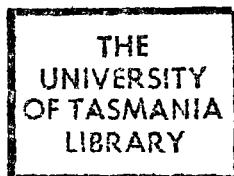


DEMARCATIION DISPUTES IN
CONTEMPORARY AUSTRALIAN
INDUSTRIAL RELATIONS -
THEIR CAUSES AND METHODS
OF RESOLUTION



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A dissertation submitted to the Political Science Department
of the Faculty of Arts at the University of Tasmania, as
part fulfilment of requirements for the degree of Master
of Social Science (Administration).

November 1982

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I, Peter Tavender, do hereby declare that this dissertation is a representation of my own original work and that it contains no material that I have otherwise published or used. I further declare that to the best of my knowledge, this dissertation contains no copy or paraphrase of material previously written by another person or authority, except where due acknowledgement has been made.



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INTRODUCTION

The objective of this paper is to evaluate the causes of demarcation disputes between trade unions in contemporary Australia, and to analyse methods of resolution of such disputes.

This topic is one which has had little attention in the academic or professional literature; in a large majority of cases where it has been mentioned, conflict over demarcation issues is treated as incidental to the major causes of industrial conflict and almost no more than an undesirable side effect of existing processes and structures. It will be shown however that although these disputes represent only a small proportion of working days lost through industrial conflict, the impact of such disputes upon the total economy is far greater than this statistical evidence would imply.

Apart from a recent article by Wright¹ there does not appear to have been any attempt to consider in detail this particular type of dispute especially in respect of possible causes, and how such disputes may be resolved.

In considering the causes of demarcation disputes, an analysis of contemporary disputes reveals that they are usually brought about, and influenced by, a multitude of factors rather than one individual cause. While these factors are often closely inter-related, they may, for ease of analysis, be divided into four categories:-

- (a) structure of employee organisations
- (b) technological change
- (c) power structure
- (d) externalities, i.e. management

With respect to the resolution of such disputes, a large percentage of conflict over demarcation matters are resolved by the parties themselves; such situations are only classified as disputes where some industrial action e.g. work

1. Wright K., JOB DEMARCATION AS INDUSTRIAL CONFLICT
Uni. of N.S.W. Sydney 1980

limitations, takes place. When such conflict reaches the stage where the parties are unable or unwilling to achieve a resolution, then three basic approaches are used to assist in resolution:-

- (a) conciliation through the auspices of the 'peak' councils e.g. Australian Council of Trade Unions (ACTU);
- (b) conciliation and/or arbitration by industrial tribunals;
- (c) structural changes to employee organisations.

Information for this paper has been derived from literature in respect of both the Australian and United Kingdom environment, decisions of industrial tribunals and interviews with trade union officials.

DEFINITION

Demarcation disputes have been defined as

"disputes between two or more trade unions over the question as to which union should be given the exclusive right to cover the work in question".²

It may be argued that this definition is perhaps too narrow and for the purposes of this paper it includes conflict between members of the same union over coverage of particular work.

Two basic types of demarcation disputes can be identified, firstly there is the claim by a trade union for its members to carry out particular tasks; secondly there is the claim of one union to recruit members (and their work) of another union. Both these types of demarcation disputes involve the constitutional membership coverage of unions. These should be distinguished from jurisdictional disputes, which may or may not involve demarcation matters, but relate to the jurisdiction of the various industrial authorities.³

2. Sheehan P., GLOSSARY OF INDUSTRIAL RELATIONS TERMS
Melbourne 1980 p.22

3. In the USE the word 'jurisdiction' includes both jurisdictional and demarcation disputes.

EXTENT OF DEMARCATION DISPUTES

The most significant outward manifestation of industrial conflict is work stoppages; one consequence has been the emphasis upon strike statistics as the basis for the study of such conflict. It is important to note however, that strikes and conflict are not synonymous, and that in order to study conflict it is necessary to consider

"the total range of behaviour and attitudes that express opposition and divergent orientations between industrial owners and managers on the one hand and the working people and their organisations on the other".⁴

Other manifestations of such conflict include working to rule, bans on overtime, absenteeism, labour turnover etc. Having regard to these alternatives which are available, considerable care should be given to any attempt to evaluate the relative extent of a particular cause of disputes based solely on strike statistics.

A further issue is in respect of the real causes of industrial disputes. The officially recorded cause of disputes needs to be treated with some caution; Dabscheck and Niland⁵ emphasise that a range of factors, often building up over a period of time (may), merge to produce what appears to be a specific event with a single cause.

Finally there is the ever present problem of effective classification of disputes especially if, as mentioned above, numerous issues are present to a greater or lesser degree.

Despite these limitations, it is still of value to consider the statistical evidence on the extent of demarcation disputes.

4. Kornhauser A., Dubin R., Ross A.M. (Eds) INDUSTRIAL CONFLICT, New York 1954 p. 13

5. Dabscheck B., Niland J., INDUSTRIAL RELATIONS IN AUSTRALIA, Sydney 1981 p. 74

TABLE 1
EXTENT OF DEMARCATION & INTER, INTRA UNION DISPUTES 1971-80

Year	No of Disputes			Working Days Lost ('000)			Workers Involved ('000)		
	Total	Demarc	%	Total	Demarc	%	Total	Demarc	%
1971	2404	184	7.7	3068	83	2.7	1327	40	3.0
1972	2298	149	6.5	2010	49	2.4	1114	26	2.3
1973	2538	201	7.9	2634	86	3.2	803	35	4.4
1974	2809	228	8.1	6292	95	1.5	2005	61	3.1
1975	2432	144	6.0	3509	55	1.6	1398	25	1.8
1976	2055	129	6.3	3799	63	1.7	2190	28	1.3
1977	2090	125	6.0	1654	28	1.7	596	16	2.7
1978	2277	169	7.4	2130	56	2.6	1076	24	2.3
1979	2042	123	6.0	3964	56	1.4	1863	18	1.0
1980	2629	145	5.5	3320	65	2.0	1126	26	2.3

Source: ABS Industrial Disputes No 6322.0 Canberra
and Unpublished Statistics

It can be seen that as a percentage, the number of working days lost and the number of workers involved in respect of these disputes is significantly lower than the actual number of disputes. This may suggest that the disputes involve relatively fewer employees than other forms of dispute, and also that there may have been a greater use of non-strike forms of industrial action e.g. bans etc.

A breakdown of unpublished ABS Statistics indicates that demarcation and inter/intra union disputes are concentrated in certain industries.

TABLE II
DEMARCATIION AND INTER & INTRA UNION DISPUTES 1971-80

Industry	% Disputes	% Man/ Days Lost
Manufacturing - metal, machinery & equipment	37	29
Mining - coal	14	16
Mining - other	12	10
Construction	11	13
Manufacturing - other	9	18
Transport, storage & communications - other	6	6
Transport, storage & communications - stevedoring services	5	2
Other industries	6	6
	<u>100</u>	<u>100</u>

Source: ABS Unpublished Statistics

When these statistics are compared with the size of the workforce in these industries it may be seen that the greatest impact of this type of dispute may be found in the mining and metal, machinery and equipment manufacturing sectors. While this only relates to disputes involving strike action, there is no evidence to indicate that the distribution of non strike action is any different from that in respect of strike action.

