SOUTH AFRICAN LABOUR BULLETIN

State and Capital — Responses to Labour

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Double Edition

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

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COMMENT

This double edition of the *SALB* is divided into two sections. The first focusses on the new Labour Relations Amendment Act, while the second picks up a number of issues central to the trade union movement today. In essence these latter issues – which revolve around the relationship between trade unions and the statutory labour relations system – constitute a broad background to the issues raised by the legislation itself.

Our aim has not been to reflect the particularly long and crisis-ridden history of the latest Act,* by tracing its passage through the appearances and disappearances of the various draft Bills that have emerged since the publication of the Wiehahn Report in May 1979. The larger part of our commentary is directed towards the Act itself, although we do include a section in which is documented a number of trade union responses to the March draft Bill.

The second section of the Bulletin, in raising fundamental questions relating to registration and participation in the official system, continues a two year old debate within the labour movement. We publish two contraversial articles; one by Morris on capital's response to changing patterns of struggle in the labour field, and the other by Fine, de Clercq and Innes which looks directly at the registration issue. Both articles evoked intense debate within the editorial board and, no doubt, similarly strong responses can be expected from many of our readers. We are planning to follow up the debate in our next edition by publishing replies to the article by Fine et. al. As a forum reflecting the diversity of views within the labour movement, *SALB* will be happy to consider for publication further contributions in the form of letters or short articles on the issues raised in this edition.

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In view of the continuous attempts by the state and management to divide and weaken the trade union movement in South Africa, the stand taken at the Langa summit conference on August 8, 1981 is of historic significance.

The 130 worker and union delegates, representing over 150 000 workers from 29 trade unions jointly decided to resist any incursions by the state into trade union autonomy. (See conference resolutions elsewhere in this Bulletin). This common stand must be welcomed particularly as it signifies both an acceptance of the need to adopt democratic principles as a means of unifying the labour movement nationally, and a commitment to joint action and co-operation between

*At the time of publishing, the LRA Bill had yet to be gazetted as an Act, although it had passed through all its stages in Parliament. The final gazetting of the Bill is generally a formality and no changes in the Bill are expected;thus, we refer throughout to the Act.

unions at the local level. The *SALB* believes that the Langa conference constitutes an important first step towards the unity of workers on a national basis.

* * * * *

SALB welcomes back into the labour movement those unionists whose banning orders were lifted on July 30, and who may decide to continue their work in the labour field. As we pointed out at the time of the bannings, the state was unable to put forward a single legitimate reason for disrupting their lives and interupting their work in various labour organisations (*SALB* Vol. 3 No. 4).

Furthermore, we condemn as victimisation the failure of the government to lift the banning order of a number of those banned in October 1976.

DOCUMENTS

Union Responses to March Bill

Conference of Trade Unions held in Langa, Cape town, 8th August 1981

Statement and Resolutions agreed on by Union delegates

We accept that trade unions are public bodies and accordingly we do not object to providing information with respect to our constitution, finances and representativity. However, we refuse to subject ourselves to control by anybody other than our own members. We therefore resist and reject the present system of registration insofar as it is designed to control and interefere in the internal affairs of the union.

The meeting specifically agreed to support each other in defiance of any abuse in the powers of investigation given to the authorities by the Industrial Conciliation Act.

The meeting also agreed that unions would support each other in defying the restrictions on supporting striking workers. It is an internationally recognised right of workers to withhold their labour. Moreover, under present conditions and legislation, strikes happen so frequently because of low wages, inadequate bargaining procedures and completely unworkable official dispute procedures. Workers therefore have no alternative to strike action outside of the law. It is, in any event, the duty and function of unions to stand by its members in any circumstances including the payment of strike pay. The prohibition on financial support for strikers will not be obeyed.

Resolution – Industrial Council: The meeting rejected the present Industrial Council system as an acceptable means of collective bargaining. The meeting recommended that unions that are not members of Industrial Councils should not enter any Industrial Council and requested that participating unions refer this back to their respective unions for endorsement. The unions agreed to support each other in the event of any union resisting participation on the Industrial Council.

Resolution – Ciskei: The meeting noted the severe difficulties created for workers by the homeland authorities and in particular by the current situation in the Ciskei, where union members and officials are subjected to severe harrasment and constant detentions. The meeting resolved to send a delegation to Chief Minister Sebe to express our extreme displeasure at his anti-union stance, and to obtain assurances about the security of the workers after the so-called Ciskeian independence.

Resolution Banning and Detentions: The meeting resolved to continue resisting banning and detention in any way possible and warned that continuation of this practice could only worsen the already deteriorating industrial relations situation.

Resolution – Solidarity Action: To give effect to the resolutions at the meeting the unions resolved to establish ad hoc solidarity committees in each region. These committees would discuss and initiate solidarity action arising out of our cooperation.

The meeting also resolved to convene again by November.

The following trade unions were present at the meeting and endorsed the above statement:

The General Workers' Union
The Food & Canning Workers Union
& African Food and Canning Workers Union
The Federation of South African Trade Unions (FOSATU)
Council of Unions of South Africa (CUSA)
South African Allied Workers Union (SAAWU)
MACWUSA (Motor Assemblers & Component Workers Union of South Africa)
The General Workers Union of South Africa (GWUSA)
The Black Municipal Workers Union
CCAWUSA (Commercial, Catering & Allied Workers Union of South Africa)
The Orange Vaal General Workers Union
General and Allied Workers Union (GAWU)
Cape Town Municipal Workers Association

Food & Canning Workers Union,
African Food & Canning Workers Union

Memorandum of Objections to the Director General,
Manpower Utilisation regarding the Draft Bill

The Food & Canning Workers Union was established in 1941 and registered in terms of the Industrial Conciliation Act of 1937. All employees in terms of the law engaged in the Food & Canning Manufacturing Industry were eligible for membership. Subsequent legislation compelled the Union to represent Coloured workers only. The African Food & Canning Workers Union was therefore established as an unregistered Union to cater for African workers. However, our view was then and is today that the interests of workers in the Food Canning Industry are best served by a single Union open to all workers.

Primarily for that reason when the Act was amended in 1979 to allow African workers belonging to racially separate unions to be registered, the African Food & Canning Workers Union decided not to register, rather than register as a separate Union.

The two Unions have a substantial membership in the food factories in amongst others the following areas: Ashton, Cape Town, Ceres, Doornbaai, Hout Bay, Hondeklipbaai, Laaiplek, Johannesburg, Lamberts Bay, Malmesbury, Montagu, Mossel Bay, Paarl, Port Elizabeth, Port Nolloth, Saldanha Bay, Somerset West, Tulbagh, St Helena Bay, Wellington, Wolseley and Worcester, Durban, East London, George, Grabouw, Groot Drakenstein.

We have taken note of the above Bill, and decided to make joint representations concerning the Bill. We have also taken note of certain aspects of the Bill that we consider to be positive, in particular with regard to removing racial discrimination in the present Industrial Conciliation Act, 1956, as amended (hereinafter referred to as the Act), the inclusion of contract or "foreign" workers in the definition of employee, and removing discrimination based on sex from certain wage agreements. However, there are other proposals in the Bill that cause us grave concern and which we consider objectionable. We wish to bring these objections to your attention and urge you to reconsider these proposals in the light of our objections.

1. Our objective as a trade union is to unite all workers in the food industry, in order to press for better living and working conditions for our members. Any legislation which makes our task more difficult, whether by creating racial or

other divisions between workers or trade unions, or by lending encouragement to the formation of a weak and fragmented trade union movement, is against our interests and the interests of the trade union movement as we see it.

We object to the present Act because its system of registration has created and enforced divisions along racial lines between White, Coloured and African workers and trade unions. This is not the only objectionable feature of the present system of registration.
Certain important categories of workers are excluded, such as workers employed in "farming operations" (a term which is not defined) domestic workers and workers employed by the State. Regarding "farming operations", this term has been held to include large establishments packing or processing food products which our Unions might organise. Further, because the constitution of a registered Union must be approved by the Registrar, the Registrar is in a position to lay down to a Union which industries they may cover and whom they may organise. As a result of the restrictive and divisive provisions of the present system of registration, there are Unions which are registered and Unions which remain unregistered.
The Bill proposes the recognition of non-racial Unions which we welcome. Yet we note with alarm that the system of registration proposed still maintains racial and other divisions in trade unions and so will lead to the creation of a weak and fragmented trade union movement.
The proposed amendments, concerning registration in the Bill we refer to are as follows:

Section 4(1)(d): The Registrar has now to refuse to register any Union which does not provide him with *any* information he may require. This further widens the Registrar's powers to refuse to register Unions.

Section 4(c): If a Union objects to the registration of another Union, the Registrar has only to take into account the members of the objecting Union who are eligible for membership of the applicant Union. We take this to mean that if a racially exclusive Union were to apply for registration in an area or industry where a multiracial Union represented an overall majority of workers, then the multiracial Union would only be able to object in so far as it has members of the same racial group as the racially exclusive Union. Clearly this makes it easier for Unions which divide workers, whether on racial or other lines, to be established. In fact,this can only serve to entrench the very divisions which we oppose.

Section 4(5)(a)(iii) prohibits the registration of a Union that is "affiliated to any political party or political organisation". The meaning of "political organi-

sation" is extremely wide and, in our opinion, vague. In a country in which politics intrudes in the everyday lives of the workers to the extent that it does in South Africa it is often a matter of opinion whether any activity has the object of promoting the "political interests" of some or any workers. Our objection is that the Registrar may refuse to register a Union because in *his* opinion it is engaged in political activity.

Section 4(6)(a) enables members of an existing Union to break away and be registered as a separate Union, without having to go through the normal registration procedures. Such a proposal again, facilitates the establishment of splinter groups. It enables the State to override the wishes of the majority of members of a Union, creating division amongst workers.

Section 4 A permits Unions that are at present provisionally registered to continue to hold provisional registration, despite the fact that the Bill proposes the scrapping of the present system of provisional registration. While we are pleased that there should no longer be provisional registration, we call for all provisional registrations to be withdrawn.

2. As Trade Unions we place great value on our autonomy to draw up our own Constitution, to follow the policies we consider appropriate and to run our Unions and to act in our members' interests without interference by the State. We further believe that our members' interests are best protected by encouraging their active participation in the Union.

In terms of the present Act, a registered Trade Union is already restricted in its freedom to draw up its own constitution and in certain other respects. We are therefore most concerned that the Bill should propose further restrictions or limitations on the autonomy of registered Trade Unions, as well as introducing new restrictions on unregistered unions. In this regard the proposed amendments we object to in the Bill are as follows:

Sections 4A, 8, 9, 11 and 61 extend to unregistered Unions or Unions that do not wish to register many of the controls that at present apply to registered Unions. Such Unions must now submit to the Registrar a copy of the Constitution, the Head Office address and the names of officebearers and officials. They must keep registers of members financial records etc., and must supply financial statements. membership figures etc. to the Registrar in the same way as a registered Union Inspectors also have the right to investigate the affairs of such Unions.

Such proposals can only mean increased state intervention in the affairs of unregistered Unions. Yet, it is precisely the extent of State control in the affairs

of the Unions that unregistered Unions, as well as registered Unions, object to. New legislation should rather eliminate or limit State control than widen it.

There are valid objections to the present system of registration, as even employers have come to recognise. It is also worth noting that although there are numerous organisations of employes which are not registered, no similar controls apply in their case. This suggests that the Bill is fundamentally hostile towards Trade Unions, and it seems most unlikely that any unregistered Union will consider it worth its while to register on account of these provisions.

Sections 12 and 13

The Registrar has the right to recommend that a Union or federation of Unions be cancelled altogether. This means not merely that the Union or Union Federation loses its registered status, but that it shall be wound up. The grounds upon which the Registrar may arrive at this decision are if the Union or *any official office bearer, committee or other body of* such Union has "failed to observe any provision of the constitution, or has acted unlawfully, or has acted in a manner which is unreasonable in relation to the members or which has caused serious dissatisfaction amongst a substantial number of the members in good standing". On these grounds he may recommend the cancellation of a Union's registration. We do not believe that any Union of whatever persuasion can have confidence in entrusting such enormous powers to the Registrar. It would enable the Registrar to literally close down a Union, against the wishes of its members, which is the most extreme form of State control of Unions that we can conceive of.

3. We affirm that it shall be the right of workers to strike in support of Trade Union demands. However, the present Act greatly limits the right to strike. In the case of the food industry where perishable food stuffs are processed, the right to strike does not exist in law, since this industry is termed an "essential industry". In fact, the food industry is not in our view in a real sense an essential industry at all, and our bargaining power with employers has been considerably weakened because we do not have recourse to strikes to back up our demands.

The restriction placed on the right to strike has not prevented strikes from occurring. In fact, there have been an increased number of strikes in a wide range of industries, both where Trade Unions are organised and where they are not. This situation is not remedied by further restrictive legislation, since the causes of strikes are in most cases low wages, poor conditions of work, dismissals which workers regard as unjust.

We strongly object to further restrictions imposed on Unions in the situation where strikes occur or might occur. The amendments proposed in the Bill that we refer to are as follows:

Section 65:

This makes it an offence for any person who grants "financial or other material assistance" to enable or induce any person to participate in a strike which is illegal in terms of the Act. Such a restriction on Trade Unions and individuals is completely unacceptable, and especially where the right to strike is limited or where there is no right to strike whatever.

We hold that it is the duty of a Trade Union to support its members on strike to the best of its ability, and to endeavour to negotiate a settlement of the dispute with employers. The Bill however, would make it a criminal offence for a Union not only to financially assist such workers, but to provide any material assistance whatever.

This could mean that were Union officials to hire a hall in which striking workers could meet, they would commit an offence. We believe such a provision to be in total opposition to internationally accepted labour practices, and fundamentally hostile to Trade Unions.

This section also provides for State supervision of strike ballots, where the procedures laid down in the Act for calling a legal strike are followed. This must be seen as yet a further restriction on the right to strike.

4. We hold that Unions should be free to negotiate with employers and enter into any agreements or arrangements to which a Union and employers are agreeable, without any limitations being imposed on them.

Section 78 now prohibits the deduction of subscriptions for unregistered Unions without permission of the Minister. On the other hand, registered Unions can compel an employer to deduct subscriptions, even though they may not have a significant membership at an establishment. We feel it is unjust that, on the one hand, without State approval an unregistered Union may not reach an agreement with an employer for subscriptions to be deducted, which in practice would only occur where such a Union has a majority membership at a factory, yet, on the other hand, a registered Union with even one member at an establishment can compel an employer to deduct subscriptions.

This constitutes an unwarranted interference in the freedom of Unions and employers to negotiate with one another and to order their own affairs.

These objections concern only what we consider the most important aspects of the Bill. They were formulated at special meetings of our Unions, and we await with concern the response of your Department.

Western Province General Worker's Union

Submission to the Department of Manpower with regard to the proposed Industrial Conciliation Amendment Bill

1. These comments are not directed at the Industrial Conciliation Act as a whole despite our wide-ranging objections to this central piece of legislation. We have by and large confined ourselves to remarking on the amendments proposed by the recently published draft Bill. Where, however, it is now proposed that those unions which elect to remain unregistered be subjected to provisions of the current Industrial Conciliation Act, we are obviously obliged to state our position on these aspects of the Act.

2. We should note at the outset that the recent Bill was drafted without any consultation with the unregistered unions. We believe that any aspect of *sound* industrial relations presupposes, by definition, consultation and negotiation with all parties concerned. This procedure was not followed and, accordingly, doubt is cast upon the intention of the drafters of the Bill. As an independent and representative organisation we are obviously loath to accept the unilateral imposition of controls and obligations.

3. The Bill proposes to extend certain of the controls already contained in the Industrial Conciliation Act to those unions which choose not to register in terms of the Act. Additional controls applicable to both registered and unregistered unions are also proposed. Consequently, whilst the decision to register remains, in principle, voluntary, the Bill attempts to extend certain controls previously incumbent upon receipt of a registration certificate to those unions which do not choose to exercise this *voluntary* option. This further reinforces the tendency to shift conduct of industrial relations from a *permissive* to a *compulsory* basis. We must restate our belief that sound industrial relations have to be based on *acceptance* by all *representative* parties and that this essential principle is further violated by the proposed imposition of statutory obligations upon those which elect not to avail themselves of the opportunity to register.

4. We are in principle opposed to the pervasive involvement of the state in the affairs of the trade union movement. The state's intervention in the field of industrial relations is sanctioned by the Industrial Conciliation Act, and the Bill now proposes to extend this field of intervention. We should point out that we are not in principle opposed to registration as long as (a) it remains

voluntary and (b) it enshrines certain principles within the registration process The fundamental principle in our opinion is that industrial relations primarily involves negotiation between workers and their employers and their respective representative organisations. So in our opinion all that is required of registration is the notification of the existence of these representative organisations. As a representative organisation of workers we have no objection to rendering to the state information which we regard as public in any case. However, any further regulating or controlling function of the state through the process o registration is totally unacceptable.

4.1 Our opposition to the state's intervention in trade union affairs stems from three main sources. Firstly, our members have never been party to the law making process which sanctions the state's involvement in the affairs of their organisation, and accordingly are loath to accept the obligations which this statutory intervention implies in the absence of the right to participate in the law making process. Secondly, the extremely hostile attitude of the state to our union and the extreme measures against the union resorted to by the authorities on a number of occasions accounts for the widespread suspicion which is generated by any extension of state interventions in our union's affairs. In particular we are concerned about the possible use to which the provision of names of officials and office bearers would be put, although we are not opposed in principle to providing these names. Thirdly, we believe that, as a trade union, it is our primary task to facilitate the establishment of institutional relations between our members and their employers. It is not our task to establish institutional relations between the workers and the state. Accordingly, we cannot accept that it is the state's right to circumscribe the nature of a Union s internal relations, or the nature of the relationship between union members and their employers.

