Arbitration and Wage-Fixing in Australia

Research Report Number 10
October, 1918

Reprinted, May, 1920

National Industrial
Conference Board

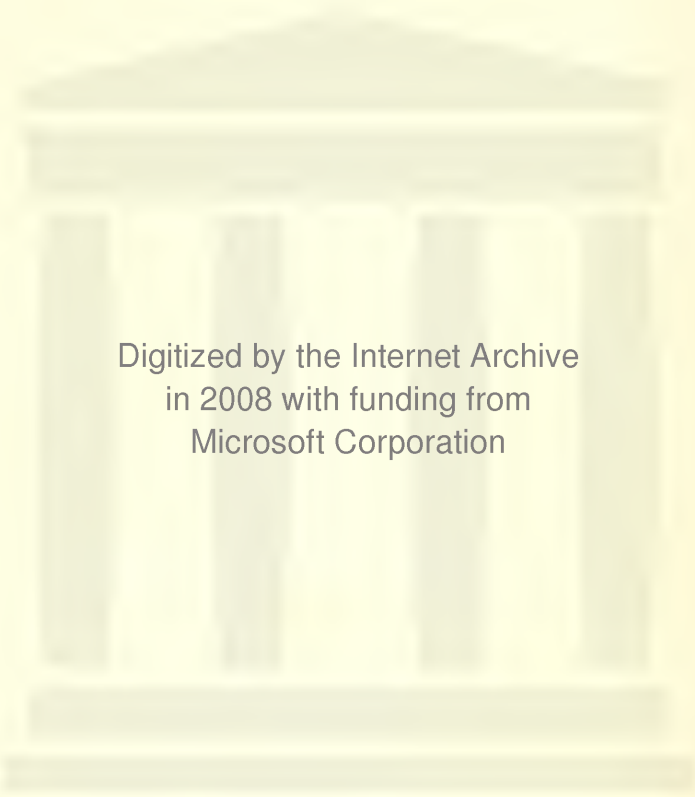
ARBITRATION AND WAGE-FIXING IN AUSTRALIA

RESEARCH REPORT NUMBER 10
OCTOBER, 1918

Reprinted May, 1920

NATIONAL INDUSTRIAL CONFERENCE BOARD
15 BEACON STREET
BOSTON, MASS.

CONTENTS



LIST OF TABLES

Foreword

THE operation of compulsory arbitration of industrial disputes in Great Britain in wartime, the numerous industrial disputes and the various measures of mediation and arbitration adopted in our own country, have given a particularly timely interest to a study of experience with labor legislation designed to prevent or reduce industrial friction.

An earlier report from the National Industrial Conference Board dealt with the Canadian Industrial Disputes Investigation Act. The present report discusses the operation of arbitration and wage-fixing legislation in Australia.

Arbitration and Wage-Fixing in Australia

I

INTRODUCTION

In efforts to minimize the clashes between employer and employee which have characterized modern industrial history, the various states of the Commonwealth of Australia and the Dominion of New Zealand have been leaders. They have become laboratories of social experiment wherein radical ideals have been readily put to the test of practical evaluation through legislative enactment. Many factors, essential to an understanding alike of the experiment and of its success and failure, contribute to this readiness. The population of Australia is homogeneous; almost 98 per cent of it is of British stock.

The Australian people accept a practical State Socialism. They are ready to endorse social ideals and give them legislative and economic expression. Their political system, in which the laboring class has full weight, lends itself to that ready adaptation called for by a process of political experimentation. Their freedom from pressing matters of foreign policy, and the nature of their administrative tasks in internal affairs, allow room for that preoccupation with industrial legislation which characterizes most of the states. Hence, once started upon a program of social reform, they have followed it out towards the suppression of sweating, the fixing of a minimum wage, and the establishment of methods of conciliation and arbitration for the settlement of industrial disputes.

Strictly interpreted, conciliation is a method for securing a peaceable settlement of industrial disputes by bringing together employers and employees for discussion and negotiation. The machinery for settlement may be either an informal conference or a constituted court. Its

initiation depends on a mediator whose duty is to get the parties into touch and keep them on the problem. He never takes sides, nor gives an opinion, nor votes on any issue before the parties.

Compulsory arbitration, on the other hand, consists in the Government compelling employers and employees to meet before a court or board which shall decide their differences. Compulsion enters in at every step. In some cases the notification of a dispute is compulsory; in every instance the difference must be submitted. As the matter is invariably taken before some form of court, witnesses are called, under compulsion, to give evidence and produce papers and books necessary for full inquiry. The same compulsion applies to the publication of an award by the court, to its observance under penalty, and to abstinence from strikes and lockouts.

Neither of these methods exists in its pure form in Australia. The state of Victoria presents one of the most perfectly developed systems of conciliation to be found anywhere in industrial history. But it is not optional in character nor purely conciliatory in method. The machinery by which it works is a Wages Board created by the state, and the members of this Board are nominated by a Minister of State. He has power also to refer a matter to the Board, though no effective result can be obtained without initiation by either employers or employees. The award of the Board is enforced by state officials. Thus, behind the machinery for conciliation provided in Victoria stands the compelling power of the state.

This is equally true of the Court of Arbitration of the Commonwealth, whose President has the power to summon a compulsory conference of conciliation. The President is, however, a mediator in this conference. On the other hand, the chairman of a Wages Board in Victoria, unlike a mediator, is called upon to express an opinion and give a deciding vote.

Most of the characteristics of compulsory arbitration are found in every state in Australia except Victoria; moreover, the Commonwealth Court itself, on the failure of the conciliation conference, becomes a court of compulsory arbitration. The New South Wales system began definitely as one of compulsory arbitration. Yet, as

investigation will show, there is a large and increasing element of conciliation within this system of compulsion. While, however, these two systems are not absolutely separated, the history and analysis of their concurrent operation furnish a measure of their relative value, and of the forces and circumstances which direct the trend and determine the effectiveness of one or the other.

No complete grasp of the significance of conciliation and arbitration policies in the Australian Commonwealth can be had, particularly by American readers, without a full appreciation of some of the radical differences which characterize the substructure of industrial relationships in the two countries. In Australia the principle of unionization of labor is not merely passively accepted, but actually fostered, a situation radically different from that which obtains in the United States. The activities of unionism do not run to a struggle for the opportunities of organization and the establishment of the closed shop. Rather are they devoted to political organization, and, in industry, to the maintenance of the generally accepted union shop.

A practical result of this situation is that conciliation and arbitration in the Australian states have been concerned mainly with wage controversies and disputes other than those concerning trade unionism. Indeed, in Victoria, the conciliation program has dealt chiefly with wage problems in one form or another, either in the suppression of the sweating evil or in the establishment of what is termed a living wage. Likewise, the arbitration system of the Commonwealth Court has centered chiefly on wage adjustments, though extending to many details of industry. The arbitration system brings practically all conditions of industry under review. As a consequence, the regulation of wages and of industry generally has become a function of the state to an extent unknown in America, even under war conditions.

These differences, apart from those arising out of different political constitutions, are fundamental, and not only must be recognized in any attempt to interpret the history of conciliation and arbitration in Australia, but also must obviously influence conclusions as to the applicability of Australian experience to the American commonwealths.

II

THE WAGES BOARDS OF VICTORIA

The Victorian system of conciliation operates through what are called Wages Boards. Representatives of employers and employees are brought face to face in the presence of an impartial chairman for the settlement of specified industrial matters. Because of their familiarity with the trade they represent, the members have been characterized as "a jury of trade experts." Consequently they do not need to call evidence, nor to enter upon any of the methods of a court. This makes possible a simple and inexpensive form of procedure. The Boards themselves are constituted by action on behalf of the state, which exercises sufficient compulsion to insure that the machinery will function. Their jurisdiction is restricted to fixing wages and settling conditions of employment. Because of the larger stress laid upon wages, the system may be described as one of collective bargaining through conciliation with simple and inexpensive machinery provided by the state.

This machinery is not definitely based on unionism. In Victoria, as in Australia generally, the principle of the closed shop is accepted and endorsed. In the arbitration system of New South Wales and the Commonwealth, unionism is the basis of the arbitration machinery. In Victoria unionism exists, but is not so strong nor so militant. Unions frequently originate the discussions and agitations which lead to the creation of conciliation machinery, but are given no legal recognition and receive no additional strength therefrom.

The Wages Boards belong logically to the factory legislation of the state. They arose out of a protest against sweating. This protest led to the appointment of a Royal Commission which in 1884 advocated Courts of Conciliation as a remedy, laying down the following as the principle of their procedure: "To enable disputants to meet on equal terms; to limit the dispute to those concerned and the decision to those who understand the merits of the

case." This Commission found that sweating existed and was identified with the methods of sub-contracting and out-work. A further agitation from 1890 onward led to another parliamentary report which advocated measures for the abolition of sweating. The result was the Factories and Shops Act of 1896, in which the principle advocated in 1884 was adopted. Special Boards were created for four of the worst sweated trades, namely, clothing, boots and shoes, furniture, and bread. This act was renewed in 1900 for two years and the butchers' trade added to the list of trades. In the same year a Royal Commission was appointed to inquire into the working of the Boards and of legislation on similar lines in other Australasian states. The Commission showed marked dissatisfaction with the work of the Boards, recommending their abolition and the substitution of arbitration on the New Zealand model. The Parliament of 1902, however, continued the system, adding to it a Court of Industrial Appeals. Subsequent changes have not affected the form of administration, tending generally to extend its scope. Boards may now cover any occupation. They may have jurisdiction over the whole state, though rural Boards may be formed for rural districts. Thus, a system directed against sweated wages in a few trades has now become a definite system for wage-fixing in almost any trade. Originally restricted to Melbourne, the chief city, its jurisdiction has now been extended throughout the whole state.

A Wages Board, called a Special Board in the language of the Act, is generally asked for by either a union or a meeting of employees. The Minister for Labour, to whom such a request is directed, makes inquiries concerning conditions in the trade in question. Employers, if in favor of the creation of a Board, claim the existence of "unfair competition." Employees, who more frequently ask for a Board, usually speak of "low wages and the employment of excessive juvenile labor." The request for a Board does not necessarily arise from a strike, or any particular instance of industrial trouble. If the Minister for Labour believes that a good reason has been given for the creation of a Board in a specified industry, he moves a resolution in Parliament declaring that it is expedient to appoint a Special Board. This resolution must be passed by both Houses, after which a Board is nominated and

its jurisdiction stated. This jurisdiction covers the fixing of rates of wages, either by piecework or time rates or both, the determination of hours of work and of overtime, and matters of apprenticeship.

A Special Board may consist of not less than four nor more than ten members and a chairman. One half of the members represent employers, the other half employees. Originally the members were elected, but the elaborate machinery provided for the purpose was rendered nugatory through the custom of nomination by the respective parties. In 1903 the right of appointment was vested in the Minister for Labour. In practice, he consults the parties interested; objections may be made to his nominations by at least one-fifth of the employers or one-fifth of the employees. In case of objection, an election must be held; this provision does not apply in the furniture trade, which is dominated by Chinese labor. The members of the Board, who are appointed for two years, must elect a chairman from outside their own ranks. If they fail to do so, one is appointed. In general, a person unconnected with the industry is elected, or, occasionally, appointed.

On its appointment the Board begins work. Its administration is devised so as to disturb industry to the least extent. Its meetings are generally held in the late afternoons and evenings. The whole procedure is one of consultation and conference. The chairman's main function is to guide and direct the deliberations so as to bring them to a final agreement. Many chairmen seek to secure a majority vote without the use of their own deciding vote, but in most matters affecting wages the chairman is compelled to be an arbitrator. When a determination is arrived at, it is forwarded to the Minister for Labour, who has the power, if he deems fit, to suspend the proclamation of the determination and to refer it back to the Board. On its publication in the Government Gazette, it has the force of law, and is administered by the officers of the Department of Factories and Shops.

