Summary and transcript of interview of Jim Mortimer by Chris Thomas, 2007 (803/22 part 2)

Approximate timings given in minutes and seconds in various places.

Summary

Subjects include (transcript paragraph numbers given in brackets): George Ward's refusal to co-operate with ACAS procedures (10-20, 42); court finding that ACAS had not consulted Grunwick employees sufficiently to justify recommendation for union recognition (22-24); attitude of the Labour government and members to the ACAS procedure and the court finding (30-38, 57-58, 80), and to solidarity action by postal workers (40); subsequent anti-trade union legislation and failure of Labour government to repeal worst aspects of it after 1997 (46, 52, 74); bias in favour of employers in policing of pickets and in interpretation of relevant law (52); importance of solidarity action to the success of industrial disputes (66); interpretation of the law to favour employers opposed to collective bargaining (76, 82).

Transcript

1. **CT:** Just start at the beginning.

2. **JM:** Yup.

3. **CT:** How did you first become aware of the Grunwick dispute?

4. **JM:** At the time I was the chairman of the Advisory, Conciliation and Arbitration Service, and there was legal provision under the Employment Protection Act for a union that was frustrated in its attempt to gain recognition for negotiating purposes from the employer to report the dispute to ACAS and then to go through a procedure to seek a recommendation for recognition. That's how I became involved.

5. **CT:** And just go through the [process]. What was the purpose of ACAS at the time?

6. **JM:** It was set down in the terms of the Employment Protection Act. It had a number of main purposes: to improve and develop industrial relations and to develop collective bargaining – the extension of collective bargaining – and to provide a means of conciliation in industrial disputes so that after the negotiating procedure had been exhausted unions or employers could report the dispute to ACAS, and it was our function to do what we could to conciliate and to reach a settlement. We could also, if necessary, provide arbitration; [we] couldn't impose arbitration, except in very limited circumstances, but we could provide facilities for arbitration.

7. **CT:** And how did the Grunwick dispute come to be referred to ACAS?

8. **JM:** That was the union that referred it to ACAS: APEX, because their efforts to secure recognition had been frustrated by the employer.

9. **CT:** And how did George Ward[1] respond to being taken to ACAS?

[1] Owner of Grunwick.

Approximate timings given in minutes and seconds in various places.

10. **JM:** He was opposed to trade union recognition. He made it quite clear that this was his conviction, that trade unionism and collective bargaining, as he saw it, was not in the interests of his company, and he refused to engage in collective bargaining.

11. **CT:** What was [were] the consequences of his lack of co-operation?

12. **JM:** It frustrated the wish of the workers who were employed by Grunwick to secure collective bargaining rights, that is, the right to negotiate on their terms and conditions of employment and to have a proper grievance procedure so that when grievances arose they could ventilate them and seek a resolution.

13. **CT:** And in terms of providing information, how could he frustrate the situation?

14. **JM:** We were under a legal obligation, in the event of a reference to us for a claim for recognition, we were under a legal obligation to ascertain the views of the workers involved, and we were not able to ascertain the views, partly because of the refusal of the employer – that was the Grunwick company – to enable us to ascertain the views from the workers. We were not permitted to conduct a ballot, say, on the premises or to interview them on the premises, or we were not supplied with the addresses, so that, whilst we had a legal obligation to ascertain the views of workers and to examine the situation, there was no legal obligation on the employer to co-operate in any way at all.

15. **CT:** Was this a first?

16. **JM:** It was the first case in which the refusal to co-operate was carried to the extremity that was shown by the Grunwick company, yes. There were previous cases where employers had indicated that they were opposed to collective bargaining, but very often we were able to persuade them that they should co-operate with us in providing facilities to ascertain the views of workers, as required by law. If you say to an employer "look, this is a legal obligation that we have as ACAS. We'd be pleased to receive your co-operation to enable us to fulfil our legal obligation," in most cases we were able to persuade the employer to grant those facilities, but not with Grunwick. **[5:26]**

17. **CT:** Did George Ward take this position himself or was he put up to it?

18. **JM:** I've no evidence on that point. I think that his conviction was a genuine conviction. I've no evidence at all that he was acting on anyone else's behalf. I think that this was his point of view; I think it was a grossly mistaken point of view, because I think the right of collective bargaining is a fundamental human right of workers, that the employment relationship is a relationship which is of imbalance of power – the employer is more powerful – and that to redress to some extent this imbalance it is necessary for workers to combine and to engage in collective bargaining.