4.2 Our opposition to the state's involvement in our affairs does not stem from a desire to maintain secrecy about the affairs of our organisation; nor does it reflect any lack of confidence on our part with respect to our financial and other records. Our attitude reflects our belief that, in its internal relations, a voluntary organisation such as a trade union should be answerable to its members only. We should also note that in particular circumstances we have made available to non-members some of the information which the Bill proposes to extract from us. We have, for example, made certain factory registers and financial records available to employers insofar as this information pertains to the nature of our relationship with these employers. This information has been provided in the course of amicable negotiations with employers who have frequently complied in

making available information to us in order to facilitate a harmonious relationship between ourselves, as representatives of their workers, and themselves, as the employers of our members.

5. In the light of the foregoing we would be willing to accept the following provisions of the Bill:

   a) the proposal that Section 4A of the Act be replaced by a provision which requires us to submit our constitution and the names of our officials and office bearers to the registrar;
   b) the proposed amendment to Section 9 of the Act which would oblige unregistered unions to notify the registrar of any amendments to their constitution;
   c) the proposed amendment to Section 11 of the Act which would oblige unregistered unions to provide the registrar with certain information pertaining to the financial records, membership registers and office bearers and officials of the union.

   We in fact believe that the provisions contained in these three sections should constitute the *sole* requirements of a registration process.

6. In the Minister's statement on the release of the Bill he emphasised that the proposed legislation was based on a commitment to establishing trade union autonomy. However, certain of the provisions of the Bill, and indeed of the Act itself, represent the most flagrant violation of internationally accepted principles of trade union autonomy. We have stated our commitment to trade union autonomy, and, in particular, our opposition to state intervention in the internal affairs of our Union. We accordingly object in the strongest possible terms to the following provisions of the Bill:

   a) Section 8(6)(c), 8(6)(d), and 8(7). These sections would have the effect of prohibiting us from affiliating to a political party or 'political organisation' and of further circumscribing our relationship with such institutions. We are not affiliated to any political party or 'political organisation', and as an independent workers organisation, the membership of which reflects a wide variety of political views, the question of affiliation to any political organisation would be an extremely serious decision requiring the active participation of the widest layers of our membership. However, we would wish to preserve the right to affiliate to a political party or 'political organisation' should our members so wish. Such affiliation is standard practice in many countries and a statutory prohibition of the sort contemplated in the Bill constitutes an unwarranted inter-

ference with trade union autonomy.

Moreover Section 8(6)(d) read in conjunction with the extraordinarily wide definition of 'political organisation' in Section 8(7) suggests a prohibition extending far beyond the question of affiliation to a constituted political party. The amendments proposed are extremely vague and potentially far reaching. If the drafters of the Bill intend prohibiting trade unions from engaging in discussions of, and active participation in, the affairs of the wider community in which the members reside then these provisions of the Bill will be strongly opposed by this Union. It is our belief that a trade union is obliged to assist and protect its members both in their work environment and in their interaction with the wider community. We believe that a highly negative purpose would be secured by any further attempt to stifle free and open discussion of, and participation in, any areas which are of intimate concern to the workers, our members.

b) The provisions of Section 61(2bis). The extreme policing powers assumed by the state in terms of this section stand in sharp contrast to internationally accepted principles of trade union autonomy. We believe that it is the *sole* prerogative of the members of a voluntary organisation to secure compliance with their organisation's constitution. In a democratic organisation it is for the members themselves to secure compliance with the constitution, if necessary, using the courts to do so. In the event of any criminal contraventions, the police and the courts are surely adequately equipped to ensure compliance with the law. If, as we suggested, the registration process required only informational guarantees and not the imposition and acceptance of state control then there would be no need for a specific policing function of the Department of Manpower.

7. Certain provisions of the Bill with respect to dispute procedures exacerbate problems already contained within the Industrial Relations machinery set up by the initial Industrial Conciliation Act.

7.1 We submit that the dispute procedures contained in the Act are too lengthy and complex. The Bill, by the contemplated addition of Section 65(5)(a) now contemplates introducing an additional control which will inevitably lengthen and certainly complicate an already unacceptable procedure for the settlement of industrial disputes. The current spate of industrial unrest clearly indicates the need for simple dispute procedures negotiated between the workers themselves and their employers. These procedures must emphasise, firstly speed, and secondly the necessity for

keeping open acceptable channels of communication between the parties to the dispute.

7.2 Moreover it is not acceptable to circumscribe industrial action by reference to the currency of Industrial Council agreements and Wage Board determinations. The present structure and functioning of both these institutions narrowly limits the role of the factory floor workers in the negotiation of these agreements. In the event, it is not at all surprising that workers have little respect for the agreements concluded within these institutions.

7.3 We should emphasise that we are are not opposed to dispute procedures per se. Union factory committees have negotiated dispute procedures which have strongly contributed to the maintenance of industrial peace. It is important to note that the dispute procedures negotiated by the workers emphasise the need for simplicity and speed. Moreoever, the negotiated relationship between the union shop stewards and their employers maximises the active participation of the rank and file membership. In this context, it is obviously desirable to agree upon procedures governing industrial action; procedures which are positively designed to minimise the necessity for industrial action, as opposed to procedures which are designed merely to defuse a grievance without the substantial possibility of real redress.

7.4 In the light of the above, the proposed introduction of section (3A) constitutes an extremely provocative intervention in industrial disputes, and is a further serious attack on trade union autonomy and individual freedom. It is therefore absolutely unacceptable. Industrial action can only be productively confronted by a concrete willingness on the part of employers to recognise representativity as the major criterion for negotiation; by the negotiation between employers and the representatives of the workers of mutually acceptable dispute procedures; and by a clear commitment on the part of the employers to a rapid improvement in wages and working conditions.

Instead of addressing the root causes of industrial unrest Section (3A) proposes to increase the already heavy penalties attached to 'illegal' industrial action. Section (3A) further penalises striking workers by preventing the union (or any other member of the community) from assisting workers during a strike. In many countries it is standard practice for striking workers to be assisted by a union fund especially intended for that purpose. It is, in fact, not uncommon for workers to receive social security benefits while on strike. Moreover, the proposed Section

(3A) is disturbingly vague. It is difficult to construe the precise meaning of the term "financial or other material assistance".

Far from acting as a deterrent to industrial action, Section (3A) will introduce an element of chaos and anarchy into a strike situation, an already inflammatory and overheated situation. What is in fact proposed is an intervention by the state which does not in any way address itself to the factors which generated the dispute in the first place. We have already noted our general opposition to intervention of this nature, and the negative consequences of this intervention are grossly exacerbated in the midst of a strike. Moreover, the precise nature of the intervention – a last minute intercession between the striking workers and their union organisation – is particularly provocative, is guaranteed to intensify hostility, and will in all probability broaden the conflict beyond the confines of the initial dispute. It is, in general, extremely shortsighted to devise means to pressgang striking workers back to work. In most cases, such tactics will not succeed. In particular, the grievance which generated the dispute in the first place will not disappear and will re-emerge in increasingly more acute forms.

8. The Bill contemplates the extension of control over registered unions.

8.1 The proposed amendment to Section 4(6) which would in effect encourage the division of established unions is unacceptable. The Union can only view legislative interventions of this type (interventions that specifically facilitate divisions amongst workers) as a particularly clear example of malign state interference in the internal affairs of the union movement.

8.2 Similarly, the proposed amendment of section 13 empowering the Minister to wind up the affairs of any union which loses its registration is unacceptable. Given the fact that the grounds for cancellation of registration as contained in section 12 are so vague and arbitrary, and given that cancellation of registration in terms of section 13 now makes possible the winding up of a union, we submit that this will effectively act to restrain the legitimate activities of registered unions. We would reiterate that exercising control over the running of the union and compliance to its constitution (which should include measures for dissolving the union when necessary) is the sole prerogative of its members.

9. We in principle object to the proposed amendment of section 78 of the Act prohibiting the collection of stop order dues on the part of unregistered unions without ministerial approval. We regard this as a further instance of state intervention in the field of industrial relations between workers and

their employers and a further infringement of union autonomy.

10.1 Certain of the provisions of the Bill are to be welcomed. We refer specifically to the proposed amendment to the definition of 'employee' ; the proposed lifting of racial restrictions on registered unions, the elimination of Provisional Registration as contained in Section 4(A) of the Act; and the removal of discrimination based on sex by the proposed amendment of Section 24 and Section 51.

10.2 We have already stated that certain provision of the Bill, if *they stood alone,* could form the basis of an acceptable registration process. Unfortunately, the Bill as a whole is aimed at increasing state intervention in the internal affairs of the union and in the conduct of industrial relations generally. We wish to record our strongest opposition to these attempts to circumscribe the activities of our Union and the union movement as a whole. The substance of the measures contained in the Bill stand in flagrant contradiction with internationally accepted practice and are an attack on the autonomy and essential independence of the trade union movement. They constitute, moreover, an extremely provocative intervention in an area already fraught with tension and conflict. The Bill makes no attempt to facilitate positively the redress of the basic grievances which lie at the heart of burgeoning industrial disputes. Rather it is designed to circumscribe narrowly the independence, and, accordingly, the effectiveness of the trade union movement.

19th April 1981

Federation of South African Trade Unions

Resolution on the Proposed Amendment to the Industrial Conciliation Act, No. 28 of 1956 passed by the Central Committee at its meeting on 25th/26th April, 1981.

FOSATU Notes:

1. the publication of the proposed amendments to the Industrial Conciliation Act.
2. that the progressive elements of the draft Bill are outweighed by the new

elements of control introduced.

3. that the draconian powers of the Registrar to de-register and then wind up unions have received wide publicity. Other elements are, however, equally authoritarian. In particular, the many controls on registered unions will now all be applied to unregistered unions, which will receive no benefits and will effectively be refused facilities such as stop orders. Rather than making registration attractive and easy, the element of compulsion is introduced.
4. the Bill makes no progress towards resolving the major problem of establishing an effective collective bargaining system. The Bill is submerged in a welter of administrative controls but does not confront the basic issue – that representative unions should have a right to negotiate on behalf of their members. Registration remains an administrative measure which emphasizes control by the State over a union's affairs. But once a union's representivity is tested for registration, there is still no guarantee of recognition by employers.

FOSATU Believes that:

1. Registration should become merely a formality, requiring only that a union prove that its constitution has certain legal and financial provisions assuring the control and independence of its membership.
2. The right of a representative union to recognition and the rights to represent members and enter into collective bargaining should be guaranteed by law.
3. The test of representivity should come at the stage of application for recognition and negotiating rights.
4. Control over a union's internal affairs should be vested solely in its membership guaranteed by the normal rights of members under common law.
5. The Industrial Council system has operated to date largely by virtue of the fact that most unions represent skilled workers . If the system is to cater for industrial unions representing the large, unskilled majority of workers it needs drastic revision, and needs to be supplemented by guaranteed rights of representative unions to in-plant bargaining.

The Central Committee therefore MOVES

1. that this resolution be brought to the attention of the government and the public.
2. that a sub-committee of the Central Committee be appointed to study the Industrial Relations system.

A Guide to the Labour Relations Amendment Act (1981)

Paul Benjamin
Halton Cheadle
Modise Khoza

The Act amends the Industrial Conciliation Act 28 of 1956 which will now be known as the Labour Relations Act. The Act follows the publication on 27 March 1981 of a draft Amendment Bill to which comment and criticism was invited.[1] This Bill was overwhelmingly criticized by trade unions of all persuasions, as well as employer groupings. As a result, a much altered Bill[2] and explanatory memorandum were tabled on 4 August 1981 and the Act was passed on through Parliament in August.

The amendments in the Act that have drawn the most publicity are those which widen the scope of the controls placed on trade unions, or extend most controls already in the Act to cover unregistered trade unions for the first time. Extensive controls have also been placed on trade union federations, whether registered or not. Other major amendments are the removal of all mention of racial discrimination from the Act, the introduction of a system of works councils at plant level to replace liaison and works committees, and the alteration of the provisions regulating the granting of stop-order facilities. These, and other amendments, will be dealt with by relating the amendment to the original section and by explaining its legal effect. Where the amendment was not included, or differs from that, in the draft Bill, or where proposed amendments in the draft Bill have been dropped, reference will be made to this in the footnotes.

Extension of Controls over Trade Unions[3]

The Industrial Conciliation Act has previously contained a number of controls that registered unions have had to comply with. Only one direct control has previously been placed on the activities of unregistered trade unions.[4] This position has been altered. A number of new controls and additional sanctions have been placed on the activities of registered unions. All these new restrictions apply to unregistered unions as well; and the majority of those controls previously imposed on registered unions have now been extended to unregistered unions.

The type of organization that can be classified as a trade union, and therefore

potentially hit by the extension of these controls, has been extended considerably. Previously a trade union was defined as an association of employees whose *primary* purpose was to regulate relations between employers and employees. The Act has extended the definition to "any association that involves itself in such activities at all". (Section 1) This extension is presumably aimed at placing controls over those community organizations(such as PEBCO in Port Elizabeth) that have been involved in industrial relations in the past. As soon as such an organization intervenes in an industrial dispute, even if only on a single occasion, it will potentially be subject to all the controls placed on unregistered unions by the Act.

1. **Political Activities**

Prior to the 1981 Act the political activities of registered trade unions were restricted. They were prohibited from affiliating with, or giving financial assistance to, a political party. A political party was defined as, "any association. . . . . .which has as its object. . . . . the nomination of candidates for election to any legislative body. . . . . or the influencing of public opinion to support or to oppose any such association or group". (Section 8(7)) These controls have been extended by outlawing further forms of political activity. The restrictions will now apply equally to registered and unregistered unions, and the latter will have one month after the Act becoming law, to comply. (Section 8(8))

The restricted political activities have been extended beyond affiliation and financial assistance so as to include all activities aimed at influencing members with the object of giving assistance to political parties. Such "assistance" (financial and influential), may now, in addition, not be utilized to assist persons seeking positions *within* a political party. (Section 8(6)(d)) Previously, registered trade unions were prohibited from giving financial assistance to a candidate seeking election to a legislative body; now trade unions will neither be able to support such a candidate (eg. through the union newspaper) or grant any assistance to a person seeking a position (eg. party secretariatship) in a political party.[5]

2. **Head Offices**

There were formerly no statutory limitations on where a trade union could have its head office. Now all trade unions must have their head offices in the Republic, excluding self governing homelands. (Section 11(4)(a)) The effect will be that trade unions operating in South Africa will not be able to have their head offices in KwaZulu (a self governing homeland, though part of the Republic) or Transkei ("independent" and not part of the Republic), for example.

3. **Strikes –**

The Act has introduced a new offence. All trade unions or federations of trade unions are prohibited from granting financial or assistance to a striker with the object of "inducing" or "enabling" him to take part in an illegal strike. (Section

65(3A)) The effect of this is to make it a crime for a union or federation to provide strike pay for workers engaged in an illegal strike. The fine for supplying such assistance is R1 000. Participants in an illegal strike now run the risk of a fine of R1 000 or one year's imprisonment or both. (Section 82(1)(b)) Previously the maximum fine was R200.[6]

4. Administrative Controls

Unions have always been required to submit copies of their constitutions to the Industrial Registrar as part of the process of registration. Now an unregistered union is (within six months of its formation or three months of the Act taking effect) required to submit a copy of its constitution to the Industrial Registrar. It must also give the Registrar the address of its head office and the names of its office bearers and officials. (Section 4A) Failure to do this renders the union liable to a fine of R1 000. Should the unregistered union alter its constitution it must notify the Registrar of this within thirty days. (Section 9(b)) No stipulations are, however, contained in the Act as to what the constitution of an unregistered union is required to contain.

Unregistered unions are now required to comply with a variety of administrative duties that have previously been imposed only on registered unions. All unions are now required to:

(a) maintain a register of members (including details of subscription payments);
(b) keep proper books of account which must be audited at least once a year and the auditor must make a report; and
(c) prepare annual financial statements and balance sheet which must be submitted to the members. (Section 8(5))

Restrictions are place on voting and election procedures:

(a) all voting by ballot must be in secret;
(b) an official of the union is not allowed to vote at an executive meeting, (this does not apply to a president or chairman employed by the Union in a part-time capacity); (Section 8(6)(a) and (b)) and
(c) the union secretary must submit the names and addresses of persons elected or appointed to positions as office bearers or officials to the Registrar. (Section 11(3))

The union secretary is required to keep all documents for three years. This includes ballot papers, books of account, financial statements, registers of members, records of payment, minutes and correspondence. (Section 11(1)) The secretary must submit to the Industrial Registrar annually:

(a) the number of members and members not in good standing;
(b) financial statements, the balance sheet and the auditor's report.

