

Statutory Recognition Provisions in Britain, 1976-1980

Les stipulations en matière de reconnaissance légale en Grande-Bretagne 1976-80.

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Article abstract

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P.B. Beaumont

This paper assesses the extent to which the union movement in Great Britain was able to realise in practice the potential advantages of the statutory recognition provisions.

In Britain there has long been policy pronouncements favouring the encouragement of union organisation and collective bargaining arrangements. For example, Britain has ratified ILO Convention No. 98 which obliges governments «to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers organisations and workers organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements». However, despite such statements there was no general, legal support for union recognition in Britain prior to the 1970s. Admittedly Government administrative, as opposed to legislative, activity was an important stimulus to union growth, particularly during the two war periods¹. However, by the mid-1960s this type of assistance and support was seen by certain trade unions, most notably those seeking to organise white collar workers, to be an increasingly inadequate substitute for statutory recognition provisions. The extent of such union concern about the absence of statutory recognition provisions had reached such a stage by the mid-1960s that the following motion was passed at the annual meeting of the Trades Union Congress in 1966:

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¹ Allan D. FLANDERS, «The Tradition of Voluntarism», *British Journal of Industrial Relations*, Vol. XIII, No. 3, November 1974, pp. 355-6; see also George SAYERS BAIN, *The Growth of White Collar Unionism*, Clarendon Press, Oxford, 1970, Chapter IX.

This Congress ... calls upon the Labour Government to give effect to the ratification of ILO Convention 98 by legislative action. Such legislation should contain provisions which establish the right of workpeople, through their trade unions, to collective bargaining rights and place on the employers an obligation to concede all the rights of representation which emanate from union membership.²

These sorts of demands for statutory union recognition provisions, which were put forward by a number of academics as well as by various unions in their evidence to the Donovan Commission (1965-68),³ were eventually met by provisions of the *Industrial Relations Act 1971*. These provisions were, however, little utilised in practice due to the unions' general 'boycott' of this Act; the workload of the relevant third party, decision making body (i.e. the Commission on Industrial Relations), which had been involved in recognition claims on a non-statutory basis from 1969 to 1971, was relatively light, involving less than 50 claims in a four-year period⁴. As a result of this limited usage the recognition issue did not figure prominently in the debate over the repeal of the 1971 Act. Nevertheless a number of potentially useful operational lessons appeared to emerge from this particular experience. These lessons included the factors held to be relevant in the determination of the appropriate 'bargaining agent' and 'bargaining unit',⁵ and the operational difficulties of trying to ensure employer compliance with third party recommendations for recognition in the presence of relatively weak sanctions⁶.

The second experience with statutory recognition provisions in Britain came during the years 1976-80 when Sections 11-16 of the *Employment Protection Act 1975* were in operation⁷. These provisions resulted from the Labour Government coming into office in February 1974 on the basis of an explicit agreement with the unions. This agreement, or 'social contract', involved the TUC committing the union movement to wage restraint in return for certain legislative and economic gains; among the legislative gains were these recognition provisions⁸. These statutory recognition provisions were

² *Annual Report of the Trades Union Congress*, 1966, pp. 389-90.

³ See, for example, Allan FLANDERS, *Collective Bargaining: Prescription for Change*, Faber and Faber, London, 1967, pp. 39-45.

⁴ Bernard JAMES, «Third Party Intervention in Recognition Disputes: The Role of the Commission on Industrial Relations», *Industrial Relations Journal*, Vol. 8, No. 2, 1977.

⁵ CIR Study No. 5, *Trade Union Recognition: The CIR Experience*, HMSO, London, 1974.

⁶ JAMES, *Loc. cit.*

⁷ For an outline of these provisions see S. KESSLER and G. PALMER, «Reconsidering Recognition», *Personnel Management*, July 1975.

⁸ See A.W.J. THOMSON, «Trade Unions and the Corporate State in Britain», *Industrial and Labor Relations Review*, Vol. 33, No. 1, October 1979, pp. 39-41.

utilised far more extensively than those of the 1971 Act. Moreover, they provided the relevant third party, decision making body (i.e. the Advisory Conciliation and Arbitration Service), with probably the most controversial and troublesome aspect of its overall workload. The difficulties of satisfactorily operating these provisions derived from a variety of problems, most notably, inter-union rivalry for recognition, employer opposition to such recognition and a number of 'restrictive' court rulings on the criteria the Advisory Conciliation and Arbitration Service (henceforth referred to as ACAS) was to apply in recognition claims⁹. For example, following the much publicised *Grunwick* case, where the House of Lords ruled that ACAS had a duty to ascertain the opinions of *all* groups of workers likely to be affected by the recognition claim, the extent of employer non-co-operation with ACAS increased through time; the ACAS Annual Report for 1980 indicated that such non-co-operation only occurred in nine of the first 150 claims, but by the time the provisions were repealed (August 1980) such difficulties were being experienced in over 50 of the 248 outstanding cases¹⁰. These difficulties had in fact reached such a stage by mid 1979 that the Chairman of ACAS drew attention to them in a letter to the Secretary of State for Employment¹¹. Following this letter the Government issued a working paper in September 1979 which stated that «... the experience of operating these statutory procedures does raise the question whether it is necessary or valuable to have statutory provisions of this kind to deal with these matters ...»¹². And subsequently, the *Employment Act 1980* repealed Sections 11-16 of the *Employment Protection Act 1975*. The result is that statutory recognition provisions do not currently exist in Britain.

The purpose of this paper is *not* to review the whole range of behavioural and legal issues raised by the operation of statutory recognition provisions in Britain during the period 1976-80,¹³ but rather to assess the extent to which the union movement was able to realise in practice the potential advantages of these statutory recognition provisions. In order to undertake such an exercise, we must first specify the conditions that must be fulfilled by a union movement seeking to realise the potential advantages of such provisions. The relevant conditions, which are developed in the next section by reference to the notion of union organising costs, are the *incen-*

9 For a general summary of these difficulties see H.A. CLEGG, *The Changing System of Industrial Relations in Great Britain*, Basil Blackwell, Oxford, 1979, pp. 408-21.

