SOUTH AFRICAN LABOUR BULLETIN

Debating Union Principles and Strategy

Reply to Fine, de Clercq, Innes

In Search of Concessions - a reply

Trade Unions and the State - a response

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The views expressed in the articles are not necessarily those of the editorial board.

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Comment – Advancing the Debate

The debate focussing on central questions of trade union strategy and principles is continued in this edition of the SALB. The issue of registration is a complex and difficult one. We attempted in the previous comment to evaluate the pros and cons of registration (see p. 34–35). The Fine, de Clercq, Innes article was included in our last edition because it was the first attempt to defend registration as a tactical issue.

We publish responses in this edition including that of the GWU, with a view to encouraging organisations which are directly involved in this decision to explain the basis on which they made it. We would like as many trade unionists as possible to write to us on this issue. In particular, we are interested in the procedure of decision making in trade unions. It would also be of interest to know whether workers in those unions in FOSATU which did register feel that the decision has led to them losing control of their organisation.

The context of the debate might be said to have changed since the submission of the Fine et al article to the SALB. The Langa trade union conference, focussing on common purposes within the labour movement rather than differences, rejected the IC system as an unacceptable means of collective bargaining. More significant for the registration debate was the agreement reached to (a) reject the present system of registration insofar as it is designed to control and interfere in the internal affairs of the union, and (b) demand that registration become a mere formality. In this specific sense the debate has shifted away from registration *per se* to wider issues about the nature and structure of trade unionism in South Africa.

The SALB would like, therefore, to encourage contributors to address their contributions to this wider question. The first issue – a crucial backdrop to most of the other issues raised – is that of trade union democracy and democratic struggle. Democracy is a contested concept that can be defined in many different ways. Not surprisingly therefore it is a word few political protagonists are prepared to concede to their rivals for their exclusive property. At the core of the debate about democracy are two conflicting views that emerge from an analysis of the Fine et al and GWU contribution. The line of argument developed by the former posits accountability as the central aspect of democracy. "They (workers) need to know who to hold accountable for their representation. It is *lack of accountability* that leads union officials and even shop stewards to substitute their own interest for those of the workers" (p.56, their emphasis). For the authors, the union officials are indeed there to advise and represent the workers and it is their accountability to the workers which operates as a check against undemocratic practice. In this sense workers control their organisation. This view also holds that internal democracy is continually violated, of necessity, by repressive conditions which make full and general discussion inside the union of some delicate issues impossible.

The other conception of democracy which is put forward in this debate (see the response by the GWU, p. 23 of this issue) gives weight rather to the participation of workers in *controlling* the direction of the union. In this view, the trade union officials must carry out the mandate of the workers, and *all* matters, particularly those of a 'delicate' nature, must be fully and generally discussed.

The questions which emerge from these differing conceptions of democracy relate both to the role of democratic processes in an organisation, and also to the significance for the union movement of the struggle for democracy outside it. But it needs to be borne in mind that democracy cannot adequately be defined in abstraction – to understand its limits and possibilities we need to examine it unfolding in a particular situation.

A number of other issues are raised by this debate – the role of intellectuals in the workers' movement remains largely an unexplored one in the South African context. FOSATU, GWU and CUSA have all benefitted by the input of students and academics – mostly white – over the years. On one level this has brought crucial resources and expertise; on another level it has laid these bodies open to allegations of domination by white intellectuals. These organisations have always denied such allegations, pointing to the democratic nature of decision-making. However, while the activities of white intellectuals in the trade union movement does not necessarily fly in the face of internal democracy, what is important is that the role of such intellectuals should not be concealed under the rhetoric of democracy.

A third issue concerns the nature of the state and of law. In recent years a resurgence of interest in these areas has led to a heightened awareness of the crudity of seeing the state as an instrument of dominant groups, or law as merely functional to the interests of business and the state. Above all, we need clarity on what is understood by 'a concession' and to what extent the 'concessions' extracted in the post-Wiehahn period are the result of conditional registration (the FOSATU position) or non-registration (the GWU, SAAWU, etc. position). Possibly these issues could be clarified by empirical investigation. Associated with the debate on the state and law is, of course, the question of participation in industrial councils. We intend to devote a full issue to this early in 1982.

briefings

With the current edition we are introducing a new feature of the Labour Bulletin. *Briefings* will appear as a regular addition to the front section of all future issues. Through this forum we aim to cover rapidly-changing developments in labour and provide much-needed commentary and analysis on a wide range of labour related issues. It is hoped that *Briefings* will serve to stimulate thought and debate around pertinent questions facing the trade union movement today. Our *Briefings* section is still in embryonic form and readers must bear in mind that the material included does not as yet reflect many of the more important developments on the labour front.

Pensions: the problem

DURING 1981 two issues – pensions and wages – have caused a great deal of industrial unrest. Yet on the pension issue there is a surprising lack of information about what is happening.

Even senior leadership in TUCSA have shown how far away from their rank and file they are when last month they tried to blame the problem on agitators.

The pension problem is a very real one and it is not being solved since the government seems blind to the issue and too many employers have reacted too slowly in the face of an obvious problem.

Earlier this year the government published a Bill dealing with pensions. This caused widespread industrial unrest and the Bill seemed to disappear for a while. However, in August it reappeared with small amendments and again industrial unrest has broken out.

Why is this? The main effect of the Bill is a proposal that a worker will not be able to withdraw his or her pension contributions until they are due to retire. At present where a pension scheme exists you can usually get your pensions contributions when you leave your job.

Basically there are three major reasons why the proposal is largely unacceptable to black workers.

- They have every reason to doubt that such a scheme will work to their benefit in practice.
- Their experience of the administration and introduction of pension schemes is generally negative.

They were not consulted on the whole proposal and if they had been they could quite easily have raised serious shortcomings in the whole concept of the scheme.

Workers have articulated these points in many different ways and their distrust and anger towards the proposal has increased as employers have mishandled the matter,and Radio Zulu and other sources have only further added to the rumour and uncertainty.

Let us look at the practical implementation of such a scheme. If a worker does change his job a few times then he will have to keep track of the movement of his pension money. Even more difficult is to keep track of what is happening to his money – how is it growing, how much has he got and what rules govern it.

Given the workers experience of UIF and Workmen's Compensation and government departments in general, he has very understandable doubts that he would ever see his money again. The general distrust of the government has also turned into distrust of the proposed scheme.

Most pension schemes for black workers were introduced in the last 10 years or so. They were generally introduced without consultation and imposed as a compulsory condition of service. In some major schemes such as in the Iron, Steel and Engineering industry the pension deduction cut into already inade-

quate wage increases. Workers have had difficulty in collecting pensions and the experience they see around them with State pensions makes this even worse.

In general pension schemes are appallingly administered in that workers have virtually no information as to how much they have contributed, how the money is invested, how interest is calculated and who controls the scheme.

I believe that the proposal is unworkable and inappropriate in the South African context. The administration problem is enormous. Since the State imposes geographic separation on people it will cost a worker nearly all his pension just to collect it. Furthermore, the newness of schemes and low wages mean that for at least two decades or so most pensions will be totally inadequate. Therefore correctly workers view pensions as a form of saving. Cash when you need it now or when you are old is far better than a meaningless pension.

If workers had been consulted, they could have told the experts all this. However, there was no consultation and the situation is now a complete mess.

If the State wants to preserve pensions, then in proper consultation with people they must evolve a State pension scheme. If it wants to rescue the present situation then the whole Bill must be totally scrapped and worker organisations given a real chance to develop their own proposals. People must be allowed to decide for themselves and not have totally inappropriate proposals imposed upon them.

Alec Erwin, Durban.

Mass resistance to Pension Bill

THE RECENT series of work-stoppages that closed down four of the five Huletts mills in Natal have highlighted, yet again, the resistance of workers to the draft Pension Bill and their mistrust of both management and the State.

The resistance has not only been in the sugar industry or in Natal. The first strike over the pensions issue was in September last year when over 400 workers at Ferro Chrome in Tubatse, Lebowa, went on strike for a week.

Since then there have been strikes and workstoppages throughout South Africa as workers have demanded back their pension fund contributions before the draft Pension Bill is passed.

Under the new legislation workers get access to their contributions at the age of 65.

Workers' protest has been especially strong in the Eastern Cape where many employers have been forced to pay out pension contributions by allowing workers to resign from pension funds. Sources say that Ford has paid out more than 1-million rand in pension money to workers. This figure is unconfirmed.

Companies that have paid out include Ford, Volkswagen, Chloride, Eveready, Firestone, Johnson and Johnson, Cyril Lord and Wilson Rowntree.

Rather than allow workers to resign from pension funds employers in Natal have insisted that workers have to resign from the company and thereby lose many of the other benefits that they have gained through service. The Tongaat

Company went further by stating that they could not guarantee re-employment of the workers who have resigned.

The first work-stoppage to effect the sugar industry in Natal was in late August, when over 2 000 workers of the Tongaat company demanded the return of their money.

The dispute went back further to June, when representatives of the worker elected committee approached the management on the issue but management refused to speak to them. Management said it would only speak to Selby Nsibande, the secretary of the Sugar Manufacturers and Refining Employee Union (SMREU) which was established last year with a loan of R10 000 from the Sugar Association.

The two day work-stoppage ended without the workers' demands being met. After negotiations between management, Nsibande and the committee, the position remained deadlocked – no pension money unless the workers resigned from the company.

Days later 500 workers downed tools at the Huletts mill at Mt. Edgecombe over the same issue.

A compromise was reached between management and SMREU. Pension money would be placed in a trust fund that would be jointly controlled by management and worker or union representatives. In the interim, workers at the Amatikulu and the Darnall mills also downed tools. Because of the SMREU compromise and the persistent refusal of the Huletts management to pay out, the workers returned to work.

In statements to the press, Huletts said that the compromise reached could serve as a model for other employers faced by the same issue.

In early October production at four mills, Mt. Edgecombe, Amatikulu, Darnall, and Felixton, were brought to a standstill as workers demanded yet again that their contributions be paid out. Again this was refused. Huletts management said there were rules and regulations relating to the fund which made a payout impossible.

The dispute was referred to the Industrial Council for the Sugar Industry which established a special committee to investigate and put forward proposals to Huletts.

After several meetings between the committee and Huletts a settlement proposal was reached that there would be a temporary suspension of pension deductions until such time as the matter was resolved in the industrial council. Workers returned to work without the matter being resolved, after more than a week of work-stoppage.

The attitude of the management of Huletts Sugar has been markedly different from that adopted by the management at Huletts Aluminium in Maritzburg.

It issued an ultimatum that if workers did not return to work by Monday October 19 failure to do so would be taken as notice of resignation by the management.

When the workers arrived, management said that all the workers who wanted their pension money would be paid out and would have to resign.

Three quarters of the African workforce, over 650 workers decided to resign in order to get their pension money. The PRO for the company, Frank Furgesson said that their positions would be advertised later in the week and there were no guarantees of re-employment. He said he did not envisage much difficulty in replacing workers due to the unemployment in Pietermaritzburg.

On Wednesday October 22 the workers gathered outside the factory gates. Police were there but did not intervene. Management decided to take workers in in groups of 115 to process the applications. They no longer insisted that all workers seeking re-employment had to pay back their pension money.

At the time of going to press it was not known how many of the applications had been accepted as they were still being processed. Management was sticking by its stand that there would be selective re-employment and a spokesperson for the Metal and Allied Workers Union warned that the workers had gone back in good faith and if the management tried to victimise workers leaders it would lead to further trouble.

Workers said they had been told by the management they would be on three month probation and that there would be a ban on meetings in the plant.

Other major recent work-stoppages and protests include:

- Over 800 workers at the Sappi Pulp and Paper Mill at Mandeni for a day in support of demands to be paid out. After negotiations between management and the Paper, Wood and Allied Workers Union (PWAWU), workers agreed to return to work after Sappi gave a bank guarantee on pay-outs.
- In Sept. another mill in Mandeni closed down over the same issue, but the 140 workers returned after management of Cappa Sacks agreed to deposit pension monies into a special account in the presence of shop stewards.
- At a meeting of 3000 Durban Municipal workers in late Sept. a vote was passed that the existing Municipal Pension Fund should cease operation on Dec. 1 and that all contributions made thus far should be refunded; and that a new pension fund be established in consultation with workers.
- Mr T. Khumalo, the secretary of the African Workers Association (AWA), said the present pension fund was not negotiated with workers and that a body should be established to control the pension fund made up of workers, management and union representatives. He said workers should be paid out their pension money everytime they leave a job or are fired else they will never see that money again — very few workers live to the age of 65.
- A meeting of over 500 workers in Maritzburg which was convened by FOSATU in early Oct. called for the scrapping of the draft Bill saying the Bill was designed to exempt the State from providing adequate social security for workers.
- On October 20, 300 workers at the Henkel plant at Prospecton stopped work demanding to know when management would return their pension money. After a day negotiations broke down and the management issued an ultimatum that if the workers were not back the next day it would be taken as notice of resignation.

  The workers returned to work condemning the threats and intimidation used

by the management and a spokesperson for the Chemical Workers Industrial Union said the workers saw the dispute as continuing.
Later in the week 900 workers at Sandock Austral stopped work in support of demands to be paid out their pension money. Management was insistent that it was not a strike and at the time of going to press it was not known what the outcome of the negotiations were.

The resistance of workers to the Pensions Bill did not fail to have an impact on employers' bodies. The Natal Chamber of Industries and the Durban Chamber of Commerce have asked that the legislation be deferred until employers had time to "educate workers on the new legislation". After a closed meeting with the Registrar of Pensions, Naas Van Staden, an announcement was made that the Bill would be passed in the next session of Parliament and that some of the pensions requirements would only be implemented in three years time.

The decision was welcomed by employers such as Roland Freaks, the executive director of the Natal Chamber of Industries who said it gave employers breathing space. But many trade unionists have said that a deferment will not satisfy workers' demands as it was not a question of education that was needed. Alec Erwin of Fosatu said, "the workers understand the Bill and they don't accept it". Sam Kikine of SAAWU described the deferrment as a "tactic" and said the workers were asking for their pension contributions to be refunded whether the Bill was implemented in 1985 or in the year 2000.

Didi Moyle, Durban

There are indications that in staging a mass demonstration against the Pensions Bill, workers are not merely protesting against the freezing of their pension cotributions. That workers are demanding immediate pension payouts, rather than a revamped government pension scheme is clear. But in so-doing they are also underlining their rejection of unauthorised deductions from their pay packets.

While workers in Natal and Eastern Cape have shown that they are not prepared to entrust their money to the govt. pension coffers, workers in the Tvl. have come out in opposition to other deductions on which they are not consulted. At United Tobacco Co. 27 workers refused to join TUCSA's African Tobacco Workers Union as required by a closed shop agreement. Inter alia, they have objected to the automatic deduction of 'high dues' for this union. Meanwhile, in the Clothing industry, workers are refusing to allow deductions to be mae for the Industrial Council's provident fund. And in the Natal Midlands, amongst sugar mill workers, the issue of deductions for food rations has been a constant source of tension over the past 6 months.

It would be well for the state, employers and the registered parallels to note that workers are not prepared to accept unquestioningly the deductions indicated on their weekly pay slips. —ed.

Workers held at gunpoint

The construction industry is likely to become the focus of industrial unrest in the near future, predicts General Workers Union's David Lewis in a recent interview in the Financial Mail.

The massive strike by workers on the Grinaker/Murray and Roberts (GMR) sites at Richards Bay in August lends weight to this prediction. GMR's handling of the strike however, gives no indication that they share this view. Or if they do, it is an ominous sign of what might be to come.

The dispute originated on the Alusaf site, where GMR is doubling-up the capacity of Alusaf's aluminium smelter. The 55 cents an-hour minimum wage (that's R24,75 for a 45 hour week) was the primary source of dissatisfaction.

Workers claim their Works Council had taken up the wage issue several times with management, but the company had refused to grant an increase saying it could not afford one. Workers rejected this rebuttal — and had their canny reading of the situation proved right only days later when, with masterly timing, both Grinaker and Murray and Roberts reported that annual profits were up more than 50 percent to a combined total of over R60-million.

The Works Council's warnings of unrest over the issue went unheeded and on Monay Aug. 10 an estimated 800 workers downed tools demanding a minimum wage of R1 an hour. Two days later the company's counter offer of a 13 cents increase had been rejected and workers on four other GMR sites in Richards Bay had joined the strike bringing the total number out to over 2000.

Faced with an intractable workforce, and one that could not be duped into believing that the company was broke, GMR's next ploy was to inform its works council that it was going to call in the KwaZulu authority.

The effect that such a move was intended to have is not clear, but on hearing that Chief Buthelezi was to be consulted, works committee members enquired if P.W. Botha might also be coming along. They also asked, was the company hoping to borrow money from the KwaZulu government with which to pay the increase?

The reason behind the approach, said the company, was that Chief Buthelezi represented the black workers. *That is of course likely to be news to Chief Minister Buthelezi as well as to the workers.* The upshot of the meeting was a stern ultimatum from the company to the workers — return to work or face dismissal.

Meanwhile, riot police had already teargassed workers on several occasions as they gathered outside the site.

Neighbouring Alusaf, where the Metal and Allied Workers Union (MAWU) represents the majority of workers, ground to a halt on Thurs. Aug. 6 in protest against the treatment being meted out to the GMR workers by both GMR and the riot police.

Their efforts to get Alusaf to intervene failed however. MAWU, whose Alusaf members had recruited some of the GMR workers, also tried unsuccessfully to

meet the company.

The weekend arrived with the ultimatum to return to work having been ignored. On Mon. Aug. 10 morning, workers allege, riot police, accompanied by a GMR foreman raided one of the compounds in which they lived.

They were rounded up at gunpoint and transported to the Alusaf site where they were told to return to work. Those who refused were told they were dismissed and 23 were arrested.

By Wed. Aug. 12 virtually all the workers were back at work and the company finally held a meeting with MAWU. A meeting with little purpose by that stage.

A simultaneous strike which took place on a Murray and Roberts site in the Cape, together with another stoppage on a Grinaker site in Durban later in the month help to demonstrate that dissatisfaction with the working conditions in the construction industry is widespread

The events highlight a number of issues. To begin with, any employer whose working conditions are as poor as those in the construction industry and who then intends to call on the SAP and/or the KwaZulu authority to deal with the resultant strikes can't expect much in the way of good labour relations. The KwaZulu authority cannot represent GMR's workers or anybody else's and the SAP has done little else but irreparable damage to labour relations.

Blatant misinformation about the company's profitability only adds insult to injury; that kind of ploy may have worked in the past for some, but is unlikely to do much else besides destroy whatever credibility management has with workers — especially at a time when a great many employers around the country are falling over backwards trying to get workers to trust them with their pension contributions.

The strike also points to the fact that the fast growing industrial complex at Richards Bay is emerging as yet another potential flashpoint in the country's volatile industrial relations front.

The construction industry is likely to be a large component of industrial activity there for some time to come and if it fails to heed these warning signs, predictions of a turbulent future for this industry may have considerable validity after all, not to mention some dire consequences beyond it.

John Stanwix, Durban, Oct 21.

People's support essential

ALMOST 1 000 workers — the entire black workforce — at the motor component firm Dorbyl in Uitenhage walked out in June this year over a pay dispute and stayed out till Aug 12 when the strike was called off.

Workers rejected a new set of minimum wages fixed by the Industrial Council for the Engineering Industry which raised wages from R1,13 an hour to R1,30 an hour.

They demanded a basic minimum of R2 an hour as a "living wage".

Before the strike, shop stewards and officials of the Fosatu-affiliated National Union of Motor Assembly and Rubber Workers of South Africa (Numarwosa) had met with management since April to negotiate new minimum wages. But the firm consistently refused to consider the R2-an-hour demand.

When workers at Dorbyl's two motor component plants decided to walk out on June 17, they were all dismissed and management announced it would start recruiting a new workforce from June 19 if strikers did not return the following day.

Early in the strike workers shouted down the Numarwosa organising secretary in Uitenhage, Mr Edwin Maepa, when he called on workers to return to work as the firm would not accept their demands and there was little indication that the firm would move away from the prescribed minimum.

Numarwosa soon backed down on its call once it had gauged that workers were firm in their refusal to return to work. According to press reports, Maepe said the union would support the democratic decision of workers not to return until their demands were met.

Nine workers, including the chairperson of the Dorbyl Workers' Committee and four shop stewards were subsequently detained by security police and charged in the Uitenhage's Magistrate Court.

They were released on bail ranging from R250 to R500 each. Five were charged for participating in an illegal strike and four others charged under the Riotous Assemblies Act. The charges under the Industrial Conciliation Act were subsequently dropped after a court appearance on Oct. 12.

Negotiations between Numarwosa and management for almost two months failed to solve the dispute during which time the majority of workers decided not to seek re-employment or re-instatement until their demands were met.

But Dorbyl consistently refused to diverge from its refusal to step outside the IC wage offer.

Two motor component firms, however, belonging to the same Industrial Council, at about the same time, agreed to break awak from these levels and accepted Fosatu's "living wage demand" of R2 an hour.

The Swedish ball-bearing company, SKF Bearings, has agreed to pay R2 an hour from January while another firm, Borg-Warner, agreed to pay rises that will reach R2 an hour by April.

Numarwosa has no seat on the Industrial Council for the Engineering Industry, but it has IC representation of the East Cape Motor Assemblers Industrial Council – which it maintains can be a vehicle for "democratic wage negotiations". The motor assemblers' IC has agreed to a R2 an hour minimum from January, 1982, following the Volkswagen strike in Uitenhage last year.

The Dorbyl strike was called off on Aug. 12 after which the majority of workers were re-employed, although it was reported that a number of "scab" workers had been employed during the strike. According to Maepe, the main reason for calling the strike off, was continued police harassment of strikers. There were also allegations that management was collaborating with police

during the strike.

During the strike, Fosatu and the Uitenhage Black Civic Organisation (UBCO) organised community support for the striking workers and made repeated calls to the community members, not to take their jobs.

Fosatu members at Ford and VW also threatened to boycott Dorbyl parts if the company continued to recruit scab labour, however no action was instituted.

Numarwosa secretary Fred Sauls said in a press statement that although he would not like to see a boycott start, "if we are forced into this situation, the union will stand firmly behind its workers".

Macwusa organiser Government Zini said the union would consider boycotting Dorbyl parts in solidarity with the fired Fosatu members if Fosatu approached it for support. However, it is not clear to what extent Zini's statement had the backing of Macwusa members.

Macwusa had only recently called off the solidarity strike at the Ford Cortina and engine plants and GM in support of dismissed Firestone workers, and it is unlikely that workers would have supported a boycott – particularly in light of the animosity between the unions on the shop floor which has not decreased.

In fact at Ford, it has increased substantially, with cases of assault being reported.

The Dorbyl strike significantly highlighted Fosatu's growing responsiveness to community action in the Eastern Cape and the need to involve community support for strike action.

