadian ones. This is no doubt because the ratification of a particular pay offer is only one of several opportunities that British trade unionists may get in the course of two or three years to

express their disapproval of management, whereas in Canada, the ratification of expiry settlement is the *only* such opportunity.

Staff officers are not involved in pay rounds unless a major breakdown of talks threatens industrial action. The union staff officer for BRITBREW has not been summoned in recent memory. The staff officer for BRITMET has often put in an appearance at the end of negotiations, but was not involved in the most recent set. Even where he does appear, he is obviously not as well briefed in the intricacies nor as wrapped up in the partisanship of the pay claim as his Canadian counterpart. At BRITMET, he usually acts as a brake on any tendency to strike action, reminding the workers that company offers are, as one shop steward disdainfully paraphrases, "not bad compared to what workers around the country are getting".

With such informality and relatively low consequence, it should not be surprising to learn that pay rounds at both British plants have not been the subject of strikes within the memory of any of the participants. One of the *more militant* BRITMET shop stewards reminisces with some satisfaction:

> "In 17 years, I've never lost a day in a strike over pay....The question of wages is very important to management and workers prepare very carefully. It's so very ritualised and we have the same basic mandate every year. It's all very predictable....No, it's usually little things that cause strikes, not the big things."

Pay rounds are only one of the plant-wide interests apparatuses employed in the British workplace. Negotiations on other, usually non-pay, issues may be taken up by the company and union at any time *outside* of pay rounds. For example, changes to the disciplinary and grievance procedures put forward by BRITBREW management at the 1987 pay round were not debated seriously at the time and did not form part of the settlement. The parties saw that the complexity of the discussions might clutter up the pay round and agreed to form a working party to discuss the issue after settlement. This they proceeded to do at their leisure, without other, unconnected, issues confusing the matter, and finally came to a separate agreement. The same apparatus has been used to negotiate other thematic mini-agreements on issues such as sick pay and absenteeism, and redundancy.

This apparatus is alive and well at BRITMET also. In the 1987 pay round, the union committee raised an issue concerning temporary employees. A member of the management team violently disagreed. The convenor tactfully withdrew the issue,

indicating he would raise it again outside of the pay round. This he did (in the absence of the querulous manager) and a settlement was reached. In Canada, there would be no such flexibility. Such an issue would have to be included in expiry negotiations. If omitted, or if lost among the welter of other proposals and abandoned, it would doubtless fester for a further two or three years.

The process works in the other direction too. An embittered group of BRITMET fork lift drivers had long been pushing for a pay reclassification for extra duties required of them. Management did not agree with their claim, fearing it would upset pay differentials, and stalled until the next pay round (which was relatively easy, as pay rounds are never more than 12 months away). There the issue was wrapped up in a general question of 'buying' the wider skilling of production employees, and settled in the context of the pay deal without differentials being altered. In a similar situation in Canada, such flexibility would be less available. The next round of negotiations could be as long as three years away, so the only way to settle the issue would be to grieve formally. Unless there were fairly explicit language in the collective agreement allowing the arbitrator to make an 'adjustment' (see Chapter V), the onus would be on the union to prove its case and establish that the grievor's "ability and work are beyond his present job description [and that he is] squarely within the description he seeks both as to ability and responsibility"[7].

Given the comments of Brown & Beatty (1984, pp. 233-238), and the language of both the CANBREW and CANMET, it is unlikely the grievors would have won this particular case at arbitration in either Canadian plant. Thus the outcome is inevitably zero sum.

The point here, though, is not the substance of the issues but the comparative flexibility of the Canadian and British sets of interests apparatuses to handle them.

"Pay rounds" and negotiations on non-pay-round agreements then, are two *plant-wide* interests apparatuses. The British plants have yet a third kind, in common with much of British industry—departmental or sectional interests apparatuses. These are not the low-level, informal, sectional bargaining that goes on from day to day in many British plants. That will be discussed under 'adjustments' apparatuses, although the boundary

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7. *John Inglis Co. Ltd.* (1964), 15 L.A.C. 126 (Macdonald), at p. 127; quoted in (Brown and Beatty, 1984, p. 236).

between the two is somewhat fuzzy. These are fairly formal negotiations that are carried on at a departmental level to establish departmental agreements, the more elaborate of which are written or printed and distributed.

Of our British plants, sectional interests bargaining is especially developed at BRITBREW, where most departments and some sub-departments have a written agreement, separate and distinct from the plant-wide document. Like the collective agreement, these do not have a fixed term. But unlike the former, they are renegotiated only when the parties feel a pressing need to do so, such as when a change in product demand or new working practices necessitates revision. They are negotiated by the sectional steward and supervisor, with some tacit assistance from higher stewards and the convenor on the union side and higher managers and the personnel department, on the employer side.

Although less frequently, the parties at BRITMET tactically make use of this apparatus too, especially in the casting unit. A redundancy agreement and an agreement to reimburse furnace operators for pouring metal through their shift change are examples. In both cases, the convenor and the personnel manager 'ran alongside' (to borrow a term ACAS conciliators use) the negotiations but the initiative was in the hands of the parties at departmental level. The BRITMET collective agreement stipulates that all such sectional agreements must be ratified finally by the plant-wide union and employer representatives, so theoretically a veto is available at the higher level. But presented with a fait accompli that the departmental people enthusiastically endorse, the higher level people are unlikely to disagree.

At BRITBREW, the involvement of the convenor and the personnel department and the writing and printing of these agreements has evolved from earlier days (in some cases only 8 or 9 years ago) when such agreements were, according to the convenor "done by a nod and a wink or pencilled in on fag packs" between the steward and the supervisor. The recent trend to written sectional agreements is part of an employer initiative to further centralisation and bureaucratisation of these agreements. To a certain extent, it has the convenor's blessing: "It's forced the union to become more professional".

However, the trend has its drawbacks as both management and the union are caught in a contradiction. Greater formalisation and involvement of higher authority provides

for greater control. But it removes a flexibility that both sides cherish. According to the convenor:

> "If a manager wants to pay additional money to a classification for the efficiency of his department, he may not be able to if personnel has to scrutinize the deal every step of the way".

As we mentioned in the last chapter, the BRITBREW convenor is firmly at the wheel most of the time but is able cannily to use the system, by deferring either to departmental stewards or the staff officer, to opt out of responsibility in some uncomfortable situations, only to regain the initiative at the appropriate time. In addition, by allowing some issues to be decided departmentally, he is less likely to be caught in the crossfire between contending groups of workers with contradictory aims, one of the curses for the convenors in the Canadian plants. To a lesser extent, and less consciously, his counterpart at BRITMET is able to do the same. Acknowledging the above contradiction, the BRITBREW convenor avers, "the pendulum swings back and forth on the question of centralisation of agreements".

Notwithstanding this contradiction in the British plants, the very fact that both plant-wide and sectional interests bargaining exist alongside each other adds yet another dimension of flexibility to disputes resolution in the British workplace that is not available in the Canadian ones.

While there are no strikes at pay rounds in our British plants, several of the longer work stoppages (those lasting more than a few hours) at BRITBREW have occurred around the renegotiation of sectional agreements. But because these strikes involve such circumscribed issues and small groups of workers, they are much easier for both management and union to keep under control and resolve than expiry strikes in Canada.

One such strike occurred over the renegotiation of the BRITBREW distribution unit incentive scheme, the substance of which will be examined in later chapters. It was a bitter strike and a major test of strength between the parties, lasting an unprecedented (for Britain) two weeks and stopping the flow of beer from BRITBREW. But it never involved more than 40% of the workforce and both union and employer took pains not to involve the other 60% in the strike. Because the collective agreement clause ensures seven days notice of layoff, a cushion of work existed for non-striking employees. This meant that the strike did not emerge full blown. Neither party had played its entire hand and each had the opportunity, at various stages of the strike's progress, to test the water.

as it were, to either escalate the struggle or to withdraw without losing too much face. The dispute ended with a compromise which satisfied both sides reasonably well, although the power of the draymen as a distinct force within the domestic organisation had been diminished.

The visible issue of the strike—the ability of draymen to maintain their comparatively high bonus earnings—was not an inherently popular one among the rest of the workforce. Yet a sense of union solidarity obliged union members to implicitly support the draymen out of principle. As one worker in the brewing unit says:

> "I and the other workers regarded the draymen as greedy and the company as bloody-minded. But if push came to shove, the blokes I work with would have reluctantly supported the draymen out of union loyalty."[8]

Luckily for the union, it never became necessary to put that sense of principle seriously to the test. The actions of the convenor are instructive. Mindful of the divisive potential of the dispute, he tactfully distanced himself from the fray as it moved to a work stoppage, leaving the staff officer and the departmental steward to sort it out with management. As the dispute concluded, he once more asserted his authority. Both management and union commentators agree that he emerged with greater stature than before and that the power of the site-wide union domestic organisation had been enhanced.

Three highly flexible interests apparatuses then, are in active use in the British plants as opposed to the single, comparatively rigid apparatus in the Canadian plants. Thus far though, only the *processes* by which they set out to reach substantive agreements have been examined. Before moving on to examine other types of political apparatuses it is necessary to explore the interests *agreements* themselves a bit more thoroughly, asking the questions: what is their content; who uses them; what do they use them for?

4. Interests Agreements

Because the Canadian collective agreement is the distillation of the overwhelmingly dominant interests apparatus and because arbitrators are so hesitant to look beyond the wording of the collective agreement in interpreting it, the agreement takes on a preternatural importance in Canadian industrial relations.

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8. Phillips & Whiteside (1985) describe this phenomenon among another strong union group, dockers. Workers will not necessarily agree with the claim of one group but accept the right of that group to pursue its own demands.

A particularly telling clue to the relative importance of the collective agreement in the two countries is obtained by tracing its currency and distribution. In Canadian unionised workplaces, and certainly in both our plants, as soon as the memorandum of settlement is ratified, the parties invariably type up a completely new document, updating the expired agreement by incorporating all of the revisions and additions agreed to in negotiations. Once prepared, the new document is formally signed and more often than not is printed in small, pocket-sized booklets. The booklets are then distributed to every worker covered by the agreement and every manager who could possibly have cause to deal with a grievance from one of these workers.

Of the above recipients, all of the managers, all of the shop stewards and many of the workers will keep their copy of the agreement close at hand throughout the working day, in a desk or a hip pocket. Among the workforce, barrack-room lawyers abound, keeping shop stewards on their toes. It is not uncommon for companies, immediately after the printing of the new agreement, to hold seminars for first line managers, taking them through the intricacies of the document. CANBREW has unsystematically attempted to do this in the past and intends to do it systematically in the future. At grievance meetings, it is common for all participants, including the grievor, to have their agreements open in front of them.

The situation in the British plants could hardly be more different. Pay round settlements and other changes to the collective agreement are seldom reduced to memoranda of settlement before ratification. The terms agreed to are eventually reproduced onto several A4 sheets of paper. But incorporation into the collective agreement is lax. A request for a 'current' collective agreement at the beginning of the study (early 1987) produced a document dated 1985 for BRITBREW and 1984 for BRITMET, neither document incorporating the several changes negotiated in the interim. The BRITMET document was cleverly assembled in a hip pocket sized ring binder with loose leaf pages suitable for replacement with updated material. The BRITBREW document is A4 size and thus not appropriate for the hip pocket. As well as this 'central' agreement at BRITBREW, procedural agreements on such topics as redundancy, grievances and absenteeism as well as sectional agreements appear after settlement, also rough on A4 paper.

Notwithstanding their compatibility with hip pockets, none of the above documents receives wide distribution. At both plants, manual workers do not generally have them and several shop stewards (though supplied) do not usually have them in hand. Managers dealing with worker complaints receive them but, except for personnel managers, do not use them regularly. Even the personnel staff do not jump for a collective agreement when confronted with a worker complaint as do their Canadian counterparts, looking at the document as an unlikely aid to most of the problems with which they are confronted.

One BRITBREW manager defended the non-issuance of collective agreements to manual workers:

> "There's a risk of misinterpretation because of a lack of comprehension on the part of the hourly paid workers if the collective agreement were readily available."

Given the complexity of the *Canadian* agreement and its distribution, this is most ironic.

The Canadian agreement has become quite complex. Comparing the collective agreements of the two breweries[9], the Canadian document at 30,000 words is more than four times the size of the British one. Yet the substantive content of the two is very similar. The British agreement consists mostly of monetary clauses including sections on working hours, overtime and shift premia, vacations and holidays, special allowances, welfare benefits and of course, wage rates. It also contains several procedural agreements (which, as mentioned above, are often renegotiated outside of pay rounds) such as grievance procedure, disciplinary procedure, lateness and unauthorised absence procedure and guidelines for the appointment and functioning of shop stewards.

By and large the Canadian agreement follows the same pattern of subjects. The only large substantive area of difference is the application of seniority, missing in the British agreement (which will be discussed more fully in Chapter VIII), which accounts for approximately 3000 words. This still leaves the Canadian agreement more than three times larger on the same subjects as the British one, dealing with the same general topics. Herding describes the evolution of US collective agreements:

> "...contracts become more detailed, more specified; the book simply gets thicker....Yet, the substantive rights it lists have hardly increased since 1945 or 1930. As companies become more bureaucratic, their labor policies are more and more spelled out in the agreement. The contracts are

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9. The BRITMET document, according to a top personnel officer, is most unusual among British collective agreements for its length. At 11,000 words, it is as long as the CANMET agreement.

ambitious to approach reality, [they attempt to provide for many eventualities] [but] leave less leeway for local give-and-take..." (1972, p. 140)

He suggests that this trend toward "legalism" aids both management and the union. It aids management in times when labour is in a *strong* labour-market position because it is a brake on how far labour can go in translating its informal power into formal power. It aids the union when labour is in a *weak* labour market position by protecting "some rights of good standing" which might otherwise be eroded by an aggressive employer. When a right exists in a written document and is potentially enforceable by law, management cannot ignore it easily. This is a very important point, and one which will be elaborated on later.

Yet, given the overriding importance of the collective agreement in the North American political apparatuses of production, Herding may be overstating his case. What is really surprising is not that the agreement is so detailed but that it is not *more* detailed. For another small but powerful difference in content between Canadian and British collective agreements that impinges heavily on this issue is the presence in the former of a "management's rights" clause. They are important enough to warrant quoting those operating in our case study plants in full:

CANBREW MANAGEMENT'S RIGHT CLAUSE

".01. The Union acknowledges that it is the exclusive function of the Company to:

a. Maintain order, discipline and efficiency.

b. Hire, discharge, transfer, promote, demote or discipline employees provided that the claim that a seniority or probationary employee has been discharged, transferred, demoted or disciplined without just cause may be dealt with as hereinafter provided.

.02. It is understood that in exercising these functions the Company must conform to all other clauses of this Agreement."

CANMET MANAGEMENT'S RIGHTS CLAUSE

"Subject only to any specific provision contained herein, for which a grievance may be filed, the Company may exercise all of the rights, powers, authority, and regular and customary functions of Management, and without limiting the generality of the foregoing, these rights shall include the right to introduce technical improvements and methods of operation, and changes in the methods of operation, the extension, limitation, curtailment, or cessation of operations and the right to engage, layoff, promote, demote, transfer, reprimand, suspend, or discharge for just cause"

A similar clause appears in the vast majority of collective agreements in Canada. The debate over how strictly this clause should be interpreted has raged among arbitrators and in the courts for over forty years. The pendulum swings back and forth and there has

been some progress in weakening the potential force of the clause. Presently to be discussed are some of the collective agreement areas where arbitrators do make 'adjustments'. But the "reserved rights" approach still stands as a touchstone of agreement interpretation, against which all more liberal attitudes must test themselves. It is expressed emphatically in an early but frequently-quoted arbitration case:

> "The company has the right to manage its business to the best of its ability in every respect, except to the extent that its rights are cut down by voluntary abrogation of some of these rights through contract with the union. The [Management's Rights] clause which appears in most contracts *is nothing but a gratuitous acknowledgement by the union of this fundamental right.* If the [arbitration] board is unable to find anything in the contract between the parties which takes away from the company's rights to conduct its own business, then it cannot be concerned with the quality of the action taken by the company nor whether it results in loss of jobs for employees of the company, nor whether the action which produced such results was exercised inside the four walls of a plant or elsewhere."(emphasis added)[10]

Simply put, in the absence of a collective agreement clause expressly forbidding a management action, such action is permitted and cannot be challenged. Moreover, according to the emphasised portion of the above quote, this right accrues to management *whether or not the collective agreement contains a management's rights clause.* As a philosophical principal of workplace life, the attitude is expressed baldly by a more recent arbitrator:

> "The industrial relations community is not a democracy. It is a relationship created and governed by contract. The respective rights and obligations of the parties are expected to be set forth in a collective agreement. In that contractual relationship, management retains all the rights that are not bargained away to the union in the course of collective bargaining...
>
> "In particular, civil rights or democratic rights or any of the other terms applied to define the concept of a body of inherent rights having application to society generally have no place in the industrial relations community."[11]

More liberal arbitrators would no doubt modify harshness of this edict. But were the situation only half as restrictive as this, it is a wonder that Canadian collective agreements are not longer and more complex than they already are. Shulman and Chamberlain suggest some reasons why "the collective agreement cannot prescribe an indisputable rule of thumb for every dispute, difference, dissatisfaction or situation that may arise during its term"[12]. First, they suggest, it is humanly impossible for the parties to anticipate every eventuality. Second, even if they could, it would curtail their freedom

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10. *Re. Electric Auto-Lite*, (1955), 7 L.A.C. 331 (Thomas), at 333

11. British Columbia Arbitrator Allan Hope, quoted in Public Employers of British Columbia (1980).

12. Shulman, Harry & Neil Chamberlain, *excerpt from Cases on Labor Relations*, quoted in Labour Relations Law Casebook Group, 1974, p. 240.

to act. Moreover, attempts to prescribe every possible problem in advance would make negotiations endlessly protracted and make it more, not less, difficult to apply collective agreement language to concrete situations. Such an abundance of detail would indeed put the agreement beyond the ken of the union membership (and, it must be added, of most first line managers). Shulman and Chamberlain put forward another, more intriguing objection, however:

> "Abundance of detail and minutiae may discover independent, individual objections of minor importance which may be aggregated (intentionally or otherwise) into a quite unwarranted total hostility. Like a political platform, a collective agreement may need to avoid 'red flags'." (ibid.)

Thus, by being *too* detailed, the agreement may *invite* more conflict than it purports to assuage. They conclude that

> "the collective labour agreement must leave much to silence, to reference or to a general statement. Like modern legislation in complex affairs, it must rely on administration to fill in the details and provide the needed *adjustments*. This requires continuous joint consideration of problems with the collective agreement as one aid to their solution." (ibid.)

But Shulman and Chamberlain are far too sanguine about the leeway afforded by the system of dispute resolution to achieve this end. This is the essential paradox of the North American collective agreement, which the above authors do, to their credit acknowledge, (although their position as liberal pluralist academics leads them ultimately to confuse what is, and what they think should be, the real conduct of the parties).

> "...the collective agreement also looses forces tending toward rigidity and unreasonableness. These are the temptations to refer all questions to the agreement; to argue about what the agreement provides and not about what the problem is and how it can best be met; to insist upon literal compliance without proper consideration of need, purpose and spirit; to couch requests and answers in terms of the agreement even when doing so conceals the parties' real concerns; in short, to think in terms of the agreement alone and not in terms of the problems or needs of the enterprise and those engaged in it." (ibid.)

Examples of this rigidity in our Canadian plants abound and some will be examined presently. But for our purposes here, one clause from the CANBREW agreement epitomises the situation:

> "Clause 'A': The Company shall supply adequate manpower in all operations in all departments at all times so that an employee will not be required to perform more than a fair day's work.
>
> "Clause 'B': Clause 'A' shall not be construed to mean that the manning of all operations is at present exactly adequate or that all employees are presently assigned exactly a fair day's work and accordingly changes in an employee's work load may be made so long as the resulting situation is not a violation of Clause 'A'."

While the substantive issues surrounding this clause will be discussed more fully in the chapter on 'Job Control', here is a truly unique provision among Canadian collective

agreements. Its uniqueness, to paraphrase a familiar aphorism, is not how well it delves into the area of job control, but that it does so at all. Its existence is tribute to the advanced and sophisticated status of industrial relations between the breweries and their unions. It seems to open up unlimited opportunities for the union to grieve manning and effort levels.

Yet the provision has caused no end of trouble for the union. The provision is not new. It has been in the agreement for more years than anyone in the plant can remember. But, says the convenor:

> "In one word, this clause is useless. It takes away what A gives. We've just had an arbitration on this and we've lost again."

The personnel manager refuses to make a similar value judgment nor to talk much about the clause, preferring to refer to the same arbitration case, as if to complacently say, "We've got it under control", secure in the knowledge that in this, more than any other area, an arbitrator would find it exceedingly difficult, and thus hesitate, to second guess management.

In the 9 years previous to the study, the clause was used to launch a grievance 13 times. On most occasions, it was hesitatingly employed by the union, to initiate discussion rather than as a serious attempt to win at arbitration, as if it were afraid of pushing it to its limits. In nearly all those instances, the grievance was dropped without achieving the union's objective. As a way of raising the issue as a legitimate grievance and putting it on the table for discussion, the clause has value, but only as that.

The difficulty surrounding this clause illustrates well the paradox of the Canadian collective agreement. As the solitary reservoir of the products of joint regulation and the main map to guide the parties' actions, it invites attention like a vacuum. But for the same reason, it is singularly incapable of prescribing solutions to most of the real problems that arise.

By contrast, the British interests agreements are not nearly so supercharged. Not only are non-monetary issues often separated from monetary ones, but the negotiation of monetary issues is spread out over a variety of loci--plant-wide pay rounds, plant-wide occasional negotiations, sectional negotiations (and day-to-day adjustments, which will be discussed presently).

While the British collective agreement does not purport to be the repository of the all the products of joint regulation, neither do the parties feel constrained to vouch for everything in the collective agreement. Agreements to disagree over its contents abound. The BRITMET agreement contains a rough-hewn seniority clause governing promotions (which will be examined more closely in the Chapter on 'Structuring of Internal Labour Market'). While the union insists the clause is 'non negotiable', the company refuses even to acknowledge its legitimacy. How then did it ever get in the agreement and why is it still there? Says a personnel manager:

> "I don't know how it ever got in the agreement, but if we gave the union notice that we wanted to take this clause out, we would have a *major* i.r. problem. Practically, we just ignore it most of the time. Luckily it hasn't been a big problem up to now."

Since the agreement is not legally binding, the clause is of quite limited use to the union in the pinch anyway. Likewise, the BRITMET agreement booklet contains Works Rules which the union refuses to recognise as legitimate but which stay in the agreement for much the same reason as above.

In the same vein, BRITBREW has a pension plan and several fringe benefits such as a sickness and accident pay scheme, some of which are in the agreement, some not, but all of which Personnel insists are 'non-negotiable'. Rather than argue with this contention, the convenor laughs and points out concrete examples where these provisions have been altered (or have been prevented from alteration) by union intervention.

As opposed to the inelegance of the CANBREW manning clause referred to above, BRITBREW's sectional agreements nonchalantly deal with manning and effort levels and also specify task responsibilities and can run to more than 10 pages each. But unlike the Canadian case, the parties rely only on each other to interpret these agreements and acknowledge a body of 'custom and practice' to help them in interpretation.

Finally, perhaps more significantly, because of the legally non-binding nature of the British agreements and the self-reliance of the parties in their interpretation, the agreement is sometimes taken to mean something it patently does not. A fine example of this is the BRITBREW redundancy agreement which pledges the company and union to make every possible effort to avoid compulsory redundancy. But, carefully drafted, it nowhere commits the company to a policy of *no voluntary redundancies*. The union, for its part, vehemently insists that the agreement contains such a commitment. At one point,

faced with possible involuntary redundancies, the union proceeded to ballot its members on a strike. In so doing, it neatly portrayed itself as the victim of company treachery to undermine a legitimate agreement. In the words of one steward, "the Company forced us to defend the [redundancy] procedure". The ballot question simply:

> I am not prepared to accept the principle of compulsory redundancy.
>
> I am prepared to accept the principle of compulsory redundancy.

Needless to say, the ballot was unanimous. So cynical was the company that it did not even ask the union for the result. As the particulars of the case made both parties eager to avoid a strike on the issue, it was resolved quietly and efficiently in a manner acceptable to both sides. ***What became preeminent, then, was not what the agreement actually said, but what one party, with sufficient motivation and aggressiveness, took it to say.*** While this should not be taken as a *norm* in British agreement interpretation, it exemplifies the limits to which such interpretation can be stretched. So, as well as flexibility in the process of *making* the British agreement, there is considerable flexibility in its use.

5. Concluding Remarks

Although this study is meant to concentrate on the hidden, day-to-day world of workplace relations, it has been impossible to ignore the more formal mechanisms employed in each country. Even though these are the apparatuses most visible to cross-national analysts, much of the subtlety is often missed. Moreover, it is difficult to draw firm lines between industrial conflict which ostensibly arises out of interests disputes (as they are defined here) and that which arises from day-to-day.

A single dominating Canadian interests apparatus, ***expiry negotiations***, which occurs once every two or three years, has been contrasted with the several interests apparatuses at work at more frequent intervals in the British plants. The potential rigidity of the first can only be appreciated when considering the potential flexibility of the second. Yet the indeterminacy of the second can only be appreciated when considering the circumscription of the first. While major conflict can be seen as a natural outcome of the single Canadian interests apparatus, the very number of British interests apparatuses may well bespeak numerous opportunities for conflict.

To a certain extent, a process of convergence is taking place. On the Canadian side, several interests apparatuses other than expiry negotiations have been noted. The fact that public policy makers in several Canadian jurisdictions have allowed for collective agreements to be opened up during term for discussions on technological change shows a glimmering of acknowledgment that the rigidity of the Canadian system may act as a cause, and not a solution to conflict. On the British side, there has been a definite trend in the past fifteen years to increasing formalisation in collective agreements. As mentioned, what might once have been verbally agreed between steward and supervisor or written on a fags pack is now often typed up on A4 paper, signed and even distributed to others.

However, the change has been one degree and not of kind. Attempts by Canadian unions to seriously challenge technological changes or any other changes within the term of the collective agreement are still severely hampered. The parties to British agreements will chuck those agreements away or deliberately interpret them as they see fit if the need arises. The habits of many decades do not die easily.

Nonetheless, compared to the possible frequency of skirmishes along the frontier of control, interests apparatuses in neither country occur often enough to handle the vast majority of problems that require joint regulation. To ignore this apparatus would be foolish. But, as promised in the previous chapter, the bulk of our task is to examine the day-to-day generation and resolution of conflict. How are the interests settlements interpreted? What of 'interstitial rule-making' (Feller, 1973, p. 745). And notwithstanding the flexibility and multiplicity of opportunities for rule-making, how are the rules and interpretations enforced? To these questions we now turn.

CHAPTER IV: RIGHTS

I. Introduction

The basic prescribed rights apparatuses in Canada and Britain are the *grievance procedure* and the *disputes procedure* respectively. They may appear fairly similar at first blush, but their operations, their role and importance in industrial relations in the two countries differ greatly.

Studying grievance procedures, quantifying them and making definitive statements about their use in Canada is a precarious exercise. First, although the grievance procedure is more sophisticated and bureaucratic in North America than anywhere else in the world, the files and records of both unions and employers are often less than meticulously kept after (and sometimes during) their currency. Upon settlement or abandonment of grievances, few employers use grievance incidence reports as an indicator of industrial relations climate or problems (Gandz, 1978). Given, as will be seen, that unions abandon so many grievances or settle them on terms less than satisfactory to the grievors, there is little incentive for unions to keep such records carefully. Thus union and management records may differ on how many grievances were filed, at which step they were resolved, how they were resolved and even on the subject matter of the same grievance. The original grievance documents themselves, if not missing entirely, may be incomplete (ie. fail to record, on their face, the disposition of the parties at various steps and at resolution).

Second, grievance filing and disposition rates may vary enormously from workplace to workplace (even within similar industries), from year to year within the same workplace, and from subject to subject. Gandz (1978), in a study of grievance incidence and patterns of resolution in 118 Ontario bargaining units, finds such variation (although a large part of it may be due to the fact that he studies grievances only through the span of one collective agreement). He ascribes the variation to differences among organisations in the actual mechanics of grievance procedures (including the number of steps involved), in the steps at which they preferred to settle grievances and in how they classified and introduced grievances.

Third, the ostensible subject of a grievance may mask its *real* intent.

> "Labor students are fond of classifying grievance issues...and seldom do they warn their readers of the unreliability of the titles used for classification. Shop grievances appear in conventionalized forms appropriate to the particular agreement in force. If a worker cannot grieve over "down time" when a machine is broken, the matter becomes a legitimate issue of health and safety..." (Kuhn, 1961, p. 111

Are grievances really about what they say they are about? Gandz (1982), perhaps overemphasizes ulterior motives behind grievances, indicating that grievances may arise as a form of communications, as general challenges to management, from characteristics of the work environment, the jobs and the grievors and from intra-union conflict. However, his attempt to link grievances to background conditions is inconclusive. Kuhn (1961) accepts that most grievances may be taken at their face value. Our case studies reveal that although several of the above factors may impinge upon the rate and aggressiveness of grievance submission, most grievances reflect the union's pragmatic attempt to come to terms with the limitations of the collective agreement. Union stewards and convenors can easily lose credibility if they cannot identify a particular affront for the grievance they are arguing. And Canadian shop stewards have little power within the term of the collective agreement other than their credibility.

Yet even accepting the manifestness of grievances, their quantification may be seriously skewed by the presence of agreement language or shop practice unique to a workplace. Grievances on piece rates will abound only where an incentive scheme exists. Grievances on manning and effort levels appear at CANBREW, not because workers there are necessarily more concerned about the issue than other workplaces but because of the unique "fair day's work" provision in the agreement.

These reservations are much more serious in an aggregate study which seeks to quantify grievance information from many workplaces, than in our more qualitative and detailed study of a small number of workplaces, where local peculiarities can be more readily accounted for. Nevertheless care must still be taken in comparing across workplaces in the same country because errors are not averaged out.

Having said that about grievances in Canada, researching grievances in Britain is infinitely more difficult. Because the eventual settlement of a disagreement (except a discipline case which proceeds to a tribunal) relies much less on the procedure that preceded it than in the Canadian case, employer and trade union records are even less well organised and susceptible to quantification.

2. The Canadian plants

Since the 1944 Order in Council, Canadian labour relations law has required that all collective agreements contain a clause providing "for the final and binding settlement by arbitration of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement"[1]. A grievance procedure preceding arbitration is not specifically prescribed, although pioneering legislation provided an employee the entitlement "to present his personal grievance to his employer at any time"[2]. The provision of an internal grievance procedure, with or without provision for arbitration, was a common feature of North American collective agreements long before arbitration became compulsory (Warrian, 1986, p. 161-66). Since that time, grievance procedures have become universal in Canadian collective agreements and usually appear as the initial steps of a process in which arbitration is the end. Thus the grievance procedure and arbitration are an essential , nay central, feature of Canadian industrial relations.

In order to get to arbitration, a grievance must follow the procedure outlined in the collective agreement. While arbitrators in most provinces[3] can proceed to adjudicate a case despite minor technical irregularities, and to relieve against minor breaches of the time limits, they have no power to relieve against a major failure to comply with the grievance procedure (Brown & Beatty, 1984, p. 100).

While management has the right to file grievances, this is most uncommon, as the collective agreement generally contains provisions to challenge, rather than establish, specific management rights. In fact, filing grievances can set a dangerous precedent for management as it can erode its sovereignty. The grievance procedure, then, is the union's tool.

While a collective agreement may allow individual employees or groups of employees to *initiate* grievances, unless the agreement says otherwise, it is the union, and not the individual employee or group of employees, that "owns" the grievance from the time of

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1. Labour Relations Act of the province where the Canadian plants are located.

2. (Federal) Industrial Relations and Disputes Investigation Act, 1948, Section 26, quoted in Woods, 1973.

3. Arbitrators in some provinces do not have jurisdiction to hear grievances where time limits have not been adhered to.

initiation right up to and including arbitration. Thus, so long as it avoids acting in a manner that is "arbitrary, discriminatory or in bad faith"[4] in representing a bargaining unit employee, the union has the power to settle, prolong or even abandon a grievance without the specific consent of the grievor. That said, a grievance will seldom proceed without the consent of the grievor. Stronger unions generally attempt to negotiate provisions allowing the union to initiate grievances themselves (the CANBREW union has succeeded, but not the CANMET union). This permits the union to avoid dropping important grievances simply because the grievor is easily intimidated or apathetic.

2.1 Grievance Procedures

Customarily, Canadian grievance procedures have three or four steps (Gandz, 1978), usually starting with the grievor bringing the complaint to the attention of his immediate supervisor and proceeding upwards through meetings between ever higher representatives of union and management. Our plants are no exception here.

Gandz's (1978) study reveals a mean grievance rate (grievances per 1000 employees per year) of 108.2 for manual industrial workers in 98 workplaces (but with a very large standard deviation). Using the same method of calculation, CANBREW is near this mean at 105.6 and CANMET considerably below at 30.7. Gandz finds the grievance rate for non-disciplinary grievances to be approximately four times that for disciplinary grievances. In our plants, the rate of non-disciplinary grievances is higher than disciplinary, but only by 40 to 60 percent.

It is impossible to measure what proportion of the total universe of worker complaints these formal grievances represent. But their importance can be inferred by looking at a number of factors. As seen in the section on interests apparatuses above, the Canadian collective agreement circumscribes the disputable issues. Arbitrators have no jurisdiction by law to rule on questions outside the agreement. While some employers do entertain grievances on such issues, especially at the earlier stages of the grievance procedure, Gandz found more than 2/3 of the employers in his study did not generally entertain them (Gandz, 1978, p. 137). Most union grievance forms (and certainly those at our two Canadian plants) specify the article of the collective agreement violated,

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4. Labour Relations Act of the province where the Canadian plants are located. For more on "unfair representation", see Adell (1984).

forcing grievors almost automatically into testing their complaint against the agreement. Thus there are few incentives for the parties to work outside the collective agreement and the grievance procedure and many incentives for them to work within it.

While CANMET's collective agreement is actually worded so that *any* complaint might be entertained, the personnel manager insists that only matters of interpretation of the agreement are legitimate for the grievance procedure. The convenor too, is highly suspicious of any deviation from the straight and narrow.

> "I don't like to see myself negotiating outside of formal 'table changing time' [expiry bargaining]. It could work to our detriment. I know management would use it to negotiate away the rights we've won".

Both managements and unions are skittish about discussions outside the grievance procedure (except for a narrowly-specified group of issues 'unrelated to collective bargaining' at infrequent labour-management meetings). Gandz (1978, p. 137) indicates that while 10% of his respondents did not take the procedure "too literally", 42% insisted on *always following procedure.*

The parties at CANBREW are a bit less rigid on adhering to the issues and procedure of the grievance process than those at CANMET. The convenor (who, incidentally, is an immigrant from the British Isles and has had exposure to the that style of industrial relations) sees the grievance procedure as particularly frustrating:

> "Once an item gets to a grievance, it drags on for weeks and months...non disciplinary grievances now take more than a year to work their way through the system"

He gives an example of a recent case where a discussion with management saved both parties from a messy fight. The company wanted a particular mechanic to work overtime against his will and insisted it had the right to do so under managerial prerogative. The convenor intervened and argued the mechanic's case. Finally, management relented and found another, less provocative solution. Why didn't the convenor use the grievance procedure for this particular problem?

> "That would have formalized it. The man would have had to work and grieve the assignment or he would have had to outright refuse to work and invite discipline, which he would have grieved. Either way, the question wouldn't be resolved till much later. Justice after the fact is no justice at all.
>
> "Once a grievance is filed, the company 'locks up shop'.

But this kind of informality is most unusual. The convenor submits he would like to increase the number of times things are handled this way but doesn't hold out much hope.

The company's willingness to 'horse trade' either before or during the grievance procedure is severely limited by fear of what this would do to the power relationship.

> "The company doesn't want to agree to union-proposed compromises. They would rather be the author themselves of whatever compromises are reached, so that they look good."

In other words, management does not mind occasionally acting benificent of its own initiative. This it does during the grievance procedure when it reduces a suspension to a letter of warning or offers an employee deprived of overtime the next available opportunity. But there is no "horse trading" to speak of and the employer is very leery of allowing the union to take the initiative in settling grievances outside of procedure for fear that the union will begin to erode management's rights. This mirror image of the situation at CANMET, illustrates the great reluctance of both parties in Canada to treat outside the bounds of procedure.

Very few grievances in Canada are pursued to arbitration. In Gandz's study (1978), the mean arbitration rate is 1.3 or approximately 1.2% of the mean grievance rate. Our plants have a considerably higher arbitration rate than Gandz's sample, at 9.1 and 2.3 (8.5% and 7.5% of the grievance rate) for the brewery and the aluminum plant respectively. But this still means that more than 90% of all grievances do not reach arbitration. What happens to them in the interim?

2.2 Patterns of Grievance Resolution

Much can be learned by observing the patterns of grievance resolution. While the caveats mentioned above about difficulties in tracking grievances apply doubly here, there is some sketchy evidence available. Gandz's (1978) study reveals very little concession by either management or unions in the early stages of the grievance procedure. As the grievance moves along, management becomes slightly more willing to concede a few non-disciplinary grievances but retains an unwillingness to settle discipline cases. Our study indicates a similar pattern, with non-disciplinary grievances being settled, or abandoned by the union, at an earlier stage than disciplinary ones. Gandz suggests that management is reluctant to settle disciplinary grievances at early stages because appeal is to the same manager who imposed the discipline. Only at higher stages, especially where the industrial relations department enters the scene, is the discipline likely to be reversed.

Our evidence indicates a definite difference in patterns of resolution between CANMET and CANBREW. First, the grievance rate is much lower at CANMET than at

CANBREW especially in the non-disciplinary area. This is possibly because, in its relative weakness, the union does not perceive affronts nor respond readily to them when perceived, unless such affronts include the suspension or dismissal of a member. At CANMET, very few grievances are conceded by management at any stage. But many grievances are dropped by the union (or seem to run out of steam) by the second step of the grievance procedure. The union has a definite problem in carrying its grievances forward through procedure. This is both a result and a cause of its weakness.

In CANBREW, a similar reluctance by management to concede at early stages exists, but a far greater number of grievances are carried by the union to the third and final step. At this point, there *is* some management concession, especially in minor discipline cases. But there is also a great deal of concession by the union. It is interesting to examine this stage more closely. The union is assiduous in carrying grievances as far as it can in order to squeeze as much review as possible by involving higher management.

The third step meeting is a serious affair, attended by the staff representative from the union and a senior ex-plant management official. Both of these representatives are formally briefed by their in-plant colleagues before the meeting. Long discussions ensue and the company gives a formal and often elaborate reply in writing, usually about a third of an A4 sheet reply for each grievance a few days later. A typical example of the length and care taken in such a reply appears in the management representative's final disposition in the case of the discipline of two employees for drinking beer on the premises:

> "The Plant Management group has attempted to control in-plant beer consumption that is contrary to our policy. I am hesitant to do anything that may jeopardize the established practice of a one day suspension for these violations.
>
> "It is obvious that the beer found in the Electrical Shop was placed there for consumption contrary to our policy. Hence, someone was planning to drink the beer. The facts are not such to lead me to believe that *two* people were drinking. So, on the face of it, *at least* one innocent man was disciplined.
>
> "The two employees were in the room with an open bottle of beer, either as a result of their own action, or due to the actions of another. This exposed them to the attention of the Supervisor, and the obvious conclusion of the Supervisor.
>
> "Without prejudice and precedence [sic], I am prepared to reduce the suspensions to written Notices of Discipline. It is hoped that neither [Mr. A. nor Mr. B.] will be found in the possession of a beer in an unauthorized area within the period the letters are active on file."

If management is willing to relent at this stage or offer a compromise, it will do so "without prejudice", cautioning the union that the decision is entirely gratuitous and no precedent should be assumed.

If management is unwilling to relent, the union has two choices: proceed to arbitration or drop the case. While the union has a high arbitration rate, it nonetheless drops most of its grievances at step 3. It does so in a letter summarising its disposition to management's 3rd stage letter:

> Dear Mr. X [Company Representative]
>
> The Union response to dispositions received as a result of 3rd step grievance meetings held on July 20th and August 3, 1984:
>
> THE FOLLOWING:
>
> *** 84-06 POLICY GRIEVANCE (GARAGE) NOT ACCEPTED
> 84-07 G. WHITE ARBITRATION
> *** 84-11 G. BLACK NOT ACCEPTED
> *** 84-13 C. GREEN NOT ACCEPTED
> 84-15 N. RED ACCEPTED
> *** 84-20 POLICY GRIEVANCE (GARAGE) NOT ACCEPTED
> 84-29 J. GOLD ACCEPTED
>
> *** GRIEVANCES. WE ARE NOT PURSUING ANY FURTHER

As can be seen above, the union presents three dispositions: "Accepted", which invariably responds to a compromise suggested in management's 3rd step letter (such as the one in the beer on the premises case); "Not accepted" accompanied by asterisks indicating the union will pursue the issue no further; and "Arbitration", giving the company notice, as per the collective agreement, that the union intends to proceed to arbitration.

Approximately 15% of the union dispositions at this step are for acceptance and 15% for arbitration. The rest and majority (approximately 70%) are for non-acceptance with no further action. The union is signaling to the company and, more importantly, to the grievor(s), that it has gone as far as it can. The grievor has 'had his day in court' but the union will proceed no further. Thus, in their third step dispositions, both the union and the company have gone through a sort of face saving exercise, primarily meant to allow the union to drop unwanted grievances. But it is often the first time the grievor is informed that he his grievance is a 'non mover'. Up to that point, the union has given every indication that it has taken the grievance seriously.

This relatively sophisticated process (especially as compared to that at CANMET) is meant to assuage conflict by allowing the full airing of complaints. But given that so few of them are really 'settled' as opposed to abandoned by the union, its success is questionable. Students of the grievance procedure (Slichter et al., 1960; Kuhn, 1961; Gandz, 1978) assume that the process somehow 'works' because there is a pattern of settlement, but this is not necessarily so. It is not possible to make a definitive link between the pattern of grievance settlement and the pattern of industrial conflict either in a workplace or across the system as a whole, but some of the network of threads linking expiry strikes, wildcat strikes and disaffected work groups at CANBREW have already been considered. The convenor suggests the link is more than tenuous:

> "Once we get bogged down in procedure, it actually prevents compromise. The workers and I get frustrated during the term of the collective agreement. The grievance system doesn't give us our due during the collective agreement so it's no surprise that people are ready to bust out when the contract expires."

Examining the processes at work more carefully, how this happens can be more readily seen. For reasons mentioned earlier, the grievance procedure is a vacuum cleaner that scoops very low, picking up even the smallest complaints and elevating them into the formal arena of 'procedure'. Once into procedure, the original complaint becomes something different, as Slichter et al (1960) say:

> "Many grievances change in character as they move through the grievance procedure--a fact not always realized...As a grievance advances up the grievance procedure, it loses its operating flavor and content. It becomes a 'paper grievance'..." (p. 733)

These authors cite some of the negative fallout from this situation:

> "Discussion and settlement of a large proportion of grievances in their operating environment by those most immediately concerned in the outcome go much further to create a satisfactory employee relations environment than do higher-step settlements. A top-step settlement of an individual employee grievance, no matter which side wins, creates no meeting of minds of those most immediately concerned." (p. 733-34)

But 'the system' seems to work against settlement at a lower level. At the early stages of the procedure, it is not in the interests of *supervisors* to concede on grievances. For all the attempts by CANBREW higher management to get first-line managers to take more responsibility for answering grievances, these managers hesitate to do so. They want higher management to hand down standard plant-wide policies on issues involving disputes with employees and they attempt to get the personnel department to help them in their replies to the union at the early stages of the grievance procedure.

The CANBREW personnel department has attempted to impress upon the first-line supervisors the importance of getting the first responses to grievances right by selectively taking them along to arbitration hearings. Other supervisors have experienced arbitration at first hand as witnesses. But instead of encouraging them to take more responsibility in answering grievances, this exercise has induced a (quite unjustified) fatalism, and often fear, among the supervisors and a preference to 'play it safe' by passing grievances on up the ladder. Confronted with arbitrators who do not take a crude pro-management line, many supervisors rashly jump to the conclusion that the whole process is 'stacked against us'. "Why can't we be left alone to just manage?" they ask plaintively. The effect of arbitration on management will be discussed in more detail in the chapter on "Enforcements". Also discussed in that chapter are the reasons for the differences in the pursuit of grievances between the two Canadian plants.

At the later stages of the grievance procedure, it is the *union* whose interests are not served by conceding on grievances. Unlike in the British situation, the political costs of 'sorting out' the membership are quite high while the costs of forcing the issue to the final step are quite low. After the final step, the costs become higher and this is where unions become a little more discriminating. While most *non-disciplinary* cases are abandoned at this stage, most disciplinary cases are taken on to arbitration. In a sense, disciplinary cases are 'safe' in that most do not challenge managerial prerogative per se.

Thus the grievance procedure at CANBREW (and, by extrapolation, most Canadian bargaining units which pursue grievances with a minimum of vigour) is like an escalator, easy to get on, hard to get off until the very end. At the end, however, it can let union members down with a nasty bump.

2.3 The Effect of Arbitral Jurisprudence on Grievance Resolution

The imagery of automatism is reinforced by the fact that from the earliest stages of the grievance procedure, both parties are heavily influenced by the arbitral jurisprudence. Forty-five years of Canadian arbitration have probably produced more than 100,000 awards. Like court decisions, they are gathered and the 'leading cases' (those that break new ground) edited and reported just as court cases in volumes of arbitral jurisprudence. Several comprehensive reviews of this jurisprudence (Brown & Beatty, 1984; Palmer, 1983) have been published and are updated periodically. As well,

commentaries on the arbitration scene are distributed by reporting services to employers and to unions. Personnel managers and convenors in both of our Canadian plants indicate that they use these reviews and commentaries. They also make a special point of being familiar with arbitration awards of other bargaining units in their industry (the approximately 40 breweries across the country are especially keen on sharing arbitration awards). As CANBREW's personnel manager says:

> "Jurisprudence enters my consideration before we move to the second step of the grievance procedure. I try to get the supervisors to act as if every grievance is going to arbitration."

The convenor at CANMET admits:

> "Jurisprudence becomes important to us by the third step. I've taken union courses on arbitration and it's drilled into people to look at their Brown and Beatty during the grievance procedure."

In addition to consulting books and reports on arbitral jurisprudence, unions and companies sometimes consult outside experts even while the case is in the grievance stages. CANBREW's personnel department is authorised to occasionally consult the company lawyer before arbitration on matters of great importance. Convenors at both of our Canadian plants consult staff officers on jurisprudence from the very beginning of some important cases.

Predictability in arbitration is highly valued by all parties, but especially by management and its lawyers and for the most part they are not disappointed. While individual arbitration awards do not set legal precedents, a strong *line* of similar awards on similar material facts will almost inevitably lead to an issue being *settled* and so comprehensive is the jurisprudence that even the most esoteric situations find their way into print. Thus, given a set of circumstances, practitioners can almost predict the arbitral outcome. Two American scholars have gone so far as to develop a computerised simulation of the arbitral decision making process in arbitration. They claim,

> "As the model is further developed and refined, a user could decide the probability of a 'win' or 'loss' outcome for a given case, to be ruled on by a *specific* arbitrator or by arbitrators in general." (Gallett & Goff, (1980), p. 66")

But since arbitrators are mere human beings and not computers, some, especially those who are just beginning their careers, are less predictable than others. Commenting on one such 'loose cannon', a Canadian corporate labour lawyer expresses his distaste:

> "I won't appear before her. It's not that she's consistently pro-union. Actually, she rules as often for management as for unions. It's just that she has no understanding of the shop floor. [He then describes a case where this lack of understanding led to an undeserved management win.]...This

kind of case destroys her predictability. And I look like a jerk to my clients if I can't predict a result from arbitration. None of us want unpredictable arbitrators."

Corporate industrial relations lawyers use this predictability not only to argue arbitration cases but to advise their clients on what action to take in a situation. Most respond on an ad hoc basis to queries by their clients and then become more involved as cases near arbitration, but some take a more interventionist approach, especially with smaller firms that do not have highly specialised industrial relations departments. One such lawyer insists:

> "We have a better record at arbitration than most law firms because we are more proactive. We encourage our clients to call us earlier in the grievance procedure. We get them to line up the circumstances so they get the best result if the case goes to arbitration. For instance, in the case of termination for absenteeism, there is a definite set of preliminaries that they should follow so that it will stand up at arbitration."

In this way, he claims that the client can "shape the event to fit the approach of arbitrators".

Because of the importance of the arbitral jurisprudence on grievance resolution, it should not be surprising that experienced practitioners on both sides learn to spot 'winners' and 'losers' among grievances quite early on in the procedure. Inevitably, this shapes their way of thinking about grievances and about worker complaints in general. If a case is a clear 'winner' for the union, management will often give way before the case goes to arbitration. As one company lawyer says:

> "Law firms can spot a loser a mile off. There are considerable costs to losing an arbitration, mainly in loss of face to the company. I always say to a client if he's got a loser, for instance in a discharge case, 'if we don't give in on this grievance now, then the guy will wave his $10,000 cheque around the plant'. Even if the arbitrator reinstates him with no back pay, it looks like a victory for the union."

This echoes the CANBREW convenor's remarks about the importance to the company of monopolising the initiation of concessions. As will be seen presently, arbitral 'losers' for employers occur most frequently in discipline cases. More often than not the case is an arbitral 'loser' for the union. Though it may have arisen as a perfectly legitimate worker complaint, once into procedure a grievance's disposition is more and more framed by arbitral considerations. It is nonetheless important that the union carry on, at least until the final stages of the grievance procedure and possibly to arbitration, lest the entire system be brought into disrepute. However, the vigour employed depends greatly on the subject matter of the grievance. Unions are very good at cynically pursuing 'losers' in discipline so that the grievor has, and is seen to have, his 'day in court' and that a third

party, not the union, makes the final decision. Ross (as quoted in Brecher, 1972, p. 254) describes this process as "the vigorous prosecution of lost causes" and suggests that employers have learnt to be tolerant of it:

> "Employers frequently understand that union officials are required to support improbable demands, and develop a spirit of tolerance toward the practice if it is not carried too far. If it is politically impossible for the [union] officials to accept a refusal, the issue may be carried to arbitration, again without expectation of success. All of these procedures are part of the equipment of successful trade union leaders"

Yet, while admittedly pursuing lost causes and hesitating to 'sort out' its members, a more subtle method of 'filtering' grievances operates to keep the number of lost causes lower than they might otherwise be. The subject matter of grievances initiated is inevitably constrained by the question of arbitrability.

2.4 The Subject Matter of Grievances

What are the subjects of grievances? Bearing in mind warnings about mixed and disguised motives, what evidence exists is worth considering, more for broad patterns than for details. Gandz's (1978) study is not able to divide grievances from his large sample into anything more detailed than 'disciplinary' and 'non-disciplinary'. However he does look more closely at the pattern of grievances over a fifteen-month period in a basic steelworks and finds the following information: The largest discrete group of grievances is disciplinary, comprising more than half of the total, with discharges at roughly 8% of the group. The second highest group, at about 25%, consists of issues concerning the structuring of the internal labour market (ie. who shall be in or out of the bargaining unit, application of seniority, job postings etc.). The third largest group, at about 7%, concerns pay, overtime and work scheduling. Only a very small group of grievances (no more than 3%) concerns itself with the performance of work itself, its speed, its direction and relations between workers and their supervisors (such as harassment by foremen), or 'job control'.

Our two case study plants follow roughly the same pattern, but with discipline forming a slightly lower majority and pay forming a much larger minority proportion than in the earlier study (most of the pay grievances are over alleged unfair distribution of overtime opportunities).

Internal labour market grievances are only 10% of the total at CANBREW. But, given the absolute flatness of the job hierarchy in this plant, it is surprising that the

grievance rate should be even this high—proving even more conclusively the importance of this substantive area in Canadian grievance procedure. Although still a very low proportion, job control grievances are somewhat more numerous at CANBREW, but this is due to the presence of the aforementioned unique 'fair day's work' clause.

Why are there so few grievances on job control issues? Could it be that these are not of importance? Given their importance in the grievances of British workers, this is doubtful. Yet their relative absence, even taking into account the scarceness of appropriate language in the collective agreement on which to base such grievances, indicates a filtering mechanism at work, operated not only by the convenor and the stewards, but possibly by the workers themselves, who sense that using the grievance procedure for such complaints may be worse than a waste of time.

3. The British plants

Unlike in Canada, the British state has not intervened in workplace industrial relations to specify how the parties should go about resolving disputes. The presence of disputes procedures for the processing of complaints from workers, therefore, has been much less uniform and comprehensive. The Donovan Report commented on the relative poverty, to that point, of workplace-based disputes procedures, and recommended that boards of companies take steps:

> "to develop, together with unions representative of their employees, joint procedures for the rapid and equitable settlement of grievances in a manner consistent with relevant collective agreements." (Donovan, 1968, p. 45)

Up to the time of the Donovan Report, much of the collective bargaining on the employer side was dominated by several large employers' federations eg. the Engineering Employers' Federation, the National Federation of Building Trade Employers and the Association of Chemical and Allied Employers, to name some of the largest. These federations had industry-wide disputes procedures but domestic procedures in individual plants were embryonic. In 1968, more than a third of federated employers and about a quarter of non-federated employers in manufacturing surveyed had no formal plant procedure (Government Social Survey, 1968).

The industry wide procedures were subject to much criticism by trade unions. It was the Engineering disputes procedure that came in for the greatest criticism, but it epitomised the problems of the others. Designed to settle disputes over the interpretation

of the industry-wide substantive agreement, it consisted of three stages, a Works Conference at the workplace, a Local Conference involving regional union and federation representatives, and a Central Conference, held invariably at York, involving national officials (Hyman, 1972). The procedure suffered from many deficiencies: it was too long; it failed to dispose of complaints effectively; it failed to stop a rise in unconstitutional work stoppages and it was overloaded above works level and yet unable to effectively handle disputes at works level (Marsh & McCarthy, 1968a, p. 18).

So discredited among unions was the procedure that former Transport and General Workers Union General Secretary Jack Jones comments:

> "I shared the view of the old lad who said that over the entrance to the Royal Hotel at York, where the monthly conferences were held ...as the last stage in the [disputes] procedure, there should have been a banner erected to read 'Abandon Hope All Ye Who Enter Here'. The procedure...was long-winded, with inbuilt delays calculated to cause frustration." (Jones, 1986, p. 111).

This state of affairs, which lasted at least half a century, nurtured a legacy of distrust of formal procedure, especially among general unions like the T&G, that persists to this day when industry procedures are no longer the norm.

But it was not only the unions that disparaged procedure. Management, while complaining that unions had scant respect for procedure, was as guilty itself. Tolliday describes the evidence given by Amalgamated Engineering Union head Bill Carron's to the Donovan Commission:

> "The shop floor [managers] had decided that the way to succeed was not to go through Procedure but to 'turn on the heat': the motor manufacturers had developed a habit of conceding *only* under pressure. "They refuse through all the levels of Procedure and then at a certain point, there is the threat of action or something similar and then they concede. This', he concluded, 'is making nonsense of Procedure.' Employers were conceding under pressure what they would not concede through reason." (1985, p. 135, emphasis in the original)

Whether they were responding to the Donovan Report or to trends and pressures building up before, many British employers (mostly with union blessing) abandoned industry disputes procedures very quickly in the early 1970's. One of our British plants, BRITMET, belonged to the Engineering Employers' Federation until 1971, when it disaffiliated. Left with little or no domestic procedure, those companies that dropped out of industry arrangements, those whose federations abandoned industry procedures and even many of those who still participated in industry procedures , started to introduce more elaborate procedures at plant level. By 1984, 91% of private sector establishments surveyed had some sort of disputes procedure (Millward & Stevens, 1986, p. 170).

3.1 A Multiplicity of Prescribed Procedures

Actually, the term disputes procedure implies a single procedure while, in fact, British workplaces have several different types, some running conjointly, making procedure somewhat more complicated than in their Canadian counterparts. Some of the distinct types of procedure are 'pay and conditions', 'disciplinary', 'individual grievances' and 'health and safety' (Millward & Stevens, 1986). Our plants have combinations of these.

BRITMET has an 'individual grievance procedure' and a 'disciplinary procedure'. It also has subsets of these: a 'collective issues' procedure which plugs into the 'individual grievance procedure' at its third stage; and 'serious misconduct' which plugs into the 'disciplinary procedure' at its third stage; both of these latter plug into the 'collective issues procedure' at its third stage. BRITBREW has a 'grievance procedure' and a 'disciplinary procedure' distinct from one another.

Given that the formal and sophisticated Canadian system suffices with only one procedure, why is it that the British system has so many separate ones? One reason is the relative novelty of domestic procedures. Collective bargaining had existed for at least a hundred years before they became widespread, so they have been added on in a patchwork (unlike Canada, where disputes procedure was prescribed at the dawn of mass collective bargaining). A second, and important reason is that since 1970, several laws have been passed which either directly or indirectly force employers to set up procedures. The Industrial Relations Act (1971) gave employees the statutory right not to be unfairly dismissed. In light of the Act and its amendments, both ACAS and various personnel management organisations encouraged (union and non-union) employers, both for their own protection and that of employees, to establish a formal procedure to follow when disciplining. This is why many employers, and our two case study plants, have disciplinary procedures distinct from others.

Discipline and its procedures will be discussed more fully in Chapter VII. It is important to note here, however, that the disciplinary procedure differs from other procedures in one important way: the initiative is taken by the employer. In Canada, the employer imposes discipline and then sits back to wait for the union to respond. If no grievance is launched against the discipline, then the discipline sticks. The only way for

the union to gain access to arbitration is to follow the grievance procedure, so a fair hearing and right to appeal at the workplace is presupposed. In Britain, an individual discharged employee, with or without the help of his union (in fact even a non-union employee), can take the employer to a disciplinary tribunal, whether or not he launched a grievance at the workplace. Yet an employer at a tribunal is judged, among other things, on its procedural fairness (Anderman, 1985, p. 422), ie. whether the employee was given adequate warnings (in cases short of gross misconduct) as well as a fair hearing and the right of appeal. Thus the employer is well advised to set the appeal procedure in motion himself, rather than wait for the employee or the union to do it.

Disciplinary procedures aside, as in Canada, the grievance procedure, although theoretically available to the employer, really belongs to the union. There is no provision in British law obliging the union to represent employees fairly as there is in Canada. The union, then, is free to decide which cases it wishes to bring to procedure, or whether to use procedure at all.

There is no restriction, whether explicitly or implicitly as there is in Canada, on the subject matter of the grievance procedure. The BRITMET procedure invites "problems of any kind". The BRITBREW procedure can be used for "any matter in which [the grievor] is directly concerned". Since, as has been seen, the collective agreement is neither comprehensive nor circumscribes the disputable issues, grievance topics vary widely.

Thomson and Murray's study (1976) of grievances in 35 British workplaces sheds some light on the question of subject matter (p. 78). As in the Canadian plants, minor pay and overtime issues are common. Discipline is also common but not nearly as much as in Canada5. Grievances about promotion and redundancy (structuring of the internal labour market), very common in the Canadian plants, are conspicuous by their absence in Britain. By far the most frequent types of grievance they found were on "working conditions" (complaints about the physical arrangements of production) and "work allocation" (resistance to being transferred within the workplace). These are issues that

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5. It should be noted that the Thomson and Murray study (1976) was carried out before the advent of disciplinary tribunals.

