CENTRE FOR ECONOMIC PERFORMANCE

DISCUSSION PAPER NO. 196

JUNE 1994

THE IMPACT OF THE LAW ON INDUSTRIAL DISPUTES IN THE 1980s: REPORT OF A SURVEY OF CONSTRUCTION EMPLOYERS

J. ELGAR AND R. SIMPSON

THE IMPACT OF THE LAW ON INDUSTRIAL DISPUTES IN THE 1980s: REPORT OF A SURVEY OF CONSTRUCTION EMPLOYERS

Jane Elgar and Bob Simpson*

The Centre for Economic Performance is financed by the Economic and Social Research Council. The research which is reported here was financed by a grant from the Leverhulme Trust.

ABSTRACT

This paper reports the results of one part of a research project designed to investigate the nature and extent of the impact of the labour legislation enacted between 1980 and 1990 on the conduct of industrial relations and the processes by which this has come about. Interviews were carried out with managers in a number of companies affiliated to both the Building Employers' Confederation and Federation of Civil Engineering Contractors. There was a broad similarity in the experience of all our respondents. An accelerated trend away from direct employment was generally seen to be the main factor explaining the low incidence of industrial action over the period under review. The law had been of limited relevance to their industrial relations activities, but it was seen as having made some contribution to creating an environment in which management could feel more confident in pursuing its goals.

This paper was produced as part of the Centre's
Programme on Industrial Relations

THE IMPACT OF THE LAW ON INDUSTRIAL DISPUTES IN THE 1980s: REPORT OF A SURVEY OF CONSTRUCTION COMPANIES

Jane Elgar and Bob Simpson*

The second part of our research project on the impact of the law on industrial disputes in the 1980s focused on surveys of management and union negotiators. On the union side the survey was carried out by questionnaire. Managers were the subject of structured interviews. The aim of this part of the research was to provide a picture of the range of experience of those with responsibility for overseeing industrial relations in a selection of companies. While the surveys of management do not claim to be representative of any industry as a whole, they have highlighted a number of important issues relating to the role of the law in industrial relations in general and industrial disputes in particular.

This report presents the results of interviews with 12 managers in eleven construction companies. The interviews were carried out in May - July 1992. All the companies were affiliated to both the Building Employers' Confederation (BEC) and the Federation of Civil Engineering Contractors (FCEC). Three were part of groups which included a company affiliated to the National Engineering Construction Employers Association (NECEA). The information obtained in the interviews was supplemented by earlier interviews with the head of industrial relations in each of these three organisations. The respondents in the eleven companies consisted of ten personnel or industrial relations specialists, nine of whom were at the company's head office the other being a project industrial relations manager, and two project managers.[1]

1. Background information about the companies

The respondents were all major construction businesses; most of them were `household names'. The information provided therefore relates to a particular section of the construction industry which also includes larger numbers of medium and small sized businesses and it is important to bear in mind that our respondents were not typical of the industry as a whole. The core areas of work of our respondents were large commercial developments and either or both housing or civil engineering. Four had expanded into property development. Several also had divisions carrying out specialist activities such as plant hire, brick and concrete factories. Four were part of larger groups with interests outside construction. All the respondent companies operated through a number of different arms each of which was responsible for a particular area of work. The mid to late 1980s were a time of expansion and acquisition for major contractors in the industry. By the time of our interviews this had largely ended and at least six of our respondents either had or were in the process of selling and/or closing some of their non-core business activities. All reported either a decline in profitability or losses in their annual reports in the early 1990s.

Numbers employed

In the early 1990s, the recession had led to a steep decline in the numbers working in the industry and all respondents had experienced this. All the time of

our interviews, two companies employed more than ten thousand workers, four had between five and ten thousand, three between one and five thousand and one only five hundred. As a result of the extensive subcontracting for the supply of labour in the industry (see below) a relatively high proportion of those directly employed by respondents were staff or white collar workers. Eight of the eleven companies employed a larger number of staff than manual workers.

2. Developments in the industry

The information provided by our respondents has to be seen against the background of certain distinctive features of the construction industry. Two of these are the extensive use of subcontracting for the supply of labour and the nature of the commercial contracting agreements.

