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REPORT OF THE INDUSTRIAL COUNCIL OF  
THE BRITISH BOARD OF TRADE ON ITS  
INQUIRY INTO INDUSTRIAL AGREEMENTS



AUGUST 18, 1913

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# BULLETIN OF THE U. S. BUREAU OF LABOR STATISTICS.

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### CONCILIATION AND ARBITRATION IN GREAT BRITAIN.

In Great Britain in recent years the development of the machinery for the settlement of trade disputes by boards of conciliation and arbitration and by joint committees has assumed great importance. While a considerable number of these boards have been in operation for long periods and many more are due entirely to the initiative of the employers and employees independent of any official agency, the Conciliation Act of 1896 has been especially influential in promoting the growth of the present movement.

The Conciliation Act of 1896<sup>1</sup> was the outcome of an inquiry begun in 1893 by the Board of Trade as to the legislation needed to meet the new industrial and social conditions. Its most important feature was the authorization of the Board of Trade as a standing agency of mediation, ready to act at the request of either party or to offer its services when the public welfare seemed to demand such action. The Board of Trade was given no powers of compulsion whatever, but the mere fact that a body of its weight and reputation had been told off for such a service tended to dignify the idea of conciliation, while the ease with which its services could be secured was a strong inducement to call upon it in cases of disagreement.

### PERMANENT COURT OF ARBITRATION.

In the period since the passage of the act two important additions have been made to the machinery which the Board of Trade was empowered to call into play when circumstances demanded. The first was the provision in 1908 of the permanent court of arbitration.<sup>2</sup> In providing for this the president of the Board of Trade expressly

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<sup>1</sup> For text of the conciliation act see Appendix I.

<sup>2</sup> For constitution of court, rules, etc., see Appendix II.

disclaimed any intention of curtailing or replacing any of the functions already performed under the conciliation act; the proposed court was to be an addition, not a substitution, and its creation was ascribed to the fact that the scale of the operations carried on by the Board of Trade "deserves, and indeed requires, the creation of some more formal and permanent machinery." Another reason given was the desire to test public sentiment in regard to arbitration; it seems to have been felt that the general attitude toward conciliation was already pretty well known. The system was put in operation in 1909.

### INDUSTRIAL COUNCIL.

The second addition to the machinery provided by the Board of Trade was made during 1911, largely as an outcome of the industrial contests of the late summer, which threw an enormous amount of delicate and difficult work upon the Board of Trade.

The new body, known as the Industrial Council, was made up of representatives of employers and of workmen in equal numbers.<sup>1</sup>

The present membership of the Industrial Council is as follows:

#### EMPLOYERS' REPRESENTATIVES.

- Mr. George Ainsworth, chairman of the Steel Ingot Makers' Association.
- Sir Hugh Bell, Bart., J. P., president of the Iron, Steel and Allied Trades Federation and chairman of the Cleveland Mine Owners' Association.
- Mr. G. H. Claughton, J. P., chairman of the London & North Western Railway Co.
- Mr. W. A. Clowes, president of the London Master Printers' Association.
- Mr. J. H. C. Crockett, president of the Incorporated Federated Associations of Boot and Shoe Manufacturers of Great Britain and Ireland.
- Mr. F. L. Davis, J. P., chairman of the South Wales Coal Conciliation Board.
- Mr. T. L. Devitt, chairman of the Shipping Federation (Ltd.).
- Sir T. Ratcliffe Ellis, secretary of the Lancashire and Cheshire Coal Owners' Association and joint secretary of the Board of Conciliation of the Coal Trade of the Federated Districts, etc.
- Mr. F. W. Gibbins, chairman of the Welsh Plate and Sheet Manufacturers' Association.
- Sir Charles Macara, Bart., J. P., president of the Federation of Master Cotton Spinners' Associations.
- Mr. Alexander Siemens, chairman of the executive board of the Engineering Employers' Federation.
- Mr. Robert Thompson, J. P., M. P., past president of the Ulster Flax Spinners' Association.
- Mr. J. W. White, president of the National Building Trades Employers' Federation.

#### WORKMEN'S REPRESENTATIVES.

- Rt. Hon. Thomas Burt, M. P., general secretary of the Northumberland Miners' Mutual Confident Association.
- Mr. T. Ashton, J. P., secretary of the Miners' Federation of Great Britain and general secretary of the Lancashire and Cheshire Miners' Federation.
- Mr. C. W. Bowerman, M. P., secretary of the Parliamentary Committee of the Trades Union Congress and president of the Printing and Kindred Trades Federation of the United Kingdom.
- Mr. F. Chandler, J. P., general secretary of the Amalgamated Society of Carpenters and Joiners.
- Mr. J. R. Clynes, J. P., M. P., organizing secretary of the National Union of Gas Workers and General Laborers of Great Britain and Ireland.

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<sup>1</sup> Mr. W. Mullin, J. P., president of the United Textile Factory Workers' Association and general secretary of the Amalgamated Association of Card and Blowing Room Operatives, who was one of the workmen's representatives during the first year, resigned.

- Mr. H. Gosling, president of the National Transport Workers' Federation and general secretary of the Amalgamated Society of Watermen, Lightermen, and Watchmen of River Thames.
- Mr. Arthur Henderson, M. P., Friendly Society of Ironfounders.
- Mr. John Hodge, M. P., general secretary of the British Steel Smelters, Mill, Iron, and Tinplate Workers' Amalgamated Association.
- Mr. W. Mosses, general secretary of the Federation of Engineering and Ship-building Trades and of the United Pattern Makers' Association.
- Mr. E. L. Poulton, general secretary of the National Union of Boot and Shoe Operatives.
- Mr. Alexander Wilkie, J. P., M. P., secretary of the shipyard standing committee under the national agreement, 1909, and general secretary of the Ship-constructive and Shipwrights' Society.
- Mr. J. E. Williams, general secretary of the Amalgamated Society of Railway Servants.

Sir George Askwith, K. C. B., K. C., is chairman of the Industrial Council, with the title of chief industrial commissioner.

The first meeting of the council was held October 26, 1911, at the Board of Trade offices. The president of the board in his address of welcome said:

\* \* \* We believe that the powers and position of the Board of Trade, its good offices, could be advantageously strengthened in the direction of what may be called a national industrial body of weight and repute, consisting of representatives of the two great sides of the industry of the country; \* \* \* a body that would bring to bear on these problems a great range of advice, great weight, and a greater likelihood, therefore, of useful and acceptable action, especially—and I lay stress on this—before, rather than after, stoppage of work. Such a body would also enable an appeal to be made to it by one or other of the combatants without loss of dignity.

I would point out further that of late years, both on the side of the employers and on the side of the workmen, considerable steps have been taken toward what I may call federated effort—combinations of trade-unions on the one hand and of federations of employers' associations on the other—and that, from the point of view of trade disputes, trade and industry are far more interdependent than they used to be. While, therefore, a few years ago the creation of a national conciliation council, representing all the great industries, might have been thought to be premature, its existence is really now essential, so that these matters can be considered as a whole. \* \* \*

Fear has been expressed that the council may interfere with the freedom of action of federations of employers or of the unions of the men, but I wish to state clearly \* \* \* that there will be no compulsion on either side to submit their case to the council or to accept its advice or its decisions. The council will not interfere with the freedom of action of the employers or the employed.<sup>1</sup>

At this first meeting of the council it was decided that regular meetings should be held in February, June, and November of each year, and special meetings might be called at any time by the chairman. Meetings in general should be considered private, only official statements of their action being issued, and the members should act in a

<sup>1</sup> Board of Trade Labor Gazette, November, 1911, p. 403.

judicial capacity, not as advocates. The following classes of cases might require to be dealt with:

(1) Cases which may be referred to the council, as an impartial body, for their opinion upon the facts only of the case, to be conveyed to the parties privately.

(2) Cases which may be referred to the council in order that the facts may be impartially ascertained and recommendations made to each side, the acceptance of such recommendations not to be obligatory nor made public.

(3) Cases similar to those last mentioned, but both sides agreeing beforehand that the recommendations of the council be made public.

(4) Cases which may be referred to the council upon which a decision may be given, the parties agreeing to accept the decision as a final settlement.

(5) Cases which may be referred to the council, under special circumstances, by the Board of Trade or the Government.

(6) Other matters, apart from particular disputes, which the Board of Trade or the Government may decide to refer to the council, with a view to obtaining a considered and representative opinion upon specific points.

#### CONCILIATION BOARDS IN 1912.

At the end of 1912 the total number of voluntary conciliation boards and standing joint committees was 297 (of which 282 were boards dealing with particular trades and 15 district and general boards), including both those registered under the conciliation act and those not so registered. The rules of a number of these conciliation boards, and also other agreements arranged between employers and workpeople in various trades, contain a clause providing that in the event of failure of the parties to effect a settlement of a dispute, application shall be made to the Board of Trade for the appointment of an umpire, arbitrator, or conciliator. Such clauses now exist in more than 100 cases. In addition a number of agreements and awards provide that questions of interpretation, etc., of such agreement or award shall, in case of disagreement between the parties, be referred to the Board of Trade or to persons appointed by the board.

#### REPORT OF THE INDUSTRIAL COUNCIL.

Because of the great number of cases arising out of these agreements coming before the Board of Trade, and of the very great public interest in the matters dealt with by these agreements, and especially because of the questions arising in connection with the strike of the Thames transport workers in 1912, the president of the Board of Trade in June, 1912, informed Sir George Askwith, as chairman



of the Industrial Council, that the Government desired to refer to the council certain matters which appeared to them to be difficulties in the way of peaceful and friendly relations between employers and workmen. The Government's request upon the Industrial Council placed before them for inquiry only two formal questions:

1. What is the best method of securing the due fulfillment of industrial agreements?

2. How far, and in what manner, industrial agreements which are made between representative bodies of employers and of workmen should be enforced throughout a particular trade or district?

The Industrial Council, after holding 38 meetings and hearing the evidence of 92 witnesses, representative of employers and workers in practically all the principal industries of the country, has just issued their report under date of July 24, 1913.

The Industrial Council, it should be borne in mind, is composed of representatives of employers and of workmen, all with experience with collective agreements and with methods of conciliation and arbitration. Especially impressive, therefore, is the emphasis with which they give their approval of the principle of the collective agreement:

The desirability of maintaining the principle of collective bargaining—which has become so important a constituent in the industrial life of this country—can not be called into question, and we regard it as axiomatic that nothing should be done that would lead to the abandonment of a method of adjusting the relationships between employers and workpeople which has proved so mutually advantageous throughout most of the trades of the country. We think it undesirable that any proposals should be put forward which might lead to a tendency to refrain from entering into voluntary agreements; indeed efforts should, in our opinion, be made rather to support the continuance of the collective bargain.