Canadian collective agreements and grievances touch on very infrequently and tangentially, in that they impinge on the area which we have called 'job control'.

British disputes procedures usually prescribe three or four steps (BRITMET has four steps, BRITBREW three), advancing from a discussion between the grievor(s) and the appropriate first-line supervisor (both of our plants invite the attendance of the shop steward), through higher levels of management. As in Canada, the procedure finally prescribes the involvement of the highest industrial relations managers in the company and the staff officer of the union.

After the final stage at plant level is exhausted, a significant minority of British grievance procedures (approximately a quarter) specify the use of a third party, other than an employers' association or trade union, to settle disputes (Brown, 1981; Millward & Stevens, 1986). Such provision is usually voluntary, although some are compulsory. At BRITMET, the collective agreement indicates that disputes after the final stage "can be referred to ACAS if jointly desired". The BRITBREW procedure provides that the matter *will* be referred to ACAS for conciliation and that failing resolution there, it *may* be referred to an independent arbitrator for final and binding settlement.

3.2 Appearance vs. Reality

So much for appearances. *The reality of disputes procedures in Britain is quite different.* Their actual *use* is much less common that their formal inclusion in agreements would indicate. To start at the end of procedure, conciliation is rare and arbitration rarer, *even where specified in procedure.* Brown (1981, p. 48) indicates that of the minority of workplaces in his sample with provision for third party intervention, more than 3/4 had not used it for pay and conditions disputes, 92% had not used it for discipline and dismissal disputes and 95% had not used it for individual disputes, in the two years prior to the study.

Compared with approximately 2000 arbitration cases a year in Canada, in Britain (a country with more than double the working population), ACAS and the Central Arbitration Committee (CAC) now handle fewer than 200 a year (ACAS, 1986, p. 44; ACAS, 1987, p. 29).

At BRITMET, despite the provision for reference to ACAS in the agreement, the parties have only agreed to refer a dispute to arbitration *once* in memory (approximately

15 years). Its outcome is highly instructive about the use of arbitration in Britain. The reference, in 1979, concerned whether tax free allowances would be included in the pay of transport drivers. The arbitrator's award was a compromise between the stated positions of both parties. But both union and management disagreed with the award and decided to ignore it despite prior mutual agreement (but no legal obligation) to be bound by it. Says a personnel manager:

> "There was no rationale that we could see for the decision. Both the union and the company were angry at him. It left such a bad impression of arbitration that we never want to use ACAS again. There would have to be a major strike over an issue that seemed insoluble for us even to consider it."

The union concurs in this assessment. The point here is not the substance of the award nor even the parties' dislike of it, but rather the way their reaction highlights their attitude to the process. Because it is so common a mechanism in Canada, the parties there accept, at least outwardly, the occasional unpopular award. In Britain, where it is exceptional, such an unpopular award often works to drastically discredit arbitration.

Some five years after the above incident came the only other mention of arbitration. Having exhausted the disciplinary procedure for an employee fired for theft and fighting, the union wrote to the company appealing the case to ACAS for arbitration. The company refused outright and a senior manager wrote to the union:

> "...The Company firmly believes that any reference to ACAS could only be made if jointly desired. The wording 'if so desired' has been part of our Agreement since 1971 and this is the first time there has been any difference of interpretation...
>
> "The Company has also discussed the situation with ACAS emphasising that it was not prepared either to be bound by arbitration or be involved in conciliation...The ACAS Regional Officer was not prepared to become involved in the case on that basis"

Realising a lost cause by this route, and feeling its chances to be worse at a statutory tribunal, the union abandoned the case. The company, for its part, had nothing to gain by arbitration. Both of these examples typify the attitude of deep distrust on both sides for third-party intervention.

A similar attitude exists at BRITBREW. Despite a *mandatory* provision for ACAS conciliation and a *directory* provision for arbitration in the disputes procedure, arbitration has, in fact, never been used and a conciliator consulted only once in the memory of the parties.

The truth is that the parties in British industrial relations by and large do not take procedure nearly as seriously as their Canadian counterparts--nor, of course, do they

have to. Because third party intervention to resolve disputes is neither required nor especially desired, the use of formal procedure to unlock access to it is unnecessary. Our investigation of procedure in the two British case study plants reveals that there really exist two procedures—a formal one, which follows the steps laid out in the agreement, and an informal one, which actually handles most of the disputes which arise. What is more, the parties slip back and forth between the two comfortably according to their needs.

This fact is particularly well-mirrored in the grievance documentation (or actually its absence) of the two plants. BRITMET can actually boast some grievance documentation, especially in discipline cases, since it is in the company's interest to maintain it as a hedge against a possible disciplinary tribunal. But for the most part, evidence on other grievances is sparse and confusing. BRITBREW's grievance documentation, both disciplinary and other, is, for all intents and purposes, non-existent. A personnel manager indicates that what few documents on grievances do exist are filed in the personnel files on individual workers. As for the union, the convenor says that "records only begin when a shop steward is not able to handle a grievance". The union's documents on grievances are in the files of individual shop stewards. But it is impossible to follow the progress of even a single discrete grievance in this way. Records of grievances may begin or end at any stage in the procedure and bear no relation to the eventual outcome or to the actual process of resolution that took place. Thomson and Murray (1976, p. 59) describe the same difficulty in their study of British grievance procedures:

> "...the factual existence of such things as standard practices is difficult to distinguish empirically from actual processes. In addition to obtaining copies of formal procedures, we asked top and middle management respondents what the 'usual' practice was for handling grievances. If several respondents tended to give the same or highly similar answers we assumed that a standard practice existed. If managers said there were no 'usual' ways of handling things or if we obtained highly varied responses as to what was usual we assumed no standard practices existed. As with the formal written procedures, however, these general statements of 'usual' were not necessarily the *actual* process by which grievances were handled..."

The fact that they carry on with their study dealing almost exclusively with formal processes after acknowledging the high degree of formality is all the more questionable. As can be seen in our case study plants, *informality* is still the rule, with the formal procedure being, as one personnel manager put it, a mere "location point in a dispute".

3.3 The Persistence of Informality

While the informal procedure is the significant method of disputes resolution in *both* British plants, it is in BRITBREW that it has reached its fullest flower. What makes this

fact all the more ironic is the evident pains to which the parties *seem* to have gone to build in quite unique incentives for adhering to procedure.

The BRITBREW collective agreement states quite clearly that:

> "Any dispute arising from the application of this Agreement will be resolved through the procedure for resolving disputes contained in the Plant Agreement. *No strike, lockout or any other action will be taken by either party until this procedure has been exhausted*." (emphasis added)

What is more, *by agreement between union and management*, the following clause appears in every individual contract of employment:

> "The employee agrees that he shall not take part in any strike or any other industrial action until any issue or dispute causing or contributing to such strike or other industrial action shall have been dealt with through the appropriate procedures agreed between the Company and the Union and those procedures have been exhausted."

To back up these admonishments, the collective agreement contains what the parties call a 'procedural bonus', described as follows:

> PAYMENT FOR ADHERENCE TO GRIEVANCE PROCEDURE
>
> The Company will make a payment of £38 per eight-weekly period in arrears to all full-time hourly paid employees in the defined work group when no unofficial action has been taken in breach of their Procedural Agreement..

The BRITBREW case is an almost perfect example of the robustness, despite prescription to the contrary, of informality. In the face of all of these explicit reminders and incentives, not only is procedure seldom followed in its prescribed form but work stoppages are common *during* procedure. But what is even more remarkable is that while both parties explicitly acknowledge and accept industrial action as the ultimate step once procedure has been exhausted, *there has never been a strike within the memory of the participants (15 years) which came about as a result of the exhausting of the procedure*. "If an issue is emotive enough to cause a dispute," says the convenor, "Then a strike may happen at any step no matter what the agreement says."

It is worthwhile briefly examining the workings of the above-noted procedural bonus provision at BRITBREW because it tells so much about the flavour of shop floor industrial relations in this plant and, by implication, in British workplaces with strong unions. The provision was negotiated into the collective agreements of BRITBREW and its sister plants across the country in the late 60's or early 70's. In those other plants, it has long disappeared by being consolidated into general pay. But it remains at BRITBREW because management still sees it as useful and the union finds it relatively easy to ignore. Its initial objective and subsequent effect have been watered down by a

number of factors: First, its amount has remained £38 for some time, reducing its real value and incentive power; Second, aggressive, fractious work groups who are prepared to strike out of procedure are willing to forfeit the payment if need be; Third, sometimes the bonus is actually paid after a non-procedural work stoppage because such payment is bargained *as part of the settlement of* the strike. The fourth factor is that, perversely, the provision can often work *to encourage flouting of*, rather than adherance to, procedure. This depends on when the non-procedural strike occurs. The bonus is paid department by department in the ninth week for the preceding complete eight-week strike-free period. The departmental scope is designed to encourage peaceable workers to rein in their more obstreperous brothers and also to avoid the difficulty of singling out the renegades. Yet if a strike occurs near the *beginning* of the eight week period and results in forfeit of the bonus, even if the strike is by a small group of workers, it can often lead the *whole* group to feel it "might as well be hanged for a Pound as a Penny", and be *more* willing to strike in the remaining weeks. Because of this, management must think very carefully about whether it wishes to withhold the bonus in any particular work stoppage. If the dispute is precipitated by a manager acting 'foolishly' and the strike is 'his own damn fault', it may well make the situation worse for the company to withhold the bonus. Thus withholding of the bonus is reserved for those occasions when the shop steward and work group involved flout the procedure gratuitously or continuously. In such cases, the company may not only withhold the bonus but also express its displeasure by threatening to remove the shop steward, discipline the strikers and withhold other 'favours' from the union. These are intended as signals to the convenor that the offending work group and shop steward have stepped over the line of acceptability, threatening to tip the entire delicate mechanism of dispute resolution over. The convenor is then expected to 'sort out' the delinquents and in most cases at BRITBREW, he does.

The above example shows a number of things. First, it illustrates that when a system of workplace industrial relations is geared to and thrives on informality, no amount of prescription and incentive will bring about formality. Second, it demonstrates that despite the informality, the system has definitive but unspoken limits of acceptability. Third, it indicates how misleading prescribed procedures can be to a researcher if not investigated more deeply.

While it is difficult to specify a 'typical' dispute at BRITBREW, the following composite reflects a common type of approach at this plant: While the grievance procedure specifies that the first stage may involve discussions between the employee and his direct supervisor, it is realistic enough to acknowledge that the discussion usually takes place between the shop steward and the department head, bypassing the grievor and supervisor entirely. Both union members and managers indicate that first-line supervisors are often too close to the shop floor and have too little real authority to be worth talking to about grievances. Likewise, bypassing the individual worker can be expeditious since the steward is often able to express the complaint more succinctly and less emotionally than the grievor, can make connections between the instant complaint and other related problems, and sometimes will 'filter' frivolous or strategically unsound grievances out of the system before they become caught up in the system.

The vast majority of disputes at BRITBREW are handled between the shop steward and the department head without the convenor or the personnel department being involved. Neither party considers the dispute at this stage to be 'in procedure' partly because it is discussion only and partly because both sides may wish to 'do a deal' without any formal documentation or formal notification of those higher up. Not many such agreements completely escape the notice of higher union or company officials and outrageous arrangements are sometimes vetoed by either management or union, but as long as the agreement is within the bounds of acceptability, both convenor and personnel are content to pretend they do not know its substance. The exact proportion of disputes settled at this stage depend on the strength and confidence of the shop steward and the manager involved.

Failing settlement at this stage, the shop steward informs the convenor who either instructs the steward to register a formal 'failure to agree' or, if the problem is very important, goes directly to the department head or the personnel manager for an informal chat. If a 'failure to agree' is registered, it consists of a short note, often written by the convenor, setting out the 'terms of reference' of the dispute. A meeting between the convenor and the department manager follows. In any case, the convenor is invariably in touch with the personnel manager to inform him of the failure to agree, even if the department head does not.

The convenor describes what goes on at the second step:

> "If we decide to formalise things at this step, we argue from entrenched positions on points of principle. We only do that if we know the issue can't be resolved here and must go higher. It's most difficult to resolve a dispute here and I feel we've failed if it gets to this level. In fact, before we go to the third step, the shop steward may have got back with the manager to try to solve the problem. Everyone is trying to find a solution to prevent it from getting higher in procedure."

At the same time, the convenor may be holding informal talks with the personnel manager. If the dispute does go to a higher step, it is usually because one party or the other wishes to stall for time. Time is important at BRITBREW for two reasons: First, a 'status quo' agreement ensures that once an issue is in dispute, conditions may not change until the parties have resolved it. Depending on the issue, time may favour one party or the other. Where management wants to introduce change, status quo is usually on the union side. Where the union finds itself in a temporarily advantageous position and wishes to press its advantage, status quo is on the employer side. Second, because of the seasonal nature of the beer industry, some parts of the year, such as the runup to Christmas and the Summer are more sensitive to conflict than others. So, for instance, in the month preceding Christmas, the employer strenuously attempts to keep issues from coming to a boil while the union strenuously attempts the opposite.

The parties can delay as much as they wish up to the third step because there are no time limits. The third step specifies a meeting between the union staff officer and the personnel manager within seven days but, if requested, the staff officer, whom everyone knows is a very busy man, will make himself unavailable.

If one side is eager to resolve a dispute, delay by the other side will inevitably bring about informal, non-procedural talks which will almost inevitably settle the dispute.

4. Concluding Remarks

This then is a taste of the complexity, tractability and mixture of formality and informality of the British disputes procedure at its fullest flower. Given a pair of parties with a reasonably mature relationship, some measure of self-confidence, a reasonably clear sense of objectives, and a degree of tolerance for low-level work stoppage, as is the case at BRITBREW, it can be a surprisingly effective system of conflict resolution. Unlike the Canadian system, where disputes become rigidly 'locked in' to procedure and the parties retreat to fixed and intractable positions almost immediately, there is plenty of room for informal discussion and for resolution of the dispute both before procedure is

initiated and while it is running. What is more important, once a dispute issue is raised, procedure does not take on a logic of its own, unconnected with the real substance of the dispute or the real wishes of the parties, as it does in Canada. There are many opportunities for both parties to give way without losing face and to win without making the other party lose face. There are a myriad of ways of 'fudging' or 'massaging' the issues if the parties wish to avoid trouble. Yet, if one or both parties wish, there are ways to bring things to a head quickly.

This type of system works best in strong bargaining relationships such as exist between management and union at BRITBREW. In fact, as Batstone et al (1977, p. 175-76) point out, "in certain respects, the mere existence of strong bargaining relationships suggests the breaking of certain procedural rules". These authors suggest that such a relationship both requires and ensures that substantive rules and agreements be broken too. In fact, they suggest that "rule breaking is a means to success", for both sides, for the union because it results in greater 'goods' for the members and for management because the union prevents trivial problems from clogging up the disputes machinery and taking up management's time and allows production to continue with minimal disruption.

The system, however, does not work as well where weaker bargaining relationships are the norm, such as at BRITMET. As seen earlier, the union has trouble both articulating its members' concerns and desires to the company and 'delivering' compliance by its members in return for deals. In this type of situation, ironically, procedure becomes much more important to the union than is the case at BRITBREW. But it is important as the lamppost is to the drunk: more for support than enlightenment. The most aggressive shop steward at BRITMET attempts valiantly to bring member concerns to the fore, but in the context of industrial relations at this plant, his way of doing so is by incessant reference of issues to procedure. It can only be concluded that the formal disputes procedure is not really meant to work, at least in the same way as the Canadian procedure.

Several company officials express impatience with this continual reliance on procedure and maintain they wish he would sit down and haggle informally. However, they fail to realise that he is more often than not short on the necessary goods to trade with—the support of his members and their willingness to back him up with industrial

action. In this case, neither formal reliance on procedure *nor* non-procedural informality are of much help to the union. Procedure is of little help because there is nothing at the end of it, such as compulsory and binding arbitration, than can enforce a claim. Informality is of little help because the union members are not consistently willing to take industrial action to enforce a claim. If anything, procedure is merely a way of forcing the employer to listen to the union. But sitting and listening to a half desperate earful from the union is not guaranteed to improve the relationship. This idea will be discussed further in the section on enforcements. What is most interesting is that this state of affairs reverses the situation in Canada. In that country, the strong union is the one that most conscientiously uses procedure, that is vigilant for breaches of the collective agreement and advances them up the grievance procedure, and employs ingenuity in using arbitration to defend the agreement and, if possible, widen its scope.

In Chapter I it was suggested that, in relation to industrial conflict, the political apparatuses of production themselves are potentially either therapeutic or provocative. A picture seems to be forming wherein the flexibility of the interests apparatuses and the tractability of the rights apparatuses in Britain (especially in plants like BRITBREW) work to assuage industrial conflict whereas the rigidity and narrowness of their counterparts in Canada are seriously hampered in their conflict resolution role.

CHAPTER V: ADJUSTMENTS

1. Introduction

Adjustment has been defined as an apparatus which operates in the 'gray area' between interests and rights. It is an informal apparatus in that the parties do not set out deliberately to formulate substantive terms and conditions of employment. But they end up doing so, though such terms may be minor ones and of fleeting duration.

Granted, some interests apparatuses are less consequential and more evanescent than others and might therefore seem like adjustments. Canadian letters of understanding and the British sectional agreements are two such examples. Yet they have been committed to writing. Accordingly, adjustments must be redefined as *unwritten* understandings. The essential difference then, is one of codification. This is not a trivial distinction. There is a difference in kind and not just degree between the two in terms of the complex problems of 'deliverability' they raise. At the interface between written and unwritten apparatuses lies a unique dialectic that marks a key difference in dispute resolution between the two countries. Codified provisions have permanence and are not easy to ignore. But they risk rigidity, narrowness of interpretation and inapplicability to many concrete situations. Uncodified provisions are open to wide interpretation and applicability. But, unless enforced continuously and vigilantly, they can disappear when one party wishes them to.

2. The Canadian plants

There is nothing in Canadian labour law that prevents the parties from formulating unwritten agreements on any matter concerning relations between them[1] and there is nothing preventing a party from offering concessions outside, or ignoring rights it has inside, the written collective agreement. Such unwritten provisions exist in all unionised Canadian workplaces. The trouble arises when good will ceases or when management decides to 'claw back' concessions, and the union wishes redress. Unless the collective agreement is due to expire soon, making the interests apparatus available, the only recourse is to arbitration. As will be seen presently, while arbitrators do, under some circumstances, consider 'past practice' and their willingness to do so is widening, arbitration is still a most unreliable forum in which to protect such unwritten provisions.

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1. Theoretically, the parties can agree to anything as long as it does not break a criminal law. One exception is that the parties cannot agree to waive the strike/lockout ban while the collective agreement is in effect

Thus the vibrancy of 'custom and practice' as a method of ordering the relationship between the parties is, as one might expect, quite minimal compared to the British workplace.

2.1 Unwritten provisions

On the Canadian shop floor, unwritten provisions fall into a few distinct groupings. The first surrounds pay and perquisites. One generator of unwritten provisions that did *not* appear in our two plants is piece work or incentive systems of payment. Tacit understandings, some directly contradicting written rules, are said to abound in this environment (Burawoy, 1979; Roy, 1954). Yet, compared to Britain, piece working and direct payment by results systems (as opposed to broader incentive schemes) are quite rare in Canada and those that do exist are much more rigorously controlled by management and much less subject to formal or informal union bargaining than is the case in Britain (see Chapter IX for a more detailed discussion).

Another source of pay adjustments is welfare plans. They are often ill-documented in the collective agreement as negotiation of the subtler points would be an endless activity. The parties often agree to the broadest outlines of, say, a dental insurance plan or pension plan and leave the details. Likewise, while the parties may agree that safety clothing will be provided to appropriate employees, the minutiae are often unspecified. Ex gratia gifts from the employer such as Christmas turkeys are, of course, never stipulated in the collective agreement nor even subject to informal negotiation.

A second area of shop floor adjustments includes provisions on the activity of and facilities for domestic union representatives. The full-time status of the CANBREW convenor, for instance, is a tacit employer concession. The provision of an office and its furnishings appears in the collective agreement of neither Canadian plant. The CANBREW collective agreement (as do the vast majority across the country) allows "reasonable time off" for shop stewards to perform union functions as long as they obtain permission from supervisors. Such permission, the document reads, "shall not unreasonably be withheld". But the amount of reasonable time is an unwritten practice honed by many years of activity. Managers at CANMET express concern over a long-standing practice whereby the three permanent members of the union safety committee take one Friday afternoon off to meet outside work each month (the union paying their

lost wages). "We don't know how it got started but we do know it's got to end" says a senior manager signaling the employer's intention to claw back the practice.

The third area is in the timing and scheduling of work and work breaks. Agreements between workers to trade shifts or to 'borrow' time from each other at the beginning or end of shifts are often tolerated by the employers so long as there are no 'screw-ups' or claims for overtime and other premia. While there are seemingly strict rules about the amount of vacation and unpaid leave time that can be taken during the Summer and/or in one block , supervisors are known to allow favoured workers, especially those with relatives overseas, to break these rules. Rotas and sometimes elaborate sets of unwritten rules within departments govern distribution of overtime. Prescribed time limits for lunches and breaks are frequently allowed to relax by supervisors, sometimes in return for 'a little extra effort' in the pinch from workers, but often only through management indulgence, negligence or simple inability to police.

The fourth area is in the structuring of the internal labour market. For example, certain "cushy" jobs involving days-only and/or relatively unstrenuous work are often reserved for older and/or injured workers in both plants. Unwritten understandings also govern transferability between production units or subunits. At CANBREW, employees of the brewing unit may bid to transfer *only once* to another section within the unit even though the collective agreement seems to allow unlimited opportunities.

At both plants, as in most Canadian workplaces, management contracts out a certain amount of work. While egregious contracting out elicits protest and challenge from the union, there are tacit limits of acceptability and sweetener deals to ease the insult. A practice which grew up at CANBREW illustrates this well. On major capital projects, for which outside contractors were hired, bargaining unit members were allowed to make overtime earnings by helping in a labouring capacity. On one occasion, CANBREW workers complained that contract workers were 'taking their jobs' by operating a fork lift truck. The company determined that considerations of damage and potential liability made it advisable for the contractor to do this particular work. It put the union on written notice that it was clawing back the practice. Thenceforth union members could not automatically expect to work with contractors. Management would assess each capital project on its merits and decide the appropriate proportions of union and contract labour.

The final area is that of discipline. The employer sets written and unwritten rules whose infraction courts discipline. The union usually remains agnostic to these rules until a concrete instance of their application arises. Yet the employer will frequently be lax in their enforcement. Further, the management of different departments often has contradictory standards of rule enforcement. This creates a problem, as one supervisor describes it:

> "They don't do a good job of discipline in X department. There's little follow-up and great inconsistency. You can't tell workers exactly when to go on lunches and breaks and when to come back. So staying late (staying beyond allowed times on work breaks) becomes custom and practice. Then management needs to challenge these practices and claw them back. We have to generate enough discipline on these issues to prevent them becoming custom and practice, just keep it to a dull roar."

The difficulty for management is not so much in clawing back the custom of 'staying late', for workers generally and certainly their unions will not cast dilatoriness in the language of legitimacy (see Armstrong et al., 1981). The problem for management is in consistency and fairness of treatment. Any attempt to restore punctuality is bedevilled by problems of favouritism and forbearance.

These then are the major areas in which custom and practice operates in the Canadian plants. Despite their existence, however, several features combine to seriously limit their versatility and robustness as adjustment apparatuses.

2.2 Limitations on unwritten provisions

First is their content. It might be thought that unwritten provisions would cover areas which have traditionally resisted codification in Canadian collective agreements, such as manning, job content, effort levels, and work demarcations—in other words, what we have called 'job control'. However our case studies show that this is not the case. The vast majority of unwritten provisions are in areas that would otherwise fall comfortably within the scope of the collective agreement. Indeed, in many cases, they merely supplement provisions that appear in the collective agreement. The CANBREW personnel manager prefers to call these 'guidelines'. Very seldom are any of the unwritten provisions used to seriously threaten managerial prerogative.

Second, when a dispute arises over alteration of an unwritten workplace adjustment, management is under *no* obligation to delay the change while the dispute continues. Arbitrator Paul Weiler enunciates the doctrine as it applies to one aspect of workplace arrangements:

"...there is no implied obligation, inferred from the 'climate of collective bargaining', to maintain, in whole or in part, the status quo as far as the assignment of work tasks is concerned".[2]

Third, while *some* of the unwritten provisions have come about as a result of management error or omission, most have resulted from conscious concessions or indulgences on the part of management, which, as per the CANBREW convenor's complaint in chapter 8, are more often granted gratuitously than in response to union deal proposals or coercion. In other words, there is precious little 'fractional bargaining' as Kuhn (1961) uses it or 'shopfloor bargaining' as Tolliday and Zeitlin (1982) use it, and what little there is is contained at a very low level of activity. What unwritten provisions exist do not, as they frequently might in Britain, come about "without any conscious decision by management" (Clegg, 1970, p. 249). The union, then, has few instances where it can claim to have wrested a concession from the employer. Management has a far greater degree of control over the unwritten practices. It giveth, and by the same token, it taketh away, which leads to the fourth point.

While shop floor adjustments are indispensable in smoothing the relationship between the parties, from time to time management feels the need to 'claw back' some of these provisions. Several examples have just been given. Canadian management, particularly as evidenced in our two plants, is vigilant that things 'not get out of hand', that the union does not build up any areas of informal control. So they frequently set off into the frontier of control on claw back missions. In clawing back adjustments, they seldom, if ever, resort to 'buying out' the workers with money (such as they might occasionally do in expiry negotiations over a cherished union demand). Their tactics are to increase discipline in cases where they have been lax with plant rules or to put the union on notice that a certain standing practice is due to end, in other words, reasserting *and being seen to reassert* their managerial prerogative. Arbitrators may occasionally intervene to ensure that the *procedure* of such clawbacks is fair, but do not restrain the act per se.

A fifth feature of adjustments in Canada comes about in light of just such recent arbitral jurisprudence where employers have been enjoined from *peremptorily* ending unwritten practices of long standing, the details of which will be explained presently. For example, spurred by what seemed an alarming trend in the jurisprudence, CANBREW's

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1. *Re. Algoma Steel* 19 L.A.C. 236 (Weiler, 1968)

personnel department conducted what might be called a *custom and practice audit*. By a specified date, all supervisors were required to send in a list of all "agreements and arrangements" operating in their departments, no matter how trivial. Personnel professed "shock" at some practices (such as not requiring employees with more than 25 years seniority to clock in), especially where conditions giving rise to those privileges had long since disappeared (in one case, fifteen years earlier). Personnel intended to compile all of these practices into a "Book of Practices and Guidelines". Higher management would then assess the contents and take one of two steps: if management felt the practice was still relevant and useful it would be codified (not necessarily in a collective document but in management's records); if management felt the practice was not relevant or desirable, the union would be given notice of its termination. By diligent housekeeping then, management checked the proliferation of adjustments—either elevating them to the status of interests apparatuses by codification or eliminating them entirely. The key here is strong management control over what adjustments do exist.

Sixth, Canadian unions themselves are exceedingly uneasy about custom and practice and do their best to discourage it on the shop floor, even while some of them find novel ways to hold employers to it in arbitration. There is a feeling, as the CANMET convenor puts it, that "management doesn't give something for nothing". Unlike his British counterpart, who often relishes horse-trading, he is fatalistic about the union being 'fleeced' in any transaction that is not codified and enforceable.

Thus, although shop-floor adjustments abound in Canadian workplaces, they are contained and constrained by managerial action, union complacency and timidity and the limits of the disputes resolution system so that they neither proliferate nor impinge upon managerial prerogative in a serious way.

2.3 Arbitration as an Arena for Adjustment

As might be expected the other great arena for the handling of adjustments is arbitration. As noted in the last chapter, less than 2% of grievances ever find their way to arbitration. Yet, as also noted, even where the parties decline to proceed to arbitration, ***the arbitral jurisprudence is tremendously pervasive and influential upon their dispute resolution activity and consequently upon all of their relations in the workplace.***

Parts of that jurisprudence will be reviewed in this and future chapters. Arbitration decisions can be quite lengthy and their language highly legalistic. But the reader would be mistaken to think that they are remote from and irrelevant to Canadian workplace industrial relations. To union and management representatives they are the very meat of their existence as practitioners (although their increasing complexity has taken them beyond the ken of most workers and first-line managers). Despite the inoperability of stare decisis (binding precedent) in arbitration, certain arbitral decisions, some dating as far back as the 1940's and 50's, have become 'leading cases' in arbitral thought and in the minds of practitioners and industrial relations managers and union staff officers will talk about classic cases such as *Port Arthur Shipbuilding* or *KVP* or *Council of Printing Industries*, or of current controversial cases almost as a shorthand.

The jurisprudence is obviously important *at* arbitration. Yet even when the parties decline to to proceed to arbitration, it is often because the jurisprudence has marked the case is a clear winner or a clear loser. Active parties like CANBREW and its union also have their own mini-jurisprudence, a body of arbitration cases arising from their own workplace or other workplaces in the industry. Both the larger and smaller bodies of jurisprudence profoundly affect the day-to-day actions of the parties and is as much part of workplace industrial relations as their own practices. Further, most arbitrators presume that the parties have knowledge of the jurisprudence, not only when they formally argue a case, but also when they negotiate the collective agreement and that they must live with the consequences of failing to so do. A claim of ignorance by either party is not suffered gladly. One arbitrator, presented with a claim by the union against contracting out, in the absence of contract language forbidding it, bluntly chided the applicant:

> "That was the law [the state of arbitral jurisprudence] as it stood at the time when these...collective agreements were entered into. This must have been known to the parties and they must accordingly be taken to have contracted in accordance therewith."[3]

Thus reference to the relevant jurisprudence is essential as a living backdrop to any discussion of Canadian dispute resolution.

Arbitral Approaches to Adjustment. Weiler (1969) has described a schizophrenia of arbitral roles between "judge" and "labour relations physician". While the formal remit

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3. *Re Kennedy Lodge Nursing Home* [1 L.A.C. (3d) 33h (Brunner, 1980)

of the arbitrator is to act as a rights adjudicator only, even the most conservative Canadian employer spokesmen allow that arbitrators must have some "equitable jurisdiction". One arbitrator has put it well:

> "...'precise, clear and unambiguous language' seldom finds its way to arbitration. More commonly, the contract clause provides only a partial answer to the problem, because it is imprecise, unclear or ambiguous. The point at issue between the parties may be one which could not have been contemplated when the agreement was signed; provisions of the contract may conflict with each other; absurdities and injustices may result from insistence upon one of several possible interpretations. Thus, the job of the arbitrator is often to construe the agreement in an imaginative way so that it copes with the unforeseen, accommodates the inconsistent, and preserves a fair and harmonious relationship"[4]

Inevitably arbitrators are called upon to either *make* adjustments where the facts before them do not fit the language of the agreement or to *compel adherence to* adjustments which the parties have constructed themselves prior to arbitration. But arbitrators are severely restricted in their ability to do so by the enabling legislation that establishes their jurisdiction, by the courts which rule on their exercise of that jurisdiction, by the notions of acceptability of the parties that choose them (for most arbitrators are chosen by agreement by unions and employers) and by their own cautious attitudes on what constitutes 'good industrial relations'.

Exactly how restricted they are is the subject of some debate. In Fox's (1966) trichotomy of perspectives, all arbitrators are pluralists (as opposed to 'unitarists' or 'radicals') in that they accept the inevitability of conflict and antagonism between workers and managers, see unions as legitimate organs for the expression of such conflict and see third party intervention as a legitimate mechanism for regulating such conflict. The debate, then, is between liberal pluralists and conservative pluralists. The former hold to a 'shared rights' theory, best enunciated by former arbitrator and Supreme Court of Canada Chief Justice the late Bora Laskin:

> "...it is a very superficial generalization to contend that a collective agreement must be read as limiting an employer's precollective bargaining prerogatives only to the extent expressly stipulated. Such a generalization ignores completely the climate of employer-employee relations under a collective agreement. The change from individual to collective bargaining is a change in kind and not merely a difference in degree. The introduction of a collective bargaining regime involves the acceptance by the parties of assumptions which are entirely alien to an era of individual bargaining"[5]

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4. *Re. City of Toronto*, 18 L.A.C. 273, at 279-280 (Arthurs, 1967).

5. *Re Falconbridge Nickel Mines* 8 L.A.C. 276 (Laskin, 1958), at 282

The latter adhere to a 'reserved rights' theory of management's rights, explored in the last chapter (management can do what it wishes subject only to the express provisions of the collective agreement). While the reserved rights approach has clearly held sway for most of the 45 year life of Canadian arbitration, the shared rights approach has shown variable signs of resurgence in the past fifteen years. The leading contemporary Canadian standard-bearer of the liberal approach is arbitrator and legal scholar David Beatty. In the essay "The Role of the Arbitrator: A Liberal Version" (Beatty, 1984), he positions himself between the conservative pluralists and the *radical* scholars of the 'critical legal studies' school (eg. Van Wesel Stone, 1981; Klare, 1978) who see the inability of arbitrators and the courts to overcome legal impediments to a shared rights approach as "paradigmatic proof of the incoherence and indeed illegitimacy of our conventional, liberal-democratic theories of law and our system or model of collective bargaining which is derived from them"(Beatty, 1984, p. 139).

Beatty insists, on the other hand, that Canadian arbitrators (and the courts that oversee them) "have the legal tools to avoid the confusion and conflict which has so far clouded this issue". Further, he proposes that arbitration can be

> "*more appropriate than negotiation or bargaining as a way of achieving a synthesis of our competing allegiances to procedural justice and substantive fairness*" (ibid., p. 142, emphasis added)

His overall project is nothing less than to "establish the legitimacy and viability of arbitration as a procedure to resolve this confounding issue of managerial discretion" (ibid., p. 142). Given that arbitration is the ostensible North American *quid pro quo* for the denial of the mid-term opportunity to strike, Beatty's position is that arbitrators can potentially deliver as much as or more than that which has been denied.

Beatty's optimism is centred on three key areas of arbitral decision making where, he claims, the hegemony of managerial prerogative has been breached. The first two concern the arbitrator's ability to consider the *past practice* of the parties in fashioning an award. The third involves considerations of *fairness*. *Because Beatty's thesis stakes the highest claim for arbitration, because it proposes that the 'liberal' arbitrator can surpass even collective bargaining in equitable power and because it posits not only what should be but what can be and is, it requires answering from a*

radical perspective. To do so, it is important to consider those three areas in more detail.

2.4 The Consideration of Past Practice in Arbitration

Past practice becomes an issue in arbitration in two ways: first, as a possible guide to the interpretation of a collective agreement (what the parties intended when they negotiated a provision or how they interpreted the provision once it was negotiated), ie. 'extrinsic evidence' and second, as a question of whether unwritten provisions that have been in effect for some time can be enforced if withdrawn, ie. 'estoppel'.

Extrinsic Evidence. As far as interpretation of the collective agreement is concerned, it is a fundament of common law that administrative tribunals such as arbitration panels do not have the jurisdiction to use extrinsic evidence to "contradict, vary, add to or subtract from the terms of an agreement reduced to writing" (Brown & Beatty, 1984, p. 152). If, however, the words of an agreement are ***ambiguous***, the arbitrator can use extrinsic evidence to solve the problem presented by the ambiguity. However, if the words of the collective agreement are ***unambiguous***, they will settle the dispute conclusively, ***even if the parties intended or have practiced exactly the opposite of those words.***

There are some good reasons for this rule, especially as it relates to ***intention.*** Without it, arbitrations could easily degenerate into fruitless rehashings of old union-employer arguments. The parties could also be encouraged to creatively misconstrue or embellish their original intent to wriggle out of their failures or mistakes in interests bargaining. But the rule leaves little scope for arbitrators to acknowledge and enshrine the creativity of the parties in their ***day-to-day interpretation*** of the agreement. Not even the most liberal arbitrators will allow the practice of the parties to take precedence over clear agreement language, except for the special condition of ***estoppel***, discussed below.

Some, more liberal, arbitrators have widened the scope of ambiguity. Where once extrinsic evidence was accepted only in cases of ***patent*** ambiguity (apparent on the face of the agreement), it is now frequently also accepted in cases of ***latent*** ambiguity (ie. ambiguous in its applicability to the facts). And in such cases, the evidence can be used not only to solve the ambiguity but to ***disclose*** it in the first place. As in many areas of industrial relations, the province of British Columbia seems to allow the most leeway

here. Its Labour Relations Act charges arbitrators to have regard for "the real substance" of the collective agreement rather than its strict interpretation and some recent arbitration awards have widened the scope of admissability of past practice and bargaining history[6].

Yet the consideration of past practice sits uneasily with even the most liberal Canadian arbitrators. Paul Weiler, one of the strongest advocates of adjustment, explains why in a passage of some significance:

> "...the best evidence of the meaning most consistent with the agreement is that mutually accepted by the parties. (Yet) such a doctrine, while useful, should be *quite carefully employed*. Indiscriminate recourse to past practice has been said to rigidify industrial relations at the plant level, or in the lower reaches of the grievance process. It does so by forcing higher management or union officials to prohibit (without their clearance) the settling of grievances in a sensible fashion, and a spirit of mutual accommodation, *for fear of setting precedents* which may plague either side in unforeseen ways in future arbitration decisions. A party should not be forced unnecessarily to run the risk of losing by its conduct its opportunity to have a neutral interpretation of the terms of the agreement which it bargained for." (Emphasis added)[7]

When looked at only within the bounds of the Canadian dispute resolution system, this makes good sense. But when looked at in the context of our comparison of the Canadian and British systems of dispute resolution, what Weiler is really saying is that ***a system of arbitral dispute resolution is fundamentally incompatible with workplace dispute resolution***. If the parties want to get the most out of the arbitration system ("a neutral interpretation of the terms of the agreement"), they dare not burden the arbitrator with evidence of their past practice. For, if past practice were to really count for something in arbitration, it would force the parties to pay much more attention to the settlements they make "in the lower reaches of the grievance procedure". Weiler claims this would make the parties less willing to make such settlements. But would this really "rigidify" industrial relations at plant level? As long as the parties have recourse to a third party to decide their differences, it *does*. Given the existence of arbitration as the inevitable last step in disputes procedure, and given the strong impact of the arbitral jurisprudence upon the dispute resolution behaviour of the parties, Weiler's and other arbitrators' otherwise prudent position on acceptance of past practice *actually has the opposite effect* to that which he suggests. In effect, a kind of "chilling effect" and "narcotic effect", (a

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6 See Palmer, 1983, p. 85; Brown & Beatty, 1984, p. 156.

7 *Re. John Bertram & Sons*, 18 L.A.C. 362 at 367-368 (Weiler, 1967). It should be noted that although this quote is from a 1967 arbitration and might appear 'dated', it is considered by Canadian arbitrators to be a 'leading case' in the area of past practice and thus retains an evergreen quality.

reluctance to engage in true prearbitral settlement activity and an overreliance on arbitration) theorised to operate in interest arbitration (Downie, 1979), *is at work in grievance arbitration as well.* Arbitration *discourages* the parties from settling things on their own, from taking responsibility for those settlements and from establishing precedents thereby. One needs to only note, in illustration, the near obsession by both parties, but especially management, to make what settlements they do 'without prejudice'. This has the effect of furthering the rigidification of the rights apparatuses which we saw in the last chapter.

Estoppel. Another major vehicle through which arbitrators may entertain evidence of past practice is the common law equitable doctrine of *estoppel.* To apply this doctrine, the arbitrator need not be confronted with ambiguity in collective agreement language. Rather, there must be evidence that one party, by its word or action, lead the other party to believe, *to its detriment,* that the first party would not assert its rights under the collective agreement. In such a case, the first party is said to be *estopped* from asserting such rights. In other words, you cannot entice someone onto a branch only to cut it off from under him.

A good example appears in a leading arbitration on this question, the *Canadian National Railways* case[8]. A collective agreement provided for sick benefits to be paid after a three day waiting period. In spite of this provision, the employer for many years paid the benefits to some employees without a waiting period. The arbitrator ruled that the employer could not unilaterally withdraw the practice. The doctrine of estoppel had been used successfully in arbitration before this case to bar a party from withdrawing such a practice *without ample notice.* In this case the employer *had* given such notice. Yet the arbitrator nonetheless ruled the withdrawal unacceptable. He did so precisely in acknowledgement of the length of Canadian collective agreements and the inability of a party to change that agreement when taken by surprise during its term:

> "The detrimental reliance then of assuming the practice would continue, lies in the union's inability to require the employer to negotiate its change in its practice *during the life of the agreement.* After a practice of this duration, if the employer anticipated changing it, it had an 'affirmative duty' to alert the union of its intention in order to give it an opportunity to negotiate..." (emphasis added)

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8. *Re C.N.R. et al. and Beatty et al. (1961), 82 C.L.L.C. 14,163*

Thus the practice would have to remain in effect at least until the next round of collective bargaining. The courts upheld the decision.

Yet as far as this case *seems* to go in protecting the party relying on past practice, the doctrine of estoppel is a seriously limited vehicle to enforce adjustments. First, the mere existence of an unwritten provision does not invite its protection by estoppel. There must exist, as there did in this case, a collective agreement provision *which has been ignored*. In the *absence* of such a written provision on which to hang the case (for example, if the employer had allowed some sick employees to claim a benefit or pay not mentioned in the agreement), the doctrine of estoppel would be much less likely to apply. The difference between these two has been likened to using the doctrine as a "shield" (in the former case) as opposed to a "sword" (in the latter) (Palmer, 1983, p. 150.). Therefore the union is always at a disadvantage. It is not enough to have a past practice; it must be one that flies in the face of the collective agreement. Since, as noted, the collective agreement seldom if ever contains language on 'job control' issues, adjustments in this area cannot be protected by estoppel.

Second, as discussed earlier, arbitration cases are not legally binding on other arbitrators. Far from being a 'settled' area, estoppel is one of the most controversial, with the mainstream of arbitrators considerably more conservative than the one (Beatty, incidentally) in the above case. Four years after *Canadian National Railways*, another arbitrator, in almost the exact same circumstances, made the exact opposite decision. He lambasted both the arbitrator and the court in the C.N.R. case, saying:

> "With all respect, that opinion is not correct....[and] is unsound as a matter of labour relations policy....It approves arbitrators' enforcement of what are amendments to the agreement never negotiated and never reduced to mutually agreed language by the discipline of writing. Moreover...the award permits apparently unfair favouritism for a certain group of employees, a matter not subject to the pressures of the bargaining table....It may also be that the failure of both the arbitrator and the court to examine the significance of the statutory definition of 'collective agreement' as 'an agreement in writing' weakens the force of the reasoning in both award [of the arbitrator] and reasons for judgment [of the court]."[9]

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9. *Re. Monarch Fine Foods Co. Ltd. and Milk & Bread Drivers, Local 647*, 18 L.A.C. (3d) 257, at 262-63 (Schiff, 1983)

Given the nature of privative10 clauses in Canadian labour legislation, the courts would be likely to find *both* arbitrators well within their jurisdiction to make these diametrically opposite decisions. What is more, Canada's industrial relations system is highly decentralised and arbitrators and courts in other provinces are not as liberal as those in Ontario and British Columbia. An Alberta court has ruled that arbitrators do not have the equitable jurisdiction to apply the doctrine of estoppel at all[11].

Third, even where arbitrators are sympathetic to estoppel, they apply harsh tests to the facts at hand and do not use the doctrine lightly. A good example comes in an unreported arbitration case involving our case study plant CANBREW. Due to a decline in sales of keg beer, kegging had become a one-shift operation and, according to a long-standing practice and a clause in the collective agreement allowing senior employees to claim 'days only' assignments, older workers had been given the work. After six years, further decline in keg beer demand had led the employer to decide to eliminate kegging as a distinct operation and combine it with a larger operation working two shifts. The older workers were transferred to two shifts and subsequently grieved.

The union disclaimed any reliance on the collective agreement clause, agreeing that the company had the right, as the arbitrator interpreted the management's rights clause, to "organise crews, schedule work, and assign employees to jobs". It based its case on the doctrine of estoppel claiming that the grievors had relied to their detriment on a company undertaking and long practice to pass up the opportunity for 'days-only' work elsewhere.

The arbitrator dismissed the grievance for a number of reasons. First, he said, "there is no *compelling* evidence of clear undertakings being given [by the company]" (Emphasis added). Second, even if such undertaking were given, or that the grievors believed they had received one, "the company would nonetheless be free subsequently to alter the scheduling of the job—for *bona fide* business reasons" (Emphasis in the original). Third,

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10. Decisions by administrative tribunals in both Canada and Britain are subject to judicial review (by way of certiorari or prohibition) on jurisdictional grounds or because of an error on the face of the record. To prevent undue interference by the courts in the arbitration forum, legislatures across Canada have included in labour relations acts privative clauses which seriously restrict the grounds on which arbitral decisions can be legally challenged. The Supreme Court of Canada itself, under the late Chief Justice Bora Laskin (a former labour arbitrator) further restricted the scope of judicial review by formulating a 'patently unreasonable' test for errors in law. Thus two diametrically opposite arbitral decisions can potentially pass this test. Few judicial reviews of arbitrations are attempted and few succeed. Most deal with matters on the 'cutting edge' of arbitration such as fairness and estoppel.

11. *Re. Smoky River Coal Limited v. United Steelworkers of America, Local 7621 et al.* (1984) 53 A.R. 150

if the promise was made to all the grievors, and enforceable, it would be ridiculous for "changes in scheduling and work assignments to be blocked...by the presence of a single surviving [grievor].".

The case is significant for a number of reasons. First, it indicates a 'Catch 22' situation at work: Unwritten provisions are by definition informal. But *the very tacitness* of unwritten provisions can be their undoing when tested at arbitration, begging the question—just how compelling must the evidence of an understanding be for it to be taken seriously be the arbitrator? The stronger the understanding, the less utility in keeping it 'unwritten'. Second, the arbitration uses the well-worn test of "bona fide business reasons", a wall which arbitral reasoning seldom dares breach (and which will be seen many more times in the course of this thesis). And third, it underlines the awesome regard that both the parties and arbitrators have for "managerial prerogative".

Thus, even though some breakthroughs have been made in widening arbitral jurisdiction in the use of extrinsic evidence and in estoppel, it must be concluded that Beatty's faith is not well placed, that arbitration not only remains an unreliable forum for a party to enforce adjustments made at shopfloor level, but that further, it effectively discourages such adjustments. Moreover, if estoppel is a sword, it cuts both ways. Management can and does use the doctrine to preclude the union from challenging practices which its members have complied with for some time. In a dispute over truck drivers washing their trucks (discussed in more detail in Chapter [illegible]), CANBREW claimed the union's case was fatally weakened by the fact that the drivers had 'always done it'. Combined with the 'obey now, grieve later' rule, estoppel can be a powerful weapon in the hands of the employer.

The Doctrine of 'Fairness'. What of adjustments by the arbitrator himself in the absence of significant past practice? Later chapters will explore further the ability and willingness of arbitrators to make adjustments in particular substantive areas of industrial relations. However, for an overall view that neatly epitomises the problem, it is useful to look at the third area for which Beatty professes some hope and a question of some current controversy in Canadian arbitration—the so-called 'doctrine of fairness'. Can the arbitrator hold an employer to exercise its managerial prerogatives in a manner that is not arbitrary, discriminatory or in bad faith? Does the existence of a collective

agreement in and of itself confer upon the employer a general duty to be fair? Or do the parties actually have to negotiate it? Again, while some, more liberal, arbitrators have affirmed such a duty, others have vehemently rejected it.

Two leading court cases in Ontario provide seemingly contradictory attitudes to the question. In the *Metropolitan Toronto Police Commission* case, the employer was accused by the union of being unfair in its assignment of overtime for inventory-taking. The arbitrator upheld the union's complaint but the courts quashed the decision, saying,

> "...we see no necessity in this case to imply a term that the management rights clause will be applied fairly and without discrimination. If such a term were to be implied, it would mean that every decision of management made under the exclusive authority of the management rights clause would be liable to challenge on the grounds that it was exercised unfairly or discriminatorily. In our opinion, this would be contrary to the spirit and intent of the collective agreement"[12]

Not long after, the *Council of Printing Industries* case seemed to reverse this decision. It involved an industry subject to fluctuation of the work force, where the collective agreement allowed some employees to be classified as "permanent" and thus immune to cyclical layoff. The employer had discretion to so classify and, in the grievance in question, did so without regard to the seniority of the grievors in spite of another collective agreement provision, not directly applicable, which provided promotion by seniority. The arbitrator ruled that the employer's use of its discretion in this case made a mockery of the spirit of the agreement which included the important principle of seniority, and upheld the grievance. When the award was taken by the employer to judicial review, the court refused to overturn the decision, ruling that it was not "patently unreasonable"[13]. Yet as far as *Council of Printing Industries* seems to go in constructing a duty of fairness, its *practical impact* is negligible, leaving the arbitral intervention in managerial prerogative still quite limited.

First, as can be seen by the contradictory court cases above, even in the most liberal provinces, arbitrators vary widely in their willingness to read a duty of fairness into collective agreements and the courts vary in their willingness to let them. Even *the same* arbitrator has been known to step back and forth across the line in different cases. And in

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12. *Re. Metropolitan Toronto Board of Commissioners of Police vs. Metropolitan Toronto Police Association et al.* (1981) 124 D.L.R. (3d) 684 at 687-688

13. *Re. Council of Printing Industries of Canada and Toronto Printing and Assistants Union* (1983) 149 D.L.R. (3d) 53 at 60.

the less liberal provinces, 'fairness' is still virtually a dead issue. As one senior commentator and arbitrator says regretfully:

> "...in light of...recent cases, it would seem that the introduction of the duty to act *fairly* in the exercise of management's rights may amount to only a brief imposition of this doctrine which is already coming to an end, and will be replaced by a return to the prior traditional view of management's rights.
>
> "The traditional view is one which placed *extreme limitations on unions and often resulted in injustice*. As well it was conducive to increasing the specificity (and hence size) of collective agreements to escape such results. As a collective agreement is meant to cover a wide variety of changing events over a long period of time, the deficiencies of the traditional approach are manifest, though no doubt satisfactory to employers in the short run." (Palmer, 1983, pp. 594-95, emphasis added)

Second, it can be argued that the *Council of Printing Industries* case itself is no momentous breakthrough. The arbitrator found a clause in the collective agreement (the seniority clause) that served as a hook upon which he could 'hang' his argument, a hook strong enough for the court to subsequently support him. Thus, at best, an employer's duty of fairness cannot be implied from the *mere existence* of a collective agreement but must take its cue from more *specific language* in that agreement, albeit that language may not apply directly to the case at hand. Or, as one arbitrator has put it more broadly, "the language of the clause, when read in a labour relations context and in the context of agreement as a whole, could support an implied requirement to act in a 'bona fide' fashion."[14] *Metropolitan Toronto Police Commission* had no such language and so it failed.

Third, what kind of 'fairness' is it that even the most 'progressive' arbitrators are attempting to impose upon management? Beatty himself gives us a hint:

> "Arbitration should be seen as an exercise in the assistive development of a common law of the shop, as a result of which the *procedural fairness* of the negotiation process is itself enhanced, carried with it an immediate and obvious corollary for courts and arbitrators alike. To act consistently with liberal democratic principles of law arbitrators must be vigilant to ensure that management, no less than unions, exercises fairly and reasonably the discretion and responsibility the parties delegate to it. And where arbitrators respond to their mandate, the courts must not...equivocate in their endorsement." (Beatty, 1984, p. 167)

So it is *procedural fairness* that liberal arbitrators are really talking about. To be more explicit, procedural fairness eschews any policy role, ie. that management must treat workers fairly *in a general sense* by, for instance, paying them a decent wage or providing them with day care centres or retraining them rather than laying them off.

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14. *Re. Toronto East General Hospital and Service Employees Union, Local 204* (3 L.A.C. (3d) 353, (Burkett, 1983), at 358.

That must be left to the parties to negotiate in the context of the status quo power balance that exists between them. Fairness means that, given a negotiated collective agreement, management must not act in a capricious or malicious manner which has the effect of 'sneaking around' or avoiding the implications of that agreement. Some arbitrators have constructed a test for implying a term into a collective agreement, consisting of two conditions:

> "(1) if it is necessary to imply a term in order to give 'business or collective agreement efficacy' to the contract, in other words, in order to make the collective agreement work; and
>
> (2) if, having been made aware of the omission of the term, both parties to the agreement would have agreed without hesitation to its insertion"[15]

In other words, what procedural fairness will do *at best*, is help the parties make the collective agreement work when one party (usually management), by its actions, is attempting to pervert it. If the offending party is using omissions in the agreement language, then the arbitrator will fill in those gaps if the arbitrator feels the offending party could not honestly object, if he feels the offender, caught red-handed, would be ashamed, and admit "Yes, you're absolutely right". While this is a definite improvement over the strict interpretations of traditionalist arbitrators, it is by no means a revolutionary step and the controversy surrounding it speaks volumes about the limitations of arbitration.

Fourth, the phrase "legitimate business interests" or "bona-fide business reasons" recurs with numbing regularity throughout the arbitral jurisprudence on the question of adjustments. It is another important test to which the exercise of managerial prerogative is put. As one respected liberal arbitrator puts it:

> "In our view the employer's decision-making should be assessed against the requirement to act *for business reasons* and the requirement not to single out any employee or group for special treatment *which cannot be justified in terms of real benefit to the employer.*"

He acknowledges that when the parties agree to leave certain matters to the discretion of management, they

> "do so in the knowledge that management's decision-making in these areas will be made in management's self-interest [and] may adversely affect individual employees, *and/or* may not impact on all employees equally. However, it is not contemplated as part of the bargain that the employer will exercise his authority in these areas for reasons unrelated to *the betterment of his business*..."[16] (emphasis added)

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15. *Re. McKellar General Hospital and Ontario Nurses' Association* 24 L.A.C. (3d) 97, (Saltman, 1986), at 107

16. *Re. United Parcel Service Canada Ltd.* 24 L.A.C. (3d) 202 (Burkett, 1988), at 213

To take the unavoidable corollary, it the employer can show, or the arbitrator can find, that management action was taken *for reasons related to the betterment of business*, then the action cannot be questioned *unless a provision in the collective agreement expressly and precisely prohibits it.* "Legitimate business reasons" is a highly elastic term. There are short-term business considerations and long-term ones. The argument can easily be made that *practically every advance ever made* by trade unions has been at the expense of legitimate business interests in the long or short term. Unsophisticated employers may get caught from time to time because they simply do not take the care to build a business utility case for a particular affront (although in the sectors where such employers operate, unions are often too weak to pursue them to arbitration). But sophisticated employers can learn quickly and without much difficulty to put the gloss of 'business betterment' on almost any action they wish to take.

Fifth, it has long been held by arbitrators that in the absence of specific collective agreement language to the contrary, management has the right to make rules for employees to follow, both formal written rules and 'on the spot' directions from supervisors. Employees and their unions also have the right to challenge such rules and it has long been held that they must be 'reasonable'[17] ie. the standard applied is

> "the extent to which the rule is necessary to protect the employer's interest in operating the plant, in preserving its property, and generally in carrying out its operations in a reasonably safe, efficient and orderly manner" (Brown & Beatty, 1984, p. 181)

So, though rules must be 'reasonable', the same limitations to reasonableness apply here as in the more general point about "legitimate business interests". But in the whole area of rule-making by employers and rule-challenging by unions, *further* restrictive conventions or what might be called 'iron rules of arbitration' operate to severely curtail the adjustment-making limits of arbitration. The first of these is the adage "obey now, grieve later" so steeped in arbitral history that its exact origin is not known. This adage is often coupled with its companion "the industrial plant is not a debating society"[18]. Together they stand in diametric opposition to the British workplace convention of *status quo* (whose operation will be examined presently). Canadian employees who raise all but

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17. *Re. KVP Co. Ltd.* 16 L.A.C. 73 (Robinson, 1965)

18. This saying is attributed to the US arbitrator and industrial relations law scholar Harry Shulman in *Re Ford Motor Co.* 3 L.A. 779, quoted in Brown & Beatty (1984).

the most cursory objections to all but the most outrageous management edicts[19] will readily find themselves guilty of *insubordination* and subject to discipline. These iron rules are not seen by arbitrators as detrimental to employee interests:

> "Arbitrators have taken the position that their recognition of the employer's right to maintain production and to preserve its symbolic authority is neither inconsistent with, nor prejudicial to, the legitimate contractual rights of the employees because in the vast majority of circumstances they can secure *adequate redress* for any abuse of authority by the employer through the grievance and arbitration process" (Brown & Beatty, 1984, p. 4.35, emphasis added)

But how adequate is such redress and to what extent does it actually succeed in 'maintaining production' in the long run? As noted earlier, unions prefer to remain agnostic to company rule-making and for good reason. Arbitral challenges to rules tend to be highly hypothetical exercises and invite long, tortured written decisions which seldom back the union's claim[20]. It is only in the *application and enforcement* of a rule that its real meaning becomes evident. Thus, for instance, a general challenge to an employer's absenteeism control programme based on that employer's inconsistency of enforcement failed because

> "consistency of enforcement is not a matter that goes to the efficacy of the policy but to its application in *particular circumstances. In other words, were discipline to be imposed for breach of the policy, consistency would be a relevant consideration in assessing the propriety of the discipline imposed*"[21] (Emphasis added)

A similar, unreported, decision was given at a sister plant of CANBREW's, causing the CANBREW convenor to express his frustration at the necessity to wait for the axe to fall.

The time period for resolution of a challenge to a rule is another major consideration in judging whether 'adequate redress' can be achieved. Non-disciplinary grievances may take an average of eight or nine months from the time they are filed to the time an arbitration award is given and delays of up to a year and a half are not uncommon (Goldblatt, 1974). At CANBREW, the average time in non-disciplinary cases is nine and a half months (with an eight and a half month average wait for all arbitrations). At

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19. Exceptions to the 'obey now, grieve later' rule include only instances where health and safety are threatened, illegality would result or where a union official is refused permission to attend to matters where 'irreparable harm' would come to the interests of other employees (Brown & Beatty, p. 4.39)

20. Such a decision occurs in *Re. McKellar General Hospital* 34 L.A.C. (3d) 97 (Saltman, 1986)

21. Ibid, at pg. 113.

CANMET, even several serious disciplinary cases had not been heard a year and a half after they were initiated.

Justice thus delayed may, at least to the employees directly concerned, be justice denied. Given that the 'obey now, grieve later' rule applies not only where the employer devises rules outside the scope of the collective agreement but *even where a manager has clearly violated a provision of the agreement*, it is not surprising that Canadian workers often take more expeditious, albeit desperate, action when confronted with unpopular management action.

As seen above, unions have learned that *hypothetical* challenges to company rules are very difficult. The most effective challenge comes when an employee has been disciplined for a *concrete* infraction of those rules. In fact, the arbitral regime may *encourage* rather than discourage insubordination and disruption where the circumstances are serious enough. This is due to another iron rule which states that the burden of proof in all arbitration cases, *except those involving discipline*, lies with the grieving party ie. the union. Thus, if the union challenges a rule on its merits, the onus is on the union to prove the rule unreasonable. If an employee disobeys the rule and is disciplined, the onus is on the *employer* to prove the application of the rule was reasonable. Thus, where they strongly oppose a management action, employees may consider themselves in for a penny, in for a pound.

Sixth, examining more carefully the array of arbitral issues, one detects a differential application of the 'business considerations' test depending on the issue at hand. On a few select issues, arbitrators seem to 'bend over backwards' to give the grievor the benefit of the doubt. But on most others, they will do the opposite.