Objection may be raised to an award by a majority of the representatives of either side on the Board, by any employer employing not less than 25% of the employees affected, or by 25% of the employees themselves. The Minister also may appeal. He does so when advised by the Department of Labour, which sometimes finds an award

unworkable. In all these cases the appeal is taken to the Court of Industrial Appeals, which consists of a judge of the Supreme Court, and two assessors nominated for the occasion, one to represent employers and one employees. The Court may alter a determination or, in case a Board has not been able to function, make an award in its own right. The alteration by the Court of an award necessitates the suspension of the Board in question till it has the permission of the Court to resume.

Principles upon Which Wages Boards Work

Ostensibly the system is one of conciliation pure and simple. But the very constitution of the Board introduces an element of arbitration. When wages are under discussion, the employees ask much more than they expect to get, the employers offer less than they expect to pay. Very rarely can a chairman of a Board avoid the necessity of "splitting the difference," or finding some intermediate figure which will be acceptable. Practically the award under such conditions is a decision in arbitration, not an agreement in conciliation. The presence of an element contrary to conciliation was recognized even as early as 1902. In that year an amending Act was made to include a proviso that at least two employees on a Board must vote with the employers, or vice versa, for an award to be valid. This was equivalent to the substitution of a seven-tenths majority for the casting vote of the chairman, and to a real award by majority agreement. But the proviso rendered several Boards unworkable. No agreement could be reached by them and the provision had to be repealed in 1903. In reporting its repeal in that year, the Chief Inspector of Factories stated that "the principle of *compulsory arbitration*, which had been abolished so far as several Boards were concerned by the substitution of seven-tenths majorities," had been *restored*.[1] Though this is probably an overstatement of the case, it reveals the tendency to arbitration inherent in the chairman's position.

The Judge of the Court of Industrial Appeals is even more an arbitrator. His judgments are decisions which, as shown above, in certain cases entirely supersede the activities of the Wages Boards. Nor is his position one of arbitrator merely in form. Decisions like those given

[1] Not italicized in the original.

in the cases of the Sewer Laborers and the Quarrymen in the last quarter of 1916,[1] in which the judge on appeal altered the work-week of 44 hours agreed upon in the award to one of 48 hours, show a departure from the pure principle of conciliation, and the practical application of social principles similar to those which regulate the arbitration system of the Commonwealth and the state of New South Wales.

No consistent or scientific principle for the fixing of wages has been formulated in Victoria. In the beginning the Boards had to combat sweating, consequently they tended to fix a wage that seemed to them to be fair. But no standard or criterion of the fairness of a wage was available. Employers could state the average wage paid in the trade. Employees could assert that this wage was too low and insufficient for the sustenance of themselves and families. But no evidence was offered. Hence, the chairman, on whom the final decision rested, could do nothing but arbitrate. Recognition of this principle on the part of the trade unions was seen in their request to the Premier of Victoria in 1902, that he should pass an industrial arbitration law, explaining that they preferred arbitration to the Wages Board system.[2] The Premier, who rejected the principle of arbitration, inserted in the amending Act of 1902 the direction that the wage fixed by a Board must be that paid by "reputable employers to employees of average capacity." This principle, however, proved unworkable. "Reputable" employers were found to be paying wages which the employees on the Boards refused to accept, and the clause had eventually to be repealed. The same Act provided a principle for the guidance of the Court of Industrial Appeals:

> Such Court shall consider whether the determination appealed against has had or may have the effect of prejudicing the progress, maintenance of, or scope of employment in the trade or industry affected by any such price or rate, and if of opinion that it has had or may have such effect, the Court shall make such alterations as in its opinion may be necessary to remove or prevent such effect and at the same time to secure a living wage to the employees in such trade or industry who are affected by such determination.[3]

[1] *Commonwealth Labour Bulletin*, No. 17, pp. 45, 46; No. 18, p. 142.

[2] W. P. Reeves: "State Experiments in Australia and New Zealand," Vol. II, p. 174.

[3] Factories and Shops Act of 1903, Sect. 16.

This legislative direction sanctions the principle of the living wage determined in the light of the condition of industry. Appeals to the Court have been so few that little scope has been given to this principle, which is still in force. In the case of the Boards, an amending Act of 1910 directed them to take into account certain general facts rather than principles in fixing wage rates. These are the nature of the work, the mode in which it is done, the age and sex of the workers, the locality, the hour of the day or night when the work is done, its casual nature, and any recognized custom of carrying it out. In short, the fixing of wages remains subject in principle to the general procedure of bargaining between organized bodies seeking a peaceful and mutually satisfactory agreement. The fundamental principle of conciliation has, therefore, been preserved.

General Results

Those who favor the Victorian system advance certain results that it is considered to have achieved. These may be stated thus:

(1) Strikes are infrequent where wages and hours are fixed by Wages Boards, and there are few appeals from their decisions.[1]

(2) It has "raised wages in all occupations."

(3) It has "abolished sweating."

(4) It has "made the surroundings of the worker in factory and otherwise healthier, safer, more moral and generally better than before." [2]

Statistical data on the relation of the system to industrial peace are difficult to secure. The system covers about 150,000 workers, whereas at least 200,000 workers are not included. The Chief Inspector of Factories is concerned mainly with the former, but does not tabulate the disputes which occur in connection with the administration of the Wages Boards or which are referred to the Boards. The Vic-

[1] Cf. M. B. Hammond: "Minimum Wage in Great Britain and Australia." Annals of the American Academy of Political and Social Science, Vol. XLVIII, pp. 31–36.

[2] The last three claims are to be found in a Report on Some of the Effects of Labour Legislation, 1916, prepared by H. M. Murphy, Secretary to the Labour Department, Melbourne, Victoria.

torian Statistician presents no statistics of industrial disputes. The Commonwealth Statistician, in his *Labour Bulletins* and *Labour Reports*, collects information concerning disputes within the Commonwealth, without special reference to Wages Boards. In consequence of the gaps in this information, much material that would be valuable to the investigator is not available.

Yet, despite the scarcity of statistical data, the relative infrequency of strikes in Victoria must be admitted. Evidence of this is to be found in the tables of the Commonwealth Statistician.[1] These show that in all industries in the period 1913–1917, the number of disputes in Victoria formed only 11.75% of those in the whole of Australia. The significance of these figures is measured by the percentage of wage-earners. For 1912, the only year in which carefully ascertained figures are available, Victoria had 34.8% of all employees in the manufacturing industries of Australia, a proportion which has not been seriously altered. The contrast between the number of wage-earners and the number of disputes is emphasized by a comparison with New South Wales. In the year 1912, the latter state had 36.5% of the employees investigated, but in the years 1913–1917 it had 68.6% of the total number of disputes.

Within the jurisdiction of the Wages Boards strikes are even less frequent. The Wages Boards work smoothly. In case of a strike the Minister has the right to suspend a determination, but has rarely been called upon to exercise this right. In October, 1913, the Builders' Laborers' determination was suspended for six months, and in July, 1914, the Bread Board determination was suspended for one month.[2] Since suspensions are subject to the discretion of the Minister, the number of suspensions does not measure the number of strikes. But it is certain that the number of strikes in trades under the Wages Boards is small.

The relative infrequency of appeals is evidence that the agreements reached are generally satisfactory. It is noteworthy that almost all appeals have been brought by employers or by the Minister for Labour. The reversal of an award in the baking trade in 1907 led to a strike, when

[1] See Table 3, p. 28.

[2] Report of the Victorian Chief Inspector of Factories on Anti-Strike Legislation, p. 11.

the employers yielded. The decision of the Court in the coal trade in 1913 led to a four weeks' strike and to the granting of a new Board for the trade before the men returned to work. In the second quarter of 1914, 450 stonecutters and masons struck. The employers had objected to the wage rates fixed by the Board, and appealed to the Court of Industrial Appeals, which fixed rates unacceptable to the employees. An agreement was arrived at after six or seven weeks.[1]

Two other disputes afford instances of attempted reduction in wages or increase in the work-week. In the first quarter of 1913, the Slaters' and Tilers' Board fixed a rate of 12 shillings for men who had previously received 13 shillings and were asking for 14 shillings per day. The men struck. Their determination was not suspended, but, instead, they were given their previous rate of 13 shillings a day for a 44-hour week.[2] In the last quarter of 1916, sewer laborers and quarrymen separately refused to work under awards of the Industrial Court of Appeals by which the work-week was increased from 44 to 48 hours. The former body of workmen resumed work on a 44-hour week. In the case of the quarrymen, the employees agreed to accept the award of the Court after a conference between representatives of employers and employees.[3]

Though the Wages Boards have not entirely done away with industrial conflicts within their jurisdiction, they have been accompanied by a relative freedom from strikes. No definite measure of the extent to which the Boards have contributed to this result is obtainable. Much of it is due to the conciliatory form of the system. But some of it is due to certain inherent advantages possessed by Victoria in the absence of a strongly organized, militant unionism and of a strong labor party in politics. Of the favorable atmosphere thus created, the Wages Boards have taken full advantage.

In the matter of wages, similar statistical difficulties are encountered. Tables of average wages are invariably offered in the reports of the Victorian Chief Inspector of Factories as measures of the results achieved. Of recent years, these tables have been carefully weighted and are statistically valid. But tables of the average wage in the

[1] *Commonwealth Labour Bulletin*, No. 6, p. 111.
[2] *Commonwealth Labour Bulletin*, No. 1, p. 40.
[3] *Commonwealth Labour Bulletin*, No. 17, p. 46; No. 18, p. 142.

years before the Boards dealt with the respective trades are not so weighted. In consequence, wherever low-priced juvenile labor is employed or apprentices form a significant percentage of the labor force, the unweighted average wage is deflected towards the lower levels. A comparison between this average wage and the weighted mean calculated for certain trades under the Wages Boards therefore exaggerates the increase which has taken place in the period.

That wages have risen in Victoria as in other states cannot be disputed. But no careful student of the situation can attribute this increase entirely to Wages Boards or other forms of arbitration. Probably the most accurate statement of their influence would be that they have facilitated the operation of those economic factors which would eventually have led to a general increase of wages.

Australian statistics demonstrate that Wages Boards, in common with other wage-fixing machinery, for a time gave an advantage to the worker by increasing wages faster than prices rose, but not since about 1911.[1] It is sometimes asserted that Wages Boards by increasing wages increase prices. Undoubtedly, in most cases wage increases are passed on to the consumer. But careful investigators of conditions in Australia and New Zealand alike are not convinced that increased wages alone have been a considerable factor in increasing prices.[2]

In comparison with the rest of the Commonwealth, Victoria has slightly lower wages for males, but slightly higher wages for females.[3] The deviations in either case are so small as not to be directly attributable to Wages Boards, but rather to the nature and distribution of the industries of the state. The same criticism applies to the contention that wages are higher in Wages Board trades than in those not regulated by Wages Boards. In general, the Board trades are larger and relatively more important, including also a larger proportion of the skilled trades. On the matter of old and slow workers, the system has achieved finality. Permits are issued for them to accept wages below the minimum wages.

[1] Cf. *Commonwealth Labour Report*, No. 7, p. 436.

[2] Cf. the evidence in Clarence H. Northcott: "Australian Social Development," pp. 226–229.

[3] Cf. *Commonwealth Labour Report*, No. 7, pp. 418–426.

In Victoria and in Australia generally there has been no tendency for the minimum wage to become the maximum. The fixing of a minimum has lifted the unskilled worker in the wage scale and thus led to a relative undervaluation of skill.[1] But it has not destroyed the ability of the skilled worker to obtain a higher wage. Thus in November, 1912, when the question of wages in the manufacturing industries of Australia was investigated by the Commonwealth Statistician, the average wage for males in Victoria was 46*s.* 9*d.*, while the minimum wage for unskilled labor was 42 shillings per week. At the same time, 50.7 per cent of the male employees of that state were earning over 50 shillings per week, and 32.7 per cent were being paid what the Commonwealth Statistician considered the wages of highly skilled artisans.[2]

The abolition of sweating is undisputed, but any better conditions which have followed the introduction of the Wages Board system seem to be more correctly assignable to other provisions of the Factories and Shops Act, or to the effect of higher wages, than to the system itself.