The council find from the evidence that collective agreements have been as a rule well kept. The exceptions are mainly in trades which are unorganized or in which organization is incomplete.

The council note the absence from many agreements of an "interpretation clause" providing for cases of disagreement regarding interpretation. Such a provision they regard as an essential part of every industrial agreement; in the event of a dispute the points in dispute should be referred to some independent authority chosen by the parties or appointed by the Board of Trade, and pending a decision there shall be no strike or lockout.

Various suggestions as to the best methods of securing the fulfillment of industrial agreements were before the council.

The value of complete and effective organization on the part of both employers and employees, they find, is very clearly demonstrated

by the experience of the different trades of the country. Where organization on both sides is imperfect the existence of any agreements that may be arrived at is constantly imperiled, owing to the inability of either side to take effective action.

The council, after examining in detail proposals for the enforcement of money penalties on persons committing a breach of an agreement and the prohibition, by law, of financial or other assistance to persons in breach, reached the conclusion that the establishment of a system of monetary penalties is not desirable, and that such penalties as prohibition of assistance to persons in breach should not be made legally obligatory. The council, however, state with emphasis their opinion that where a breach of an agreement has been committed no assistance, financial or otherwise, should be given to the persons in breach by any of the other members of the associations connected with the agreement; that moral influence should in every feasible way be brought to bear in favor of the strict carrying out of agreements, and that, in cases where a breach is found to have been committed, associations should accept the findings of the tribunal and should exercise to the full the disciplinary powers of their organization, assisted by the force of public opinion.

"Compulsory" arbitration the council do not view with favor, but they consider it essential that conciliation boards or joint committees should be provided with some authority to which final appeal may be made for a recommendation as to settlement. Before there is a reversion to the method of strike or lockout, it is important, they think, that there should be a pronouncement upon the question at issue by some independent body or by some impartial individual, and that with this object in view the question in dispute should be thoroughly debated by a body representative of those whose interests are concerned, presided over by an independent person having the power of recommending a decision should he fail to reconcile the two sides of the board.

With regard to the question as to how far and in what manner industrial agreements between representative bodies of employers and employees should be enforced throughout a particular trade or district, the council find that, especially in trades where there is a considerable minority outside the employers' association, and the workmen's organization is not sufficiently strong to secure the general observance of the terms of agreements, there is a real danger that effective voluntary agreements can not be maintained. The council is of the opinion that means should be provided by which, at the request of both parties to an agreement, and after suitable inquiry, its operation may be extended to include the minority and its terms made applicable to them.

In the scheme recommended by the council to provide such means it is also required that an agreement in order to receive consideration for extension must provide—

(a) That at least ——— days' notice shall be given by either party of an intended change affecting conditions as to wages or hours; and

(b) That there shall be no stoppage of work or alteration of the conditions of employment until the dispute has been investigated by some agreed tribunal and a pronouncement made upon it.

The full report of the Industrial Council upon the questions referred to it by the Government is printed in the following pages:

#### DETAILED REPORT OF INDUSTRIAL COUNCIL.

SIR: We have the honor to submit herewith our report upon the inquiry which, in accordance with the request of His Majesty's Government, we have made into certain matters connected with industrial agreements.

2. The questions which were referred to us were the following:

(a) What is the best method of securing the due fulfillment of industrial agreements? and

(b) How far and in what manner industrial agreements which are made between representative bodies of employers and of workmen should be enforced throughout a particular trade or district?

3. In the course of our inquiry we have held 38 meetings, at 29 of which we heard evidence from 92 witnesses, representing the employers and workpeople in the majority of the principal industries of the country.

4. At the commencement of the proceedings invitations to nominate representatives to give evidence were addressed to a large number of the principal associations of employers and workpeople. The majority of these bodies accepted the invitation.

5. Among the bodies representative of workpeople invited to submit evidence were the trades-union congress parliamentary committee, the parliamentary committee of the Scottish trades-union congress, and the parliamentary committee of the Irish trades-union congress. Representatives from the Scottish and Irish congresses subsequently attended as witnesses and were examined. The following letter, dated 19th July, 1912, was addressed to the registrar of the council by the secretary of the trades-union congress parliamentary committee:

"DEAR SIR: Your communication of the 25th ultimo was duly considered by the parliamentary committee at their meeting held yesterday, and I am instructed to reply that, inasmuch as four members of the committee are serving upon the council, and two or three have given evidence before the council as representatives of their respective societies, the committee do not deem it necessary to appoint witnesses to give further evidence.

"After giving the subject under investigation by the council their full and close consideration, the committee passed the following resolution and directed me to forward a copy to you:

"That this parliamentary committee hereby declares that any well-considered plan to strengthen and bring into a more general observance trade agreements duly ratified between the recognized leaders of employers and workmen will be beneficial and reduce the number of irregular disputes.

"Yours, faithfully,

"(Signed)

C. W. BOWERMAN,

*"Secretary."*

In addition to the oral evidence which the council have had an opportunity of hearing, a circular letter was addressed at the commencement of the inquiry to a large number (about 2,000 in all) of the employers' associations and trade-unions of the country, advising them of the inquiry which the council had undertaken, and inviting them to forward, for the information of the council, a statement containing any observations which they might desire to offer regarding the matters to be dealt with under the terms of reference.

#### THE FULFILLMENT OF AGREEMENTS.

6. It may be of advantage at the outset to consider what might be regarded as a working definition of an industrial agreement. (It is understood that there is no legal definition of the term.)

An industrial agreement may be described as an arrangement arrived at by employers and workpeople with a view to formulating the general conditions of employment in a particular trade and district. It is essentially different from (though to a large extent it forms the basis of) the contract of service entered into between an individual employer and an individual workman. It is, in most cases, arrived at because the employers and workpeople think that a collective agreement is a desirable method of formulating what they have agreed shall be (for the time being, or for some period mentioned in the agreement) the principal terms governing the contracts of service between individual employers and individual workmen.

As a matter of practice, agreements are usually made between associations of employers and associations of workpeople, and the extent to which these associations in the various cases cover the whole of the trade concerned differs in almost every instance.

7. It is to be noted that industrial agreements, considered as contracts between employers and employed, can not fairly be compared with the ordinary commercial contracts made between individuals or corporate bodies. In the case of ordinary commercial contracts the persons who enter into the contracts are the principals directly concerned, or at least persons acting under well-defined authority from principals. Industrial agreements, on the other hand, are frequently made—especially on behalf of the workpeople—by representatives who, by reason of the numbers involved and the circumstances which surround trade movements, find it difficult to obtain well-defined authority to enter into a settlement, or even to ascertain, beforehand, the exact wishes of those whom they represent. This fact it is necessary to keep clearly in mind in the consideration of the questions now under review.

Notwithstanding these difficulties inherent in dealing with large numbers of workpeople, we find from the evidence that agreements in most cases are well kept. Although a number of instances of alleged breaches of agreements have been referred to in the course of the inquiry, the evidence of a considerable majority of the witnesses is to the effect that agreements have, viewed generally, been duly fulfilled by both parties. The breaches that have been mentioned were, with a few exceptions, the result of the action of comparatively few men, or due to exceptional circumstances or to differences and misunderstandings in regard to points of interpretation, and are not, as a rule, countenanced by the respective organizations.

It is recognized by both sides that they are under a strong moral obligation to observe agreements which have been entered into by them or by their representatives on their behalf. The principal exceptions appear to be in trades which are unorganized, or in which on one side or the other the organization is incomplete or is of recent origin, but we find that where agreements are the outcome of properly organized machinery for dealing with disputes they are, with very few exceptions, loyally observed by both sides. Where agreements have been broken it is frequently found that they were made at times when, owing to the abnormal conditions, great difficulty must have been experienced in arriving at a fair adjustment.

8. Where one side or the other are alleged to have committed a breach of an agreement, an examination of the facts of the case sometimes shows that the signatories to the agreement, though acting in good faith, signified their assent to the terms of the agreement, but were unable, subsequently, to carry their constituents with them. In fact, the agreement, regarded as a compact made by the constituents of those who signed it, was no agreement. It is perhaps unnecessary to detail all the causes in cases such as these, but it may be mentioned that one of them is the fact that, in their desire to effect a settlement of a dispute, particularly where a stoppage of work is in progress or is imminent—the representatives of the parties sometimes agree to proposals which are shown by subsequent developments to require amendment, and although both those who signed the agreement and those for whom it has been signed, may be extremely desirous of maintaining it, due observance of the agreement has been found on occasion to be impracticable, particularly in cases where it has been found impracticable to consult the constituent members. There does not seem to be any satisfactory way in which an “agreement” under such circumstances could be enforced, and the case would seem to be one for further adjustment by the parties.

9. There are cases of alleged nonfulfillment of agreements which on examination, are found not to come within the category of breaches of agreements, but are rather instances of a failure to agree upon a question of interpretation. Those who have had experience of the manner in which industrial agreements are sometimes made will be aware of the fact that the form of words adopted is frequently only an approximation to the real intentions of the parties, the stress of the moment rendering it impracticable (and sometimes even undesirable) to enter into a strict analysis of the possible literal meanings of a form of words which has been suggested by one side or the other, or has been evolved in the course of long sittings during

which considerable feeling may have been displayed. Hence it sometimes happens that when the agreement comes to be put into practice different interpretations may be put upon some part of the document. The obviously reasonable and advantageous course for the parties to adopt in such circumstances is to submit the point of interpretation to some person not concerned in the question at issue.

It appears to be the case that many industrial agreements contain no clause providing for cases of disagreement regarding the interpretation of the document, and we are of opinion that such a clause—an "interpretation clause"—is an essential part of an industrial agreement and should form part of every such agreement. We consider that a model clause of this character would be one which provided that, in the event of a dispute arising as to the interpretation of an agreement, the point in dispute should be referred to an independent chairman, or to arbitrators, or a court of arbitration, agreed upon in each case by the parties. In the event of the parties failing to agree upon the person or persons to whom the matter is to be referred, it should be referred to a chairman or a court of arbitration appointed in accordance with the provisions of the Conciliation Act, 1896. We are of opinion that such a chairman or court should have a casting vote, or at least be able to recommend a solution should the parties fail to agree.

