Research Paper

The United Kingdom recalibrates the US National Labor Relations Act: Possible lessons for the United States?

Ref: 01/05

2005

Prepared by:
Nancy Peters
On behalf of Acas Research and Evaluation Section

inform advise train work with you

For any futher information on this study, or other aspects of the Acas Research and Evaluation programme, please telephone 020 7210 3926 or email research@acas.org.uk

Acas research publications can be found at http://www.acas.org.uk/index.aspx?articleid=405

ISBN 0 9552187 1 3
ISBN 978 0 9552187 1 2

Preamble

The research set out in this Acas Research Report was carried out by Nancy Peters, a lawyer and accountant based in Washington, D.C. This paper is the product of a project sponsored by the UK Foreign and Commonwealth Office under the Atlantic Fellowships in Public Policy. During 2002 and 2003 Nancy spent 10 months as a visiting scholar, working in Acas' Research and Evaluation Section. This paper has also been published under the same title in *Comparative Labor Law and Policy Journal* (Volume 25, Number 2, winter 2004). We are grateful to Nancy and to the journal publishers for the opportunity to re-publish the paper as an Acas Research Report. The report reflects the views of the author alone, and not those of the Acas Council.

The paper compares the new UK recognition procedures set up under the Employment Relations Act 1999 with procedures available under the US National Labor Relations Act, and examines the extent to which the new UK statutory provisions may have improved the operation of the NLRA recognition model. It concludes with several recommendations for further reform, based on assessment of the operation of UK scheme in its first three years.

Contents

1. Introduction

Since June 2000, the United Kingdom has administered a statutory scheme for trade union recognition similar to that available under the U.S. National Labor Relations Act (NLRA), by which a majority of workers may demand that their employer recognize a union as their bargaining representative in collective bargaining over pay and working conditions. However, the new U.K. recognition procedures, set up under the Employment Relations Act 1999, include innovative features such as a statutory prototype of bargaining procedures and various other provisions that encourage unions and employers to settle their differences voluntarily, rather than through administrative and judicial litigation. Historically, U.S. recognition procedures under the NLRA have been characterized by conflict and protracted litigation, and, in many cases, newly recognized union representatives fail to negotiate any terms and conditions of work (a so-called "first contract") for their workers. This study compares U.S. and U.K. recognition practices, examining to what extent the new U.K. statutory provisions may have improved the operation of the NLRA (or more broadly speaking, the North American) recognition model.

2. Background

The recognition process - how a union gains an official place at the bargaining table - varies widely among different countries. One very sharp contrast, though, is that between those procedures used in the United States and Canada (the "North American model") and the general process in countries such as Germany, Belgium, and Italy (the "European model"). On the one hand, the European model organizes workers at a national level, with industry-wide bargaining for wage rates and working conditions. In this model, recognition by individual employees is more or less routine, and there is generally no legal statute that states that employers have a duty to bargain with unions. For the most part, the entire recognition process is considered voluntary.

The North American model, on the other hand, is almost precisely the opposite. Bargaining is most often done at the smallest local unit, and every aspect of recognition is governed by statutory, administrative, and judicial requirements. Most generally, the model says that if a majority of workers - as certified by a government agency - want union representation, then the employer must recognize the union: this is so-called "mandatory recognition." Table 1 sets forth major differences in the two recognition models.

Table 1: Generalized Characteristics of North American and European Recognition Models[i]

American Recognition Model	**European Recognition Model**
Majority of workers in an individual workplace may choose (by secret ballot) their union representative.	Centralized industry groups select a union representative for industry workers.
Statute provides a statutory duty to recognize union.	No statutory duty to recognize union.
Mandatory recognition is the rule.	Voluntary recognition is the rule.
Disputes resolved through legal and administrative processes.	Disputes resolved through voluntary action by employers and unions.

For the past thirty years or so, union recognition in the United Kingdom has been somewhere in the middle of these two models. After a long tradition of mostly centralized industry bargaining with voluntary non-legalistic recognition procedures, it moved toward decentralized workplace bargaining with legally regulated procedures. In the 1970s, there were two attempts to provide unions with a right to recognition, both of which had been repealed by 1980.[ii] Then, in 1999, with the enactment of the Employment Relations Act, the United Kingdom set up a system that firmly plants U.K. collective bargaining with the North American model.

Ironically, while the United Kingdom has steered ever closer to the North American model in the past thirty years, during the same period, the U.S. recognition process has been increasingly mired in hostility and protracted delay. In fact, the major labor issues in the United States today revolve around the recognition process: that is, for the most part, when union representation is established in the workplace, collective bargaining runs generally rather smoothly, with relatively small numbers of industrial actions and strikes in recent years. The recognition process, though, has nearly broken down with constant litigation and persistent delays. Over the period from 1960 to 1989, the time it took to determine whether workers wanted union representation (essentially the union election) increased fourfold from an average of 54 days per case to 212 days per case.[iii] But in addition to such protracted delays, there is also the likelihood that once recognition has been required, there will never be a collective agreement because of continuing hostility between the union and the employer.

