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ARTICLES

APPENDIX

Overtime Earnings

The estimate for average overtime earnings in column 1 of Table 2 is derived as below:

Table 2

Year	*Above-the-Award Component*			*Increase in Above-the-Award Component*		
	Overtime 1.	*Other* 2.	*Total* 3.	*Overtime* 4.	*Other* 5.	*Total* 6.
1960-61	24.4	58.9	83.3			
				—2.8	4.2	1.4
1961-62	21.6	63.1	84.7			
				7.1	4.0	11.1
1962-63	28.7	67.1	95.8			
				5.8	9.2	15.0
1963-64	34.5	76.3	110.8			
				5.1	10.4	15.5
1964-65	39.6	86.7	126.3			

For each year of the table, an average for the twelve months of the "(average) hours of overtime per employee" from the survey "Factory Overtime and Short Time" of the Department of Labour and National Service, was calculated. From the Commonwealth Statistician's surveys of earnings and hours it appears that the ratio of overtime worked for "All Industry Groups" to overtime worked in Manufacturing is approximately constant at .825 (Oct., 1963, 2.3/2.79; Oct., 1964, 2.84/3.44—from *Wage Rates and Earnings* Bulletin, April, 1965, Table 18). The averages from the Department's surveys were multiplied by this factor, .825, to arrive at estimates of the average hours of overtime worked per employee, for the years shown in the table.

Earnings per hour of overtime worked were estimated by first dividing the average award rate in column 3 of Table 1 by 40, to give the normal hourly rate, and then multiplying by 1.5 on the assumption that all overtime was worked at "time-and-a-half".

Multiplying the average number of hours worked by the overtime earnings rate so derived, gives the estimates in column 1.

The figures in column 3 are entered from column 5 of Table 1, and all other entries are obtained by appropriate subtraction.

The Mount Isa Affair[1]

E. I. Sykes

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THE complicated picture of industrial turmoil which developed at Mt. Isa in 1964-1965 cannot be regarded as typical of an Australian industrial dispute situation. Beginning with an employer-union impasse which had been accentuated—some observers would say caused—by rather unusual legislation by the State Parliament, it developed into a position of conflict between official union leadership and an unofficial rebel group within the union which also brought into relief the question of inter-union rivalries in a small community isolated to a very large degree from the current of ordinary Queensland life. Also involved were attempts by the State industrial authorities to enforce the anti-strike law of the State and the intervention of the State Government by the promulgation of regulations and the passing of legislation of an extremely drastic nature. The demands of the union on an official level for industrial benefits, the demands of the unofficial group which largely involved the position of one man, the attitude of the company to each set of demands, the "bonus issue" raised by the industrial arbitration legislation of 1961 and the later impact of special emergency legislation all combined to create something of a witch's cauldron of issues and counter-issues which was the despair of those seeking a settlement by conciliation methods.

It is proposed firstly to set out the factual and legal situation as it existed before the inception of the 1964 dispute, then to trace the development of the dispute to the present moment, and finally to segregate and endeavour to evaluate the main issues that arose.

The Factual and Legal Situation

In 1961 the Queensland Parliament scrapped its previous industrial legislation and passed a new Industrial Conciliation and Arbitration Act. The feature which attracted most public attention at the time was the constitution of two industrial tribunals in imitation of the Federal organizational structure set up in 1956 as a result of the *Boilermakers' Case*. There was set up an Industrial Commission with conciliative, arbitral and award-making functions on the one hand and on the other hand an Industrial Court (constituted by a Supreme Court Judge) which shared with Industrial Magistrates the so-called penal jurisdiction

of enforcing the observance of the Act and of awards and of penalising breaches of the same. The Federal dichotomy was not completely followed inasmuch as the power of issuing injunctions in respect of breach of the Act or of an award was vested in the Commission though proceedings for *breach* of such an injunctive order would come before the Court. Moreover, an appeal was given from the Industrial Commission to the Industrial Court on a question of law. This, of course, would be applicable to an arbitral decision.

These two tribunals replaced the pre-1961 Industrial Court which exercised both arbitral and judicial functions.

It was not until the debate on the Bill in Parliament had proceeded for some time that attention was directed to the fact that the general award-making section contained a provision that the Commission "shall not award bonus payments" and that bonus payments "shall be a matter of negotiation between employee and employer or an industrial union or industrial unions on their behalf". It was further provided that any bonus payment provided for by an award in force immediately prior to the commencement of the Act should continue in force until the circumstances should so alter as to require the reduction or abrogation thereof and the Commission was given jurisdiction to so reduce or abrogate an existing bonus payment. In substance, the Commission was stripped of the power to award a new "bonus" or increase the amount of an existing "bonus" though it could decrease the amount of an existing "bonus" or abolish it altogether.