Summary

The Wages Boards of Victoria represent the earliest and one of the most successful forms of conciliation to be found in industrial history. Inaugurated to suppress sweating, their success in that direction has led them on to the regulation of wages generally. Simple, direct, and inexpensive, alike in constitution and in administration, they provide the essential requisites of conciliation. They have produced a general sentiment in Australia in favor of their superiority over the method of individual contract. Employers, who, even in Victoria, have no great liking for state interference, yet prefer the Wages Boards system to that of arbitration. Though this preference may be based on local prejudice, the Wages Boards system is more limited in its interference with the employer. Compulsory arbitration has carried interference in industry further, and thus has given organized labor a more powerful weapon to use in dealing with the employer. Although the system does not give employees that support for trade unionism upon which arbitration is

[1] See C. H. Northcott as cited, pp. 221–224.

[2] *Commonwealth Labour Report*, No. 3, pp. 8–11.

based, yet they show no concerted effort to alter it. Judged by itself, by what it has done in the direction of securing fair wages and furthering industrial peace, it must be ranked as a significant and measurably successful attempt to regulate some of the more important problems in the relations of employer and employee.

But too much must not be claimed for it. It is not a pure instance of conciliation. Nor is it in any sense tantamount to voluntary arbitration. A large measure of the methods and purposes of compulsory arbitration has entered into it. However, although the procedure of a conference gives representatives of each party an understanding of the problems and difficulties of the other, neither employers nor employees feel themselves bound always to accept an award. Employers appeal from determinations and employees go on strike.

Nevertheless, from many standpoints, this system has proved effective in dealing with industrial difficulties in Victoria. The Boards are in continuous existence and can readily give their attention to any subject which may lead to industrial trouble. They are a safety valve whereby grievances may be expressed and remedied. They furnish definite machinery to maintain personal relations between employers and employees. They become centers of common information and discussion concerning industry. In this way they convince employees of their dependence upon the prosperity of the industry in which they are engaged. Thus they inspire greater mutual confidence and tend to prevent or remove the causes of industrial conflict.

III

THE ARBITRATION SYSTEM OF NEW SOUTH WALES

Contrast with Victoria

The state of New South Wales, the largest in the Australian Commonwealth, commercially, industrially, and in respect to population, presents a system of wage-fixing very different from that of Victoria. From 1901 onward it has endorsed compulsory arbitration, from the principle of which it has never departed. But step by step methods of conciliation have been added to the original machinery. Wages Boards, though not on the Victorian model nor comparable in scope and method, were added in 1908. In 1912 the office of Industrial Commissioner was created to allow of the calling together in conference of parties between whom a dispute had arisen. At the same time, Conciliation Committees were authorized for major occupations or callings employing more than 500 men. In the recent amending Act of 1918 more extended provisions for the principle of conciliation were adopted. Thus the trend of the administration of compulsory arbitration in New South Wales has brought this state nearer, in principle at least, to the Victorian system.

Yet significant differences exist between the two states, affecting the nature and results of their industrial laws and the mode of their administration. Neglect of these differences leads students of social affairs to institute comparisons which are invalid, and vitiates conclusions concerning the two systems.

New South Wales differs from Victoria, first, in the number and composition of its working population. The Commonwealth Statistician estimates that in the years 1913 and 1914 the average number of persons in receipt of wages or salary in New South Wales was 453,600; in Victoria, 346,800.[1] The factory population of the former

[1] *Commonwealth Labour Report*, No. 6, p. 108.

state in 1913 [1] was 117,400, and of Victoria 118,700. The sex distribution of this population is also significant as affecting its organization and the use of its economic power in strikes. Figures are not available for a sex distribution of the total working population, but of those employed in factories in 1913, the ratio of females to males in New South Wales was 100 to 339; in the latter state, 100 to 207, a distinctly greater proportion of females.[2] When the larger agricultural, mining, and pastoral industries of New South Wales are considered, the preponderance of males in its working population is demonstrated.

The nature of trades and occupations is also a differentiating factor in industrial unrest. New South Wales has a relatively larger proportion of males engaged as primary producers, and in transport and industry. A highly important fact is that it has nearly three times as many miners as Victoria.[3] These are distributed in two large industrial centers where they are the dominating element. Though only 8.6 per cent of the industrial population of the state, they are a serious factor in producing strikes and smaller disturbances of production.

Further, unionism in New South Wales is stronger in numbers, better organized and more aggressive. At the end of the year 1914 the male members of unions in New South Wales included 60.7 per cent of the estimated total number of male employees of that state. The corresponding percentage in Victoria was 50. On the other hand, the female members of trade unions in Victoria were estimated at 12.7 per cent of the total number of females employed, whereas in New South Wales the percentage was 10.9.[4]

Unionism in the latter state furnishes the basis for arbitration. The unions have supported the compulsory principle from the beginning. The development of arbitration in this state has run side by side with that of a political Labour party which has practically, either as a party or in the person of some of its earlier leaders, controlled the administration of the arbitration machinery

[1] This year is selected because the war has affected the total working population and its sex and occupational distribution.

[2] Commonwealth Year Book, No. 10, pp. 471, 472.

[3] Commonwealth Year Book, No. 8, p. 437.

[4] *Commonwealth Labour Report*, No. 6, p. 11.

since 1910. In Victoria the Labour party has never been strong, and has held office for only thirteen days. These differences in the political and industrial history of the states are reflected in their systems of arbitration.

Development of the System

Early efforts at wage-fixing in New South Wales were in the direction of mediation and conciliation, but all proved futile. A disastrous and widespread maritime strike in 1890, which affected New Zealand as well, led to the first real effort to avert industrial disputes. This strike followed an attack by employers upon the principle of collective bargaining. Its failure was the motive for the rise of an organized political Labour party, and led to an effort to investigate and deal with the causes of industrial disputes. In 1892 a Trades Disputes Conciliation and Arbitration Act was passed, to operate for four years. By it, Councils of Conciliation were appointed, with adequate machinery. But the Act did not compel either party to submit a dispute to the Court or obey an award. There was no public opinion in favor of its utilization. The employers, fresh from their recent victory in the strike of 1890, were in general opposed to collective bargaining, and would not appear before the Councils. Consequently, after less than three years, the administration of the Act lapsed. An amendment made in 1899 proved ineffective.

Industrial Arbitration Act of 1901. The failure of voluntary conciliation led to the formulation of an attempt at arbitration, the Industrial Arbitration Act of 1901. This was modeled on the New Zealand Industrial Conciliation and Arbitration Act of 1894, which provided for local Boards of Conciliation and a Court of Arbitration. The Boards of Conciliation consisted of four or six persons elected by unions of employers and workers respectively, and an outside chairman chosen by the elected members. If a decision was reached before these Boards, it was legally binding; otherwise it was merely a friendly recommendation and could not be enforced.

These Conciliation Councils having proved ineffective by 1901, the New South Wales Act omitted them, and thus became purely compulsory. Its two keynotes were organization and compulsion. It made strikes and lock-

outs misdemeanors, punishable with heavy penalties, except when a reasonable notice had been given to enable the Arbitration Court to deal with the matter. It encouraged trade unionism and collective bargaining by providing that only organized bodies of employers or employees could approach the Court. It sought to facilitate the process of collective bargaining by allowing industrial unions to come to an agreement in writing, and by providing that this agreement should be registered as an award. Further, in contradistinction to the New Zealand model, the principle of the "common rule" was introduced, whereby such an agreement could be made applicable to a whole industry.

This Act, which its framer, the late Mr. B. R. Wise, K. C., had regarded as a "crucial experiment which should enable a decisive answer to be given as to the practicability and benefits of the legal method of settling industrial disputes," failed to work smoothly. Legal technicalities hindered its administration, and an unsympathetic Parliament refused the amendments necessary to remedy the defects. The common rule clause, the most useful part of the measure, was emasculated by judicial decisions on appeal. More work was consequently thrown upon the Court, which became tremendously congested. During the first year of its operation, out of 81 cases listed for trial, only 11 were disposed of. By the end of the year 1905, 146 industrial disputes had been submitted to it, 54 had been heard and determined, 17 settled or withdrawn, while 75 awaited hearing. The long delays caused by the congestion of the Court led to great industrial unrest. Unions, which had given up their power to strike in favor of arbitration, withdrew from the Court. The Newcastle miners had waited four years for their case to be heard, and were prevented from striking only by the creation of a special tribunal. This industrial unrest was a consequence of the administration of the Act, not a measure of the value of the principle of arbitration. The congestion of the Court, the unsympathetic administration, and the threat of the replacement of compulsory arbitration by a system of Wages Boards, were the prime causes of the troubles that threatened in Australian industry in 1907 and 1908. Nor were the deficiencies of the Act and of its machinery related to the principle of arbitration. The Act was a piece of experimental legislation and therefore in need of amendments

that would fit it to function effectively. Yet it ran its appointed course till June, 1908, without any effective amendment, whereas the original New Zealand Act was amended seven times in the first five years of its existence.

Industrial Disputes Act of 1908. So strong was the feeling in favor of compulsory arbitration that the new Act, the Industrial Disputes Act of 1908, did not alter the principle. It added, however, a system of Wages Boards and sought to prohibit strikes and lockouts by re-enacting the penalties of the earlier Act and, after an amending Act in 1909, applying them with greater rigor. The Act was received with much disfavor by the unionists, whose numbers and strength had been increased by the Act of 1901. One chief reason for this disfavor was the proposal to allow a specified number of persons, even if unorganized, to initiate arbitration proceedings. Its rigorous administration, furthermore, led to serious and far-reaching strikes, and to the placing of a Labor party in political power in 1910.

Industrial Arbitration Act of 1912. The Minister for Labour and Industry in this administration, Mr. George S. Beeby, M.L.A., brought forward the Industrial Arbitration Act of 1912. This Act retained the Wages Boards of the preceding Act, but sought to avoid their two chief defects, their multiplicity and the overlapping of awards. Industries were grouped and defined by schedules. Wages Boards for callings or occupations within each group were all placed under one chairman, who was thus able to co-ordinate the awards. The Act yielded to both judicial and public opinion in removing the penalty of imprisonment for striking, since it sought to repress rather than to prohibit strikes. A monetary fine still remained as penalty for striking, individuals being subject to a fine with a maximum of £50 ($243.50). A trade union which struck might have its registration canceled and the Court might grant a writ of injunction against any one continuing to instigate or aid a strike, the maximum penalty being imprisonment for six months.

Yet the outstanding feature of the Act was the machinery provided for conciliation, in the appointment of an Industrial Commissioner and the provision for Conciliation Committees. Experience with this Act showed, however, that the altered administration of Wages Boards did not mitigate delay in hearing and determining awards,

nor prevent their overlapping. Hence, in 1916 the Act was amended so as to provide for additional judges to sit in the Court of Industrial Arbitration, in order to divert some of the work from the Wages Boards.

The war introduced political elements that were reflected in the state's industrial history. The question of conscription disrupted the Labour party and threw it out of office. Its experienced leaders were expelled. Extremists gained control, both of the unions and the Labour political organization, and in August, 1917, precipitated a trial of strength with organized government. The employees of the state-owned railways of New South Wales struck against a method adopted by the Railway Commissioners to obtain a better accounting system in their workshops. The unions issued an ultimatum demanding the withdrawal of the method. As all the employees were servants of the state, the Government of New South Wales, like the Government of France in 1910, joined issue on the question of control of public services. A sympathetic strike involved ultimately 76,000 persons, with a loss in wages estimated at £1,700,000 (approximately $8,500,000). As the matter was one of principle, no measures of conciliation were attempted till the strikers seemed beaten. After ten weeks matters were adjusted. The penal provisions of the Act were set in motion against striking unions. The result was such altered conditions of industrial organization as to demand important amendments to the Act.