It was the first time a Fosatu union in the Eastern Cape had attempted to call on community support, after Numarwosa had been widely criticised for its stand during the 1979 Ford strike.

Numarwosa had in turn criticised the Ford Workers' Committee for affiliating to the Port Elizabeth Black Civic Association at the time.

But the new move during the Dorbyl strike brought strong reaction from a former interim president the Uitenhage Black Civic Organisation, Mr Thomas Kobese, who publicly accused Fosatu of infiltrating community organisations for its own ends.

Fosatu has rejected the allegations. Organisers said there was no bar on Fosatu members joining community organisations and standing for elections to the executive committee.

This is a significant shift in Numarwosa's former stand in Port Elizabeth where it maintained that trade unionists should not be involved in civic or political matters.

Mr Kobese, who was elected UBCO secretary during election to the new executive, resigned his position during the strike. He claimed the elections were "undemocratic" and rigged in favour of Fosatu supporters.

At the meeting the president of Numarwosa, Jurie Harris, was elected UBCO treasurer.

In a surprise move earlier this year, Mr Kobese resigned from the key post of Fosatu secretary in Uitenhage to join Macwusa. At the time, he said he was dissatisfied with the union in the area and at least 200 Goodyear workers, where Mr Kobese works, left Numarwosa.

In an interview, he said that conflict between the two unions should not be brought into UBCO. Although Macwusa had maintained good relations with the current PEBCO leadership, this was because of "goodwill" between the organisations and not a planned strategy of co-opting civic bodies to shore up the union's "standing" in the community.

He alleged that Fosatu was violating the autonomy of UBCO and was attempt- to use the organisation to improve its image in Uitenhage

He alleged that members to the new UBCO executive had not been democratically elected, but had been nominated and resigned as secretary in protest. He also criticised the new executive's policy of not co-operating with other civic associations.

Numarwosa rejected the allegations and said there were "no plans for the union to take over UBCO and that Harris had been a member of UBCO for quite some time.

"Mr Kobese should not lose sight of the fact that the community is made up of workers and Fosatu members form the majority of the entire workforce in Uitenhage," Maepe said.

Bill Gardner, P.E.

One prong of the strategy

The Stag Packing dispute arose against the backdrop of negotiations between management and NUTW worker representatives. This stemmed from worker dissatisfaction of management's motives in dismissing 12 workers on 2 June 1981. Although management claimed the reason for the retrenchment was that trade was slack, the Union alleges that the dismissals occurred after management disapproval of having active Union members at the plant.

As a result a one day stoppage ensued, a NUTW attorney was brought in and a meeting between management, officials and shop stewards was held on 11 June 1981.

Agreement was reached concerning issues such as retrenchment of workers, redundancy pay for retrenched workers and no compulsory overtime except on certain machines etc.

At the end of June, however, disputes arose concerning the implementation of the agreement on compulsory overtime. After discussion between the union attorney and management the dispute seemed to be settled. The next day, however, the NUTW shop steward claims that the plant MD, Mr Grobler, began shouting that he was not prepared to deal with the union any longer and that all union members were dismissed.

The next day 12 workers were 'escorted' off the factory premises by security guards with alsatians and sjamboks — it is believed the guards were called by

management.

NUTW took Stag Packing to court on the grounds of unfair dismissal and victimization of workers because they were union members. Judgement was made in favour of the management and NUTW has since decided to take the case on appeal.

This move of taking the company to court is a strategy which must, according to FOSATU spokesmen be seen in context, and as only one part of an overall strategy — as such FOSATU have 'no illusions about the neutrality of the courts.

The Union's strategy in the Stag Packing dispute took the form of 4 main decisions — each applicable in the general sense.

- **To take the company to court.**
- **To withhold labour** — *On being thrown off the premises, the workers decided to remain out en masse. Selective re-employment of skilled, semi-skilled or of workers breaking ties with the union was considered unacceptable.*
- **Picketing** — *This pressurizing device, however, was severely hampered by security guards with alsatians and sjamboks.*
- **Calls upon the community** — *While FOSATU places primary emphasis on organization, particularly of strong shop steward systems within the factory, community issues and involvement are not excluded.*

There is however, implicit in FOSATU policy, a note of caution in talking too euphorically about community support without recognizing the practical limitations FOSATU tends toward a down-to-earth attitude eg., how is a community boycott of locomotive parts organized; how easy is it to convince a widow with three children not to provide 'scab' labour.

These considerations do not prevent FOSATU from involving the community by calling both for financial support for the union and dismissed workers and also not to supply 'scab' labour which can be lethal to the effectiveness of a strike.

Following on from the need for community involvement, general meetings were held with attendances of up to 700 people. Representatives from FOSATU, AZAPO, COSAS and the Committee of 10 among other organizations were there to pledge their support for the workers in the Stag Packing dispute. Press statements were also made — although not always published by newspapers.

In this context then, the decision to use the courts was only one prong in a multi-pronged strategy.

Stag Packing's parent company is a British-multinational and it was hoped that, in hearing of the court case, because of its ostensibly positive policy towards trade unions it might pressurize local management in favour of the workers to avoid damaging publicity — this was not the case.

FOSATU spokesmen make it clear that the court case has no further organizational significance — the shop steward system at the plant is now non-existent by virtue of their dismissal. However NUTW are still optimistic of winning the

appeal in which case by that time settlement could involve up to R250 000 in back wages.

Labour Focus No. 3 (Aug. 1981)

Natal shop workers get in touch

If the Game Discount Stores dispute is anything to go by, then it is clear that distributive workers in Natal are no longer prepared to accept passively the conditions dished out to them by the bosses.

In 1981 Game workers are expected to live on monthly wages of R160 (men) and R125 (women) – averages established by a 1979 wage determination.

According to the bosses these are fair wages because they are complemented by a 'host of benefits' such as 'discounts, pensions, and time-off'. The workers say that this is the first time they have heard of such 'benefits'.

Their grievances have gone unheeded, as the Company refuses to deal with their Union, CCAWUSA, which is well-entrenched on the shop floor, being the mouthpiece for 80 percent of the African workforce at two Durban branches.

The wage issue came to a head when, on Sept. 28 workers at the West Street branch decided to push for a R220 monthly minimum wage and recognition of the Union. Game rejected these demands, and two days later the West St. workforce was joined by workers of a second branch. They demanded clarification of the management response. From 8.30am workers waited in their canteens for a reply. The answer came in the form of an ultimatum to return to work or face dismissal. At 5pm. workers were presented with their pay-off cheques. They refused these and left the store.

At a meeting that night workers collectively decided to return to work the following day. The next morning on arrival they were technically locked out and within 2 hours the police arrived to disperse them.

Workers then met on a daily basis to discuss their situation. Each meeting gave unanimous reaffirmation to continue the fight for worker rights. Management responded by sending telegrams to selected workers offering their jobs back before an Oct. 16 deadline. At the same time, Game's access to the media enabled the company to create an impression that workers had started drifting back to work. After two weeks this strategy began to find its target amongst the more isolated workers who could not afford to travel into town to attend daily meetings. By mid-October, about 60 workers – one-third of the strike force – had returned to their jobs.

Early on in the dispute the Game bosses' refusal to talk to CCAWUSA and the shop stewards led workers to call for broad-based support for their struggle. The resulting meeting brought together a sizable number of local community, student, church and labour organisations who issued a statement calling for the immediate reinstatement of the workers and the opening of negotiations with CCAWUSA.

Focus on the Game dispute was again directed towards the community when

shop stewards gave an account of their struggle to the Anti-SAIC Convention on the 10th October. Delegates representing 109 regional and national organisations pledged support for the workers and decided to send telegrammes to the Company demanding reinstatement.

While workers at Game seem to be stuck with intransigent bosses, other distributive workers employed by OK, Greatermans, Pick and Pay and Allied Publishing have all made considerable progress in achieving recognition for their Union, CCAWUSA.

Merle Favis, Durban. (Oct 21).

Nailing down that coffin

FOSATU has repeatedly rejected unrepresentative industrial councils. When unions are representative of workers in their industry, and where workers retain democratic control over negotiations, industrial councils can be made to work to the workers' benefit.

This is true of the Automobile Assembly Industrial Council in the Eastern Cape where the National Union of Motor Assembly and Rubber Workers, for the first time in South Africa, won the right to a living wage.

But in most cases, the newly registered and non-racial trade unions do not yet represent a majority of workers in the industry, and the industrial council acts to set wages throughout the industry at a uniformly low level.

The problems are worst where an industrial council already exists to keep the bosses united. In the Wood and Paper industry there is a strong employers' association. The Paper, Wood and Allied Workers Union shop stewards at the Sappi Paper Mill were shown a letter by their bosses written by the industrial council saying that no company should sign a recognition agreement with a union that had not agreed to join the council.

Only after seven months of struggle by the union and six hours of continuous negotiations at which the shop stewards threatened a strike, did Premier Paper Mill agree to drop its demand that the union enter the industrial council.

Premier's statement to union shop stewards at the end of the negotiations, stands as a warning to workers all over South Africa. 'We never wanted the industrial council. But we were under so much pressure from the employers' association that negotiations had to get to this point before we could give in.'

Together with PWAWU, FOSATU hopes this drives the last nail into the coffin of the industrial council as it presently exists.

Only when workers can match the employers' strength in a powerful national industrial union, will major gains be won. Only then will industry-wide bargaining make sense.

Fosatu Worker News, Aug.

Reply to Fine, de Clercq and Innes

General Workers Union

We should make it clear at the outset that we do not intend writing a critique of the article by Fine, de Clerq and Innes. In our opinion the article does not warrant the seriousness of a detailed reply from the union.

Firstly, the article is a complicated Cooks tour of every issue – and a great many non-issues – confronting the union movement. It constructs a series of spurious arguments and straw men, presenting them as the case upon which the refusal to register stands, and then tries – not always successfully – to shoot down these pseudo-arguments. The fact is that not many of the arguments purporting to represent the 'anti-registration' unions emanate from these unions at all. At best, they are such a gross caricature of the line of these unions that they are completely valueless as the basis for a serious debate on registration. But the really disturbing aspect of the article is that its presentation of the arguments of the anti-registration unions is so far off-line that it is extremely difficult to believe that the authors, however naive, were unaware of their distortions. If that is true then the article is nothing more than a malicious smear, propaganda of the basest variety, and, as such, is dismissed with the contempt that it deserves.

However, as a trade union representing a large number of workers throughout th country, it is our duty to take the authors to task for the malicious style that is exhibited throughout the article. It is an affront to our members and to the workers movement of South Africa and we flatly refuse to let it slip by.

At the outset it is asserted that the unregistered unions represent a tiny minority of black unions throughout the country. Firstly, that is incorrect, and secondly, it is irrelevant. TUCSA counts heads in order to establish that they are the major representatives of the organised workforce. Fine et al count heads in order to establish that the line which they are peddling is the dominant line in the union movement. It is by no means certain that a head count would support their assertion. But, in any event, surely one has to utilise criteria more substantial than a mere counting of heads. Surely it is necessary to decide which unions have, over the past two years, exhibited the most phenomenal growth; which unions have, in the post-Wiehahn period, stood at the forefront of the intense workers struggles; which unions have, in the recent past, suffered most greatly from splits and breakaways. These criteria are surely at least as relevant as the head counting of Fine and his colleagues. But the real issue is that both lines represent a substantial body of opinion within the union movement and it is only the rampant sectarianism of the authors that leads them to preface their article with the assertion that the unregis-

tered unions represent an insignificant minority of the organised workforce. The recent inter-union conference in Cape Town is living and recent evidence that these unions are by no means an insignificant minority.

But head counting is not the only criteria the authors use to dismiss the unregistered unions. Having assured their readers of our numerical insignificance, they then attempt to dismiss the unregistered unions *qua* unions. It is interesting to note that whenever the line of those unions opting for registration is referred to, their line is ascribed to "the workers"; but whenever the authors refer to the unregistered unions, their line is ascribed to "the radical intelligentisa". Hence, on the second page of the article the authors crystallise their view of the unregistered unions when they pompously assert that "if it proves to be the case that these unions (that are opting for registration) are right, it would not be the first time that the workers have moved ahead of the radical intelligentsia." This is a repeated *ad nauseam* throughout the article.

This discourse is familiar to us. Whenever the most vicious propagandaists of the state are faced by a social movement which contradicts state policy, such a movement becomes the product of the "radical intelligentsia" or, in the less obscure parlance of the state, the "agitators". Whenever the state is faced by a movement which meets with its approval, then that movement is the true representative of the"workers", or in the terminology of the state, the "bantu" or the "employees". This stark similarity between the style of the state and that of Fine, de Clerq and Innes is reinforced by the latters' insidious lumping together of the unregistered unions and the entire gamut of the liberation movement in exile. Like the state, Fine *et al* cannot believe that a militant position can be the true product of the workers and the people of the country. It is always the product of "agitators from the universities" (or the "radical intelligentsia") and the "terrorist movements" (or the liberation movement). However, that we are familiar with this discourse does not mean that we are less horrified at its unprecedented appearance in the pages of the SA Labour Bulletin from people who call themselves supporters of the trade union movement.*

We are at various stages of the article accused of "bad leadership", we are described as "bureaucratic", as "unaccountable to our members". We are vilified as "purists", "idealists" and "syndicalists". We are told that we have a "profound lack of faith" in the workers (in the original draft we "despised" the workers) and that we refuse to credit the workers with the capacity to "resist the temptations of opportunism", that we are guilty of "deluding" the workers. There is little point in asking why, when guilty of all these heinous(if somewhat vague and abstract) crimes the workers continue to tolerate the leadership of the unregistered unions. The authors have already provided the answer: the "radical intelligentsia" (and, if the authors are to be believed, the FOSATU leadership as well) are, in their view, infinitely capable of manipulating the workers.

Fine and his co-authors reduce the trade union movement to differing views

held by the intelligentsia, some "radical", others presumably "moderate". The workers are the mere backdrops, necessary ingredients to be totted up when one wants to support a point, battering rams in the squabbles of the intelligentsia. We can only think to describe the authors in the terms that they reserve for an unidentified tendency of the unregistered union movement. They are clearly amongst "those who will try and find any excuse to channel the workers struggle to their own ends". And their task is considerably eased by their belief that the workers will complacently take a line from any member of the intelligentsia who happens to come along. Some will tell them to register; others will tell them to refuse registration. If any of the authors had ever been actively involved in the union movement (indeed, if any of them had merely lived in the country in the past ten or more years) they might find the workers less susceptible to manipulation and more committed to democracy. That they have never worked in the union movement has not prevented them from commenting upon the most detailed and concrete aspects of workers'organisation; nor has it prevented them from glibly asserting what the workers want and what they do not want; what they should and should not do; of what they are capable and incapable of achieving. This attests not only to an extraordinary degree of personal arrogance on the part of the authors, but is also a monumental expression of the utterly patronising and contemptuous light in which they hold the workers.

However, we will, primarily for the benefit of those readers first exposed to the registration debate by the Fine article, briefly restate our reasons for refusing to apply for registration.

Our principal reason for rejecting registration lies in our uncompromising commitment to workers control, to internal democracy within our union. We are convinced that the requirements for registration presuppose that the workers voluntarily relinquish exclusive control over their union.

Our initial position on registration has been widely publicised. In essence we refused to consider registration because of the controls contained in the registration requirements. Principally, these referred to the prohibition on contract workers from joining a registered union; the ban on non-racial registered unions; the introduction of a second tier of registration – "provisional registration" – which quite explicitly contained only "obligations" and no "rights"; and, in general, the complex web of controls over the unions'constitution, finances, elections and general internal functioning.

The direct controls contained in the registration process have shifted since the initial Wiehahn Reports. It is from the outset important to recognise that the state has made certain concessions, precisely *because* those unions that have rejected registration have demonstrated their *ability to advance* whilst remaining outside of the official system. It was initially argued – primarily by those unions that have since opted for registration, that it would be well nigh impossible to continue operating effectively if registration was rejected. It was held that refusal to register

would be used by the bosses as a further reason for refusing to deal with the union, and, conversely, that registering would mean that this impediment was not available to the bosses. Secondly, it was argued that in a situation where some unions registered – and it was always clear that the TUCSA parallels would register – these unions would be so highly advantaged by the relatively benign attitude of the bosses and the state, that it would be increasingly impossible for the unregistered unions to continue organising.

This has not proved to be the case. The unregistered unions have not faded out of the picture. On the contrary, they have flourished, often at the expense of the registered unions. Their growth has, accordingly, undermined the official system; they demonstrated that their success did not hinge upon registration, upon a formal relationship with the state. It is for this reason that the state has conceded certain demands – in order to persuade the burgeoning unregistered union movement to enter the official system so as to restore the credibility of the latter. It is spurious to argue that the "protest" of the registered unions and their "testing" of the registration process in the courts have shifted the state. The occasional threats by these unions to deregister have undoubtedly played their part in the concessions, but the major impetus has been the rapid advance of the unregistered union movement, the very existence of which stands as a concrete challenge to the officially sanctioned system.

Since the publication of the first Wiehahn report the state's position has shifted in three important areas. Firstly, because of the united refusal to register, the state rapidly withdrew the prohibition on contract workers joining the registered unions; secondly, the state has removed the system of provisional registration from the statute book; thirdly, the state has conceded the right to register non-racial unions. The remaining direct controls cover important aspects of the content and format of the constitutions of registered unions. Voting procedures are specified by the Act; the size of a registered unions subscription is subject to the registrars approval – in the words of the Wiehahn Commission ". . . . a trade union that is in financial straits would have its very existence threatened if the Registrar, for good reason, could not assent to an increase in its membership subscription. . . . . " (Part 5, Para 4.34.15); the applicant unions are required to specify (and comply with) the industrial and geographical areas in which they intend organising; the constitution is required to specify the mode of election of representatives to the statutory collective bargaining institutions. This latter clause does not require the registered unions to participate in these institutions; it merely requires them to specify how they would choose their representatives in the event of a union utilising the industrial councils or Conciliation Board. It would be interesting to know how unions that are opposed to these statutory bodies – and many of the newly registered unions claim to oppose these forms of collective bargaining – justify the inclusion in their constitutions of this clause.

Moreoever, having said all this, the registrar still enjoys absolute power to

register or refuse registration of an applicant union. The Wiehahn Commission notes that " . the Registrar is vested with wide discretion in determining representativeness or in fact ignoring it, in theory even a union with half a dozen members may achieve registration if no objections are lodged". (Part 5, para 4.33.3) And, more pertinently, "it is also a fact that the Registrar can, virtually arbitrarily and without giving reasons, refuse to register a trade union in spite of its seeming compliance with all requirements" (Part 5, Para 4.34.1)

In essence then, the constitutional format of the union is rendered so complex by the process of registration that it effectively removes the function of drawing up the constitution from the hands of the workers and places it in the hands of legal experts. Registration not only extends to the Registrar far reaching rights of inspection of the affairs of registered unions, it also allows the registrar the right to seek compliance with the union's constitution. Accordingly, the construction of and supervision over the internal operations of the union – operations specified by the constitution – become the province of legal experts who are, in turn, subject to the specific and general supervision of the state. As the Wiehahn Commission points out:

> "The aspect that proves most problematical in practice . . . is that of the requirements to be satisfied by the constitution of the applicant union. Because the specifications to be met are not spelt our clearly enough, much negotiation between the registrar and union representatives takes place before the constitution is satisfactorily formulated. *Applicant unions are in fact finding it increasingly necessary and fruitful . . . . . to make use of legal advisers in seeking registration"* (Part 5, Para4.3.1)(Our emphasis)

Registration thereby becomes a process which removes direct control of the union from the hands of the members. It is therefore not a neutral, technical exercise devoid of influence on the unions internal operation. Rather, it is a process whch permits of state involvement in the union's internal affairs, and, equally importantly, which accentuates the mental/manual division in the union placing in the hands of the intellectuals exclusive control over fundamental aspects of the union's activities.

This, in brief outline, is the substance of our opposition to registration. We are not opposed *per se* to recognition by the state; we are not opposed to making public, information about the internal functioning of the union. We are, however, absolutely opposed to being drawn into a highly complex, legalistic framework whch allows for state intervention in internal union affairs and which assigns to union bureaucrats and legal experts a dominant place in the maintenance of that relationship. In essence, the union movements' conflict with the state consists largely in the efforts of the movement to establish its independence from state control. When recognition by the state involves the provision of informational

guarantees only, a formal notification of our existence, then we will consider registration. But for as long as registration presupposes entering structures where the dice are heavily loaded against the unions' independence, we will not consider registration.

Identical considerations apply with respect to our relationship with the bosses. There is no *a priori* value – and in fact there is considerable danger – in a formal relationship with the bosses unless it scrupulously guarantees the unions independence from the bosses and the workers' leadership in the unions' dealings with management. It is precisely in this sense that we have argued that registration is a *total package* which structures the relationship between the workers and the state, and between the workers and the bosses. The former is principally contained in the formal requirements for registration; the latter is contained in a series of institutional arrangements with the bosses made possible by registration, ranging from easy access to stop orders through to access to the Industrial Council system.[2] Just as the registration certificate does not permit the union to "carry" the workers struggle into a neutral area with the state, so too is this not permitted by the union/management institutional arrangements that registration facilitates. These latter institutions are developed power structures which mirror the dominance of the bosses in society and where the power balance is reflected in a loss of independence for the union and, of equal importance, in the dominance of union bureaucrats over the workers.

Fine, de Clerq and Innes, however, in a fit of *post hoc* theorising, to justify registration, argue that any institutional arrangement ("recognition") which brings the union into contact with the bosses or the state is an advance for the workers. This is classically opportunist theory. Firstly, because the form of contact sanctioned via these institutions is one over which "union experts" exercise dominant influence; and, secondly because it always presupposes that the union draws in the boundaries of its democratic practices. In an undemocratic society the boundaries of the state will only be forced back when it is forced to recognise democratic organisation of the people.

Fine and his colleagues in fact explicitly recognise that the relationship which they encourage with the state and the bosses will be dominated by the union bureaucrats and that it will involve compromising on the principle and practice of democracy. But this is of no concern to them. Firstly, because their view of worker's struggle rests primarily on the ability to manipulate given structures, and this lends considerable weight to the sophisticated educated experts of their ilk. In fact, they state that "workers need union representatives who have developed skills in negotiation". We agree – in the contorted legalistic structures acceptable to the authors the workers will not only need "skilled" negotiators, they will be utterly dependent upon them. But then, all the better for "channelling the workers struggle to their own ends."

Secondly, because, when all their high flown "theory" fails them, they advocate

a primary role for union officials in the worker/boss relationship because "workers need union representatives . . . . who cannot be immediately victimised by management" – picture their view of the cowering, timid workers who possess neither the courage nor the intelligence to speak for themselves.