3. United Kingdom Statutory Recognition Scheme Similar to that in the United States

When one compares the statutory schemes for recognition set up under the Employment Relations Act 1999 and the NLRA (the prototype for the North American recognition model), initially one is struck by the similarities in the two schemes. Both countries, for example, have put the responsibility for managing the process in an independent government agency. In the United Kingdom, it is the Central Arbitration Committee (CAC) and in the United States, it is the National Labor Relations Board (NLRB). However, while the general outline of the recognition process is remarkably similar, the details of the operation of the process can be very different.

3.1 Basic Statutory Schemes

In the United States, the NLRA (and related judicial and administrative rulings) set forth the basic procedures for statutory recognition, i.e., where the employer has not voluntarily recognized the union as bargaining representative. Initially, workers in an "appropriate unit" may petition an independent government agency - the NLRB - to request an election. The NLRB establishes that the workers are in an appropriate unit (a "bargaining unit") where workers share a "community of interests." If the union can show that 30 per cent of the unit supports union representation, the NLRB can order an election, a secret ballot to be held on the employer's premises. If a majority percent of the workers voting in the election agree to the specific trade union as a representative, then the NLRB certifies the election result and the employer must recognize the union. Once the union is certified, the employer has a "duty to bargain" with that union as the workers' elected representative.

In the United Kingdom, the general statutory structure in the Employment Relations Act 1999 mirrors that of the United States. To obtain statutory recognition, a trade union applies to an independent government agency - the CAC.[iv] Similar to its U.S. counterpart, the CAC may approve or impose an appropriate bargaining unit and, upon a showing of worker support for trade union representation, may order an election. If a majority of workers support trade union representation, the CAC will then declare that the trade union must be recognized by the employer. The simplified stages of the basic statutory scheme - which can be described generally as the North American recognition model - are set forth in Table 2.

Table 2: American Model for Statutory Recognition

Stage 1	**Stage 2**	**Stage 3**	**Stage 4**
Union applies for statutory recognition with government agency.	Appropriate bargaining unit for representation is determined.	Government agency orders mandatory recognition if a consensus of workers wants representation.	Employer and union representative negotiate a substantive agreement.

3.2 Variations in Specific United Kingdom and United States Recognition Procedures

In the details of the recognition process, the United Kingdom and United States' procedures differ significantly. The variations reflect different political compromises as well as the varied cultural traditions of the two countries. Table 3 lists some significant procedural differences in the two processes.[v]

Annex I further summarizes major statutory variations between the United Kingdom and the United States.

Table 3: Some Significant Differences in U.K. and U.S. Recognition Schemes

General statutory element for North American recognition model	**U.K. procedure**	**U.S. procedure**
Necessary worker support for recognition	To apply, over 50 per cent of unit must be likely to support; to win, 40 per cent of entire unit must vote for union.	To apply, over 30 per cent must show an interest; to win, over 50 per cent of those voting must vote for union.
Union rights	Election may be unnecessary if a majority of the unit are union members; if in an election, the union has a right of access to workers.	No comparable provisions in U.S. law.
Time limits before union can re-apply	3 years	1 year
Time limits before employer can challenge the union majority	3 years	1 year if no collective bargaining agreement; up to 3 years if there is an agreement for that term.
Required subjects for bargaining	Only pay, hours and holidays required.	Only "mandatory" subjects required.
Employer bargaining requirements	No duty to bargain, but detailed statutory model for bargaining procedures.	Duty to bargain but few specific statutory requirements.
Voluntary options	Strongly suggested.	None suggested.

The different political compromises between the rights of workers and unions on the one hand, and those of employers on the other hand, can be seen in the implications of the first two categories, categories labeled "necessary worker support" and "union rights." The first category concerns how much support a union must demonstrate in order to (1) apply for recognition, and (2) win mandatory recognition. In fact, the United Kingdom has higher thresholds of worker support than the United States. However, if one looks at the second category, "union rights," one sees that while the United Kingdom may require a higher proportion of worker support, it also provides more union rights once such support is demonstrated. Importantly, once U.K. unions have demonstrated the necessary support from workers of the bargaining unit, and if a majority of the worker are holders of a union membership, formal election proceedings may not be required (in the United States, this is the so-called "card-check" recognition).

The time limits are telling as well. In the United Kingdom, a union can be barred from reapplying after an unsuccessful recognition attempt for a longer period of time (three years) than a union in the United States (one year). However, the union majority is also protected for a longer period of time (three years) from subsequent employer challenge.

One of the more controversial items in the United Kingdom scheme was the decision to limit the bargaining subjects that an employer may be required to negotiate to three: pay, hours, and holidays. By contrast, the United States does not expressly limit the topics, but required bargaining is limited only to "mandatory" subjects, namely those subjects that directly affect the "terms and conditions of work."

One major difference in the United Kingdom and the United States schemes relates to how the employer must conduct negotiations after statutory recognition. In the United States, the employer has a non-specific "duty to bargain", an ill-defined term that requires only that the employer bargain in "good faith" at "reasonable" times. In the United Kingdom, on the other hand, the employer and union must agree on a method of how to conduct collective bargaining within thirty days of recognition, or either side may call upon the CAC to impose a statutory method of bargaining. The statutory method is a lengthy set of very detailed procedures: e.g., there must be three union and three management representatives, with the head of the negotiating body alternating between union and management representatives.