The Act defined "bonus payment" as "a payment by way of the division of the profits of an industry . . . being a payment in excess of a just wage including all proper allowances such as are ordinarily and usually prescribed by an award or industrial agreement". This definition, judicially described later as a strange piece of legislation, requires that there be something in excess of a rather indefinite element described as a "just wage".

It will be noticed that the Act in terms provides for bargaining in relation to bonus payments but did not attempt in any way to channelize the course of such bargaining, though it did provide for the making available of a member of the Commission for mediation in relation to such bargaining and the registration with the Commission of "any bonus so negotiated" (*sic*). In particular there was no imposition of any *duty* to bargain on either side.

Conditions of employment at the Mt. Isa mine were governed by the Mount Isa Mines Limited Award which did in 1961 provide for something called a "bonus". This bonus was first introduced as a "lead

bonus" by a judgment of the then Industrial Court on 8th November, 1937. This was provided for in the case where the price of lead per ton exceeded £20 on a scale under which the payment varied with the price of lead. In 1948 the rate was increased but the lead price at which the bonus commenced was raised to £57/10/- per ton (Australian). In 1950 on an application by the unions for various wage increases, the amount of the lead bonus was stated by the Court to be £13/10/- per week and it was commented that this exceeded the award wage rate for the majority of workers. In 1951 the bonus was £17/5/- per week and the Court then fixed this as a maximum. In 1959 when the price of lead had fallen to the point where a bonus of £3/17/6 was indicated by the scale, the award was varied by consent to provide for a minimum bonus of £5. In 1959 the award received a comprehensive overhauling at the hands of the then Industrial Court. The Court pointed out that for some years past copper production at Mt. Isa had proved more important than lead production and it was therefore illogical to describe the bonus as a lead bonus. It should be described simply as a "bonus" and thereafter it was so described. The Court also thought it was preferable to have the bonus prescribed as a fixed amount and not on a sliding scale. It was provided that as from January, 1960, all employees covered by the award should receive a bonus payment of £8 per full week worked or £1/12/- per day or shift of eight hours.

So stood the matter at the beginning of 1961.

Most men employed by Mount Isa Mines Ltd. and also those employed by contractors with the mine are Australian Workers' Union members. This includes under-ground miners. Smaller numbers of craftsmen belonged to the various craft unions; for instance, the Amalgamated Engineering Union, the Electrical Trades Union and the Federated Engine Drivers and Firemen's Association, affiliated with the Queensland Trades and Labour Council. A local Trades and Labour Council to which most of the craft unions belonged on a local level of organization also existed at Mt. Isa.

The History of the Dispute

In 1961 there was a dress rehearsal of the 1964-65 tragedy. At the time of the passing of the 1961 Act, applications had been lodged by the relevant unions for an increase in the then £8 per week bonus. The Court, in view of the bonus payments provision of the legislation, declined to proceed any further. This was a matter of ill-fortune for the Mt. Isa unions as an application for the increase of the bonus at the Mary Kathleen Uranium mine had been dealt with just before the Act came into operation and the bonus at that mine had been increased

to £10 per week. The unions took up direct negotiations with the Company which, however, throughout the discussions adhered to a policy of no increase in the bonus. Symptoms of slow-down in work effort appeared at the mine and minor tactics of pressure such as unauthorised stop-work meetings were resorted to by the craft unions, whilst the A.W.U. announced it intended to hold a strike ballot. The Company reacted sharply and closed down its operations. After conciliation efforts had failed, Mr. Commissioner Harvey made an order that in effect the Company resume operations by a named date and that all workers resume work by a particular date. At this point the State Government intervened and declared a "state of emergency" under the State Transport Act of 1938. The significance of this is later discussed. No executive orders were, however, promulgated thereunder as both the A.W.U. and craft union members resolved at mass meetings to return to work. The mine had been closed for about five weeks.

During the period of 1962 to 1964 the A.W.U. had made claim from time to time on the Company for an increase in the bonus, but the Company had invariably said, "No".