10 ACAS Annual Report 1980, HMSO, London, 1981, pp. 76-77.

11 This letter is reproduced in the *ACAS Annual Report, 1979*, HMSO, London 1980, pp. 108-12.

12 See *Department of Employment Gazette*, September 1979, p. 874.

13 For such a review see P.B. BEAUMONT, *Trade Union Recognition: The British Experience 1976-80*, Employee Relations Monograph, MCB 1981.

tive that certain unions had to push for the introduction of such provisions; the *ability* to introduce them was provided, as indicated earlier, by the existence of the 'Social Contract'. In making this point it should be emphasised that not all unions were particularly interested in the establishment of statutory recognition provisions. They were, for example, of relatively little interest to many of the well established manual unions in highly organised industries, such as coal, steel and the railways. The leading advocates were very largely the unions seeking to organise the white collar grades of labour in relatively expanding industries such as insurance, banking and financial services.

UNION ORGANISING COSTS AND STATUTORY RECOGNITION PROVISIONS

The most useful way of introducing and developing the notion of union organising costs is to consider a number of *changing* characteristics of the British system of industrial relations that raised questions about the adequacy of the traditional, voluntary methods of trying to achieve union recognition, and consequently suggested the potential value of having statutory recognition provisions. The first such feature was the changing nature of bargaining structure that was increasingly apparent in Britain from the 1960s. This period of time witnessed a continuing, strong movement away from a system of predominantly multi-employer, industry level collective bargaining to one of single employer bargaining conducted at the plant, and to a lesser extent the company, level¹⁴. And the potential importance of formal, statutory provisions to deal with 'substantial recognition problems' is very much enhanced in a system characterised by single employer bargaining arrangements,¹⁵ simply because of the inevitably greater volume, and more complex nature, of recognition issues in such a system. The second relevant factor was the relatively high *overall* level of work-force organisation that had come about in Britain by the early 1970s. The position was that by the early 1970s some 50 per cent of the total workforce (64.7 per cent of the manual workforce) were unionised, while some 72 per cent of the total workforce (83.2 per cent of the manual workforce) were employed under the terms and conditions laid down in col-

¹⁴ The most comprehensive evidence is presented and analysed in D.R. DEATON and P.B. BEAUMONT, «The Determinants of Bargaining Structure: Some Large Scale Survey Evidence for Britain», *British Journal of Industrial Relations*, Vol. XVIII, No. 2, July 1980.

¹⁵ On this point see Alan GLADSTONE and Muneto OZAKI, «Trade Union Recognition for Collective Bargaining Purposes», *International Labour Review*, Vol. CXII, August-September 1975, pp. 165-67.

lective agreements¹⁶. These relatively high base figures suggested that the union movement might well face substantial difficulties and costs in attempting to increase the proportion of the workforce that was organised in the near future, particularly if reliance was placed solely on the traditional, voluntary methods of attempting to achieve recognition. In other words, the unions had to consider the possibility that something of a *saturation point* in the extent of overall workforce organisation¹⁷ might be uncomfortably close to hand.

The third and final background consideration was the fact that both the *industrial* and *occupational* distribution of employment was continuing to move strongly against the traditionally highly organised sectors of employment. And as a result the overall level of workforce organisation would be difficult to maintain, much less increase, in the near future. In this regard Price and Bain,¹⁸ for example, estimated that if the industrial distribution of employment had not changed between 1948 and 1974 union membership and density would have been greater by about 8 per cent. This adverse, industrial distribution effect was compounded by the strong shift of employment towards the relatively unorganised white collar section of the workforce. Indeed this occupational trend was of such magnitude that Price and Bain predicted that overall union density would fall below 50 per cent by the end of the decade if the existing levels of white collar and manual worker unionisation were simply maintained and not increased¹⁹.

In the face of such adverse industrial and occupational distribution of employment trends the availability of statutory recognition provisions is likely to become of major potential importance to any union movement. This is because the union movement is no longer in the position of being able to enjoy substantial membership gains through the simple mechanism of employment increases in the traditionally well organised sectors of the labour market, which have such extensive closed shop arrangements. In such circumstances the potential importance of statutory recognition provisions to any union movement is that they can arguably assist unions to make inroads into the relatively little organised sectors of the labour market. This

¹⁶ These figures are taken from P.B. BEAUMONT and M.B. GREGORY, «The Role of Employers in Collective Bargaining in Britain», *Industrial Relations Journal*, Vol. 11, No. 5, November/December 1980.

¹⁷ Julius REZLER, *Union Growth Reconsidered: A Critical Analysis of Recent Growth Theories*, Kossuth Foundation, New York, 1961, p. 4.

¹⁸ R.J. PRICE and G.S. BAIN, «Union Growth Revisited: 1948-74 in Perspective», *British Journal of Industrial Relations*, Vol. XIV, No. 3, November 1976, pp. 341-44.

¹⁹ PRICE and BAIN, *op. cit.*, p. 347. For some preliminary evidence on this prediction, see *New Society*, 26 June 1980, p. 358.

assistance would largely come about on the *supply* side of the market through a reduction in union *organising costs*, which are likely to be a function of (i) workforce characteristics (e.g. sex, occupation); (ii) establishment characteristics (e.g. plant size); and (iii) the existence and extent of employer opposition to the organisation of their workforce. There has in fact been no explicit, detailed theoretical or empirical treatment of the extent and nature of union organising costs. However, such cost considerations are invariably drawn upon to justify the inclusion of certain variables in multivariate studies of inter-industry, inter-area etc., variation in the level of workforce organisation²⁰. More generally, a number of contributors to the 'saturationist versus historical school' debate over the future growth prospects of the American labour movement have made extensive reference to the important role of union organising costs²¹. Indeed the saturationist position is essentially based on the notion of the inordinately high costs facing unions in their attempts to organise the currently under-organized sectors of the labour market.