Evidence comes from an exhaustive survey of the reported decisions of Ontario arbitrators from April, 1977 to April 1986 dealing with almost 10,000 issues in that period[22]. In this survey, a union 'win' is considered any arbitral decision which upholds a grievance *in whole or in part*. The overall 'win' rate for unions is 45.8%, less than half

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22. The survey, in rough form, was compiled from the Ontario Ministry of Labour's Office of Arbitration Monthly Bulletin by the Ontario Federation of Labour, assisted by the United Steelworkers of America (District 6). The analysis was done by the author. The arbitration decisions were those submitted to the Office of Arbitration, which comprise at least 70 to 75% of those heard in the province over those years. Given that a union 'win' is considered a decision upholding a union grievance *in whole or in part* the survey, if anything, tends to overstate union success at arbitration.

the issues[23]. The distinct arbitral area with by far the highest union 'win' rate (and the only one over 50%) is discipline with 51.2%. (Discharge has an even higher union 'win' rate of 52.7%.) Yet discipline is also by far the most arbitrated subject taking up a full 41.5% of the issues.

Straightforward issues of pay (including errors in pay, expense allowances, holiday and vacation entitlement and sick leave), accounting for 15.4% of the issues, yield a union 'win' rate of 48.3%. Structuring of the internal labour market (such topics as protection of the bargaining unit, job postings, seniority and redundancy), accounting for 19.7% of the issues, yield a union 'win' rate of 37.8%. The above three areas, together, account for the vast majority of arbitrated issues (76.6%) with a union 'win' rate of 47%.

On the other hand, the area of 'job control' and 'working conditions' (including classifications, management's rights, technological change and work assignments) accounts for only 7.6% of the issues and has a union 'win' rate of 34.4%.

This breakdown shows that on issues of discipline (and especially discharge, where a union 'win' may include reinstatement without back pay, which is really tantamount to an upheld suspension), arbitrators are only barely more likely to rule for the union than for the employer. Yet compared to other arbitral subjects, this is a high union success rate. On issues of pay, most of which are straightforward, unions also have a fair success rate. Not surprisingly, a large majority of the issues submitted to arbitration (two thirds) are in these more or less 'winnable' areas. On issues of structuring the internal labour market, the union is also relatively prepared to submit to arbitration. Yet the success rate hardly warrants the optimism. In the area of job control, the success rate is barely one in three. The low number of arbitration issues submitted under this heading reflects not only the low success rate but the previously-mentioned paucity of 'grievable' language in the collective agreement.

The success rates and submission rate in these arbitral areas reflect both the clarity of the collective agreement language in the area and, where the language is not clear, the amount of adjustment which the arbitrator is allowed to make. Disciplinary clauses, as

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23. Stanton (1982), with a database of 3,276 arbitrated issues in British Columbia from 1966 to 1981, shows an overall union 'win' rate of 45.2%. He counts "draws" (8.9%) as "cops to the unions, being flaccid when compared to what the unions had sought" (p. 9). His breakdown by issue is somewhat different than that above but the general thrust is the same.

will be seen in the chapter devoted to that issue, contain no more explicit an arbitral mandate than to consider 'just cause'. Yet arbitrators have been allowed and have assumed a tremendous amount of interpretive leeway. The high submission and success rates reflect this fact. Pay and perquisite language is usually quite clear. The moderate submission yet high success rate reflects this. Job allocation language is generally muddy. There is often a clash between considerations of seniority and qualification and some incertitude about what constitutes 'bargaining unit' work. The moderate submission rate and moderate success rate reflect this. Job control language is either sketchy or non-existent. The low submission and success rate reflect this.

To summarise, arbitrators have traditionally gained leeway to limit managerial discretion *only* in those areas such as discipline and structuring the internal labour market, where the potential damage to employee interests *far outweighs* potential damage to managerial prerogative. This and the other five constraints upon arbitral ability to imply a duty of fairness, would seem to reduce considerably the revolutionary potential of the doctrine upon Canadian industrial relations.

Beatty himself concedes that,

> "Realistically... the recent decisions of the courts in Ontario and the division of opinion in the arbitral community do not provide cause to be optimistic that these adjudicative processes have the will to work the law pure. This history of confusion and contradiction which distinguishes their collective treatment of the issue suggests that a legislative amendment will be necessary for the liberal theory of arbitration to be fully realized" (Beatty, 1984, p. 167)

Several provinces have enacted just such an amendment. The British Columbia act requires arbitrators to have regard to the "real substance" of the collective agreement. The Manitoba act enjoins management to "act reasonably, fairly, in good faith and in a manner consistent with the collective agreement as a whole." But such clauses could backfire. An old legal maxim *expressio unius, exclusio alterius*, holds that where a legal provision is expressly mentioned in one place but not another, it does not apply in the second place. The very fact that these two provinces have legislatively required some degree of fairness on the part of employers renders the situation in all other jurisdictions automatically worse. A clever management lawyer in those jurisdictions could make a convincing argument as follows: "The B.C. and Manitoba legislatures, in their wisdom, chose to make a fairness provision explicit. Our legislature, in its wisdom, chose not to.

In the absence of such a provision, we must *assume* our legislature did *not* want such a provision to apply. Thus arbitrators have no right to imply one."

2.5 Summary

Thus, after looking in some detail at the three areas where Beatty contends that arbitration has shown promise of making inroads upon managerial discretion, it must be concluded that the vitality of arbitration as a forum for the making of adjustments is not only severely limited but severely limits the ability of the parties to fashion such remedies of their own accord. Far from being a vehicle superior to collective bargaining for the achievement of workplace equity, the arbitral forum is a hothouse of reaction and a quagmire of lost hopes.

As one noted commentator has said of the subatitution of arbitration for the strike in the US:

> "The no-strike provisions of...collective agreements constitute a *quo* considerably in excess of the *quid* of the agreement to arbitrate." (Feller, 1973, p. 760, emphasis in the original)

3. The British Plants

Comparing adjustments in Canada and Britain, two sets of important axioms form *mirror images* of each other. If, in Canada they are: "in the absence of collective agreement language to the contrary, management's rights prevail" and "obey now, grieve later", then in Britain they are: "everything is negotiable" and "status quo". Together, the Canadian axioms tightly constrict the viability of custom and practice as an adjustment apparatus. Together the British axioms ensure it.

To examine the British axioms in more detail: Even at BRITMET where, in reality, union power is relatively weak and the union's ability to *enforce* adjustments inconsistent, both parties agree that negotiability is not a rigid concept. A steward explains that:

> "The union is concerned whenever there is a change in working procedures. We expect to be informed by the company and consulted in every such change."

A personnel manager there also ingenuously avows that

> "The union sees all changes in working practices as negotiable. The company takes pains to inform the union of all such changes and then sits back to see if the union will object."

Somewhat more cannily he suggests that just *how* negotiable a change is depends upon the circumstances, including how loudly the union objects and "whether we want to pay attention to what the union says or not". The instrumentalism of his response echoes that

of his union counterpart and both parties at BRITBREW, for whom the difference between 'negotiable' and 'non-negotiable' is the intensity of struggle over an issue, not its existence or preclusion, as is the case over a wide range of issues in Canada.

3.1 Status Quo

'Status quo', the other key axiom, is a principle widespread throughout British industrial relations. It may be explicit, as in the BRITMET collective agreement:

> Status quo: In case of a dispute, the conditions to be applied during procedure are those prevailing by established practice.

or implicit as described by a manager at BRITBREW:

> "It is understood that no new practice will come into operation until agreement has been reached".

The status quo provision does not invariably, as might be expected, work to the union's benefit. Any industrial action by the union before the exhaustion of either interests or rights procedure is considered a violation of the status quo and management in both plants (but especially BRITMET) will resist 'negotiating out of procedure' or 'under duress'. Yet, as noted in chapter IV, this concept is a flexible one. As Marsh says, such remonstration may often be an indicator of the need for:

> "informal talks between the officials of both sides. The use of the technique of 'no negotiation under duress' is, in fact a tactical matter and frequently succeeds, not from the excellence of the idea itself, but because it enables forces of time and circumstance to be applied to the situation." (Marsh, 1966, p.7-8)

Indeed, at both of our British plants, union industrial action out of procedure is often a way of underlining the seriousness of a grievance while management recourse to status quo is often a method of bringing the union back to the table, albeit informally.

Status quo can also work to the employer's benefit when, all other things remaining the same, the union wants to exploit a temporary advantage (eg. seasonal ones at BRITBREW) to introduce a change, like a rate increase, and management wishes to resist. Management can drag out talks until the advantage has passed.

But it is the union to whom this principle most often redounds and the industrial plant can indeed sometimes become a 'debating society', although the managers in neither of our British plants feel that such shop-floor debates per se present a major problem of disruption.

To invoke the status quo provision, the union need only launch a dispute. Since it is management that most often wishes to initiate change, and delay in implementing change

can often cost money, the status quo provision *can* be a powerful union lever, in and of itself, for wresting concessions from managers where they must make quick or marginal changes.

On the other hand, the status quo provision can have the effect of forcing management to plan important changes carefully in advance if it feels it necessary to 'take on' the union. For instance, in the dispute over the BRITBREW draymen's incentive scheme, mentioned in Chapter III, the company laid plans for changing the scheme a full two years before the eventual strike and hired a new manager with suitable 'hatchet man' qualifications. Feeling a strike might eventually result, management submitted a report to head office, indicating how important the desired change was, warning that a strike might result, estimating the losses that would be incurred, and requesting a 'bail out' if necessary. Head office agreed to the plan and estimated strike costs were built into the BRITBREW's budget.

The dispute was ostensibly over change to a *written* departmental agreement. Yet like an unseaworthy ship, the old agreement was unsatisfactory to the company not only because of internal weakness but because of the mass of unwritten adjustments which had grown onto it like barnacles over more than a decade....items like delivery routes, procedure if a load could not be delivered, the amount of assistance given by draymen to publicans, whether signatures were required on delivery notes. All of the above were important to the company to control costs and service and to the workers to maintain earnings and some amount of job discretion. As mentioned earlier, the ability to isolate this dispute in time and place from other issues in the plant helped both parties, to their independent benefit, keep it containable. The existence of cushioning body of unwritten adjustments means that both sides could settle earlier, without losing face, in the confidence that even the most Draconian settlement could be adjusted at the point of production to meet their day-to-day needs.

In Canada, managements also plan in advance for showdowns with the union over change, but only if they involve amendment to the collective agreement. For other small and large changes under the umbrella of 'management's rights', industrial relations implications are often blithely ignored. Where change must be negotiated in Canada, the relative absence of a cushioning body of custom and practice makes any proposed

agreement all the more drastic for both parties, witness the extended work week dispute at CANMET.

3.2 Custom and Practice

What is it that status quo preserves in the British workplace? It is most often called 'custom and practice' (or C & P). The BRITBREW union's *Shop Steward's Handbook* indicates how important it is amid the political apparatuses of production:

> INFORMAL AGREEMENTS, CUSTOM AND PRACTICE
>
> Ensure that you know all the different rates and conditions of the workers for whom you are responsible. There may be all kinds of variations depending on how the job is organised, types of machinery, and methods of staffing. These may be recorded in separate agreements, but often custom and practice is the only guide as to how jobs are done, how they are graded and paid. There may also be agreements about matters like the amount of work to be done. These individual conditions of working *are no less important for you to know than the main agreement.* (p. 9, emphasis added)

But the exact content of custom and practice is not easy to pin down. It is a paradox: both highly tangible in its existence yet highly abstract in its substance. Ask union or management representatives to define custom and practice and they are hard pressed; they are unable and unwilling to recite a list. Yet, they are ready enough to raise the concept under concrete circumstances. Brown (1972) describes the phenomenon aptly:

> "The stable dog was important in the Sherlock Holmes story not because it barked at the time of the crime but because it remained silent. Similarly the C & P status of some practices only arises when they are challenged, questioned or broken." (p. 44)

There has been some debate about the origin of custom and practice. Brown (1972, 1973), in perhaps the major British examination of custom and practice, criticises Flanders and Fox for succumbing to the notion that C & P is unilaterally worker regulated and salutes Clegg for showing that management "can play a key part in establishing and maintaining it although infringements will be guarded against primarily by workers and their representatives" (1972, p. 44). Brown shows that it is not enough for workers to have a practice but that to become custom and practice, a way of doing things must in some way have been condoned by management. He also concedes that management may actively collude, for its own (Brown implies usually short-sighted) purposes in the development of C & P. Yet he comes to the conclusion that the rules of custom and practice "are the product of management error and worker power" (p. 59).

The investigations of C & P behind Brown's conclusions were carried out mainly in the engineering industry and in a period of high general union power in Britain (late 60's and

early 70's), a place and time in which it was hard *not* to see C & P as an almost uncontrollable 'problem' fo· management. Yet to be fully understood, the phenomenon needs to be viewed also as it operates in workplaces such as those investigated by Armstrong & Goodman (1979), and Armstrong et al. (1981) "in which advanced systems of shop-steward organisation characteristic of the engineering, vehicle and printing industries are absent." (ibid., p. 20) and under the conditions of union power after several years of Thatcherism. Armstrong et al., examining plastics, light electrical fabrication and footwear factories in the late 70's, found not only that managers can take a less passive role in the development of C & P than in the Brown-type plants, but that they can often "co-opt this principle for their own use" to legitimise, and elevate to the status of rules, practices which are detrimental to worker interests but which have gone unchallenged by those workers (p. 171). This phenomenon is called "managerial and supervisory custom and practice" (Armstrong & Goodman, 1979).

Custom and practice in our plants is examined after at least eight years of heavy unemployment, anti-union legislation and union decline. They reveal that custom and practice is not merely a creature of powerful unions in good economic times nor of union capitalising on management error and omission (though this fertile soil may have been necessary for its growth). It is now an assuredly bilateral process, comfortably and opportunistically employed by both parties as a full-fledged adjustment apparatus.

While it *is* most often raised by the union and in the presence of an explicit challenge by management to a long-standing practice, our research reveals that custom and practice can also be anticipated by thoughtful and careful managers before it is a gleam in a shop steward's eye. Both of these would be aspects of what Armstrong and Goodman (1979) call "worker custom and practice" in that they work to the benefit of the workers.

At a BRITMET departmental production meeting, supervisors discussed the efficacy of requiring fork lift truck drivers from the fabrication unit to dump empty bins deep in the premises of the casting unit. Current practice was for the drivers to drop the bins at the demarcation line between the two units for casting unit drivers to pick up, resulting in two separate operations. While reduction to a single operation would have been more efficient, the production meeting decided *without even breathing the idea to the union*, that the old method was "custom and practice" and change was not worth

"upsetting the union". The decision in this case was not the product of temerity but of hard-headed rationality. Thus the principle of past practice can be so powerful as to be upheld by management *even in the absence of the union.*

Far from being ignorant of custom and practice until it is incanted by the union, management is often keenly aware of its operation. Not only do managers "rely on the silences of the labor contract as much as do workers....to benefit from unspoken assumptions when they have the chance" (Armstrong et al., 1981, p. 25) but also often cooperate with workers in "fiddles" either to meet or surpass production quotas or to hide deficiencies in their own management. The pattern of collusion and conflict in such fiddles will be examined in detail in the chapter on job control.

It is only when these adjustments turn perverse that a 'clawback' is seen as necessary by the employer. Perversity arises either when conditions change so that fiddles no longer produce such great output to cost advantages or when earnings threaten to seriously disrupt internal pay differentials and site-wide harmony. In retrospect, it may be easy to accuse managers of short-term opportunism, but in light of the results achieved, it is a highly rational, even economically efficient, activity.

Also evident to some extent is "managerial and supervisory custom and practice", especially at BRITMET, where managers, by their practice, subvert written (or what the unions regard as long standing verbal) arrangements. Such a case is where the seniority clause in the BRITMET collective agreement is ignored by managers. This incident is explored in more detail at the end of this chapter. Nonetheless, although the BRITMET union is weaker than that at BRITBREW, it does not compare to the situation in Armstrong & Goodman's (1979) and Armstrong et al.'s (1981) case study plants where union organisation and resistance is minimal. Because of the volatility of the BRITMET workforce, management rides roughshod over established norms at its peril.

3.3 Differences between Britain and Canada in the Operation of Adjustments

What then, are the major differences between Britain and Canada in the operation of adjustment as a political apparatus of production? First, there is considerable divergence in the subject matter of adjustments. To be sure, they mirror the subject areas outlined in the Canadian plants (ie. activity of and facilities for union representatives; timing and scheduling of work and breaks; job allocation; aspects of compensation; the

enforcement of work rules). But, in addition, they cover many areas not covered in Canadian adjustments, particularly in what we have called 'job control'. Storey (1977) asked a sample of British ship stewards and managers what issues they negotiated on and found that they very frequently negotiated on the expected issues of overtime, discipline, dismissal, redundancy and shifts, issues which would be quite familiar to their Canadian counterparts. But they also negotiated on manning, job content, production techniques, demarcation, quality standards, scheduling of operations, layout of equipment, level of output and speed of work, subjects which would be particularly taboo in Canadian plants. Given the limited size and breadth of British collective agreements and the inapplicability of codification to many of these issues in any case, it is likely that they would be negotiated under adjustments apparatuses, employing the concept of custom and practice. In addition to the above, there were several issues almost never negotiated such as type of product, price of product, source of materials, investment and ownership. While management would strenuously resist negotiating on such issues, by and large British unions, like Canadian unions, have chosen to leave them entirely to management discretion anyway.[24]

Another major area of negotiation in British industrial relations and a wellspring of adjustments is payment by results systems, especially for small work groups in strategic positions. As noted earlier, such payment systems are less common in Canada and where they exist, more tightly controlled by management, less dependent upon the efforts of small groups. The differential operation of such schemes will be explored in Chapter IX. Suffice it to say that they are a fecund source of adjustments.

Second, while adjustments enjoy much more management initiative than an earlier generation of British commentators believed, compared to the Canadian plants where gratuituous concessions and indulgences by management are the norm, it is the unions in Britain that are the main architects and policemen of custom and practice.

Third, for this reason, the 'clawing back' of custom and practice by management is far more difficult and less employed in the British plant. Unions will defend that which they

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24. Significantly, promotion is an issue which both parties rank very low in negotiability. 11% of the shop stewards and only 1% of the managers in Storey's survey listed promotion as an item negotiated. In Chapter VIII it will be seen that promotion is an item of seemingly low importance to workplace industrial relations in Britain compared to its almost universal importance in Canada.

feel they have constructed. British managements do not set off on clawback expeditions on principle, but rather opportunistically, as and when practice becomes obstructive and where the benefit to be derived from the change is 'worth' taking on the union.

When such clawbacks are found necessary, British managements are still prone to 'buy out' the work group involved. While BRITBREW managers express their intention to reduce the instances of 'payment for change' and BRITMET managers deplore the idea for the record, this activity is ill-concealed in both plants. The practice of compensation (usually two years worth of estimated lost income) when any change (not related to sales) threatens total earnings is well established at BRITBREW. Strong work groups will sometimes even take on additional bits of work so that their bargaining position is enhanced in this regard. At BRITMET, a group of furnace operators in the casting unit negotiated a continuous bonus for the inconvenience of occasionally working through their cleanup time and shift change. In another case at the alumunium plant, the company, in order to introduce automatic machine monitoring equipment, was prepared to compensate maintenance mechanics for dropping a standby allowance. What makes such buyouts palatable for both companies is the belief that it will be a 'once and for all' payment (although, as seen in Chapter IX, this is not always the case). For the purposes of this chapter, it is a common and accepted method of clawing back custom and practice in British plants.

Fourth, unlike in the Canadian plants, the British managements are not so obsessed with auditing past practices and moving to remove them from the sphere of adjustments by codifying or eliminating them. While there is a notable move toward greater codification in general, managers at all levels appreciate the benefits of adjustment. Unlike the personnel department at CANBREW that was 'shocked' by some of the (in comparison, fairly tame) practices they encountered in their custom and practice audit, their counterparts at BRITBREW, when confronted by the researcher with evidence of custom and practice contrary to general company policy in some departments, show no alarm. As a personnel manager says when informed by the researcher of a group of workers blacking a certain process:

> "That's an embarrassing problem for lower level management. But we're not going to act on it. Personnel can't take on all of these minor problems and there must be many of them. We have a delicate path to tread."

Fifth, the concept of 'legitimate business reasons' which so tightly constrains the scope of Canadian arbitral adjustment, is not a blanket impediment to adjustment in British workplaces. Because the apparatuses of interests, rights and adjustments are not strictly segregated as in Canada, the zero-sum nature of bargaining is implicitly acknowledged in all of them. An advantage for the workers or their union may well be a disadvantage to the business interests, legitimate or otherwise, of the employer. If what goes on at BRITBREW is not entirely atypical, and it is submitted that it is not, then even in the eighties, it is common in British workplaces with strong unions and appropriate profit levels, for even the most commercially rational changes to be delayed, at least temporarily, while the parties haggle.

In one such case, BRITBREW began the installation of a new yeast plant. The union fully agreed that the plant was desperately needed to increase quality and efficiency but was worried about one job loss and the effect of changes in working practices to their incentive earnings. Working amid construction was also problematic. The union initiated a dispute and claimed status quo ie. no work on the new machinery could be done until the dispute was resolved. The company refused to consider 'buying out' the changes until after the equipment was installed and a thorough work study carried out. Yet 'status quo' and non-cooperation by the workers was holding up construction and implementation of the machinery. So the parties settled by 'temporarily' building one hour overtime into each day, whether it was worked or not (it usually wasn't). The arrangement, meant to last a few weeks, lasted five months. By this time, the workers had become accustomed to the £20 per week extra from 'overtime'. Again the union insisted on status quo. The eventual settlement had to take account of this payment.

Yet, as in everything, notions of 'acceptability' do prevail and the workers at BRITBREW, militant as they are, have quite definite views on legitimate and illegitimate resistance. The union will seldom resist patently obvious business rationality. The employer proposed to eliminate a 'floating' crew whose actual work did not justify its existence and to transfer the workers in the crew to other jobs. The workers involved, used to being paid for doing very little, protested loudly and resisted dispersal. While the union attempted to get the best 'deal' for them in the transfer, it acknowledged the need for change. Says the convenor

> "We did the best we could for the blokes, but we came close to fistfights on a few occasions. Their own shop steward refused to represent them after a while. They had no support from the other workers. Both we and the company had to pretend the dispute was serious."

The main difference between this and the Canadian situation, then, is that the legitimacy of change is socially constructed by the parties themselves rather than rigidly, with regard to the ideas of a third party. As with the concept of 'negotiability', it is a question of intensity of struggle rather than of preclusion.

Thus custom and practice, and adjustments in general, are the political apparatuses of production which most clearly distinguish Canadian from British industrial conflict management.

What of the difference *between our two British plants* in the operation of custom and practice? Recalling the BRITMET managers meeting and the problem of fork lift truck drivers dropping bins discussed earlier, and remembering what has been said in Chapter II about the weakness of the union and the volatility of the workforce, it must be stressed that management *could probably have* driven such a change through without serious challenge by the union. But it could not have presupposed the acquiescence of the workers. Had management called union representatives in for discussions on the issue, they may well have stubbornly resisted or commenced procedure, yet not had the self-confidence to either bargain a settlement or back up their resistance with action. The response of the workers would remain a wild card. As mentioned earlier, negotiating change with the union at BRITMET is an extremely frustrating experience. Management must do much of the thinking about the consequences of change out of range of the union.

A similar situation would proceed quite differently at BRITBREW. In the first instance, of course, management would also have to consider whether a change might upset the workers. But managers would be far more sanguine about the possibilities of 'working a deal' with the union. And the union, being more self confident than the one at BRITMET, would be, on the one hand, less bloody minded about conceding 'small stuff' and on the other, more willing to bargain over 'big stuff'. The BRITBREW union shop stewards handbook, indeed, invites stewards, in pursuing a grievance, to

> "Bear in mind the management frequently offers some compromise. As far as you can, decide in advance what are the minimum terms you are prepared to accept". (p. 29)

In fact, an agreement by union representatives to allow some 'small stuff' can often mean that the managers involved 'owe' them future consideration. Thus proposals for

adjustments are taken up by the union in a highly selective and instrumental way, in light of the whole context of labour-management relations. According to the convenor,

> "The union is obliged to represent, not defend. If a worker's complaint puts into jeopardy what we've achieved, then it's a non-starter."

4. Concluding Remarks

To summarise, given the importance of custom and practice and its attendant concepts of status quo and negotiability, the task for British managements in implementing change is to weigh *immediately* the benefits to be gained from the change against the industrial relations implications of the change. The response from the workers and their union will also be immediate. In a plant with high union power, like BRITBREW, those implications, while perhaps more costly, are also more predictable than at a plant with low union power, like BRITMET. In both plants, however, personnel and production managers have a finely honed sense of what will 'carry' on the shop floor and what will not. If resistance is expected, they (and especially those at BRITBREW) have fairly clear ideas on how such resistance can be overcome.

In the Canadian plants, in a similar situation so securely within the ambit of managerial rights, management would doubtless introduce the change without compunctions about the necessity of securing union agreement, (other than perhaps informing the union out of courtesy). What is more, seeking union agreement for such change would be seen as an unacceptable precedent. A classic expression of this danger appears in a pamphlet issued in 1956 by the US National Association of Manufacturers:

> "If foremen in their day-to-day performance are allowed to administer the contract in a slipshod fashion, the vital authority of management is drained away. In fact it is perfectly possible for supervisors to give away in daily operations the management rights fought so hard for in negotiations." (quoted in Bakke et al., 1967, pp. 230-233)

Yet, given the greater apparent ease of introducing change in the Canadian plants, Canadian managers have much less intuitive sense about what can and cannot carry on the shop floor. They may well be more easily lulled into a false sense of security about the long-term effects of their actions, to be "caught by surprise" (as one CANMET manager described his reaction to the long 1986-87 strike), by the intensity of worker and union opposition and bloody-mindedness at the bargaining table when it is often too late to avoid all-out industrial conflict.

CHAPTER VI: ENFORCEMENTS

1. Introduction

Thus far, the exploration has been of ***potentiality***. Some tentative probes of the relative power of the parties in our workplaces have been attempted and the mechanisms of dispute resolution ***available*** to the them have been more thoroughly canvassed. It is now time to explore ***actuality***. Between potential power and the mechanisms available on the one hand and the ***results***, the actual power, achieved on the other, lies an intermediating apparatus, called enforcement.

By enforcement is meant both the ***efficacy*** of pursuing and resisting claims and the ***sanctions*** that may be applied in so doing. It is here that intra-national dissimilarities between our sets of workplaces become clearer and more analysable. It is here also that the differential cross-national ability of the two 'systems' to allow these dissimilarities comes into focus.

The question asked at this juncture is: how does the potential power of the union interact with mechanisms available to produce the concrete expression of that power? Earlier, union power was defined as the ability of the union to 'deliver the goods' both to its members and to management. So the question becomes: what exactly is the 'delivery system' through which this is accomplished?

The ultimate sanction or enforcement method for unions is the strike. While it is by no means the only, nor necessarily the most effective sanction of itself, the strike or its threat is the inevitable counterpoint to all other forms of enforcement. Thus it is necessary to briefly review the availability and the use of strikes and strike threats in the two countries in conjunction with other available methods.

2. The Canadian Plants

2.1 Strike enforcements

The strike (and lockout[1]) weapon is legally available to the parties in Canada only at the expiry of a collective agreement and after bargaining in good faith for a new one. In most jurisdictions, including the province housing our two plants, strikes are also only

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1. Hereinafter, only strikes will be mentioned. First, lockouts are not nearly as common as strikes. Second, most lockouts come about at the end of a chain of events which would otherwise have led to a strike. Thus, at CANBREW, although the shutdown of breweries is technically a lockout, *for our purposes* the difference from a strike is negligible.

'timely' after the parties have submitted to the intervention of a government-appointed third party (conciliator and/or mediator), after the third party reports his inability to resolve the dispute, after a 'countdown' period from the report has elapsed and after a strike vote has been held.

In the province where our plants are located, the Labour Relations Act broadly defines a strike to include:

> "a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output"

Although an explicit subjective component like 'in furtherance of a trade dispute' is missing[2], it is presupposed by the fact that strikes can only take place at agreement expiry and that striking or threatening to strike on an 'extraneous issue' (any issue other than that which directly concerns the parties to the agreement) is 'bargaining in bad faith'.

'Timely' strikes are further limited in their effectiveness by the way Labour Relations Boards atomise bargaining units by 'certifying' unions to represent groups only large enough to encompass workers with a narrow 'community of interest', by the way the boards thus limit the ability of bargaining units to legally combine into 'negotiating units' (see Forrest, 1988) and by the practical difficulties of bargaining units in coordinating simultaneous 'timely' strikes to increase economic leverage. Thus multi-plant or industry or coordinated plant level bargaining can really take place *only* with management consent (which, for obvious reasons is seldom given, except, as is the case at CANBREW, where it is to the employer's advantage).

Only a small minority of collective agreements have provisions giving workers the right to refuse to cross picket lines or handle hot goods (known in Britain as 'blacking')[3] and it is questionable whether such provisions can override the blanket strike ban in any case.

Another constraint on timely strikes is the effective ban (by both statute law and common law torts) on secondary picketing, blacking and refusing to cross picket lines (see

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2. A few jurisdictions do apply apply a 'subjective' component ie. that a strike or work stoppage designed to elicit an economic response from the employer. However this has had the ironic effect of exempting 'political' strikes from the strike ban. (See England, 1983a, p. 243)

3. Only 11.5% of collective agreements covering 500 employees or more have such provisions (Kumar et al., 1986, p. 397).

England, 1983b). Even primary picketing is highly restricted by a sometimes bewildering combination of civil, criminal and common law on such issues as trespass, nuisance, watching and besetting, assault, battery, property damage, obstruction of traffic, obstruction of police and defamation.

As will be seen, a multiplicity of restrictions on picketing is also available to British employers. But there is a great difference in the way they are used in the two countries. In the UK, the aggressive use of police and the law against picketers has been the exception and not the rule. The miners' strike, Wapping, and other celebrated cases in the 'North American style' may or may not be harbingers of a future trend, but the British picket line has long been a more genteel affair than the Canadian. The fact that strikes are generally much shorter than Canadian ones is both a cause and a result of the above. Because timely Canadian strikes are long affairs, it is not uncommon for employers to continue operations with managerial and non-union labour[4]. CANMET continued its most important fabrication operation using managerial and white collar employees during the 11-week 1986-87 strike. Managers claim they were prepared, had the strike lasted longer, to bring outside strikebreakers through the picket lines. For reasons outlined earlier in Chapter III, the breweries choose to shut themselves down during a strike/lockout. Yet when they 'hang a plant out to dry', they will supply beer from other, working plants.

The police are highly involved in Canadian strikes and arrests on picket lines are common as union members attempt to impede the ingress of managers, non-bargaining unit workers (who may be in other bargaining units but not in a 'timely' strike position) and 'scabs'. If direct use of the law by police is insufficient, then courts will award injunctions limiting picketing and other acts, making offenders liable to contempt of court. A group of prominent Canadian legal scholars conclude a review of picketing law with the understatement: "the [Canadian] picket line is not a tea party" (Labour Law Casebook Group, 1986, p. 330)

A further legislative intervention into the conduct of strikes is the 'once-and-for-all' opportunity of a strike-bound employer to unilaterally call upon the Labour Relations

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4. Of all the jurisdictions, only Quebec law prohibits the hiring of 'scabs' (ie. people who were not employees before the strike) during a strike. The Quebec law does not prohibit the employer from operating with managerial personnel from the site, however.

Board to impose a 'supervised ballot' on its last offer. Such a provision exists in the province where our plants are located and CANBREW made effective use of it in the strike/lockout most recent to the study. The union-conducted ratification ballot had been close. When the employer applied for a supervised vote a few days into the work stoppage, the governmental authorities moved with breathtaking swiftness. Says the staff officer,

> "It was very impressively organized. Before we knew what was happening, the government had served all employees with official papers at their homes. The time and place of the new vote had been set. We didn't hold a meeting because everybody knew the issues, but there would have been very little time to do so had we wanted to."

The new vote resulted in a bare majority in favour of the company offer. The employer had gauged the situation correctly and achieved its objective. Although supervised votes are not used often by employers (because they have learned that the action often offends workers and solidarises, rather than breaks, a strike), CANBREW's behaviour is typical of Canadian employer behaviour during strikes. They will readily use the legal means at their disposal and unions have come to accept it as normal.

Perhaps the best characterisation of North American 'timely' strikes is that of a US commentator who describes them as "rituals of polite attrition" (Kuttner, 1984). Unless fortune puts the union in a position of great economic leverage precisely at the point of collective agreement expiry, the timely strike is a sanction of limited usefulness. Given what has been said in the previous chapter about the difficulties inherent in the Canadian interests apparatus, ie. the long interval between bargaining sessions, the multiplicity and complexity of issues weighing down the bargaining table, the tendency to reduce all demands to the lowest common denominator of money, neither the mechanism nor the sanction allow much leeway for a union to exercise its power.

What of strikes within the term of the collective agreement? As mentioned earlier, over the past 25 years, illegal or 'untimely' strikes have accounted for about a fifth of all strike days lost in Canada. The figure is all the more remarkable given the variety and Draconian nature of the remedies available to employers and their readiness to use them. Faced with an untimely strike, the employer may do the following, singly or in combination (see England, 1983a):

i) He may fire or suspend the strikers. While Canadian law does not deem the contract of employment automatically forfeited by a refusal to work, arbitrators are quite rigorous in holding that striking unlawfully is 'just cause' for discipline and leading such a

strike is just cause for dismissal. ii) He may go to the labour relations board[5] for a declaration of an illegal strike (or arbitration for a declaration of violation of the 'no strike' clause of the agreement) and a 'cease and desist' order, enforceable, by contempt proceedings in the courts. The labour relations board route, being quicker, is usually used to end an ongoing strike; the arbitration route is more often used if a strike is over. iii) He may seek damages from the individuals through the labour relations board or arbitration for lost production and incidental expenses. Employers do not do this as often as disciplining the individuals concerned but damages are frequently obtained and not enforced, in order to hold a 'sword of Damocles' over the head of the workers or trade for a union concession. iv) He may seek damages against the union and possibly its officers rather than the individual workers concerned. This is sometimes more effective because it puts the onus on the union to 'control' its members. v) In cases of outrageous flouting of the law (usually after an injunction), strikers and union leaders can be criminally liable and subject to jail sentences. This remedy is seldom used by employers but may be considered by state agencies if the challenge to the law is egregious.

The liability of the union for the illegal strike actions of its members makes it highly unlikely that such strikes will receive open or even tacit support from union officials. In fact, in order to escape liability, union officials are expected to instruct the membership to return to work, in no way encourage, instigate or participate in the walk-out and further, "take prompt and affirmative action to bring it to an end". The holding of a meeting of union members in which union officials are dilatory in denouncing the strike and do not threaten members with disciplinary action has resulted in the union being held 'vicariously responsible' for the strike. The onus in proving that reasonable steps were taken is on the union. (See Brown & Beatty, 1984, pp. 664-668).

The experience in our Canadian plants illustrates the firmness with which untimely strikes are handled in that country. As part of a campaign to crack down on illegal stoppages in its plants across the country, CANBREW's parent company's corporate industrial relations manager sent a memo to all plant industrial relations managers

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5. Injunctive relief can be obtained from the courts in most jurisdictions, but because of the delay factor and because the courts often defer to the labour relations boards, few employers use this avenue

outlining the company's position. In it he indicates that even short stoppages can (and should) be successfully prosecuted:

> "We are now advised that [one of our competitor breweries] are processing a company-initiated grievance against the union for an illegal work stoppage of two hours duration. The damages pursued are in the amount of $40000 [approximately £20000] for resultant losses..."

With the memo, he enclosed a recent arbitration and court case in which a company was awarded damages for loss of 'overhead' even though the strike had caused no eventual loss of production. He also enclosed a document compiled by the company's firm of lawyers entitled "Procedures in the Event of an Unlawful Strike". This latter document is instructive in the way Canadian employers are expected to handle illegal strikes. All employees, it advises, must be told that their refusal to work constitutes an illegal strike. The police should be called immediately and asked to disperse the picketers, even if they are peaceful. This, it says "is an extremely important step for unsuccessful police involvement is a prerequisite to any injunction order"

The document advises management to contact the union office by telephone and follow-up telegram, indicating that

> "the company holds the union responsible to take every available step to get the men to return to work. Also, the immediate attendance of a union officer should be requested for the purpose of ordering the employees back to work."

A telegram should be sent to all striking employees' homes, advising that they are on illegal strike and liable to discipline and prosecution. And the employer should

> "resist attempts by employees to negotiate a settlement of the issue or issues while employees are still on strike."

Finally, all aspects of the strike should be carefully recorded and particularly

> "the effect of the strike and picket line on the business. It is especially important to indicate the irreparable damage, that which cannot be compensated for in money eg. missed deadlines, potential loss of customers, physical harm, etc."

CANBREW has become more aggressive in pursuing the sanctions available to it against wildcat strikes in reaction to a series of walkouts in the late 70's where the company employed a softer 'talk it out' approach. Managers concur that the latter approach "only encouraged more of the same" and that swift retribution and its threat is the only way of avoiding wildcats. Pursuit of illegal work stoppages has extended even to concerted overtime avoidance. In one such case, CANBREW commenced a case against the union at the Labour Relations Board but dropped it when the overtime ban dissipated.

CANMET has an even more Draconian, albeit spontaneous approach to illegal stoppages. When fabrication employees walked off the job over a long standing safety issue, several of them, including their shop steward, were immediately suspended. On another occasion, when another group temporarily left their work stations because smoke in the air made it difficult to breath, managers began automatically to prepare discipline, only to learn later the true facts of the case. Workers have come to expect that in such situations the company will shoot first and ask questions later.

Given the state of the law and employer aggressiveness in untimely strikes, it is little wonder that these tend to be desperate and emotional affairs. While most of them are sparked by a particular critical issue, they soon disclose a litany of complaints and pent up frustrations. Because of the liability of union officers, few are consciously planned in advance and fewer are instrumentally directed at winning particular concessions from management. While most start in a particular department, if they last more than a short period, they inevitably spread to others as fellow workers, impelled by solidaristic notions and their own private gripes, fail to consider whatever particularity the walkout may have initially possessed. While some such strikes are settled by a promise of amnesty for the strikers, very few result in substantive concessions and, being so emotionally charged, last no longer than it takes for the workers involved to 'cool down' and take stock of their tenuous position. In most cases, after a few hours, the workers and certainly their union, devoutly wish to return to work.

A rare and notable exception to this rule occurred in 1976 at a plant in British Columbia. Paul Weiler, then chairman of the provincial labour relations board, into whose hands attempts to end the strike fell, describes the circumstances:

> "This was not a flash wildcat strike precipitated by a grievance, such as a safety issue or the firing of a popular union steward. Rather it was a planned attempt to force the re-negotiation of a collective agreement and to achieve a new contract expiry date which would facilitate common front bargaining with the employees of [plants owned by the same company]. As such it was a deliberate challenge to the fundamental principles of the Labour Code...
>
> The illegal action was massive in character. Of the 2800 employees of the smelter, most remained away from work for two and a half weeks, and notwithstanding the issuance of Board orders which were filed with the Supreme Court and served personally on the strike leaders." (Weiler, 1977, p. 661

Weiler explains that because the union and the vast majority of workers were determined to defy the law, the customary remedies available simply broke down. And the union leaders seemed only too glad to go to jail on principle. The board devised a new

remedy which, along with time, helped end the strike peacefully (the union did not achieve its objective). The point of this example is that in the vast majority of small, uncontrolled wildcats, the remedies and employer willingness to use them are enough for the employer to make short work of the disturbance without any concessions. In the case of an instrumental and determined wildcat, the stoppage soon escalates into a challenge to the system as a whole, involving the state or its agencies, and is thus taken beyond the workplace, a situation deeply inimical to the union achieving its objectives. Pace Kuhn (1961), the availability of the strike weapon and hence, of the threat of same, as a sanction to back up 'fractional bargaining' in Canada, is almost non-existent.

2.2 Non-strike enforcements

In the absence of the strike weapon, what enforcements does the union have available to make its claims? Other than very low level 'You scratch my back; I'll scratch yours' deals between workers and their supervisors (described as shop floor adjustments earlier in this chapter and practically unenforceable), the parties must rely on the wording of the collective agreement and the arbitral jurisprudence in making their claims. Thus the main enforcement apparatus is the grievance and arbitration procedure[6].

Yet even the 'settling' of an issue by arbitration and its *formal* acceptance by the employer does not guarantee *actual* compliance. Nor does it allow the union to take enforcement into its own hands. For example, an employer was found by arbitration to have improperly contracted out a small part of its operation. On several occasions over the subsequent year, the employer continued to do so. The union, worried about acquiescing, instructed its members to refuse to cooperate. These members were disciplined and the discipline upheld by another arbitration, which ruled they must 'obey now, grieve later'. In other words, the *violation of a previous arbitration award must be the subject of a new arbitration*[7]. Given the previously-noted delay of non-disciplinary arbitrations, 'grieving later' in this case demonstrates the limitations of

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6. Like decisions of labour relations boards, those of arbitrators are enforceable by registering them in the courts and then suing for contempt. Yet such is the durability and repute of arbitration among employers that such recourse is virtually unnecessary. As mentioned earlier, the courts have limited power of review of arbitration awards. Thus the decision of the Canadian arbitrator, unlike that of his counterpart in Britain, is final and binding and, moreover, accepted as such.

7. *Re British Columbia Telephone Co. Ltd.* [1] L.A.C. (2d) 312 (MacIntyre, 1976)

arbitration as an enforcement apparatus. That is not to say that all employers similarly flout arbitral decisions, yet the frustration of the workers confronted by this eventuality can be easily imagined.

As for collective agreement language, naturally, some collective agreements will provide greater scope for claims than others. For example, CANBREW's agreement, among other things, provides for seniority as the criterion in promotion 'provided that the candidates are sufficiently qualified', contains the unique 'fair day's work' clause, provides for three weeks's vacation after three years, double time and a half for all hours worked over eight on a Sunday and up to a year and a half of income supplement in case of layoff. CANMET's agreement, on the other hand, provides for seniority as the criterion in promotion 'where skill, knowledge etc...are relatively equal" (a somewhat inferior clause to CANBREW's), contains no 'fair day's work' clause, provides for three week's vacation after five years, double time for *all* hours worked on a Sunday and no income supplement in case of layoff. So, it can be said that the agreement at CANBREW is marginally 'better' than the one at CANMET. But not qualitatively better. Aside from clear monetary provisions (eg. Plant A gets $X per hour while plant B gets $Y per hour), the variation in scope for claims is actually quite narrow. As has been and will be seen, the apparent superiority of the promotion clause and the 'fair day's work' clause have been whittled down by arbitrators. In fact, arbitration has a 'levelling' effect upon the differences that do exist among Canadian collective agreements.

In their main contents the majority of Canadian agreements are remarkably similar. Discipline is almost universally covered by the sole 'just cause' provision. Promotion and layoff are nearly always governed by some mixture of seniority and qualification. The grievance procedures are virtually boilerplated. The union generally has the right to post notices on a bulletin board and employees can request leaves of absence. It is because of this relative uniformity of agreement language that the arbitral jurisprudence, full of interpretations of agreements in thousands of workplaces, makes sense to anybody.

But if strikes are of limited use as enforcements during the term of the agreement, if collective agreements are quite similar and if, as has been noted earlier, the arbitration system is so predictable, what, if anything, provides for variation in the application of union power? There are two answers. First, compared to the British system, the

variation in power application between weak and strong Canadian unions *is* indeed quite small. Weak unions are defended by the predictability and reliability of arbitration. Strong unions are constrained by the its inherent conservatism and the limitations of its purview. As mentioned at the end of Chapter II, more than the union, it is perhaps the *system of dispute resolution itself* that acts to 'deliver the goods' to both union members and management. It is the grid that overlays everything, both protective and restrictive.

The system is automatistic in the sense that a grievance pursued up the procedure and taken on to arbitration, as analogised, is on an escalator. But therein lies the difference. For, it is in the vitality with which the union pursues grievances, prosecutes arbitrations and uses other laws and regulations available to it that is able to translate what power it has into results.

This vitality does not necessarily translate directly into numbers of grievances filed or taken to arbitration, for a union that calculatedly chooses its challenges for impact and winnability may well have fewer than one that does not. This is one reason that Gandz's (1978) correlation of grievance rates against several variables such as technology, size of plant, workforce characteristics, 'industrial relations climate' and union political instability may have yielded such inconclusive results (the correlation to 'industrial relations climate' is a particularly spurious one). The number of grievances launched is merely one indicator. Certainly, in our two Canadian plants, the grievance rates do differ considerably. Yet looking more deeply, two distinct patterns of grievance activity can be observed.

At CANMET, as noted earlier, not only does the union not push the limits of the collective agreement, it is also seriously inconsistent, in fact negligent in pursuing cases that seem likely to succeed or to organise its members so they have the best chance to succeed[8]. A former convenor typifies the attitude that characterised the union for many

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8. Criticism of the CANMET union does not necessarily imply any overall criticism of the external union. Some of its branches, especially in larger plants, are quite powerful, good at pursuing grievances and innovative in their representation tactics. Likewise, the external union at CANMET has some weaker branches. Despite this, the amount and quality of assistance given by the staff officer and the external union office to the branch at CANMET left much to be desired. The advice given to the branch was frequently poor or non-existent, and pursuit of arbitration dilatory and sloppy. The efficiency of the external union was most evident when diplomatically intervened to help end the long strike. As mentioned earlier, these problems for the external union may well have had their origin in swingeing staff cuts made necessary by the loss of members in the 1980-84 recession.

years: "We'd never go to arbitration and they [the employer] knew it." A good example is the case of the fabrication work group disciplined for walking off the job in response to a safety hazard. Safety concerns are one of the *only* exceptions to the 'obey now, grieve later' rule. So a grievance diligently pursued and taken to arbitration may well have resulted in exoneration or a smaller suspension. The union would have had nothing to lose. Yet the grievance 'died' after the second step. In addition to arbitral remedies, health and safety law in the province where our plants are located contains a 'right to refuse', provided the workers have reasonable belief that their work is unsafe. In order to use this right, however, the workers must have some self-restraint and knowledge of a fairly simple procedure (communicating the belief to a manager in a reasonable and adequate manner, notifying the union etc.). The union can also have used safety committee meetings to raise the issue. This example is especially relevant because in none of these avenues could potential employer resistance have been a major factor. Safety is a 'safe' item, one of the most 'legitimate' areas (Armstrong et al., 1981) of union-management intercourse. However, pursuit of any of these three avenues would have taken a modicum of coordination, organisation, education and self-discipline on the part of the domestic union as well as encouragement and backup support from the ex-plant union staff. Save for a few exceptions (such as reporting the company to the government employment standards office for breach of overtime regulations and the organisation of the 11-week strike) the domestic union is too poorly organised to make use of those mechanisms available to it.

A look through the CANMET collective agreement reveals many 'time bombs' ie. clauses which are imperfectly worded so that a sharp lawyer for *either* party could construct a case portraying them to mean the opposite of what was intended. For instance, the grievance procedure ostensibly allows any complaint to become a grievance, while neither of the parties intend it to handle anything but application, interpretation or alleged violation of the agreement. Another clause prohibits the arbitrator from

> "substituting [his] judgment for that of the Company in respect to grievances arising out of layoffs, promotions, demotions and transfers; or to over-rule the decision of the Company in respect thereto, unless it finds that the Company acted in violation of the expressed terms of this Agreement"

While company managers claim they are unaware of the consequences of this clause (it was negotiated many years ago) and have no intention of so restricting an arbitrator, and

while the union seems oblivious of its import, its effect is potentially disastrous for the union, a bomb looking for a place to blow up. The reason that these and several similar clauses are in the agreement is that the union seldom puts the agreement it to the test by attempting to enforce it. Were it to do so, both parties would soon discover its deficiencies and attempt, through collective bargaining, to rectify them. The union has rights, obtained both through its own bargaining and the disputes resolution procedure. Yet due to its lack of organisation, for the most part it sleeps on those rights. If one of the problems of unions is that they *react* only, then the CANMET union's reflexes are exceedingly slow.

Contrast this to CANBREW where the union, both domestic and external, 'makes the most' or at least much more of those mechanisms. Its competent and businesslike handling of grievances and its willingness to proceed to arbitration has been reviewed. The collective agreement contains few time bombs because it has been well-tested. Yet another example of the union's aggressiveness and inventiveness is the campaign against the introduction of cans. Reactive, to be sure, it also had its proactive side. Faced with the severe limitations of collective bargaining, the union launched an appeal for public and governmental sympathy, something akin to the "corporate campaigns" several U.S. unions have waged against anti-union companies. The union produced a sophisticated video for its members and the press. Union officers learned to 'work the press', lobby politicians and get their message across to the public. By playing up the job loss aspect, the union was able to play down the fact that its members are 'aristocrats of labour'.

In the end, though, the public campaign had to be judged by what was achieved at the bargaining table. Though the union did not win the banning of cans or complete job security, it did win one of the most generous 'technological change' provisions in the country (discussed in Chapter °) to provide a modicum of income protection for laid-off employees.

2.3 Summary

In summary then, because of the rigid constraints of the Canadian apparatuses, the amount of force that potentially powerful unions can bring to bear on employers is severely limited. The greater the union's potential power, the greater will be the gap between what the union and its members would like to achieve and what actually can be

achieved. This must inevitably lead to frustration and the greater possibility of industrial conflict. Given the severe limitations on expression of industrial conflict, that which emerges may be all the more explosive.

On the other hand, these same rigid apparatuses act as a safety device, providing the weakest of unions with defences against management tyranny. While the basic Canadian collective agreement[9] does not contain some of the 'goodies' present in mature collective agreements, it does provide unions and employees with many of the important protections contained in more elaborate ones, such as a grievance and arbitration procedure, the 'just cause' test for discipline and seniority provisions for promotion, layoff and recall. What is more, those terms and conditions, once in the collective agreement, cannot be altered (except by mutual agreement) until the next round of expiry negotiations. Even at expiry negotiations, those terms and conditions take on an aura of abidingness. While at expiry the agreement is theoretically 'up for grabs' and employers sometimes set out to gut it, these terms and conditions more often act as a minimum to be negotiated from. Even when the employer sets out to erode the collective agreement, the very word employed for this process: "concession bargaining" implies that the union is giving something up. So there is a quite firm floor of protection for the weaker unions.

While the actual number of arrows in the quiver of strong and weak unions does not differ greatly, the difference appears in the ability and willingness of weaker unions to *use those arrows it has*. It is only in turning to Britain that a gap of qualitative proportions between strong and weak unions can truly be seen.

3. The British Plants.

3.1 Strike enforcements

The British law on strikes is presumably known to the reader, so a summary shorter than the Canadian one is in order[10]. The same legal restrictions and protections cover all strikes in Britain, whether they arise from interests, rights or adjustments apparatuses. No law expressly forbids strikes according to the status of the collective agreement. Thus strikes can potentially take place at any time and the question of

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9 Several provinces have introduced 'first collective agreement arbitration' wherein either party to first agreement negotiations can request the imposition of terms by an interest arbitrator.

10. The sources used for this description of British strike law are Wedderburn (1986) and Salamon (1987)

timeliness is irrelevant. But there are several procedural and substantive legal impediments which unions must consider when choosing to strike.

While there is no *positive right to strike* as in Canada, certain *immunities* against tort prevail in the case of a 'trade dispute'. The definition of trade dispute practically restricts the legal legitimacy of strike issues. Thus they are confined to disputes 'between workers and their employer' so that strikes on general policy (including political strikes) and demarcation are ruled out. The courts have interpreted this to preclude strikes over contracting out since they involve 'workers' employed by another employer'[11]. While restricting secondary action somewhat, the law does provide *much* more leeway for it than is the case in Canada.

Unlike in Canada, common law governs an employee's contract of employment and it is deemed broken when he refuses to work. An employee may be fairly dismissed for striking unless he is unreasonably singled out. Thus only the good will of the employer and/or the stength of the union protects strikers from dismissal.

All industrial action must be authorised by a majority of workers voting in a secret ballot, the ballot paper must indicate that the proposed action is in breach of contract and the strike must take place within four weeks of the ballot.

Picketing is tightly constrained so that the striking employee is restricted to the actual work site and secondary picketing is precluded. Codes of practice and policing seek to restrict the number of picketers at each entrance to six. As in Canada, a host of civil, criminal and common law governs the picket line.

To enforce the above, the party prosecuting can apply for damages caused by a strike and for an injunction to end an ongoing strike. Thus, *in theory* at least, British unions would seem to be faced with at least as full (even if not a similar) array of legal impediments to strikes as their Canadian cousins. But this is simply not the case. Due to differences in the *enforcement* of the law, British strikes *in practice* are not *nearly* so restricted as Canadian.

First, while the basic structure of strike law has been built up over a century, the repressive superstructure (and the economic and social conditions that accompanied it) are creatures of only the last ten years. Strike habits learned by both unions and

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11. *Dimbleby & Sons Ltd. v National Union of Journalists* (1984) IRLR 67, CA

employers over the long preceding period are very much alive. While new tools are available to employers, the tendency has been not to use drastic measures unless the conditions of industrial relations change drastically. Because high unemployment has dampened the militancy of most unions, for the most part such drastic conditions have not materialised. Thus studies of the effect of strike legislation (eg. Younson, 1984; Evans, 1987) indicate that the use of strike law by employers, while increasing, "applies mainly at the margins" (ibid. p. 429).

Second, the option of dismissing striking employees has always been available to British employers and is sometimes used. But it is by far the exception and not the rule. Unless an employer wishes to escalate a dispute rather than settle it, it is unlikely to dismiss strikers.

Third, as most strikes are short, it is not economical for employers to commit the large 'sunk costs' (both financial and psychic) necessary to maintain production in defiance of the strike. Thus the picket line is not the critical crucible of conflict that it is in Canada, making most picketing legislation irrelevant.

Fourth, while the trade union movement at first opposed strike ballots on principle, and many still do (including the manual union at BRITBREW), most domestic union organisations now hold ballots regularly on site-wide issues, and many use them instrumentally to wring concessions from management short of actually striking. The domestic unions at both BRITMET and BRITBREW have attempted to do this, as witnessed by the BRITBREW 'compulsory redundancy' dispute mentioned in the previous chapter. Small sectional strikes and walkouts are generally not balloted. But they are usually over before any legal action by the employer becomes worthwhile. Such legal action is not worthwhile partly due to the next point.

Fifth, most of the strike law must be prosecuted by individual employers (or persons adversely affected by the strike) rather than state agencies. The prosecutors have recourse only to the courts. The courts have never been especially friendly to labour and unions have an abiding and not unjustified hatred in return. But therein lies the problem. For the employer to take the union to court assuredly spells a fundamental breakdown of the relationship, quite unlike the situation where a Canadian employer brings a union before the 'impartial' and jointly respected labour relations board or arbitrator. In the

absence of such total breakdown, court action by a British employer "is incompatible with its primary objective to resolve the dispute and secure its production" (Salamon, 1987, p. 357).

Sixth, and much more intangible, is the fact that both employers and unions in well-established and 'mature' relationships are simply more genteel than their Canadian counterparts. Though often tough with the union, at both of our British plants personnel and production managers display a far more decorous attitude than their Canadian counterparts. Likewise, the union officers exhibit far less bile than the Canadians. One sophisticated Canadian personnel officer, veteran of many union relationships (not from either plant in this study) insists the 'BOTH' treatment is the best way to handle unions. When questioned whether this means both the carrot and the stick, he replies, "No. Beat them On The Head".

A look at the use of strike law in our British plants is instructive about the differential use of law by British employers. BRITMET, which had not had a serious work stoppage since the introduction of the last of the new strike legislation (1984), experienced one shortly after the 1987 pay round (which was settled without industrial action). The company had proposed to demote a supervisor to a shop floor position and the manual workers' union had objected. The union held a strike ballot (and won a 90% majority) which was intended, and was portrayed to the workers, primarily as a show of strength, to back up the union's argument in meetings with the company. When the company refused to budge and, in violation of 'status quo', actually carried out the demotion, a strike began. Even then, the union believed the company would capitulate within 24 hours. But by the time of the walkout, the company had decided to 'take on' the strike partly in spite of and partly because of the fact that a major 'just in time' order was due to be shipped. That they had fortuitously discovered a new weapon for their arsenal was a windfall.

For, in its ballot, the domestic union had made a technical error in not warning members that strike action would be "in breach of your contract of employment"[12]. With the counsel of its solicitors and head office personnel advisors in hand, the company wrote

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12. Union officials claim this ballot was not intended as a strike ballot, but rather to 'sound out the members'. Unaware of this fact, shop stewards felt they were legally entitled to pull the members out on strike when negotiations with the company broke down.

to the union's regional headquarters advising, first, that the walkout was not spontaneous but organised by the shop stewards and that:

> "We have taken legal advice and are advised that the ballot paper which was used does not meet the requirements of the law and the ballot was therefore not valid.
>
> "The stoppage is causing us substantial financial damage and we are taking further legal advice as to the remedies available to us and the further steps we should take."

A similar letter was sent to shop stewards. Though no no outright threat was made and no legal action initiated, the letters clearly set out the preconditions for an injunction and/or damages suit. Further, informal 'leaks' and tactical rumours (such as a bruited damages figure of £3 million) impelled the union's regional office to distance itself immediately from the strike and instruct the staff officer to end it forthwith. This he did, in a tumultuous meeting, to the resentment of workers and shop stewards. Once back at work, support for a strike unravelled and a subsequent ballot failed to win the 2/3 majority specified by the union rule book.

Despite the use of the law in this case, company managers insist that their action was entirely instrumental and not part of a policy of running to the courts to solve their industrial relations problems. Says one:

> "We're very careful about the use of the law. In this particular example, we wanted to upstuctle [pull the rug from under] strong shop stewards who were overconfident that the company would back down...We'd use an injunction to get people back to work, to break the back of a strike, but we're glad it didn't have to get to the courts in this case...Note that we carefully avoided directly threatening to sue the shop stewards or to sack strikers. We didn't want a witch hunt."

Significantly, the company in the end took no reprisals by discipline or litigation. Nevertheless, the welter of rumours, which the employer took few pains to scotch, including mass sackings of strikers, created a climate of apprehension about striking among the workers and shop stewards which management admits "was not unstrategic from a long-term view" and established that the company could be tough if it wanted to be. On the other hand, union officers insist the company has gone out of its way since the strike to avoid confrontations on the same issue. They also contend that the union's mistake came about simply through inexperience and would be unlikely to happen again. BRITMET then, is like many British companies in its use of the law. While not committed to using the law whenever applicable, it takes an instrumental or opportunistic approach, using the law selectively and employing the threat rather than the full weight and, more

significantly, using the external union to whip employees into line rather than doing this itself.

BRITBREW, by contrast, represents another prevalent, and traditional, approach by British employers to strike law. It has not used the law at all. Most of the work stoppages, in the words of a personnel manager, "are measured in hours". These, he insists, are not strikes. True strikes are those stoppages which "seriously impede our ability to trade". The draymen's strike (described in Chapter III) was just such a one. Occurring in the absence of a ballot and lasting two weeks, it was clearly illegal and provided a perfect opportunity for the use of the law. Yet the company chose to 'take on' the union with no less determination than BRITMET, but using conventional methods. Echoing managers on this question, the convenor is somewhat more blunt:

> "For the company to go to court is an admission of failure, that they can't handle their industrial relations. If they had gone to court during the draymen's strike, the dispute would inevitably have escalated."

Ironically, the ultimate pattern of strike ballots at BRITBREW is that the union holds them when it *does not* go on strike and does not hold them when it *does* go on strike.