Another important difference between the two schemes is that the United Kingdom provides both statutory and technical encouragement for voluntary recognition, that is, opting out of the statutory CAC process altogether for a separate voluntary agreement. Thus, for example, the U.K. statute requires that the union send a letter to the employer asking for voluntary agreement at least ten days in advance of application for recognition. Should the employer want a voluntary agreement, there is an additional 20-day period set aside for the negotiations on voluntary recognition. In addition, though, another independent agency - the Advisory, Conciliation and Arbitration Service (Acas) - is available to assist the parties in informally determining the level of worker support for the union. There are no comparable procedures in the United States.

4. Disparate Outcomes for U.K. and U.S. Recognition Schemes

Despite major similarities in the statutory process, the U.K. and U.S. recognition schemes show wide differences in outcomes. In the United States, recognition is predominantly "mandatory" through government-supervised elections, and an estimated one-third of newly-recognized unions fail to reach a collective agreement with their employers. In sharp contrast, the vast majority (94 per cent or more) of U.K. recognition deals set up between 2000 and 2002 were voluntarily agreed upon by the union and the employer, with no government supervision.[vi] Moreover, further review of the small fraction of U.K. deals that were government-imposed showed that most mandatory cases resulted in productive successful collective negotiations, with only a small number of cases likely to fail to achieve collective agreements on substantive issues.

4.1. U.S. Recognition Results From Government-Monitored Elections

In 2001, unions won 1,274 NLRB elections.[vii] Once a U.S. union is recognized in an NLRB-certified election, the standard procedure is to try to negotiate a "first contract." Whereas the United Kingdom has a two-stage negotiating process - where the union and the employer first agree on negotiating procedures (typically how bargaining will be conducted, what issues will be negotiated, and how disputes will be handled), and later conduct "rounds" of negotiation on pay and working conditions - U.S. unions

generally negotiate both procedural and substantive issues at one time for one contract. The Commission on the Future of Worker-Management (commonly referred to as the "Dunlop Commission")[viii] estimated in 1994 that "on the order" of one-third of newly elected unions fail to negotiate a first contract. The U.S. Federal Mediation Conciliation Service developed this estimate from data it collected on first contracts between 1986 and 1993.[ix] Thus, using this estimate, about 425 of the 1,274 U.S. union representatives newly elected in 2001 will likely fail to reach any collective agreement on working conditions.

4.2 Vast Majority of U.K. Recognition Deals are Voluntary

Although there is no official government count of U.K. recognition deals, the Trades Union Congress (TUC) collects data on recognition deals completed by its member unions, presented in its annual report *Focus on Recognition*.[x] The TUC reported 470 new recognition deals in 2001 and 306 in 2002.[xi] As can be seen in Table 4, by far the vast majority of the recognition deals reported by the TUC were voluntary agreements. During the two-year period, November 2000 through October 2002, the CAC imposed forty-four recognition agreements. Thus, approximately 6 per cent of the total 776 agreements were mandatory, leaving 94 per cent concluded voluntarily between the unions and employers.[xii]

Table 4: Data on Recognition Deals November 2000 through October 2002

Type of recognition deal	**Number of TUC cases**
Mandatory: those deals that completed the CAC statutory process	44 (6 per cent)
Voluntary: those deals that either did not start or did not finish the statutory process	732 (94 per cent)
Total deals	776

Most of the recognition deals reported by the TUC were likely to have been concluded without any formal application to the CAC. In a 2003 report, the U.K. Department of Trade and Industry reported on the cases the CAC dealt with in the first two years of its operations (June 2000 through May 2002).[xiii] In this period, the CAC received about 165 different cases (it actually received 188 applications but at least twenty-three were withdrawn and resubmitted at a later date) or roughly eight cases per year. Of these, about one-quarter resulted in statutory recognition, about one-quarter opted out of the formal CAC process for voluntary recognition, and the remaining were either withdrawn without recognition or a union lost an election.

4.3 Most Mandatory U.K. Recognition Deals Led to Productive Contract Negotiations

In its first two years of operation (from June 2000 through May 2002), the CAC imposed mandatory recognition in forty cases. To determine the extent and quality of the bargaining relationship established after the CAC imposed recognition, I examined twenty-six of these cases using a combination of surveys and interviews of union officials (see Annex 2 for a full discussion of the methodology). Of these twenty-six cases, unions in three cases (11 per cent) appeared unlikely to complete negotiations on substantive issues.

In addition, I reviewed evidence available on the remaining fourteen cases that I did not study in detail. Of these, at least four cases appeared to be in great difficulty, two because of very troubled negotiations and two because the original employer has stopped its operations. To be conservative, I assumed as well that one of the other ten remaining cases was also experiencing grave difficulties, leading to an extra five cases where failure was likely. Thus, in all, I estimated that of the total forty mandatory recognition cases, eight cases (20 per cent) were unlikely to complete negotiations over substantive issues.

While negotiations in many of the twenty-six cases that I studied tended to be difficult, a wide range of bargaining relationships - varying from the robust, to the minimal, to the very bad - emerged. Table 5 below outlines some of the information obtained about these cases on the bargaining relationship, the size of the bargaining unit, and the current relations among the workers, unions and employers. As can be seen, although in three cases (as mentioned above) unions had poor relationships with employers, in eleven other cases the unions enjoyed constructive, robust bargaining relationships, while in the remaining eleven cases unions only had minimal or weak relationships with employers (one case did not provide sufficient information).