In summary, statutory recognition provisions can, at least in principle, help unions to penetrate the hard to organise sectors of the labour market. In Britain there are likely to be two quite *dissimilar* groups of hard to organise employers:²² (i) the industries with relatively low levels of white collar organisations; and (ii) the relatively few unorganised plants situated in industries with relatively high levels of manual worker organisation. These are likely to be the two major target groups for unions using statutory recognition provisions. However, for the potential advantages or benefits of such provisions to be realised in practice there must be evidence that the following conditions have been met:

- (i) there is a significant concentration of recognition claims in these relatively hard to organise sectors of the labour market;
- (ii) there is a significant concentration of 'successful' (i.e. those which involve a third party recommendation for recognition) claims in these relatively hard to organise sectors of the labour market; and
- (ii) there is a significant concentration of employer compliance with the third party recommendations for recognition in these relatively hard to organise sectors of the labour market.

²⁰ See, for example, Barry T. HIRSCH, «The Determinants of Unionisation: An Analysis of Interarea Differences», *Industrial and Labor Relations Review*, Vol. 33, No. 3, January 1980, p. 151.

²¹ For an overview and testing of some of the hypotheses generated by this debate see William J. MOORE and Robert J. NEWMAN, «Determinants of Differences in Union Membership Among the States», *Proceedings of the Industrial Relations Research Association*, Winter 1973, pp. 188-96.

²² For some trade union evidence on this matter see *Annual Report of the Trades Union Congress*, 1967, p. 130.

The explicit setting out of these three conditions clearly indicates both the *opportunities* and *challenges* that the availability of statutory recognition provisions poses for a union movement in a system of industrial relations characterised by the structural features discussed above. The point is that high organising cost considerations should lead unions to disproportionately concentrate their initial recognition claims in the relatively hard to organise sectors of the labour market, but these very same cost considerations are likely to militate against the union movement successfully fulfilling conditions (ii) and (iii) above. In other words, the presence of high organising costs, *ceteris paribus*, place unions seeking to organise such workers in a relatively weak position which will make the potential advantages of statutory provisions attractive to them, but at the same time particularly difficult to realise in practice.

Accordingly, in the remainder of this paper we consider the extent to which the above three conditions were fulfilled in Britain during the period of operation of Sections 11-16 of the *Employment Protection Act 1975* — i.e. the period 1976-80.

AN OVERVIEW OF USAGE

Under Section 11 of the *Employment Protection Act 1975*, an independent trade union could refer a recognition issue to ACAS and when ACAS received such an application, it examined the issue and tried to settle it by conciliation. If a settlement could not be reached by agreement, ACAS made further inquiries which included finding out the views of the workers covered by the claim. Unless the reference was withdrawn, ACAS was required to prepare a written report setting out its findings, any recommendation for recognition and the reasons for making or not making a recommendation — i.e. the Section 12 stage. A recommendation for recognition was not directly enforceable, but if the employer did not comply with it the union concerned could complain to ACAS under Section 15 of the Act. And, if ACAS was unable to settle the matter by conciliation, the union could seek a unilateral award of terms and conditions of employment from the Central Arbitration Committee under Section 16 of the Act.

In Table 1 we set out the total number of Section 11 recognition references which went to ACAS, the particular stage at which they settled and their outcome. The contents of Table 1 indicate that the overwhelming majority of recognition references were settled at the initial (Section 11) conciliation stage of the procedure. Indeed, only 247 references went through to a full, published report at the Section 12 stage of the procedure

out of the total number of 1,610 references. At the Section 11 stage just under half (47 per cent) of the 1,115 settlements resulted in the union being fully or partially successful in securing recognition. The union 'success rate' at the full statutory, Section 12 stage was greater, with approximately 65 per cent of the reports recommending full or partial recognition. The ACAS Annual Report for 1980²³ indicated that recognition had been accorded to about 65,000 workers as a direct outcome of all Section 11 references, with some 49,000 of these employees receiving such coverage as a result of settlements at the initial, Section 11, conciliation stage. These figures can be put into some perspective by noting that the total coverage figure (i.e. 65,000) only constituted 0.27 per cent of the total workforce (of approximately 24,000,000) in the mid 1970s and only 0.35 per cent of the existing workforce then operating under the terms and conditions of collective agreements.

TABLE 1
Total Number of References under Section 11,
with their Stage of Settlement and Outcome
(1 February 1976 — 15 August 1980)

<i>Stage</i>	<i>Outcome</i>	<i>Number</i>
Section 11	Full recognition accorded to union as a result of its application	306
	Partial recognition or representational rights accorded and accepted by union as satisfactory	143
	Section 11 application withdrawn for further negotiations between union and employer where union has been fully or partly successful in securing recognition	69
	Union claim to recognition withdrawn because of low membership and support	336
	Union claim withdrawn for other reasons	195
	Section 11 application withdrawn for further negotiations between union and employer where union has been unsuccessful in securing recognition	13
	Application for reference withdrawn for technical reasons	53
	References where inquiries (conciliation, survey, etc.) were taking place prior to draft report	220
	References where draft reports were under consideration	28
	References reported on under Section 12	247
Total references		1,610

Source: ACAS Annual Report 1980, Tables 17-19.

²³ ACAS Annual Report 1980, p. 99.

In the remainder of this paper there are three basic sets of evidence drawn upon in our attempt to assess the extent to which the union movement in Britain met the three conditions set out earlier, and thus realised the potential advantages or gains of these statutory recognition provisions. The three sets of evidence are as follows: (i) an industry distribution of Section 11 claims set out in the relevant annual reports of ACAS; (ii) the unit characteristics and ACAS recommendation in each claim that went to the full statutory stage of a Section 12 ballot and published report;²⁴ and (iii) an independent follow-up by Incomes Data Services on the implementation (or not) of ACAS recommendations for recognition in the period of time following the issuance of a Section 12 report²⁵.

THE INDUSTRY LEVEL EVIDENCE

In order to consider the fulfillment (or not) of our first basic condition for realising the potential advantages of statutory recognition provisions, we set out in Table 2 the relevant industry distribution (at the 2 digit industry level) for the initial Section 11 claims by individual year and for the period as a whole.

The industries which stand out in Table 2, in terms of the proportion of claims accounted for by them, are clearly Food, drink and tobacco, Mechanical engineering, the Distributive trades, Professional and scientific services and Miscellaneous services; for the period as a whole these five industry orders accounted for just under 43 per cent of the total number of Section 11 references. Furthermore, we sought to assess the stability of industry rankings in the use of these procedures across this period of time by computing Spearman (rank) correlation coefficients. These clearly revealed that the high (low) industry users of the Section 11 recognition procedures in one year were very much the high (low) industry users in the other years²⁶.

