COLLECTIVE BARGAINING IN PAPUA NEW GUINEA: TENSIONS BETWEEN POLICY AND THE LAW

by

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1 - INTRODUCTION

In the years after independence concern has been mounting about the level of governmental regulation of the collective bargaining process. In more recent years this concern has found expression in the form of complaints about the mechanisms for the determination of wages. Thus in March 1983, the Minimum Wages Board issued a determination whose effect was to place a ceiling of five per cent (5%) on wage rises for a three year period.[1] This determination, not unexpectedly, drew heavy criticism from the trade union movement, although it was welcomed by the Employers' Federation of Papua New Guinea. The trade unions argue that the system of centralised Government controlled wage-fixing is not only anathema to a system of collective bargaining which they would favour in principle but also has the effect of reducing in real terms the purchasing power of the ordinary worker in the face of an ever-increasing rate of inflation. On the other hand, the Employers' Federation president, in a recent address to the Industrial Relations Society of Papua New Guinea, was reported to have urged the Government to retain the Minimum Wages Board system because "[employers] consider that [doing away with the Minimum Wages Board System] would cause wages to sky-rocket... and there would be a multiplicity of awards."[2]

It is submitted that the controversy surrounding the wage-fixing system is only one symptom of discontent with the legal regime governing collective bargaining. Central to this discontent is the perennial conflict between a philosophy of free collective bargaining on the one hand, and, on the other hand, Government regulation of industrial relations not only in relation to the processes of collective bargaining but also in relation to the terms reached as a result of such bargaining.

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The conflict between a philosophy of free Collective bargaining on the one hand, and Government regulation, on the other, in PNG industrial law was identified before Independence by Paul Munro[3] as one demanding examination. This article seeks to do that and it is hoped that the article will, in part at least, excite further examination of this issue.

In 1979 Good and Fitzpatrick appeared to blame the situation in Papua New Guinea on what they perceived as a veiled but growing State opposition to trade unions.[4] Others have laid the blame at the door of the actors (employers and unions), particularly the trade unions.[5] This article suggests that the blame does not lie with the parties to collective bargaining in PNG, but rather in the legal regime within which they are required to operate. In other words, the fault does not lie with the actors but with the unsatisfactory script which has been handed to them.[6]

In this analysis collective bargaining is stipulatively defined as a continuing institutional relationship between an employer entity and a workers' organisation concerned with the negotiation, administration, interpretation and enforcement of agreements collectively reached to govern terms and conditions of employment.

2 - HISTORICAL OVERVIEW

The growth and development of workers organisations in Papua New Guinea are comparatively recent. The origin of the modern trade union movement in the country has been traced to as recent a date as 1959 by Metcalfe[7] and 1958 by Good and Fitzpatrick.[8] Until then, the enduring framework for the regulation of labour relations had been that set in the early days of colonisation. That framework was described in 1931 as "really rather like slavery".[9] Apologists have sought to present it as a system in which the colonial administration endeavoured to persuade a reluctant peasantry to make its labour available for economic activity in return for the protection of the labourer and of the colonised people generally.[10] The provision and retention of labour was served by the indenture system which used criminal penalties to ensure that the labourer worked and did not "desert" before the end of the period of contract. This compulsion was said to be needed because Papua New Guineans lived in "primitive affluence" and so lacked the "usual motivations" to labour and keep on labouring in plantations - "there was no pressing economic incentive". At the same time the law protected the labourer against "fraud and compulsion" and cruelty and injustice by the employer, and since, in the view of the apolo-

gists, the law was mostly complied with, the system "on the human level... was neither brutal nor particularly oppressive". It has further been postulated that, in terms of the interests of the people generally, an "enlightened" colonial administration aimed at "controlling the nature and rate of social change so as to preserve the people's social structure". The measures taken to achieve this end were said to be intended "to minimise the effects of development on traditional native life" and "to avoid the creation of a landless proletariat".[11]

The fallacy of this representation of the legal regime in the colonial period has been demonstrated by more recent research.[12] Research elsewhere also supports the theory that objectively - that is, quite apart from individual actors' intentions - the law in colonial societies served to impede the development of the colonised people.[13] More specifically colonial law was used to effect control by the colonist and an aspect of the control imposed by colonial law was its use to counter any tendency of the colonised people to organise outside the traditional context or independently of the colonist, and thus perhaps in opposition to him. "Law and the use of force which it serve[d] to 'legitimate' [were] particularly important in a colonial society; such a society [was], as between its disparate strata, markedly un-integrated and at this overall level most forms of social control subtler than law tended not to exist."[14] The relevance of that theory to Papua New Guinea is shown by the history of the emergence of trade unions in Port Moresby and Madang in the late 1950s, their advocacy and pressure not only for the conventional "industrial" objectives but also for wide-ranging social and political changes, and the Administration's reactions to that development.[15]

It is trite learning that historically labour was fragmented, with the result that there was a clear imbalance between the enormous power of the owners of capital and the insignificant power of the workers. Elsewhere workers in time realised the potential power that lay in speaking with one voice; so they formed trade unions. The reaction of the law was historically negative and suppressionist. Devices used against the nascent trade union movement ranged from criminal sanctions and the invention of so-called economic torts to declaring such organisations as having objects in restraint of trade and thus illegal combinations. The economic reasoning pressed in aid of these reactions was that any combination formed by workers to pursue collectively their interests was an unnatural interference with the operation of the forces of free enterprise, ie the forces of supply and demand.[16] In Papua New Guinea, as elsewhere, this reasoning ignored the fact that the owners of capital themselves were already organised in combinations.[17]

At the time when modern trade unionism was taking root in Papua New Guinea, these theories had long been discredited and rejected in the societies where they were nurtured. Accordingly, other reasons were advanced for discouraging the growth of trade unionism and therefore of collective bargaining in Papua New Guinea. Munro was able to say that "arguments... pointing to an absence at the 'grassroots level... [of a]... sound basis for unionism' are realistic". He cited in support the low memberships maintained by the various workers' associations, and asserted that "[u]nion leaders appear not yet to have learned the roles (sic) of industrial conflict and indeed may not for the foreseeable future aspire to the type of roles for themselves that have come to be regarded as foundational in the growth of many labour movements".[18] An Australian Tripartite Labour Mission, representative of government labour officials, trade unions and employer organisations, which visited PNG in October 1960, published a report in January 1961[19] which approved the absence of either formal industrial relations machinery or any attempt "to force the growth of trade unionism". The Tripartite Mission strongly urged that formal machinery for recognising trade unions, collective bargaining and dispute settlement procedures should be avoided. The Mission suggested, instead, that "[i]t could be that the need for comprehensive machinery... [to deal with industrial relations]... will never arise. Drawing on the experience of other countries we feel that the problem ought to be provided for at this stage simply by the Administration being ready, if the occasion arises, to nominate, say a senior officer of the proposed new labour administration element as a conciliation officer who would attempt to help the parties to find solutions to their problems".[20] That reflected the view of the colonial Administration which in its 1959 Annual Report had stated that "at [that] state of their development it would be very difficult for the indigenous workers to form proper trade unions. The great majority of workers are illiterates who would not be able to hold responsible positions in a trade union, and who, as members, would have difficulty in assimilating the aims and ideals of trade unionism".[21] This view had strong settler support.[22]

