Methods of Adjustment of Industrial Disputes in Germany [1]

FIFTY years ago in Germany there was no state machinery for settling conflicts of economic interests such as existed in the machinery of the courts of law for settling conflicts of legal rights. The parties to economic conflicts were entirely free to enforce their claims themselves as best they might and to use forcible measures, such as strikes and lock-outs, to do so. The state did indeed sometimes intervene in the labour disturbances which arose out of the more important of these disputes, if the public interest required it. This intervention, which was intended for the maintenance of public order and security, did not always fully achieve even this object; and there were no constant preventive measures inspired by the social principle of a right adjustment of the respective interests of the employers and the workers.

This lack of some state machinery for the prevention and settlement of collective labour disputes made itself particularly felt in Germany in the last quarter of last century. Important industrial crises led to an increase in the frequency and violence of these disputes ; and the wages boards and arbitration and conciliation authorities, which had been set up in a few cases by collective agreement, proved to be insufficient.

It had already been recognised that a rapid, simplified, and relatively inexpensive procedure was required for the settlement of legal disputes arising out of labour contracts and that special courts were needed for such cases. In response to that demand the industrial courts, commercial courts, mining courts, conciliation boards of the guilds, and

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(1) *SOURCES :*

REICHSAMT DES INNERN : *Reichsgesetzblatt* has been the source for the text of all laws and regulations. Other authorities are :

REICHSARBEITSMINISTERIUM : *Richtlinien für das Schlichtungsverfahren nach den Verordnungen vom 23. Dezember 1918 und 12. Februar 1920,* in *Reichsarbeitsblatt,* No. 5, 11 Dec. 1920, pp. 182-184.

KASKEL, Prof. : *Das neue Arbeitsrecht; Systematische Einführung.* Berlin, 2nd edition, 1920.

GIESBERTS und SITZLER : *Verordnung über Tarifverträge, Arbeiter- und Angestelltenausschüsse und Schlichtung von Arbeitsstreitigkeiten vom 23. Dezember 1918.* Berlin. 5th edition, 1920.

SITZLER, Dr. F. and others : *Der Begriff der Gesamtstreitigkeit im Schlichtungsverfahren* in the *Neue Zeitschrift für Arbeitsrecht.* Mannheim, Berlin and Leipzig. Bensheimer.

seamen's boards, which are still in existence at the present time, were set up. These labour courts, whose proper work was originally the giving of awards in the settlement of disputes arising from an individual employment contract, were at first also entrusted with conciliation and even arbitration of labour disputes within restricted limits. It was the duty of these courts to intervene if called in by both sides, or to induce both parties to call them in if only one or neither side had appealed to them.

These arrangements, however, constituted only a first step in the process of settling industrial disputes, as they did not set up general machinery to deal with all classes of disputes, but limited the competence of the authorities to certain branches of industry and occupations, or even to certain districts. The industrial courts, for example, were limited in their competence to disputes in which certain kinds of industrial workers, factory officials, foremen, and others who fulfil prescribed conditions as regards employment in an undertaking or fall within certain earning groups, etc., are concerned. The seamen's courts, commercial courts, and mining courts are subject to similar limitations upon their action. In many branches of industry there is no machinery for the settlement of disputes and in many districts no courts have been set up, either because no provision is made for cities of less than 20,000 inhabitants, or because certain districts do not come within the provisions of the law.

An early attempt was made to supplement and complete these regulations by the creation of chambers of labour (*Arbeitskammern*). These efforts have not, however, received any legislative sanction, and the two Bills on such chambers during the legislative sessions of 1908-1910 and 1918 were both rejected—the first on account of objections to the principle involved, the second because of the Revolution.