In December, 1963, the A.W.U. and the craft unions made application to the Industrial Commission for an increase of £4 per week to the wages prescribed by the award by reason of the prosperity of the Company. This application was on 4th August, 1964, refused by the Commission, substantially on the ground that the granting of such application would amount to awarding a bonus. An appeal was instituted by the union to the Industrial Court, but shortly after the decision and in protest against it the A.W.U. had instructed the under-ground miners who worked on contract (i.e., piecework) rates to abandon contract work and to revert to work for hourly wages only. This step resulted in a considerable reduction in the output of the mine. On 28th September, on an application by the union for an extension of time to appeal against the above-mentioned decision of the Commission, Mr. Justice Hanger, President of the Industrial Court, expressed the view that the action of the contract workers constituted a "go slow" strike. (If the tactics amounted to a strike then the same was illegal under Section 98 of the Act.) Mr. Justice Hanger, whilst extending the time for appeal, indicated that he would refuse to hear the appeal itself whilst a state of strike existed.

In consequence of this intimation the A.W.U. recommended the withdrawal of the contract ban. The miners rejected this official recommendation; the rejection was inspired by a rebel group of dissident A.W.U. members who had united themselves to form a local committee of the Committee for Membership Control. The latter rebel organization had been existent within the A.W.U. on the Australian level for some

time but had not as yet appeared at Mt. Isa. Their leader was one Pat Mackie (otherwise Eugene Markey), who had been dismissed by the Company on 23rd October for absenting himself from work without leave. The decrease in output reached drastic proportions and in November the Company closed down its copper smelter. The Company applied to the Commission for an order in the nature of an injunction restraining the A.W.U. and its members from taking part in or being concerned in an unauthorised strike by reason of a ban or restriction in respect of the performance of contract work. This was refused by the Commission on 25th November, 1964, on the ground substantially that it would be ineffectual. On appeal to the Industrial Court, Hanger J. (1st December, 1964) held that the Commission had applied the wrong principles as to the granting or withholding of injunctions, ruled that the reversion to contract work constituted an unlawful strike, and remitted the matter to the Commission. The latter body on 3rd December granted the injunction.

Before any action of a punitive character had been taken thereunder, the State Government dramatically intervened on 10th December by declaring a "state of emergency" under the State Transport Act of 1938 and an Order in Council issued thereunder on the same day forbidding miners governed by the Mt. Isa Mines Award from refusing to accept contract or piecework and directing them to present themselves on 14th December at the premises of the mine and accept contract or piecework in terms of the award. This order was not in fact complied with. Before the miners' reaction to it was known, however, the Industrial Court President announced that in view of the emergency order he would hear the A.W.U.'s appeal against the August decision refusing the increase of £4 per week wages.

In the meantime, issues had become more complicated. Mackie, as has been said, had been dismissed by the Company. A charge was brought against the Company by Mackie under Section 101 of the Arbitration Act that the Company had dismissed an employee by reason of the circumstance that he had absented himself from work without leave where his absence was for the purpose of carrying out his duties as an officer of an industrial union and he had applied for leave before he absented himself and leave was unreasonably withheld. This complicated charge was based upon an ill-phrased complex of offences set out in Section 101, the general purport of which was the existence of some kind of anti-union discrimination by an employer. Mackie in fact had applied for leave and had been refused. The charge was on the 23rd October, 1964, dismissed by the Industrial Magistrate at Mt. Isa on the ground that Mackie was not an officer of an industrial union. Mackie was also expelled from the A.W.U. and his appeal to the Convention

of the Union at Sydney failed. The Mt. Isa Trades and Labour Council admitted the rebel A.W.U. members to affiliate membership and began to take an increasing hand in the dispute. The strongly anti-A.W.U. Queensland Trades and Labour Council also moved to intervene in the dispute and officials of the Council began to arrive at Mt. Isa.

However, the announcement that the union appeal in the matter of the £4 a week claim would be heard ushered in a period during which it was strongly hoped that conciliation would settle the dispute. The thankless task was undertaken by Mr. Commissioner Harvey, who travelled to Mt. Isa and conducted conferences with the Company, A.W.U. representatives and the representatives of the craft unions. The miners, however, had refused to obey the emergency orders and the mine completely closed down on 15th December.

On the same day Mr. Justice Hanger allowed the appeal of the A.W.U. in the bonus case and held that the "bonus" provision of the Act did not debar an overall increase in the total wage (of which bonus was a component) based on the prosperity of the Company and that a prosperity loading was not a bonus. The matter was remitted to the Commission, which after a short hearing awarded £3 per week which it referred to as a prosperity loading (24th December). I should at this point add that considerable confusion was shown in the reports of some southern newspapers to the effect that Mr. Justice Hanger had somersaulted on his previous decision regarding the bonus provision. But he had not given any previous decision. The previous decision was that of the Commission. This decision he reversed and this reversal was in accord with his previous decision in the Brisbane Abattoir case that a prosperity loading was not a bonus.

