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INDUSTRIAL COURTS ACT 1919

REPORT OF A COURT OF INQUIRY UNDER THE RT HON LORD JUSTICE SCARMAN, OBE INTO A DISPUTE BETWEEN GRUNWICK PROCESSING LABORATORIES LIMITED AND MEMBERS OF THE ASSOCIATION OF PROFESSIONAL, EXECUTIVE, CLERICAL AND COMPUTER STAFF

Presented to Parliament by the Secretary of State for Employment by Command of Her Majesty August 1977

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INDUSTRIAL COURTS ACT 1919
APPOINTMENT OF COURT OF INQUIRY AND RULES OF PROCEDURE

WHEREAS by Section 4 of the Industrial Courts Act 1919 the Secretary of State for Employment (hereinafter referred to as the Secretary of State) is empowered to refer any matters appearing to him to be connected with or relevant to a trade dispute, whether existing or apprehended, to a Court of Inquiry and to make rules regulating the procedure of any such Court;

AND WHEREAS a trade dispute (hereinafter referred to as "the dispute") exists between Grunwick Processing Laboratories Limited and members of the Association of Professional, Executive, Clerical and Computer Staff.

NOW THEREFORE the Secretary of State by virtue of the powers vested in him by the Act and of all other powers enabling him in that behalf, appoints the following to constitute a Court of Inquiry:

The Rt. Hon. Lord Justice Scarman, OBE

Mr. J. P. Lowry

Mr. T. Parry, CBE, OBE

AND the Secretary of State directs that the terms of reference to the Court shall be as follows:

"To inquire into the causes and circumstances of, and relevant to, the dispute, other than any matter before the High Court, until the final determination of those proceedings, and to report"

AND the Secretary of State directs that the following rules regulating the procedure of the Court should have effect, that is to say:—

1 (i) Any person may, by order in writing signed by the Chairman of the Court, be required to attend as a witness and give evidence before the Court, or attend and produce any documents relevant to the subject matter of the inquiry, or to furnish, in writing or otherwise as the Court may direct, such particulars in relation to the subject matter of the inquiry as the Court may require;

(ii) The Court may require any witness to give evidence on oath and the Chairman or any person duly authorised by him may administer an oath for that purpose;

2 The Court may act notwithstanding any vacancy in its number, and two members shall form a quorum;

3 The Court may at any time, if it thinks it expedient so to do, call in the aid of one or more Assessors specially qualified, for the purpose of assisting the Court in its inquiry;

4 The Report and any interim report of the Court shall be made to the Secretary of State in writing and shall be signed by such of the members as concur therein, and shall be transmitted to him as soon as possible, and any minority report by any dissentient member of the Court shall be made and transmitted in like manner;

5 Persons may appear by counsel or solicitor on proceedings before the Court with the permission of the Court;

6 Subject to these rules the Court may regulate its own procedure as it thinks fit;

AND the Secretary of State further appoints The Rt. Hon. Lord Justice Scarman to be Chairman; and Mrs. J. I. Bailey to be Secretary of the Court.

SIGNED by order of the Secretary of State for Employment this thirtieth day of June 1977.

M. WAKE
Under Secretary
Department of Employment

REPORT

To the Right Honourable the Secretary of State for Employment.

Sir,

1 We were appointed by you on 30 June 1977, under the provisions of the Industrial Courts Act 1919, with the following terms of reference:—

> " To inquire into the causes and circumstances of, and relevant to, the dispute [between Grunwick Processing Laboratories Limited and Members of the Association of Professional, Executive, Clerical and Computer Staff], other than any matter before the High Court, until the final determination of those proceedings, and to report ".

In accordance with the terms of our appointment, we submit the following Report.

2 We sat in public in London on 5, 11, 12, 14, 18, 19, 21, 22, 26 and 27 July. On 13 July we visited the premises of the company in Chapter Road and in Cobbold Road, Willesden. We have also sat in private to consider the dispute.

3 At our first public hearing we granted the right to be represented at the inquiry to the following:—

Grunwick Processing Laboratories Limited (hereinafter called " the company " or " Grunwick ");

The Association of Professional, Executive, Clerical and Computer Staff (hereinafter called " the union " or APEX);

Brent Trades Council (hereinafter called " the Trades Council ").

The company, the union and the Trades Council were represented before us by solicitors and counsel:—

Mr. Mervyn Heald, QC and Mr. Stuart McKinnon appeared on behalf of the company, instructed by Trower, Still and Keeling.

Mr. Stuart Shields, QC, Mr. Jeffrey Burke, and Mr. Peter Clark appeared on behalf of the union, instructed by Mr. Brian Thompson.

Mr. Stephen Sedley appeared on behalf of the Trades Council, instructed by Mr. Ritchie of Brent Community Law Centre.

A list of those who gave oral evidence before the Inquiry is given in the Appendix to this Report.

4 One other body features prominently in the dispute—the Advisory, Conciliation and Arbitration Service (ACAS) established by the Employment Protection Act 1975. This body, which is independent of government, is " charged with the general duty of promoting the improvement of industrial relations and in particular of encouraging the extension of collective bargaining " (s. 1 (2) of the Act). It was not represented in our inquiry; nor did any one from ACAS give evidence.

Some Preliminary Observations

5 The difference between the union and the company is profound. They are not even agreed on the nature or the extent of their dispute. The union says that the dispute is about two issues:—

(1) the reinstatement of their members whom the company has dismissed,

(2) recognition of the union for the purpose of collective bargaining on behalf of certain specified grades of weekly paid staff.

The union makes the additional point that the company has refused or sought to impose qualifications upon every proposal made for resolving the dispute.

6 The company does not accept even the possibility of a true trade dispute as to reinstatement. Its view is that it has exercised its contractual right of dismissing all who went on strike: and the law provides for no judicial review of the fairness or unfairness of these dismissals. The company does, however, accept that there is a dispute as to recognition, but contends that its employees, in contrast with its lawfully dismissed ex-employees (i.e. the strikers who are members of the union), do not want a union to bargain for them. Most of them, the company says, do not want to join any union, and the company sees itself as fighting to defend their right not to join, or be represented in the bargaining process by, a union. As to the state of opinion of its employees, the company relies on three features of the evidence, one of them negative and the other two positive:—

(1) the absence (to use a neutral term, for the company, supported by the Court of Appeal, think of it as a failure) of any inquiry by ACAS into the opinions of those who have continued in the employment of the company,

(2) an opinion poll taken by an independent outside firm (M.O.R.I.) in February 1977,

(3) a second opinion poll taken in July 1977 by another such firm (Gallup).

7 The union's fundamental comment upon the company's contentions is that, if they be upheld, an obdurate or " intractable " (the union's adjective) employer can frustrate the machinery set up by statute for resolving recognition disputes, and so undermine the policy of the law. The company replies simply that at all times it has acted reasonably and within the law.

8 The union and the company are, however, agreed on one aspect of their dispute: both see it as one of principle. Each is determined—implacably so: and each believes that right is on its side. Nobody, who has studied the dispute, should be surprised that the strike has proved to be one of the longest in the recent history of industrial relations in Britain or that its persists and, with the passage of time, deepens. Its progress from small beginnings to a national issue can be seen, with the benefit of hindsight, to have been inevitable.