The National Service Act of 5 December 1916, passed under pressure of conditions then prevailing, constitutes a certain progress as regards arbitration. This Act set up special adjustment boards (*Schlichtungsausschüsse*) in addition to the existing conciliation authorities (*Einigungsstellen*). These boards were entrusted with the settlement of disputes about wages and other labour conditions, in addition to the other duties imposed upon them by the Act. The boards acted even if they were only appealed to by one of the parties, or if only one of the parties appeared before them to negotiate.

As these boards were constituted to satisfy the requirements of war production and munition manufacture, they were connected with the military organisation, and the chairmen nominated by the War Office. Similar boards—War Boards (*Kriegsausschüsse*) — which had already been set up in certain branches of industry, e.g. in the metal and clothing industries in Berlin, continued to exist by the consent of the War Office.

The period for which the National Service Act was to be

enforced was limited by the Act itself to one month after the conclusion of peace at latest. The Act was, in fact, repealed by the Manifesto of the Council of People's Commissioners of 12 November 1918. Those of its provisions which dealt with the settlement of labour disputes had, however, to be retained in the absence of any other Act serving the same purpose, especially as the conditions created by the Armistice and the Revolution were likely to give rise to labour troubles on a large scale. These conditions also made it desirable to separate the machinery of adjustment set up by the National Service Act from the military organisation. The political situation made it so urgent to find some immediate general settlement for the most important labour problems that there was no time for carefully worked out legislation based on experience. Furthermore, the lack of organisations capable of conducting negotiations would have added to the difficulties. It would hardly have been possible to negotiate with an unorganised mass of workers who might perhaps have been assembled by chance; for, even if one man came forward as spokesman, he would have no power to impose the result of the negotiations upon the others, who would not feel themselves bound. Only after the large employers' organisations and the trade unions had mutually undertaken to recognise each other's existence by the agreement of 15 November 1918 did it appear possible to undertake a general overhauling of the machinery of adjustment in labour disputes.

Under these circumstances, the Order of 23 December 1918 concerning collective agreements, workers' and employers' committees, and adjustment of labour disputes, was passed as a temporary measure " pending final regulation by law ", as stated in its Preamble (2). The first Section of the Order deals with collective agreements. A Bill is at present under consideration which, if passed, will supersede this Section. The second Section, relating to works councils, has now been superseded by the Works Councils Act of 4 February 1920.

The third Section is still the main legislative basis of all procedure for the adjustment of labour disputes. It is, however, proposed to supersede this Section of the Order by new legislation, the draft of which was approved by the Federal Economic Council in June 1921. It should be added that this Section is supplemented in certain important respects by the Orders concerning demobilisation, the Order of 12 February 1920 on the engagement and discharge of workers and employees during the period of industrial demobilisation, by the Act of 6 April 1920 concerning the employment of seriously disabled men, the special Order of 24 January 1919

(2) For the English translation of this Order see UNITED STATES BUREAU OF LABOUR STATISTICS : *Monthly Labour Review*, Vol. VIII, No. 4 Apr. 1919, pp. 160-167. Washington, Government Printing Office. 1919.

concerning agricultural workers, and by the above mentioned Works Councils Act of 4 February 1920. Moreover, the Federal Minister of Labour on 30 November 1920 issued certain guiding rules and regulations concerning procedure in the settlement of labour disputes (3).

Principles and Objects of Adjustment

As the term adjustment (*Schlichtung*) (4) implies, the organisations engaged in the work of adjustment of disputes do not give decisions on disputes, but attempt to reconcile differences and to bring about a balance of forces. The adjustment boards do not determine questions of right; they mediate and bring about agreements on what appears to be a fair basis. The judgment of disputes on positive legal grounds belongs fundamentally to the ordinary courts. The result of the process of adjustment or conciliation is not a " verdict ", which can be executed by the legal authorities, but an " award " which represents a proposal to the parties to make an agreement embodying those terms. The parties are asked to transform those proposals into contractual obligations. Only in exceptional circumstances can the adjustment authority itself make an explicit decision, and even then such decisions, in order to be executed, must be confirmed by a decision of the regular courts. However, this feature of the system, which permits definite awards or decisions on special occasions, makes the process one of arbitration, as well as of mediation and conciliation. In

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(3) Reichsarbeitsministerium: *Reichsarbeitsblatt*, No. 5, 11 December 1920, pp. 182-184.