19. **CT:** But nevertheless a small employer – we're not talking about a major, you know, industry – to take on the state and have the bottle to say "I don't actually have to take any notice of you." Is that just a small employer speaking or were there forces behind him?

Approximate timings given in minutes and seconds in various places.

20. **JM:** Well, undoubtedly, there were people who were sympathetic to Mr Ward and the Grunwick company, but I've no firm evidence that there was an organised force behind him at all. Certainly there were people who were sympathetic to his point of view, but I think that Mr Ward was in his own way a man of conviction, and he was totally opposed to collective bargaining, and that was the A to Z of his point of view.

21. **CT:** Now, your deliberations came, if my memory serves me correctly, before the Scarman Report[2]. Is that correct?

22. **JM:** Yes, yes. Well, we issued a, finally, a recommendation in favour of recognition because we were able to ascertain, with the assistance of the union, we were able to ascertain the views of some of the workers, but not all the workers, and there was undoubtedly sufficient support for collective bargaining to warrant a recommendation from ACAS for trade union recognition. But Mr Ward would not accept it and he fought through the courts and eventually, of course, he won. The court decided that there was a legal obligation for us to ascertain the views of the workers, and whilst that may not mean every single worker, as the courts interpreted it it meant a substantial proportion of the workers, and we did not obtain that, it was a minority of the workers whose point of view we secured. Now there were plenty of precedents for recommendations with less than majority support, because we had to satisfy ourselves that there was sufficient support to justify collective bargaining, and I would say that if you could show you had thirty per cent support, or something like that, that would be sufficient for collective bargaining. There were cases – not only with ACAS but with the predecessor organisation, [the] Commission on Industrial Relations – of support for recommendation for recognition with less than thirty per cent. But the courts in this case decided that we had to have really a substantial number of workers whose views were ascertained, and we did not obtain it, we couldn't obtain it. **[9:35]**

23. **CT:** Did that send a signal out to employers, do you think?

24. **JM:** Yes, undoubtedly, it did. By the time that ACAS came to an end, we had a significant number of cases which had been referred to us by trade unions where the employers, following the example of Grunwick, refused to co-operate, and said "well, we're not under any obligation whatever to help you to ascertain the views of our workpeople."

25. **CT:** Now, coming to the Scarman Report: were you surprised at the response George Ward took to it?

26. **JM:** Yes, because it was very, very unusual for either an employer or a trade union to reject a report which was conducted by an eminent judge, [a] very eminent judge. So I was surprised, but there was no question at all of the conviction of the Grunwick company, Mr Ward in particular, opposition to collective bargaining.

[2] Inquiry into the dispute chaired by Lord Scarman.

Summary and transcript of interview of Jim Mortimer by Chris Thomas, 2007 (803/22 part 2)

Approximate timings given in minutes and seconds in various places.

27. **CT:** Now let's just talk about the Labour Party at that time. Were you chair of the national executive at the time?

28. **JM:** No, no, I was secretary of the Labour Party, but in later years.

29. **CT:** Right. Were you aware of how it was being discussed in the Labour Party at that time, say, at the national committee stage?

30. **JM:** Well, my impression was that they were sympathetic, but they were – quite clearly they did not intervene because it was before ACAS, I mean it was being considered by ACAS. This was a legal procedure, or a procedure set out in law, and the party, as a party, had no standing in that. I think the government view undoubtedly was that both employers and trade unions should co-operate in the work of ACAS, but they were satisfied that we were doing our job, I think. And of course, once it got into a legal process before the courts then the courts, independent of the executive authority of the state as it were, and they should be permitted to proceed, and they did, and that was the interpretation they put upon the law.

31. **CT:** But were they surprised because they appeared somewhat impotent once they discovered they had an employer that wasn't going to be part of the conciliation and consensus view? And what could they do?