9 Our contribution to a settlement is primarily one of informing public opinion. We propose, therefore, to state the facts, to assess them against the background of normal industrial relations and to suggest a possible reconciliation of two apparently irreconcilable points of view. We do not see it as our task to make specific recommendations as to the reform of the law.

10 One final comment by way of introduction. In our view it does not help to impute evil or mischievous motives to the two parties in dispute. Mr. George Ward, the managing director and moving spirit of the company, is sincere in his beliefs and has shown himself an enterprising and successful business-man. Mr. Roy Grantham, the General Secretary of the union, and his colleagues in the Trade Union movement are equally sincere in their beliefs

and have acted at all times for the best, as they saw it. It is important that the company, which has made a fine start, should continue in business: it is vital that the trade union movement should continue effectively to serve the interests of its members. It would be tragic if our society should prove too inflexible to accommodate both the company and the union.

The Company, and its Workforce

11 The company was incorporated in 1965. It has a board of 9 working directors. The managing director is Mr. Ward, who has worked full-time for the company since 1967. He is, by profession, a chartered accountant. The company carries on the business of processing and printing photographic films. Much of its work is done direct with the public by means of mail order. The business, which is seasonal in character, having its peak in the summer holiday months, has prospered. Amateur photographers from many parts of Europe as well as from all parts of the UK send their films by post to the company which develops and prints them, and sends them back by post. The processing (i.e. the developing and printing) is done in factory premises, called " laboratories ", at Cobbold Road and Chapter Road, Willesden which is in the Brent district of London. The incoming and outgoing mail—a vital part of the business—is handled in a mail order department at Chapter Road. The physical working conditions which we saw in both Cobbold Road and Chapter Road are good. The Cobbold Road premises, where the company has been since its inception, are less modern in lay-out and facilities than the Chapter Road premises into which the company moved as recently as April 1976 after spending some £70,000 on modernisation and improvements. The company, which in 1976 employed about 500 people, may be regarded as of medium size in the industry of photo-finishing, which though it contains giants like Kodak and Ilford, does attract a number of small firms. A large proportion of the company's workforce is female: and since 1974 an increasing proportion of this workforce has consisted of immigrants. Many of them are Indians who, after being evicted from their homes in East Africa, settled in north-west London. They speak English reasonably well, but read and write it less well: many of them speak Gujerati as their first language. Their employment opportunities are not many, or good: and firms such as Grunwick, by providing them with work, perform a useful function. One of the major issues, however, which we have to consider, is whether Grunwick has taken advantage of their weak position in the labour market and exploited them by low pay and an insistence on oppressive terms and conditions, including compulsory overtime in the summer season.

The Union (APEX)

12 The union has been described to us as a "white-collar" union "known in the labour movement for its right wing views and . . . a supporter of moderate policies ". Current membership is of the order of 143,000 of whom 90,000 are in the engineering industry. The General Secretary is Mr. Grantham, and one of its two senior London area organisers is Mr. Leonard Gristey. Both of them gave evidence before us. When on 24 August 1976 the union admitted Grunwick employees into membership, it had no members in the film processing industry. But we do not question that APEX is an appropriate union to

represent the weekly paid staff of the company, if they are to be represented by a union. The union's policy in industrial matters was described by Mr. Grantham as being:—

> " to seek wherever possible to negotiate with employers, to be responsible in negotiations and to allow industrial action to take place only after procedures have been complied with and exhausted and a ballot has been held amongst the members and a national official has invited the company concerned to attempt to resolve the dispute before industrial action takes place ".

Mr. Grantham told us that the union has never sought a closed shop at Grunwick. In our view it is significant that there was no political motivation or " empire building " on the part of the union. The union was not looking for members: some Grunwick employees were looking for a union.

THE HISTORY OF THE DISPUTE

The small beginnings

13 It was a long hot summer. On Friday 20 August 1976 the dog days were making themselves felt, the air-conditioning plant recently installed at the company's new premises in Chapter Road was not yet in operation (through no fault of the management) and it was the company's busiest period of the year. Everybody—management and staff—must have been under heavy pressure: and tempers were taut. The trouble flared in the mail order department, which was under the direct supervision of Mr. Malcolm Alden—32 years old and in that very month appointed a director. Mr. Devshi Bhudia, aged 19, was a worker in the department. His task that day was to sort 13 crates of outgoing mail for dispatch by the evening post. He expressed his resentment at being put in charge of some 3 or 4 student workers on the job: if he was to be in charge, he wanted more money, but Mr. Alden said firmly " No ". Mr. Bhudia also felt the job, with its time limit, was an unfair imposition. He, therefore, and his colleagues, who sympathised with him, " went slow ". Mr. Alden noticed it: there was a scene when Mr. Alden asked what was going on. Mr. Alden there and then dismissed him. He left: and the three (or four—the exact number is in doubt) students, who were working with him, walked out with him. There was an element of premeditation in Mr. Bhudia's departure. He had become discontented with pay and conditions and a week earlier had discussed with some the possibility of joining a union. He had carried his dissatisfaction sufficiently far to seek and obtain the promise of a job elsewhere before, on his own admission, he provoked the incident which brought about his dismissal. After he and his 3 (or 4) sympathisers had walked out, they remained in the street outside the factory until 7 p.m. They were still there when Mrs. Jayaben Desai and her son, Sunil, also walked out at some time between 6 and 7 p.m.

14 Mrs. Desai's departure was spontaneous, not premeditated. It was however, as will become apparent, the result of underlying tension and a sense of grievance. The evidence as to what happened is confused: but the essential features are clear. Work remained to be finished that Friday afternoon so that outgoing mail would catch the last post before the week-end. Mrs. Desai wanted to go home, and packed up her unfinished work sometime after 6 p.m.

Mr. Peter Diffy, the assistant manager under Mr. Alden, said he had some more work for her. This was not to her liking: she protested: voices were raised: Mr. Alden intervened, inviting Mrs. Desai into his office (a glass partitioned compartment having a full view of the mail order department). There was an altercation, and Mrs. Desai asked for her cards and walked out. As she passed through the mail order department, she was exclaiming loudly—in Gujerati and English—against Mr. Alden. Her son joined her, and they made their way out into the street, where they met Mr. Bhudia and his friends. According to Mrs. Desai, she suggested there and then that they needed a union. We think it is very probable that the talk on the street turned to the possibility of getting a union. But they were totally ignorant of how to go about finding one.