#### CONCILIATION BOARDS, JOINT COMMITTEES, ETC.

10. A great number of examples were mentioned in the course of the evidence of the various forms of machinery which exist in most of the industries of this country for the consideration of trade disputes by voluntary conciliation and arbitration boards or joint committees, and it was stated by a large proportion of witnesses that the existing conciliation procedure was found to work satisfactorily and to assist in the settlement of the great majority of the points of difference that arise from time to time between the parties.

A difference of opinion was manifested as to whether or not the awards and decisions of conciliation boards should be made binding, though a majority of the witnesses who expressed an opinion upon this point were in favor of the suggestion.

Many witnesses considered that there should be attached to every conciliation board some independent determining authority (e. g., a chairman) with power to make a pronouncement upon questions in dispute concerning which the board had been unable to agree.

Evidence was given that in many industries, when the established conciliation procedure has failed to settle a dispute, recourse is had (in accordance with the expressed rules, or ad hoc by agreement of the parties) to the Board of Trade, or some other outside neutral authority, to arbitrate in the matter.

11. The extent to which some form of conciliatory machinery exists in connection with the various industries of this country is a marked feature of the industrial life of the community, and the success which has attended the operations of the various voluntary boards of conciliation and arbitration points to the desirability of the continued maintenance of this form of adjusting trade disputes. The basis of these conciliation boards and joint committees is mutual consent, and their value in the past has depended upon the loyal

acceptance on the part of the constituents on both sides of the decisions arrived at in accordance with the procedure of the boards. This acceptance is purely voluntary, depending solely upon the sense of moral obligation. So far as has been shown by the evidence which we have heard, loyal acceptance of the decisions of the conciliation boards has been the rule in all the trades concerned, and it would appear inexpedient to attempt to substitute for these voluntary forms of machinery some alternative method based upon principles other than that of mutual consent.

12. The question arises, however, whether it is desirable or expedient to supplement in any way the existing voluntary agencies of conciliation.

The object in view we understand to be to minimize the loss and inconvenience caused to the persons concerned, and to the community as a whole, by strikes and lockouts. That there must be the power to appeal ultimately to the arbitrament of the strike or lock-out is apparently the general opinion of those whom we have had an opportunity of examining, and we concur in this view. It is, however, also the general opinion that the chances of effecting an amicable settlement of industrial difficulties are increased if there is an established and recognized form of procedure which must be followed by the parties concerned before a cessation of work may take place.

13. We were informed by witnesses from many of the organized trades that under their respective systems of organization the stoppage of work on questions of wages, hours, and similar conditions of employment is precluded by consent, pending some form of inquiry into the circumstances of the matters in dispute.

In some cases it was stated that where an unauthorized stoppage has occurred the circumstances in connection with it are not taken into consideration by the organization, or by the conciliation board, until work has been resumed.

Much support has been given to the view that some procedure should obtain in all trades to preclude a stoppage of work until the matter in dispute has been made the subject of some form of inquiry.

The majority of opinions on the point favored the principle that a definite period should elapse after the notification of a grievance before a stoppage of work. In most cases 30 days was suggested as a suitable length of time.

Certain witnesses, while favoring the continuance of work in cases of dispute till after an inquiry, were opposed to any definite period being stated within which no stoppage of work might take place.

The suggestion was made that when every stage of the established inquiry procedure has been gone through in cases of dispute, a further period of 30 days should intervene before any stoppage of work may take place, the object of this further period being to afford the parties another opportunity of considering the position.

Several witnesses favored the suggestion that incitement to strike during the period of inquiry should be prohibited, and the opinion was expressed that employers should not make use of that period for the organization of nonunion workers.

14. Where there exists in any trade a recognized form of conciliatory machinery for the adjustment of disputes agreed by both sides to come within the conciliation scheme, we consider that it is unnecessary that there should be any intervention on the part of the community (acting through a Government department or otherwise) until the existing procedure has been exhausted, but in order that the interests of the community may be adequately safeguarded we couple with this opinion the view that it is desirable that before a cessation of work takes place there should be a period of time (after the existing procedure has been exhausted) sufficient to admit of (a) the further consideration of the position by the parties, and (b) the opportunity of the introduction into the discussion of some authority representing the interests of the community.

15. We consider that it is an essential part of a conciliation board or joint committee that there should be attached to it some authority to which, in the event of a deadlock, the parties may appeal for a recommendation as to settlement. We do not view with favor the establishment of "compulsory" arbitration, but we do regard it of great importance that the conciliation board or joint committee should possess a means of arriving at finality. We think that before there is a reversion to the method of strike or lockout, it is important that there should be a pronouncement upon the question at issue by some independent body, or by some impartial individual, and that with this object in view the question in dispute should be thoroughly debated by a body representative of those whose interests are concerned, presided over (at some stage or other, but not necessarily the first) by an independent person invested with the power of recommending a decision, should he fail to reconcile the two sides of the board or the joint committee. The matters to which we have alluded in this and the preceding paragraph are, in our opinion, of such importance that in the recommendations which we have made under the second part of our reference we have inserted provisions which we think would assist in bringing about the desired end (vide par. 58).

16. We are of opinion that, where there is (a) a difference in regard to the interpretation of an agreement, or (b) a difference as to whether there has been a breach of an agreement, there should be no stoppage of work (by strike or lockout) pending the reference of the difference to some impartial tribunal, and pending the issue of a pronouncement by the tribunal. We have suggested (vide par. 9) a method of determining a difference in regard to the interpretation of an agreement, and we think that a similar procedure might possibly be adopted in the case of a difference as to whether there has been a breach of an agreement.

#### ORGANIZATION.

17. A very large proportion of the witnesses examined on the subject gave evidence as to the value of organization as a means of securing the due fulfillment of agreements, both by the signatories to the agreement and by the trade as a whole.

The opinion was expressed by certain witnesses that complete organization is the best means of securing the fulfillment of agreements, and that any form of compulsion should only be employed



when it has been found impossible satisfactorily to organize either one or both sides of the industry.

In cases where definite opinion has been expressed a few witnesses have stated that they consider complete organization preferable to any legislative action in connection with agreements, and others have suggested that thorough organization renders legislation and monetary guarantees and penalties unnecessary.

The view was taken by certain witnesses that where there is exceptional difficulty in the way of organization, some form of legislative compulsion ought to be employed to make the terms of voluntary agreements general throughout the trade or district.

18. The value of efficient organization on the part of employers and workpeople as a means of securing the due fulfillment of industrial agreements is very clearly demonstrated by the experience of the different trades of the country. Where, as in the steel trade, the associations of employers and workmen include an overwhelming proportion of the persons engaged in the trade on both sides, it is found that breaches of agreements rarely occur, or, if they do occur, generally occasion no difficulty since they are dealt with by the prompt and efficient action of the employers' association or the trade union, as the case may be. In such an industry as the baking trade, however, where organization on both sides is imperfect, it appears at present to be the fact that (except in one or two localities where the organization has been improved) the existence of any agreements that may be arrived at by such part of the employers and workpeople as are organized is constantly imperiled owing to the inability of either side to take effective action in the event of a breach of the agreement occurring.

Between the two extremes exemplified by these two trades there are, of course, a large number of intermediate states of organization, and it is impracticable to divide into two distinct groups the trades in which organization may be held to be so far perfect as to render any outside assistance unnecessary, and those in which the organization is so incomplete that the fulfillment of agreements can not be secured unless a means is found whereby the existing efforts of the parties may be strengthened.

#### MORAL OBLIGATION.

19. In the course of the evidence which we have heard different opinions were expressed in regard to the efficacy of the "moral obligation" as an aid to the due fulfillment of agreements. Several witnesses held the view that the moral obligation to fulfill agreements was stronger than the fear of incurring a monetary fine for breach, and it was suggested that the sense of moral obligation was a sufficient guarantee of due fulfillment; it was also pointed out that the existence of a system of monetary penalties might weaken the value of the moral obligation in so far as it led to the belief that, the fine having been paid, the offense was condoned and there was therefore no longer the same need to observe the terms of the agreement, the argument being that a sense of moral obligation is less easily disposed of. In this way the value of the moral obligation—now a very important factor in assisting in the fulfillment of agreements—

might be lessened. On the other hand, a considerable number of witnesses favored the principle of monetary guarantees or penalties.

Some evidence was given to the effect that monetary guarantees or penalties would not interfere with, but possibly might strengthen, the moral obligation.

MONETARY PENALTIES AND PROHIBITION OF ASSISTANCE TO PERSONS  
IN BREACH.

20. Among the proposals which have come before us for consideration as possible methods of assisting the due fulfillment of agreements are two which, though dissimilar in some respects, seem to us to require, for the purposes of their proper examination and analysis, the application of very much the same principles. These suggestions are (a) the infliction and enforcement of monetary penalties upon those committing a breach of an agreement, and (b) the prohibition by law of financial or other assistance to persons in breach. A very considerable amount of evidence was given in regard to these two proposals, and we have given both subjects very full consideration.

21. The greater part of the evidence which was given in connection with monetary penalties was in favor of the proposal that a penalty, in the nature of a fine, should be imposed on persons committing a breach of an agreement. A number of witnesses, however, expressed opinions against the establishment of penalties.

The majority of the witnesses expressed the view that the penalties should be recoverable from the association rather than from the individual, the association to have the right of recovery from the individual. It was also suggested that claims for penalties should in all cases be made through the association to which the aggrieved party belonged.

Some witnesses held the view that the penalty should not be a monetary penalty, but should take the form of expulsion from the trade-union in the case of the workman, or from the employers' association in the case of the employer, such expulsion being considered—especially in the case of the trade-unions—as sufficiently punitive in effect. It was, however, pointed out that the expulsion of a man from a trade-union might involve unduly severe punishment, inasmuch as the man might (on account of the members of the union refusing to work with him) be altogether precluded from following his trade.

A number of witnesses referred to the difficulties that were likely to be experienced in connection with the recovery of money penalties from individual workmen, or from bodies of workmen (apart from the trade-unions).

Various suggestions have been made as to the procedure by which monetary penalties should be recoverable. Apart from their assessment by a neutral and independent arbitrator, it has been suggested that they should be recoverable through the county court.

22. Among the matters to which attention is necessary in dealing with the proposal to establish a system of monetary penalties is the question whether the penalty should be claimable from the defaulting individual direct or from his association, and, if the latter whether the association should in turn be empowered to claim the amount of the penalty from the individual member.

