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unions is discussed elsewhere in this issue,[15] but the general interest of these cases lies in the resort to common law and equitable remedies in industrial issues. In *True's Case*, for instance, the plaintiff received considerable damages for wrongful expulsion from his union, while in the *Hursey Case* the damages, though considerably reduced by the High Court, were based on various heads of liability at common law. Pre-occupation with the arbitration system and its penal sanctions has tended to obscure the fact that strikes and other forms of industrial action may frequently give rise to common law liability. It is true that each of the above actions was brought by a member against his union, but, of course, the field is not so limited. Whether the last year marks the beginning of a trend towards a greater use of common law remedies it is still too early to say. If this did occur, however, and, particularly if the plaintiffs were employers, one might expect to see the State legislatures intervening and adopting, perhaps, the English Trade Disputes Act.

FOOTNOTES

1. *R.* v. *Cwlth. Conciliation and Arbitration Commission and Ors.*; *ex parte Assn. of Professional Engineers, Australia* (1959) *A.L.J.R.* 236.
2. E.g., past decisions and *dicta* suggest that doctors, lawyers, and schoolteachers, whether employed in an industrial undertaking or not, cannot be engaged in an "industrial" undertaking.
3. I.e., "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State" (Section 51 (xxxv) of the Constitution).
4. The proposed new provision was also to include power to settle disputes by conciliation and arbitration and to establish and/or invest Commonwealth and State tribunals with authority under that power. It does not appear that these additions would really qualify the main grant of power.
5. See, however, C. P. Mills, *Journal of Industrial Relations*, Vol. I, No. 2, pp. 119-122.
6. This legislation (Industrial Arbitration (Female Rates) Amendment Act (1958)) was discussed by J. E. Isaac in Vol. I, No. 1 of this publication at 49-50, and also by K. Laffer in Vol. I, No. 2, at 114.
7. (1959) 14 *Industrial Information Bulletin* 360.
8. (1959) 14 *I.I.B.* 1176.
9. I.e., s. 88D of the Principal Act.
10. Of course, much collective bargaining is, *at present*, carried on outside the tribunals by parties who are covered by awards.
11. This body was recently established with the intent of looking after the industrial conditions of European migrants.
12. N.S.W. Supreme Court. April, 1959—not yet reported.
13. (1959) *A.L.J.R.* 269 (High Court).
14. (1959) *A.L.J.R.* 224 (High Court).
15. H. A. J. Ford, "Trade Union Law and Aid to Political Parties".

A NOTE ON MARGINS

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THE Commonwealth Conciliation and Arbitration Commission on November 27th, 1959, increased margins in the Federal Metal Trades Award by 28%. This percentage increase is now in the process of being extended, with variations, to all the awards and determinations of all the various wage-fixing tribunals throughout Australia, and in many cases to private arrangements as well.

Two questions might be asked in regard to this decision and the results which are flowing from it: (1) Why increase a particular portion of a wage? and (2) Is a hearing by a court of law[1] settling a dispute in one industry a satisfactory way to determine a national wages policy?

In Australia we are used to the idea of regarding wages as consisting of two parts, but most of us will have had the frustrating experience of attempting to explain this division to a foreigner. "Wages in Australia", you state, "consist of the basic wage plus a margin for skill, etc.". "The basic wage is the lowest wage payable by law?"—"No". "The living wage?"—"No. — It did start as something like that some 50 years ago but it is not a living wage now". "The wage paid to the unskilled worker?"—"No. It is a foundational wage", you conclude rather lamely, "and the margin is the rest of the wage".

The result in this particular example of varying margins by 28% is that a person with a margin of, say, 5/- above the basic wage of £14/3/- (N.S.W.) would receive an increase of 1/5d. per week or .5% of his whole wage, whereas the person on a salary of £2,000 per annum which is equivalent to a margin of £24/5/- per week would receive an increase of £6/16/- per week or about 18%—all of which is arbitrary.

The only justification for this result is to say that when the basic wage is increased the stagger is in the opposite direction. The result of varying wages in a way which alternately favours the lower paid employees and then the higher paid, is to provide a perfect ratchet-equipped jack for giving inflationary lifts to the economy.

The historic justification for this peculiar system has disappeared and the result is that no one, including the Commission, has any clear picture of the progressive increase in wages as a whole.

We should discard the artificial division of wages into basic wage and margins. If it is considered as a matter of economic policy that wages in Australia should be increased, then it could be stated that there should be a general increase of, say, 2% in all wages. This is, of course, more or less what is done in New Zealand, although there, by an ingenious set of qualifications, they still manage to obtain a considerable amount of complication.