The big walk-out

15 On the morning of Monday, 23 August, the Desais, Mr. Bhudia and his companions, and a few others were standing with some placards outside the factory gates in Chapter Road. Over the week-end they had decided to canvass support amongst their fellow workers for a union. Their purpose was to obtain that morning signatures to a document in support of a union from employees as they came to work. A number of workers signed. At the lunch hour Mr. Sunil Desai, and very probably some others, arranged with sympathisers, most of them working in the mail order department, for an afternoon walk-out. It was timed for 3 p.m.; about 50 walked out. When the party from inside reached the street, there was shouting and excitment, and an inconclusive parley with management. The strikers decided to march round to Cobbold Road. When they arrived there, a violent scene ensued. The strikers were calling upon those who were inside to come out and join them. Some fiery spirits tried to force an entry and broke some windows. The management resisted and it is possible, though by no means certain, that in the confusion, which for a short time must have caused some apprehension, if not alarm, in the minds of the management and workers at Cobbold Road, a girl striker was hit. The police were called and the strikers went away. Only a few from Cobbold Road joined the strikers that afternoon.

16 The Cobbold Road incident is relied upon by the company as a reason for refusing to countenance in any circumstances the reinstatement of at least some of the strikers. Although there was some violence, it was short-lived—no more than an explosion of excitement following upon the Chapter Road walk-out. We do not believe it was, or ought to have been, a major factor in the determination of the company's attitude towards the strikers or of its actions in dealing with the union.

17 The management was taken by surprise by these events—" staggered ", as one of them put it, " flabbergasted ", in the words of another. They could think of no reason for the walk-out other than sympathy for Mr. Bhudia and Mrs. Desai. An attempt was made to explain to the workforce at Chapter Road and at Cobbold Road the circumstances in the hope that their departure would be seen as arising from causes personal to the two of them, and not from some deep-seated, general dissatisfaction with working conditions. The attempt had a measure of success: nevertheless during the next few days, the numbers on strike increased to 137 out of a total workforce of approximately

490. We now know that 91 of those who went on strike were permanent staff, and 46 were student workers who in a week or so were due to return to their studies in any event. The demand at this stage was a simple one—a union to represent them in negotiation with management.

Enter, the union

18 On 23 August Mr. Sunil Desai and others began their search for a union. They sought help from the Citizens Advice Bureau, who suggested they contacted " the TUC ", and gave them a telephone number. They telephoned and within a few hours were advised that a suitable union was APEX. They had also contacted the Brent Trades Council, whose secretary Mr. Jack Dromey became one of the principal advisers of the strikers. On 24 August, Mr. Gristey, the senior London organiser of the union, was in touch with the Trades Council and the strikers, and a meeting was arranged for that evening at the Brent Trades and Labour Hall. Mr. Gristey, Mr. Dromey and some 60 or 70 strikers attended, at least 60 of whom there and then applied to become members of the union. The effect of application was to make them members subject to confirmation by the Executive Council, which was given almost at once. By the end of the week the 91 permanent staff on strike were members of APEX.

19 It was at once obvious to Mr. Gristey and Mr. Dromey that the strikers had no knowledge of trade union procedures and organisation. Under their advice and guidance, a strike committee was elected, its chairman and secretary being duly elected by the committee. Mr. Dromey and Mr. Gristey attended the meetings of the committee, but had no vote. Of course, they provided substantial support for the strike and exercised great influence upon the strikers, all of whom were ill-acquainted with the conduct of industrial relations in Britain, and most of whom had some difficulty with the English language. It was decided to produce a strike bulletin. The first was published on 31 August and was followed by further issues at regular intervals. We are satisfied that, though Mr. Dromey gave substantial help in the editing of the bulletin, with particular reference to its English, the bulletin represented the views of the strike committee and was largely the work of the secretary to the committee.

20 After the meeting of the 24th, Mr. Gristey felt himself in a position to approach the company. He met Mr. Stacey, the personnel manager, outside the Chapter Road gates on 27 August and was invited by him to write to the company. He did so by letter dated the same day. The letter contained a request to the company to recognise APEX as the appropriate union to deal with the affairs of the company staff and suggested a meeting " to discuss a detailed recognition and procedure agreement and to commence raising issues connected with terms and conditions of employment which have led to the present unhappy situation ".

The company's response

21 We are satisfied that the management resented the intrusion of the union into what they believed was an unhappy incident which, left to themselves, they could handle. Meetings on the company's premises with employees who remained at work and with striking employees elsewhere were addressed by Mr. John Hickey, a director of the company and in the absence on holiday of

Mr. Ward, its acting chief executive. He was, we are satisfied, conciliatory in his search for a basis for ending the strike, but we are also satisfied that he made it abundantly clear to those who remained at work that the company did not want a union. Since the company's attitude to unions has been the subject of discussion before us, it is right that we should state our finding explicitly. It was the desire of the directors and top management of the company, while professing to accept the right of individual employees to join a trade union, not to recognise a union for collective bargaining purposes; and they have sought up to this day to maintain that policy. They successfully resisted an attempt by the Transport and General Workers Union to secure recognition in 1973, when a few workers (some 16, we were told) came out on strike in support of two who had been made redundant. They have sought up to this day to maintain their non-union shop. To this end, they have established a works committee, and taken steps to ensure good physical working conditions. Management is " from the front ", in the sense that managers are always accessible and visible. Money has been spent on maintaining the premises in excellent condition—Chapter Road, in particular, into which the company moved in April 1976, after extensive modernisation. We do, however, accept Mr. Ward's statement that, if the company's workforce, or a substantial proportion of it, should evince a wish to be represented by a union, the company would not resist recognition. We also accept his word that the company recognises the right of every employee to join a union, if he chooses. Nevertheless the company, we are sure, does all that it can to persuade its employees that they are better placed without a union. There is, we stress, nothing unlawful in the company's attitude towards unionisation: but whether in all the circumstances it remains to-day reasonable is another question—perhaps the fundamental question confronting us.

22 Mr. Gristey's meeting with Mr. Stacey on 27 August was his only meeting with the company. He never succeeded in getting another one. His letter reached the company on 31 August (the delay being due to the Bank Holiday week-end). By this time Mr. Grantham and Mr. Gristey had come to the conclusion that they were dealing with an obdurate employer, and that they owed it to their newly enrolled members to declare the strike official, thereby entitling them to receive strike pay. Accordingly, the union on 31 August declared the strike official with effect from 1 September. Subsequent events have shown that they did not under-rate the strength of the company's will: and we do not think it conceivable that the company's attitude would in any way have been affected by delaying the declaration.

23 Mr. Ward was on holiday in Ireland (his holiday dates were 20 August to 6 September). He was kept fully informed but we are satisfied that he left matters in the hands of his co-directors, including Mr. Hickey. Upon receipt of the letter, Mr. Hickey decided to seek legal advice: and he conferred with solicitors and counsel on 31 August or 1 September. Their advice was that, if the company wished to avoid the risk of reinstatement of some of the strikers (as it certainly did wish), it must dismiss all of them. The advice was based on the Employment Protection Act 1975 Schedule 16, Part III, paragraph 13 amending paragraph 8 of Schedule 1 of the Trade Union and Labour Relations Act 1974. The company accepted the advice, and decided to dismiss all

employees who were on strike. Accordingly on 2 September dismissal notices were dispatched by letter, the effective words of which were:—

> " Your participation in strike action has brought the contract [i.e. the addressee's contract of employment] to an end, and accordingly your employment with this company has ceased ".

Everyone has appreciated that these notices effectively terminated the contracts of employment and from this date onwards the union has been seeking the reinstatement of its members thus dismissed.