Table 5: Bargaining Relationships in Mandatory Recognition Cases[xiv]

Characteristics of cases with specified bargaining relationship	**Robust bargaining relationships**	**Weak or minimal bargaining relationships**	**Bad bargaining relationships**
No. of sample cases with relationship[xv]	11 (44 per cent)	11 (44 per cent)	3 (11 per cent)
Characterization of relationship	All but one case showed improved relationship after recognition; all had negotiations broader than the statutory minimum.	Some cases show improved relationship, others the same or worse relationship, but generally negotiations limited to statutory minimum (pay, hours, and holidays). Only two cases had negotiations on other substantive issues.	No negotiations on substantive issues, although may have negotiated a procedural agreement.
Percentage where union elected	75 per cent	75 per cent	33 per cent
Size of bargaining unit	Less than 100: 4 101–299: 4 300 or above: 3	Less than 100: 7 101–299: 4 300 or above: 1	Less than 100: 1 300 or above: 2
Union membership rising	75 per cent	50 per cent	33 per cent

In general, the wider the scope of bargaining issues - beyond the topics of pay, hours, and holidays required by law - the more successful the bargaining relationship appeared to be. Interviews with union officials indicated that the most constructive bargaining relationships - those that showed the most improvement after a hostile CAC proceeding -were those that also (eventually) resulted in negotiations over a wider range of substantive issues than simply those required by law (pay, hours, and holidays). However, a wider scope of bargaining did not always indicate a successful bargaining relationship. In two cases parties maintained only minimal relationships even though they reached agreement on issues other than those required: in one case, the parties were merely following standard industry practice and, in the other case, the employer treated the negotiations as "just one more piece of paper."

For those eleven cases where the bargaining relationship could be classified as "robust," the union officials interviewed noted that the relationships had generally improved after recognition even though most of the employers were very hostile to unions initially and negotiations were often difficult (and some very prolonged). Since recognition, these unions had all ended up negotiating over more issues than that required by the statute (i.e., more than pay, hours, or holidays).

Although most cases were in traditional unionised sectors, a few of the most successful were with companies in industries or occupations not typically associated with unionization.

In the most successful cases, union officials seemed to adopt co-operative, pragmatic approaches to company management, working jointly with management to solve identified employee problems. Examples of this attitude include:

- In a company with a factory line, the union negotiated to limit the company's piece-rate pay scale in return for union attention to unnecessary product waste.

- In a company with high worker turnover, the union negotiated a substantial pay rise and worked with the company to improve morale among low-wage occupations.

- In a company intensely hostile to unions, after recognition the union immediately started negotiating with the company on how to introduce new 24-hour, 7-day schedules into the company; after negotiating with the company to set up a more equitable pay schedule, the union worked with the company to begin fair employee evaluations.

Among the eleven cases where unions had only minimal or weak bargaining relationships, the union official tended to view the company as sticking very close to the legal minimum, negotiating over nothing more than that required technically by the new statute. In at least one case, company management never met with union officials for official negotiations, instead sending lawyers or other representatives. Some examples of the problems encountered in these cases included:

- In a company with a traditionally strongly organized industry, the union official was very disappointed with the strictly legalistic approach taken by management; from the official's point of view, the union would likely never have a constructive relationship with the company when faced with such a narrow bargaining position.
- In a company without any union history, the company negotiated through its lawyer; the union official had found it difficult to get continuing support the workforce and was having difficulty in recruiting local union representatives.

- In a number of companies the managing director continued personally to take a hard-line attitude against union inclusion.

Among the three cases where the union has found itself in a bad bargaining relationship, two involved companies with managing directors who remain personally vehemently opposed to union activity, and the third involved a company with a long history of working against union influence. In one case, the manager overrode the nearly-completed union negotiations to personally impose a pay settlement; in the other case, the manager simply ignored all communications on the CAC process. In the third case, the company set up parallel working groups on pay, hours, and holidays without including any union representation.

5. U.K. Innovations Add Incentives for Productive Negotiation

While some of the difference in outcomes between the U.K. and the U.S. statutory recognition schemes can be attributed to divergent cultural traditions, the United Kingdom has also revised the basic North American recognition model to include specific impetus to productive labor negotiations.[xvi]

Although voluntarism has traditionally underpinned union recognition in the United Kingdom, the statutory scheme built strong incentives for voluntary action directly into the new regulatory process. Likewise, while U.K. unions and employers historically have generally worked out industrial disputes non-legalistically, the U.K. scheme offers a statutory "default" model of bargaining procedures that has effectively set new minimum standards for collective negotiations.

5.1 Voluntarism Written into the U.K. Statutory Scheme

Taken as a whole, the U.K. statutory scheme includes a host of different provisions that serve as practical incentives to both unions and employers to avoid the statutory recognition process, thereby working out recognition agreements voluntarily. Such provisions include:

- Once the union can demonstrate that it has majority support in a bargaining unit, then recognition by the CAC is nearly automatic.

- However, if the union withdraws an application with the CAC after the CAC has accepted it (because, for example, it does not have majority support of its workers), then the union is barred from re-applying to the CAC for three years.

- The union must ask for voluntary recognition before it files an application with the CAC, and if both parties agree, it may call in Acas to conduct an informal ballot of bargaining unit employees to determine the workers' consensus.