(4) There has been considerable difficulty in determining the precise terminology to be used in rendering the terms employed in German to designate the different bodies or organisations concerned in the settlement of labour disputes. Germany employs three distinctive words in its legislation on the subject. There is first the very general term *Schlichtung*, which carries with it the idea of settlement—smoothing out difficulties. The nearest English equivalent appears to be the word " adjustment ". Neither in the English nor in the German is the word used in a technical sense, but rather as a general descriptive term. In both languages there are the semi-technical words which have been fixed by usage as part of the terminology of settlement of labour disputes. The Germans have the word *Einigung*, " practically ane quivalent of the ideas involved in the English words " mediation " and " conciliation ". This conception is carried one step further by the term " arbitration ", for which the German equivalent is *Schiedsverfahren* and various compounds of the word *Schied*; for example, *Schiedsgericht*, a court of arbitration ; *Schiedsrichter*, an arbitrator; *Schiedsspruch*, the award.

In order apparently to get away from the technical words *Einigung* and *Schiedsverfahren*, the Order of 23 December 1918 adopted the word *Schlichtung*, which it uses as a general term to describe a system or organisation for settlement of labour disputes, involving the ideas both of conciliation and of arbitration, at the same time emphasising the idea of mediation and conciliation and definitely avoiding the invidious connotation of the word " arbitration " (*Schiedsverfahren*).

short, the whole system is exceedingly flexible, and lends itself very readily to the differing exigencies of labour disputes.

The Order of 23 December 1918 is generally construed as referring only to collective disputes. According to its terminology and interpretation as well as according to the existing conceptions of German jurisprudence, labour disputes are divided into collective and individual disputes, and disputes of right and disputes of interest. These distinctions determine the fundamental character of the whole system of adjustment. The procedure is only intended in principle for collective disputes. The draft of the Labour Disputes Code recently approved by the Federal Economic Council defines these as " disputes between one or more employers or economic associations of employers on the one hand, and the body of workers or a group or a part of the body of workers or economic associations of workers on the other, concerning the regulation of conditions of employment or injuries to the economic interests of the employer or to the common economic interests of the workers ". In short, a dispute must have two distinguishing features to be regarded as collective; first, as regards the parties involved, and secondly, as regards the matter in dispute. The procedure employed in the adjustment of collective disputes may, however, be used for individual disputes, i. e. disputes arising out of, or connected with, the relation of an individual worker to his employer, in certain special cases which are defined by various Acts and Orders (5). This is only a temporary measure and is allowed in cases where there are no special competent authorities. In these cases the action of the adjustment boards is not yet one of actual adjustment, but is judicial, administrative, supervisory, or penal.

The limits of the procedure are further defined by the distinction between disputes concerning rights and disputes solely concerning interests. The ordinary courts are not competent for the latter, while for the former both methods of settlement apply. Disputes about right in this sense are disputes concerning the existence of labour agreements or their interpretation, while disputes concerning employment conditions to be agreed upon in the future are disputes about interests. In the former case it is a question of rights which already exist, while in the latter case it is a question of the creation of rights by agreement. In the case of

(5) See the Order concerning the engagement and discharge of manual and non-manual workers during the period of industrial demobilisation, 12 Feb. 1920 (Sections 20 and 22); the Works Councils Act, 4 Feb. 1920 (Sections 30, 41, 43 (2), 52, 82, 84, 86, 87, 97); the Order concerning a provisional regulation of agricultural labour, 24 Jan. 1919 (Sections 8, 18, 19); the Order concerning the making available of employment positions during the period of industrial demobilisation, 25 Apr. 1920; the Act concerning the employment of seriously disabled men, 6 Apr 1920; and the Federal Pensions Act. Cf. *Reichsarbeitsblatt*, No. 5, 11 Dec. 1920, p. 182.