TABLE III
DEMARCATATION AND INTER/INTRA UNION DISPUTES PER '000 EMPLOYEES

Industry	1971-80		
	Av. Annual Employment '000	Av. Annual No. of Disputes	Disputes per employees '000
Mining - coal	24.2	21.9	0.9
Mining - other	46.4	14.1	0.3
Manufacturing - metal machinery equipment	190.0	59.4	0.3
Construction	479.1	17.9	0.04
Transport, storage, ⁶ communications	312.7	17.4	0.05
Manufacturing - other	1086.8	14.1	0.01
Other industries	3534.7	9.4	0.003

Source: ABS Australian Labour Force. 6204 Canberra 1981
and Unpublished Statistics

While these figures do indicate a relatively long term tendency for demarcation disputes to be concentrated in certain industries, in the short term there are a number of instances of significant disputation which are not revealed in these statistics and which perhaps confirm the statement mentioned earlier that industrial action relating to this type of dispute is more commonly in the form of bans rather than strikes. Mr. G. Polites, Director of the Central Industrial Secretariat of the Confederation of Australian Industries in a recent address to the Tasmanian Chamber of Industries (18 February 1981, Hobart, unpublished) stated that in his opinion there were two major areas of demarcation disputation which were currently having a significant impact upon Australia's economy, and these were in the building and construction, and stevedoring industries. In respect of the stevedoring industry, the Marine and Ports Council of Australia identified inter union disputes as a significant cause of disruption to shipping. In 1979-80 63% of manhours lost in disputes by the Waterside Workers Federation were due to inter union problems.⁷

6. Breakdown between 'stevedoring' and other 'transport' is not available.

7. Statement by Mr. R. Hunt, Minister for Transport
17 January 1982.

Niland⁸ points out that the demarcation dispute is at best, a rather superficial measure of inter union rivalry. Far more significant is the network of restrictive practices spawned by the excessive number of trade unions in Australia. Restrictive labour practices have been defined as

"rules or customs which unduly hinder the efficient use of labour".⁹

Many practices, for example some safety procedures, result in the less efficient use of labour, however they may be justified on humanitarian or social grounds. Niland's comments may be compared with the Donovan Report which claimed that most restrictive labour practices are not enforced by the union as such; the Report points out that some aspects of such practices reflect upon inefficient management e.g. bad time keeping.¹⁰

Because the causes of restrictive practices can be laid at the feet of both employers and employees care must be taken when using them in the study of demarcation disputes. A study in 1957 on restrictive practices in the metal, stevedoring and mining industries in Australia admitted that the results were impressionistic with little evidence presented on the cost of these practices. Nevertheless in considering one particular area of this study, Cruise stated that demarcation disputes between boilermakers and shipwrights in the shipbuilding industry resulted in a 5% increase in the total cost of building a destroyer.¹¹

Apart from the very few studies such as those by Cruise into restrictive labour practices, little attempt has been made in Australia to provide any measurement of the costs of demarcation (and other) forms of disputation. In following up public statements on the extent of losses incurred by companies as a result of disputes, the Department of Industrial Relations found that there was little factual basis to these statements which were often in the form of production and wages foregone, much of which would be recouped once the dispute was resolved.

8. Niland J. Collective Bargaining & Compulsory Arbitration Sydney 1978 p.72

9. Royal Commission on Trade Unions & Employer Associations 1965-68 Report (Donovan Report) HMSO London 1968 p.77.

Demarcation and inter/intra union disputes are unique in that they normally involve conflict within one element of the industrial relations system, yet with the potential for affecting all other elements. The statistical evidence shows that these disputes only form a relatively small proportion of the total number of disputes in Australia, nevertheless when the evidence incorporates descriptive analysis, it would appear to indicate that the effects of these disputes are far greater than their numbers would imply. A further factor is that the disputes tend to be concentrated in a relatively small number of industries and as a consequence their impact upon the total economy is likely to be far greater than if their incidence was more widely scattered in less strategic industries.

CAUSES OF DEMARCATION DISPUTES

STRUCTURE OF THE AUSTRALIAN TRADE UNION MOVEMENT

Australia's trade union movement owes its heritage to the birthplace of trade unionism, England. During the nineteenth century many new settlers in Australia brought with them the ideas and aspirations of the newly formed English trade unions. They found an environment somewhat similar to that which they had left behind, with only limited safeguards for employees and, as a consequence of the newness of the nation, little effort to legislate in this area.

English trade unions have often been associated with the guilds which had operated since medieval times. Guilds in fact were comprised of both masters and journeymen, the latter being skilled tradesmen who had completed an apprenticeship and who would expect to eventually become masters. The growth of industrialization brought with it an increasing separation of master and journeymen with the latter having his status undermined by new working conditions and an increasing inability to obtain the necessary capital to reach the ranks of master or employer.¹²

10. Ibid

11. Cruise H.F. "Some Restrictive Practices in Australia; their extent, effect and origin", AIPS Productivity and Progress, Sydney 1957

12. Pelling H, A History of British Trade Unionism
London 1975, p.8

While the guilds and the new trade unions exhibited fundamental differences, a significant link was that union membership was made up, in the first instance, of former journeymen, with unions being established in almost every trade. It was not until well after the passing of the Combination Act in 1824 that unions with a more wider base were established, e.g. Grand General Union of the Operative Spinners of Great Britain and Ireland.

The Australian trade union movement followed a similar pattern with the first trade unions being made up of artisans with aims strongly oriented towards the protection of their craft. One example is found with the Typographical Association of Victoria whose membership rules stated very forcefully that the 'art' was not to be watered down by training a disproportionate number of apprentices.¹³ As in England, these unions were first established on a regional basis, later to become State organisations but with membership and aims not always completely comparable with similar trade unions in other States.

Two significant developments occurred during the latter part of the 19th century; first there was the establishment of organisations of unskilled employees in industries characterised by special features, e.g. coal mining, where employees were forced to share common dangers. This move was followed by the 'new unionism', a phrase used in both England and Australia to describe the new unions of unskilled and semi-skilled employees which saw themselves as representing a particular class of people rather than a particular trade. These developments were often stimulated by an ideological attitude that there should be greater equality of wealth, noticeably different from the general attitude of craft based unions which still concentrated on the protection of their trade. Equally important was the fact that these new unions were formed after the craft based unions and in employment areas where there were relatively few, if any, skilled workers; however where skilled workers were present, e.g. maintenance fitters, a majority tended to remain in their original craft union. A primary reason for this action was the general perception of differing status between artisans and labourers.

¹³ Dabscheck and Niland, *op cit*, p 38

This mixture of craft and industry based trade unions has remained the predominant feature of Australian unions to the present day.