24 On the same day Mr. Hickey replied on behalf of the company to Mr. Gristey's letter. We are satisfied that this letter accurately sets out the attitude of the company at that time. We read the letter as a clear indication, subject only to consideration at their next board meeting, that the company would not be recognising the union so long as there was no evidence that its staff wanted union representation. It also makes clear that the company was excluding from further consideration the views of the strikers, on the ground that they were no longer its employees. Some further correspondence ensued, but no progress was made. Since September 1976 there has been a total breakdown of direct communication between the company and the union—because the company so chose. The union, as the company knew, was always ready to talk.

The Widening of the Dispute

25 By 2 September, if not earlier, the union had concluded that industrial action was needed if the union was to achieve what it now sought, namely the reinstatement of its members and the recognition of the union as a bargaining agent for certain grades of weekly paid staff in the company. It was also obvious that the strike, left to itself, would achieve nothing. The union realised that the company, and its employees, who, understandably, valued their jobs, would move imperturbably across the picket line. APEX therefore decided to enlist the support of the trade union movement as a whole. This it was perfectly entitled to do. Indeed, other than the acceptance of defeat (for which there was the bitter TGWU precedent of 1973), no other course was open to the union. And so Mr. Grantham raised the matter in a speech to the Trades Union Congress on 6 September. The importance of the speech is not so much what was said as that it served to bring a local trade dispute into the national arena.

26 The speech was followed by industrial action, all of which was initiated by the union, or by the Trades Council with the union's consent. On 14 September Mr. Grantham wrote to Mr. Tom Jackson, General Secretary of the Union of Post Office Workers, seeking sympathetic action from postal workers. An attempt was made to picket chemists' shops so as to dissuade them from sending customers' films to Grunwick to develop. By the end of September, as the union appeared to be getting nowhere, Mr. Grantham took over personal responsibility for the conduct of the dispute. The union was convinced that (in the words of Mr. Grantham's conference speech) it had on its hands " a reactionary employer taking advantage of race and employing workers on disgraceful terms and conditions ". In early October the union wrote to Mr. Len Murray, General Secretary of the TUC, who in turn wrote to all affiliated unions enlisting their support.

27 We do not doubt that it was the union, with the active assistance of the Trades Council, that forced the Grunwick dispute into the national arena. In doing so, spokesmen for both bodies were in the early stages inaccurate in some of the things they said. They can however be forgiven for believing the physical working conditions at Grunwick to have been much worse than they were: for the company never let them see for themselves. One error in the September/October campaign was, however, to some degree the fault of the union—the continued reference in the strikers' bulletins and in union communications to 200 strikers. The figure was 137. Once the union realised the error, it was careful to stick to the correct figure.

ACAS

28 To understand this aspect of the dispute, some observations as to the functions of ACAS are needed. As its name implies, this body provides a number of services, under powers conferred on it by the 1975 Act, in the field of industrial relations. Two are directly relevant to this dispute—conciliation and the encouragement of collective bargaining. Where a trade dispute exists or is apprehended, the Service may offer its assistance with a view to bringing about a settlement. If an independent trade union (APEX is one) wishes to be recognised by an employer for the purpose of collective bargaining and refers a recognition issue to the Service, ACAS comes under a duty to examine the issue and, in the absence of a settlement, to report its findings including any recommendation it chooses to make as to recognition. It is unnecessary for us to describe in detail the enforcement process which can follow a recommendation in favour of recognition. It includes arbitration and provision for the inclusion in an employee's contract of employment of some or all of the terms and conditions specified in the union's claim. Suffice it to say that the statute (the Employment Protection Act 1975) treats conciliation as a service on offer which may be accepted or rejected, but contemplates the reference of a " recognition issue " as a process which, while putting great pressure upon an employer to recognise a union, imposes no direct sanction for a failure to do so. Finally we would observe that no other institution—judicial or otherwise—has power to make a recommendation for recognition attracting the sanctions (such as they are) provided by the Act. If a union is to achieve recognition from an unwilling employer, ACAS is the only body empowered by law to make an effective recommendation that recognition should be granted. When, therefore, as we shall relate, the company rejected the ACAS offer of conciliation, it was acting within its rights. And when, at a much later stage, the union, frustrated by its inability to bring the dispute to a successful end, sought the mass picket, it was faced with a law on unfair dismissals which did not allow a claim that the strikers had been unfairly dismissed to be examined, and a law on recognition which was strong in principle but slow in implementation.

29 ACAS entered the dispute early. It first offered its assistance in the role of conciliator to union and management on 31 August. The union welcomed the offer, but the company did not. ACAS renewed its offer to the company on 2, 10 and 30 September: but each offer was declined. The persistent refusal of the company to avail itself of ACAS offers of assistance was one of the factors which led Mr. Grantham to assume personal responsibility for the dispute in October. The company's attitude to ACAS was then as it always

has been:—" there is nothing to settle: we have lawfully dismissed the strikers: we do not intend, and cannot be compelled, to take them back: our employees do not want the union," (our paraphrase).

30 Mr Grantham approached not only the unions (as we have already mentioned) but also the Secretary of State for Employment. He felt that a Court of Inquiry was needed. He was, however, persuaded to give the normal powers of the law a chance, and accepted the suggestion (with some misgivings, which subsequent events may seem to have justified) that the union should refer a recognition issue to ACAS. The processes of the law have not yet achieved any result. Fifty-nine of the strikers applied to an Industrial Tribunal for reinstatement or compensation only to be told that the tribunal had no jurisdiction (2 March 1977 case numbers 40224/76/C to 40282/76/C). The union referred its claim for recognition to ACAS: and we now await the decision of the House of Lords as to the lawfulness of the ACAS recommendation in favour of recognition.

31 Our terms of reference exclude from our consideration the matters submitted to the adjudication of the courts in the ACAS litigation. We shall, therefore, merely outline the history. On 15 October the union referred a recognition issue to ACAS, as it was entitled to do by s. 11 of the 1975 Act. ACAS representatives met representatives of the company on 26 October, when the company said that it was willing to co-operate with ACAS. On 1 November members of the UPW (in response to Mr. Grantham's plea for help) " blacked " (i.e. refused to handle) the company's mail—an action vividly, and accurately, likened by Mr. Ward to cutting the company's jugular vein. On that day there was a further meeting with ACAS at which the company's representatives said that they would co-operate in the ACAS inquiry only if ACAS could ensure that the blacking of their mail was stopped. At the same time the company started legal proceedings for an injunction against the UPW. There were further meetings, the upshot of which appears to have been that the UPW undertook not to interfere with the mail, relying upon what ACAS had told them as to the intentions of the company, and upon an assurance given by the company that it would co-operate in the inquiry. By 8 November, the blacking of the mail being out of the way, ACAS were embarked upon their examination of the recognition issue. Differences arose between the company and ACAS, upon which, for the reason already given, we shall not comment. The company maintained that the proper subject of inquiry was the opinion of those in its employment: ACAS considered that it must also ascertain the opinion of those whom the company had dismissed on 2 September. The company, strongly opposed to any inquiry directed towards those no longer in its employment, sought legal advice: and, under advice, refused for the time being to provide access to, or even a list of names and addresses of, its current employees. ACAS now prepared a draft questionnaire, but progress was not made, as the company was not prepared to accept it until it had further legal advice. Crisis was reached in the week ending 20 December. ACAS felt themselves in a situation of stalemate: the management were saying that they could not meet their lawyers until 21 December and that the intervention of the long Christmas break meant that nothing could be done until January: they suggested 4 January as a possible date for a meeting. The proposal did not satisfy ACAS, who now took the view that the delay was unreasonable

and that they must proceed with their inquiry. By letter of 20 December they communicated their decision to the company. Thereafter they were without the assistance of the company. They sent their questionnaire to the strikers, but not to the existing employees of the company. In February they produced a draft report: and on 10 March they published their report with its recommendation of recognition.

