

## BOPHUTHATSWANA INDUSTRIAL CONCILIATION ACT\*

In the first week of March Bophuthatswana's Industrial Conciliation Act passed through parliament - making the territory the first of the "independent" homelands to draw up its own legislation providing for the operation of trade unions. The act is retrospective to the 1st July 1983.

The question of trade unionism in Bophuthatswana had become a pressing one as the activities of unions, which are based in "white" South Africa, increased. At the time of Bophuthatswana's independence, most of the unions operating there were long established. They included the all-white right-wing Mine Workers Union (MWU) with a claimed 2000 members on the mines, as well as the more craft-oriented bodies, such as the Electrical and Allied Trades Union. More recently, emerging, largely black, unions such as the National Union of Mine Workers (NUM) (affiliated to the Council of Unions of South Africa (CUSA)), the Commercial, Catering and Allied Workers Union of South Africa (CCAWUSA), and the South African Allied Workers' Union (SAAWU) began organising there. This prompted the authorities to finalise the new law.

The Act provides for the existence of both registered and unregistered unions, but ensures that their activities will be strictly controlled. The very wide definition of an unregistered union sets out to bring any body representing workers under the Act's ambit. Besides bodies purporting to be unions, the definition includes the association of persons claiming "to represent the interests of or act on behalf of workers or any group of workers, whether employed or unemployed...". Thus even a workers' committee would be considered to be an

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\*This briefing is an "information update" produced by the South African Institute of Race Relations.

unregistered union and fall under the Act's provisions. The definition also includes trade union federations, but there is no provision in the Act for their registration.

Among the main conditions governing both registered and unregistered unions are that the head office of their controlling bodies must be situated in Bophuthatswana and that no person may be employed or appointed as an office bearer or official unless "he is ordinarily employed and ordinarily performs his work" in Bophuthatswana. The implications for unions active there, but whose head offices are based in "white" South Africa, are far-reaching: they will either have to move their head offices to Bophuthatswana or withdraw. Before the law was tabled, Bophuthatswana's Department of Manpower and Co-ordination sent letters to the NUM, CCAWUSA, and SAAWU advising them of the proposed requirement and pointing out that they would not be able to operate in the territory. This precipitated a strike at UCAR Minerals, a subsidiary of Union Carbide, by NUM members.

Unions organising commuters living in Bophuthatswana but working in the border areas were concerned lest the Act prohibit them from holding union meetings in Bophuthatswana after work. No such prohibition is contained in the Act, however. The Minister of Manpower and Co-ordination, Mr Rowan Cronje, had initially indicated that he would prohibit such gatherings. He has since told the South African Institute of Race Relations that this decision falls outside his jurisdiction. In terms of Bophuthatswana's Internal Security Act, permission for meetings of more than 20 people must be obtained from the local magistrate in any event. Attempts by the authorities in the past to block such meetings have been unsuccessful because they have been challenged under Bophuthatswana's bill of rights.

The Act grants wide powers to the registrar to decide whether to register a union. One of the main requirements is that he must be satisfied that

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the "applicant is a responsible body capable of taking part in the negotiation of matters of mutual interest between employers and employees in accordance with the provisions of this Act". There is no definition of what a "responsible" body is, however, nor are there any criteria to guide the registrar in making his decision. He may cancel a trade union's registration for the same reason and may also apply these criteria in deciding whether to register or wind up an industrial council.

The registrar must also be satisfied that the constitutions of registered and unregistered unions alike embody procedures for the collection of membership fees, keeping of proper books, and maintenance of a register of the names of all their members, as well as a complete record of membership fees paid by each member and the period to which it relates. Financial statements must be submitted to the auditor annually and a list of members (including those in arrears) sent to the registrar. While not particularly onerous for established unions, these administrative requirements would be more difficult for new unions, as well as for other bodies, for example works committees, which fall under the definition of an unregistered union.

A further - and in this case welcome - requirement is that no union may be registered if its constitution allows for discrimination on the basis of race, colour or creed. In what seems an oversight, however, this requirement does not apply to unregistered unions.