Matters, however, had gone too far for conciliation efforts to succeed or for the £3 rise to satisfy demands. The demands of the rebel group had grown to include *inter alia* revision of the contract system, revision of the procedure for dealing with grievances, repeal of the bonus clause in the Act, and the recognition of the Mt. Isa Trades and Labour Council as the negotiating body, but the most strongly vociferated demand was that for the reinstatement of Mackie. Conciliation bogged down to a large degree on the difficult issue of representation. The Committee for Membership Control was not allowed to be represented at the conciliation proceedings nor was the Mt. Isa Trades and Labour Council a party as such, though certain of its officers were present in their capacity as craft union officials. A meeting arranged on 16th January, 1965, with the object of enabling Mr. Harvey to address the miners ended in disorder when Mr. Eager Williams, State Secretary of the A.W.U., was howled down.

The State Government attempted another intervention, apparently with the object of enabling the A.W.U. to regain control of its membership by excluding potential troublemakers from the scene. What it produced, however, on the 27th January, 1965, was a very drastic Order in Council which offended both left-wing and moderate union sentiment. Features of this order, also promulgated under the "state of emergency" proclamation, were firstly powers given to police officials to direct removal from the Mt. Isa field or to forbid entry to that field of any person whose presence the police official thought likely to prejudice a return to work, secondly provisions forbidding the writing or printing or speaking of any words or signs inducing or calculated to induce any person to do any act likely to prejudice a return to work. These provisions were implemented by the presence of extra police at the field and at air terminals and the prevention of Mr. McMahon, the President of the Mt. Isa Trades and Labour Council, from returning to Mt. Isa, his place of residence.

Strong reaction from union circles, including a threat by the Queensland Trades and Labour Council to declare a State-wide twenty-hour stoppage by its affiliated unions, caused the Government to withdraw the offending order. Thereafter the conciliation process was resumed, but although agreement was reached on what were described in the Press as the "industrial issues", viz. improvement of the contract system and grievance machinery, the ultimate rock on which negotiations came to shipwreck was the demand for Mackie's reinstatement, a demand which the Company refused to entertain.

Mackie, however, moved in February with an application to the Industrial Court and/or Commission which in part purported to be an appeal from the previous decision of the Industrial Magistrate but also in part purported to be an application for the exercise by the Commission of a jurisdiction to reinstate Mackie on the basis of the general powers given by the Act. On a summons for directors coming before the Industrial Court, Mr. Justice Hanger on 24th February, 1965, refused to hear the matter at all on the ground that a situation of threatened pressure existed, that is to say a decision would be accepted only if in favour of reinstatement.

On 17th February, 1965, the Company reopened the mine and offered to accept for employment men who had been employees of the mine as at the 14th December, 1964. The A.W.U. officially called on its members to return to work. A small number of employees returned and the trickle back to work increased slightly each week. Those returning had to face a barrage of abuse and name-calling from pickets and certain incidents of force and threats of force were alleged. The State

Government, in the belief that a situation of intimidation was prevalent, hastily passed an Industrial Law Amendment Act which came into force on 17th March. The Bill was passed through all its stages in one day. Though not as drastic as the January Order in Council, it did forbid *all* picketing at or near the mine, allowed the police to direct persons to remove themselves whenever the police officer formed a certain opinion, and converted into offences many acts of counselling or inducing which would have no connection or very slight connection with picketing.

This legislation, although it drew considerable criticism, failed to evoke the hostility which had greeted the January Order in Council, and a proposal to call a protest stoppage of all unions affiliated with the Queensland Trades and Labour Council was cancelled because of lack of support. The anti-picketing Act seems to have been administered in a very temperate manner by police concerned and it no doubt lent a considerable impetus to the trend to return to work. The stream of workers returning to work gradually increased. Mass meetings of the A.W.U. and of the craft unions finally agreed to a return to work. At the present moment the dispute might be regarded as ended except for the fact that the Company in a rather late change of attitude refused to accept the principle of "no victimization". Obviously with the hard core of the supporters of the Committee for Membership Control in mind, it changed its previous attitude as announced on the occasion of its reopening the mine in February and proclaimed that each case would be judged on its own merits: it is understood that approximately forty-six of those associated with the Committee for Membership Control have been refused re-employment.[2] It was reported in the Brisbane newspapers that the Company had recently refused to employ Mackie when he applied for work.