Protection from victimisation and success in negotiation does not come pushing workers into the background and replacing them with "experts". It comes from a well organised workforce whose workmates possess the necessary confidence and a clear mandate to speak on behalf of their fellow workers. And the message – be it "reinstate our comrade" or "increase our wages" – is that much more clearly imparted when expressed by the people with the clout to back up the demand, than when it is presented in the finely modulated tones of the union "expert". We should just add that this principle – whilst fundamental to all democratic unionism – is absolutely critical where workers do not generally speak the same language as their bosses, and where the defining element of their relationship with the power structures has been their voicelessness.

Thirdly, Fine *et al* have no qualms about dismissing any argument based upon the primacy of democracy because they are cynically dismissive of the possibility of democratic practices at all. In the final analysis, herein lies the difference between the authors and the General Workers Union. We do not accept that internal democracy is an unattained "principle", an ideal state to be achieved on liberation day. We do not doubt the ability of workers to lead their own organisation and to participate fully in the making of every decision affecting their union. In fact, this participation, free and open discussion at the union, is a *precondition* for the growth of progressive organisation.

There is a myth which enjoys some currency in intellectual circles which asserts that, because we live in a highly repressive, undemocratic society there is, at this stage no possibility of democracy in the unions. Therefore, at this stage, runs the argument, it is incumbent upon the intellectuals involved in the unions to take the correct decisions because free and open discussion is rendered impossible by the repressive climate in which we live and work. This myth first saw public light of day in the union movement in a letter written by Halton Cheadle to the *SALB*, and it is now revealed in all its finery by the "theory" of Fine and his colleagues. This myth needs to be laid to rest because it is a highly dangerous justification for unchecked intellectual domination over the unions. It is a blank cheque for those who want to "find any excuse to channel the workers struggle to their own ends." And, of course, the "excuses" offered by the authors is the ultimate excuse. They, in effect, are saying: "We are the leaders of your organisation and we will make the policy of the organisation. Because we live in such a repressive society we can't possibly tell you why *we* will lead you, or *how* we will lead you. In fact, it is for your own good that these delicate matters are hidden from you. But trust us and when we have bedazzled the bosses and the state with our sophistication and intelligence then we will give you the fruits of our victory. In the meantime, just

to back up our claim to speak on your behalf, an occasional strike might be in order (although please don't discuss strikes with us because we might go to jail an then what will you do?" It is the ultimate excuse; it is also the ultimate theorisation of the workers as battering ram – the brawn that is necessary to underwrite the brain.

In one extraordinary passage Fine, de Clerq and Innes write: "The boycotters assert as fundamental principles that must not be compromised workers' control of the unions (that is, internal democracy) and political (sic) independence from the state. We do not argue with these principles as goals to be attained; quite the reverse; but we do argue with the claim that these principles have already been put into practice by any of the unregistered unions. If democracy means anything, it must include full and open discussion on all pertinent issues, full accountability of the leadership, the open election and revocability of all officials, and so forth. But under the present repressive conditions workers cannot possibly feel free to engage in full and open discussion of say, strikes or political associations which the state is likely to deem illegal. To the extent that discussions of this type do take place, they must do so in a manner that is discreet and so violate the norms of internal democracy. It is important to call things by their real names. In as much as any workers organisation is forced by circumstances beyond their control to suppress discussion of "delicate" issues or to hold such discussions only on a selective basis, they should not pretend to practice full democracy within their ranks."

The paragraph speaks for itself but let's just point out the following: Firstly, the contrast between the cavalier attitude adopted by Fine *et al* to the Industrial Relations legislation and their paranoid attitude towards the repressive laws is in itself indicative. Whenever a law is capable of complex legal interpretation, and whenever the institutions established by such laws lend themselves to apparent manipulation by "experts", then the letter of the law is of no significance. When, however, the law is in the hands of the security police (who are less susceptible to the sophisticated guiles of "experienced negotiations") and when the institutions established by the law are prison cells, then the respect of Fine, de Clerq and Innes for the law is absolute. One is tempted to think of them as merely faint-hearted. However, in the context of their article, one is equally tempted to conclude that they intentionally encourage a cavalier disrespect for all laws, the "reinterpretation" of which is in the hands of intellectuals (like themselves); but simultaneously encourage absolute obedience to those security laws, the "reinterpretation" of which necessarily presupposes mass participation the "channelling" of whichis potentially out of the control of intellectuals (like themselves).

Secondly, the recipe for democracy which they provide also warrants a second glance. Not only does our union engage in full and open discussion of all issues , but it is mandatory when the issue is "delicate" (for example, the unions involvement in major political campaigns like the Anti-Republic Day Campaign). Despite

the authors assertions to the contrary our leadership is fully accountable and open election and recall of our officials is a firmly entrenched practice in the union. Workers do engage in full and open discussion of all strikes. Moreover, in the GWU workers are specifically encouraged to discuss strike action with the organisers before the strike takes place. The organisers do not then merely act as legal advisers but discuss the looming confrontation openly with the rank and file. Unquestionably there are snap strikes where workers react immediately (usually to a dismissal) and go on strike without the prior knowledge of the organisers, but this type of action is discouraged and most certainly the union officials do attempt to involve themselves fully in any strike action or potential confrontation. Finally, no issue is "suppressed" and nor are discussions ever held on a "selective" basis. If certain discussions are to be suppressed or held only on a selective basis, may we ask who decides what is suppressed, and who selects those for discussion?

Thirdly, it is ridiculous to argue that, because the state attempts to undermine democratic practices, that we should therefore be willing to compromise voluntarily on any democratic practice. It is the most contorted logic to argue that because we are not permitted to affiliate to a political party, we should therefore not feel chary about voluntarily subordinating ourselves to the registrar or the Industrial Councils. Adherents of the old Unity Movement would argue that because trade unions are obliged to "compromise" their entire existence is worthless; Fine and his colleagues argue that one compromise means that we might as well compromise on anything.

Finally we must say to Fine, de Clerq and Innes that they are quite right when they say that our members believe that their union has a political role to play. It will not be necessary to go into Fine's political sophistries about the "true" nature of politics. We will just note the following: The political question of the day in South Africa is the struggle for democracy. Correct political practice consists in nothing else than uniting all the oppressed people in the struggle for democracy. Our political practice consists first and foremost in our absolute adherence to internal democracy and in our willingness to cooperate openly and democratically with all other organisation who share our democratic goals. In the final analysis this is why there can be *no* compromise over the question of internal democracy.

Footnotes

1 There is, of course, one peculiar irony in the authors' juxtaposition of "anti-registration/radical intelligentsia" and "registration/workers". The authors assert that "FOSATU appears to have undertaken the fight for recognition in a defensive way, vaguely apologetic for their decision treating it for the most part as a technical exercise bringing with it technical advantages and therefore failing to reveal its significance either to its own members or to other black workers". If a union has not "revealed the significance" of a major decision like registration to its own members then it remains to be asked, "who makes the decision?" The

authors claim that it is not the workers, for if they had then they would presumably understand the "significance"; and it is surely not the "radical intelligentsia" who are so vilified by the authors. That leaves the "moderate intelligentsia", predominantly the phalanx of labour lawyers who appear to be playing such a predominant role in the political decision of some unions. Like all poor propaganda, the cause most sorely embarrassed by the authors advocacy is that to which they lend their support!

2. Fine, de Clercq and Innes would undoubtedly claim that the fact that we have no stop order arrangements with the bosses is another example of a compromise dressed up as a principle. In fact, it is union policy that stop orders be refused precisely because the workers feel that it is an institution which permits management's intrusion in the union. This general policy, we should also add, was adopted despite the initial opposition of at least two very highly placed members of the "radical intelligentsia" in the union; and it has been held in the face of strong requests by some bosses that we accept a stop order arrangement.

In Search of Concessions – reply to Fine et al

Fink Haysom

Introduction

The provocative contribution to the registration debate by Fine, de Clercq and Innes (Fine et al) evokes an ambiguous response. Their article, in the words of a renowned critic, is both original and good. Unfortunately, the critic added, the original parts are not very good and the good parts are by no means original. The article however, is particularly significant in two respects. In the first instance it marks a significant departure from the taboo on discussion of union practices by intellectuals. Intellectuals committed to, but formally outside of the labour movement, have been told that as they have no 'organisational base' their only critical role is one of complicit silence on union policy and practices. Thus, sycophantic academia has contributed to a culture of secrecy on certain union policies and practices. No doubt there are some good reasons for this policy, but we would argue there are also some bad reasons. What the boundaries of the legitimate role of such intellectuals might be is obviously a difficult question, but it is certainly not compliant silence.

Secondly, the authors correctly indicate in their far-reaching article that the issues in the registration debate extend beyond that debate and indeed touch the central questions relating to the policies and practices of the independent trade union movement. That we consider their treatment of these issues to be disappointing by no means renders the task of examining the relationship between trade unions and the state unimportant.

The Context of the Article

Now, it is not our intention to intervene in the registration debate in the same fashion as Fine et al. We believe that events have, to a large extent, overtaken this debate. Our primary concern is to rescue some of the issues raised by them from what we believe to be a cursory treatment. The necessity of this task is brought on because political reasoning is directly rooted in actual practices. In this regard and with regard to the content of our reply we would make the following preliminary comments:

1. The authors' contribution does not occur in a vacuum. There are keen debates within the labour movement as a whole and the reformists/workerists in these debates have been associated with Fine et al's logic.[1] The debates have not only concerned 'registration' but also trade union policy on issues such as alliances with community and student organisations, sectarianism, politics. These debates

have also related to internal trade union practices such as participatory democracy, accountability of officials to the rank and file, top-down unionism, the 'management' of militancy, differential salary scales and the division between mental and manual labour (eg, unions employing sweepers and cleaners to keep their office clean).[2]

2. The pro-registration lobby has long felt the need to recover lost intellectual ground (even hegemony) through a radical articulation of their position on a range of issues. But the problems posed by being too closely associated with this radical gloss is that such an association might involve the risk of losing their new found respectability with the state and management. Now we, like Fine et al (p 67), believe that their reasoning should have been, and should be, openly and assertively advocated. We cannot accept that such debate needs to be suppressed in South Africa.[3] It is thus ironic that Fine et al have objectively provided such reasoning for the decision to register. Now it is the reasoning behind the decision, the conception of the state, law, politics, worker organisation, embedded in that reasoning that needs to be unpicked – not simply the decision itself. It is precisely some of these premises that can be identified with the questionable theory and practices of certain intellectuals in the labour movement and which needs to be confronted.
   For these reasons, perhaps unfairly and notwithstanding whatever subjective intention or knowledge on the part of the authors, their article will not be treated innocent of or in isolation from the current context.

3. The final preliminary comment on Fine et al's approach to the debate on registration is that they treat FOSATU as a monolithic unity. Just as we have taken issue with a current crude reduction that would classify FOSATU as the bosses' union, so we would take issue with Fine et al's representation of FOSATU. Even amongst the leadership there are significant differences of approach to the central issues both amongst the ex-TUACC unions and also between these and Numarwosa.[4]

Now, it is not our purpose to tackle every issue raised in their polemic although we believe the article contains many important omissions, errors of fact and reasoning. We certainly do not intend to take up cudgels on behalf of those unions which Fine et al reduce to manipulative cliques, except in as much as Fine et al's portrayal appears mischievious.

Similarly, we do not intend to unscramble the anti-registration texts cited in Fine et al's article. We merely mention that even the text, the passages cited do not support Fine et al's intended caricature. The article indicates that the decision to register should be based not on automatic reflex, but on an assessment of the controls, on the question of the terms on which the unions should register. This is a question which Fine et al astonishingly fail to answer themselves.

Fine et al's propositions:

In essence, the article boils down to a set of propositions that enjoin the unions to consider registration as an advance for the trade union cause. We have attempted to disentangle these propositions from their assault on their self-created monster – The Blind Beast of Boycott.

According to Fine et al.

1. The state has been forced by worker struggles to offer concessions to the independent trade unions.
2. The amended legislation offers workers both rights and restrictions. This must not be viewed as a control strategy merely because the state has declared that to be its purpose. On the contrary, because it is an 'incorporation' strategy there must be real advantages. If there were no advantages the strategy would fail to 'incorporate' and would 'collapse in on itself'.
3. The real question the unions must ask themselves is whether registration advances working class interests. They state correctly that the question is not one of principle, but one of selecting the tactic which advances worker power, and hence they propose that it is the duty of trade unions to seize even the smallest 'right' offered. Participation in industrial councils, for example, although laden with dangers may still provide for such an 'extension of worker power'.
4. The boycott position is incorrect in that it is based on the legacy of an automatic reflex, a desire to avoid the contamination of involvement with the state. For the authors on the other hand, the boycott is a defensive weapon to be used as a last resort. Fine et al state that the correct strategy is to recognise that one is hopelessly compromised in the first instance. Nothing should be regarded as too sacred to be compromised – even internal democratic practices. The major criteria is the gaining of 'rights'. Where these are outweighed by accompanying restrictions the correct policy is to take up the rights, while protesting against the restrictions.
5. Registration above all means 'state recognition'. This is seen as the primary political goal of trade unions; it will bring recognition from the bosses and legitimacy from the state. To abstain from registration is to 'boycott the state' and thus to 'boycott politics'.

State and Law: Politics and Economics

We will not deal in detail with Fine et al's version of the contradiction ridden state that struggles to assume shape in their text. Their major aim is to warn us against an instrumentalist conception of the state i.e. the state as the mechanical agent of the bosses. In this regard their point is true but trite. It is when we try to advance beyond this first premise that we encounter problems with their treatment of the state and law. We may observe that according to the authors in its coercive moments the state is to be obeyed respectfully (e.g. when keeping unions isolated from political discussions or illegal strikes). At other points the state's practices

are indeterminate. In the absence of a more specific understanding of the state, their analysis of state responses remains at the level of assertion.

Our concern here, however, is to examine one possible reading of Fine et al's conception of the state that is shared by certain pro-registration ideologues and clearly needs to be exposed to the light of day.

They assert that no one understands the state quite as well as FOSATU does. Not even FOSATU's own ranks (p 41). This is perhaps not surprising, given Fine et al's definition of the state:

> 'It is a repressive force located in a nexus of contradictory social relations whose character is determined by the changing social relations between these classes.' (p 41)

This does not explain how or into what form the state changes in response to these 'changing social relations'. It certainly does not tell us the nature of the relationship in which the state stands to the bosses, or to these social relations; rather it implies that the state is external to these relations. This is also reflected in their treatment of 'law', which is coupled to the state in their text. According to Fine et al law does not constitute social relations. It is inserted into preconstituted social relations. It has no power or effect. It is the social relations, the balance of class forces at any particular time that gives effectivity to law (p 47). For the authors, it has no form, only content.[5]

There are a number of implications for this undialectical and ahistorical treatment of law and the state. The form of law and the state is ignored. It is squashed into different shapes in different parts of the text. But it is with the notion that the state and law are somehow *external* to the social relations of production that we take issue. In this conception of the state and law, we may perceive the state as some spider which rests passively in a web of social relations.

If the unions can pacify the spider they will be able to continue with their task of tackling the preconstituted web of 'social relations of production'. Once they have sufficiently damaged the web of social relations, the spider will plummet earthwards. This crude representation is as wrong in the world of humans as it is in the world of insects. Implicit in this conception is a technical definition of social relations (in which social relations are defined as exclusive of political and juridical relations). At its most simplistic this position argues that union recognition weakens the state.

Politics and Economics

This conception, which in fairness to Fine et al is only embryonic in their article, informs the 'primary contradiction thesis'. In terms of this thesis the primary contradiction in capitalist society is reduced to the struggles between wage labourers and management and is geographically confined to the shop floor. This becomes the only authentic struggle and questions of class power are magically collapsed into questions about the labour process. In this view, 'politics' is a taboo or illegitimate

diversion, and the centrality of the state in the workers' struggle is ignored. The consequences of such a position is the attempt to resolve the relationship between politics and economics, trade union and political organisations, intellectuals and workers, by framing the trade union as the 'worker party'/'the movement'.[6] This collapsing of politics into economics, reduction of politics into trade union politics, whch Fine et al themselves criticise, has long been associated with certain of the unionists/intellectuals whose cause they espouse.[6] They profess, however, that their timid attitude to the state is complemented by their uncompromising attitude to the bosses.[7] Such an assertion stands in direct contradiction to what, in our opinion, appears to be a quest for respectability and legitimacy with the bosses and the state, a means to which end is provided by registration.

This theoretical underpinning of their notion of 'politics' can have disastrous consequences for their understanding of the limits and possibilities of trade unions. For, in reality, it is inconceivable that the trade union can incubate in its economistic womb, free from political contamination, its little socialist egg – a truly class-conscious working class.

In our understanding, relations of production take the form of particular juridical and political relations, forms of property and societal organisation.[8] These relations are not mere secondary reflexes of productive relations; but are precisely forms of production. The private appropriation of surplus is predicated on the 'free' labourer – the absence of direct coercion in production and its relocation in the impersonal authority of the state. This does not mean that private appropriation is not political. On the contrary, the political struggle over private appropriation is *transformed* into a battle over the terms and conditions of work and concentrated at the point of production.

Private appropriation rests on the state not only as a 'repressive force' but also in its effect in separating and compartmentalising the struggles of the working class. This in no way implies that the state is not capable of granting real enough reforms. It does imply, however, that the state's existence is central in any struggle and that those unions that attempt to exclude questions of state power and politics may find that they are unable to confront or answer political challenges.[9]

The crux of the debate: 'Real concessions'

Fine et al's propositions do not help us identify the meaning of the state's legislation. We are told not to believe the state when it explains what it is trying to do, because the state is trying to pull a fast one, to pacify the bosses. Instead we are told the obvious. 'the duty of the trade union is to assess whether the package deal advances or retards the workers' interests.' Fine et al are unable to answer that question until they explain *how* the working class 'advances', or *what* constitutes an 'advance'.

We are told that there are rights and restrictions in the package deal. We do not deny that 'rights which extend the workers' power' are a real concession. The

question correctly asked by Fine et al is whether the rights offered are meaningful and whether they are outweighed by the restrictions/disadvantages.

Fine et al list an awesome set of controls that have been part of the package (p 60); inter alia controls governing the right to strike, political affiliations, membership, internal functioning, and providing the power to wind up a union. The rights that workers will apparently win are 'official state recognition', easier access to official bargaining, and a 'firmer legal basis viz-à-viz the courts (p 60).

Some preliminary comments need to be made about their cursory evaluation of the position. Fine et al never define a 'right', particularly one which advances workers' interests. Rights are treated as if they are unambiguous in themselves – the other side of control. In this respect we remark that Fine's co-author in a recent publication[10] has commented that collective struggles require that we should go beyond and around these legal forms; that rights are themselves contradictory; and that 'the extension of legal rights has done much to defuse the collective struggles and strengths that brought them about.' But Fine et al seldom look at the nature of collective struggle. This is replaced in their work by formal expansion. We will return to this point below. We must add that because we ask for a more rigorous treatment of the term 'rights', this does not mean that we believe legal rights to be illusory. Rather, we assert that the nature of rights in general, and each right in question be explored within the context of the whole. A similar method must be applied in evaluating controls – the other edge of the sword.

Perhaps the most startling omission is their failure to examine the controls at all. Now we believe that the extent of the direct controls may well have been exaggerated by the anti-registration unions. Certainly, Fine et al have ignored what has been the central thrust of the pro-registration argument viz the controls are ineffectual and exist primarily on paper.[11] Furthermore, the latest amendments to the Industrial Conciliation Act go some way to levelling the position between the registered and unregistered unions. By ignoring the assessment of the 'controls', Fine et al have astonishingly failed to tackle the test they themselves have set others.

Instead of evaluating the rights and restrictions as a package, Fine et al have separated and isolated the rights from the controls, whereas the two are intrinsically linked. This illegitimate method frees them to look at the rights in isolation and to evaluate participation on that basis. In this way, the 'rights' are decontextualised, freed not only from the controls, but also from the current co-ordinated attempt at restructuring the political conditions of domination.

This misconception is only possible because of Fine et al's inability to ground their academicist propositions. If there is a notable feature of their article, it is the gap between their abstract formulations and the current conjuncture. This failure leaves their article studded with empty phrases such as the 'extension of rights'. The clearest example of this is their logical deduction of the existence of rights.

Despite the absence of an assessment of the nature of the controls embedded in Wiehahn, Fine et al are still able to exhort the unions to register, and to make use of the advantages in the legislation.

According to Fine et al, there must be advantages in the legislation because the state's intention is to incorporate a section of the working class. This would be impossible unless real advantages were offered. The deal would collapse in on itself.

This optimism is based on the most delusory logic. One is reminded of the apocryphal tale of the child who was an incurable optimist. The tale unfolds as follows: on his son's birthday, the father fills the boy's room with horse manure. When he goes to investigate his son's reaction to his birthday present he finds him digging furiously at the mountain o f manure and muttering, 'With all this shit, here has to be a pony here somewhere'. This optimism is no better than Fine et al's own portrayal of the pessimist who on being offered the pony immediately starts looking for the manure to clean up. Either way, Fine et al must show that there is a real pony in the registration package. It is, as the authors themselves point out, insufficient to refer only to what the state *pretends* to intend to do.

Assessing the advantages of registration

Having derived through logical deduction that there must be advantages in registration, Fine et al proceed to uncover what these advantages might be. It is our opinion that the advantages are not sufficiently and concretely substantiated. As the authors have left us with no criteria to evaluate trade union advances, we trust that such advances are not to be measured in formal terms (size, income). This would be clearly incorrect. Questions around the function and purpose of trade unions are central questions in South Africa. The 'growth' of a trade union is not based on some unilinear Rostowian theory of quantitative expansion to be measured in terms of stop orders and paper membership.

The first advantage that registration is claimed to bring with it is state recognition. We deal with Fine et al's estimation of this 'goal' in more detail below. At this stage, we mention that in isolation from the other concrete gains it is difficult to see clearly what the advantage of this purportedly primary goal of trade unions is. Should the authors believe that trade unions can dupe the state by merely putting on a registration overcoat, then we disagree. One possible benefit; favour in the eyes of the state is mainly operative in as much as the state's attention is focussed on fellow unions which have not registered. An argument along these lines would amount to an exhortation to pre-selected unions to scab on the others. Although we have heard this line of reasoning from certain quarters, we can certainly not credit the authors with advancing it.

Looking at the issue from the other side of registration, it is clear that in many senses, the state does 'recognise' unregistered unions: it is compelled to do so by sheer force of these unions' growing presence. More fundamentally however, a

union is grounded on its members,not on the favour of the state. It is ironic indeed that the strength of some unregistered unions has grown precisely because they have remained unregistered.