Amending Act of 1918. In February, 1918, Mr. G. S. Beeby, author of the Act of 1912, introduced an amending bill which, after many alterations in the legislative process, became law on March 22, 1918. This measure is the most significant worked out in the Australian laboratory of social experimentation. Its chief provisions relate to the distinction made between legal and illegal strikes, the conditions under which strikes may be legal, more extended machinery for conciliation, and provisions for a more scientific calculation of the minimum and living wage.

This historical summary shows that without any alteration in principle, arbitration in New South Wales has increased in complexity and extended in scope. The process through which it has passed has been one of experiment

and amendment. From the very beginning it has had the definite aim of fixing a living wage and thereby minimizing industrial conflict. But in the process there has been a change of attitude toward strikes. It must be remembered that arbitration is an alternative to the strike as a method of industrial agreement. A system of arbitration, therefore, calls for measures to reduce or prevent strikes. From 1901 to 1910 the administrative policy was definitely to penalize striking by characterizing it as a misdemeanor, punishable with fine and imprisonment. From 1910 onward a large measure of conciliation was added to the arbitration machinery, and striking was made "an extravagant proceeding," which might involve the offender in penalties and the attachment of his wages. In 1918 a more definite and extended system of conciliation was adopted, to minimize the number of trivial and resultless strikes, which involved little that could be subjected to arbitration. At the same time a distinction was made between legal and illegal strikes. Strikes are declared illegal in any industry under Government or municipal control, or under an industrial award or agreement, or in case 14 clear days' notice had not been given of the intention to strike. Illegal strikes are to be heavily penalized, penalties are specified against the union, the individual strikers, and any one encouraging them by word or act. A union may, however, strike legally, but only after at least twelve months trial of an award; further, a secret ballot, in which two-thirds of its members take part, must be held in all cases.

The Act of 1918, therefore, while recognizing the right to strike under certain conditions, nevertheless sharply limits that right and lays far greater stress on the principle of arbitration.

Administrative Machinery

The arbitration system of New South Wales is under the direction of the Minister for Labour and Industry, as the head of an organized department of the civil service. The corner-stone of the system is the Court of Industrial Arbitration, which consists (1918) of four judges, one of whom is designated the President of the Court. The Court has jurisdiction in the last resort over the whole of the Boards and over industrial matters generally. The Boards, more correctly called Industrial rather than

Wages Boards, are constituted by the Minister on the recommendation of the Court of Industrial Arbitration. They consist of two or four members, equally representing employers and employees, with a chairman appointed by the Minister. From 1912 onward, this chairman has presided over a number of allied Boards in the one group of trades. These allied Boards thus become subsidiary arbitration courts dealing with specified industries or callings and subject only to the control of the Court of Industrial Arbitration.

Proceedings begin before a Board on application by employers or employees in the industries or callings for which the Board has been constituted. In the case of the employees, the application must come from a union through its officers, and only a union can appear before the Court or a Board. What is technically called a dispute arises when a request comes from one party for any alteration of existing conditions. The refusal of this request, provided that the subject is an "industrial matter," constitutes a dispute, which is then submitted to the Registrar of the Court of Arbitration. This official, when satisfied of the jurisdiction of the Court over the parties and the subject, brings the matter before the Wages Board concerned, which sits as an official court. Both employers and employees may be represented before the Board by counsel, the employees being usually represented by a union secretary. Evidence is given in open court, but the decision is reached in private deliberation of the Board.

In jurisdiction and method the Boards differ from those of Victoria. They have a much wider scope. In so far as their functions include the fixing of wages, hours, overtime, and the number of apprentices, they are comparable with those of Victoria. But in addition they may rescind or vary any award, may grant preference to unionists, and generally determine any industrial matter. Their method of procedure is different. They often take evidence at great length, and their fixing of the minimum wage is by a process of judicial determination rather than of agreement in conference. They definitely adopt the principle of the cost of living as an index of the living wage which they fix. The chairmen are always barristers, but often have not sufficient prestige and authority to check the lengthy and tedious evidence which other members of the Board encourage. This is one of the

reasons which led in 1916, and later, to an increase in the number of judges in the Arbitration Court. It was felt that judges could probably do their work more expeditiously, and that the addition of a few would enable the Court to take over a large share of the work of the Boards.

The Boards issue their findings as awards which, while subject to appeal to the Court of Industrial Arbitration, are generally registered without appeal, and become operative with the force of law. The record of operations of Boards shows their superiority to the earlier system as well as their activity in formulating and varying awards. From February, 1902, to July, 1908, the first Court of Industrial Arbitration made 89 awards. From the latter date, when Wages Boards were instituted, till April, 1912, 213 Boards were in operation and issued 430 awards. From April, 1912, to June, 1916, 862 awards, including 368 variations, were made by the Boards, and 174 variations by order of the Court of Industrial Arbitration.[1]

The Act of 1912 systematized the practice of industrial agreements which had formed a part of the system of arbitration since 1901. These agreements are registered and have the force of awards, being binding on the parties and on the individuals. Their maximum duration is fixed at five years. The number of agreements filed since 1902 is shown in the following table:

TABLE I: INDUSTRIAL AGREEMENTS, NEW SOUTH WALES, 1902–1916

(New South Wales Year Book, 1916, p. 823)

Year	Agreements Registered	Year	Agreements Registered	Year	Agreements Registered
1902 }	28	1907	11	1912	44
1903 }		1908	12	1913	36
1904	18	1909	28	1914	50
1905	6	1910	21	1915	33
1906	13	1911	27	1916	51

The conciliation machinery which became a feature of the system in 1912 was suggested by the experience of the first ten years of arbitration. This had shown that many trivial and wasteful strikes originated in small disputes which were scarcely on the level of arbitration, and which might be settled quickly if the machinery for immediate inquiry were available. By the Act of 1912 an Industrial

[1] New South Wales Year Book, 1916, p. 822.

Commissioner was appointed, charged with the responsibility of intervening in all cases where he was directly or indirectly aware of any actual or threatened dispute. He had power, in such cases, to summon a compulsory conference of employers and employees. He could not, however, make an award. He was authorized only to act as chairman of a conference, and to seek to reach some agreement by conciliation. Should occasion demand, he reported the matter to the Minister for Labour, who referred it to the Court and thus obtained a speedy inquiry. These measures were intended to provide a simple and expeditious procedure for smaller disputes and a quick decision in larger matters.

The measure was very successful. In the first nine months the Industrial Commissioner intervened in 36 cases. He effected a final settlement in 15 cases, made a temporary arrangement in 20 cases, and failed in only one case, where the employer refused to assist him, but after a long struggle accepted terms which the Commissioner had offered him. In January, 1913, the Commissioner pointed out that the compulsory terms of his authority were of little use, since his intervention was welcome. In December, 1913, he reported that he had dealt with 142 cases since his appointment. In 83 cases he prevented the threatened stoppage of work. In 56 cases where work had ceased, the stoppages were curtailed and concluded. In only three cases did conciliatory efforts fail.[1]

The same Act provided for the appointment of Conciliation Committees in the larger occupations and callings, to consist of not more than two representatives each of employers and employees, with a chairman. The meetings of this committee constituted a voluntary conference, which, it was believed, would be of value in such an industry as mining, where disputes constantly arise over small matters. Even if a Board existed for the industry, the committee could negotiate an agreement, which would be registered under the Act. Conciliation Committees were appointed for the three colliery districts of the state, and have sat intermittently. Their value, however, has been nullified by the undisciplined miners, whose leaders could neither direct nor restrain them.

Notwithstanding these and other difficulties, the Act of 1918 removed all restrictions on the power of the Industrial Commissioner, and practically increased the power

[1] *Commonwealth Labour Bulletin*, No. 8, p. 287.

and scope of Conciliation Committees. In the strike crisis of 1917 the coal miners went back to work on terms which involved the appointment of a general Conciliation Committee for the coal trade, and local Conciliation Committees for each colliery. In the Act of 1918 provision was made for "shop committees, conciliation committees, industrial councils, or voluntary committees formed for the purpose of adjusting the industrial relationship of employer and employee." All industrial matters were to be left to these councils, except wages and working hours, which still remained under the jurisdiction of Boards. All decisions of these industrial councils may be referred to the Court of Industrial Arbitration, which may register them as awards.

The recent amending Act also instituted a Board of Trade, with widely extended powers. On it is cast the responsibility of initiating the new machinery for conciliation. The problems involved in apprenticeship are enunciated in full and included in its functions. But its most important function, outside of provision for conciliation, is to collect information which will enable the Arbitration Court to determine a living wage. On this basis of fact, the Court will declare once a year what is to be the living wage for males and for females for that year, either in the state as a whole or in any defined area. This general declaration will entitle every employee in any form of industry, whether regulated by arbitration or not, to such a wage. In addition, a distinct minimum wage may be fixed for each industry, taking account of questions of skill and continuity of employment.[1] The Court is empowered also to fix the quantity of work or services to be required for that wage.

Results of the System

Statistical Basis. It is customary to criticise the New South Wales system by its success or failure in reducing industrial disputes. Even were this an adequate measure of the success of a system which has other aims than that of the regulation of strikes and lockouts, the information does not exist in statistical form for discriminating judgment. The Commonwealth Statistician, whose figures are comparable throughout Australia, and whose definitions of "strike" and "lockout" are valid, has collected statistics only since 1913. The Industrial Registrar for New South

[1] See Appendix, p. 50, Sect. 24A (2).

Wales has prepared an exhaustive report of industrial dislocations since 1908, but his figures are not exact earlier than 1912. His definition of "dislocations" is so much broader than that of the Commonwealth Statistician that comparison is impossible. Moreover, his figures give a misleading impression unless carefully analyzed, since some disputes or dislocations referred to are not strictly strikes. Further, he has stated, after analysis of the causes of the dislocations scheduled, that a proportion of workdays amounting to 27 per cent in general, and to 40 per cent in the mining industry, was lost on account of "causes which could not practically or effectively be adjudicated upon by Courts or Boards." [1] This indicates that an endeavor to measure the success of arbitration in New South Wales by the number of strikes requires careful analysis and discrimination.

Disproportionate Influence of the Mining Industry

This difficulty in the evaluation of arbitration as a remedy for strikes is accentuated by the disproportionate number of strikes in the mining industry. At the census of 1911 this industry embraced little more than 5 per cent of the total labor force of the state. Yet it contributes overwhelmingly to the number of disputes in the state. The following table shows its sinister influence.

TABLE 2: NUMBER AND PERCENTAGE OF INDUSTRIAL DISLOCATIONS IN NEW SOUTH WALES, 1908–1916, ACCORDING TO INDUSTRIES, MINING AND NON-MINING [2]

Year	Number of Disputes			Percentage	
	Total	Mining	Non-Mining	Mining	Non-Mining
1908	223	140	83	62.8	37.2
1909	151	91	60	60.3	39.7
1910	136	49	87	36.0	64.0
1911	106	52	54	49.1	50.9
1912	127	80	47	63.0	37.0
1913	169	93	76	55.0	45.0
1914	313	220	93	70.3	29.7
1915	314	225	89	71.7	28.3
1916	344	209	135	60.8	39.2
Total	1,883	1,159	724	61.6	38.4

[1] New South Wales *Industrial Gazette*, Vol. IV, p. 1110.