In order to explore the data in Table 2 further, we examined the nature and strength of the relationship between these figures and existing levels of workforce organisation. The statutory recognition provisions were seen from their inception as very much an instrument for white collar organisa-

²⁴ All of these published reports were made available by the ACAS regional office in Scotland. The relevant data was extracted, coded and processed at Glasgow University.

²⁵ Their follow-up findings are set out in *IDS Brief* No. 114, August 1977; 125, January 1978; 132 May 1978; 135 June 1978; 138 August 1978; 148 January 1979; and 188 September 1980.

²⁶ The Spearman correlation coefficients, which were all statistically significant, ranged from 0.523 to 0.888.

TABLE 2
References under Section 11 Analysed by
Industry Group in which Employer was Engaged

<i>Industry Group</i>	<i>1976</i>	<i>1977</i>	<i>1978</i>	<i>1979</i>	<i>1980</i>	<i>1976-80</i>
	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
Agriculture, forestry and fishing	0.6	0.3	—	0.4	—	0.4
Mining and quarrying	0.2	0.3	—	—	—	0.2
Food, drink and tobacco	6.7	8.3	5.0	6.6	4.3	6.9
Coal and petroleum products	0.9	0.5	2.2	0.4	—	0.9
Chemicals and allied industries	5.8	5.7	7.2	6.2	5.7	6.1
Metal manufacture	2.6	1.2	0.7	0.9	1.4	1.5
Mechanical engineering	7.6	10.9	13.2	9.2	1.4	9.7
Instrument engineering	1.5	3.6	5.4	1.7	—	2.9
Electrical engineering	7.2	5.4	3.9	7.0	11.4	6.1
Shipbuilding and marine engineering	3.9	1.6	0.7	0.4	1.4	1.9
Vehicles	2.8	3.8	0.7	7.4	1.4	3.4
Metal goods not elsewhere specified	4.0	1.6	0.4	2.6	—	2.1
Textiles	2.4	2.8	2.9	2.2	—	2.5
Leather, leather goods and fur	0.2	0.5	—	—	—	0.2
Clothing and footwear	3.5	3.5	1.8	2.6	2.8	3.0
Bricks, pottery, glass, cement etc.	0.9	2.0	3.6	2.2	4.3	2.1
Timber, furniture etc.	3.0	1.6	1.4	3.0	7.1	2.4
Paper, printing and publishing	3.5	4.5	4.3	0.4	1.4	3.5
Other manufacturing industries	5.6	2.9	2.9	5.3	4.3	4.1
Construction	2.2	3.8	3.9	4.8	—	3.4
Gas, electricity and water	0.2	0.2	—	—	—	0.1
Transport and communication	5.0	4.3	2.2	3.0	8.6	4.2
Distributive trades	9.8	8.2	12.5	8.8	4.3	9.3
Insurance, banking and business services	7.8	5.0	5.0	2.6	4.3	5.4
Professional and scientific services	3.7	5.9	7.2	8.3	22.9	6.6
Miscellaneous services	8.0	10.0	10.4	13.6	13.0	10.2
Public administration and defence	0.4	1.6	2.5	0.4	—	1.2

Source: ACAS Annual Report 1980

tion, but in practice far from all recognition claims were for white collar workers only; in 1979, for example, only a little over half (118) of the 227 Section 11 references were for white collar workers only²⁷. Accordingly, we extracted data from the 1973 New Earnings Survey on the proportion of *both* male manual and non-manual employees working in each industry under the terms and conditions laid down by collective agreements²⁸. We then entered these two agreement coverage variables in separate regression equations, together with the proportion of total employment accounted for by each industry. The latter is an essential *control* variable as our dependent variable (i.e. column 6, Table 2) is in the form of the proportion of the total number of cases accounted for by each industry, which does not *weight* for the fact that large sized industries are likely to significantly influence the industry distributions in Table 2 simply because of their above average *absolute* number of unorganised relationships. The two coverage variables had to be entered in separate regression equations because of the predictably high degree of multi-collinearity between them ($r = 0.65$). The results of this estimation exercise (with *t* statistics in parentheses) were as follows:

$$\begin{aligned} \text{ID}(1) &= 4.270 \text{ CONST} - 0.052 \text{ NMCAC} + 0.553 \text{ EMPLOY} \\ &\quad (2.1) \qquad\qquad (2.9) \qquad\qquad (5.0) \\ &\quad (R^2 = 0.54; \quad F = 14.06; \quad N = 27) \end{aligned}$$

$$\begin{aligned} \text{ID}(1) &= 5.595 \text{ CONST} - 0.046 \text{ MCAC} + 0.458 \text{ EMPLOY} \\ &\quad (2.5) \qquad\qquad (1.7) \qquad\qquad (3.9) \\ &\quad (R^2 = 0.45; \quad F = 9.71; \quad N = 27) \end{aligned}$$

The control variable, employment size, is predictably highly significant in both equations, but the interesting result from a behavioural point of view is that for non-manual collective agreement coverage. This has the expected negative sign and is statistically significant, thus indicating that the unions disproportionately concentrated their organising efforts in the industries with relatively low levels of white collar organisation. The variable for manual worker collective agreement coverage is also negatively signed, but falls short of statistical significance. The indication is that the manual worker only claims were more randomly distributed across industries²⁹.

In summary, these findings would seem to suggest that the unions very largely fulfilled condition (i) of the three conditions that the unions must

²⁷ ACAS Annual Report 1979, p. 22.

²⁸ New Earnings Survey, 1973, HMSO London, 1973, Table 110.

²⁹ There was little difference in the results when the relevant female coverage figures were substituted for their male counterparts. This lack of change was hardly surprising as there was predictably a close relationship between male and female non-manual coverage ($r = 0.84$) and between male and female manual coverage ($r = 0.70$).

meet in order to realise the potential advantages of statutory recognition provisions. This is clearly an important step in the right direction from their point of view, but as we indicated in the previous section, it is conditions (ii) and (iii) that are likely to be the hardest to meet. Whether these conditions were successfully fulfilled is a matter that will be examined in the next sections of the paper.