However, as Hess has pointed out, at this stage a real conflict of interests emerged between the Administration and the white settler community.[23] Such a conflict of interests must have represented a sharp turn of events since the settlers had strongly supported the view of the Tripartite Mission and that of the Administration. This is, however, easily explained. By 1961, the Papua New Guinea Workers Association had such demonstrable support that it was already clearly too late to prevent the colonial Administration from recognising it. Faced with that reality, the employer groups

sought to avoid the type of legal recognition which would lead to any system of tripartite industrial relations. "They wanted to deal directly with workers whose organisations were young and weak, whose leaders could easily be bought and which without a system of industrial relations would be left with only one power, the power to strike. With such organisations the employers would always be able to count on government support because of the disruptive social and economic effects of strike action".[24]

However, the inevitability of worker unionism having been accepted by the Administration, the latter preferred to control it within the framework of an industrial relations system rather than have it operating as a wild card in a potentially explosive social situation.[25] Another factor weighed heavily with the Administration: the change, which had by then occurred, from predominantly contract labour made it essential that workers' organisations be recognised, "as bargaining replaced authority as the only means of ensuring control over the workforce".[26]

The Administration's view prevailed, and a policy for resolution of worker dissatisfaction, not by suppressing it but by channelling it into acceptable paths, was accepted. In 1962 the Territory of Papua and New Guinea received its "Trade Union Law". Introducing the legislation in the Australian House of Representatives, the responsible Minister, Paul Hasluck, stated its purpose: "The principle to which we are dedicated is that of freedom of association. In this as in other fields in which we are promoting the advancement of the people, our method is to try to anticipate the need, to provide the opportunity, and to encourage the response, but not to bend an unready people into uncomfortable shapes of our own choosing... We have to clear a path but let them walk it" (emphasis mine).[27] That legislation, the Industrial Organisations Ordinance together with the Industrial Relations Ordinance (nos38 and 39 respectively of 1962), still forms the basic framework for industrial relations in the Independent State of Papua New Guinea. Today they are titled the Industrial Organisations Act, and the Industrial Relations Act.[28].

The legislation, by clearing the path but letting the parties to industrial relations walk it, might have been expected to epitomise the classic free enterprise situation in which the parties to the employment relationship are encouraged to use machinery, either of their own choosing or mandated by law, to reach through collective bargaining agreements which the law would then recognise as binding them. Indeed that has consistently been the stated perception of the political leaders of this young nation. The official approach to industrial relations points towards collective

bargaining as the underlying theme and the ultimately desired objective,[29] and implies that the legislation promotes that process. What seems to have eluded this perception is that the social and/or political circumstances in which the legislation was enacted resulted in a legal regime for collective bargaining that was designed to give the State considerable powers for governmental regulation of both the processes of collective bargaining and the terms of collective agreements. That regime, it will be argued, is inconsistent with the philosophy and logic of free collective bargaining espoused in the public utterances of policy-makers.

3 - NATURE, THEORY, AND LOGIC OF FREE COLLECTIVE BARGAINING.[30]

'Bargaining' as the term is used here, is the process whereby two persons with opposing interests arrive at, or attempt to arrive at, the terms of a transaction. Where two or more persons act as a unit on one or both sides the process is referred to as "collective bargaining".

However, whether the subject-matter of the transaction be property or labour, 'bargaining' does not occur between the parties unless each is able to force upon the other some concession, some abandonment of a preferred position, that is to say, unless each has 'bargaining power'. In the case of bargaining about the terms of a sale, Alexander Frey observed,[31] that the seller can exert very little pressure unless there is some degree of scarcity, some limitation upon the supply of that which he seeks to sell. This scarcity is the first essential of 'bargaining power'. Moreover, if the seller is offering something which it is advantageous to the buyer to purchase at some price, then the ultimate price which the seller receives, depends upon the respective resources with which each of the parties can withstand a deadlock. In other words, if the seller must sell to live, and if the buyer is free to refrain from buying, then - even in the extreme case where he controls the entire supply - he must accept the best terms offered, however far below what he regards as a "fair" price. Without some resources at the seller's command there is no element of 'give and take' in the situation. This is the second essential of 'bargaining power'.

Since at the least the Industrial Revolution, ie the mechanisation of the processes of production and the consequent introduction of the factory system, conditions have denied all but the most highly skilled workers the power to bargain individually with their employers on a basis of equality. Great cities which were the centres of the factory

system developed. The individual worker and his employer grew farther and farther apart socially and economically. The favourable atmosphere for personal conferences and resolution of disputes disappeared. Mass-production methods resulted in huge concentrations of labour and in a great increase in the percentage of jobs not requiring skilled work. Thus unskilled or semiskilled workers are today the vast majority of those employed or seeking employment, and their labour has little or no element of scarcity. This is particularly true of the labour market in Papua New Guinea.[32]

In short, under modern industrial conditions the individual worker is powerless to bargain with his employer with respect to the terms of his employment. Acting alone, he has no practical alternative but to accept the terms offered to him. But through unionisation he can secure at least a measure of the two essentials of bargaining power. First, unions provide a medium for concerted action by which the supply of labour available to an employer may be restricted, so that even unskilled labour in an era of unemployment can acquire some scarcity value. Secondly, unions through the medium of "strike funds" constitute a potential source of the minimum of capital which the individual worker must have if he is to be able to resist at all when deadlocked with his employer over terms and conditions of employment.