The second advantage cited by the authors is a 'firmer legal basis vis-à-vis the courts'. 'To our knowledge the unregistered unions have not been hampered by this apparent lack of a 'firmer legal basis'. In this regard, we mention that conciliation boards are available to workers from *unregistered* unions. This point has significance in as much as the procedure for legal strikes are followed by workers. At the moment it would not appear very significant – although we do not rule out the possibility that it might be significant in the future.[12]

The third advantage according to the authors is access to the official bargaining channels. As Fine et al imply that this access constitutes a central 'concession' granted by the state, we must examine the question in some detail. An examination of the bulk of disputes reveals that they are handled directly by the workers, their representatives and their union officials. There has been no question of using the industrial council, parallel unions or the committees. It is necessary to point out that if there is a lesson the unregistered unions have taught the independent labour movement, it is that power – power to demand negotiation with the bosses, power to win victories – is based on the workers support for the union, and the nature of that support. No longer do we hear of the threat to independent unions posed by the parallel unrepresentative unions. This argument was predicated on a scorn for the power of organised workers and a lack of faith in their ability to choose between democratic and dud unions. It has been shattered by the struggles of 1980 and 1981 in which unregistered unions forced the bosses to recognize them. At best it represents a misreading of organisational strengths, at worst a guise by which to simulate the practices of opportunist unions. Even employers' organisations such as the Afrikaner Handelsinstituut have recommended that the bosses negotiate with unions on the basis of worker support *regardless of whether the union is registered or not.*[15] Here we note that Fine et al, unlike the unregistered unions did not examine the gap between the state and the bosses despite their admonishment of those who had an instrumental notion of the state.

Industrial Councils

Wiehahn and, to a much lesser degree the authors, presume that participation in industrial councils will be its own reward and the reward for registration. The recent Summit Conference of independent trade unions (which included FOSATU and CUSA) felt otherwise.[13] Indeed, unions in FOSATU have fought bitter struggles against the bosses for the 'right' *not to sit on* the industrial council.[14]

Why do these unions not share Fine et al's appraisal of the possible merits of the industrial councils? In the first instance, organisation cannot be officials talking to the bosses, or asking the bosses to help them organise the workers. It would be a negative practice for unionists to direct themselves at the bosses rather than

the workers; to ask the bosses for stop orders before explaining the trade union struggle to the workers; to ask the bosses for 'rights' before setting up shop steward committees. The workers feel that this practice places the source of their victories on the bosses and the union officials without the workers' involvement. Unionism from the top down is particularly damaging in the South African context where organisations must promote the development of a confidence to act despite the legacy of defeats and repression.

In the second instance, the workers regard the industrial councils themselves with suspicion , as councils of the bosses, like a vamped-up liaison committee. Fine et al show why they have good reason to suspect this. The authors show in their article that the industrial councils have been used to 'incorporate' sections of the working class. On the one hand, Fine et al assert that this is because of the existing social conditions and not because of the industrial council system itself. But they do not show how the social conditions have changed so that workers may use this 'alien form'. On the other hand, the authors themselves show how the form disembodies the trade union by severing them from their lifeblood-rank and file participation and control. The authors go on, despite this confusion, to assert that the organisational perversion can be combatted.

At this point we must ask why the unions should surrender to participation on the councils at all? Registered and unregistered unions have shown that it *is* possible to negotiate wages and working conditions directly with the bosses at plant level. Even employers' organisations have begun to recommend that there be negotiation with the unions on the basis of worker support, *regardless of whether the union is registered.*[15] In the face of management, the state and other registered trade unions, these unions have demonstrated the possibility of escaping this restricting structure.

Furthermore nowhere in their article do the authors conceive of what *additional* gains the unions can make through struggle. They either accept the thesis that workers in South Africa are too weak, or worse still, they fail to ask themselves what the power of the workers is at this point in time. It can never be enough to look only at the strength of the state and the bosses, while ignoring the strength of workers. The latter must constitute the first question, not the forgotten one.

Thirdly, Fine et al's formalist notion of organisation leads them to equate the use of the works committees with participation in industrial councils. There are, however, fundamental differences between these two bodies. Government created works committees were used by, *inter alia,* the 'boycott' unions as a basis for collective worker organisation for many years. This is ignored by Fine et al in their caricature of these unions as rigid and autocratic "boycotters of the state". The committees were used as democratic shop steward committees and facilitated broader organisation of workers in the region, on the basis of *democratic shop floor participation.* Fine et al go on to say that the principle applies to the question

of participation in the industrial councils, although the feature of the industrial council form is its *"substitution of legal and bureaucratic methods of organisation for grass roots work."* (emphasis added p 63)

Thus we find that this form does not facilitate rank and file participation and thorough democratic organisation; it hinders it. Once the implications for organisation are considered, why do Fine et al equate these two forms? Is it because they both involve compromises? In the article we are not told to *assess* the compromises involved. We are merely told that compromises are necessary. This is strange because the authors themselves are aware that the industrial councils are not simple institutions. As has been pointed out:

1) Independent trade unions would have limited power on the councils to dictate changes in the constitution etc.
2) Labour would come to the negotiation table divided (at the present time). Victories would be gained at the expense of divisions among the workers, not the bosses.
3) The potential of the union to draw its rank and file into the process of negotiating would be dramatically undercut. Hence the trade union also loses the power to enforce or back its negotiation demdands.

Put briefly, trade unions that are too weak or do not have the worker support to remain outside the industrial councils are also too weak to enter them. Industrial councils are not a means of extending workers' power. They operate *(as they were intended)* to curb and channel power already possessed by the workers' organisations.

Finally the argument that increases in minimum wages in an industry can only be won through the unions' participation in the industrial councils is fallacious; there is more than a germ of truth in the workers' belief that industrial councils are organisations of the employers. The function of industrial councils is not unrelated to the competition between differing enterprises within an industry. It has often been the case that where high minimum wages have been won by workers in sectors or enterprises in an industry, the larger enterprises force their weaker brothers to apply these minimums.

Tactics and Principles

A starting point for the evaluation of the correctness of a particular tactic, is to assess how that tactic advances one's position in relation to a *final goal.* Now it is apparent that Fine et al do not commence at this point.

The second step for members of a trade union who are assessing an appropriate tactical response is to take into account not only their own strengths and weaknesses, but those of the labour movement as a whole. Fine et al fail to do this. There are two aspects to such an argument. Firstly, tactics are chosen from the full range of possible options, including those the state has not chosen to lay before the unions. To exclude these *a priori* in the belief that the state is a rigid repressive force is

false. For as Fine et al so correctly point out, "between the state's intentions and their realisations in practice falls a shadow: the struggle of workers." (p.51)

But for the authors of the article there are only two kinds of struggle; legal or illegal. (p65) The *non-legal* approach is reduced to *illegality* and discounted as immature and adventurist.[17] In this way the middle ground between underground activity and an obedient legalism is dissolved. For the authors benefit we mention that workers strike illegally each day. Do they imply that this flagrantly illegal 'boycott of work' is adventurist? This crude reduction to two extreme positions is used to strengthen the argument for participation and obedience to the letter of the law, and thus to argue that on principle one should participate in state institutions wherever there is a "timid" (sic) advantage, and simultaneously merely to 'protest' against new far-reaching controls – even where participation is not required by law – so as to 'test the sincerity (sic) of the state's intensions'.

The second aspect of the assessment of a strategy is that reference must be made to the opinion, militancy and experience of workers. Indeed, we go further in asserting that to prescribe strategic options without reference to the subjective experience and consciousness of the wokers is to fundamentally misunderstand the role of organisation of any kind. The question of appropriation of control, experience and knowledge in struggle is precisely one of the central bridges between daily struggle and long term goals.

For examle, throughout the article Fine et al take as a given that the decision to register is one taken by the workers. Does this mean that the decision was taken by the rank and file after an informed discussion, or taken by an accountable elite? There has been a suggestion that the decision to register was taken from the top downwards. We would invite and welcome unions to reply to this damaging allegation. On the last page the authors hint at this themselves when they refer to FOSATU's 'technical' approach to registration:

> FOSATU appears to have undertaken the fight for recognition in a defensive way, vaguely apologetic for their decision, treating it for the most part as a technical exercise bringing with it technical advantages, and therefore failing to reveal its significance either *to its own members* or to other black workers. (p67 our emphasis)

Telling workers that registration would involve no more than the technical formalities of a marriage licence or a car licence is more than being merely 'technical', it is manipulatively depoliticising the nature of the question.

The failure to take into account worker militancy and consciousness has cost some unions dearly. An example is rigid opposition to struggles by workers outside the workplace. Whatever reservations certain Eastern Cape FOSATU unions had about community organisation these unions have had to change their attitude after the Ford strikes where they were caught unaware by the political mood of sections of their membership.[18] It is our opinion that the primary force in shifting the GWU away from its idealist position was precisely the struggles taking place

in and out of the factories in the Western Cape.[19]

Participation and Control over the Union.

There are other illustrations of this distrust of workers. The shining example is the sleight-of-hand with which union democracy is treated. For Fine et al, union democracy appears to be a formal requirement of trade union practice. As such, it may be compromised when the circumstances demand it. They do not see that open worker organisation must be premised on democratic control/participation. If a trade union cannot be the site for the democratic control by workers of their own organisation and struggle then indeed it is difficult to see how these authors can see workers democratically controlling society. Anti-democratic practices undermine this belief amongst the workers themselves. It is the struggle for democratic control which pushes work-place organisation into a progressive role in a society in which politics is separated from economics and struggles are 'domesticated and isolated'. By democracy we mean the real thing not formal substitutes. Full participation and discussion on policy, access to information, revocability of officials. Not mere constitutionalism behind which anti-democratic functionaries can hide.[20]

We have encountered the retort that organisations should not attempt to prefigure within their organisation the principles of a future utopia. Attempts to put into practice democratic principles are chastised for being premature, with the result that any attempt to picture the *actual process* through which worker democracy is built historically, becomes foggy. We do not believe that this retort re the viability or otherwise of democratic practices is applicable in trade unions or in any other type of organisation.[21]

The boycott weapon

In Fine et al's view the boycott weapon has been employed in South Africa without regard to its suitability to the current conditions i.e. as an automatic reflex. They do not envisage the use of this tactic as a political and strategic choice. For them the boycott is false politics. It means boycotting the state. 'True politics' is participation in state structures. We will leave aside for the moment this novel and startling conception of politics.

Firstly, Fine et al argue that the boycott weapon has no relevance where the state threatens to enforce its controls. Secondly, if the state does not threaten to enforce its controls, the 'boycotters' will lose the possible advantages of registration. The boycott is thus to be used as a last resort – when there are no other alternatives open. These are the only criteria the authors offer.

Let us examine these remarks more closely. Fine et al have categorised the boycott weapon as a negative sanction, a defence weapon, a rampart behind which to hide. An examination of the use of works and/or liaison committees by trade unionists in the 1970's will reveal the false premises upon which this conception

of the boycott tactic is based. These committees were boycotted where the union support was *strong*. Where the position of the union was weak the committees were used as a basis to build the union. It is clear that decisions on the correct tactical response to these committees were based on an assessment of the strength of the union and the consciousness of the workers (an absent consideration in the article) and on the need to affect these selfsame factors. (another consideration absent in the article). The decision to boycott the committees was premised on the use of the boycott as an offensive weapon. The decision to participate in the committees was based on the premise that participation was a defensive strategy to be used where a boycott would fail. This same logic applied to the Duma debates. We see now that Fine et al's schema is completely upside down.

We would go a long way with the authors when they state:

> "Just as the state is constantly seeking to divide and out manoeuvre the black union movement, so must that movement seek to turn the tables on the state by using every advantage offered it, all the time putting forward its own demands and rallying more and more workers to its side."

And further when discussing the state's anxiety that unions should participate in its new deal "The state does not want a return to the status quo ante" (p62)

It was this last point that was forcibly made by the GWU when they pointed out that never before had independent unions as much bargaining power.[23] The state needed participation for the reasons mentioned by Fine et al, not least the marketability and the success of the package. It has since altered its provisions to accommodate the independent trade unions. The GWU first assessed the strength of the union movement before making the decision to boycott. They noted that their strength depended to a large extent on the unity of the independent trade union movement.

The pro-registration leadership on the other hand, did not look at their strength, nor at the possibility of using an offensive weapon to win as much of a control-free package as possible. They looked at the threat of the parallels. The omnipotence of the state and the 'technical' gaps in the legislation.[24] Perhaps it is easier to be wise after the event – and it perhaps unfair to attack these unions for overemphasising their weakness – but their tactical reason must nonetheless be exposed.

The denial of the validity of the 'boycott' as a conscious political strategy, allows for the decision of SAAWU/MACWUSA/GAWU/AFCWU to refuse to register to be interpreted as a blind response. This dogmatic critique of their openly political reasoning has not prevented these organisations from developing shop floor support. In South Africa the task of separating politics from economics in th mind of the worker is one of the most difficult facing the state, the bosses and theeconomistic unions. Inter alia, it will require rigid control and discipline over union membership. For the above organisations such a task is inimical to worker interests. If we take the Eastern Cape's SAAWU as an example.[25] They reject the contention that pass laws or Ciskeian 'independence' are not worker issues. For

them, economic exploitation is connected to relations of political domination While never purporting to be the workers' political party, they are aware of the implications of economism. Indeed, they used the registration issue to conscientise workers about the need for strong and democratic unions and to reach the unorganised workers by drawing them into full discussion on the question. In this context, the boycott strategy bridges the gap between politics and economics. In as much as a trade union can only hope to transcend its limitations and never eradicate them – one must take serious account of their claim. It is certainly very far off the mark to cast respected worker leadership, which has grown with th labour movement, into the mould of a self-seeking petit bourgeoisie wishing to use the workers as a 'battering ram' for its own cynical ends.

We would add further that supporting the 'political' demands of the workers does not necessarily mean that shop floor organisation is ignored. There is a current thesis in vogue amongst certain academics that the two are mutually exclusive. In particular, we note that activists of the time do not accord with the new historical interpretation that 'politics' killed SACTU. This question has been recently opened up[26] and reveals that the relationship between politics and SACTU strengthens are more complex than this fashionable thesis allows.

State Recognition and Politics

We have stated earlier that the mystique attached to 'state recognition' is unclear to us. We cannot accept that FOSATU wolves dressed in wolly registration clothing will be able to steal up on the bosses while the state watches on benignly. We believe that the state 'recognises' unregistered unions, and we know that workers currently exercise their right to join and form unregistered unions. We know that the bosses will recognise unregistered unions which represent their workers. What magical rewards have we not seen but which Fine et al see so clearly? We believe that the state would see little purpose in recognising a union without support, a hollow shell, an empty structure.

But the authors go further than this when they state that this slippery prize – official recognition is the primary, crucial goal of the trade unions. It separates real politics from false politics. Real politics is, if the authors are to be believed, participation in state structures. We are forced to challenge this simplistic reduction of politics into formal articulation with the state. For Fine et al the Presidents Council or Inkatha would be political, whereas the student risings of the 70's would be apolitical as they did not formally articulate with the state structures. In reality we see that SAAWU – (blind boycotter of the state) has requested the independent unions to consult with the Ciskeian government vis a vis the detention of unionists whereas FOSATU's Joe Foster replies that he does not recognise the homeland government.[27]

We do not deny that the state is central in any analysis of the nature of political demands. But we do assert the self-evident: that the refusal to register

is a demand on the state and that it is by no means a 'boycott of politics'. If we have bent the reed too far in asserting that the advantages of registration are not as substantial as the authors would have us believe, we should add that in our opinion the controls accompanying these advantages are also not as substantial as they have been portrayed. But when Fine et al call participation/registration the only form of politics they make a fetish out of formal relations with the state; encourage a narrow survivalism and provide a prescription for the opportunist practices they warn against.

Footnotes

This response has been workshopped from discussions with a broad range of labour interested and involved persons. The responsibility for the article remains my own.

1. Here we refer to an alliance between a workerist position and a reformist position. The practices associated with this alliance have led in the past to charges of opportunism or more recently "survivalism".
2. The latter specific example is drawn from debates over internal practices between the NUMARWOSA and some of the TUACC unions.
3. This position is argued in a letter to the *SALB* Vol.5 Nos 6 and 7.
4. An example of such differences is the question of participation in industrial councils.
5. This is particularly surprising as Fine himself has stressed the significance of the form of state and law in his important contribution "Law and Class" in *Capitalism and the Rule of Law* Fine et al 1979.
6. Interview with Joe Foster in *SASPU National* Vol 2 No. 7. See also, address to the Inaugural Congress FOSATU by Phil Bonner.
7. Ibid. See also the letter in *SALB (supra)*.
8. See Ellen Wood "The Politics of Production" in NLR 127.
9. In point here is the clash between Inkatha and Natal trade unions.
10 Sol Picciotio in *Capitalism and the Rule of Law* op cit 171. See also F. Haysom 'Legalism & Democratic Organisation' WIP 18-19.
11 Interview with Joe Foster *(supra)*.
12 Workers have rarely followed the legal procedure before striking. The exception in 1981 was the Colgate strike. There is a prevalent misconception that only members of registered unions may request a conciliation board. In fact workers at a plant, whether organized or not, may request such a board.
13 Conference solutions in *SALB* Vol 7 Nos 1 & 2.
14 Struggles at Colgate, SAPPI, Premier Milling. See *FOSATU Worker News,* August 1981.
15 Morris "Capitals Responses Post Wiehahn" *SALB* Vol 7 Nos 1 & 2.
16 "The Industrial Conciliation Amendment Act and Industrial Councils" Paul Benjamin and Fink Haysom *Work in Progress* No 19.
17 For a discussion on this point, see further, "Legalism and Democratic Organization" *Work*

in Progress Nos 18 and 19.

18 See *SALB* Vol 6 Nos 2 & 3, in particular J Maree "The 1979 PE Strikes and an evaluation of the UAW".

19 See, for example, the analysis of the meat strike *SALB* Vol No.6 No.5

20. "Constitutionalism" has been the hallmark of undemocratic unions in the UK. An example of where the constitution has been used to protect officials from their workers is the Cortina workers abortive attempt to displace Mke and his executive.

21 There is a further questionable implication in this logic which is rooted in the positivist perception of theory as a single "true line" to be imported by intellectuals into the union. Theory is thus unrelated to the experiences of the members of the union. There is no need for democracy, it follows, only obedience.

23 See GWU 'The Cape Meat Strike – Struggle for Democratically elected Workers Committees' in *SALB* Vol 6 No. 5.

24 *Ibid*

25 *SASPU National* Vol 2 Nos 5, 6 & 7.

26 Kaplan and Morris "African Union Recognition 1960–64" in *SALB* Vol 7 Nos 1 & 2.

27 *SASPU National* Vol 2 No 7.

Trade Unions and the State - a response

Alan Hirsch

Martin Nicol

I

The article by Fine, de Clercq and Innes in the last issue of the Labour Bulletin (Vol. 7 Nos 1 & 2)is the first attempt to ground theoretically the decision of certain independent black unions to apply for registration under the 1979 Industrial Conciliation Act. To this extent, it is an important contribution to the debate about the participation of independent black unions in the formal state industrial relations system.[2] However, the article also consists of a bitter attack on unions which have not applied for registration. In fact, their whole argument is presented as a "general theoretical critique of. . . the domga of boycott" which the authors see as the "predominant" position of those who warn against registration (Fine, de Clercq & Innes (FCI) p.40). They believe that a space may exist for constructive engagement by unions in the state-sponsored industrial relations institutions which have recently been opened to them, but that this space is invisible to those blinded by the dogma of boycott. They seek to "lay the groundwork for a radical alternative perspective" which will allow the possibility of participation in the new labour dispensation and hence "better serve the black trade union movement". (FCI, p.40).

The article is hampered from the start by its attribution of theoretical and strategic positions to trade unions which simply do not hold and such positions. FCI's spurious conflations and imputations invalidate much of their subsequent argument. However, since they make the greatest claims for their alternative perspective of relations between capital, labour and the state, we will begin with a critique of their theoretical framework and thereafter proceed to look at their fabrication of the boycottist position.

The "radical alternative" – state, law and politics

The flaws in the alternative perspective proposed by FCI extend from their theory of the state, law and politics.

After criticising those incorrect views of *the state* – that it is a neutral arbiter between contesting interest groups or a simple repressive instrument of one class – they seem to attempt to combine these approaches rather than discard them. For them the state is a repressive force of indeterminate character – "a repressive force which is located in a nexus of contradictory social relations and whose character is determined by the changing relations between the classes involved"

(FCI, p41). Their state is a poisonous jelly-fish; formless but potent, it drifts up and down the shore as the tide of class struggle turns. There seems to be nothing specifically capitalist about it except that in capitalist society it is controlled by the capitalist class.

For us, this conception of the state is inadequate because it ignores the form of the capitalist state.[3] The capitalist state and its apparatuses are organised in a *specifically* capitalist way. There are hierarchies resting on certain features of capitalist society, importantly, for example, the division between mental and manual labour. These forms tend to be inimical to democratic organisation though they do not make it an entirely unachievable goal. While the capitalist state is organising capital, it disorganises the working class and other oppressed classes not only through repression, but through imposing forms of organisation. An element of Panitch's critique of corporatism exemplifies this:

> Trade-union power is based on the effectiveness of its collective organisation. But the power of capital is based on control of the means of production and this control is not transferred to the interest associations of business (employers organisations) by individual firms. This means that these associations' incorporation via state structures is less significant for capital than is the incorporation of trade unions for labour, precisely because these associations play a less critical role for their class as agencies of struggle, of representation and of social control than do trade unions for their class, not least because of the role of the capitalist state itself in cementing a common interest among capitals'competing fractions.[4]

Here Panitch shows one way that trade unions can be pushed into organisational relations which, though apparently "fair", undermine their organisational strength. This is typical of organisational forms which capitalist states attempt to impose on opposition movements. (Of course in facist and other totalitarian capitalist social formations these undemocratic strictures are substantially more severe.)

For FCI however, this crucial area, the *form of organisation of the* capitalist state, (or of trade unions, for that matter) plays little or no role in their analysis. The jelly-fish has no characteristic structures or patterns – it drifts, wobbles or stings.

II

Problems with FCI's two dimensional state are reflected in their contradictory treatment of *law* in capitalist society. Effectively, they separate the two dimensions – the state as an absolute repressive force and the state as mouldable clay in the hand of the class struggle – and then apply them independently of each other, as it suits their argument at the time. In some cases, the pliability of the state is highlighted and its repressive character ignored and in others, precisely the opposite.

Thus, on the one hand, *the law is dismissed as irrelevant.* The strategy of "legal

independence" from the institution of state registration is dismissed as irrelevant and illusory. Why? Because unions can never "be independent of the state" (FCI p.45). Unions are hemmed in by so many laws and regulations anyway that to take a stand against the conditions of union recognition has no special purpose. It is impossible to escape the tentacles of the state and thus silly to strive for formal independence. This is echoed in their treatment of the history of the I C Act. The effectiveness of the 1924 Act in "incorporating" the bulk of the registered trade union movement is explained by objective conditions surrounding the implementation of the Act (the "nexus of contradictory social relations").