Where a breach of an agreement is committed by an employer, the workmen concerned would appear to have a reasonable chance of recovering the amount of the penalty, but where the breach is committed by an individual workman, or a body of workmen, acting independently of their union, the employer's chance of recovering the penalties may be found to be so slight as to render the procedure useless. As, presumably, the object of the penalty clause would be to secure the observance of the agreement, rather than the infliction of fines, it would appear to be desirable that the area of responsibility should be widened, and this suggests that the penalties should be claimable from the associations rather than from individuals, and that claims in respect of alleged breaches should be made only through the respective associations. Where the breach is committed by persons not members of an association a different procedure would, of course, be necessary.

23. In order that the individual might not be free from direct personal responsibility, it would be essential that, where a penalty had been paid, the association should be empowered to recover the amount from the defaulting members. It may be doubted, however, whether this disciplinary course would, or could, in practice be followed in the case of a trade-union where any considerable number of its members were in breach, or where the want of organization gave opportunities to men who left the trade-union rather than pay the fine to obtain employment as nonunionists.

24. It is to be noted that more than one witness emphasized the desirability of strengthening the responsibility of trade-unions and, in particular, of trade-union officials. The opinion was advanced that if unions were liable to the infliction of fines or penalties for breaches of agreements or strikes without due notice, the officials of the unions would find themselves in possession of a new means of insisting upon their members observing the agreements or of refraining from ceasing work without proper notice. The unions might be liable for breaches of agreements (1) when committed with the knowledge and sanction of the union officials or executive, (2) when committed by one or more individual members of the union without the sanction of the union officials.

The amount of the penalty would vary according to the special circumstances of the trade concerned and the particular nature of the case in point. The rate of the penalty would require to be higher in the case of (1) than (2). In the case of (2) it was suggested that the ability of the union officials to maintain discipline among their members would be greatly strengthened by a provision giving them power to claim from the individual members the amount of the penalty incurred by the union on their behalf, or to expel the offending members from the union, the whole of any sums due to such members, or such part of those funds as may be necessary to cover the amount of the penalty, being retained by the union.

25. A similar procedure to that indicated in the preceding paragraph would be necessary in the case of associations of employers.

26. A proposal was put forward to the effect that where individual workmen committed a breach of an agreement and would not pay the penalty adjudged against them it should be possible for a lien to be placed upon their wages (if and when they again became employed) until the amount was paid.

This proposal is one which it would seem difficult in practice to carry out, and we are disposed to agree with the view that in such a case it should be left to the union to deal with the man in such manner as they thought fit.

27. As regards the prohibition of assistance to persons in breach, the suggestion that no support should be given by either employers' associations or trade-unions to their respective members acting in breach of an agreement (e. g., that the union should give no strike pay in case of breach and the association should also render no assistance to a defaulting member) has, as a principle, received general support from almost every witness who considered the matter in the course of the evidence. It was also stated by several witnesses that this attitude toward members in breach is already adopted by many employers' associations and trade-unions and is a policy which is laid down in the rules of the organizations.

Opinion was divided as to the desirability of introducing any form of legislative compulsion to make such rules operative in every case. A majority of the witnesses who expressed a definite opinion on the subject held the view that some kind of legislative compulsion is desirable, but some witnesses were opposed to legislative interference, and preferred that the matter should be regarded as part of the internal discipline of the organizations concerned.

28. We think there can be little doubt that the fact that financial or other assistance could not be given to persons acting in breach of agreement would be an aid to discipline and would tend to assist in the maintenance of agreements, and we are of opinion that where it has been decided by an impartial tribunal (or by mutual consent of the parties to an agreement) that a breach of an agreement has been committed by any person who is a member of an association represented by the signatories to the agreement, no assistance, financial or otherwise, should be given to that person by any of the other members of the associations who were parties to the agreement. We have already suggested (vide pars. 9 and 16) a method by which it might be decided whether or not a breach had, in fact, been committed.

29. The desirability of maintaining the principle of collective bargaining—which has become so important a constituent in the industrial life of this country—can not be called into question, and we regard it as axiomatic that nothing should be done that would lead to the abandonment of a method of adjusting the relationships between employers and workpeople which has proved so mutually advantageous throughout most of the trades of the country. We think it undesirable that any proposals should be put forward which might lead to a tendency to refrain from entering into voluntary agreements; indeed efforts should, in our opinion, be made rather to support the continuance of the collective bargain. Thus there is a danger that the introduction into the terms of agreements of provisions for the enforcement of money penalties or fines may in some instances deter workpeople from entering into agreements which might in other respects have been acceptable to them.

30. The feeling expressed in the dictum that "those who break their contracts ought to be made to pay for it" is one which we fully understand, but in our opinion the more important consideration

is whether the end in view (i. e., the proper maintenance and fulfillment of industrial agreements by employers and workpeople) is likely to be secured by attempting to punish, by means of monetary penalties, persons who, for reasons which may be good or bad, are found to have committed a breach of an agreement to which they, through their associations, are parties. So far as we are aware, and so far as has been shown by the evidence which we have had, industrial agreements are not lightly broken by either side, and the circumstances which have, in certain cases, led to a breach of an agreement are usually of a very special character.

We heard evidence at some length regarding the strike in connection with the eight-hour agreement in the Northumberland coal trade in 1910, and the strike in connection with the London taxicab industry in 1913, both of which cases are illustrative of the special difficulties which sometimes surround agreements affecting large bodies of men. The former case has been cited as an instance where an agreement containing provisions known to be objected to by a large minority of the men concerned was nevertheless entered into by the union executive under the force of circumstances, a large number of men subsequently going on strike against it. In the case of the taxicab award it was found that, owing to certain circumstances connected with the price of petrol, the operation of one of the clauses would probably mean a reduction in the men's earnings amounting to over 6 shillings (\$1.46) a week—a reduction which, it was claimed, the men could not afford.

31. An automatic monetary penalty operating in cases such as these seems open to objection on grounds of equity, while the difficulty of enforcing the penalty in such circumstances would probably be found to be almost insuperable.

32. As we have already pointed out, industrial agreements can not fairly be compared with the ordinary commercial contracts made between individuals or corporate bodies, where the terms of the contracts are decided upon by the principals directly concerned. In the case of industrial agreements circumstances may arise subsequent to the date of the agreement which might be held to justify a right of relief from the whole or some part of the terms of the agreement. A study of the circumstances leading up to the conclusion of an agreement and of the circumstances subsequently existing will frequently be found to indicate that some amount of elasticity is inevitable.

33. Having regard to the special nature of industrial organization on the workpeople's side, the ultimate result of the institution of a system of legal money penalties for breaches of agreement or the legal prohibition of assistance to members in breach might be that the trade-union leaders would find themselves precluded from entering into agreements at all, or, if agreements were entered into, that they would be compelled to insist upon the insertion of a clause which enabled them to terminate the agreements upon exceedingly short notice. An alternative to this might be defiance of the law, when there would at once arise all the difficulties inherent in any attempt to enforce the law against a large number of individual workmen—with no ultimate source of pressure short of imprisonment.

34. The matters referred to in the foregoing paragraphs have been discussed at length, and in the result they appear to us to involve a question of important principle, viz, whether the maintenance of industrial agreements should be compelled or attempted to be compelled by penalties in the law courts or should rest on intention, moral obligation, mutual agreement, and generally on consent.

35. We are aware that the perfected organization which has been attained in many associations does not exist in all cases, but we are not at present prepared to hold that in consequence of these cases a new principle should be imported into industrial arrangements and all other associations penalized and their work on voluntary lines made difficult or impossible by reason of the action of a few. Our view is that voluntary organization and collective bargaining can not successfully proceed upon a basis of broken faith, and that breach of faith should be discouraged by all voluntary action that can be taken by associations on either side. In many associations rules for the punishment of persons committing a breach already exist, and we recommend that other associations should follow the lead which has thus been taken and consider whether it is not advisable that similar rules should be adopted in their organizations.

36. While we are convinced that it is to the interests of both employers and workpeople that industrial agreements should be duly fulfilled, we think that in the long run this object is more likely to be secured by an increased regard for the moral obligation and by reliance upon the principles of mutual consent, rather than by the establishment of a system of monetary penalties or by the legal prohibition of assistance to persons in breach.

#### MONETARY GUARANTEES.

37. A number of suggestions were received in favor of the principle of monetary guarantees in connection with agreements, and evidence was given as to the utility of the guarantee fund which exists in the boot and shoe trade. A few witnesses, however, expressed doubts as to the efficacy of monetary guarantees. It was pointed out that the disciplinary value of a money payment for breach of agreement might be of little effect if the payment were made out of funds which had been set apart for the purpose, as in such a case the payment would not affect the general funds of the organization, and the penalty would not be brought home to the members. One witness suggested that monetary guarantees implied a doubt as to the good faith of the parties to the agreement. It was also stated that in some cases the union funds could not bear the strain involved in maintaining a heavy guarantee fund, and also that the individual sum per man would be small; in the case of unions who are parties to a number of agreements it was suggested that it would be difficult for them to provide a monetary guarantee in each case.

38. We have given consideration to the principle of monetary deposits as a means of securing the due fulfillment of industrial agreements. This principle is in operation in the boot and shoe trade, and in one or two other instances, but it has not been generally adopted in the various trades of the country. Considerable diversity of opinion appears to exist in regard to the

efficacy of a monetary guarantee. If the fund is intended to be one out of which a penalty is payable equivalent to the amount of damage suffered, it is clear that, in order to provide for a case involving a large number of persons, the sum of money which it would be necessary to deposit would be such that many of the smaller organizations would be unable to set aside so large a proportion of their funds, or to obtain money for such a purpose. If, on the other hand, the penalty to be paid is merely in the nature of a fine, it does not appear that the adoption of the principle adds much to the restraining influence which is already exercised by the moral obligation to observe agreements.

39. In this connection it is to be noted that the system of monetary guarantees does not afford a means by which pressure may be brought to bear upon persons not members of the associations who contribute to the fund.

40. We are of opinion, therefore, that the general adoption of the system of monetary guarantees, in the form of a deposit of money, can not be regarded as constituting a practicable and efficient means of insuring the fulfillment of agreements. At the same time where monetary guarantees are voluntarily offered we see no objection to their adoption.