In summary then, compared to Canada, the strike is an ever-present and potentially potent weapon. To use a perhaps crude analogy, management is assumed to be armed with the law and its prerogative of ownership. The strike weapon of Canadian unions is locked away in a cabinet, the bullets are locked away somewhere else, and the keys to both are not always available. In addition, a vigilant and determined sheriff sits waiting to sort out any disagreements. On the other hand, the strike weapon of British unions is close to hand and loaded and the sheriff lives 500 miles away. Disagreements must be handled by the parties themselves.

3.2 Non-strike enforcements.

Yet in this seemingly precarious situation, the British parties are able to survive without 'all hell breaking loose'. Brown points out "as political scientists observe, an appeal to legitimacy is very economical when compared to the use of sanctions." (Brown, 1972, p. 55). With their weapons nearby, the parties attempt to reach agreement by a complicated ritual of talk and mobilisation, of bluff and spear-rattling, of appeals to reason and calls to arms, which might be called 'showing the colours'. The most successful parties are the ones who can keep the troops drilled and ready for battle yet with the

discipline to prevent their troops from running amok. Because the employer side constantly requires organisation simply by the nature of its main task of production, it is the organisational ability of the *union* which is key to variation here. But what is meant by 'organisation'?

Brown suggests that the "political awareness of the labour force" is a main factor in the ability of the union to translate potential power into real power and defines it as

> "the extent to which workers and their representatives see issues as involving conflicts of interest (between themselves and management) and as negotiable" (ibid., p. 59)

Batstone et al. (1977) take this concept somewhat further and describe the phenomenon of "mobilisation of bias" wherein 'leader' stewards maintain their troops at the ready "by the continual reaffirmation of a body of union principles which serve to define members' 'real interests'" (p. 249).

In Canada, as mentioned, it is the system of dispute resolution itself that acts as the main enforcement apparatus to 'deliver the goods'. It is highly institutionalised, an apparatus with the full backing of the state behind it. And while restrictive, it requires little operational effort to maintain. The organisational resources of the union do play a role in determining how fully this system can be exploited, but the system sets narrow limits.

In Britain, on the other hand, it is the organisational ability of the union itself, its ability to keep its troops in high state of alert, yet disciplined, that is the main enforcement apparatus. Compared to Canada, this apparatus requires a much greater amount of energy to maintain and thus favours only those unions with the requisite organisational resources. Yet for those unions, the limits are much wider and the potential rewards much higher than for their Canadian counterparts. Likewise, the potential for inefficacy is also much higher. Our two British plants illustrate this aptly, and the difference between them is nowhere better typified than in instances where the unions are faced with the sticky problem of mobilising bias *amid a conflict of interest among their members.*

As noted, BRITMET is short on leader stewards and the convenor does not have the time, organisational resources or motivation to coordinate consistent and effective challenges to management. A particularly good example occurred when the employer shut

down an anodising line in the finishing unit, shedding 15 jobs in the process but proposing to find alternate work in the plant for the employees concerned.

The company did not wish to disrupt the still-operating anodising line and proposed that the jobless group be moved en masse to (less preferable) jobs in the fabrication unit. The steward involved, one of the more forceful in the plant, argued that departmental seniority should apply so that the more senior of the jobless group (several of them older workers) could, in effect 'bump' junior employees on the remaining anodising line. Both sides then proceeded in the elaborate ritual of 'showing the colours'.

First the steward put the dispute into procedure, claiming the collective agreement supported him. But the supervisor (correctly) pointed out that the agreement said nothing about the situation. As in most British collective agreements, the collective agreement is extremely vague on such issues. The steward then claimed 'custom and practice' supported him but the supervisor called his bluff. The steward then threatened to take a straw poll of workers to show the supervisor the degree of support he had. But he soon learned that he could mobilise such support only on his own shift by trading on his personal prestige. The workers on the remaining anodising line naturally did not want to be the ones to move and their friends supported them. There was no small amount of sympathy among other union members for the older workers but the steward found it difficult to raise this to the level of readiness to fight. He describes the problem:

> "The problem was fighting with other workers. They would have backed these blokes if the company had proposed to make them redundant, but not when they were just being sent to another department."

The convenor feared becoming involved in a situation where he would have to support one group of workers against another. In the end, he advised the shop steward to drop the case. The domestic organisation was unable to sufficiently reaffirm a body of union principles to define the struggle as being in the 'real interests' of the majority of its members. An appeal to solidaristic principles was highly contingent upon the issue at hand. Given a conflict of interest among the workers, it failed.

Meanwhile, sensing that the steward's 'poll' was flagging, the supervisor decided to pre-empt him, steal his idea and take a poll of his own. It revealed what the steward feared....a work force divided. The issue died, a clear defeat for the union. A significant point here is that the supervisor himself engaged in the process of 'mobilising bias', an act

not at all uncommon in the British plants, but especially BRITMET, where, as mentioned, the employer is never certain to what extent union speaks for its members. In the context of industrial relations at BRITMET, (which have been discussed at some length earlier) often it is insufficient for management merely to defeat the union. That is easy enough. But to ensure that all the fires are out, management must soak the ground liberally.

At BRITBREW, on the other hand, while sectional conflicts of interest abound, these are overridden by the 'body of union principles' when it is necessary to 'show the colours'. In the 'compulsory redundancy' episode mentioned earlier, the shop steward's meeting at which it was debated revealed a tremendous amount of personal resentment against the workers threatened with compulsory redundancy when their department closed down. The negligence of their supervisors had allowed the 'grievors' to get away with atrocious amounts of personal absenteeism, so that the issue was one of discipline as well. Several stewards suggested that the grievors were flaunting their 'immunity', cautioned that union support for them could *damage its credibility* and jeopardise the sick pay scheme and warned that their members would not back the dispute. One steward expressed the frustration:

> "We know there's fucking malingerers amongst us, and we say good riddance. Those blokes have never cared about the union and now they come running to us for help."

The convenor and several other stewards agreed that the grievors were wretched and undeserving recipients of the union's mercy. They agreed that there were several issues other than redundancy (what might be called 'micro-issues') involved, but explained that the redundancy principle (or the 'macro-issue') was foremost. As the discussion ended, several stewards still dithered on how much they would tell their members about the 'micro-issues'. Some promised they would "tell the members everything and let them decide".

Adding to the above difficulty for the union, as the dispute continued, the company, sensing the split, insisted that the union include the 'micro-issues' on the ballot paper. So the outcome of the dispute seemed, to an outsider, to be 'up in the air'.

Yet within a week, the eventual ballot paper contained the single question referred to in the previous chapter and the vote was unanimous. Between the steward's meeting and the ballot, the convenor and several stewards had successfully mobilised the official union response, not only by diligent interests definition but also by conducting a sort of 'three-

line whip', a call to arms, as if to say "You had better believe this is a serious dispute and you had better back your leaders if you know what's good for you". In fact, the minor instigation by the employer may have stiffened the union's resolve. The power of the union's response was possible because there existed a residual degree or 'steady state' of organisation, a sort of low level alert among the 'troops' as a result of the continual reaffirmation of the body of union principles. 'Three-line whips' or appeals to solidarity by the leadership work only if the memory of previous struggles is alive and reinforces the need for discipline. Yet, ironically, when the company is aware of this state of alert, it must more carefully decide whether a dispute is worth 'taking the union on'. Thus full-blown disputes are rarer.

So disputes at BRITBREW are of two types. There are sectional disputes which, though volatile, are conducive to containment and settlement because of their particularity. There are also site-wide disputes. These also are conducive to settlement, first because the union's call to arms must be seriouly by the employer, second because the union exercises a high degree of discretion on what disputes it will pursue.

At BRITMET, on the other hand, enterprising stewards find themselves having to virtually 'reinvent the wheel' in most disputes. The process of interests definition is discontinuous. At the end of each dispute, the troops disperse and stewards have to beat the bushes to find them again. Thus when stewards do wish to challenge management, or assert 'custom and practice' (for surely custom and practice has as much to do with the power to force one's view on an opponent as it has to do with the *actuality* of past practice), they are not usually able to muster the force to be taken seriously. On the other hand they lack the discipline over the troops to control when and how strikes occur. The highly contentious 1987 pay round, with its drastic changes in work organisation passed without a strike, while the seemingly minor issue of a supervisor transferred to the shop floor resulted in a three-day walkout. A strike on the first, with many important issues issues at stake, might have yielded employer concessions. A strike on the second could not. In fact the strike had strong roots in the pay round, as personnel managers and the union staff officer agree. In the latter's words "there was going to be a dispute there come what may". In the end, there emerges a union with severely hampered effectiveness.

3.3 Summary

In Britain then, unlike Canada, differences in potential power between domestic union organisations are reflected ominously in the differences of actual force that can be applied at the shop floor. Strong unions can be very strong indeed. Weak unions can be very weak indeed, and a so-called 'floor of protections', if it exists at all, will bear very little weight at all before it collapses. In Canada, a weak union can always 'fall back on its rights' in the collective agreement as it were. In Britain, falling back can lead to a long drop. A union continually renegotiates such rights or loses them. At BRITMET a strange phenomenon occurs. There, an employer appreciative of the benefits that can be achieved by joint regulation, must actually engage in activities that 'prop up' the union, make it look better than it actually is. In Canada, an employer in a similar situation would not bother. In the United States, such an employer might well encourage a decertification petition and rid itself of the union altogether.

4. Concluding remarks

It is intriguing to compare the above-mentioned disputes at BRITMET and BRITBREW with what would likely have occurred in the Canadian plants. As seniority provisions are rife in Canadian collective agreements, the first dispute would have been easily solved. Both CANMET and CANBREW agreements are clear that departmental seniority applies in the first instance and the temporarily jobless workers with enough seniority could have 'bumped' junior employees on the remaining anodising line. In the second dispute, the company would probably have dismissed the employees, the union would probably have grieved the dismissal and some four to seven months down the road an arbitrator would probably have ruled that, in the absence of a proper series of warnings, the employees were improperly dismissed. But due to some culpability on the part of the grievors, they may well have received less than full compensation.

In the Canadian setting, other than the decision to carry the dispute to arbitration (certain at CANBREW, uncertain at CANMET), little or no mobilisation, little or no state of readiness, little or no no redefining of interests, little or no reaffirmation of a body of union principles would have been necessary.

CHAPTER VII: DISCIPLINE

1. Introduction

The end of the previous chapter spotlighted the case of two previously undisciplined BRITBREW employees with a serious record of absenteeism. Exploiting the opportunity presented by the shutdown of their department, the employer attempted to sack them. A major mobilisation by the union persuaded the employer to back down.

For the purposes of *this* discussion, the issue of compulsory redundancy can be faded into the background to bring forward a comparison of discipline-handling that intriguingly typifies the process in the two countries.

Though a Canadian employer would probably have sacked the workers, arbitral jurisprudence indicates they would probably be deemed improperly dismissed and ordered reinstated with a lesser penalty substituted.

At first blush, the Canadian solution appears infinitely preferable to any British alternative in avoiding industrial conflict. The grievors would have been ill-served at a British Industrial Tribunal. Both the standard of employer 'resonableness' considered and the inability and unwillingness of Tribunals to order reinstatement would have made the grievors' return to work almost inconceivable. Yet the workplace campaign to prevent their dismissal raised the collective blood pressure and involved a palpable strike threat. Both solutions seem almost guaranteed to *raise* the level of industrial conflict, not abate it.

Indeed, the North American system of arbitral review of discipline appears to be the jewel in the crown of dispute resolution there. Several British commentators (Dickens et al., 1985; Concannon, 1980) have pointed to arbitral rather than judicial decision-making, and Collins (1982) has pointed specifically to North American arbitration, as a method of disciplinary dispute resolution far preferable to British industrial tribunals.

Appearances may well be deceiving. For not only must the vaunted North American arbitral review of discipline be compared to the British disciplinary tribunal system, an appreciation of the role of disciplinary structures in the generation and resolution of conflict can only be gained by the comparative analysis of *the whole system* of handling such disputes in the two countries.

2. Theoretical Considerations

If a fundamental dialectic in employer control of production is between the coercion of employees and the generation of their consent, then the handling of *discipline* is the most special of special cases. The power to discipline employees is an essential employer tool, no matter what system of production or what type of production regime exists. The power of the employer to "mobilise sanctions" (Offe & Wiesenthal, 1985) comes naturally from the law of property and from the power differential between capital and labour. Whether this power is frequently used or merely sits in the background, it is essential backdrop to all methods of compelling compliance (Lukes, 1981). But several factors make it more and more difficult for employers to wield this tool arbitrarily without inviting operational inefficiency, industrial conflict or state sanctions: the increasing complexity of work organisation (Gersuny, 1973), the increasing power of trade unions to organise resistance to such arbitrariness, the intervention of the state to limit managerial discretion and the need, in many sophisticated industries, to obtain not only passive employee compliance but active employee cooperation and use of their 'tacit skills' (Manwaring and Wood, 1984) in the production process.

It is by now quite common to describe labour control mechanisms on a continuum from 'direct' or 'coercive' on the one hand, to 'responsible' or 'cooperative' or 'hegemonic' (Friedman, 1977; R. Edwards, 1979; Burawoy, 1985) on the other. Correspondingly, the handling of discipline is widely theorised as ranging from the more 'punitive' or 'punishment-centred' approaches to the more 'corrective' or 'representative' approaches (Gouldner, 1954; Ashdown & Baker, 1973; Anderman, 1972; Adams, 1978). Inevitably, the tendency is to periodise the movement from one end of the continuum to the other. In less subtle approaches, punitive discipline is seen as almost invariably clumsy, immature and autocratic, while corrective approaches are seen as sophisticated, mature and democratic.

The stages seem to divide along three essential elements : formality of rules, consensuality of the disciplinary process and progressivity of the sanctions themselves. 'Punitive' discipline is characterised by managerial peremptoriness in the ad-hocery of the rules, the quantum of discipline (the use of dismissal in preference to less harsh forms) and the degree to which it consults employees or their representatives. Corrective discipline is characterised by greater codification of rules, by the involvement, through

multi-stage disciplinary and grievance procedures, of the employee and his representatives, and the use of "an arsenal of calibrated punishments" (Glasbeek, 1982, p. 75) up to and including dismissal, with all, except the last, seeking to rehabilitate the employee . The corrective approach is theorised as not only humane for the employee but also 'good business sense' in reducing costs for the employer. Together with the construction of an internal labour market, it serves to increase job security and secure employee commitment. By providing clear and reasonable rules and procedural involvement, the employer secures *legitimation* or as Adams puts it:

> "voluntary compliance [which] avoids the cost to management of having to surveil the workplace in an extensive manner and to commit substantial resources to rule enforcement...[and] have a positive impact on workplace morale and productivity" (Adams, 1978, p. 199

By providing a range of punishments short of dismissal, corrective discipline helps the employer avoid "capital losses" which have been spent in recruiting, training and accepting sub-optimal productivity in the employee's early days at work. (Adams, 1978, pp. 27-28).

Securely based in pluralist thought, the corrective approach is the engine that drives most of liberal industrial disciplinary practice and the thinking of governmental agencies engaged in overseeing discipline in industrialised countries. But it has met some serious criticism from more radical commentators. Mellish and Collis-Squires (1976) suggest that the punitive/corrective dichotomy is overly concerned with *procedural* as opposed to *substantive* reform, takes on board uncritically the advantages of increasing formalisation and is almost exclusively management-oriented.

Henry (1983, 1987) proposes a more subtle evolution of styles, with "representative-corrective" as only a second stage beyond "punitive-authoritarian". In this second stage, the "voluntary compliance" of workers and their representatives is illusory:

> "...in spite of its claim to provide fair justice there are considerable grounds for the view that justice by formal procedural equality of treatment delivers less justice than it delivers legitimation and less legitimation than is generally perceived. By assuming a formal equality it ignores the marked substantive inequalities in conditions and opportunities between employer and employee....Because the employer's fundamental power base is never threatened they can concede a number of points on procedural matters, allowing union representatives to win what are localized and contained victories so long as the substantial and material conflicts of interests remain suppressed." (Henry, 1987, p. 240).

Henry propounds a third style, "accommodative-participative", wherein disciplinary outcomes are more truly bargained between management and labour. Management's attitude is similar to the earlier stage but because the union's attitude is different "any

notion of fixed penalties is not feasible since the penalty arrived at is itself the outcome of negotiation." (1987, p. 299) At one end, smaller transgressions are tolerated while at the other, both management and union cooperate in discipline, engaging in a sort of "mutual moral training" (ibid., p. 312)[1]. One impetus leading to this stage may correspond to Burawoy's concept of "hegemonic despotism" (1985, p. 150) wherein the relentless forces of international competition compel labour, out of fear for its survival, to take on the aims of the corporation.

Edwards and Whitston (1988) take issue with the periodisation implicit in Henry's (1983) and others' discussion of these issues pointing out that coercive and participative methods of discipline have co-existed across enterprises at various stages of capitalist development and even coexist within single enterprises and that in the free labour-market regulatory environment of the 80's, more coercive measures are by no means absent. They correctly criticise Henry for failing to reconcile his macro approach to 'micro approaches' of workplace sociology such as Gouldner (1954), Lupton (1963), and Mellish and Collis-Squires (1976). Henry himself (1987) appears to be moving away from a temporal evolution and suggests that disciplinary styles may appear in combination.

Yet the more competitive atmosphere of the 80's has not made it a simple matter for managements to claw back concessions. The justice and legitimation provided by the corrective approach may well be illusory but a ratchet effect is at work here. Unions often fight hard to keep what they have come to consider their only shield against the onslaught. And there is evidence that managements may not deem it necessary to introduce a 'new industrial relations' package a la Kochan, Katz and McKersie (1986) to remain competitive (R. Adams, 1988)[2]. Despite the temptations of a looser regulatory environment and high levels of unemployment, mainstream managements on both sides of the Atlantic are still wary of abandoning the legitimising institutions that they and the unions have grown comfortable with. Likewise, despite some nibbling at the edges,

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1. Henry also postulates a fourth type of discipline called "collaborative-collective" a somewhat utopian system, mostly found in cooperative organisations free of the power of a single employer, wherein 'self-discipline' is taken to its logical conclusion and members of the work community are responsible for adhering to the group's norms. This type of discipline does not apply to this study.

2. Adams looks at the industrial relations policies of the Steel Company of Canada which, constrained by a militant union and its own uneasiness with the 'new i.r.' has pursued productivity increases comfortably within the structure of traditional adversarial collective bargaining.

governments have been loath to make a meal of the institutions *they* have set in place to encourage and disseminate more liberal disciplinary approaches.

On the robustness of those institutions, a most interesting debate has emerged comparing British industrial tribunal and North American (and particularly Canadian) arbitral treatment of discipline. The debate is especially interesting as it is not between pluralists insisting their own system is better than the other fellow's but between radicals intent on knocking the stuffing out of their respective systems (Collins, 1982; Glasbeek, 1984). As such, the debate revolves around the limitations of the two systems and the question of just how restrictive of justice they really are. It will be argued that both of these authors overstate their case because they look only at the adjudicatory aspect of discipline handling in the two countries and ignore the wider context.

Collins suggests that in the 1960's the British polity was suffering from a crisis of pluralism, with unions exercising their market power to wring unacceptable compromises from capital and creating much industrial conflict, especially on the question of dismissal. The state responded by establishing industrial tribunals, but in so doing "bypassed the structures of joint regulations between management and union" (p. 82) by specifying that the parties to the dispute would be the individual employee and his employer. Collins rejects suggestions (eg. Elias, 1981) that pluralism has been enhanced by the project, insisting that the type of regulation employed was "corporatist" in the sense that it "marginalize[s] the significance of collective bargaining for the regulation of the workplace, [establishes] systems of compulsory arbitration of collective disputes and [severely curtails] the right to strike"[1] (ibid., p. 82).

Collins insists that the courts and tribunals responded naturally to their order-restoration mandate and their neutral 'above the fray' position by using their powers to define a doctrine of fairness which focussed on reviewing management's procedure rather than the substantive merits of the discipline imposed. This neglected the power relationship between the parties and, in so doing, accepted the status quo of management hegemony. From this, it was then a logical step for the tribunals to begin to interpret the 'reasonableness' of management's discipline in the most conservative way possible.

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1. Collins also takes much too narrow a view of corporatism, failing to acknowledge that corporatism exists on a number of levels: macro-, meso- and micro- corporatism (Rogowski, 1985), not necessarily mutually incompatible.

To this he compares favourably the arbitral system in North America. Not only does the North American system provide a higher degree of substantive equity and greater job security to employees, he insists, it is also a process firmly rooted in the collective bargaining relationship. Rather than a rights apparatus, says Collins, it is an interests apparatus, fully accommodating the power positions of the parties.

Collins echoes Concannon (1980) who, comparing voluntary British arbitrations to unilateral industrial tribunals, praises the former for their flexibility, emphasis on compromise and acknowledgment of the collective power dimension, in short, for their ability to appear legitimate to both parties, calling it "essentially the product of collective relations" (p. 15) and "a reflection of the application of the union's power" (p. 16).

Dickens et al. (1985) sum up the position well:

> "the more tribunals have to treat a dismissal as an issue between an individual worker and an individual employer without regard to the industrial relations context of the dispute and the possible collective implications of it, the less attractive will the system be to the organised sector. The more reluctant tribunals are to overturn employers' decisions because of the broad nature of the 'range of reasonable employer responses' test...the less likely are they to be seen as efficient from the point of view of dismissed workers." (p. 217-218)

These authors suggest that the introduction of an arbitral system of dismissal review will do much to eliminate such deficiencies.

While agreeing with Collins' general approach, Glasbeek (1984) finds that the latter's remarks about the North American arbitral system do not correspond to reality and berates him for taking the claims of "conventional North American industrial relations' scholars" at face value. Using the case of Canada (which, for the purposes of debate is the same as the US), Glasbeek submits the North American system of dismissal review to close scrutiny (employing some of the arguments advanced hitherto). He insists that that system affords employees no qualitatively greater job security , allows employers no smaller a list of grounds on which to legitimately dismiss employees, imposes swingeing penalties on many employees in place of dismissal, closes off lawful access to the strike weapon, forces employees to 'work now and grieve later' rather than arguing their case to the employer, forces the union to 'filter' grievances and thereby 'educate' the work force on 'acceptable' work conduct and juridifies the entire process of discipline-handling so that, despite its pretensions to rough justice, it is "a cumbersome, dilatory, highly technocratised system of dispute settlement" (p. 149).

But while Collins wildly overstates the efficacy of the North American system, Glasbeek engages in his own share of exaggeration. While most of his points are incisive, he is inaccurate in a few instances where he deals with the practice, as opposed to the law, of arbitration. More importantly, in seeking to temper Collins's adulation of dismissal arbitration, Glasbeek goes too far and loses perspective. *For there is no question that a comparison of British tribunal to Canadian arbitration would inevitably compel a dismissed worker with no recourse but to adjudication to prefer the latter over the former*

In purporting to explore the wider effect of the two mechanisms on pluralism, collectivism and industrial conflict, as lawyers, both Collins and Glasbeek make the fundamental error of restricting their scope to third party intervention only and ignoring its place in the entire context of discipline-handling between the parties. The debate between Collins and Glasbeek suffers, as many cross-national comparative exercises, from a the discrepancy between a very close analysis of one country and a very peremptory analysis of the other.

The present study, as an investigation of workplace industrial relations in which third-party intervention has played a part, is in a unique position evaluate this debate and correct some of the deficiencies. To assess the efficacy of the conflict management properties of the two systems, it is necessary not only to undertake a selective comparison of third party adjudicatory bodies, but then to place them in their context and finally to explore how various substantive discipline-generating issues are handled by the parties in each country and across the industries studied. In light of the preceding discussion of the theoretical issues, the following questions must be assessed: to what extent do the two systems of discipline treatment advance the legitimation of managerial control, obscure exploitation and generate consent; to what extent do the two systems advance or retard collective bargaining and collective action; and to what extent do they deliver equity to individual workers?

3. An Apposite Case

Before dealing with these questions, it is worth looking at a dispute at CANBREW which contrasts with the BRITBREW case above and uniquely characterises key

differences. It involves: a dismissal for somewhat similar cause; industrial action in support of the grievor; and third party review of the dismissal.

Alarmed at high lateness and absenteeism rates and its own laxity in dealing with them, CANBREW implemented a 'crack down'. As is common in such campaigns in Canada where both management and unions are loath to engage in anything smacking of codetermination, the union neither wished to be nor was particularly well-informed of the philosophy behind or the procedure connected with the programme. At a time of considerable industrial conflict in the plant, what was intended as a non-punitive approach was seen by the union as an ominous campaign. When the worker with demonstrably the 'worst' attendance record in the plant was dismissed, a wildcat strike ensued.

Wary of its 'softer' approach in previous illegal strikes, the company moved quickly to crush it. Arranging a court appearance for the next morning, it served all the strikers with notices that they and the union would be held liable. The robust employer response combined with the disorganisation of the strike spelt its doom[4]. With company promises to reduce the firings to suspensions and assurances that the grievor's case would go to arbitration (which it would have done anyway), the staff officer and convenor convinced the strikers to return to work.

Mindful of frayed tempers, the arbitration hearing was expedited to two months later and an award issued two months after that (as opposed to the plant mean of 7.7 months from dismissal to award). At the hearing, the union argued that it had not been informed of the programme and that the company's action had the effect of lulling the grievor and everyone else into a false sense of security. The employer agreed that other than attendance problems the grievor, a man of 40 with seven years' seniority, was a good employee and acknowledged that much of the problem arose after his marriage breakdown. While the arbitrator rejected both of the union's initial arguments, he decided to hold the company to its commitment to a blameless absenteeism programme. The company had successfully established a bad absenteeism record but had not proved the grievor's prospective unlikelihood of good attendance. Finding the grievor's

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4. A humorous sidelight to the incident occurred when the grievor arrived *45 minutes late* for a mass meeting called by the strikers to discuss the future of their protest against his sacking for *bad attendance*.

circumstances worthy of compassion, the arbitrator ruled that the company had acted precipitously and punitively in light of its declared non-punitive aims and ordered the grievor reinstated. Yet the reinstatement was with no back pay, in effect a suspension of 14 weeks, and with stringent probationary conditions.

The personnel manager distributed a memo to other managers claiming the award as an *employer* victory:

> "Although the arbitrator reinstated [the grievor], it is without any compensation, and with fairly restrictive terms...
>
> "I am encouraged by this award, despite the reinstatement [because]...the arbitrator does not agree with the union's contention that our Program places an employee in jeopardy...At no place in the award does he challenge our right to use a non-disciplinary approach...
>
> "According to the arbitrator, we are guilty of professing to use a non-disciplinary approach while at the same time adding an element of discipline by treating the grievor's last absence as blameworthy. *This is something we can learn from and correct for the future.* (emphasis added)

This 'management education effect' of arbitration has been seen earlier and will be seen and commented upon later.

Contrary to Collins' contention of arbitral sensitivity to industrial action, the strike had no effect whatever on the outcome of the case. Yet the failure of the strike had profound effects on future industrial conflict. The 26 suspended strikers nursed their resentment for both the employer and the union hierarchy for many years afterward, a ginger group which was to be behind much of the subsequent industrial unrest in the plant.

The above case demonstrates many of the strengths and weaknesses of disciplinary dispute handling in Canada. Some of these will become clearer as the third party and workplace processes are examined in more detail.

4. Tribunal and Arbitration Compared[5]

4.1 'Winning', 'losing' and the penalties involved

If the results of cases coming to hearing are compared, then Canadian Arbitration is by far kinder to the dismissed employee. Slightly over 50%[6] of dismissals are overturned as opposed to under 30% in British Tribunals. Yet before pronouncing

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5. From hereon in, the small-case word "tribunal" will describe both Canadian and British dismissal adjudication forums. The upper-case "Tribunal" (or "Industrial Tribunal") and "Arbitration" will refer to the specific forum in each country.

6. Calculated from the United Steelworker survey cited earlier and from Adams (1978, p. 40)

Canadian arbitrators more liberal than their British counterparts, it should be noted that in two-thirds of the Canadian reversals of the employer's decision, the arbitrator imposes a penalty of his own. The fourteen week suspension in the CANBREW case above is quite lenient. Over one quarter of the reinstatements carry penalties greater than three months off work with no pay (calculated from Adams, 1978, p. 57 & 61).

Comparing the instance of *complete reversal of dismissal*, British Tribunals actually come out ahead. With reversal in only one fifth of the cases, the Canadians trail the British by one-third. If those employees without representation are deducted from the British total, resulting in a sample more comparable to Canada (where all grievors are represented), the British exoneration rate looks even better. Certainly, with only a yes/no choice confronting it, the Tribunal may be like the jury faced with imposing the death penalty and hence slightly more careful about 'industrial capital punishment'. Yet the difference in reversal rates between the two countries is still wide enough to seriously shake Collins' contention that "the standards by which management discretion is reviewed" (1982, p. 85) in North America offers greater job security.

By far the greatest difference between the two tribunals is the power over the penalty. Canadian arbitrators can and do reinstate both exonerated employees and those found culpable but deserving of lesser penalty. This has been arbitral practice since the earliest days[7].

An order of reinstatement is enforceable by the union in the courts and companies are liable for contempt of court for refusal. Practically, Canadian employers have come to accept reinstatement. Almost three-quarters of reinstated employees choose to return to work and about 60% remain employed (Adams, 1978, p. 63). Adams declares that "these results appear to vindicate the corrective approach to discipline forged by arbitration tribunals" (ibid., p. 66)

British Tribunals can either find the complainant either [illegible] dismissed or quash the dismissal (although some degree of culpability may be recognised in the compensation award) but do not have the power to substitute a penalty. While the Tribunal does not

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7. At the end of the 60's, the courts briefly ruled that arbitrators had no such power. So great was the outcry from arbitrators and practitioners (occasioned in no small part by fear of the delegitimizing of arbitration) that suitable legislation was quickly passed in most jurisdictions to allow arbitrators to reinstate grievors and alter penalties (see *Port Arthur Shipbuilding Co. v Arthurs* [1969] S.C.R. 85, 70 D.L.R. (3d) 643).

have the power to impose reinstatement or re-engagement, it can *recommend* such remedies but seldom does" (Dickens et al., 1985), preferring a compensatory award which, in about 85% of cases is worth less than one month's pay (calculated from Employment Gazette, 1986). Tribunals are supposed to take the employee's and not the employer's views on re-employment into account, but because they must also decide on the practicability of re-employment, the employer's views (usually negative) prevail.

4.2 Who and What Gets to Arbitration

The parties of record to the British Tribunal are the individual employee and the employer. The majority of applicants (68%[9]) are not union members. Of the trade unionist applicants, only half are represented by their unions and a quarter (27%) have been refused such representation. The reason for these refusals will be examined presently. Unions, then, are marginal to the process.

Moreover, while application to Tribunal is unilateral by the aggrieved employee, fewer than a third of all cases submitted ever reach a hearing as the pre-hearing assessment process and the involvement of ACAS conciliators results in claimants dropping their cases or settling 'out of court' (Dickens et al., 1985[10]).

In Canada, the union is central. Dismissal Arbitrations, like all Canadian Arbitrations, arise from grievances over the interpretation of collective agreements, and while the dismissed employee must ask his union to take up his case, the parties to the dispute thereafter are clearly the employer and the union. Application to Arbitration is unilateral by the union[11]. Yet while the Arbitration springs formally from the collective bargaining relationship, Collins (1982) is quite wrong to assume that the collective bargaining strength of the parties has more than the faintest effect upon the arbitrator.

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8. An employer refusing a recommendation of re-employment can be compelled to pay an 'additional award' of compensation (Anderman, 1985, 285-86).

9. All of the figures on characteristics and representation of applicants cited here are taken from the Dickens et al. (1985) survey of 1063 applicants to tribunals and 596 complainants whose case was forwarded to a hearing.

10. Statistics on tribunal applications also calculated from reports on tribunal applications in Employment Gazette, 1984, 1986, 1987, appropriate months.

11. To remedy the delay in conventional Arbitration, several Canadian jurisdictions, have introduced the option of *expedited Arbitration* providing for referral to either the labour relations board or a government-appointed (rather than bilaterally-chosen) arbitrator and a quick hearing and decision. If this option is chosen, the parties must accept the intervention of a conciliation officer. In Ontario settlement officers effect a pre-hearing settlement in about two-thirds of cases. However, expedited Arbitration accounts for only 21% of all Arbitrations and for 17% of all discharge Arbitrations (Rose, 1986).

The inapplicability of past practice and bargaining intent has already been reviewed in Chapter V. And while arbitrators are usually appointed by mutual consent and can become unpopular if they are perceived as biased over a range of many cases[12], in the real world their decision has virtually nothing to do with an "attempt to adjust the result in accord with the bargaining strengths of the parties" (ibid. p. 90). Concannon (1980) contends that "[the] possibility or reality of industrial action is a significant factor in the Arbitration of dismissal cases [in Britain]" and this may well be the case where Arbitration is *voluntary*[13]. But it is most definitely not the case in Canada where Arbitration is *compulsory* and meant to preclude, not solve, industrial action. In the CANBREW case cited above, the arbitrator's eventual award made no mention of the strike and it is highly unlikely it was even mentioned in the hearing. Whether a grievor's fellow employees are apathetic or burning with anger over his dismissal is totally irrelevant to the Canadian arbitrator.

But Glasbeek is mistaken to assume that because the union has carriage of the dismissal case, it can take a ruthlessly expedient attitude such that:

> "the pursuit of a grievance is not likely to be undertaken unless the union believes it to be important to its long range bargaining position and/or is winnable." (1984, p. 146)

and thereby engages to any extent in "educat[ing] the rank and file into what is acceptable or, more importantly, defensible work conduct" (ibid., p. 146). While Canadian unions definitely *do* carry on such filtering and shaping activity in non-dismissal grievances (see chapter IV), dismissal is perhaps the one area where the grievor is almost invariably given the benefit of the doubt. Whether a dismissal grievance goes to Arbitration depends *not* as much on its 'winnability' or union considerations of acceptability of the culpable conduct, as on the organisational ability of the union (discussed in the previous chapter on Enforcements) and on the relative value of the job that was lost.

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12. The nine-year survey of arbitrators carried out by the United Steelworkers cited in Chapter V was specifically directed at identifying arbitrators who seemed 'more sympathetic' to unions in an array of issues. Employers do the same type of thing. Yet given the career structure of arbitrators, their "employer" is not any one set of parties but the collective union-management community. And while they cannot help but be somewhat sensitive to their overall 'record' of 'pro-union' and 'pro-management' awards and to the overall power balance of the parties, this sensitivity does not extend to any single set of parties.

13. In Britain, as seen in our example at BRITMET in Chapter IV, where Arbitration is voluntarily chosen, it is often done in crisis situations, such as where a strike is in progress and the parties cannot find a face-saving solution themselves.

At CANBREW, practically every dismissal that the union is unable to mitigate in the grievance procedure is taken to Arbitration, partly because the union is so diligent and partly because union members are unlikely to find a better job anywhere. Even cases of misconduct which CANBREW union members privately view with distaste are taken up rather than deprive the employee of his 'day in court'. Thus the union has defended employees disciplined for dangerous drunkenness at the wheel of a lorry, for racial slurs against other union members, or for widely acknowledged lapses of competence. Several of these the union has won as a result of procedural errors by the employer. The union does not apologise but sees its role as relentless challenger in a fully adversarial system.

At CANMET a much smaller percentage of dismissals reach Arbitration, not because the union agrees with management's decisions any more than the one at the brewery but partly because the union lacks diligence and partly because of the two very different labour markets in which they operate or . as the convenor says, "because there are lots of similar jobs 'out there' to the ones they do in here".

While the duty of fair representation is not so stringent that it cannot readily be satisfied by a union which refuses, in good faith, to pursue the case of an undeserving member[14], unions seldom take such stands. It is far less risky politically to go to arbitration. If the union wins, it looks good. If it loses, it was the arbitrator, not the union, that agreed with the employer (and there is no provision in Arbitration for costs against the union for vexatious claims). Given the union's limited scope of action and low success rate with *most other* workplace issues between rounds of interests bargaining, it is one of the only and one of the most important things a union can do to justify its existence.

4.3 The Hearing and Procedure

While the hearing in both countries was originally intended to be informal and open to the pleadings of lay practitioners, and the more formal trappings of the courts are

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14. The author, as a staff officer, once recommended that the union not seek Arbitration for the dismissal of a member who had assaulted his foreman. The assault was the last of a series of unprovoked 'bullying' incidents by the grievor and had killed what little support remained for him in the plant. Nevertheless, the grievor appealed to the union executive and won the right to proceed to Arbitration, arguing that the union should not 'act as judge, jury and executioner' and threatening to sue for unfair representation. The union executive decided that the trouble and expense the grievor could cause far outweighed any trouble or expense involved in arbitrating his dismissal. The above example shows that, barring financial considerations, there is little disincentive for Canadian unions to take all dismissal cases to Arbitration.

absent, Collins and Glasbeek correctly observe that tribunals in their countries have developed into formalistic and legalistic arenas, removed from the ken of most non-practitioners. Roberts quotes a veteran Canadian union Arbitration 'wing-person' in a particularly acerbic attack:

> "The whole system has become so legalistic that a layman has to be a linguist. You have to know your Latin very well in order to know what's being said. Here's an example from one case: *ejustem generis* [sic] rule. Well, who knows what the *ejustem generis* rule is? If you don't know, they tell you it's very much like the *nascitura assecitus* [sic] rule. Now if you have a legal dictionary beside you, you might find out what your opposition is talking about, but the poor fellow who's got the grievance and who's listening and who's waited six or eight months to get justice—he doesn't know what's going on. And this often drags on for four or five days" (Roberts, 1983, p. 20-21, emphasis in the original)

While only about half of British Tribunal applicants are represented by lawyers or full-time union officials (Dickens et al., 1985, p. 45), virtually all dismissed grievors in Canada have such representation. And while the quality of representation is by and large excellent, workers are little more than spectators or witnesses to a clash of legal or para-legal Titans from outside the workplace. Technical and procedural complications abound, preparation is often meticulous and cross-examination is frequently withering. Both workers *and* first-line supervisors at CANBREW tell horror stories about "folding" or "making fools of themselves" and thereby "kissing the case goodbye" under cross-examination at Arbitration.

Thus Collins is incorrect to imply that North American dismissal Arbitration is in any sense an *interests* apparatus (1982, p. 89) or closer to the shop floor than British Industrial Tribunals. While the arbitrator has much greater power to 'second guess' management, especially in the quantum of discipline, arbitration as a forum is light years removed from the workplace. As Schatz says of seniority rights, so it is of disciplinary procedures in North America: they are "*collective* achievements which protect *individual* liberties" (1983, p. 117, emphasis added).

4.4 The Burden of Proof

In Canadian discipline Arbitrations the burden of proof is on the employer to establish 'just cause' for the discipline[15].

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15. Actually, the initial onus is on the union to prove a few elementary facts: that a collective agreement between the parties exists, that the grievor was an employee and that discipline took place. The onus then shifts to the employer to prove just cause. The burden of proof shifts back to the union temporarily to show mitigating circumstances, but such circumstances will only be considered by the arbitrator if the employer has fulfilled the burden of proving just cause. If the cause for discharge is akin to a criminal offence, the union may have the burden of proving lack of intent by the grievor (Palmer, 1983, pp. 262-66).

This used to be the case in Britain. But while the record of applicant success in British Tribunals should hardly have warranted their concern, British employers lobbied and in 1980 secured a change so that employers now need only prove they *had* a reason (as opposed to no reason) for dismissal which falls within the statute, for the onus to shift equally to both parties on the question of *reasonableness* (Anderman, 1985, p. 107). While this may seem a small change, many observers of Tribunals echo the dour assessment of the BRITBREW union's shop stewards handbook that:

> "In practice, this shifts the burden of proof on to the dismissed worker and can make it harder for him/her to win a claim"

4.5 Procedural Fairness

In both countries, a major concern behind the adjudication of dismissal is the *way* in which the employer went about disciplining the complainant, not just from the point of view of equity to the complainant but in the interests of industrial relations as a whole. Thus, in Britain, part of the public policy rationale, while not specified in the Act, was "the importance of restoring order to industrial relations by insisting that proper procedures should be followed by employers before dismissing the employee" (Collins, 1982, p. 87). This includes the right of the employee to know the charge against him, the right to answer to it, the right to representation by an appropriate champion and the right to be warned that a mode of conduct would lead to discipline. A dismissal executed without such procedural solicitude would not only do insult to the complainant, it would, more importantly, outrage his fellow employees, and even precipitate (quite unnecessarily from the point of view of the policy makers and courts) industrial conflict.

However, Collins correctly suggests that even though a preoccupation with proceduralism characterised their *initial* orientation, so managerialist have these bodies been in their substantive orientation that even this concern for procedure began to break down. Thus in several cases[16], procedural omissions by the employer, failure to involve a trade union official, failure to warn and failure to give the employee an opportunity to be heard, *even in contravention of a collective agreement*, have not kept several Tribunals or the Employment Appeals Tribunal (EAT) (in spite of a chorus of legal and

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16. Eg. *British Labour Pump Ltd. v. Byrne*, [1979] IRLR 94, EAT; *Bailey v BP Oil (Kent Refinery) Ltd.* [1980] IRLR 287, CA; *W & J Wass Ltd. v Binns* [1982] IRLR 283, CA; *Retarded Children's Aid Society v. Day* [1978] IRLR 128, CA. A recent case *Polkey v. A.E. Dayton Services Ltd.* [1987] IRLR 503 HL, claws back some of the damage done to proceduralism in the former cases.

academic criticism) from upholding dismissal on the grounds that such procedural niceties would not have altered the employer's decision in any case. Not all Tribunals or EAT panels have been so cavalier, but the above cases have received much publicity. The credibility implications for workers and trade unions of such decisions need only be imagined.

In Canada, since Arbitration cannot be set in motion without the completion of a grievance procedure specified in a collective agreement, many of the preconditions for procedural fairness will already have been satisfied automatically before the hearing. Depending on whether the wording of a collective agreement in this regard is *mandatory* or *directory* (and it is most often the former), failure by the employer to follow the procedure, except in the case of the most flagrantly gross misconduct, will result in the discipline being overturned. Failure to give proper warnings may also result in the discipline being overturned. In the CANBREW case above, the union argued that the employee had not been sufficiently warned and the union not sufficiently informed of the company's intentions. The arbitrator rejected the union's argument not because such warning and informing was unimportant but because he was satisfied that the company had communicated such information.

Because Canadian arbitrators have the power to alter penalties, even if the procedural defect is not sufficient to overturn the discipline in itself, it may well result in serious mitigation of the penalty.

4.6 Substantive Fairness

In both countries, the legislative enabling formulae provide little in the way of guidance or standards for tribunals to judge the substantive fairness of dismissal. Other than certain circumstances where dismissal is automatically unfair (eg. if the stated reason for dismissal is union activity, pregnancy, sex, race etc.), the British legislation directs fairness to be determined by

> "whether the dismissal was reasonable in the circumstances (including the size and administrative resources of the organisation) and in accordance with equity and the substantial merits of the case" (Dickens & Cockburn, 1986, p. 421, paraphrasing the Employment Protection Act).

In Canada, the overwhelming majority of collective agreements specify nothing more than "cause" or "just cause"[17] as the test of substantive fairness. In fact, some arbitrators

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17. Palmer (1983, p. 235-236) indicates that arbitrators have taken these phrases to mean the same.

and courts have found such a provision to be implicit in collective agreements which are silent on the matter (Palmer, 1983, p. 234-35).

Yet tribunals in the two countries have gone in very different directions in fleshing out these indeterminate prescriptions. While British Tribunals and the EAT have opted to give managerial prerogative wide rein, Canadian Arbitrations and the courts that supervise them (in the area of discipline alone) have waded in up to their elbows, not, it will be argued, to seriously question the right of management to make rules and enforce them, but rather to assist management handling a potentially explosive area of concern.

One limit on the British Tribunal's powers to 'second guess' employer action relates to the facts upon which the employer based his decision. The employer need not prove on the balance of probabilities that the employee was guilty of the alleged misconduct but only that it reasonably believed such guilt after as much investigation as was reasonably warranted.[18] (Anderman, 1985, p. 117).

A second important limit relates directly to deciding the reasonableness of the dismissal. The British Tribunal errs in law if it asks itself what it would have done if it were the employer. For the test is whether the dismissal falls outside the action that might be taken by 'a range of reasonable employers' (Dickens et al., 1985, p. 103; Anderman, 1985, p. 149).

Dickens et al. (1985) summarise their discussion of substantive fairness by criticising a judge who warned that Tribunals should "not impede employers unreasonably in the efficient management of their business". They point out that "by subsuming the interests of employees in general under the 'needs of the business' the interests of any individual employee in retaining his or her job can be overridden" (p. 106).

Yet it is not merely the consideration of business interests which allows the Tribunal to override the interests of the employee, it is the entire context of the forum and especially the inability of the Tribunal to substitute a different penalty. The ability to do that in Canada allows the arbitrator to fashion a "workable compromise between the interests of the individual and the demands of efficiency" (Adams, 1978, p. 29). It has been noted earlier that the "business interests" argument seriously works *against* Canadian unions in most cases. But in the field of discipline and especially dismissal, it

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18. *British Home Stores v Burchell* [1978] IRLR 379, EAT.

often works to the employee's benefit because the harm to him, the so-called 'industrial capital punishment' is seldom outweighed by the harm to the employer. So, with no less attention to 'business interests' than in Britain, this rationale in Canada is turned on its head. While the occasional arbitrator imports a hands off approach from the rest of arbitral jurisprudence, the mainstream view, supported by the Canadian courts, is clearly that arbitrators have the right to substitute their judgment for management's:

> "...when an arbitrator selects a penalty different from that selected by an employer, he is really saying that the employer has ignored some relevant consideration, proceeded on some misunderstanding, acted from some illicit motive, or otherwise affronted the arbitrator's sense of what is 'just'...In other words, the arbitrator is not only judging the grievor; he is judging the employer as well"[19]

Because of the leeway of substantive review and the ability to reinstate with lesser penalty, the concept of corrective discipline is powerfully cast into workplace industrial relations by Canadian Arbitrations and the doctrine of a "culminating incident" takes on great importance. Except in cases of gross misconduct, arbitrators will simply not allow dismissal unless the dismissal offence has been preceded by several similar transgressions and progressive warnings have been given. Arbitrators do not consider this to be impinging on management's rights but rather:

> "the doctrine simply purports to accommodate the employer's legitimate interest in being able to terminate the employment of someone who, but for such a doctrine, could with impunity commit repeated infractions of diverse company rules and policies and generally perform in an unsatisfactory manner without fear of being discharged, so long as she did not commit a serious offence or did not persist in misconduct of the same type." (Brown & Beatty, 1984, p. 4"5)

The mirror image of the doctrine of culminating incident is the ability of the arbitrator to look at the grievor's record of employment and disciplinary history to find cause to mitigate any penalty imposed. Thus the following factors will be reviewed[20]: previous good record; long service to the employer; whether the offence was an isolated occurrence; whether the grievor was provoked; whether the offence was a momentary aberration; the hardship of the penalty to grievor in his circumstances; the uniformity of employer enforcement of the rule(s) transgressed; the intent of the grievor; the overall seriousness of the offence to the employer; and several other factors including the grievor's degree of remorse.

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19. *Re Lewi Strauss*, 29 L.A.C. (2d) 91, at 93 (Arthurs, 1980)

20. *Re Steel Equipment Co. Ltd.* 14 L.A.C. 356, (Reville, 1964), at 356-8

Yet though Arbitration may differ *in form* from Tribunals in its freedom to consider substantive fairness, more radical Canadian trade unionists find the process still stacked heavily against the worker:

> "I have some questions for these arbitrators who adamantly proclaim their neutrality in judging labour-management disputes.
>
> "How can you, in all honesty, pass judgment on an aggrieved employee who has been suspended or even fired for lateness and absenteeism when you yourselves regularly arrive late for arbitration hearings? Or, as so many of you do, let months go by before rendering your decisions?
>
> "...How can you claim to understand the family difficulties imposed on shift workers and families with working mothers when, as recently happened to us, you arrive at a case, late I might add, and announce that you would like to leave early as your wife has gone skiing for the day and your children will be at home alone?
>
> "How can you comprehend the financial problems of a discharged, suspended or laid-off workers with a family to support when you receive several hundred dollars[21] for one day's work...?" (Taylor, 1977), p. 9)

4.7 Appellate Structure and Power

While tribunals in both countries have become highly legalistic, the courts have had a far greater impact upon British than on Canadian tribunals. The EAT has generally taken on the role of coordinating and setting standards of fairness for tribunals to follow. While it is not a *tribunal de novo*, and can only review points of law, the EAT has interpreted this restriction quite liberally. The EAT is a court of specialised jurisdiction, but in the absence of the type of privative clauses that prevail in Canada, its activity comes under the scrutiny of the Court of Appeal. The particular combination of appellate bodies has resulted in a high degree of restraint by the courts and a limited ability of Tribunals to develop their own law (see Dickens et al. pp. 209-212).

While the Canadian courts have shown a fondness to rein in arbitral activity in non-disciplinary cases, they have left arbitrators relatively free to nurture their own law of just cause in discipline. Palmer, marvelling at its comprehensiveness after a mere forty years, says:

> "...there has been no decisive outside influence which has shaped the work of arbitrators in this area. The courts have only intruded to a minimum, and then largely on procedural points; their intervention has been sporadic and, on the whole, of limited duration" (Palmer, 1983, p. 231).

Thus the credibility of Canadian Arbitration as an 'expert' body and its distinctness from the judicial system is far better developed than its British counterpart.

5. The Impact of Tribunals and Arbitrations

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21. At the time of this study, it is not uncommon for arbitrators' fees to be more than $1000 per day.

5. Comparative Use of Third-Party Adjudication

A comparison of the finer points of Tribunals and Arbitrations, while important, can be dangerously misleading. For the impact of each upon workplace industrial relations in the types of plants we are investigating is dramatically different. While Arbitration is an intimate part of discipline-handling in unionised Canadian plants such as ours, Tribunals have only marginal impact upon similar British plants.

While figures are not available for an exact comparison, it can be roughly estimated[22] that, in any year, the number of Industrial Tribunal hearings where British unions represent dismissed members is about 10% less than the number of dismissal Arbitration hearings in Canada, (proportional to the number of unionised employees in each country[23]). However, such union activity in Britain is highly concentrated on employees in smaller workplaces and very much rarer in workplaces above 100 employees (Dickens et al., 1985). In Canada, on the other hand, dismissal arbitration activity is more evenly spread across the range of workplace sizes, and some evidence indicates, as might be expected, it is slightly *higher* in larger workplaces (Gandz, 1978).

A look at the rate of discipline in our four plants[24] may help put these figures into perspective. It is remarkably similar along industry lines. Expressed as a percentage of the workforce per year, both the British and the Canadian aluminium plant dismiss approximately 0.7%. Both breweries dismiss 0.4%. Figures on dismissal rates in the two countries as a whole are meager. The best estimate for Britain as a whole, obtained from survey data, is just above 1% per annum (Brown et al., 1981, p. 116) with a range between .04 for workplaces with more than 1000 employees and 1.8 for those with less

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22. This comparison was calculated as follows: To obtain a number for Canada, the approximate annual number of Ontario dismissal arbitrations, derived from the United Steelworkers' survey, was increased proportionate to the inverse of Ontario's share of the number of employees covered by collective agreements across the country (x2.8). This produced a figure of approximately 430 Canadian dismissal arbitrations per year. To correct for Canada's smaller size, this figure was further increased by the proportion that Britain exceeds Canada in union members (x3) for a figure of approximately 1300 arbitrations per year. To obtain a figure for Britain, the survey of British Tribunal applicants in Dickens et al. (1985) was employed. The survey revealed that approximately 12% of all applicants appearing at hearings were trade union members represented by their unions. This percentage was extrapolated to the total number of hearings held annually to produce a figure of approximately 1150 Tribunal hearings a year.

23. As mentioned earlier, the number of British arbitrations on dismissal is negligible. Those that are held are voluntary and tend to be at the larger employers.

24. Complete figures for discipline over a long enough period for statistical accuracy were not always easy to obtain, especially at BRITBREW and CANMET. However, enough information was available to make intelligent estimates.

than 100 (Daniel & Millward, 1983, p. 171). So the range of dismissal rates in our plants fit within these parameters[25].

The evidence of external dismissal adjudication in our plants shows dramatic differences. In the ten years previous to this study, BRITBREW faced only two tribunal applications and BRITMET faced only one. In the Canadian plants, disciplinary arbitration is de rigeur. In the eight and a half years preceding this study, CANMET faced five discipline arbitrations (four for dismissal and one for suspension) and CANBREW faced twelve (four for dismissal, seven for suspension and one for disciplinary demotion).

Unlike British Tribunals however, Canadian Arbitration *also* deals with complaints of discipline *other* than dismissal (suspensions, demotions and disciplinary notices). These cases account for slightly more arbitration hearings than those on dismissal, so that there is actually more than twice as much third party adjudicatory activity on discipline in Canada as in Britain.

The rate of *non-dismissal* discipline is much greater in the Canadian plants. While in both British plants it is almost the same as for dismissal, CANMET's figure is 2.2% (more than twice its dismissal rate) and CANBREW's is 4.4% (more than four times its dismissal rate). Two, somewhat contradictory reasons can be posited for this: first, it reflects a high preoccupation with progressive discipline, in response to the signals given by arbitrators and, especially at CANBREW, where a sophisticated management is concerned with the cost of depleting an internal labour market in which it has invested considerable resources; second, it reflects a less paternalistic, more punitive orientation toward the disciplining of the workforce in Canada. To be somewhat glib, the motto of Canadian managers might well be "punish them, but be careful and methodical about how you do it".

At first glance, it appears as if the corrective approach to discipline is not nearly as well developed in the British plants as it is in the Canadian. While there is some concept of progressive discipline in BRITMET, with several dismissals coming at the end of a series of smaller warnings or suspensions, none of the dismissals at BRITBREW are the

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25. Similar data are not available for Canada. However, the author suspects that dismissal rates in Canada might be significantly higher than in Britain because of less paternalistic employer attitudes and the illegality of unions striking over dismissal, but this cannot be proven at this point.

result of a culminating incident. Those dismissals that do happen are mostly a result of gross misconduct, such as theft or dishonesty. But further consideration below will yield quite different conclusions.

On a more qualitative level, the differential impact of third-party adjudication in the two countries is even more striking.

5.2 Impact on Management

In the disciplinary activity of the British managers, third-party adjudication has some discernable impact, but it pales in comparison to Canada. In keeping with a pronounced national trend (Millward & Stevens, 1986, p. 169-180; Dickens et al., 1985, pp. 232-238), the introduction of Tribunals, the publication of the ACAS Code of Practice and its propagation by the Institute of Personnel Management all promoted the growth of disciplinary procedures and the development of published workplace rules in our plants. These were reviewed in Chapter IV. But it was also noted in that chapter that in our British plants, and especially at BRITBREW, while procedure is in place, it is often peremptorily ignored in cases of serious misconduct or where the collective implications are ominous.

Procedures aside, while the British personnel managers have a nodding acquaintance with some of the broad Tribunal precepts of substantive fairness from professional seminars (one manager remarks favourably on the licence that the 'range of reasonable employers' test gives him), it has very little to do with the way in which they administer discipline from day to day. Their personal experience with Tribunals is very limited, so in considering discipline, they generally 'play it by ear', as they have always done.

The impact of Tribunals on line management is even more vague, and direct familiarity with Tribunals is non-existent. Immediately after the introduction of Tribunals and subsequent procedures, both plants echoed a national trend in manufacturing (Daniel & Stilgoe, 1978, p. 41; Brown, 1981, p. 32; Dickens et al., 1985, p. 264-5) for authority for discipline to shift away from line managers to personnel. Yet BRITMET has more recently made efforts to pass the responsibility back down and BRITBREW talks about it seriously.

The situation in Canada is very different. Knight (1984) reports that arbitral decisions have considerable impact on the employer administration of disciplinary

policies including such areas as progressive discipline for absenteeism, the question of intent in theft cases, employer procedure in insubordination cases, leniency in alcohol and drug abuse cases and the importance of disciplinary procedures. Our plants confirm this. Not only do personnel managers have considerable personal experience with Arbitration both in their own plants and in those of sister plants, as mentioned earlier they have a broad knowledge of the arbitral jurisprudence and the comments of legal and academic commentators on it. They often communicate their assessments of Arbitrations to their colleagues, including line managers.

The familiarity of line managers with Arbitration is also much greater than in Britain and is especially pronounced at CANBREW, where they not only have been called upon to testify at Arbitrations but are expected to attend them as part of their training in how to discipline.

The following is an example of the impact of discipline Arbitration on CANBREW managers, which like episodes cited previously, splendidly epitomises not only this but several other aspects of the question before us:

The grievor was a fully-licenced Maintenance Mechanic with four and a half years' seniority who, according to the employer, was incapable of performing up "to the high standards of craftsmanship expected and required of a qualified skilled tradesman". Acknowledging the grievor's lack of intention to do wrong, and employing a 'non-disciplinary' approach, the employer demoted him to the position of production worker (which the union estimated would cost him $15,000 per year). The grievor's professional mediocrity was widely acknowledged by managers and workers alike so as to be almost a legend in the plant. But justifying the demotion was quite another thing, especially when the union swung its legal guns around to defend the grievor. Several supervisors testified to major and costly errors directly caused by the grievor that had led them to assign him simpler tasks or "work around him". He was told about these errors but never warned that failure to improve his performance could result in discipline or demotion. The union's witnesses testified that the grievor was able to do a wide range, indeed most, of his maintenance tasks with acceptable competence. The union argued that

> "elemental fairness demands certain steps to let him know he is in jeopardy...If a mechanic is incompetent, that is serious for the Company in terms of cost. It should be important enough to document and tell the employee about."[20]

The union also argued that the employer was attempting to make the grievor a scapegoat for the lack of supervisory competence in his department.

The arbitrator ruled a) that the evidence did not convince him that the grievor was so bad at performing the range of tasks expected of him as to be classified 'incapable', b) that even if the grievor was incapable, the evidence did not prove he was incapable of improving and c) that even if a) and b) were proved, the employer's neglect to warn the grievor of the consequences rendered the discipline null and void.

At first the decision hit the employer like a thunderbolt. Fearful of its impact on managerial prerogative, top managers sought a legal opinion on the chances of quashing the award in the courts. While arguing that the decision would seriously "fetter or circumscribe the discretion and mandate that the Management Rights Clause provides to the company", he reminded them of the very narrow scope of judicial review in Canada (the arbitrator had written his award so that it did not seem 'patently unreasonable') and put their chances at "less than even". The employer did not challenge the award.

Yet after a period of reassessment, a top company industrial relations manager sent a memo to other top managers, in which he takes a different view of the award's effect on managerial prerogative:

> "I think the arbitrator is right. We made the age-old mistake of *knowing* (that the grievor) is incompetent, but being unable to *prove* it in a just cause sense. (emphasis in the original)
>
> *"The result of the arbitration is not unmanageable but (as usual) it makes the process longer and harder to administer."* (emphasis added)

Once again the 'management education effect' is seen. The manager indicates he is sending a copy of the memo to all personnel managers (in all of CANBREW's sister plants across the country), recommending they treat similar situations in the future in the following way:

> 1. We will document every incident where an employee completes a work assignment in a manner which is unacceptable to us, and we will impose appropriate discipline if circumstances warrant.

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20. From the recorded minutes of the final step grievance meeting. Note the way the union craftily moves from a 'protection of incompetence' argument to a 'concern for managerial efficiency' argument, attempting to cast its case in a more legitimate guise (see Armstrong et al., 1981).

> 2. If the employee has a history of such documented incidents and we feel we must remove him from his job, our options are open. If we feel we can prove incapacity we can use the non-disciplinary approach, and if we cannot prove incapacity we will simply follow the disciplinary approach through to its logical conclusion.