[2] New South Wales *Industrial Gazette*, Vol. IV, p. 1079 *et seq.*; Vol. VII, p. 552 *et seq.*

In other words, 61.6 per cent of the industrial dislocations experienced in New South Wales in the period 1908–1916 took place in the mining industry. The effect upon the statistics of the whole Commonwealth is similar. To measure it, account must be taken of the loss in working days and wages and of the number of disputes which lasted one day or less, since the differences over working conditions, so characteristic of miners, are of that duration in many cases. This is done in Table 3, which also gives similar data for the state of Victoria and for the entire Commonwealth.[1]

This table shows to what extent a single industry in one state of the Commonwealth has fostered industrial unrest and defeated the aim of arbitration to provide a speedy and peaceful means of settling industrial disputes. Of the total of 1,855 disputes in the Commonwealth during 1913–1917, New South Wales had 1,273 or 68.6 per cent, but of the total of 933 disputes in the mining industry it had 842 or 90.3 per cent. Of the disputes within its own borders during that period, 66.1 per cent occurred in the mining industry, as compared with a similar figure in the whole Commonwealth of 50.3 per cent. The workdays lost in the mining industry formed 42.9 per cent of the total for the whole Commonwealth, but aggregated 51.3 per cent for New South Wales. Almost the same ratio obtains if the comparison is made on the basis of loss of wages. Of the total number of disputes lasting one day or less, during the years 1914–1917, those in the mining industry constitute no less than 75.9 per cent. Yet the mining industry embraces but a small fraction of the total workers in the state.

It is clear, therefore, that the mining industry tends to distort the trend of industrial disputes in Australia, and that this influence comes principally from New South Wales. Mining disputes in Victoria form only 22.9 per cent of the total, and the workdays lost thereby only 21.7 per cent. The relative frequency of disputes in this industry is due mainly to the irresponsible character and temperament of the miners. In general, their leaders, even when definitely preferring arbitration to the strike, have not

[1] It should be remembered that disputes are differently defined by the Commonwealth Statistician, and that the figures in Table 2 are not likely to be identical with the figures for New South Wales for the same years in Table 3.

TABLE 3: INDUSTRIAL DISPUTES, NUMBER AND MAGNITUDE IN THE MINING INDUSTRY IN AUSTRALIA AND IN NEW SOUTH WALES AND VICTORIA, 1913–1917 [1]

	Total for Australia					New South Wales					Victoria				
	1913	1914	1915	1916	1917	1913	1914	1915	1916	1917	1913	1914	1915	1916	1917
Total number of disputes.....	208	337	358	508	444	134	235	272	336	296	29	44	38	55	52
Number of disputes—**mining**.....	**103**	**186**	**204**	**240**	**200**	**83**	**167**	**195**	**214**	**183**	**12**	**13**	**5**	**12**	**8**
Total number disputes lasting one day or less.....	66	118	147	155	158	52	108	126	133	136	6	4	15	8	6
Number of disputes lasting one day or less—**mining**.....	*a*	**96**	**108**	**117**	**118**	*a*	*a*	*a*	*a*	*a*	*a*	*a*	*a*	*a*	*a*
Total number workdays lost.....	623,528	1,090,395	583,225	1,678,930	4,599,658	468,957	836,948	464,343	1,145,222	3,308,869	85,212	84,106	64,878	228,269	760,410
Number workdays lost—**mining**..	**383,335**	**698,725**	**357,757**	**920,105**	**1,317,016**	**287,197**	**650,649**	**321,773**	**762,581**	**1,172,863**	**44,015**	**34,641**	**28,511**	**72,564**	**86,122**
Total estimated loss in wages, £ ..	287,739	551,228	299,633	967,604	2,594,808	216,368	419,656	240,322	674,064	1,929,405	35,744	39,619	28,476	114,683	378,946
Estimated loss in wages—**mining**, £	**180,208**	**350,568**	**192,948**	**570,278**	**937,326**	**134,883**	**324,668**	**176,977**	**481,307**	**856,514**	**18,342**	**16,884**	**12,073**	**38,552**	**45,259**

[1] *Commonwealth Labour Report*, No. 5, pp. 74, 75, 77; No. 6, pp. 105–107, 113; No. 7, pp. 491–492, 496; No. 8, pp. 128–133.
a Figures not given.

been able to exert a restraining influence. In consequence, trifling disturbances, often lasting less than a day, have been characteristic of the industry.

General Summary

The results achieved by arbitration in New South Wales can most definitely be discussed in connection with those registered for the whole Commonwealth.[1] In general, it is claimed that it has increased wages, though its influence, as in Victoria, cannot be clearly differentiated from that of the rising prosperity of the state. A sharp rise in commodity prices in 1912 has made real wages lower than they were at any time subsequent to 1901. The use of the principle of the cost of living as determining the living wage has tended, however, to preserve a normal relation between family expenditures and nominal wages.

The system has maintained shorter hours. The 8-hour day, 48 hours per week, is a maximum, while a 44-hour week is worked in many industries.

The cost to the state of administering the system, as shown by Table 4 below, is strikingly small; moreover, the cost per individual Board and award has decreased sharply.

TABLE 4: COST OF THE INDUSTRIAL BOARDS OF NEW SOUTH WALES FOR 1909–1916

Year ending June 30	Cost of Boards		Cost per Board ($)
	Total (£)	Per Board (£)	
1909	3,116	95	463
1910	8,620	86	419
1911	7,524	84	409
1912	10,473	91	443
1913	13,653	66	321
1914	14,455	67	326
1915	9,154	41	200
1916	14,210	59	287

(See New South Wales *Industrial Gazette*, Vol. IV, p. 425; Year Book, 1916, p. 823.)

By insisting on collective bargaining, and allowing only unions to approach the Court on behalf of employees, it has deliberately strengthened and encouraged unionism. In 1903 the number of trade unionists in the state was

[1] See pp. 39–46.

estimated at 73,301, in 1914 it had risen to 237,714, and in 1916 to 244,074.[1] Of this latter number, 230,138 were males, representing 64.0 per cent of the estimated total number of male employees, and 13,936 were females, or 16.8 per cent of the estimated total number of female employees.

On its administrative side, the compulsory features of the system have not been effective in preventing disputes. They have reduced the seriousness and probably the number of major strikes, but have been accompanied by an increase in small and irresponsible disturbances. The system had not, at least prior to the Act of 1918, developed machinery adequate for handling the frequent difficulties in the mining industry. Its conciliation features, though promising, have not had the same scope as its compulsory features. Its Wages Boards have not been an unqualified success. They have never been able to utilize the conciliatory machinery of the Victorian system; they have become tedious and clumsy imitations of the Court of Industrial Arbitration, and seem destined either to pass away before the new industrial committees, or, at least, to sink to a position of subordinate importance.

The system has the support of public opinion in New South Wales. Not even employers would suggest a return to the principle of individual bargaining. No considerable body of opinion would exchange it for the Wages Boards of Victoria. Judged on its social side, it is recognized as a success. The objections to it are economic. The ultimate test of its efficiency is whether these social advantages are of such worth as to counterbalance its economic disadvantages.

[1] New South Wales Statistical Register, 1903–1904. *Commonwealth Labour Report*, No. 7, p. 343.

IV

THE COMMONWEALTH CONCILIATION AND ARBITRATION ACT

Comparison with the New South Wales Act

The Federal Constitution of Australia, which became operative on January 1, 1901, contained a provision granting the newly created Commonwealth the right to legislate concerning labor disputes extending beyond the limits of any one state. In 1904 the first Commonwealth Conciliation and Arbitration Act was passed. It was amended in 1909, 1910, 1911, 1914 and 1915, while further amendment is proposed to cover the conflict of state and federal awards. By the Arbitration (Public Service) Act of 1911, the machinery of the Federal Court was made applicable to claims originating from employees in the Commonwealth Public Service.

Among the chief objects of the Act are the following:

(a) To prevent lockouts and strikes in relation to industrial disputes;

(b) To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties;

(c) To facilitate and encourage the organization of representative bodies of employers and employees and the submission of industrial disputes to the Court by organizations, and to permit representative bodies of employers and of employees to be declared organizations for the purposes of this Act;

(d) To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.[1]

These clauses reveal a similarity to the original New South Wales Act of 1901. There is the same encouragement to organization, and the same provision for organizations, rather than individuals, to submit matters to the Court. Unionists are protected by a penalty of

[1] Commonwealth Conciliation and Arbitration Act, 1904–11, Sect. 2.

£50 ($243) against an employer who dismisses them for membership in a union. The onus of proof is upon the employer to show some other definite reason for dismissal. There is the same provision for industrial agreements which may be made for a term not exceeding five years, and which are binding on the organizations and their individual members. There is similar penalization of strikes and lockouts, the penalty being fixed at £1,000 ($4,866).

But in several respects the Commonwealth Act differs. The "common rule" clause is not operative; agreements affect only those organizations and persons bound by them. The High Court of Australia has decided against the constitutionality of the "common rule." A Federal award, however, at least within the industry affected, is equivalent to the extension of the common rule, since the President of the Court secures the consent of both employers and employees to action in the Wages Boards of the various states which will effect the same purpose as the common rule.

The most characteristic distinction from the New South Wales Act is in the provision for conciliation. The Commonwealth Act charges the President of the Court of Conciliation and Arbitration

> with the duty of endeavoring at all times by all lawful ways and means to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the Court has cognizance of them in all cases in which it appears to him that his mediation is desirable in the public interest.[1]

To carry out this purpose he may summon a compulsory conference, calling thereto any person, whether directly concerned with the dispute or not, whose presence is thought likely to conduce to the prevention or settlement of the dispute. The penalty for failure to obey a summons to such conference is fixed at £500 ($2,433).

Administrative Machinery

The practical administration of the Commonwealth Act centers round a Court of Conciliation and Arbitration with a President, who is one of the Justices of the High Court of Australia. The President is charged with

[1] Commonwealth Conciliation and Arbitration Act, 1904–1911, Sect. 16.

regulating the practice and procedure of the Act, and prescribing the duties of the Industrial Registrar and other officers of the Court. He may appoint a deputy to take his place in his absence, to assist him in any specified capacity in any part of the Commonwealth. He has original jurisdiction in all industrial matters. Should he think fit, he may refer any question of law, as distinct from questions of evidence and fact, to the High Court for guidance. In several matters the High Court has limited the jurisdiction of the Arbitration Court, but the latter has great prestige and authority and has been described as "the industrial arbiter of the continent."

The President, or the Court in its corporate capacity, takes cognizance of disputes when they are referred to it by either the Registrar of the Court, acting in his public capacity, by any industrial organization or state industrial authority, or by the President after an unsuccessful attempt at conciliation. State courts dealing with a dispute must cease to do so on the request of the Commonwealth Court. In the hearing and determination of a dispute,

> The President shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform ... his mind on any matter in such manner as ... he thinks just.

Disputes are determined either by industrial agreements between the parties, or after a compulsory conference with the President of the Court, or by an award. An award of the Commonwealth Court may lead to a number of agreements between the parties at issue. Thus, in 1914 and 1915, out of 224 separate industrial agreements filed in the Commonwealth Court, no less than 175 were made on behalf of the Federated Engine Drivers' and Firemen's Association in terms of one specific award.[1] The Court has power to appoint a Board of Reference, consisting of one or more persons, to deal with matters arising out of an award, but the High Court has so strictly limited the scope of the President's powers of reference to such a Board as to render the provision nugatory.

[1] Cf. *Commonwealth Labour Report*, No. 6, p. 78; No. 7, p. 439.

Principles in the Fixing of Wages

Much of the prestige of the Commonwealth Court of Arbitration is due to the fulness and clearness with which its President, Mr. Justice Henry B. Higgins, has enunciated the principles on which his awards are based. The general support given these principles in public opinion, legislative action, and the social philosophy of Australia, renders their enunciation an essential part of an analysis of Australian arbitration.