If there is an absence of bargaining power, or a pronounced disparity of bargaining power as to a significant class of buyers or sellers, then, experience has taught, government will intervene. It will either dictate to buyer and seller the terms of the transaction (thus removing it from the traditional bargaining process of free enterprise), or it will attempt to improve the bargaining power of the weaker side, so that the bargaining process, and the free-enterprise system, may continue to function without the injustice inherent in inequality. (Examples include infancy law, the usury statutes, and fiduciary standards). There is one factor relevant to PNG which is worth mentioning here. Many workers here and in a number of developing societies do have some resources to withstand a deadlock: they can revert to farming, and they may be able to rely on the traditional social security system.[33]

However, in PNG as elsewhere, the traditional social security system is over-strained and has usually proved unable to sustain a rapidly expanding population. When emergency conditions such as war or natural disaster disrupt the normal balance of bargaining power, temporary controls (as on rent, wages etc) may at times be instituted.

If it is conceded that under modern industrial conditions the individual worker, acting alone, has little or no bargaining power, then it must be recognised that he will be likely to endeavour to foster his interests by acting in concert with his fellow workers. If a free enterprise system is (rightly or wrongly) accepted, consistency requires collective bargaining. Accordingly, the appropriate way for the government to safeguard the individual worker is not by dictating the amount of wages to be paid to him, but by facilitating the development of organisations through which he may achieve the only kind of realistic freedom of enterprise available to him, namely, collective bargaining.

There can be little doubt that if collective organisation fails significantly to bring about substantial equality of bargaining power between employers and employees, then the government will attempt to aid which ever is the weaker side by dictating wages to be paid and received, by reference to 'floors' and 'ceilings'. Dictation by government of the terms of any transaction (even the establishment of "floors" and "ceilings") tends to set off a chain of governmental actions which increasingly restrict the areas of free enterprise. This is particularly true of the establishment of labour costs, for in order to effectuate its wage policy a government is likely to find it has also to concern itself with other costs and with prices, which in turn involve profits, the investment of capital, the use of property, and the myriad decisions which would otherwise be reached by the traditional process of free bargaining.

The prerequisites of collective bargaining are easily stated. Since the individual worker can bring himself within the framework of the free enterprise system only by bargaining collectively, it is essential that employers bargain with their employees only on a collective and not on an individual basis. This may not be achieved simply by a group of workers forming an organisation and agreeing to negotiate only as a unit with a given employer or potential employer. They do not thereby achieve any bargaining power with reference to that employer so long as he is able to obtain an adequate supply of competent employees on his own terms by dealing individually with other unorganised workers. Hence, if labour relations are to be determined by a genuine bargaining process, and not by governmental fiat, it is necessary either that employers voluntarily refrain from dealing with individual employees except on terms that have emerged from collective-bargaining negotiations, or that employers be precluded from such dealing by the organisation of substantially all available employees into one or more labour unions through which they will bargain only collectively.

The suggested self-restraint is hardly likely to occur: each employer (even companies employing huge aggregates of workers) will discount the danger of eventual governmental intervention on a national scale following upon the absence of genuine bargaining in his particular plant; each employer will convince himself that the terms and conditions of employment which he will unilaterally establish if the opportunity presents itself are fair and reasonable. It follows that bargaining as to employment conditions can occur only if employers cannot obtain adequate supplies of labour except by first negotiating terms and conditions of employment with an association of workers organised to bargain collectively.

It must be borne in mind that, just as in an ordinary sale there is always a specific subject-matter of the bargain, so every instance of collective bargaining is as to the terms and conditions of employment of the employees in a given bargaining unit. A bargaining unit is not a union; it is a group of jobs. It may be the jobs connected with a particular machine or operation; it may be the jobs of a particular craft, such as painters; it may be the jobs in a particular department of a plant; it may be clerical jobs or production jobs; it may be all non-supervisory jobs in a given plant or in all the plants of the employer. Collective bargaining cannot proceed until the bargaining unit has been established, whether by prior practice or custom, decision of an administrative agency, or agreement of the parties. With reference to a given bargaining unit, there may be more than one union to which divergent groups of the available workers belong. If so, the employer will have a choice of organised sources of his labour supply with which to bargain collectively, unless the operation of a labour relations statute or agreement between the unions to act in concert controls his choice.

Even if the employer has, however, no choice but to deal with one union representing all of his employees or potential employees in a given bargaining unit, he is not unfairly placed in the position of a would-be buyer of a commodity which has been monopolised by a single seller. The monopolistic commodity seller has many potential buyers to pit against one another, they being unorganised, while each individual buyer has, by hypothesis, no alternate seller with whom to deal. A labour union is a bargaining agency only if the workers comprising it act as one man in selling their labour. The difficulty or impossibility which an employer encounters in finding an alternative group of employees, when all potential employees are organised, is thus matched by the difficulty or impossibility which the union members, as a unit, encounter in finding another employer.

This unitary aspect of organised workers is an essential element of collective bargaining. There can be no collective bargaining as to the sale of labour without the right to strike and to lockout.[34] Unless those available for work in a given bargaining unit are permitted to act in concert in refusing to work, and unless the employer is permitted to withhold job opportunities from the members of the bargaining unit as a group, a bargaining condition as to labour relations cannot exist. There are several interesting corollaries to this conclusion. Where a condition of collective bargaining does exist, and the workers in a given bargaining unit embark upon a strike, they ought not to be privileged to exert other economic pressures upon the employer, such as inducing or persuading third persons to cease or refrain from dealing with him, so long as he either does not or cannot obtain labour to replace that of the striking members of the bargaining unit; and a refusal by another employer to employ the strikers while the strike is in progress ought not to be adjudged an unfair practice on his part. So-called "secondary" boycotts and sympathetic strikes are defensible, if at all, only in situations where the conditions of collective bargaining do not exist or where the strike is provoked by a genuine unfair practice of the employer. If, however, the employer replaces the striking members of the bargaining unit with non-union employees, neither the strikers nor the unorganised replacements have any actual bargaining power, and almost inevitably the strikers will attempt to exert forms of economic pressure upon the employer other than the futile witholding of their own services.

Outside the field of labour relations, the equivalent of a strike or a lockout is a normal element in the bargaining process. When buyer A (usually a company) is unable to reach an accord with seller X (usually another company), buyer A refuses to deal further with seller X, or vice versa, and each seeks a seller or a buyer elsewhere. But, as indicated above, when a bargaining impasse occurs between an employer and a union, resulting in a strike or a lockout, there is normally no other seller (ie an entire group of workers corresponding to those involved in the bargaining unit) for the buyer (ie the employer) to turn to, and there is no other employer from whom the workers as a body can obtain employment. The accuracy of this statement is not substantially affected by the fact that a few employees, as individuals, may be able to get some kind of temporary work elsewhere, or that the employer may be able to obtain a trickle of replacements for individual workers. Even if that were not always so, it would be in the case where a strike occurs in any plant in which the organised workers constitute a sizeable segment of the local community, because then the possibility of other jobs or other workers being obtained on a substan-

tial scale is illusory. Consequently, so long as the deadlock continues, the parties have no alternatives but to wait each other out, or to resume negotiations with each other.