The memo is highly significant in the insight it gives into the interplay between Canadian arbitration and management practice. The arbitration had different effects at two different levels of management. To many line managers, it was yet further proof that, as one supervisor says, "arbitrators won't let us manage" and that "once probation is over, there's a problem getting rid of the poor performer". But to some line managers and to those higher up, the arbitration was a slap on the wrists for lazy management and a lesson in how to better manage. As one manager says:

> "We tried to take the easy way out and demote him. It would have taken a lot longer to build a case against him and we didn't. We colluded with him by putting him on the easy jobs. It's a symptom of a larger problem here."

Thus what at first appeared to be a major victory for the union, an example of the arbitrator 'bending over backwards for the worker', actually became a great boon to management, a learning experience, an opportunity to use the arbitrator's wide experience of 'good industrial relations' *to fine tune its practice of control.* The arbitral award undoubtedly does make the "process longer and harder to administer", but more efficient in the end.

The 'management education effect' has thus far been seen when CANBREW management in the absenteeism case at the beginning of this chapter and in Chapter V, when a burgeoning arbitral jurisprudence on promissory estoppel led it to institute its 'custom and practice audit'.

5.3 Impact on Workers and Trade Unions

In the comparison of Tribunals and Arbitration, it is the the *legitimacy* of the two forums to trade unionists that is most striking and most determinative of their differential impact in the workplace.

In the eyes of the Canadians, disciplinary arbitration is used and highly regarded not just because it is the *only* method of seeking equity (although that is doubtless a powerful impetus). Nor is it favoured because it actually *delivers* a high quality of equity. The comparison with the dismissal reversal rates of the beleaguered British Tribunals, the fact that almost half of dismissals are upheld, and the fact that trade unionists are ill-equipped to form evaluative assessments of arbitration's equitable quality in any case,

makes the whole question indeterminate and irrelevant. Arbitration is favoured because it *appears* to deliver equity, especially compared to its poor record in non-disciplinary cases. In over half the dismissal cases put before arbitrators, management is slapped on the wrists and the employee earlier *seen* emptying his locker is now *seen* returning triumphantly to work. In just less than half of the *non-dismissal disciplinary* cases, there is a similar slap on the wrists. Just as this has a demoralising effect on some supervisors, it has a stimulating effect on workers and trade union officials who seldom consider that the arbitrator has acted essentially as an arm of management's disciplinary apparatus and, in their rush to welcome him home, seldom ask the prodigal son if he has lost his inheritance.

Yet for all its popularity, disciplinary arbitration is not seen by the trade unionists as something integral to the workplace, something they themselves have accomplished by their power, mobilisation or ingenuity. It is something apart from them, a sometimes benign yet always distant *deus ex machina*, not the result of collective action. The full significance of this relationship becomes clearer when the impact of Tribunals on the British trade unionists is examined.

In the British plants, Industrial Tribunals quite simply have little or no credibility. Even at **BRITMET**, where the union is not able to consistently mount a workplace challenge to management's disciplinary activity, Tribunals are seen as a forum for losers, a desperate last resort for the employee in which the union's participation is far from certain.

The only Industrial Tribunal to take place at **BRITMET** within the period encompassed by our study involved an employee dismissed for excessive absenteeism. The union declined to represent him.

Of the two Tribunal cases at **BRITBREW**, the union represented the complainant in one case only. The convenor explains that this was only because of extraordinary circumstances. To set an example, the company was determined to fire a woman canteen worker accused of unauthorisedly taking leftovers home. The union felt that, in light of the overall high level of pilferage in the area, there was sufficient uncertainty about her guilt to give her the benefit of the doubt. The union won the Tribunal case and the complainant received compensation.

In a second Tribunal case, however, involving pilferage of product by a drayman, the union refused to help the complainant, and his case was dismissed.

Whether or not it is true, the BRITBREW convenor believes that

> "the first question Tribunals ask [when a union member appears before them] is whether the union is backing the case. If it isn't, his case is as good as lost".

Thus the BRITBREW union's refusal to represent a claimant is more than mere indifference *but a conscious act of collusion in his dismissal.* The difference from Canada could hardly be more pronounced. Why is this so?

The union (and of course the company) prefer to handle disciplinary matters within the bounds of the workplace. In an unspoken agreement, the union participates in the policing of its members while the company keeps discipline to a minimum. In return for its willingness to withhold serious support for the few employees who cross the bounds of acceptability (especially in cases of egregious absenteeism, theft and larcenous fiddling), the union is able to protect the jobs of others by what we have earlier called 'showing the colours'. Both management and union have ways of 'signaling' the degree of their concern about the issue and to read the other party's signals. Thus discipline at BRITBREW is a shared activity, to an extent that separates it not only in degree but in kind from the other three plants.

A look at the disciplinary statistics at the two breweries proves the case. They have the same rate of dismissal, showing a similar propensity for ridding themselves of employees with unacceptable behaviour. But the Canadian brewery has *four times* the non-dismissal disciplinary rate of the British one. If the BRITBREW union were weak or not vigilant in defence of its members, the paucity of non-dismissal discipline might indicate a less progressive, more punitive model of discipline. But given the union's strength, a different conclusion must be drawn ie. that more than any of the other three, this union *participates* in the disciplinary process. This is not simple co-optation but rather a process in which the union has much to gain for its members.

This process is repeated in many British workplaces. The Institute of Personnel Management reports that in 14% of workplaces with over 100 employees and 19% of workplaces with over 500 employees, "all disciplinary matters [are] agreed between trade union and management" (1979, p. 96).

Henry's (1983, 87) move beyond the simple punitive-corrective model is useful for analysis here. In essence, while the three other plants are at different places on the "representative-corrective" approach, BRITBREW has advanced into the "accommodative-participative" sphere, wherein a) worker participation is not limited to "advocacy or appeals roles" as it is in the "representative corrective" approach but b) the collective nature of the disputes is fully acknowledged by both parties and c) discipline more fully is subject to negotiation. Henry implies that in this approach, management "institutionalise[s] the collective bargaining process by incorporating representatives from both management and unions in a joint disciplinary procedure" (1987, p. 298). Yet it can be argued that the process is not quite as overt as this, that the approach works better in the British context if, as at BRITBREW, the collaboration is *not formalised* into a joint disciplinary procedure but rather works out that way in practice. The implications of this process upon levels of industrial conflict can be inferred.

While space does not permit canvassing the full range of causes giving rise to discipline, a brief look at the handling of three of them where orientations and reactions vary across the two countries and two industries, especially in the two breweries, sheds valuable light on the question.

6. Attendance

Attendance is *a* major cause of discipline in both countries and *the* major cause they share (Adams, 1978, p. 45; Edwards & Whitston, 1988, p. 3). Certainly, a common major problem in all four plants is controlling lateness and absenteeism by employees. What is acceptable attendance? Edwards and Whitston (1988) criticise attempts at simplistic construction of differential 'cultures of absence' and, indeed, the attempt to go beyond acknowledging the existence of differing rates and weights of absence to more rigorous analysis is fraught with problems, not the least of which is irrelevance. Nevertheless, it is undeniable that in tackling absenteeism, managements themselves make assesaments based on a perceived 'acceptable' level of attendance, which differs from work area to work area and is closely bound up with the nature of control in those areas. Managements are aware of attendance levels in their industry and, having established an acceptable plant norm, assess different departments on their deviance from that norm and different employees on their deviance from the departmental norm. Thus, for example, BRITBREW

management, while admitting that the tough manual work of their draymen and staging unit workers contributes to high absence, also concludes it has an absenteeism problem. On the other hand, BRITMET management points to its casting unit workers as having an absence record well below the plant norm.

Management in all four plants, as in most modern industrial workplaces, has moved beyond a purely punitive approach to absenteeism. Where once both legitimately incapacitated *and* malingering employees might have been disciplined or sacked for non-performance, collective bargaining and a corrective approach have introduced absence indemnity (sick pay) schemes meant to reward otherwise punctilious members of the internal labour market. But the following questions must still be addressed: what is to be done with malingerers and those whose incapacity, though blameless, does not allow them to fulfill their obligations of service; how is the scheme to be managed to prevent it from both encouraging absenteeism and becoming too costly; and to what extent can the indemnity scheme itself be used to address these problems? The level of participation of the union is crucial to the answer.

In Canada, the union is both structurally and attitudinally precluded from participating[27]. The coverage and payout level of the schemes is bargained and set in the interests apparatus, and is subsequently 'locked in' as an employee right. The policing of attendance is off limits to joint regulation. Neither party would dream of fettering its discretion to impose or oppose sanctions as the case may be. Most attempts by management to use the indemnity scheme itself to curb absenteeism are resisted by the union using the rights apparatus.[28] Thus management is forced to use straight discipline to compel attendance. At both Canadian plants, then, written warnings, suspensions and dismissals are employed (or warnings, counselling sessions and final discharge where a 'non punitive' policy exists) even as the indemnity scheme continues to give monitored

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27. One notable exception to the union's refusal to participate in discipline is the CANBREW rule against alcohol on company premises (other than in the canteen). For many years, the company has imposed a one-day suspension for this offence. The company's consistency over such a long period has led the union to seldom seriously challenge these suspensions unless the penalty has been mistaken. Such acquiescence, though passive, sends a clear message to employees that the union is unsympathetic to their claims and thereby promotes obedience to the rule.

28. At one of CANBREW's sister plants, employees are allowed to 'bank' unused sick leave days and 'cash them out' at the end of a period. This is a strong incentive for most employees not to use the sick days, but is very costly to the employer and hence very rare among blue collar workforces.

employees their day's pay. In the CANBREW case involving the wildcat strike cited earlier in the chapter, the union had warily avoided any involvement in the company's absenteeism correction programme, which the company had introduced unilaterally in any case (though it did peremptorily inform the union). The union's argument that it and the grievor were taken by surprise thus held little weight with the arbitrator. The dismissed employee was returned to work not by the strike nor by any collective action by the union, but merely by the impatience of the company in improperly following the procedure of its own absenteeism reduction programme. According to the personnel manager, that could and would be easily corrected.

In the British factories, where bargaining structures are less rigid, there is room for a more flexible approach to absenteeism, ie. more room for 'adjustments'. Management at both plants has attempted to involve the union in policing absenteeism, holding out the promise of a better indemnity scheme if the 'abusers' can be isolated. It does this because an ounce of the union's cooperation in discouraging abuse is worth several pounds of company-initiated punitive action.

Like the Canadian unions, the BRITMET union is highly distrustful of management's initiatives in this area. Significantly though, as mentioned in the previous chapter, unlike the Canadian unions, it cannot fall back on its 'rights'. It either continually renegotiates them or loses them. For example, management proposed a progressively punitive scheme for reducing lateness. When the union refused to negotiate, the employer acted unilaterally and, according to a personnel manager:

> "we ended up imposing a harsher procedure than we had proposed to the union. Because we couldn't get their agreement to our proposal or even some compromise, we had no guarantee of compliance. I think the union lost out in this instance as in many others by its behaviour in negotiations".

The BRITMET union was offered improvements in the absence indemnity scheme if it would would stop appealing, as a matter of course, all suspensions from the scheme. This the union would not do. Says a personnel manager:

> "They have two faces. They privately admit the legitimacy of discipline for offenders but publicly defend them. The union sees cooperation as selling their members out but their own members support our scheme. Why, even the abusers admit they deserve to be suspended from the scheme!"

A union steward agrees:

"We're in an uncomfortable situation. We're expected to represent the members. But we'd like to get the number of waiting days (an obligatory period of absence before the plan kicks in) down. It's a job to know how to do it".

Eventually though, after a year of a unilateral company programme of suspending acknowledged 'abusers' from the scheme, the union began to accept the company's bona fides and agreed to an improved scheme, while tapering off its automatist opposition to the treatment of abusers.

The BRITBREW union, on the other hand, more readily enters into negotiations, not only on the payout of the scheme but on the method of weeding out abusers. The jointly-agreed procedure involves the following sequence: a) a verbal, then a written warning prior to disciplinary action b) a six-month suspension from the scheme and c) dismissal if, during suspension from the scheme, the unacceptable level of attendance continues. The union retains the right to argue each case on its merits and stops short of joining with the company to discipline offenders. But a personnel manager says the company would not have it any other way:

"It's the union doing its job. If the union didn't do it, then it would have a problem of credibility with its members and the whole procedure would start to fall apart".

On the other hand, says another manager, the disciplinary system works so smoothly because the union is seen as "co-authors". Though it can intercede in absenteeism disputes, the union seldom does so except to ensure employee representation. The concern of shop stewards not to jeopardise the indemnity scheme was clearly evident in their comments on the "fucking malingerers" in the previous chapter. Only because the voluntary redundancy principle ranked higher in the union's priorities was this concern overridden in that case.

By participating in the regulation of absenteeism, the BRITBREW union may be abandoning the defence of some of its members in the short run. But by doing management the favour of helping to castigate them, it is building up I.O.U.'s which it will expect management to repay at some future date. This the other three unions do not have the strength or confidence to do. The BRITBREW union's arsenal contains favours as well as industrial action while that of the other three contains only industrial action.

It is pertinent and ironic to note that once the union had achieved its purpose of preventing the compulsory redundancy of the four employees concerned, it proceeded to help convince three of them that they would be better off taking voluntary redundancy pay

and leaving the company (which they did). The fourth transferred to a new job within the company and was, with union acquiescence, suspended from the indemnity scheme for six months.

7. Insubordination

Adams (1978) defines insubordination as a "direct challenge to authority such as refusing to obey an order and swearing, fighting and insolence *where a supervisor is involved*" (p. 43, emphasis added). With regard to this cause of discipline, the most striking difference between the two countries is in its frequency or lack thereof.

In Canada, it is beyond doubt an issue of gravest importance. Adams' survey of dismissal arbitrations (1978) finds it as the chief cause of discipline, ahead even of attendance and Palmer insists:

> "Unquestionably, *insubordination is the most common type of disciplinary action found in the field of labour arbitration.* Equally, it is considered by most arbitrators to be 'one of the most serious industrial offenses'. The reasons for this is that it strikes at the heart of an employer's prerogatives, the right to manage. It is felt that the right to order employees to carry out orders without extended debate and without a loss of respect is central to the role of management". (1983, p. 319, emphasis added)

The seriousness with which Canadian arbitrators' treat insubordination is indicated by their comparative reluctance to reinstate employees dismissed for this cause (10% less likely as the norm of 53.5% according to Adams, 1978, p. 54, who says the figure is not lower because insubordination is very often "an isolated event...that arises in the nature of a momentary 'flare up'"). But insubordination is a cause that invites among the severest penalties overall, with 81% of grievors either not-reinstated, reinstated with no back pay or reinstated with over three months' suspension (ibid., p. 61).

In our Canadian plants, while it lags behind attendance, it is a prominent cause of discipline, especially at the aluminium plant where management control is tighter and several people on both sides considerably less genteel than the industrial norm.

In Britain, however, insubordination ranks farther down the list in causes of discipline. In the IPM survey, only 2% of the employers listed "refusal to obey reasonable instructions" as the major cause of discipline and only 25% listed it in the first four causes of discipline (Institute of Personnel Management, 1979, pp. 31-33). Even Tribunals are careful in finding "a refusal to obey a legitimate instruction" a reasonable cause for dismissal (Anderman, 1985, pp. 158-9).

Managers and trade unionists in both our British plants are somewhat nonplussed by the concept, although those at the aluminium plant are more familiar with it, for the same reasons as in Canada. Few cases of outright disciplinary action result from this cause in either plant.

The reason for the great difference between the countries on this matter should be fairly obvious. In a regime where such great pains are taken to ensure that "the industrial plant is not a debating society" and that employees "work now and grieve later", much behaviour outside these norms inevitably becomes a challenge to managerial prerogative, *even if it is not specifically intended as such.* A certain amount of 'shop talk' between employees and supervisors is not only unavoidable but also necessary for the smooth functioning of any regime, and Canadian arbitrators have ruled discipline for insubordination too severe where swearing did not connote insolence (Palmer, 1983, p. 336), where the supervisor had not been clear in his order or in the consequences of disobedience (ibid., p. 320-322), where there was provocation of the employee (ibid., pp. 335) and where the order was illegal, dangerous or patently unreasonable (ibid., pp. 323-332). Yet in this environment, it could be said that management neglects to discipline for insubordination at its peril.

As most of the causes of discipline for insubordination relate directly to the forum of (what we have called) job control (Palmer, 1983, pp. 337-38, 340; see Chapter IX for a fuller elaboration), it is inescapable that many of the high number of disciplinary disputes in the category of insubordination have been *displaced* from that forum. Many that begin life under job control and cannot find legitimate expression there are serious enough that they will not be suppressed. Thus they inevitably find their way through to the disciplinary forum. This point will be discussed further in the chapter on job control.

On the other hand, in a regime which not only tolerates but invites debate on the shop floor, and where strikes are considered "those stoppages which seriously impair our ability to trade", it is little wonder that insubordination per se is of far smaller import than in Canada. BRITMET supervisors claim no more than two disciplines for insubordination in ten years. One involved general rudeness, unpleasantness and verbal aggressiveness to supervisors. The other involved a shop steward telling an employee to slow down. The personnel manager says, almost apologetically:

"We know it goes on but it's never done openly. In this case he did it right out in the open. There was no way we could let it go."

Discipline for insubordination is even rarer at BRITBREW. From observation, a far higher degree of "shop talk", especially by shop stewards toward line managers, is tolerated than in the other three plants. With small scale departmental stoppages always a possibility, mere argument, even if vigorous, can seem like a blessing. Being confronted by an angry steward (or one pretending to be angry) is quite a common occurrence in many departments. Almost all cases of insubordination have occurred around the ongoing dispute between the distribution unit management and the draymen. One such case is illustrative of the general approach taken to discipline by the company.

The new departmental agreement (which ended the strike) specifies that draymen who are unable to raise a publican to accept his delivery may lose bonus earnings if they fail to telephone a supervisor and accept his instructions (to wait, revisit, reroute or return beer to depot). One dray crew refused to obey the supervisor's instruction to attempt redelivery and were disciplined by a written warning and the loss of their bonus for their entire load. Eventually, the parties agreed to a verbal warning and the loss of the bonus for the delivery only (a drop from £9 to £3). The company realised, as it did in the case of the 'procedural bonus' discussed in Chapter IV, that punishment for a full load might well invite rather than prevent violation of the agreement if workers felt they 'may as well be hanged for a pound as a penny'. A personnel manager says:

"The union accepted the final result as just. Neither the company nor the union feels it was compromised by the deal. [The company] sometimes goes in higher than it might otherwise in discipline if we feel it might be reduced on appeal"

What is unique about BRITBREW is not the fact that management often sets discipline high and reduces it on appeal. The three other managements do that from time to time. Where BRITBREW differs qualitatively is in the fact, and the readiness to acknowledge the fact, that discipline is a negotiable item, even where direct management orders have been flouted. Refusals to follow orders then, can seldom be classified as insubordination. They are not as much willful challenges to managerial prerogative (as they are in Canada) as they are positional tactics in the gestalt of continuous collective bargaining.

8. Work Performance

Adams defines culpable work performance problems as "carelessness; negligence; breach of company rules [involving] no direct affront to authority...most cases relat[ing] to how the work is done" (1978, p. 44A). Managements in all our plants have used discipline where employees, through their negligence, have been found to be culpably responsible for substandard or damaged product. Yet again, the Canadian plants use a far heavier hand than their British counterparts in the same industry.

Nowhere is this more evident than in the brewing unit of the two breweries, which are similar in all major respects. As described in Chapter II, the unit in both countries employs process production in large batches and is capital intensive, with high technology prominent. Work tasks are primarily monitoring and intervention at key junctures to expedite flow and to prevent disruption or contamination of the process. Morale and self-discipline in these areas are higher than plant norms because of the job content and high degree of responsibility.

Despite (or perhaps because of) the high degree of automation, errors by operatives can result in considerable loss of or damage to product and consequent loss of profit. As a food product, quality is of primary concern and negligence a very serious offence.

While it is impossible to quantify the concept of product quality (and no attempt is made to disparage Canadian beer), the importance of quality may be slightly greater in Britain, especially in the ale (as opposed to lager) market, where consumer loyalty depends more on taste distinctiveness and less on marketing techniques.

Yet the number and seriousness of disciplinary penalties handed out at CANBREW for negligence and carelessness in brewing is significantly greater than at BRITBREW. Verbal warnings, written warnings, suspensions and disciplinary demotions for slip-ups have been handed out over a long enough period that its contrast with BRITBREW is noticeable.

In a typical such case, a CANBREW employee with some 12 1/2 year's seniority was disciplined after committing four performance errors, over a two year period, that resulted in product loss. The first offence (pumping uncompleted product prematurely) netted a three day suspension (reduced in the grievance procedure to two days) and a letter indicating:

> "...based on this incident and your employment record...which is completely unacceptable, you should be fully aware that if you fail to follow procedures or disobey Company rules and

regulations you could subject yourself to further progressive discipline up to and including discharge. As you know, working in the Brew House requires a high degree of diligence. Should you fail to follow proper procedures again, you may be removed from the Brewing Department".

The second offence (allowing the concentration of product to fall below acceptable levels) invited a verbal warning. The third (allowing ingredient to drain onto the floor) also received a verbal warning. In neither of the latter two was the union formally notified. The fourth (overfilling a tank and hence spilling large amounts of product) resulted in the employer finding the grievor "unsuitable for work in the Brewing Department" and demoting him permanently to the packaging unit.

The union grieved the demotion and carried it through to arbitration. According the collective agreement, it argued, the middle two offences were not formal discipline and hence incapable of being relied upon in support of the company's claim of a 'culminating incident'. The union made other arguments attempting to excuse the final offence.

The arbitrator rejected these excuses but agreed with the union's first argument, finding the middle two offences inapplicable to the case at hand. Accordingly, there was inconclusive evidence that the grievor was incapable of performing his job and deserved demotion. However, finding "the culminating incident was an incident of blameworthy conduct", the arbitrator imposed a three-day suspension.

Without making any judgments on the grievor's degree of culpability, there is one aspect of this case and most of the others examined thus far that is particularly striking. That is the extent to which procedural and technical, as opposed to substantive, considerations dominate the union's arguments.

With few weapons available to defend its members other than third-party adjudication and trapped by its own and the employer's unwillingness to engage in any more *active* approach, the union inevitably becomes a *prisoner of proceduralism*. With nothing to 'trade' with, it responds with a passive/aggressive, automatistic adversarialism which spins it and the employer into a vicious circle of formal but often inconclusive confrontation. Because of the importance of the concept of 'culminating incident' in arbitration, each incident becomes a separate battlefield and credibility counts for little in the ensuing scrap. Indeed, the union's practice is to challenge *even letters of warning* for fear that these will later haunt the employee. In this vortex, both

conceding that an employee's guilt invites discipline, and using collective action to resolve the dispute, (*two sides of the same coin*), are equally unthinkable.

At BRITBREW, on the other hand, the union is able, and far more willing, to bargain discipline, within the context of a single incident and overall. Within the incident, it may (but does not always) 'trade' on anything from the threat of industrial action to petty blackmail (such as the responsibility of members of management for performance errors, drunkenness and other misdemeanours[N]). Overall, it may rely on its willingness to concede the guilt of its members in certain cases to trade for employer leniency in others. Because third parties are mostly irrelevant to discipline, more than a minimum of attention to proceduralism (to ensure a fair hearing of the issues) is unimportant and the *substance* of the discipline comes to the fore. In this setting, it is impossible for the union to avoid making value judgments on the incidents provoking discipline thus its credibility to management is very important. This credibility can only be maintained by a process of give and take, by conceding guilt in order to later defend.

9. Concluding Remarks

The beginning of this chapter promised to test the proposition that Canadian Arbitration is a 'jewel in the crown' of industrial dispute resolution in that country and a major contributor to assuaging industrial conflict, especially as compared to Britain's Industrial Tribunals. Contemplation of theoretical debates on discipline helped provide a framework for the analysis. More than any superficial win/lose rate, deeper considerations of the quality of equity provided, of the legitimation of managerial control, of the obscuring of exploitation and of the importance of collective action are necessary to answer the question.

A comparison of Tribunals and Arbitration per se indicated a) that the superiority of the latter in protecting job security has more to do with its ability to effect reinstatement than its propensity to encroach on managerial prerogative to discipline, b) that, as compared to Tribunals, the credibility of Arbitration is enhanced by its power to reinstate, by its greater flexibility and procedural solicitude, and by its lesser reluctance

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N. In a case of drunkenness by a union member, the convenor made the company aware that the union knew of abuse by some managers of the 'sample cellar'. In another case, the union suspected that a member of management was responsible for an error leading to the loss of product in brewing. These bits of knowledge have some value, though limited, to mitigate the discipline of union members

to 'second guess' managerial decisions, c) that collective considerations have little more effect on Arbitration than on Tribunals, both of which individualise disputes, d) that in 'second-guessing' managerial action, Arbitration threatens managerial prerogative little more than Tribunals but rather actually restrains, guides and teaches those employers sophisticated enough appreciate such assistance and e) that, in substituting its own discipline, Arbitration does not usurp, but rather collaborates in management's role.

Notwithstanding this, an investigation of the differential effect of third party adjudication in the two countries revealed its impact on unionised workplaces in Canada as far greater than in Britain. Because of its minimal relevance in Britain, workplace apparatuses take on a far more important role in dispute handling. Where the union has the requisite strength and confidence to breathe life into those apparatuses (and where management is strong enough to respond in kind), a transition to something like Henry's "accommodative-participative" mode of discipline handling results, offering a higher degree of collective action and participation and arguably at least an equal degree of substantive equity to that which is found in the Canadian workplace. What is more, in these circumstances, the apparatuses can a very effective in conflict-management. Where the union lacks the requisite strength and confidence, a vacuum results which Tribunals, ACAS Codes of Practice and considerations of "good industrial relations" can only partially fill.

In Canada, the efficacy of third party adjudication in handling industrial conflict can only ever be partial. For within the system itself lies not only a barrier to more collective forms of conflict management but the seeds of conflict itself.

CHAPTER VIII: STRUCTURING THE INTERNAL LABOUR MARKET

I. Introduction

The end of Chapter VI told of the shutdown of an anodising line in the finishing unit at BRITMET. The question was whether the workers on that line would be transferred en masse into the fabrication unit or whether some of them could use their seniority to 'bump' junior employees on the remaining anodising line. The collective agreement, while briefly specifying seniority as one criterion to be used in promotions[1], says nothing about its use in the case of layoffs or transfers. The ensuing wrestling match was won by management and all of the employees, regardless of age or service, had to move to the more onerous fabrication work.

By contrast, on this and other questions of layoff, recall, promotion and transfer, the procedures outlined in Canadian collective agreements are usually clear and comprehensive. Thus, among the several pages devoted to these issues in both the CANMET and CANBREW booklets, provisions appear specifying : that manpower reductions in a department are by reverse order of seniority in that department; that in the first instance laid-off employees can bump those junior to them in the department; and, if this is not feasible (such as when an entire department shuts down), that laid off employees can bump junior employees in other departments.

It would seem then, that compared with the confusion, vexation and potential conflict in British plants in issues of this type, the Canadian solution is infinitely preferable and that, next to 'just cause' in discipline, the seniority provision is the second 'jewel in the crown' of North American dispute resolution. Indeed, Palmer says "few concepts are more important to the union movement" (1983, p. 547), Gersuny and Kaufmann call it "a key facet in the moral economy" of North American unionised workers (1985, p. 463) and Schatz is almost fulsome in calling it:

> "...the greatest accomplishment of the union movement of the 1930's and 1940's, the achievement which justifies its claim to stand beside abolitionism, civil rights and women's rights as one of the great movements for freedom and dignity in American history" (1983, p. 117)

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1. BRITMET is unusual among unionised British plants in containing a specific clause in the collective agreement on the use of seniority. BRITBREW's agreement, for example, contains no such clause. It should be remembered, however, that this is one of the clauses that BRITMET management does not regard as legitimate and has 'agreed to disagree' with the union on.

Is the seniority principle really so great an achievement? Just as in the discussion of discipline, appearances can be deceiving. For it is not merely the seniority principle that must be explored to gain an appreciation of how conflict is generated and resolved in these matters in the two countries. A wider understanding of the joint regulation of the *internal labour market* must be considered in order to competently answer the question.

2. Theoretical Considerations

By now there is a fairly mature theoretical literature on the existence of segmented labour markets. The neoclassical notion of a homogeneous labour market in perfect competition, with little distinction between internal and external realms except for temporary disequilibrium, has been fundamentally shaken. While something like this market may operate among firms at the competitive end of the industrial structure, firms at the monopolistic end are characterised more or less permanently higher earnings, greater job security, as well as "hierarchical job ladders, limited ports of entry, inducements to stay on the job [and] job-specificity of skills" (Stone, 1973, p. 75). The sum total of these inducements constitutes the so-called "internal labour market" (i.l.m.). Many firms and especially unionised ones exhibit i.l.m. characteristics. Indeed, as detailed in Chapter II, all of our four plants have thriving internal labour markets.

Outside of neo-classical approaches, Rubery (1978) suggests, there are two main explanations for the development of i.l.m.'s. . "Dual labour market theories" (Doeringer & Piore, 1971; Berger & Piore, 1980) stress the exigencies of technology and the need for job-specific skills in provoking appropriate employers to safeguard their investment in human capital. "Radical theories" (Stone, 1973; Edwards et al., 1975; Edwards, 1979; Gordon et al., 1982) reject the latter explanation as too directly contingent on exogenous forces and dispute the effect of technology. They stress the internal logic of capitalist control of the labour process and in particular 'divide and rule' strategies.

Rather than leading to a greater and more diverse skilling of the labour force, radical theorists suggest, new technology in the hands of oligopolistic employers led to a *breaking down* of skill differentiation, to homogenisation of labour (their argument either prefiguring or echoing Braverman, 1974). While this made for more efficient control of production, it threatened new problems of industrial conflict by bringing masses of undifferentiated workers together in a position to potentially unite against the employer.

In response, employers contrived intricate systems of job differentiation and complicated mechanisms of advancement to divide workers from each other.

Perhaps the leading article on the historical development of job ladders and seniority is Stone's (1973) discussion of the US steel industry. She claims that by 1910, employers had eliminated the craft unions by a vigorous anti-union campaign and by employing new technology that

> "diminished the skill requirements for virtually all the jobs involved in making steel, so that even the most difficult jobs could be learned quickly. The gulf separating the skilled workers from the unskilled workers became virtually meaningless" (p. 45)

To combat problems of worker motivation, discipline and recombination into industrial unions, says Stone, employers developed wage incentive schemes, welfare policies and elaborate job ladders. Given the actual lack of differentiation, Stone contends, these ladders were mere sleight of hand, "a solution to the 'labor problem' rather than a necessary input for production itself." (p. 49). Moreover, they were successful in turning worker against worker in cutthroat competition, in what Gordon (1972, p. 77) calls a "hierarchy fetishism".

Stone claims that

> "The issues of how work shall be organized, how jobs shall be defined and how workers shall be paid are points of conflict and class struggle between workers and employers. The structures that emerge can only be understood in those terms."

But in her attempt to show management purposiveness, she gives short shrift to the role of unions in developing this hierarchy.

While it is undeniable that seniority has been the key operative concept in the structuring of the unionised North American internal labour market for more than forty years, Stone submits that its consolidation by industrial unions in the late 1930's and onward acted merely to limit favouritism in the competition for jobs in the hierarchy while not seriously altering its nature. She concludes that seniority only

> "helped to rationalize the system by taking it away from the discretion of the foreman and basing it on principles of fairness..."

> "The existence of job ladders has produced continual conflict among steelworkers, as it was *originally intended to do*" (p. 72, emphasis added)

However, Stone gives no strong evidence of this "continual conflict" other than fleeting reference to how the seniority principle has worked against initiatives for positive action for women and blacks.

Burawoy, in his study of a machine shop, does provide some plant-level evidence of competition among workers and goes so far as to contend that job ladders and the rules governing them "[foster] the same competitive individualism that has been normally associated with external labor market" (1979, p. 104). He too asserts that the elaborate structuring of the internal labour market works to assuage class conflict in the factory:

> "Just as mobility mitigates conflict in a hierarchical direction, it tends to generate conflict in a lateral direction, both among operators and between operators and auxiliary workers." (ibid., p. 105)

Yet Burawoy goes somewhat beyond a disturbing tendency among the radical theorists to treat the internal labour market as an out and out shell game fully thought out by management and directed at duping the workers. He admits that the workers are offered a wide array of real choices

> "nor should these choices be belittled by saying that one boring, meaningless job is much the same as any other. The choice gains its significance from the material power it gives to workers in the attempts to resist or protect themselves from managerial domination." (ibid., p. 107-8)

Schatz, in his study of the US electrical engineering industry (1983) also recognises the fundamental duality of the structuring of the internal labour market. Unlike Stone and the others, he does not deny that the achievement of joint regulation in this area was a great victory for trade unions. It well nigh destroyed "the foreman's empire" and gave unions and their members a tremendous boost of confidence, an unquantifiable but tangible foothold in the campaign to challenge managerial prerogative on the shop floor. Yet Schatz does admit there is a darker side:

> "...that victory had its price, since seniority rules dampened workers solidarity at the same time that they fortified the workers' position relative to management. In no area, indeed, were the achievements and legacy of the union movement more contradictory and complicated." (1983, p. 105)

He gives actual evidence of Gordon's "hierarchy fetishism":

> "Workers quickly formed the habit of memorizing not only the year and month but often the day and precise hour as well. Most people would mentally file similar information about their co-workers. When management was reducing the size of the work force, workers would watch for opportunities to 'bump' less senior people and thereby avoid being laid off." (ibid., p. 111)

Yet Schatz too is sketchy on evidence of the ***degree*** of intensity of competition between workers and of the effect of such competition on overall industrial conflict. Like the other US authors, he merely assumes a general reduction in industrial conflict emerging from the structuring of the internal labour market and takes for granted the radical conflictual potential of homogenised labour. Why, for instance, should conflict between workers inevitably reduce the amount of conflict between workers and bosses? Is

conflict some sort of finite resource? While he, like Stone, shows how the seniority system served to ensconce the already existing racism by giving more job security to entrenched whites than to newly-hired blacks, this was precisely because of a historical contingency--the large post-war influx of black workers. There is no evidence that it was seniority itself that divided the workers or that the absence of seniority would have led to less racism. What is more, he admits that all workers, black or white, men or women, supported the seniority system for its obvious advantages (p. 131). In a country like Canada, in which seniority had the same importance but which did not have masses of black workers suddenly entering the industrial workforce, such 'divisive' effects were missing.

In contrast to Stone's stable steel industry, Schatz in his electrical industry study and Gersuny and Kaufmann (1985) in their study of the development of seniority systems in the US auto industry, indicate a somewhat more chaotic internal labour market prior to industrial unionisation. In fact, in most mass-production industries, while job ladders may have had origins in the first three decades of the century, *it was only with the advent of industrial unions and the development of professional personnel departments in the 30's and 40's that job ladders and seniority systems came into their own* (Gordon et al., 1982; Kochan et al., 1986)). Thus, far from being a fait accompli by the time unionisation occurred, in these industries at least, the full flower of the internal labour market came about only by a process of struggle between management and labour. In Britain, the steel industry also had a steep hierarchy but the industry was not marked by the kind of internal divisiveness Stone talks about (Elbaum & Wilkinson, 1979; Hyman & Elger, 1981). All of this calls into question both the generalisability of Stone's steel model and perhaps her interpretation of the data.

In fact most radical theorists pay only lip service to class struggle while saving full deference for managerial purposiveness in pursuing control. While Gordon et al. (1982), do bring unions into the equation, they are merely passive participants. As Rubert says of their view:

> "It is the threat of worker resistance which determines which system of work organisation employers choose. Unions play no active part in the development and organisation of the work process." (Rubery, 1978, p. 22)

Gersuny, in fact, takes an opposite view of seniority to that of the radical theorists. Rather than dividing workers, he says, seniority

> "serves to buttress the bargaining power of unions by curbing competitive and aggressive behavior that sets one worker against another. Instead of fighting among themselves over scarce opportunities and carrying favor with supervisors—behaviour which enhances employers' capacity to divide and rule—employees submit to a hierarchic principle based on institutional age. [This] reinforces the bargaining strength of unions, a strength that would vanish if the shop floor became the scene of cutthroat competition for preferment." (1982, p. 514)

Rubery, also, suggests that the structuring of the internal labour market can enhance the power of labour:

> "...the existence of a structured labour force, where jobs are strictly defined, and workers are not interchangeable, provides a bargaining base for labour against management's attempts to increase productivity and introduce new technology. Changes in job ladders, skill demarcations and the pace of work become areas for bargaining, whereas a homogeneous work force, interchangeable in function would lay itself open not only to competition from the external market but also to further declines in workers' control of production and a continuous undermining of bargaining power. Divisions by custom, rule and status are essential parts of any union's bargaining strategy. Reducing the differentiation between workers and developing job rotation may decrease the monotony of work, increase class cohesiveness, and create opportunities for workers to control the pace and method of work. However, unless they organise to seize these opportunities and to create a bargaining position based on this new organisation of work, the development of a more homogeneous work force may undermine the basis of workers' industrial organisation." (1978, pp. 29-30)

Thus the question of the effect of the structure and the *structuring* of internal labour markets on industrial conflict is not nearly as clear as the American theorists would have us believe.

Indeed, that may be one of the problems. The question has been a remarkably Americo-centric one. This is probably due to the obsession of US observers with two fundamental questions which take on unusual prominence in that country. For the dual labour market theorists: why in an affluent advanced capitalist country have pockets of low wages persisted? For the radical theorists: why is the US working class so quiescent and why has it never been able to formulate a socialist agenda?

Strange as it may seem, little or no tempering of i.l.m. theory has been undertaken by comparing the North American situation to that in other countries. A look beyond the North American continent at methods of structuring the i.l.m. in Europe, for example, or more specifically Britain, might reveal whether suppositions about conflict and the internal labour market were valid and generalisable.

Even British scholars such as Rubery (1978) and Fine (1987) who criticise the segmented labour market theorists fail to explore the differences between the two countries but rather take the American theories at face value. Jacoby acerbically calls

these theories "ex post facto rationalizations of postwar American [industrial relations] practices" (1985, p. 19) that do not explain "why internal labor markets have always existed, if they are so efficient, or why their features are so different in other industrial nations" (ibid., p. 9).

The rest of the chapter attempts to fill in some of the glaring gaps in this discussion by exploring how quite different apparatuses operate to structure the internal labour market in Canada and Britain and considering how they work to generate or resolve conflict both *among workers* and *between workers and employers*.

For this purpose, the structuring of the internal labour market may be divided into three key areas of struggle: a) struggles over the integrity of the i.l.m.; b) struggles over exit from the i.l.m. and c) struggles over movement within the i.l.m.. The first two are struggles over what Atkinson calls "numerical flexibility"; the last is over what he calls "functional flexibility" (1984, p. 28), though as will be seen, sometimes they interlink.

3. Struggles Over the Integrity of the Internal Labour Market

For our purposes the cohort of blue-collar employees enjoying the benefits of the internal labour market enumerated above will be called the *core*. While employers and unions in i.l.m.'s have allegiance to the i.l.m. *in general* for the benefits of loyalty, stability and predictability it delivers, there are still powerful forces eroding its integrity. Employers attempt to gain as much numerical flexibility as possible at its edges both to buffer core employees from employment contractions and to have at least part of the workforce more malleable and susceptible to arbitrary allocation to jobs and tasks (functional flexibility) than the core. Opinions may differ as to how widespread, systematised or strategic the drive for flexibility is (Pollert, 1987) but few can dispute that the impetus exists.

The union's attitude to this erosion is paradoxical as well it might be. On the one hand, union power depends upon the strength, size and degree of integrity of the i.l.m.. So it fights to expand or maintain the strength, size and degree of integrity of the i.l.m.. On the other hand, the provision of a buffer around the edges of the core, while threatening the integrity of the i.l.m., can *at the same time safeguard* integrity of the core. Core workers enjoy their security and perquisites not only because of the secondary labour market outside the firm but also that within it. For every temporary or part time worker

employed by the firm, the job security of the *employed* core worker is increased but the *absolute size* of the core is reduced. This dynamic tension is a permanent characteristic of internal labour markets and is a major source of both collusion and conflict between unions and employers.

The employer has several tools to gain numerical flexibility. One is the use of non-blue-collar employees of the firm to do work of the blue-collar core. Such non-blue-collar workers may come from core management (eg. foremen) or from core clerical/professional (eg. engineers, work study men). This option is only selectively used as such labour is usually more expensive than the blue-collar core. The second and more important tool is the construction of a *peripheral labour market within the employer's purview* (the 'periphery') consisting of workers to whom some or all of the i.l.m. perquisites do not apply. The periphery may consist of non-permanent (temporary, part-time and casual) *employees* of the employer or they may be employees of another, contracted employer. The contract workers may do work on site ("contracted-in") or off site ("contracted out").

3.1 The Canadian Plants

The key concept in the integrity of the i.l.m. in the unionised Canadian workplace is that of *bargaining unit*:

> "This jurisdiction...forms the basis for the union's power and circumscribes the area where the collective agreement operates. Consequently, its preservation and, indeed, extension, is of extreme importance to the relevant union" (Palmer, 1983, p. 429)

In manufacturing plants, labour relations boards generally certify unions as sole and exclusive bargaining agents for blue collar bargaining units with descriptions quite similar to that at CANMET:

> "all hourly-paid employees of the Company at [the address of the workplace], save and except watchmen, guards, ...summer students, office staff, foremen and those above the rank of foremen".

This bargaining unit description is then transposed into the collective agreement as the so-called 'scope' clause and thereby binds the parties[1]. In defining what jobs properly lie

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1. The parties are free, by mutual agreement, to alter the bargaining unit description after certification to comprise a different 'negotiating unit', but this is seldom done.

within scope, arbitrators may also examine classifications, schedules and, to a limited extent[3], past practice (Palmer, 1983, p. 431).

While the union has jurisdiction over employees in the bargaining unit, the scope clause is not meant to imply any proprietary rights in those jobs by core employees. Temporary, part-time and casual employees, though performing the same work as core employees, are not included in bargaining units by labour relations boards[4] and accordingly seldom appear in collective agreement scope clauses unless the union is quite powerful and these employees form an important part of the workforce. Thus the union usually has no jurisdiction over them. Where such employees *are* included (such as at CANBREW), their rights and privileges vis a vis core employees are usually drastically curtailed.

Even a determination that a task falls clearly within the type of work normally performed in the bargaining unit does not imply job ownership:

> "To the contrary, in the absence of specific language in the collective agreement providing otherwise, it is now universally accepted that bargaining unit work may be subcontracted to non-employees, provided that the subcontracting is genuine and not done in bad faith." (Brown & Beatty, 1984, p. 215-6)

Arbitrators (and sometimes labour relations boards, where they retain some jurisdiction in these matters) may occasionally disallow the subcontracting of tasks from the bargaining unit where the new workers are really still employees of the primary employer or are under its effective control[5], especially in cases of *contracting-in*. However, aside from these rare instances, and especially where the contracting out is "for sound business reasons...

> "...subcontracting will be upheld even to the extent of wholly displacing the bargaining unit, in the absence of specific language in the agreement to the contrary. Indeed, even where the agreement expressly limits the ability of an employer to contract out, this may not apply to emergency situations where bargaining-unit employees are unavailable to do the work." (ibid., p. 218)

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3. See Chapter V for the strict limitations on the use of past practice in arbitral jurisprudence.

4. While the labour relations board in the province housing our Canadian plants and most other provinces do not include temporary, part-time and casual employees in primary bargaining units, this practice is not common to all provinces. A few allow part-time employees into the bargaining unit.

5. See *Re. City of Kelowna* 25 L.A.C. (2d) 344 (Larson, 1980) and *Re Kennedy Lodge Nursing Home and Service Employees' Union, Local 204* Ontario Labour Relations Board Reports, (date unknown)

So contentious is the issue of contracting and so 'settled' this area of arbitral jurisprudence, that unions seeking adjustment here will find little sympathy from arbitrators. As a leading case says:

> "The wide notoriety given to labour's protests against this practice, the almost equally wide notoriety, especially amongst *experienced* labour and management representatives, of the overwhelming trend of [arbitration] decisions, must mean that there was known to [employer and union] at the time they negotiated the collective agreement the strong probability that an arbitrator would not find any implicit limitation on management's right to contract out"[6].

Yet despite this arbitral promotion joint regulation, the use of peripheral workers is one of the areas in which Canadian employers most obsessively pursue unilateral regulation[7]. Thus unless the union is able to foresee future problems of subcontracting, convince its members that the issue is crucial, overcome vigorous employer resistance at the bargaining table and succeed in negotiating a restriction that suitably covers the contingencies, it will be entirely helpless to prevent contracting out once the collective agreement is signed[8].

It is worthwhile looking briefly at the struggle over i.l.m. integrity at CANBREW. For while the collective agreement contains more than average *restriction* on managerial prerogative in this area, there is also more than the average *erosion* at the edges of the i.l.m.

Peripheral Employees of the Firm. As mentioned in Chapter II, the periphery used by this employer is extensive, in fact distinctively similar to the famed Japanese model (Dore, 1973, p. 38). Between 15 and 50% of the work force (depending on the season and level of demand) is made up of temporary workers, mostly in the packaging and staging areas. While there is no legal obligation for the employer to include them in the bargaining unit, the union has succeeded in negotiating them in thereby gaining some control over their

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6. *Re Russelstool* 17 L.A.C. 253 at 256, (Arthurs, 1966).

7. Of Canadian collective agreements covering over 500 employees, more than half have no restriction on contracting-out (Kumar et al., 1986, p. 394). In the entire population of collective agreements, the proportion would doubtless be far less.

8. A leading case on contracting out/in is *Re Kennedy Lodge Nursing Home* 28 L.A.C. (2d) 398 (Brunner, 1980). The union's presentation was one of the most sophisticated ever made on the question, applying, among other arguments, the issues of 'fairness' and 'estoppel'. It argued that by not informing the union at expiry negotiations of the intention to contract part of its operation, the employer had breached its obligation of good faith and led the union out on a limb which was later cut off. Had the union been informed of the employer's intention before negotiations, it could have used whatever industrial muscle it had to legally resist the move. Caught by surprise in mid-agreement, it had no such legal opportunity. Despite these appealing arguments, the arbitrator dismissed the grievance. This case is yet another demonstration of the severe limitations of arbitration as adjustment and as a substitute for the right to strike.

terms and conditions and does receive checked-off dues for them. But this has been achieved at the cost of institutionalising their use, enshrining their second-class status and agreeing that they

> "shall have no rights, benefits or access to the grievance/arbitration provisions under the Collective Agreement except where specifically stated".

Hired for periods of no longer than 132 days, they are paid just over half the rate of permanent employees, receive no benefits other than specified in employment standards legislation and cannot bid on overtime unless core workers have refused. While the 'best' may at the end of this period be taken on as probationary and then as permanent employees, no more than about 5% have made the transition. They can be and are dismissed for offences which might warrant a verbal or written warning to core employees. Compared to the care that must be exercised in successfully disciplining core employees (see the previous chapter), supervisors are able to exercise a great amount of power over them. Given their precarious position, these workers tend to be docile and considerably more productive in low-skill jobs than core employees[9]. Another peripheral group are probationary employees (the period is 90 days) who have access to grievance and arbitration *for dismissal and non-payment of wages only* and to whose dismissal the 'just cause' test does not apply[10].

The union's attitude toward periphery workers is highly ambivalent. On the one hand, union officials admit that they act as a buffer against layoff of core workers and the union plays an active part in negotiating their relative disadvantage. On the other hand union officials are uneasy collaborating in the "exploitation" of this group while collecting its dues. They cannot avoid the profound suspicion that as the periphery grows, the core shrinks. Through a combination of good luck and good management, CANBREW has built up the periphery as the capacity of the plant grew. Thus the worst fears of an absolute

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9. At one of CANBREW's sister plants, union and management, in response to union worries about the erosion of the bargaining unit, had devised the concept of 'super temp' i.e. temporary employees with better wages than ordinary temps, some benefits, some rights to grieve, *preferred* status for permanent openings. This is an example of the internal labour market becoming even more segmented, with the institutionalisation of several 'classes' of worker.

10. The relevant letter of agreement clause reads: "On a discharge case, the standard cause for arbitral review of the Company has acted [sic] in an arbitrary or discriminatory manner or in bad faith. It is agreed that the usual 'just cause' test shall not apply".

decline in the core have not been realised. Yet in proportional terms the core *has* decreased and continues to decrease.

There is also a legitimate fear that the more temps that management can direct at will and the more flexibility this allows, the more it erodes bargained rights and union's potential power to resist or regulate changes. This is especially salient in work areas with high levels of periphery staffing. Complaints about working conditions can only be aired as grievances. But peripheral workers cannot formally file grievances and it is questionable whether the union could successfully pursue a "policy" grievance on their behalf to arbitration. A particularly apt example of this awkwardness occurred when a group of temporary workers felt aggrieved over an abrupt shift change. They submitted a formal grievance but each deliberately garbled his signature to avoid reprisal. The convenor, impatient with their diffidence, withdrew the grievance after the first step.

Theories that anticipate only rivalry and disharmony between workers divided by i.l.m. structures are far too simplistic. Because peripheral workers work alongside core workers, friendships and solidarity inevitably evolve. Several years previous to the study, CANBREW workers held (yet another ultimately unsuccessful) wildcat strike to protest the sacking of a peripheral worker they felt had been unfairly evaluated precisely because of the lack of access to the grievance procedure. This illustrates that *human* boundaries between the core and periphery are much harder to draw than *institutional* boundaries and that far from reading off labour quiescence from worker division, increased conflict can be a result. When core workers work alongside peripheral workers, bonds and allegiances inevitably form. While there will be discrimination, there will also be commiseration. A personnel manager admits that "the downside of having so many temps is lower morale among union employees".

Contracting In/Out. Unlike most Canadian collective agreements, that at CANBREW contains *some* restriction on the contracting of work, but only in the transportation unit:

> The Company agrees not to use outside trucks for any delivery which is normally made by the Company's trucks and while an employee on the seniority list (who is qualified to drive) is on lay-off.

But a look behind this clause reveals that the employer regularly contracts out at least 20% of its transportation requirements to common carriers. Says a transportation manager: "We size our fleet to the *lowest* period and the rest goes to outside firms". The key in circumventing the *spirit* but not the *letter* of this clause is the preservation of the

status quo ie. not allowing the layoff of a driver to result directly in contracting out. Here is another example of expanding capacity and the status quo working in favour of the employer.

As might be expected, contracting out and in is quite common for work claimed by both equipment and vehicle mechanics. This is especially true with specialist repair and capital projects. A common employer practice was to allow employees to assist in the performance of contracted-in work. Yet when the union claimed 'ownership' of this work, as seen in Chapter V, the employer put the union on notice that it intended to 'claw back' the privilege and henceforth distribute it at discretion.

Thus even the relatively powerful union at CANBREW is highly constrained in its ability to resist the erosion of the integrity of its bargaining unit. To a limited extent, the vigour of its resistance is tempered by acknowledgement of the advantages of the periphery. Yet there is little or no evidence that these advantages are instrumental in permanently reducing conflict.

Though there is little use of peripheral workers at CANMET, several incidents bear attention. The Company contracted-in a janitor, not under its direct control, to clean toilets on weekends. Discovering this, the convenor became angry, threatened the janitor and raised a fuss with the employer. While an arbitrator would have upheld the company's prerogative here, the company acquiesced and agreed to use one of its own employees in the future. In another case, the Company employed a truck driver under its direct control but purposely and blatantly neglected to include him in the bargaining unit where he properly belonged (ie. did not deduct union dues for him and did not feel bound by the collective agreement in regard to his conditions of employment). Arbitral jurisprudence indicates the union could have *successfully* grieved this affront because the action was in bad faith and served no discernable legitimate business purpose. Yet at the time of the study, the union had not come around to filing a grievance. This is yet another example of the phenomenon stressed earlier about the Canadian system ie. a certain amount of protection is institutionally available and need not be created by the union; but the union must have a degree of vigilance, initiative and self-discipline to claim that protection. The CANMET union is neither systematic nor consistent nor predictable in claiming those rights available to protect the integrity of its bargaining unit. If

confronted with an affront, it may explode in response. Yet it may allow a more serious and combatable affront to go unchallenged.

3.2 The British Plants

Unlike Canada, no agency external to the parties either delimits the borders of the core blue-collar work force or purports to regulate the degree of their erosion. Nor do collective agreements offer much guidance. Much of the regulation is left to the day-to-day commerce between the parties. Thus the union need not commit itself in principle to the use of peripheral workers in order to achieve some say in their use but rather retains the ability to react on a contingent basis. This means that the employer at one and the same time has more potential freedom but must be more circumspect in its introduction and use of such workers.

Other than a strong union general commitment against it, the use of peripheral workers at BRITBREW is not extensive for two reasons. The first involves unskilled or semi-skilled departments such as transportation and staging where the use of temporary workers might provide flexibility. These work groups are strongly solidaristic and would resist the use of peripheral workers in any case. But a large proportion of earnings in these areas is based on payment by results and in order to optimise p.b.r. earnings, it is in the interests of these groups to help the employer adjust the labour force quickly to changes in external demand. If demand goes down temporarily, the employer carries unneeded core employees. If demand goes down permanently, these employees and the union will help in labour shedding (to be discussed presently below under 'exit from the i.l.m) so that p.b.r. earnings are not diluted. If demand goes up temporarily, the workers will simply work more hours and make more bonus. If demand goes up permanently, the workers and the union will cooperate in taking up labour (because earnings are so good, there is an internal waiting list) so that p.b.r. earnings are spread to a greater group without dilution. Manning and effort bargaining will be dealt with more thoroughly in the next chapter but they are important here for the following reason: Because there is so much to gain (and so much to lose), it is the workers and the union themselves who act, through a continual round of negotiation, to provide all the numerical flexibility the employer needs to cope.

The second reason involves high skill departments such as maintenance, where contracting-out might provide added flexibility. Here p.b.r. earnings are not so important because 'results' are harder to quantify. Management deliberately overmans this group, giving it some flexibility to respond to emergencies. Yet these workers have resisted much of what contracting occurs, especially when they are not consulted. Sometimes they will 'black' the machinery constructed or repaired by the contractors. In serious cases, they may down tools until the contractors leave the site. In response to such actions, a joint agreement has been drawn up whereby the company agrees to inform the union of the contractors it proposes to use and the union is able to agree or disagree. While this process does not always result in agreement, it does reduce conflict. What is more, the activities of the engineers invite some resentment from other workers. This resentment is summarised by the convenor who is not hesitant to suggest that the engineers

> "are their own worst enemies. They have no right to complain...They're among the best paid in the plant [though not as high as draymen or staging workers]...They've been successful at resisting the reductions the company would like to make and are now topheavy compared to most other breweries. But they also refuse to cooperate in innovation so they're almost inviting contracting in"

Thus, rather than promote internal solidarity, the ability of some work groups to wage sectional struggles can promote a certain amount of disunity.

The use of peripheral workers is more extensive at BRITMET, where up to 16% of the work force can be classified as 'temporary'. Yet these employees are not nearly as segregated and disadvantaged vis a vis the core as those at CANBREW. They receive 90% of the pay of the lowest permanent classification. While the BRITMET union is not aggressive in fighting discipline at the best of times, there is no outright impediment to access to procedure for these workers as in Canada. Where once these employees retained temporary status for 18 months, the union has managed to reduce this to 12 months and finally 9 months, whereupon they advance to permanent salary and admission to the sick leave plan. After 12 months, they are admitted to the pension plan. What is more important, however, is that all of them, almost without exception, have been taken on as permanent employees. Perhaps more efficacious in permitting numerical flexibility, however, is the tremendous amount of overtime worked by core employees.

3.3 Summary

In struggles over the integrity of the i.l.m., a greater use of peripheral workers, a greater intensity of differentiation between classes of workers and a greater institutional leeway for employers to so differentiate has been observed in Canada. Yet this institutional division does not necessarily result in a corresponding degree of interest differentiation among workers. In Britain, on the other hand, some workers may be divided from others by the very intensity of their efforts to maintain their own sectional internal labour market. And unlike their Canadian counterparts, strong work groups have powerful tools to resist the erosion of the internal labour market where they wish to do so. But unlike Atkinson's (1984) simple model of numerical flexibility invariably undermining the power of core workers, it has been seen at CANBREW in many instances that not only is numerical flexibility negotiated but often works in the interests of these core groups. While it is important conceptually to consider internal labour market questions separately, in the British workplace, these can only be fully understood in the context of wider shop floor politics.

While it is difficult to predict resulting levels of management-labour conflict, it cannot be read off that Canadian workers are any more acquiescent toward employers than British workers on this issue. Moreover, there is evidence of greater diversionary intra-union conflict in Britain which may act to dampen collective conflict in the very way predicted by the radical theorists.

4. Struggles Over Exit from the Internal Labour Market

In achieving numerical flexibility, the other side of the coin to expanding the periphery is *contracting the core*. If the employer is fortunate enough to be doing this over a long enough time period, or while expanding capacity (as CANBREW has been), then redeployment within the workplace[11] or attrition, ie. reduction by *ordinary* exit, can suffice without the necessity of more provocative measures. Often, however, the employer is not so lucky and core employees must be selected for *extraordinary* exit.

Extraordinary exit can be subdivided by its permanence: short-term and indeterminate exit, which can be called 'layoff'; permanent exit which can be called

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11. Relocation can be a source of aggravation as witnessed at the beginning of this chapter, but not nearly as much as redundancy.

'redundancy'[12]. A further subdivision can be made by size into 'mass exit' (where a large proportion of the workforce is involved) and 'limited exit' (where small groups of workers are involved).

Extraordinary exit inevitably involves the picking of 'losers' and 'winners' and as such is one of the most contentious and 'political' of union-management issues. Layoffs and redundancies in both Canada and Britain have resulted in strikes and plant occupations (Hardy, 1985; Grayson, 1985; White, 1987). Unlike struggles over the integrity of the i.l.m., the consequences here for the union can be starker and less ambiguous. These are not marginal adjustments but intensely human dramas and those selected to leave may well respond with despair, anger and resentment. Those not selected may feel relief and complacency, but often also have strong feelings of solidarity with the unfortunate ones, of "there but for the grace of God...", and about the legitimacy of industrial action. For these reasons, it is not prudent for employers, whether unionised or not, to regulate extraordinary exit unilaterally or arbitrarily[13]. It is thus one of the issues most disposed to joint and systematic regulation.

Given the contentiousness of the issue, our test of joint regulation and the political apparatuses employed will be the extent to which they 'depoliticise' the issue of extraordinary exit, either by defusing conflict itself or channeling it away from the labour-management interface.

4.1 The Canadian Plants

The conflictual potential of this issue in Canada is underlined in reviews of arbitral jurisprudence:

> "Aside from discharge, no concept in collective bargaining has a more emotional connotation than lay-off. To earlier generations it brought visions of the dole. To present day workers, especially those in their later years, the possibility of no further gainful, worthwhile employment must be in the back of their minds." (Palmer, 1983, p. 558)

By far the most common method of dealing with extraordinary exit in Canada is seniority. Literally, the rule is 'last in, first out'. At first glance, it is simple, providing two paramount virtues—equity and predictablity. 'Bumping' is the practice to seniority's theory. Jobs, not employees, are what the employer eliminates (for otherwise the

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12. These terms are an amalgam of the colloquial terms actually used in the two countries.

13. For this reason, the Employment Protection Act, S. 99, 1975 obliges companies to consult with whatever trade unions represent their employees, no matter what level of collective bargaining exists.

dismissal would be disciplinary). So though the job of a senior person may be eliminated or claimed by someone more senior, he merely 'bumps' an employee with less seniority in order to retain employment.