32 The company challenged its legality essentially upon two grounds:—

(1) that ACAS had paid regard to the opinion of persons whom it should have disregarded,

(2) that ACAS had not inquired as to the opinion of those to whom it should have paid regard, i.e. those who were continuing in the employment of the company.

An action begun by writ on 5 April was heard by the Lord Chief Justice, who on 12 July gave judgment for the defendants, ACAS and APEX. The company appealed: and on 29 July the Court of Appeal allowed its appeal, but gave ACAS leave to appeal to the House of Lords. ACAS is appealing but our report is likely to be published before the result is known.

33 We would make only three comments on this protracted affair:—

(1) In the absence of agreement ACAS, and ACAS alone, can determine by lawful recommendation the issue of recognition and we cannot now know before we publish our report what ACAS's determination will be;

(2) the company was entitled to seek legal advice and to challenge in the courts the legality of a recommendation which it was advised was bad in law;

(3) the delay associated with the reference and the litigation has deepened the sense of frustration felt by the union, the Trades Council, and the whole trade union movement in the country.

The Mass Picket

34 By the spring of 1977 the union was facing the fact that its efforts had failed to shift the company. The claim for reinstatement had failed in the industrial tribunal: the claim for recognition was bogged down in the technicalities of the law. The company had survived the industrial action. Many of its workforce had remained loyal, it was getting its supplies, and its mail was getting through. In February the company did what ACAS had not been able to do: it organised an opinion poll of its workforce. At the request of the company, the Market and Opinion Research International organisation, (MORI), an independent body of undoubted integrity, polled the workforce on 25 February. The result of the poll was summarised in the report in these terms:—

> "Overall, 21 of Grunwick's 250 employees (8.4%) wish to have a union to negotiate for them, and a further 13 (5.2%) say they don't know. The remaining 216—or 86.4%—want things left as they are."

35 It was said in evidence that Mr. Ward urged the staff to give by their vote "a big no" to the union. He denied ever saying this: but the staff well knew what he wanted, and some may have feared that he would be able to discover

how they voted, notwithstanding the secrecy of the poll. The vote was however calculated to weaken confidence in the ACAS recommendation of recognition, and clearly strengthened the resolve of the company to resist the claims of the union.

36 A further factor in the union's appraisal of the dispute was that the summer season was approaching. If the union was to achieve any results in the reasonably near future, its best hope lay in intensifying industrial action during the company's busy period.

37 The union responded to these pressures by seeking further assistance from the UPW and by an invitation to all trade unionists to join a mass picket. It is no part of our task to trace the history, or discuss the cause, either of the blacking by post office workers of the Grunwick mail or of the mass picketing of the Chapter Road premises. But the social significance of these two developments in raising the dispute to one of national importance is a matter we neither minimise nor disregard. It is sufficient for our purpose to note that this summer the postal workers at the Cricklewood sorting office refused to handle Grunwick mail, and that the Post Office, rather than countenance the selective and illegal blacking of one customer's mail, closed down the Cricklewood sorting office, thereby depriving a sizeable area of N W London of postal services for some time.

38 The mass picket called for by the union started on 13 June, and was maintained for several weeks. It was marked on occasions by scenes of violence which have shocked the nation. The disruption of mail services and the mass picket convinced public opinion that the country was watching an industrial dispute develop into unacceptable social strife. On 30 June 1977 we were appointed a Court of Inquiry to inquire into the causes and circumstances of the dispute. The dispute continues. The union has said that it will consider itself bound by any recommendations we may make. The company has reserved its position, but Mr. Ward was adamant in evidence that the company would never reinstate the strikers. Finally, while we were sitting to hear evidence, the company surprised everyone, including us, by arranging the Gallup poll, which was taken on 20 July. This poll produced the following results in respect of non-managerial staff:—

Question 1—do you want a trade union to negotiate for you?

Yes: 12 (7%)

No: 153 (83%)

Question 2—do you wish to be a member of APEX?

Yes: 7 (4%)

No: 157 (85%)

Question 3—do you think the dismissed workers should be re-employed by the company?

Yes: 9 (5%)

No: 147 (80%)

The total of the non-managerial staff polled was 184.

39 The survey goes to show that (notwithstanding, or perhaps even because of, the mass picket) the present workforce as a whole wished neither to have a union nor to see the strikers reinstated. Its findings are subject to the same comments as we have made on the MORI poll. But there is no evidence that Mr. Ward exerted pressure on his workforce in respect of this poll: and we are satisfied that he was content to allow the situation as it was in July to exert its own pressures upon the opinions of the company's employees.

The Causes of the Dispute

40 The company was perfectly entitled to prefer a policy of conducting its employee relations without the intrusion of trade unions in a collective bargaining role. But the maintenance of such a policy depends on industrial relations policies which, in terms of pay and conditions, management attitudes, and the provision of an adequate alternative to collective bargaining machinery, do not cause employees a sense of deprivation or grievance. We are satisfied that it was the company's failure to meet these exacting criteria which led to the dispute. The Bhudia and Desai incidents, which were quite unrelated to each other, would not, in our judgment, have been followed by the walk-out of 137 employees, their persistent strike, and their determination to join a union, unless there were sincerely felt grievances. While it remains difficult to define with precision what the grievances were, the evidence leaves us in no doubt of the fact that they were felt. Of course, it does not follow that because they were felt they were justified.

41 The grievances were appropriately classified in counsel's opening speech for the union as being:—

> " low pay, long hours with compulsory overtime, petty restrictions imposed on working people, a bullying attitude on the part of supervision and frequent dismissals and threats of dismissals ".

Before discussing them, we would make two general observations. First, if there be no adequate ways and means of handling grievances, even fanciful ones can pose serious industrial problems. Secondly, where the workforce consists largely of immigrants of the female sex, language difficulties, job insecurity, the spectre of unemployment, and a lack of knowledge of British industrial relations practice and organisation impose even greater responsibilities upon management. Such people are vulnerable: they are particularly at risk when they are employed in a fiercely competitive business where low prices and rapid service bring great rewards.