> Law operates within the context of certain social, political and economic conditions and if one wishes to understand the implications of a particular law on society one has to examine it within the context of these conditions. . . . . (The effectiveness of the Industrial Conciliation Act) was a product not of the Act itself but rather of the social conditions into which it was inserted.(FCI p46).

The law and industrial relations procedures themselves are rendered unimportant enough not to need to be examined. On the other hand, when convenient, laws and the intricacies of relations between trade unions and the state *assume absolute importance:*

> the struggle by the trade unions . . . (for) state recognition is crucial: in terms of winning space for the unions to organise . . . (FCI p66).

> State recognition, however limited makes it less difficult for unions to recruit members, to gain access to the workplace, to win management recognition, to secure stop-order facilities etc. In addition, trade union recognition means *direct* access to the industrial councils and other official bargaining channels . . . these unions may now use the space they have won *to put forward their own demands* . . . . . .These new rights are vital in assisting black unions to overcome the major obstacles which have restricted their development in the past. (FCI p.64). (Their emphasis.)

Not only is state recognition regarded as crucial, but the taking up of all "concessions" (regardless of how they are defined at this stage of our argument) is regarded as a "simple principle". Hence:

> "Black workers can learn to use the most timid concessions granted by the state (p.58) . . . . . advanced workers should not reject the fight for concessions, even when they are offered in a most divisive of ways, rather, they should learn to use the advantages they win for themselves as a wedge by means of which other workers can gain a foothold." (p.59)

So, now legal status, in terms of formal rights or access to administrative machinery, becomes a central focus of trade union organisation.

Thus, at times for FCI the *law is nothing;* "legal independence" merely fosters an illusion. It is the balance of class forces that matters. At other times *the law*

is everything, legal status, access and rights are principal considerations for trade unions.

What is absent in their approach to law and the state is an acknowledgement of the importance of contradictions *within* the capitalist state and its practices. For them the contradictions exist outside and around the state, – the "contradictory social relations" in which the state is inserted.

Their argument is based on a dichotomy between concession and repression. For them, state action is either one or the other. Concessions are forced on the state by the workers – the tide flows in; legal rights, access to state apparatuses are extended. Repression means the opposite – as the tide ebbs back. For FCI all concessions must be taken up by workers and forged into weapons to exploit the contradictions in the state.

> " . . . . .whatever concessions (the state) offers, whatever rights it extends, will be used by black workers in ways that were never intended: to consolidate, broaden and strengthen the union movement." (FCI p.XX

This again indicates their limited understanding of the subtleties of the disorganising strategies of the capitalist state.

All extensions of rights by the capitalist state go hand in hand with attempts at disorganisation, if only insofar as it attempts to impose hierarchical and undemocratic forms of organisation on the organisations of the oppressed classes. The imposition of indirect representative forms of democracy as opposed to direct democracy has determinate effects on the character of worker organisations. Often the forms of organisation imposed are not even indirectly democratic. Disorganisation is more complex than FCI allow.

This lack of understanding of the contradictory nature of the practices of the capitalist state is reflected in their vague usage of the term "incorporation". It is a term that is never defined – its meaning is assumed, the process of incorporation is not regarded as worthy of discussion. Hence, the means of establishing whether a concession is "real" or "fraudulent" is also never discussed. These terms are held as self-evident – either the "power of black trade unions" is increased or diminished.

Of course, we dispute neither the possibility of reforms nor the actual embodiment of concessions within the new Labour Relations Amendment Act. Clearly the scrapping of racial discrimination and provisional registration, for example, are concessions. However, a concession has to be analysed in its context; is the *package deal* likely to further the interests of democratic trade unionism or not? What disorganising conditions does it contain?

To assess this we have to look at the structures embodied in the labour relations institutions. Do they promote the bureaucratisation of trade union – in other words,do they promote the separation of officials from workers? Do they confine unions to strictly economic issues? Do they increase state control over workers' organisations? To put it generally, do they promote the establishment of undemo-

cratic hierarchies in the union movement in such a way that these pressures are difficult to resist? The question is not whether the state's labour dispensation is repressive or introduces concessions – we have already argued that concessions contain elements of disorganisation. It is: can these pressures be effectively resisted, and in the South African case can they be more effectively resisted inside or outside the formal industrial relations structure?.

III

Their failure to analyse the meaning of "incorporation" is related to their conception of *politics*. For FCI, politics equals explicit relations with the state: "If the workers organisations do not take up struggles around the state they will necessarily have no influence over the state. The political arena will become the exclusive domain of forces other than the black workers" (FCI p.67). These and surrounding comments suggest that FOSATU is political because it engages in activities with the state, whereas those who do not are economistic and syndicalist.

An obvious response to this argument is that unregistered unions are indeed performers in the political arena – their effect on state policy certainly cannot be denied. It is formalistic to maintain that politics is limited to formal relations with the state.

Moreover, there are several other equally important points that need to be raised here. Firstly, their argument about politics effectively denies that the *organisation* of trade unions itself poses political questions. The question of democracy within organisation is reduced, by FCI, to the question of formal accountability. Officials must be accountable to workers, they argue. That's all very well, but any organisation with any claim to be a trade union has formally accountable officials. The question is, does democracy *work* in the union?

That it does in some trade unions is not merely the product of constitutional provisions, but of the real location of power in the hands of the members. Following from this, the decision whether or not to enter into state institutions should include a serious consideration of the effects that the move would have on trade union democracy. Thus, for example, participation in Wage Board hearings in the fifties or Works Committees in the seventies might be acceptable because the action does not tend to seriously undermine democratic forms, whereas a decision to enter an industrial council which effectively excludes worker participation might not. The question of whether anti-democratic pressures – bureaucratisation, mental/manual division of labour, domination by middle class intellectuals can be adequately counteracted is a *political* question of organisation.

A related point is that FCI assume that proper trade unions are pure working class organisations. The position amounts to a denial that trade unions involve class alliances – that members of the petty bourgeoisie are involved in all union organisation; that trade union officials are by virtue of their place in the division of

labour members of the petty bourgeoisie. The political question posed, of course, is what is the appropriate nature of the class alliance within trade union organisation?

Their simplistic notion of the nature of the trade union as an organisation is associated with one of the ironies of their article; whereas they accuse their opponents of syndicalism, their argument is in fact much closer to a workerist/syndicalist position. This is announced in the article when the forces acting upon the state to win concessions are consistently identified with the working class or "the workers movement". Only once is a token reference made to "populist struggles" (FCI p.62). For the rest, there may be no pressures on the state in South Africa other than from the working class. It does not enter their calculation that changes in labour legislation might be provoked by pressure from other classes or their organisations. Such changes are not derived from the contradictory relations between labour and capital alone, let alone from the strength of trade union organisation.

On the other hand, when they do consider the effects of other classes they adopt a basically syndicalist position – the trade unions are the political organisations of the workers. A sentence quoted above bears repeating: "If the workers' organisations (clearly, in this context, meaning the trade unions) do not take up struggles around the state then they will necessarily have no influence over the state". Other struggles and forms of organisation are effectively rendered irrelevant or reactionary.

We have shown that FCI's theoretical position is problematic – their conception of the state is eclectic; of the law is contradictory; and of politics is formalist and workerist.

Their "critique" – the fabrication of boycottism

The FCI article is so confused in its theory that it can in no way be the foundation of a radical perspective to guide the strategy of the black trade union movement. But the article is not merely incorrect. It makes several allegations which justify it being condemned as misleading and even malicious. The constant effort of the authors is to characterise all unions and organizations which abjure registration as "boycottist". They assert that unions which reject registration and participation in industrial councils do so because they are bound to a blind principle, a "dogma of boycott". The boycottist label is applied not only to the unions' rejection of registration, but also to the attitude of all these unions to the state in general. The Anti-registration position is parodied as a vain effort to "boycott the state".

The type of boycottism attributed to all the trade unions which oppose registration does not represent their position in general. Unions have rejected registration because they believe that their struggles are best advanced outside the framework it imposes on them. This does not necessarily indicate that the unions have an objection on principle to participation in state industrial conciliation apparatuses

and institutions. A deeper investigation of the reasons why registration is rejected is required before any such conclusion can be drawn. FCI provide no evidence of there being a stand on principle against registration by the unions. The most they indicate is that different unions have different minimum conditions under which they would register. The fact that unions are prepared to set out such conditions is itself an indication that no stand on principle is involved. The minimum conditions certainly vary between unions – from relatively minor changes in the legislation to unattainable ideals even – but it requires more than a demonostration of this to prove boycottism. It is difficult to set out with accuracy the reasons why each union has refused registration – only the General Workers Union has clearly stated its position. However, for FCI reasons matter little , the mere fact of being opposed to registration indicates boycottism.

To sustain the wider point that refusal to register is simply part of a belief that the state can be 'defeated' by non-participation in all state apparatuses and institutions, requires an analysis of the ways the unions operate. FCI do not even attempt this. They provide no examples from the practices of any unions to substantiate the contention that they are trying to 'boycott the state' – even in instances where (on the face of it) this might be possible. They turn a blind eye to the participation of the Food and Canning Workers Union in conciliation boards, the African FCWU in Wage Board proceedings, the WPGWU in works committees up to a few years ago, the submission of evidence to commissions by all these unions and above all by their use of the courts in fighting certain issues.

In these instances the charge of boycottism rings hollow, in others it remains unproven. It is false and misleading to state that all unions and groupings opposed to registration ground their opposition in the principle of boycott. FCI sustain this allegation only by repetition of the words "boycott", "boycotters" and "boycottism". The allegation verges on the malicious when it is used to group together a whole range of organizations, not all of which are trade unions and many of which operate illegally. This association has no purpose in the argument; but its affect is to link together, for the benefit of the state, security police and employers, unions operating openly and legally, with illegal and clandestine bodies.

It is necessary for FCI's argument that they present the boycott as a weapon which can be used *either* as a tactic *or* as a 'blind principle'. They condone its "selective use . . . . as one tactic among many open to the trade unions" (FCI, p40) but condemn its application as a principle. This is a false polarity. We have shown that FCI fail to demonstrate that all unions follow a 'blind principle' of boycott. However, this need not mean that registration and membership of industrial councils is rejected as a mere tactic.

Questions of principle may be involved – specifically principles relating to the organisasional structure of the unions. Participation in industrial councils, for example, imposes a certain form on the struggles of a union which might be seen as undermining its organisational purposes. The rejection of participation in the

industrial councils is then a principled stand, not a matter of tactics; but it is based on upholding principles of democratic organisation – not principles of boycottism.

No one would deny that the general questions about boycottism raised by FCI are relevant. But they present their argumens against a fictitious boycottism – their chain of boycott linking anti-registration unions in heresy is an illusion. In addition, it is almost offensive for them to present their critique of boycottism as an original contribution to debate in South Africa. The place of boycott in the struggle has been extensively debated over the last three years. The implications of boycott strategies have been widely aired with respect to trade union, community and student struggles. Indeed, during and after the schools/bus/meat boycotts in Cape Town last year there can be few questions that were more intensively discussed.[5] In Durban in recent years there has been much discussion over the boycotting of the S A Indian Council elections.[6] A further index of awareness of the implications of different forms of boycott is the number of articles on the subject appearing in community newspapers and journals such as *Grassroots,* [7] *Social Review* [8] and *Work in Progress.*[9] It seems as if the isolated position of the authors in England has made them insensitive to the long-term decline in the strength of the ideological position of boycottism as originally propounded by the Non-European Unity Movement.

For all its length and repetitiveness, its richness in red herring and innuendo, the FCI article reduces to three aspects: the first, a wilfully misleading identification of anti-registration with boycottism; the second, a contention that all concessions made by the state are forced upon it by the struggles of the working class and the third, an instruction that all concessions must be taken up. In all these aspects, we have shown the article to be fatally flawed with theoretical errors and confusions.

Furthermore, mention should be made of their devious style of argument. At one and the same time the article takes on the appearance of a neutral academic intervention *and* strongly advises full participation in the Industrial Conciliation Act. The article begins by denying that its intention is "to provide propaganda for those unions which have sought registration". Their claim is that the article provides a theoretical framework by means of which black union strategies can be worked out. This is summed up as follows:

> " . to the extent that registration represents a real extention of the rights of black unions or, conversely, to the extent that it represents a diminution in the state's restrictions over black unions, *in relation to their existing position,* unions should seek to take advantage of such concessions and not boycott them" (Their emphasis and ours) (FCI p.60)

From this point onwards FCI *move over* to justify and encourage 'taking up the concessions' but *without going into an analysis of concrete conditions* faced by the black union movement at present. Quite apart from the poverty of their theory, their contention that registration "extends the rights of black workers and so

augments the workers' field of action" rests on unsubstantiated assertion. No link is established between their theory and their prescription. Consequently, their directive for action – registration and participation in the industrial council system is invalid.

The FCI article is a knot of confused theory, malicious smear and unvalidated prescription, founded on devious and illegitimate tactics of debate. The vituperative tone of much of the comment on black trade unions is not reflected in the open positions involved in the debate on registration here in South Africa. In the light of all this, it is certainly questionable whether this intervention by FCI can realize its stated intention of serving the black trade union movement as a whole.

FOOTNOTES

1. We thank Jonny Myers for participating in the earlier drafting of this article. Unfortunately he was unable to participate in its completion, being out of town. We also thank other friends for criticisms and suggestions which we may or may not have heeded.

2. The subject of the debate is not the question of legal or illegal action as FCI's subtitle misleadingly suggests – it is the question of voluntary participation in particular institutions.

3. This is surprising as one of the writers has concerned himself specifically with the importance of the legal form – c.f. Bob Fine, "Law and Class" in *Capitalism and the Rule of Law* edited by Fine, Richard Kinsey, John Lea, Sol Picciotto and Jock Young, Hutchinson, 1979.

4. Leo Panitch, "Trade unions and the capitalist state", *New Left Review,* No. 126, March/April, 1981.
5. See, for example, "The Azania Manifesto" (Committee of 81), 1980.
6. See, for example, "The Leader" and "The Graphic", April–July, 1979.
7. *Grassroots,* April, 1980; August 1980.
8. *Social Review, 6,* August 1979; *7,* December 1979; *10,* September, 1980.
9. *Work in Progress, 10,* November 1979; *12,* April 1980; *13,* July 1980; *15,* October 1980.

Wiehahn Part 5 and the White Paper

Jud Cornell

Alide Kooy

Part 5 of the Wiehahn Commission report completes its investigation into industrial relations outside mining. It is of interest in the context of the issues debated in this and the previous *Labour Bulletin*, since it provides an indication of how the Commission – and the government in responding to the Commission – view developments in the labour field since the publication of Part 1 of the report. Some of the Commission's recommendations have been incorporated into the new legislation and the report provides some explanations of the thinking behind these changes.

In this article we have summarised parts of the report and the White Paper which accompanies it, on the questions of

- trade unions (particularly registration)
- decentralised collective bargaining
- strikes and pickets
- collective bargaining for farm, domestic and state workers minimum wages
- the Industrial Court.

The report also contains a chapter on women in employment, which we have not summarised here.

This article does not attempt to analyse the Commission's report or the White Paper, or even to situate them in context : what follows is merely a summary. However, a few brief (and rather random) comments can be made.

It should be noted that one theme running through the report reflects the Commission's concern that South African labour law and practice should be in line, as far as possible, with international standards. The whole of chapter 3 is devoted to an examination of ILO standards, codes of conduct of international agencies and foreign governments, and local codes of conduct. Other chapters start with an overview of practices in other countries and a comparison with South Africa.

However, a theme of far greater importance in this report, as in the first report of the Wiehahn Commission, is the Commission's concern at the development of 'duallism' in South Africa labour law and practice. The duallism which concerned the Commission in the first report sprang mainly from the exclusion of African workers from the Industrial Conciliation Act. With the amendments of the Act to include African workers, the Commission has had to come to terms with duallism

of a different sort; the parallel unions have registered, but have proved to be no basis on which the state or employers could pin the new system, while the democratic trade union movement has grown in strength and although some unions have chosen to register a significant part of the movement has remained outside the statutory system. At the same time, spontaneous worker struggles all over the country have shown that the present system is incapable of containing worker unrest.

The Commission states explicitly that the fact that some unions choose to remain outside the statutory system, while still demanding recognition from employers and often being involved in illegal strikes, is 'perhaps the prime source of concern' about the system.

The second main source of concern is 'unsure and negative' reactions from emmployers to some initiatives to organise and represent the workers. Employer reactions to organisations which are representative (in the sense that they can demonstrate their standing with the workers) have often been less than constructive. This can spark industrial unrest.

This reflects the Commission's understanding that the new labour legislation, if it is to work, must take account of the growth of strong, representative worker onganisations. These organisations cannot be ignored by the state or employers, nor can they be prohibited or forced to register (although a substantial minority of the Commissioners do in fact recommend compulsory registration).

The Commission rejects the argument that unions which choose not to register have 'political' goals which compulsory registration could restrict. Throughout its report it is concerned to define a legitimate field for labour law and to emphasise that 'political' questions cannot be solved through industrial law, nor should industrial questions be covered under security legislation.* Rather, unions which choose not to register must be brought into the system through a combination of adjustments – to make the system more attractive – and extension of some of the controls which previously applied to registered unions to unregistered unions.

Clearly, the state is not prepared to adjust the system far enough to bring it into line with the demands of the unions which refuse to register, nor does the Commission recommend it does so. The controls in the registration process, the Commission argues, are not 'excessive'; they are aimed at protecting the members of worker organisations and not at shackling the organisations in their service to their members. It is interesting that the Commission does, however, implicitly recognise the argument that there are advantages for unions in remaining unregistered : it is concerned that unregistered unions may have 'an unfair advantage' over registered unions, which may induce registered unions to deregister, and it even suggests that such unfair advantage should be actionable as an unfair labour

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Unless otherwise stated, references are to Part 5 of the Report of the Commission of Enquiry into Labour Legislation (Wiehahn Commission), RP 27/1981 and to the White Paper on Part 5 of the Report, W.P. Q–'81.

practice before the Industrial Court (which the government accepts).

Some changes, however, the state has been prepared to make on the recommendation of the Commission to entice unions into the system. A number of these adjustments, it is clear from the Commission's report, were made as a direct result of the strong united stand taken by the democratic trade union movement (such as the complete scrapping of the racial provisions in the Act). At the same time, the registration process is to be streamlined and the question of representativeness for registration purposes re-examined.

It is interesting that in discussing ways to streamline the registration process as regards the constitution of a registering union, both the Commission and the government give credence to the argument that the process shifts control over the union away from the rank and file. Much negotiation, says the Commission, takes place between the registrar and union representatives on the satisfaction of the legal requirements for the constitution of a registering union. Applicant unions are 'finding it necessary and fruitful' to use legal advisers in seeking registration; the government states that 'organisations are assisted (by the Department of Manpower and the Registrar's office) in bringing their constitutions into line with the requirements of the Act'.

The same concern that industrial peace cannot be maintained through unrepresentative worker organisations is reflected in the Commission's findings on decentralised collective bargaining. Although it sees some usefulness in works committees and works councils, in this report the Commission concludes that these bodies are not 'genuine worker organisations in the accepted sense of the term' – they are not representative, membership is not voluntary, they cannot be independent of the employer, and they have hardly any right to strike and so no 'power base'.

As a result, any process of coming to agreements on conditions of service through these committees 'cannot be said to constitute collective bargaining or even negotiation'.

The problem of duallism in the system is also raised by the Commission in the context of workers currently excluded from the provisions of the Industrial Conciliation Act, such as farm workers, domestic workers and state employees. The Commission recommends the extension of the Act to cover these categories of workers, although with limited rights to strike for state employees. It is clear that one reason for this extension, in the Commission's opinion, is the need to extend control over these categories of workers (the government reports that unregistered unions are organising farm workers in some sectors, for example). Another reason is given by a rather cynical argument that it will make no difference anyway.

TRADE UNIONS

The fourth chapter of the report covers industrial relations in South Africa. It

starts with a 'cursory overview' of the historical background and a number of observations on contemporary developments.

The Commission finds that South Africa's industrial relations legislation and system are fundamentally sound and few changes are necessary. (4.12.1) However, there are two main sources of concern:

- 'the tendency for some emergent worker organisations to ignore the statutory system for the regulation of labour relations, but nonetheless to demand recognition by employers and, in several instances, to embark directly on illegal strike action wholly in conflict with well-tested procedures for mediation, arbitration and conciliation' (4.12.1)
- the 'unsure and negative' reactions from employers to some initiatives to organise and represent the workers, which contribute to an atmosphere of confrontation.

The phenomenon of 'extra-legal activity', the Commission states, has become perhaps the prime source of concern about South Africa's labour law reforms. 'There is more than mere irony to the fact that after years of severe criticism from Black trade unions and a host of others of the exclusion of Black unions from the statutory system, some of these unions now prefer to bypass the system'. (4.11.4)

This places a severe strain on the principle of voluntarism and minimal state intervention. It creates a spirit of confrontation and raises the prospect of a new form of duallism in industrial relations, which could be a major source of friction. 'The Commission has had several intimations that if some unions were to be permitted to gain an unfair competitive advantage by circumventing the law and its procedures, established unions could well decide to redress the imbalance by de-registering'. (4.11.5)

Closely associated wih the phenomenon of deliberate non-registration, says the Commission, is the incidence of illegal strikes. This tends to involve the authorities 'prematurely and often unnecessarily' in a situation in which they are committed to 'minimal official involvement' in the relations between workers and employers. 'Official involvement, although obviously undesirable, becomes especially necessary when industrial unrest threatens to escalate into civil unrest'. Further, illegal strike action can have undesirable effects on the position of non-striking workers, who may be affected if an employer is forced to a lock-out. (4.11.6)

The Commission therefore *recommends* that employers and workers be encouraged to make maximum use of the statutory system and that legislative adjustments and the administration of laws be made in such a way as to provide 'maximal incentives for employer and employee organisations to avail themselves of the statutory system as well as disincentives for bypassing the statutory system'. (4.13)

The *government* states that the questions of incentives and disincentives are contained in the new Act and will continue to receive attention. (4.4)

The Commission then considers trade unions and the Industrial Conciliation Act under several main headings : trade union membership, trade union autonomy, registration and recognition.

