SETTLEMENT THROUGH NEGOTIATION OF DISPUTES ON THE APPLICATION OF COLLECTIVE AGREEMENTS

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1. APPLICATION OF COLLECTIVE AGREEMENTS IN SWEDEN: HISTORICAL OUTLINE[1]

In Sweden, as in the other Scandinavian countries, the labour market began to assume a well-defined structural pattern at a relatively early date. For a long period the development was markedly extralegal in character. Around the turn of the century local arrangements of collective-agreement type had begun to be common in crafts and large-scale activities in the towns. By that time the trade unions of the manual workers had also amalgamated to form nation-wide federations, each representing an occupation or an industry and each affiliated to a central body, the LO (Landsorganisationen i Sverige—the Confederation of Swedish Trade Unions). In a number of sectors the employers had followed this example; one of their nation-wide organizations, the SAF (Svenska Arbetsgivareföreningen—the Swedish Employers' Confederation), became a counterpart of the LO. Soon after the beginning of the century collective agreements tended increasingly to be nationwide in character. In time these national agreements came to function as a kind of labour legislation, the contents, scope and formulation of which varied in the different sectors and occupational spheres. In addition to leading to a more uniform regulation for a sphere of work these agreements helped to make the collective agreement more effective as an instrument. An important development was that it became usual to include clauses on negotiation arrangements aimed partly at reinforcing the function of the agreement as a peace document and partly at guaranteeing to the parties the facility of talking to one another on questions that arose during the period of the agreement. A procedure for dealing with disputes in two or more

[1] Swedish labour law has been treated in English in the following studies: Axel Adlercreutz, "The Rise and Development of the Collective Agreement", *Scandinavian Studies in Law*, vol. 2, 1958, pp. 9 ff.; T. L. Johnston, *Collective Bargaining in Sweden. A Study of the Labour Market and its Institutions*, London 1962; Folke Schmidt, *The Law of Labour Relations in Sweden*, Cambridge, Mass., 1962.

instances was typical of the national agreements. Sometimes it was only provided that disputes should be the object of negotiations in the first place at the local level and in the second place at union-association level, but in many cases provisions were also made for some form of mediation or recourse to arbitration as the final step. Often the parties undertook to preserve industrial peace at any rate until the dispute had passed through all the prescribed stages of negotiation.

For a long time the upholding of collective agreements was largely left mainly to the parties. In 1906 a governmental service for conciliation in industrial disputes was set up; certain other efforts were made by the Government to promote the carrying out of agreements. It was not, however, until 1928 that collective agreements were made an integral part of the legal system. In that year, in the face of bitter opposition from the workers, a non-Socialist government forced through the Riksdag an act which laid down the legal effects of collective agreements in broad terms. Such agreements were declared binding both for the signatory organizations and for their members. The act established a minimum peace obligation, which among other things meant that collective offensive actions were not permitted in disputes on the correct interpretation or application of the agreement. For disputes of this kind there was set up a special court, the Labour Court, composed of three officials and two representatives of each of the opposing camps on the labour market. As a result of this the Labour Court became as a rule the third and ultimate instance in disputes arising under a national agreement; however, if an arbitration procedure was stipulated in the agreement the Court had no jurisdiction. Signatory organizations were authorized to bring suits on behalf of their members, but if an organization refused to take up a member's case the latter could take it to the Court himself. It was a condition of the hearing of a case by the Court that negotiations should have been carried out in accordance with the negotiation procedures established in the agreement, unless the counterparty had refused to negotiate. (I shall deal further with the Labour Court at the end of this section.) In 1936 the existing legislation was supplemented by an Act on the right of self-organization and negotiation, the main purpose of which was to support the incipient efforts of salaried employees in the private sector to organize themselves. The right of negotiation for organizations and individual employers was established in respect of all kinds of disputes concerning condi-

tions of employment. In stages the same right of self-organization was granted in principle to salaried employees in the public sector also.

In the course of the years the Swedish labour market has become more and more intensely organized. On the workers' side, we find a degree of organization amounting to practically 100 per cent, and the LO covers almost the whole field. Salaried employees in both the public and the private sectors also show a high degree of organization, and confederations of national organizations have been established in these areas, too. On the employers' side the great majority of the large enterprises are organized. Almost every part of the labour market is now covered by national agreements or by local or regional agreements modelled on these. As the result of union amalgamations, however, many areas of agreement have merged and the types of agreements found in similar industrial spheres have become more uniform.

A significant tendency is the increasingly active role played by the confederations. In 1938 there was taken a step which paved the way to a greatly intensified cooperation between the parties at all levels both within and outside the framework of the relations arising from the agreements. In that year, partly in order to forestall the intensified governmental intervention which the parties apprehended (especially with regard to the position of third parties in disputes), the SAF and the LO concluded what came to be known as the Basic Agreement. In this the parties agreed to observe considerable restraint with regard to resort to hostile actions of an economic character. The agreement also contained negotiation rules conferring protection against unreasonable dismissals of workers and a general negotiation procedure for disputes of rights and interests during the period of validity of an agreement; these rules were more detailed than had been customary. The Basic Agreement has been adopted as a collective agreement by most of the unions and associations in the SAF–LO sphere and has become a model for similar agreements in other sections of the labour market; it has also been followed by a series of cooperation agreements on other important matters. For rather more than ten years past the confederations for the various main sectors have started off the ordinary collective bargaining rounds by issuing recommendations to their member unions and associations for a framework within which to negotiate. It has, however, proved difficult to arrive at a rational procedure in various respects.

Within wide limits the parties of the labour market have been left free to determine the contents and application of collective agreements. Such legislation as there has been in this sphere has been confined to particular matters, although as such it is sometimes of substantial importance. However, the self-government which is enjoyed would not appear in its true light unless reference were made to its marked dependence on the environment created by governmental economic and social policy. In various respects this policy has greatly expanded in scope, while at the same time a point has been approached where for the great majority of categories of employees the extent of increased earnings depends on the annual growth in production. In consequence the trade unions have to an increasing extent been impelled to act as political pressure groups. In this connection a special position is held by the workers' trade union movement, with its intimate connection with the Social Democratic Party, which has held the reins of office in Sweden for some 35 years. The growth of the white-collar groups, with aims which sometimes compete with those of the workers, has shifted the classical front lines still further forward. The picture is complicated by the increasing internal differences in the labour market organizations with regard to the interests of highly-paid and low-paid employees. The problems of coordination have begun to assume such considerable dimensions that it may be found that the governmental attitude of non-intervention cannot be maintained to the same extent as hitherto.

Against the background of this brief outline of developments, something should now be said about the importance of the legal element, which was introduced into the labour market sphere as a result of the establishment of the Labour Court on January 1, 1929.

In most collective-agreement spheres the Labour Court has been the sole forum. In some areas, however, arbitral procedure has been applied for certain categories of disputes; in rare cases such a procedure has been practised for overall purposes. So far the Court has adjudicated about 3,500 disputes. This is only a tiny proportion of all the disputes which might have been submitted to legal procedure; as previously, negotiation has been the normal method of solving disputes. It is, however, probable that the contribution made by the Court as a norm-creating and disciplinary element has been a good deal greater than the number of cases would indicate. It is evident that the cases taken to

the Court—about 90 per cent of them by the workers' side represent a selection qualified in various ways. The Court has been markedly prone to set precedents, even though this tendency has become less pronounced with the passing of the years. The structure of the labour market, as well as the fact that the Court fairly soon ceased to be a controversial element, has created the necessary conditions for giving its judgments widespread and powerful effect. In a very broad sense the Court, by making ways of thought and patterns of behaviour more uniform, has contributed to the creation of a "common medium" in the labour market sphere.