Use of subcontractors

The use of subcontractors for the performance of specialist tasks is a long established feature of the construction industry. Concern over the extent of `labour only' sub-contracting and the associated practice of self-employment led to an official inquiry in the 1960s. Its report recommended a degree of greater regulation of employment in the industry.[2] This did not materialise and in the 1970s and 1980s there was a steadily increasing trend in the use of subcontractors for the supply of labour. This was a policy pursued by all of our respondents although there were some geographical variations, with the North East of England in particular mentioned as an area where higher levels of direct employment had been maintained. Direct employment had also been maintained to a greater extent on some major civil engineering projects.

Respondents identified a number of advantages for large businesses in subcontracting for the supply of labour. It was said to be cheaper than direct employment, although two respondents noted that this was assumed rather than proved. A related point was avoidance of the costs imposed by the employment protection legislation of the 1970s. There was greater flexibility in the use of labour so that, for example, large numbers of scaffolders could be brought in to work for a single day and workforce size could be varied more easily to meet the changing demands of a particular project. The problems of restricted mobility associated with a permanent workforce were avoided. In addition to these employment-related factors, we were also told that commercial contracting considerations (see below) reinforced the trend towards subcontracting. But it is notable that in response to questions about improvements in productivity and changes in working practices, subcontracting for the supply of labour was rarely mentioned.

The disadvantages of subcontracting which respondents identified included loss of control of labour costs. In times of boom as in the mid-1980s, skill standards were relaxed and labour costs soared as the pool of trained craftsmen proved insufficient to meet demand. Conversely in the recession of the early 1990s some subcontractors were not paying even the admittedly inadequate minimum rates in national agreements and intense competition led to a record number of failures among subcontracting businesses. Concerns were also expressed about the quality of work, health and safety standards and the adverse impact on training of skilled workers. On the evidence of our interviews there is some variation in the nature and

extent of subcontracting practices and the problems identified varied according to the particular arrangements used.

Only two respondents, however, would have liked to see a return to higher levels of direct employment. One particular obstacle to achieving this which respondents identified was a decline in in-house supervisory and managerial skills which had followed from increased subcontracting for labour. Against this, however, in one case it was said that the labour supplied by subcontractors was mainly unskilled and was managed by direct employees of the company. These variations reflect differences in the practices of different employers. For some, labour supplied by labour only sub-contractors would be managed as if the operatives were directly employed. Other arrangements would afford a lesser role to the management of the main contractor. A central feature of all these different arrangements was the rise in the extent to which the operatives were self-employed.

Commercial contracting agreements

For most of our respondents, much of their work was as `main contractors' on large projects. As such, they would be responsible for the performance of the whole of the contracted work notwithstanding the fact that a substantial proportion of it would be sub-contracted. In the 1980s, an alternative form of commercial contracting developed under which large contractors, including some of our respondents, were engaged as `management contractors'. The aim was to involve the management contractor at a much earlier stage than under conventional contracting arrangements, to make use of the contractor's `management' expertise and to secure an early start to construction work. That work would be split into a number of packages let to `works contractors' who would enter into a contract with the management contractor. Works contractors might themselves further sub-contract elements of their works package. This practice had significant industrial relations implications as management contractors would employ virtually no direct labour on site, retaining only senior management staff. Moreover, it led to considerable fragmentation; we were informed of one project which had been divided into 95 separate works packages which led to up to 38 sub-contractors being on site at any one time. A variation of the management contracting approach is `construction management' under which the construction manager contracts with the client to provide construction expertise and with the client then entering into a series of separate direct contracts with `trade contractors'; again, a significant number of separate trade contractors could be on site at any other time - all in direct contract with the client. This practice was never widespread and was a victim of the recession in the early 1990s.[3]

Changes in working practices

Respondents disagreed on whether there had been productivity gains on construction sites in the 1980s. Five said that there had been no change, and while seven identified gains, two of these qualified their response. The gains were seen to have resulted from developments in design and planning leading to more efficient building methods, new materials, better control of supply of materials, increasing use of prefabricated units and new methods of contracting which minimised delays in starting and completing work. Respondents disagreed in particular about the extent to which any improvements could be attributed to changes in working practices on

site. All agreed that mechanised materials handling had often reduced the demand for unskilled labour, but not all attached the same significance to this. Two respondents cited civil engineering as an exception: a third, by contrast, said that mechanised handling of materials had reduced the numbers employed by a half. These differences of opinion suggested that improvements in labour productivity could not be easily measured and that productivity was not a central factor in decisions on the subcontracting of work.