THE DETERMINANTS OF A RECOMMENDATION FOR RECOGNITION

In this section we concentrate solely on the full statutory stage of the procedure where a recognition issue was not settled by conciliation or withdrawn and ACAS was required to issue a formal report under Section 12 of the Act. In undertaking this analysis it is important to recall that only a relatively small proportion of recognition claims went through to this full statutory stage (see Table 1); these 'hard to settle' claims are obviously concentrated at the heart of the hard to organise employer group(s). The importance of our subsequent analysis, therefore, follows not from the number of claims that are involved, but rather from the fact that the public policy controversy surrounding these provisions was almost entirely centred on the Section 12 stage of the procedure. In concentrating on this particular subset of claims, one should not, however, lose sight of the union gains at the Section 11, conciliation stage (see Table 1); gains that arguably would not have been realised in the absence of Section 12 as a 'back-up' stage.

The Section 12 reports examined here are based on the questionnaires or ballots that ACAS used to 'ascertain the opinions of workers to whom the issue relates' by enquiring about their union membership, if any, whether they wished to be represented by a union in negotiations with their employer, and whether it should be the union(s) making the reference. The full set of published Section 12 ballots were examined with a view to extracting a full set of data from the ballots of workers; the result was a set of 249 observations for the recognition claims of an individual union from a total of 228 published reports. In this set of 249 observations there were 38 different unions involved, with the major ones being the Transport and General Workers Union with 21.3 per cent, the Association of Scientific, Technical and Managerial Staffs (20.5 per cent), the Amalgamated Union of Engineering Workers (Technical, Administrative and Supervisory Section) (11.6 per cent) and the Association of Professional, Executive Clerical and Computer Staff (6.8 per cent). More than half of the cases (56.2 per cent) involved non-manual workers only, 35.3 per cent involved manual workers only, and 8.4 per cent involved both manual and non-manual

workers. A quite sizeable range of industries was represented in the set, but with the largest individual groups being the Distributive Trades (12.9 per cent), Mechanical engineering (9.6 per cent), Food, drink and tobacco manufacturing and Professional and Scientific services (both 7.6 per cent), Chemicals and allied industries (6.8 per cent) and Miscellaneous services (6.4 per cent). The basic results of the ballots were an ACAS recommendation in favour of full recognition in 59.8 per cent of cases, a recommendation for partial³⁰ recognition in 4.0 per cent, and with recognition being *not* recommended in the remaining 36.1 per cent of cases.

In the remainder of this section we consider the influence of certain specified unit characteristics on the likelihood of receiving a recommendation for recognition from ACAS. This type of analysis has been undertaken on the outcomes of union representation elections³¹ and more recently on union decertification outcomes³² in the United States. The unit characteristics hypothesised to influence the likelihood of receiving a recommendation for recognition are argued to operate through the level of employee support expressed for the union bringing the claim. This does not seem an unreasonable operating assumption in view of our basic figures which indicate a mean level of employee support of 63.2 per cent (standard deviation = 19.1) in claims where recognition was recommended, compared to a mean figure of only 34.6 per cent (standard deviation 20.2) in claims where recognition was not recommended.

The basic framework of analysis employed here builds on the argument of Farber and Saks³³ that, at the level of the individual employee, if the expected utility from the job becoming a union job is higher than from it not becoming a union job, then the individual will vote for the union. If we aggregate up from the individual employee to the bargaining unit level of analysis, then this utility based choice or decision will be made under the combined influence of union and employer arguments and pressures so that our potential explanatory variables can be grouped under three basic sub-

³⁰ A partial recognition recommendation may, for example, have involved a recommendation that the union be recognised only for matters at the discretion of the local plant management. See P.B. BEAUMONT, A.W.J. THOMSON and M.B. GREGORY, *Bargaining Structures, Management Decision*, Vol. 18, No. 3, 1980, pp. 150-51.

³¹ See, for example, Joseph B. ROSE, «What Factors Influence Union Representation Elections?», *Monthly Labor Review*, Vol. XCV, 1972, pp. 49-51.

³² See, for example, John C. ANDERSON, Gloria BUSMAN and Charles O'REILLY, «What Factors Influence the Outcome of Decertification Elections?», *Monthly Labor Review*, Vol. CII, November 1979.

³³ Henry S. FARBER and Daniel H. SAKS, «Why Workers Want Unions: The Role of Relative Wages and Job Characteristics», *Journal of Political Economy*, Vol. 88, No. 2, April 1980, pp. 351-4.

headings: (i) the attractiveness of the individual union seeking recognition; (ii) the attractiveness of unionism and collective bargaining coverage in general; and (iii) the extent and nature of employer opposition to recognition in general, or to the particular union seeking recognition.

Our first sub-vector of variables must take account of the argument that the supply of union organising services will vary in direct proportion to the incentives on individual union leaders to expand their organisations³⁴. The implication of this argument is that there is likely to be a wide variation in the amount of resources that individual unions are willing to allocate to recruitment and organising activities. It has already been noted that a disproportionate number (60.2 per cent) of our Section 12 cases involved only four unions. This we assume is reasonably representative of the extent of their involvement across the full range of recruitment and organising activity. Accordingly, we expect a higher level of worker support, and thus a greater probability of a recognition recommendation, in cases involving these four unions on the grounds that they are the most committed to expanding their organisations and have therefore devoted relatively more attention and effort to the task of persuading workers to vote for them. The basic figures indicate that these four unions received a recommendation for recognition in 64.9 per cent of their claims, which may be compared to the 53.5 per cent 'success rate' of the other unions.

A second potentially relevant variable under this sub-heading is suggested by Berkowitz's comment that:

... the function of organising ... is a selling job designed to convince workers of the wisdom of attaching themselves to unionism in general and to one union in particular. If competing unions are in the field, the task becomes at once easier and more difficult. The rivals might, quite unconsciously, aid each other since both are interested in overcoming opposition to the idea of unionism; yet their tasks are more difficult since each is attempting to sell its own differentiated brand of the product.³⁵

The essence of this argument is that the presence of *union competition* in recognition claims is a double-edged weapon from any one union's point of view in that it is likely to raise the proportion of respondents in favour of collective bargaining coverage *in general*, but lower the proportion of respondents in favour of any one union. It is the latter proposition that we are concerned with here as the issue of inter-union competition was one of the major difficulties that ACAS claimed to have faced in operating the statutory recognition provisions³⁶. In an attempt to measure, or at least pro-

³⁴ See, for example, Monroe BERKOWITZ, «The Economics of Trade Union Organisation and Administration», *Industrial and Labor Relations Review*, Vol. 7, No. 4, July 1954.