#### MONETARY GUARANTEES AND PENALTIES CONSIDERED AS IN THE NATURE OF COMPENSATION FOR DAMAGES.

41. The assessment of monetary penalties and claims on guarantee funds as compensation for damages due to breach of agreement was favored by several witnesses, but other witnesses opposed the suggestion. Among the reasons for not favoring the principle were the preference for the moral obligation, the consideration that any compensation (from union funds) that could be provided would be inadequate, that a penalty should only be a preventive to the continuance of any action in breach of agreement, and that there would be difficulty in recovering damages. On the other hand, it was suggested that a small penalty, in the nature of a fine, would not act as a sufficient preventive of breach, and also that the actual losses of either party due to breach should be made good, as far as possible, by the party acting in breach.

#### DURATION OF AGREEMENTS.

42. The instances which were cited in the course of the evidence as to the duration of agreements indicate that in practice agreements are usually made for a fixed period—varying from one to five years—after which either party desiring alteration or withdrawal is required to give a term of notice, such term varying from 14 days up to as much as 6 months. Some arrangement of this nature was favored by the majority of expressed opinions on the point.

Certain witnesses held the view that it is desirable that agreements should be made to last only a short period of time, in order that the opportunities for variation in the terms of the agreement might not be too infrequent.

It has been suggested as desirable that sectional agreements in a particular trade or allied group of trades should run concurrently, and that all the agreements should terminate and come up for consideration at the same time, it being anticipated that a succession of sectional disputes (involving a danger of breach of agreements by sympathetic strikes in other directions) might thus be avoided.

43. The question of the period for which agreements should operate is one to which our attention has been directed, and it is one of no little importance. The existing practice appears to be different in different trades. In the tin-plate trade of South Wales, for instance, the agreement which covers that trade comes up for discussion annually, and this practice of giving opportunity for revision after the expiration of a year is one which is stated to have given satisfaction to both employers and workpeople. In certain branches of the building trades (e. g., the carpenters and joiners) an agreement once entered into continues in force till one side or the other gives six months' notice to terminate it. In other cases (e. g., the shipbuilding trade agreement of March, 1909) it was provided that the agreement should continue in force for a fixed period—three years—and be subject thereafter to six months' notice from either side.

There may in some instances be difficulty in inducing employers or workpeople to bind themselves to observe particular terms of employment for a long period, but it appears to us to be to the advantage of the trade generally that agreements should continue in force for some fixed period.

44. For the purposes of the consideration of this part of the subject, agreements may be divided into two categories, viz, (*a*) those which have been arrived at for the purpose of establishing machinery for dealing with questions which may arise between the parties, and (*b*) those which are made as a result of the operation of the machinery established under (*a*). It will be obvious that the duration of agreements in these two classes will vary, and that, in general, agreements included under (*a*) would be of longer duration than those included under (*b*). In both cases the period for which the agreement is to last must vary according to the circumstances of particular trades, but we think that in ordinary cases such period should not exceed three years.

As regards (*a*), we consider that agreements providing for the establishment of machinery should contain a provision to the effect that the machinery shall remain in operation for an agreed period, to be mentioned in the document, and that it shall continue in force thereafter until such time as either party shall have given not less than three months' notice in writing to the other side to terminate it or to amend any of its provisions.

With regard to (*b*), agreements on questions coming within the scope of the recognized machinery, we consider that they should be subject to revision on such written notice as may be agreed between the parties.

In making the suggestion that the period for which agreements are made should not, in general, exceed three years, we have no wish to interfere in any way with the existing practice in trades where longer periods may have been customary and are necessary for the



proper conduct of the trade, nor with the practice under existing conciliation boards.

#### EXTENSION OF AGREEMENTS.

45. The evidence of a considerable number of witnesses was to the effect that the terms of agreements arrived at between employers' associations and trade-unions are often observed, particularly as regards rates of wages, by individual firms who are not members of the employers' association, and are not, therefore, parties to an agreement. This was usually accounted for by the fact that the workpeople in the industries concerned were well organized, and that the trade-unions were strong enough to bring pressure to bear on the "outside" employer. In trades in which the workpeople are less well organized, the observance of agreements by the nonassociated employers is less usual. It has in some cases been stated that it was not the policy of employers' associations to take steps to induce non-associated employers to observe agreements, but to rely upon the unions to do so. Instances were given where the trade-unions resorted to a strike to compel nonassociated firms to observe the terms of an agreement, and evidence was given as to strikes and as to the existence of difficulties in carrying out agreements owing to the presence of nonassociated employers.

A very large majority of the witnesses who expressed themselves definitely on the subject were in favor of the principle of the extension of agreements to the whole trade of a district, where such agreements have been arrived at voluntarily by associations representative of the trade in the district.

There were, however, certain witnesses who opposed the suggestion.

Evidence was given regarding the difficulty which would arise in practice in defining the area to which any particular agreement should be applied.

The view was expressed that the extension should be made only after the agreement had been considered (on the application of the parties) by a competent independent authority, and had been found to be a proper agreement.

It was held in a number of cases, though not in all, that it should be a condition precedent to the holding of an inquiry for the purpose of extending an agreement, that the parties to the agreement which it was proposed to extend should represent a majority of the trade in the district concerned.

The suggestion was made that in the event of an authority being established with power to decide as to the extension of agreements, such authority should also be empowered to hear appeals for exemption from the action of the extended agreements, and to grant such exemption if the special circumstances of the applicants were considered to warrant it.

The majority of opinions expressed on the point were in favor of the terms of the agreement being declared to be enforceable at law upon the persons to whom it had been made applicable by the operation of the principle of extension; though, on the other hand, a number of witnesses (while desiring to see the terms of agreements observed by nonassociated persons) expressed opinions un-

favorable to the adoption of legislation for such purpose. In the case of the witnesses from the iron and steel trades it was held that the organization in those trades is sufficiently complete to secure the observance of the terms of agreements by persons outside the contracting associations, and for this reason, apart from any others, legislative action was not favored. Other witnesses who expressed the view that legislative action was undesirable based the objection apparently upon the desire to avoid legislative interference with their trade.

46. It appears clear that in trades in which the organization is imperfect the effective maintenance of agreements is jeopardized by the existence of a section (perhaps only a minority) which is not party to, and therefore not in any sense bound by, whatever agreement may be arrived at by the rest of the trade. Where the organization on the workpeople's side has reached a high degree of perfection, the presence of a minority of employers outside the employers' association does not seriously affect the efficacy of an agreement, since the trade-union is generally able by the threat of withdrawing its members, to secure that the nonassociated firms observe the terms of the agreement, but even in such cases a section of a trade, however small, outside the general conditions of employment where other things are equal, is a menace to the agreement.

47. In cases where, however, there is a considerable minority outside the employers' association, and the workpeople's organization is not sufficiently strong to deal with such minority, there is a real danger that effective voluntary agreements can not be maintained even as regards the majority. Where the agreement provides for a particular rate of wages (and the industry is one in which the wages bill is a prominent factor in the cost of production) the members of the employers' association who are parties to the agreement, and who comply with its terms, are at a distinct disadvantage as compared with those nonassociated firms who, while not being bound to pay the rate of wages fixed by the agreement, are competitors with them. The influence of such a noncomplying and competitive minority is likely to endanger the continuance of the agreement, and we are of opinion that means should be provided whereby, at the request of the parties to an agreement and after suitable inquiry, its operation should be extended to include the minority and its terms made applicable to them.

48. The form of machinery that might suitably be established to deal with proposals for the extension of agreements is a subject to which we have given full consideration. It is essential that the body charged with the responsibility of arriving at decisions which might very seriously affect certain parts of particular trades should command the confidence of both employers and employed. It must, of course, in each instance, be completely independent of both the employers and the workpeople engaged in the trade concerned.

49. After considering various proposals regarding this matter (including one to the effect that the Industrial Council should be the authority appointed to hold the necessary inquiries and decide upon the various applications for extension of agreements that might be made), we have arrived at the conclusion that the proper body to appoint the authority is the Board of Trade. It will be evident that the circumstances of each application may vary and that some

discretion will be requisite in constituting the authority in the various cases. Should it be considered that the services of a body similar to the Industrial Council are necessary to deal with a particular case that had arisen, the council would readily be available for the purpose.

50. It has not been proposed that the Board of Trade should entertain any application for the extension of an agreement unless such application is received from both the parties to the agreement. There is thus no element of compulsion upon either party.

51. Attention has been drawn to the fact that in the establishment of a scheme for dealing with proposals for extension of agreements it would be necessary to provide for exceptions to be made in regard to individual firms or workpeople whose conditions of trade or employment were such as to differentiate them from the remainder of the trade to such an extent as to make the application of the agreement to them an inequitable proceeding.

52. It would therefore be desirable that public notice should be given of the fact that an application for the extension of an agreement had been made, and that at the inquiry that is made by the authority appointed by the Board of Trade full opportunity should be afforded to those whose interests might be affected to appear before the authority and explain the circumstances which they considered warranted the authority in exempting them from the general operation of the agreement. In the publication of its decision regarding the extension of the agreement the authority would include a statement of any exemptions which it might deem necessary to make.

53. We have already stated (par. 44) that we think the fixed period for which agreements are made should not, except in special circumstances, exceed three years. In regard to proposals for the extension of agreements already arrived at it would seem desirable that the period for which the extension should operate should, ordinarily, be the same as the period of operation of the agreement itself. But there may be circumstances in which it might be found that a different period should be fixed, and accordingly we are of opinion that the authority which is appointed to consider the proposal to extend the agreement should be empowered to determine the period of operation, after taking into consideration all the circumstances of the case.

54. It was suggested to us that where a rate of wages is a rate "commonly recognized" in the district (as e. g., certain rates of wages in the building trades), the authority should be empowered to determine that such a rate should be extended to the whole trade or district, even though the parties to the agreement (in the case in point, the members of the employers' association and the trade-union) did not constitute an actual majority of the trade. In such cases it would seem to be the duty of the authority to consider each instance upon its merits and to ascertain *inter alia* how far the rate was, in practice, "commonly recognized" by others than the actual parties to the agreement.

55. It will be of interest, in considering the principle of the extension of agreements to persons not members of the contracting associations, to note the terms of the fair-wages clause which is inserted

in Government contracts in pursuance of the "fair-wages resolutions" of the House of Commons. The clause is as follows:

"The contractor shall in the execution of this contract observe and fulfill the obligations upon contractors specified in the resolution passed by the House of Commons on the 10th March, 1909, namely: 'The contractor shall \* \* \* pay rates of wages and observe hours of labor not less favorable than those commonly recognized by employers and trade societies (or, in the absence of such recognized wages and hours, those which in practice prevail amongst good employers) in the trade in the district where the work is carried out. Where there are no such wages and hours recognized or prevailing in the district, those recognized or prevailing in the nearest district in which the general industrial circumstances are similar shall be adopted. Further, the conditions of employment generally accepted in the district in the trade concerned shall be taken into account in considering how far the terms of the fair-wages clause are being observed. The contractor shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatever, any portion of his contract without the written permission of the department. Subletting, other than that which may be customary in the trade concerned, shall be prohibited. The contractor shall be responsible for the observance of the fair-wages clauses by the subcontractor.'"