But the seniority rule is never that simple[14]. It is nearly *always* tempered by the need of the employer for minimum disruption to its operation. This requirement is met by collective agreements in several ways: First, they specify in some way that qualifications of the remaining workforce are adequate to the tasks at hand. Second, they restrict the application of seniority in the first instance to the department and only later to the plant as a whole. Third, they limit the number of bumping iterations allowable. Most struggles over exit from the i.l.m. arise here, from the tension between the principle of seniority and the practicality of managerial efficiency.

The question of seniority versus qualifications is the major battleground, both here and in promotion. Having made the exception in the last chapter, we return to the rule: simply said, the scope of arbitral review of managerial prerogative is exceedingly small.

> "...it has been generally accepted that the standard of arbitral review of any managerial decision which includes an assessment of the abilities of various employees is less rigorous than in the case of disciplinary decisions affected by the employer. On this understanding, it has been said that unless there is evidence of discrimination, bad faith, (as for example, bias in a selection committee) or the employer exercised its judgment unreasonably, arbitrators should be loath to interfere with management's decision." (Brown & Beatty, 1984, p. 248)

Yet, remembering that the onus in seniority cases is on the union, even proving bad faith is not easy:

> "To sustain a challenge that the employer's decision was arbitrary or discriminatory, however, is likely to prove much more difficult. In such circumstances, the employee is generally required to prove either that the employer did not apply its standards consistently, that it made unfair or injurious distinctions, that it showed an unjustified favouritism to one employee, or that it had exhibited an undue prejudice against the grievor" (ibid., p. 308)

When CANMET laid off almost 100 employees in the economic slump of 1982, a large (in the context of this plant) flurry of grievances claiming "layoff out of seniority" resulted. With characteristic diffidence, the union took only one of them to arbitration as a sort of test case. It is a good example of the limitations the union can face in translating the *principle* of seniority into the *actuality* of job preservation.

The collective agreement provides that:

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14. Of Canadian collective agreements covering 500 employees or more, only 17.6% have lay off clauses specifying seniority as the only criterion (Kumar et al., 1986, p. 345). In the entire population of collective agreements, the proportion would doubtless be far less.

> ...whenever a decrease in the working force becomes necessary...an employee who has acquired seniority shall exercise his displacement rights [by first displacing junior employees in his department and then]...displac[ing] a more junior employee on the Plant-wide seniority list...whose job he is qualified to perform"

It also contains a provision common to most collective agreements, that seniority applies only:

> ...where skill, knowledge, ability and physical fitness are relatively equal.

The grievor was laid off along with 14 other employees and claimed that there were at least four employees with less seniority still working whose jobs he could perform. All of these employees were in labour grades higher than his own. Of three jobs, the grievor could perform at least some aspects. Of a fourth, he could perform all aspects if the job content were arranged in a particular way.

While the arbitrator rejected the company's argument that no employee could 'bump up' to a higher rated position, he ruled a) that in order to be "qualified", the grievor would have to prove a level of performance in the job 'relatively equal' to the incumbents, which he could not, b) that the agreement did not require the employer to train a senior employee to displace a junior employee (the Company had claimed, to union incredulity, that training could take from six weeks to three months, depending on the job) and c) that the arbitrator had no jurisdiction to "second guess" the company's organisation of production:

> "...the Company is not required to rearrange the job content of any established position so as to provide work for a senior employee"

The grievance was dismissed.

Upon receiving the award, the company's lawyer evaluated the case in a letter to the personnel manager. Like several internal communications viewed earlier, his interpretation is perhaps even more interesting than the award itself in that it indicates how management's thinking would come to be conditioned on the issue:

> "...therefore it is not only necessary that a candidate be 'qualified' to do a given job; it is also necessary that a candidate be 'relatively equal' to the incumbent in the job he seeks to fill. *I would expect that that would very seldom, if ever be the case.*
>
> "...I hope this award clarifies your lay-off procedure *and gives you the flexibility you need in future similar situations*" (emphasis added)

That the lawyer was confident of the unlikelihood of a grievor meeting the test says volumes about how collective agreements really work. Although it may not necessarily have been the best test case, the message to the workers and the union was clear: "don't

bother using arbitration to fight layoff out of seniority". With the award issued more than four months after the layoff, the workers involved were, in any case, long gone[15]. In fact, although layoffs continued, no further arbitrations were attempted. Is this a sign that the issue was resolved and workers were satisfied with the result? Not likely. Layoff without compensation and in the middle of a recession is a painful thing. At its best, seniority merely apportions the pain and (more importantly) *is seen* to apportion the pain fairly. When the expectation and the appearance of fairness is shattered by the exigencies of management interests, then the pain and humiliation may well be more acute, not only to the one leaving (who may be recalled to bring his sense of injury back[16]) but to those left and the union that represents them as well.

There is no evidence that this employer made any attempt to *deliberately* flout seniority or ignore relevant data on employee qualifications in these or other layoffs. Had it demonstrably done so, an arbitrator would have corrected the error (if the union were vigilant enough to pursue the case). *In general* employees *are* selected for exit in reverse order of service. But whenever there is any clash between seniority and 'legitimate' business interests, the latter automatically prevails. This can and often does so seriously disrupt the exercise of seniority that, especially to the individuals concerned, it is rendered meaningless.

Two interconnected questions inevitably arise: is the 'legitimacy' of business interests an absolute or a relative concept; and what does the employer owe the senior employee? In answer to the first, while 'legitimacy' is clearly a relative concept in normal parlance, and also within British industrial relations (Armstrong et al., 1981, pp. 167-8[17]), it becomes an absolute concept when attached to the words 'business interest' in Canadian arbitral consideration. By definition, 'illegitimate' business interest is synonymous with

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15. This arbitration was quick by usual standards. Goldblatt (1974) indicates a median wait from grievance to award of 200 to 224 days in non-disciplinary arbitrations.

16. In fact, since seniority does not accumulate during a layoff, those employees who were recalled have nursed resentment over this issue for years. According to the convenor, the issue of their lost seniority is raised at every set of interests negotiations. Of Canadian collective agreements covering 500 employees or more, 29.6% do not specify the accumulation of seniority during layoff (Kumar et al., 1986, p. 345).

17. "...the subject matter of industrial relations conventionally begins only when ... generalised management pressure encounters resistance from the workers mediated by *their* sense of legitimacy. On issues within the latter zone, and to the extent that power is articulated through the available legitimising resources, there normally exists something approaching a balance of power" (Armstrong et al., 1981, p. 168).

arbitrariness, discrimination and bad faith, in other words *no* business interest at all. Practically then, the employer must show *only* that its interest is related to production and not related to getting rid of the employee out of seniority order. The point is proven by the answer to the second question. In terms of order of layoff, the employer owes the senior employee nothing that would in any way discomfit its production process. It is evident from the arbitral jurisprudence (Palmer, 1983, p. 516-518) that barring explicit language in the collective agreement on compulsory training periods (and these are rare), the employer is under no obligation to offer the employee training in a new job. It is also evident from the above CANMET case that the employer is under no obligation to alter its work process one iota to accommodate the senior employee, even if such alteration would have no discernable effect upon productivity or profitability. Any attempt to use a grievance on job allocation as a back door into job control is thus blocked. As will be seen in the British plants, managerial discomfiture is not in itself a bar to issue settlement in that country.

When the North American seniority system works well , it is under conditions of expanding industrial capacity, where extraordinary exit is limited to short-term layoffs as firms retool or make marginal changes in manpower. Junior employees are young enough to find other jobs and may well be recalled in any case when production picks up. But when expansion slows, job hierarchies rigidify and it becomes more difficult for new employees to find a foothold to avoid being bumped (see also Herding, 1972, pp. 24-28). On the other hand, the more seniority is restricted to separate departments and the more bumping iterations are limited in number, then the more employees with accumulated seniority may find themselves at risk as in the CANMET case described above. To be sure, the *most* senior employees (over 30 years seniority) are reasonably well protected in the Canadian system, short of total closure. Not only do they have a great deal of seniority. In most cases, they also have a vast reservoir of skills that would render them able to pass most tests of *qualifications*. But as exit becomes more widespread and the younger group disappears, it is the group *just below them* (with 10 to 25 years' seniority) that is particularly imperilled as they start to be bumped by older workers and as their age and enterprise-specific skills render them unattractive for employment outside the i.l.m..

Statutory protections across Canada against job loss for senior workers are meagre, providing only compulsory periods (to a maximum of 16 weeks in mass exit and much less in individual layoff) of notice of termination (Kumar et al., 1986, p. 260-61). Provided the employer gives such notice, no payments are required. Extra-statutory redundancy payments are usually non-existent or niggardly[18] (ibid., p. 389-91). Some company pension plans make provision for early retirement but most of these impose swingeing reductions in benefits. CANMET, for example, though part of a large transnational company, is little different than other employers in its industry in offering no supplementary unemployment benefits, redundancy payments or special early retirement schemes.

Only the very wealthiest employers with strong unions, such as automobile manufacturers, offer such perquisites. Breweries are among these. For redundant workers over 60 only, CANBREW has an early retirement scheme which pays up to about 1/3 of the employee's earnings per year (depending upon years of service) until retirement age. For redundant workers under 60, a one-time lump sum payment from the guaranteed wage scheme of up to about 3/4 of one year's pay is available. These are excellent benefits by Canadian standards. But compared to similar payments at the British brewery (where lump sums can amount to 2 1/2 times a year's pay in addition to monthly payments), they are ungenerous. Even the British aluminium plant offers better redundancy payments than the Canadian brewery[19]!

But regardless of the level of payments offered, voluntary redundancy of older CANBREW workers or older workers in any Canadian workplace is simply not part of the *culture* of structuring the internal labour market. And because the inverse seniority provisions of the collective agreement are so powerful, older workers cannot be forced to leave.

This has created a major industrial relations problem at CANBREW, what might be called 'the middle-age squeeze'. Because of the lack of growth in the product market and

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18. Of Canadian collective agreements covering 500 or more employees in 1986, only about half had severance payment schemes for layoff. Only 8.2% offered two weeks or more per year of service (Kumar et al., 1986, p. 390). In the entire population of collective agreements, the proportion would doubtless be far less.

19. Where CANBREW does excel most is in paying supplementary benefits to employees on *short-term* layoff. Employees with 10 or more years' service will receive up to 78 weeks pay at about 70% of normal earnings

the existence of the peripheral work force[20], few young workers enter the CANBREW core (only about 11% are under 35 years of age). Thus the median worker age is rising. But because it is a relatively new plant, there are few workers over 55 (11%). The vast majority (78%) are between 35 and 55 years of age with about 60% between 40 and 55. The threat to employment presented by further reduction in demand for beer and the possible introduction of cans has this middle-aged group extremely worried. Even if all workers over 55 took early retirement, the middle-age group would be squeezed, but the voluntary redundancy of older workers would relieve at least some of the pressure.

On top of any other problems mentioned in earlier chapters about the reasons for militancy among CANBREW workers, the middle-age squeeze cannot be avoided as a prime factor in industrial conflict in this plant. This large group of disaffected workers was one of the main reasons that CANBREW workers were practically the only ones in the expiry negotiations most recent to the study to reject a revolutionary (by Canadian standards) "technological change" clause.

This clause provides that in any technological change occasioning ten or more redundancies, the company will give the union 60 day's notice of the consequences in manpower and proceed to:

> ...canvass [eligible] employees...as to their willingness to elect special early retirement...and if they choose to take early retirement...[they] will receive a Technological Change Bonus (TCB).

If not enough eligible employees elect to take early retirement, then selection for exit will be by the usual means and those selected may, in addition to the separation pay mentioned above, be eligible for an extra eight weeks' benefit. Yet neither this nor the TCB brings the redundancy payment of either group within the range available at either British plant (both proportional to average income and in absolute terms). Despite the CANBREW union staff officer's remonstrance that the deal was among the best in the entire country, the middle-aged majority of CANBREW workers voted against the settlement and shut the entire industry down. High among their fears of mass exit was the improbability of older workers 'doing the honourable thing'.

CANBREW is an exception that helps to prove the rule. If its redundancy arrangements *which are so obviously superior to the Canadian norm* do so little to

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20. Note that challenges to the integrity of the i.l.m. work together with problems of exit from the i.l.m. to exacerbate industrial conflict in Canada. In Britain, they work in the other direction.

alleviate conflict in this area, it can easily be imagined that in most other unionised Canadian workplaces, the system of seniority has actually very little depoliticising potential. Indeed it has very high conflictual potential in anything other than limited exit[21].

4.2 The British Plants

The British model for effecting extraordinary exit, especially in unionised plants such as ours, is very different than in Canada. The *most* popular measures by far are voluntary redundancy and early retirement, followed at some remove by compulsory redundancy (Daniel & Stilgoe, 1978; Booth, 1987; Turnbull, 1988). When compulsory redundancy *is* used, seniority (or 'LIFO' ie. last-in, first-out) is employed as a criterion in only about half the instances (Booth, 1987, p. 406). Employers consider seniority a crude and inefficient means of forceably shedding workers (Turnbull, 1988, p. 16) and even trade unions, though seniority provisions do appear in many of their collective agreements, do not consider it of primary importance in managing extraordinary exit (Booth, 1987, p. 405-6). Thus, while seniority is *one* method among others of handling exit, unlike North America, it is not *the* method, nor even an important one.

Before 1965, redundancy was met by a mixture outright union resistance (Salmon, 1988) and seniority. But the Redundancy Payments Act in that year marked a distinct change. Following on from several pace-setting redundancy agreements[22], the Act was introduced at a time of high employment and was intended to enhance labour mobility from dying to expanding industries. Lump sum statutory payments were provided to workers who left voluntarily. While the payments were not large[23], many employers began to 'top up' the amounts with extra statutory redundancy payments (ESRP's) so as to

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21. Several Canadian provinces eg Manitoba, British Columbia and the federal jurisdiction have recently passed legislation allowing collective agreements to be opened in mid-term for negotiation on technological change. However, the union cannot strike on the issues raised. In some cases, an interests arbitrator can be appointed. Thus far, the use of such provisions has been minimal. The presence of technological change clauses in collective agreements is minimal too. Of Canadian collective agreements covering over 500 employees, only about 5% specify notice of layoff due to technological change or contain a 'tech change' reopener clause (Kumar et al., 1986, pp. 382 & 391.

22. Information obtained in an interview with Harry Urwin, former top official with the Transport and General Workers Union. See also Booth, 1987, p. 404.

23. In 1986, statutory redundancy payments provided 1.5 week's pay per year of service to a maximum of 20 years service to workers over 40 (Booth, 1987, p. 402).

provide added incentives for certain target groups of workers to leave[24]. Daniel and Stilgoe found that in about half of the firms offering ESRP's:

> "schemes...[were] commonly designed to attract older workers to volunteer, and secondly to attract the less fit and those with poorer health records" (1978, p. 18)

While not designed for a period of high unemployment, and prophesied by some to be a disincentive to labour shedding, redundancy payments proved, in hindsight, to be remarkably well-suited to the recessionary exigencies of the 1980's. In fact, Atkinson indicates that from 1981 to 1986:

> "the number of men aged between 55 and 64 who retired early more than doubled...Almost half of all the men aged between 60 and 64 are currently in early retirement." (1986, p. 22)

Not only did statutory and extra-statutory redundancy payments relegate seniority to a little more than footnote in British industrial relations, they were extremely successful in depoliticising the issue of extraordinary exit, by "undermining individual and therefore collective resistance to redundancy" (Turnbull, 1988, p. 10)[25]. All of the other authors cited above and many others (cited ibid., p. 24, ff. 11) echo this view strongly.

Though some trade union leaders would like to believe they were at least partly responsible for the development of what is, at best, a humanitarian system of industrial adjustment (but at worst takes the issue of job retention and creation off the agenda entirely), the truth is that trade unions have been swept along by the tide of events:

> "Whatever their initial feelings might have been, trade unions soon found themselves to be powerless in the face of the growth of voluntary redundancy schemes. If they tried to challenge and oppose the need for redundancies, they were undermined by individual members eager to accept voluntary redundancy terms. In consequence, caught in a pincer movement between managerial strategy and individualist opportunism upon the part of members, trade union representatives had no alternative but to adopt two stances in relation to voluntary redundancy. The first was to insist upon, 'No redundancy other than voluntary redundancy'. The second was to bargain over the inducements to volunteer and, in particular, to try to bid up the size of the employer's supplement to the statutory minimum payments." (Daniel, 1985, p. 74)

Unlike their Canadian counterparts, who oppose it, British trade unionists remain as ambivalent toward extraordinary exit as both groups are toward erosion of the integrity of the i.l.m.. Provisions in the Redundancy Payments Act and the subsequent Employment Protection Act to compel employers to involve unions in redundancy

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24. According to Booth (1987, p. 488), the six top-paying industries had payments ranging from 139% to 245% of the statutory payments (which amounts to between 80% and 170% of a year's salary).

25. While the Employment Protection Act does provide some protection against 'unfair redundancy', this is a very minor part of its operation compared to unfair dismissal for disciplinary reasons. Moreover, indications are that tribunals are not overly exacting in their review of employers' activities in this regard (Anderman, 1985, p. 424-7) or that employers are inhibited in any significant way by the Act (Daniel & Stilgoe, 1978, pp. 17-8)

discussions served to bolster the appearance of union cooperation in labour shedding exercises.

But what is even more remarkable than the usurpation of union initiative and the depoliticisation of the issue, is the way that the phenomenon has acted to enhance employer job control. Turnbull (1988) shows that the system acts to increase both numerical and functional flexibility. Like the concept of "technological change" which Daniel (1987) has shown acts as almost a talisman upon which aquiescence to change can be conjured, the mere phrase "voluntary redundancy" is often enough to induce compliance *not only to redundancy but to the attendant changes in working practices which under other circumstances workers might oppose fiercely.* Even the resistance of a radical union leadership ideologically committed to fight redundancies is seldom able to break the spell (Wood & Dey, 1983).

A particularly good example of the above points was the contraction in the casting unit at BRITMET, which involved the introduction of *both* redundancy *and* new technology. The new continuous casting machinery and other equipment promised a manpower reduction of up to 50% in a unit previously staffed at 91 manual workers. Decided well in advance, the technical change gave management ample time to plan the industrial relations strategy to accompany it. Consultation and negotiation with the unions began quite early and in good faith. But management had already decided its main objectives in a breathtakingly comprehensive agenda: to reduce manpower in the unit to an 'acceptable' level; to remove all of the workers in the unit over 55 but none under 55; to restrict redundancy eligibility to older workers *in that unit only* in order not to dilute the localised scope of the operation (despite the existence of workers in other departments over 55 desiring voluntary redundancy); to restrict redundancy to only those older workers whose services were really redundant (thus engineers would be unlikely to be let go); to bring about a flexible workforce willing and able to do physically demanding work and perform many interchangeable tasks in the unit (including the handling of molten metal which some had previously avoided) under a single job classification; and finally, but not unimportantly, to obtain the union's full cooperation in the operation rather than its usual mute but stubborn resistance.

After briefing the local supervisors and giving a carefully prepared presentation to the unions, in which 'no compulsory redundancies' was promised, the personnel managers withdrew to allow working parties (one for production, another for maintenance) to negotiate. The idea was to keep negotiations as informal as possible. "We didn't want to be seen as involved," says a personnel manager, "It would stand a much better chance if they [the 'men of molten metal'] were seen to 'do it themselves'. Who knows, they might well have come up with something useful that we hadn't thought about".

Management had decided that the union would have a say in manning levels. It deliberately suggested a figure below its real intention to allow the union leeway to bargain. "We were prepared to be talked up by the union on our declared manning targets," says the personnel manager, "In the end they negotiated two more men per shift but they were actually right. Our proposed manning would have been too tight." In fact, the negotiating teams did come up with "something useful"--the concept of an extra small team to do specialty casting.

Despite a policy commitment from the external unions against redundancies and instructions to that effect, all of the domestic organisations cooperated in negotiating the redundancy[26]. Says the general union convenor:

> "There's a discrepancy between union policy and site policy. But the [external] union itself is split on the issue. I was at a meeting of the Confederation of Engineering [and Shipbuilding] Unions and even some of the national officers were saying 'you can't stand in the way of progress' *We're resigned to the fact that modern technology means lower manning levels even though we say the opposite in public.* "

Spurred by its older members outside the casting unit, the domestic union insisted on site-wide eligibility for redundancy, but this demand crumbled quickly in the face of management obduracy. The union insisted on two job classifications but this also fell.

Far from eliciting conflict, the affair was surreally *popular* in the casting unit. The capital stock had been allowed to run down for 20 years and workers had been insecure about the future of the operation. The sudden infusion of £1 million of investment lifted their spirits. "There's a new interest now among the workers and a curiosity about the new labour processes, an interest in learning. Even those leaving see it as progress," says a manager. The convenor phlegmatically agrees. Though the workers in the rest of the

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26. The engineering employers union staff officer gave signs of seriously blocking voluntary redundancy of his members. However, the high value of all skilled workers reduced the likelihood of the company wanting to let any of them go anyway.

plant were curious and the older workers were resentful of not being offered redundancy, they had been well-trained in the British tradition of sectionalism to keep their noses out of a private affair.

While negotiations proceeded, every casting unit worker over 55 received a bundle of information on redundancy and was invited to apply for it. Those that wished received individual counselling on the exact nature of the redundancy package. Calculated on years of service, age, weekly pay and pension entitlements, this package included a lump-sum redundancy payment, an optional lump sum payment from the pension fund, an immediate pension and a different pension to begin at age 65. The lump sum in most cases (for they all had considerable age and service) was 2 1/2 times a year's pay. The immediate pension amounted to about 1/3 of salary per year. It is little wonder that the response from eligible workers was enthusiastic. With the actual deployment of these seemingly abundant new resources over the rest of their working lives (see Martin & Fryer, 1973) merely a hazily distant problem, they perceive themselves, temporarily at least, as rich men.

The exercise was a smashing success. "This whole episode," says one manager,

> "...was one of our industrial relations pluses. The union is happy because it was able to take care of its people and negotiate manning levels. The company is happy because we handled it well. We were helped by the fact that there were significant numbers of workers over 55 who weren't adverse to voluntary redundancy, especially when the terms are so generous. But really, we didn't expect anything different".

In fact the company achieved everything it wanted and more. Not only had it shed labour successfully, it had also achieved considerable functional flexibility. It had done this by a) targeting exactly the portion of its workforce it wanted to be rid of (who were not only superfluous numerically but who might be expected to most strongly resist change), b) built a new set of working practices on the back of the redundancy and technological change and c) secured the union's commitment to the changes while at the same time 'making the union look good'.

A strong caveat is in order. While a good part of *this* exercise was planned by *this* employer and while new technology and voluntary redundancy are doubtless employed in this way by many British managements, it would be a mistake to think that the logical leap can be made to theorising an overall purposive managerial imperative of control in the i.l.m.. Voluntary redundancy developed not as a completely-thought-out system of

control for the 80's but rather as a piecemeal response to certain economic and political contingencies of the 60's and early 70's. That it worked so well in the 80's is partly due to fortune and partly due to many sets of employers and unions finding it instrumentally useful to their problems.

4.3 Summary

In terms of conflict-resolving and -generating potential, several contrasts to the Canadian situation should be almost too obvious for further comment. Impressionistically, a system which purports to pick losers fairly (but which also has many painful exceptions) contrasts with one in which everybody appears to emerge a winner. But several specific points bear mentioning.

First is the connection between the integrity of the i.l.m. and exit from it. In Canada, except where capacity is expanding, an increase in the number of peripheral workers can directly result in compulsory exit of core workers. This makes the erosion of the boundaries of the i.l.m. a particular potential flashpoint of conflict. In Britain, on the other hand, the existence of peripheral workers can actually act to smooth the way for voluntary redundancy. As seen at both of our British plants, the preparation for a large redundancy is a highly complicated allocation project that would do honour to an operations research expert. Having peripheral employees available to temporarily plug shortfalls in manpower eases the process of adjustment to new manning levels and helps older workers out the door.

Second, with compulsory redundancy an ever-present threat if not enough volunteers for redundancy are found, the union in Britain is almost forced to participate in rounding up likely candidates for exit. This profoundly compromises the union in its ability to oppose redundancy.

Third, if the British union attempts to seriously question aspects of the voluntary redundancy or to take a stand against it (thereby delaying the process), hostility by workers against the union can result, deflecting conflict into the union ranks. Militant union leadership can become unpopular quickly (see Wood & Dey, 1983)27. There can also be conflict between those staying and those leaving.

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27. Even before the days of redundancy payments, it was difficult for unions to rally workers to oppose redundancies on principle (see Salmon, 1980).

Fourth, even in Canadian plants with redundancy payments like CANBREW, middle-age workers can be left with little protection and little incentive to leave. In our British plants, workers in their thirties and forties (with sufficient years of service) can still cash out with payments in five figures or up to a year's pay[28].

Fifth, while short-term lay-off (and subsequent recall, by seniority) is the norm for limited exit in Canada, voluntary redundancy is used in *all* sizes of manpower reductions in Britain (Daniel & Stilgoe, 1978, p. 17). While reassuring older workers, this revolving door inevitably weakens the internal labour market bond between young Canadian employees and the employer and hence their commitment to the enterprise. It also makes middle-age workers nervous. The opposite obtains in our British workplaces, where younger employees know that older workers will leave before they do and older workers know that they will 'be taken care of'. What is more, once gone, they do not return to haunt the employer.

Finally, the difference between the two countries has much to do not only with who is made redundant but also with entirely different political apparatuses employed to achieve the result. Because there is virtually no possibility of addressing the issue of extraordinary exit during the term of the agreement in Canada, the CANBREW union was forced to use the absurdly unwieldy mechanism of interests negotiations to handle the vaguely perceived threat of future mass exit. In order to rally its troops, it had to vastly exaggerate the threat. When inevitably confronted with a compromise, the troops revolted. How conflict is avoided in such situations is the real mystery. In the British situation, however, in addition to the cash sweetener, the apparatuses help depoliticise the issue. The parties address the problem as and when it arises (with proper notice imposed by law). If manifest conflict does arise, it is more an opportunistic response to an immediate problem than an ultrazealous response to the unknown. Moreover, the inevitable compromise addresses specific surmountable grievances rather than a general insuperable conundrum. What all of the above has done, of course, is to disarm British trade unions on the larger question of redundancy and unemployment.

5. Struggles Over Movement Within the Internal Labour Market

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28. In fact, as seen in the last chapter, the workers that the BRITBREW union had gone so far to protect from compulsory redundancy eventually cashed out with £8,000 to £10,000 apiece.

While the previous two struggles in this chapter occur at the interfaces between the internal and external labour markets, struggles discussed in this section occur within the internal labour market in its own right. Where the former explore the joint regulation of *general* worker movement in and out of the internal labour market, the latter explores the regulation of job locations and of worker movement from one job location to another.

Remembering that radical theorists have posited that within the structured internal labour market

> "just as mobility mitigates conflict in a hierarchical direction, it tends to generate conflict in a lateral direction..." (Burawoy, 1979, p. 103)

a comparison of how the hierarchy is constructed and how workers move within it in the two countries may help to test the proposition. Accordingly, three aspects of the issue will be addressed: these concern hierarchy construction (how the job locations are arranged), upward mobility (how workers move up through the job ladder) and horizontal mobility (how the employer maintains operational flexibility within the job ladder structure).

5.1 Constructing the Hierarchy

Windolf, observing West German structuring of i.l.m.'s insists that compared to Britain, they are "unstructured" (1986, pp. 251-2). Yet compared to their British counterparts, the degree of vertical gradation of the internal labour market within our *Canadian* plants is formidable, confirming what internal labour market theorists have said about job ladders in North America. This is especially striking in the two aluminium plants. Both plants have much the same technical complexity, multiplicity of labour processes and horizontal divisions of labour (see Chapter II). Yet while BRITMET has only six basic vertical labour grades throughout production and maintenance, CANMET has *16 separate vertical labour grades in production and a further 10 in maintenance.* Combined with the horizontal divisions, this amounts to no fewer than 72 separate job classifications in the collective agreement, or approximately one job classification for every five manual workers!

However, an even more remarkable contrast emerges when differentials in basic rate between the lowest and highest production grades are examined. The gap in pay between the *four* production grades at BRITMET is 22% (or an average rise of 7.3% in pay for each grade jump). Yet the equivalent differential for the *16* at CANMET is only 6.6% (or an average of only .44% in pay for each grade jump). Thus the payoff for a production

worker from advancing to the next labour grade at BRITMET is 17 times higher than at CANMET. In light of such limited returns to progression, it might well be concluded that whatever competition exists between CANMET production workers for advancement up the job ladder is quite trivial.

At BRITMET, aside from a few "skilled chargehands", maintenance workers are in a single vertical labour grade and, since the move to multi-skilling (where the distinction between mechanical and electrical fitters was effectively abolished) a single horizontal classification (fitter/electrician) exists. At CANMET, on the other hand, there are such diverse classifications as "Electronic Electrician", "Electrician (Grades 1 & 2)", Mechanic (Grades 1 & 2)", "Plumber...", "Carpenter...", "Welder...", "Tradesman's Helper", with a further six classifications in the toolroom alone. Yet the pay differential between the highest and lowest classification of licensed tradesmen *within the separate trade groups* (for workers cannot jump between trades) is a mere 1.6%. So again, the returns to progression are limited.

The breweries present a different but even more intriguing system of hierarchy construction. In the plants in *both* countries, the unions have similarly fought for and won an extremely flat job ladder despite significant differences in skill levels among employees. In essence, a *single* production grade prevails. This is due to the looseness of the product market and the almost perverse importance of unskilled workgroups employed in units with ancillary technologies (see Chapter II). Both combine to make construction of a hierarchy less urgent. At BRITBREW, except for a few chargehands who are paid a small premium, the spread in basic pay among seven grades of production workers is a mere 4.3%. Among licensed tradesmen there is a single rate. At CANBREW, there is a single grade for most production workers (with .3% less paid to a few packaging labourers and 1.5% more to a few articulated lorry drivers) and two grades for licensed tradesmen with a differential of 4% between them.

Yet despite appearances, the unions themselves have constructed hierarchies. At BRITBREW, differing abilities to boost p.b.r. earnings have resulted in distinct pay differentials among job groups and even between different work groups in the same basic job. The differential between the lowest and highest earnings is 52%. These differentials have played havoc with internal skill distinctions. Thus, while the basic pay of licensed

tradesmen is 12% more than that of labourers in the staging unit, the latter actually make 43% more in total earnings! The effect of p.b.r. and effort bargaining will be discussed in the next chapter. Here it should be noted that while all workers at BRITBREW are paid higher than they would be outside the brewery, these internal differentials cause a considerable amount of ill will between work groups, which may exacerbate small sectional disputes and militates against solidarity and more widespread labour-management conflict. Given that the highest paid groups tightly regulate entry to their sub-internal labour markets, this effect is even more pronounced.

At CANBREW, where no p.b.r. or other bonus system exists, all production workers are paid the same. Nevertheless, a limited hierarchy has still developed. Since jobs in the brewing unit are far more attractive than those in the packaging and staging units, a move from the latter to the former is considered a promotion despite (or perhaps because of) the fact that they pay the same. Even a move from one section of the brewing unit to another is considered a promotion.[29].

Thus in Canada, hierarchy has developed in spite of attempts to eliminate it. Nonetheless, there is little evidence of a conflict among workers over these positions. CANBREW workers exhibit a noticeable commonality of interest. As will be seen though, there is considerable conflict *between labour and management* over the allocation of what job locations exist.

In general then, looking at our plants, the effects of "hierarchisation" (Herding, 1973) are problematic. The mere existence of even an elaborate hierarchy does not necessarily promote rivalry between workers. In fact, in one case, it is the hierarchisation brought about by the exercise of sectional *union power* that may promote such rivalry. In another case, the high degree of division within a limited range of pay may in fact reduce rivalry by reducing the incentive to compete. On the other hand, while hierarchisation need not turn worker against worker, the greater the number of job locations and the greater the activity of movement within them, the more opportunities

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29. In a leading arbitration, involving a brewery, "the arbitrator expressly recognized[d] that a promotion need not necessarily entail being paid a higher rate of pay. Rather, it [was recognized] that certain jobs, because of their level of responsibility, could be conceived of as promotions by employees even though they would not secure additional remuneration." (Brown & Beatty, 1984, p. 271-2)

may exist for grievances to enter the dispute resolution system. If that system does not handle them efficiently, the amount of labour management conflict may well increase.

5.2 Upward Mobility

The Canadian Plants. The key principle in deciding promotion in Canada is seniority ie. the senior applicant gets the job. But just as in extraordinary exit, management's need for a qualified workforce strongly impinges on the free exercise of seniority[30], resulting in much controversy. In looking at job ladders and seniority unproblematically, radicals have ignored the many struggles that emerge in the contradiction "between the union desire for job security and the company need for change and efficiency"[31]. Herding summarised the same phenomenon found in his studies:

> "Contrary to many sweeping statements on the firm entrenchment of seniority in unionized industries, the day-to-day working mechanics of seniority in half our sample plants are not even now affording the worker the minimum job 'protection' and predictability..." (1973, p. 155)

The battle is carried on across several political apparatuses of production in Canada. In *Interests* negotiations, unions often fight tenaciously to improve on the phrase "where skill etc.....are relatively equal" (often known as the 'man against man' test). Such a test allows management to disregard seniority unless applicants are equal in qualifications. Consequently, training can be haphazard, with the senior applicant automatically rejected due to lack of it. In the worst cases, management may give favoured employees chances to gain experience on higher-rated jobs so that they will be "shoe-ins" at selection time. Although the union at CANMET has tried to address this problem by negotiating a clause in the agreement stipulating that

> "skills or job knowledge acquired through a temporary transfer cannot be used as criteria on job postings or layoffs"

it claims that supervisors find many other ways to surreptitiously train favoured employees. The production manager lauds supervisors who keep their eyes open for "guys with potential" to train and promote but acknowledges that the lack of systematisation in this regard can and does facilitate favouritism in spite of the spirit of the seniority clause, a source of great frustration for workers.

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30. Of Canadian collective agreements covering 500 employees or more, only 65% contain a promotion clause in which seniority is the only criterion (Kumar et al., 1986, p. 395)

31. *Re Algoma Steel Corp. Ltd.* 19 L.A.C. 236 (Weiler, 1969)

The strongest unions have wrestled, against strong management resistance, to move from a 'man against man' to a 'man against job' test in the application of seniority. The 'old' CANBREW promotion clause read as follows:

> Promotions and allocations...shall be based on merit, ability, and the efficient operation of the Company, but with other things being equal, the employees with the greatest seniority shall be given preference. In the event that a senior employee lacks the necessary training, the Company will arrange to give the employee the necessary training wherever, in the opinion of the Superintendent, this is practicable.

Somewhere between 1973 and 1980, the parties at CANBREW hammered out a new clause. Yet the qualified nature of its wording reveals just how tortured the negotiating sessions that produced it must have been.

> On posted jobs, promotions and transfers shall be based on seniority provided that the applicants *are sufficiently qualified and considering the efficient operation of the Company.* The Company will arrange appropriate training wherever practicable. (emphasis added)

Despite this advance in Interests definition, or precisely because of it, the ensuing struggles over *Rights* definition have bred what the convenor calls "ongoing irritation and frustration". In obvious ways, a 'man against job' clause surpasses a 'man against man' clause. But in one perverse way it does not. In the man against man test, the employer's attention is focussed more on the several applicants than on the job vacancy itself. Able to pick among several candidates, the employer may not be very worried about the job description. In the man against job test, however, with much more obligation to choose the senior applicant, the company's attention swings full force onto the job. The employer must be extremely careful, perhaps too careful, in considering the 'sufficient qualifications' required. On several occasions, CANBREW has refused promotion to the senior applicant for a job in the brewing unit based not on his qualifications but on undesirable aspects of his work behaviour in another unit.

One such case, which was arbitrated, has much to say about both seniority and the problem of absenteeism (discussed in the previous chapter). The employer acknowledged that the grievor was qualified but found that his absenteeism record in the packaging department rendered him unacceptable, and awarded the job to the most senior employee below him with acceptable qualifications. The manager responsible reported that even if

the grievor had been the only applicant, he would not have been accepted[32]. As reported in the arbitration award, the brewing unit shop steward acknowledged that

> "there is a higher degree of employee responsibility in the [brewing unit] where mistakes are costly as to the loss of product and efficiency...There is more onus on the employee to make sure the job is completed."

but also testified that two completely different cultures of absence and individual responsibility characterised the two units, saying, "people who are transferred into [the brewing unit], in his opinion, become more mature in performing that work." The supervisor who rejected the grievor admitted that this was true but that he had not considered it when making his decision.

Another brewing unit employee with a previous bad absenteeism record in packaging testified that his

> "...absenteeism record improved 100% because he enjoys the work, as everyone else does in that [unit]."

The union argued that the Company's test of qualifications was unreasonable. If absenteeism were a factor, then the cultures of different units could not be discounted. The union suggested that

> "...if these [inordinately] high standards were maintained, then the Company has amended the operation of the collective agreement by inferring a competition type clause amongst applicants where the Company could pick the best rather than apply the specific terms of [the promotion clause]"

The arbitrator acknowledged that a previous award (in fact a leading reported case) adjudicating almost the same circumstances with the same parties some ten years previous *with the 'old' promotion clause* had ruled in favour of the employer. Yet the new clause did not lead to a different result. The arbitrator dismissed the grievance. In so doing, the arbitrator basically applied a limited test of procedural fairness, holding that the employer had satisfied him that:

> "The same standards were used by the Company in considering all of the applicants with regard to absenteeism and performance records, both of which are relevant in such an assessment."

The arbitrator gave little attention to the unions' arguments about inferring a 'man against man' test, thereby effectively confirming those arguments. In the union's eyes, after all the vexation of negotiating the new clause, of grieving alleged violations and of

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32. Arbitral jurisprudence holds that in the 'man against job' test, an employer can reject all applicants if they have insufficient qualifications and go outside the firm to recruit (Brown & Beatty, 1984, p. 246-7).

running cases through arbitration, the clause proved only to raise and then dash expectations.

The British Plants. Of the several salient differences between Canadian and British industrial relations, some are more important but none is more striking than the weight given seniority in promotion. For, compared with the near obsession with which it is regarded in North America, in the British plants studied (and in British workplaces generally) seniority is *next to irrelevant.* To state it in less categorical terms would do the phenomenon an injustice.

While a few cases at BRITMET involved the issue of preference for senior employees to fill vacancies, ("it does give the promotion process some consistency and predictability," says a personnel manager) most promotions were left to management's discretion, with little apparent hostility by the workers or the union. Sometimes seniority would be a major factor, sometimes not. Indeed, the union had, in the collective agreement, explicitly forfeited the right to any say in promotion to the charge hand position which it otherwise represented. At BRITBREW, the situation was even more dramatic as convenor, stewards and workers alike expressed no concern that senior applicants be awarded job vacancies. In fact, many otherwise militant trade unionists were perplexed by the question. As one steward said, "Of course the most qualified person should get the job. What's the point otherwise?" In both British plants, the unions displayed a nonchalance about the necessity for posting of vacancies which would have shocked their Canadian counterparts.

This presents a serious puzzle. After the high degree of attention radical theorists have given seniority and upward mobility in labour-management relations in North America, could it be that these features are mere insignificant games played by unions otherwise restricted in their ability to bargain the more important things? Or could it be a mere accident of history that they developed as significant features in one country and not the other? In fact, there is no evidence that seniority is as strong a concern of unions anywhere in the world *outside North America.* There is some truth in both answers. Nonetheless, the phenomenon does seriously undercut (though not destroy) the power of the radical theorists' arguments on this point. If seniority is so important a weapon in

management control of the labour process, why did it not spread to Europe like many other American fads and inventions?

Perhaps some reasons can be suggested for the cross-Atlantic emergence of two quite different concerns about promotion. First, as witnessed dramatically in our two aluminium plants, the structuring of the internal labour market is not nearly as well developed in Britain as it is in North America. Thus the opportunities available for upward mobility are limited in any case. This might be explained by the late emergence of large workplaces, labour homogenisation and mass industrial unionism (aspects of what has been called "Fordism") in British industry and the late demise of craft control (Lewchuk, 1983) as compared to North America.

This late development of aspects of Fordism and the retention of craft control partly explains a second possible reason—the retention of multi-unionism. This does not explain the phenomenon in *our particular* plants (BRITBREW has a single union; BRITMET has three but a single union represents *all* semi-skilled workers), but in many larger workplaces such as automobile manufacture or shipbuilding, which set powerful paradigms for the rest of unionised industry, the semi-skilled internal labour market has long been divided into distinct vertical swaths represented by different unions. The number of advancements possible within each swath before a worker bumps up against an inter-union demarcation line is quite limited.

Third, with the internal labour market so highly divided (as opposed to North American industry) into distinct occupational/union groupings, British employers tended less to use a single entry port at the very bottom of the i.l.m. and more to hire distinct sets of workers at every swath. Thus, an unskilled worker might be hired from the outside into the Transport and General Workers' rank; a sheet metal worker might be hired from the outside into the Sheet Metal Worker's rank; a skilled vehicle builder might be hired from the outside into the Vehicle Builder's Union swath (before it merged with the T&G in 1972); and a more highly skilled worker would be hired into the Amalgamated Engineering Union and the Electrician's Union.

Fourth, while the craft unions were virtually eliminated by employers in US mass industry at the beginning of the century and then bypassed by the new industrial unions thirty years later, British craft unions, and especially the Engineering union (the second

largest in the country), have had a much larger influence throughout the century. If the Engineering Union did not represent a sizable group of workers in a company, its presence would still probably be felt by its recognition for mechanical tradesmen (as at BRITMET). The craft union mentality is powerfully directed toward skill, not seniority and in fact treats the latter with contempt. This would inevitably rub off to some extent on the other unions. A good example is available from BRITMET. When a vacancy opened in the finishing unit, the general union pushed for applications to be accepted by seniority plant-wide while the employer invited applications from within the unit only, arguing that this would make a mockery of in-unit training. Faced with a third stage grievance meeting where convenors of all the unions would appear, one personnel manager could hardly contain his anticipation.

> "This grievance is ridiculous. I can't wait until the craft unions hear it. I'll put the company's arguments to them and I know they'll enjoy seeing us tear [the general union] to pieces logically on this."

Knowing the craft union's attitude to seniority disputes, he intended to divide and conquer, at least on this issue.

For all of the above reasons, the importance of seniority has not developed in Britain to the extent it has in North America. What effect may this have had on industrial conflict? In fact, the existence of rigid occupational/union demarcations in Britain may well have a more highly insidious effect upon worker solidarity than competition among workers for spaces on the job ladder in North America. While worker-against-worker competition may have some negative effect on the community of interests in the Canadian workplace, as mentioned earlier in this chapter, human boundaries are much more difficult to draw than institutional boundaries and solidaristic feelings can often overcome divisions imposed *from above*. On the other hand, when the boundaries are no longer between workers but between work groups and/or unions, *and therefore legitimised from below*, their corrosive effect upon solidarity is strengthened immeasurably.

One more important point needs to be mentioned about upward mobility. When the parties in Britain do concern themselves with the issue, it is far less likely to centre obsessively around considerations of managerial efficiency. When BRITMET had a vacancy for a "grade 3 paint line operator", the union supported the application of a

grade 4 operator with 27 years' service. It did this partly from concern for his long service but also because he was popular and it was 'the right thing to do'. Since the new job entailed a certain amount of report writing, the employer, citing this applicant's low literacy, declared him unsuitable. But in the end the employer backed down, partly because it was such an emotional issue, partly because it was counterproductive fighting the union on it at a time when greater overall flexibility was being sought. As one personnel manager says:

> "The company backed off on this one. If there's some writing to be done, the blokes on the shift may help him but there won't be much of it. We get what we want through negotiations, not confrontation. That particular dispute focussed on the wrong thing—persecuting a long-service employee rather than on flexibility as a general issue."

Thus, the employer was willing to take a longer-term view of the immediate challenge to flexibility. In order to do this, it was prepared to accommodate the job to suit the senior employee, unlike the CANMET arbitration case cited above. Such action on the part of a Canadian employer might well be considered an egregious abdication of managerial prerogative and, remembering the riposte to Weiler in Chapter ", a dangerous precedent. Certainly, as has been seen, few if any Canadian arbitrators would require it.

5.3 Horizontal Mobility

The ability to have workers move from one job to another, at least temporarily, without regard to job classification or seniority is a tool to achieve functional flexibility coveted by many employers. The debate about horizontal mobility has been fiercely joined in the US. Several commentators (Kochan et al., 1986; Piore, 1986; Bluestone & Harrison, 1982) have observed that the high differentiation and hierarchisation of jobs and regulation by seniority that served the 'old industrial relations' so well now stand in the way of the flexibility needed by US industries. They both describe and prescribe a move by employers to break down so-called internal labour market rigidities. While the extent and necessity of these changes may indeed be debatable, especially as it relates to Canada, (see Adams, 1988), it is undeniable that many employers all over North America and Britain are attempting to achieve them and that unions are resisting.

The imperative to change is less pronounced in high-tech, highly capital intensive industries, with high variation between driving and ancillary technologies (see Chapter II), such as our breweries. Within separate units, workers have for some time been well-integrated into teamwork. Between units, different skills and labour processes militate

against horizontal mobility. This is one fairly peaceable point on the frontier of control of these plants.

In more labour-intensive industries, however, where the bundle of technologies is more homogeneous and skill levels less distinct, and where organisation inertia can have high costs, the imperative to change is much greater.

A look at our two aluminium plants shows these tensions in operation. Ironically, despite the general rule about collective agreement verbosity in the two countries, it is the British plant's collective agreement which more specifically limits horizontal mobility. In the BRITMET agreement, after some general platitudes about the need for "flexibility and mobility" within and between pay grades and across the plant, and after the reminder that

> When an employee is asked to temporarily transfer to another job he will co-operate in that transfer.

comes the clause that most of the more militant shop stewards remember:

> However, if the employee wishes to stay on his job and if it is working he should be allowed to continue to work on that job.

Yet despite this clause, the employer has developed, and not without union compliance, an impressive degree of functional flexibility[13]. The clause was used much more frequently before 1979. But even before recent moves to multi-skilling among non-craft workers, though the union still retains it like a security blanket, the clause had begun to fade in importance. There are several reasons for this, many of them in common with other British manufacturers. First, the low number of job grades obviously permits far greater leeway of lateral movement. Second, the early 80's recession seriously shook workers' confidence in the company's survival and put them in a frame of mind more conducive to change. Third, the more recent productivity and profitability successes have afforded the employer several palliatives, not the least being money. Says one senior manager:

> "I've taken many seminars on flexibility. Nine out of ten companies have done it from a position of crisis and most haven't succeeded. Our problem is coping with success"

Fourth, there is now a high number of younger employees who relish variety and have few ingrained notions of inflexibility (made possible in part by voluntary redundancies of

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13 This is another of the few examples of "managerial and supervisory custom and practice" (Armstrong & Goodman, 1979) to be found at BRITMET (see Chapter VII).

older workers, who had quite opposite attitudes). Fifth, managers discovered that excessive mobility can disrupt, not enhance production. The quality assurance manager insists that stable teams turn out much better product and one foreman says:

> "We don't want to move people too much once they've started work. It gets them frustrated and we don't get the best out of them. *The reason we have such good flexibility is that we do it as little as possible.* Also, I remember who has agreed to move and then I remember to do them little favours like letting them leave early for a football match.

The sixth reason is the enormous amounts of overtime. On overtime, a worker must be ready to do any job required of him. Thus highly-trained press drivers may be assigned to wrapping product in the packaging unit.

The CANMET agreement, on the other hand, is more ambiguous on the employer's discretion to transfer employees. The seniority clause ("where....are relatively equal") includes "transfer" in the matters to be decided by seniority. But this refers to the ability of an employee to use his seniority to *voluntarily* transfer to another job in his pay grade. Another clause stipulates that a transfer of less than 30 days is temporary (and by implication, need not be posted), but it is not of much help. As might be expected, no arbitration has ever examined the issue. However, arbitral jurisprudence is fairly clear that:

> "Generally, the employer has an inherent right to transfer employees within a classification..." (Palmer, 1983, p. 548)

so long as it is done in good faith and for a legitimate business reason (ibid., p. 548–9).

However, a problem arises when the employer proposes to transfer the employee to a job in a job grade higher or lower than his own. The former is a promotion and is subject to the seniority clause. The latter is a demotion. If disciplinary, it can be grieved. If non-disciplinary, according to the agreement, CANMET must first follow the bumping procedure. Thus, when an employer has a multiplicity of job grades such as CANMET has, it can theoretically be *severely* restricted in its ability to transfer. But theory is one thing and practice is another. One manager insists the employer has had little problem in the past in transferring employees when it wishes.

> "There's quite a lot of mobility here. If a machine breaks down or we need someone somewhere else, they move. It's probably the greatest asset of this workforce."

With a more fractious workforce and a stronger union, however, he admits he would be in trouble. The more radical union leadership worries him. But he insists he would confront the problem in true Canadian style: "I'd take a strike to hold onto the mobility we

have". This is exactly what happened in the long strike most recent to the study on the question of extended working hours. When the union fell back on its rights in the collective agreement and employment standards legislation, the employer had no choice but to go on the offensive to change the collective agreement. Given the high potential for conflict in Interests negotiations (Chapter III), a strike was inevitable.

While both Canadian and British managers, then, have been able to circumvent collective agreement (or jurisprudential) restrictions on operational flexibility, only in the British case can the employer rest assured that the situation is stable. The Canadian situation is much more explosive. Either the union refrains from exercising its rights under the collective agreement or it faces a major management confrontation.

6. Concluding Remarks

As in the previous chapter, the beginning of this chapter promised to test the proposition that the seniority system was the second 'jewel in the crown' of industrial dispute resolution in Canada particularly and North America generally. But rather than viewing seniority in a vacuum, theoretical considerations allowed it to be placed in the context of the wider debate on the nature of the internal labour market. Engaging with radical labour market theorists (who posit that hierarchy and seniority fetishism devised by American employers to divide and conquer American workers), two interconnected questions emerged: to what extent does the structuring of the i.l.m. divide or unify workers and to what extent does it generate or mitigate labour-management conflict? Noting the paucity of serious comparative work on this aspect of the i.l.m., especially at workplace level, it was suggested that such work might test the robustness of the radical argument.

Upward mobility is only one aspect of the structuring of the i.l.m.. Struggles also take place over the integrity of the i.l.m., over exit from the i.l.m. and over lateral movement within the i.l.m.. On challenges to the integrity of the i.l.m., unions are highly ambivalent since the existence of a periphery is at the same time a threat and a protection for the core. Despite and because of more rigid political apparatuses, Canadian employers have greater institutional leeway in eroding the integrity i.l.m.. But this can generate much frustration among workers and unions and thus much labour-management conflict. Yet in

Britain, the very intensity over protection of sectional i.l.m.'s can drain away conflict at a more general level.

Struggles over exit from the i.l.m. remain highly politicised in Canada. The need of the Canadian employer for efficient operations can seriously undercut the efficacy of seniority, frustrating many of the aspirations built into the concept. The awkwardness of the Canadian system in addressing the problems of 'middle-age' workers is another source of potential friction. The British system of voluntary redundancy, on the other hand, has dramatically depoliticised the issue.

On struggles over movement within the i.l.m., the intricate hierarchisation in Canada and the Canadian obsession with seniority, both of which bespeak continual abrasion, contrast conspicuously with employer and union nonchalance and the consequent flexibility in regulating these issues in Britain. On the question of horizontal mobility, the very hierarchisation and the web of seniority rules in Canada virtually invites confrontation while their relative absence in Britain does the opposite.

Thus, any conception that the traditional North American system of i.l.m. regulation has absolute or comparative conflict-mollifying superiority is overly simplistic and guilty of implying too much power and purposiveness on the part of employers and too little power and resistance on the part of trade unions.

Rubery comes closest to the truth in suggesting that regulation of the i.l.m. "provides a bargaining base for labour against management's attempts to increase productivity and introduce new technology" (1978, p. 29). The idea that a "homogeneous work force, interchangeable in function" would have more potential to resist management manipulation or greater revolutionary thrust denies the tortuous path that labour treads in the quest for emancipation.

This chapter has seen the question of i.l.m. structuring, at several points, touch obliquely on issues of of control of the production process, issues such as job content, pace of work, the effort bargain and the introduction and use of new technology. It is to these issues that we turn now in the next chapter.

CHAPTER IX: JOB CONTROL

I. Introduction

The last two chapters have dealt with two issues of great importance in union-management regulation of factory life. Indeed, together they take up the greater proportion of commerce between the parties. But compared to a third issue which receives less explicit attention, they may be described as *contextual*, rather than *substantive*, affecting the environment rather than the essence of shopfloor industrial relations. The third issue is *work itself*—what work is done, how it is done, how fast it is done and whether specific monetary rewards flow directly from these components[1]. The regulation of this third issue will be called *job control*.

The definition of job control is thus circumscribed by the exclusion of discipline and structuring of the i.l.m.. Yet this is no simple matter. In fact, most scholars who have used the term 'job control' either combine the three issues purposely or are not precise about excluding the former two. This has greater negative consequences when looking at North America for reasons to be explained presently. Herding (1972), attempting to show the erosion of American union power in the postwar era, defines job control as

> "all devices of labor union influence on the existence of, the access to and the performance of operations." (1973, p. 2)

and specifically includes discipline and seniority issues in his remit along with those concerned with work itself. Tolliday and Zeitlin (1982) purport, at the outset, to deal with "manning, workloads and the introduction of new technology" (p. 3), but later expand their field to encompass discipline and seniority.

Scholars looking at Britain alone have perhaps greater justification for neglecting the distinction since the main apparatus used to negotiate job control—custom and practice—tends to blur the distinction somewhat. Hyman and Elger (1981), discuss the ebb and flow of worker job control. Yet by attempting to depict the historical extent of so-called "restrictive practices" and their subsequent erosion in several industries, they inevitably touch on questions of discipline and of limits to entry and exit from the internal labour market. Belanger (1985) and Belanger and Evans (1988) examine struggles over control

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1. Issues of pay are thus included in job control, but *only* where there is a specific and direct link between work performance and remuneration, such as in incentive schemes.

of the labour process in British engineering shops. Yet, in defining job control, along with "effort bargaining" they include "work allocation" and "job mobility" (ibid. pp. 162-167) and also cannot avoid discussion of discipline (eg. p. 170).

Edwards & Scullion go so far as to argue that,

> "The effort bargain (a part of what we have defined as job control) cannot be divorced from other aspects of the frontier of control" (NR2, p. 167)

Indeed, the distinctions between any two of the three issues can be hazy, as has been seen in the previous two chapters. The issue of movement of workers to jobs within the i.l.m. cannot be divorced entirely from the content of those jobs or whether job content can be changed to accommodate candidates. The issue of labour accumulation and labour shedding cannot be entirely divorced from the issue of the output and incentive-based earnings of the group concerned. And the issue of discipline for anything connected with work itself can surely not be divorced from work itself.

So in one sense, treating the three issues separately risks ignoring how they articulate with each other, how control of discipline and of the structuring of the internal labour market conditions the performance of work itself, and how victories in the first two *can* provide the floor of confidence for workers to attack the third (Rubery, 1978). Once these connections are acknowledged, however, blurring or eliminating the distinction invites imprecision and jeopardises analytical rigour in the discussion of the political apparatuses of production, especially where comparative work is being undertaken.

There are three main reasons for this. The first involves workers' temporal perceptions. While instances of formal discipline, and entries into, exits from and movements within the i.l.m. are discrete stochastic events in workers' consciousness, the question of what work to do, how fast and hard to do it and what rewards or sanctions[2] will be forthcoming are *continuous* concerns, during every minute of every working day. By merit of this alone, job control would require special attention.

The second reason involves the differential contribution of the issues to conflict or the lack of it. An analogy can be made to Herzberg et al.'s (1959) theories of motivation. It is arguable that the *presence* of job control is more closely linked with job satisfaction

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2. The distinction between "sanctions" and formal discipline is an important one. The former are the opposite of production incentives and include all unpleasant consequences to the worker(s) arising from production performance unsatisfactory to management, ranging from ridicule and verbal reprimands to the withholding of 'good jobs' or bonuses

while the *absence* of control over pay, discipline and internal labour market allocation is more closely linked with conflict. In other words, job control is a positive 'satisfier' or 'motivator', while discipline and i.l.m. regulation are merely 'dissatisfiers' or 'hygiene factors'. Baldamus (1961) too, provides a useful paradigm in a somewhat similar vein, when he talks about aspects of effort (such as "impairment", "tedium" and "weariness") being "deprivations" which are mitigated by "relative satisfactions" (such as "inurement", "traction" and "contentment"). Thus, in his terms, job control can be thought of as a relative satisfaction.

One problem with Herzberg's and Baldamus's theories (and also of Wall and Lischeron, 1977, who insist that causality in the strong participation/satisfaction correlation is indeterminate) is that they base their assumptions on individuals or collections of individuals rather than on unionised work groups for whom there is a 'logic of collective action' as discussed in the treatment of "cultural" theories in Chapter I. It can be argued, therefore, that for unionised work groups job control is an even more powerful satisfier than for individuals. More concrete evidence of this will appear near the end of the chapter.

With regard to the distinction between our three issues, when general pay rates are being negotiated, wages may be foremost in workers' minds. But once that issue is decided, when asked what they strive for, unionised work groups are *less* likely to answer "A say in discipline over our fellow workers" or "A say in the who's taken on, released or moved about the plant" unless a specific incident of perceived inequity is current. From minute to minute, however, they are *more* likely to answer "A say (or some sort of autonomy) in the work we do". The extent to which this say is available then, has a hidden but powerful connection to their overall sense of grievance or well-being.

The desire for job control in work groups is not absolute but rather strongly conditioned by the type of work performed and management's attitude to control of the labour process. While employers who require only shovel fodder may see 'direct control' (Friedman, 1977) as their primary means of getting workers to carry out required tasks, many more are subject to the essential dialectic that wherever workers are required to be more than mere automatons, to actually freely offer their skill and intellectual initiative in the labour process, management must, in the often-quote words of Alan Flanders,

"regain control by sharing it". In fact, "real subordination of labour" is unachievable so long as not only labour *desires* but management *requires* participation (Cressey & MacInnes, 1980).

The third and perhaps most important reason to distinguish the other two issues from job control relates to the fact that in one of our countries this distinction *has already been made*. Some important differences in handling discipline and i.l.m. structuring in the two countries have been seen thus far. But these pale in comparison to the differences between the two countries in the area of job control. *While there is no explicit boundary drawn in the British system of workplace dispute resolution between the three issues, the genius of the Canadian system of dispute resolution is how it so dramatically separates disputes over discipline and i.l.m. structuring from those over job control.* Thus even though victories in the first two can give workers confidence to struggle for the third, in actual fact the barrier erected by the North American system between them over the past forty years is formidable. For a cross-national researcher to ignore this fact is folly.

2. Comparative Theoretical Considerations

A cross-Atlantic debate has arisen in recent years on the issue of the comparative degree of shopfloor bargaining and the extent of union job control and restriction of employer prerogative in the United States and Britain. The intention here is not to cover ground already well traversed by the authors involved, but to use the debate to illuminate several new issues and those important to this thesis: the place of Canadian workplace industrial relations in the debate; the relevance of the question to levels of industrial conflict; some empirical probes on just how far the erosion of British unions' job control has gone; and investigation of differences among British workplaces in this regard.