Evaluation of the Issues Involved

(1) *The Bonus Issue*

Although other issues supervened and played what could be regarded as a decisive part, the bonus provision undeniably was the original cause of the dispute. But for this, in my opinion, the dispute would not have arisen. In view of the prosperity of the Company it is almost certain that somewhere during the period 1961-1964 either the Commission would have ordered an increase or the Company would have negotiated it. For undoubtedly it was in reliance on the bonus legislation that the Company presented such an unchanging face in negotiation.

The provision that the bonus could be decreased but not increased probably looked more unjust than what it was. It merely expressed a philosophy that bonus payments were a matter of management pre-

rogative. I firmly believe that in the circumstances of time and place that philosophy was wrong. It is of course quite possible to argue that when it comes to a division of the element of profit, it should rest with management as to what decision it should make. The salient point, however, is that adjudication on bonuses within the machinery of the arbitration system had been in vogue for twenty-four years. It had been accepted as part of the *mores* of Queensland industrial relations at Mt. Isa that an increase in the prosperity of the company should be reflected not in an increase in the wage element as such but in this particular way. The bonus had also come to be regarded by the public at Mt. Isa as part of the compensation for the stresses and inconveniences of life in a remote part of the State. Moreover, a view that a bonus payment inherently pertains to the prerogative of management is by no means accepted in other countries. Thus, for instance, in the United States neither fringe benefits nor bonus payments are regarded as concessions made purely by grace of management. They are subjects of mandatory bargaining, that is to say they are topics to which the employer's obligation to "bargain in good faith" extends.

Once it be accepted that whether for reasons of principle or reasons of history, bonuses are fit to be regulated by the usual method of determining industrial matters in Australia, viz. by Court award, it represented an injustice thus violently to take it out of orbit as it were *unless some other effective method of determination was put in its place.* What I say under the next head will, I think, show that the substituted method stated in the Act was quite illusory.

The ultimate decision of Mr. Justice Hanger in the 1964 Mount Isa "bonus" case that the legislation does not forbid the granting of a prosperity loading might well have the effect of by-passing the intention of the 1961 Act and removing its sting. The fact remains, however, that the meaning of "bonus" remains legally doubtful and this doubt in future cases may well lead to expensive and time-consuming litigation. If, as Hanger J. said in another case, a "bonus" within the meaning of the Act requires some formal act of division of the Company's profits either by the Company itself or some third body, then the Mt. Isa bonus as existing at the time of the passing of the 1961 Act would not be a "bonus" under the Act. This in fact was argued by the union in the 1964 case.

(2) *Direct Negotiation*

The 1961 Act said that bonus payments could be determined by negotiation, i.e., by bargaining. This added nothing. Of course they could be. But there was no *duty* to bargain. If the framers of the 1961 legislation meant to import the elements of the system known as

collective bargaining, they forgot two facts on which the efficient working of that system, at least in the United States, depends. The first is that the American law places a duty on the employer to "bargain in good faith". This obligation is enforced by the National Labor Relations Board and it is not satisfied by going to the bargaining table with a resolve to grant no concession. Bargaining implies a willingness to concede, to chaffer, to trade point against point, to use arguments as bargaining tools. There seems no doubt that the 1961-64 attitude of the Company which indicated a willingness to meet the union but to concede nothing in any circumstances on the point of bonus, would not in the United States be regarded as bargaining in good faith. The second point is that in the United States—and this holds for Britain too—full-blooded bargaining would not be regarded as existing unless there was freedom to use as a last resort the weapons of industrial pressure, viz. strike and threat of strike. That freedom does not exist in Queensland. Assuming the continued existence of the arbitration system, it seems that "bargaining" in Australia can only exist as ancillary to that system, as a kind of top layer. It is hardly possible to try to put it on its own feet and ask it to stand alone. Bargaining as envisaged by the 1961 Act failed therefore because the Company sheltered behind the legislation and felt no obligation to make any concession.

The employees therefore lost the benefits of compulsory arbitration and were not given in lieu thereof a bargaining system which could be enforced. They got the worst of both possible worlds.

(3) *The Functioning of the Arbitration System*

With its powers emasculated, or seemingly emasculated, by the legislation, the Industrial Commission started at a considerable disadvantage in relation to the dispute. It is true that it was ultimately able, by virtue of the decision of Mr. Justice Hanger, to award a prosperity increase, but this came at a later stage when the dispute had become so complex and so many other factors had become involved that the situation was uncontrollable.