Further features of the Australian union movement are the relatively high percentage (when compared with other Western countries) of union members in the total labour force - in excess of 56%; and the large number of trade unions, 316.¹⁴

The average membership of these unions is just under 10,000, however a more detailed breakdown is shown below:-

TABLE IV

No. of members	No. of unions	% of unions	% of unionists
0 - 499	100	32	1
500 - 9,999	154	49	13
10,000 - 49,000	48	15	42
50,000 and above	14	4	44
	316	100	100

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It may be seen that there are a very large number of unions with a relatively low membership, 81% of trade unions contain only 14% of the total membership. On the other hand 14 trade unions have individual membership in excess of 50,000 and together represent almost half of the total membership.

In addition to this skewed structure of trade unions there are two important features which have an influence upon demarcation disputes. Firstly not all unions cover the same work classification or in fact exist in every State. Dabscheck and Niland points out¹⁶ that 174 or 55% of trade unions only have membership in one State. The remaining unions have membership in anywhere from two to six States, however this group covers over 80% of total union members.

14. ABS Trade Union Statistics, Australia 1981 Canberra 1982

15. Plowman D., Deery S., Fisher C., Australian Industrial Relations Sydney 1980 p 194

NOTE: The table has been revised to include 1981 trade union statistics.

16. Dabscheck and Niland op.cit. p 113

A consequence of this structure is that employees in a particular work classification may be covered by different unions in different States, and, as it will be seen below, by more than one union.

In the metal industry for example, there are, under the Federal jurisdiction, four trade unions which are basically craft unions with a varying coverage of semi-skilled occupations, the Australasian Society of Engineers (ASE), Amalgamated Metalworkers and Shipwrights Union (AMWSU), Electrical Trade Union (ETU) and Federated Moulders Union, (FMU). In addition there are two unions, Federated Ironworkers Association (FIA) and the Federated Engine-drivers and Firemens Association (FEDFA) which are general industry unions with primary coverage of semi-skilled and unskilled workers. Both these latter unions may and do feel threatened where jobs for which they have legal coverage, are demanded by craft based unions.

A second feature is in respect of the industries covered by particular trade unions. A primary definition of industries is found in the Australian Standard Industrial Classification, however such a definition is designed for statistical purposes and may not be expected to reflect the myriad inter-relationships which have resulted in today's trade union structure. It must be noted that most unions were formed to cover particular activities at a certain point in time; many industries have changed dramatically over the intervening period and while some unions have also changed their coverage to accommodate these structural changes, these have not always been in the same direction, i.e. a union may emphasise the coverage of a wider range of employment classifications rather than following the development of a particular industry.

Wright¹⁷ points out that in practice in the U.S.A., except in the building and construction industry, and possibly rail and printing, the system of exclusive industrial jurisdiction does not apply in practice.

17. Wright op cit. p 11

In Australia many trade unions have coverage within a range of industries. Niland¹⁸ in a survey of N.S.W. unions showed that 40% of 87 unions had members in more than one of 29 industry groups and 10% had members in more than five industries. This particular structure can and does lead to a relatively high percentage of demarcation disputes because of overlapping coverage, especially as membership coverage can be equated to property rights which may be fiercely defended from external assault.

A feature of the industrial relations systems in Australia is that under all industrial jurisdictions with the exception of Victoria and Tasmania, there is a requirement for both employer and employee organisations to be registered with the industrial tribunal under whose jurisdiction they wish to operate. The emphasis behind this requirement was to encourage representative organisations so that employers would be forced to recognise and deal with trade unions; this was seen as equating the balance of power from the very one-sided situation during the era of the major strikes of the 1890's. Justice Higgins commented that the (Federal) system was based on unionism "*indeed without unions it is hard to conceive how arbitration could be worked*".¹⁹

The system of registration has a basic aim of providing some degree of control over the total number of trade unions, yet at the same time providing a freedom for employees to join (or not to join) the union of their choice. The system could also be expected to overcome the problem of multiple trade unions and the consequential rivalry which has been an important factor in demarcation disputes. It will be seen that this has not necessarily been the case.

The registration process has had one effect in that it has removed nearly all the problems associated with the formation of trade unions. A consequence has been the development of many smaller and often weaker trade unions which have become protected from other unions.

18. Niland op. cit. p 74

19. Portus J.H., The Development of Australian Trade Union Law, Melbourne 1978 p 15

Yerbury²⁰ makes the point that many such weaker unions have grown strong under the protection of the registration system, but would have quickly faded away under day to day collective bargaining processes.

The important feature of this registration process in the Federal jurisdiction is found in Section 142 of the Conciliation and Arbitration Act.

"the Industrial Registrar shall, unless in all circumstances he thinks it undesirable to do so, refuse to register any association if an organisation to which the member ... might conveniently belong had already been established"
(my emphasis).

In carrying out this process, the Registrar is required to take into consideration the public interest. From the Act it would appear that there would be almost indefinite protection for organisations once they have become registered. In practice however, decisions have generally been in favour of the applicant; for example, the existence of political differences has been ruled as adequate reason for registration of an organisation with a membership coverage similar to that of an existing organisation (NUR Case 32 CAR 450). A further example was the attempted registration by the Building Workers Industrial Union (BWIU) in 1962 following a ten year period of deregistration. The Registrar accepted the registration on the grounds that the union had maintained its membership during this period, despite the existence of a rival union to which they could have conveniently belong, i.e. the Australian Society of Carpenters and Joiners (ASC&J).

Portus makes the point that

"it is difficult under five arbitration acts to find recent decisions in which a union has failed in its application, for the reason that members could conveniently belong to an existing union. The consequence of these various decisions has been a multiplication in the number of trade unions with overlapping membership coverage".²¹

20. Yerbury D., "The Main Characteristics of Trade Union Law in the Australian Compulsory Arbitration System" Isaac J.E. and Ford G.W. Australian Labour Relations Readings 2nd Edition Melbourne 1971 p 165

Both the Jackson Committee²² and the Donovan Royal Commission²³ in the United Kingdom make mention of the problems created by the present union structure. The former states

*"the occupational structure of some unions, taken with the fragmentation of membership is a fertile field for demarcation and jurisdictional disputes. The conflicts can be bitter as they involve questions of present and future membership, and they can often lead to strike action"*²⁴.

While it is difficult to find evidence of particular demarcation disputes that have been caused solely by the existence of this unique union structure, there is no doubt that the multiplicity of trade unions structured on both a craft and industry basis is a significant factor in a large number of demarcation disputes.

TECHNOLOGICAL CHANGE

The Myer Committee defined technological change as

"changes in processes, materials, machinery or equipment, which have an impact on the way which work is performed in an enterprise or on the efficiencies and effectiveness of the enterprise".²⁵

It went on to point out that this definition would be unnecessarily restrictive if it did not include, for example, organisational change.

Advances in technology have always been an integral part of industrial societies with every major development having a significant impact upon the total society. These changes have increased the living standards of many people, yet at the same time hardships have resulted where the less fortunate have been displaced by new machinery and processes and have not been able to adapt to the new environment.