3. Negotiating arrangements

The increase in subcontracting in the 1980s took place against the background of national bargaining arrangements which remained unchanged. All respondents were party to the National Working Rule Agreement of the National Joint Council for the Building Industry (NJCBI) and the Civil Engineering Construction Conciliation Board Working Rule Agreement (CECCB) made by the BEC and the FCEC respectively with trade unions led by Union of Construction Allied Trades and Technicians (UCATT) and the Transport and General Workers Union. These agreements traditionally provided for low basic rates which were supplemented by allowances and local bonuses determined at site level. Most site bonuses were not the result of negotiated agreements. One consequence of this framework was that there could be large variations in pay between different sites. In the 1992 NJCBI agreement, the first step was taken to raising basic rates and reducing bonuses as a proportion of take home pay by consolidating guaranteed minimum bonuses into the basic rate.

Up to 1990, the Declaration of Intent which prefaced the NJCBI agreement attempted to preclude the use of self-employed labour by either the parties to the agreement or their subcontractors. It was generally appreciated that this did not reflect the reality which was that by this time over half the operatives in the industry were self-employed. In general, contractors failed to give effect to the stated purpose of the national agreement that workers engaged by subcontractors should be directly employed. After 1990 the NJCBI agreement was changed so that it provided in National Working Rule 26 that employers only had to take all reasonable and practicable steps to ensure that operatives were in the direct employment of companies or their subcontractors. Where operatives were self-employed, companies were required to see that they were engaged on terms no less favourable than those who were directly employed.

All our respondents said that either they would recommend that subcontractors give facilities to trade unions, or that the unions had their own contacts with subcontractors. Most expressly stated that they would expect subcontractors to observe the terms of the national agreement. Two told us that they would not use subcontractors who refused to have anything to do with unions, and all said they notified the unions of most if not all new contracts. We were told, however, that one or two subcontractors had resisted attempts to make them deal with unions, even challenging the legality of pressure to persuade them to do so. Only two respondents said that the unions were given an opportunity to comment on lists of subcontractors; another said that on occasion the unions had wanted to recommend subcontractors.

The background to these arrangement was a decline of uncertain extent in union membership in the industry. This dated back to the 1950s and 1960s and was

one of the pressures that led to the formation of UCATT through mergers in 1971. The percentages of directly employed operatives whose union subscriptions were paid by the check off in our respondents varied from over 50% in one case, 40 - 50% in two cases and 35% in another two down to less than 10% in one smaller company. Others suggested that the number of union members was so small as to make the density insignificant. One respondent estimated that union membership among all operatives - ie directly employed and those engaged by subcontractors - had not changed over 20 years; although the numbers had reduced approximately one third remained unionised. On particular projects the percentage could be much higher: 80-90% on one project with which one of our respondents was concerned. On major maintenance or civil engineering contracts we were told that what were in effect closed shops still operated.[4]

These variations in membership were mirrored in the extent of site based union organisation. The difficulties for a union in recruiting and organising an itinerant workforce on short term work are obvious. The construction unions face an additional problem in maintaining their relevance to the large numbers of self-employed workers. Most management contact with unions took place through full time officers. Negotiated site agreements to supplement the national agreement had become very much the exception and were normally found only on very large projects. Only three of our respondents referred to the existence of full time convenors on site; one employed a convenor on sites as a matter of policy, another used them on larger sites and a third commented that while its sites were too small for a full time convenor, in one area there was one employee who was engaged full time on trade union duties. Four others had experience of convenors in the past and one had resisted trade union pressure for a convenor on a current project.