The frequency of cases brought before the Labour Court has, however, shown a continual decline and is now as low as 25 a year. It may seem natural to see in this evidence of the extent and strength of the sphere of power represented by the Court. Account must, however, also be taken of the development which has taken place on purely extralegal foundations. It may be here that one should seek the most important reasons for the changes which have occurred in the legal "demand" situation, changes which are all the more evident in view of the extraordinary growth of the whole sphere regulated by collective agreements. These agreements are now more clearly formulated than they were. Their very application has contributed to a clarification of the contents. It cannot be doubted that the will to observe the sanctity of agreements has grown stronger even apart from legal stimuli—a high degree of pacification has been achieved in the labour market in the sphere of disputes of interest also. The capacity of the organizations to administer collective agreements has been reinforced and their memberships have been educated to appreciate the spirit of these agreements. The forms of negotiation have been made more efficient. The increased community of values between the parties has made their relations smoother; in spirit and direction but also in a purely practical sense the application of agreements increasingly has the character of joint administration. The increased power of the organizations has meant that they feel under less compulsion than formerly to bring a claim to the Court purely out of regard to the feelings of their members. They have become trained to use the instrument of the Labour Court in a judicious way. It is, however, also probable that costly experience has brought the parties to a realization of the deficiencies which in various respects may attend the method of litigation. The orthodox legal techniques which have distinguished the judg-

ments of the Labour Court provide only a very limited scope for taking account of the actual substance of the matter. The organizations are no longer so willing as they were to place their members' interests at hazard in the way that a court case too often proves to involve. In a number of important questions it has become evident that the outcome of a case may lead to a blocking of the legal situation which the losing party will be unable to overcome by means of negotiations except with considerable difficulty and after a considerable lapse of time, especially since the Court has shown a disinclination to depart from positions once taken up; in this connection one may note a trend during recent years towards an increased use of arbitral procedures, with the clear aim of promoting a more flexible and progressive legal development. Apart from this, frequent recourse to litigation does not harmonize well with the general efforts of collaboration in the labour market sphere and is also difficult to reconcile with the ambitions harboured by the organizations and their officials, for reasons of prestige, to cope with matters themselves.

There may be different opinions on what the Labour Court has actually meant as well as on the value of its contribution. To me, however, it seems merely to be stating a fact to conclude that to a considerable extent the Court has had a beneficial effect during an intermediary stage of an historical process. The full sovereignty of the parties over the collective agreements has been increasingly regained by them in so far as it has not been affected by the Court's activities. In this I am inclined to see above everything a sign of maturity and competence on the part of the unions.

2. INTRODUCTION ON ENGINEERING AND HOUSEBUILDING AGREEMENTS

In what follows I propose to give some glimpses from a study which I made of extralegal negotiations in disputes concerning the interpretation and application of collective agreements in the Swedish labour market (*Tvisteförhandlingar på arbetsmarknaden. En rättslig studie av två riksavtal i tillämpning*, Stockholm 1967).

The study in question is an attempt to describe, principally from certain juridical points of departure but with a sociological ap-

proach and with some use of the general theory of conflicts, certain aspects of the reaching of decisions in disputes dealt with in the highest negotiation instance in a collective-agreement area. As objects of the inquiry there were chosen two of the oldest and most important national agreements for manual workers, the agreements for engineering and for housebuilding workers. An account was given of these very different sectors with respect to production, ownership and organization, the construction of the agreements and the methods for their administration, especially with regard to the procedure for dealing with disputes. The main part of the study consisted of a field investigation of a number of disputes which had been the object of negotiation at the level mentioned. Before I give details of this investigation I will first give a brief account of the areas covered by the agreements.

(a) *The engineering industry,* one of Sweden's largest export sectors, has since 1902 been regulated by the so-called Engineering Agreement. From the outset the sole contracting party on the employers' side has been the Swedish Metal Trades Employers' Association (Sveriges Verkstadsförening–VF). On the workers' side there were originally a number of unions, of which the Swedish Metal Workers' Union (Svenska Metallindustriarbetareförbundet –Metall) now covers the whole field of workers from different occupational categories employed in the industry. From an early date the engineering sector occupied a prominent place in Sweden with regard to bargaining, discipline and cooperation between the parties, and the area of the agreement has as a whole played a leading part.

Like most Swedish employers' associations the VF has properly speaking no sub-organizations, whereas Metall is organized in divisions for the different localities with sub-units, factory branches ("clubs"), in the larger enterprises. In principle, the Engineering Agreement is constructed as a minimum-wage agreement based on time and piece-rate wages; the latter are fixed after negotiation at the workplace on the basis of certain guidelines laid down in the agreement.

In the engineering trade the negotiation arrangements prescribed in the Basic Agreement apply to disputes during the currency of the agreement. These arrangements cover both disputes on rights and disputes of interest.

In the first place disputes are dealt with in what is known as local negotiation between the enterprise and the factory branch (or union branch). In many enterprises negotiations may take

place at two or three levels. Disputes concerning serious offences against working discipline, e.g. a strike, are often dealt with through another form of contact between the parties. The firm approaches the workers' local organization or, through its own organization, the workers' union, requesting its assistance in restoring order. The workers' organization is legally liable to intervene when members have committed unlawful hostile actions and to some extent in other cases also. Action of this kind is sometimes supplemented by negotiations.

If it has not been possible to resolve a dispute at the local level, the workers' local organization, which generally is the party which has called for negotiations, approaches its union with a request for central negotiations conducted by representatives of the central offices of the two organizations. The question whether a dispute is to be dealt with at the union level is decided in the light of considerations of suitability from case to case, and this involves the balancing of individual interests and the interests of local organizations and the unions; the same applies, *mutatis mutandis,* in the case of the employers' side, when a member firm requests central negotiations. If Metall considers there is sufficient reason for proceeding with the matter, representations for negotiations are made to the VF. During the exchange of correspondence which ensues the dispute may be solved or the claim be withdrawn. Otherwise the dispute is submitted to a meeting for oral negotiation, generally at the place where the firm is situated, by representatives of the local parties. On average only one or two per cent of all disputes go to central negotiation.

According to the practice of the Labour Court the contracting organizations are in principle expected to determine questions of the interpretation of the agreement by mutual consultation. They are not, however, allowed either separately or jointly to determine the application of the agreement when conditions of employment are concerned. Thus they cannot, without the consent of their members or special statutory permission, force on a member a settlement which would mean an encroachment upon his rights in accordance with the agreement. In such cases the member himself may apply to the Labour Court in order to have the case examined. Conversely, a member cannot negotiate a settlement on his own without consulting the union. Thus, from a strictly legal point of view, a settlement reached in central negotiations often presupposes a consensus both internally and between the opposing parties. In actual fact, however, the development in the engineer-

ing industry and in the rest of the labour market seems increasingly to have gone in the direction that the representatives of the unions and associations act as if they had full competence to decide. Nevertheless, the investigation shows that the attitude of the representatives may vary from a mediatory to a judicial posture according to the type and significance of the dispute, the legal situation and the psychological circumstances. Particularly on the part of the labour unions there appears to be some apprehension about settling a grievance in a way conflicting with the opinions held by their membership.

According to the negotiation arrangements in the Engineering Agreement the Labour Court is as a rule the final instance; arbitral procedure of a decisory or recommendatory character is, however, applied in some cases, e.g. in connection with the discharge or laying-off of workers. Submission of a dispute to the Court is preceded by a thorough inquiry from legal and other angles.

It should be added that it occasionally occurs that disputes on questions of principle become the object of special discussions between senior officials of the unions and associations during the period of the agreement. However, the most common alternative to a solution through the ordinary channels of negotiation or submission of a case to the Court is that the question of principle is brought up in the negotiations for a new agreement.

(b) The *Swedish building industry* has undergone a marked expansion in recent years. In terms of volume it has become as important as the engineering industry. The enterprises engaged in it have become larger and more stable, production has become more industrialized and less seasonal. The earlier marked proliferation of organizations and agreements has to a large extent become a thing of the past. The section of the industry dealt with in the investigation, the housebuilding industry proper comprising woodworking, bricklaying and cement operations, is regulated by a national agreement between the Federation of Swedish Building Employers (Svenska Byggnadsindustriförbundet — BIF) and the Swedish Building Workers' Union (Svenska Byggnadsarbetareförbundet—BAF). This agreement, the origins of which can be traced back to 1909, was—unlike the Engineering Agreement and most other national agreements—not directly binding on the memberships of the contracting organizations, but had the character of a recommendatory agreement concerning the provisions to be incorporated in collective agreements reached locally. Formerly the differences of opinion within the housebuilding

industry were very marked and bargaining discipline left much to be desired. As a result of this there was a high frequency of disputes and many cases had to be submitted to the Labour Court. Since the beginning of the 1950s, however, as in the engineering industry, only one or two cases a year have been sent to the Court.