It *recommends* the full application of the principles of freedom of association and trade union autonomy as the basis for membership of trade unions, and therefore the removal of limitations on membership of foreign and commuter workers. (4.21) It also recommends that restrictions on racially mixed membership of unions, ministerial permission for mixed membership, restrictions on mixed meetings and on the race of officials, should be removed. (4.28)

The *government* has accepted both these recommendations and given them effect. (WP 4.5)

Explaining its reasoning, the Commission points out that all these restrictions have been used to justify non-participation in the system by some organisations (4.20.3 and 4.25.3). In any case, the extension of trade union rights to foreign migrants and commuters is not likely to destabilise the system : for one thing 'there has been little sign of effective organisation of those migrant and commuter workers who do qualify' and workers from countries outside South Africa or 'former South African territories' are a very small proportion of the labour force outside mining – 1,5 percent of the total African labour force in manufacturing and 2,5 percent in construction. In the case of the mining industry, several factors would strongly inhibit the establishment and growth of a strong union among foreign black workers. (4.20.5) Furthermore, the protection against victimisation and the prohibition on political activity in the IC Act do not apply to those who are excluded from the definition of employee. (4.20.1) On the question of restrictions on racially mixed membership, the Commission points out that the removal of these restrictions will not diminish the prerogrative of unions to organise themselves on racially exclusive lines if they wish to do so. (4.25.3)

On both these questions Commissioners Drummond, Nieuwoudt, Neethling and Hechter presented *minority recommendation* . (4.24 and 4.29)

REGISTRATION

After a lengthy summary of practices in other countries on recognition, registration, criteria for registration and other matters (4.32.1 to 4.32.24) the Commission considers current South African law and practice in regard to these areas (4.33.1 to 4.33.5). It then goes on to examine some of the main difficulties with registration.

(1) Procedures are cumbersome and time consuming.

This is a frequent criticism of registration procedures. The main delay, the Commission finds, is in the satisfaction of legal requirements for the constitution of an applicant union. The specifications are not clearly spelt out in the Act, so that much negotiation takes place between the Registrar and union representatives.

Applicant unions are in fact finding it necessary and fruitful to use legal advisers in seeking registration, the Commission says. The Department is now preparing a registration manual to facilitate matters.

Further sources of delay are problems of demarcation, of functions between trade unions and industrial councils, the extension of agreements to areas in which one of the parties might not be representative, and the time (up to 3 months) allowed by the Act for the lodging of objections to registration by a union.

(2) Dispute procedures with which registered unions must comply are complex and unwieldy.

The Commission says that criticism of dispute procedures was rarely heard in previous years. It considers that 'newcomers to the system', as strangers to the industrial society and its institutions, might see time-honoured mechanisms such as cooling-off periods as stalling tactics. However, this system has served well in the past, the Commission says, and standards should not be lowered. (4.34.2)

The Commission has noted that much of the unrest involving African workers has been concerned with the issue of recognition. Employers as well as unions have contributed to confrontation and disruption. (4.34.3)

Employer reactions to organisations which are representative (in the sense that they are capable of demonstrating their standing with the work force through industrial action) have often been less than constructive. Employers have often not had clear policies on recognition; they have been confused about the status of registered and unregistered unions; they have tried to impose organisational patterns which 'do not meet the aspirations of the workers'; they have refused to enter discussions with some organisations and they have vacillated in dealing with disputes. (4.34.5)

Negative reaction from employers can spark militant behaviour on the part of leaders of organisations who risk losing support if they are seen to be incapable of getting responses from employers where there are genuine grievances. This militant behaviour has one of two effects on employers: 'either (to) precipitate recognition of the employee organisation (also of those who deliberately avoid registration as a means of ensuring untrammelled freedom of action) or stern reaction to counter extra-legal behaviour' This stern reaction is 'fully justified where the motives of the unregistered organisation go beyond the welfare of workers and are perhaps political'. But it could be counterproductive in the long run where the organisation has 'legitimate' objectives. (4.34.6)

The Commission draws two conclusions from this : that there should be some dialogue between employers and the workers' organisation to establish the good faith of the organisation; and that the present emphasis on the quantitative aspect of representativeness has in many cases precluded consultation or negotiation with organisations which could have prevented or mitigated labour unrest. (4.34.7)

(3) The system of registration is still discriminatory in some respects.

The Commission considers that arguments against registration based on this assertion are slender. However, the fact that such arguments are put forward reinforces its view that the discriminatory aspects of the legislation should be removed. (4.34.9)

(4) Registration represents unacceptable government control over unions.

The Commission summarises the implications of registration as follows:
- it confers statutory status
- it imposes certain obligations with regard to the organisation's constitution
- it requires that the constitution be scrutinised and approved by the Registrar
- it requires the organisation to maintain a register of members and the fees payable by them
- it requires the keeping of proper books of account and the audit of these books at least once a year
- it requires the preparation of an income and expenditure statement and a balance sheet, as well as the provision of additional information which the Registrar may demand
- it imposes limitations on relations with political parties or candidates. (4.33.5)

These effects do represent certain controls over union activity, the Commission acknowledges, but these controls are not excessive and are aimed at protecting the interests of union members, rather than shackling the organisation in its service to its members. a registered union can be just as 'assertive' as an unregistered union in serving its members, 'in fact, if it were to choose the path of illegal action (such as an illegal strike) to achieve its objectives, its position would be no different from that of an unregistered union adopting this course'.

Registration shows a union's good faith in
- its intention to use machinery for the settlement of disputes and to refrain from illegal actions
- its willingness to have its handling of public funds independently and impartially scrutinised
- its willingness to report on a regular basis to its members on its activities. (4.34.11)

A far more difficult question to answer, the Commission considers, is that of 'possible political motivation' in the refusal to register. One of the arguments for making registration compulsory is that this would help to prevent or restrict 'politically motivated industrial action'. The Commission's view is that 'where ideologically motivated organisations seek to achieve political results through industrial action no amount of compulsion in industrial law will succeed in preventing such abuses'. Industrial law cannot, it says, seek to perform the task of political law, and 'if the notion of compulsory registration were intended primarily to preclude political abuse of the industrial relations system, this would in itself constitute an

abuse of industrial law and an intrusion into the field of political and security legislation'. (4.34.14)

In any case, the Commission states, a direct prohibition on unregistered unions would probably only 'drive them underground' or give rise to subterfuges aimed at circumventing the prohibition.

'Under an approach which rather seeks to remove obstacles and which links demonstrable benefits to registration, it would be a fair assumption that any organisation which refuses to take advantage of the benefits,but which still purports to represent workers' interests has objectives well outside the sphere of industrial relations.' Such a problem cannot be accommodated within the confines of industrial law. (4.34.15)

In the same way, the Commission does not consider it feasible to prohibit collective agreements where either or both of the parties are unregistered. Not only would it be difficult to prove the existence of agreements at times, but it would mean imposing criminal sanctions. 'It would seem to be a rather dubious notion from a judicial point of view that an agreement which has the legitimate aim of improving workers' conditions of employment should be construed as a criminal conspiracy contrary to the public interest.' (4.34.16)

Criteria for Registration

The Commission reaffirms that trade unions should be able to form themselves along lines of their own choosing. At the same time, however, it sees a need to avoid 'excessive proliferation' of unions, by requiring applicant unions to show that they are representative. In the South African case, however, this cannot be done by a simple majority which confers exclusive bargaining rights on one union. Rather, the Commission suggests, in considering criteria for registration and also for recognition, acceptance of the phenomenon of several 'most representative' unions, none of whom should have exclusive bargaining rights, 'is an unavoidable consequence of the composition of South African society'. (4.35.3) This means that it is not feasible to prescribe percentages of worker support as a prerequisite for registration and perhaps also for recognition. However, this is still an important first step to establish the quantitative support for an organisation, and should be done through a secret ballot. Other criteria for registration must remain in the discretion of the Registrar, with recourse to the Industrial Court for aggrieved parties.This appeal, together with the fact that registration is not compulsory, would mitigate the degree of subjectivity and discretion involved in the powers of the Registrar. (4.35.8) Further shortcomings in the definition of criteria for registration could best be overcome by the Department of Manpower with advice from the National Manpower Commission.

At the same time, the Commission suggests, every means of speeding up the registration process should be used. This could be done by removing the prohibition on mixed unions, by instituting clear prescriptions by the Registrar for the con-

stitutions of registered unions, with a programme of guidance for newly registering unions, and by reducing the time specified in Section 4 of the Act for objections to the registration of a union. (4.35.9)

Recognition by employers

'Essentially', the Commission states, 'the question of recognition by the employer is not a question for regulation by the State.' (4.36) However, situations can arise where employers refuse to recognise organisations which have given adequate proof of their representativeness, and this frequently gives rise to industrial action. The Commission suggests that this issue, and a failure to 'bargain in good faith' with a formally recognised union, should be actionable before the Industrial Court as unfair labour practices. Only after judgement by the court should a strike over recognition be permissible. Failure by a workers' organisation to conform with its obligations in regard to constructive behaviour in recognition issues should also constitute an unfair labour practice. (4.36)

Discrimination against registered unions

The Commission is concerned that the freedom of action of unregistered unions relative to registered unions could constitute discrimination. It suggests that an advantage enjoyed by an unregistered union over a registered union should be regarded as an unfair labour practice where it could be prejudicial to the interests of the registered union. This would be a strong incentive for unregistered organisations to opt for registration. Although the Commission believes that equal access to the judiciary is a fundamental right of every citizen and it would therefore be 'quite unacceptable' if unregistered organisations were to be denied access to the courts - including the Industrial Court – 'it believes that the duty of the Industrial Court to take account also of considerations of equity becomes particularly relevant in this case'. (4.36.1)

Information by registered unions to the Registrar

The Commission considers that it is necessary, perhaps more than ever, for the Department to maintain records of organisations. This would be an indispensable aid to the NMC in its task of 'keeping development on the industrial relations front under constant surveillance'. All organisations that come into being should therefore be required to inform the Registrar of their existence and provide him annually with details of their membership. (4.36.2)

Recommendations

The Commission *recommends* that registration should continue to be voluntary. (4.39.1)

The *government* accepts this recommendation, but points out that 'strongly worded representations were received from various employer and trade union

quarters, including Black trade unions, requesting that existing voluntary basis of registration should be replaced by a system of compulsory registration'. (WP 4.6)

The Commission *recommends* that the provisions of the Act with regard to registration be amended so as to eliminate delays and streamline procedure; (4.39.2) that provision be made in the Act for ballots to determined representativeness and for organisations which fail in a ballot to have the right to call for a further ballot after a specified time (procedure to be formulated by the Department of Manpower after consultation with the NMC; (4.39.3) that provision be made in the Act for appeal to the Industrial Court against decisions by the Registrar on registration; (4.39.4) that the criterion of 'representativeness' in the Act be replaced by the criterion of 'the most representative' and that the Registrar be allowed discretion to take into account other considerations of representativeness. (4.39.11)

In view of the complexity of the problem and the lack of unanimity in representations on the draft bill on this issue, the *government* has decided to refer these questions to the NMC. (WP 4.7, 4.8, 4.9 and 4.14)

The Commission *recommends* that the provisions for the protection of members of registered organisations also be made applicable to unregistered organisations, which should be required to keep registers of members and proper books of account and to distribute annual reports and audited financial statements to members; (4.39.5) that the Department be empowered, if it wishes to do so or if requested by an interested party to call for the constitution, annual report, financial statements or any other relevant informaion from an unregistered organisation; (4.39.6) and that any new such organisation be required to provide the Registrar annually with all information he may require. (4.39.7)

The *government* accepts these recommendations and has incorporated them into the new law. (WP 4.10)

The Commission *recommends* that recognition by an employer should continue to be voluntary, but that unreasonable refusal to recognise a registered, representative organisation should constitute grounds for an unfair labour practice. A strike over recognition should be permissible only when a positive finding by the Industrial Court is ignored by the employer. (4.39.8)

The *government* does not accept this recommendation at this stage. The matter will be reconsidered after the NMC has completed its investigation into the Industrial Court. Meanwhile, the government reiterates its commitment to 'a policy of non-intervention in the regulation of labour relations, including reciprocal recognitions agreements, between employers and employees', and continues:'Any element of compulsion which may be introduced into this voluntary relationship may constitute undesirable State intervention'. The government also points out that worker organisations can have recourse to the provisions of the Act in situations where employers refuse to recognise them, for example through conciliation

boards, this recourse is available only to registered organisations, but 'the Government is satisfied that that prerequisite is reasonable and that it contributes towards orderly and stable labour relations'. (WP 4.11)

The *government* also does not accept the Commission's recommendation as it relates to strike action under these particular circumstances; the specific provisions of the Act on the right to strike were designed to afford 'ample redress' to workers who are unable to resolve a dispute through the conciliation machinery in the Act (WP 4.11)

The Commission *recommends* that an advantage enjoyed by an unregistered organisation over a registered organisation which prejudices the interests of the registered organisation or its members should constitute grounds for unfair labour practice complaint to the Industrial Court. (4.39.9) The *government* accepts this recommendation. (WP 4.12)

The Commission *recommends* that a programme of public guidance should be introduced and clear prescriptions should be given about constitutional requirements for registration. (4.39.10)

The *government* accepts this recommendation. It has always been the practice the government states, of the Department of Manpower and the office of the Registrar to advise, guide and assist organisations on the requirements of the registration process. 'In addition, organisations are assisted in bringing their constitutions into conformity with the requirements of the Act. Efforts have recently been intensified in this regard and the Department has also prepared a guide on registration for trade unions.' (WP 4.13)

A minority recommendation presented by commissioners Botes, Grobler, Sutton Drummond, Neethling, Nieuwoudt and Hechter states that registration of all employer and worker organisations should be made compulsory because:

- this would achieve unification, order and discipline in the system and assist in recognition disputes
- the industrial relations system could be seriously prejudiced and disrupted by unregistered organisations which have no obligations under the Act.
- the Department should have up to date records of all organisations and known the office-bearers and affiliation with other organisations. It should also be able to monitor financial affairs of organisations. (4.38 and 4.40)

Deduction of trade union membership fees

In general, the Commission *recommends* that deductions should continue to be a matter for negotiation between employers and workers, with recourse to the Industrial Court if the matter cannot be settled by existing dispute procedures (4.16.1 and 4.61.2) The *government* is in agreement with this. (WP 4.25) However the Commission has reconsidered the recommendations in Part 1 of its report and

concluded that two aspects need to be changed.

It *recommends* that the provision in section 78 of the Act for the compulsory deduction of trade union membership fees on the instructions of the Minister should be removed. (4.61.4) This provision conflicts with the principle of minimal state interference; it was intended as a safeguard against unreasonable behaviour by employers and is no longer necessary now that the Industrial Court presents an avenue of appeal. (4.59.2) The *government* accepts this recommendation.

Secondly, the Commission suggests that deductions in favour of unregistered unions should not be prohibited, contrary to its earlier recommendations (in Part 1). 'The need to encourage emergent worker organisations to participate voluntarily in the statutory system' makes this provision undesirable. Check-off can be a weighty consideration in the registration or recognition of emergent unions, the Commission says, and the provision of check-off facilities by the employer could be a stabilising factor, while an organisation does not yet satisfy all the criteria for registration or while it is still waiting for its registration application to be processed. (4.59.3)

However, 'in the interests of discipline and order' the Commission *recommends* that the Minister should be empowered to prohibit deduction of trade union membership fees where worker organisations involve themselves in illegal activities in terms of existing labour legislation, provided that aggrieved parties should have recourse to the Industrial Court. (4.60.6 and 4.61.3) The *government* has not accepted this recommendation, preferring to 'leave the matter to be resolved between the parties concerned'. But it has decided to prohibit the deduction of membership fees to an unregistered union without the Minister's permission. (WP 4.25)

Information to be provided by employers

Section 59 of the IC Act provides that every employer on whom an industrial council agreement or award is binding must give the inspector certain information about the undertaking and notify him of subsequent changes, and that on submission of this information the employer is issued a certificate of registration. The Commission *recommends* that this provision be deleted from the Act, 'in the light of the Department's evidence that it finds it extremely difficult to administer'. (4.86 and 4.87) The *government* accepts this recommendation and amending legislation has already been passed. (WP 4.35)

Commissioners Botes, du Toit, Grobbelaar, Steenkamp and Sutton present a *minority* recommendation that this provision be retained. (4.90)

The primary purpose of the section, they argue, is to effect the control of employers, particularly in regard to specified financial obligations on their part. Inspectors cannot issue registration certificates if an order has been made against the employer under section 54 of the IC Act or under other sections in the Black

Labour Relations Regulation Act or the Wage Act, relating to underpayment of workers. Furthermore, the inspector cancels the certificate of registration held by an employer if he fails to comply with an order made under these acts.

It is a contradiction, these Commissioners argue, 'to make specific provision for the registration of both employee and employer organisations in other sections of both the IC Act and the BLRR Act, with the object or promoting sound industrial relations, and then, by the same token, to seek the removal of provisions that are aimed at providing protection for employees against malpractices by employers'. (4.88.2)

It is not necessarily true, the Commissioners state, that these provisions cause duplication of information, since industrial councils keep their own registers (4.88.3) If the Department is finding this section of the Act difficult to administer, specific instances of these difficulties should be furnished. (4.88.1)

STRIKES AND PICKETS

On strikes, the Commission *recommends*

- the suggested procedure for officially supervised secret ballots to determine representativeness of rival unions should apply to strike ballots (4.117.1)
- the NMC should consider the need for special measures regarding the right to strike and lock-out for works councils and works committees. (4.117.2)

The *government* does not accept either of these recommendations. On the procedure for ballots, it considers present provisions adequate. On the strike rights of committees, the government states that the NMC is to investigate the functions of councils. It is not prepared to extend strike rights to works councils at present. (WP 4.45 and 4.46)

The Commission considers the implications of legislation outside its terms of reference which also bears on industrial relations and picketing in particular. The Acts it refers to are:

- the Internal Security Act, 1950, which can prohibit certain people from union office, membership or activity and can affect fund-raising
- the Riotous Assemblies Act, 1956, which affects boycotts, picketing in general, and industrial action in essential industries
- the Trespass Act, 1959 and the Gatherings and Demonstrations Act, 1973, which have implications for strikes and pickets
- the Fund Raising Act,1978
- the Affected Organisations Act, 1974, which prohibits fund-raising from overseas for 'affected organisations'
- the Armaments Development and Production Act, 1968, which prohibits strikes in this industry and excludes it from the IC Act.

In general, the Commission states that the legislation affecting labour and industrial relations should be transferred to the Department of Manpower for

administration, and that industrial relations law should not seek to perform the functions of national security law. (4.124) Here picketing is of direct significance, the Commission defines the elements of picketing as

- the presence at the workplace of the picketers (either the workers involved in a dispute or sympathetic supporters)
- the message or appeal to the public and potential supporters (including fellow workers)
- the purpose of persuading supporters not to deal with or support the employer.

It points out that picketing is legal in many countries, and is considered illegal only when violence, threats, insults and other forms of coercive action are used. In many countries picketing has come to be recognised as a right for which specific provision has to be made in law.

South African law is not well developed on the question of boycott. 'The impossibility of predetermining the illegality of such actions as picketing or boycotts, and the lack of guidance-giving precedents in our law, have in all probability compelled the legislature to outlaw the secondary boycott in the country's security legislation wherever it is seen as serving a particular political purpose', the Commission states. Except for section 65 of the Industrial Conciliation Act, all the provision relevant to picketing are contained in national security laws.

However, picketing is already a well-established institution that 'should not primarily be seen in the context of security legislation', the Commission considers. It *recommends*

- that the Act be amended to provide for the legitimate use of peaceful picketing as an instrument of industrial action; and the definition of picketing encompass the notion that picketing is an attempt peacefully to induce fellow workers or members of the public to support workers engaged in a lawful strike. (4.126.1)
- all other forms of picketing, particularly when accompanied by unlawful coercive action, be outlawed in the Act. (4.126.2)
- the NMC investigate the feasibility of transferring industrial relations matters in security laws to statues dealing with industrial relations and vice versa (4.126.3)

The *government* does not accept the first two recommendations. However, it agrees with the third, and has decided that the departments concerned should take steps to give the matter attention. (WP 4.49 and 4.50)

Commissioners Botes, du Toit, Grobelaar, Steenkamp, Sutton and Munsook presented a *minority* recommendation for a National Mediation, Conciliation and Arbitration authority.

The number of strikes between October 1979 and August 1980, mostly on the 'legitimate' issue of wages, indicate that existing conciliation and mediation machinery is not adequate any longer. (4.132.1) These strikes were nearly all illegal in terms of the IC Act. Employers often dismissed workers, which, although premature,

is a course of action justifiable in terms of the Act, before dismissal it might have been advisable to persist with the negotiation process.

Three strikes are described with special reference to factors which affected settlement:

(1) a strike in a motor vehicle assembly plant which was settled as a result of the following pressures:
- investment and share market considerations
- the desire to preserve the company's image in industrial relations
- the influence of the head office of the transnational, influenced in turn by an international trade union
- the influence of a foreign government.

(2) a strike in a food firm where pressure exerted by non-industrial groups (churches, political organisation, student groups etc) let to a successful boycott of products which evidently forced the employer to settle. Significantly the Commissioners say, this settlement was negotiated by a church group.

(3) a strike in a local authority which also involved pressure from consumer and church groups and even a political party, although no settlement was reached and the action burnt itself out 'presumably because of lack of resources on the part of employees to last out' (4.132.2)

The Commissioners conclude that
- The authorities took few or no initiatives to resolve the disputes speedily. There seems to be no policy, they say, for dealing with large scale industrial unrest.
- Significantly, parties in the dispute generally did not try to gain official assistance, or, if they did, no serious action followed. This is put down to ignorance or lack of confidence in the official machinery, which 'remains a strong possibility in so far as the Black employees are concerned'. (4.132.3)

In most cases, the financial resources which determine how long the parties could 'sit out' the work stoppage were an important consideration. The question arises, the Commissioners say, of whether or not this process is an acceptable method of settling industrial disputes. (4.132.4) With the introduction of the new labour dispensation based on the Commission's first report, South Africa faces 'a problematic period of adjustment'. Prolonged and frequent strikes have the potential for developing serious social unrest, they argue. (4.132.5)

The Commissioners therefore recommend a tripartite National Mediation, Conciliation and Arbitration Board which, apart from intervening in disputes, could also take responsibility for the registration of unions and employer organisations, an essential factor in industrial peace. The use of a tripartite body to handle these matters is more likely to be acceptable to the parties concerned, they consider. (4.132.10)

The board could also handle more effectively the work involved if the government decided to extend collective bargaining rights to state employees. (4.132.11)

DECENTRALISATION OF COLLECTIVE BARGAINING

The Commission finds that the Black Labour Relations Regulation Act has contributed to improving the wages of particularly low-paid workers and has helped to preserve industrial peace. It has recently been more widely used : by the end of 1979 there were 2 683 liaison committees and 312 works committees in existence, covering respectively 698 202 and 75 948 workers, compared to 1 482 liaison committees (covering 470 992 workers) and 207 works committees (covering 50 362 workers) at the end of 1974. At the same time, disputes involving work stoppages decreased from 185 (19 932 workers) in 1974 to 45 (4 979 workers) in 1979. (4.17.1 and 4.17.2)

Thus, the Commission says, the existing committee system covers a very substantial number of black workers, out of a total black work force of 2 103 136 at the end of 1978. (4.50)

However, there are a number of important limitations to the system as it is presently set up, such as the fact that it is subject to outside regulation with very limited scope for growth into 'genuine worker organisations in the accepted sense of the term'. (4.17.4) The Commission specifically points to the following problems in the present committee system in terms of the exercise of collective bargaining rights:

- the criterion of voluntary membership of a workers' organisation is not met
- no measure of representativeness is, therefore, applied
- there is cause for doubt as to whether there is in fact an 'organisation' in the sense of a trade union
- the requirement of independence from the employer is almost impossible to meet (and to the Commission's knowledge none of the existing committees meet this requirement)
- committees have extremely limited legitimate means of withholding labour, so that there is no 'power base' from which to confront the employer.