If satisfied that a union fulfils the necessary requirements, the registrar may register it for a particular industry, undertaking, trade, or occupation and for the interests of workers in a particular class or classes of work in a particular area. Interests of trade unions may not overlap. It is thus not possible for two trade unions to be registered for the same interests in the same industry for the same area. The Act also outlaws closed shops, so enabling workers to join a union of their choice.

As with its South African counterpart, the Act prohibits all dealings, financial or otherwise, between a trade union, whether registered or unregistered, and a political party or political organisation or candidates standing for political office. It also prohibits unions from having any dealings with people or organisations whom the Minister has listed in the government gazette. Failure by unions to comply with any of the requirements concerning their existence and operation is an offence.

Most of these conditions also apply, *mutatis mutandi*, to employers and employers' bodies.

One of the fundamental features of the Act is that it sets out to create a conciliation process that is industry-based, and that will, as far as possible, exclude the emergence of plant-level bargaining, as has developed in South Africa. Firstly, where there are no trade unions in an industry, the Act provides for the setting up of industrial boards by the Minister either on his own initiative or after representations have been made to him by any employer or employee party concerned. The majority of the members of the board are appointed by the Minister from employer and employee nominees, but additional independent members may also be appointed. These boards will investigate and make recommendations regarding the conditions of employment in "any undertaking, industry, trade or occupation in any area" in respect of which no industrial council is registered. If the Minister agrees with the recommendations, they become binding (after allowing for objections).

Negotiations can also take place through industrial councils set up by agreement between registered trade union and employer parties (whether registered or not). More than one council may not be established for the same undertaking, industry, trade, or occupation in the same area. If two or more councils seek registration for different sections of an industry or of an undertaking in the same area, only the one that is the most

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representative of all the interests may be registered.

To foster industry-based bargaining, either an employer or an employee party can request the Minister to allow for the establishment of a statutory industrial council where no council exists. If he is satisfied that such a council would adequately represent the industry in a particular area, the Minister may instruct the parties to form it within a certain period. If they fail to do so, he will establish one himself and appoint its members from persons nominated by the parties concerned. Such a council will be dissolved once the parties establish their own council.

The result of this system of industrial boards and voluntary and statutory councils is that minimum conditions of work will be widely set on a clearly demarcated basis, according to specific industrial interests or sections of those interests within specified areas. Although this system does not prevent unions from approaching individual employers to negotiate conditions better than the minima set, this, according to Mr Cronje, is not acceptable and will be opposed. There is little doubt that employers will be under pressure to comply with such union initiatives.

One of the notable features of the Act is that it virtually precludes legal strikes. These are totally prohibited in "essential services" and during the currency of any agreement or determination which deals with the issue under dispute. When a dispute occurs, it must first be dealt with by the industrial board or council, and where these do not exist, by a conciliation board. Both councils and conciliation boards may apply to the Minister for the appointment of a mediator to assist them in the settlement of a dispute. If they fail to settle a dispute they may refer it to the industrial tribunal - a body of four having as its chairman a retired judge of the Bophuthatswana Supreme Court or of a Supreme Court or High Court of any other country, or an advocate of any such court

with not less than ten years' standing.

If the Minister believes that referring a dispute to the tribunal will lead to a change or an addition to any existing agreement, he may decide not to so refer it. If the issue is referred, the tribunal makes a determination which the Minister must publish in the gazette within 21 days, after which time it becomes binding. As in the South African situation no strike is allowed during this process or after the determination has become binding.

The Act differs radically from the South African law in allowing for compulsory arbitration in most disputes. Even if the parties do not voluntarily refer a dispute to the tribunal, it will still be referred to it, (unless the Minister decides otherwise, which he may do, for the same reason as above). Where a determination is made, it becomes binding within 42 days of being published. However, either party to the dispute may inform the Minister in writing within 28 days that it does not wish to be bound by the determination and the Minister must publish a notice to this effect in the gazette within 14 days. After this, providing that more than 51% of the workers agree to it in a secret ballot, a legal strike may be called.