Supreme position among those principles which determine the decisions of the Court is given to that of the minimum wage. The Act itself lays little stress upon the matter. It is an Act "for the prevention and settlement of industrial disputes." Its ultimate aim is the securing of industrial peace. But the President of the Court has found the payment of "something like a living wage" to be fundamental to such a result. He has pointed out that, just as a drowning man will struggle to get his head above water, so a man will dispute until he gets "enough wherewith to renew his strength and to maintain his home from day to day." The direct connection between industrial unrest and insufficient wages has led the Arbitration Court to give most attention to the question of a minimum living wage.

In his formulation of the principle upon which to determine this wage, Mr. Justice Higgins has invented the formula: "the normal needs of the average employee, regarded as a human being living in a civilized community."[1] He has made this concrete by finding what would insure an unskilled workman food, shelter, clothing, frugal comfort, and provision for evil days. He has held, also,

> that regard should be had to the short periods of employment, to the expenditure of money and of time in getting to work, to the "broken time" of the employees, to the fact that they are paid by the hours of actual work, and to the general rise of wages in the community.

[1] Legislative definition of the minimum wage in terms of this formula has been given in two states,— Western Australia and Queensland. The provision in the Queensland Industrial Arbitration Act of 1916 reads: "The minimum wage of an adult male employee shall be not less than is sufficient to maintain a well-conducted employee of average health, strength, and competence, and his wife, and a family of three children, in a fair and average standard of comfort, having regard to the conditions of living prevailing among employees in the calling in respect to which such minimum wage is fixed, and provided that in fixing such minimum wage the earnings of the children or wife of such employee shall not be taken into account." The minimum wage for an adult female employee is similarly defined, except that family obligations are not considered.

The living wage has been adjusted year by year, since its determination in 1907, in accordance with the changes in the purchasing power of the English sovereign, as calculated by the Commonwealth Statistician. Whenever this wage is written into an award or agreement, it is the minimum below which the employer must not go except on pain of prosecution.

When the minimum living wage has been fixed, the added wage for skill has next to be determined. This was done originally by determining the ratio between the living wage and the wage for skill customary in the industry. But the wage for skill is not rigidly enforced. Subject to the approval of the Court, employers may bargain with employees for a somewhat smaller payment, never, however, below the minimum; but, on the other hand, they are free to pay as much above the nominal rate for skill as they choose.

The right to fair wages is not regarded as equivalent to a claim upon a fair proportion of the profits. Employees "run no financial risks, and incur no liabilities," hence cannot ask to share in profits.

But on the other hand, wages are a first charge upon industry, standing on the same level as the cost of raw material. A fair and reasonable remuneration has to be paid before profits are ascertained. The capabilities of an industry are not taken into account by the Court, so far as the living wage is concerned, since to do so would make want of skill and enterprise on the part of an employer a reason for the stinting of laborers in their prime necessities of life.

> If a man cannot maintain his enterprise without cutting down the wages which are proper to be paid to his employees — at all events, the wages which are essential for their living — it would be better that he should abandon the enterprise.[1]

This limitation applies more specifically to the minimum living wage. If a company whose financial position is not good is willing to pay that minimum, it may bargain with its skilled workers for a wage lower than their customary wage, and they are at liberty, so far as the Court is concerned, to accept it.

[1] Mr. Justice Higgins, in *Commonwealth Arbitration Reports*, Vol. III, p. 32; usually cited thus: III C. A. R. p. 32.

While restrictions on the freedom of employers are imposed by this system, in common with any compulsory system of wage-fixing, their professed purpose is to limit state interference to matters affecting the lives and health of employees. Some idea of their extent and of the principles upon which they are based is to be found in the following quotations from decisions of the President of the Court:

> My principle is to interfere as little as possible with employers in the administration of their business, to interfere only so far as to protect human lives from the undue pressure which profit-making often involves, and as to rectify, in the interests of industrial peace, matters of grave injustice. (IV C. A. R. p. 73.)

> I conceive it to be my duty to leave every employer free to carry on his own business on his own system, that he may make the greatest profit within his reach, so long as he does not perpetuate industrial trouble or endanger industrial peace; and that means, so long as he satisfies the essential human needs of his employees, and does not leave them under a sense of injustice. (IV C. A. R. p. 18.)

> In the strain of competition, the pressure on the employer is often very great, and he ought to be free to choose his employees on their merits and according to his own exigencies, free to make use of new machines, of improved methods, of financial advantages, of advantages of locality, of superior knowledge — free, in short, to put the utmost pressure on anything and everything, except human life. (IV C. A. R. p. 18.)

> I recognize as fully as anyone the responsibility of interfering with an employer in the management of his business; but after all, the interference is of a very limited character. It is analogous to the interference of sanitary authorities. Just as the employer has to comply with sanitary arrangements prescribed by competent authorities, so he has to comply with certain industrial arrangements prescribed by the award. (V C. A. R. p. 100.)

> I certainly do not feel justified in ordering the Company to continue mining operations under the circumstances .... It is not for the Court to dictate to employers what work they should carry on. It can merely, in such a case as this, prescribe fit conditions for human labour if the company employ it. (III C. A. R. p. 35.)

> I am very loth to interfere with the discretion of an employer in selecting his employees; and I certainly shall not compel him to obey any mandate or opinion of the union. (V C. A. R. p. 168.)

> When an employer is told that he must not pay his employees less than a stated minimum wage, it is only fair that his hands should be free to select whom he will employ. . . . Unfortunately many of the employers who come before this Court abuse this freedom of choice by using it to punish union officials; and it is the duty of this Court, working under an Act which avowedly encourages unionism (see Section 2)[1], to check this abuse to the utmost of its power. (VII C. A. R. p. 147.)

Social considerations are intimately interwoven into the principles upon which the living wage is based. The wage is calculated for a married man with children, because a wage that makes marriage a luxury is held to be neither fair nor reasonable. A single man receives the same wage, without discrimination, since he is potentially the head of a family. The minimum wage for women is based on the assumption that they have to provide for themselves, and not for a family. Considerations of health enter also into the question of the conditions of labor and the rate of wages. Increased wages are not to be regarded as a set-off to unduly long hours, unhealthy and degrading conditions, or unnecessary risks to life and health. Leisure also is regarded as essential to health and industrial peace. To enforce it under certain circumstances has involved considerable interference with employers' liberty of action. But any reasonable infringement which secures greater industrial peace is held to be justified. For the public interest is held to involve not only an increase in production but also in human happiness. Hence, since some measure of conflict is inherent in industrial relations, social welfare is to be furthered by reducing the seriousness, frequency, and costliness of the conflict through such means as the living wage and reasonable conditions of labor. On this social philosophy is based the whole conciliation and arbitration system of Australia.

The Commonwealth Court of Arbitration has not had to deal with many disputes. During the years 1913–1917, as will be seen from Table 6, the number settled under this Court amounted to only twenty, but these disputes, covering, as they did, employees in two or more states of Australia, affected large interests and many persons. The subjects in dispute comprised practically all conditions of

[1] Commonwealth Conciliation and Arbitration Act, 1904–1911, Sect. 2.

the industry. Thus, a claim made by the employees of the meat industry in Victoria and South Australia included regulation of rates of pay, hours of labor, holidays, terms and conditions of employment, and preference to unionists. The hearing of this claim occupied the attention of the Court for forty-two court days. There were 1,225 respondents in the case, and the printed award covers sixty pages. The award was preceded by a lengthy judgment in which the President of the Court entered into a full discussion of wages, prices, piece and time rates of wages, the effect of wages upon prices, budgets of income, questions of skill and efficiency, waiting time, hours and wages in small shops and apprenticeship.

In short, the Commonwealth Court of Arbitration is significant, less for the number of disputes it handles than for their size and importance, and for its success in preventing strikes. No investigation is entered upon by its President till work has been resumed, and only once has the decision of the Court been followed by a strike.

V

GENERAL RESULTS

This analysis has shown that a tendency exists in the Australian states toward a combination of the methods of conciliation and arbitration. The Victorian Wages Boards, although starting with a pure system of conciliation, resort to arbitration whenever a chairman fixes wages by his deciding vote. Further, they have been strengthened by a Court of Industrial Appeals, which is in form and essence an arbitration court. New South Wales started in 1892 with pure conciliation. When this failed, compulsory arbitration of the most stringent type was substituted. Since 1912, conciliation has been added in ever larger measure to the compulsory arbitration which remains the basis of the system.

The evolution of the South Australian system was identical, till 1912, with that of Victoria, including even a Court of Industrial Appeals. In that year compulsory arbitration and mediation were introduced. The Queensland system was one of Wages Boards on the Victorian model till 1912, after which it became an imitation of the New South Wales system. Western Australia and the Commonwealth combine conciliation by means of compulsory conference with compulsory arbitration through the judicial awards of a Court of Arbitration.

The use made of the compulsory conference reveals the same admixture of compulsion and conciliation. This provision is now found in the Commonwealth and Western Australia, as above described, also in New South Wales, Queensland, and South Australia. It originated in the Commonwealth Conciliation and Arbitration Act of 1904, in the first draft of which attendance at the conference was optional. The provision in consequence proved a failure. From 1910 attendance was made compulsory, and that aspect has been incorporated into the legislation of the four states above mentioned. Its success has been striking. Out of 201 compulsory conferences called in the Commonwealth and the four states over

various periods, 183 were directly effective, only 18 proving unsuccessful.[1]

Results on Wage-Fixing. The relative scope of the voluntary and compulsory systems in wage-fixing is illustrated by data showing the methods by which changes in wage-rates have been brought about. Figures for the whole Commonwealth, which have been collected since 1913, are set forth in Table 5. These figures concern all alterations in wage rates, whether or not they had technically become the subject of a dispute.

TABLE 5: CHANGES IN RATES OF WAGES CLASSIFIED ACCORDING TO METHODS BY WHICH EFFECTED. COMMONWEALTH OF AUSTRALIA, 1913–1917.[2]

	Number of Changes				
	1913	1914	1915	1916	1917
By voluntary action of employers	2	12	21	51	24
By direct negotiations	30	57	63	175	75
By negotiations, intervention or assistance of third party	4	1	20	9	14
By award of Court under Commonwealth Act	3	5	9	17	35
By agreement registered under Commonwealth Act	24	31	14	30	28
By award or determination under State Act	213	197	202	467	310
By agreement registered under State Act	36	62	36	72	88
Total	312	365	365	821	574

This table shows that out of a total of 2,437 changes in the five years, 1,506, or 61.8 per cent, were settled by a third party or by an award. In the same period 821 changes, or 33.7 per cent, were obtained by means of conciliation, and only 110, or 4.5 per cent, by the voluntary action of employers. The system of legal regulation of wages has, therefore, a firm hold in Australia; of the various systems used, that of arbitration is supreme.

Where such a great number of changes occur, invariably bringing an increase in wages, there obviously results a considerable and widespread advance in nominal wages. The 312 changes noted in 1913 affected 166,132 persons, and led to an increase of £37,713 ($183,660) per week.

[1] *Commonwealth Labour Bulletin*, No. 8, p. 293.
[2] *Commonwealth Labour Report*, No. 6, p. 95; No. 7, p. 457; No. 8, p. 113.

The 365 changes in 1914 affected 125,218 persons, giving a weekly increase of £30,685 ($149,435). In 1915, 197,410 persons received an increase per week of £51,905 ($252,777) in consequence of 365 changes in rates of wages. The 821 changes recorded in 1916 distributed a weekly increase of £142,923 ($696,035) among 492,487 persons.[1] In 1917, a year of great industrial disturbance, changes were fewer than in the previous year, totaling 574, affecting 292,910 persons, and giving a weekly increase of £81,007 ($394,504).[2]

The Commonwealth Statistician estimates that nominal wages increased 47.6 per cent between 1901 and 1917, although effective wages had, after keeping ahead till 1911, dropped behind, and in 1917 were slightly below the index number for 1901.[3]

The average nominal weekly wage payable to male adult workers on December 31, 1914, was £2 15*s.* 7*d* ($13.54), and for females £1 7*s.* 5*d.* ($6.67).[4] The minimum living wage at that date for a family with two children had been fixed at £2 8*s.* 0*d* ($11.68).[5] On December 31, 1917, the average nominal weekly wage for males had advanced to £3 4*s.* 2*d.* ($15.66) and for females £1 10*s.* 5*d.* ($7.41).[6] At the same date, the minimum wage for male employees varied slightly round about £3 ($14.60) per week.