Under the BIF is a network of local master builders' associations. The BAF is organized in the same way as Metall but has no branches at the individual enterprises. The agreement is constructed as a normal wage agreement with rates of pay which may not be exceeded. As in the engineering industry, both time and piecework wages occur, but the piece rates have been laid down in fixed national price lists; they are not based upon agreements reached at the shop level. The national agreement comprises a complicated regulation of the forms for carrying on piecework.

The Basic Agreement of 1938 has not yet been adopted in the building trade. The negotiation of disputes is regulated by a few provisions in the national agreement. The local negotiation is not carried on within the framework of the individual enterprise but is concentrated in the hands of the local organizations on both sides. The central negotiation is, broadly speaking, organized in the same way as in the engineering industry, except that the Employers' Association applies a certain geographical decentralization. The Labour Court is the last instance except in the case of piece-rate disputes, for which there has long been a permanent national arbitration board. In the last few years there have been set up between the central negotiation body and the national arbitration board national negotiation committees for each trade with powers to interpret, supplement and alter the price lists during the period of the agreement; in this way the arbitral board has become almost superfluous.

3. AIMS AND METHODS OF THE INVESTIGATION INTO DISPUTES

The reasons why the investigation was limited to negotiation at the central level are mainly as follows. The cases which are taken up to this level cannot be assumed to be representative of the

great majority of disputes. They do, however, constitute a selection of cases which were in some respect or other particularly difficult to settle and therefore appear to merit special attention. It may be assumed that the problems connected with the complicated network of rights and duties on different levels in collective-agreement relations will be particularly evident at the central negotiation of disputes, which moreover probably reflects more faithfully than does the local negotiation the attitudes of the signatory organizations. It seems reasonable to suppose that the central instance provides especially good opportunities of studying the interplay between the different procedures which may come to be applied in the treatment of a dispute.

With the aid of certain distinctions borrowed from the modern theory of games the present author laid down the general direction of a study aiming at a comparative analysis of, on the one hand, the method of negotiation viewed *in abstracto* and, on the other, judicial techniques as applied by the Labour Court. It is established that the latter techniques are based on the application of legal rules which presuppose a tendency to uniform treatment and permit only a limited number of solution models; among other things, except within narrow limits, there is no place for compromise solutions (if this term can properly be used for a balancing of interests other than on a general rule-creating level). In principle, however, a settlement can always be achieved by resort to the Court. As far as the negotiation method is concerned, there exists as a point of departure the circumstance that from a legal point of view the parties to collective agreements are by and large entrusted with the administration of the agreement in all its phases. There is no public control and even the observance of statutory obligations is generally a matter for the parties to watch over, and the Court does not act until a party has taken the initiative, nor usually does the governmental conciliator. When a dispute is negotiated the parties have complete freedom to decide both whether a settlement shall be concluded and in what way this shall be done. Seen from this angle the negotiation method may thus be said to be characterized by a freedom of choice which is typical of the rules of a game but is alien to rules of law. Theoretically, freedom of negotiation could extend up to the limits or barriers set up by the given reality in each particular case. There is, however, good reason to assume that such an anarchical situation could hardly exist in an area having the structure and traditions of the Swedish collective bargaining

system. In section 1 of this article I pointed to a series of factors of a legal or extralegal kind which have the effect of creating ties in the negotiations, of giving them an external and internal bearing and a capacity to bring about solutions. It is evident, however, that negotiation must necessarily cover a much wider and more diversified set of actions than judicial activity could do and that it will be much more prone to anomalies and lack of continuity.

The present author's study was only to a minor extent directed to clarifying the substantive pattern of the decisions reached at central negotiations. It was mainly intended to give an idea of the ways in which the parties reasoned when they were in process of reaching outcomes of different kinds. Against this background the following three basic hypotheses seemed natural: (1) In negotiation the frequency of settlements will not be one hundred per cent as in the case of the Labour Court, but the majority of cases will be solved in this way. In some respects the capacity of negotiations to achieve a settlement is much larger than in the case of legal procedure, in other respects it is less. (2) In some cases—though perhaps not very many, considering the relatively few disputes which are submitted to central negotiation—it will be possible to achieve a settlement which is compatible with the agreement in the opinion of both parties, even if this is not in every case a settlement which in regard to its bases and contents is entirely in accord with what the Labour Court would have reached if it had tried the case. (3) In other cases it is to be presumed that the parties will to no small extent choose to make concessions in order to reach a settlement, even though the solution thereby achieved is not ideal, at any rate according to a strict conception of the agreement. Several different groups of reasons for concessions can be distinguished, and therefore this group of solutions, too, is not without stabilizing factors.

In addition to these questions others may be added. As a whole the selected series of disputes was subjected to the following questions, intended to throw light upon the corresponding aspects of what may be called the negotiation structure:

(a) What was the main aim of the negotiations? (b) What attitudes were primarily adopted in the negotiations? (c) Was the dispute solved at the negotiations or was it at any rate made the object of some agreement with a view to its further treatment? (d) In what way was a solution achieved with respect to the interest in a settlement as such, what were its contents and scope (in the last-mentioned respect what is meant is whether it was con-

ceived of as a normative solution or as an *ad hoc* solution) and what were the motives contributing thereto? (e) What motives were of importance in the failure to solve the dispute by negotiation? (f) Did the parties contemplate referring the dispute to the Labour Court, and in that case what motives played a part?

With regard to the prospective alternatives solution through concession/no solution, the following almost self-evident assumption was made in the first place. The attitude taken up by a party in this choice situation must have a basic connection with the question whether the party called for the negotiations or not. This should at least apply when the claimant party really aimed at having the dispute settled by negotiation, and the negotiations were not meant simply as a formal or preliminary step before referring the dispute to the Labour Court or a board of arbitration. If the negotiation situation is viewed against the background of the fact that if no settlement is reached the application which the claimant party wants to remove will continue to hold good, at any rate for the time being, one ought therefore to be able to expect two contrary presumptions concerning the outcome of a party's choice between the two alternatives. Thus, if it is the workers' side which has asked for negotiations, it should generally be more advantageous for the claimant to have a compromise solution than no solution at all, whereas for the employers' side the situation should be the reverse. If, however, it is the employers' side which has resorted to negotiation, the contrary situation will apply. Nevertheless, these are no more than probabilities. In each particular case there may exist circumstances which reinforce or weaken the attitude, conditioned in the way stated, to a settlement.

Later, recourse was made to a series of hypotheses concerning the factors which may have played a part in this respect. It is not claimed that these hypotheses comprise all conceivable types of motives, but they would seem to cover a fairly wide range, and to represent broadly all the motives discovered in the course of the inquiry. The headings for these hypotheses are as follows: (1) membership considerations, (2) value of the dispute, (3) strength of conviction about the correctness of the interpretation applied, (4) considerations of reasonableness, (5) general interest in a solution, (6) possibility of solution by some other method (judicial procedure, arbitration in certain engineering cases, negotiations over the terms of a new collective agreement).

It should moreover be pointed out that at the time when the

study was started the idea was not to achieve results which would be valid according to tests of breadth and quantity. There are still considerable differences of character among the various collective-agreement areas in the labour market. Many of these areas, among them the building industry, are undergoing rapid changes. Moreover, the investigation material as such is probably too heterogeneous to lend itself to far-reaching generalizations. In view of this, the aim of the study was essentially to use what might be called a "soft" sociological method to illustrate—with proper attention to nuances—questions and hypotheses, and to give an idea of how the collective-agreement mechanism worked during a limited period. It is, however, my conviction that a study of this type, if undertaken with adequate penetration and critical awareness by a person familiar with the field of activity in general, will quite often tell us as much as an investigation directed to what is statistically verifiable.