collective disputes about rights the adjustment procedure aims at conciliation and the ordinary legal procedure declares a final judgment. In the case of collective disputes about interests only the adjustment procedure is permitted. Individual disputes about right are exclusively within the province of the regular courts, but as an exceptional and temporary measure the adjustment procedure may be used for declaring a final judgment in a case. For instance, a workman discharged with proper notice will have no right of action on his individual contract. There may, however, be a provision in other legislation that an employer shall institute part-time work before discharging any workers; under this legislation, a workman may appeal to the adjustment board and make out a case against his employer on the question of discharge On the other hand, individual disputes about interests cannot be dealt with either by the ordinary methods of adjustment or by ordinary legal procedure. It must, however, be remembered that individual disputes about interests often concern associations and are therefore taken up by them.

These principles of procedure apply in the case of the machinery of adjustment as created by law. In the case of the adjustment agencies set up by collective agreements, different procedure is possible. Further, if there exists machinery for conciliation both set up by law and also resting on collective agreements, the procedure prescribed under the latter takes precedence of that prescribed by the former, on the principle of the priority of rights established by contract over those created by law.

Adjustment Agencies

The agencies of adjustment are, then, of two kinds, those set up by law and those created by collective agreement. The statutory authorities for the adjustment of disputes include the ordinary and special adjustment boards, the Demobilisation Commissioners, and the organisations created by pre-war legislation, viz. the industrial and commercial courts, the guild boards, and seamen's boards.

The composition of the regular adjustment boards set up in certain localities by the National Service Act of 5 February 1916 is laid down in the Order of 23 December 1918. Each adjustment board consists of one temporary and two permanent representatives of the employers and a similar number of representatives of the workers in the district. The temporary members have to be selected from the branch of industry concerned in the dispute. They must not, however, be, or have been, concerned in the particular matter in dispute, either as employers, as workers, or as workers' representatives. Failure to observe this provision would give rise to challenge

on the ground of prejudice. There may be an impartial chairman, if the adjustment board so decides in general or in particular cases, or if such a chairman is expressly provided for by law.

The special adjustment boards are set up to meet the demands of important cases, such as those affecting large numbers of persons directly or indirectly, or cases likely to have a particularly disturbing effect upon industrial life (6). The terms of Section 22, Sub-section 3, of the Order of 23 December 1918 on the point in question require that in important cases which would in themselves fall within the competence of the legal (ordinary) adjustment committees the Federal Ministry of Labour may, if conciliation has failed and no award has been pronounced, itself deal with such dispute or lay it before such other adjustment agency as it may consider suitable, e.g. a State conciliation board (*Landeseinigungsamt*) or a special adjustment committeee attached to the Demobilisation Commissioner.

While the adjustment agencies mentioned above have proved satisfactory in cases where private employers and workers were involved, they have not proved entirely so in the settlement of disputes which have involved the Federal Government and the States and their employees. Owing to the peculiar nature of the relation between the undertakings and administrative Departments of the governments and their employees, it is of special importance that the practice followed in making awards should take account of the centralised organisation of these administrations, and should therefore be based upon uniform principles. Thus, for example, in the case of the two Departments of state administration most concerned, i.e. the posts and railways, an untenable situation would arise if the employees in the various branches did not receive uniform treatment by the adjustment authorities in different localities. The awards would naturally differ in different cases, and would lay the state open to the charge of treating its employees unfairly. The necessity for uniform treatment in disputes of this kind is most evident in questions of discharge of officials owing to the winding up of Departments, budget limitations, and the like.