The mention of economic policy then leads to a discussion on the second question as to whether a court of law hearing a dispute in one industry is the best way to determine a national wages policy.

Reduced to simple terms the Commission in these national wage cases determines the purchasing power of the currency. When it increases wages it does not in any orderly or determinable way necessarily increase the share of the national income going to wage-earners—although this may result for a while. It does, of course, detract from the relative position of

some sticky income groups, and its main achievement is to take from the Australian export industries, which group is practically alone in being unable to pass on costs.

(In the course of this case, Counsel for the Commonwealth quoted President Eisenhower:

> "Inflation is not a Robin Hood, taking from the rich to give to the poor. Rather, it deals most cruelly with those who can least protect themselves. . . ."

And incidentally attempts are often made to justify these wage increases by references to increases in productivity. But generally changes in productivity are simply considered as changes in output per man hour without considering the changes in the input of the other factors of production. This is quite wrong in principle and quite misleading in practice, but too big a subject to deal with here.)

These results of a decrease in the purchasing power of the currency (inflation) may be desirable in some circumstances. Clearly, though, the whole matter involves fundamental national economic policy.

The Commission itself in this metal trades judgment says: "the true function of the Commission is to settle industrial disputes". It then goes on to imply that while it will not ignore the economic results of its decisions these are not its prime consideration. There would be no doubt that legally the Commission is correct in this view.

It is not a complete answer to say that the Commonwealth Government can put its point of view through its Counsel to the Commission. The Commonwealth Government did do this in this case for over three days and concluded by saying:

> "On the view the Commonwealth takes of the situation, if the Commission pleases, the Commonwealth would be seriously apprehensive of the effects of a further large and widespread wage increase on costs and prices".

It is true that the Commission in these sort of judgments produces a comprehensive and well-informed analysis of the current Australian economy of which any economist could be proud to claim the authorship. But somehow the Commission then fails to draw this material together on to a basis of economic theory so as to produce an economically sound conclusion. There seems little logical connection between this profound analysis and the resulting decision.

The result is that because of a constitutional provision which has now been pressed into a shape which could never be recognised by the constitutional fathers and by a series of developments during the history of this Federal industrial jurisdiction, we have come to the position where an industrial tribunal in settling an industrial dispute produces the national economic climate more or less as a by-product.

A wages policy for a nation is a fiscal matter which concerns the national government as much as its credit policy, its budget or its tariff. It is not a matter of industrial relations.

Perhaps there are good reasons why a government should not legislate directly on wages. Certainly there are such strong political reasons that no Federal Government in Australia is ever likely to do so even if it were handed the constitutional power. But undoubtedly the present system of almost isolating wages policy from economic policy generally is not satisfactory.

This economic hiatus might at some time result in a national catastrophe and the unsatisfactory state of affairs would seem to be due firstly to leaving one of our most important national economic determinations to a tribunal set up as a court of law with the over-riding duty of settling industrial disputes, and secondly to the fact that these most important and complicated economic decisions are left to a body on which there is no provision for the appointment of anyone trained in theoretical economics.

Our Federal Constitution gives the Commonwealth Parliament legislative power in labour matters only in respect of conciliation and arbitration for the prevention and settlement of interstate disputes. Conciliation and arbitration should not, however, mean only a Commission of predominantly judicial composition. It could presumably mean a tribunal which included economists or others whose training enabled them to understand and interpret national economic data. Such a body, still under the guise of settling industrial disputes, could lay down the general guiding pattern for wages. It could set the purchasing power of the currency as determined by wage levels as part of the general economic pattern. This could be done by Federal Parliament simply amending the Conciliation and Arbitration Act to delete reference to the basic wage and to alter fundamentally the composition of the Commonwealth Conciliation and Arbitration Commission.

Thus a great deal could be achieved within the present Constitution towards setting our national wage determinations on a sensible economic basis and without any unorthodox constitutional interpretation. But in any case in respect of nation-wide wage-fixing might not the Constitution be read to give the Commonwealth power to legislate under some power other than the industrial one, e.g., "trade and commerce" (51 (I)) or "currency coinage and legal tender" (51 (XII))? I suggest that to the economist a national wage policy is more a matter of trade and commerce or currency than of settling industrial disputes.

FOOTNOTE

1. The 1956 amendment to the Conciliation and Arbitration Act in effect changed the name of the Commonwealth Court of Conciliation and Arbitration to "Commission" and shore it of its judicial function but it continues to act essentially as a court of law and in fact all the Presidential members have "the same rank, designation, status and precedence as a Judge of the Court (Section 7 (5))".