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22. Committee to Advise on Policies for Manufacturing Industry Policies for Development of Manufacturing Industry: A Green Paper (Jackson Committee) Canberra 1976
23. Donovan Report op. cit.
24. Jackson Committee Report op. cit. p 111
25. Committee of Inquiry into Technological Change in Australia Report (Myer Committee). Canberra 1980
Vol. 1 p 8

These changes all have an influence upon the division of labour, the distribution of economic benefits and consequential power and social relationships.²⁶

Concern over the impact of technological change upon work and society has been expressed by many individuals and groups ever since industrial processes were first developed. The Luddites of the 19th century are evidence of one form of group reaction to such changes; in more recent times J. Barbash in 1960 wrote that almost every major industrial relations problem that comes into public view seems to be interlaced with technological change²⁷.

More specifically, a large number of writers have argued that such changes have been the major cause of demarcation disputes²⁸.

The effect of technological change in both the United Kingdom and Australia may be expected to be greater than that in other countries because of the particular structure of trade unions with its craft and industry base. The primary reason is that technological change may be expected to have a greater impact upon individual jobs whereas changes to industries are far more gradual. In addition, craft based unions tend to reinforce existing divisions of labour. It is worth noting however, the comments of Frenkel²⁹ in a Study of the Australian Telecommunications Commission where he suggests that technological change and occupational unions do not inevitably lead to a higher incidence of demarcation disputes.

While technological change covers a very diverse range of developments, its effect upon organisations and their employees may be classified into four broad categories:-

- (a) Changes in work patterns which maintain the use of existing skills, e.g. later models of particular machines.

26. Wright op. cit. p 14

27. Plowman et al op. cit. p 334

28. Matthews & Ford p 33; Plowman (in Cole) p 48;
Martin p 89; Frenkel p 140
Myer Committee Report

29. Frenkel S.J. (Ed) Industrial Action Sydney 1980 p 153

The major impact of this type of change is not likely to be respect of inter or intra-union conflict, but rather over the remuneration for the actual work which is to be carried out, i.e. productivity bargaining.

- (b) Changes which result in a deskilling of an operation, e.g. machinery formerly operated by a skilled worker may now be operated by a semi-skilled or even unskilled worker.

If these two levels of skill are contained within a single trade union there is less likelihood of dispute, however it needs to be remembered that demarcation of work can and does exist within a trade union where a number of different skills are present. Senator R.W.B. Harradine claimed that the largest demarcation dispute in Australian history was between members of a single trade union, the AMWSU, on the West Coast of Tasmania³⁰.

Attitudes of trade union members have an important bearing on the effect of this type of technological change. Sheridan in his history of the Amalgamated Engineering Union (AEU) pointed out that

"the union took a very open view in respect of the less skilled workers in the industry".³¹

The approach taken by that union was to seek to control the new processes and to ensure that the wages for skilled workers were maintained and that semi-skilled machine operators also received adequate remuneration. This approach may be compared with that taken by the Federated Moulders Union which refused to have anything to do with new technology which involved deskilling of work. The consequence of this attitude was that semi-skilled work was taken over by other trade unions, e.g. Agricultural Implement Workers and Stovemakers Union, while the remaining trade positions became more and more isolated and divorced from new developments within the industry.

30. Senator R.W.B. Harradine Senate Hansard 26 November 1981
Canberra p 2632

31. Sheridan T. Mindful Militants Cambridge UK 1975 p 59

A further conflict situation may arise where one union, while having legitimate coverage for a particular classification for one reason or another has never enforced this right and has allowed other unions to recruit these workers. The steady decline of membership through technological change on the waterfront, resulted in demarcation disputation during 1982 when the Waterside Workers Federation attempted to recruit tradesmen's assistants from craft based unions, the AMWSU and ETU.³²

The likelihood of demarcation disputes is obviously influenced to a considerable extent by the strength of attitude of both union officials and their membership. In the shipbuilding industry, shipwrights have been very conscious of demarcation issues because technological change has been responsible for forcing the trade almost out of existence; they have therefore fought hard to hold on to the remaining work left to them.³³ A large part of this conflict was in fact directed against other tradesmen, e.g. fitters, welders etc.³⁴

- (c) Changes which cause the decline of a particular work process and may involve additional work being carried out by different work groups.

One example in Australia has been in respect of the building industry where technological developments in precast concrete have resulted in an increasing percentage of work now being carried out away from the actual building sites. The consequence for the trade union movement has been a decline in the work for the union with members working on building sites, the Builders Labourers Federation (BLF) but an increase for that union traditionally working away from building sites, the Australian Workers Union (AWU).

32. The desire to establish an "industry" union was an important consideration in this action by the WWF.

33. Kriegler R.J., Working for the Company Melb. 1980 p 210

34. In 1976 the Federated Shipwrights & Ship Construction Association of Australia amalgamated with the Amalgamated Metal Workers Union (AMWU) to form the Amalgamated Metal Workers and Shipwrights Union (AMWSU)

Demarcation disputes have taken place where the BLF has attempted to maintain work for its members by recruiting off site workers.³⁵

In a majority of industries where this situation arises, agreements have been drawn up between the competing unions to delineate which union shall cover which particular operation, e.g. WWF/TWU Tasmanian Ports Agreement 1960. Such agreements must be amended or re-negotiated to allow for new developments. It is during this renegotiation process that further demarcation disputes can and do occur.

- (d) Finally there is the situation where technological change causes a decline or demise of a particular work process and results in a new range of work being carried out using new skills which may or may not be carried out by the same enterprise.

Developments in the newspaper industry are an example of this type of change. Throughout the world the traditional means of newspaper production through the use of 'hot metal' systems are being replaced by 'cold type' computer based equipment. A major demarcation issue in this industry has been in respect of the manning of the new equipment and processes such as the video display screens.³⁶

The union which covers tradesmen in the industry, the Printing & Kindred Industry Union (PKIU) has expressed understandable concern that the work of many of its members is becoming redundant, with both clerical staff and journalists taking over their work by imputing material into the computer together with typesetting instructions.

35. Frenkel op. cit. p 27

36. Forward P.J., McColl P.T. "Technological Change in the Australian Newspaper Industry" Myer Committee op. cit. Vol. 4 p 173.

In certain areas of technological change, the primary demarcation issue relates to which of two (or more) groups of workers are to carry out the new functions, the critical factor being the membership of which trade union. In addition certain changes involve the obsolescence of particular work skills with no guarantee of retraining to cover the new functions, especially if other workers are already training, or nearly so, in these new techniques. Both these situations are compounded by the ever present fear that with almost all technological developments there are less jobs available associated with the particular work activity.

These broad groupings of the impact of technological change must be seen as a continuum rather than discrete segments, and are designed to show the range of issues which have the potential for creating or influencing demarcation disputes. It can be seen therefore that technological change has the potential for being a major cause of this type of dispute.

POWER STRUCTURE

In this section it will be proposed that the power which is held by union leaders as a consequence of their position within their organisation, may be a significant factor influencing the incidence of demarcation disputes.

Yerbury³⁷ claims that there is a fundamental belief stemming back to the formative years of trade unionism that they should operate in a democratic fashion. The *raison d'être* being identified by the Webbs³⁸ as the extension of democracy from the political environment to the work place thus enabling employees to participate in decision making within the organisation. As the institution representing the employees, trade unions must be similarly organised and operated.