There is no distinct tendency in Australia to treat the minimum wage as a maximum. Special work and qualifications, responsibility, long and trustworthy service, are compensated for by higher wages. Yet skilled labor has not that prestige in Australia which it enjoys in other countries. The range between the wage scale of unskilled and skilled workmen is narrow. This is largely due to the certainty with which arbitration causes the wages of adult men to rise toward the average wage, and to the preponderance of unskilled labor in a new country. Nevertheless, there is evidence of a distinct tendency toward the relative undervaluation of skill.[7]

[1] *Commonwealth Labour Reports*, No. 6, pp. 89, 91; No. 7, p. 457.
[2] *Commonwealth Labour Report*, No. 8, p. 113.
[3] *Commonwealth Labour Report*, No. 8, p. 89.
[4] *Commonwealth Labour Report*, No. 7, pp. 427–428.
[5] Commonwealth Arbitration Reports, Vol. 8, p. 65; N. S. W. *Industrial Gazette*, March, 1914.
[6] *Commonwealth Labour Report*, No. 8, p. 78.
[7] See the evidence in C. H. Northcott: "Australian Social Development," pp. 218–232.

Settlement of Disputes. A comparison of methods of settlement of industrial disputes reveals an overwhelming preponderance of direct negotiation between employers and employees or their representatives. This preponderance exists whether the significance of the disputes be measured by their total number, the number of workpeople involved, or any other measure. Such a classification for the disputes already presented in Table 3 is given in Table 6.

TABLE 6: METHODS OF SETTLEMENT OF INDUSTRIAL DISPUTES, COMMONWEALTH OF AUSTRALIA, 1913–1917 [1]

Methods of Settlement	Number of Disputes					
	1913	1914	1915	1916	1917	Total
Negotiations. Direct between employers and employees, or their representatives . . .	119	247	254	319	234	1,173
By intervention or assistance of distinctive third party — *not* under Commonwealth or State Industrial Act . . .	17	11	29	34	38	129
Under State Industrial Act. By intervention, assistance, or compulsory conference	19	7	3	9	12	50
By reference to Board or Court . . .	22	17	5	10	13	67
Under Commonwealth Arbitration and Conciliation Act. By intervention, assistance, or compulsory conference	4	5	2	6	3	20
By filling places of workpeople on strike or locked out	13	16	9	18	36	92
By closing down establishments permanently	1	4	1	6	4	16
By other methods	13	30	55	106	104	308
Total	208	337	358	508	444	1,855

[1] *Commonwealth Labour Reports*, No. 5, p. 83; No. 6, pp. 121, 123; No. 7, p. 502; No. 8, p. 139.

On this count, direct conciliation is the mode of settlement for the greater number of strikes, though not the more serious and far-reaching disputes. Thus, 1,173, or 63.2 per cent, of these disputes were settled by direct negotiation between employers and employees or their representatives. The more serious strikes come before the State or Commonwealth industrial tribunals. In explanation of settlements "by other methods," which have shown some increase in recent years, the following statement by the Commonwealth Statistician should be considered:

> It must be mentioned that a large number of stoppages of work occur each year, principally at the collieries, without any cause for such stoppages being brought officially under the notice of the employers or their representatives. Such stoppages usually last for one day, and work is resumed on the following morning without any negotiations for a settlement of the trouble which caused the stoppage.[1]

The figures clearly show an increase in the number of disputes in Australia in recent years. The significance of this increase, however, is greatly modified, first, because many of these controversies were trivial, and second, because of the considerable proportion contributed in the mining industry by a small minority of irresponsible mine workers who have been highly intolerant of union discipline. It is recognized that at times such discipline has not been exerted with due rigor. The failure of arbitration to handle this small minority of workers, however, is not a fair criterion of its efficiency as a broad policy, applied in the Commonwealth as a whole. Except for the mining industry of New South Wales, the industrial situation in Australia has in general been normal.

These facts are confirmed by the following statement from Mr. George S. Beeby, Minister for Labour, speaking in the New South Wales Parliament, February 6, 1918:

> Year by year the irresponsible and unreasonable strike is the one that has been increasing....The big strike, which does arise from resentment at some oppressive industrial condition, very rarely occurs in this state today....It is a disorganized and undisciplined trade-unionism that is the danger in any country.

[1] *Commonwealth Labour Report*, No. 7, p. 503.

Speaking of the preponderance of strikes in mining districts, he asserted that

> the majority of the strikes which have occurred in the mining districts could, with the slightest exercise of discipline by the central body of the union, have been prevented.

With respect to major disputes which reach the Commonwealth Court of Arbitration, it is a significant comment on the operation of the system that the President of that Court, Mr. Justice Higgins, was able until recently to state that not a single strike had occurred against any of its awards or decisions.

VI

CONCLUSION

The following conclusions are clearly indicated by this analysis of arbitration and wage-fixing legislation in Australia:

State regulation of wages and of industrial disputes is firmly established as a public policy in Australia. The methods and machinery differ, but the fundamental purpose is the same: viz., to reduce industrial friction.

The "living wage" as a minimum is definitely endorsed by the state as the principle behind all forms of conciliation and arbitration.

Beyond that minimum, a wage for skill is fixed in each occupation, but not so rigidly as to prohibit bargaining between employer and employee for a higher wage, or, under definite conditions, for one somewhat lower.

The minimum wage has not become the maximum. The average wage for males is above the basic wage, and a considerable percentage of workers receive an added wage for skill. The system tends, however, to limit the reward for extra skill.

Nominal wages have risen, but to what extent arbitration has been responsible cannot be determined; the general prosperity of the country has contributed to the increase. Effective wages, however, have declined somewhat.

Trade unionism and collective bargaining are not only recognized, but fostered, as a national policy. This is reflected in provisions whereby only associations of either employers or employees may initiate proceedings before Arbitration Courts, and in the rapid growth of trade unions in membership.

The system has not prevented industrial disputes, which have, in fact, increased. But the number of major disputes is small and is decreasing. Decisions are accepted by both sides without

serious objection. Strikes result mainly from conditions not provided for in awards.

The mining industry contributes altogether disproportionately to industrial disputes. This is largely due to the irresponsible character and temperament of the miners, who often disregard the advice of their leaders, and to the failure of union leaders to exert their authority.

In the practical administration of arbitration systems there has been a tendency to place increasing stress on conciliation without abandoning compulsory features.

The right to strike is recognized, but is sharply limited, and illegal strikes are penalized.

Public opinion in Australia considers the system effective. It is credited with having given the working classes, who form a large section of the population, a higher standard of living by guaranteeing them at least a living wage. In general, there is no tendency in Australia to give up any of these methods of arbitration. Even in a period when effective wages are falling, the Labour party has shown no general desire to substitute the strike for arbitration.

Australian arbitration and conciliation systems are but one manifestation of a broad social policy, which involves intimate regulation of conditions affecting wage-earners' interests. The system as a whole has admittedly involved an economic cost in reduced efficiency of production. The ultimate test is whether that cost is justified by social advantages.

It should be repeated that the underlying political and economic conditions in Australia, particularly in respect to the high degree of unionization of labor and the presence of a labor party in politics, differ sharply from those in the United States. These differences are of fundamental importance in any attempt to judge the practicability of applying Australian experience to this country. Nevertheless, that experience clearly establishes the value of conciliation and of some form of arbitration as a means of reducing industrial friction.

Appendices

List of Public Documents on Arbitration and Wage-Fixing, Issued by the Governments of Australia

THE COMMONWEALTH

Commonwealth Arbitration Reports, serially and anually from the office of the Registrar, Commonwealth Court of Conciliation and Arbitration, Melbourne. *Labour Bulletins* and *Labour Reports*, quarterly and annually, respectively, from the Commonwealth Bureau of Census and Statistics, Melbourne. These publications deal with wages, trade unions, industrial disputes and other industrial subjects, and include figures for the whole of Australia.

NEW SOUTH WALES

Comparative Legislation Relating to the Industrial Classes, Government Statistician, Sydney.

New South Wales Industrial Gazette, monthly, Department of Labour and Industry, Sydney.

Industrial Arbitration Reports, Government Printer, Sydney.

VICTORIA

Annual Report, Chief Inspector of Factories, Melbourne.

The Victorian Labour Laws.

Report on Anti-Strike Legislation, 1915.

Report on Effects of Labour Legislation, 1916.

Wages and Prices in Australia.

Reports prepared by the Secretary, Department of Labour, Melbourne.

QUEENSLAND

Queensland Industrial Gazette, monthly, Department of Labour and Industry, Brisbane.

SOUTH AUSTRALIA

Determinations of Wages Boards, Department of Labour and Industry, Adelaide, S. A.

WESTERN AUSTRALIA

Reports of Proceedings under the Industrial Conciliation and Arbitration Act Department of Labour and Industry, Perth, W. A.

ABRIDGED TEXT OF THE COMMONWEALTH CONCILIATION AND ARBITRATION ACT, 1904–1915

An Act relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State.

2. The chief objects of this Act are:

I. To prevent lockouts and strikes in relation to industrial disputes;

II. To constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes;

III. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties;

IV. In default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award;

V. To enable states to refer industrial disputes to the Court, and to permit the working of the Court and of State Industrial Authorities in aid of each other;

VI. To facilitate and encourage the organization of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organizations, and to permit representative bodies of employers and of employees to be declared organizations for the purposes of this Act;

VII. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

4. In this Act, except where otherwise clearly intended:...
"Industrial dispute" means an industrial dispute extending beyond the limits of any one state and includes:

(I) any dispute as to industrial matters, and

(II) any dispute in relation to employment in an industry carried on by or under the control of the Commonwealth or a State, or any public authority constituted under the Commonwealth or a State, and

(III) any threatened or impending or probable industrial dispute;...
"Industrial matters" includes all matters relating to work, pay, wages reward, hours, privileges, rights, or duties of employers or employees, or the mode,terms, and conditions of employment or non-employment; and in particular, but without limiting the general scope of this definition, includes all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal, or non-employment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organization, association, or body, and any claim arising under an industrial agreement, and includes all questions of what is fair and right in relation to any industrial matter having regard to the interests of the persons immediately concerned and of society as a whole;...

6. (1) No person or organization shall, on account of any industrial dispute, do anything in the nature of a lockout or strike, or continue any lockout or strike. Penalty: £1,000.

7. Where persons, with a view to be associated as employers and employees respectively, or representatives of such persons, have entered into an industrial agreement with respect to employment, any of such persons who, without reasonable cause or excuse, refuses or neglects to offer or accept employment upon the terms of the agreement, shall be deemed to be guilty of a lockout or strike, as the case may be.

8. Any organization of employers or employees which, for the purpose of enforcing compliance with the demands of any employers or employees, orders its members to refuse to offer or accept employment, shall be deemed to be guilty of a lockout or strike, as the case may be.

9. (1) No employer shall dismiss any employee from his employment or injure him in his employment or alter his position to his prejudice by reason merely of the fact that the employee is an officer or member of an organization or of an association that has applied to be registered as an organization or is entitled to the benefit of an industrial agreement or award. Penalty: £50.

(3) In any proceeding for any contravention of this section, it shall lie upon the employer to show that any employee, proved to have been dismissed or injured in his employment or prejudiced whilst an officer or member of an organization or such an association, or whilst entitled as aforesaid, was dismissed or injured in his employment or prejudiced for some reason other than that mentioned in this section.