However, a further factor peculiarly relevant to industrial relations is that the vast body of consumers constituting the public has a very real interest in not having the production of housing, food, and goods and services of other sorts interrupted, and that this may occur while the employers and employees engaged in such production slug out their differences over labour relations. Consequently, there are recurring proposals for legislation aimed at precluding strikes and lockouts, at least in those situations in which the public interest is vitally affected.

Here, then, is a perplexing dilemma: strikes which materially affect the production or distribution of essential commodities are inimical to the public interest, but legislation which curtails the right to strike, in effect eliminates collective bargaining, which is not an expedient way to protect the public interest, for the consequences of the cure may be worse than the disease. The situation is not, however, hopeless. There are at least two avenues of approach to the solution of this dilemma. One lies in an intensive and unremitting search for methods of improving the processes of collective bargaining. These could bring about a dramatic decrease in the number of ultimate disagreements, which are the sources of strikes and lockouts.

Gains may be expected from wise legislation, from intelligent administrative procedures, from understanding and acceptance by the parties of their responsibility so to conduct themselves as not to endanger the institution of collective bargaining. But, given all these, no doubt there will remain an irreducible minimum of disagreements, the disputants to which are unable to resolve on mutually acceptable, negotiated terms. Here the public interest in the avoidance of strikes and lockouts may be protected by promoting measures which will encourage self-restraint on the part of both employers and organised labour - a not impracticable task, for together these groups constitute an influential part of the public.

What is the second avenue of approach to the solution of the dilemma? If a buyer and a seller are fairly evenly matched as to bargaining power, there are several things that may happen: each may make some concessions, may recede somewhat from a preferred position, and an agreement may be concluded; or one may ultimately regard the other as so unreasonable as to render further negotiations futile, whereupon they will part company at least for the time being - the equivalent of a strike or a lockout in collective bargaining;

or, while unable to agree upon one or more of the terms of their bargain, they may both consent to take a chance within defined limits by submitting the controversy to an impartial third person for final and binding determination. This last procedure is arbitration, and in it lies the major hope of preserving the bargaining process in labour relations, and thus of saving both industry and labour from the evils of domination by officialdom.

Arbitration of labour disputes is an extension of collective bargaining, for voluntary arbitration of a dispute occurs only when the disputants are relatively equal in bargaining power.[35] If one of the parties to a dispute cannot afford to hold out for his contention, and the other suffers little or nothing by holding out for his, the stronger party, being in a position to prevail without risk of loss, will not agree to arbitrate.

This latter situation is that in which a worker finds himself if he is not fortified by the collective strength of a labour organisation. There are few, if any, instances in which a dispute over terms of employment between such a worker and his employer have been submitted to arbitration. On the other hand, the situation is ripe for arbitration when the parties to a dispute have exhausted their efforts to find a mutually satisfactory settlement, and yet each believes that the risk of detriment from a prolonged deadlock is greater than that from a determination of the dispute by an impartial third person. In consenting to arbitrate, the disputants, while unable to agree upon a solution of the substantive issue, agree upon a procedure for resolving it. When used in this sense, the term 'arbitration' refers to a voluntary process; it is a consensual matter, and "compulsory arbitration" is a contradiction in terms.

The late Professor Frey identified four principal reasons why "compulsory arbitration" will not provide an acceptable solution to the problem of finding means for the peaceful settlement of deadlocks between an employer and a union arising out of labour disputes. They are: (1) the minimising effect of "compulsory arbitration" upon genuine bargaining by the disputants; (2) the absence of standards without which the adjudicator could not avoid being (or at least seeming to be) either arbitrary or reactionary; (3) the tendency of "compulsory arbitration" to increase rather than to diminish disputes, because of the probable reluctance of at least one of the parties to "live with" the adjudicator's order, and (4) the impracticability of enforcement of the decree. None of these four reasons is conclusive. Nevertheless, it remains the case that compulsory arbitration is by definition a denial of the free-enterprise, "market" mode of

settling labour disputes. Therefore, whether it is practical or not, it is undesirable because it defeats the desirable features of free enterprise.

4 - THE LEGAL REGIME FOR COLLECTIVE BARGAINING IN PAPUA NEW GUINEA

The law[36] recognises the existence of industrial organisations and encourages them. Thus, s63 of the Industrial Organisations Act prohibits, even though in rudimentary and far from satisfactory terms, unfair labour practices on the part of management.[37] There are provisions enabling the funds of an industrial organisation to be spent on "the conduct of industrial disputes" and "the compensation of members of the Organisation for loss arising out of industrial disputes".[38]

The Industrial Organisations Act recognises the existence of 'registered' as well as 'unregistered' industrial organisations and seeks to control both of them. Some of its sections apply only to 'registered' industrial organisations,[39] one applies only to unregistered industrial organisations,[40] and the remainder apply to both.

The common regulatory provisions relate to the registered office of the industrial organisation;[41] matters to be provided for in its constitution;[42] qualifications, disqualifications, rights and obligations of members;[43] qualifications, disqualifications, rights and obligations of office bearers;[44] union democracy;[45] management of union funds;[46] unfair labour practices on the part of the union and its members as also on the part of the employer;[47] maintenance of records, submission of returns to the Registrar;[48] restrictions on specified activities during the currency of awards[49] and, among other things, penalties for breach of statutory duties.[50]

Every industrial organisation with a membership of not less than 20 employees or not less than four employers is required to be 'registered' or get dissolved.[51] Detailed provisions for 'registration' and issuance of the 'certificate of registration' have been made.[52] 'Registered' industrial organisations enjoy certain exclusive "rights, immunities and privileges".[53] These include corporate personality with perpetual succession and a common seal, powers relating to investment of funds and property, immunity from certain civil actions, and a declaration that their objects "shall not, by reason only of the fact that they are in restraint of

trade, be deemed to be unlawful" for the purposes of "criminal conspiracy" or rendering "void or voidable any agreement or trust".[54]

Unregistered industrial organisations, may sue or be sued under the name under which they operate or are generally known.[55]

In keeping with the policy of "channelling [workers organisations and their activities] into acceptable paths", the law in PNG recognises and provides for collective bargaining through what one may call 'voluntary', 'persuasive' and 'coercive' processes.[56] The voluntary processes include industrial councils and negotiation, as will be explained further below. It will also be submitted that persuasive processes are conciliation, mediation and Boards of Inquiry. The processes referred to here as coercive are the Minimum Wages Board and Arbitration. It is submitted that: (1) the requisites we identified as essential to a 'pure' system of collective bargaining in a free enterprise economy exist, if at all, only at the 'voluntary' and 'persuasive' levels; and (2) that the regulatory regime established by the law is not suited to a free system of collective bargaining. The latter is so at least because the regime is a carry-over from the colonial period and was intended for purposes other than the fostering of free collective bargaining.