37. Yerbury op. cit. p 150

38. Webb S & B Industrial Democracy New York

An important factor relating to this feature is that democracy is often seen as a state of mind and as such cannot be legislated for; it depends upon the willingness of the participants to take advantage of the structures which are made available for them.

In Australia there has been a considerable emphasis by Governments on legislation providing for the paraphernalia of democracy, e.g. secret ballots, limited terms of office etc. Rawson³⁹ suggests that this legislation (in the Federal jurisdiction) is based on three propositions:-

- (a) unions should be administered according to its own rules,
- (b) rules should provide safeguards against financial malpractice,
- (c) unions should not have oppressive, unjust or unreasonable rules.

As a result the large percentage of Australian unions which operate under one or the other of the industrial jurisdictions, offer the structure which provides rank and file members the opportunity to influence decision making within the organisation. Two points emerge however, firstly that honest elections do not necessarily militate against the development of oligarchies; secondly, as noted by Allen,⁴⁰ the aim of trade unions is to improve the general well being and living standards of their members and not to provide them with an exercise in self government.

With trade unions as with every other established organisation there will always be a requirement for leaders to exist; this begs the question of the manner in which these people operate and the extent to which, if at all, their actions influence either positively or negatively the existence and extent of demarcation disputes

39. Rawson D.W. Unions and Unionists in Australia Syd 1978

40. Allen V.L., Power in Trade Unions London 1954 p 64

With regard to the operational processes taken by union leaders, Michel concluded that

"in the trade union movement, the authoritarian character of the leaders and their tendency to use democratic organisations on oligarchic lines, are even more pronounced than in political organisations".⁴¹

He saw that the 'iron law of oligarchy' applied for a number of reasons:-

- (a) it was impossible to operate on the basis of direct democracy because of the need to conduct negotiations etc., i.e. flexibility;
- (b) officials stick to jobs like limpets for economic and social reasons;
- (c) members acquiesce to the expertise and prestige of the officials who gain virtual permanency.

Michel's argument may be supported for example by the United Kingdom context where some trade unions appoint their chief executives for life. In addition there is a common practice for some organisations to have a high level of appointed rather than elected officials; such people are normally appointed by the existing leadership and may therefore have similar attitudes and philosophies. There is also the potential for people who have lost elections to be appointed to posts within the organisation, e.g. in 1979 Mr. J. Baird was defeated in an election for the position of National Organiser of the AMWSU, he was immediately employed by that union as Director of Research.

On the other hand Clegg,⁴² in a survey of trade union government concludes that most unions are not autocratic, members in fact have a number of channels, which vary between unions, to exert influence over their leaders. He also argues that low polls in unions elections do not necessarily prove that the voters are unrepresentative of the views of the members as a whole.

41. Michel R.W.E. *Political Parties* USA 1958 p 173

42. Clegg H. The Systems of Industrial Relations in UK Oxford 1970 p 112

Despite these claims, there is a strong case for suggesting that there is a zone of indifference amongst members based on a lack of interest and/or knowledge which gives the leaders what amounts to power without accountability. Clegg in a later writing⁴³ tends to contradict himself by implying that there is a good deal of evidence to suggest that Michel's argument has some application amongst British unions. Yerbury makes the statement that:-

"it is a poor leader who cannot, at least some of the time, manipulate the external paraphernalia of democratic procedures so that the outcome represents his own will - even if the membership walks out of the door convinced and satisfied that they have played their part".⁴⁴

Given that union leaders have the potential to exert influence over their organisations it is necessary to see whether the perceptions of union leaders are in any way different from those of their members. A survey conducted by Sentry Holding Ltd. in 1977⁴⁵ indicated a significant divergence of opinion between union leaders and the work-force as a whole,⁴⁶ in respect of a wide range of issues relating to the role of the union. Three particular aspects were:-

43. Clegg H., "The Changing System of Industrial Relations in U.K." Oxford 1978 p 200

44. Yerbury op. cit. p 151

45. Sentry Holding Ltd. Managers & Workers at the Crossroads Sydney 1978 p 23

46. It is accepted that there may be a divergence of opinion between the views of workers who are union members and those who are not members, however in respect of the questions covered in this paper it is assumed that any divergence is not significant.

TABLE V

Question/Response	Workforce %	Union Leaders %
1. "Pressure for wage increases now (1977) is not readily supported by rank and file"		
Agree	63	20
Disagree	32	74
Don't know	5	6
2. "Union leaders often seem to be looking for something to justify their existence".		
Agree	78	12
Disagree	20	86
Don't know	2	2
3. "Trade unions should be actively concerned about gaining a greater say for unions in the running of a business"		
Agree	41	86
Disagree	57	14
Don't know	2	0

Short term differences between union leaders and rank and file members, especially over a particular industrial issue are not uncommon, as evidenced by the extent of 'wildcat' strikes i.e. where members take industrial action against the advise of their union leaders, or without the latter being aware of such action.

In the long term, significant differences of opinion are likely to result in the removal from office of the leaders, nevertheless until that point is reached the leaders may possess a considerable degree of freedom to follow courses of action which are oriented towards their own objectives which may or may not be compatable with those of the total membership.

On the assumption that such differences of opinion do occur for at least some of the time, it is necessary to consider what other influences there are which affect the actions of union leaders. Mills⁴⁷ sees them as part of the national power elite, not seeking to radically transform the social structure but to achieve a more advantageous integration (my emphasis) of their members into the existing framework. One interpretation of such integration would be increased numerical strength of the organisation together with coverage of activities which provide a strategic influence over economic activity. This may be achieved by widening of existing membership/job coverage especially in situations where technological change (see above) creates new functions and industries.

Both Martin⁴⁸ and Bagley⁴⁹ suggest that the rewards of union leadership includes both ideological considerations as well as potential political achievements. The importance of the former may be restricted to a relatively small number of union leaders, however these people may have significant influence upon the level of disputation in particular industries. The Federal Secretary of the BLF (Mr. N. Gallagher) is a member of the Communist (Marist-Leninist) Party and has, on numerous occasions justified conflict with the BWIU on the grounds that the Secretary of that union, Mr. P. Clancy, is a member of the Communist (Soviet) Party and therefore 'working against the interests of the country'.⁵⁰ In respect of political involvement, union leaders have the opportunity to establish themselves in the public eye; not only in their industrial role, e.g. strike leader, but also as political leaders, e.g. State Conferences of the Australian Labour Party are made up from representatives of both local branches and trade unions, thus providing a vehicle for such participation.

47. Wright Mills C. "The Labour Leaders & Power Elite" Kornhauser et al op. cit. p 151

48. Martin R.M. Trade Unions in Australia Brisbane 1972 p 84

49. Bagley Measuring Regional Industrial Conflict Hunter Valley Research Foundation 1982 p 6

50. Wise R. "The Union Wars" Australian Financial Review 17/19 March 1982

A significant ingredient of this power is the strength and growth of the particular union; a leader whose union is losing members, or who is not seen to be strenuously defending coverage of work be it on the grounds of winning back work previously lost, or as a result of technological change is unlikely to create the necessary dynamism to maintain his own position.