- If an employer is still reluctant to undertake voluntary recognition, then the employer risks losing not only time and expenses but also must undergo a CAC-ordered election that will require added union access to workers.

- Finally, if the CAC eventually imposes mandatory recognition, then the employer must deal with a model procedural agreement that prescribes detailed minimum standards for collective bargaining negotiations.

These provisions work effectively together. Thus, for example, if an employer is confronted by a union with strong membership support, the employer must consider whether pursuing a formal process (entailing costs, work disruption, union access) that will likely end with automatic recognition and a detailed default procedural agreement will help its management position. Similarly, the unions have a serious incentive to pursue a voluntary agreement because, should they lose a bid for statutory recognition, they risk being barred for three years from future application for recognition.

Generally, it is unclear how many voluntary recognition deals in recent years would have come about as a matter of course (without the new law) and how many have resulted because unions and employers have consciously "opted out" from the formal statutory process to pursue a less confrontational and time-consuming voluntary recognition. Observers have suggested that the statute has a pronounced "shadow effect," noting the sharp rise in voluntary recognition deals since enactment of the law in 1999.[xvii] According to TUC data, the number of recognition deals in the three-year period from November 1999 through October 2002 was 891, nearly triple the number of recognition deals agreed upon in the three-year period that immediately preceded Enactment, 301. However, the TUC also notes that while its union affiliates reported in 2001 that 79 per cent of their recognition deals were "due to new legal right to recognition," a year later they believed that only 34 per cent of their recognition deals were due to the new legal right.

Among the union representatives I interviewed, all agreed that the statute had been quite effective in gaining back union recognition where it had been increasingly lost since the 1980s. A number of unions had been heavily "derecognized" in the past decade, after highly publicized industrial disputes. For these unions, in particular, the "shadow" effect of the new law has been very real. Even though the unions were officially recognized, union membership stayed high at many workplaces. Where the unions have retained strong membership, the new statute has allowed them to once again approach previously unionized employers for voluntary recognition. In the three years since the start of the statutory operation, these officials suggested that it was becoming the standard practice to informally work out voluntary recognition agreements, especially as the intricacies and difficulties of the statutory process are increasingly apparent.

However, the union representatives underscored the significance of the Acas role to informally conduct membership counts and worker ballots. To agree to voluntary recognition, employers insist on worker majority support, much as required by statute. To avoid CAC process, the Acas procedures for determining worker consensus offer a practical alternative frequently used by unions and employers before voluntary recognition is agreed.

Research by Robert Poole of Warwick University published in April 2003 offered additional support for the effects of such incentives on employers.[xviii] In his study, he compared the attitudes of employers who completed the mandatory CAC process with those of employers who opted out of the formal process only after the union applied for recognition. Among the employers who withdrew from the statutory process to agree to recognition, the three most significant factors for such action were: (1) that the employer had no choice legally, (2) that the employer wanted to retain flexibility over the recognition agreement, and (3) that the employer believed that the outcome was inevitable anyway. Thus, as suggested also by the union officials in my interviews, it would appear that these employers have been strongly influenced by statutory incentives to avoid the formal process.

5.2.1 Minimum Negotiation Standards Set by Statutory Bargaining Procedures Model

After imposing mandatory recognition, the CAC retains authority to monitor the collective negotiations and statutory provisions specify certain actions that remain to be completed by the parties. Principally, the union and the employer must agree to a procedural agreement (a method of collective bargaining) within thirty days. The CAC procedures include:

- Within thirty days, the parties must agree to a method of collective bargaining; if not, either party may request further assistance from the CAC.

- If the parties cannot agree to a method of bargaining, the CAC may impose a model agreement (a statutory "default" method that is part of the statute).

- While the model method of bargaining provides explicit instructions on how to conduct collective bargaining, it only requires that parties negotiate over pay, hours, and holidays.

In my questionnaire and interviews with union officials, I asked how useful they found the procedures requiring procedural agreement. Table 7 below shows the how the union officials viewed the effectiveness of the statutory model for bargaining procedures.

Table 7: Usefulness of the Statutory Model for Procedural Agreement[xix]

	Cases with robust bargaining relationship (11 cases)	**Cases with weak or minimal bargaining relationships (11 cases)**	**Cases with bad bargaining relationships (3 cases)**
Found model agreement generally useful (14 cases)	6 cases: Parties unfamiliar with bargaining; model agreement used to develop bargaining relationship.	7 cases: Parties unfamiliar with bargaining; model agreement used to set minimum standards.	1 case: Model agreement used but too complex for situation.
Found model agreement generally not useful (11 cases)	5 cases: No need for model agreement; once recognition, parties proceeded to bargain successfully.	4 cases: No need for model agreement; industry standards generally set higher standards than the model agreement.	2 cases: Model agreement did not help at all.

Not withstanding whether the bargaining relationship was robust or weak, union officials viewed the model agreement as most useful in cases where the employer was unfamiliar with bargaining procedures or how to deal with unions, especially where there was no standard industry practice as reference. Thus, in general, in these cases the model agreement was used as a framework for the negotiations, as a guide for what needed to be discussed in the initial negotiations.