A 'Voluntary' Processes

An industrial council is conceived as a voluntary body consisting of representatives of the employees, employee-industrial organisations, employees and employer-industrial organisations in a particular industry or trade for:

> "(a) fostering the improvement of industrial relations between employers and employees;
>
> (b) encouraging the free negotiation of the terms and conditions of employment of those employees; and
>
> (c) promoting the peaceful settlement of disputes or differences as to the terms and conditions of employment of the employees."[57]

It is now generally accepted that such institutions have not been a success, mainly because industrial organisations tend to view industrial councils as rival bodies. This tendency may be particularly pronounced in Papua New Guinea, for at least two reasons:

i. The Act requires representatives of employees and representatives of registered employee-industrial organisations to sit side by side in the collective bargaining process. This would tend to excite rivalry by enabling a body which includes non-unionised workers to negotiate terms and conditions on behalf of unionised workers, thereby: (a) undermining traditional union claims that only through unionisation are workers enabled to secure better terms and conditions of employment; and (b) giving rise to union suspicions that employers use the institution to "divide and rule" the workers.

ii. The functions of the Industrial Council are not limited to making comments. Section 5 of the Industrial Relations Act provides:

> "An Industrial Council may:-
>
> (a) make arrangements for the alteration of, or for the settlement of disputes or differences as to, the terms and conditions of employment of the employees represented on the Council by-
>
> (i) free negotiation; or
> (ii) conciliation or arbitration otherwise than under Part III;
>
> or
>
> (b) subject to Section 33, agree as to such terms and conditions of employment".

The statute stipulates that any agreement reached by the parties must be filed for registration and on being registered is deemed to be an award as between the parties to the agreement.[58] The registered award is binding on the employers and employees to whom it relates.[59] Indeed s44(2)(b) goes on to provide that as from the date of registration, the terms of an award are implied terms of the contract between the employers and the employees to whom it relates until varied by a subsequent registered award.

Obviously, the Council's power of entering into agreements, which may be registered and, thereby, be "deemed to be an award" affects the role of the registered industrial organisations in the collective bargaining process.

This institution might not have been offensive to the collective bargaining process if it had been limited to establishments whose employees were not organised; but it is not so limited. Industrial councils elsewhere are usually considered to be vehicles for the encouragement of bargaining between management and employees in establishments where workers are not organssed. In this sense, they are ad hoc arrangements which automatically become functus officio when industrial organisations come on to the scene.[60] Indeed the PNG legislation recognises this, but only in respect of the settlement of industrial disputes.[61]

Negotiation is another voluntary process provided for in the Industrial Relations Act. It is one of the main functions of industrial councils,[62] and the legislation contemplates a major role for it in the settlement of disputes.[63] Negotiation, as emerges from the legislation, suffers from the absence of a requirement to negotiate 'in good faith' despite the emphasis the Act lays on negotiation. Bargaining in good faith is a concept contained in the United States of America's National Labour Relations Act.[64] In general terms, the concept requires parties to collective bargaining to do more than hold conferences, exchange pleasantries, and engage in 'surface bargaining'. Its purpose is to bring to the bargaining table parties willing to present their proposals and articulate supporting reasons, to listen and weigh proposals and reasons of the other party, and to search for some common ground which can serve as the basis for bilateral agreement.[65] The PNG legislation provides for 'compulsory conferences' which are really compulsory negotiations,[66] but even in such cases there is no duty to negotiate in good faith although it is safe to assume that the 'compulsory conference' must have been conceived with such a notion in mind.

B 'Persuasive' Processes

These processes (conciliation, mediation and Boards of Inquiry) are referred to here as 'persuasive' in the sense that they are designed to induce the parties to negotiate solutions to their differences. They relate principally to the 'administration' phase of collective bargaining.[67]

Boards of Inquiry

Boards of Inquiry, as provided for in the Industrial Relations Act,[68] are bodies that the Head of State may establish to inquire into and report on such industrial relations matters as are referred to them. Section 9 of the Act

empowers the appropriate Minister to cause or permit to be published, in such manner as he thinks proper, the whole or part of the report of a Board of Inquiry. Boards of Inquiry affect collective bargaining tangentially through the effect which their reports may have both on the parties and on public attitudes to their respective bargaining positions. A Board of Inquiry is neither a decision-making nor indeed a collective bargaining authority. Its function lies in persuasion through enlightenment, although its activities may also lead Government to formulate or reformulate its policies in regard to wages and conditions of service. Thus, it provides another door through which Government may invade the realm of free collective bargaining.

Conciliation and Mediation

Both conciliation and mediation feature in the legislative scheme in relation to the settlement of disputes. Sections 27 and 28 of the Industrial Relations Act provide for conciliation and mediation roles for the Department of Labour either when one of the parties to negotiations so requests or where the parties are summoned to a 'compulsory conference'. A compulsory conference is called by the Secretary for the Department of Labour where after a specified period (currently 28 days) the parties have not settled their differences themselves. Indeed, s28(2) provides that a compulsory conference cannot be called if the parties to a dispute have an arrangement for the settlement of industrial disputes by conciliation and arbitration unless: (i) at the expiration of 28 days no settlement by means of that arrangement has been effected; or (ii) one of the parties refuses to proceed or proceed further under that arrangement; or (iii) the parties themselves consent to or request the conference.

