briefings

An anti-labour Labour Bill — Zimbabwe

After two years of labour, the Zimbabwean Ministry of Labour finally gave birth to its heralded replacement of the notorious Industrial Conciliation Act, the Smith regime's principal instrument for disciplining black labour. That long gestation, however, has produced a monster.

To assess the bill, we first consider the role of trade unions in the transition to socialism.

Everywhere, the transition to socialism proceeds by way of state capitalism. Zimbabwe today and for many years will have a state capitalist political economy. A state capitalist economy can go either of two ways. It may move towards fascism — that is, the naked control of the state machinery by and in the interests of multi-national corporations and the local entrepreneurial class; or it may move towards socialism — that is, towards control of the state by and in the interests of the peasants and workers.

During the period of state capitalism the countervailing power of the workers plays an important part in taming entrepeneurial power. Great multi-national corporations and local capitalists today dominate Zimbabwe's economy. In a myriad of ways, subtle and not so subtle, they seek to catch government in their tentacles. Without active working class support, government too easily falls into their embrace.

Which way Zimbabwe? To a large extent, that depends on whether the state succeeds in creating an ally in the working class, whether it liberates that class so that it becomes a countervailing power to capitalist power. Only with working class support is the state likely to transform its institutions step by step in a socialist direction.

Zimbabwe's government has pledged itself to these objectives. This bill denies that pledge. It serves the interests *not* of workers, but of employers. Let's examine how the bill places fetters on the organising of the unorganised, and aids employers in collective bargaining; how it hinders worker participation and choice; its resurrection of influx control; its fair labour standards provisions; and its provisions concerning discrimination in employment.

Ninety-two percent of Zimbabwe's workers have no unions. To help them receive a fair share of the national pie, they must have unions. That requires effective constraints against management interference in the unionisation process, state support in the bargaining process, and help in funding. This bill fails in every department.

The bill formally forbids employers from interfering with employees' right to form, belong to, and participate in the work of trade unions. It

provides a procedure for determining whether the employer committed such an unfair labour practice. It deprives workers, however, of their right to strike against an employer who commits an unfair labour practice. Instead, it depends on the Public Prosecutor bringing a criminal charge against the employer in a magistrate's court. Experience under the Minimum Wages Act teaches that prosecutors seldom prosecute employers for violating labour laws. They think they should spend their time prosecuting 'real' criminals.

Sophisticated employers interfere in unions not by discriminating against union activities, but by subtly dominating 'sweet-heart' unions, with whom they can negotiate collective bargaining agreements favourable to the employer. Registered with the Minister, these agreements make it a crime to strike for better pay or conditions of work. Most labour acts around the world prohibit employers from dominating a labour union. This bill does not.

The bill makes it practically impossible for workers to organise their own trade union. Until registration, a union may not collect dues. To register, the union must apply to the Registrar. The employer and other unions may contest the registration. They can appeal from the Registrar's decision to a Regional Hearing Officer, to the new National Labour Relations Board, and to the Supreme Court. The bill does not tell us where an unregistered union without power to collect dues will find the money to engage a lawyer for these appeals.

In any event, the registration provisions seem unconstitutional. The Constitution forbids a hindrance on the right of free assembly and association, and expressly mentions registration of a trade union as a hindrance on the right.

A registered union may collect dues. It cannot, however, call a strike nor enter into a collective bargaining agreement. To do so requires certification. The criteria and procedure for certification repeat those of registration. The registered union must go again through the weary round of application, hearing before the Registrar, and appeals.

An employer who could not prevent a union from obtaining certification for three or four years ought to get himself a new labour lawyer.

The new labour law ought to help unions bargain against employers. It does not. On the contrary, it throws a variety of checks in the way of unions.

Right to strike

Unions have an ultimate weapon: the strike. Anything that weakens the strike weapon, weakens unions. This bill effectively cuts the right to strike.

The bill boldly proclaims a right to strike, but only if the union has exhausted the dispute-settlement mechanisms created by the bill. Before striking, a union must give two weeks' notice to the employer. The employer may then notify a labour relations officer (the bill's new name for the old industrial relations officers). After a hearing, the labour relations officer may send the matter on an unfair labour practices charge, or for compulsory arbitration before the new Zimbabwe Arbitration Tribunal.

In either event, a strike becomes unlawful. One of the grounds for ordering compulsory arbitration is that a strike threatens.

The right to strike probably is constitutionally protected. In this regard, too, the new bill violates the Constitution.

No qualifications limit appointments to the new Zimbabwe Arbitration Tribunal. If precedent serves, one member will be a white employer or employer's lawyer, another will be a black lawyer (supposedly 'representing' workers) and the third a public figure, supposedly representing 'the public'. In any event, none will be a worker. All will come from the middle or upper classes. Should Zimbabwe's workers surrender the right to strike for compulsory arbitration before a tribunal like that?

The bill permits workers to create workers committees. Unlike registered but uncertified unions, they have the right to negotiate collective bargaining agreements and to call a strike. They do not, however, have the right to collect dues. Without a strike-fund, a strike becomes suicidal.

The bill, however, does not permit a dispute between a workers' committee and an employer to go to compulsory arbitration. Faced by an unfunded workers' committee, an employer can afford to be tough, knowing the committee cannot afford to strike, and that the dispute cannot go to compulsory arbitration. Faced by a tough and financially strong union, however, the employer can still opt for compulsory arbitration. The employer wins both ways.