32. **JM:** Well, I think that's right. There was always an assumption that, in a case like this, in the ultimate, an employer and a union, no matter how strongly they may feel about an issue, would co-operate. But Grunwick did not, and I think that this came as a surprise to the government, as indeed it came as a surprise to us, because we'd had employers previously who were not particularly keen on trade union recognition, but they did not go to the extent of the Grunwick company. **[13:11]**

33. **CT:** And could they have done anything else? I mean, we had a Cabinet with two members, if not three, that were members of the APEX union, who were influential over the Prime Minister, James Callaghan, and yet nothing seemed to come of that influence.

34. **JM:** I think that in fairness one has to say that they were conscious that a procedure was being followed which was specified in law. That is, the procedure of ACAS, and the right of Mr Ward to take legal proceedings. He had that right, certainly, to call for really a judicial review if he felt that we had exceeded our legal – this wasn't the first occasion that we'd had legal problems, not the first but – so, in this process it is customary in Britain, as you know, that the government does not interfere, because we – there is the doctrine of the separation of power between the executive power of the government and the judicial power of the courts.

35. **CT:** But once they realised the current legislation was inept when you had an employer as resistant as George Ward was, wasn't there a necessity for new legislation?

36. **JM:** Well, I would've favoured that, but the government did not. I think that they were – by this time there was no agreement about what kind of new legislation there should be. I was always a

little hesitant about supporting the idea that trade union recognition should depend upon balloting. I think that the right of trade union recognition is a fundamental trade union right. In other words, it's similar to having the right to vote. It's a human right, and I think that the right to organise, to represent your interest, is a fundamental human right, and this is derived from the imbalance of power in the employment relationship. So I was always hesitant in thinking that a legal procedure which depended ultimately upon the balloting of people, balloting of workers, was the appropriate way. It's not the procedure that's followed in other countries, except the United States; the United States was the example, under the 1935 National Labor Relations Act, and at that stage in America it was undoubtedly a big step forward, because all the big employers were very strongly opposed to trade union recognition, and Roosevelt introduced that measure as a step forward to enable the unions to gain recognition, and it was successful. But it's not the system employed in France, or Spain, or Germany, or Scandinavia.

37. **CT:** Returning to the plight of the Labour government at the time: it was on every newspapers' headlines, once the mass picketing started, it was on all the newspaper front pages, newspapers and television. The Labour government had a majority of five or six at the time. How vulnerable did they feel, and how exposed did they feel because of this dispute?

38. **JM:** Well, I'm not able to speak with any authority about the point of view of the majority of the Cabinet. I think their point of view was that a procedure was being followed and it was not for them directly to interfere. I think if they had any advice to offer to Mr Ward it would be to co-operate, as they would if a union was refusing to co-operate. They would say "well, we have provided the machinery, we think you ought to co-operate." But, in the end, as the courts verified, he had the legal right, as the courts saw it, not to co-operate.

39. **CT:** But was there pressure through the TUC to stop the picketing, that this was an embarrassment for them, that this was the wrong way about going about things?

40. **JM:** Well, a vital step, of course, was the proposed solidarity action of postmen in London, because Grunwick were a processing company for photographs, and there were moves to boycott the post. But I think the postal workers' union took the view that this would probably be an unlawful act, and that boycott did not take place. Now, I think the government probably would have been very cautious about saying that it was legal because, as they would see it, it would be a matter for the courts. **[19:04]**

41. **CT:** Looking at the dispute, do you think it could have been handled in a different way? Do you think it would have got a different result?

42. **JM:** No, I think what it did expose was the limitation, the weakness of the law. And, as I have mentioned, it placed an obligation upon ACAS to follow a certain procedure, and it placed an obligation upon the union seeking recognition to follow that procedure; [it] placed no obligation on the employer. The employer was free to say "I am not prepared to co-operate."

43. **CT:** At the time, Margaret Thatcher was the leader of the Conservative Party in opposition. What political capital was she making of it? And was this [a] concern to the Callaghan administration?

Approximate timings given in minutes and seconds in various places.

44. **JM:** I've no doubt that the Conservative Party wanted to use this as an illustration of the power of trade unions, unjustified picketing and so on. It's not my point of view, but it was their point of view and supported probably by the majority of newspapers in Britain, certainly the national dailies. And, as I say, it's not a point of view which I support, but I've no doubt that that did exist.

45. **CT:** But the great roll-back of anti-trade union legislation was to start, was to emanate from Grunwick.