It is submitted that the legislation should have provided a clearer manifestation of a policy whose emphasis is on encouraging a system whereby the parties make their own agreements and settle their differences themselves. This could have been achieved by stipulating that where suitable voluntary machinery exists by agreement of the parties (ie internally collectively-bargained dispute settlement procedures), the Secretary for Labour is under a mandatory obligation to refer the dispute for settlement in accordance with those dispute settlement procedures. This could be accompanied by a requirement that all collective agreements, awards, determinations and Common Rules presented for registration should contain satisfactory voluntary machinery for the settlement of disputes arising out of those agreements, awards, determinations and Common Rules. It should be manifestly the law's policy to rely on the parties' own endeavours towards settlement. The premise of such a policy

should be that the parties would resort to their own procedures, that they would endeavour in good faith to exhaust their procedures, and that only after they had done so to no avail would they themselves recognise the need for outside assistance and seek it.[69]

C 'Compulsory' Processes

Minimum Wages Board

The Minimum Wages Board established by the Industrial Relations Act,[70] is potentially the most pernicious of all the legislated processes in its effect on collective bargaining. The expression 'Minimum Wages Board' is a misnomer. The Board deals not merely with wages but with most of the subjects that usually engage parties to collective bargaining. Thus s14 of the Act provides:

> "(1) Subject to this Act, the Head of State, acting on advice, may refer to the Minimum Wages Board for determination any matter relating to minimum wages and conditions of employment of employees other than apprentices, including matters relating to:
>
> (a) minimum rates of pay; and
> (b) allowable deductions from wages for -
>
> (i) food, accommodation or issues supplied by employers; and
>
> (ii) recruitment and repatriation costs; and
>
> (c) deferred wages; and
> (d) allowances; and
> (e) penalty and overtime rates; and
> (f) hours of work; and
> (g) leave...
>
> (4) A matter may be referred to the Minimum Wages Board notwithstanding the fact that it is the subject of, or is connected with, an industrial dispute, whether or not the dispute is the subject of other proceedings under this Act". (Emphasis mine).

Furthermore, as is evident from the provisions of that section, only determined rates of pay are supposed to be 'minimum': all the other decisions of the Board are conclusive. Even the net rate of pay in practice at least has

tended to be determinative of the amount to be paid. It is thus clear that through the device of Minimum Wages Boards, the Government has the power to go beyond the regulation of the processes of collective bargaining and into the stipulation of the terms of what ought (according to the free enterprise model) to be freely negotiated collective agreements. The Act makes this clear in ss44(2), 14(4) and 15. It is apposite here to reproduce the provisions of ss44(2) and 15. (Section 14(4) has already been reproduced above.)

"44.(2) Subject to this Act -

(a) a registered award or a registered determination of the Minimum Wages Board is binding on the employers and employees to whom it relates; and

(b) as from the date specified in the award or determination or, if no date is specified, the date of publication of the notice under Section 43 in relation to the award or determination - it is an implied term of the contract between the employers and the employees to whom it relates that the wages to be paid and the conditions of employment to be observed under the contract are in accordance with the award or determination until varied by a subsequent registered award or registered determination."

"15. Notwithstanding this Act, where a matter has been, or is, referred to the Minimum Wages Board under Section 14 -

(a) no action, or further action, shall be taken under Part III on any industrial dispute as to any thing within the terms of reference of the Board; and

(b) no agreement shall be registered under Section 33 in relation to any such thing;

until -

(c) the determination of the Board has been registered under Section 40; or

(d) the end of a period of one month, or such further period as the Head of State, acting on advice, directs, after any reference of the determination to the National Executive Council under Section 41,

whichever first occurs."

Awards or registered awards, or indeed registered collectively bargained terms and conditions of employment cannot legally over-ride the provisions of a registered determination of the Minimum Wages Board. This institution of the Minimum Wages Board shackles collective bargaining in at least three ways:

1. it can take the initiative away from the parties to collective bargaining even before the parties have had an opportunity to bargain;

2. as ss14(4) and 15(a) and (b) make abundantly clear, even where the parties have taken the initiative, the subject-matter can be wrested from them before they have exhausted their own agreed procedures; and

3. during the currency of a registered determination of the Board, the parties are by law prevented from attempting through collective bargaining to alter the terms of the determination. One searches in vain for any guidance in the law as to what steps the parties to the employment relationship may take to persuade (let alone compel) the Head of State to initiate steps to vary those terms or to make another reference.

These legal fetters on the collective bargaining process - and thereby the worker and his union - underlie the discontent with the 1983 Minimum Wages Board determination. The workers' side are more detrimentally affected because the Government is at present probably the largest single employer in the country and it is manifestly worried about the effect of uncontrolled wage negotiations on its overall wage bill. In this there is a co-incidence of interests between the Government and the Employers Federation.[71] But where does that leave the avowed policy of encouraging the formation of trade unions and the promotion of industrial peace through the encouragement of collective bargaining?

Arbitration

Whilst recourse to arbitration is not compulsory in all cases, the power to refer industrial disputes to arbitration tribunals is vested in the Head of State acting through the Secretary for Labour. Section 29 of the Industrial Relations Act states that the Head of State may, if he thinks fit, and shall, if so required by the parties, make a reference to a tribunal for decision and the making of an award. Thus, even in relation to arbitration, collective bargaining is fettered with manacles in at least two respects:

1. the Head of State may, if he thinks fit, and this clearly irrespective of the volition of the parties, refer a matter to an arbitration tribunal. That tribunal then has power to decide the issue and make an award which, when registered,[72] is binding upon the parties. That would be so even if the parties were to reach on their own what they themselves considered to be a mutually satisfactory accommodation on the issues in contention;

2. the parties to collective bargaining are not able on their own motion to refer a matter to an arbitration tribunal, but have to go through the office of the Head of State. Since the Head of State is under an obligation to refer the matter to arbitration if so required by the parties, one wonders why the parties themselves cannot be placed in a legal position to refer the matter to arbitration?

In both of the above circumstances, it is to be regretted that the legislation offends the proposition that 'arbitration' is a voluntary process, that is, that it is a consensual matter. Consensual arbitration is envisaged by s28(2) of the Act,[73] but the law stops short of measures to shore up a system of private arbitration and the recourse thereto. Besides, the power vested in the Head of State to refer a dispute to an arbitration tribunal irrespective of the parties' volition, gestures towards a disinclination on the part of the law to accord a greater role to private arbitration arrangements.

D Further Shackles

The Industrial Relations Act reserves to the Government further powers of intervention in collective bargaining. Section 41 says that:

> "41.(1) Where the Registrar is of the opinion that an award or a determination of the Minimum Wages Board filed with him for registration under this Act -
>
> (a) in the case of an award - is inconsistent with a law; or
>
> (b) in the case of a determination - goes beyond the terms of reference of the Minimum Wages Board in relation to the matter in question; or
>
> (c) in any case, is -
>
> (i) contrary to public policy; or
> (ii) not in accordance with the best interests of Papua New Guinea,
>
> he shall refer the award or determination to the National Executive Council for consideration, with details of his reasons for his opinion.
>
> (2) The Registrar shall not register an award or determination to which Subsection (1) relates without the approval of the Head of State, acting on advice."