³⁵ BERKOWITZ, *op. cit.*, pp. 580-1.

³⁶ ACAS *Annual Report*, 1980, pp. 73-76.

xy, the intensity of this inter-union competition, we took the difference between the percentage of respondents in favour of collective bargaining *in general* and the percentage of respondents voting in favour of representation by the particular union bringing the claim. The hypothesis here was that the greater this difference (i.e. the more voted has gone to other unions) then the more intense was the inter-union competition and hence the less the likelihood that the union bringing the claim would receive a recommendation for recognition. The basic figures certainly supported this proposition, with the difference being 4.9 per cent in cases where recognition was recommended, and 7.5 per cent in those claims where recognition was not recommended.

The final variable under this particular sub-vector is the size of the workgroup involved in the claim. The expectation here is that recognition is more likely to be achieved in the case of smaller sized workgroups³⁷. The *a priori* basis for expecting such a relationship is that the job related interests of workers in such units are likely to be more homogeneous in nature, which makes the unions 'selling job' somewhat easier — i.e. the union concerned will appear a much more attractive proposition to any individual employee if he is reasonably confident that most of the other employees in the unit want essentially the same thing from the union. Certainly our basic figures supported this hypothesized relationship; the mean unit size was 256.7 employees in claims where recognition was recommended, compared to 566.1 in claims where recognition was not recommended.

In view of the extensive body of literature on the alleged differences in the general attitudes of manual and non-manual workers towards the institution of trade unionism it was important to investigate the influence of this particular factor. The essence of the argument about the alleged differences in attitudes is that non-manual workers who join unions are assumed to be motivated primarily by *instrumental* considerations which are sufficiently strong to outweigh their principled objections to unionism, whereas manual workers are assumed to be motivated primarily by a principle commitment to unionism³⁸. This perspective would seem to imply that there should be lesser support for collective bargaining *in general* among non-manual workers. There was in fact little support for this particular proposition with the mean number of non-manual respondents wishing collective bargaining coverage in general being 61.8 per cent, compared to 59.7 per cent of the manual worker respondents. However, as only 53.2 per cent of

³⁷ See the findings and discussion in Gary M. CHAISON, «Unit Size and Union Success in Representation Elections», *Monthly Labor Review*, Vol. XCVI, February 1973, pp. 51-2.

³⁸ For a summary and critique see George SAYERS BAIN, David COATES, and Valerie ELLIS, *Social Stratification and Trade Unionism*, Heinemann, London, 1973, pp. 126-36.

claims involving non-manual workers only received a recommendation for recognition, compared to 72.7 per cent of claims for manual workers only, it is essential to control for this variable in our estimating equations. Under this second sub-vector of influence we also entered as a variable the percentage of eligible voters in the unit who did in fact vote. This 'turn-out' variable was hypothesized to have a positive influence on the likelihood of receiving a recommendation for recognition, in that the higher the turnout the greater the interest in unionisation and collective agreement coverage in general. The basic figures, however, provided no obvious support for this particular hypothesis; the mean turnout rate in claims where recommendation was recommended was 83.2 per cent and 84.1 per cent in cases where it was not recommended.

Ideally, we would like a measure of the extent of employer opposition to recognition in general, or to the particular union involved in bringing the claim. In the absence of such a direct measure we computed the *length of time* between the date of notification of the recognition claim to ACAS and the date of the published Section 12 report. The mean length of time involved was 14.3 months (standard deviation = 7.4), with our hypothesis being that the greater the length of time taken to hear the claim, the lower the likelihood of a recommendation for recognition. This time factor we argue is a reasonable proxy for the extent of employer opposition to union recognition, although we recognise that other factors may also operate to lengthen the time period involved in hearing and reaching a decision on a claim³⁹.

It is especially important to explicitly test for this length of time influence as earlier experience in Britain,⁴⁰ as well as experience in the United States,⁴¹ has indicated considerable union concern over the likelihood that the longer the time taken to hear a claim, the lower the probability of them receiving a recognition recommendation. Our basic figures were certainly consistent with this contention in that the mean length of time from referral to report was 13.1 months in the cases where recognition was recommended, compared to 16.5 months in the cases where recognition was not recommended.

Finally, in considering the industries in which the recognition claims occurred we differentiated the four industries where existing collective

³⁹ See, for example, *ACAS Annual Report*, 1978, p. 29.

⁴⁰ JAMES, *ibid.*, pp. 38-40.

⁴¹ See, for example, Richard PROSTEN, «The Longest Season: Union Organising in the Last Decade», *Proceedings of the Industrial Relations Research Association*, Winter 1978, pp. 240-49.

agreement coverage for the male non-manual workforce was below 30 per cent (SICs V, XII, XV, XVII) from the rest. In the case of these particular industry orders one could argue that employer opposition will be greatest in them because of the lack of a tradition of widespread organisation — i.e. employers in such industries are less likely to feel the 'odd man out' in opposing recognition claims, and may genuinely believe, on the basis of historical experience, that union organisation is not appropriate to the circumstances of their industry. On the other hand, one might want to argue that the real source and strength of employer opposition to current recognition lies in the relatively few unorganised establishments in the relatively highly organised industries. This is because it is these establishments that have held out for so long against unions in the face of a strong, surrounding tradition of workforce organisation. These two potentially offsetting hypotheses make an *a priori* prediction about the sign on the industry variable difficult. However, the basic figures indicated that 78.4 percent of the claims in these low organised industries received a recognition recommendation compared to only a 57.3 percent success rate in the remaining industries.