It is clear from the extent of union organisation in the industry that the survival of the NJCBI and CECCB agreements was largely due to the importance which employers attached to maintaining the structure which they provided, for the determination of terms and conditions on site. At the time of our interviews none of our respondents had encouraged the Electrical, Electronic, Telecommunication and Plumbing Union's (EETPU's) attempt to recruit among general building operatives.[5] Union influence did not generally derive from the strength of membership on site.

4. Disputes in the 1980s

An important factor in the experience of disputes was the disputes procedure which all respondents bar one saw as an essential feature of the national agreements. Five respondents had experience of national panels under either the NJCBI or CECCB procedure in recent years[6]: for others, this had not occurred since the early 1980s or late 1970s. One respondent observed that under the NJCBI procedure, most issues were settled at regional level. Another said that national panels usually concerned the most fundamental and intractable issues in the industry. These included the use of subcontractors and self-employed workers.

Although their experience of use of these procedures was limited, ten respondents rated them as either effective or very effective, though two of these had reservations about whether they avoided industrial action. The perceived benefits included reinforcing the authority of union full time officers, providing a safety valve which was an alternative to industrial action and, more cynically, avoiding having to deal with contentious issues before a project ended. The procedures were

supplemented by informal contacts with union full time officers at regional and national level. Good relations at this personal level could mean that it was rarely necessary to invoke the disputes procedure.

General experience of industrial action

None of the respondents had experienced widespread industrial action. The last major industrial action was on the Sizewell B project at the time it was being set up in 1989. Another major dispute which affected some respondents' associated companies whose activities fell within the remit of the National Agreement for the Engineering Construction Industry was the six weeks strike by steel erectors in London in 1989. In general, industrial action tended to be short lived and unofficial. Some projects in particular were said to have given rise to a number of short stoppages, for example over safety issues.

Three respondents had experience of picketing. In one case this was a token protest against a subcontractor who had gone out of business leaving bricklayers unpaid. Another related to bonus payments and the use of subcontractors. The third was a more widespread picket of a number of the respondent's sites over redundancies at another site among workers engaged by one of the respondent company's subcontractors. In 1992 an unofficial organisation called the Joint Sites Committee (JSC) emerged in London, and received some publicity for industrial action which it organised, but its activities had not directly affected any of our respondents.

Two issues in particular gave rise to what might be seen either as industrial action or a lesser form of protest. The first, a fatal accident on site, invariably led to the closure of the site for the rest of the day either due to a walkout by the entire workforce or according to one respondent, because management would close the site. The other was the non-payment of workers by insolvent subcontractors. Respondent companies' response to this increasingly common occurrence varied. One company refused to accept any responsibility to the workers concerned. Three had made provision to take on the workers concerned for a limited period. Four others persuaded replacement subcontractors to take them on and met at least part of the costs involved; this might involve making up for loss of pay through, for example, enhanced bonus payments. In general, our respondents' view was that the potential for wider disputes which this issue raised had been successfully diffused by their reacting to the situation quickly.

Pay related disputes had not been a major issue in the experience of any of the respondents, despite the existence of considerable differentials between the pay of workers employed by different contractors. The action at Sizewell was over bonus payments. The massive job losses that had occurred since 1989 also rarely gave rise to any dispute, let alone industrial action. Union responses to redundancies were more likely to include industrial tribunal claims relating to alleged failures to comply with the law on redundancies.

Management responses to industrial action

Where industrial action occurred the involvement of full time officers was seen as important although on occasion industrial action took place against their advice. On one of the more common causes of dispute, non-payment of workers by subcontractors, a quick response to the underlying issue was seen to be important. None of the companies had any evident strategy for responding to industrial action; their reaction to what seemed to regarded as an exceptional but at some point inevitable occurrence would be determined on an ad hoc basis.

5. Disputes and the law

The extensive use of subcontracting for the supply of labour and the associated increase in the numbers of self employed workers provided a distinctive context for the legal regulation of industrial conflict in general and the changes to the law in the 1980s in particular. Only one respondent company had been involved in labour injunction proceedings in the period under review. In this case injunctions were secured against named pickets and the dispute was resolved without observance of the injunctions becoming an issue. Two other companies had seriously considered resort to the law over picketing in particular disputes. Another had taken legal advice about the possibility of proceeding against the unions if the activities of the JSC caused disruption on its sites. The objective here would have been to force the JSC to confine its activities to other companies' sites, a reflection of the ad hoc nature of management reactions to industrial action referred to above.