Non-registration of the award or determination renders it unenforceable and, therefore, deprives it of all legal authority. The effect is to render nugatory the whole process that may have led to the award. Furthermore, it is not immediately apparent why the ordinary courts should not be allowed to use their wide powers to rectify the situation where an award "is inconsistent with a law of Papua New Guinea" or a determination "goes beyond the terms of the reference". The motive behind the transfer of these issues from the arena of judicial decision-making to that of administrative, and indeed political (ie the National Executive Council

- the PNG Cabinet), decision-making can only be a desire to shackle the collective bargaining process. This proposition finds further support in the provisions of s42 which reads:

> "42.(1) The Head of State, acting on advice, may at any time disallow -
>
> (a) an award or a registered award; or
> (b) a determination or a registered determination of the Minimum Wages Board,
>
> on the ground that the award or determination;
>
> (c) is contrary to public policy; or
> (d) is not in accordance with the best interests of Papua New Guinea.
>
> (2) Notice of dis-allowance of a registered award or registered determination of the Minimum Wages Board shall be published in the National Gazette, and the award or determination ceases to have effect on the publication of the notice."

5 - CONCLUSION

The perennial question, of whether the proper function of law is limited to organisation for collective bargaining or whether the law should do more than that, is still with us and cannot be wished away. Should Government regulate not only the procedures for collective bargaining but also the terms of collective agreements, ie taking the law beyond the stage of recognition into the conference room?

The raison d'etre for government intervention in the collective bargaining process usually lies either in the need to provide equality of bargaining power between the parties or in the potential impact of collective bargaining on the national economy. The preference for collective bargaining over state paternalism, as a mechanism for settling industrial disputes, is rooted in the twin objectives of lasting industrial peace and the growth of industrial organisations as responsible democratic organisations.[74] The provisions we have been examining do not, however, appear to be necessarily related to those concerns.

It is time for the collective bargaining system in Papua New Guinea to be unshackled. Whatever the justification for the legislation in the colonial days, its continued existence is of doubtful utility today. Perhaps the national interest may be usefully safeguarded by providing for parliamentary control of governmental action in this field. To begin with, actions taken under these wide powers could be required to be placed before Parliament. Even if it is conceded that the assessment of the economic impact of collective bargaining and the formulation of policies thereon belong to the domain of governmental action (and that such action should not be delegated), governments ought to be made responsible to those from whom they derive power which, in the words of the preamble to the Constitution of Papua New Guinea, "belongs to the people acting through their duly elected representatives". Additionally, or alternatively, the national interest may be safeguarded by restricting compulsory arbitration to a limited number of sectors of the economy specifically designated as 'essential services'.

The present situation in the country provides a striking demonstration of the failure of a system which was conceived in isolation from the concrete social and economic realities of post-independence Papua New Guinea. The present state of the industrial relations system is one of instability in which there are powerful forces impelling it away from a state of equilibrium, and there are no forces capable of bringing it nearer the accepted goal of a collective bargaining system. There exists not merely a stagnating vicious circle of weak trade unions, a low level of collective bargaining, excessive state intervention, tending to further weakening of the unions and further decline in collective bargaining, but also a cumulative tendency towards the gradual elimination of collective bargaining altogether from the industrial relations scene.[75] We in Papua New Guinea must realise that trade unions in the developing countries have usually been novel institutions, that they are usually plagued with problems of leadership, membership commitment, financial and structural difficulties alongside ideological and political conflicts.[76]

The writings and experiences of other peoples, however much we admire them and however deeply we share their sentiments, must, it is submitted, be seen only as possibly helpful pointers, to be received and followed only with an informed scepticism and after sober appraisal. The time has come to either take sincere steps to make collective bargaining possible and practical, or to accept knowingly a policy of pervasive state dictation of terms and conditions of employment with no (or little) role for collective bargaining.

ENDNOTES

1. Minimum Wages Board Determination nol of 1983. Department of Labour and Employment, Waigani: March 1983.

2. Post Courier newspaper, (Port Moresby) August 2 1985, p2.

3. Munro, P, "Background to and some Research Needs in Industrial Law in Papua New Guinea", Undated mimeographed paper. It appears from the substance of the paper that it was written in the late 1960s or very early 1970s.

4. Good and Fitzpatrick, "The Formation of the Working Class" in Amarshi, Good and Mortimer (eds) Development and Dependency: The Political Economy of Papua New Guinea. (OUP 1979).

5. See eg Maino, A, Assistant Secretary for Industrial Relations, in "Development of Industrial Relations in Papua New Guinea", paper read at 10th Independence Anniversary Conference, University of Papua New Guinea, Port Moresby June 1985.

6. The unsatisfactory nature of that script in relation to individual trade unionists has been outlined in Seddon, N, "Legal Problems Facing Trade Unions in Papua New Guinea." (1975) 3 (nol) Melanesian Law Journal 103.

7. Metcalfe, P, "Port Moresby's Papuan Workers and their Association." MA Thesis, University of Auckland 1966; cited in Hess, M, "'In the Long Run' ... Australian Colonial Labour Policy in the Territory of Papua New Guinea", (1983) Journal of Industrial Relations 51, 64.

8. Op cit n4 supra at p130. See also, Kerr, J, "Trade Unions and Industrial Relations in Australian New Guinea" (1961) 3 Industrial Relations Journal, 17, who states that the year 1960 marked the beginning of trade union organisation in the country.

9. Murray, J, The Scientific Method as Applied to Native Labour Problems in Papua New Guinea (Port Moresby, 1931) p9.

10. See eg Smith, D, Labour and the Law in Papua New Guinea (Canberra, ANU 1975).

11. Ibid

12. See eg Fitzpatrick, P, "Labouring in Legal Mystification: a review of Smith, D, Labour and the Law in Papua New Guinea" (1976) 4 (no1) Melanesian Law Journal, 133; and his Law and State in Papua New Guinea (London, Academic Press 1980).

13. See eg Balandier, G, The Sociology of Black Africa (1970 Praeger, NY) 29.

14. Fitzpatrick, (1976) 4 (no1) MLJ pp133 and 135.

15. Kiki, A, Kiki: Ten Thousand Years in a Lifetime (1968) p97-99.

16. See eg Philadelphia Cordwainers Case (Commonwealth v Prellis) 1806, 3 Commons & Gilmore 59-248; a case discussed by Nelles, "The First American Labor Case," (1931) 41 Yale LJ 165.

17. See eg Justice Holmes, O, dissenting in Vegelahn v Guntner 167 Mass. 92 (1876) at 108; Hess, M, opcit, n7, supra.

18. Munro, P, op cit,n3 supra p10.

19. Department of Territories, "Report of the Tripartite Mission on Labour Matters to the Territory of Papua New Guinea, Sept.-Oct. 1960", p18.