The Commission concludes that 'any process of coming to agreements on conditions of service under such circumstances cannot be said to constitute collective bargaining or even negotiation in the sense of these terms as accepted by the Commission'. (4.50.1) It suggests that works councils and works committees should be reconstituted so as to meet the various prerequisites for collective bargaining.

It *recommends:*

The prerequisites for the meaningful exercise of collective bargaining rights by committees and councils in all industries, including mining, should be built into the legislation. (4.52.1)

At the same time, collective bargaining should take place at the highest level of organisation to which the employer and employees are parties and the role of committees and councils should then be restricted. (4.52.2)

Where there is no higher organisation, councils and committees should have negotiating rights until such higher organisations develop (4.52.3)

The Commission explains its thinking, that where higher organisations councils and committees should confine their role to consultation and bargai only on those matters which the higher level organisation has ceded to the (4.50.3) Further, the collective bargaining rights of committees and councils sh be relinquished in favour not only of industrial councils where applicable, of trade unions or federations recognised by the employer or the employers' association, but also of co-ordinating bodies based on councils or committees. (4.50.3) Agreements concluded on a decentralised level should remain within the terms of industrial council agreements. (4.50.6)

The *government* has referred most of these questions to the NMC for investigation. Legislation providing for the establishment of works councils has already been approved by parliament. (WP 4.21 to 4.23)

BARGAINING FOR WORKERS EXCLUDED FROM THE ACT

The public sector

The Commission notes that the vast majority of workers in the public sector have only a limited right to associate, hardly any right to bargain collectively and no right at all to strike. It considers the question of how this matter is dealt with in other countries (4.65.5 to 4.65.17),concluding that most countries 'have been rather cautious' in extending collective bargaining rights to public sector workers, but that in the recent past there has been a trend towards the extension of these rights. However, governments are still extremely reluctant to concede the right to strike.

In South Africa, the distinction between the private and the public sector is not clear. At the end of 1979 there were 18 registered trade unions in central government (mostly in the airways, railways and harbours), 17 in divisional and municipal services and 1 in the broadcasting industry. There were 2 employers' organisations and 5 industrial councils. It is clear from this that although only part of the public sector is covered by the Industrial Conciliation Act*, the principle of extending general labour legislation to the public sector 'is a reality' in South Africa. (4.65.18 and 4.65.19)

The commission considers that collective bargaining rights should be further extended to public sector workers, in line with the trend in the rest of the world. The advantages of this would be

- a greater involvement of these workers in decisions affecting their conditions of work
- a readier acceptance of decisions by the state on the part of public sector workers

specific statutes cover public service, railways and harbours, defence force, the police and provincial administrations.

as a result of their having 'some sense of participation, however limited'
- a reduction in disparities in salaries and conditions between the private and public sectors, a decelerating effect on private sector salaries and better co-ordination
- the possibility of the introduction of productivity bargaining in the public sector, with benefits for taxpayers and 'the country as a whole'
- a better image for the public service
- South Africa would be in line with other countries and could benefit from their research and progress
- the problems caused by the exclusion of town clerks (on which much evidence was presented to the Commission) would be solved. (4.65.20)

Thus, the right to trade union membership and the right to benefits such as medical aid, provident and other funds, should be extended to all workers. Not all rights need, however, to be extended : for example, the right to strike should be denied to soldiers, policemen, prison officials, firemen, health officers and other persons 'rendering security and essential services necessary for the security and well-being of the community' and the right to strike of other workers should be strictly controlled. It should not be possible to 'paralyse essential and strategic services through industrial action'; nor should everyday administration be subjected to the possibility of such disruption.

The Commission therefore *recommends* that the principle of extending collective bargaining rights to workers in the public sector should be accepted and their exclusion from the Industrial Conciliation Act should be removed. (4.67.1) Compulsory arbitration should be substituted for the right to strike for public sector workers. (4.67.2)

The *government* states that a Committee of Enquiry has been appointed under the Commission of Administration to investigate this matter. (WP 4.28)

Farm and domestic workers

The Commission considers that farm workers should not be excluded from the Act because
- their exclusion 'is no guarantee that they will not be organised'
- the dividing lines between farming and other activities are becoming blurred with the rise of corporation farming
- the principle of freedom of association and collective bargaining should be extended to all workers
- there is no practical value in the exclusion of workers who will in any case find it very difficult to be organised or to participate in the industrial relations system
- organisations formed among farm workers would immediately be subject to the provisions of the Act if their exclusion were removed

Much of this also applies to domestic workers, the Commission says.

Where farm and domestic workers do not organise themselves, provision could be made under the Wage Act for the regulation of certain aspects of their relationship with employers. The Commission therefore *recommends* that the exclusion of farm and domestic workers from the provisions of the Act should be removed.

The *government* notes that in many branches of farming and many regions farm workers would be difficult to organise, but that in certain branches like sugar and forestry and where activities are industrialised, the situation is different. This is proved by the organisation of farm workers in some sectors by unregistered unions, and by representations from farm workers to be admitted to registered unions. However, before taking a decision on this matter, the government prefers to 'consult with all the parties'. (WP 4.29)

General

The Commission received submissions that para-statal bodies (especially Escom) should be exempted from the provisions of the Act and allowed to structure systems of their own or systems under a different Act. The reason given was that these corporations 'render essential services of a strategic nature and the country cannot afford disruptive industrial unrest in such services'.

THE INDUSTRIAL COURT

The Commission shares the concern of trade unions, employers' bodies and lawyers that the provisions concerning the Court do not reflect the spirit of the recommendations in Part 1 of its report. It reports several shortcomings:

- the fact that the Court is an integral part of the Department
- the fact that its presiding officers are appointed by the Minister and not by the State President
- the fact that the line procedure, and other matters of appeal, are not clearly provided for
- the limit on its judicial jurisdiction to matters arising from laws administered by the Department of Manpower
- uncertainty as to whether orders, instructions and judgements of the Court are binding, and if so, how they are to be enforced. (4.44.1)

However, the Commission notes that the Court itself has already submitted proposals for amendment of the legislation. It therefore confines itself to *recommending:*

- that urgent attention be given to the shortcomings of the Court
- that the various facets of its status, composition and functions be dealt with more comprehensively in the legislation
- that the principle of maximal substitution of the Court for the Minister in judicial or quasi-judicial matters be accepted and implemented. (4.46.1–3)

The *government* has directed the NMC, in co-operation with the President of the Industrial Court, to investigate these matters and will consider the question of substitution for the Minister by the Court in terms of this investigation. (WP 4.19 and 4.20)

The Commission also considered a proposal from the Department that the fees of the Court be raised from R60 a day to R200 a day, in order to encourage settlement of disputes outside the Court. It concluded that the cost of litigation in the Court should be kept as low as possible, since 'the success of the new labour dispensation is largely dependent on the Industrial Court's being accessible to the man in the street'. (4.99)

The Commission therefore *recommends* that the present fees be maintained. (4.99) The *government* accepts this recommendation. (WP 4.38)

The Commission considers that breaches of the employer-worker relationship and unfair labour practices should be brought within the jurisdiction of the Industrial Court. It *suggests* that a code of fair employment practices could be built up on the basis of the Industrial Court and the industrial council system. (4.127) The *government* accepts the principle of fair employment practices legislation, but considers that this is already enshrined in labour legislation as far as possible. (WP 4.51)

The Commission also considers that many offences under statutes administered by the Department of Manpower should be decriminalised. Excessive state intervention through the criminalisation of essentially civil matters, is inconsistent with the principle of self-governance in the private sector, it says. (4.118) It recommends:

- decriminalisation of offences wherever possible, bearing in mind the need for discipline in cases such as non-observance of industrial council agreements and other wage regulating measures (4.120.1)
- urgent research into the extension of the Industrial Court's jurisdiction in these offences. (4.120.2)

The *government* is not against the principle of decriminalisation, but considers that removing existing sanctions without replacing them with other effective sanctions will seriously hamper the administration of the Act. Extension of the role of the Court would require its total restructuring and the duplication of existing judicial machinery. (WP 4.47)

MINIMUM WAGES

At present, the Commission reports, there are 69 wage determinations in force, covering some 900 000 workers. Since 1970 there has been a steady decline in the number of determinations and the number of white, 'coloured' and Asian workers covered. For African workers the figures have remained more or less constant. (4.134.8 and 4.134.9)

The Commission outlines the procedure followed in a Wage Board investigation (4.134.1 to 4.134.7) and points to the need for streamlining. As wage determinations are revised only every 3 years, minimum rates fall behind rises in the cost of living. However, the inclusion of 'escalator clauses' pegged to the consumer price index is not practicable in South Africa becasue

- it could have disastrous effects on the ability of employers, especially small employers, to continue production
- the complexity of the system could cause mistakes and misunderstandings and lead to labour unrest
- it would be difficult to relate these increases to productivity
- the system would be inflationary. (4.134.10and 4.134.11)

The Commission considered the long delay (an average of 16 months) between investigations and the promulgation of determinations, focussing on two aspects:

- Section 13 of the Wage Act allows for publishing of the recommendations in the Government Gazette and the press, inviting objections. The Commission considers this unnecessary as the views and requirements of interested parties are considered in the framing of the determinations.
- Section 11 (9) provides for the tabling in both houses of parliament of every report and recommendation and reservation. The Commission questions the need for this, since the purpose of the reports is merely to substantiate the Board's recommendations to the Minister. (4.134.20 to 4.134.23)

The Commission therefore *recommends:*

- abolition of the tabling of reports and recommendations and of publication of recommendations for objections. (4.137.2) The *government* has already repealed the relevant sections of the Act in terms of the Wage Amendment Act, 1981 (WP4.53)
- Constant review of administrative, procedure to speed up determinations. (4.137.4) The *government* points out that the Wage Act was amended extensively in 1981 for this purpose. The Board usually provides for annual increases for 2 to 3 years and where possible confines revisions of determinations to wage clauses. (WP 4.55)
- Employers should be urged to introduce steep wage curves. (4.137.5) The *government* does not support this recommendation, as it considers intervention would deviate from the policy of maximum self-governance and autonomy of action. (WP 4.56)
- Application of the Act to farm and domestic workers. (4.137.3)

Here the Commission argues that the exclusion of classes of workers is no longer justified and as a beginning, farm and domestic workers should be included in the provisions of the Act. The *government* states that it will investigate this matter. (WP 4.54)

The Commission also considered the question of national minimum wage legislation and rejected it because:

- it would be contrary to free-market principles, it would deviate from self-governance in industry and 'run counter to the government's stated policy of encouraging and promoting free collective bargaining'
- it would have retarding effects on employment as a result of the replacement of men by machines
- it would be inflationary.

The Commission refers to ILO reports, debates and decisions to back up its view. (4.134.12 to 4.134.18)

Commissionerss Botes, Grobelaar, Munsook and Sutton present a *minority* recommendation that the current minimum wage system be extended on a sectoral and regional basis through a special division of the Wage Board, also to farm and domestic workers, industrial councils, government departments and semi-state undertakings. They also recommend that the Minister be empowered to make minimum wage orders which can override industrial council provisions. (4.138)

PROGRESS IN IMPLEMENTING POLICY

In the first parliamentary session of 1981 the following acts were amended:

- the Workmen's Compensation Act, 1941, was amended to raise the benefits payable and to raise the earnings level below which the Act applies from R9 600 to R12 000 a year.
- the Unemployment Insurance Act, 1966, was amended to provide for unemployment otherwise than as a contributor to the Fund to be taken into account for the payment of benefits for illness, maternity and death, if the necessary credits have been obtained.
- the Wage Act, 1957, was amended to provide for the streamlining of the Wage Board's functioning and to prohibit differentiation on the basis of sex. (WP 2.2)

The Manpower Training Bill, the Guidance and Placement Bill and the Bill to amend the Industrial Conciliation Act, 1956, were piloted through parliament in the second session of 1981. (WP 2.3)

Following the report of the Wiehahn Commission on employment, social security and health and safety (Parts 3 and 4), the government decided to establish:

- a separate occupational health act to be administered by the Department of Health
- a Directorate of Industrial Health in the Department of Health
- a Directorate of Occupational Safety in the Department of Manpower

Two new bills administered by the Department of Manpower, the Machinery and Occupational Safety Bill and the Conditions of Employment Bill, which replace the Factories Act and Shops and Offices Act, were published for comment.

These two bills, a bill to further amend the Unemployment Insurance Act, and a bill to further amend the Industrial Conciliation Act, will be introduced in the

1982 parliamentary session. (2.3.1 and 2.3.2)

Between 1 October 1979 and the end of May 1981 37 unions, one for whites only, five for 'coloureds' only, 21 for blacks only and 10 for all races, applied for registration. One white union, 5 'coloured', 17 black, 2 white, 'coloured' and black and 5 'coloured' and black unions have been registered. The rest of the applications are still under consideration. (WP 2.4)

In addition 52 registered unions requested Minsterial approval to extend their membership. All but one application have been approved, and the other is still under consideration.

There are now 195 registered unions, 78 for whites only, 52 for 'coloureds' only, 17 for blacks only. The constitutions of 40 unions provide for white and 'coloured' members, of 3 unions for white, 'coloured' and black members and of 5 for 'coloured' and black members. There are 261 registered employer organisations. (WP 2.4.1)

Discussions between the parties concerned and the Department of Manpower are continuing on the question of the withdrawal of Work Reservation Determinations 4 (municipality of Cape Town) and 27 (sampling, surveying and ventilation on the mines). Some exemptions have been granted, and it is hoped that these determinations will soon be phased out completely (WP 2.5)

The report of the NMC on the closed shop has been received and the government has decided that the practice should continue, but with certain safeguards. (WP 2.6.2)

Draft rules for the proceedings of the Industrial Court are being finalised (WP 2.7)

By the end of May 1981, 184 applications to indenture black apprentices had been referred by Apprenticeship Committees to the Registrar of Apprenticeship and approved. Between the beginning of January and the end of May 1981 a total of 3 625 apprenticeship contracts were registered, 102 of them for black apprentices.

Tax concessions on the training of apprentices, applicable from 1 October 1979, have had 'a noticeable effect' on the training of apprentices. (WP 2.8)

The recommendations of a special subcommittee of the Manpower Board on compulsory military service and apprenticeship have been approved and exemption boards will be instructed to grant deferment of military service as far as possible, subject to certain stipulations. (WP 2.9)

The Trade Training Centres at Kasselsvlei in Cape Town (for 'coloured' workers) started with 94 trainees in January. A Centre for 90 white workers at Vereniging will open early in 1982. (WP 2.10)

In terms of the In-Service Training Act, 1979, 340 training schemes and 91 private training centres had been registered by the end of May 1981. A total of 528 schemes and 42 centres had been registered in terms of the Black Employees' In-Service Training Act, 1976. Six public in-service training centres have now

also been registered as private centres so that white, 'coloured' and Asian workers can be trained there. Amounts of R5,25-million for provision of additional facilities and R2-million for training equipment have been approved for the public in-service training centres in the 1981-82 financial year. (WP 2.11, 2.11.1 and 2.11.2)

Eli Weinberg - a brief history of his life

Luli Callinicos

Eli Weinberg, Administrative Secretary of SACTU, died aged 73 years, on July 19 1981 in Dar es Salaam, Tanzania.

With him went one more example of that generation of South African labour activists whose lives illustrated and were bound up with, the formative history of the black trade union movement in South Africa.

Eli Weinberg was born in 1908 in Libau, a port on the Baltic in Latvia; at that time an independent republic which had strong fascist leanings. The First World War and then the Russian Revolution had a profound influence on him as a child and at the age of 16, working for the railways, he joined a trade union. He soon became deeply involved in its activities. He was arrested twice for his trade union activities, the second time in 1928, when he was jailed for his part in a general strike held in protest against anti-trade union legislation.

With this background Eli Weinberg arrived in South Africa in December 1929, just one month before the state closed its doors to east European Jews. He had arrived in a country whose working class was racially divided and therefore weak. But black unregistered trade unions were springing up, organised mainly by the "purged" communists both black and white, from the ICU. The S.A. Federation of Non-European Trade Unions had been formed in 1928, consisting of 5 black unions. In the early thirties the African Federation of Trade Unions was founded.

In 1932 Eli Weinberg joined the Communist Party, then a legal organisation, and threw himself into the struggle for a united working class through the trade union movement. The 1930s were a turning point in worker organisations. At the time, the unions were dominated by white controlled craft unions; but with changes in the labour process of many industries and increasing industrial expansion in the mid-thirties after the depression, there was a rapid proletarianisation of blacks and a number of new industrial unions were established. Eli Weinberg was one of the founders of the African Garment Workers Union in 1935, having been invited by Solly Sachs for assistance in this key industry in the Cape. He also organised the sweet workers in Port Elizabeth. At the same time, Weinberg served as General Secretary of several white unions, the aim always being to work towards non-racial unions.

As a trade union official, Eli Weinberg was also a member of the SA Trades and Labour Council, which was open to all unions, including African unions. Theoretically it had no colour bar in its constitution, but despite Weinberg's efforts, no Africans were ever accepted onto the Executive Committee, and the federation

did little to further the development of African workers. But Weinberg remained, consistently campaigning for the inclusion of Africans in a united working class, using whatever loopholes possible to extend benefits to the most exploited work-force, the black workers.

In 1941 the Council of Non-European Trade Unions was formed – a federation that was to lead black workers during the struggles of the 1940s. Weinberg was active in the CNETU and also, during those years, in the African Mine Workers Union, which had become militant enough to warrant a special War Measures Act No. 1425, prohibiting gatherings of more than 20 Africans on mining property.

But confrontations continued. In 1946, the AMWU launched a strike which was perhaps to be the most significant in South African history. Between 70 000 and 100 000 black miners from 21 mines went on strike. The CNETU, supported by the ANC, immediately called general strike. The strike held out for a week, while Union leaders, including Weinberg, conducted operations at a secret venue. Eventually, the strike was forcibly broken up by the police, who stampeded the workers back into the compounds and underground. In the process 12 men had been killed, 1200 injured and 88 trade unionists, including chairman JB Marks, arrested.

The strike was crushed; but it had long-term effects. For one thing, it was to lead to the historic alliance between the black trade union movement and the ANC. It also shook deeply the white ruling class which, as in the aftermath of the 1922 strike, witnessed a regrouping of some fractions of capital and an alliance with white labour – leading in 1948 to the election victory of the National Party.

Eli Weinberg in the meantime had been serving as the General Secretary of the National Union of Commercial Travellers since 1943. By the late forties he was resisting increasing pressure to exclude African unions completely from the SAT & LC. After 1948, under the barrage of apartheid legislation aimed at all blacks, and particularly black workers, the trade union movement suffered a series of blows. The 1949 Unemployment Insurance Act excluded most Africans from benefits; the 1951 Native Building Workers Act prevented Africans from performing skilled work except in black townships where they were paid a third less (and at a considerable saving to the state); in the same year labour bureaux were established to make labour distribution more efficient, especially where there were "shortages" of cheap labour, notably on the commercial farms; in 1952 all urban areas were declared subject to influx controls. Then the Native Labour (Settlement of Disputes) Act permanently extended the War Measures Acts to declare all strikes, lockouts and sympathy strikes to be illegal for Africans. It furthermore prevented Africans from representing workers at conciliation boards or industrial council meetings and from the collection of union dues by stop orders.

In 1950 the Communist Party was banned. In 1953 Eli Weinberg was hit by a succession of bannings which were to continue for the next 23 years. He was also listed as a communist, together with some fifty other trade unionists, and pre-

vented from union organising. Once this happened, the SAT & LC dissolved itself and reformed as an all-white organisation. In response, the CNETU and about 14 other unionists, including Weinberg, convened another conference which led to the formation of SACTU in March 1955.

From its inception SACTU was aligned with the Congress movement. Eli Weinberg believed that the economic struggle could not be isolated from the political struggle for a democratic South Africa, and that while SACTU did not bar membership on the basis of colour or race, its priority was to organise African workers as the most oppressed, exploited and least organised workers in the country. SACTU therefore was a partner in the Congress Alliance – but within the Alliance, it was the only affiliate to confront not only the state, but also management.

Weinberg was instrumental in establishing, in June 1953, the little-known, Non-European Metal Workers Joint Committee, a committee consisting of the African Motor Industry Workers Union and the Transvaal Non-European Iron and Steel Workers Union. A month later he was banned and had to absent himself from the committee for two years. In December of that year he was able to return, after successfully winning an appeal, invalidating the notice served by the Minister of Justice. However, the following year the Suppression of Communism Act was amended and Weinberg was again prohibited from attending meetings.

As a banned person, Weinberg was also prohibited from entering "black" areas, factories or educational institutions, and from writing or publishing. He was not however, prevented from pursuing his other early love, photography. He set up business in his home in Orchards, with a plaque above his gate – " Eli Weinberg – photographer", and undertook many commissions, ranging from now famous studio portraits of Congress leaders to regular contributions to the ANC-backed *New Age,* until its banning in 1962. A great deal of Eli Weinberg's visual record of the struggles against exploitation and oppression is surprisingly familiar to most of us interested in the social history of his time. There are too many "classics" to mention all by name. Perhaps his photo montage of the Treason Trialists, who had to be photographed in small groups because the Joubert Park keeper objected to "kaffirs" in the park; or the photographs of the bus boycotis, on the 1957 and 1958 stay-at-homes, the Kliptown Freedom Charter scenes or simply day-to-day scenes of factory workers, will be most familiar. They have become part of the culture of our time.

But Weinberg did not abandon his trade union activities. He continued to participate in worker issues. He responded vigorously, for example, to the 1956 Industrial Conciliation Act, which extended job reservation and aimed to enforce further racial segregation in the registered unions. The Act succeeded in bringing out the contradictions and divisions which existed amongst even the most committed trade unionists.

SACTU's strongest and most organised affiliates were the registered unions, mostly in textiles, laundry, food and canning. The issue became one of whether

these registered unions should continue to struggle within the new limitations in order to persuade employers to extend benefits to African workers in industrial agreements; or, as Eli Weinberg in March 1957 argued in *Truth,* the laundry workers' paper (he was between bannings) there should be voluntary deregistration so that black members could become equal partners, participating fully in the control of funds; in decision making in the constitution; in elections and in strike action. For almost two years there was heated, sometimes bitter debate over how trade unions should respond to the increasing state control over worker organisations. The outcome of the issue was that individual unions were left to make their own decisions. The major registered unions opted to comply with the Act and confine its black membership to "coloured" workers.