In order to provide for the peculiar nature of these disputes a special organisation for the adjustment of disputes was set up by the Order of 14 April 1920. In addition to the local adjustment boards, special chambers of experts were established under the name of district adjustment boards (*Bezirksschlichtungsausschüsse*), while a Central Adjustment Board (*Zentralschlichtungsausschuss*) was formed to deal with the administrations and undertakings of the Federal Government and of the separate States. The Central Adjustment Board for the Federal Government is attached

(6) Cf. KASKEL, op. cit. p. 254.

to the Federal Ministry of Labour. The district adjustment boards are competent for purely local questions, and the Central Adjustment Board for questions affecting the central organisation.

The Demobilisation Commissioners are appointed by the chief provincial authorities, or for several States by the Federal Chancellor. They are competent for the district of a higher administrative official or for specially defined districts. In Prussia the work of the Demobilisation Commissioners is carried out by the provincial governors (*Regierungspräsidenten*). The rôle of the Demobilisation Commissioners in the settlement of disputes is restricted to the period of industrial demobilisation. They have to deal with all collective and some individual disputes about the engagement and discharge of workers and employees during this period. Their functions are laid down in Sections 24 to 28 of the Order of 12 February 1920.

The machinery of adjustment which existed in connection with former labour courts Acts continues to work side by side with the new agencies set up during and after the war. While amendments to the Industrial Courts Act and the Commercial Courts Act incorporated in the Acts of 12 May 1920 and 29 October 1920, such as the raising of the limit of amounts involved in cases tried before such courts and the extension of the suffrage for the election of their members by the admission of women, may have strengthened their strictly judicial functions, these courts have continued to lose importance as respects their function in the field of conciliation and arbitration since the establishment of an improved machinery of adjustment in labour disputes.

Adjustment agencies set up by agreement have maintained their importance side by side with the statutory adjustment authorities. These adjustment boards, wage committees, and wages boards were among the first bodies to undertake the settlement of collective disputes. Probably every collective agreement contains some provision concerning the way in which disputes shall be settled. Very often they are referred to special boards of arbitration, the composition of which varies according to the industry concerned and the importance of the dispute, while often again the competence of the statutory adjustment boards is recognised by agreement. In the latter case the statutory boards do not act in virtue of their statutory powers, but as boards of arbitration recognised by agreement. They might refuse to accept the position of arbitrators, but, as a rule, they so refuse only when they consider that such activity would prejudice their official work, or would involve the government in special expense.

The statutory procedure makes no provision for appeal, but appeal may be made in the procedure established by agreement.

Procedure of the Adjustment Boards

The adjustment procedure as well as the adjustment authority differs according to whether the system followed rests on statute or on agreement. Collective agreements can naturally lay down the most various regulations for procedure according to the nature, size, and organisation of the industry concerned, as well as according to the kind of disputes in question. In their most essential features, however, these regulations generally imitate the statutory regulations for procedure. It is thus unnecessary to give a special description of the provisions concerning procedure contained in collective agreements in addition to the following description of statutory procedure, as this would involve too much detail.

Statutory procedure for the adjustment of disputes is not, like that in ordinary judicial proceedings, for instance, strictly bound; its form is regulated solely by the purpose in view; the way in which the dispute is dealt with can in a large measure be left to the judgment of the boards of adjustment. The proceedings involve no legal costs to the parties. They are generally initiated by appeal to the adjustment board from one side; the legally competent representatives of the interested parties, in the sense defined above, are entitled to lodge the appeal. In some circumstances, and especially if the peaceful continuance of work is imperilled, the adjustment board may also intervene *ex officio*. The Demobilisation Commissioner may also appeal to the adjustment board in certain circumstances.

Negotiations are carried on as far as possible in the presence of the parties. A party who fails to appear can be subpoenaed. Only in exceptional cases, as, for instance, when the non-appearance of one party makes it possible to deduce that the opposite party is in the right, can a decision be given in the absence of one of the parties. The proceedings may be public or not, as the board thinks fit. Thus, for example, it may appear necessary to exclude the public if impartial consideration of the dispute is endangered by illicit external influences. The deliberations of the adjustment board itself are secret. All the members of the board must take part.