This completes our set of potential explanatory variables and in Table 3 we set out our basic correlation results. The signs on all the variables were as expected, with five of the seven attaining various degrees of statistical significance. The two most highly significant variables were the difference between the vote for collective bargaining coverage in general and that for the individual union bringing the claim (a proxy for the intensity of inter-union competition) and the length of time from referral to report (a proxy for the extent of employer opposition). These were followed by non-manual status, the claims of the unions most heavily involved in the Section 12 claims (i.e. the particular union) and unit size, with all relationships being in the predicted direction. A series of stepwise multiple regression equations were then estimated,⁴² with the best fit equation being defined in terms of the step at which the predictive power of the equation was maximised (using the adjusted R^2). In this best fit equation only inter-union competition and the particular union variables were statistically significant, but too much should not be made of the significance (or not) of any individual variable because of the extensive pattern of multi-collinearity that was present

42 It is acknowledged that the use of ordinary least squares to estimate an equation containing a dichotomous dependent variable may give rise to certain statistical biases. Theoretically more sound techniques (e.g. logit or probit analysis) do exist, but various studies employing both these and ordinary least squares have in practice found little difference between the two sets of results. See, for example, Morley GUNDERSON, «Retention of Trainees: A Study with a Dichotomous Dependent Variable», *Journal of Econometrics*, Vol. 2, No. 2, April 1974.

among virtually all the variables that were significant in Table 3. The fact of the matter is that there were strong interdependent relationships between non-manual status, inter-union competition, unit size and the length of time involved in reaching a decision on the claim. This pattern of interdependence is illustrated by the following mean statistics for the measure of inter-union competition, unit size and the time involved for both manual and non-manual claims separately.

TABLE 3
Pearson Correlation Coefficients between Independent Variables and an ACAS Recommendation for Recognition

<i>Variables</i>	<i>Correlation Coefficient</i>
Particular union	+ 0.14515**
Inter-union competition	- 0.29131***
Unit size	- 0.12433*
Non-manual	- 0.17302**
Turnout rate	+ 0.01765
Time involved	- 0.21793***
Industry	+ 0.08614

*significant at the .10 level

**significant at the .05 level

***significant at the .01 level

TABLE 4
Measure of Inter-Union Competition

	(1) <i>Non-manual claims</i>	(2) <i>Manual claims</i>
(1) Unit size	538.7 (median = 100.5)	86.2 (median = 35.5)
(2) Time involved	16.6	11.3
(3) Inter-union competition	12.6	3.2

These basic figures clearly indicate that the non-manual recognition claims were overwhelmingly characterised by intense inter-union competition, large unit size and took a relatively long period of time to be heard and decided. These are *all* factors that strongly militate against a union achieving recognition and thus go a long way towards explaining why only 53.2 per cent of claims involving non-manual workers only received a recommendation for recognition, compared to 72.7 per cent of claims for manual workers only. These results, therefore, clearly provide little support for any notion that the unions realised the potential advantages of statutory recognition provisions by disproportionately winning recommendations for recognition in the key, under-organised sector of the labour market — i.e. the growing, white collar sector of employment. As a consequence, it would appear that condition (ii) for union success under such provisions was not in fact fulfilled.

In the next section we consider the fulfillment (or not) of the third and final condition. The non-fulfillment of condition (ii) would at first glance seem to make this something of a non-starter as a question. This is certainly true in relation to the non-manual claims (the first group of hard to organise employers), although we would argue that the union movement could still obviously gain in relation to the second group of hard to organise employers — i.e. the relatively few unorganised plants situated in industries with relatively high levels of manual worker organisation.

THE EXTENT OF EMPLOYER COMPLIANCE WITH A RECOMMENDATION

The issuance of a third party recommendation for recognition is far from constituting an automatic guarantee that such recognition will in fact come about. According to Philip Ross⁴³ such a recommendation is unlikely to ensure the establishment of collective bargaining arrangements for a union with a precarious employee majority in favour of it, or for one which faces persistent employer opposition. This perspective leads him to suggest that whether a contract is signed following an order to bargain is an important test of the effectiveness of the National Labor Relations Board. On this question, Richard Prosten recently reported some figures which indicated that approximately 35 per cent of units were not under contract five years after representation elections had been won by unions in the year 1970⁴⁴. In

43 Philip ROSS, *The Government as a Source of Union Power*, Brown University Press, Providence, Rhode Island, 1965, pp. 258-9.

44 PROSTER, *op. cit.*, pp. 246-7.

Prosten's view recognition recommendations which did not actually result in the establishment of collective bargaining arrangements were relatively easy to predict on the basis of employer behaviour during the course of the hearing and decision making process. This behaviour being reflected in the relatively long period of time taken to hear and reach a decision on these recognition claims.

In Britain the importance of examining this particular hypothesis, and indeed the whole question of the extent of employer compliance with recommendations for recognition, is suggested by the finding that not all of the earlier Commission on Industrial Relations recommendations for recognition, during the period of operation of the *Industrial Relations Act 1971*, were in fact implemented⁴⁵. This result was alleged to be reasonably predictable in view of the relatively weak sanction for employer non-compliance with a recommendation for recognition under the 1971 Act, namely an arbitration award requiring the employer to incorporate terms and conditions into his employees individual contracts of employment. And the important point to make here is that this was exactly the same sanction, which was provided in Sections 15 and 16 of the *Employment Protection Act 1975*, for employer non-compliance that was operative during our period of study⁴⁶.

The extent of compliance with a recommendation for recognition during our period of study was in fact systematically investigated by the independent study group Incomes Data Services who followed up on all but five of the published Section 12 reports. This follow-up approach involved extensive sets of telephone inquiries of the unions involved in the respective cases, with some occasional cross-checking with the employers concerned. These inquiries were always made more than two months after the Section 12 report was issued and typically were conducted some six months after it had been issued. In view of the fact that a recommendation for recognition should normally have become operative a fortnight after the employer received his copy of the final report, and the union could complain to ACAS of non-compliance when two months had elapsed from this operative date, these follow up investigations had clearly allowed sufficient time for a reasonably clear cut picture of the post award situation to emerge. That is, they certainly did not over-estimate the extent of employer opposition to recognition as reflected in non compliance with recommendations; if anything, their bias is in the other direction. The basic findings by Incomes Data Services were as follows:—

⁴⁵ JAMES, *Loc. cit.*

⁴⁶ JAMES, *ibid.*, p. 39.