It may be argued that union leaders have both the opportunity and incentive to take such action which might exacerbate demarcation disputes. Whilst some examples have been mentioned in this section, it is difficult to prove the extent of the influence of this factor, as Wise⁵¹ points out, few unions admit to empire building but many act as if that is their primary objective.

EXTERNALITIES

Perhaps the major external influence i.e. outside the parties themselves, in respect of demarcation disputes are the actions of employers. The fundamental principles of management prerogative provides the employer with a considerable potential to influence both the existence and extent of this type of dispute. Issues such as the allocation of work between members of different unions, between staff and non-staff employees, and use of sub-contractors instead of employees are the fundamental ingredients of demarcation disputes.

Wright⁵² argues that there is very little academic evidence of the existence of such influence, however he goes on to suggest that even in case reporting this influence is usually underestimated.

There is no doubt that some dispute situations arise through the unintentional action of employers e.g. a foreman using the tools of the trade in doing the work of a subordinate to satisfy an urgent need to have a certain piece of work completed.

51. Ibid

52. Wright op. cit. p 20

Kriegler,⁵³ when reporting upon the attitudes of some BHP employees at Whyalla shipyards, found that many of the employees felt that the majority of demarcation disputes fell into this category rather than a calculated manoeuvre by management to create conflict between unions.

Employers may be expected to support existing processes within their work place, this is especially so in respect of first and second line supervisors who have probably been promoted from within the organisation. Brown⁵⁴ suggests that management usually tolerates 'customs and practice' simply because its control are too slack to prevent such things occurring. While management prerogative is the basis of legitimacy of these customs, management does not always have the motivation to enforce its own wishes, i.e. senior management when confronted with a written agreement on one hand and a two year old 'custom' that they may never have heard of, on the other hand, can be expected to accept the latter in order to avoid possible disputation.

There are two main situations where management may deliberately initiate action which could lead to a greater incidence of demarcation disputes:-

- (a) given the option of allocating work between two or more unions, most employers are likely to support the union from which they can expect the least amount of industrial disruption. This may be based on the employers own perception, or through a quite conscious investigation of the potential consequences of all available alternatives. W. Kelty, Assistant Secretary ACTU suggests that⁵⁵ a review of industrial disputes in Australia confirms that certain unions are involved in a relatively large proportion of disputes.
- (b) A further situation is where an employer may take such action as to reduce the number of unions in the work place so that there will be less groups to deal with in the negotiating situation, and (hopefully) less demarcation disputes.

53. Kriegler *op. cit.* p 212

54. Brown W. "Customs & Practice" *British Journal of I.R.* March 72

55. Wise *op. cit.* 18 March 1982

While Kriegler reported above that a majority of disputes were caused by management error, it is worth noting that he also found that some tradesmen perceived that the company was attempting to unilaterally weaken the traditional barriers between trades and actively encouraging the elimination of the Shipwrights Union.⁵⁶

As with other causes of disputes, action taken by management on its own may not necessarily lead to this type of dispute, however when combined with other factors it can result in very serious demarcation disputes.

RESOLUTION

As mentioned above, once conflict between unions reaches the stage that the parties themselves are not going to find a resolution, then there are three primary approaches which may be taken:-

- (a) recommendations from 'peak' councils;
- (b) conciliation and/or arbitration by industrial tribunals;
- (c) structural changes to trade unions e.g. amalgamation.

In the same way that most disputes are the result of an amalgam of causes, their resolution often involves more than one approach. In many cases tribunals only become involved after attempts at resolution by the union movement itself have failed. The third alternative, that of structural changes must be regarded as a long term approach which involves many other factors not merely the settlement of demarcation disputes.

a. Peak Councils

One of the early functions of the peak councils of employee organisations was the encouragement whenever possible, of trade unions to resolve disputes between each other, and as a last resort to use the offices of the peak councils themselves.

56. Kriegler op. cit.

In 1939 the British Trade Union Congress (TUC) adopted a set of principles, the Bridlington Principles, which were primarily designed to avoid competition between unions. This included encouraging unions which have frequent contact with one another to establish joint working arrangements. The concept behind these principles was that they were not designed to eliminate all inter-union conflict, but to form a code of conduct which unions are advised to follow.⁵⁷

In the Australian context the objectives of the ACTU does not mention the resolution of this type of dispute, although the objectives of at least one of its State Branches includes the following:-

"when requested to assist by conciliation or decision in the settlement of disputes between affiliated organisation".⁵⁸

The ACTU however adopted a policy on Inter Union Code (see Appendix A) which provides machinery and guidelines to be adopted by that body for facilitating settlement of disputes which have been referred to that body.

Little evidence is available with regard to the success of these two approaches, however in its evidence to the Donovan Royal Commission in 1868, the TUC stated that about 100 cases had been reported to it over a four year period; of these nearly half were withdrawn or disposed of without a formal hearing, while a 'very high majority' of the remainder were settled by the TUC machinery.⁵⁹

An important feature of the TUC policy is that the Congress does have the power to suspend organisations from membership should they fail to obey a decision of the Congress, with the final sanction being expulsion. This ultimate sanction has been only very rarely used.

No statistical evidence is available on the Australian environment, however it is significant that the ACTU was moved to establish a new policy in 1981. Prior to that date, the procedure allowed for one representative from each of the competing unions with an independent chairman

57. Donovan Report op. cit. p 184

58. Tasmanian Trades & Labour Council Objectives 1981

59. Donovan Report op. cit. p 183

from the ACTU or one of its State Branches to form a committee to attempt to resolve the dispute. This process was found to be unsatisfactory for a number of reasons:-

- (a) it created a situation similar to an arbitrated decision (see below) with a majority rather than unanimous decisions the most likely outcome. This in effect meant a win/lose situation.
- (b) the lack of enforceability tended to result in a refusal by the losing union to accept the decision.
- (c) some unions have been reluctant to use these services because of a lack of familiarity of the procedures involved.⁶⁰

A further difficulty has been where organisations have refused to participate in such hearings on the grounds that political affiliations may influence the final outcome.

In 1981 the new policy provided a greater emphasis upon conciliation rather than arbitration. When a dispute is notified to the ACTU, a committee is established comprising two representatives from each of the unions concerned, the State Labour Council i.e. Branch of the ACTU, and the ACTU. The committee has no authority as a decision making body, nevertheless it has had some successes primarily because the greater number of independent members who are now involved has reduced the possibility of bias on political or ideological grounds. Some of the difficulties mentioned above may still be expected to occur, because, like all 'agreements' there must be an essential commitment by all parties to accept and abide by the final outcome.

b. Industrial Tribunals⁶¹

In the Federal jurisdiction the High Court has ruled that the Australian Conciliation and Arbitration Commission has the authority to deal with demarcation disputes (see R vs Commonwealth Court of Conciliation and Arbitration ex parte APM Employees Union 67 CLR 619), under three sections of the Conciliation and Arbitration Act:-

60. ACTU Circular No. 325/1982 7 July 1982

61. This section will concentrate upon the Federal jurisdiction, however a number of State tribunals have similar power to make decisions in respect of demarcation disputes.