On the other hand, union officials found the model least useful where either the employer was familiar with bargaining procedures or where there were traditional industry standards. In one case, once recognition was imposed, the employer brought in a human resource manager who was very familiar with collective bargaining. In other cases, industry standards provided a broader range of issues than that required by the model agreement. Among the more successful bargaining cases, once the CAC declared recognition, the parties simply put their previous differences aside and "got on" with negotiations.

In those six cases classified as enjoying a robust bargaining relationship that found the model useful, five cases used the model as the starting basis for the negotiations. In addition, these officials frequently combined the model agreement with other features of the U.K. system. Examples of how the provisions worked in these cases include:

- Where one company was not in a traditional union industry, the management needed to be "educated" on what to expect of collective bargaining; to do so, the union representative found both the model and intermittent support from Acas very helpful.

- In other, more traditional manufacturing companies, neither the union representative nor the company management knew exactly how to proceed in negotiation—the model provided help as a guide to issues that must be discussed, but when the representatives used it with the deadline as a "catalyst" for negotiations, the bargaining relationship progressed.

- Where one union represented many low-wage workers in a company with no history of collective bargaining, the representative found that the model agreement set standards better than those that would have been expected in a voluntary agreement.

In those cases classified as having only a weak or minimal bargaining relationship that found the model useful, it helped unions set the minimum standards for what needed to be included in negotiations. Where an employer was resistant to including certain issues or where employers proposed "outrageous" conditions, the unions could refer to the model as the baseline. These officials, though, believed that the model set the minimum standards too low—they were unable to develop sufficient bargaining scope with the limitations implied by the model agreement. Examples of these situations included:

- In a non-traditional company where negotiations proceeded only through the company's lawyer, the model proved a "buffer" for negotiations—when the lawyer suggested something "off-the-wall," the representative could point to the model as a guideline of an alternative solution.

- In a traditional company with a long union history, the model set the minimum standards that the company management only "grudgingly" accepted.

- Where the company manager had long been strongly against having union representation, the representative found it very helpful to have a deadline for agreement even though the model did not allow the union to be an "equal partner" with management (according to the representative, the union was just "waiting for scraps").

Among the three cases with bad bargaining relationships, the statutory provisions had almost no effect on substantive negotiations. Although a procedural agreement was signed in two cases, the model agreement did not help the bargaining relationship progress in any way. In one case, the model agreement was too complex for the company. In the other case, the employers set up a procedural agreement but have taken other additional actions that essentially nullified the procedural agreement. In the third case, the employer simply ignored all CAC proceedings. In these cases, it is not clear to the union officials as to what course to take to remedy the situations.

6. Conclusion

In the first three years of the initial operation of the its statutory recognition scheme, the United Kingdom has altered the basic North American recognition model from one where the vast majority of recognition deals result from hostile litigation (as in the United States) to one where only a fraction of such deals arise from legal proceedings. While this strikingly different outcome can be attributed in part to disparate cultural traditions in the United Kingdom and the United States, innovative U.K. statutory provisions have also encouraged more cooperative collective bargaining relationships. As such, the United Kingdom should continue to strengthen these unique provisions, looking to avoid the known pitfalls of the U.S. statutory scheme. Further, the United States might also consider adjusting its statutory scheme to incorporate European-style "voluntarism" into its recognition process.

Annex I Comparison of U.K. and U.S. Statutory Recognition Schemes

Table I below compares the U.S. and U.K. statutory schemes during the period 2000 through 2002. Major variations in the U.K. statutory system are shown for each stage of the general process with comparable U.S. procedures described opposite.

Table 1: U.K. Statutory Recognition Scheme Compared to U.S. Scheme, By Stage

U.K. variation, by stage	Comparable U.S. process
Stage 1: Application	
(1) Before applying for statutory recognition, the union must write employers seeking a non-statutory, negotiated recognition agreement.	(1) None. Traditionally, unions write a "recognition letter" to employers requesting immediate recognition, but this is not a formal requirement for filing a petition with the NLRB.
(2) If both parties agree, then an independent public agency, Acas, will conduct an informal ballot or membership check among workers in the proposed bargaining unit.	(2) None.
(3) To be accepted for statutory recognition, the union must show not only that ten (10) percent of the proposed bargaining unit are union members but also that a majority of workers support union representation.	(3) For the NLRB to order an election, the union must prove that thirty (30) percent of the unit "show an interest" in union representation.
(4) If a union withdraws from CAC proceedings after the CAC has accepted its application, the union is barred for three (3) years from using the statutory recognition procedures for the same bargaining unit.	(4) Where a NLRB election has been held, there is a 1-year bar against elections in the same bargaining unit.
Stage 2: Bargaining Unit Determination	
(5) If parties are unable to agree on the appropriate bargaining unit they are encouraged to seek the assistance of Acas to work out their differences voluntarily.	(5) None.
(6) If parties cannot agree, the bargaining unit will be imposed by the CAC.	(6) The NLRB determines the appropriate bargaining unit.
Stage 3: Worker Consensus	
(7) Trade union representatives have a right to have access to workers during the election period; parties may negotiate a formal access agreement specifying terms or access.	(7) Under the NLRA, the employer may not interfere with the workers' right to organize collectively, which gives some rights to solicit workers; union representatives do not have a right of direct access to workers.