The principles involved in this clause substantiate the proposition that conditions of employment which have been agreed upon or are recognized by the employers and workpeople in the trade generally—and which may therefore be regarded as reasonable conditions—might equitably be observed by the remainder of the persons engaged in the trade. There is no proposal, in connection with the clause, that particular rates of wages or other conditions of employment should be imposed upon the trade by the legislature or by any other outside body, but that, if those in the trade, employers and workpeople, have agreed that certain conditions are fair and reasonable, these conditions should be applicable to others who may be engaged under similar conditions in the trade and district concerned.

56. It is of interest to note that in the agreement between the Welsh Plate & Sheet Manufacturers' Association and the several trade-unions having members employed in the tin-plate trade of South Wales there is a clause which provides as follows:

"That the rates paid, and the conditions, must not be more favorable than the foregoing (i. e., those laid down in the agreement) to works outside the employers' association."

In accordance with this clause it is the duty of the unions to see that the nonassociated employers observe the terms of the agreement, and it appears from the evidence given on behalf of the employers' association that the clause is largely instrumental in securing the continued maintenance of the agreement. The result of the operation of the clause is that, while the agreement purports to cover only about 80 per cent of the trade, its terms are, in fact, observed by the whole of the trade.

57. In the foregoing paragraphs mention has been made of certain proposals for the adoption of a scheme whereby there should be established machinery for the purpose of dealing with requests for the extension of voluntary agreements. We have given these pro-

posals our careful consideration and are of opinion that their main principles should be adopted. We have accordingly drawn up the details of a draft scheme on these lines, and submit it, as follows:

“DRAFT SCHEME.

“58. Where an industrial agreement has been arrived at between representatives of one or more employers' associations and representatives of one or more trade-unions in a particular trade or district it shall be competent for the parties to the agreement to apply (at any time during the currency of the agreement) to the Board of Trade to cause an inquiry to be held, by such authority as the Board of Trade may direct, to determine whether or not the agreement shall be extended and its terms made obligatory upon persons not members of the associations represented by the signatories to the agreement.

“Upon receipt of an application for the extension of an agreement the Board of Trade shall arrange for an inquiry to be held and shall take steps to advertise the facts that an application is under consideration and that an inquiry is to be held. The name or names of the person or persons constituting the authority shall be made public.

“The inquiry shall be held at such times and places as shall give reasonable opportunity for those affected to attend should they so desire.

“The terms of any agreement in respect of which an application for extension has been received shall be duly advertised by the Board of Trade a reasonable time before the inquiry is commenced.

“If the authority appointed by the Board of Trade are satisfied, after holding the inquiry, that the associations represented by the signatories to the agreement constitute a substantial body of the employers and workmen in the trade or district and that the agreement is a proper agreement and one that might suitably be extended, the authority may declare that the terms of the agreement, with such modifications thereof as may be agreed upon by the parties at the inquiry, shall be extended to cover the whole of the trade or district. Where an agreement has been so declared to be extended, it shall be an implied term of any contract of service in the particular trade or district that the terms of the agreement shall be an essential part of such contract.

“It shall be a condition precedent to such determination by the authority that the agreement provides—

“(a) That at least ——— days' notice shall be given by either party of an intended change affecting conditions as to wages or hours, and

“(b) That there shall be no stoppage of work or alteration of the conditions of employment until the dispute has been investigated by some agreed tribunal, and a pronouncement made upon it.

“In determining whether or not an agreement shall be extended, the authority shall take into consideration representations that may be made to them by persons claiming that they should be exempted from the operation of the agreement, either generally or as regards any part or parts of the agreement, and if the authority are satisfied that a claim for exemption has been established an intimation of such exemption shall be included in the determination respecting the agreement.

"The authority shall forward its determination to the Board of Trade, and the Board of Trade shall cause it to be duly published, and copies of the determination shall be given to such persons as are known to be interested or affected or to any who may apply for copies.

"The period during which an agreement which has been extended shall operate shall be such period as the authority may think fit."

59. We do not think it desirable to attempt to give a rigid definition to the term "substantial body," as used in the foregoing "draft scheme." We think that the authority should, when considering the application for the extension of an agreement, take into account all the circumstances of the case, and that, after an examination of the evidence available, they should determine whether or not, in the particular instance under consideration, the parties to the original agreement constitute a body that is sufficient to make an extension of the agreement to the whole of the trade or district fair and reasonable.

60. In considering the application we think that the authority should also take account of the suggestion we have made in paragraph 28, viz, that financial or other assistance should not be given to persons acting in breach of agreement, and whether or not the agreement, or the rules of the associations that are parties to it, stipulate that no such assistance should be given.

#### SUMMARY.

61. It will be seen from our report that among the various suggestions that we have had under consideration with respect to the first part of our reference, i. e., as to the best method of securing the due fulfillment of industrial agreements, are the following--

(1) Organization (i. e., complete and effective organization on the part of both employers and workpeople).

(2) Moral obligation.

(3) Monetary penalties and prohibition of assistance to persons in breach.

(4) Monetary guarantees.

The whole organization of collective bargaining, of which we have expressed our approval, is based upon the principle of consent. We have found that such collective agreements have been as a rule kept, and we are loth either to interfere with the internal organization of the associations on both sides by putting upon them the legal necessity of exercising compulsion upon their members, or to introduce a new principle which might have far-reaching and unexpected effects upon the natural growth of such associations or upon the spirit with which as a rule they have been carried on. We have therefore, as will be seen, come to the conclusion that the establishment of a system of monetary penalties is not desirable, and that such penalties as prohibition of assistance to persons in breach should not be made legally obligatory. We have stated, however, and we wish to give our opinion the maximum degree of emphasis, that where a breach of an agreement has been committed no assistance, financial or otherwise, should be given to the persons in breach by any of the other members of the associations connected with the agreement. The language of our report is intended to express as strongly as possible our adher-

ence to the view that moral influence should in every feasible way be brought to bear in favor of the strict carrying out of agreements, and that, in cases where, by any of the methods to which we have alluded, a breach is found to have been committed, associations should accept the findings of the tribunal and should exercise to the full the disciplinary powers of their organization, assisted, as would no doubt be the case, by the force of public opinion.

62. As regards the second portion of our reference (as to how far and in what manner industrial agreements which are made between representative bodies of employers and of workmen should be enforced throughout a particular trade or district), we have come to the conclusion that, subject to an inquiry made by an authority appointed by the Board of Trade, an agreement entered into between associations of employers and of workmen representing a substantial body of those in the trade or district should, on the application of the parties to the agreement, be made applicable to the whole of the trade or district concerned, provided that the agreement fulfills the requirements laid down in the draft scheme in paragraph 58 and contains conditions to secure—

“(a) That at least ——— days’ notice shall be given by either party of an intended change affecting conditions as to wages or hours, and

“(b) That there shall be no stoppage of work or alteration of the conditions of employment until the dispute has been investigated by some agreed tribunal, and a pronouncement made upon it.”

We have the honor to be, sir,

Your obedient servants,

GEORGE ASKWITH, *Chairman*.

\* GEO. AINSWORTH.

THOMAS ASHTON.

\* HUGH BELL.

C. W. BOWERMAN.

THOMAS BURT.

FRANCIS CHANDLER.

G. H. CLAUGHTON.

\* W. A. CLOWES.

J. R. CLYNES.

JAMES H. C. CROCKETT.

\* FRED. L. DAVIS.

\* THOS. L. DEVITT.

F. W. GIBBINS.

HARRY GOSLING.

ARTHUR HENDERSON.

JOHN HODGE.

C. W. MACARA.

WM. MOSSES.

E. L. POULTON.

† THOS. R. RATCLIFFE-ELLIS.

\* ROBERT THOMPSON.

JOHN W. WHITE.

ALEX. WILKIE.

J. E. WILLIAMS.

H. J. WILSON, *Registrar*.

24th July, 1913.]

The following memorandum is attached to the signatures of Sir Gilbert Claughton, Mr. J. H. C. Crockett, Mr. F. W. Gibbins, Sir Charles Macara, Sir Thos. R. Ratcliffe-Ellis, and Mr. J. W. White.

We have signed the report, but desire to add that in our opinion an inquiry into the effects of the Trade Disputes Act, 1906, and the provision of protection would be desirable. (Both subjects are much misunderstood, and may be germane to the fulfillment of industrial agreements.)

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\* Signed subject to memorandum (1) attached.

† Signed subject to memorandum (2) attached.

## MEMORANDUM (1).

(1) While agreeing in the main with the foregoing report, we do not concur in those portions which, giving the go-by to the very strong opinions expressed against compulsion, seek to impose agreements made between certain persons on others not parties to them. We are, therefore, unable to sign the report without reservations.

(2) Supplementary to what is said in the report, paragraphs 6 and 7, we desire to state what we conceive to be the real nature of the so-called "agreement" and the necessary limitations to its binding force. The arrangement made between an employer, or a group of employers, and persons purporting to represent the trade-union organization of the men employed must be deemed to be a bargain made between each employer and the men in his employment, whether members of the trade-union or not. It is binding only to a very modified extent, for it leaves employer and workman alike free to terminate the relation between them under the ordinary notice. This is a right which neither party is willing to surrender. The arrangement goes no further than to set out the conditions of wages, hours, and other matters, on which those responsible for it consider employment ought to be offered and taken. It is clear that if such conditions are fair to A they must be fair to B, whether A and B be unionist or nonunionist. For this, among other reasons, we hold compulsion to be inadmissible as a means of obtaining the adherence of the parties to the arrangement. We are, moreover, of opinion that no statutory compulsion could, in fact, be enforced, nor would any penalties, whether monetary or other, be of avail. It is difficult, if not impossible, to give effect to the civil remedies which the parties already possess in the only circumstances (that of a general strike or lockout) when they might be of some use. How much less possible would it be to put into operation penal clauses at such a crisis?