46. **JM:** Yes, yes, yes it was. And of course the defeat of the miners' strike in, later in eighty-three eighty-four – was it eighty-four eighty five – that enabled the, or assisted, the Conservative government in introducing anti-union legislation, but it had already started. I mean, the – and in my view, we have not yet repealed the worst features of that Conservative anti-union legislation. It is still unlawful to engage in solidarity action, for example. There are still very severe limitations on picketing, [the] number of people you can put on a picket. The situation in the law in industrial disputes is worse, worse than it was a hundred years ago after the passing of the 1906 Trade Disputes Act with a Liberal government.

47. **CT:** One of the things that the strike became famous for was the policing of the picket –

48. **JM:** Yeah.

49. CT – and a certain policing style. Merlyn Rees was then the Home Secretary.

50. **JM:** Yeah.

51. **CT:** How – was he familiar? Did he encourage? What was the relationship between the Home Secretary and the policing of that dispute?

52. **JM:** I don't know, I don't know. I think that it is the duty of the police in an industrial dispute to ensure that the law is observed. The law at the present time, right now in 2007, is very bad on picketing. It talks about six people on an entry, and in many cases only two. And in my view a picket is a combination, both of peaceful persuasion and a demonstration of support for a strike, and therefore I have no objection in principle to hundreds, thousands of people participating in a picket. After all, you can have a demonstration for people who want to hunt foxes, but if it's a demonstration in support of a strike then it's regarded as being unlawful if it exceeds these very narrow requirements of the present law. And I think that in many disputes beforehand that there has been a tendency to interpret the law in a very, very strict manner on picketing. I am in favour of peaceful picketing; I don't want see violence on a picket line, and I think when I was a union official I've helped in this, you approach the police and you talk to them. I remember a strike that we once had in de Havilland's where I was engaged, we sought the co-operation of the police to ensure that we had our rights, but the law was also observed, and sometimes that can be secured. But I think in too many cases there is a tendency for the police to take the view that they're on the side of the employer and against the strikers, or at least they're against the strikers. **[24:30]**

Approximate timings given in minutes and seconds in various places.

53. **CT:** OK, that's just the general policing, but it was cranked up a notch by the introduction of the Special Patrol Group, which is a kind of – well, the heavy brigade, as they were technically known.

54. **JM:** Yes, yeah.

55. **CT:** Now, why was that introduced? The general feeling was it was to intimidate people, and to say "don't come to the picket." Now, that can only have come down from on high; they just don't turn up.

56. **JM:** Well, I have no evidence on that point because I was not involved in discussions with anybody about the policing of the strike.

57. **CT:** Can I now return to the Labour Party? Now, how was this being discussed, as you were aware, within the Labour Party? There must have been concern by root and branch members about what was going on.

58. **JM:** Yeah, I've no doubt at all that among the rank and file of the Labour Party there was overwhelming support for the union, for APEX and its efforts to gain trade union recognition. I think also that that support was extended to the majority of Labour members of parliament, and probably also to at least a substantial number of members of the Cabinet. I'd no indication at all during this period, for example, that the ministers at the Department of Employment were hostile to it, not in the slightest. But there would be one or two I suppose who were persuaded in a different direction, but certainly none of them spoke to me about it.

59. **CT:** But the issue of the media influencing things must have been a problem.

60. **JM:** Of course, because so many of the national newspapers were hostile: hostile to trade unionism, hostile to the campaign for recognition at Grunwick.

61. **CT:** And influenced the government that way?

62. **JM:** Well, it may be that there were one or two ministers who felt that it would be better if such a situation didn't exist, and that meant trying to almost conclude the dispute on any terms.

63. **CT:** I mean, if the price was this issue disappearing off the headlines and out of the television, and it was lost, that was a price worth paying for this to be –

64. **JM:** Nobody ever put it in those terms to me, I have to say, nobody, but possibly that was a view in the minds of one or two. But certainly I wouldn't have said that was the view of the Department of Employment.

65. **CT:** Could the TUC have handled it differently, provided different support?