Persons who are entitled to appeal to the adjustment board may also take part in the proceedings and make claims. Employers' and workers' organisations may appear in the person of their competent representatives (trustees, trade union secretaries, and others). An employer may be represented in the way customary in industry by an official responsible for management. Representation of the parties by counsel or by officials of associations to which the parties belong is, however, prohibited, as being inconsistent with the

nature of the procedure of adjustment, in which influence is to be exercised on the parties in person. Only in exceptional cases, if a party is unable to appear on account of illness, distance, or other unavoidable accident, may he be represented by counsel. The adjustment board has full power to weigh evidence. There are no definite rules as respects evidence and there are no special means of compelling evidence. It can only hear the evidence or expert information of witnesses (*Auskunftspersonen*), but cannot put them on oath or have them put on oath by a court of justice. It cannot demand to see the books of an undertaking, or to have an undertaking inspected by other persons, unless the parties have agreed, e.g. by collective agreement, to submit to such investigation.

If the conciliation procedure does not succeed in bringing about an agreement, which is its principal object, the adjustment board issues an award (*Schiedsspruch*) by a simple majority, and, in the case of certain disputes affecting an individual worker and his employer, a decision (*Entscheidung*). A settlement resting on contract between the parties, the execution of which may be demanded before the courts, is created by a decision in all cases, and by an award if it is accepted by both parties or if it is declared binding in the manner described below.

The award should represent the opinion of the adjustment board as to the proper method of settling the dispute, in such a manner that, if it is adopted by both parties, it can serve as a contract, both as regards form and content. Statutory provisions and settlements resting on contract, particularly those arising from collective agreements, must be taken into account. The award may settle all the points in dispute, or, as is generally the case as regards collective disputes of wide scope, it may merely lay down the lines on which conciliation or compromise between the two parties is suggested. Although this is not laid down by law, it is desirable that the award should include an explanatory statement of the reasons inspiring it, to facilitate its interpretation in disputes about right, and to make it possible to investigate its correctness as regards the facts.

Publication of the award is prescribed, so that the force of public opinion may be brought to bear to induce the parties to accept it. The manner of publication is left to the discretion of the adjustment board. It is not usually made through the press except in cases of general interest. The parties have to declare within a period fixed by the adjustment board whether they accept the award. If this declaration is not made within the appointed period, the award is considered to have been rejected. If one party rejects the award, the party which had accepted it ceases to be bound. If no compromise is reached and if all the employers' and all the workers' members voted against one

another, and there is no impartial chairman, or the impartial chairman makes use of his right to abstain from voting, in that case no award is made, and conciliation is considered as having failed. The fact of the failure of conciliation must be published.

The Demobilisation Commissioner may himself call in the adjustment board in all collective disputes, and in individual disputes arising out of the application of the Order of 12 February 1920. In the latter case, he acts as one of the parties to the dispute and takes part in the proceedings. As a rule, however, he only intervenes in individual disputes if these are of considerable importance, for instance, if they are likely to lead to collective disputes. If an adjustment board cannot agree upon a settlement in a dispute, the Demobilisation Commissioner may have the dispute reheard by the board and he may then act as an impartial chairman.

The procedure concerning the declaration of binding awards by the Demobilisation Commissioner is of great importance. As noted above, in disputes the adjustment of which is undertaken by the Federal Ministry of Labour, the latter is also competent to declare awards binding. The Demobilisation Commissioner may do so either on his own authority or at the request of one of the parties. Such a declaration of an award as binding is only contemplated as a last resource and only in those cases where an agreement appears impossible and the interests of the general industrial situation make it essential that the dispute should be settled. The authorities are careful to urge on both parties the need of amicable agreement. It is felt that an injudicious application of the right to declare an award binding would discourage the parties from coming to a friendly agreement and thus imperil the whole system of collective bargaining. However, in individual disputes in which the lawful claims of the parties are involved, the declaration of awards as binding must be more frequently allowed. It is well to observe that the award should correspond to the existing state of the law. In these cases the Demobilisation Commissioner will generally assist in carrying out an award.