Studies were made of 50 disputes handled in 1959 in the building industry and 65 disputes handled in 1960 in the engineering industry; for various reasons it was necessary to choose different years, but this probably does not detract from the comparability of the two series. Only disputes which in the last resort could have been referred to the Labour Court were included. Thus the largest category of building disputes, those concerning piece rates, had to be excluded; and so, for reasons of comparability, corresponding engineering disputes were also omitted. Certain other omissions regarding the subject of disputes and other matters also had to be made. With some modification in regard to the building trade, however, it can be said that there were no omissions on qualitative grounds. Subject to this reservation, therefore, the material is representative of the administration of an agreement for the period of a year.

The investigation consisted partly of examination of negotiation minutes and other available written material, partly—and above all—in interviews with all the persons who took part in the negotiations as representatives of their organizations. It was not possible for me to be present at negotiations except on a random-sample basis. Similarly I had to abstain from direct inquiries addressed to the local parties.

On the workers' side all the negotiators lacked legal or other academic training. On the employers' side the majority of the negotiators had had a technological education and a few were lawyers. It is striking that the negotiators on both sides gave an

impression of taking the business of negotiating disputes very much in earnest. In no case was a negotiator unable to give a reasonably comprehensive and coherent account of the situation of the dispute, its outcome and the reasons for his own attitudes. It may seem surprising that so many of these officials should appear so competent. One explanation may be that, especially on the workers' side, they have grown up within the industry and find a considerable appeal in their work as representatives.

In principle the study was directed only to arriving at the reasons proffered by the individual officers concerned and this involved a considerable restriction to certain rational layers of motivation. The organizations were quite evidently favourably disposed to the study, but it is probable that sometimes the interviewees were deliberately reticent, among other things concerning considerations connected with long-term collective-agreement policy and with regard to the internal relations of the side which they represented. A certain corrective against incomplete or incorrect statements existed, however, in that the negotiators on both sides were heard and were given an opportunity to learn what had been said on the other side. In a certain sense, moreover, it seems of minor importance whether the statements which were made were correct or not; in any event they may be of interest as symptomatic of the way of reasoning and the types of motives which as a whole are regarded as *acceptable* in the context of negotiation. The study can be compared to a conventional investigation of legal practice with its concentration on the publicly announced reasons for judgments, the reasons which the Court considers to fall within the framework of legitimate grounds for decision.

The actual examination of a selected number of disputes was supplemented by certain other inquiries, including random samples of other dispute material both within and outside the engineering and building trades and general interviews with a large number of officials in these and other collective-agreement areas. The development in the trades concerned was followed in some detail up to the end of 1966. The dispute material is described in the study case by case in accordance with the arrangement of the different subjects in the collective agreements.

4. SOME RESULTS

Of the disputes investigated almost all were related to actual grievances concerning the local application of the agreement. These cases have been divided into three categories: (1) disputes concerning complications in the local negotiations, (2) disputes concerning breaches of work discipline, and (3) other disputes. Groups 2 and 3 are by far the most numerous and only these will be dealt with here. It should be remarked that the interest of an inquiry of this kind naturally lies, to a considerable extent, in a penetrating analysis of individual cases rather than in a mere précis. However, accounts of one or two disputes may help to make the picture more vivid.

(a) *Disputes concerning breaches of work discipline*

Nearly all these cases were submitted to central negotiation at the request of the employers' side. The 14 disputes of this kind in the engineering industry all related to cessation of work or other impermissible offensive actions. Of the 15 disputes in the building trade only a few concerned offensive actions, the rest arose because individual workers were alleged to have absconded from their piecework before the expiry of the term, varying from a few weeks to a few months, which is regarded as the work period in certain jobs in the building trade. For some years previously there had been noted a marked increase of breaches of these types and the employers' associations found it necessary to refer cases to the Labour Court more often than previously. The difficulties encountered in maintaining respect for the engagement periods of the building agreement were obviously attributable to the boom conditions which tempted the workers to pick and choose between jobs. As regards the cases of breaches of industrial peace which were particularly common in the engineering industry, the deeper reasons for these seem rather obscure, but they too seem to be connected with the general economic situation in so far as the shortage of manpower reduced the effectiveness of the dismissal sanction. Disciplinary difficulties existed during the first half of the 1960s but appear subsequently to have gradually been brought under control in various ways.

In considering the handling of the disputes in question it is perhaps not of great interest to summarize the extent to which and the way in which they were solved in accordance with the classification scheme of the study. In most cases a breach of agree-

ment incontestably existed and as a rule damages or other compensation were not claimed, and thus as a rule compromise solutions could not come into question. (In this connection it may be mentioned that the Labour Court, in contrast to general courts of law, was empowered to award not only special damages for breaches of collective agreements but also general damages for non-economic injury, though only to an amount of 200 kronor per worker. This form of sanction, however, is not considered practicable in the case of negotiation.) What is of interest in the cases investigated is the actual trend of the negotiations and what they implied as a whole.

In the cases from the building industry, contractors whose workers had absconded from their jobs were often placed in an extremely awkward situation owing to the difficulty of recruiting replacements at short notice. On the workers' side it was also obviously to the disadvantage of a piecework gang if one of their members should leave. In all cases the unions were brought in but failed to bring about a resumption of work by persuasion. In these circumstances central negotiations were resorted to chiefly in order to enable the organizations to get to work jointly on the employee concerned with a view to persuading him to return to work. The unions also tend to consider that the mere circumstance that serious breaches of discipline will be referred to central negotiation may have a repressive effect. In seven of the cases the negotiations had no result. In two of these the employers' association found it desirable to proceed against the worker, partly with a view to bringing about a more powerful sanction against breaches of agreement through a claim for damages. Here we cannot go into the question of the principles on which cases were chosen for judicial action.

It is the strict policy of the VF, in the event of offensive action, not to negotiate until industrial peace has been restored; for that matter there is no legal obligation to negotiate in such cases. In the cases which had arisen, work was in fact quickly resumed after intervention from Metall. Nevertheless, as a rule negotiations were called for on the initiative of the VF rather than that of the enterprise. What are the reasons for this? Preventive considerations played a dominating part. The incident was considered too serious or the circumstances too obscure for the VF to ignore the matter or let the enterprise clear up the situation on its own. In some cases there was a desire to goad the committee of the factory branch on to look after the members better. On

occasion it was also felt that Metall needed stimulating into greater activity. But often enough the negotiations seem largely to have been intended to impress on the employer member the VF's strict view of breaches of the peace obligation and to remind him of his possible co-responsibility for the incident. At the same time it was thought that negotiations might help to relieve the tension created as a result of the action and to give a clearer picture of what measures ought in the future to be taken by the enterprise and the organizations. In addition to all this there may have been some more special aims. In the not inconsiderable number of cases where at a preliminary assessment it did not seem altogether out of the question that the incident ought to be dealt with by legal action negotiations had in the last resort the object of clarifying the need for such action and how the defence should be formulated.

Metall for its part was often quite eager for a matter to be taken to negotiation, inasmuch as it had an interest in common with the VF in clearing up the circumstances. In some cases Metall even called for the negotiations itself.

Of the 14 cases legal action was considered in rather less than half, and in four of these a suit was brought against the workers. With some simplification the following may be said. The group of cases where recourse to the Court was not contemplated concerned hostile actions which, though considered serious, were not regarded as being especially intractable. Apart from this, a desire not to upset good working relations contributed to prevent the VF from taking the matter further. Regard was also paid to the employers' own attitude to legal action. The other group comprised cases which were considered so serious that the need for legal action was considered to weigh more heavily in the scales than any annoyance the bringing of an action might cause and the inevitable unpleasantness of the action itself. In the former set of cases the VF appeared in the role of a wise counsellor, in the latter more in that of a policeman.

By way of conclusion of this part of the paper a report may be given of the following case, or to be more exact series of cases, all taken from the same enterprise.

> A firm which built motor-vehicle bodies and specialized mainly in lorry-drivers' cabins in wood had since 1957 belonged to the Employers' Association of the Swedish Wood Products Industry (Sveriges Träindustriförbund). The greater part of its manufacturing activity was covered by the national agreement between this

association and the Swedish Wood Workers' Union (Svenska Träindustriarbetareförbundet). During 1959 the firm gradually changed over to manufacturing drivers' cabins in steel. At the same time there was introduced a process of rationalization, involving a switchover to a conveyor-belt system. At the same time the firm underwent a marked expansion and greater emphasis was laid on the quality of the product. During the year the labour force increased from about 200 workers to about 320.