The secretary must respond within thirty days to any request by the Registrar for details about the above. (Section 11(2)) Where a trade union changes the address of its head office the secretary must notify the Registrar of this within thirty days. (Section 11(4)) Where a new branch is established the Registrar must be given details as to the office bearers, officials and membership. (Section 11(5))

Controls over Federations of Trade Unions.[7]

The Industrial Conciliation Act provides for the registration of federations "consisting wholly or partly of registered trade unions" and which have as their object, or as one of their objects, th promotion of the interests of employees. (Section 80(1)) A federation applying for registration is required to submit certain information to the Registrar. (Section 80(2)) Once registered the only duty previously placed on the federation was to notify the Registrar of amendments to its constitution, elections and appointments, the names and addresses of its members, and the number of workers each member represents. (Section 80(4)) The Act places further controls on federations of trade unions, whether they are registered in terms of the Act or not. (Section 80(8)) The restrictions on political activity, assistance to strikers and the location of a head office now apply to all trade union federations in the same way as they apply to trade unions.[8] Federations will have to keep audited books of accounts and retain these and financial statements, registers of members, records of payment and correspondence for three years in the same way as trade unions. The secretary of a federation will be obliged to respond to requests for information by the Industrial Registrar in the same way as a union secretary. No restrictions, however, are placed on voting procedures in a federation and an unregistered federation is not required to inform the Registrar of the names and addresses of its members and the number of persons each member represents.

1. **Special Powers of the Registrar –**

Prior to this Act the Registrar was entitled to conduct an enquiry into the affairs of a registered trade union on certain grounds. (Section 12) The grounds are: any material irregularity in respect of an election, or any act by an official, office bearer or committee which is unconstitutional, unlawful, unreasonable to the members or has caused serious dissatisfaction among a substantial number of members. After the enquiry, the Registrar can make a recommendation to the Minister to remedy the situation, and the Minister may, in his discretion, make this recommendation binding on the union. The Act now gives the Registrar the same powers to intervene in the affairs of a registered federation.[9]

2. **Inspectors' Powers**

Section 60 makes provision for the appointment of inspectors to monitor

the application of the Act. These inspectors are now given various powers of investigation to determine whether any trade union, federation, employers' organisation or Industrial Council is carrying out the provisions of its constitution and the Act. (Section 61) Previously these powers, which include powers of search and interrogation, did not apply to federations.

Repeal of the Black Labour Relations Regulation Act

The Act has repealed the Black Labour Relations Regulation Act 48 of 1953. This Act provided for the system of liaison and works committees (a form of representation for Africans primarily at plant level), a mechanism for determining minimum wages and working conditions for Blacks in particular industries or trades and a complex procedure for settling disputes. Provisions to replace the first two features have now been included in the Labour Relations Act.

1. Works' Councils

The Black Labour Relations Regulation Act provided for the establishment of works and liaison committees at factory level for Blacks only. The courts have held that these committees enjoyed only those limited powers given to them by statutes.[10] The Act has now introduced a new forum for plant level negotiation. (Section 34A) An employer and all or some of his workers may set up a works' council. No mention of race is made in the section constituting these councils. Such a council may be set up for a section of a factory, a factory or where an employer has more than one factory in the same industry, two or more factories. At least half the members of the council must be elected representatives of the workers. The remaining members will be representatives of management. What functions these councils can perform are not specified in the Act, and they can perform any function that the employers and workers agree upon. All liaison committees in existence in terms of the Black Labour Relations Regulation Act will be regarded as works' councils. (Section 34B) (Works committees cannot be regarded as works councils as they do not have management representatives on them.)[11]

2. Determination of Wages and Working Conditions

The Black Labour Relation Act provided for a separate mechanism for setting minimum wages and working conditions for African workers. These standards were determined by the Minister upon the recommendations of employers or employer organizations in their particular industry. No provision was made for reference to the workers affected and the minimum wages and working conditions were promulgated in the Government Gazette as a Black Labour Order. These provisions have now been included in the Labour Relations Act. (Section 51A) The effects of this is that a labour order could now be made in terms of this procedure to regulate wages and working conditions for workers of all races. Black

Labour Orders will remain in effect until superseded by an Industrial Council Agreement. (Section 51A(7))

3. **Dispute Procedure**

The Black Labour Relations Regulation Act had a special disputes procedure for Black workers. This procedure, which provided for disputes to be referred to a variety of committees, labour officers and boards has given way to the conciliation procedures contained in the Labour Relations Act. This will do away with the anomalous situation that previously existed which required Black workers to exhaust the disputes procedures under both the Black Labour Relations Regulation Act and Industrial Conciliation Act before staging a legal strike.

The Removal of Racial Discrimination:

The Act has deleted all reference to race. In some cases, this was achieved simply by deleting the offending words, in others the process of extraction was more complex.

1. **Definition of Employee**

The definition of "employee" has been used as a device to exclude Africans from participating in the official collective bargaining system instituted by the Act. The Industrial Conciliation Amendment Act 94 of 1979 included African workers in the definition, but excluded migrant and foreign workers. After substantial criticism, this definition was extended by the Minister so as to include all workers except "foreign workers".[12] Foreign workers were those from internationally recognized states such as Mocambique, Lesotho, Botswana, Malawi. The Act has removed all these exclusions and extensions and defines an employee as any person in work and receiving remuneration.(Section 1) The effect is to open the official collecting bargaining system to all workers.

2. **Registration**

The Industrial Conciliation Act introduced the notion of racially separate unions in 1956. Section 4(6) of the Act prohibited the registration of mixed unions without the authorization of the Minister. This power enabled the Minister to deal with those unions registered under the 1937 Act which had mixed membership. Such unions were then allowed to register provided their constitution provided for an all white executive, racially separate branches and racially separate meetings. (Section 7(3)) Section 6 made provision for one racial group to split from a mixed union and form a racially separate union. To facilitate such splitting, the Act provided for a division of assets between the "racially separate" and the "mixed" unions. These provisions have now been removed from the statute book with the following consequences:

(1) the prohibition of the registration of mixed unions has been repealed in its

entirety as well as the similar prohibition existing under the procedures for the variation of registration; (Section 4(b) – repealed)

(2) the specific constitutional requirements for mixed unions such as a white executive, separate branches and the like have been repealed. The effect will be to allow the mixed unions to arrange their constitutions racially as they see fit; (Section 8(3) repealed)

(3) the special provisions absolving white unions from the representative requirements under the registration procedures have been removed. Registration under section 4 of the Act follows roughly the following course: The applicant union applies for registration for certain interests (eg. industries or job categories) in certain areas. The Registrar gazettes the application and invites objections to the registration by other registered unions (or unions seeking registration at the same time). In the light of any such objection and further representations by the applicant union, the Registrar can register the applicant. He may opt to limit its scope of registration, if need be by taking into account the extent to which the area and interests applied for are "served by" the applicant union, and the representativeness of the objecting union. If the objecting union is sufficiently representative in any of the areas or interests applied for then the applicant union may not be registered in respect of such areas of interest. Previously special provisions of the Act absolved racially exclusive unions from objections based on representativeness provided that they had 50 percent of the racial group as members working in the area applied for. This provision has now been repealed.[13]

(4) Section 6 of the Act provided for a division of assets of unions. It was enacted in 1956 to facilitate the racial separation of mixed unions registered under the 1937 Act. Where a racially exclusive union broke away from a mixed union, the new union could apply for a division of assets of the original union in proportion to the relative sizes of membership of the two unions. The concept of the division of assets has now been removed from the Act so that a breakaway group will not be able to force the original union to divide its assets wth them.[14]

Registration

The Act makes two amendments to the registration procedure, other than those related to the removal of racial terminology. Where an existing union objects to an application by a union for registration, the Registrar must now assess the representativeness of the applicant only in respect of those members of the objecting union who are eligible for membership of the applicant union (Section 4(4)(c)). The effect of this is that although a union has over 50 percent of the employees in an industry it will not necessarily be representative in every section or category of worker in that industry. If the applicant union so limits its scope, whether racially or by occupation, it will be registered despite the fact that the objecting union is

representative of the industry as a whole. This will allow racially exclusive unions, by defining their scope of interests racially, to be regarded as representative, despite the fact that the special provisions relating to the registration of such unions have been repealed. The concept of provisional registration introduced in 1979 has been abolished. Section 4A gave the Registrar wide powers to register trade unions provisionally and impose conditions on such registration. Should the Registrar believe that such conditions have not been complied with, he was empowered to withdraw the registration. Unions provisionally registered at the time the Act became law, are dealt with as if the section had not been repealed.

Stop-Order Facilities:

Prior to the 1981 Act an employer could grant stop order facilities to any trade union, whether registered or unregistered. Section 78(1C)(a) now makes it an offence for an employer to grant stop orders to an unregistered trade union without the consent of the Minister. A registered union can compel an employer to grant stop orders by application to the Minister. For an application for compulsory stop orders to succeed, the applicant union was required to be both representative and registered in respect of the industry or undertaking concerned. The Minister retains his right to refuse an application for compulsory stop orders. (Section 78 (1A)(a)) A provision that allowed racially exclusive registered unions to be granted compulsory stop orders even though they were not representative of the industry or undertaking concerned has been repealed.[15]

Miscellaneous Amendments:

1. The Industrial Court –

Various amendments have been made to the sections that constitute the Industrial Court. The Minister or the president of the court if authorized is now able to appoint *ad hoc* members for any particular purpose (Section 17(1) (6A) . Originally, the court was only able to sit in Pretoria. This has now been remedied, and the court may now perform its functions anywhere in the Republic (Section 17(2)(c)). The Act now provides for contempt of court. Anyone who insults a member of the Industrial Court, or interrupts or misbehaves during the proceedings of the court shall be guilty of the offence. In addition, anticipating the findings of the court in a manner calculated to influence its findings or obstructing a member of the court in the performance of his functions, will also be guilty of contempt. (Section 17(20A)) No attempt has been made to extend or clarify the powers that the court has to hear and adjudicate on disputes.

2. Sexual Discrimination –

The explicit power given to Industrial Councils to discriminate on the ground of sex in Industrial Council Agreements has been repealed. This means that no

new Industrial Council Agreement which discriminates sexually in the setting of minimum wages and working conditions can be declared binding by the Minister in terms of Section 48. Similarly, the Minister cannot extend an agreement that discriminates sexually, or exempts a party from the provision of agreement if the exemption might operate to allow sexual discrimination. This brings Industrial Council Agreements into line with Wage Determinations which may no longer discriminate on grounds of sex.[16]

3. **Duty to Report Work Stoppage**

A new section 65A has been enacted which places a duty on all employers to report to an inspector of the Department of Manpower Utilization any work stoppage. The duty applies where the work stoppage arises out of a dispute over terms and conditions of employment between employer and employee. Failure to comply with this duty is an offence.

4. **Unfair Labour Practices**

The discretion of the Minister in regard to applications for conciliation boards for a dispute arising out of an unfair labour practice has been reduced. Previously, the Minister could refuse an application for the establishment of a conciliation board to settle a dispute unless the dispute was in an essential industry. Disputes concerning unfair labour practices have now been put on the same footing as disputes in essential services. Where certain conditions are satisfied (eg. that no Industrial Council has jurisdiction in respect of this dispute or that the dispute does not arise solely out of a question of law) the Minister must approve the establishment of the conciliation boards. (Section 35(4))

5. **Display of Wage Regulating Measures**

Previously, all employers were required to display all wage regulating measures such as Industrial Council Agreements binding upon them in a conspicuous place on their premises. The address of the inspector who had jurisdiction over the premises had to be displayed as well. This is no longer required, but the employer must keep a copy of all measures binding upon him on his premises and make them available to employees on request. (Section 58) Where, however, employers are obliged by an Industrial Council Agreement to display the agreement they have not been relieved of this duty by the amendment to the Act.

6. **Industrial Councils**

The sections effecting industrial councils have been amended in a number of ways. The statute no longer requires employers bound by an Industrial Council to register. The 'secrecy provision' which makes it an offence to disclose information obtained at an industrial council meeting has been extended to "all persons attending such meetings". (Section 67) Where an employer is convicted of failing to pay

prescribed wages or benefits in terms of an Industrial Council Agreement, such money may now be paid to the council having jurisdiction. Previously such money had to be paid to an officer specified by the court. (Sections 53, 54 and 55). The Registrar may now conduct enquiries into the affairs of an Industrial Council to investigate irregularities. (Section 12)

7. **Fines**

The maximum penalty for a conviction for victimization has been increased from a fine of R600 and/or imprisonment for 2 years to a fine of R2 000 and/or imprisonment for 2 years. In the case of all other offences the maximum sentence is now a fine of R1 000 and/or imprisonment for up to 1 year. (Section 81)

Footnotes

1. Notice 235 of 1981, GG 7521, 27 March 1981.
2. Labour Relations Amendment Bill (W. 59–'81) According to the Explanatory Memorandum accompanying the Bill a number of the more controversial proposed amendments have been referred to the National Manpower Commission.
3. This article refers to the controls placed on trade unions. It should be noted that similar controls are placed on employers' organisation, whether registered or not.
4. This is the right of an inspector appointed in terms of the Act to carry out an investigation to determine whether any trade union is observing the provision of its constitution and the Act. This control has been dealt with under the heading "Controls on federations" as the way in which it effects trade unions has not been altered. The power of the Industrial Registrar to investigate the affairs of a registered union has also been dealt with under "Controls on Federations."
5. The controls in the Act on political activity are considerably narrower than those proposed in the Draft Bill. The Bill extended the definition of a political party to include the single person. The intention was to close the loophole in respect of "independent" candidates, who registered trade unions were (and are still) able to support. More importantly, the Draft Bill introduced the concept of a "political organization". This was defined as any person or association with the purpose of promoting the "political interest" of all or some of its members. What constituted "political interest" was not defined in the Bill. Had this section been enacted, it would certainly have affected relationships between trade unions and community organizations and might well have, affected unions affiliating with each other as a union could quite conceivably constitute a "political organization".
6. The restrictions in this section also apply to employers' organizations giving assistance to employers involved in illegal lock-outs. In the Draft Bill it was proposed that assistance to strikers by anybody should be made an offence. The Bill contained an additional amendment dealing with strikes which have now been dropped. A registered trade union may not call or take part in a strike without first conducting a strike ballot to ensure that the majority of members in the undertaking, trade or industry involved support the strike. The Bill proposed to place certain controls over the holding of such ballot.
7. Equivalent controls are place on federations of employers' organizations.
8. These are dealt with above in "Controls on Trade Unions".
9. In the Draft Bill the powers of the Registrar were, in addition, extended so as to include the power to recommend the deregistration of a registered union or federation. If the Registrar recommended de-registration, the Minister the Bill proposed had to invite the

union to make representations. It would, however, remain within his discretion to give effect to such a recommendation. Upon de-registration the union would cease to be a body corporate and once the union had been de-registered by the Minister it would be subject to compulsory winding-up. The effect of these proposed amendments was that the Minister would have the power to deregister a union or federation for unlawful, unconstitutional or unreasonable acts and upon such deregistration the union would be wound up. The assets of the union or federation would be distributed to federations or unions registered in respect of the same interests.

10 See *Piet Bosman Transport Works Committee* v PE Bosman Transport (Pty) Ltd (1980) 1 ILJ 66; 1979 (1) SA 389 (T) in which the court held: ". . . .a works committee . . . .is a statutory body with the limited functions of establishing and maintaining dialogue with an employer of Blacks . . . . and negotiating with him on behalf of his Black employees . . . . the statute does not vest a committee . . . .with the power of going to court" (at 69 A–C).

11 In the Draft Bill no provision was made for a legislative frame work for bargaining at plant levels. Employers' organizations protested against the failure to replace the works and liaison committees with an alternative "official" system of plant level representation.

12 R2167 in GG 6679 of 28 September 1979.

13 The Draft Bill contained a provision which would allow a section of a registered trade union to break away from that union if it changed its membership qualification as a result of the repeal of the prohibition on mixed unions. The new union would be exempt from a number of the registration requirements. The effect would be to allow a section dissatisfied with the opening of membership to other races to set up and have registered a separate union despite the fact that the original union might be representative in all the areas and interests applied for. This would have precluded registration in the normal course of events.

14 The section remained in the Draft Bill but all references to "white" and "coloured" were removed. The effect of this would have been to allow a new union of undefined membership to divide off from original union and take with it a proportion of the assets of the original unions, provided it could satisfy the membership requirements stipulated in the section.

15 In the Draft Bill the granting of stop-order facilities to registered unions was made compulsory provided the application for a stop order was submitted in the prescribed form by the union and had been signed by both the employee and the secretary of the union deve-

16 The type of discrimination that has been prohibited is the setting of lower minimum wages for women doing identical work to men.

Critique of the Act

SALB Editors

Introduction:

In the 1970s the state was constrained to amend South Africa's principal labour laws on four occasions. The Industrial Conciliation Act was amended in 1970 and 1979, and the Black Labour Relations Regulation Act was revised in 1973 and 1977. Early in 1981 the Minister of Manpower (previously Manpower Utilisation, earlier Labour) published proposals for extensive amendment of the labour legislation. When parliament reconvened after the 1981 general election the Minister issued a revised version of his earlier proposals in the form of the Labour Relations Amendment Bill.

The Labour Relations Amendment Bill (59 of 1981) was released in the House of Assembly on 4 August 1981. During the following three weeks the Bill passed relatively smoothly through all its stages in Parliament and to all intents and purposes can be treated as an Act. It is in many respects essentially the same as the draft Industrial Conciliation Amendment Bill circulated in March, but contains a number of important differences, suggesting that the Ministry of Manpower and its legal draftsmen have taken note of some of the weighty criticisms levelled at the draft by labour and capital alike. Thus some of the most controversial clauses in the first draft – relating to the political activities of unions, strikes and the 'winding-up' clause forcing the registrar to wind up a registered union under certain circumstances and allowing for the division of its assets among rival unions – have been dropped or amended.