It is the duty of the Demobilisation Commissioner, in collective disputes of wide scope, to investigate whether it is in the general interest to impose the award on the parties. As regards individual interests in individual disputes, the Demobilisation Commissioner will, as a rule, only act at the request of the interested party. A request that the award be declared binding must be made to the adjustment board or the Demobilisation Commissioner within two weeks of the publication of the rejection of the award by the other party. When the declaration that an award shall be binding is made by the Demobilisation Commissioner on his own authority, no definite time limit is fixed.

In order to decide whether an award is to be declared binding or not, the Demobilisation Commissioner should investigate the correctness of the form and contents of the award, as far as possible, on the basis of a further hearing of the parties, and with special attention to the arguments adduced for the rejection of the award. On this re-hearing, no arguments and evidence other than those based upon facts which have only arisen or have only become known to the party since the giving of the award may be brought forward. If the investigation shows that the award was not in accordance with the law and especially if important evidence concerning essential questions was not recognised as important and was not taken into account or given its due weight, the dispute may be referred back to the adjustment board to be discussed and decided a second time. The dispute must always be referred back if there have been important contraventions of correct procedure, e.g. if the constitution of the adjustment board was not in accordance with the regulations. The possibility of reconsidering and referring back a decision has to some extent the effect of an appeal against the award of the adjustment board. If the award is not referred back on account of the above considerations, the Demobilisation Commissioner may exercise his discretion as to whether or not to declare the award binding. His decision is final and can therefore not be reviewed or modified either by himself or by a superior official. The Demobilisation Commissioner is not competent to modify an award. The declaration of the award as binding is a substitute for the agreement of the party which rejected the award. The award thus becomes compulsory (a binding contract), a result which could not otherwise have been reached without the agreement of the rejecting party.

The execution of this compulsory award, as in the case of an ordinary award freely accepted, can only be enforced by a suit before the ordinary courts, based upon the terms of the award which has been declared binding. The findings and facts which led to the award, or to its declaration as binding, are not to be reviewed by the court; the latter has only to pass upon points of procedure followed in giving the award or in declaring it binding. This view of the question of binding awards is supported by the Federal Ministries of Labour and Justice, but is vigorously contested in legal circles (7). The right of the Demobilisation Commissioner to declare awards binding is not limited to the disputes referred to in the Order of 12 February 1920, but is applicable to all collective disputes.

(7) Cf. *Neue Zeitschrift für Arbeitsrecht*, Nos. 1-2, 1921, p. 71.

Practical Results

As stated already, the work of the various labour courts in settling collective labour disputes, in addition to their strictly judicial functions in settling individual disputes, was not greatly developed in practice, and the machinery set up by agreement to deal with collective disputes proved insufficient. Thus the urgent need for a system of labour disputes adjustment established by law is best proved by the fact that, much as the present regulations stand in need of reform, the organisations which they set up were immediately called upon to deal with a large number of disputes, and have been made use of to an ever increasing extent.

In 1919, the latest year for which data are available, there were in Germany 264 local adjustment boards (8). The total number of disputes brought before them was 84,846. According to the available information these disputes were as follows :

	Number	*Per cent.*
Collective disputes	33,127	39
Individual disputes	44,627	53
Not defined	7,092	8
Total	84,846	100

These figures show that the majority of the disputes were individual, i. e. disputes of a kind which, according to the principles set forth above, were only to be temporarily within the competence of the boards until the labour courts were set up to decide them. This has greatly hindered the principal task of the boards, that of the adjustment of collective disputes. It may be expected that when the settlement of individual disputes has been handed over to the labour courts, the adjustment boards will be able to give more time and attention to the settlement of collective disputes, and that more success will therefore be obtained in the settlement of such disputes than has hitherto been the case.