- (i) Section 4 which defines industrial matters, in particular paragraph (p)
"any question as to the demarcation of functions of employees, or classes of employees, whether as between employers and employees, or between members of different organisations".
- (ii) Section 41(1)(d) grants the Commission discretion to dismiss matters in the public interest i.e. an application by one organisation for coverage of a particular class of work may be dismissed "in the public interest" on the grounds that the workers were adequately covered by another (appropriate) organisation.
- (iii) Section 142A authorises the Commission (Presidential Member) to make an order
"providing that an organisation should have the right, either generally, or subject to limitations, to exclusively represent the individual interests of a particular class or group of workers".

Despite the existence of these various sections of the Act which may be used to resolve demarcation disputes, the Commission has been reluctant to arbitrate decisions on the grounds that this type of dispute should preferably be dealt with by the organisations themselves, or failing that, through the auspices of the relevant peak council (see above).

No specific rules have been established by the Federal or State tribunals for dealing with demarcation disputes, however it has been suggested that there are three guiding principles:-

- (a) Coverage of work by one union. There should, generally speaking, be only one registered organisation to which people engaged in any particular industrial work could conveniently belong, and as a necessary consequence the work should be allocated to members of that organisation.
- (b) Custom and practice. Custom and practice in relation to the work in question was of major significance.
- (c) Public Interest. Exclusive representation ought to be given to one union in respect to particular work if that course of action is in the public interest.⁶²

62. CCH Industrial Law Reporter Sydney 1981 p 4193

There are certain important factors which need to be considered in respect of this approach; firstly it is necessary for one of the parties to notify the Commission that a dispute situation exists, before the tribunal may take any action.⁶³

For a variety of reasons, the parties are not always willing to take this step, preferring to allow the dispute to be resolved in time by the parties themselves. It may also be a tactical move, not to notify the dispute.

As mentioned, strikes are not necessarily the most significant form of industrial action over demarcation disputes; if the dispute is only inconveniencing a small group then it may have low priority with consequential delays before the hearing actually takes place. Even when the hearing does occur, it may extend for weeks and months with arguments on interstateness and constitutional coverage, together with the total process of consultation, conciliation and finally arbitration.

The second point is that the process of compulsory arbitration relies upon the principle that the participants will accept the decision of an independent third party. Niland point out that there is less likelihood of such decisions being accepted by the parties in such a situation when compared with the case of the parties being forced to resolve the issue themselves, i.e. collective bargaining.⁶⁴ Lack of acceptance of arbitrated decisions is perhaps best demonstrated by the use of the appeal mechanism, i.e. to Full Bench of the Conciliation and Arbitration Commission, Federal Court and finally High Court. The situation then becomes a legal argument often completely divorced in both time and space from the employees working in the disputed area. The arguments over the erection of the Omega Navigation Tower in Victoria (FIA v ABCBLF 1980 AILR 85) is a good example where the dispute became one of semantic arguments as to the definition of the word 'building'.

63. Under State jurisdictions, Ministers of the Crown have the power to order compulsory conferences to settle disputes.

64. Niland op. cit. p 37

There is a tendency for many tribunal decisions to be a compromise with work being shared approximately evenly between the organisations concerned to the satisfaction of neither body, and with the likelihood of further disputation at a later stage. This difficulty was evidenced recently in the dispute over the manning of pilot boats in Sydney between the Merchant Service Guild and the Seamans Union of Australia where the work has been arbitrated to be shared between the unions (1982 AILR 354).

Finally it must be noted that where tribunals do delineate job functions between organisations their prime concern is the settlement of the immediate dispute rather than with any long term resolution in mind.

In respect to this approach, Governments in Australia through the Ministers of Labour Advisory Committee are currently considering a number of alternative proposals to assist in the resolution of this type of dispute. The main thrust of their approach is to develop complimentary legislation such that the jurisdictional element of demarcation disputes may be avoided. Difficulties associated with this approach include the problem of obtaining agreement from all Governments to a particular course of action. In addition it must be remembered that the Federal Government, with over half the workforce under its industrial jurisdiction, only has power to establish the legislative framework for the resolution of (inter-state) disputes, and limited opportunity for involvement in its own right.

One proposed change is in respect of allowing State and/or Commonwealth tribunal members 'reciprocal rights' to settle disputes in more than one jurisdiction where such disputes occur on a single site or in respect of one basic issue. These proposals are again not aimed at resolving all demarcation disputes, but attempt to go some way towards the resolution of those disputes which have complications through overlapping jurisdictional boundaries.

A further alternative under consideration is the use of a special panel of the Australian Conciliation and Arbitration Commission which would deal solely with this type of dispute and, it is assumed, develop a high level of competence in this specialised area.

c. Structural Change (Amalgamation)

As far back as the eighteenth century the Webbs⁶⁵ mentioned that there has been a fascination about the idea of amalgamation of trade unions. This has been followed up during this century with the arguments for the 'One Big Union' concept. The question of whether larger unions are more efficient and more effective than smaller unions will not be canvassed in this paper; the emphasis will be upon the impact of amalgamation of unions upon demarcation disputes and the extent to which they may be resolved by such structural changes.

An important factor is the perception of the union members themselves, whether they see themselves after amalgamation as an integral part of the large union, or rather fearing a loss of identity attempting to maintain their own group as a discrete unit. In an interview with Tasmanian State Officials of the AMWSU it was noted that in the ten years since the creation of the AMWU (later AMWSU) there has been ongoing conflict between members of the original constituent unions; this has been evidenced by the continuation of existing work practices and demarcation lines. A further example of this fragmentation is where 'autonomous' groups conduct their own union activities, e.g. London dockers and Heathrow Airport workers etc. in the British Transport and General Workers Union.⁶⁶

Perhaps of greater importance is the form in which the amalgamation will take; if the new union is still based on craft functions, then the level of demarcation disputes may not be expected to decline to any extent. Should amalgamation be designed to lead to the formation of an industry based union it may be argued that many of the present problems associated with the present structure of Australian unions may be resolved.

65. Webb op. cit.

66. Mayne J. Submission to Government Employment & Industrial Relations Committee on Union Restructuring & Amalgamation

However Gill points out that demarcation disputes are often caused by one union claiming jurisdiction on an industry basis, another on a craft or occupational basis, with each claiming either an exclusive or superior right of coverage.⁶⁷

Before considering the likelihood of establishing industry based unions, it is perhaps worthwhile considering the extent of amalgamations over the past two decades. Only two major amalgamations have occurred, one of these involved three unions when the Amalgamated Engineering Union, Boiler-making and Blacksmithing Society and Sheet Metal Workers Union amalgamated in 1972 to form the AMWU.⁶⁸ While this union does have an element of industrial concentration it is primarily a craft based union.

An earlier amalgamation took place in 1966 between the Printing Industry Employees Union and the Amalgamated Printing Trades Employees Union which combined to form the Printing and Kindred Industry Union, a union which includes a large, but not total, section of the printing and paper pulp industries.