Perhaps the strongest spark to the debate has been the contrast between the pre-war and wartime militancy of American labour and its long post-war slide. Several historical studies of US workplace industrial relations in mass industry[3] have indicated that in the period roughly between the first stirrings of industrial unionism in the early 30's and the historic General Motors strike of 1945-46 (and the Taft-Hartley Act a year later), American workers stormed the citadel of entrenched managerial prerogative. At the

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3. See Brody (1980), Lichtenstein (1980), Jefferys (1987), Harris (1982), Schatz (1983)

policy level, not only were workers and unions intent on obtaining grievance procedures, seniority and adjudicated discipline, but many militant trade unionists were also seeking a say in a much wider range of issues in their factories. At the shopfloor level, militant shop stewards backed by their members were struggling with supervisors on job content, work speedup and incentive job rates. General Motors may be thought guilty of some exaggeration when it warned in 1945 that unions were out to

> "...pry their way into the whole field of management. It leads surely to the day when union bosses, under threat of strike, will seek to tell us what we can make, when we can make it." (quoted in Brody, 1980, p. 176)

Yet the aspirations of some union leaders were not far removed when they stated that unions "must be conceded the right to bargain respecting all functions of management" (quoted ibid., p. 182).

Lichtenstein (1980) shows how automobile workers prior to the 1950's carved out domains of shopfloor militancy and job control. This was especially true for the majority of workers, off the assembly lines in skilled jobs and on piece rates, and especially during the war (when much of the previously routinised work gave way to individually-paced, task-oriented, small batch production).

In the immediate postwar years, however, management went back on the offensive to repulse the onslaught and to claw back many of the shopfloor rights and much of the wage drift conceded during the war[4]. This was done by a) generally conceding unions the right to exist with security and bargaining rights, thereby smoothing out class animosities enflamed by basic recognition battles, b) strenuous lobbying to change the law (eg. Taft-Hartley) to reverse or constrain advantages gained under the Wagner Act and its judicial interpretations, c) providing generous general wage and benefit increases to 'buy out' resistance to loss of job control, d) increasingly using the formal collective agreements to delimit the job rights available, but specifically excluding most references to job control issues, e) pursuing and winning from the unions drastic curtailments on the right to strike during the term of the collective agreement and union agreement to police such restrictions by repudiating wildcatters, f) establishing professional personnel departments to administer those agreements and attend in an organised way to the needs

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4. To the authors listed in footnote 3, add Harding (1972), Aronowitz (1973), Brecher (1972), Tomlins (1985), Edwards (1986) on the employer revanchement

of labour, and g) upgrading foremen to full managerial status, thereby forestalling unionisation by them and reversing whatever fraternisation had developed between them and their subordinates.

The unions, for their part, other than a few minor hiccups, conceded readily to the employer offensive, for in return they received union security, stability and relief from the draining effort of establishing and re-establishing their legitimacy. By the mid-50's, then, the limitations to American collective bargaining had essentially been drawn and pattern set for the next 30 years.

As for Canada, intensive historical studies of workplace industrial relations in this key period are sparse. It can be assumed however that no greater amount of job control was won on the shopfloor than in the US and that no smaller amount of employer retrenchment followed after the war. There are several good reasons for this assumption based on some significant differences between Canadian and US industrial relations.

First, while there is evidence (Abella, 1973; Lipton, 1973) that the upsurge of industrial organising throughout the 30's and 40's was no less intense than in the US (and in several cases, Canadian organising efforts provided inspiration for US unionists), Canada had nothing comparable to the 1935 Wagner Act that provided a similar degree of legal and moral encouragement to trade unions. In fact, until almost the end of the war, other than provisions for the investigation and conciliation (and some argue suppression[5]) of industrial disputes *in the limited number of cases where unions were already established*, most Canadian governments actively abetted employers in resisting union recognition. Thus, in an economic period increasingly favourable to labour, while US unionists were consolidating themselves and extending their influence on the shop floor, Canadian industrial unions were still struggling for recognition.

Second, even the spate of legislation that substantially improved the bargaining rights of Canadian unions (beginning with PC 1003 in 1944, incorrectly dubbed 'Canada's Wagner Act') was considerably less generous to labour than its American counterpart. It

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5. The Trade Unions Act (1872) and the Industrial Disputes Investigation Act (1907) were the only major pieces of Canadian legislation purporting to regulate industrial relations until just before the war. While mainstream Canadian industrial relations scholars eg. Woods (1973) cite the latter as an advance, several Canadian labour historians, notably Craven (1980) & Palmer (1983) and Warrian (1986) have insisted that it "gave no protection to unions, stripped organized workers of the ability to exploit the timing of a dispute, and provided no guarantees that workers would not be dismissed before or after the process of negotiation." (B. Palmer, 1983, p. 143)

has been argued that only in the post-war period and into the 50's were Canadian unions, through waves of strikes, able to gain the basic rights that US unions had enjoyed for more than a decade and a half (Warrian, 1986). Thus, rather than 'coming to terms' with unions, most large Canadian employers continued to resist them until a period when economic conditions were more in the employers' interest.

Third, and most importantly, the legislation that did finally guarantee Canadian unions recognition rights firmly prohibited all strikes within the term of the agreement. In the context of job control, this point is significant. Several authors, including Herding (1972) and Tolliday & Zeitlin (1982) indicate that one of the mechanisms that aided US shopfloor bargaining in the beginning and then kept it alive long after bureaucratic, higher level bargaining had become the norm was the right (though extensively bargained away) of workers to strike within term. While the US courts moved to tighten up the right to strike while negotiable issues were in arbitration in the late 50's and early 60's, there has always been some lawful leeway for shopfloor groups to press their claim by striking[6]. And US workers have used it (Herding, 1973, p. 30) both to make sectional gains *and* to press the larger union into a more militant stances. In Canada such legal rights were snuffed out entirely at the same time as recognition rights were granted.

Canada, then, was subject to the same, if not greater, restrictions on challenging managerial prerogative than those developed in the US in the postwar period. That Canadian unions in the 80's have been better able than their US cousins to resist the wholesale erosion of what rights remained, is another story[7].

In contrast to the hemmorhage of shopfloor bargaining and job control in North America, several of the US authors have looked longingly toward what they consider a last bastion of those features--Britain. Brody compares the strong control exerted by US union headquarters and master collective agreements and the last gasps of US workplace militancy to Britain,

> "where union contracts did not penetrate down to the factory floor, [and] the shop stewards carved out a bargaining realm quite independent of the union structure." (UWU, p. 206)

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6. See Chapter *, page * for a brief description of US law on strikes during the term of an agreement.

7. Haiven (1988a) argues that the high degree of decentralization of Canadian unions, their aggressive recruitment and their relative lack of illusions about managerial and governmental autonomy, as well as some legal, corporate and public policy differences between the two countries have *thus far* allowed Canadian unions to more successfully resist the new employer onslaught.

Lichtenstein compares the heyday of US union militancy to

> ...what came to characterise large sections of British industry in the postwar era. There a militant, semiautonomous shop stewards movement won a central role in the life of the unions representing car workers. While [external unions] still negotiated periodic pay adjustments, these company-wide arrangements were little more than a platform from which stewards could legitimately seek to win improved conditions in direct confrontations with plant management" (1983, p. 348)

Tolliday and Zeitlin (1982) correctly criticise these overly simplistic and idealistic models of British industrial relations. They show that in many parts of British industry, the model of union job control took shape only in the late 50's and early 60's and has been subject to erosion by management ever since. Where it reached its fullest flower and management effectively abdicated control, they contend, the unions seldom responded by imposing their own rationale upon production. In fact, unions became locked into a vicious spiral of sectionalism and pettiness, riding a treadmill to nowhere[8].

Where Tolliday and Zeitlin's case falls apart is in their attempt to so magnify the extent of US shopfloor job control as to actually reverse the common wisdom and prove that US unions constrained managerial prerogative more than British in the postwar era. Edwards (1986) does a good job destroying their argument (pp. 185-192) while tempering Brody's and Lichtenstein's romanticism with facts gleaned from several empirical studies. But a further point needs to be added. Tolliday and Zeitlin make the fatal error of judging the US and Britain by two different standards. In Britain, they gauge the extent of job controls as we have defined them above and as imposed by unions at the shopfloor. But presumably finding little evidence of either in the US, they turn to restrictions upon management imposed by collective agreements and in the area of discipline and seniority only. In light of what has been said above, they miss the point entirely so that what seems to be an important and novel thesis dissipates.

They quote Piore on how seniority rules, which were once easily tolerated by US employers, now restrict their flexibility. But even ignoring the severe caveats about the efficacy of seniority expressed above in Chapter VIII, they vastly overstate the extent to which such restrictions impede managerial prerogative. Restrictions on internal labour market flexibility affect job control tangentially, not directly. And in any case, the restrictions are not the products of active shopfloor responses to current managerial initiatives but forty-year old fossils calcified by fear into collective agreements. Likewise,

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8. See also Hyman & Elger, 1981; Edwards, 1986; Belanger & Evans, 1986).

they drag out the old chestnut of high union "win" rates in discharge arbitration (counting a win as any altering of the penalty), unmindful that the figures they themselves use show a 75% management success rate in upholding discipline (p. 30). Again, even ignoring the severe caveats expressed on discipline arbitration in Chapter VII, they provide no substantive evidence to conclude that disciplinary procedures are a significant direct constraint on managerial prerogative(p. 30).

Where they can point to restrictions in the area of job control, the pickings are thin and the evidence sketchy. They cite a UAW–GM provision providing that workers could meet production standards working at a "reasonable pace". Though this is a unique clause by North American standards, our discussion of the limitations of CANBREW's "fair day's work" clause suggests that it is dangerous to read off substantive restriction of managerial prerogative from collective agreement language without exploring how it has come to be interpreted by arbitrators and how it *actually works on the shop floor.*

As well as indicating that US and British unions were seriously limited in their challenge to managerial authority even at the best of times, Tolliday and Zeitlin conclude with the popular pessimism that defensive systems of control in neither country

> "have...proved effective in resisting determined managerial counter-offensives in the harsher economic and political climate of the 1970's and 80's." (p. 34)

However, this ignores the essential difference between the countries (and between Britain and Canada also). In Britain, job rights were won by shop floor militancy and those that persist have been maintained by shop floor militancy. In North America, they were also won by shop floor militancy but those that persist have been maintained only as imprints of that militancy, unreceptive of the breath of life to respond to the problems of a different era. This has severely limited the ability of unions in resisting employer offensives. As Panitch and Swartz have said of the Canadian approach:

> "[it]...did not just weaken the apparent importance of militant organization, but directed the efforts of union leaders away from mobilizing and organizing towards the juridical arena...In this context, different skills were necessary: it was crucial above all to know the law—legal rights, procedures, precedents, etc. These activities tended to foster a legalistic practice and consciousness in which union rights appeared as privileges bestowed by the state rather than democratic freedoms won and defended by collective struggle." (1985, p. 28–9; see also Tomlins, 1985)

It is to the present–day legacy of these historical processes that we now turn.

3. The Canadian Plants

3.1 Job Control in Collective Agreements

The Relative Scarcity of Job Control Language. The general rule of Canadian dispute resolution has already been thoroughly discussed: where a collective agreement is silent, managerial prerogative prevails. While arbitrators have been seen in Chapter V to have limited power of 'adjustment' in some areas of the agreement, job control is the area in which they will, and are expected to, exercise it the least. For it is in this area that arbitrators perceive "legitimate business reasons" to be at their highest and potential employee injury at its lowest. The only exception is where collective agreement language clearly challenges managerial prerogative. But Canadian collective agreements contain little or no language on job control. In their survey of contents of agreements covering 500 employees or more (reproduced in Kumar et al., 1986), Labour Canada lists only a few items that might come under this heading. The following are the listed topics that might conceivably involve job control and some practical qualifications to their effectiveness:

Collective agreement 'reopener' clauses for technological change are extremely rare (fewer than .1% of the agreements listed have one) and are in any case usually meant to deal with questions of exit from the i.l.m., not job control questions (ibid., p. 382). More importantly, seldom, if ever, do they allow the right to strike[9]. Statutory provisions to reopen agreements for technological change (mentioned in Chapters III and VIII) in some provinces have similar limitations.

The right to refuse overtime appears in about half of the collective agreements (ibid., p. 388). While gaining this right cannot be said to be a major restriction on managerial prerogative (since employers can usually find enough willing candidates for overtime), *not* having this right can be quite prejudicial to employees:

> "Arbitrators have consistently recognized that, unless overtime is made explicitly voluntary in the agreement, employees will be obliged to work overtime if requested. *An employer is not required to be able to show that overtime is necessary.*" (Palmer, 1983, p. 634, emphasis added)

What is more, any *collective* refusal to work overtime on the part of even a few employees, and even where it is voluntary in the collective agreement, can be deemed an illegal strike (ibid. p. 635).

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9. Even if such agreements did allow for the right to strike, such provision would be rendered null and void by the labour relations legislation of the appropriate jurisdiction.

While the law in many provinces makes workplace safety committees compulsory and in some provinces gives workers the 'right to refuse' unsafe work, it is interesting to note that more than a quarter of the agreements contain no safety provisions (Kumar et al., 1986, p. 401) and more than 93% contain no environmental protection provisions (p. 402). Safety, however, is one area where job control issues are vented, as will be seen presently.

Yet in contrast to the *scarcity* of language on job control is the *abundance* of management's rights clauses. They appear in over three-quarters of the agreements (ibid., p. 393), even though arbitrators generally agree that such provision is implicit (see Chapter III) and therefore not required. Canadian collective agreements are as much normative documents as collections of terms and conditions of employment. Unlike their British counterparts, they are meant to be read and taken to heart.

Explicit provisions for job control. Those few agreements that do have explicit provisions on job control immediately capture attention when they reach the arbitral forum. One such well-known case is *York University*[10] wherein a university bookshop secretary grieved her boss's order to fetch him a coffee. This case is highly significant because it is the exception to the rule of absence of job control provisions in Canadian collective agreements. How it was treated, then, can and does say much about the issue. So it deserves to be discussed in some detail.

Hailed as a great step forward for Canadian trade unionists and women workers, it owes little to arbitral progressivism and much to the collective bargaining perseverance of the union for this advance. But for a quite unique provision in the collective agreement, the grievance would surely have failed:

> If an employee is required to perform any duties of a personal nature not connected with the approved operations of the University he/she may file a grievance

The clause was sought and won precisely because the vast majority of the union members were women and precisely to avoid the indignity of such servile 'women's' tasks as fetching coffee. Confronted with an order she though directly contravened the spirit, if not the letter of the agreement, the grievor (presumably reluctantly) followed the 'obey now and grieve later rule'. When the grievance finally came to arbitration (almost a year

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10. *Re. York University* 24 L.A.C. (2d) 80 (Brunner, 1979)

later), the union requested that the arbitrator retrospectively declare requests to fetch coffee 'illegal' and enjoin the employer from so demanding in the future. The union further requested a ruling on whether a secretary *could* be required to fetch coffee for meetings between her supervisors and their suppliers and/or customers. Only because the employer raised no objection did the arbitrator agree to engage in this second, hypothetical, exercise. In argument on both issues, the union relied on the specific agreement clause and the fact that coffee-fetching did not appear in the grievor's job description.

The employer made an immediate preliminary objection, claiming that, in allowing the grievor merely to "file a grievance", the clause offered no injunctive relief. The arbitrator disagreed, stating that injunctive relief flowed from the definition of "grievance" elsewhere in the collective agreement.

On the main question, the arbitrator did find the requirement to fetch coffee for a supervisor to be a violation of the collective agreement and enjoined such activity in the future[11]. But on the second request, interestingly, he ruled *against* the union, stating

> "We have no hesitation whatever in stating that a request addressed to the secretary of the director of bookstores to purchase coffee at the University's cafeteria and/or serve the same at a meeting or conference attended by her supervisors and buyers and sellers of books or other printed materials normally handled by the bookstores, is not a requirement to perform a duty of a personal nature not connected with the approved operations of the University, within the meaning of those words in [the relevant collective agreement clause].
>
> "...It is obviously in the interest of the University to obtain the most favourable terms it can for the purchasing and selling of books." (p. 83-84)

Thus began the arbitrator in his circumscription of the impact of the award. On the question of job description, the arbitrator reiterated the standard jurisprudential attitude

> "It has long been recognized by arbitrators that a job description does not and cannot in a living and growing enterprise, include every duty and task that an employee may be required to perform. There are, in our view, of necessity, certain duties which are ancillary or incidental to the main or major duties that are normally delineated in a job description." (p. 85)

This makes perfectly clear that in the absence of the special language, the grievance would have failed entirely. Even where job descriptions exist, they do not constrain management's right to assign tasks. The effect of job classifications on job control will be discussed in more detail presently.

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11. Though the arbitrator enjoined such activity in the future, this would not, of course, release a future grievor from the "obey now, grieve later" rule (see Chapter VII).

The significance of the above case lies not in the union victory, for such collective agreement language is indeed rare, but rather in just how tightly the arbitrator circumscribed his ruling. Despite or perhaps because of the symbolic importance of the case for 'human dignity at work', the arbitrator chided the union (and the employer) for bringing the case before him:

> "...we deprecate the fact that a grievance of this type has proceeded to arbitration."

He also took pains to qualify the precedent-setting impact of his award:

> "We do not think that supervisors should be discouraged by this award from asking their secretaries to purchase coffee from time to time and we hope that secretaries will not be inclined to stubbornly refuse to comply with reasonable requests of this kind."

Moreover, the arbitrator also took pains to limit the strength of the award's challenge to managerial prerogative, as seen in his response to the written dissent of the employer's nominee on the arbitration board. In her opinion, fetching coffee, though clearly a duty of a 'personal' nature, could not be considered unconnected to the 'approved operations of the University'. To this the arbitrator replied that because the relevant clause was *so* clearly intended to abridge general management's rights, to read it otherwise would be to make a mockery of it.

For that very reason, however, this particular arbitration case may have an effect quite opposite to that for which it is hailed. Rather than advancing the cause of union job control, it may actually further constrain the narrow purview of arbitrators in these matters. Our old friend *expressio unius* (encountered in Chapter V) is applicable here. If the *York University* collective agreement contains a clause expressly limiting managerial prerogative, then the vast majority of collective agreements, which do *not* contain such a clause automatically grow weaker. A clever management lawyer could make a convincing argument as follows: "The particular parties in *York University* wanted to limit managerial discretion in task assignment so they negotiated an explicit clause. In the absence of such a clause, we *must* assume that parties to an agreement *intend* to leave managerial discretion unfettered." Nothing, of course, could be farther from the truth. Yet the argument has a perverse and compelling logic.

The CANBREW agreement has a similar express provision on job control—the 'fair day's work' referred to earlier, which the union has attempted to enforce several times unsuccessfully. One arbitration case on the issue is a fine example of the limitations of

such provisions in collective agreements. But even more interesting than the actual result of the case is what it says about the process of struggle between union and management over job control issues in Canada.

The case involved truck drivers and a maintenance employee who, among other duties, washed their vehicles. Management had transferred a deceased employee's duties to the 'vehicle washer'. The union's first grievance cited the failure of the employer to post the deceased's job. When the vehicle washer, with his new duties, found it impossible to complete his washing tasks, several drivers voluntarily washed their own vehicles. Their supervisor followed eagerly by asking all drivers to 'voluntarily' do this task. Concerned about the creeping augmentation to their job content, the union instructed drivers to resist:

> Dear Brothers:
>
> At the special meeting held on April 27, the following motion was overwhelmingly approved:
>
> > "No driver will wash his unit nor run it through the truck wash unless given a direct order to do so by the Company. In the event that such an order is given, the work is to be done under protest!"
>
> As a result, this is now official Union policy and it is expected that each member will comply with this rule.

Faced with such a direct challenge, the employer responded quickly so as not to set a precedent (see Estoppel, Chapter V). The transportation supervisor issued a memo to all drivers explicitly ordering them to wash their trucks. Obeying 'now' under protest, the union grieved later, alleging violation of the 'fair day's work' clause[12].

The two grievances proceeded jointly to arbitration. Acknowledging the 'fair day's work' clause as a "unique provision" the arbitrator celebrated the novelty of the matter in the first sentence of his award, declaring, "This is an interesting case". On the issue of posting the deceased's job, he turned to the jurisprudence, which allows management sizable leeway in deciding whether a vacancy exists. In the words of one case cited,

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12. To save the reader from flipping back to Chapter III, the 'fair day's work' clause reads as follows:

> Clause "A": The Company shall supply adequate manpower in all operations in all departments at all times so that an employee will not be required to perform more than a fair day's work.
>
> Clause "B": Clause "A" shall not be construed to mean that the manning of all operations is at present exactly adequate or that all employees are presently assigned exactly a fair day's work and accordingly changes in an employee's work load may be made so long as the resulting situation is not a violation of Clause "A".

> "It is well established that a vacancy need not be posted simply because an existing job in a classification is not filled. Rather the company must first initially determine if they require a person to do that job...However...the company's opinion must be exercised on the basis of a reasonable view of the objective facts as they exist."[13]

The arbitrator found when the time spent per day by all drivers washing their trucks was aggregated (2 1/2 hours), it did not justify the creation of a vacancy (arbitrators have required almost a full day's continuous work to exist before they will overrule an employer)[14]. Thus, barring any further express language to the contrary, the case would have failed.

But such language did exist in the 'fair day's work' clause and to this the arbitrator turned his attention. Although drivers worked an average of 53 to 55 hours per week, the union argued that the small amount of extra vehicle washing work, (eight minutes per driver per trip), was "the straw that broke the camel's back". But when none of the drivers testifying claimed that the 53 to 55 hours per week "put them in a position of performing more than a fair day's pay", the arbitrator declared the extra work "*de minimus*" (a trifle) and dismissed the case.

To the arbitrator, to any other outside observer and by any objective standard, the case may well have been de minimus. But it rubbed the noses of the employees concerned in their powerlessness to assert job control. Baldamus correctly observes that

> "in the worker's definition of the situation, minute details are often very important for his evaluation of customary effort levels." (1961, p. 99-100)

Like the "man against job" seniority clause considered in the previous chapter, the pains taken in interests negotiation to improve collective agreement language had yielded frustration in rights adjudication. Moreover, having won the clause in the collective agreement, and with little other outlet than insubordination or sabotage[15], the work group concerned and consequently the union, is obliged to use it. So a vicious circle emerges. Alert, even supersensitive, to affronts, work groups and the union seek redress by the limited means available. Defeat disappoints but renders them even more sensitive and driven to assert the rights they think they have. And so it continues. In the relative

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13. *Re Horton Steel Work*, 3 L.A.C. (2d) 54 at 56 (Rayner, 1973).

14. *Re Horton Steel*, supra.

15. See Zabala, 1983 for an exposition of the use of sabotage by US car factory workers frustrated by their inability to exercise job control. While Zabala finds some ability to bargain with this activity, he admits it is limited and the effect mostly negative.

absence of control over work itself, the work group and the union become obsessed with the notion of a 'fair day's work'. Hyman and Brough suggest that,

> "the notion serves primarily to contain and sublimate a potential conflict between those in managerial and those in subordinate positions. Its use is to sustain a sense of work obligation among those whose work offers little or no intrinsic motivation to high performance and to denounce those who fail to meet managerial expectations. This is to imply that the concept is ideological". (1975, p 29)

The process of defining a 'fair day's work' and thus of "contain[ing] and sublimat[ing] conflict" is far more advanced in our British plants, and especially at BRITBREW, where, coincidentally a very similar set of events to those just discussed took place. At the outset, it is important to note that, unlike at CANBREW where drivers are paid a flat rate, payment by results at BRITBREW means that the price of nearly every aspect of draymen's work is negotiated. Whenever management proposes to add or subtract tasks, whether they be marginal or not, the change is a potential subject for negotiation, as is manning. However, this does *not* necessarily mean that every work change results in a monetary change or that management and labour always agree. It simply means that it is a legitimate area for negotiation. In fact, because 'everything is negotiable', work groups may occasionally take on *ex gratia* extra tasks. BRITBREW employed a man to pump diesel fuel into the lorries; but when he proved incapable of doing his job as quickly as draymen required, many of them pumped the fuel themselves. Management did not feel constrained to respond by institutionalising the new tasks as its Canadian counterpart did. Nor did the work group or the union feel bound to refuse to do the work. This is not to say that disputes do not break out over such issues, merely that they are not *bound* to break out as they seem to be in Canada. Lupton describes this very process as it operated in his piece work shop:

> "The strength and solidarity of the workers, and the flexibility of the management system of control, made a form of adjustment possible in which different values about a fair day's work, and about 'proper' worker behaviour, could exist side by side". (1972, p. 139)

If the relative lack of language on job control issues in Canadian collective agreements were taken as an indication that such issues are not important to Canadian workers and their unions, the notion should easily be dispelled by the above examples. The fact that strong and/or highly-motivated unions do bargain such clauses despite the odds against them demonstrates the desire is alive. But there is a good reason why language on job control is scarce—the interests apparatus is the worst possible forum for

the handling of such issues. In order to be handled by this apparatus, the job control issue must be reduceable to a set of words that will cover eventualities within the term of the agreement. But this is almost impossible. More than remuneration, discipline and i.l.m. structuring issues, job control issues are difficult to predict in advance, because they emerge from the exigencies of production itself. If the wording is too general, two problems emerge: either it is so vague a statement of intent as to be useless or it is so comprehensive that no employer in its right mind would allow itself to be so restricted (unless equally comprehensive wording qualifies the working of the clause, as in the CANBREW 'fair day's work' clause). When a union attempts to introduce new language into a collective agreement using the interests apparatus, the employer will demand to know its reasons. Unless the union can point to a specific instance of past injury, the employer will naturally resist. Likewise, union members will not readily be mobilised to fight for such language. On the other hand, if the union can demonstrate a precise motive, and language is negotiated to cover it, the wording may be too particular, risking unenforceability unless the exactly appropriate set of circumstances arises within term. Arbitral conservatism in this area, as seen in the *York University* case, makes the risk of overparticularity even more acute.

It should be obvious from previous discussion that the adjustment apparatus is the most appropriate vehicle for handling job control issues. But, as seen, that avenue is so embryonic in Canada as to render job control almost totally hors de combat.

3.2 Tangential Approaches to Job Control

Given the scarcity of agreement language directly on job control and the unfledged development of shop-floor bargaining, the main way of approaching the issue in Canada is obliquely, through tangential issues such as pay, discipline and i.l.m. structuring. Unions can, sometimes without directly aiming to, involve job control in a dispute by combining it with or masking it with another issue. Likewise spontaneous resistance to changes in work practices can emerge in other guises.

Job Classifications and Work Assignments. When management adds to, subtracts from or changes the tasks involved in a job, unions sometimes launch grievances. Where no job descriptions exist, the arbitrator has little to work from except verbal evidence, which may do little to pin down the exact job content, *especially* in the rarified

atmosphere of the hearing room so far removed from the shop floor. But even where job descriptions are explicit, the general arbitral rule is quite rigorous:

> "An employer has the right to institute new work processes and new classifications for them, or to redistribute tasks among or within existing classifications in order to reorganize his work force. There is no implied proprietary right of an employee in the job duties he is actually performing and specific provisions of the agreement must be relied on to restrict managerial initiative. *The existence of an agreed-to wage structure is not such a restriction on managerial work assignments since it merely gives the employee to whom the work is given a possible right to grieve about the propriety of the wage he is given for the work he is doing.*[16]" (emphasis added)

In the italicised portion the arbitrator is saying that where job content has changed, the best and nearly the only claim is for a change in pay. Yet even such a claim is very difficult to make:

> "Job content of a classification is unaffected by an increase in work load and a person cannot claim a different classification simply because the amount of work has increased" (Palmer, 1983, p. 477)

And even if a "real and substantial change in job duties and responsibilities" (ibid., p. 478) is found, in the absence of appropriate collective agreement language, the arbitrator may well lack the jurisdiction to set a new wage, leaving such determination to managerial discretion until the next round of collective bargaining.

In the absence of a wage-change claim a grievance may successfully challenge the job-content change only where the union (given that the onus is on it) is able to prove that the change was undertaken without legitimate business reasons either with the intent and/or the result of subverting other rights in the collective agreement such as seniority. But this is rare.

Some sets of parties (especially in the very large bargaining units in steel and auto) provide for joint input into job evaluation and wage-setting, engaging in 'cooperative wage study' schemes. But these schemes are often highly constrained by job rating and pricing systems developed and monitored by compensation consultants. Yet trade unionists attempt to become involved in even such limited exercises, another example of the latent desire for *some* job control. The CANMET convenor has attempted for some time, unsuccessfully, to persuade the employer to agree to a joint project of this type.

> "Often when the company introduces new equipment, workers' jobs become less skilled. Sometimes they become more skilled. The company just decides unilaterally how to rate the new jobs. We've suggested cooperative wage study for many years but the company shoots it down. They don't seem to want us to have a say in this."

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16. *Re. Algoma Steel*, 19 L.A.C. 236, at 243 (Weiler, 1968).

Incentive Schemes. Payment systems providing bonuses for work performed lend themselves much more readily to job control by work groups and unions than straight compensation systems, especially when unions have managed to obtain negotiating rights in these matters. Job content, task assignment, manning and work speed all become potential subjects of co-determination. To British observers (Lupton, 1963; Brown, 1973), it is well known that piecework bargaining provides the "hothouse conditions" (ibid., p. 1) for job control.

Roy's (1952) and Burawoy's (1979) descriptions of piece work in (the same) Chicago machine shop and their comments on its effects on inter-worker relations have become well known in the academic literature. Yet because of the (deserved) popularity of these works, an incorrect impression may have been given about the popularity and ubiquity of piecework in North America. Compared to Britain, payment by results schemes are relatively unpopular with North American labour and management alike and have been for some forty years. Where they still exist, managerial prerogative is jealously guarded.

Stone (1973) claims that US steel companies brought piece work systems in at the turn of the century over the militant opposition of unions,

> "to break up any community of interest that might lead workers to slow their pace (what employers call 'restriction of output') or unite in other ways to oppose management" (p. 44)

Schatz (1983), however, claims that such schemes were highly popular among pre-war and wartime electrical engineering workers and that their union eagerly participated in rate-setting. Lichtenstein (1980) maintains that pre-war and wartime autoworkers on piece rates were the militant leaders of automobile unionism.

Whatever the case, after the war, a managerial imperative away from piece rates emerged, picking up steam through the fifties and sixties. Schatz (1983) relates that:

> "The history of workers' struggles regarding piecework and money is a record of advance followed by retreat. Unionization and economic recovery so greatly changed the balance of power in encounters between workers and supervisors that by the early 1950's management had begun a search for alternatives to incentive pay." (p. 160)

As Slichter et al. found in the late 50's, piece rates were more and more restricted to "piece rate industries" at the competitive end of the spectrum such as clothing and labour-intensive engineering (1960, pp. 522-5). Employers in the more sophisticated industries found truth in the comment of Slichter et al. that "piece rates are in some degree substitutes for refined management methods" (ibid., p. 523), which then became part of

managerial ideology. Indeed, managers in both our Canadian plants echoed this sentiment proudly, though an incentive plan had existed at CANMET up to 1978. A CANMET supervisor insists that the incentive plan was rough on equipment, as workers drove machinery to its limit, and that workers took on a 'devil take the other guy' attitude. The more quality became a concern of production, the less beneficial the incentive scheme became.

Certainly in Canadian unionised workplaces, incentive schemes are rarer than in Britain. To illustrate the trend, while only 20% of collective agreements in the Labour Canada survey had incentive schemes in 1973, by 1986 this number had been cut in half. Incentive plans are somewhat more popular in unionised manufacturing plants, with 40% of agreements in the survey containing them in 1986 (Kumar et al., 1986, p. 401, 422)). Incentive schemes also tend to be offered only where individual worker input forms a large part of value added and where worker output can be accurately measured[17].

Whatever their initial feelings, North American unions have by and large come to distrust payment by results. While CANMET management may have lost a strong commitment to the scheme by 1978, consistent union pressure against it, culminating in a strike, brought about its end. The CANMET convenor, echoing the situation in Burawoy's (1979) machine shop, remembers that

> "the incentive scheme only created friction among the work force. Everyone wanted better tools and didn't get them. They used to bribe the foremen for the best jobs and do other things to please them."

The management of the CANMET scheme was indicative of Canadian managerial attitudes to incentives (and perhaps Canadian managerial attitudes in general). In contrast to much of the British system, the plan was tightly run, with keen vigilance and almost obsessive tightening of the standards upward. The union had little say in the running of the scheme and work study engineers were distrusted by the workers. What records are available prior to 1978 indicate an inordinately high number of grievances on the subject of incentives. One steward describes the frustration:

> "The standards got tougher, wiping out the increase in earnings we presumed in negotiations. After negotiations, the company would send in the time study men who would jack up the standards. When I started in 19[7], we had to build 3 1/2 [units] per shift to go into bonus earnings. By 1978, when the plan ended, we had to build 5 [units]. But nothing about the building

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17. As opposed to Britain, as will soon be seen, where payment by 'results' extends to many groups of workers where results is virtually unmeasurable

process had changed. So workers took shortcuts on safety. For one whole year, I never made any bonus so I said 'Fuck it'".

The move to measured day work, however, can bring other problems. While monetary incentives contain their own whip, measured day work requires more active discipline by the employer. A particularly apposite case is *Great Atlantic and Pacific*[18] wherein the employer used a non-incentive piece system to measure employee productivity. When an employee consistently failed to meet the standards set, he was disciplined. The arbitrator noted that

> "the union has not disputed at any time the reasonableness of the programme which was instituted to raise the performance level of its employees in these facilities and which obviously was done for a *proper business reason* and not to discriminate against any of its employees".

naturally failing to note that the union was in an especially disadvantaged position to raise such objections *until such time as an employee was disciplined by which time it is probably too late* (see Chapter V on the inefficacy of hypothetical challenges to employer rules).

The effort bargain, then, is one more aspect of job control in Canada where union participation is minimal. Because of the nature of the bargaining system, it is a case of 'damned if you do and damned if you don't'. Where incentive plans exist, lack of control by work groups and union make them a potential source of great frustration. Where they do not, the self-expression of workers is further restricted, inviting conflict.

Job Control and Safety. Armstrong et al. (1981) have asserted that workers will attempt to couch demands of questionable legitimacy in the most legitimate terms available, even if this involves exaggeration of some order. In Canada, job control is a very 'illegitimate' concern while safety is a very 'legitimate' one. With few other outlets available, it is here that job control concerns, often clumsily, often explosively, occasionally emerge.

This is especially evident at CANMET. Several wildcat strikes, as described in Chapter VI, have had safety as their spark. Yet further questioning about them reveals a buildup of tension in these work areas over a number of issues of work speed and job content, with safety complicatedly ravelled up in them. In another instance, a militant CANMET steward took it upon himself to "shake things up", in the words of the convenor,

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18. *Re Great Atlantic and Pacific Co. Ltd.*, 3 L.A.C. (3d) 403 (Brown, 1992).

in a particularly sleepy department. This he proceeded to do in an aggressive way. To the employer's annoyance, a flurry of safety grievances on previously uninvestigated matters (problems of heat, dirt, dust, noise and fumes) ensued. More than complaining about safety, though, he was in effect disrupting the process which Baldamus (1961) has called "inurement". One day the steward complained to his foreman that his press was turning out faulty product due to poor maintenance (two bolts had sheared off). The foreman dismissed the steward for a coffee break while he fixed the machine. After a quick repair job, the foreman placed a (more quiescent) relief worker on the press but soon the bolts sheared again causing an arm of the machine to fall away. Back from his coffee break, the steward surveyed the new damage and erupted in anger, excoriating the foreman for shoddy supervision and "almost killing me". When the foreman complained that the steward was blowing the safety issue out of all proportion, the steward is alleged (by the employer) to have grabbed the foreman by the collar and punched him. When the steward was suspended (and later discharged on another, minor, incident), the union angrily claimed victimisation. At the time of the study, a year and a half had elapsed since the suspension and neither grievance had been resolved, making for a festering sore point in relations between the parties. The incident illustrates a major problem in 'legitimacy transfer': while it is one way of venting job control problems, it almost invariably leads to more conflict and frustration.

Job Control and Discipline. The above story serves as well as any other in the study as an illustration of a point made earlier in the discussion of discipline: what emerge as disputes over job control and cannot find legitimate expression there may find their way through to the disciplinary forum as insubordination. It is difficult to prove this conclusively. Yet the inference begs to be drawn from the evidence. Arbitrators have dealt with enough cases of insubordination to list the most common causes for discipline in this area:

> i) refusal to perform normal work
> ii) refusal to work outside of normal classification
> iii) defiant slowness to respond to an order
> iv) refusal to perform work in the manner requested by management
> v) refusal to attempt to meet production standards, *whether reasonable or not*
> vi) refusal to buy and wear safety equipment
> vii) refusal to perform contracted-out work
> viii) refusal to accept promotion
> (Palmer, 1983, pp. 337-8, emphasis added)

as well as refusal to work 'reasonable' amounts of overtime (unless the collective agreement makes it voluntary) (ibid., pp. 340). Clearly, the majority are job-control issues.

Indeed, CANBREW employees have been disciplined (usually short of discharge) for, among other things: refusing to carry a large amount of cash (for fear of being mugged); for taking a break at shift-end though ordered to go straight into overtime work; and for yelling and swearing at a supervisor when the latter phoned the employee at home to request extra hours. CANMET employees have been disciplined for, among other things: refusing to carry a pager, refusal to work overtime, shoving a foreman in an argument; harsh words to a foreman; and changing shifts without permission.

3.3 Summary

As can be seen, job control issues in Canada are seldom addressed directly, either through explicit collective agreement language or through appeals to arbitral adjustment. Employers jealously guard their prerogatives in this area, arbitrators tread warily and unions exercise extreme caution. But the impulse still burns brightly. Left to their own devices, shopfloor work groups and individual stewards attempt to use what vehicles are available to vent their concerns. But these are of limited usefulness as arbitrators seldom allow them to intrude on the terrain of job control. What is lacking entirely is the sense that joint regulation in this area is in any sense a legitimate preoccupation of unions. This becomes much clearer when compared to the situation in Britain.

4. The British Plants

A fair amount of space has been devoted to describing what may have seemed an obvious assumption: that the amount of bargaining, at higher or shop floor levels, on job control in Canadian workplaces is minimal. This was necessary because actually little empirical work and theoretical literature has accompanied the assumption. But it was also argued that the urge for job control was no less strong among Canadian workers than any others, so a certain amount of searching about was necessary to track down the outlets available and used for venting concerns here. Also, Tolliday and Zeitlin's (1982) exaggerated claims about the vibrancy of US shopfloor bargaining throughout the postwar era begged answering. Turning to Britain, a much greater body of literature covers this ground, so less space needs be taken to describe the situation. The questions that need to

be answered are: to what extent do struggles over job control in our plants reflect what has been written about the fate of job control in the late 1980's in Britain and what are the consequences for comparative industrial conflict?

By the 70's union shopfloor job control and rampaging stewards in Britain had become the stuff of legend both at home and abroad. Much of the blame for poor British industrial performance was directed at union 'restrictive practices', even by left-of-centre authors (Kilpatrick & Lawson, 1980). Yet after only a few years of Thatcherism, the decline of shopfloor union power and the rise of the "macho manager" had become the new folklore. Several academic observers have insisted that both images are distortions of the truth. A line of authors (Brown, 1973; Hyman & Elger, 1981; Tolliday & Zeitlin, 1982; Edwards & Scullion, 1982; Edwards, 1986; Belanger & Evans, 1988) have together shown that in the 'pre-'79' period a) union shopfloor job control was not as widespread as popularly believed, with uneven development across industries and even within industries, b) it was often more a product of management laxity and attempts to secure production at any cost than of union strength, c) at its best, the system of job control was susceptible to disorder d) even at their strongest, the constraints upon management were task-oriented rather than challenging larger management investment and planning decisions, e) job control, residing in small work groups, engendered a sectional consciousness that barely transcended the boundaries of the factory and f) even where considerable job control was exercised, it was more friend than foe to British capital. Hyman & Elger's comment about craft workers' control is meant to apply even more broadly:

> "The displacement of managerial control onto the craft group was compatible with an acceptable rate of profit, in part because of the world hegemony of British capital, in part because of the power of notions of 'a fair day's work': in the absence of detailed managerial discipline, workers' job controls contained an important element of *self*-discipline...Paradoxically then, workers' job controls can serve the interests of capital by reinforcing workers' commitment to profitable production." ([1981], p 119)

Yet Hyman & Elger insist that this working arrangement between labour and capital was always highly unstable, liable to break apart when the exigencies of capital accumulation altered, as it began to in the 70's. Examining four industries, they document management attempts to regain lost control of the labour process beginning in the 70's and picking up speed into the 80's as economic and political conditions changed and international competition intensified. Several of their tentative predictions about

sweeping changes in working practices in railways, newspapers, steel and automobiles have come true.

But even a general prediction of the erosion of shopfloor controls must be qualified. Debates over the ascendancy of the "macho manager" (Edwards, 1985; Marchington, 1985; Mackay, 1986) continued through the 80's. Though there was copious evidence of managers clawing back union gains, there was also copious evidence of managerial caution in 'taking on' shop stewards (Terry, 1986; Batstone, 1984). Many managers echoed the one who told the UMIST survey

> "My philosophy is that you get the IR you deserve anyway, and, while it might be easier at the moment to go and kick the unions, my view is that their turn will come back again, and they'll come back and kick you" (Mackay, 1986, p. 25)

As well as variations in managerial attitudes, Edwards and Scullion (1982), looking at seven plants, show just how huge a variation in job controls persists across and within industries and just how difficult it is to make sweeping generalisations about the pervasiveness or diminution of job control. Quite simply, it is impossible to construct with any degree of certainty, as in Canada, a single model of union job control in Britain. Our study bears this out.

At BRITMET, while job control was never as high as in 'typical' engineering plants (Batstone et al., 1977), the decline since 1981 has been dramatic. Yet at BRITBREW, despite attempts by management to tighten up working practices, the union still exercises a degree of job control more associated with an earlier era.

But reflected in the mirror of comparison with Canada, certain features of British industrial relations emerge as pervasive despite these disparities, and they temper any discussion of differences among British workplaces. The first of these is what can be called *mutuality*[19], the ever-present prospect that change is negotiable, that bargaining about all aspects of work is neither precluded nor illegitimate. This is almost self evident at BRITBREW, but it also applies at BRITMET. There management control of the labour process is firm. Yet, as seen in earlier chapters, *if* and *when* the union is able to mobilise discontent, it is able to push the frontier of control back at certain points. Moreover,

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19. The term mutuality has been used to describe the system in the engineering industry and especially some auto plants in the days of piecework, wherein every change in job content or working conditions was cause for bargaining. It is the spirit, not the letter, of this phenomenon, that the present redefinition is attempting to catch.

management must always second-guess the union and *actively mobilise consent* in order to be assured of "bringing the union along", quite unlike its Canadian counterpart.

A good example of this dynamic occurred in a dispute over "laundering" (tapping and transferring molten aluminium from a main furnace). As in Canada, safety issues served to 'legitimise' an issue which had heavy job control implications. The workers concerned (experienced and proud 'men of molten metal') had traditionally had considerable discretion in how laundering was done and how many men would be involved. Because of the danger of explosions, fire and metal spillage (see Chapter II), more than one worker would often participate in the process. A new casting unit manager (whom the workers insisted was trying to make a name for himself as 'the new broom') insisted that physically the job only required one man. Without consulting the union steward, he ordered the workers to comply . Unused to such peremptoriness, the non-consultation outraged their sensibilities as much as or more than the order itself. The dispute having entered procedure, both sides argued that 'status quo' supported their position. When the workers refused to comply with management's view, the new manager proceeded to suspend the dissidents, along with the steward who, though not involved in the laundering process, represented them.

Amid fraying tempers, higher management stepped in to cool things out. Although not given the apology the union demanded, the dissidents were paid the wages lost in their suspension. The whole issue went into a state of suspended animation, or a process the researcher observed in several disputes, which can be called '*fudging*' the issue. When pressed, management still insists that one-man laundering is necessary. The workers still insist the opposite. Both sides are coy about what actually takes place. According to the steward, "It's up to the discretion of the fireman. Sometimes we do it with one man if we think it's safe." According to management, new methods of work have obviated the safety problem (though there is some indication that this was done partly to address the industrial relations problem). One thing both management and union agree on however, is that the issue was badly handled by the new manager. A foreman is quite blunt about it:

> "Management was plain wrong. They should have apologised for sending the workers home. It was [the new manager's] fault. He should have had the fellows in and explained it. That's what I try to do. It cuts out the animosity. The whole issue of introducing change is very touchy and has to be handled very carefully."

The foreman puts his remarks in context:

"I don't always go along with all that management does; I've got to work with the men."

The disciplined shop steward assesses the dispute:

> "I'd say we're very moderate and there aren't many disputes in this part of the plant. But when we're riled we stick together. This all started with increases in production about two years previously. The men thought these increases in production would be a dangerous practice. *People will cut corners to get more production; if the workers are happy, they'll go along with it. But in this case, when the new broom didn't consult, the men resisted.*

As suggested before, even though BRITMET management has power to coerce the union without too much fear of outright industrial conflict, the ethos of mutuality is still strong, so much so that a breach of it is considered more serious than any substantive change. This ethos is fed by both a general tradition in British industrial relations that unions consider almost inviolable and a kind of pragmatic instrumentalism dear to the heart of British management.

4.1 The Effort Bargain and Payment by Results

A second pervasive feature of British industrial relations that overrides the disparities among workplaces is the tradition of payment for effort and payment for change. So pervasive is this tradition that 'effort bargaining' persists even where piece work systems are absent. Edwards and Scullion (1982) note that under measured day work, stewards often "[concentrate] their bargaining pressure on the effort side of the wage effort bargain." In both our plants, the piecework paradigm was the reference point from which all ambitious shop stewards worked.

British textbooks on compensation management stress the importance of this remuneration system:

> "Incentive schemes have proved popular in the United Kingdom, more so than in any other industrial nation, and in some industries represent a considerable proportion of the task of managing remuneration...Research and surveys in the late sixties suggested that more than three quarters of firms in Britain used incentives and more than one third of the nation's labour force was covered by some sort of scheme." (Smith, 1983, p. 12")

Little has changed. More recent surveys indicate over 60% of manufacturing firms have p.b.r. for manual workers (Brown, 1981), that 40% of manual employees in the country are on p.b.r. and that these earnings make up almost 8% of their gross weekly earnings (Department of Employment, 1987). Even more strikingly indicative is the proliferation of such schemes into work groups and sectors where worker output cannot be accurately measured, such as maintenance engineers and groundskeepers in factories

and manual workers throughout the public service. A personnel manager at BRITBREW attempts to explain this to a foreigner:

> "It's part of the corporate and union philosophy in the brewing industry and many other industries across Britain, but especially in this area. It's part of the heritage handed down from the engineering industry. Even my brother who works as a lawn mower mechanic in local government gets incentive payments."

BRITMET's anguished experience with p.b.r. schemes is illustrative of how employers and unions wrestle with this tradition. The company had a small-group-specific incentive system until the mid 70's, which suffered the curse of many British schemes—poor design and insufficient vigilance by management leading to standards that were either too tight (leading to worker discouragement) or too loose (leading to earnings 'drift'). This gave way to a site-wide productivity scheme. But when productivity increased as profitability decreased, the employer found itself "throwing good money after bad". A subsequent change to a profit-sharing scheme bore no relation to productivity and resulted in much worker discouragement when no bonus was paid out in lean years in the early 80's. For two years, without any incentive scheme, the situation drifted uncomfortably. A personnel manager analyses that period, adding some very prescient observations about why incentive schemes are so popular in Britain.

> "There was a general dissatisfaction on the shop floor with basic pay rates. We needed a system linked to job satisfaction. It was very difficult under that system to link pay to performance...*For its part, the company needs to be able to more finely regulate worker output. For their part, the workers distrust both management and the union. They'd like to get some control over their earnings outside of what the union can negotiate in pay rounds or what management decides to give them as gratis.*"

More than remuneration then, the issue is one of control, for all parties: for the employer to gain a more subtle touch in manipulating the levers of productivity; for the workers to gain input into the production process and increase job satisfaction; for the union to stabilise its institutional strength. The manager appreciates full well that the employer must "regain [or improve managerial] control by sharing it". The big question is exactly how much control to cede to the workers and what level of involvement the union should have. Although he is sagacious in noting some conflict of interests between the workers and the union, the relationship is complicated. At the time of the study, the employer had introduced yet another new scheme, developed by a compensation consultant. Despite the best intentions, however, it was not achieving either of these power of objectives well. Based on productivity rather than output (so that many factors

outside the direct control of workers were crucial), and on large work group and site-wide performance rather than smaller groups, it is difficult for workers to understand and has led to considerable resentment (from groups who do not receive bonus) or bewilderment (from those who do). Moreover, while the union is *formally* involved in discussions to implement and maintain the scheme, it has little input and consequently little commitment to the *substance* of the scheme. So the struggle goes on to find the right balance of control between the potentially wide limits of choice offered by a weak union and the rigid constraints imposed by the product market and production technologies (see Chapter II).

BRITBREW, with more forebearant product market and technologies and a stronger union, has a much more traditional British payment by results programme. Each department negotiates its own incentive scheme, based upon general company principles. The process begins with analysis of job content by work study engineers (themselves company employees and members of the technical and clerical section of the same union as the manual workers). Unlike in Canadian plants, shop stewards and work study engineers have a fairly good working relationship. Occasionally there is friction and non-cooperation from workers and stewards can result in a more compatible engineer carrying on the study. From the work study, manning requirements are put forward. The proposed bonus is calculated on a standard time to complete the task or group of tasks. Based on this input, union and management representatives in the unit sit down and hammer out a 'unit agreement' which can cover, in addition to an exact blueprint of the incentive scheme, hours of work, job loads, manning requirements (often as related to throughput), job content, working arrangements, and substantive and procedural rules. Thus aspects of job control undreamt of in Canadian workplaces are jointly regulated as a matter of course.

In reality, the operation of incentives can be divided between 'live' schemes and 'dead' schemes. The latter applies to the majority of production units, where the relation between worker input and output is more or less indeterminate (eg. maintenance, brewing, packaging). Although several aspects of job control are still jointly regulated, there is little agitation over the incentives themselves. Bonus paid is much the same in every pay period, being either the maximum attained in a long-moribund unit agreement or an average of the bonus earnings of several units. The former applies to the few

production units where the input/output ratio is readily calculable (eg. transportation and staging). In these units incentive earnings fluctuate depending on throughput, worker effort and *micro-changes* in work organisation. It is in the departments with 'live' schemes that the fuss over these issues occurs, especially over *macro-changes* in work organisation.

An interesting cross-national insight into general problems with these schemes comes from a report by a senior manager of a Canadian brewing company (not CANBREW) on a visit to BRITBREW to compare industrial relations in the two countries.

> "There are a number of problems associated with such schemes:
>
> (a) There tends to be established a minimum bonus for the achievement of Standard performance which can be as high as 75% of the maximum payment. Thus, the real incentive payment is not large enough to provide a major effort to increase production above the standard.
>
> (b) The minimum bonus tends to be paid even when performance falls below standard.
>
> (c) When the job content changes due to [altered production conditions or technological change], it is necessary to restudy a job. There is some Union resistance to this in that the bonus tends to be treated as part of one's normal earnings and there is a great reluctance to see such reduced. As well, the Union feels that its members should share in the benefits resulting from capital expenditure-derived productivity increases.
>
> (d) There are areas (such as Maintenance) in which the direct effort required to increase productivity is difficult to measure.
>
> (e) The schemes must be manipulated in such a way as to maintain relationships between various job groups..."

He predicts some of the problems that might be encountered with such a scheme in Canada:

> "In the Canadian environment where line efficiency and manning levels are set by Management, it would be difficult to pay an incentive bonus in [one part of the country] in order to achieve efficiency levels which are reached in [other parts of the country] without any payments beyond the base rate. Such a program could backfire into our efficient plants and we would end up paying more for the same effort and levels of production."

Provocatively, he concludes:

> "The general response by the Management group [at BRITBREW] was that we [Canadians] should not begin a programme of incentive schemes unless we absolutely have to."

A look at the operation of the incentive scheme in the transportation unit and the dispute surrounding its alteration is illustrative of the problems and the utility of such schemes. The original incentive scheme was drawn up in 1967 and provided for payment by the number of items (beer containers) per load carried on the back of the lorry and by

the number of miles driven. As in most schemes, a ceiling was placed on bonus earnings[20]. Typical of much of British industry, the rates were not amended regularly and workers' output quickly surpassed that required to meet the ceiling. At that point, further effort yielded no more pay. The cleverest draymen soon found that if they deliberately tarried, they could maximise their bonus *and* overtime earnings. Naturally, productivity in beer delivery fell.

In 1974, the scheme was altered to raise the ceiling. This rectified matters for a while, but soon the workers reached the new ceiling. Over the years the old agreement operated, the job content of beer delivery had changed quite drastically. Lighter aluminium and steel kegs and casks replaced wooden ones, so that draymen could carry more product and expend less effort. New motorways cut down on trip times making mileage payments less relevant. Yet job restudy was not undertaken for eighteen years! Until beer consumption fell and the market became more competitive, successive transportation and company managers declined to engage in the discomfort of negotiating a new scheme. The workers did not complain because some of them were making more than 175% of the average plant earnings with 'fiddles'.

The fiddles included the following, individually or in combination: finishing deliveries quickly with no call-backs for previously undeliverable items; building up as much mileage as possible without increasing delivery time; and building in as much time as possible for allegedly 'legitimate' delays (eg. breakdowns). The best combination of these required no small amount of ingenuity.

At long last, the employer decided to 'take on' the work group on this issue. At first, this involved tightening up surveillance of delays and failures to deliver product and discipline. Next came the larger (but still limited) confrontation and industrial action described in previous chapters.

BRITBREW's readjustment above worked out relatively smoothly despite the strike. This is because management, though less than tyrannical in its "detailed control", still exercised a requisite level of "general control" (Edwards, 1986). The union too, was essentially temperate in its exercise of power. A fundamental trust between the parties,

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20 A BRITBREW personnel manager readily admits that "placing a ceiling is an admission of a bad incentive scheme in the first place."

though shaken, was never broken. So the system 'worked' to provide for a relatively orderly readjustment. One contributor to moderation on both sides was undoubtedly the memory of the notorious brewery dispute in 1981 at Ansell's (as well, of course, as the recently concluded miner's strike). At Ansell's the 'system' had gone awry. There for several years, management had more precipitously ceded both detailed and general control, leaving the union with an reciprocally exaggerated sense of its own power and invulnerability. A fundamental breakdown in trust between the parties ensued. When the economic imperatives of the early 80's forced their way onto the scene, and the company finally 'took on' the union, disaster was almost inevitable. When management called for compulsory redundancies, new conditions of employment and swingeing changes in working practices, the workers walked out. The parent company responded by permanently closing the plant (a move that is reported to have been preconsidered). The external union finally abandoned the strike. (For a more detailed account of the strike, see Waddington, 1987.)

Returning to the discussion of incentive plans, the flip side of worker resistance to job restudy in live' incentive schemes is the expectation that when change finally does come, workers will be 'bought out' or compensated for earnings lost for a set period (usually two years)[21]. In looser times, workers were known to ratchet up their earnings to maximum under new schemes while still on compensation for the 'loss' of earnings in the old ones. Management had tightened this up somewhat. Yet under the new scheme eventually negotiated in transportation, the employer promised to maintain the *average* earnings of the draymen group as a whole. While some dray teams stood to gain, several stood to lose up to 15% of their annual earnings.

But as much as the drop in pay, it was the relative loss of control that rankled these workers[22]. Only partly hyperbolically, one drayman gripes:

> "The old scheme kept you alive, it did. It made work more interesting. Sure it was susceptible to abuse, which was mostly the fault of poor management. But it was a challenge mentally. It was competition."

The transportation supervisor does not disagree but insists:

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21. This 'payment for change' is a tradition in evidence at BRITMET also, as witnessed by the buyout of furnacemen for working over the shift break, described in Chapter VI.

22. It must be remembered that compared to Canada and to many British plants such as BRITMET, the new scheme still entailed a formidable amount of job control for workers.

"The old scheme was an incentive for craftsmen, not for work."

The 'fiddle' then, is as much a way of enriching work as it is a way of making money and certainly more than deliberate sabotage or shirking of production responsibilities. Edwards (1988) and Burawoy (1979) have pointed out that the significance of such activity is complex. It cannot be read off as automatically injurious to the employer's interests. Moreover, managers, both low and high, often cooperate in such activity. Lupton gives the classic description of this phenomenon, just as relevant at CANBREW today as it was at 'JAY'S' in the early 60's. In fact it sums up much of what can be said about the efficacy of job control in conflict generation and resolution:

> *"...the 'fiddle' was an effective form of worker control over the job environment...I have no doubt that, if management controls had been made less flexible, and management planning more effective, the 'fiddle' would have been made more difficult to operate and probably output could have been slightly increased. But this might have destroyed the balance of the social adjustment between management and the workers, and the outcome might have been loss in work satisfaction. The shop would no longer have been a 'comfortable', may be not even a 'happy' shop. And in turn, this might have reduced higher labour turnover, absenteeism and the like."* (1963, p. 139, emphasis added)

4.2 Manning

In British workplaces, the issue of manning sits on the border between structuring the internal labour market and job control. In the previous chapter, it was seen how departmental manning levels are a quite legitimate subject for negotiation between union and management. This is most fully developed at BRITBREW where, as seen, responses to short and long term fluctuations in demand were smoothly engineered within the context of the incentive scheme. Since the sectional union interest is to keep incentive earnings as high as possible, the union cooperates in adjusting manning levels to the level and permanency of product market conditions. Yet even in those units with *dead* incentive schemes, such as maintenance, the union has active, if indirect, input into manning levels.

Yet as also seen, allowing the union to co-determine sectional manning levels does not necessarily work against management's interests. In many cases, it keeps manning levels lower than they might otherwise be. And because strong sectional interests are so concerned with manning in their own areas, less concern is focused on overall manning levels or those in units with weaker union organisation. The 33% reduction in manpower at BRITBREW between 1979 and 1987 was achieved with very little conflict or, more importantly, lingering resentment. Thus the ceding of detailed control in this area has effectively increased the general control of the employer.

4.3 Work Load and Work Pace

The control of work load and work pace is another area where the British plants differ substantially from the Canadian. The joint regulation of work loads (where such can be quantified) has already been seen in the negotiation of formal departmental agreements. But even where quantification is not possible, work groups and the union can have tremendous input.

An apt example is the staging unit at BRITBREW. The job of one relatively small group of workers is to collect beer barrels from the warehouse and load them onto the shipping bays ready for the draymen to load onto the lorries. The existence of the incentive scheme, their strategic placement in the production flow and the high degree of solidarity among these workers has made them almost legendary in the plant. They have become like entrepreneurs, wheeling and dealing to combine work loads and work pace to maximise their earnings. Over the years, wherever management has been lax or other workgroups less than vigilant, they have gladly taken on extra tasks. Those that can be measured by work study have become part of the incentive scheme. Those that cannot, provide flat-rate payments.

They are also legendary for their pace of work. Their formal work day is 8 hours. But operating on a "job and finish" basis (they can go home when they have completed their daily duties), they effectively work little more than 3 1/2 hours. During that period, the level of their activity is truly formidable. The researcher is told he is "in for a treat" and is not disappointed. For just over three hours, sweat, sinew and beer barrels form a blur.

While managers acknowledge this group is highly cost-effective and hesitate to do do anything to upset its morale, there are several actual and potential problems. First, the group's earnings are so high as to make a mockery of internal comparisons. One worker in the brewing unit refers to their "licence to print money". Second, the group resists any technological change (in a low tech area, this means the use of new equipment and work methods) that has even the vaguest hint of reducing its earnings. Third, faced with inevitable change, the group demands compensation for lost earnings due to change. Fourth, like high performance thoroughbreds, they are very highly strung. Any small annoyance can set them off on a wildcat strike. Such strikes can wipe out the benefits of

their efficiency. It boils down to a trade off between the morale of this group, and the morale of the workforce as a whole as well as between management regaining control and sharing it. The key for management (and the site union) is to be able to bring about enough change to mitigate these problems without breaking the morale of this group.