Although few respondents had actively considered seeking legal remedies in disputes, ten said that the law had been of at least some importance in their dealings with unions; the other two said that it was not at all important. Three expressly stated that the law was seen very much as a last resort: two that before it was invoked, senior management would be involved. It should be noted that up to the end of 1990, the nature of employment in the industry could have been a significant obstacle to proceedings against the unions in respect of certain possible infringements of the law.[7] Effective action against individual workers could be equally problematic because of the peripatetic nature of the workforce. Respondents nevertheless felt that the law had established a clearer framework within which both sides could work, management had more confidence and among union full time officers it had reinforced recognition of the need for a dialogue with management.

Industrial action ballots

The experience of these respondents with respect to ballots on industrial action was noticeably different from that of managers in other industries. Only four respondents were aware of ballots having been held.[8] While there is evidence that in other industries holding a strike ballot is seen as a useful negotiating tactic by trade unions, the obstacles in the way of organising a lawful ballot of construction workers mean that this is far less likely to be the case in this industry. Moreover there was no tradition of balloting before industrial action on construction sites. Some respondents believed that a lawful ballot - at least if it extended to more than one site - was impossible. It may be noted that among the obstacles facing the unions would be identifying who their members were on a particular site and the related problem of the need to establish disputes with all the employers of workers who were to be balloted and called on to take action. Our respondents were clearly

aware of at least the first of these two issues. Most said that if a ballot was held they would monitor it to see that it complied with the law. In one case this had led to a reballot which reversed the first vote in favour of industrial action. It was clear from responses that a union threat to hold a ballot on industrial action lacked credibility with the companies. Most action that had occurred had been unballoted. Eight respondents said that there had been unballoted action in their company.

Individual workers

The potential for these companies to direct legal sanctions against individual workers was restricted by the progressively greater use of subcontractors to supply labour. We were informed of just one case where a large number of directly employed operatives were dismissed in a dispute - a move that was said to have contributed to successful resolution of the issue from a management viewpoint.

6. Perceptions of the 1980s

In addition to questions focused on use of the law (if any) in relation to particular events, respondents were asked some more general questions on their perception of the climate of industrial relations in the 1980s and the role of the law in this context.

Respondents were evenly divided over whether employers had become more hardline in their dealings with unions in the 1980s. In their own industry there was evidence of a more hardline attitude among employers in their being less willing to assist the unions through `top down' organising practices (see Evans and Lewis, 1989). But all respondents were committed to maintaining the established negotiating structures in the industry.

Only three respondents agreed with the statement that personnel specialists had become less important in companies. One of these had seen personnel staffing reduced by two thirds. Three respondents referred to the changing role of personnel away from industrial relations to training and development. Three placed the increasing importance of personnel specialists in the context of managers' greater need for awareness of a wide range of legislative requirements affecting the employment relationship.

Only two respondents agreed with the statement that the most important factor affecting whether or not industrial action had taken place in the 1980s had been the law. The majority referred to the unions' organisational weakness on site and the prevalence of self-employment as the key factors: two referred to the general state of the economy.

These responses can be compared to respondents' views on the importance of the law as a factor favouring employers in their dealings with unions. Only two said that it had not been at all important, seven rated it fairly important and three important or very important. These views did not relate in any way to active `use' of the law which was, as noted above, very much the exception. Taken together these two groups of responses suggest that a majority of the respondents saw the importance of the law to lie not in preventing industrial action but in influencing the behaviour of both unions and management in their dealings with each other.

Six respondents agreed and three disagreed with the statement that ballots before industrial action were a good thing for trade unions; three declined to express a view. The positive side to balloting from a trade union perspective was seen to be

that ballots provided a truer reflection of members' views and re-established the authority of full time officers over `militants'. The negative implications arose from the perceived difficulties of persuading members to vote for industrial action and delays which undermined the impact of immediate (`wildcat') action.