Low Pay

42 The evidence was voluminous, but our findings can be shortly stated. Prior to the strike, pay was at the lower end of the rates of pay found in the by no means highly paid industry of photo-finishing. Mrs. Desai, who joined the company in 1974—a time when she said there were few immigrants employed —was taken on at a basic rate of £26 for a 35 hour week. Some were engaged at a basic rate of £25 for the same hours. Prior to August 1976 basic rates for those engaged in the mail order department varied, depending on the recommendation of their departmental head, between £25 to £30 for a 35 hour week. In the busy summer season overtime would be paid at the rate of time and a quarter for the first 6 hours and time and a half for any excess over 6 hours.

The policy of the company was to avoid redundancies in the slack winter period. The comparatively low basic rate paid throughout the winter months was designed to be complemented by the substantial overtime done in the summer. One lady told us cheerfully, and without any sense of grievance, that she had worked 30 hours overtime in addition to her basic 35 hours. Annual rises were normally given in April: but they were not great—£1 or £2 a week. By comparison with other firms in the industry, overtime rates, holiday and sickness benefits were not high.

43 In our judgment, the rates of pay and other financial benefits paid prior to August 1976 were low, but they were not the main grievance. We are not, however, surprised that since 1974 the workforce has become increasingly immigrant in character: nor do we find it surprising that in 1976 some were beginning to express discontent and to feel the need for a union to bargain on their behalf.

44 A significant feature of the pay situation is what has happened since the strike. In November 1976 the company granted a general wage increase of 15 per cent: and a further increase of 10 per cent in April 1977. According to the company, these increases together with some improvements in holiday and sickness benefits which had been announced in February 1977 were granted for three reasons:—

(1) inflation,

(2) increased productivity,

(3) loyalty in the face of mounting industrial action against the company.

The increased productivity arose because of the depletion of the workforce by the departure of the 137 strikers. The effect of the pay increases has been to make Grunwick's rate of pay and other financial benefits broadly comparable with, and in some respects slightly better than, those paid by other comparable firms in their industry. We make the obvious, but necessary, comment. The presence of the union and the protracted nature of the dispute must have been important factors in the company's decision to improve rates of pay and other benefits.

Compulsory Overtime

45 Overtime was a cardinal feature of the terms and conditions of employment at Grunwick. We have been shown the written particulars of employment which each employee received. Whatever criticisms be made of these particulars (and some effective criticisms were made), they did make clear that the employee was required in the company's busy period to work overtime. We are satisfied that the company's employees knew and in general accepted the requirement. The grievances they felt were threefold:—

(1) the length of the overtime expected of them,

(2) the inflexibility of the management in enforcing it,

(3) the shortness of notice when it was required.

46 We are satisfied that these grievances had some justification, and caused some discontent—particularly in the mail order department. They were one of the major causes of the walk-out and the demand for a union. Before the mail order department moved (which it did in April 1976) from premises in Station Road, Wembley to Chapter Road, overtime sometimes extended until 10 p.m.

Basic hours were 9.30 a.m. to 5.30 p.m. (with an hour's lunch break). In the summer the factory opened at 8 a.m., and the eager worker could do overtime between 8 a.m. and 9.30 a.m. only to be faced with further overtime up to 10 p.m. After the move to Chapter Road, overtime was not worked after 8 p.m. Overtime of such proportions could easily become exceedingly burdensome, if not administered with understanding of the problems of the individual workers, many of whom were ladies with families to look after. Mr. Alden assured us that he was attentive to their problems: and this we would accept as generally true. But he was under pressure, and he did not always think that the request to be excused was justified. The seeds of discontent were present. In the absence of effectual means of redress some discontent was bound to develop: and in our judgment it did. There was also evidence that sometimes employees in the mail order department were told only at the last minute that overtime was required. Management denied this: but we are satisfied that some genuinely felt that they were not always given sufficient notice.

Petty Restrictions

47 This was, in our judgment, the least of the grievances: but it was part of the accumulation of discontent which led to the walk-out. Asking for permission to go to the lavatory, a requirement which had been imposed at Station Road, Wembley when the lavatories were outside the premises occupied by the company, but was never imposed after the move to Chapter Road, "no talking" in the mail order department, and problems as to the choice of piped background music caused some grumbling. Had there been an effective system for ventilating grievances, these grumbles could have been resolved.

Bullying attitude of the management

48 This grievance arose from Mr. Alden's manner of exercising his authority as the man in charge of the mail order department. It is impossible to assess the strength or justification of the grievance. Mr. Alden was doing his duty as he saw it: he was a tough manager determined to maintain a high level of productivity. He believed in discipline, and believed that it was his discipline which mattered. In the absence of an effective means of discussing the discontents of those who were under his management, a sense of grievance was sure to develop.

Dismissal, and the threat of dismissal

49 The turnover of staff was high. The disappearance of white women workers and the increase in female immigrant workers since 1974 are features of the employment situation of the company, to which we have already referred. Many of the immigrant workers did not stay for very long: and we have seen figures for the turnover in the mail order department, which show that the threat of dismissal must have been an anxiety for many in the workforce. In the period 1 April 1976 to 20 August 1976, 32 left the mail order department. Of these, 21 left of their own accord for reasons ranging from incompatibility to pregnancy. 11 (3 of them students) were dismissed. During this period the strength of the department was 102. An extrapolation of these figures would indicate an annual turnover of staff in the department as high as 100%—a disquieting percentage even after allowance for the various factors which may accelerate change in a predominantly female workforce. The company did

operate a system of warnings before dismissal: but no code of disciplinary practice appears to have been provided to the staff until June 1976. The evidence was overwhelming that the staff, though they knew that there was a warning system, did not appreciate that they could appeal against the decision of their manager—if indeed they could, a point upon which the evidence was unclear. As for the code published in June 1976, it sets out clearly the system of warnings and the existence of a right of appeal. It was published on departmental notice boards. But it had made little or no impact upon the staff by August 1976 when the strike began. We doubt whether many of the Asian employees read it, or really understood it if they did read it. Some of them would have been unable to read or understand it. This is one of the problems of management with a workforce such as Grunwick's.

Lack of Effective Machinery for handling grievances

50 Grievances such as these occur frequently in industry. They become serious only if there is no effective way of dealing with them. The company was aware of the need for machinery to enable workers' representatives to discuss problems with management. In the letter of engagement issued to each employee the grievance procedure was stated to consist of a personal approach to the works director, followed if necessary by a written submission to the managing director for consideration at the next full Board meeting. Given the nature of the workforce, we can hardly regard such a procedure as an encouragement to employees to raise a grievance with a reasonable expectation of its resolution. After the TGWU incident in 1973/74 the company reviewed its arrangements. In 1975 the existing Staff Committee was replaced by a Works Committee on which all departments were to be represented by elected representatives. This committee was not encouraged as a forum for the handling of individual grievances, and the minutes which we have examined do not create the impression that it was a very effective body for dealing expeditiously with collective issues that were raised. In any event, the mail order department consisting largely of Asian ladies never did elect a representative: and their representative on the committee became Mr. Alden, himself the source of many of their grievances. A number of witnesses told us that they did not even know of the existence of the committee, and others said it was ineffectual. None of them thought it had the strength to stand up to management. But there was no channel other than this committee and complaint to one's manager available to an aggrieved worker. The company does not appear to us to have established truly effective machinery for the ventilation of grievances: and the absence of such machinery must have aggravated the discontent and sense of grievance felt by some of the staff.