It is true that the state has taken the step of recognising the right of all workers regardless of race to membership of registered trade unions. African workers can, for the first time, belong to registered unions by right rather than Ministerial exemption. And in some important respects the Act *is* less punitive than the March draft. But it would be a mistake to overemphasise this. The Act still represents an intention on the part of the state to extend control over the unions, in spite of the state's claim to 'the principle of the full recognition of trade union autonomy' articulated in the explanatory memorandum (White Paper 10/1981).

Besides the extension of full trade union rights to African workers very little in this Act is to be welcomed in itself – the scrapping of provisional registration and the removal of race and sex discrimination. Even here, some provisions have been retained which enable racial division : the overtly racial application of exemptions from wage regulating measures in 'Bantu areas' has been dropped, but the Minister and industrial councils are still empowered to grant exemptions from these

measures to 'any person or class of persons' in 'certain areas'.

In addition, clause 5(c) provides for the industrial registrar in determining the state of representativeness of unions for the purpose of registration to have regard only to those members of an objecting union who may also become members of the applicant union. The explanatory memorandum is explicit on the implications of this: ' . . . if a trade union with only a White or Coloured or a Black membership should apply for registration and a multi-national (sic) registered union objects to such an application, then the Industrial Registrar can only take into account the members of the objector who belong to the particular population group which can also become members of the applicant' (page 6); although at the same time the white paper denies the 'racial connotation', explaining that the same stipulation would apply on the basis of occupational groups. This is done in the name of 'the protection of the rights of particular groups of workers in accordance with the principle of the full recognition of trade union autonomy'.

References to this principle are frequent in the explanatory memorandum. However, it seems clear that the thrust of the Act is, on the contrary, to restrict trade union autonomy still further, by extending controls to unregistered unions (and to federations, registered and unregistered), by restricting union assistance to strikers, by retaining and increasing restrictions on 'political' activity.

Extension of controls over the unions

In terms of the new Act, unregistered as well as registered unions will have to:

- submit to the industrial registrar a copy of their constitutions, head office addresses and the names of office-bearers and officials;
- notify the registrar within 30 days of constitutional changes and changes of head office address;
- notify him within 30 days of their election of the names of office-bearers and officials, whether or not any changes have been made;
- keep for 3 years books of account, income and expenditure statements, balance sheets and auditor's reports, registers of members and records of money paid by each member, minutes of meetings, substantiating vouchers, correspondence and other documents;
- have union books audited annually and have income and expenditure statements, balance sheets and auditor's reports presented to a meeting of members or their representatives at least once a year;
- vote by ballot secretly and keep the ballot papers for 3 years;
- submit annually to the registrar copies of the auditor's report, income and expenditure statements and balance sheets;
- notify the registrar of the establishment of new branches, with particulars of membership and the names and addresses of chairmen and secretaries;
- provide the registrar by 31 March each year with a certificate showing total membership and number of members not in good standing;

– respond within 30 days to any written request from the registrar in connection with any of these matters.

Non compliance with certain of these provisions is an offence carrying a penalty of up to R1 000.

The extension of provisions to unregistered unions is being done, according to the white paper, 'so as to effect uniformity and to protect the interests of the members thereof in the light of past experiences' (page 8).

The Act does not extend the constitutional requirements binding on registered unions to unregistered unions. These requirements are that a constitution must specify the manner in which the membership of a member must be terminated and in which the office-bearers and officials may be dismissed from office. The constitution of a registered union must also make provision for the election of representatives on any industrial council or conciliation board.

The Act extends the powers of the industrial registrar regarding investigations and the issuing of directives to registered federations, but not to unregistered unions or federations. In terms of section 12 of the principal Act the registrar may conduct an enquiry into a registered union when he suspects that there have been irregularities in the elections, or that the union has acted unconstitutionally or unlawfully or has acted unreasonably towards its members. He can subpoena any person, retain any book and enter any premises. He can then make recommendations to the Minister which the Minister may put into effect. Similar powers of investigation of all unions, registered or unregistered, are available, in terms of section 61 of the principal Act, to inspectors appointed by the Minister : an inspector can enter any premises at any time, taking with him a member of the police force if he wishes, and obtain any information relating to the activities of the union and seize any book or document which in his opinion may afford evidence of any offence under the Industrial Conciliation Act. However, this Act does not specify any further action or steps to be taken by the inspector after conducting an investigation, nor does it lay down any sanctions on an offending union.

The clause regulating affiliation to political parties applies equally to registered and unregistered unions. The thrust of the earlier draft was to extend the definition of political party, introduce the definition of a 'political organisation' (widely defined) and extend the range of prohibited activities in connection with these. The explanatory memorandum states that representations on the current Bill submitted that 'the existing provisions have thus far worked well and that an extension thereof is, therefore, unnecessary at this stage' (page 7) and the current Act is less severely restrictive. However, the strictures on the active participation by trade unions in party politics have been retained, extended to unregistered bodies also, and broadened to prohibit them from carrying on any activities influencing or endeavouring to influence their members on behalf of a political party or candidate for election to office in a political party or legislative body such as a community council. This may not be a serious control, in practice, on the

activities of democratic trade unions. Nevertheless, it constitutes a continuing and widened restriction on the right of union members themselves to decide if and how they wish to discuss, comment on and enter into any relations they choose concerning issues which affect them.

The new Act seems to make access to stop-order facilities for union membership fees effectively the same for registered and unregistered unions; by ministerial sanction only. The earlier draft simplified the procedure for registered unions by proposing an amendment to section 78 of the principal Act, thus providing an incentive for registration, while prohibiting deductions in the case of unregistered unions without the express permission of the minister. The present Act reinstitutes ministerial sanction for all unions, but the prohibition in employers' deductions is more emphatic in the case of unregistered unions.

The organisational advantages or disadvantages of stop order collection of union membership fees as opposed to, say, gate collection, are not the point at issue here. The point is rather that real adherence on the part of the state to the principle of trade union autonomy would leave the question to be decided on by the unions themselves and negotiated with employers.

To sum up, then, the effects of the Act on the relative positions of registered and unregistered unions are : both are subject to administrative obligations and failure to comply is an offence for both , registered unions are subject to enquiries by the registrar which may be followed by Ministerial sanctions against them; both are prohibited from access to stop-order facilities without Ministerial permission, but the prohibition is stronger in the case of unregistered unions; both are prohibited from lending assistance to political parties. In addition, both are prevented from granting assistance to workers in an illegal strike (see below).

The amendments contained in the Act raise the question of whether or not the distinction between registered and unregistered unions has been blurred. It is not the case that in terms of the Act unregistered unions have no state controls over them whereas registered trade unions are strictly controlled by the state, since the state intends to extend controls over all unions. Indeed, it was never the case, both in terms of the previous Act as it stood before the passage of the new Act (the powers of inspectors under section 61) and in terms of the fact that the state has at its disposal an arsenal of security legislation and powers which it can exercise against trade unions whenever it chooses.

At its conference in Langa in August 1981 the democratic trade union movement rejected all state controls, refusing to subject themselves to control 'by anybody other than our own members' and uniting to 'resist and reject the present system of registration insofar as it is designed to control and interfere in the internal affairs of the union' (see the full statement elsewhere in this Bulletin). In the light of the Langa decision and its practical implications it would seem that the question of whether the new Act 'blurs' the distinction between registered and unregistered unions, in that it extends controls over unregistered unions, becomes somewhat

abstract.

What, if any, are the implications of the new Act for the registration debate? Does the Act, extending to Africans the possibility of membership in registered unions and at the same time making further inroads on trade union autonomy, change the terms of the debate at all, and if so, how?

The democratic trade union movement has collectively rejected all state interference in its activities, although, 'since trade unions are public bodies', there is no objection to providing information about constitutions, finances or representativity. Clearly, however, there are still differences of view as to the extent to which entry to the formal industrial conciliation machinery can advance democratic worker organisation.

These differences cannot be reduced to a few points. However, some of the arguments can be summarised here, with their counter arguments. Some of the arguments which have been articulated in favour of remaining unregistered are:

- remaining unregistered is the only certain way of retaining worker participation and control of their unions since it means staying outside the industrial council system. By registering, trade unions can be enticed, cajoled or forced into industrial councils where forces will be brought to bear on the unions to operate bureaucratically and cede powers to union officials.The counter argument to this is that registration does not necessarily lead to participation in the industrial council system. But, moreover, it is misleading to talk of this system as being uniform and monolithic in nature. In certain specific situations membership of an industrial council would not necessarily undermine worker participation and control.

- registration and entry into industrial councils will considerably weaken the bargaining strength of independent trade unions, because they must face many employers on an industrial council, where they are not representative and can be outvoted by a minority, whereas unions are stronger in negotiating factory agreements with companies where they are well organised and have the capacity to call workers out on strike. The counter argument is that under certain circumstances a union may be able to increase its bargaining strength against employers by entry into an industrial council.

- the powers of the industrial registrar to conduct an enquiry into the affairs of a union and to make recommendations which can be implemented by the Minister applies to registered unions only. The counter argument points out that investigations can be conducted into all unions, whether registered or not, by other state agents, especially the security police, and that they can act with even greater devastation against any trade union. This argument holds that it is important not to isolate only one Act and its provisions, but to see legislation

and the state's role in its entirety.

- the constitutions of unregistered trade unions do not have to contain the provisions specified by the Industrial Conciliation Act. The counter argument is that these provisions are insignificant and do not undermine the principles and practice of worker participation and control of trade unions.

Some of the arguments which have been articulated in favour or registration are:

- registration eases the struggle for trade union recognition by employers, since it eliminates their last argument for refusing recognition. The counter argument is that employer recognition of a union depends on the organised strength of the workers and that many companies have been forced to recognise unregistered trade unions for precisely this reason. In fact, the argument continues, this has happened to such an extent that many employers and employers' federations are openly advocating a policy of recognising representative unions regardless of whether they are registered or not.

- registration provides certain legal rights to trade unions which are not accorded to unregistered unions, and these rights can be used to advance working class interests. For instance, the prohibition on victimisation in the Wage Act and the Shops and Offices Act applies only to members of registered unions. The counter argument is that these legal rights are not in themselves sufficient to outweigh the disadvantages of registration.

- registration of predominantly African trade unions constitutes an important concession to African workers on the part of the state and grants them a legitimacy which will make it harder, if not impossible, for the state to repress such trade unions. The counter argument is that in the end the state's ability to act against worker organisations depends on the strength of these organisations, and that the concession to African workers is to be weighed up in terms of the disorganising provisions it contains and resisted on this basis. In any case, the counter argument continues, the state has in a sense acknowledged the right of unregistered unions to exist and operate as unions in that they must submit constitutions, financial statements, names of office bearers and so on to the industrial registrar.

A central question, clearly, is the consequences for democratic trade unions of entry, or refusal to enter, into industrial councils. We also want to raise the question of whether industrial councils are the most appropriate institutions for collective bargaining.

At the Langa meeting the unions rejected the present industrial council system as an acceptable means of collective bargaining, recommending that unions which are not party to industrial councils should not enter them and requesting participating unions to refer this back to their members for endorsement.

A footnote to the explanatory memorandum suggests that the state has not yet fully formulated its intentions with regard to registration. The note is referred to only in the section dealing with the right of existing unions to object to the registration of new unions (section 5(c)), but is worded generally : 'A lot of representations were received on a subject connected with the Amending Bill, namely the registration process of employers' organisations and trade unions. In the light thereof it was decided to hold the clauses of the Amending Bill connected therewith in abeyance and to refer the whole question of the registration process to the National Manpower Commission for investigation. As soon as the National Manpower Commission's report and recommendations on the matter are received, the whole matter will be looked at again with a view to amending legislation'. (page 19).

We would urge the National Manpower Commission to take account of the demand from the democratic trade union movement, that registration should be merely a formality and should not in any way undermine trade union autonomy.

Strikes

The new Act introduces a fresh offence as regards strikes. It is an offence (with a penalty of up to R1 000) for any trade union to grant financial or other material assistance to anyone involved in an illegal strike. In introducing these provisions, the state is implicitly acknowledging its inability to suppress the spontaneous expression of worker militancy. The provisions are aimed at inhibiting the involvement of trade unions in strike activity to the obvious advantage of employers.

A strike is the legitimate weapon of last resort for workers in a dispute. Employers are in a far more powerful position than workers on strike, unless workers can obtain financial assistance, and trade unions do not have the resources to sustain workers on strike for any length of time.

It is well known that most strikes in South Africa are in fact illegal. The definition by the state of the legality of strikes in terms of a wholly unrealistic set of regulations and prohibitions has meant that all but one of the 743 strikes by black workers between 1973 and 1979 fell into the 'illegal' category. This has provided legal justification for the arbitrary use of state power against striking workers, whether in the form of police intervention or the selective prosecution of strikers in the courts. By focussing on the legality/illegality of strikes in the Act, the state is showing again that it is not prepared to come to terms with the basic question of why strikes have become so common in South Africa. Instead, the legislation perpetuates the situation in which the 'resolution' of a conflict between workers and their employers is facilitated by an external force of re-

pression. Such a 'resolution' of conflict is no more than an attack on the symptoms, strike action, rather than on the causes of the malady. Ultimately industrial peace can be promoted only through the recognition by the state and by capital of real worker grievances and genuine worker representation of such grievances.

Unwillingness to recognise democratic worker representation is a central factor giving rise to widespread strike action.

In these terms not only the new provisions of the Act, but that part of the principal Act (section 65) which prohibits strikes except under certain special circumstances, must be seen as faulty. The prohibitions are based on the mistaken assumption that no serious disputes between workers and management which may lead to strikes can occur during the currency of an industrial council agreement. But the situation which in fact exists, where strikes are virtually a daily phenomenon sharply contradicts the state's refusal to recognise that conflict is inherent in the factory situation. The prohibition of strikes does not prevent them, it simply makes them 'illegal'.

In addition, the prohibition in section 65 of the Act weakens the collective bargaining power of workers. The right of workers to take immediate collective action when their employers introduce an unfair labour practice has been removed by requiring, inter alia, a 30 day 'cooling off' period before a strike can take place legally. Workers are thus prevented from acting when they experience injustice most intensely; the 30 days clause aims to provide employers with the opportunity to deflect real grievances and to seize the initiative and consolidate their position during a period when workers, if they are not to act illegally, must remain passive. The most extreme weakening of workers' bargaining power is in the 'essential' industries where workers are completely prohibited from legal strikes.

The Act also does not come to terms with another serious shortcoming. The grossly unfair judicial recognition that an employer can dismiss a striking worker, whether the strike is legal or illegal, is a complete denial of workers' collective bargaining rights. This power stems from common law where an employer has the right to dismiss a worker who refuses to work on the grounds that this refusal constitutes a breach of contract. However, in industrial societies in the late 20th century the terms and conditions of employment are predominantly determined by collective bargaining agreements rather than individual contracts of employment. Strikes form an integral part of the collective bargaining process and should be legally recognised as such. It follows that workers out on strike must have security of employment to give collective bargaining meaning. The right of workers to strike collectively with security of employment should therefore be recognised by law and take precedence over the employers' right at common law to dismiss workers on strike.* It is necessary either for judges to give weight to these considerations or for the victimisation provisions of the Industrial Conciliation Act to

* See J.S.A. Fourie, Status en kontrak in die Suid-Afrikaanse arbeidsreg, Tydskrif vir Hedendaagse Romeins-Hollandse Reg, 42 (1) February 1979, pp 79–85.

be widened so as to prohibit dismissals of workers who strike to improve or defend their terms and conditions of employment.

It should also be noted that the right to strike is of little value without the right to conduct a lawful picket.* At present the Riotous Assemblies Act effectively renders picketing illegal.

It is interesting that in an attempt to appear neutral and even-handed, the state has made the same restrictive provisions as apply to strikes in the Act as far as unions are concerned apply also to lock-outs, as far as employers are concerned. Embedded as it is in a set of clauses which, far from redressing imbalances in the previous Act, increase them, this apparent neutrality can hardly be taken seriously. The inherent domination of employers and their control over workers remains intact through legislation which appears to grant equal rights to workers and employers.

Reduction in employers' obligations

The hollowness of the attempt at neutrality, like that of the state's claim to respect the principle of trade union autonomy, is underlined by the fact that although the restrictions on unions are increased, the duties of employers and their organisations are decreased, in some important respects.

The principal Act required employers to put up notices in a conspicuous place containing summaries of or extracts from the Act and from the relevant agreement or award, as well as the address of the local office of the industrial council concerned or the Department of Manpower. This section has been amended so that the employer need only retain a copy of the wage-regulating measure applicable and make it available to workers at their request. The white paper points out that few employees made use of this requirement, and that it 'weighs heavily upon the employer'.