During the 1950s Eli Weinberg was also active in the National SACTU School, lecturing and, as a veteran trade unionist, serving as a resource for younger workers and organisers. It was a decade of mounting resistance, both in the workplace and the community, starting with the 1952 Defiance Campaign, carrying it through to challenges against the removals in Sophiatown, Bantu Education, low wages, transport costs and the extension of passes to women. The resistance met with varying degrees of success, but was effective in creating a mass following for the Congress movement, which culminated in a period of intense activity at the end of the decade.

In 1960; the breakaway Pan African Congress challenged the ANC to greater militancy and launched the anti-pass campaign, which resulted in the tragedy of Sharpville. In the ensuing burning of the passes and the general panic amongst the ruling class, a state of emergency was declared. Along with 2000 other people Eli and his wife Violet were detained. The ANC and the PAC were banned and went underground. SACTU, however, was not banned. It continued to operate, somewhat ambiguously, until one by one its most effective members were banned and the organisation declined. During the economic upswing of the mid-60s, strong worker organisations were absent.

In 1963 Weinberg was again detained. After a lengthy trial together with others – in the "Fisher trial" – he was sentenced to 5 years for attempting to revive the Communist Party for revolutionary purposes. Violet Weinberg was jailed the following year. During their imprisonment the Weinbergs suffered a tragic blow in the sudden death of their son, Mark. Neither Eli nor Violet was permitted to attend the funeral. When Weinberg was released in 1970 he was again banned and house arrested.

Then, in the wake of the 1973 Durban strikes there was a resurgence of black trade unions; and in June 1976, the Soweto uprising sparked off nation-wide resistance. A number of Weinberg's friends were picked up. In September of that year, Weinberg went into exile.

Dar-es-Salaam became his base. There he worked for SACTU and also taught photography at the Tanzania School of Journalism. He also published a book of

his photographs taken in South Africa – *Portrait of a People* – and was, in his capacity as a SACTU executive committee member, adviser to the history of SACTU, *Organise or Starve!*

Earlier this year Weinberg returned from a trip to Europe, and was about to move SACTU's external headquarters to Lusaka, Zambia, with plans to set up a SACTU training school, when he died – just two weeks before his long-time friend and colleague from ANC, SACTU and *New Age* days, Joe Gqabi, was assassinated in Zimbabwe. Eli leaves behind him his wife, Violet, now in exile, and his daughter Sheila, who at 18 was the youngest person ever to be detained at the time, and is now banned and house afrested in Johannesburg.

DOCUMENTS

Report on the Work Stoppage at Richards Bay Minerals National Federation of Workers

1. Meeting Between Union Officials and Management of Richards Bay Minerals, 23rd June

(a) On the 23rd June 1981, a meeting between workers representatives and management of RBM was held at Richards Hotel, Richards Bay. The meeting was held on the request by the Union to discuss the possibility of Union recognition as well as to request the management to allow members to pay Union dues by means of the stop orders.

(b) Management indicated during discussions that RBM is willing to negotiate with any representative group that can prove the support by employees of 50 percent or more. To prove this, management was prepared to pay for the independent audit of the Receipt Books of the Union in order to ascertain *fully paid up membership* of the Union.

(c) The Union, on the other hand, suggested that a referendum be held or a secret ballot be held to ascertain the representativeness of NISMAWU. This would not in any manner inconvenience the management since RBM is on record that RBM does use "secret ballot" when voting for the Works Council system, which is the management initiated system of communication currently in use at RBM.

Moreover, it had been established that the management of RBM does directly or indirectly victimise those employees known to be active members of the Union. One such employee is Mr Enock Gumede, a shop steward committee member, who was suspended on the 18th of June 1981 for allegedly being found in possession of a Union membership application form. The suspension was later withdrawn by a member of the senior management. The President and the Vice President of this Union have also been interrogated by the management regarding their Union activities.
As a result of the management's attitude, the President of this Union, Mr K.E. Nkuku, was forced to resign his position as *Acting Foreman,* since in this position, he was not allowed to associate or organise fixed rate workers, who are members of this Union.

(d) The Union argued that it further could not ascertain what interest, RBM management has on the "paid up" members of this Union. In terms of the Union's Constitution, a person shall be admitted a member on payment of a prescribed joining fee or on a *decision* of the Executive Council of the

Union. It was therefore possible that there might be some confusion as to the true number of employees that *want* to be represented by NISMAWU. On the credit side of the secret ballot, the management would get a democratic and accurate indication of the true aspirations of its workers regarding the system of representation. To protect workers/members against victimisation, ballot papers would contain no names of the workers.

(e) Since management refused (repeatedly) to hold a referendum or ballot, on the grounds that such action would constitute a "de facto" recognition of the Union, the workers representatives suggested that the workers be allowed to personally present themselves to the management for physical counting in order to satisfy RBM that they (workers) want to be represented by the Union and no longer by the Works Council which was fast losing popularity among the workers. It was repeatedly stressed to the management that such "self presentation" for "counting" by the workers would be no strike at all. Management would only have to satisfy itself that the majority of the black workers were in favour of being represented by the Union. Again the management refused; but decided to adjourn the meeting until the next morning.

2. Meeting Resumed (24th June)

(a) Meeting resumed shortly after 9.00a.m. on the 24th June 1981 at Richards Hotel, Richards Bay. The management reported that after careful deliberations, it still insists that the only acceptable manner to prove our representativeness will be to audit our receipt books to ascertain the paid-up members. Only such paid-up members would be regarded as active members of this Union and nobody else.
The Union repeated its arguments concerning "paid up membership ", but management would not reverse its decision. During the talks of the previous day, management once indicated that RBM might consider a secret ballot to test the representativeness of our Union, NISMAWU, and other Unions that once approached RBM; namely BAWU and FOSATU.

(b) During the previous day, management had disputed and questioned the wisdom of holding such a ballot whereas it was only NISMAWU that has come up with an idea of a secret ballot. Besides, so many names on the ballot paper might tend to confuse the less literate or illiterate employees who might be confused by the many different names on the paper. However, seeing that the management at this meeting (24/6/81), was adamant that it only wants the audit of the Union's books, the workers representatives indicated that they can consider the ballot as suggested by the management; that is the ballot paper containing many Union names.

The management then flatly refused such a suggestion; and told the workers representatives that management has "changed their minds". To this the deadlock was reached and the meeting closed.

3. **Meeting with the Workers on the 24th June 1981**
   (a) A "report back" meeting was held at Esikhawini Methodist Church on the evening of the 24th June. Workers were given full report of the discussions between worker's representatives and the management of RBM. Suggestions by management, as well as suggestions by the worker's representatives, were fully discussed at this meeting.

   (b) After thorough discussions of the pros and cons of the suggestions to prove the Union's majority support by the black work force, the meeting *unanimously* decided that all workers who are members of the Union, including those who have not enrolled yet, (but are eager to join the Union) will assemble at the factory gate (RBM) early in the morning of the 25th June 1981 (Thursday) before they commence duties and request to be counted by the management and then proceed to their work places.
   The Union leaders then warned that workers must remember that such an action should not at all be regarded as a strike; and workers were warned to behave in a very decent and calm manner no matter what the circumstances.

4. **Thursday (25th June)**
   More than 500 workers of RBM assembled outside the gates and waited to be counted by the management. Workers were told by the management to elect 14 representatives and proceed to their work places whilst negotiations continue with such representatives. Workers waited to remind the management that they already have elected representatives among themselves under the auspices of their Union.
   However, the management did not afford workers the opportunity to enter into any meaningful dialogue. Workers assembled themselves inside the factory gates. After a while, Mr B.J. Grierson, the managing director of the company told workers that he will shut down the plant and send all workers back home. Workers would be regarded as being absent from work.
   Six buses were made available, but workers still continued to "sit in", since they never considered themselves on strike. It was only at 3.00p.m. that workers were taken home in the buses . The "sit in" was conducted in a very calm and orderly manner without any incident.

5. **Friday (26th June) at RBM**
   On Friday the 26th June; workers arrived at the factory and found the gates

locked. Management told workers that they will go to work in a manner prescribed by the management. The management then "called in" workers per shift. However, no "shift" appeared and the management concluded that no-one "wanted to work".
Workers were then told that like the previous day, they will be sent back home. At this stage workers were told that they are being misled by their "advisers" who are not affected by the "strike action". Workers were not given any opportunity to speak to the management. The Union leaders, who are mostly RBM employees continually appealed to the workers to behave well and not to cause any trouble. Therefore, there was always a high degree of discipline. At 3.00pm., all workers got into the buses and left.

6. **Saturday (27th June) at RBM**
On the morning of Saturday the 27th June, the workers were still "locked out". The management told workers that RBM is speaking to them *for the last time.* Workers should not think that they are in any way crippling the firm; but the firm can also not keep the workers for long.
Again, like during the two previous days, workers were not afforded the opportunity to speak to the management. The workers committee never stopped to encourage workers to keep calm. The employer, in his address, also thanked the workers for remaining calm and orderly. Workers got into the buses at 3.00pm.

7. **Sunday (28th June) at RBM**
   (a) Workers assembled at the factory gates as in the past three days of the "work stoppage". Management approached the workers and told them that management is now aware that the "law abiding" workers who are eager to continue with their work have been assaulted, and their houses (which are RBM property) damaged.
   Management said the Police are dealing with the law breakers and promised that those responsible for violence will be dealt with accordingly, whatever the outcome of this "work stoppage". Again, like in the past three days, workers were never given an opportunity to speak to the management.

   (b) A delegation of ten men was sent by the workers to the local tribal chief, Chief Mbuyazi of Kwa-Mbonambi, a black village just outside Richards Bay Town where RBM is situated. The purpose of sending the delegation was because of rumours among the workers that the Chief was called in on Thursday the 25th by the management.
   Rumours had it that the Chief told the management or the management told the chief that the residents of Nseleni and Esikhawini Townships (who are members of the Union) had started the strike. There was also an allegation that the employer is sending in the private "Kombi's" at night

to fetch labour at the Chief's area.

Workers felt that such action might cause antagonism among the workers and ultimately result in violent outbursts.

(c) After discussion with the Chief, it emerged that these allegations were unfounded. The Chief did say that he emphasised to the RBM management on the 25th June, that he wanted to speak to the so called "striking" workers. He was stopped from doing this by the management who said the chief's dignity will be vilified by the striking workers as they (the workers) will use impolite language when speaking to the Chief. However, the Chief promised to meet again with the workers delegation on Monday the 30th June.

(d) At 3.00p.m. workers left for their respective residential places.

8. **Monday at RBM, 29th June**

The buses taking the workers to RBM on Monday morning were escorted by armed Police. When the workers arrived at the company premises, the Police were already on stand by. The managing director of RBM Mr B.J. Grierson then started addressing the workers. He told them that all workers below the grade of 10, had been fired with effect from the previous day (Sunday 29/6/81).

The reasons given by Mr Grierson for firing employees were:

(a) continuation of an illegal strike by employees and,

(b) violence allegedly by RBM "striking" employees. Workers told Mr Gierson that their representatives asked for the secret ballot and the management refused. Workers also made it clear that the Union is the workers themselves. Workers were bitter that the management failed to grant stop order facilities regarding the collection of their Union dues, whereas management usually makes deductions without the consent of the individual worker, e.g. Pension contributions and medical aid.

The Chairman of NISMAWU asked to be given an opportunity to address the workers, but the Police interrupted and said the time for meeting is over; and reminded of the provisions of the Act that prohibits outside gathering. Workers were then escorted by the Police after they all refused to collect their pay packets. (Management insisted that workers reapply subject to screening as some would not be re-employed.)

9. **Further Developments**

(a) Meeting with Kwa-Zulu Government: 29th June

A meeting was held between the worker representatives and the Minister

of Interior, Dr Frank Mdlalose on Monday the 29th June, in a bid to settle the dispute with the management of RBM. The worker representatives and the Minister discussed the cause of the dispute in full. Dr Mdlalose then phoned the managing director of RBM, Mr Grierson, and tried his best to request Mr Grierson to take back all the fired employees. The Minister also enlightened the managing director on the implications and complications of refusing to re-employ all workers.

After a lengthy talk with Mr Grierson, the Minister was promised a reply the following morning (Tuesday 30th). The worker representatives pointed out to Dr Mdlalose the fact that most fired employees were occupants of RBM houses at Esikhawini, and about sixty workers at Enseleni Townships were also occupying houses reserved for the RBM workforce.

(b) **Tuesday the 30th June 1981 at Ulundi:**

The worker representatives met with the Minister of Interior at Ulundi to get RBM management's reply to the previous day's telephonic conversation. Dr Mdlalose, the Minister, told the workers representatives that RBM is adamant that workers must re-apply subject to normal screening. Mr Grierson said he will not re-employ all workers especially those that were with the MINISTER (the workers' representatives). Among these workers representatives there was the President Mr K.E. Nkuku and Chairman (Vice President) Mr R. Zondo.

10 **Meeting with Esikhawini Town Council:**

A meeting with Esikhawini Town Council was held on Tuesday night in a bid to persuade the councillors to call a mass meeting of the residents. The purpose of the meeting would be to ask the community to wholeheartedly support the struggle of the sacked RBM employees to win unconditional re-instatement or re-employment. The meeting finally agreed to send the Esikhawini Mayor, Mr Welcome Shange to the "report back" meeting that was to be held with the sacked workers at 12.00 noon the following day.

11. **Meeting on the 1st July 1981:**

(a) A meeting with the fired workers was held at Esikhawini Methodist Church at 12.00 noon on the 1st July. 492 workers from Esikhawini, including delegates sent by workers of Enseleni, Ngwelezane, Nhlabane and Ntambanana attended.

(b) The Vice President of NISMAWU, Mr Rex Zondo gave the full report of the discussions with the Minister of Interior; Dr F.T. Ndlalose.

(c) The President and General Secretary of National Federation of Workers, Messrs Keith Nkuku and Matthews Oliphant appealed to the workers to refrain from any acts of the alleged violence in the townships. Mr Nkuku

thanked workers for their continued discipline in all gatherings held by the Union. The meeting was held in the presence of the Mayor of Esikhawini Mr Welcome Shange.

12. **Resolutions taken at the Meeting:**

(i) *On Re-applying for work at RBM:*
Workers unanimously resolved not to re-apply until management undertakes to re-instate or re-employ all fired employees unconditionally and continue negotiation for recognition of their Union, the National Iron, Steel, Metal & Allied Workers Union.

(ii) *On the Vacation of RBM Houses at the Townships:*
Workers have been notified by RBM that they will have to vacate RBM houses on the 13th July 1981 at 9.00. Since this is a serious issue, and likely to deprive hundreds of families of accommodation, the mayor of Esikhawini, Mr Welcome Shange was requested to take up the matter further with his fellow councillors and the Kwa-Zulu Government. Legal advice will also be sought by the National Federation of Workers.

(iii) *On the Arrest of Fellow Workers:*
It was resolved that the Union seeks legal aid and advice regarding the arrest by the SAP of approximately 13 members for alleged public violence.

The Mayor Mr W. Shange thanked workers for the orderly manner in which the meeting was conducted. He mentioned that RBM has summarily fired workers because RBM knows that there is vast unemployment in the African community. He promised to consult with his fellow councillors on this matter.

Reverend Dandala of the Methodist Church thanked the Union leaders and the Union members for their continued respect of the Church since the Union started using his Church for meetings during the past six months. He said that he fully sympathises with the sacked workers of RBM.

13. **Meeting with the KwaZulu Minister of Interior (3rd July)**

(a) The workers representatives were informed by the ward councillor at Esikhawini that they were to meet with the Chief Minister of Kwa Zulu, Chief Buthelezi on Friday 3rd July at Ulundi. Without any further dalay, the worker representatives drove to Ulundi to see the Chief Minister, only to find that they were again made to talk to the Minister of Interior, Dr F.T. Mdlalose.

(b) Since the purpose of the proposed meeting with the Chief Minister was to

find ways and means to persuade RBM management to re-instate or re-employ all workers unconditionally, it is clear that our meeting with the Minister of Interior could not achieve the desired results. An assurance was given that Kwa Zulu Government would do everything possible to help solve the problems of the sacked workers.

14. **Meeting with Chief Mbuyazi of Kwa Mbonambi where RBM is situated: (3rd July)**

Whilst worker representatives went to Ulundi, other worker representatives went to meet with the local tribal Chief of Kwa Mbonambi, Chief Mbuyazi. The purpose of this meeting with the local Chief was to get results of the Chief's meeting with the RBM management. However, the Chief could not give any results of his meeting with management since he wanted other Union leaders to be present when he gives a "report back". The worker representatives were told to come back (with Union leaders) on Tuesday the 7th July 1981.

15. **Meeting with Sacked Workers on 4th July**:

Since some of the workers were becoming disillusioned and hopeless, a meeting was called on the 4th July with the hope of giving workers a "report back" after meeting with the Minister of Interior and the local Chief Mbuyazi. However, since there was nothing concrete to report, it was agreed that the meeting be adjourned until the next day.

16. **Meeting with Chief Mbuyazi on the 5th July (8h00)**

(a) Although originally it was arranged that Chief Mbuyazi would meet with Union leaders on the 7th July, it was felt that the matter warranted no further delays. It was for this reason that ten Union leaders went to meet with the Chief, in order to get results of the Chief's meeting with the RBM management.

(b) The Chief informed the Union leaders that he and Mr Dube, Kwa Zulu Member of Parliament, met with the management of RBM with the aim of ending the deadlock between the workers and RBM management. After lengthy discussions, management finally *agreed* to re-employ all the sacked workers unconditionally. Workers would be placed in the position they were in before the work stoppage. In any case, workers would be regarded as newly employed. The Chief told the Union leaders that should there be any breach of this promise by management, the affected workers must report back to him or to the MP, Mr Dube.

17. **Community Meeting on the 5th July (14h00)**

(a) The Town Councillors of Esikhawini called a community meeting in order to ask the community to sympathise with the workers of RBM. Most of

the sacked workers together with their representatives were present at this meeting.

(b) The President and the Vice President of NISMAWU gave full details of the events leading to the work stoppage and subsequent dismissal. The members of the community were asked to show solidarity with the dismissed workers.

(c) The Councillors told the RBM workers that it was their wish and the wishes of Kwa Zulu Government that the workers go back to RBM and re-apply. They said Kwa Zulu Government has promised to help those workers that will not be re-employed.

18. **Meeting with the Workers on 5th July (18h00):**

(a) Workers were told that Chief Mbuyazi has said that he has been told by RBM management that all the dismissed workers will be re-employed.

(b) After thorough workers' discussion and debate on the merits and disadvantages of going back to work, the clear majority voted in favour of going back to work on the understanding that all workers, repeat *all workers,* will be re-employed *unconditionally;* and that negotiations for recognition of their trade union will resume.

(c) The Chairman of the Town Councillors Mr V.W. Shange was requested to contact the management of RBM and inform the management that all workers will re-apply on the 7th July and on the 8th July.

19. **Events of Tuesday (7th July):**

(a) All workers went back to RBM as agreed at the meeting of the 5th July. However, RBM management committed a breach of its promise to re-employ all workers unconditionally, made to Chief Mbuyazi and the MP Mr Dube. Some workers were turned away and told to come back within seven days for further interview. Some, including the top union leaders, were told that the Company is no longer prepared to re-employ them.

(b) This fact was reported to the Kwa Zulu Minister of Interior through the MP Mr Dube. However, the Minister could not divulge what Kwa Zulu Government intended doing about this matter. The mayor of Esikhawini was also told about this.

20. **Conclusion:**

(a) Several attempts since (Tuesday the 7th July) to get the assistance of the Kwa Zulu Government have failed completely. People who were not re-

employed as promised by RBM through Chief Mbuyazi and the Member of Parliament Mr M. Dube have since received further notices of eviction from RBM houses at Esikhawini, a Kwa Zulu township. These sacked workers (who are invariably office bearers of the Union) have nowhere to stay and live with their families.

(b) It needs mentioning that RBM built houses in the Kwa Zulu township with the "blessings" of the Kwa Zulu Government. The occupants of these RBM houses were not allowed to obtain alternative "permanent" housing in the township. This brings us to the conclusion that the occupants of these RBM houses are targets of any form of exploitation and oppression by RBM, since if they are not prepared to subject themselves under such exploitation by RBM, they are liable to be dismissed and evicted from RBM houses. Of course, we find it strange that the Kwa Zulu Government seems powerless to stop the employer from such cruelty.

(c) The township manager informed the Union's President, Vice President and General Secretary that a Mr Bothma at Ulundi (who is a township Inspector), said that the RBM employees will not be given any alternative accommodation at Esikhawini. Mr Bothma alleged that the "fourteen" dismissed employees were given an opportunity to re-apply at RBM; but refused. (Of course, this is a gross misrepresentation of known facts.)

Appendix I

Disposition of National Federation of Workers to Kwa Zulu Ministry of Interior:

Our organisation has gleaned a number of disconcerting facts from its association with the KwaZulu Ministry of Interior; following the work stoppage and subsequent sacking of workers from Richards Bay Minerals:–

1. that the KwaZulu Ministry of Interior is totally powerless to impose any measure of pressure on any employer on the KwaZulu Border Industries on situations that warrant such pressure;

2. that the KwaZulu Ministry of Interior has led the entire Esikhawini population, interested in the developments at the RBM dispute with its workforce, on a wildgoose chase. The essence of the promise that workers would be re-instated unconditionally (as expressed through the mouthpiece of KwaZulu officials) and the subsequent breach of such promise means that the community can no longer have confidence in any promise made by employers through such a

mouthpiece.

3. that the KwaZulu Ministry of Interior's sole interest in getting workers back to work, at the expense of a certain percentage of the workforce which was not re-employed, was to avoid scandalous repercussions of its inadequacy in providing accommodation for its population, (if the five hundred or more dismissed workers stood firm on their resolve until a written undertaking to re-instate them had been made, the KwaZulu Ministry of Interior would have been faced with the task of accommodating five hundred or so households which had been evicted from the township-based RBM compound);

4. that the KwaZulu Ministry of Interior has kept our organisation at the background of its negotiations with RBM management, instead of playing a wholly 'arbitrator role' by refereeing negotiations between the officials of our organisation and the RBM management. The question arises as to why the KwaZulu Ministry of Interior no longer wishes us to participate in negotiations involving the fate of our members,

Since it is our express wish, as an organisation, to have a healthy working relationship with the KwaZulu Ministry of Interior, it is thus necessary for this Ministry to dispel any disillusionment which might have arisen in our minds following the aforementioned incidents.

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