51 For these reasons we are satisfied that the grievances to which we have referred, intensified as they were by the lack of effective means of examination and redress, provided the underlying causes of the dispute. They are the reason why the 137 came out on strike and demanded a union.

COMMENT ON THE SOCIAL AND LEGAL ASPECTS OF THE DISPUTE

The Social Aspect

52 The borough of Brent covers an area of north-west London which has attracted a high immigrant population. According to the 1971 census it had a

population of 280,655, of whom 39,180 were born in New Commonwealth countries, i.e. 13·96 per cent of the population. It would not be unreasonable to estimate the percentage to-day as nearer 20 per cent than 14 per cent, for the indications are that the total population of the borough has diminished while the immigrant population has increased. In a study prepared for the Greater London Council in 1973 it was included as one of London's most deprived areas. In the past an area of thriving industry, it has run into difficulties. Factories have closed, employment opportunities have become fewer, and unemployment is a serious problem. The advent of an enterprising new industrial business such as Grunwick could, therefore, be either a curse or a blessing. In so far as it has provided job opportunities in a depressed area for people whose situation in the labour market was weak, the company has proved beneficial. It has provided jobs, where jobs were and are urgently needed, at rates of pay which, though they were (until November 1976) low, were not the main grievance which provoked the strike. The main discontent expressed was more concerned with the operation of the overtime system and the attitude of some members of management.

53 When one turns to working conditions, the same sort of picture emerges. Physical working conditions were reasonably good, and at Chapter Road, save for the mischance with the air conditioning in a hot summer, excellent. Compulsory overtime was at times a burden, but more often was seen as a welcome addition to the wage packet. The management was strict in its insistence upon overtime during the summer season. Although it was clear that some applications for relaxations on overtime working had on occasions been granted, there was on other occasions a lack of human understanding in dealing with such requests.

54 For these reasons we think that the company did fail to maintain an industrial relations policy adequate to prevent the development of underlying discontent, and that this failure was responsible for the strike which followed upon the Bhudia and Desai incidents.

The Legal Aspect

55 In the field of industrial relations the law has to effect a reconciliation and adjustment of a number of fundamental human rights and basic freedoms. Inevitably the stance of the company has been associated with some of these rights and freedoms and the stance of the union with others.

56 The rights and freedoms with which the stance of the company has been associated are:—

(1) the right to the peaceful enjoyment of property, which includes the right to conduct a legitimate business within the law as one judges best: see Article 1, 1st Protocol, European Convention on Human Rights;

(2) the freedom to refuse to join an association (which in its industrial application becomes the right not to join a union): see the Universal Declaration of Human Rights 1948, Article 20(2);

(3) the right to free choice of employment: see the Universal Declaration, 23(1).

57 Those with which the union stance has been associated are:—

(1) the freedom of association, which in its industrial application becomes the right to join a union: see European Convention, Article 11, and the Universal Declaration, Articles 20(1) and 23(4);

(2) the freedom of peaceful assembly, one of the industrial applications of which is peaceable picketing: see European Convention, Article 11, and the Universal Declaration, Article 20(1) and

(3) the right to just and favourable conditions of work: see Universal Declaration, Article 23(1) and the European Social Charter 1961.

58 The English reconciliation of these rights and freedoms has been traditionally sought through the development of voluntary collective bargaining but this process is now supported principally by two statutes, which themselves have to be interpreted in the context of the common law—the back-cloth of English law. The statutes are the Trade Union and Labour Relations Act 1974 and the Employment Protection Act 1975. The policy of the law is to exclude "trade disputes"—or industrial disputes, as they are more familiarly known—from judicial review by the courts, while leaving to individual workers a recourse to the courts (i.e. industrial tribunals) to pursue certain individual grievances. There is substituted for judicial review of trade disputes an advisory, conciliation and arbitration process with ACAS as the statutory body to operate it. All rights and freedoms for which each side contends are recognised by English law, but failing agreement their adjustment to each other is to be sought by the processes of conciliation and arbitration under the guidance of ACAS. The sanctions of the law (such as they are) are indirect and are not those associated with the execution or enforcement of a judgment delivered by a court of law. An inevitable consequence of the system is that, where the process fails to secure agreement, industrial action is the one weapon left to resolve the dispute. Industrial action is a form of organised self-help—e.g. the lock-out, the strike, "blacking", and the picket. And there is always a risk that self-help, if not coupled with self-restraint, may end in violence. English law, if it is to work, requires of parties to an industrial dispute a modicum of self-restraint in the pursuit of their rights. Men must act reasonably within the law. The British tradition of compromise is implicit in the modern English law governing industrial relations.

59 Judged by the norms of good industrial relations practice that are to be found in industry generally, how have the company and the union measured up to the responsibilities imposed upon them by law but not directly enforceable by legal process? First, the company. By dismissing all those who went on strike they have excluded judicial review of the dismissals, but in our view they acted unreasonably in so doing. The dismissal of strikers, particularly within days of a strike starting, is extremely rare in practice, and by their own admission in evidence, they would have been willing to take some of the strikers back but refused to so do since, if they did, they would have to face proceedings by the others in an industrial tribunal in which the company would have to show in each case that the dismissal was fair. We ask—why not? Was it really unfair or unreasonable that a dismissed employee should have his individual case considered by a court or tribunal on its merits?

60 Upon our analysis of the underlying causes of the strike the answer must be "No". If it be considered that in early September the company could not reasonably be expected to have the insight into their problems which we now have, why did they not accept the ACAS offer of conciliation? Though within their rights in refusing reinstatement and in rejecting the means available of attempting a settlement of the dispute at that stage, the company, in our view, acted unreasonably, and inconsistently with the policy of the law.

61 The company must, therefore, accept a measure of responsibility for prolonging, deepening, and widening the dispute. Faced with a rejection of the advisory and conciliation processes provided by law for the resolution of disputes, the union in loyalty to its recently enrolled members really had no option other than to seek the support of the trade union movement as a whole. At this stage—September and October 1976—the union was, however, still hoping to achieve something by legal process. In October Mr. Grantham suggested a Court of Inquiry, but after seeing the Secretary of State, decided to test the fairness of the dismissals by industrial tribunal proceedings and by reference of the recognition issue to ACAS. It was only when these steps failed to bring an early end to the dispute that the union intensified its industrial action.

62 There can be no doubt that the request from APEX to UPW members to black Grunwick mail in 1977, after the legal case of Gouriet *v* UPW, further hardened the company's attitude. We did not take any evidence on the blacking of Grunwick's mail and consequential related activities. It is significant that the two unions involved, both the UPW and APEX, have experienced great difficulty in persuading UPW members to call off the blacking and to obey the law. Whilst recognising that unions consider certain actions necessary in furtherance of a trade dispute we cannot condone advocating action which had been clearly judged to be against the law.