Similarly, section 59 of the principal Act, which required every employer on whom an agreement was binding to furnish the Department of Manpower with his name and those of his partners, the names of the secretary, directors and managers of companies, the name of the business and its address and changes in any of these, has been repealed. Registration of employers is now to be a matter to be negotiated at industrial council level. The explanatory memorandum points out that many employers failed to furnish the information, and that these requirements resulted in additional administrative work 'for both the employer and the Department'. (page 15)

Works Councils

The new Act repeals the Bantu Labour Relations Regulation Act, thus removing

* See SALB evidence to the Wiehahn commission, SALB 5 (1) May 1979.

the legal foundation for works and liaison committees. The earlier draft did not reinsert these committees, which was surprising in view of the fact that by 1979 no fewer than 303 works committees and 2 664 liaison committees had been established, largely at the initiative of employers. The present Act rectifies what appears to have been an oversight by incorporating virtually all of the provisions of section 7 in respect of liaison committees from the Bantu Labour Relations Regulation Act. Liaison committees are re-defined as works councils, and works committees will have no legal standing under the new Act. A footnote to the explanatory memorandum explains: 'Strong representations which were made as a result of the publication of the Amending Bill mainly indicated that statutory provision should exist for communication machinery at the level of the undertaking. It was consequently decided to give a statutory structure at this stage to liaison committees of which there are approximately 2 750 in existence at present and, which will henceforth be known as works councils and to refer the functions of such councils and other negotiating bodies at the level of the undertaking to the National Manpower Commission for investigation. Amending legislation will be considered in the light of the National Manpower Commission's report and recommendations'. (pages 19–20).

Another section, section 11A, is also transferred from the Bantu Labour Relations Regulation Act, permitting a group of employers whom the Minister regards as sufficiently representative to apply unilaterally for an 'order' governing minimum wages and working conditions of their workers. During the first year of operation of such an order no legal strike can be held, so that a restriction on strikes is transferred from the Bantu Labour Relations Regulation Act to the new Labour Relations Act.

Trade Unions and the State : the question of legality

Bob Fine
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Introduction

Ever since the Wiehahn Commission published its findings and the government introduced legislation enabling the registration of black unions, an important debate has emerged in South Africa and abroad concerning the response of black unions to the state's initiatives. This debate is to be welcomed since it raises not only questions of immediate practical concern for black unions – whether or not to register under the amended Industrial Conciliation Act but also *broader* questions of the strategy to be adopted towards a state that represents one of the major obstacles to union growth. It is evident that for black workers, who face state repression in every aspect of trade union organisation and in every form of collective action, the resolution of such issues is vitally important. Full and open discussion of these issues, as far as it is possible under present conditions, is a necessary and desirable step. Without such discussion, there can be no adequate resolution of the thorny question of the state – and certainly not one that is understood and supported by the black workers themselves.

Although we welcome the debate, we are not happy with the predominant direction which it has taken so far. Most critics of the state's registration strategy have advocated that it should be boycotted by all black workers who value their independence from the state. This has been true of critics both inside South Africa and abroad; and it is the one common element that binds together radicals who otherwise hold very different or even antagonistic political perspectives. Boycott has become almost a credo for radicals, a principle which marks the boundary between the fight against and connivance with the apartheid state. It is this stance – sometimes explicitly presented as a principle, but more often implicit in a seemingly tactical argument – which we intend to challenge.

The role of the *SALB*, in particular, has been useful in publicising the actual responses to Wiehahn coming from within the black trade union movement. To many people overseas it comes as a surprise to learn that the majority of black unions are actually applying for registration, or at least keeping open that option, depending on the changing conditions which the state attaches to registration. Clearly, not all of these unions can be dismissed as reactionary or "yellow", as

the most rigid ideologues on behalf of boycott would have us believe. Certainly, this charge cannot be levelled at FOSATU, the trade union body that has initiated and led the drive to make critical use of the state's registration package.

The fact that the greater part of organised black labour has taken this position does not of course make it right. But it should at least act as a stimulus for re-examining the orthodoxy of boycott. If it proves to be the case that these unions are right, it would not be the first time that workers have moved ahead of the radical intelligentsia. The unfortunate features of the debate so far are that the reasons why FOSATU has taken this position have been scarcely articulated and, more generally, that the theoretical basis for an alternative strategy to boycott has barely been spelt out. It is not our intention – nor are we in a position – to provide propaganda for those unions who have sought registration. Rather, we wish to offer a general theoretical critique of what we see as the dogma of boycott, and to help lay the groundwork for a radical alternative perspective that will better serve the black union movement.

Lest we are misunderstood, we should emphasise from the start that we are not opposed to the selective use of boycott as one tactic among many open to the trade unions; nor do we say that this tactic might not at some time be appropriate with respect to the state's current proposals, particularly if the state continues its tendency (evident at the time of writing) to tighten even further the restrictions associated with registration. It is proper that, as events develop, there should be continuing debate within the black unions over the appropriateness of various responses, including a boycott of registration. What we do insist, however, is that the boycott tactic be taken down from the pedestal on to which it has been elevated by the boycotters, and that the limits of its effectiveness be recognised. There has been the tendency for this grouping whether consciously or not, to make a spurious principle out of boycott. It is a position which finds a sympathetic response among all those who wish to express their abhorrence of apartheid by having nothing to do with the regime, but one which nonetheless reduces political questions to notions of moral abstinence.

The Debate

We begin this discussion with a brief statement of the positions which, broadly, characterise the two poles of the argument surrounding registration. This will provide a basis to examine the presuppositions in which these positions are rooted.

Among those black unions which have agreed to apply for registration there are important differences. Some, like those unions affiliated to TUCSA and to a lesser extent to CUSA, have not seriously challenged the advisability of registration. For these unions, registration has been welcomed as an unambiguous victory for black workers, though they may have expressed some minor disagreements with aspects of the state's package. For others – and here we refer specifically to FOSATU unions – agreement to register is based on a far more complicated and contradictory

analysis of the advantages and difficulties it brings to black workers.

FOSATU has set itself certain long term aims which it regards as crucial to the development of a strong trade union movement among black workers. These include: the elimination of legally-enforced racial division in the labour movement; the radical limitation of state interference in labour relations; the establishment of workers' control in the unions, and an end to craft-based divisions within the union movement.[1] FOSATU is adamant that "our struggle has not been to achieve registration as an end in itself".[2] However, while they reject registration as an *end*, FOSATU has not necessarily rejected registration as a *means* of achieving their long term aims: that is, they have adopted a tactical approach to the question, arguing that they would accept registration only if it served to help them win their long term aims. To this end, they agreed to apply for registration on condition that certain demands intended to promote their aims were met by the state.

FOSATU's position implies a different conception of the state from that advaned by TUCSA. By arguing that in amending the IC Act, the state has at last come to its senses, TUCSA implicitly posits a conception of the state as more or less neutral in relation to the struggles between various contending social groups, comprising employers and groups of racially defined workers (white, coloured, Indian and African). FOSATU, on the other hand, through its continued protests against state interference, recognises its repressive character. However, this does not lead them to conclude that registration should be dismissed as *merely* an instrument of state repression.[3] On the contrary, FOSATU argues that both the Wiehahn Commission and the amendments have been forced upon the state "by years of struggle by workers and their representative organisations",[3] and therefore that these changes establish a new terrain of activity to which black workers and their unions must relate. The workers' movement, they continue, would be foolish to ignore that the state may be making real concessions under pressure and, therefore, FOSATU is willing to "test"[4] the state's intentions by applying for registration under their own (FOSATU's) clearly defined terms. Implicit in all these arguments is a view of the state in which it appears not as a neutral arbiter between contending groups, nor *merely* as the repressive instrument of one class, but rather as 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. Unfortunately, since this theoretical position has not been explicitly developed by FOSATU, the organisation has found itself swayed at various times by different pressures, thus leading to a good deal of confusion within its own ranks about its overall position and tactics.

A rather different analysis of the state is implicit in the position adopted by those black unions opposed to registration. Here the basic argument is that both the Wiehahn Commission, which arose as a response to a crisis in the political and economic control of the black labour movement, and the legislation which followed are no more than a crude attempt by the state to intensify and rationalise control

of the independent black trade union movement. The rhetoric of liberalization is a fiction behind which lies the harsh reality of the extended domination of the apartheid state. According to the GWU which supports this view:

> Now suddenly it seems that formal recognition has become a real possibility. But only because the unions have been presented with a highly restrictive and limiting set of conditions for registration. Acceptance of these conditions raises the possibility . . . . . of formal recognition being extended on a wide scale precisely because registration spells the death knell of workers' control of the unions. . . . . it involves, in other words, a series of compromises with the bosses and the state. . . the unions will have to compromise on the question of workers' control, for this is what registration implies. Having compromised on the question of workers' control, the unions will have lost the most important element of their power.[5]

Far from registration being a concession of rights to black workers (as FOSATU sees as a clear possibility), in this view, the amended legislation represents the imposition of severe limitations over black trade union activity. Among the limitations to which this group draws attention, we find not only those which affect the *direct* relationship between the state and the unions, such as the threat to remove existing rights from those unions which refuse to register, but also those relating to the broader powers of the state, such as the powers of the police. According to this argument, so long as these latter powers remain intact, and so long as the fundamental feature of the apartheid state – its denial of democratic rights to the black population – remains untouched, there can be no meaningful reform. Behind the thin veneer of the velvet glove, the argument goes, there lurks as ever the iron fist of apartheid, ready to strike.

Clearly, in this analysis the state is seen as an uncompromisingly repressive force capable of *adapting* its methods of repression towards the labour force, but never of *easing* repression. There is no room here for the kinds of manoeuvres which FOSATU seeks to adopt since any attempt to work, however critically, within the confines of the new legislation automatically implies a fatal subordination to the new forms of repression, to the power of the state. According to this view, the aim of the new legislation is to create new divisions within the ranks of the workers by incorporating a small minority of organised, urbanised, skilled African workers alongside their white, coloured and Indian counterparts, while continuing to deny any meaningful rights to the mass of unskilled migrant Africans. Advocating this position, Nicol writes that:

> The legislation is framed and calculated to encourage the organisation of skilled black workers and to exclude the organisation of unskilled migrant workers . . . . All the "positive" aspects of the legislation are intended to benefit only this

> section of the working class. The legislation aims to divide the working class. Secondly, the legislation seeks to entrench reformist political practices in the African trade union movement. It attempts to draw them into an industrial relations system which predisposes unions to become bureaucratic...encouraging the making of major decisions by the leadership as opposed to the workers, encouraging the use of the law as opposed to organisation as the first weapon of the union . . . . . The embryonic organisation of the independent trade unions can only be protected off the rack of registration.[6]

According to this argument, acceptance of registration means collaboration with the state in its aims, while failure to understand this reflects a basic misconception of the nature of state power and is tantamount to a betrayal of the majority of black workers. The only way forward is to refuse the straightjacket of apartheid legality and to continue to build an independent union movement free of the restrictions of registration. As the GWU states:

> Knowing the state's objectives does not mean accepting them. And the only way of really refusing to accept the state's objectives is to refuse to accept registration under the conditions offered by the state.[7]

This latter position is taken up to varying degrees by different unions. Within South Africa, SAAWU, the GWU and the Food and Canning unions have all argued the need to reject registration on the grounds that it will inevitably involve collaboration with the apartheid state, and therefore the weakening of the labour movement. For instance, the SAAWU secretary, Kikine, stated recently that:

> If we submitted to the government's registration requirement, we would be submitting to its legislation instead of fighting it.[8]

In exile, SACTU has rejected the notion that peaceful reform of any kind can be meaningful under apartheid, and therefore dismisses registration as a fraud and mere window dressing for apartheid. SALEP, a minority dissident group on the left fringes of SACTU and the ANC, has also rejected registration on the abstract grounds that no capitalist state in South Africa can ever offer any lasting concessions to the working class.

But, whatever their reasons and different positions, all these varied groups have in common the fact that they regard the state's concessions as essentially fraudulent and therefore they all advocate a policy of boycott.

It is around this issue of the nature of these concessions – are they real as FOSATU argues or are they simply fraudulent? – that much of the debate turns. And underlying this question is that of the nature of the state which has offered these concessions and of its relation to the classes which constitute the social fabric of modern-day South Africa. In attempting to answer these complex ques-

tions, we begin by examining historical experience in South Africa to see what lessons can be learned.

The Legacy of History

a) *Incorporation or Independence?*

Stripped of its rhetoric, the basic argument which the boycott group put forward is that the legal registration of trade unions involves a substantial loss of independence for them and therefore leads to their incorporation by the state; while, conversely, they argue that trade union independence can only be achieved through non-registration. This argument seems to gain credence from the historical experiences surrounding the IC Act, which *appears* to provide a decisive illustration of the dangers involved in registration.

Trade union registration has always been hedged around with a multiplicity of far-reaching restrictions on trade union rights, such as those of free association, political affiliation, strike action and shop floor negotiation. Since the Act was first passed in 1924 the state has been spectacularly successful in securing the incorporation of most of the registered unions. The existence today of an organised white, coloured and Indian labour movement dominated by tame and bureaucratised registered trade unions which are closely tied to state institutions and isolated from their own rank and file, *seems* to provide conclusive evidence of the way in which registration under the IC Act almost inevitably leads to incorporation by the state. A conclusion often drawn from this particular interpretation of history is that any union which registers today must inevitably suffer the same fate – and that therefore the only correct way forward for those black unions seeking independence is to reject registration.

We intend to challenge this by delving into such appearances to discover what lies beneath. A closer inspection suggests that the historical illustrations are often far more complex than is usually assumed. Most important in this regard, are the few historical examples which show that registered unions have not always been incorporated by the state.

While accepting registration for a racially defined group of workers, certain unions nonetheless managed to retain their commitment to the principles of trade union independence and non-racialism. During the 1920's and '30's, the Garment Workers' Union under the leadership of Sachs and, during the 1940's and '50's, the Food and Canning and Textile Workers' Unions all mounted serious campaigns against the racially discriminatory provisions and bureaucratic controls contained in the IC Act. *At the same time,* they attempted to take advantage of their official legal status, using their access to the official bargaining machinery which registration afforded them. These unions, then, did not regard the restrictive legal provisions of the Act as being insurmountable obstacles, but rather sought to find tactical ways of manoeuvring around them.

Equally, in the more recent period, some registered unions (such as NUMARWOSA, WPMAWU and Food and Canning) have been able to make use of their right of access without betraying their commitment to a united, democratic, non-racial labour movement. Moreover, despite their legal status as registered unions, the first two unions mentioned above both underwent radical internal changes during the early 1970's, becoming, in the process, more responsive to rank and file demands for worker control in the unions and for an alliance with African workers. In other words, the experience of these unions showed that registration does not *necessarily* prevent a successful campaign being waged by workers against bureaucratisation and racial divisiveness. The efforts of these registered unions to fight against these aspects of the Act cannot be ignored in any serious attempt to examine its overall impact on the union movement.

While the above historical analysis suggests that there is no necessary association between registration and incorporation, the reverse of the boycott group's argument – that non-registration is the *sine qua non* of trade union independence – does not stand up to historical scrutiny either. The boycotters rest their argument on the notion that unregistered unions are free and independent of the state without ever specifying precisely what these terms mean. This confusion leads them to propagate two unfortunate fallacies.

First of all, it is central to their argument that in order to preserve their commitment to independence and democracy it is necessary to operate outside the IC Act. This argument however, is based on a confusion between a particular phenomenon, the IC Act, and the more general phenomena of the law and the state. Refusing registration will certainly mean that the unions will remain outside the discipline of this particular Act, but it will hardly lead to their independence from the multiple other laws which affect them, nor even from the power of the state. Since their inception, unions have been subjected to bannings, detentions without trial, charges under the Riotous Assemblies Act, police suppression of strikes, deportation of striking workers – all carried out in terms of the law of the land. Of special relevance here is the fact that it was the so-called "Campaign of Terror" mounted by the state during the period 1928–32 which contributed to the collapse of those registered and unregistered unions which had resisted the state's efforts to incorporate them under the IC Act. Refusal to register does not mean – nor can it ever mean – independence from the state. Precisely because the unions are not, and never can be, independent of the state, they are *constantly* forced to tailor their activities to take account of state power, eg, with respect to political affiliation, strike action, etc. Nor is this a condition which applies only to South African unions. On a world scale – whether in Poland, Britain or elsewhere – the history of the trade union movement has been necessarily one of compromise. By not recognising this, the boycotters fail to recognise the true nature of trade union activity: namely, that compromises can never be avoided. The question is to distinguish between those compromises which promote and those which retard the

workers' movement.

The above arguments and illustrations do not in themselves disprove the all-too-obvious fact that, historically, the IC Act does seem to have been remarkably successful in securing the incorporation of the vast majority of registered unions. However, these illustrations do suggest that if we want to understand this incorporation, we have to look beyond simplistic notions which confuse "legal independence" from the mechanisms of state registration with *real* independence from subordination to the state. That is, we need to look in more detail at the conditions under which incorporation took place.

b) *Registration and the Conditions of Incorporation*

In order to answer the key question of why the 1924 IC Act was able to undermine the majority of the white, coloured and Indian unions which registered under it, one has to look further than the provisions of the Act itself. Law operates within the context of certain social, political and economic conditions, and to understand the implications of a particular law for society, one has to examine it within the context of these conditions. In this regard, there are a number of points to which we draw attention in order to establish the conditions within which the 1924 Act was introduced.

The most important starting point is to situate the 1924 Act within the productive and social relations which existed within the labour force at that time. Here the key elements would appear to be the existence of a well entrenched racial hierarchy in the division of labour and the differential incorporation of the racial groups in the country's political structures. In addition to these objective conditions – all of which promote racial divisions within the labour force – are important subjective conditions which further entrenched these divisions. Of importance here is the tradition of craft unionism with its accompanying ethos of sectionalism and racial superiority which was imported from abroad and was prevalent among white workers. (The 1922 Rand Revolt, with its emphasis on the consolidation of sectional privileges for white workers and the institutionalisation of racial forms of protection, was an obvious expression of this latter phenomenon.) The point is that the IC Act of 1924 was inserted into a society whose objective and subjective conditions were already permeated with racial divisions.