In view of the changed manufacturing structure the company left the Association of the Wood Products Industry and joined the VF in October 1959. However, the national agreement for the wood products industry continued to apply until January 31, 1960, after which the engineering agreement came into force. At negotiations between the Wood Workers' Union and Metall on the transference of the members of the former union to the latter, the workers made it clear that they were opposed both to the change of union and the application of the agreement; they were afraid that if they became subject to the engineering agreement their earnings would suffer. At a meeting between representatives of the VF and Metall, however, it was agreed that after the changeover to the engineering agreement the personal time wages previously current should be retained. The company also gave certain pledges that it would not reduce piece-rate earnings in connection with future production changes. The workers were transferred to Metall's local branch, and a factory branch was established.

However, only a few days after the engineering agreement came into force there arose troubles which resulted in a stoppage of work. Later in the year, too, strikes and other hostile action occurred time and time again. Central negotiations had to be resorted to on five occasions. In the following brief comments, only the last negotiation will be dealt with in detail.

The information obtained indicates that, only a few years before the period we are considering, problems of cooperation arose at the firm. The settling of piece-rate and other disputes had to be referred comparatively often to central negotiation. In a number of dismissal disputes the workers' side complained of infringement of the right of association. In one such case this claim was sustained by the Labour Court. Work stoppages or tendencies in that direction were not unusual. The negotiation procedure at the firm seems to have been loosely constructed; no definite order providing for consecutive steps was followed and the owner of the firm sometimes intervened in the negotiations at an early stage, so that both management and workers became uncertain and

nervous. Another negative factor was the tension existing between the firm and the organization to which it then belonged.

However, the friction appears to have increased around the turn of years 1959/60 in consequence of the changes in production within the firm and in the situation with regard to agreements and organizations. Strains arose on both the employers' and the workers' side with increased friction as a result. The production changes placed greater demands than before on the administration of the firm, and the response to these demands could not keep pace with the re-allocation of the productive resources. The changes which were introduced were in themselves of a kind likely to create dissatisfaction. The many piecework disputes and the strike actions often connected with them may also be seen as an expression of the workers' fears that their earnings would be adversely affected. Moreover, both sides were unused to the engineering agreement, especially with regard to the bases for calculating piece rates. The VF and Metall were both fully aware of these problems and hoped to bring about a better state of affairs by giving advice, sending representatives and offering help with negotiations. The VF for its part preferred to wait before taking such a drastic step as bringing a suit in the Labour Court. As for Metall, it threatened to expel members who continued to take hostile actions but was reluctant to carry this threat into effect. The new members found it difficult to fit in at the local branch of Metall, where they came to form a minority, and Metall felt that it would take a considerable time before these men became completely loyal to the organization.

When for the fifth time in the course of less than a year central negotiations had to be resorted to because of a widespread work stoppage, the VF, concluding that there was no point in hoping for more peaceful conditions to emerge, brought a suit in the Labour Court. It was considered that Metall's resources for dealing with its members were largely exhausted. Probably Metall itself was also now convinced that recourse to the Labour Court was necessary in order to restore peace. Thus the workers in question were sued and a claim was made for damages amounting to the legal maximum of 200 kronor for each worker, with the exception of two against whom a lower claim was made. The workers' side conceded that there had been a breach of the agreement but pointed out that there had long been strained relations between the employer and the workers and that the latter were not solely responsible for the situation. The Labour Court, by its de-

cision no. 8 of 1961, awarded the damages claimed. No further strike or similar action at the enterprise was reported during 1961. Central negotiations on disputes—among other things on those concerning piece rates and dismissals—occurred on only two occasions. To judge by this and by statements made by representatives of the organizations, a certain stabilization took place during this year.

(b) *Other disputes*

These disputes, amounting in the engineering industry to 48 and in the building industry to 35, were almost all initiated by the workers' side and, usually after local negotiation, were referred to the union concerned. The range of subjects covered was considerable.

In both collective-agreement areas the way of negotiation was chosen in order to induce the employer to take a new course when there were differences of opinion on the correct interpretation of the agreement. In contrast to the employers' side, the workers did not use the central instance for dealing with uncontested breaches of the agreement. In a number of cases, however, a factor clearly contributing to the resort to negotiations was a wish to take exemplary action against what the workers' side thought to be a cavalier attitude towards the agreement on the part of the employer. On the employers' side, too, there was probably sometimes an intention to use the central negotiations to give enhanced effect to a threat of legal action. It can, however, be said categorically that negotiations were never, as they were in some employers' disputes in the engineering trade, intended purely and simply as an intermediate stage on the way to legal action. There was a general preference for a settlement if an acceptable one could be obtained. Apart from this the negotiations, in these as in preceding cases, often performed an informative and therapeutic function which might extend further than to the question of the dispute actually under consideration.

It appears quite clear that generally, when considering a dispute at the outset, the representatives of each side applied, not only in relation to the other side but also internally, their idea of the proper construction of the collective agreement. As will be shown below, there was much variation in the extent to which the organizations, when taking up their final positions at the negotiations, insisted on a settlement in accordance with their

conception of the agreement. Nevertheless it is clear that, throughout, each side endeavoured to secure an interpretation which it considered in conformity with the agreement. The basic attitude seems also generally to have been to try if possible to reach a settlement on such a basis; in a few isolated cases in each industry, however, the workers' side, for special reasons, aimed in the beginning at a settlement diverging from the agreement. One of the most noteworthy features of the approach to the agreement was a refusal to be bound by formal considerations and an endeavour to give the agreement an appropriate forward-looking interpretation. Moreover, compared with a strictly legislative view of the agreement, the attitudes of the parties were coloured to a relatively large extent by considerations of their respective interests. The intentional variations with regard to the degree of penetration of the agreement were of course greater than in the case of actions tried by the Labour Court. As a whole, perhaps, the evaluations were not marked by much legal subtlety. So far as I have been able to see, however, the wide and flexible settlement framework did not mean that the methods of the negotiating officials were characterized by undue arbitrariness and inconsistency; in fact my impression was rather the contrary, and to a degree that I had scarcely expected.

Before proceeding further, I propose to interpolate here, by way of example, an account of a dispute in the building trade. This dispute is particularly instructive in so far as both of the alternative solutions—legal action and negotiations over the terms of a new agreement—entered into the picture.

> In clause 1 (d) of the building agreement it is stipulated: "If a worker who has presented himself at the workplace is unable to begin work owing to inclement weather or if for such reason work is suspended, waiting time above one hour shall be paid at time wages unless the employer has announced within one hour that the workers need not remain at the workplace."
>
> At a certain workplace a new construction for a waterworks was being erected. On October 7, 1958, a piecework team of six wood workers was engaged in preparing moulds. Owing to rain the work had to be suspended at 10 a.m. The supervisor told the workers that they needed not stay at the workplace but that the work would continue after the midday break at 1.30 p.m. if the weather had improved by that time. The workers returned at the time indicated and, as the rain had ceased, work was resumed.
>
> A dispute arose as to whether the workers were entitled to wait-

ing-time compensation because of the interruption of work from 10 a.m. until the beginning of the midday break at 1 p.m. The handling of the dispute went through the following stages.

(1) *Negotiations in June 1959*

Standpoints

The *workers' side* pleaded as follows. The management had ordered the workers to return after the midday break. This had meant that the workers, without any break, had had to remain at the disposal of the management. If, for example, a worker had been living outside the locality of the workplace, he would thus have had to stay in the workers' quarters or wait at some café. In such circumstances there must exist a right of compensation in accordance with clause 1 (d), para. 2. It was therefore claimed that waiting-time compensation for two hours per worker should be paid.

The *employers' side* objected that according to general rules of labour law a worker was under obligation to remain at the employer's disposal during ordinary hours of work. The clause invoked did not imply any exception to this but merely set out to regulate the conditions for compensation in the event of interruptions of work owing to inclement weather. By informing the workers within one hour from the time when work had to be suspended that they need not remain at the workplace the employer had in the present case done what was required of him in order not to have to pay waiting-time compensation. The fact that work was resumed at 1.30 p.m. was in itself of no importance for the question of waiting-time compensation. By keeping open the possibility that work might be resumed after the midday break the management had also been acting in the workers' interest by securing that they did not unnecessarily lose working time.