63 The union, we are satisfied, had no intention of provoking violence and civil disorder by calling for the mass picket. Nevertheless it cannot be denied that the risk of a mass picket getting out of control was known. A mass picket allows violent extremists to participate. Such people cannot be prevented from joining it and will use the opportunity it presents to provoke civil disorder which in itself is sure to prejudice the very cause which the picket was called to promote.

64 On the legal aspect of the dispute we conclude that both the company and the union have in certain respects failed to respond to the spirit of the law. By dismissing all the strikers on 2 September and refusing to negotiate the reinstatement of any of them, and by refusing to accept ACAS offers of conciliation, the company has contributed to the prolonging, deepening, and widening of the dispute with all its attendant risk of violence and disorder. By seeking in 1977 further UPW action in blacking Grunwick mail the union ignored the legal decision in the case of Gouriet *v* UPW, and in calling for the mass picket it initiated action, the subsequent course of which has greatly disturbed the nation.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

65 The underlying cause of the walk-out on 23 August 1976 was a genuine, even if not clearly formulated, sense of discontent and grievance amongst a substantial number of staff—particularly in the mail order department. The demand for a union, which was the cry of those who went on strike, summed up accurately their sense of grievance: they wanted some body independent of management with the knowledge to advise them and the strength to make some impact upon the company.

66 Their discontent and grievances arose from the company's lack of a properly developed industrial relations policy including effective machinery for the examination and redress of grievances.

67 The company by dismissing all the strikers, refusing to consider the re-instatement of any of them, refusing to seek a negotiated settlement to the strike and rejecting ACAS offers of conciliation, has acted within the letter but outside the spirit of the law. Further, such action on the part of the company was unreasonable when judged by the norms of good industrial relations practice. The company has thus added to the bitterness of the dispute, and contributed to its development into a threat of civil disorder.

68 Once the recognition issue was referred to ACAS by the union, the company recognised that by law it must co-operate with ACAS in its inquiries. It is not for us to pass judgment on the legal differences which arose between the company and ACAS: nor are we in a position to determine whether the company "dragged its heels" or ACAS was justified in deciding on 20 December to proceed without the assistance of the company. We merely note that the company has exercised its undoubted right of access to the courts to test the validity of the ACAS report, and that the consequent legal proceedings have added to the delays which have so greatly embittered the dispute.

69 The union acted reasonably in responding to the strikers' call for help, in enrolling them as members and in seeking to negotiate with the company. When the strikers were dismissed, the union had no choice but to add a claim for their reinstatement to its existing claim to be recognised by the company for the purpose of collective bargaining.

70 In all the circumstances the union was fully justified in raising the dispute at the Trades Union Congress and invoking the support of the trade union movement as a whole. It was also fully justified in referring on 15 October 1976 a recognition issue to ACAS.

71 The union, however, when frustrated by the seemingly indefinite prolongation of the dispute in 1977, in calling for further industrial action by members of the UPW took a step which led to breaches of the criminal law. Although it was never the intention of the union the mass picket on occasion has led to forms of civil disorder. It could have been foreseen that this was likely.

72 In our judgment, good industrial relations depend upon a willingness to co-operate and compromise. The law favours collective bargaining and encourages the use by workers of independent trade unions for the purpose. The

policy of the law is to exclude "trade disputes" from judicial review by the courts and to rely not on the compulsory processes of the law but on the voluntary approach backed by advice, conciliation, and arbitration to promote good industrial relations. The efficacy of such a law depends upon goodwill. If men act unreasonably, by which we mean in obedience to the letter but not the spirit of the law, it will not work. It does not, however, follow that judicial review would be an effective substitute: for, whatever the sanctions imposed by law, its efficacy depends upon the consent of the people.

RECOMMENDATIONS

73 **(1) Reinstatement**

In the conduct of industrial relations in this country, and no matter what the legalities are, it is the exception rather than the rule for employees who are dismissed during the course of a strike not to be re-engaged after the dispute is ended. Ideally in our view Grunwick should therefore offer re-employment to all those strikers who before the dispute were full time employees of the company and who wish to be taken back. It is our recommendation that this should be done if it be at all practicable. We recognise however that the nature of the company's business is such that the necessary number of vacancies may not now exist, although it seems to us that a seasonal business dependent on overtime must have at least some vacancies.

In the absence of any established relationship between Grunwick and APEX the question of determining the number of vacancies which do exist could well, and we recommend should, be considered by a mediator either agreed by the company and the union, or appointed by yourself in the absence of such agreement.

It would in our opinion be reasonable for the company to make to those for whom there are no vacancies, an ex gratia payment commensurate with their length of service. The amounts of such payments are a matter on which the mediator might well be able to offer helpful advice.

(2) Individual rights of representation

We were pleased to hear it said on behalf of the company during the course of our inquiry that if an individual employee who was a member of the union had a grievance which he or she could not settle directly with the management, and wished to be represented by the union in pursuance of that grievance, the company would accept that right. We recommend that the company give effect to this declaration.

(3) Recognition for the purposes of collective bargaining

Whatever the result of the company's case against ACAS (which is now for the House of Lords to decide), ACAS is the body established by law to determine the recognition issue in the absence of agreement. We do not propose to pre-judge the issue. Nevertheless, we have no doubt that union representation, if properly encouraged and responsibly exercised, could in the future help the company as well as its employees.

(4) Law Reform

We are not a suitable body to propose specific reforms of the law: nor do our terms of reference enable us to make the sort of inquiries necessary for the formulation of sound proposals. And, of course, we are not able to engage in consultations—the very stuff of law reform. We do however welcome your announcement in an answer in the House of Commons on 12 July that the Government has under review the law relating to picketing.

74 Finally, we wish to put on public record our thanks to our tireless and capable secretarial team Judith Bailey and Neil Atkinson, for their notable assistance in our work, and also to the devoted men and women who so ably organised at very short notice the public hearings and general conduct of the inquiry. We should also wish to record a special word of thanks to Mr. Charles Birdsall, our press officer, whose work was, we believe, as helpful to the press as it was to us.

L. G. SCARMAN
J. P. LOWRY
T. PARRY

MRS. J. BAILEY (Secretary)
N. J. ATKINSON (Assistant Secretary)

LIST OF WITNESSES

Witnesses Called by the Union

Mr. Raschid Mohammed
Mrs. Jayaben Desai
Mr. Roy A. Grantham
Miss Indira Mistry
Mr. Devshi Bhudia
Mr. Chandrakant Patel
Miss Rajeshwari Patel
Mr. Noorali Valliani
Mrs. Delcie Claire
Mrs. Joyce Pitter
Mr. Leonard Gristey

Witnesses Called by Brent Trades Council

Mr. Tom Durkin
Mr. Jack Dromey
Mr. Antonio Jimenez
Mr. Kevin J. Slattery

Witnesses Called by Grunwick

Mr. Peter H. J. Diffy
Mr. Malcolm C. Alden
Mr. John P. J. Hickey
Mrs. Azadi Patel
Mr. Frank H. Collins
Mr. Bipin Patel
Mr. George H. R. Ward
Mr. Peter D. Byrne
Mr. Kenneth W. Pearson

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