It would be inadequate to argue that simply because the above conditions prevailed at the time, it was therefore *inevitable* that the Act would have its intended effect of dividing and incorporating workers. However, in order for workers to be able to resist these tendencies the presence of a countervailing social force, capable of generating and sustaining a movement in the opposite direction, is necessary. In other words, the "success" of the IC Act must be related to the relative strengths of the opposing classes. To resist incorporation, it was necessary that the mass of the labour force, African workers, should lead the movement as a whole. Yet in the mid-20's, the African section of the labour force, especially

in industry, was relatively weak – and certainly far weaker than it is today – and the social conditions favourable to unity simply did not then exist. This is not to say that African workers did not fight important struggles against employers and the state during this period, but that they were not a strong enough force (numerically, organisationally, ideologically) to counter the intense pressure which the state was imposing on white workers. Furthermore, it must be borne in mind that the 1924 IC Act was introduced after white workers had sustained a heavy defeat at the hands of the state. The crushing of the Rand Revolt brought with it a phase of demoralisation among these workers (witness the fall in the number of strike actions among these workers and the decline in their membership of trade unions over the following years.) This has important implications for our argument. Objectively divided, enmeshed in the grip of a narrow racist and sectionalist ideology, driven backwards and demoralised by the state, with no substantial countervailing force to sustain or rejuvenate them, is it any wonder that the majority of the white workers fell easily into the trap of incorporation which the state had laid for them through the terms of the IC Act? Indeed, the wonder is that despite these awesome conditions, some white workers, albeit only relatively few, still managed to resist incorporation – until the end of the decade when the state's "Campaign of Terror" literally hammered all resistance out of them.

To sum up, we would argue that it was not the IC Act which led to the defeat of the registered union movement after 1924 (in terms both of its incorporation by the state and its rejection of non-racialism). What turned the IC Act into a defeat for the labour movement was the existence of definite historical conditions and a particular balance of class forces. The Act was designed to entrench and extend racial divisions among the labour force. However, this fact is not enough to establish why it should be successfully implemented. It is only by linking the terms of the legislation to the social context, and especially to the balance of forces within it, that we can satisfactorily explain its implementation.

However, to pose the question in this way runs the risk of missing an important aspect of the argument: that is, the IC Act itself cannot be treated as simply a functional appendage of the state which in some magical way would resolve all its problems. Rather, the Act was an attempted solution to the contradictions faced by the state and therefore contained in itself both advantages and dangers.

c) *The Contradictory Nature of the IC Act*

Some Marxist analyses of South African society crudely represent the law as being no more than an instrument of the dominant capitalist class; a weapon capable of unambiguously promoting the interests of this class. In positing this functionalist conception of the law, these theorists are perhaps reacting against an equally crude pluralist conception which treats the law in positivist fashion, as value free and therefore neutral in the struggle between social groups. In our view, both these approaches fail to grasp the essence of the nature of the law:

that it both expresses and attempts to regulate a set of antagonistic social relations, thereby representing a form of domination through which the conflict between antagonistic classes is mediated. Law does not *constitute* social relations, but rather it acts upon forces already constituted. Consequently, we would reject the argument that it was the passage of the IC Act in 1924 which secured the incorporation of the registered unions, since the Act itself could have no magical powers of this kind. Rather, we would see the passage of this Act as an attempt by the state to resolve certain fundamental contradictions which faced employers at that time, but which simultaneously opened up a new set of contradictions which would have to be confronted.

There is no doubt that the IC Act of 1924 brought with it substantial advantages for the state and employers. Foremost among these were the denial of rights to African workers, the racial divisions which it encouraged within the labour force and the co-optation of the white-dominated labour aristocracy. Yet in noting this it seems to us just as important to bear in mind that the state paid a high price despite these advantages. In particular, the introduction of a statutory colour bar – a necessary device if white workers were to be enticed into collaboration with the state – imposed restrictions on the use employers could make of relatively cheap black workers in the more skilled positions. This in turn, led to the shortage of skilled labour becoming a serious economic problem. Further, by drawing non-African workers into collaboration with the state, they were prevented from fulfilling their role as a labour aristocracy able to exercise, on behalf of employers, a degree of ideological dominance over the African labour force. (It is worth noting here that after the African mine workers' strike of 1920 the Native Recruiting Corporation, aware of this problem, sought to foster the creation of a *racially mixed* labour aristocracy on the mines which could serve as a buffer against the mass of unskilled African workers and help prevent a potentially dangerous racial polarisation emerging among the work force – an attempted "solution" which, of course, carries within it a different set of potential contradictions.)

Finally, the ICAct helped to create more favourable conditions for a convergence of the African workers' struggle and the nationalist struggle. Although an important advantage of the legislation was that it helped undermine the potential for solidarity among white and black workers, a corresponding disadvantage lay in the political danger to the state which emerged from the potential unity forged within the black population. This provided the basis for an alliance not only between black workers and other sections of the black population (based on their common oppression as blacks), but also within the various sections of the black working class itself (based on their common subjection to discrimination under the IC Act). This further encouraged black workers to overcome such major divisions among themselves as between tribes, migrants and non-migrants, urban and rural divisions, etc. These and other implications of the Act – implications which could not have been welcomed by the state – inevitably contributed to the politicisation of industrial

conflict and placed political questions high on the agenda for those organisations which were to seek to represent the interests of black workers.

Thus, while we accept entirely that, over the decades following its introduction, the IC Act was effectively used by the state as a weapon against the labour movement, the lessons to be drawn from these historical experiences are, first, that its effectiveness was a product not of the Act itself, but rather of the social conditions into which it was inserted and that therefore if these conditions do not exist there is no reason why the effect should necessarily be the same: ie, why incorporation should occur. Second, the Act itself had contradictory implications for the future development of capitalism in South Africa. To ignore these points and to argue that history proves that trade union registration automatically implies incorporation by the state is not only erroneous but politically dangerous as well, in that it leads to a principle being made out of the tactic of boycott. In order to develop this point further we turn now to a more detailed examination of the boycott position.

Exposing Wiehahn

The boycotters have shown great energy in trying to expose the real meaning of "Wiehahn". There is no doubt that this is a vital task, since the rhetoric through which the state presents its Wiehahn strategy does not reflect the actual nature of the changes being introduced. Hence one of the essential tasks of critical analysis is to expose the inner content of the state's reforms. What we question is the basis on which the boycotters have undertaken this difficult task.

Those advocating boycott have argued in essence that while the Wiehahn strategy *appears* as a concession of rights for black workers, it is *in reality* merely a more rational, subtle and intense form of state control. There are three related problems with this approach. First, by placing exclusive focus on challenging the semblance of rights offered by Wiehahn, the boycotters accept uncritically the image, put forward by the Commission itself, that its proposals represent a *rational* solution to the problems of labour control faced by the state. Second, by treating the liberal rhetoric of Wiehahn as *merely* an ideological fiction they fail to examine the ways in which registration might extend the rights of black workers and so augment the workers' field of action. Third, by concentrating on exposing the repressive character of apartheid legality (a fact that is well known to most black workers) they neglect the equally vital, but less evident, task of revealing the *uses* which black workers can make of changes in the legal status of their unions. These failings reinforce each other. Fetishism of the rationality of the Wiehahn strategy leads to an inability to grasp its inner contradictions. Fetishism of the illiberality of the state leads to an inability to warrant that workers can force real concessions from it. Fetishism of the task of exposing the state leads to an inability to comprehend the practical uses black workers can make of the legal channels opened up by the state.

In actual fact, the rhetoric employed by the Wiehahn Commission and by the

government has not in general been one of concern for the rights of African workers; rather it has been one that emphasises the hard imperatives of their rational control and economic exploitation. Thus, the Commission expressed its regret over the state's inability to crush black unionism; its anxiety over the threat to "authority and the capitalist system" posed by the unions' growth; and the urgent necessity to find more effective means of drawing the unions' teeth. Assertion of the rights of African workers plays little role in the Report. It comes as no surprise that an organ of the apartheid state is more interested in control than in rights: especially as its rhetoric is designed to convince wavering capitals in South Africa of the advantages of bringing African workers under the "discipline" of the law; to convince foreign investors that the "labour problem" is well in hand; and to allay the fears of white workers and voters that they will lose their racial privileges. The public that the state addresses is not one renowned for its interest in the rights of blacks; but it is renowned for the efficient control and exploitation of black labour.

Thus the boycotters, in their constant re-assertion that there is nothing liberal in the state's new measures, do little more than repeat what the representatives of the state themselves say – only in slightly more explicit form.They expose little, because the repressiveness of apartheid is scarcely concealed. Supreme power is and always has been the boast of the state, the substance of its rhetoric.

It is characteristic of the state to present its reforms both as a recognition of the rights of its citizens and as an optimum form of control over them. The temptation facing the state's critics is to reject the soft language of rights as no more than an illusory veil, while accepting the hard language of control as a true mirror of reality. But neither side of this coin is correct. On the one hand, it cannot be assumed that rights are *merely* a veil for power or a mystification which hides the brutal realities of class domination. The existence of rights constitutes a vital resource for the oppressed and an inhibition on the power of the oppressors. That is why the winning of rights from the state has been a vital part of all labour movements. Further, there is no reason to presuppose that even the most authoritarian regimes cannot be forced by working class movements to concede, at least for a period, crucial democratic rights. Even in Franco's Spain or, more recently, in Brazil, the opposition was able to squeeze a measure of liberalisation from the regimes and to make use of the rights afforded, however meagre and precarious. Thus, the notion that rights are nothing more than an illusion or that they are impossible to win under authoritarian governments is a false dogma that can only obscure the need – and sap the will – to fight for them.

The other side of this critique is also misplaced. It cannot be assumed – simply because the agents of the state say so – that the new labour policy does introduce a more rational or intense form of control over the unions. The state presents its Wiehahn strategy as a technical device for imposing more efficient control over black unions and as a quantitative increase in the intensity of control. Our task is not to bow before this image of omnipotence, but to search beneath the surface

for the contradictions inherent within the new regulations; not to accept the technical appearance of these reforms, but to grasp the shift in class relations they signify, not to assume that they represent a quantitative increase in control, but to assess the qualitative changes in the form of domination which they signify, and to find out independently of the state's rhetoric which side stands to benefit from these new arrangements. The state itself reveals in practice, through its hesitancy in implementing the reforms, less confidence in their potency than its rhetoric or that of the boycotters would have us believe.

We should add that for any capitalist state, control is not an end in itself, but is always subordinate to the demands of capital accumulation. There can be no certainty in advance that the imperatives of control will neatly correspond with the imperatives of accumulation. Indeed, as we shall see later, the Wiehahn proposals by no means eliminate these tensions.

For these reasons it is not sufficient for critics of Wiehahn to focus on the state's *intentions* alone. Protagonists of boycott have argued rightly that the state intends to use registration to divide, discipline, incorporate and isolate the black union movement. But our response to these innovations cannot be determined by the state's intentions; rather we must make our own assessment of the real effects of registration. For between the state's intentions and their realisation in practice falls a shadow: the struggle of workers. Whether the new forms of labour control will serve to constrict the labour movement (as the state wishes) or whether thy will serve as a stimulus for its development (as the state fears) cannot be gauged by studying the state's intentions alone. When the state deludes itself into believing that its intentions can immediately be translated into practice, it only expresses its view of labour as nothing more than cogs in the wheels of capital; whose sole function is the production of profit. It is not for us to replicate this illusion.

The principle of boycott flows directly out of this form of criticism. As long as it appears that the state's intentions behind its labour reforms will automatically be realised in practice, there would seem to be no alternative for those who resist the realisation of these aims other than that of boycotting registration in its entirety. But this mechanical logic removes from sight the contradictions in the state's new measures – and in so doing rules out from the start any possibility that the labour movement can exploit these contradictions to its own advantage. The vital task of black workers is to search for means whereby they can take hold of the instruments which the state seeks to use against them and turn them around to their own advantage. This is not always possible. However, to exclude this course in principle merely ties the hands of the labour movement.

The Dialectics of Control

The exposure of the contradictions of state power is as vital as the exposure of

its repressiveness. In the past, radical critiques of South Africa have tended to concentrate in an abstract way on the repressive character of the apartheid state, failing both to examine the changing forms in its exercise of power and to locate the contradictions inherent in it. This abstractness is typified by the GWU statement cited earlier. We are told that "registration spells the death knell of workers' control" and that it "involves . . . . a series of compromises with the bosses and the state", but at no point are we told precisely what the "highly restrictive conditions" are that have such dire implications. Such an omission leaves the contradictions of power obstructed and replaces dialectics with denunciations. This failing has had major strategic implications beyond the immediate issue of a response to Wiehahn.

When the boom in capital accumulation in South Africa took off in the 1960's, exploding the old liberal myth about the incompatability of apartheid and "modernisation", the overwhelming emphasis of radical analysis was on the functionality of apartheid as a means of labour control for capital. This emphasis reflected the apparent iron grip which apartheid had imposed on black workers, the collapse of their unions and the defeat of their militancy. It seemed as if apartheid in all its repressive manifestations was the rational optimum form of the regulation and control of labour. The corollary of the idea that apartheid had succeeded in resolving the contradictions of capitalist control over labour was that effective opposition seemed to be possible only from without: by armed struggle entering from neighbouring countries, by economic sanctions imposed by Western countries, by international pressures, and so forth.

It was the actual struggles of black workers – in advance of such intellectuals – which rent asunder the myth of apartheid's omnipotence. Starting with the mass strikes of 1973, they have ever since exposed in practice the inner contradictions of apartheid.s labour controls. They did this by organising their own unions, by waging industrial and political battles, and by making real gains. Now that the South African state is on the defensive and is being forced to re-structure its forms of labour control, the radical intelligentsia who make a principle out of boycott once again affirm the functional, efficient nature of apartheid's new arrangements. In so doing, they necessarily obscure the task of finding ways of exploiting new contradictions and areas of struggle opened up by the Wiehahn reforms.

We have already outlined some of the contradictions inherent in apartheid's old system of labour regulation in our discussion of the 1924 IC Act. The tensions inherent in the Wiehahn strategy have a number of economic and political ramifications which make it a high risk policy for the state. On the economic level, difficulties arise out of the uneven nature of capitalist development. While the existence of organised African labour, if kept within certain bounds, might be compatible with the highly modernised sector of industry, this poses real problems for those businesses which still rely heavily on comparatively backward technology and large inputs of cheap, unskilled black labour. In those areas of production

characterised by high productivity and the extraction of relative surplus value, the bosses of big business might well learn to live with a legally sanctioned and organised African labour movement. (This is not to say, of course, that black unionism does not pose problems even for them.) However, in low productivity sectors, the requirements of extracting absolute surplus value – namely the lengthening of the working day, the intensification of labour and the lowering of the price of labour below its value – make the presence of an organised black workforce, however bounded, into a real threat. This kind of problem serves to remind us again that the imperatives of labour control must always be seen in the context of the imperatives of accumulation and do not automatically correspond with them.

The political difficulty which the Wiehahn strategy poses for the state is essentially this: if it is to incorporate successfully a section of African labour it must concede to them some extension, however meagre, of the restrictive rights which they currently possess. If the state offers nothing, then its policy of co-optation cannot hope to succeed. The risk from the perspective of the rulers is that whatever concessions or rights it offers, will be used by black workers in ways that were never intended: to consolidate, broaden and strengthen the union movement. This is the weak underbelly of the government's strategy. Our argument is that by making a principle out of boycott the opportunity to exploit this weakness is lost.

The decisive issue with respect to registration is whether or not it represents, in relation to the existing situation of black workers, a real extension of their rights. If this is not the case, then boycott is clearly in order. However, if concessions are made (albeit for the purpose of co-optation), then it signifies – whatever the intentions of the state – an advance for black workers.

"Outside the Law" : the Myth of Compromise

Our major difference with the boycotters is not over their empirical estimation of the government's reforms, but over the conception of the state on which their boycott strategy rests. It may well become the case that the government so attenuates the "Wiehahn" proposals and attaches so many conditions to registration, that it will cease in any way to represent an extension of black unions' sphere of activity. In this event, the state's co-optation policy would collapse from within and the unions would surely be right to boycott and resist such changes. Our objection to the boycotters is that, although they often appear to treat the question of boycott as tactical, in reality it becomes for them a general principle of keeping one's hands clean of contamination by the state.

The boycotters achieve this metamorphosis of tactic into principle by rejecting in advance the possibility that black workers could force the state to make real concessions which they could usefully exploit. They argue that, to the extent that any real concessions are made by the state, it is only with the intention of incorporating a section of the black **labour** movement, and that the use of these con-

cessions would necessarily compromise the unions involved. Thus, even when concessions are "real" they are to be boycotted since, if unions took advantage of them, they would compromise their independence from the state. Accordingly, the concrete question of whether or not registration extends the rights of black unions loses its significance as a basis for developing strategy. If it does extend rights, then it will incorporate; if not, then it will further repress. Registration appears as a "no-win" situation: either way, boycott appears as the only principled response. This approach treats advances made by workers as if they were traps that will automatically lead to their incorporation. It is this that we take issue with.