Once the refusal to perform contract work developed and the Mt. Isa Industrial Council and the Queensland Trades and Labour Council entered this scene, there was abundant scope for the exercise of the conciliation functions. Mr. Commissioner Harvey proved a tireless conciliator and did all that was humanly possible. However, the representation question proved a considerable stumbling-block. One could hardly exclude the A.W.U. and nobody in justice could contend that it should be excluded. Yet here was a large proportion of its membership repudiating its leadership and demanding that the Mt. Isa Trades and Labour Council act as the negotiating body. The Committee

for Membership Control was not admitted to the conciliation table. The Company refused to recognize it. There were not lacking people who contended that it should have a place found for it. Yet to what extent is it legitimate or ultimately wise for a conciliator to overlook the registered union, which after all is the official representative of that particular segment of workers, and refer to a rebel group within that union? Another strong difficulty in the way of conciliation was the clash of personalities involved. A large part of the appeal of Mackie lay in his personality and he was prone to making extreme statements which at times brought him into conflict even with officials of the Queensland Trades and Labour Council who on the whole supported his attitude.

One possibility for the exercise of the power of arbitration as distinct from conciliation lay in the question of Mackie's dismissal from employment. The dismissal of the prosecution of the Company under Section 101 of the Act merely turned on a technical point and did not involve the question whether *as a worker* Mackie had been in some way discriminated against. It was alleged that the Company regarded Mackie as a troublemaker and dismissed him for conduct which, however reprehensible, had been passed unnoticed on the part of other workmen. There is some legal doubt in Queensland as to the power of the Commission to reinstate or re-employ a worker except in the case where the dismissal of the worker is in breach of the award or an offence under Section 101.[3] However, the Act is widely phrased and to my mind would permit the exercise of such a power. The opportunity of testing this did not arise because Mr. Justice Hanger refused to hear the preliminary application. He refused to adjudicate in a situation of what he regarded as duress. What he probably had in mind was that if his decision was against reinstatement the Mackie group would not accept it, whereas if it was in favour it might be suggested that he had bowed to pressure. Much might be said for and against his attitude. It might be remarked that one of the fathers of the Federal system, Mr. Justice Higgins, frequently refused to adjudicate on union claims unless he first received an undertaking from both sides that they would accept his decision, though whether he would have applied this to a situation which amounted to a State industrial upheaval is open to doubt. The situation indeed was not quite on all fours. Whilst Mr. Justice Hanger first called on counsel for Mackie to define his attitude in the event of the decision being for or against his client, counsel naturally could not speak for any one but Mackie and could not undertake anything on behalf of the followers of Mackie. Whatever the legal niceties be, it seems very unfortunate that the merits of Mackie's dismissal remained unprobed and a strong allegation that he

had been discriminated against as an individual, which seemed to have at least some substance, was not authoritatively dealt with.

On the penal side, the arbitration system failed hopelessly or perhaps never properly got into gear. In so far as the dispute was settled (or at least petered out) by means of penal measures, those measures were those of the State Government. Though the injunction in respect of the refusal to work on contract was ultimately granted, no action was taken to enforce it. Indeed, the difficulties of applying such an injunction are obvious. In fact, the injunction was flouted. Some difficulty existed in elucidating whether a strike really existed. A strike is illegal unless a ballot has been first taken and here no ballot was taken before the reversion to work on hourly wages was decided upon. The definition of "strike" in Queensland includes the "go slow" method. The decision of Mr. Justice Hanger that the change in work methods constituted a strike within the definition drew some criticism, but if his judgment be examined, the judge does not rely on the mere fact of the change from contract work but on his view that the evidence showed that there was factually a slow-down in operations accompanying it and this had been intended as a result of combination. In my opinion the decision was legally unassailable.

Thus of the three elements which go to make up the Australian system of compulsory arbitration, arbitration was muzzled, conciliation had to cope with inter-union and personality questions as much as a straight employer-employee issue, and the penal side either failed or was supplanted by Government action before its effectiveness was tested.

(4) *The Emergency Legislation of the State Government*

After the rather feeble implementation attempted in December, this came in two major instalments. There was firstly the Order in Council of January, 1965. This contained most drastic provisions restrictive of the normal rights of citizens to freedom of travel and freedom to express opinions. It was probably designed to allow meetings of A.W.U. members to be held free from possible intimidation. However, the presence of such provisions would seem to be justified only by a state of acute national peril. One of the most objectionable features was the extent to which the illegality of certain actions was made to depend not on objective principles of law but on the opinion of a police officer, which need not be reasonably held and could not be challenged in the Courts in the case of an actual prosecution. Apart from the objections in principle, the legislation offended moderate union sentiment and was ill-timed at that particular juncture of the dispute.