The bill gives either side the right to object to a particular member of the other side's negotiating team or to their style of negotiating. If the other side then does not take reasonable steps to remove the 'prejudice', it commits an unfair labour practice. Thus an employer can object to a militant member of the union's negotiating team and force his removal. Employers have unlimited phalanxes of corporate lawyers on whom to call. Labour unions have much thinner manpower resources. The provision seems blatantly pro-employer.

Agreements

Finally, the Minister has power under the bill to accept or reject a collective bargaining agreement or a clause in it. He may do so if the agreement seems unfair to consumers. Every raise in pay or improvement in working conditions costs an employer money. Every employer therefore weeps that to improve pay or working conditions will require him to raise prices. (He never accepts that instead they might reduce his profits). The bill does not even give the parties to a collective bargaining agreement the right to be heard before the Minister vetoes their agreement.

State capitalism will move towards socialism rather than fascism to the extent that workers and peasants become liberated. This bill does not move towards workers' liberation. It ensures that they remain under the thumb of employers and Government. In most countries of the world, for example, the workers in a plant decide by secret ballot which union they want to represent them. Under the new bill, they do not. The Registrar in his discretion decides which union ought to represent them.

(One of seven considerations that he must take into account is 'whether a substantial number of employees in the undertakings, industries, trade or occupations ... are in favour of joining the trade union ...' — not even whether a majority does so.)

The Minister has complete control over the internal affairs of trade unions by controlling their finances. He can order an employer to pay the dues he witholds from employees' pay packets into a trust fund, thus stopping the union's source of funds. He can tell a union how much dues it may collect, and for what purposes it can spend its money.

Colonialist

One technique of colonial control over trade unions lay in prohibiting them from political activity. This bill repeats that colonialist technique.

Quite unconstitutionally, the bill gives the Minister power to declare one area with a labour shortage, or with a labour over- supply. If it is a labour over-supply area, he can prohibit people from entering it to look for work. If a labour shortage area, he can prohibit workers from leaving the area. Call it influx control.

The bill includes a scheme for defining and enforcing fair labour standards. It adopts the old Industrial Conciliation Act's principal device for disciplining black labour. Under the old act, the employers and the union in a particular unit formed industrial councils, for the continuous negotiation of controversies. These worked quite well. Since mainly only white workers had unions, the industrial councils serviced mainly white

workers.

The old act had a seemingly analagous, but in fact completely different set of institutions, industrial boards, to set wages, hours and working conditions for the unorganised — read black — workers. The Minister selected members of the industrial boards, choosing some to 'represent' employee interests, and some to represent employer interests. Employers he identified easily. With no union, however, who represents employee interests?

In the end, employers sat around the table with some civil servant representatives and decided how much to pay black labour — the so-called employee 'representatives' went along. What the employers and civil sevants decided became regulations promulgated by the Minister. After that it became a crime to strike for higher wages or better working conditions.

The present bill retains both industrial councils and industrial boards, under the new names of employment councils and Employment Boards. No change appears in their content.

The bill's only remedy for failing to pay minimum wages or to follow regulations about hours and working conditions remains a criminal sanction. That has not worked to enforce the present Minimum Wages Act. Why should it work to enforce minimum wages under the new bill?

Job reservation

The old Industrial Conciliation Act succeeded in de facto job reservation while pro-claiming its non-racial character. It did this by permitting craft unionism — that is, a union could represent, for example, all the electricians in an area, no matter what firm they worked for. The other workers in a firm might not (and usually did not) have a union to represent them. The union and management then manipulated the apprenticeship programme to ensure that only whites became electricians.

Thus it used craft unionism as a device to split white workers off from black ones. Splitting the working class to make it easier for employers to deal with the workers as a whole has long served as craft unionism's principal function.

The present bill makes no effort to change that situation. It does not express a presumption in favour of industrial unionism: that is, unions which represent all the workers in a particular factory or industry. Industrial unionism implies the unity of the working class. Craft unionism implies its opposite. The bill permits the continuation of craft unionism.

The bill contains not one but two horrendous-sounding anti- discrimination clauses, making criminal discrimination in employment on

grounds of race, colour, creed or sex (and in one of the sections, age). These provisions contradict the President's directive about Africanising the civil service. If a permanent secretary employs a black over a slightly more qualified white because the applicant has a black face (as the Presidential directive requires), the permanent secretary becomes liable to a $5,000 fine or two years in prison.

The bill must have had as its ultimate author an attorney representing big business — nobody else could have written it so carefully to deprive labour of any legal support. Its adoption could well put paid to Zimbabwe's declared goal of socialist transformation, for it will inevitably place government in the role of labour's enemy, not its ally. Enactment of this bill will strangle the working class, destroy the right to strike, place unions under the thumb of emloyers and government, permit the Minister to impose influx control, and in the end drive a fatal wedge between government and the working class.
(Moto Magazine December 1982/January 1983.)

Conditions of Employment (SATS) Bill 1983

The Conditions of Employment (South African Transport Services) Bill, 1983, which passed its third reading in Parliament recently, is consolidating legislation bringing together 24 previous Acts dealing with employment conditions in the SATS.

Most amendments were to the Railways and Harbours Services Act, No 22 of 1960 and the most important change was to the SATS conciliation machinery. Clauses 27 and 28 scrap the Conditions of Employment Advisory Board, which represented all staff associations, and replace it with smaller ad hoc boards representing only the staff association most immediately effected by the matter at hand.

The Government White Paper describes the procedures for settling disputes in terms of the 1960 machinery as time-consuming and expensive. It had therefore recommended simplified procedures and the appointment of one-man commissions to settle disputes instead of the existing two-man nominated commissions.

Five broad themes emerge from the bill; entrenched but hidden racism, the SATS refusal to recognise independent unions, far- right fears of in-