We have seen how the temptation to treat the tough language of bourgeois reformers as if it represented the true meaning of reforms easily leads radicals to fall for the adoption of illusions propagated by the state. Nowhere is this generality more pertinent than in the way in which the boycotters reflect the Wiehahn Commission's version of the existing status of independent unions. The Commission's argument is that the persistence of African unions "outside the law" poses threats which can only be met by drawing them within the discipline of the law. This conception has been repeated uncritically by those of a boycott persuasion who simply reverse the value judgements, but retain the terms of the opposition. Outside the legal framework, they argue, African unions accord themselves "freedom of action"; forced back within the ambit of the law, they will be "co-opted" and "rendered ineffectual".

The idea that "independent" unions have ever existed "outside the ambit of the law" is nonsense, as the history of their legal suppression clearly shows. The Commission may have had its own reasons for suggesting that "independent" unions are not under the legal subjection of the state, but the fact that it so deluded itself is no reason for its critics to do the same.

Do the boycotters really believe that unregistered unions can, as has been argued, "alone decide when and under what conditions to strike"? They know that the laws against strikes have hit not only registered unions, but even more harshly so unregistered unions. Or do the boycotters really believe that unregistered unions can participate in "industrial as well as political struggles"? They know that any declaration of political affiliation will lead them into direct confrontation with the state's "security" laws. Or do the boycotters really believe that "outside the law" unions can arrange their own finance? The recent crack-down on FOSATU unions receiving funds from abroad is just one instance of the already existing restrictions. The notion that there is independence from the law outside the industrial conciliation system is a fiction put about by state "reformers" to support the idea that registration would impose more constraints on black unions.[10] This fiction has merely been repeated by boycotters to prove their point.

The issue before us is not to swallow blindly the mythological notion that any unions are free of legal constraints; rather it is to compare empirically the limited rights and severe controls facing black unions inside and outside the official nego-

tiating machinery, and to decide policy on this basis. It is not enough to say that registration is tied to the imposition of constraints; the significant question is whether these constraints are more or less restrictive than those currently exercised.

Most boycotters would doubtless agree, when the question is put to them so baldly, that unregistered unions are subjected – and always have been – to the most intense legal controls by the state. However, they fall back onto a conception of inner freedom in the face of external adversity: they argue that unregistered unions have been able to maintain their internal integrity in the face of state repression, while participation in the official machinery of industrial conciliation is dependent on the unions' compromising themselves. In other words, registered or not, unions are under pressure from the apartheid regime; however, registration implies accession to these pressures, non-registration implies resistance. It is this rhetoric of "no compromise" with which we now take issue.

By its very nature all trade unionism is based on compromise, in that unions negotiate the rates and conditions of exchange between labour and capital without directly challenging the exchange relation itself and the dominance of capital implicit therein. Additionally, in the South African context, there are specific compromises that are inevitable. The boycotters assert as fundamental principles that must not be compromised workers' control of the unions (that is, internal democracy) and political 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 norm of internal democracy. It is important to call things by their real name. In as much as any workers' organisation is forced by circumstances beyond their control to suppress the 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 fact is that all unions are forced to compromise on fundamental principles. This is not a fault; but a strategic necessity in the context of a repressive state. For instance, laws restricting strikes have led unregistered unions to adopt some kind of mediating position as far as workers are concerned: merely advising strikers or negotiating on their behalf, but not actually calling a strike. Laws restricting political affiliation have led all unions to forego such a step for fear of direct confrontation with the state. These are concessions forced upon the unions by the imperatives of survival and growth.

The danger of the boycott position is that it conceals the reality of the com-

promises which the unions already make beneath an ideology of "no compromise". As a result, they present – albeit often unwittingly – what is in fact a concession in the face of state power, as if it were a sacred principle of independent unionism. A case in point is the position taken by the GWU regarding negotiations through workers' representatives as opposed to union officials. Consider their account of their negotiations with the stevedores' employers:

> The bosses want the union officials to have observer status in negotiations . . . . . We accept observer status not because we find it necessary to accede to the bosses' formulation, but rather because, in line with union policy, observer status places squarely on the shoulders of the workers of the union, and not the officials of the union, the responsibility of negotiating with and generally confronting the bosses . . . . It is not for the union secretariat to substitute itself for the workers . . . . [9]

This rhetoric, which counterposes workers to officials, becomes a cloak which obscures the real question of good versus bad leadership, accountable versus unaccountable, democratic versus bureaucratic. What separates officialdom from membership is not that the former advises and represents its members – if union officials cannot do this then what are they useful for? – but that they cease to be accountable to the membership. Workers need union representatives who have developed skills in negotiation and who cannot be immediately victimised by management. They 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 interests for those of the workers, not the performance of their necessary functions of leading and representing workers. Such considerations suggest that what lay beneath the GWU slogan of workers' control was in fact no more than an "accession to the bosses" which limited union officials to observer status. We make no judgement on whether or not this compromise was warranted; our only insistence is that when compromises are made, they are seen for what they are – and not mystified under the name of "first principles".

The rhetoric of "no compromise" confuses the issue of the fight against opportunist compromises and that of compromises demanded by the objective conditions of the struggle. All workers who have been through strikes have experienced compromises: when they have had to return to work either without achieving their goals or with only partial successes. Workers learn to understand the differences between compromises forced upon them by objective conditions, like inadequate strike funds, lack of outside support, or more emphatically sheer starvation – which in no way reflect on their readiness to carry on the struggle – and on the other hand, those compromises forced upon them by opportunist leaders, who try to ascribe to external causes their own self-interest. Of course, it is not always easy to tell which is the case; but there is no alternative other than to judge each situation on its merits. The difficulty cannot be overcome by any "principle"; nor does

the fact that compromises in general are permissible and essential for unions obliterate the distinction between those brought about by incorporation of workers' leaders and those by the necessities of manoeuvre in the workers' struggle.

There is no magic in being outside the industrial conciliation machinery. Unions are still faced with the power of state and capital; they are still forced to make concessions given the balance of forces between themselves and those who rule over them; their leaders are still exposed to the twin dangers of repression and co-optation. Compromise is part of the fight, however much rhetoric is used to deny it. At one level, the slogan of "no compromise" boils down to a boast which proclaims how independent of the state the boycotters are at the very moment when their rhetoric mirrors the illusions of the state. At another level, it diverts attention away from those changes in the black unions' relation to the state which are necessary if the fundamental principles of workers' control and independence from the state are to be realised in practice.

"Inside the Law" : The Fear of Incorporation

The rhetoric of "compromise" pervades the boycotters' critique of registration. It has taken two major forms. The first line of argument is that the conditions attached to registration fall short of the conditions for which the black unions are fighting and that therefore acceptance of the former would compromise their larger goals. This case has been put in a variety of ways by the different boycott groups. According to some (e.g. the GWU), everything conceded by the state which falls short of the unfettered right of free association must be boycotted; for others (like SAAWU) all concessions short of the dismantling of apartheid in all its aspects must be boycotted; the position is taken *ad absurdam* by the dogmatists in SALEP who declare that the state must be boycotted until capitalism is overthrown. At issue here is the *counterposing* of different goals to the use of minor concessions won from the state. It is not the case that the taking of small steps obviates the struggle for larger ones. There are no grounds for the criticism levelled as some unions by SACTU that their search for registration necessarily implies that they regard registration as the end of the struggle (this view has been emphatically repudicated by FOSATU). To accept the SACTU position is tantamount to a declaration that all reforms must be shunned because a fight for them necessarily entails a compromise on larger principles.

In this purist rhetoric everything is confused. The problem of opportunism – ie., the *substitution* of partial goals for the final goal – is confused with the necessary process of winning partial reforms as stepping stones to more major changes. The critical use of partial reforms is confused with uncritical acceptance of them as an end in itself. Assessment of the significance of the state's reforms is based solely on their comparison with an *ideal* (e.g. free association, the end of apartheid, the collapse of capitalism) rather than on the *actual* situation of the unions. Instead

of asking whether or not registration would increase the power of black unions, the boycotters ask only how far it falls short of the ideal that lurks in their mind's eye. This idealism may perhaps have some use as a tool of criticism, but it is useless as a basis for action.

Black workers can learn to use the most timid concessions granted by the state: to intensify the contradictions facing the regime, to win more space to organise and educate themselves, and to afford to themselves the direct experience of winning struggles on the basis of their collective effort. This is true in the factories; and equally in the relation of workers to the state.

The second line of argument, which the boycotters have used to show that registration implies incorporation, revolves around a distorted version of the "aristocracy of labour" theory. It is argued that the concessions yielded by the state will only apply to a small section of African labour, while both the mass of unorganised African workers (in mines, farms and essential services) and large sections of organised African labour will be excluded – either by formal *fiat* or in practice. They conclude that any union seeking to procure such rights is necessarily pursuing a position of sectional privilege for its members over other workers. Instead of building worker solidarity, the argument goes, these unions and their members will look to the state to protect their privileges, while perceiving in other African workers merely a threat to their privileges. In the current jargon they would join their white, coloured and Asian counterparts in forming a revamped "aristocracy of labour" – dependent on the state and fulfilling a disciplinary function over the majority of workers. The moral of this tale is clear: to avoid such a disastrous outcome for the black union movement, it is necessary to reject any concession that is restricted to only one section of African labour, or, to put the matter the other way round, to reject registration until it is available to all African workers. The principle of unity is inviolable.

What the boycotters fail to notice is that their principle is already violated daily. Unevenness in the workers' movement is the product of the uneven character of the capitalist organisation of labour itself. It is inevitable that some workers will be in a better position to organise themselves and develop their consciousness than others. Not only is it not a fault, it is the duty of advanced workers to make demands on and win concessions from both management and the state, which will open the way for their less advanced fellow-workers. The fact that management and the state make concessions only with a view to incorporation is no reason to forego the struggle for and the use of such concessions.

It is quite wrong to *counterpose* the winning of concessions by a section of organised labour to the advance of black workers as a whole. When workers in one factory are able to organise themselves into a union, and on this basis fight for, say, management recognition or higher wages, who would declare that the concessions they win necessarily conflict with the interests of workers in other plants? Quite the reverse! The advances made by workers in one factory can offer a lead

to workers in other factories.[10] If this principle holds at the level of the plant, can it not hold equally at the political level of the state? The capacity of some African workers to gain official recognition and an extension of their rights for their unions is not necessarily in conflict with the interests of others seeking to gain these ends. The opposite may equally be true: the former can become the cutting edge of the movement as a whole.

It is of course the case that opportunists will use rights to try to secure sectional privileges by relying on the state's support and by attempting to restrict access to such rights for the majority of black workers. It is imperative that such opportunism be fought. But this does not mean that workers should boycott the legal system that affords them these rights; rather they should strive to ensure that these rights are used well – not as a privilege for the few, but as a lever for the extension of rights to all workers. The boycotters forget that there is no inevitability in advanced workers becoming "aristocratic"; they may also serve as leaders for the class as a whole. For this reason, advanced workers should not reject the fight for concessions, even when they are offered in the 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. This is the historic lesson of labour struggles the world over: South Africa is no exception.

The theme that dominates the boycotters' rejection of registration is fear of incorporation. Implicitly or explicitly, they say that if workers win marginal rights, they will be incorporated by the state and give up the larger struggle in support of others; if workers compromise on one issue, then this will open the floodgates for their compromise on all issues; if workers make any headway in forcing the state to liberalise its labour policy, then they will cease to struggle against it.

This politics reveals something about the boycotters themselves. They speak of the militancy and independence of the black workers; but what lies concealed beneath the surface is a profound *lack of faith* in them. From the boycott perspective, it appears that if the state gives black workers an inch, far from taking a mile, they will gratefully say thank you. They refuse to warrant the capacity of black workers to turn to their own advantage the legal gains they make, or to resist the temptations of opportunism, or even to fight for reforms without surrendering their wider goals.

The boycotters' lack of faith is based on illusions. They say that the state's concessions are fraudulent and yet in the same breath argue that they are real enough to incorporate a section of African labour; they say that unions are free "outside the law" when they are suppressed in their every movement; they say that compromises do not take place when of necessity they do so; they say that reforms necessarily lead to incorporation when they are in fact the vital ingredients of all workers' struggles. This is why in our view the boycott principle not only gives little credit to black workers – it also deludes them.

The Alternative to Boycott

It is not the purpose of this paper to investigate in detail the substance of the Wiehahn proposals and of subsequent government legislation, particularly as the IC Act is currently undergoing another round of amendments. Rather, our purpose is to establish the basis upon which this investigation should take place. To repeat the conclusion from our argument so far: to the extent that registration represents a real extension of the rights of black unions *in relation to their existing position,* (or, conversely, to the extent that it represents a diminution in the state's restrictions over black unions) unions should not boycott such concessions, but should instead seek to use them to extend the power of black workers. It is this simple principle that has been obfuscated in the debate.

One point is clear about the registration package as constituted by the state at the time of writing: namely, that although certain controls over black unions remain unchanged, the package introduces both new restrictions and rights. The controls include those governing the rights to strike and to political affiliation. The new restrictions that accompany registration have included at one time or another: a ban on racially mixed unions; a ban on the registration of migrant workers and of black workers in the mines, farms and in domestic labour; an increase in administrative discretion over the registration and de-registration of black unions; and the threat of intensified controls over unregistered unions. The new rights include: official state recognition; easier access to bargaining channels; and a firmer legal basis vis-a-vis the courts. In any assessment of the way in which black unions should respond to the government's package it is these pros and cons which must be weighed against each other.

There seems to be general agreement – which we emphatically endorse – that any increase in state repression over black unions, whether registered or not, must be resisted. The question then arises as to how this resistance should be carried out. The strategy of boycott is only one of the means available to achieve this end, and it possesses two major weaknesses that we wish to emphasise. First, the boycott strategy has no relevance in a situation in which the state intensifies its controls over unregistered unions. If, as it now threatens, the state legislates to apply the present package to *all* unions, there is just no way that the restrictions in the package can be boycotted. Faced with this eventuality, those whose strategy revolves around boycott are left with nothing. They will either have to disband (and thereby throw fifty years of prolonged struggle out of the window) or – and hopefully this is the course they will follow – rethink their position. Second, the boycott strategy carries with it the severe disadvantage that the gains accruing from the package will be lost at the same time as the restrictions are resisted. For this reason, boycott should be regarded not as a strategy, but as a tactic to be used only as a last resort: that is, when it is clear that there are no real gains to be made from registration and when no alternatives are left open.

The alternative to boycotting the package is to try to exploit the contradictions which the state faces so as to counter the restrictions contained in registration, while, at the same time, taking full advantage of the extension of rights offered (broadly this has been the tactical response adopted by FOSATU). A concrete example here will help to illustrate what we mean. After initially banning the registration of migrant workers and commuters, the state subsequently revoked this measure under pressure from virtually the whole of the black union movement. The contradiction which the state faced over this issue needs to be exposed. Since migrant workers and commuters constitute a substantial proportion (and in some cases the vast majority) of the membership of most black unions as long as non-migrants stood firm maintaining solidarity with them, the state could not possibly exclude them from membership of registered unions. To do so would have meant jettisoning its entire strategy of bringing the black workforce under closer control through union registration. If the state were to have excluded from registration the majority of *bona fide* black unions, being largely contract worker-based organisations, it would have been totally incapable of bringing the majority of black workers into the legal fold.

Another example relates to the state's intention of using the registration package as a means by which further divisions – along the lines of urban skilled versus migrant unskilled – might be introduced among African workers, the idea being that the former should be granted rights denied to the latter. First of all, it is important that the Act's powers in this regard should not be fetishised or exaggerated. There are numerous legal, political and administrative controls already in existence (such as influx controls, labour bureaux, etc) which seek to promote these and other divisions. (Furthermore, these kinds of divisions tend to be reproduced within black political organisations, such as Inkatha, which seems to have a largely migrant following, and the Soweto Committee of Ten with its urban orientation.) What the state is seeking to do through the registration package is not so much to *create* divisions where none exist, but rather to rationalise and restructure the process by which these divisions have been reproduced in the past. Here the state faces a major contradiction in that these divisions are becoming increasingly antagonistic to the social division of labour. It is simply no longer true that *only* urban African workers have skills and that migrants have no skills. In order to impose its divisions, the state would have to set the clock back and restrict the process of economic expansion, thereby creating further contradictions for itself. Today, large numbers of both urban and contract workers are employed in similar jobs and, what is most important, seem to have recognised an identity of interests – a fact which is clearly expressed in their joint membership of and close collaboration in the same unions. Thus, the fact that the composition of black unions clearly cuts across the kinds of divisions the state seeks to impose suggests that there is ample room here for the unions to resist this initiative. (The same argument can be applied to African, coloured and Indian workers who in-

creasingly find themselves not only working together in similar jobs, but are also learning to unite in trade union activity.)

These examples highlight our main argument that there is *considerable room* for unions to manoeuvre against the state's intentions precisely because of the contradictory position in which the state finds itself. In this regard it is worth mentioning that the tactics adopted by FOSATU unions so far have met with a good deal of success. For instance, confronted by the government's registration proposals, FOSATU decided to apply for registration *on its own terms* in an attempt to force the government to concede the right of unions to determine the composition of their membership free of state interference. The government's response was formally to conceed FOSATU's right to a non-racial constitution and also its right to register unions with a racially mixed membership. However, the right to represent workers in a factory has been confined to workers defined in terms of race. FOSATU has challenged this latter decision and, at the time of writing, is continuing its campaign for unrestricted freedom of association, threatening de-registration *as a last resort* if their demands are not met. This tactical battle has been compounded by the publication of the proposed amendment to the IC Act. Again, FOSATU's position, as expressed in a resolution adopted at the end of April, was to draw attention to various "authoritarian" aspects of the Bill, at the same time putting forward its own demands for the terms under which registration should occur (designed to protect and promote the independence of the black unions).[11] Of course, there is no *guarantee* that FOSATU will be victorious on these issues. Yet surely it is this kind of approach – criticising every repressive aspect of the government's proposals, counterposing to them the unions' own demands, and ensuring no unnecessary sacrifice of the benefits to be derived from registration – which offers the most constructive way forward for the labour movement.