Prior to 1972 the only legal requirement for amalgamation was the voluntary deregistration of the old organisations and the registration of the new body. The Registrar was required to satisfy himself that a majority of members were in favour of the amalgamation. In 1972 (after the formation of the AMWU) legislation was passed which in summary required that 50% of the members of the organisations concerned must vote in a secret ballot, and 50% plus one of the voters of each union must be in favour of amalgamation. More relaxed conditions existed for the situation of a takeover, i.e. where the membership of one union was less than 5% of that of the other union. Because of the generally low percentage of returns in union ballots a consequence has been that the only amalgamations which have taken place since that date have been in the takeover category.⁶⁹

67. Gill D. "Industrial Unions", Journal of Industrial Relations Vol. 21 No. 2 1979 p 186

68. The Boilermaking & Blacksmiths Society was created in 1965 through the amalgamation of the Boilermakers Society of Australia and the Blacksmiths Society of Australia.

69. A recent attempt to amalgamate between the Australian Textile Workers Union and the Australian Boot Trades Employees Federation failed because of insufficient votes. The AMWSU and the FEDFA decided to co-locate and combine their resources as their Executives saw it unlikely that formal amalgamation would succeed for the same reason.

If a potential solution to demarcation disputes is industry based unions, it is necessary to consider whether such organisations are a possible development in the Australian context, with or without legislative encouragement - it is assumed that enforced amalgamation would not be an option acceptable to the union movement in general. A number of points must be considered:-

- (a) what is meant by the word 'industry'? There are a number of definitions in use, for example, the Australian Standard Industry Classification, informal classifications such as used by the Australian Conciliation and Arbitration Commission for its Panel system etc. Gill exposed some of the difficulties by posing the following questions:-

"(i) should there be one transport industry or four (shipping, road, rail air)? Would the waterfront form a separate industry, be an additional transport industry or part of any one of them?

(ii) should there be one metal industry or several (vehicle building, steel fabrication, appliance manufacturing etc.)? Or is the metal industry just a part of manufacturing industry?

(iii) is the storage and distribution an industry or is it simply a function of all industries? If it is both where are the boundaries between the two?"⁷⁰

- (b) The second aspect is that the creation of such unions requires the voluntary disbanding of, or dramatic changes to, existing craft based unions. Some unions such as the Federated Clerks Union and the Electrical Trades Union may have no reason to exist at all, while many unions would lose their existing strong strategic position.
- (c) A further aspect is in the case of unions with similar coverage but having different ideological views, e.g. Australian Railways Union and National Union of Railwaymen. These two unions have been allowed to develop because actual or potential members align themselves to the views of one particular union. It would appear unlikely therefore that any amalgamation of such unions would be an alternative acceptable to the membership.

70. Gill op. cit. p 188

The various limitations imposed by legislation have no doubt been an important factor why little or no progress has been made in union amalgamation. However, as amalgamation may be expected to only link unions with similar attitudes and philosophies, it is unlikely that such moves would result in significantly reduced demarcation disputes as it still leaves a major interface between unions of different ideological attitude, the pressure for survival, as well as the continuing problems brought about by a craft and industry based union structure.

SUMMARY

As mentioned above there is relatively little academic or professional literature on the subject of demarcation disputes. This paper therefore may be regarded as an attempt to bring together evidence from a variety of sources in order to provide an initial analysis of this subject.

At the beginning of the paper it was emphasised that demarcation disputes represent only a minor proportion of the number of disputes and mandays lost, yet their total impact upon the economy is far greater than statistics would imply. One result is that many disputes result in non-strike forms of industrial action, e.g. black bans, while others involve only small groups of employees. It is apparent however that these disputes are concentrated in a small but strategic sector of the economy where a relatively minor dispute may have far reaching implications for the total society.

The causes of disputes have been brought together under four broad groups, these include the organisational structure of Australian trade unions, the impact of technological change, the influence of power relationships on trade union officials, and finally those causes which may be described as external to the parties themselves such as those generated by management decisions.

It is evident that most disputes are not the result of one specific cause but are the consequence of an amalgam of issues which may have built up over time and affect the dispute to a greater or lesser extent. No attempt has been made to evaluate the extent to which any particular causes have the greatest impact on demarcation disputes however from a study of contemporary disputes a common factor is the existence of some form of change which has influenced the work process.

The paper has not attempted to include those jurisdictional disputes which relate to the boundaries of the various Industrial Tribunals. Such disputes are often inter-related to demarcation disputes created by one or other of the causes mentioned above, but are unique to Australian industrial relations because of a multiplicity of Industrial Authorities. A study of this subject would require a very detailed legal analysis that is beyond the scope of this paper.

The final sector of the paper considered the alternative approaches currently adopted to resolve this type of dispute. Primarily because most disputes have a number of causes it is not possible to establish any correlation between the causes and methods used to resolve such disputes. If anything the methods of resolution may be seen as a progression with the parties attempting the various alternatives in turn, i.e. use of peak councils, Industrial Tribunals and finally (but rarely) structural change. Mention was made of developments currently being undertaken by both the ACTU and the Governments to improve the machinery which is available to resolve these disputes.

Finally it must be emphasised that this paper is designed to highlight the broad issues involved in demarcation disputes; the classification of the various causes may be seen as a starting point for a more detailed analysis into this hitherto relatively untouched area of industrial relations.

EXTRACT FROM THE ACTU POLICY ON TRADE UNION ORGANISATIONINTER UNION CODE

The A.C.T.U. and its State Branches have a duty to use their influence to promote maximum unity amongst unions with a major consideration being the elimination of destructive demarcation disputes and other divisive actions which are contrary to the rules and/or policy of the A.C.T.U.

A. DEMARCATION DISPUTES

1. Congress reaffirms its view that effective and speedy procedures to the settlement of demarcation disputes between unions are essential for the continued unity of the trade union movement. With this objective in mind, Congress states that
 - (i) Demarcation disputes should be resolved by agreement between the unions concerned; or
 - (ii) Where agreement cannot be achieved directly between the unions concerned, the unions should notify the ACTU or the State Branch of the ACTU in the relevant State.
2. Machinery for Dealing with Demarcation Disputes

Upon notification of a demarcation dispute, the ACTU or the relevant State Branch shall constitute special machinery to facilitate the settlement of the dispute. The machinery may take the form of:

 - (a) a panel consisting of an ACTU and/or a State Branch nominee, and an equal number of representatives from each of the unions concerned in the dispute;
 - (b) A panel consisting of an independent chairman and other members as agreed between the unions concerned; or
 - (c) Reference of the dispute to the relevant industry group or groups.

3. Guidelines

The guidelines to be followed by a panel or group in the settlement of a demarcation dispute shall be consistent with ACTU policy. The guidelines adopted shall be such as to ensure that all relevant matters are considered including the constitutional rights of the unions involved and the merits of the matters in dispute. Without limiting the panel or group, the consideration of the merits shall be based on

- (i) Historical aspects, e.g. custom and practice;
- (ii) Relevance of wage rates and working conditions for the workers concerned;
- (iii) The attitude of the workers concerned; and
- (iv) Other specific qualifications and considerations.

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