Considering the 84,846 disputes dealt with, conciliation was successful in 29,303, or 35 per cent.; arbitration in 30,624 or 36 per cent.; simple mediation without oral proceedings in 23,729, or 28 per cent. In 1,190 or 1 per cent. of the cases proceedings were pending at the time of reporting. Of the cases mediated without formal oral proceedings, the majority were dealt with through preliminary and informal negotiations before the impartial chairman of the adjustment board in the course of which a settlement was reached. In a minority of cases the appeal to the board was withdrawn. The high percentage of cases in which either conciliation was successful or settlement was obtained by informal mediation (i. e. in

(8) Cf. *Reichsarbeitsblatt*, No. 13, 15 April 1921, p. 506.

63 per cent. of all cases) shows that the adjustment agencies clearly understand their task as primarily that of arriving at an amicable settlement in preference to issuing awards.

The disputes taken over by the Federal Ministry of Labour for settlement were in almost all cases collective disputes. Some of them were terminated by preliminary proceedings with the assistance of an authorised Referee (*Referent*) of the Ministry, so that the appointment of a special board was unnecessary. In the remaining cases conciliation procedure took place before a special adjustment board appointed by the Ministry. The results are shown in the following table.

INDUSTRIAL DISPUTES SETTLED BY FEDERAL DEPARTMENT OF LABOUR DURING YEAR ENDING 31 MARCH 1920 AND SIX MONTHS ENDING 30 SEPTEMBER 1920

Method of settlement	Year ending 31 March 1920		Six months ending 30 September 1920	
	Number of cases	Per cent.	Number of cases	Per cent.
Mediation	27	13	27	16
Appearance before adjustm^{t} boards	174	87	140	84
Total	201	100	167	100
Conciliation	49	28	35	25
Arbitration	95	55	85	61
No result	30	17	20	14
Total	174	100	140	100
Award accepted by parties	87	92	76	89
Award not accepted by parties	8	8	9	11
Total	95	100	85	100

The relative increase in the number of cases submitted to the Federal Ministry of Labour for adjustment as indicated by the table is to be attributed, on the one hand, to the increasing anxiety of the parties to settle their disputes amicably, and, on the other hand, to the growing frequency of industrial disputes, due largely to recent increases in the cost of living.

A comparison of the work done by the local adjustment boards with that of the Federal Ministry of Labour shows that the local boards have been more successful, apparently, in settling disputes by voluntary agreement. This is due, however, to the fact that the figures for the work of the local adjustment boards include individual disputes, in which it was generally easier to reach an agreement than in the case of the collective disputes dealt with by the Federal Ministry

of Labour. There is also the tendency in disputes of the latter character to issue awards on principles which may serve as precedents in subsequent disputes.

The existing organisation for the adjustment of disputes, with all its limitations, has undoubtedly produced some satisfactory results. In many instances there is no doubt but that it has maintained industrial peace, prevented political and public disturbances, and secured the continuity of production, the interruption of which would have involved enormous loss. None the less, various reforms have been suggested to improve the system. These proposals include the introduction of the right of appeal, which has hitherto not existed, the abolition or alteration of the procedure by which awards are declared binding, the guarantee to undertakings of public necessity of greater security from industrial disturbance, and the general prohibition of strikes and lock-outs until after the expiration of a period within which conciliation and arbitration must be tried. The urgent necessity of placing the whole system of adjustment in its new form on a uniform and inclusive basis, and of excluding all functions of a judicial nature from its sphere of activity, is generally recognised. Many of these proposals are embodied in a new Bill — or rather, Labour Disputes Code — which was submitted to the Federal Economic Council in November 1920, and approved by it in December 1921.