(8) The CAC may require that an employer recognize a union if the union can show that the majority of the workers in the bargaining unit are union members unless it is in the best interests of good industrial relations to conduct an election.	(8) None. Originally, the NLRB provided for a similar procedure, but subsequently abandoned it. While an employer is free to voluntarily recognize a union at any time, the NLRB may only require recognition if the union wins a formal election or, under certain circumstances, if the employer has been shown to have violated its workers' rights.
(9) To win a CAC-ordered election, not only must a majority of voters agree to union representation, but also the majority voters must constitute over forty (40) percent of the bargaining unit.	(9) A union will win a NLRB-ordered election if a majority of those voting agree to representation.
(10) No procedures included for filing a formal complaint with the CAC alleging that the other side has violated statutory requirements.	(10) If either the union or the employer believes that the other party has violated a required procedure, they may file a complaint alleging an "unfair labor practice" with the NLRB.
Stage 4: Substantive Negotiation	
(11) The union and the employer must agree on a "method of collective bargaining" within thirty (30) days after the CAC has ordered the employer to recognize the union; if not, either party can ask the CAC for further assistance in reaching agreement on bargaining procedures. If necessary, the CAC may impose a "default" procedural agreement with very specific details on how negotiations will proceed.	(11) After the NLRB certifies that a union has won an election, U.S. employers have a "duty to bargain in good faith." An elaborate body of caselaw refines what this means, but the Board cannot make a contract for the parties nor mediate labor disputes.
(12) If the union believes that the employer is not following the agreed procedures in a CAC-imposed procedural agreement, the union can file for "specific performance" with the courts requiring that the employer follow the agreement. If the employer fails to follow the agreement after a court order, the employer may be fined.	(12) If a union believes that the employer is failing to bargain in good faith, the union may file a complaint with the NLRB alleging an unfair labor practice. If the complaint is sustained the NLRB will order the employer to bargain in good faith.
(13) Once a procedural agreement is negotiated, subsequent substantive negotiations may be limited to pay, hours and holidays.	(13) In the U.S., all issues—procedural as well as substantive—are negotiated terms in one contract agreement. In this contract, U.S. employers are only required to include "mandatory" subjects—this can limit the bargaining issues to those with a "significant relationship" to "terms or conditions of employment."
(14) If both parties agree, Acas may provide assistance on reaching either procedural or substantive agreements.	(14) If both parties agree, the Federal Mediation and Conciliation Service may assist in negotiations; however, this assistance may be limited to those situations potentially leading to a "substantial interruption of interstate commerce."

(15) An employer may not file an action with the CAC to "derecognize" a union until three (3) years after mandatory recognition.	(15) If the parties fail to reach agreement, an employer may file for a "decertification" election one (1) year after a union is certified if it presents evidence that the union has lost majority support. However, during a period where there is a collective bargaining agreement in effect, an employer cannot challenge the status of a union for the contract's term up to three (3) years.

Annex II

Survey Responses

In all, twenty-six union officials completed all or part of a brief survey on post-recognition negotiations. Below, I list the questions in the survey and the responses to each question.

Method for Conducting Collective Bargaining:

- Question I.1: After recognition, how long did the parties take to reach agreement on a method of bargaining?

Less than 30 days	Between 1 and 2 months	3 to 4 months	5 months or more	Not yet reached agreement	No response
6	6	6	3	1	4

- Question I.2: As a way of facilitating negotiations, how useful was the [statutory model] method of bargaining?

Very useful	Useful	Of little use	Of no use	Don't know	No response
5	9	7	4	0	1

Procedural Agreement:

- Question II.1: Since recognition, have the parties signed a procedural agreement?

Yes	No	No response
25	1	0

- Question II.2a: Since recognition, have the parties agreed procedures for handling collective disputes?

Yes	No	No response
23	2	1

Question II.2b: Since recognition, have the parties agreed procedures for going to a 3rd party in the event of a dispute?

Yes	No	No response
10	15	1

- Question II.2c: Since recognition, have the parties agreed procedures for dealing with employee grievances?

Yes	No	No response
19	6	1

- Question II.2d: Since recognition, have the parties agreed procedures for disciplinary actions?

Yes	No	No response
17	8	1

- Question II.3: Since recognition, have the parties agreed union use of facilities?

Yes	No	No response
22	3	1

- Question II. 4: Since recognition, has the employer agreed that the union can hold meetings in working time?

Yes	No	No response
13	12	1

- Question II. 5: Has the employer agreed to allow the union representative to take time off to spend on union matters?

Yes	No	No response
16	1	9

Pay Negotiations:

- Question III.1: Has the union negotiated worker pay?

Yes	No	No response
18	8	0

- Question III.4: Before the outcome of the pay negotiations, were union members asked whether they accepted the pay offer?

Yes	No	Not applicable
18	0	8

Negotiations on Non-Pay Issues:

- Question IV: What issues has the union bargained with the employer?

	Yes	No	No response
Working time	14	11	1
Holiday pay	10	15	1
Sick pay	5	20	1
Training	10	15	1
Physical working conditions	11	15	1
Staffing levels	5	20	1
Recruitment	4	21	1
Redeployment within establishment	6	19	1
Size of redundancy payments	4	21	1
Other	10	15	1
None	4	21	1

General Post-CAC Conditions:

- Question V.1: Since recognition, how would you describe the relations between the employer and the union?