Outcome

After the question of the dispute had been further discussed it was established that no agreement on the matter could be reached.

The reasoning of the negotiators

On either side the parties were strongly convinced of the tenability of their attitudes. It is true that on the labour side it appears that having regard to the small amount at stake the workers were not disinclined to accept a compromise settlement while standing by their view of the principles involved. However, no compromise seems to have been offered by the employers' side. The latter probably believed that the workers would "drop" the dispute, although they were also prepared for the eventuality that

the matter might be taken to the Labour Court. It seems possible, although it did not emerge clearly, that at the negotiations the workers were already inclined to take the matter to the Court if necessary. At any rate the workers' side decided to do this after taking legal advice when the negotiations had failed.

(2) *Reference of the case to the Labour Court*

As the dispute could not be settled by negotiation the union, the BAF, took it to the Labour Court in November 1959. It claimed that the company should pay the workers waiting-time compensation as stated above, together with interest. In addition general damages of 500 kronor were claimed from the company and its association, the BIF. These claims were contested in a written statement.

Before the matter had come to the oral part of the preparatory proceedings, however, the parties jointly requested that the hearing of the case should be postponed until further notice. The background of this request—which was made principally on the initiative of the BIF—was that in the light of the imminent negotiations for a collective agreement in 1959/60 the workers' side had put forward certain demands for amendment of clause 1 (d). It is true that this had no immediate relevance to the question involved in the dispute, but it was thought on both sides that in connection with the proposed amendment it might be possible to arrive at a regulation which would solve the problem at issue in the dispute.

(3) *The collective-agreement negotiations 1959/60*

The case at bar was in fact discussed, too, in connection with the negotiations for a new national agreement. Complications, however, arose inasmuch as the whole question of a worker's duty to stay at his employer's disposal in the case of an interruption of work entered into the picture. The workers' side maintained that the worker was entitled to go home for the day without any obligation to return to the workplace if the suspension of work should end, a view which the employers' side was unable to accept. It proved impossible to reconcile these standpoints, nor could any separate solution of the question at issue in the dispute be reached; certain amendments of the provision were adopted but they had no relevance to this question.

(4) *Negotiations on dispute resumed on June 1, 1960*

After the conclusion of the negotiations for the new agreement in the spring of 1960 the dispute was once more referred to central negotiation. A final outcome was achieved as cited below.

Outcome

> At today's negotiations it was established that the parties still had different attitudes of principle to the question at issue. Having regard to the relative unimportance of the dispute, however, it was agreed, without any ruling with regard to principles that the dispute should be settled in such a way that special compensation should be payable to each of the six wood workers for one hour at the usual time rate. By reason of this the action in the Labour Court should be withdrawn.

The reasoning of the negotiators

After the discussions which had occurred in connection with the negotiations for the new agreement the parties on both sides began to have doubts about their ideas of the meaning of the disputed part of the collective agreement. Both sides, too, seem to have viewed with a certain lack of enthusiasm the prospect of resuming the proceedings in the Labour Court, with all the work and trouble which this would entail. In addition there was another circumstance which played a part. After the negotiations for the new national agreement the BIF had taken up with the workers' unions a discussion on certain questions of work obligations which had not been dealt with at the negotiatons. This had led to some tension between the organizations and on the employers' side it was feared that a legal action which touched on the problems of work obligations would result in still further strains. On the workers' side, moreover, it had been hoped that it would be possible to bring up again, on some later occasion, the question of interpretation involved. Nor was the matter at issue of such importance that it appeared urgent for either party to have a prompt solution. By now, moreover, the incidents leading to the dispute were so old (nearly two years had elapsed) that it seemed desirable to have the matter brought to an end. The amount of the claims involved was, after all, very small.

Both sides were now ready for a settlement. A compromise was reached, without any abandonment of the standpoints of principle, which meant that the workers received compensation for one hour each at the usual time rate.

Later the BIF issued a number of practical instructions to their member enterprises regarding the application of the disputed provision, instructions which seem to show some appreciation of the workers' attitude on the matter. This is said to have had the result that, at any rate during the 1960s, it has not been found necessary to send any more disputes on the subject to central negotiation.

Outcome in "other disputes"

	Number	*Settled at negotiations* By mutual consent in accordance with the collective agreement	By concessions	*Other outcome* Sent back for new local negotiations	Labour Court	Definitely unsettled
Engineering industry	48	23 1/2	17	5	1	1 1/2
Building industry	35	7 2/3	24	1 1/3	—	2

As will be seen from the table above, in each industry a few disputes were referred back to local handling; it had been presumed that the local parties should be able to solve the dispute by themselves with the guidance of what had emerged at the central negotiations. Only one engineering dispute went to the Labour Court for adjudication, and this was at the request of the workers' side; a further dispute in each trade was referred to the Court, but both were in the end settled by agreement. Only one or two cases in each industry can be described as having been left unsettled. Thus the results fully confirm the assumption of a high frequency of solutions. In the engineering trade half the cases were settled in a way which from their own points of departure, if not always for the same reason, the parties could regard as in accordance with the collective agreement. The corresponding group for the building trade is smaller, but it is doubtful whether this fact is of any significance. In the other instances of settlement, agreement was reached through concessions, these usually being mutual. The frequency of settlements by concession—which it is true must be viewed against the background of the fact that workers' unions are normally reluctant to send forward local grievances which they consider to have no chance of success—illustrates very clearly what indeed no investigation is needed to prove but may rather be said to be notorious on the Swedish labour market, namely that compromise belongs to the standard armoury of methods for eliminating all kinds of collective-agreement disputes at all negotiation levels. In the cases investigated, it was found possible to arrive at compromises irrespective of the subject of the dispute, the amount at stake, the type of regulation by the agreement and the actual situation of

the dispute. In disputes which were on matters of principle or were otherwise of an important character, however, the balancing of concessions was very difficult to achieve, and was in some cases so great that the negotiations failed; this either led to the workers' side bringing action in court, and possibly thereby succeeding in making the employers' party ready for an acceptable settlement, or meant that the employers had won the trial of strength.

However, it should be noted in this connection that differences on questions of principle could usually be bridged over with a compromise, which in accordance with the reservations stated were of an *ad hoc* character, but with very few exceptions it was not possible to solve the question of principle itself unless this was of minor importance. The central negotiation instance does not appear as an instance for the establishment of precedents in the true sense, even though the decisions reached may often have been of considerable importance for the enterprise concerned or at the place in question. This in itself seems to be a serious weakness compared with the capacity to render decisions clarifying matters of principle which distinguishes a court such as the Labour Court. Difficulties of reaching decisions seem to be something which is a characteristic feature of national agreements covering large areas where the questions may be of very wide scope and where it may be difficult to foresee how a settlement will affect different parts of the area. On going through the minutes of central negotiations in some minor collective-agreement sectors the present author noted considerable differences. In such areas reservations stating that no precedent had been established proved to be less frequent, and it quite often happened that the parties entered into agreements on the interpretation or the amendment of a disputes clause in the course of ordinary dispute negotiations. The differences were most noteworthy with regard to agreements which covered only a single enterprise. The parties were free to use their discretion provided the dispute did not concern a clause with a counterpart in other trades within the jurisdiction of the organization. The conditions on the labour market seem also to vary, however, owing to differences in the general inclination of the organizations to make concessions on matters of principle during the currency of an agreement.

It would obviously show a lack of understanding of the special character of negotiation if one were to condemn solutions obtained in this way simply because often they necessarily involve

the setting aside of principles. The strength of the institution indeed largely consists in the fact that it renders possible solutions adapted to the particular case, solutions which go to the root of the conflict and which meet a response from both parties. It is by no means certain that what the disputants want is in every case a general indication as to how they shall proceed in the future. The important thing for a party is not to know what attitude the other side will formally adopt, as a matter of principle, but what interpretation determines that party's actual course of action. The number of disputes taken to court in an area such as that of the engineering agreement would not have been so small if the attitudes on matters of principle had not been counterbalanced by a considerably more flexible approach when it came to actual claims. Apart from this even an *ad hoc* compromise performs a certain norm-creating function by giving local parties a pointer to a suitable basis of concession. And indeed it often happens that the anomalies of the concessions are straightened out in course of time; the daily matching of strength, together with accumulated experience, leads forward to a practice which in reality constitutes a solution according to principles.