7. Conclusions

One of the most striking features of our interviews with managers in construction companies was the high degree of uniformity in their responses. This was in part a reflection of a broad similarity in both the business activities and the nature of the organisation of these companies. Their employment practices and industrial relations structures were important elements in this common experience. Both were significant influences on the incidence of disputes and industrial action in these companies and the relevance of the law to this.

The increasing use of subcontracting for the supply of labour and extent of self-employment among operatives were notable features of the period under review. Both practices go back a long way,[9] but a number of our respondents identified an acceleration of the move away from direct employment as a significant trend among employers after the 1972 national strike.[10] Since there had been no dispute in the industry since 1972 on anything like the same scale, these respondents claimed that employers had thereby achieved for themselves what the 1980s legislation sought to achieve for employers generally, namely a reduction in the ability of trade unions to support their claims by a credible threat of industrial action.

While their own very limited experience of industrial action in the 1980s - and indeed often since 1972 - is consistent with this view, it does not necessarily demonstrate that these employment practices alone were responsible for a reduction in industrial conflict. The declining economic fortunes of the industry after the mid-1970s[11] and the weakness of trade union organisation on site were clearly effective constraints on the use of industrial action at either site or national level.[12] However some industrial action did occur. In the upturn of the mid-late 1980s pressures on pay gave rise to some conflict, although none of our respondents had direct experience of resulting industrial action. It was also evident that subcontracting for the supply of labour could create its own problems, notably the inevitable discontent caused by subcontractors becoming insolvent and leaving workers unpaid. While this could generate industrial action, in the experience of our respondents this was usually shortlived and largely demonstrative and the situation had so far been satisfactorily resolved by a prompt management response which usually secured continued work for the operatives involved.

Of equal importance in explaining the low incidence of industrial action is the nature of collective labour relations in the industry. The weakness of union organisation on site - to which self-employment and labour-only sub-contracting were contributory factors - was a key feature here. Even significant membership density might well be the result of `top down' recruiting practices[13] which did not provide the necessary organisational strength to sustain industrial action. Major industrial action remained a serious possibility only on larger projects where the real organisation on sites was stronger. The union side had only limited bargaining power in the national bargaining arrangements and it is clear that these survived largely because the employers saw advantages in the structures they provided for industrial relations. One of these advantages was that the disputes procedures of the

NJCBI and CECCB enabled many issues to be contained rather than give rise to open conflict.

As they had seen little industrial action, our respondents had had few occasions to consider resort to the law. Where it had been considered, and on one occasion invoked, restraints on picketing were the most prominent issue. It is arguable whether or not legislative changes to the law in the 1980s made any crucial difference to the ability of construction employers to obtain labour injunctions to restrain picketing.[14] Nevertheless there was a definite perception among our respondents that in the 1980s it had become possible for picketing to be rendered ineffective, if not eliminated, by recourse to the courts, should employers wish to enforce their legal rights.

By contrast with other sectors, there was little evidence of any countervailing gains for trade unions in construction through threatening or organising strike ballots. Managers' belief that it would be well nigh impossible for the unions to do this lawfully was a factor here; a threat to hold a strike ballot would in most circumstances not have been taken seriously by our respondents. We were, however, made aware of a ballot being held on a site of one of the companies in our survey and it was reported that the vote in favour of industrial action was followed by a negotiated settlement of the dispute. Whether or not this ballot complied with the detail of the law, it demonstrated that in construction as elsewhere, a strike ballot could at least in some circumstances be a factor in the development and resolution of a dispute.