(3) In the great organized industries it is admitted that arrangements are carried out in a fairly satisfactory manner, and that it is only under circumstances of unusual tension that failure occurs. It is averred that this failure is as frequent on the side of the employer as of the workman. We offer no opinion on the accuracy of this statement. In any case, consent, which is admitted to be the best ground on which to build, is found to afford a fairly sure foundation. It is proposed, under certain circumstances, to abandon this. We do not agree to this for the reasons we have given.

(4) But we think there are other grounds for dissent. The compulsion which, under paragraph 47, et seq., it is sought to impose, might lead to intolerable tyranny. Small manufacturers carrying on various industries might find themselves hampered in a way calculated to prevent that progress which it is the interest of the community at large to promote. The modern tendency is to limit the number of these industries in a manner to be regretted, for they form avenues of advancement which it is important to keep open. We can not be parties to advising a course which would, in our opinion, have the effect suggested.

(5) A further consideration to which, in our opinion, great weight attaches, relates to the position of the general public. It is not difficult to conceive circumstances in which the interests of a majority of the employers and their workmen might be at variance with those



of the general community. If the other employers and workmen were compelled by law to accept the decisions of such a majority and to regulate their practice accordingly, it might have the result that prices would be artificially forced up, in the interest of a particular trade, to the great detriment of the consumer. The burden of this advance would fall on people who would be unable to protect themselves against the legalized tyranny inflicted on them by a strongly organized combination of employers and workmen, representing, it might be, but a small majority of the producers of some important article of consumption.

(6) We recognize fully the advantages of thorough organization to both employer and workman, but we do not disguise from ourselves that it has also serious drawbacks, which we have endeavored as far as possible to set out in the foregoing remarks. They are greatly reduced when the organization is based on consent, and we do not see our way to recommend any departure from this method.

(7) We had desired to add to the report some comments upon the effects of the Trades Disputes Act, 1906, which it is claimed militates seriously against the fulfillment of industrial agreements. It has been stated that, as the law now stands, certain sections of the community are relieved from effects of conduct which, if pursued by other persons, would entail serious consequences. If this be so, the immunity in respect of the commission of wrongful acts is, we believe, without precedent. The question of the provision of adequate and effective protection to men who wish to work is part of the same subject. As, however, the evidence taken upon these matters has not been very extensive and as they have not been specifically referred to the council in the terms of reference, we do not comment further upon them, but we consider that an inquiry into these questions would be valuable and we think it should be undertaken without delay.

Subject to these reservations we sign the report.

GEO. AINSWORTH.  
HUGH BELL.  
W. A. CLOWES.

FRED L. DAVIS.  
THOS. L. DEVITT.  
ROBERT THOMPSON.

#### MEMORANDUM (2).

I am in entire agreement with the statements made in paragraphs 14 and 15 of the report, but I am of opinion that to secure the object aimed at something more than an expression of opinion on the part of the council is necessary. I think that it should be provided by statute that it should be an implied term of every collective industrial agreement that before there is a reversion to the method of strike or lockout there should be an inquiry and a pronouncement upon the question at issue by some impartial tribunal, and that where that statutory term of the agreement is not observed it should constitute a contravention of the agreement.

I am in entire agreement with the statements made in paragraphs 27 and 28 of the report, but again I consider that something more than an expression of opinion on the part of the council is necessary. I think it should be declared to be illegal to make any payment, or to give any financial assistance in support of any person who (having been a member of an association represented by the signatories to the

agreement) has been declared by the tribunal referred to in paragraph 9 of the report, or by the consent of the parties to the agreement, to have contravened any of its terms. There may be cases where either employers' associations or workmen's associations may possess under their respective organizations the means of securing compliance with the opinion so strongly expressed in paragraph 28 of the report, and be able to enforce it. If so, the statutory provision would not be necessary in such a case. A method by which such association might be excepted from the statutory obligation during such time as the agreements are observed would be that power should be given to the Board of Trade to issue a certificate that the statutory provision should not apply in any cases where, after inquiry, the chief industrial commissioner is satisfied that the rules of the association and its disciplinary power of enforcing those rules are such as to secure the due fulfillment of all the terms, statutory and otherwise, of any agreement entered into. Such certificate should be revocable, but might be reissued.

It has been contended by some of my colleagues on the Industrial Council that the suggested legislative prohibition of assistance might, under certain circumstances, be harshly applied. To avoid that, it might be provided in the act that proceedings against persons alleged to have made such illegal payments should not be instituted except on a certificate of the tribunal referred to in paragraph 9 of the report that it was a proper case for a prosecution. If that certificate were given, neither the Trade Disputes Act nor any other act should be a bar to such proceedings.

Holding the opinion expressed in paragraph 18 of the report that "the value of efficient organization on the part of employers and workpeople as a means of securing the due fulfillment of industrial agreements is very clearly demonstrated by the experience of the different trades of the country," I favor the proposals for the extension of agreements as proposed in paragraphs 45 et seq. of the report; but in my opinion the draft scheme set out in paragraph 58 should be amended by having a third condition added to the two conditions precedent to such determination by the authority, namely—

(c) That it should be illegal for any financial assistance to be given by either the employers' association or the workmen's association in support of any person who, having been a member of an association represented by the signatories to an agreement, has been declared by an impartial tribunal or by mutual consent of the parties to the agreement to have contravened the terms of the agreement.

Except as I have set out above, I agree with the report.

THOS. R. RATCLIFFE-ELLIS.

(3) MEMORANDUM BY MR. ALEX. SIEMENS.

While agreeing with the report so far as it summarizes the evidence submitted to the council I am unable to adopt the conclusions drawn from that evidence or the recommendations as made.

I therefore consider it desirable to state fully the impression I have gained from an examination of the evidence and from the discussions at the various meetings of the council.

When considering the subject I have done so in the light of over 17 years' actual experience in negotiating and administering indus-

trial agreements in conjunction with several of the most important trade-unions in the Kingdom.

The original position in industrial matters was that there should be a free market in which the employers were at liberty to purchase and the workmen at liberty to sell labor without restrictions. In such circumstances both employers and workpeople were at liberty to come to terms mutually satisfactory to the individuals concerned. Owing, however, to developments which have taken place from year to year the original position has been altered, and the rights of parties in this respect are restricted.

The most important restriction is due to the system of collective bargaining. Collective bargaining restricts the individual workman and the individual employer, while, on the other hand, trade-unions restrict the rights of employers and the employers' associations the rights of trade-unions.

The development of the position has resulted in a state of affairs whereby to a large extent individual employers and workpeople have surrendered their freedom of action to organizations in which the interests of the individual are merged with those of the body to which he belongs.

It is important, however, to remember that although this change has taken place the individual rights of the employer and of the workmen still remain, restricted though they may be.

Having these considerations in view, an industrial agreement, as distinguished from an agreement of service between an individual employer and an individual workman, may be defined as an agreement in which collective bargaining either acknowledges the natural rights and privileges of employers and workmen or embodies the restrictions under which such rights and privileges may be exercised.

Such agreements may cover two sets of questions, viz, questions of principle and questions of fact. Questions of principle arise out of the rights and privileges of the employers and workpeople, either maintained by the party concerned or acknowledged in an agreement. Questions of fact, on the other hand, are questions which are determinable by circumstances which may be readily ascertained and which vary from day to day. A notable question of fact is the question of general alterations of wages.

The manner of dealing with questions of principle and with questions of fact necessarily differs. On questions of fact it may be desirable to have a final settlement by negotiation which would preclude a stoppage of work. This could be achieved by invoking the intervention of an outside impartial authority who would have a determining voice in the event of the parties failing to agree. In questions of principle it is difficult for an outside authority to be of assistance. The solution of such questions does not depend on the ascertainment of facts.

There is one important consideration which seems to have been overlooked, if not altogether at least in great measure. Industrial agreements are made either in settlement of disputes or by ordinary process of collective bargaining, the parties to the agreement not being in dispute but being desirous of arriving at a formal agreement embodying their ideas on certain points or certain informally recognized conditions of labor.

The latter class of agreement has not been much referred to in the evidence given before the council. It appears, however, to be necessary to keep this class of agreement prominently in view, especially when considering the difficulties which are alleged to have arisen owing to the leaders of the unions having taken upon themselves the responsibility of entering into agreements without having a mandate previously obtained, or without taking the precaution to get the agreements approved prior to their being put into operation.

It may be taken as generally accepted that, in adjusting agreements of the nature referred to above in the second place, there is either a mandate previously obtained or the agreement is provisionally arrived at, and is subject to the approval of the constituents on both sides.

It is necessary, as well as desirable, that agreements which have to be worked to by the individual members of any body should be approved by the members of that body according to their rules. There is no doubt that in comparatively few cases all the members of an employers' association or of a trade-union would be willing to accept the terms of an agreement submitted to them, but it is usual for the rules of such bodies to provide that acceptance by a certain proportion is binding upon all.

In the case of agreements which are made in settlement of a dispute it is desirable that those who negotiate ought to have instructions previously given, or ought to confine themselves to a provisional agreement which they would undertake to recommend for acceptance by their constituents.

I regret being unable to indorse the view which has been expressed that questions arising regarding the interpretation of the clauses of an industrial agreement should be referred to an outside body. Experience has demonstrated that where a difference of opinion exists as to any clause in an industrial agreement the difference may be due not to the fact that parties were at variance as to what was intended by the phraseology of the clause, but may be due to the phraseology itself, which conceivably does not convey the intention of the parties. That being so, the only reasonable course is to get the parties to the agreement together and give them an opportunity of so phrasing the clause in question as to convey their intention. It is undesirable to endeavor to hold the parties strictly to the phraseology adopted. Industrial agreements are not framed like commercial agreements, in which the phraseology determines the position. The clauses are intended to be simply an embodiment, in language which can be understood by the parties, of their intention when the agreement was made.

The recommendations which I would submit are as follows:

*Question (a).*

1. Agreements entered into by representatives of the parties shall, prior to being put into operation, be ratified by the constituent bodies wherever the rules or practice of the contracting parties demand such a course.

2. All agreements shall contain provisions which afford ample and ready opportunity for discussion of any questions which may arise.

3. I strongly recommend that all agreements shall contain an effective provision that no financial or other assistance shall be given to persons acting in breach of the agreement.

4. On wages questions no stoppage of work shall take place, and the provisions for discussion referred to above shall include, as the ultimate stage, reference to an independent authority with power to finally dispose of the matter.

5. (a) On questions of principle, an independent authority shall be admitted only by consent of the parties concerned.