Nevertheless it may reasonably be asked whether it would not be sensible in many collective-agreement areas to have a system offering a greater possibility of solving problems on grounds of principle as a part of a general bargain (give and take) during the currency of the agreement. One argument for this is the fact that in Sweden today collective argreements are generally concluded for long periods (as a rule 2–3 years), another is the complications which the participation of the confederations in negotiations has proved to introduce into the unions' collective-agreement negotiations, as well as the fact that the Labour Court has moved out to the periphery of the collective-agreement sphere. Technically and from the point of view of cooperation there should be mutual advantages to be gained if disputes could be resolved at a relatively early stage and be taken one by one to a greater extent than at present happens in ordinary collective-agreement negotiations. As has been shown, the building industry has in fact already begun to practise a form of "continuous collective-agreement negotiations" with regard to piecework prices.

We shall not here examine the different types of solutions from the point of view of their contents. With regard to the scope of the solutions as norm-creating phenomena it has been indicated that *ad hoc* solutions have been frequent in disputes really con-

cerned with norms; they have been preferred, too, in disputes where large amounts of money are at stake, even though the parties differed on matters of fact only.

As regards the settlement motives, the present author did not probe to the bottom when analysing those cases in which the negotiations produced an outcome regarded as being compatible with the collective agreement. In view of the fact that compromise seems to be the form of solution which has most to tell us of what is fundamental in the negotiation method, interest was mainly concentrated on the conditions for settlements of this kind.

To summarize: the basic assumption was confirmed that the workers' side, in view of its starting position, has specially good reasons for reaching a compromise. There may be great variations in the insistence on a standpoint and in willingness to give up a demand. However, in all those cases where, from doubt as to the legal position or for other reasons, the workers' side does not consider it possible or reasonable to force the dispute further, there is simply no alternative to the taking of the offer which was ultimately obtained in order not to go home empty-handed. In such a case a conciliatory offer will have to be a very poor one to be turned down out of sheer pride. And even supposing unions, from general considerations, were inclined to abstain from agreement, they would be reluctant to deprive the members concerned of what was offered if the members found they would benefit from it; one method of eliminating the internal conflict, quite often applied in the engineering industry, was to recommend the local parties to come to a settlement without the participation of the union.

It is an established fact that the employers' side is usually less inclined to make concessions. It is, however, also clear that, generally speaking, the attitude towards a compromise is far from being the direct opposite of that on the workers' side.

An attempt to explain this in broad terms might be as follows. It has been a constant aim of the workers' organizations to reduce both formally and in concrete terms the employers' freedom of manoeuvre in interpreting collective agreements. The employer, however, is still a highly privileged party. It is difficult to believe that the administration of the collective agreement would function at all, at any rate with reasonable efficiency, if the employers used their prerogatives to the utmost. A fairly considerable measure of concessions would seem to be necessary as a lubricant in the relations between the parties and ultimately also as a means

of ensuring that the workers' side will raise what in the employer's opinion are moderate demands for changing the contents of collective agreements and for having a voice in their application. Even if the employers do not always behave as if these circumstances were present in their minds, the cumulative pressure of reality probably works to bring about a certain balancing of accounts through daily compromises. It may be asked whether in course of time a change of emphasis has not taken place in the employers' attitude towards compromises, from concessions *ex gratia,* made in a spirit of patriarchal humanitarianism, to concessions made largely in their own interests against the background which has been indicated. For the employers more than for the workers one may speak of a "equilibrium strategy", an "optimal" strategy, rather than of a strategy aimed at maximal gains at any given time.

The investigation, however, showed how compromise-making by either side may arise from more diversified causes. It was possible to distinguish motives of very different kinds which occurred with such frequency that they seemed to point to a number of situations where, other circumstances apart, the disposition to compromise tends to be greater or less in relation to the general point of departure. However, in most cases the complex of motives was many-faceted—not only on the employers' side, although particularly so in its case. Space does not permit me to embark on any detailed account of the types of motives studied. Briefly, the groupings which were made may be said to mark different types and degrees of functionality in compromise-making, ranging from agreements which were clearly in themselves more attractive than a settlement on strict collective-agreement bases to settlements which were at any rate to be preferred to failure to establish an understanding. One observation which could be made in a large number of cases in both industries was that while the parties distinguished clearly between settlements according to the agreement and compromise solutions, the latter type of solutions do not lack correlation with an assessment in accordance with the agreement. Like the iron filings in a magnetic field, the compromise solutions are found at shorter and longer distances from the poles formed by the parties' attitudes to the interpretation and application of the agreement and the strength of these attitudes. In the majority of cases the making of the compromise was clearly a quite voluntary act. Apart from a few building disputes where a precarious manpower situation practically forced the employers'

side to make concessions, it was really only the alternatives of legal action or solution on grounds of principle through future collective-agreement negotiations which acted as a sanction; the outcome has shown an evident connection with the parties' calculations concerning the probability of these alternatives and their consequences. Another rough division would be based on the extent to which the parties were informed of the actual circumstances on the other side, e.g. as regards internal relations within the party in question. Central negotiation is to a lesser degree than a lawsuit a "game open to communication"; conscious uncertainty about the situation on the other side seems to have led parties to compromise rather than to take a risk. Another approach would be to establish to what extent short-term and long-term considerations played a part. In the spectrum of settlements by concession it was often possible to observe a conflict between considerations of the two types. Although it is seldom that formal adjustments of the agreement are undertaken in negotiations over ordinary claims, this does not mean that within certain limits the agreement is completely fixed and rigid during its period of validity. To a considerable extent the compromise solutions appear to be symptomatic of movements under the surface of the agreement, and to be indications of what the future regulation of the agreement will involve.

5. SOME CONCLUSIONS AND COMMENTS

Let us now, finally, view the results of the study as a whole from one or two angles suggested by the theory of games, even though this will in part be a matter merely of formulating in another way what has already been summarized above.

In its original form, the theory of games made use only of situations simplified to a conflict between diametrically opposed interests. In recent times, however, attention has increasingly been given to relations distinguished by a community of interest between the players. According to one view which has been put forward, we should place in the centre the case where interests partly coincide ("game with mixed interests"), flanking this on the one side by the situation of diametrically opposed interests and on the

other by the situation of wholly identical interests.[2] This tripartite division could be applied to the material investigated. In two groups which comprised disputes concerning local negotiations and breaches of discipline, the organizations, often at least, had virtually the same overall aim: to restore order and a spirit of cooperation at the workplace. Even where the employers' association resorted to legal action, this may have been in harmony with the general intentions of the union. On the other hand, as has been mentioned, in some disputes on principle the interests—at any rate those of the organizations—were sharply opposed and the settlements reached were only to a small extent, if at all, conditioned by consideration for the other side. The great majority of disputes concerning the correct interpretation of the agreement, however, belong to an intermediate area where a certain interest in cooperation was present without necessarily dictating the whole outcome. On both sides the parties tried hard to reach an assessment in accordance with the agreement in a spirit of reasonableness and without legalistic hair-splitting, and both showed a readiness to discuss the matter further in case of need. The attitude of the organizations' representatives was that negotiations should preferably not finish either in an atmosphere of triumph or in one of defeat on either side but should create a basis for further coexistence. How far the local parties were satisfied with the outcome of the cases is a matter which was not specially investigated. It is, however, important to note the therapeutic ambitions; in a number of cases it could be observed that the organizations had checked up on the consequences of the decision or that they had on request intervened in order to help their members to adjust themselves to the settlement reached by the parties. Here we observe a marked contrast to the attitudes and the framework of action typical of the courts.