There is a further major obstacle to legal strike action, however. The Act says that the President of Bophuthatswana, if he deems it "necessary or expedient in the public interest" may, before the 14 days have expired, declare the determination shall, from a certain date, become binding - thus effectively prohibiting the holding of a legal strike. It is clear that the President's power in this instance is specifically designed to prevent legal strikes from being staged in the territory's strategic industries, notably the mining industry, which employs about 46 000 workers and is one of its main sources of revenue. In practice, then, only a small number of disputes - those referred on a compulsory basis to the tribunal and which are not prohibited by the President - may reach the stage where they will result in a legal strike.

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A major difficulty with this negotiating procedure is its length. As South African experience has shown, a cumbersome conciliation process, rather than leading to the peaceful settlement of a dispute, may add to worker frustration and even precipitate unrest. To minimise this, South African labour law was amended in 1979 to allow for the establishment of an industrial court to provide an aggrieved party with a quick means of gaining temporary relief pending a final decision where an "unfair labour practice" allegedly occurs. While the Bophuthatswana Act makes provision for the establishment of an industrial court, its functions are mainly confined to the hearing of appeals against the decisions of the registrar concerning the registration, variation of scope and winding up of trade unions, employer organisations and industrial councils.

The implications of the Act are far-reaching. The prohibition on unions based in "white" South Africa from operating in the territory seems to contradict recent changes in policy that regard homelands and the nearby industrial areas in "white" South Africa as single economic regions. Many South African companies have factories in Bophuthatswana, among them BMW, AECI, and SA Breweries. It has been argued that if these "foreign" companies are allowed to operate in the area, then why not "foreign" unions.

It is clear that one of Bophuthatswana's concerns is to prevent unions that have organised a plant in "white" South Africa from organising a sister plant in Bophuthatswana. Apparently the Bophuthatswana authorities want to prevent labour unrest in "white" areas from spilling over into their territory. On the other hand, a situation where plants in different areas are organised by different unions, or where the plant in "white" South Africa is organised and its Bophuthatswana counterpart is not, could also lead to problems. This is particularly true where workers in "white" South Africa receive better wages than workers in the same companies or

industries in Bophuthatswana. Some of the craft unions operating in Bophuthatswana argue that as their members are employed by companies whose head offices are in "white" South Africa they should be able to negotiate on their behalf with company headquarters outside Bophuthatswana. It seems that such an arrangement has already been introduced in the case of the Mine Workers Union which claims that it has been given permission to continue operating in Bophuthatswana on a "semi-official" basis. The union fails to fulfil two important criteria for registration in the Act, however. Firstly, it does not have its head office in Bophuthatswana, and, secondly, its constitution discriminates on the basis of race. The MWU claims that it will be able to negotiate in Johannesburg on wages and conditions of work for its members on JCI's Rustenburg Platinum Mine and Gencor's Impala Platinum. While confirming that mineworkers could remain members of the MWU, Mr Cronje has said that the union will not be able to represent its members, or negotiate on their behalf, or enter into any agreements. He said that any agreements negotiated by the MWU in Johannesburg will have no legal standing in Bophuthatswana. Only published agreements between registered employers and organisations and registered trade unions would have legal standing. If miners involved in accidents wished to call on MWU officials for their expertise in an inquiry they could, but the union would not be able to represent workers in an "official or semi-official capacity". Whether this arrangement will be extended to other unions, such as the SA Boilermakers Society, the Electrical and Allied Trades Union, and the three mining officials' associations, all of which have members on these mines, is not clear.

What is clear, however is that the presence of the predominantly black emerging unions will not be accepted at all. Whether these unions will try to continue to operate is an open question. There is little chance of their agreeing to establish their head offices in Bophuthatswana as they refuse to

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recognise the "independence" of the territory, regarding all workers there as South African citizens. What is possible is that new unions will emerge that will be more cautious than their South African counterparts and readier to compromise in their dealings with management.

Some managements in the area have expressed concern over the new requirements, particularly the requirement that they will have to conform with two different sets of labour law. One suggestion is for the introduction of a reciprocal registration procedure, whereby if a union is registered in the one territory, it has an equivalent status in the other.

(Carol Cooper, Johannesburg, March 1984).