The overall picture was, therefore, that the law was of limited direct relevance to our respondents in their industrial relations activities. At the time of our interviews more pressing problems for the industry were the depth of the recession of the early 1990s and the difficulties flowing from companies' short term approach to issues, notably training where existing provision was admittedly inadequate (see NEDC, 1992, where the proposal for a qualifications based operative registration scheme was made in part to address this weakness).[15] A number of respondents welcomed changes to the law on contract compliance for which the BEC and FCEC had both lobbied strongly from the end of the 1970s. The outlawing of `union labour only' clauses in 1982 and the changes to local government tendering practices required by legislation in 1980 and, in particular, 1988 which prevented local authorities from attaching non-commercial conditions to tender documents, were therefore seen as positive developments. Changes in employment practices and the general state of the economy had, however, been far more important than the law in reducing what collective power that workers and unions in the industry had. But the law was not seen to be wholly irrelevant. It had contributed to a mutual awareness among managers and unions of an environment in which management could feel more confident in pursuing its goals.

ENDNOTES

* Jane Elgar was a Research Officer at the Centre for Economic Performance from 1990-1993 and Bob Simpson is Senior Lecturer in Law and a member of the Centre for Economic Performance at the London School of Economics and Political Science.

1. These two managers were both in the same company and at these interviews some additional information was provided by a member of the company's industrial relations department.

2. Phelps Brown, 1968. See Lewis, 1969.

3. A review of all the procurement practices in the industry carried out by Sir Michael Latham was published in July 1994.

4. Estimates of the overall density of union membership among operatives working in the private sector of the industry vary and some put it is low as 20%. The nature of the industry makes accurate measurement of union membership difficult if not impossible.

5. Companies' attitudes may well have changed since our interviews. In 1992 the EETPU amalgamated with the Amalgamated Engineering Union to form the Amalgamated Engineering and Electrical Union (AEEU). Difficulties over, inter alia, the EETPU's recruitment activities in the construction industry were overcome to enable the EETPU part of the AEEU to be readmitted to the TUC in 1993.

6. While disputes under the CECCB agreement go straight to a national panel, there are three stages in the NJCBI agreement: local, regional and national.

7. Changes to the law on secondary action in 1980 and ballots before industrial action in 1984 were originally drafted so as to limit their impact to where the industrial action involved breaches of contracts of employment. Where, as in the construction industry, large numbers of workers were self-employed, it was possible that these provisions would have no application in many disputes. The Employment Act 1990 redrafted these provisions to bring industrial action by self-employed workers within their scope. For this reasons union full time officers would be aware that virtually all industrial action would be likely to be on the wrong side of the law.

8. It is unlikely that this represents the total number of ballots held among workers on sites where these companies were working. Respondents would not necessarily have been made aware of all ballots held on each site.

9. On the historical origins see Clark, 1967.

10. Significant contributory factors which encouraged this trend were the extended range of employment protection rights for employees enacted in the Employment Protection Act 1975 and the introduction in 1976 of 714 certificates for bona fide self-employed operatives enabling them to be paid gross, without any deduction of income tax.

11. On the situation up to the late 1980s see Evans and Lewis 1989. The recession of the early 1990s had a particularly severe impact on the construction industry.

12. This was evident in the 1993 national negotiations which resulted in a pay freeze; while there were threats of industrial action by some workgroups in protest against this, no industrial action actually took place.

13. On `top down' recruiting practices see Evans and Lewis 1989.

14. On the law of picketing see Lewis 1986.

15. In 1993 agreement was reached within the industry an action to implement the NEDC proposals.

REFERENCES

Clark, G. de N., `Industrial Law and the Labour-Only Sub-contract', Modern Law Review, Vol.30, January 1967, pp.6-24.

Evans, S. and R. Lewis (1989). `Destructuring and Deregulation in the Construction Industry in Manufacturing Change: Industrial Relations and Restructuring , ed S. Tailby and C. Whitson, Blackwell, Oxford pp.60-93.

Lewis, R., `Labour in Building and Civil Engineering with particular reference to labour-only sub-contracting, Report of the Phelps Brown Committee' Modern Law Review, 32 January, 1969, pp.75-80.

Lewis, R., (1986) `Picketing' in Labour Law in Britain, ed R. Lewis, Blackwell, Oxford pp.195-221.

National Economic Development Council (NEDC), (1992) Registration in the Construction Industry: A Discussion Document, NEDC, London.

Phelps Brown, Committee of Inquiry into Labour in Building and Civil Engineering with particular reference to labour-only sub-contracting, Report Cmnd 3714, 1968, HMSO, London.