(1344.) WELLINGTON COOKS AND WAITERS.—RECOMMENDATION TO ADD FURTHER PARTIES TO AGREEMENT.

Under "The Industrial Conciliation and Arbitration Act, 1905," and in the matter of a dispute between the Wellington Amalgamated Society of Cooks and Waiters' Industrial Union of Workers and the employers hereinafter mentioned:—

Hotels—
Albert Hotel; T. Ashman.
Albemarle Hotel; Mr. and Miss Meyer.
Albion Hotel; W. Berti.
All Nations Hotel; W. Middleton.
Duke of Edinburgh Hotel; R. Dwyer.
Grand Hotel; J. Beveridge and E. J. Hurn.
Grand National Hotel; W. Redmond.
Pier Hotel; P. Griffin.
Provincial Hotel; K. C. Williams.
White Horse Hotel; G. F. Robinson.

Restaurants—
Carroll's; E. Carroll, Willis Street.
Godber's; J. Godber and Co. (Limited), Cuba Street.
Paragon; D. and Mrs. D. Barrie, Courtenay Place.

Oyster-saloon—
Searle's; E. J. Searle and T. P. Lyons, Willis Street.

THE Conciliation Board for the Industrial District of Wellington, having received the necessary proofs establishing its jurisdiction in

the above matter, having heard the parties, and having carefully inquired into the said dispute, recommend as follows:—

That the several employers mentioned in the reference do, before the 5th day of September, 1907, apply to be made parties to the industrial agreement dated the 26th day of November, 1906, relating to the said dispute.

Given under my hand, this 5th day of August, 1907.

P. J. O'REGAN, Chairman.

REASONS FOR THE RECOMMENDATION.

The facts of this case are as follow: In October last a dispute between the union and the employers came before the Board, and, after two conferences, during which, save on minor points, no agreement was arrived at, the Board framed its recommendations, and filed them in the ordinary course. The case was not taken to the Arbitration Court, and the recommendations then became technically an industrial agreement. "The Industrial Conciliation and Arbitration Act, 1905," contains no provisions for joining employers who were not parties to the original agreement, unless by their own consent. There is, moreover, an important difference between an award and an industrial agreement, in that, while an award binds all employers who commence business within the industrial district after the same has come into operation, an agreement has no such effect, and can be made applicable only to those employers who voluntarily become parties thereto. In the present case certain employers were inadvertently omitted from the original citation list, and there are others who, having commenced business since the agreement came into operation, are outside the scope of the same. The total number of employers who were in this position was until recently thirty-one, but of that number seventeen have signed application-forms and have become parties to the agreement. Fourteen, however, decline to make such application, and the union accordingly initiated what may be termed another dispute in respect of those particular employers, and brought them before the Board. The employers have asked us to frame an entirely new set of recommendations as far as they are concerned, and have indicated the lines upon which they would like the same to be made. The union, on the other hand, have sought a recommendation that the employers in question apply to be made parties to the existing agreement.

After hearing argument on both sides and carefully weighing the circumstances, we have formally made the foregoing recommendation, because we have concluded that no other course is possible. The Board has no jurisdiction to make recommendations at variance with those already embodied in the existing agreement. We are quite satisfied that the Act does not contemplate the existence of more than one award or industrial agreement in connection with the same trade or business at the one time. If there might be two

awards or industrial agreements affecting the same business in the same district, there would be no logical limit to the possible number, and in any case it would be palpably unjust to have more than one. We are aware, of course, that it is quite competent and often desirable to limit awards or agreements to particular portions of an industrial district, or to make particular parts of an award or agreement covering the entire district applicable only to particular localities therein. The awards in a number of cases are, for instance, limited to the City of Wellington and its suburbs. That, however, was something very different from what was sought in the present instance—that a set of recommendations should be made which, if given effect to, would mean the existence of totally different conditions as to wages, hours of labour, &c., as between persons engaged in the same trade and in the same locality. Such a state of things would clearly be in contravention both of the spirit and purpose of the Act.

The procedure adopted by the union is analagous to an application to have certain employers made parties to the agreement already in force, and the Board has no choice but to make the formal recommendation. Clearly the Board has no jurisdiction to join parties. If an agreement between the parties to a dispute cannot be brought about, its functions are limited to framing and filing its recommendations. Technically the present case is exactly similar to the Wellington Saddlers case (Awards, Vol. ii, pp. 36 and 48). We are aware, however, that the circumstances are very different, inasmuch as the employers who refuse to become parties to the agreement in the present instance do so for the reason that they do not consider it equitable to accede to the wish of the union. We would point out, however, that, without questioning the validity of their objection, the present position is decidedly unsatisfactory. It is obviously desirable that all the employers in a given business should, as nearly as may be, stand on a footing of equality in respect of wages, hours, and other industrial matters usually covered by an award or industrial agreement. In this case, however, while the great majority of employers engaged in the Wellington catering trade are bound by the existing agreement, the employers who are not bound thereby have an advantage to which the others must naturally object, since it destroys the position of equality which it is the intention of the Act to secure and preserve as far as possible.

We readily admit that there are hardships and anomalies in the agreement as it stands. We are aware that it came into operation by a peculiar oversight on the part of the employers. The defects in the agreement are due partly to the scant information obtained from the employers when the original dispute was before the Board, and partly to errors in drafting which, had we the power, we would gladly rectify. As illustrating the first point, we may mention that certain parties to the agreement, whose business as caterers is merely accessory to their principal business, are obliged to pay

the wage fixed for a fifty-two-hour week, although they close their principal business (and therefore their catering business as well) at 6 p.m., and work only forty-four hours per week. Here is clearly a matter for which provision might well have been made, but, as the employers concerned never saw fit to place the facts before the Board, we could scarcely be expected to provide for circumstances of which we had neither knowledge nor evidence. As to the second point, the Board freely admits that several serious anomalies have arisen through errors in drafting. In this connection it appears extraordinary that the Legislature has made no provision to enable the Board to correct such errors. The recommendations of the Board, when adopted by the parties, have a currency not exceeding three years, and the usual period is two years. When it is remembered that the interests of employers, *inter se* and as between different portions of the industrial district, are often so exceedingly varied that every provision has to be hedged with qualifications and limitations, it cannot be a matter for surprise that errors should be revealed in practice which were quite unintentional. A set of the Board's recommendations is really legislation, since it is prepared under the authority of a statute, and has the force of law when once in operation. Parliament has frequently to amend its legislation at intervals shorter than two years, and we think, therefore, that errors of draftsmanship are so probable on the part of Boards that power should be conferred on them to make necessary amendments. Did such power exist in the present case we would have no hesitation in putting the agreement into the form originally intended, in which case it would be shorn of its more objectionable features and rendered much more workable in practice. This is a point which we commend to the serious consideration of the Government and of the Legislature.