The State Transport Act of 1938 indeed was a rather peculiar source

from which to draw the authority to enact these provisions. The Act gives power to declare a state of emergency in circumstances which seem to suggest some emergency caused by the forces of nature, for instance fire, flood or famine, and the objects specified in the Act to be dealt with by Orders in Council are those of securing the means of transport and the necessities of life. However, no legal challenge was made.

The second instalment was the Act of March. This was proclaimed by Government spokesmen as being an Act to cope with intimidatory picketing. The situation with lines of pickets intruding on Company property, the jeering and hurling of abuse and the indiscriminate and obviously perverse use of the word "scab" clearly need some corrective action. However, corrective machinery *was* present in the existing law. Section 534 of the Criminal Code contains provisions adequate to deal with intimidation and with picketing when it ceases to be peaceful. The 1965 Act, whilst it contained provisions against intimidation which were unobjectionable, also in terms prohibited *all* picketing in relation to the mine and the provisions which forbade words, speech or signs which were likely to induce persons not to resume work could make criminal a quiet expression of opinion over a beer at a hotel. The provisions regarding the power of the police to "move on" people were dependent, like most of the provisions in the January Order in Council, on opinions formed by police officers. Criticism on the part of the Opposition in the State Parliament was, however, largely muzzled by the fact that the Act closely resembled the anti-picketing Act of 1948 introduced by the Hanlon Labour Government to deal with the railway strike of that year.

It can be argued that the Act succeeded in its purpose, but this was largely due to the tactful and careful way in which it was administered by the police. They could, it seems, have acted equally efficiently under the existing law.

The use of emergency powers to cope with situations of industrial conflict must always be suspect. Successive Queensland Governments seem to have formed a habit of acting on the belief that a situation of industrial deadlock demands solution by a spectacular piece of "strong" legislation. Such legislation nearly always contains powers which exceed the needs of the situation. The fact that the legislation attained a measure of success must not blind us to the great invasion of the liberties of the subject involved in its provisions. The Mt. Isa situation was not quite normal and it is undeniable that once elements of force and disorder develop, the ordinary industrial law must give place to the criminal law, but the ordinary criminal law is usually adequate and should first be tried before emergency regulation is called in.

(5) *The Union Situation*

Both the intra-union situation and the inter-union situation were explosive, but it is hard to generalize. There was the internal situation of the union, the A.W.U. This is a very powerful union and its leading personalities develop strong views, express them strongly, and are very sensitive to adverse criticism. The feeling developed amongst rank-and-file miners that it was indifferent to their interests. The union could not be regarded as unduly Brisbane-based as historically its function has been to look after the interests of country workers. It cannot be denied, however, that it lost control of its members at Mount Isa and its local officials on the field could make no headway against the persuasiveness of Mackie. Undoubtedly the feeling developed locally that it was autocratically structured and in the early inception of the dispute not greatly interested in the aspirations of Mt. Isa workers. I do not know enough of the internal affairs of the A.W.U. to assess in any adequate way the justice of this feeling.

As regards inter-union relationships, when the Queensland Trades and Labour Council intervened there was considerable speculation as to the extent of Communist influence in view of the well-known Communist affiliations of some of its officials and some of the officials of its unions. However, it is incorrect to style the Trades and Labour Council as Communist dominated as the trend of many of its unions is left-wing or "militant" without being Communist. In fact, its members seemed to speak on the Mt. Isa situation with many voices and the extent to which it was genuinely in support of the Mackie group is extremely debatable. I think it a fair assessment as an outside observer to say that the Trades and Labour Council and the craft unions generally were inclined to use the occasion to discredit the A.W.U. and weaken its hold in Mt. Isa. Traditionally the craft unions have been at variance with the A.W.U. and the air in Queensland has frequently in the past been thick with accusations of member-filching on the part of the latter body. I would discount the possibility of the existence of any attempt on the part of anyone except individuals to deliberately obstruct settlement on the lines of Communist technique.

One feature of the dispute as it progressed was the way in which the Mt. Isa Trades and Labour Council gradually faded out of the picture and the Queensland Trades and Labour Council took control of it from the craft unions' point of view. No doubt this to a large degree depended on the fact that they were handlers of the strike relief money.