(b) Pending the exhaustion of the provisions for discussion, no stoppage of work shall take place, and in the event of failure to arrive at a settlement, at least 30 days' notice shall be given of a stoppage of work.

6. I further recommend that no period shall be fixed for the duration of agreements except in the case of agreements affecting wages questions, in which a minimum period shall be fixed of 12 months clear.

*Question (b).*

I recommend that it shall be competent for the parties to an agreement to apply jointly (at any time during the currency of the agreement) to the Board of Trade to cause an inquiry to be held, by such authority as the Board of Trade may direct, to determine whether or not the agreement shall be extended to, and its terms made obligatory upon, persons not members of the associations represented by the signatories to the agreement.

Upon the receipt of an application for the extension of an agreement, the Board of Trade shall arrange for an inquiry to be held and shall take steps to advertise the facts that an application is under consideration and that an inquiry is to be held.

The inquiry shall be held at such times and places as shall give reasonable opportunity for those affected to attend should they so desire.

The terms of any agreement in respect of which an application for extension has been received shall be duly advertised by the Board of Trade a reasonable time before the inquiry is commenced.

If the authority appointed by the Board of Trade are satisfied after holding the inquiry that the associations represented by the signatories to the agreement constitute a substantial majority of the particular trade in the district in question, and that the agreement embodies the recommendations made in reply to question (a), and is one that might suitably be extended, the authority may declare that the terms of the agreement, with such modifications thereof as may be agreed upon by the parties at the inquiry, shall be extended to cover the whole of the trade in the district. Where an agreement has been so declared to be extended it shall be an implied term of any contract of service in the particular trade or district that the terms of the agreement shall form the basis and be an essential part of such contract.

The authority shall forward its determination to the Board of Trade, and the Board of Trade shall cause it to be duly published, and copies of the determination shall be given to such persons as are known to be interested or affected or to any who may apply for copies.

I have given careful consideration as to whether or not in extending an agreement it should be extended as a whole, or whether it would be desirable to exempt any part or parts of the agreement, but in view of the fact that agreements in general are of the nature of a compromise, I am of opinion that no clause should be omitted and that the agreement should be extended as a whole to the trade in the district as a whole.

I desire to add that, in my opinion, an inquiry into the effects of the Trade Disputes Act, 1906, and the provision of adequate and effective protection to men who wish to work would be desirable. (Both subjects are much misunderstood, and may be germane to the fulfillment of industrial agreements.)

ALEX. SIEMENS.

#### APPENDIX I.—CONCILIATION ACT, 1896.

##### AN ACT TO MAKE BETTER PROVISION FOR THE PREVENTION AND SETTLEMENT OF TRADE DISPUTES. [7TH AUGUST, 1896.]

1. (1) Any board established either before or after the passing of this act, which is constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, or any association or body authorized by an agreement in writing made between employers and workmen to deal with such disputes (in this act referred to as a conciliation board), may apply to the Board of Trade for registration under this act.

(2) The application must be accompanied by copies of the constitution, by-laws, and regulations of the conciliation board, with such other information as the Board of Trade may reasonably require.

(3) The Board of Trade shall keep a register of conciliation boards, and enter therein with respect to each registered board its name and principal office, and such other particulars as the Board of Trade may think expedient, and any registered conciliation board shall be entitled to have its name removed from the register on sending to the Board of Trade a written application to that effect.

(4) Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

(5) The Board of Trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.

(6) Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

2. (1) Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely:

(a) Inquire into the causes and circumstances of the difference;

(b) Take such steps as to the board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body, with a view to the amicable settlement of the difference;

(c) On the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation;

(d) On the application of both parties to the difference, appoint an arbitrator.

(2) If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavor to bring about a settlement of the difference, and shall report his proceedings to the Board of Trade.

(3) If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed

by the parties or their representatives, and a copy thereof shall be delivered to and kept by the Board of Trade.

3. The Arbitration Act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this act applies, but any such arbitration proceedings shall be conducted in accordance with such of the provisions of the said act, or such of the regulations of any conciliation board, or under such other rules or regulations as may be mutually agreed upon by the parties to the difference or dispute.

4. If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with the employers and employed, and, if the Board of Trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

5. The Board of Trade shall from time to time present to Parliament a report of their proceedings under this act.

6. The expenses incurred by the Board of Trade in the execution of this act shall be defrayed out of moneys provided by Parliament.

7. The Masters and Workmen Arbitration Act, 1824, and the Councils of Conciliation Act, 1867, and the Arbitration (masters and workmen) Act, 1872, are hereby repealed.

8. This act may be cited as the Conciliation Act, 1896.

## APPENDIX II.—COURT OF ARBITRATION.

The following is the text of a memorandum communicated by the president of the Board of Trade to chambers of commerce and employers' and workmen's associations in September, 1908, with reference to the formation of a court of arbitration as an auxiliary to the conciliation act. It is self-explanatory.

### MEMORANDUM.

1. Under the Conciliation Act of 1896 the Board of Trade has power to appoint a conciliator in trade disputes, and an arbitrator at the request of both parties. These slender means of intervention have been employed in cases where opportunity has offered, and the work of the department in this sphere has considerably increased of recent years. In 1905 the Board of Trade intervened in 14 disputes and settled them all; in 1906 they intervened in 20 cases and settled 16; in 1907 they intervened in 39 cases and settled 32; while during the first eight months of the present year no fewer than 47 cases of intervention have occurred, of which 35 have been already settled, while some of the remainder are still being dealt with.

2. It is not proposed to curtail or replace any of the existing functions or practices under the conciliation act, nor in any respect to depart from its voluntary and permissive character. The good offices of the department will still be available to all in industrial circles for the settlement of disputes whenever opportunity offers. Single arbitrators and conciliators will still be appointed whenever desired. Special interventions will still be undertaken in special cases, and no element of compulsion will enter into any of these proceedings. But the time has now arrived when the scale of these operations deserves, and indeed requires, the creation of some more formal and permanent machinery; and, with a view to consolidating, expanding, and popularizing the working of the conciliation act, I propose to set up a standing court of arbitration.

3. The court, which will sit whenever required, will be composed of three (or five) members, according to the wishes of the parties, with fees and expenses to members of the court and to the chairmen during sittings. The court will be nominated by the Board of Trade from three panels. The first panel—of chairmen—will comprise persons of eminence and impartiality. The second will be formed of persons who, while preserving an impartial mind in regard to the particular dispute, are nevertheless drawn from the "employer class." The third panel will be formed of persons similarly drawn from the class of workmen and trade-unionists. It is hoped that this composition will remove from the court the reproach which workmen have sometimes brought against

individual conciliators and arbitrators, that, however fair they mean to be, they do not intimately understand the position of the manual laborer. It is believed that by the appointment of two arbitrators selected from the employers' panel and two from the workmen's panel in difficult cases, thus constituting a court of five instead of three persons, the decisions of the court would be rendered more authoritative, especially to the workmen, who, according to the information of the Board of Trade, are more ready to submit to the judgment of two of their representatives than of one. As the personnel of the court would be constantly varied, there would be no danger of the court itself becoming unpopular with either class in consequence of any particular decision; there would be no difficulty in choosing members quite unconnected with the case in dispute, and no inconvenient labor would be imposed upon anyone who consented to serve on the panels. Lastly, in order that the peculiar conditions of any trade may be fully explained to the court, technical assessors may be appointed by the Board of Trade, at the request of the court of the parties, to assist in the deliberations, but without any right to vote.

4. The state of public opinion upon the general question of arbitration in trade disputes may be very conveniently tested by such a voluntary arrangement. Careful inquiry through various channels open to the Board of Trade justifies the expectation that the plan would not be unwelcome in industrial circles. The court will only be called into being if and in proportion as it is actually wanted. No fresh legislation is necessary.

5. Steps will now be taken to form the respective panels.

September 1, 1908.

When both parties to an industrial dispute desire to have their differences settled by arbitration it is open to them jointly to apply to the Board of Trade under the conciliation act either (1) for the appointment of a single arbitrator, or (2) for the appointment of a court of arbitration in accordance with the scheme devised in 1908, by the president of the Board of Trade.

The following regulations have been drawn up by the Board of Trade in connection with the appointment of courts of arbitration:

#### REGULATIONS.

1. The application should state (a) the subject matter of the dispute; (b) whether the parties wish the court to consist of (1) a chairman and two arbitrators, or (2) a chairman and four arbitrators; (c) whether the parties desire the Board of Trade (i) to appoint a chairman and arbitrators, all of whose names have been jointly selected by the parties from the respective panels, or (ii) to appoint a chairman whose name has been jointly selected by the parties from the chairman's panel, and to select and appoint the arbitrators from the respective panels, or (iii) to select and appoint the chairman from the chairman's panel, and to appoint arbitrators jointly selected by the parties from the respective panels, or (iv) to select and appoint all the members of the court from the respective panels; (d) whether the parties wish the court to appoint, or apply to the Board of Trade to appoint, a technical assessor or assessors.

2. A court of arbitration shall, if either party or both parties shall have so requested, or may on their own initiative, if they consider that the assistance of a technical assessor or assessors is expedient, appoint or apply to the Board of Trade to appoint a technical assessor or assessors accordingly.

3. Technical assessors shall not be members of the court. They will be appointed solely for the purpose of giving the court information on technical matters when required by them. They will only be entitled to be present at such stages of the proceedings as the court may direct. Every assessor before taking up his duties shall pledge himself in writing to keep secret all matters with which he shall in the course of the performance of such duties become acquainted.

4. All procedure in connection with the hearing of a case shall be settled by the chairman after consultation with other members of the court, including the mode of appearance thereat.

For the convenience of the court, each application should be accompanied by a statement showing (a) whom the parties desire to represent them at the hearing and (b) the approximate number of witnesses each side desires to call.



5. The award of a majority of the members of the court shall be the award of the court. When no majority can be obtained in favor of an award, owing to the arbitrators being equally divided, then the matter shall be decided by the chairman, acting with the full powers of an umpire.

6. After an award is made it shall be signed by the chairman on behalf of the court, and he shall then cause a copy to be sent to the representatives of both parties to the dispute. The original award, together with any shorthand notes and all relevant papers, shall be forwarded to the Board of Trade.

7. Shorthand notes (and transcripts of such notes) of any part of the proceedings shall only be paid for by the Board of Trade if the chairman of the court certifies that the notes were necessary for the purpose of the court. The Board of Trade will also pay any expenses connected with the drawing of the award and for the hire of a room for the hearing of the case when necessary. They will also pay the expenses of the members of the court.