66. **JM:** I think that the TUC might have called for greater solidarity action because solidarity action can be very effective in a case like that. Whilst I was at ACAS, we also had a recognition claim for

Approximate timings given in minutes and seconds in various places.

another big company, who – American company – said that they were totally opposed to trade union recognition anywhere in the world, and they wouldn't agree. And I went to Sweden because that was the one country where they recognised the union. And I went to Sweden and found out how the union had gained recognition. It was the metalworkers, and they'd put in a claim and it'd been refused, and they then went to the Swedish TUC – LO as it's known – and Swedish LO wrote to the firm and said "under Swedish law, as you will be aware, if a strike is legal, all solidarity action in support of that strike – peaceful solidarity action – is also legal, and we are advising you" – they gave proper warnings, requests for talks, but all this was refused - "we are advising you that we will call upon other unions to withdraw all the supplies," electricity, water, postal, even policing, and the firm conceded recognition. So I think that in a case like Grunwick solidarity action is really the answer, and I'm quite certain – well, I say I'm quite certain, I'm certain as I can be – that, faced with such solidarity action, we might have had a change of attitude on the part of the company.

67. **CT:** Yet the TUC didn't call for it.

68. **JM:** They didn't, no.

69. **CT:** Pressure from the government?

70. **JM:** I don't know, I don't know.

71. **CT:** When do you think the dispute was lost?

72. **JM:** At the point at which the courts decided that there was no obligation on the part of an employer to co-operate in the recognition procedure, and the union was effectively left to continue to fight on its own resources.

73. **CT:** What do you think the consequences has [have] been of the loss of that dispute?

74. **JM:** Oh, very substantial. Trade union membership has been halved; I don't attribute that solely to Grunwick, I mean I see the whole consequences of Mrs Thatcher's anti-union legislation, and the failure of a Labour government to repeal the worst features of this legislation, which still exists. And it has to be said that, immediately before the election of the Labour government in 1997, Tony Blair made no secret of his [the] fact that this would be – [the] main features of the legislation of the previous government would continue. I have an article, I still have it, which he wrote for the *Times* just before the election, in which he made this promise. I think that was an appalling, an appalling decision. It's been carried out, and I think that the trade union movement has suffered to this day from the failure of the Labour government since 1997 to deal effectively with the anti-union legislation of Mrs Thatcher. There have been some improvements but they're not the important changes that should have been made.

75. **CT:** What's your one strong residing memory of the dispute?

Summary and transcript of interview of Jim Mortimer by Chris Thomas, 2007 (803/22 part 2)

Approximate timings given in minutes and seconds in various places.

76. **JM:** First of all, admiration for many of the people who were involved in the dispute, because they were predominantly immigrant workers: Mrs Desai[3], for example. Admiration for her. Secondly, it brought home to me that there can be a difference between legal interpretation and social justice. In my view, social justice requires that workers should not be denied the right of collective bargaining, but the courts interpreted the law in a way that protected an employer from co-operating in any way with the body charged with the legal duty of promoting collective bargaining. Those were my main impressions.

77. **CT:** How was the minister for employment[4] involved in this dispute, and what influence did he have?

78. **JM:** No, he wasn't, he wasn't directly. No, not directly.

79. **CT:** So he wouldn't have discussed it or. . ?

80. **JM:** Well, I'm not able to say that because I [was] not party to all the discussions which ministers – there were a number of ministers who were directly involved, but – who had responsibility in the area of employment, but I had no evidence at all that they sought to intervene, or to prevent us doing anything which we were legally charged to do. On the contrary, all my impression was that [the] ministers concerned were sympathetic to the work of ACAS, all of them. At different times we had Michael Foot, Albert Booth, Harold Walker – Harold Walker was under-minister, I think, at that time – and my recollection is that they were all of them sympathetic to the work of ACAS.

81. **CT:** Finally, could the dispute have been handled in a different way, do you think, that could have got a different result?

82. **JM:** As far as ACAS is concerned, no. I think that we did everything that we could legitimately do, under the law, to seek the co-operation of the employer. Made concessions about how we should ascertain the views of the workers to ensure that if he had any susceptibilities about intruding into the affairs of his company that was not – all our intention was to find out what workers thought, as the law required us to do. So I think what was wrong was the law, really. I mean, I would have hoped that the courts would have interpreted the law in a different way; they would have said that to a body charged with the duty of promoting collective bargaining there was a legal implication that people, citizens, should co-operate with it, but they didn't say that.

83. CT: Let me just stop there.

[3] Jayaben Desai, treasurer of the Grunwick strike committee.

[4] Albert Booth, Secretary of State for Employment.