(6) *Other Considerations*

The strong and persuasive personality of Mackie cannot be ignored as a factor. A forceful and persuasive speaker, he was able to present himself as the victim of company discriminatory tactics and as the speaker for the underdog. Whilst no doubt it is an easy solution to regard him as a person in the hands of Communist influences, nothing really supports this, and in fact Government spokesmen seemed to regard him rather as a spearhead for a gangster element as witness the long list of his alleged convictions read out in the State Parliament.

The extent of Communist influence has, I think, been vastly exaggerated. The dispute began as a genuine industrial dispute though undoubtedly, as it developed, individual Communists tried to fish in the troubled waters. After all, this is only to be expected from their particular ideology. It seems more correct to style the Mackie group as anarchical than Communistic.

Summary

A heavy share of blame must rest on the State Government for its ill-conceived bonus legislation which set the stage for the ultimate explosion. Its handling of the dispute was at times maladroit, as was instanced by the ill-timed Order in Council of January. Whilst it was actuated throughout by the best of intentions and at times held its hand with praiseworthy restraint, its liaison with the trade unions was poor and its penchant for suddenly producing drastic legislation something to be deplored. The Company had been a good company in the paternalistic tradition and had a good record in the past in the way of schemes of housing and amenities for workers, but since 1961 its public image had been poor. In some quarters it was described as "faceless". If it inspired the inclusion of the bonus provision in the 1961 Act, its vision was poor, and its sheltering behind that provision showed great short-sightedness. Whilst its attitude in the final stages of the dispute was quite "correct", it is undeniable that its failure in the early stages to grant timely concessions had much to do with accentuating it. The third participant in the distribution of blame must be the A.W.U. for its inability to control its members and a certain defect in communication which made it easy to represent that it was not interested in the fate of rank-and-file miners. Concerning the rebel group, they were loud-mouthed, demagogic and irresponsible, but it is as idle to allot blame to them as it is to blame the elements which take part in a spontaneous combustion. Given the existence of legislation which either is or appears to be unjust, an employer who will not consider concessions and a feeling that the union is just not trying hard enough, and you have the stage set for the intrusion of elements which *may* be sinister but may be just irresponsible. It might also be added that whilst the defects of compulsory arbitration may be great and the virtues of

collective bargaining may be great, it is rather asking for trouble to abolish one facet of the compulsory arbitration system without being pretty sure what you are putting in its place.

FOOTNOTES

1. A paper given to the Seventh Annual Convention of the Industrial Relations Society, Terrigal, on 8th May, 1965.
2. In August, 1965, Mr. Commissioner Taylor of the Industrial Commission directed re-employment of all but one of these men on the ground that the failure to re-employ them involved discrimination on the part of the Company. This order is at present the subject of an appeal by the Company to the Industrial Court.
3. Since this paper was delivered the matter has come to a head. See Footnote 2.

The 1920 Civil Service and Teachers' Strike in Western Australia

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DURING the post World War I years, Western Australia experienced increasing financial deficits and concomitant price inflation. Among the chief sufferers in the squeeze between fixed incomes and increasing prices were the public servants and the teachers. Agitation for improvement culminated in a strike during the winter of 1920 which lasted about three weeks. It ended in a compromise, but did result in the establishment of two well-recognized employees' organizations. As this paper will show, this strike of the Western Australian public service employees and teachers is unique in many ways as to background, course of the strike itself, problems encountered, and results obtained.

FINANCIAL PROBLEMS OF STATE

Although the history of the dispute shows the culpability of the State Government, the financial situation of the Government certainly affords some understanding of the postures assumed by the several premiers in the years immediately preceding the strike. Apparently, the State's financial problems became acute after 1910. Then the system of federal payments to the States was changed from a percentage of customs receipts to a flat twenty-five shilling payment per person in the population. The money from the new formula was augmented by annual special grants, starting at £250,000 and diminishing annually by £10,000. But these payments were not enough to take care of the State's expenses which included at that time a considerable amount for developmental work, such as railway and road building. It may have been that in signing the agreement of 1909 changing the formula for federal payments, the Premier had over-estimated the population growth. At any rate, the twenty-five shilling payment proved inadequate, and the Government had a persistent annual deficit beginning in 1910.[1] Table 1 gives some indication of the impressive size of this deficit, which in 1923 had accumulated to £17.8.4 per head.

Whatever the reasons for this poor financial situation, the fact remains that the several premiers, from 1910 onward, had been faced with it, and had tried to keep the deficit down by whatever means were