Better than before recognition	Stayed the same	Deteriorated since recognition	No response
14	8	3	1

- Question V.2: Since recognition, what has happened to the level of union membership?

Increased	Stayed the same	Decreased	No response
15	8	2	1

[i] The characteristics vary with individual countries. For example, France imposes a statutory obligation to bargain with unions on its employers.

ii.The United Kingdom enacted a statutory scheme under the Industrial Relations Act of 1971 that set up procedures somewhat comparable to those in the North American model. After this act was repealed in 1974, another statutory scheme was enacted in the Employment Protection Act of 1975. This, in turn, was repealed by the Employment Act of 1980.

iii.*See* National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters, GAO/HRD-91-29 (Jan. 1991).

iv.Central Arbitration Committee, Statutory Recognition - Guide for the Parties (Apr. 2002), *at* http://www.cac.gov.uk.

v.Some amendments to these procedures were enacted in the Employment Relations Act 2004 (Sept. 16, 2004). These amendments introduce, *inter alia*, rules to define unfair practices during recognition and to clarify union access to workers in a bargaining unit. The provisions in these amendments are not included in this paper.

vi. This report deals only with recognition deals between 2000 and 2002. However, according to the Trade Union Trends Recognition Survey 2003 conducted by the Trades Union Congress, 79 per cent of the 166 recognition agreements concluded in 2003 were voluntary, thus continuing the same general trend.

vii. This statistic is taken from the Daily Labor Reporter (June 17, 2002), published by the Bureau of National Affairs (BNA). It includes information only on recognition elections "certified" by the NLRB. It does not include information on recognition obtained without the use of the NLRA process, such as those recognition agreements secured in the recent highly-publicized "Justice for Janitors" campaign.

viii. A commission appointed in 1992 by the U.S. Secretaries of Labor and Commerce to examine wide-ranging issues related to worker-management relations.

ix. Different researchers using various samples of union first-time negotiations in the 1980s developed other estimates ranging from 20 per cent to 40 per cent. However, the largest-scale sample was included in a 1994 study by Gordon Pavey of the AFL-CIO (the U.S. equivalent of the U.K.'s TUC). This study showed that unions elected during 1987 secured first contracts in 65 per cent of the cases, thus supporting the Dunlop Commission's estimate. Gordon Pavey, *A Question of Fairness: Winning NLRB Elections and Establishing Stable Collective Bargaining Relationships with Employers*, Industrial Union Department, AFL-CIO (1994).

x. Trades Union Congress, *Trade Union Trends: Focus on Recognition* (Feb. 2003).

xi. As the TUC figures do not include data on unions not affiliated with it, the figures undercount the number of recognition agreements nationwide. Independent researcher Gregor Gall reported 518 recognition agreements in 2001. Gregor Gall, *Union Organizing: Campaigning for Trade Union Recognition*, in Routledge Studies in Employment Relations 67 (G. Gall ed., 2003).

xii. Two of the CAC-imposed recognition deals were with a union not affiliated with the TUC.

xiii.Review of the Employment Relations Act 1999 (Dept. of Trade and Industry, Feb. 2003).

xiv. To characterize the cases, I used survey questions III (negotiations on pay issues), IV (negotiations on non-pay issues), and V.2 (relations between union and employer after recognition). *See* Annex II for survey questions and results. If the case survey showed both more than minimal negotiations and improved union-employer relations, the case was included in the "robust" category; if the case survey showed no substantive negotiations, then the case was included in the "bad" category; all others were included in the "weak or minimal" category. Interviews on the cases confirmed the general case characterizations. However, I made one exception to the classification scheme: in one case where the interview with the union official indicated that negotiations had progressed quite rapidly after recognition I included the case in the "robust" category even though the same official responded in the survey that the relationship had not improved.

xv. Only twenty-five cases are reported; one of sampled cases did not provided sufficient information for the table.

xvi. Much of the cultural divergence between the United Kingdom and the United States centers on the continuing influence of the voluntarist tradition in collective bargaining as well as European Union social regulation. For example, even though the United Kingdom now has statutory procedures similar to those of the United States, its bargaining agreements remain largely unenforceable in the courts. European Union legislative directives have required U.K. employers to consult more widely with employees (generally through their trade union representatives) on issues such as redundancies, ownership transfers, substantial business decisions, and safety measures. The European judicial system also has a significant role in regulating U.K. labor practices.

xvii. See Stephen Wood, Sian Moore & Paul Willman, Third Time Lucky for Statutory Union Recognition in the U.K.?, 33 Indus. Rel. J. 215 (2002); see also, Gregor Gall, The Unintended Consequences of Schedule 1 of the Employment Relations Act 1999, 22 Employee Rel. Rev. 34 (2002).

xviii. See Robert Poole, Agreed or Imposed? A Study of Employer Responses to Statutory Recognition Applications (Warwick Papers in Industrial Relations Series, No. 71, 2003).

xix.To develop this table, I used data from survey question I.2 on the usefulness of the statutory model. See Annex II for survey results. To be classified as viewing the model as "generally useful," the respondent noted that the model was either "very useful" or "useful." To be classified in the second category, respondents indicated that the model had been of either little or no use in negotiations. These responses were divided according the same case characterizations set forth in Table 6.

Published by Acas