20. Ibid. See also Pacific Islands Monthly, October 1960, p18.

21. Department of Territories, New Guinea Annual Report, Canberra, 1959, p105.

22. Hess, op cit, n7 supra pp62 etseq

23. Ibid. p66.

24. Id.

25. There had been many strikes in the period before unions were recognised but because of the predominantly contract systems of labour such strikes were disguised the strikers being dealt with as individual contract breakers.

26. Hess, op cit n7 supra p66.

27. Department of Territories, "Speech by the Minister", Canberra 1961, p6.

28. Revised Laws of Papua New Guinea, Chapters 173 and 1974 respectively.

29. Indeed, in April 1985, the Acting Prime Minister of Papua New Guinea, Fr. John Momis, stated that: "Collective bargaining is not new to us; Papua New Guineans, by virtue of their traditional communal system, have always been involved in collective bargaining. Indeed long discussions, compromise and consensus took place in traditional society. This correlates with the negotiations between trade unions and employers". Address to PEA-AAFLI Seminar on the Role of Trade Unions in Papua New Guinea. Port Moresby, April 15-19 1985. See also Report on Dispute Settlement And the Promotion of Industrial Peace in Papua New Guinea: 1962-1982 (Waigani, Department of Labour and Employment, June 1983), p12, where it is stated that the "the whole tenet of [the] legislation is bipartite collective bargaining between the parties involved".

30. In this part I have borrowed heavily from the late AH Frey's very lucid exposition of the subject in "The Logic of Collective Bargaining and Arbitration", (1947) 12 Law and Contemporary Problems, 264.

31. Ibid. p265.

32. PNG Department of Labour and Employment, op cit n29 supra p6.

33. Useful analyses of the social security system known in Papua New Guinea as the "wantok system" can be found in Ballard J, "Wantoks and Administration". Public Lecture delivered at UPNG on May 26 1976; and Kajumba, S, "Wantokism as an ideology of the oppressed". (Mimeograph, 1983).

34. See on this subject, Kaburise, J, "The Right to Strike by Public Employees in Papua New Guinea" (1985) 15 Zambia Law Journal (forthcoming) cf Collymore and Anor. v A-G. for Trinidad and Tobago (1969) 2 All ER 1207 (PC).

35. Perhaps what matters is not the parties' actual power as their respective perceptions of their own and the other's power. A strike or lockout may occur when the parties are very unevenly balanced, but each thinks he can hold out longer. In this calculation, the effects of public support/antipathy, and of possible political intervention, also play a part.

36. The legal regime is contained in the Industrial Organisations Act (Chapter 173 Revised Laws of Papua New Guinea) and the Industrial Relations Act, Chapter 174. The latter Act is stated "to be incorporated and read as one with the Industrial Organisations Act".

37. Similar provisions appear in s63 of the Industrial Relations Act. They seek to protect the employee from being injured by the employer on account of industrial action.

38. Industrial Organisations Act, s54(1)(e) and (f).

39. Ibid ss9, 10, 11, 12-30, 41-46, and 56.

40. Ibid s47(1).

41. Ibid s47(1).

42. Ibid s48 and the Schedule to the Act.

43. Ibid ss33-38, 62.

44. Ibid ss37 and 39.

45. Ibid s61.

46. Ibid Part VI.

47. Ibid s63.

48. Ibid ss56-59.

49. Ibid s64.

50. Ibid s69.

51. Ibid s8.

52. Ibid ss9-26.

53. Ibid Part IV, ss27-30.

54. Id.

55. Industrial Organisations Act, s31.

56. This nomenclature is borrowed from Anandjee "Employee's (sic) Instruments of Economic Coercion in Industrial Relations and the Law in Papua New Guinea." (Mimeographed. First Draft, UPNG, undated), p22.

57. Industrial Relations Act (PNG) (Revised Laws c174), s4.

58. Ibid s33(i).

59. Ibid s44(2)(a).

60. See eg Industrial Relations Act, no4 of 1980 (Swaziland), Part V.

61. Industrial Relations Act (PNG), ss26 and 28(2).

62. Ibid s5(a)(i).

63. See in particular, ibid ss25-27.

64. Popularly called the Wagner Act, it requires the parties to "confer in good faith". The relevant provisions (ss8(a)(5), 8(d) and 9(a)) have been held to establish an obligation to "bargain" in good faith. See eg Fireboard Paper Products Corp., v National Labour Relations Board 379 US203, (1964).

65. Smith, "The Evolution of the 'Duty to Bargain' Concept in American Law" (1941) 39 Mich L Rev 1065; Gould, W, A Primer on American Labor Law (Cambridge MIT Press, USA 1983), p109; Miller, "The Enigma of Section 8(5) of the Wagner Act," (1965) 18 Ind & Lab Rel Rev 166; Gorman, R, Labor Law: Text (West Publishing Co USA 1976) Chapter XX.

66. Industrial Relations Act (PNG), s28.

67. See the definition of collective bargaining which appears at the beginning of this article.

68. Industrial Relations Act (PNG), Part II, Division, and s24(2)(b).

69. An example of such a policy is contained in the Trade Unions and Trade Disputes Law 1964 (Lesotho).

70. Industrial Relations Act (PNG) Part II, Division 3.

71. The Employers' Federation president, Flynn, B, said that much in the speech reported in the Post Courier newspaper. See, n2, supra.

72. Industrial Relations Act (PNG), ss32(2) and 44(1) & (2).

73. See text on ppl10-112 supra.

74. For an illuminating discussion of the merits of collective bargaining, see Laffer, K, "Problems of Compulsory Arbitration in Australia", International Labour Review vLXXVII, no5 May 1958, and "'Compulsory Arbitration' and 'Collective Bargaining'" (1962) 4 Journal of Industrial Relations 146.

75. Papola identified a similar state of affairs in India in 1968. See Papola, T, "The Place of Collective Bargaining in Industrial Relations Policy in India", (1968) 10 Journal of Industrial Relations 25.

76. See Millen, B, The Political Role of Labour in Developing Countries, (The Brookings Institution, Washington, DC, 1963); Sufrin, S, Unions in Emerging Societies: Frustration and Politics, (Syracuse University Press, Syracuse, 1964); Walter Galenson (ed), Labour and Economic Development, (John Wiley & Sons, New York, 1959), and Labour in Developing Economies, (University of California Press, 1963); Dunlop, J, Industrial Relations System, (Henry Hold and Company, New York, 1958).