

## **WHEN IS A TRESPASS NOT A TRESPASS?**

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Lord Kincaig's decision at Edinburgh's Court of Session on 26 February to withdraw an interim interdict (injunction) granted earlier that month restraining the occupation of Plessey's electronics components factory in Bathgate, West Lothian, not only raises an interesting legal question — namely when is a trespass not unlawful? — but also carries important implications for industrial practices on both sides of the border. James Gould, chairman of the CBI in Scotland, immediately pointed out that

denying Scottish employers recourse to the law in cases of factory occupations could set an example for the rest of Britain; local Labour MP Tom Dalyell jubilantly claimed that 'Boardrooms throughout the City of London will have to take cognisance of this decision'; while the *Morning Star* saw the judge's comments as 'of significance for the whole trade union movement'. What was all the fuss about?

Plessey's is a profitable British-based multinational company specialising in the booming electronics industry. Despite profits of £84 million in the first three quarters of 1981 and order books standing at £1,150 million, a decision was taken in January of this year to stop the manufacture of capacitors at the Bathgate plant, which uses some of the most advanced machinery in the world, and transfer production to Italy with the loss of 330 jobs. The proposed closure would continue the programme of 'rationalisation' — running down production in Britain and re-investing capital in more profitable locations — pursued by Plessey's throughout the 1970s, the workforce having been reduced in the UK from 68,000 to 38,000 over the past four years.

On 25 January, however, 200 workers at the plant voted to oppose the closure and begin sitting-in, following the famous Scottish examples of UCS and Plesseys (Alexandria) in the 70s and more recently the successful Lee Jeans occupation at Greenock. The company responded by applying for an interim interdict, claiming infringement of its property rights, which was granted by Lord Kincaig on 4 February. The unanimous vote to maintain the sit-in despite this ruling then brought another Order from the Court of Session requiring the 117 women and 10 men named in the original action to appear before the court and explain their non-compliance. So it was that on 26 February Lord Kincaig reversed his previous decision, recalling the interdict on the grounds that, since the occupation was 'in furtherance of a trade dispute' as laid down in Section 13 of the 1974 Trade Union and Labour Relations Act, and Parliament's intention in drafting this legislation had been to keep such matters out of the courts, the defendants might have legal immunity from the employers' action. He added: 'It may be that sit-ins have been legalised by that section. I would myself doubt it, but I cannot at this stage affirm that it does not.' Plessey's appeal against this ruling was postponed three times, pending the outcome of negotiations taking place through ACAS, where 80 jobs were in fact saved.

What is at stake here, however, is manage-



*Plessey workers meet during their occupation of the Bathgate factory*

ment's ability to manage the production process, to direct labour and allocate other resources in accordance with its profit calculations, regardless of broader social issues or the particular needs of local communities. This ability ultimately depends, in Scottish and in English law, on the private property right of the enterprise to *exclude* labour from the point of production — workers having the status of mere licensees and thus becoming *trespassers* on exceeding the conditions of their licence or its withdrawal. Thus events at Plessey's might have been expected to take a course similar to that at the nearby Leyland truck plant, where Lord Mayfield's interim interdict of 30 January was quite unequivocal and a sit-in protesting at the loss of 1300 jobs was ended after a week, enabling BL to proceed with redeployment of plant and machinery; or to that at Laurence Scott's engineering works in Manchester, where a 17 week sit-in was ended in September 1981, after the defendants' refusal to obey a court order, by bailiffs wielding sledgehammers and pick axe handles. Employers have successfully resorted to trespass and related law throughout the 1970s to regain possession from protesting occupiers, as have other private property interests in removing squatters and student demonstrators, so why this apparent perverse decision in 1982, and what are its legal and social implications?

The law has been embarrassed in this case because of the inability of the court to reconcile two different areas of law brought clearly into conflict by the Bathgate occupation, involving on the one hand the enterprise's right of exclusive management and control, and on the other the workers' right, enshrined in public statute, of immunity

from private actions in tort where the industrial practice is 'in furtherance of a trade dispute'. This legal contradiction has always been likely to become manifest since the appearance of mass protests involving trespass at the beginning of the 1970s, and has emerged as such now in the context of a worsening economic situation which has forced more closures, redundancies and increasing unemployment and resulted in a greater determination of workers in certain areas to fight closure plans and defy the due process of law. Whereas previously the 'trade dispute', whether strike, work-to-rule or overtime ban, had left management's fundamental right of exclusion unaffected, the new forms of industrial protest take the struggle firmly onto the premises of the enterprise and involve a challenge to management's *ultimate* right to sack workers, cease production, withdraw investment and dispose of valuable plant and capital equipment. The suggestion that factory occupations might be 'lawful', despite the obvious trespass committed, is anathema to company managements constantly seeking further rationalisation. Well might the chairman of the Scottish CBI lament: 'It is a strange situation where the court denies a firm access to its own premises and goods.'

In March the appellate judges in the Scottish Court of Session confirmed Lord Kincaig's decision. It could be reversed 'at a later date, but meanwhile a glimpse has been caught of the contradictory operation of the law in a period of economic recession; and isolated victories may be expected to continue against closure decisions outside the courts through the sheer determination and defiance of the occupiers.

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