In the analysis which preceded the setting of the study's aims, action patterns of legal-rule type were opposed to action patterns of games-rule type. This of course is yet another rough division, but it nevertheless seems to have something to tell us in a general characterization. The games character of the negotiation method does not preclude successful procedures which are of such rigidity that they may almost be described as action by legal rule. The study has given support to and filled out the contours of the very probable presumption that the settlement of disputes at the or-

[2] See, e.g., T. C. Schelling, *The Strategy of Conflict*, Cambridge, Mass., 1960, pp. 81 ff.

ganization level is largely of this character. If we look at the negotiations we find a landscape criss-crossed by a network of fixed paths. The collective agreement with its ramifications and outrunners is the code of rules that the parties abide by, or try to abide by, and which the negotiators know inside out. The organizations constitute foci for views which, at any rate internally, are uniform on how the agreement is to be conceived and put into effect. The strong community of interest in continuing bargaining relations and the institutionalized forms of party contracts act in favour of common lines of action. Another factor contributing to this conformism is one so extraneous as the Labour Court and its operation. The settlements reached against this background through common acceptance of the terms of the agreement resemble more or less closely the adjudication by a court. Concessional and *ad hoc* settlements represent deviations from paths which the parties, separately or together, normally follow or would prefer to follow. According to the picture resulting from the study it would be quite inadequate as an overall assessment to describe such settlements as solutions which come about for the sake of expediency. Rather there are certain general guidelines observed by both sides. When it happens that on recurring questions the parties begin increasingly to compromise at a definite level, they approach a legal-rule pattern of behaviour. Typically, however, the concessional solutions represent a games-rule element. Having regard to the duality in the attitudes, the inclination, on the one hand, to follow and develop norms and, on the other, the extensive readiness in case of need to compromise and to proceed in an individualized manner, the central handling of disputes appears as based on a rules system of mixed nature. Comparisons may be made with arbitral procedure and the ambivalent attitude to be found among legal writers and among many arbitrators—particularly those who are lawyers—concerning the permissiblity in arbitration of judging on other grounds than those accepted in law. I was not able to observe any corresponding dissension and uncertainty among the negotiators. Not even among the minority in the employers' associations who had legal training was I able to observe any hesitation on grounds of principle about reaching settlements in accordance with considerations of pure suitability. The lawyers in question, however, were in all cases old hands at negotiation and had obviously been strongly influenced by the style of argument used on the workers' side, the side which in the nature of things is the one which gives the

"direction" to a negotiation. Whatever may be the legal influences at work it is here decidedly a question of a dispute-solving process which rests on its own presumptions and which is distinguished by the sovereignty of the parties.

It appears to me that the study has shown that where the organizational conditions are favourable justice can be administered in a way which meets reasonable requirements as to "the rule of law" without being based on the supremacy of legal rules. As regards the foreseeability of the outcome, even here it may be questioned whether central negotiation of disputes is notably inferior to resort to a court; perhaps, on the contrary, the fact is that the outcome of such negotiation is usually easier to calculate, case for case, than is the result of trial by a court. The parties have control over the framework within which a settlement can be accepted; at the union-association level there is often a predetermined attitude on various questions which is well known to the other side; if unity in accordance with the agreement cannot be achieved there are in many cases good prospects of a compromise on terms which are to some degree calculable; the fact that the interests of the parties themselves and substantive justice have an excellent chance is in itself an important factor. I would, however, say that I do not think that the calculability aspect should be assigned the same importance as it is usually given by legal writers and judges. In the negotiation sphere a relativistic approach is common. The negotiators know that their own conception of what is right and proper cannot always win the day, however justified it may be. There is another rule-of-law consideration which the parties consider more important than the requirements of uniformity and foreseeability. This is that the individual parties must be able to rely on the organizations to do their best with the disputes which are entrusted to them.

In the course of the study there emerged a number of differences between collective-agreement areas in the aspects dealt with. It is probable that these differences would have appeared earlier and in greater numbers if the dispute material, had, especially in chronological terms, been more extensive and if there had been a more intensive investigation of environmental factors. What, however, seems to me most striking is that the patterns, although relating to sectors and collective agreements of widely differing character, should have such a high degree of fundamental uniformity. One has the impression that the dissimilarities are essentially differences of degree only. There seems to be reason

to believe that the results of the study have a more general application than they were expected to have and than is directly claimed for them. The study has perhaps a good deal to tell us about central negotiation and its mechanisms in other large industrial labour spheres. It is, however, probably very uncertain to what extent generalizations can justifiably be made in regard to negotiation in the field, both in the trades investigated and in others. The local handling of disputes shows great variations in technical quality and with regard to objectives. It is probable that it contains a comparatively large element of bargain-striking with a corresponding detachment from the collective agreement itself and with an even greater emphasis on practicability—the parties are negotiating both literally and figuratively in their working clothes.

The following reflections may conclude this paper.

To the general public, judicial procedure is the method of settling disputes which above all has come to be regarded as the incarnation of the concept of justice. Even when, as in this study, one is confronted with people whose main occupation it is to resolve disputes in autonomous forms, the foundations of which were laid long ago, one often finds that they themselves are surprised at the idea that the work they are doing could have anything to do with the administration of justice. How does it come about that such an attitude exists among those who, if anybody, ought to have some insight into the meaning and importance of extrajudicial methods?

The fact that negotiation of disputes is so intimately interwoven with everything else connected with the preservation of collective-agreement interests may be a partial explanation. Basically, of course, one activity is just as much or as little "judicial" as the other.

Especially with regard to negotiation, a further explanation might also lie in the associations which the term administration of justice has with a laying down of the law in absolute terms. In my experience negotiating officials do not like the idea of being regarded as a kind of lawyer with the sole task of diagnosing a case with respect to what is right or wrong from the angle of a rigidly fixed scheme of evaluations and ideas. They insist that the method of negotiation contains much more than this.

But yet other interpretations present themselves. Among the organizations there is a consciousness that the dispute procedure which has been built up is uneven in respect of both organiza-

tion and personnel, and naturally they try to remove any deficiencies that exist. It is considered too much to expect to reach judicial standards as regards the technical aspects. This is no doubt true—with some reservation regarding negotiations at the organization level—although it is difficult to compare systems which place such different demands on their executants.

But the phenomenon thus pointed out is also likely to reflect the lingering, in the official "legal world", including that of legal writers, of old prejudice as to the proper criteria to be fulfilled by an activity which deserves the name of "administration of law".

With regard to this attitude, it seems relevant to refer once more to the legislative intervention in the collective-agreement sphere which was undertaken in 1928. This action was taken against the background of a lack of faith in the administration of justice by the parties of the labour market. This "no confidence" character was emphasized by the doctrinal methods which were to distinguish the judgments of the Labour Court. Both to the judges of that Court and to its supporters it seemed self-evident that the community and the parties could only benefit if accepted legal ways of thought penetrated throughout the labour market. The idea hardly arose that perhaps the Court for its part might have something to learn from the autonomous procedures which, though still insufficiently refined and still too much marked by the bitterness of interparty disagreements, might contain elements worth seeking out and improving. If the Court had shown a less markedly legalistic attitude, if its judgments had been consciously and openly of a less rigid kind, a bridge might have been built between extra-judicial and conventional judicial techniques. The system of autonomy of the parties, itself certainly capable of vigorous growth, would have been injected with the prestige of official status, while at the same time the Labour Court might in the long run have enhanced its possibilities of contributing to better industrial relations.

These critical objections may seem too symptomatic of an anachronistic way of looking at the matter. They are intended as a point of departure for noting the growing scepticism which during the work on the study I came to feel with regard to the traditional ideals for the administration of justice in private-law contexts. It may be that negotiation and legal procedure are so differently constituted and in essential respects meet such differing needs that they should function in different ways. Nevertheless,

there seems to be a strong case in favour of the assumption that the parties to an agreement would benefit if the transition from negotiation to legal action was less abrupt. In Sweden there is a noticeable tendency both in legislation and in judicial practice to give the courts greater scope with regard to considerations of reasonability and choice of legal sanctions. There are probably some who feel that this development has already proceeded too far. In my opinion, the administration of justice in the courts is far from having been given a sufficient measure of functional flexibility. Its technique should be reformulated with greater attention to, on the one hand, the individualistic, pluralistic and changing elements in production and society, and, on the other hand, what might be called the trend to automation in these spheres. Perhaps extralegal research on a broad basis can not only provide perspectives of importance for those who are engaged in autonomous forms of settling disputes but also provide impulses for new thoughts about the kind of official administration of justice needed by the modern community.