<i>Post Recommendation Position</i>	<i>Total Number of Cases</i>
No Agreement (i.e. Due to non-compliance by employer)	88
No Agreement Due to other circumstances (e.g. plant closure)	10
Negotiations being conducted	30
Partial Agreement	5
Full Agreement	24
No Recommendation for Recognition	88
No Information (i.e. no follow up)	5

The above figures indicate that only in 17.9 percent of the reports recommending recognition had this clearly come about. Furthermore, there was *definite* non-compliance with the recognition recommendations in 54.3 percent of the cases, a figure that was quite likely to be raised by some of the 'Negotiations being conducted' category coming to nothing. It would obviously be most useful, from the public policy point of view, to be able to predict with a reasonable degree of accuracy the type or character of claims where such non-compliance was most likely to occur.

In an attempt to provide some perspective on the character of these definite non-compliance cases we estimated a series of stepwise multiple regression equations on definite non-compliance using as a vector of potential explanatory variables the same set of bargaining unit characteristics that was utilised in the previous section. The best fit equation (defined in terms of the step which maximised the R^2) indicated that the two significant variables were non-manual status and inter-union competition both of which were negatively signed, thus indicating that definite non-compliance was significantly concentrated among recommendations for recognition which covered manual workers only and involved relatively little inter-union competition. That is, definite non-compliance tended to be concentrated in situations where a single, manual union had sought and received a recognition recommendation for a relatively small sized group of employees.

CONCLUSIONS

The above findings, when put together with those of the previous section, reveal that (i) a significantly high proportion of non-manual claims never received a recommendation for recognition, and (ii) a significantly

high proportion of manual worker claims that received a recommendation for recognition were not in fact complied with by the employer. As we argued in an earlier section, the hard to organise groups of workers in Britain are disproportionately concentrated in the industries with significantly low levels of white collar organisation and in the relatively few unorganised establishments in the highly organised (manual worker) industries. It is these two diverse groups of hard to organise employers that appear to have effectively 'defeated' union recognition claims at two different stages and thus prevented the realisation of conditions (ii) and (iii) that we outlined in an earlier section. As a consequence of this opposition the unions appear to have fallen well short of realising the potential advantages of statutory recognition provisions during this period of time in Britain. The major problems which we have documented here were (i) the procedural delays in hearing and reporting on references, due particularly to employer opposition to recognition, and (ii) the relative ineffectiveness of sanctions for employer non-compliance with recommendations for recognition. These particular problems have been highlighted in a recent review of the operation of statutory recognition provisions in the United States⁴⁷. This suggests that these particular sources of difficulty transcend the institutional details of any one country's recognition procedures and are *common* to the operation of statutory recognition provisions elsewhere. However, whether these *common* problems are in fact *inherent* problems is the real crux of the matter. This is a question that is impossible to answer given the present state of our knowledge, but is one that is likely to be much discussed in Britain, as well as elsewhere, in the years to come.

Les stipulations en matière de reconnaissance légale en Grande-Bretagne: 1976-80

En Grande-Bretagne, les syndicats s'en sont traditionnellement remis à la reconnaissance volontaire des employeurs. Toutefois, certains changements importants dans le système britannique de relations professionnelles à partir de la fin de la décennie 1960 a favorisé la mise en place d'un régime de reconnaissance légale de certains syndicats de cols blancs. Ces modifications avaient pour but de favoriser un glissement vers l'établissement de négociations avec les employeurs pris individuellement ainsi que le développement soutenu du syndicalisme dans le secteur des services et des emplois de bureau en général de beaucoup les moins fortement syndiqués au

⁴⁷ Moira HART, «Union Recognition in America — The Legislative Snare», *Industrial Law Journal*, Vol. 7, 1978.

sein de la main-d'oeuvre britannique. Ces revendications syndicales ont été obtenues pendant la période dite du «contrat social», alors que le gouvernement travailliste en 1974 cherchait à obtenir que le mouvement syndical restreigne ses revendications salariales en retour de certains avantages législatifs. Parmi ces avantages se trouvaient les sections 11 à 16 de la Loi sur la protection de l'emploi (Employment Protection Act) qui comprenaient les stipulations relatives à la reconnaissance des syndicats.

L'article évalue les gains syndicaux obtenus pendant la période où fut appliqué ce mécanisme législatif de reconnaissance syndicale, soit de février 1976 à août 1980. Fondé sur la notion du coût du recrutement syndical, l'article analyse trois conditions auxquelles le mouvement syndical doit répondre pour bénéficier des avantages de ces stipulations. Ces conditions sont les suivantes:

- i. il doit y avoir une volonté significative de réclamer la reconnaissance dans les secteurs du marché du travail où le recrutement est difficile;
- ii. il doit y avoir un nombre significatif de requêtes qui ont donné lieu à une décision de reconnaissance dans ces secteurs où le recrutement est difficile;
- iii. il doit y avoir une intention significative d'acquiescement des employeurs à la reconnaissance syndicale dans ces secteurs.

Les secteurs du marché du travail où le recrutement est difficile proviennent essentiellement des industries où le degré de syndicalisation des cols blancs est relativement bas et d'établissements non syndiqués peu nombreux dans des industries où la syndicalisation des travailleurs manuels est assez marqués.

Bien que les syndicats aient obtenu certains gains, le plus souvent à la suite d'ententes où la conciliation a été fructueuse, un examen des faits disponibles indique que la première condition s'est réalisée mais non les deux autres qui étaient plus difficiles. Les principaux problèmes que durent affronter les syndicats furent d'abord les délais tant dans l'audition que dans la décision des requêtes à cause de l'opposition des employeurs et, en second lieu, de l'inefficacité relative des sanctions contre la résistance des employeurs aux décisions rendues. Ces difficultés devront être surmontées si l'on veut dans l'avenir recourir aux stipulations relatives à la reconnaissance syndicale en Grande-Bretagne. Ceci peut cependant s'avérer une tâche qui sera loin d'être facile quand l'on considère que ces difficultés semblent aussi exister dans d'autres pays, notamment aux États-Unis qui ont adopté depuis longtemps ces systèmes de reconnaissance légale des syndicats.