10. (1) No employee shall cease work in the service of an employer by reason merely of the fact that the employer is an officer or member of an organization or of an association that has applied for registration as an organization or is entitled to the benefit of an industrial agreement or award. Penalty: £25.

(3) In any proceeding for any contravention of this section, it shall lie upon the employee, proved to have ceased work in the service of an employer whilst the employer was an officer or member of an organization or such an association or was entitled as aforesaid, to show that he ceased so to work for some reason other than that mentioned in this section.

16. The President shall be charged with the duty of endeavoring at all times by all lawful ways and means to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the Court has cognizance of them, in all cases in which it appears to him that his mediation is desirable in the public interest.

16A. (1) The President may, whenever in his opinion it is desirable for the purpose of preventing or settling an industrial dispute, summon any person to attend, at a time and place specified in the summons, at a conference presided over by himself.

(IA) "Any person" in the last preceding sub-section includes not only persons engaged in or connected with an industrial dispute, but also any person engaged in or connected with any dispute relating to industrial mat ters (whether extending beyond the limits of a state or not), and related in any way to an industrial dispute; and also includes any person, whether connected with an industrial dispute or not, whose presence at the conference the President thinks is likely to conduce to the prevention or settlement of an industrial dispute.

(2) Any person so summoned shall attend the conference and continue his attendance thereat as directed by the President. Penalty: £500.

(3) The conference may be held partly or wholly in public or in private, at the discretion of the President.

25. In the hearing and determination of every industrial dispute, and in exercising any duties or powers under or by virtue of this Act, the Court or the President shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its or his mind on any matter in such manner as it or he thinks just.

40. (1) The Court, by its award, or by order made on the application of any organization or person bound by the award, may:

(a) direct that, as between members of organizations of employers or employees and other persons (not being sons or daughters of employers) offering or desiring service or employment at the same time, preference shall, in such manner as is specified in the award or order, be given to such members, other things being equal; and

(b) prescribe a minimum rate of wages or remuneration (in which case the Court shall, on the application of any party to the industrial dispute, or of any organization or person bound by the award), make provision for fixing, in such manner and subject to such conditions as are specified in the award or order, a lower rate in the case of employees who are unable to earn the minimum wage so prescribed.

(2) Whenever in the opinion of the Court, it is necessary, for the prevention or settlement of the industrial dispute, or for the maintenance of industrial peace, or for the welfare of society, to direct that preference shall be given to members of organizations as in paragraph (a) of sub-section (1) of this section provided, the Court shall so direct.

73. Any organization may make an industrial agreement with any other organization or with any person for the prevention and settlement of industrial disputes existing or future by conciliation and arbitration.

INDUSTRIAL ARBITRATION (AMENDMENT) ACT, 1918, NEW SOUTH WALES

Summary of Important Amendments

24A. (1) The court or a board may in prescribing minimum wages fix the quantity of work or services to be done.

(2) Whenever an award relating to any skilled occupation fixes minimum wages higher than the living wage, the amount of the excess of such minimum wages above the living wage shall be the same in the case of males and females doing the same class of work.

(3) The court or a board shall, as far as is consistent with the maintenance of industrial peace, deal only with wages and hours of employment, leaving all other matters to shop committees, conciliation committees, industrial councils, or voluntary committees formed for the purpose of adjusting the industrial relationship of employer and employee. A judge or deputy judge of the court may act as the chairman of any industrial council.

24B. All employees engaged in rural industries shall be entitled to be paid the living wages declared in their regard by the Board of Trade, but with the exception of employees whose conditions of employment have been regulated by any award, shall not be otherwise subject to the provisions of this Act.

45. The following strikes and no others shall be illegal:

(a) Any strike by employees of the Crown or of any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government of the State, ... or by employees engaged in any contracts for military or naval purposes.

(b) Any strike by the employees in an industry, the conditions of which are for the time being wholly or partially regulated by an award or by an industrial agreement: Provided that any union of employees may render an award which has been in operation for a period of at least twelve months no longer binding on its members by the vote of a majority of its members at a secret ballot taken in accordance with

the provisions for ballots contained in this Act and the regulations thereunder in which not less than two-thirds of the members of such union take part.

(c) Any strike which has been commenced prior to the expiry of fourteen clear days notice in writing of intention to commence the same, or of the existence of such conditions as would be likely to lead to the same given to the Minister by or on behalf of the persons taking part in such strike.

46. In the event of an illegal strike occurring in any industry, the court may order any trade union, whose executive or members are taking part in or aiding or abetting the strike, to pay a penalty not exceeding £500.

48. (1) The Minister may at any time or from time to time during the progress of any strike, or whenever he has reason to believe that a strike is contemplated by the members of any industrial or trade union, or association of employees, direct that a secret ballot or secret ballots of such members or employees shall be taken in the manner prescribed for the purpose of determining whether a majority of such members or employees is or is not in favour of the institution or continuance respectively of the strike.

48B. If any person

(I) aids or instigates an illegal strike; or

(II) obstructs the taking of a ballot under this Act; or

(III) counsels persons who are entitled to vote at such ballot to refrain from so voting; or

(IV) being an officer of a union or association refuses to assist in the taking of such a ballot by acting as a scrutineer or providing for the use of the returning officer and his assistants such registers and other lists of the members of the union or association as the returning officer may require or otherwise; or

(V) directs or assists in the direction of an illegal strike, or acts or purports to act upon or in connection with a strike committee in connection with an illegal strike;

he shall be deemed guilty of a default of public duty, and upon being so found by the court shall be liable to a penalty not exceeding £50 or imprisonment for a period not exceeding six months.

48C. The proprietor and publisher of any newspaper which advises, instigates, aids, or abets an illegal strike shall for each offence be liable to a penalty not exceeding £100.

48D. Any person who induces or attempts to induce any person to take part in an illegal strike shall be liable to a penalty not exceeding ten pounds or to imprisonment, with or without hard labour, for a term not exceeding one month.

79. (1) The Board of Trade shall from year to year after public inquiry as to the increase or decrease in the average cost of living declare what shall be the living wages to be paid to adult male employees and to adult female employees in the state or any defined area thereof. In declaring such living wages the Board of Trade shall make a separate public inquiry into the cost of living of employees engaged in rural occupations, and shall make a separate declaration as to the living wages to be paid to such employees.

(2) No industrial agreement shall be entered into and no award made for wages lower than such living wages.

82. The Board of Trade is further empowered to exercise the following functions and perform the following duties:

(a) To encourage and create councils of employers and employees for the purpose of encouraging the proper apprenticeship of all minors and provide for the welfare of juvenile labour.

(b) To acquire and disseminate knowledge on all matters connected with industrial occupations with a view to improving the industrial relationship between employers and workers and to combat the evils of unemployment.

(c) To collect and publish information relating to or affecting industrial conditions.

(d) To propound schemes for welfare work, and report to the Governor on all matters relating to such work and to the insurance of employees against loss or injury caused by unemployment, sickness, or accident, or industrial diseases.

(e) To report on any matter referred to as to the prices of commodities, and as to whether or not monopolies or trade rings exist for the purpose of unfairly keeping up the prices of commodities.

(f) To investigate and report on the existence of sweating in an industry.

(g) To report upon the productivity of industries, the number of employees in any industry, and the effect or probable effect of the regulation of the conditions of any industry upon such productivity.

(h) To consider and report upon the industrial efficiency of the community, the organization of the labour market and opportunities of employment, and all questions relating to unemployment.

(i) To collect and publish from time to time statistics of vital, social, and industrial matters, and on labour employment and unemployment in specific industries, and on other prescribed matters.

(j) To encourage and assist in the establishment in different industries of mutual welfare committees and industrial councils, and of subsidiary shop committees for individual enterprises.

(k) To encourage and assist schemes for mutual co-operation and profit sharing between employers and employees.

(l) To encourage and assist in the establishment of hostels for women workers and workmen's clubs and libraries.

(m) To report and advise on schemes for the better housing of the people.

(n) To consider and report upon any other matter referred to it by the Minister.

Publications
of the
National Industrial Conference Board
15 Beacon Street, Boston, Mass.

Research Report No. 1. Workmen's Compensation Acts in the United States — The Legal Phase. 60 pages. April, 1917. Revised, August, 1919. $1.00.
Research Report No. 2. Analysis of British Wartime Reports on Hours of Work as Related to Output and Fatigue. 58 pages. November, 1917. $1.00.
Research Report No. 3. Strikes in American Industry in Wartime. 20 pages. March, 1918. 50 cents.
Research Report No. 4. Hours of Work as Related to Output and Health of Workers — Cotton Manufacturing. 64 pages. March, 1918. $1.00.
Research Report No. 5. The Canadian Industrial Disputes Investigation Act. 28 pages. April, 1918. 50 cents.
Research Report No. 6. Sickness Insurance or Sickness Prevention? 24 pages. May, 1918. 50 cents.
Research Report No. 7. Hours of Work as Related to Output and Health of Workers — Boot and Shoe Industry. 76 pages. June, 1918. $1.00.
Research Report No. 8. Wartime Employment of Women in the Metal Trades. 80 pages. July, 1918. $1.00.
Research Report No. 9. Wartime Changes in the Cost of Living — July, 1914, to June, 1918. 82 pages. August, 1918. $1.00.
Research Report No. 10. Arbitration and Wage-Fixing in Australia. 52 pages. October, 1918. $1.00.
Research Report No. 11. The Eight-Hour Day Defined. 12 pages. December, 1918. 50 cents.
Research Report No. 12. Hours of Work as Related to Output and Health of Workers — Wool Manufacturing. 69 pages. December, 1918. $1.00.
Research Report No. 13. Rest Periods for Industrial Workers. 55 pages. January, 1919. $1.00.
Research Report No. 14. Wartime Changes in the Cost of Living — July, 1914, to November, 1918. 33 pages. February, 1919. 75 cents.
Research Report No. 15. Problems of Industrial Readjustment in the United States. 58 pages. February, 1919. $1.00.
Research Report No. 16. Hours of Work as Related to Output and Health of Workers — Silk Manufacturing. 54 pages. March, 1919. $1.00.
Research Report No. 17. Wartime Changes in the Cost of Living — July, 1914, to March, 1919. 31 pages. May, 1919. 75 cents.
Research Report No. 18. Hours of Work as Related to Output and Health of Workers — Metal Manufacturing Industries. 62 pages. July, 1919. $1.00.
Research Report No. 19. Changes in the Cost of Living — July, 1914, to July, 1919, 31 pages. September, 1919. 75 cents.
Research Report No. 20. Wartime Changes in Wages — (September, 1914,— March, 1919). 128 pages. September, 1919. $1.50.
Research Report No. 21. Works Councils in the United States. 135 pages. October, 1919. $1.50.
Research Report No. 22. The Cost of Living among Wage-Earners — Fall River, Massachusetts, October, 1919. 18 pages. November, 1919. 50 cents.
Research Report No. 23. Conciliation and Arbitration in New Zealand. 46 pages. December, 1919. $1.00.
Research Report No. 24. The Cost of Living among Wage-Earners — Lawrence, Massachusetts, November, 1919. 21 pages. December, 1919. 50 cents.
Research Report No. 25. Changes in the Cost of Living, July, 1914, to November, 1919. 24 pages. December, 1919. 75 cents.
Research Report No. 26. A Works Council Manual. 32 pages. February, 1920. $1.00.
Research Report No. 27. The Hours of Work Problem in the Five Major Industries. 91 pages. March, 1920. $1.00.

RESEARCH REPORTS IN PREPARATION

Conciliation and Arbitration in France.
Federal and State Agencies of Conciliation and Arbitration in the United States.
Extent and Causes of Absence among Industrial Workers.

INDUSTRIAL NEWS SURVEY

Weekly. Important industrial news in concise form. $2.00 per year.