5. Concluding Remarks

Up to this chapter, the aim has been to show how aspects of Canadian dispute resolution that can appear effectual actually are no more so than their British counterparts. The task has been to highlight subtleties and paradoxes not readily discernible where processes seem similar.

It is in the area of job control, however, that the divergence between the two countries finally becomes dramatic and full-blown. In Britain, the difference between job control and other areas of dispute along the frontier of control is a subtle one. In Canada, the difference is striking. And the remarkable thing is that by so neatly dividing job control from discipline and from the structuring of the internal labour market, the state, employers and unions have effectively traded the appearance of consent in the former two for the cold reality of coercion in the latter.

British employers are no less *concerned* about concessions made to work groups and the union in this area than are their Canadian counterparts. The tightening up of working practices in both British plants and especially BRITMET is proof of that. And Canadian employers are no less *concerned* about giving workers some say in the work they do in order to improve productivity than are their British counterparts. CANBREW's employee survey and the plethora of 'quality of working life' and quality circle programmes now popular are proof of that. ***The difference is that job control is an institutionally negotiable item in one country while it is almost totally precluded from union-management discourse in the other.***

What is entirely lacking in Canada is the institutional counterpush from the union that constrains managerial discretion. As Streeck (1985) and Nolan (1988) point out, contrary to conventional wisdom, this counterpush can be a blessing for management while too much flexibility can be a curse.

In Britain, as has been shown, union and work group job control, if appropriately managed within the contingencies of the product market and technology, can and does

contribute to a harmonious 'working relationship' between labour and capital whereby capital accumulation is more readily obscured and secured. Conflict, though not unavoidable, is instrumental and circumscribed within the limits of work groups, tasks and a concrete effort bargain.

In Canada, on the other hand, it is argued that on job control may hinge a prime difference between the countries in the generation of unresolved conflict. Some of the conflict generated in this area, as mentioned earlier, is displaced to the disciplinary forum. Some of it surfaces in mid-term strikes, either as a direct cause or as an indirect influence. And some of it emerges as a major residual irritant contributing to the high number and bitterness of Canadian end-of-term strikes. While it is doubtful that this can ever be proven conclusively, the inferences are compelling.

CHAPTER X: CONCLUSION

In *The Politics of Production*, Michael Burawoy attempts one of the only comparisons of industrial relations at workplace level in a British and a North American factory. In a fortuitous coincidence, his experiences at the American machine shop, Allied, are comparable with Lupton's experiences in the British machine shop, Jay's (1963). So Burawoy proceeds, exactly as this thesis has done, to draw inferences from "two workshops with similar labour processes...situated in similar market contexts but different national conditions." (Burawoy, 1985, p. 128).

He finds (as found in our previous chapters), two very different sets of 'political apparatuses of production' in operation. He notes that "the continual bargaining and renegotiation at Jay's contrast with the broad adhesion to a common set of procedural rules at Allied" and that "bargaining over 'custom and practice' rather than consent to bureaucratically administered rules shaped production politics at Jay's." (ibid., p. 132). Burawoy concludes with a potent truth, about what we have called 'job control':

> "workers at Jay's had more control over the labour process, and therefore more bargaining power with management, than at Allied" (ibid., p. 132)

Yet this is an extremely broad statement of result and as heavy-handed as the discussion of the causes that lead to it. While the present study owes a great deal to the bravado and elegance of his overall analysis, it is obvious that Burawoy's attempt at operationalising his theory in a transatlantic set of workplaces leaves much to be desired and begs for further work to be done.

Serious questions could be asked about the validity and generalisability to the present-day situation of a comparison of studies by two different authors with two different research agendas, carried out more than a decade and a half apart, with one as early as 1958. Moreover, Burawoy is on shaky ground in analysing a single industry only, with the resulting failure to consider the effect of differing technologies and an idiosyncratic concentration on piecework which, as has been shown, is marginal as a method of ordering employment relations in North America. His treatment of the political apparatuses of production in the two countries is peremptory, as in the throwaway reference to "continual bargaining" and "custom and practice".

The majority of his efforts are directed at the workings of the internal labour market in the two countries. But this gives cause for considerable concern. Similar to our study, in contrast to the hierarchisation and competition for 'advancement' at Allied, he finds little of the same at Jay's. Yet in defining the internal labour market strictly in terms of what has been called "vertical mobility" in our Chapter VIII, and in ignoring the other important questions of the integrity of, entry to, horizontal movement within and exit from the internal labour market, he facilely dismisses its effect in the British factory. He goes from noting that "...at Jay's the distinction between internal and external labour markets was harder to discern" (ibid., p. 134) to effectively assuming that there is *no* system of selection, training, pay, placement, protection from arbitrary discipline and redundancy within Jay's that binds employees to the firm, that helps legitimise the expropriation of surplus value by the employer as it does at Allied. And, like most of the American radical commentators reviewed in Chapter VIII, he overstates the case for the divisive effect of job ladders and seniority schemes in North America. Yet if in the scrabbling for position on the American job ladder "the possessive individualism associated with the external labour market is imported into the factory" (ibid., 133), then in fact the British internal labour market should be more, not less, hermetic than the American.

His summarising of the two national systems of bargaining and his suggested conclusions about the effects of these on industrial conflict give cause for the greatest concern. Contrasting the American situation with that in Lupton's and Maitland's (1983) British factories, he boldly states:

> "The results are clear. Whereas the grievance machinery at Allied dampened collective struggles by constituting workers as individuals with specific rights and obligations, grievances at Jay's were the precipitant of sectional struggles which brought management and workers into continual collision." (Burawoy, 1985, pp. 135-36)

In essence, Burawoy looks at conflict quite one-dimensionally, as a mere aggregate of a series of "collisions" between labour and capital in the two countries. Although the aim of his book is to examine differential patterns of subordination and resistance in factory regimes, and thus of conflict generation and resolution, his view of conflict is strangely unproblematic.

In drawing his model of patterns of state intervention and their relation to production (ibid., pp. 137-48), and in suggesting the rise of a new "hegemonic despotism" (ibid., p.

150) wherein in an era of unparalleled international competition capital *in all countries* demands concessions from labour based on their so-called 'common' interests, Burawoy suggests that the American pattern of postwar industrial hegemony has left American labour particularly vulnerable. While he is careful not to make predictions about how British labour will react to the new imperative, the implication is clearly that because hegemonic factory regimes have not established themselves as strongly as in the U.S., British labour has been left much less vulnerable, that it will have some conflictual tools in its bag with which to resist.

But is this so? Is industrial conflict in a factory, industry, or society merely the sum total of the collisions between labour and capital at the workplace or is a more complicated calculus at work? And have the larger domains of shop floor control carved out by British unionised workers and their greater experience of day-to-day "collisions" really put them in a better position to resist the management onslaught of the eighties?

It is to these gaps in Burawoy's otherwise exciting and compelling intellectual exercise that this study has felt itself inexorably drawn. A modest attempt has been made to refine one part of his analysis by opening up the black box of the "political apparatuses of production" to reveal the inner dynamic of two differing "factory regimes". Contextual factors such as labour markets, technology, product markets and managerial organisation have been carefully analysed and their effect considered. A stab has been made at specifying several "political apparatuses of production" and at analysing how these apparatuses interact with several key flashpoints of potential conflict on the frontier of control. Most adventurously, an attempt has been made to use this analysis to push at the barriers of theory in cross-national variations in industrial conflict.

An anecdote from one of our case studies adds considerable insight here. The BRITBREW convenor went on a joint union-management trip to the United States to examine industrial relations at several American breweries and beer distribution companies. Throughout the trip, he and the other union representatives travelled and often ate and drank with their British management counterparts. At several points in the trip, the British shop floor union representatives met privately with groups of American workers and shop floor union representatives. The Americans expressed surprise and

some shock at the degree of fraternisation between the British managers and workers. Says the BRITBREW convenor,

> "The Americans found it incomprehensible that labour and management were cooperating in the project. They said they would never do such a thing".

Yet according to the convenor, the scepticism of the American workers seemed to arise not from self-confidence but from a profound sense of insecurity. They exhibited a much more adversarial attitude toward management than the British workers and also viewed their parent unions with suspicion. They tended to view any management moves to 'participation' as part of an overall management attack on the union and suspected the union of capitulation. What is more, says the convenor, they were probably right. He did notice much more highly developed participation programmes in the United States, but these were all directed at workers *as individuals*. They *were* attempts to weaken or remove the union. The convenor attempts to interpret the U.S. unionists' attitudes:

> "In the U.K., we see the union as the branch. In fact, the union is part of the company. Not that we're under management's thumb; far from it. But the workers identify with the union at branch level. I think the Americans see their unions as something from the outside, 'faceless wonders' who negotiate the national pay deal."

And the irony of the American trade unionists querying his cooperation with management is not lost on him:

> "There's a real contradiction in the States between union weakness on the one hand combined with this rigid adversarial attitude they have toward management on the other. whereas in Britain we have stronger unions but also a measure of agreement and cooperation between company and union. In the States, management is management. They say to the union 'we'll take the decision and you butt out'. In Britain it's not the same."

The convenor's comments about the contrasting cultures of industrial relations adversarialism in Britain and the U.S. could perhaps better apply to Canada, where adversarialism has continued unabated, even intensified through the 80's. As mentioned in the introduction, with the density of U.S. unionism declining rapidly, Canada more and more takes on the mantle of the 'North American' model of industrial relations. Standing back in this conclusion and looking with some detachment at our case studies, what general observations can be made about differing patterns of industrial conflict in Britain and Canada?

Our two Canadian plants clearly exhibit a union-management relationship in which adversarialism and distrust are deeply ingrained and perpetuated. On the one hand, both plants regularly have major and bitter strikes involving all workers. The expiry strikes at

CANMET have followed a typical Canadian pattern (long, drawn-out affairs of mutual intransigence on both sides, with management attempting to maintain production throughout, and finally resolved through mutual fatigue). Those at CANBREW and other breweries have been somewhat shorter, but this is due to several unique factors, not the least of which is the very high amount of (alcohol tax) revenue that the provincial governments stand to lose in a shutdown of the beer industry. More than in most Canadian private sector industrial disputes, it is crucial to governments that disputes end relatively quickly. Yet despite this, long brewing strike/lockouts are not uncommon, with a seven month conflict in Alberta in 1980-81 and a six and a half month conflict in Newfoundland in 1985!

In fact, brewing is a high conflict industry in Canada, with over twice the average number of working days lost per year and over four times the average number of strikes (proportional to workers employed) compared to Canadian manufacturing as a whole[1].

In our British plants, a radically different pattern of industrial conflict can be observed, also in line with the patterns observed in Chapter I. At BRITMET, there have been only three work stoppages in ten years, all three involving the majority of production workers but extremely short: two lasting a day and one lasting five days. None of these strikes occurred at a pay round. At BRITBREW there have been no strikes involving a majority of production workers and no strikes at a pay round in the same ten year period. As mentioned, sectional work stoppages are common but are not treated by management as 'serious' disputes. In the ten years, only one dispute has earned the management label of "strike" in seriously impairing the employer's ability to trade. That episode, involving the negotiation of a new draymen's incentive scheme, lasted an unprecedented 14 days but involved only about 40% of the workforce.

British brewery strike figures appear to have a somewhat more complicated relationship to those in manufacturing as a whole than is the case in Canada. While brewery strikes are about 1.5 times *more numerous* than those in British manufacturing, volume is almost half[2]. While figures for British breweries were not

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1. The figures are for the ten years from 19[illegible] to 1986 inclusive and have been calculated from raw data supplied to the author by Labour Canada.

2. Figures on British brewery strikes in the similar time period to the Canadian figures were unavailable. They have been interpolated from Smith et al (1978) and *Employment Gazette* (various years).

available for the same period as our Canadian breweries, it can be inferred that strike volume (proportional to employed workers) in Canadian breweries is three to four times the level in British breweries. A more dramatic variation in industrial conflict across the countries is hard to imagine. While British brewery strikes are more numerous than the manufacturing average, they cause far fewer working days to be lost. The picture then conforms to what has been seen in our case study plant--many, very small strikes, few all-out confrontations. On the other hand, Canadian brewery strikes heavily exceed the manufacturing average in both incidence and volume. This picture also conforms to that seen in the case study plant.

In the vast majority of British strikes observed, the issue causing the strike is clearly discernible and the settlement squarely addresses the issue. In all of the Canadian expiry strikes observed, a burden of unresolved issues and a body of disappointed workers is invariably carried forward as a legacy to the next dispute. Both of our Canadian plants have also had their share of wildcat walkouts in a typical Canadian pattern (short-lived, rather desperate affairs, with management force and the weight of law combining to crush them). These have invariably left a similar legacy of bitterness behind them.

Compared to the sheer volume and "total war" character of the Canadian strikes, the striking feature about the British work stoppages is not only that they are relative exiguous but that they are eminently *containable and contained.* And while the number of micro-incidents of industrial action at BRITBREW is far greater than at BRITMET, it is in the workplace with the *stronger union* that industrial relations is more predictable. While the British system may provide for far more discernible "collisions" between labour and management at one level, it also seems to provide for a lower degree of conflict at a more general level.

To help explain this, it is important to realise that dispute 'resolution' is merely one side of a coin. Even those with a more radical inclination fall too easily into a pluralist trap of concentrating on how dispute resolution mechanisms *resolve* conflict. Yet there is a continuous dialectic between conflict *generation* and *resolution* at the point of production and even in the 'dispute resolution' procedure itself. Certainly the study of our four workplaces shows that both labour and management alternate between the two as they see fit to further their interests and that conflict generation and resolution are so

bound up together as to be almost inseparable in an analytical sense. Hence, they must be looked at as a package.

In fact, this may be an important analytical tool in explaining different patterns of industrial conflict in different workplaces, industries, sectors, countries or groups of countries. When it is realised that ***conflict itself is an important method of conflict resolution*** and conversely that ***the process of conflict resolution itself can actually generate conflict***, then it is possible to move beyond somewhat simplistic, unidirectional conclusions about conflict and see that conflict operates in different ways at different levels of analysis. Burawoy makes just such a mistake in attempting to compare the British and American workplaces. In fact, as has been seen, many of the radical and Marxist scholars, especially the Americans, have the problem of thinking in a simplistic manner about industrial conflict. Maitland suggests there is:

> "an unspoken assumption that the relationship between aggregate outcomes and micro-decisions is fairly direct and unproblematic. That being assumed, it is a straightforward matter to infer from the results of workers' actions what their states of mind must have been...Marxist approaches to understanding industrial disorder are especially prone to this confusion of levels of analysis." (1983, p. 108-9)

Maitland ascribes this problem to something inherently wrong in the Marxist or radical approach itself whereas this study appreciates that the failure to problematise conflict is due to the overwhelming pressure on radicals to work at a broad level of analysis. Yet employing some of the reasoning on the manufacturing of consent provided by Burawoy himself, the picture may well be rendered more subtle. Realising the complex interplay between conflict generation and resolution and between coercion and consent and comparing Canada and Britain, it can be seen how factory regimes and forms of state intervention that ***seem to offer more opportunity*** for conflict and labour militancy at a lower level might just end up producing less conflict and less resistance at a higher one.

In the study undertaken here, it is fairly clear that the British workplace industrial relations environment presents greater ***opportunity*** for the parties to engage in conflictual behaviour ***from day to day*** and on a much wider array of issues. But whether those opportunities are taken up and whether shop-floor or sectional conflict translates into wider workplace, sectoral or national industrial conflict is somewhat more problematic.

With that in mind, this is an appropriate place to recapitulate what has been learned from the study to explain the working of conflict at different levels. In fact, much of this explanation should have started to come clear as the account progressed for this study has been organised in a deliberate fashion. Most treatises based on the case study method deliver their findings in an anecdotal fashion, presenting descriptions of their subjects sequentially and waiting to the end to draw the insights together. An attempt has been made in this study to treat the material thematically and to proceed in a more or less logical progression of ideas engages in theoretical discussion as well as description within each subsection, thereby, it is hoped, advancing the overall argument step by step. To the extent that this has been done then, a recapitulation of the material should help to answer the questions posed above. Of course, the danger is summarising a complex study such as this one is that abridgement and synoptisation will trivialise the findings. What is attempted then, is a review of the material to find and present the conceptual arrows that point in the same general direction.

In Chapter I, the need for workplace micro-studies was illustrated. Too much of the literature on cross-national variations in industrial conflict, in both institutional and 'political economy' approaches, has dealt with macro-level institutions and political relationships and has thus missed how institutions and politics at that level are refracted by the prism of the workplace. Defining the workplace as a forum in which the parties employ micro-institutions to engage in a political (rather than a merely economic) struggle for control in the production process, there emerges the possibility that both institutional and political economy approaches can be reconciled and some insight can be gained about how regimes of state intervention result in factory regimes. In fact, this new approach might well be called a *microinstitutional* one. The institutions employed for the political struggle for control were redefined as Burawoy's "political apparatuses of production" and these were conceptually subdivided into interests, rights, adjustments and enforcements. Three key loci on the frontier of control with which these apparatuses articulate were delineated as Discipline, Structuring of the Internal Labour Market and Job Control.

In Chapter II, the workplaces were introduced. While they were chosen to provide a clearly-defined demarcation *across the industries*, they were also chosen to provide as

much comparability *across countries* as possible. The dimensions chosen for cross-industry variation were technology, stability of product markets and labour costs, profitability and the attendant 'style' or militancy of trade unions. While it is clearly impossible to 'hold constant' for the many variables that might intercede to cloud the comparison, it can be said with some satisfaction that the chosen workplaces fit well into the above prerequisites.

Several key features contributing to the climate of industrial relations in the workplaces were considered in the same chapter. Labour markets were examined. Evidence was presented that external labour markets have indeterminate influence on the system of pay and the industrial relations climate in any particular firm. Most firms constr uct an internal labour market that shields them from the effect of the external labour market. The regulation of this internal market would be examined later in the study.

Size of workplace chosen was a crucial factor, and it was proposed that somewhere in the 300 to 800 employee range, a threshold was breached whereby union organisational power (measured by such indices as full-time convenors, regular steward meetings and persistence in pursuing claims) could increase dramatically. Just where that threshold lies is determined by several other factors, among them features of the technology and product market in the subject plants.

Aspects of technology (labour costs, degree of technical control over the labour process, variation between the 'driving technology' and 'ancillary technologies) were seen to interact with aspects of the product market (interfirm competitiveness, volatility of secular demand, pricing, profit potential) in a complex amalgam to effect different climates of industrial relations. It was suggested that the essential ingredient of this mix was 'controllability'. This is what most clearly separates our aluminium plants from our breweries, with the latter at the high and the former at the low end of the controllability continuum.

The above *contextual* factors to some extent give rise to and to some extent combine a more *intrinsic* factor—two distinct sets of power relationships between union and management: the aluminium plants presenting hardheaded management against unions of low power; the breweries presenting somewhat more indulgent management against

unions of high power. However, given these two distinct *sets* of power relationships in the two countries, the case study plants are seen to divide into four clearly distinct *factory regimes* along a scale of union power and influence, with the British brewery at the high end of the scale, the British aluminium plant at the low end of the scale and both Canadian plants (with the brewery somewhat higher) squarely in the middle.

The contextual factors looked at above then, only provided minimal explanation for these variations in factory regime. It is only by looking at the differing national systems of generating and resolving conflict and the way these systems operate in certain loci along the frontier of control, that explanations for the differences in factory regime can be advanced. The next four chapters dealt with different sets of political apparatuses of production. It was suggested that these apparatuses in and of themselves can be either therapeutic *or* dispose the parties toward conflict depending on how well they reflect notions of democracy in society at large, deliver a quantum of equity and engage the union and its members in a collective 'busymaking' exercise.

The set of *interests* apparatuses, wherein the parties meet formally to negotiate written agreements differs across the two countries not so much in form but rather in variety and significance. While the Canadian interests apparatuses are few in number but extremely important in workplace industrial relations, making for a great rigidity and potential for overloading, the British interests apparatuses are highly diverse, eclectic and of far smaller significance, making for much more flexibility. Canadian managers, stewards and workers live by "the bible"—the bi- or triennially negotiated collective agreement document covering the entire workplace. Given the limited nature of the other three sets of apparatuses in Canada, these negotiations take on a 'make or break' atmosphere and are inevitably highly conflictual. In fact, it can be said that the apparatus for *handling* conflict here can be a major *contributor* to conflict itself. In Britain, on the other hand, the parties move relatively smoothly between different interests apparatuses at different levels at within different timing sequences. Disputes that cannot be handled within pay rounds may be handled within the negotiations for various central thematic agreements or within the bargaining over departmental agreements and vice versa. If a dispute *must* come to conflict, it will, but it will not do so because of the nature of the apparatus itself.

Rights apparatuses in the two countries were seen as mechanisms through which claims of violation of terms and conditions of employment are processed. Again very different systems were observed in the two countries. The Canadians were seen as willing captives of procedure, which acts like an efficient vacuum cleaner, sweeping very low, allowing a minimum of informality. Yet the scope of the grievance procedure is severely circumscribed by the contents of the collective agreement so that many very real complaints go unanswered. Once 'locked into' procedure, grievances were seen as taking on a life of their own, distinct from the causes which provoked them and often becoming, not easier, but more difficult to solve. Canadian managements are loath to engage in 'horse-trading' with unions for fear of losing managerial prerogative. The impact of arbitration on Canadian workplace industrial relations can scarcely be overemphasised and the parties put a high premium on predictability so that 'winners' and 'losers' among grievances can be predicted early on. Yet precisely because of this predictability, both unions and employers tacitly agree to cooperate in the charade of 'the prosecution of lost causes'. Nevertheless, employees are almost inevitably let down with a crash when their grievances are abandoned or suffer arbitral reversal at the end of these exercises and the union's policing role is a subtle and pervasive one, built comfortably into the system rather than requiring the union to participate actively. The success, settlement and consequently submission ratios of Canadian grievances and arbitrations are highly contingent upon the subject matter of the grievance, with discipline and internal labour market regulation issues far outweighing any others, especially those concerning job control. A Canadian lawyer who regularly presents union grievances to arbitration tribunals tells the author, "It's a system designed to make people mad."

Formal disputes procedures in Britain, a relatively new phenomenon, were seen as complicated and multiplicitous. Yet despite often detailed prescriptions of method for handling disputes, the British parties treat procedure cavalierly. In fact, two types of procedures are readily observable, the formal and the informal with the parties comfortably slipping between them according to their needs. So powerful is the tendency to informality that it was seen to persist in the face of even the most elaborate provisions to punish it and reward formality. Yet despite the seeming lack of form and restriction on the subject matter of grievances, the parties construct very definite bounds of

acceptability and powerful domestic unions exert a strong and explicit policing role on the claims of their members. In fact, this was one of the most important differences in trade unions discovered between the two countries. The stronger the British union, the more willing it appears to be to (in the words of a transplanted English trade unionist in Canada) "kick ass", or sort its members out. This effectively reduces the claims of the union to an instrumental few and also builds credibility with management. Among an highly-trade-union-conscious membership, this policing role is acknowledged as one of the prices of success. And a corollary of the policing role is the ability of the union to demand solidarity at appropriate crises.

In contrast to Canada, the British rights apparatus where stronger unions prevail is most definitely a *trading exercise*, one in which the parties expect to give and receive. Again, just as with interests apparatuses, in Canada the rights apparatus may not only often be ineffective but *in itself* be a catalyst to conflict. Whether it is or not will depend on the substantive area on the frontier of control that it purports to handle.

While interests and rights are familiar terms in industrial relations, *adjustments* has been coined to denote a distinct and vital apparatus between the two and to shed light on a major institutional difference between our two countries. This apparatus was defined as a method of filling in the spaces between interests and rights, where terms and conditions of employment are either vague or non-existent and where circumstances demand joint regulation of a problem. The apparatus is extremely limited in Canada, constrained particularly by the tacit rules "in the absence of collective agreement language, management's rights prevail" and "obey now, grieve later". While the parties can and do make adjustments, the union has little power to hold the employer to them. Also, though the rigidity of the Canadian interests apparatuses leaves a large vacuum in joint regulation, arbitrators (who are the only recourse for the union between distant bouts of expiry negotiations) have little power to fill that vacuum. In discussing adjustments it was necessary to seriously take on and refute contentions that arbitration is in any way a substitute for negotiations (suitably enforced by the right to strike). Thus the potent claims of liberal arbitrators about their power to effect adjustments were considered carefully and, it is hoped, exposed as without substance. Moreover, it was pointed out that arbitrators are powerfully constrained by the concept of "legitimate business

interests" which operates over the whole of arbitral consideration and also operates differentially between types of grievances, being weakest in discipline and strongest in job control matters. The point here is that the concept of legitimacy is externally constructed by a third party and does not arise from the parties themselves.

In Britain, the adjustment apparatus is a particularly robust one, depending for its strength on the dual notions of "everything is negotiable" and "status quo" (which prevail even in our aluminium plant with low union power). The vehicle through which the apparatus operates is "custom and practice" which both parties use to their advantage as the case may be. While "legitimate business reasons" obviously do influence how strongly management may resist union claims, it does not preclude them. Moreover, despite what seems a far more disorderly apparatus than that which exists in Canada, there exist strong bounds of acceptability tacitly agreed by both management and union. The sense of legitimacy arises from the power relationship between the parties and is socially constructed by them alone. In order to make some claims, the union must forego others. In order to exploit some opportunities to engage in industrial action, the union must forego others. Management too, cannot afford to ignore industrial relations at the point of production. Unlike its Canadian counterpart, it must have its ear to the ground constantly and continually make decisions about what will or will not 'carry' on the shop floor. Thus, unlike the Canadian situation where managers may be confronted with resistance of unexpected ferocity, in the British plant there are few surprises.

Enforcements was the final apparatus considered, involving the efficacy with which claims are pursued and resisted and the the sanctions that can be applied in so doing. In essence it is the ability of the parties to exercise the potential power they have. The use of strike sanctions is severely curtailed in Canada by the presence of a body of restrictive law and by the willingness of employers to use it. Expiry strikes, occurring a specific intervals, rarely coincide with periods of union strategic advantage and picketing is severely restricted so that these strikes become "rituals of pulite attrition" (Kuttner, 1984). Wildcat strikes are typically desperate, ad hoc explosions of frustration and seldom address a specific resolvable issue. The use of strikes to back up "fractional

bargaining" (Kuhn, 1961) is virtually non-existent[3]. Moreover, compromise to end such strikes is strongly resisted by management to discourage their use and discipline and the law are frequently used in their suppression. There is a dramatic division between strike and non-strike enforcements, with strikes as major disruptions of collective bargaining and arbitration as the only means to the latter. Yet arbitration is of limited use as an enforcement even when there has been a clear violation of the collective agreement. The "obey now, grieve later" rule forces employees to postpone the search for equity (often for many months), an especially galling exercise when the offence is flagrant or when the collective agreement provision has been hard fought-for or when the issue is "perishable" (Clegg, 1979, p. 121). Moreover, even a clear arbitral decision against an employer practice does not in itself enjoin its reoccurrence. A new grievance and a new arbitration are required, with all the attendant frustration. In fact, the Canadian system as a whole plus the conservatism of arbitral jurisprudence act as great levelers, ensuring that however great the differential in *power potential* between domestic union organisations, the differential in the *exercise of that power* will be small. Weaker domestic unions have a substantial floor of institutional and legal protections through which it is difficult to fall. But by the same token, potentially powerful domestic unions are confronted by a strong ceiling which restricts their ability to apply their power. What differences do exist are not so much in the application of industrial muscle as in the assiduousness with which the union uses the procedures available to it. Potentially powerful unions feel acutely the gap between their aspirations and the limits to what they can attain. This, it is submitted, is a major cause of industrial conflict. Stronger Canadian unions then, are like sorcerer's apprentices, unable to harness, apply and direct their power, but able to do considerable damage when the few opportunities to do so arise.

Britain now has a panoply of strike legislation that rivals Canada's. But employers have been loath to use it. Where unions are weaker, the law tends to be used, but tentatively and opportunistically. In more traditional, stronger union situations, employers tend to be much more hesitant. There is much less separation between strike and non-strike enforcements, with strikes being used, especially by the more powerful

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3. It is suspected that the incidence of fractional bargaining since Kuhn's time has declined drastically in the U.S. despite the existence of leeway to strike within the term of the collective agreement

unions, as a tactical extension rather than a disruption of collective bargaining. As Batstone et al. say,

> "Strike action is a continuous possibility in our system of industrial relations and merges into other forms of collective action and work behaviour...Strikes therefore constitute simply one means by which the 'frontier of control', the relative power of management and workers over the work situation, is changed or maintained" (1977, p. 218)

In this situation, the differential in the application of union power much more closely resembles potential union power than in Canada. The ability to exercise power depends upon the ability to mobilise resistance and weaker domestic unions are at a severe disadvantage, for unlike their Canadian counterparts, they cannot 'fall back on their rights'; they must continually organise to renegotiate them or lose them. Stronger domestic unions, on the other hand, have far more leeway than their Canadian alter egos to exercise their power. Where management is weak or has abdicated shop floor control, then the result is disorder such as plagued *selected* British industries through the three decades prior to the 80's. For the union, as a reactive organisation, cannot and will not replace management's rationality with its own but merely attempts to preserve the status quo. Where management is of requisite strength, however, and especially when conditions are more favourable for management as they are in the 80's, then, it is submitted, strong unions more fully participate in the regulation of the enterprise.

The above formulation goes some way toward explaining the industrial relations conundrum of the 80's. As mentioned in the previous chapter, many British commentators are wrestling with the question of whether on the many shop floors across the country (and not the few sensationalised in the press) 'macho managers' have indeed 'conquered' the unions. From our limited observation, it seems that there has indeed been substantial change. But, as suggested in Chapter I, it has been one in which management has not sought to drastically alter the institutions of industrial relations, as they have, say, in the United States. In fact, it has left existing insitutions remarkably intact and rather used them to alter the outcomes. Management having grabbed the reins more forcefully in more hospitable conditions, industrial relations have taken on a new flavour. The system has taken not a wide swing but rather one of a few degrees. Yet while little has changed, everything has changed. While the *form* of industrial relations has changed little (ie. union organisation, numbers of stewards, presence of full-time convenors, the trappings of collective bargaining), the content has changed substantially (the

introduction of new technology, swingeing redundancies, new working practices and numerical and functional flexibility). So rather than the scenario painted by Bassett (1986), MacInnes (1987) and Batstone (1984), we have one more like that painted by Terry (1988). It is also possible that in the 'new reality', the very institutions that resulted in so much industrial unrest in the 1960's and 70's may well make for industrial quiescence and effective labour co-optation in the shrinking unionised sector. Whether this amounts to a British variation of 'enterprise unionism', as suggested by Brown (1983) is open to debate but the drastic divergences in strike patterns between Canada and Britain in the 80's adds to the impression. While Canadian employers have also found existing institutions more amenable to the production exigencies of the 80's than U.S.-style union-bashing, the persisting volatility of Canadian industrial conflict patterns makes the future less easy to predict.

Just how the existing insitutions in both countries have been used to bring about change can only be appreciated by examining how the political apparatuses of production articulate with the three major concrete issues in the regulation of the workplace: discipline, structuring the internal labour market and job control. And this the study has attempted to do. These exercises included refutations of several specific and commonly-held misconceptions about the efficacy of British versus North American systems of dispute resolution and explorations of just how and how effectively several state-imposed mechanisms *actually operate* at the level of the workplace.

The discussion of *discipline* how conflict in this potentially volatile terrain on the frontier of control is managed. The state-imposed North American arbitral system, which at first appears as the jewel in the crown of dispute resolution, was contrasted not only with the British state-imposed industrial tribunal system, but with the British discipline-handling system *as a whole*. It was found that not only is Arbitration much more limited than supposed, but that the parties in the British workplace, especially where stronger unions prevail, have very effective ways of managing discipline and reducing its conflictual potential. Issue was taken with radical commentators who see the systems of disciplinary adjudication in their own countries as invariably and unproblematically operating to the detriment of labour and to the benefit of capital while they see the systems of other countries in a romantic haze. State-prescribed adjudicatory

tribunals can be a great boon to trade unions in curbing the more intemperate of management actions and to individual workers who fall afoul of collectivist solutions. They have also forced managements in both countries to regularise procedural, if not substantive, justice in discipline. But the tribunals help management as well. In several instances, the *management education effect* of Canadian disciplinary arbitration was observed, wherein arbitrators act, in effect, as coordinators and establishers of 'good management practice'. They do not prevent employers from disciplining employees (contrary to the belief of some junior managers), but rather teach employers how to more effectively discipline employees. Canadian arbitrators can do this so effectively because arbitration is the sole recourse for unions in appealing employee discipline and where arbitrators have wide powers to second guess and substitute penalties for management. In this context, at worst, a vicious circle is set up wherein unions strenuously abstain from any involvement in discipline, encouraging what may already be a tendency among Canadian employers to harsh discipline. And once the discipline is handed out, the union concerns itself almost solely with procedural considerations to the exclusion of substantive ones. This results in a kind of disciplinary 'multiplier effect', so that the mechanisms prescribed to defuse conflict here actually act to exacerbate it. In Britain, on the other hand, the state-prescribed apparatus is in fact quite marginal to the disciplinary forum. The handling of discipline is much more of a collective exercise and unions, especially stronger ones, participate to the extent that Henry's "accommodative-participative" model may well apply. Again, self-policing by unions enhances bargaining power so that a very effective system of equity can operate. What is more, overall the British system appears to be much more effective in assuaging conflict than the Canadian.

The structuring of the internal labour market is another area in which North American unions seem to have advanced much further (either toward emancipation or co-optation depending on one's view) than their British counterparts. But again the situation was seen as not so simple. First, there was seen to be no straightforward connection between elaborate job ladders and the use of seniority to advance up them, which are almost unique to North American industrial relations, and internecine conflict among workers or weakening of worker solidarity against management. Second, it was maintained that 'vertical mobility' is only one aspect of the effect of the internal labour

market on industrial conflict. In other aspects, especially maintaining the integrity of the i.l.m. and exit from the i.l.m., it is the Canadian system that may actually heighten union-management conflict and the British which may effectively discourage collective resistance, not by intensifying individualism but by intensifying sectionalism. It is in this substantive issue that the concept of conflict operating at different levels first comes into focus. The structuring of the internal labour market is a forum with considerable conflict in Britain, but it is one in which the conflict is not general to the work place but strongly localised. Strong work groups within domestic unions actually help construct internal labour markets within the internal labour market. Several examples of this were given in both British plants. Only where the domestic union is strong and only when the issue is especially crucial to all workers is the union able to overcome the divisive conflicts of interest among work groups which the British system encourages. Third, the concept of seniority was seen as particularly inappropriate to the issue of large-scale redundancy. Seniority, so strongly ingrained into the Canadian system, was seen to politicise redundancy and strongly encourage labour-management conflict in that country while its absence in Britain allowed the parties to find a far more effective palliative in voluntary redundancy and early retirement. So structuring of the internal labour market is one more area where conflict appears to be more endemic in Canada than in Britain.

While the differences between Canada and Britain in the above two areas required some subtlety of argument to tease out, it was in the area of *job control* that the limitations of the Canadian system of dispute resolution were most clearly seen. While there are problems in dividing this area conceptually from the other areas on the frontier of control, the Canada-Britain comparison enhances the theoretical distinction. Job control, as defined here, was seen as almost entirely missing from Canadian collective agreements, being an area of interests negotiations where employers most strenuously protect their prerogative and where trade unions are loath to promote *direct* confrontation. Where collective agreement language does exist, it was demonstrated how profoundly uncomfortable arbitrators are in handling the weighty issues that emerge, invariably attempting to minimise their significance. Yet the issue is far from absent from the hearts of Canadian workers who will use ingenious and devious methods for self-expression. But these attempts are doomed to failure. In both of the above situations, a

vicious circle, similar to that encountered in discipline results. The interests apparatus is so clumsy, the rights apparatus so inappropriate and the adjustment apparatus so ineffectual in handling these issues that arise from the exigencies of production itself that any attempt to *consciously* use these apparatuses to address problems in this area inevitably invites frustration. Yet precisely because they arise from the exigencies of production and the need for new truces to be drawn along the frontier of control, it is impossible for workers and their unions to ignore them. So new attempts are made and frustrated. As seen in the discussion of the adjustment apparatus, adjustments are always made in the Canadian workplace. But they are almost totally under the control of management. It was suggested that conflict over such issues, unable to find expression a a lower level, will submerge to inexorably surface in three ways: first, in the disciplinary forum as cases of insubordination; second, as a direct cause or an influence on wildcat strikes; third, as a residual irritant contributing to the high number and bitterness of expiry work stoppages.

This study has had two objectives: first, to compare the systems of 'dispute resolution' in Canada and Britain by constructing a distinct analytical framework and using empirical data from case studies; second, to draw some conclusions about the reasons for variations in industrial conflict between the two countries.

There is some confidence that the first has been accomplished. The microinstitutional approach has posited four discrete political apparatuses of production and three substantive areas on the frontier of control with which these apparatuses articulate. Such a framework can be employed in the analysis not only of Britain and Canada but of any set of advanced capitalist countries.

About the second objective there is still some hesitancy. The recapitulation above has been a selective exercise, attempting to gather from the study as many arrows pointing in the same direction as possible. As a necessarily qualitative project, this is all that can be done. Yet as can be seen, within the intellectual framework employed, many arrows do point in the same direction. It is hoped that this study has avoided two pitfalls in this regard: that so many arrows point in the same direction that nothing more than the obvious has been longwindedly revealed; and that a specious analytical framework has distorted the facts so that the arrows cannot help but point in the same direction. As for

the first pitfall, it is hoped that the long list of intuitive predictions presented in the introduction and their subsequent refutation will dispel apprehensions. As for the second, while the framework was developed to make particular sense of the actions of the parties in the two countries involved, its theoretical applicability to other countries must be the test.

A key to the analysis in this study and one which has seldom if ever been used in cross-national studies has been the deliberate differentiation between plants with stronger and weaker unions. And one of the key findings is related to the fact that strong British domestic unions have far more leeway to exercise their power than their Canadian counterparts. What does this tell us about industrial conflict? Every study involves an infinitesimal number of logical steps, like the synapses between nerve endings along a neural pathway. The author hopes to have so constructed the pathway that the transitions are almost undetectable. But some synapses are too large to bridge without a logical leap of faith, as it were. One such logical leap of faith has been between the innumerable "collisions" between labour and capital over specific issues in the workplace and more general conflict involving work stoppages in that workplace. There is some confidence that that gap has been traversed. However, the largest logical leap of faith in this study is between work stoppages in four workplaces and industrial conflict in four industries and two countries.

Another look at the pattern of strikes in breweries might help in this regard. Compared to strikes in manufacturing, the British brewery pattern has much higher incidence and much lower volume, indicating many short stoppages and very few longer strikes (or those which, in the words of the BRITBREW manager "seriously impair [the employer's] ability to trade". This is the pattern of many BRITBREWs, where relatively strong unions use the strike weapon instrumentally but sparingly and in which little residual frustration, resentment and adversarialism-for-its-own-sake is built up. Contrary to the picture presented of stronger British unions in the sixties and seventies, these unions are not the architects of "disorder" but rather apply their own rigorous standards of industrial behaviour in self-policing activity. While they fight to maintain gains made in better times, they are hardly immune to the economic and political climate and the new managerial imperatives to move back the frontier of control. What they

engage in is a relatively orderly retreat in which change is patiently but firmly negotiated. This, it is submitted, in its own way has fit in extremely well with the impetus to British industrial restructuring and, as mentioned earlier goes a long way toward explaining why the form of British industrial relations has changed so little.

The Canadian brewery strike pattern is quite different, with much higher incidence *and* volume than in manufacturing as a whole, indicating in the context of the Canadian system, both long classic battles of attrition *and* numerous short wildcat walkouts. This is the pattern of many CANBREWs, where relatively strong unions, confronted by the evidence of their own impotence, locked into a blind adversarialism, engage in periodic bouts of undirected conflict. Change is (justifiably) distrusted and resisted. Thus far, the stronger Canadian unions have resisted many of the swingeing concessions to which their American cousins have succumbed. But the future, especially in light of moves to free trade with the U.S., is not certain.

In fact, it might be said that industrial conflict in the two countries is of two entirely different types. In Britain, it tends to be more focused, more strategic, more purposive, what might be called *instrumental conflict.* In Canada, it tends to be more diffuse, more undirected, more desperate, what might be called *reactive conflict.*

Pains have been taken to criticise some scholars for an overly romantic view of British workplace industrial relations so it would be embarrassing for this study to be guilty of the same misdemeanor. It would also be unfortunate to ignore the strengths of the Canadian system. It is important to see the situation in both countries not static but in transition. There are many indications that studying industrial plants in the late 1980's may be like studying a species on its way to extinction. Yet there is much for either country to learn from the other.

There is much for Canadians to learn from the British system, especially for those who, as Canadian industrial conflict continues at its high level, see more and more formal regulation as the answer. On the British side, there is much to learn from the Canadian situation. As the nature of British industry changes, as the average workplace shrinks in size, as the typical work group moves from masses of blue collar workers to small crews of white collar or service workers and as the old model of British workplace trade unionism undergoes the tremendous attendant strain, the advantages of this model will start to

disappear. Unless it can be replaced with a floor of protections such as exist in Canada, available to even the least powerful work groups, then British workers and British unions may find themselves thrown back into the last century.

APPENDIX A: METHODOLOGY AND METHOD

Perhaps only in a scholarly project concerning itself with North America would an apologia for the use of case study and qualitative methods be necessary. Such projects have a long and honoured tradition in Britain, especially at Warwick University's Industrial Relations Research Unit, where the author resided throughout the study and whose members' work and thoughts formed the intellectual harbour from which conceptual and empirical expeditions were launched.

Yet as explained in Chapters I and II, the use of case studies and qualitative methodology is not a mere whim but an essential requisite to address many of the problems inherent in the subject matter. On the one hand, much of the work on cross-national variations in industrial conflict involves the analysis of macro traits of a large sample of countries (eg. Clegg, 1976; Korpi & Shalev, 1979), treating either institutions of joint regulation or the political interaction of unions, employers and governments as unproblematic black boxes where certain inputs invariably yield certain outputs. It has therefore been necessary to narrow the purview of study to a pair of workplaces in a pair of countries.

On the other hand, some studies have involved the analysis of quantifiable questionnaires on *individual* worker attitudes in different countries (eg. Gallie, 1978, 1983; Lash, 1984). But these run the risk of ignoring black boxes entirely and of giving short shrift to distinctive *patterns of behaviour* of *collectives* of workers which exist, are observeable, and can be so useful in analysis of the problem. It has therefore been necessary to ask questions and examine documents about, and closely observe, these patterns of behaviour rather than concentrate on the attitudes giving rise to them.

The particular methodology employed then, has been a difficult but potentially rewarding one. Rather than collect quantitative data about individual attitudes or aggregates of institutional traits and characteristics and present statistical relationships between these factors, and rather than merely *describe* a set of behavioural sequences, the study has set out to *interpret* unquantifiable sets of actions, by defining them as *micro-institutions* and relating them to the balance of political resources available to and capable of being used by the parties. In fact, it is doubtful that the parties interviewed could have described (without an outrageous amount of prompting by the

researcher) what was being sought. For instance, the use of the terms "political apparatuses of production" or more particularly "interests", "rights", "adjustments" and "enforcements", as theoretical concepts defined herein were only arrived at after considerable reflection upon the author's own experiences in the Canadian industrial relations system and a kind of intensive pilot study at BRITMET undertaken early on in the project. The process is described by Glaser and Strauss:

> "In discovering theory, one generates conceptual categories or their properties from evidence; then the evidence from which the category emerged is used to illustrate the concept. The evidence may not necessarily be accurate beyond a doubt (nor is it even in studies concerned only with accuracy), but the concept is undoubtedly a relevant theoretical abstraction about what is going on.

While the fact that the *two-by-two* matrix of case studies allows for greater richness of analysis than single case studies and hence a greater propensity to generalisation, the sample can by no means be taken as "typical" in the statistical sense. But, as explained and demonstrated in Chapter II, the workplaces were carefully chosen first, to avoid, as far as possible, *atypicality* and second, to reduce areas of difference between them and hence theoretical considerations necessary, to a controllable number. Thus the workplaces were not only generally in line with industrial norms in the two countries, but adequately "comparable" with each other in the same industry across the two countries. In the end, however, they were chosen "in terms of [their] explanatory power rather than for [their] typicality." (Mitchell, 1983, p. 203).

And, as Mitchell says of the logic employed:

> "...the process of inference from case studies is only logical or causal and cannot be statistical and ...extrapolability from any one case study to like situations in general is based only on logical inference. We infer that the features present in the case study will be related in a wider population not because the case is representative but because our analysis is unassailable." (Ibid., p. 200)

The exercise in extrapolation was aided immeasurably by a body of empirical work available in both countries. Of course, with a long tradition of workplace industrial relations study, Britain afforded the bulk of such resource. Thus it was possible to compare any set of features in the British workplaces to the data contained in such works as Daniel & Millward (1983), Millward & Stevens (1986), Brown (1981) and Government Social Survey (1968). Unfortunately, such a body of data has not been collected in Canada (and needs to be done). However, because of the high degree of regulation and formalism in that country's industrial relations, the presence of data on the contents of

collective agreements (eg. Kumar, 1986) and reports of arbitration awards (eg. Brown & Beatty, 1984) provide a 'next best' resource.

One of the best things about the case study method backed up by the availability of such data, is the ability to explore "exceptions to the rule" use them to deepen the explanatory quality of the studies. More quantitatively-oriented methods must needs ignore such exceptions or statistically level them. As Mitchell says:

> "It frequently occurs that the way in which general explanatory principles may be used in practice is most clearly demonstrated in those instances where the concatenation of events is so idiosyncratic as to throw into sharp relief the principles underlying them." (1983, p. 204)

The study had a number of such exceptions which helped to "prove the rule". One, where CANMET management atypically tabled a proposal for an extended working week, aptly illustrated how easily the Canadian interests apparatus can overload and predispose to conflict. Another, where the BRITBREW collective agreement contained a quite atypical "procedural bonus" and provision for conciliation and arbitration to discourage strikes out of procedure, splendidly demonstrated that the tradition of informality persists in British dispute resolution despite the strongest formal prescription. Yet another, where an exceptional early retirement provision at CANBREW proved unsatisfactory to middle age workers, showed just how conflictual structuring of the internal labour market in Canada can be.

One incalculably helpful contextual resource is the fact that the author worked in several blue collar jobs in Canada, and served in the capacity of shop steward, staff officer and general secretary in several Canadian unions over a period of twelve years. Among his experiences were stints as a "man of molten metal" in a foundry and smelter. These experiences helped the author not only to understand instinctually many of the industrial processes and patterns of behaviour observed, but also to gain a measure of credibility among both managers and trade unionists in the workplaces studied. As Nichols says of Baldamus's insights into the nature of work:

> "It is perhaps because Baldamus had himself worked on the shopfloor (and, as he put it, 'not as a participant observer') that he was so acutely aware..." (1980, p. 13)

Yet as with Baldamus, the value of this resource should not be overstated and reference to the author's experiences was deliberately avoided in the body of the study. The empirical data in the study were meant to be substantial enough stand on their own (and, it is hoped, they succeeded in so doing). Moreover, while the researcher made no

secret of his industrial experience to the subjects and did not hesitate to make suggestions, broach interpretations and invite comparisons based on this experience, he made a studied attempt *not* to identify with any group, to maintain a strict attitude of objectivity and impartiality. And except for an initial reserve, all the subjects cooperated enthusiastically and candidly. Unlike Belanger (1985), the author had notebook and pen out at all times, even on the shop floor[1] and did not find that this inhibited the subjects to any significant extent.

Participant observation, while providing a certain richness of data, can present problems in qualitative research. It is not bias per se that is the problem but rather that participant observation involves a huge investment of time and effort by the observer and this may overemphasize the importance of the research locus and/or obscure its uniqueness. Just such a problem may have led both Roy (1954) and Burawoy (1979) to exaggerate the importance of piece work in American industry.

Another very useful resource was the acquaintance by the author in both countries of several representatives of management, unions and government and legal or para-legal industrial relations practitioners. These people provided a sounding board against which impressions and theories were projected. While their contributions did not form an integral part of the study, some are mentioned in it.

Acquaintance with practitioners was especially important in Britain, where "knowledge" of the very complicated system of industrial relations as a whole had to be somehow acquired in three years. A strategic decision was made early on to live in Britain for that entire period (except for the few research forays to Canada). So, in addition to the specific information garnered in the case study plants, much was learned by steeping in the industrial relations atmosphere in that country. The author attended several union and management conferences, assiduously read and photocopied articles from journals, magazines and newspapers, and paid close attention to television and radio reports of British industrial relations. No mere academic study could have provided this background. Again, while not specifically used in the study, such material was invaluable for making sense of new phenomena.

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1. A tape recorder was not used as it was found that note taking allowed for adequate transcription of interviews or meetings. Moreover, the lack of a tape recorder conveniently allowed for requests of interviewees to repeat and elucidate important points.

As in all case studies of industrial plants, the question of getting into the workplaces in the first place was problematic. The problems increased manyfold due to the binational character of the project. While the question of access was naturally considered in the selection of the case study industries, access was at no point guaranteed. This was especially true in Canada, where little tradition of workplace study by academics and considerable distrust of them exists. In fact, on several occasions, it appeared as if the project would have to be abandoned. But the timely intervention of several individuals saved the day, and to these persons much is owed. The author considers himself quite simply remarkably fortunate in gaining access to such a pair of "matched sets" of workplaces. Having gained such access, an interesting and rewarding study was almost inevitable.

Three distinct methods were used in gathering information about the case study plants: interviews, examination of documentary evidence and observation.

In each of the four factories, people or groups in the the following classifications were interviewed. On the management side: at least one manager, usually in charge of human resources, at a level higher than plant-level (where possible); at least one plant-level general or production manager; the personnel/industrial relations manager of the plant as well as other personnel/industrial relations officers; several first-line supervisors (foremen); other managers (such as quality control, engineering and special operations). In addition to these, the author deliberately sought out and found it very helpful to interview marketing managers in each of the companies, a resource few industrial relations researchers bother about. Marketing managers invariably present a view of the production process and a dispassionate appraisal of the role of industrial relations in the entire context of the business that i.r. and production managers sometimes lack. Nevertheless, the bulk of information from management representatives in all cases came from the interviews with the personnel/industrial relations managers and/or their immediate subordinates.

On the union side, the following people or groups were interviewed: the 'staff officer' (external union representative from outside the plant) with responsibility for the domestic union; the convenor (chief shop steward, local union president etc.) in charge of the major domestic union in the plant, as well as some convenors of smaller unions where

applicable; and a selection of shop stewards. In each plant, the author also made a point of formally interviewing a selection (usually agreed between management and union) of five or six "ordinary workers" (ie. those who had been employed for some time but were not necessarily union activists). These interviews were important to supplement more informal, and hence fleeting, contacts with workers on the shop floor. The bulk of the information from the union side came, in all cases, from the convenors.

Considerably more time was spent both in interviews and observation in the British plants. As mentioned earlier, BRITMET was the first plant studied and it acted as a kind of pilot project. Approximately four months was spent at this plant in a time period ranging from the Spring of 1986 to the Spring of 1987. Approximately three months was spent at BRITBREW in the period from the autumn of 1986 to the autumn of 1987. Both Canadian plants were studied in an intensive two-and-a-half month blitz in the spring of 1987.

For most interviews, and especially those in the Canadian plants, the author used a structured set of questioning areas. However, where time permitted, and always with the primary interview subjects, the discussion was allowed to digress when the topic seemed material to the study.

In each of the plants, access to agreements and documents concerning disputes and general industrial relations was sought. While very useful documents were obtained in all of the plants, unlike the interviews, the number and quality of documents varied from plant to plant. As mentioned in Chapter II and IV, records of specific disputes were especially accessible at BRITMET and CANBREW, somewhat less so at CANMET, and relatively inaccessible at BRITBREW. However, where information on past disputes was scarcer, more effort was made in interviews to reconstruct them and considerably more effort was made in observing ongoing disputes. Because of the longer observation span (1 year) and greater attendance at both British plants, the author was able to observe several disputes begin, enter procedure (formal and/or informal) and be resolved. While this was not possible at the Canadian plants, the presence of written arbitration awards (which go to some length to describe the same thing) provided almost the same result.

Finally, the author spent time "on the shop floor", both in the company of union or management representatives and alone, observing the production processes and the

interaction among workers and between workers and management. The author also attended several random grievance meetings and discussions between management and union, both to chart the progress of specific disputes and to gain general impressions of the tenor of the relationship between the parties.

In addition to those conducted at or about the case study plants, some additional interviews provided information useful to the study. Especially fruitful were matched interviews with an ACAS conciliator and his direct counterpart in the Department of Labour in the province of the Canadian plants. The ACAS officer had been involved in a BRITBREW dispute and the Canadian officer had been involved in one at CANBREW. Also interviewed were practising Canadian arbitrators and labour lawyers in both countries. In one particularly auspicious coincidence, the author was able to interview the arbitrator who had adjudicated one of the more significant cases at one of the Canadian plants. (For reasons of confidentiality, the identity of neither the abitrator nor the case is made explicit).

Inevitably, while the initial fear was of not getting enough information, the ultimate problem was in getting too much. The transcribed interviews filled almost 400 pages. The photocopied documents filled an entire filing cabinet drawer. Boiling down this amount of material and fitting it into the thematic (rather than anectdotal) form which the study takes was aided greatly by transcribing the material into a form readable by a computer database programme which was able to sort it according to pre-selected "key words" such as "labour markets", "seniority", "discipline", "strikes", "job control" and so on. While the author searched for a programme with the ability to actually write the thesis, such could not be found and recourse was necessary to old technology to accomplish this task.

Table 1: Indicators of Strike Activity for Various Countries, 1948-81

Country	% of wkrs affected '48-'57	'58-'67	'68-'77	'78-'81	Days lost per worker '48-'57	'58-'67	'68-'77	'78-'81
Belgium	7	2	2	1.5	0.6	0.1	0.2	0.16
Denmark	1	1	4	3.4	0.1	0.2	0.2	0.12
France	19	14	12	3.0	0.5	0.2	0.2	b
Italy	19	19	56	57.5	0.5	0.8	1.5	0.79
Netherlands	1	1	a	a	b	b	b	b
Norway	1	1	a	a	0.2	b	b	b
Sweden	a	a	a	a	b	b	b	b
W. Germany	1	a	1	1.3	0.1	b	b	b
US	5	3	3	1.4	0.7	0.4	0.5	0.33
UK	3	5	7	8.2	0.1	0.2	0.5	0.56
Canada	2	3	6	3.9	0.4	0.4	0.9	0.78

Sources: Lacroix, R., (1986). "Strike Activity in Canada", in W. Craig Riddell, ed., Canadian Labour Relations. (Toronto, University of Toronto Press). p. 188., citing 1948-77: L. Loewen & J. Stewart. (1980). Canadian Industrial Relations Perspective: Indicators, Descriptive Statistics. (Ottawa, Labour Canada)., p. 8., 1978-81: International Labour Office, Statistical Yearbook.

a. Less than 1 percent
b. Less than one-tenth of one day.

Table 2 Number of Strikes per Thousand Workers, Various Countries
1970-81

Country	1970-75	1976-81	1970-81
Belgium	52.5	56(a)	54.1(b)
Denmark	45.5	87.8	66.6
France	174.9	146.7	160.8
W. Germany	--	--	--
Italy	237.9	123.4	180.6
Netherlands	6.2	6.3	6.2
Norway	9.1	11.3	10.9
Sweden	19.4	27.7	23.3
US	65.0	46.8	55.9
UK	114.1	81.6	97.8
Canada	93.2	98.8	96.1

Source: Lacroix, R. (1986), "Strike Activity in Canada", in W. Craig Riddell, ed., Canadian Labour Relations. (Toronto, University of Toronto Press), citing International Labour Office Statistical Yearbook, relevant years.

a. 1976-80
b. 1970-80

Table 3: British and Canadian Strike Patterns, all industries, 1980-86

	No. of strikes per 1000 workers		% of workers affected		working days lost per worker	
	CANADA	BRITAIN	CANADA	BRITAIN	CANADA	BRITAIN
1986	.064	.044	4.2	3.0	.613	.079
1985	.073	.037	1.4	3.3	.276	.266
1984	.065	.051	1.7	6.2	.352	1.125
1983	.060	.058	3.1	2.5	.414	.162
1982	.064	.065	4.2	8.9	.544	.225
1981	.095	.056	3.1	6.3	.807	.178
1980	.096	.053	4.1	3.3	.838	.478
Average	.074	.052	3.1	4.8	.549	.359

Sources: International Labour Office. (Various Years) Yearbook of Statistics.

Table 4: Strikes in Manufacturing, Canada and Britain, 1970-1986

	CANADA					BRITAIN				
	No. of Strikes	wkg. days lost (000's)	000's of emfctrg. workers	No. of Strikes \1000 wkrs.	wkg. days lost per worker.	No. of Strikes	Wkg. days lost (000's)	000's of emfctrg. wkrs.	No. of Strikes \1000 wkrs.	wkg. days lost per worker
1986	319	1387	2015	.16	.69	349	1069	5445	.06	.20
1985	357	1586	1981	.18	.80	388	912	5728	.16	.16
1984	343	2356	1968	.17	1.20	699	2658	5715	.12	.47
1983	311	1385	1886	.17	.73	610	1776	5749	.11	.31
1982	292	1691	1930	.15	.88	711	1919	6040	.12	.32
1981	423	4638	2122	.20	2.19	660	2292	6365	.10	.36
1980	402	3161	2111	.19	1.50	612	10896	7085	.09	1.54
1979	511	3129	2071	.25	1.51	1276	2552	7403	.17	3.05
1978	459	2527	1956	.23	1.29	1518	7678	7437	.20	1.03
1977	342	1665	1888	.18	.88	1719	8057	7473	.23	1.08
1976	457	4493	1921	.24	2.34	1118	2308	7425	.15	.31
1975	523	5340	1890	.28	2.83	1474	5002	7629	.19	.65
1974	685	4815	2024	.34	2.38	1946	7498	7984	.24	.94
1973	384	3376	1968	.20	1.72	1857	5701	7953	.23	.72
1972	290	2042	1857	.16	1.10	1671	7876	7906	.21	1.00
1971	278	1541	1795	.15	.86	1465	6577	8179	.18	.81
1970	263	3631	1790	.15	2.03	2588	6495	8462	.31	.77
Avg. 70-79				.20	1.47				.17	.81

Source: International Labour Office Yearbook of Labour Statistics, relevant years.

Table 5: Mid-term strikes in Canada and the US, 1970-78

	CANADA		US	
	Strike days lost (000's)	Strike days lost/worker	Strike days lost (000's)	Strike days lost/worker
1978	388	.039	n/a	
1977	321	.033	4051	.044
1976	1215	.128	2468	.027
1975	971	.105	3551	.041
1974	1839	.205	n/a	
1973	225	.026	1840	.021
1972	306	.037	4140	.050
1971	263	.033	3719	.047
1970	200	.025	2358	.029
Avg. 1970-'77		.074		.037

Sources: Internation Labour Office Yearbook of Labour Statistics, relevant years; Labour Canada, Strikes and Lockouts in Canada, relevant years; Rock, 1980; Kumar et. al., 1986)
n/a: not available

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