It must not be forgotten that the main reason for the state's embarking upon its Wiehahn reforms in the first place is that the previous position of refusing recognition to black unions was no longer tenable. The state has been pressurised from a number of sides (economic changes, mounting resistance from black workers and populist struggles, and from pressure groups abroad) into making concessions. The fact that the state chooses to turn this defensive manoeuvre into a positive advance for itself through its present registration package should not be allowed to obscure the fact that this new strategy is itself riddled with contradictions. It is these that must be analysed, exposed and manipulated – not boycotted. 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. Certainly, the state does not relish the prospect of officially recognising a strong trade union movement in the country, *but nor does it want a return to the status quo ante.* That is why it has conceded real rights

to black workers. The prospects that have been opened up thereby pose a great challenge to the union movement. It would represent a major setback for that movement if this challenge was not met.

Theoretically, this challenge has always presented itself to the labour movement. In 1953, for instance, the state responded to the growing organisation and influence of African unions, such as CNETU, by seeking to impose a works committee system on African workers. This system sought essentially to undermine African trade unions by offering an alternative channel of representation which would have only an advisory status and would be limited to 'in-plant' organisation. While such initiatives aimed to deny full union rights to Africans deserved to be condemned in the strongest terms, this does not mean that use of these state institutions was illegitimate if it was the only available means through which African workers could organise themselves *as part* of their struggle to win union rights. This would only be the case if they were used as satisfactory alternatives to trade unions or as obstacles to the development of such unions. But, to the extent that they provided African workers with *the only* legal opportunity – however inadequate – to organise, put pressure on management and convey to them workers' grievances, there was no useful purpose to be served in boycotting them.

A further example is the introduction in 1977 of in-plant committees which were granted formal negotiating powers. As part of the struggle for the right of African workers to belong to legally recognised trade unions, some unions also began to make use of the machinery of the works committees with the view to consolidating the unions' position on the factory floor. They transformed these committees into democratic shop steward committees, seeking to ensure that the members were democratically elected by the rank and file, that full discussions were held prior to the meetings with management, that report back meetings were held and that close cooperation was maintained with both the union officials and the committee members in other factories and industries. The ideal was to *combine* different methods of struggle and not to *counterpose*, as the state intended, participation in these committees to the building of trade unions.

The same principle holds with registration and participation in the industrial council system. There can be no doubt that the state introduced this system as a means of forcing union officials to negotiate through these centralised bodies alone; to divorce them from their rank and file and shop floor activities; to delimit what is negotiable; and to substitute legal and bureaucratic methods of organisation for grass roots work. However, this does not mean that the African union movement should renounce in principle and under all circumstances participation in the industrial councils. In the absence of unrestricted negotiating channels, the unions *may* wish to use the industrial council system in the same way that they used the works committee system. In doing so, however, the unions should fight to ensure, *inter alia*, that the fullest possible discussion takes place with the membership about the issues to be put forward at the industrial council meetings; that there

be early report backs to the membership of discussions at these meetings; that the presence of shop floor representatives be made a condition for participation and that present restrictions such as veto rights be removed. By winning these and other demands, workers may succeed in injecting their own content into alien forms. However, even the winning of these rights should never result in the substitution of plant level by industrial council bargaining. The former must always be protected as a primary channel for the pressing of workers' demands. As presently constituted, the industrial councils threaten the power of black unions. To meet this threat, the unions could combine the struggle to transform the character of these official institutions with the struggle to extend alternative open channels of negotiation. What is important is that the unions use their rights of representation at industrial level to put forward a set of minimum demands which would apply to all workers of that particular industry, thus opening up the possibility for unions to gain access to the unorganised section of the African workforce.

Finally, it is important to recognise that for the first time in South African labour history some African workers have been granted official trade union rights When the state poses an immediate and constant threat to black unions, the winning of basic rights of trade union representation provides some measure of protection from the worst excesses of state repression and executive action. 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 facilities access to bargaining channels. This is a major advance on the previous *formal* situation in which African workers could not negotiate directly for themselves, having to rely either on the registered parallel unions to represent them at industrial council level or, in the case of a dispute, to call on a Government labour officer who would refer the dispute to various committees, culminating in the Minister of Labour. At one level, all the state is doing through the law is giving formal recognition to a *de facto* situation; at another level this extention of legality provides more favourable conditions for the real extension of workers' power – precisely what the boycotters fail to see.

The Politics of Legality

Within the different strands of opinion that together comprise the boycott position one belief pre-dominates: namely, that unions must be political and that the only correct *political* response to registration is that of boycott. In one way or another, the various boycotters all share the view that in South Africa politics and economics are inseparable; that economic struggles (over narrow trade union issues of wages and conditions of work) and political struggles (over Pass Laws, influx controls etc.) are so closely intertwined that any attempt to fight for the

former without the latter would be doomed to failure and is as such regressive. While we do not disagree with the view that there is a close relation between economics and politics, we do challenge the boycotters' conception of the unity between them – and in particular their belief that boycott of registration is an appropriate way of securing their unity in practice.

Behind this argument lies an old shibboleth for the opposition movement in South Africa: namely, that illegality (or non-legality) is more radical than legality and that the use of legal means of struggle is inherently reactionary. It is time that this disastrous fetishism of illegality, which has little to do with progressive workers' movements the world over, be put to rest. There is nothing inherently wrong in workers using the legal openings afforded them to press for the extension of their legal rights. To deny this and to present illegality as an absolute rule of conduct is a chimera of the ultra-left. In our view, it is one that has seriously impeded the historical development of the struggle for black political rights in South Africa (witness the defeat of the black trade union movement which accompanied the turn to illegality in the early 1960's). The call to boycott legal registration expresses in a new form just such a perspective.

Underlying the boycott view is a serious misconception of the relationship between trade unions and politics. According to the boycotters, in order to extend narrow economic trade unionism into politics, the unions need only develop their own political activities (e.g. in campaigns against the Pass Laws) and/or enter into alliances with political organisations. However, such extensions of the trade union movement into politics, while not necessarily wrong, are not the key elements in the process. Most important of all, is the struggle for recognition from the state, since it is this which establishes membership of trade unions as a political right for workers. The significance of this step in the development of the workers' movement has been appreciated by workers in other countries such as Poland, where state recognition of Solidarity was a primary demand.

Even in South Africa black unions, such as SACTU, have historically seen the necessity of winning state recognition, though now that such recognition is on the agenda they shy away from it. The boycotters fail to see this because they obscure the connections between registration and state recognition.

Registration, the boycotters say, does not mean state recognition, it means state control. This mystifies the whole issue. The state does not cease in its attempts to control unions simply because it is forced to grant them recognition (as recent events in Poland clearly illustrate). Recognition, however, does not thereby lose its significance. Registration is an attenuated and hopelessly timid form of state recognition; what it represents is no more than a foot in the door – a first step in the struggle to acquire full and unconditional state recognition.

But then the boycotters say that registration ties such severe conditions to state recognition that it can only be gained at the expense of foregoing the independence and democratic character of black unions. Again the issue is confused. Registration

is an acceptable form of state recognition only if it increases the power of black unions. In so far as it makes such concessions – as was certainly the case with the original Wiehahn proposals – it facilitates, not hinders, the task of the unions to achieve independence from the state.

Finally, the boycotters put the seal on their confusion by declaring that state recognition does not matter anyway! They argue that this is irrelevant for the development of black unions, but that recognition by management is crucial. They try to create a watertight divide between state and management recognition: the one demanding compromise, the other not; the one threatening the fundamental principles of independent unionism, the other not. This divide is totally artificial. Its effect is to place – contrary to the rhetoric of the boycotters – a self-imposed restriction on the unions' extending their narrow plant-based struggles into the political realm of the state; that is, into the arena of the general administration of society.

However insignificant the boycotters consider state recognition to be, the state does not reciprocate this neglect. It co-ordinates and focusses management's attacks on the black unions, it establishes the coercive framework within which all unions must operate; and it prepares and organises the police, army and prisons, not to mention the spies and scabs, whose goal is the destruction of independent unionism. In this context, the struggle by the unions to extend the sphere of workers' power through state recognition is crucial: in terms of winning space for the unions to organise, in terms of establishing general conditions conducive to the organisation of black workers where the establishment of unions is almost impossible; in terms of co-ordinating and centralising the workers' movement in the face of the co-ordinated and centralised policy of the state; and, finally, in terms of extending the narrow economic concerns of unions into larger political concerns of democracy and influence over the state. This failure to comprehend the importance of state recognition reveals the parochialism of the boycotters: in an inability to perceive the approach which is necessary if black unions are to transcend narrow economism.

So far we have discussed the boycotters as if they were a single entity; but behind their common agreement lie diverse and sometimes antagonistic political positions. This is not the moment to discuss in any detail the political reasons why various groups have adopted a common boycott stance. However, there are two major tendencies within the boycott position between which it is important to differentiate (although these strands do not necessarily coincide with particular organised groupings).

One tendency reflects the view of those who will try to find any excuse to channel the workers' struggles to their own ends. They do not want the unions – that is, the workers' own organisations – to take up issues pertaining to the state, for they wish to reserve this task for hands other than those of the workers. They are afraid of the movement of black workers; they wish either to restrict it within

a narrow terrain or more usually to dissolve it in a mass political movement dominated not by the workers, but by the petit bourgeoisie. According to them, the workers are only useful as a kind of battering ram for a movement they themselves seek to lead. In fact not only are they unhappy when the unions take the initiative with the state, but in general they are reluctant to see any show of independence by the unions as this threatens their own political leadership. The 'unity of economics and politics' is the subordination of unions to a movement headed by and serving the petit bourgeoisie.

The second tendency is found among those boycotters who are genuinely committed to the movement of black workers. They have fought hard precisely to free workers' organisations from dependence on both the state and the petit bourgeoisie and to build them up as an independent force in their own right. They advocate boycott not to prevent unions from taking the initiative, but with a view to preserving their independence from any force outside themselves. For them, the substance behind the principle of "the unity of the economic and the political" in that trade union struggles in South Africa are in themselves political. Thus while the previous strand of boycotters collapses the economic into the political (thus subordinating workers to an alien politics), this strand of syndicalist-inclined boycotters collapses the political into the economic. However, the political sphere – i.e. that of the state – will not disappear simply because the boycotters define it away. If the workers' organisations do not take up struggles around the state then they will necessarily have no influence over the state. The political arena will become the exclusive domain of forces other than those of black workers. Thus, while, in its rhetoric, this syndicalism usually commits itself to "politics", in actuality it is based on the mistaken belief that workers can practice politics by having nothing to do with the state!

As against these boycott tendencies, the position represented by FOSATU has recognised the significance of state recognition. Like the latter group of boycotters, FOSATU has also struggled to create a black worker movement independent of both the petit bourgeoisie and the state. FOSATU, however, has had its shortcomings as well, in that its response has tended to identify independence from petit bourgeois politics with independence from politics in general. This has lead to the charge of economism being levelled against FOSATU, ironically by those who themselves represent another kind of economism – ie. syndicalism. The curious outcome of these different viewpoints is that the "non-political" FOSATU has taken up the crucial political question of state recognition, while the "political" boycotters have told workers in effect to abstain from politics! However, 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.

What is crucial in our view is that all those who are concerned to promote the

position of black workers recognise the struggle for state recognition of black unions as their primary political goal. There is agreement that the state's denial of trade union recognition to black workers over the past fifty-odd years has been one of the most serious obstacles to their development. Now that the state, in the face of consistent and militant opposition, appears finally prepared to make its first concessions on these demands, it would seem to us the height of folly for the unions to turn their back on these concessions.

Footnotes

1. see FOSATU Central Committee statement, *FOSATU Workers News,* November 1979.
2. ibid.
3. ibid.
4. ibid.
5. Western Province General Workers Union: Registration, Recognition and Organisation; *South African Labour Bulletin,* Vol. 5, No. 6, p72.
6. M. Nicol: Legislation, Registration, Emasculation; *South African Labour Bulletin,* Vol.5, No. 6, p51.
7. Western Province General Workers Union: Comments on the Question of Registration, *South African Labour Bulletin,* Vol.5, No.4, p120.
8. South African Black Power, *Newsweek* Special Report, March 9, 1981, p47.
9. Western Province General Workers Union: Registration, Recognition and Organisation; *South African Labour Bulletin,* Vol.5, No.6, p71.
10 Witness the first trade union recognition agreement won in 1977 by the National Union of Textile Workers at Smith and Nephew which paved the way for other black unions to seek to win similar recognition. Another illustration of this tendency is found in the 1980 wage struggles among motor workers in Port Elizabeth and Uitenhage; these struggles quickly spread to other plants in the region.
11 FOSATU Memorandum on the Proposed Amendments to the Industrial Conciliation Act, April 1981.

Capital's Responses to African Trade Unions post Wiehahn

Mike Morris

The 'Wiehahn era' has undoubtedly witnessed major developments in the re-alignment of forces in the black labour field. Prior to this, the independent non-acial (but predominantly African in membership) trade unions had, simply by dint of government and capital's non-acceptance of their bonafides, maintained a semblance of public unity in the struggle for African trade union rights. On the other hand,different strategies towards African worker organisation within the bourgeoisie had not been articulated since the early 1960's. It had appeared that the African working class was confronted with a unified position from the bour-goisie – rejection of trade union rights for black workers.

Of course, such a characterisation is far too simple. The Wiehahn Commission did not emerge from thin air, nor were the commissioners simply clear sighted individuals abstracted from other social forces. While I have no intention of pre-senting a comprehensive analysis of the pre-history of Wiehahn, a number of points, salient to any discussion of the post-Wiehahn period, must be dealt with.

Different perspectives within the unregistered trade unions on Wiehahn

The obvious question that all interested observers grappled with was : Why the shift in the dominant classes' thinking on trade unions for blacks? For unless one has a rudimentary grasp of that question it is extremely difficult to work.out a strategic counter, based not only on principle, but also on the real balance of forces.

In the unwritten history of the trade union movement, a number of answers to this question were in circulation. I intend to deal with only the three that were the most dominant within the left wing of the union movement. I leave aside those within the unregistered trade union movement which were self-consciously re-formist or made no attempt to seriously grapple with the issues involved.

One argument when reduced to its bare bones ran as follows: the South African economy had increasingly become dominated by monopoly capitalism. It was the multinational companies, due to overseas pressure, that were, if not demanding, at least willing to concede labour reforms. The African working class, on the other hand, was extremely weak, both in its economically organised forms and in spon-taneous struggles at the workplace. Hence, the most influential force in the equa-tion, viewed from the perspective of the trade union struggle, was the multinational

companies. The organisational strategy that corresponded with that argument was therefore one of concentrating on shop floor organisation in multinational companies. For, if the workers were acting from a position of weakness, then organisation could be protected by primarily organising in those enterprises that would be more susceptible (for a variety of reasons important amongst which was overseas pressure) to signing recognition agreements with unregistered trade unions. This, in turn, would increase those multinational companies' interest in securing state recognition of black trade unions.

Furthermore, based on the assessment of the weakness of working class organisation, this perspective evinced a mistrustful attitude towards the politics of community organistions. There were two basic reasons underlying this attitude: because the working class was weak, it should not provoke state reaction that would threaten the goal of trade union recognition and jeopardise the organisation of workers; because the working class was weak it should be wary of petty bourgeois dominated community organisation often expressing nationalist oriented ideologies since these would only swamp and/or dilute worker organisation at the point of production.

Hence, recognition agreements became the over riding objective in this strategic perspective, since *protection* of weakness was the tactical basis of organisation. Once state policy shifted, the strategy of protection demanded its logical and practical extension with respect to registration: "compromise on registration now because you are weak, in order to build up strength at a later stage."

As is usually the case, every strategy and theoretical perspective has its mirror opposite. This alternative perspective could be summed up in an epigram running along the following lines; 'the strength of the workers is everything, the workers are being strengthened everywhere'. Here all the emphasis was placed on the existing strength of the African working class, so much so that the student disturbances of 1976 were reduced to a 'proletarian youth rebellion'. Hence, shifts in state and capital were primarily, indeed solely, the result of the power and pressure of the organised and unorganised working class. The strategic approach that followed was one of principled refusal to consider compromise; partly because within this perspective, tactical decisions had neatly been conflated to issues of principle. If the strength of the African working class is an objective fact and triumph is assured in the near future, tactical compromise could only result in a weakening of ones position.

Now the basic problem with both these positions is a unilateral stress on one side of a polarity – 'the workers are weak, therefore . . . . ; the workers are strong, therefore . . . . . .' A third broad position in currency at the time tried to overcome this polarity with differing success at different times. Although often drifting towards the second position, the argument that finally emerged as the dominant and stable one went as follows.

First and foremost it was the spontaneous struggles of the African working

class since 1973, coupled with the trade union organisation based on these struggles, that created the social force placing labour concessions on the agenda. However, these independent non-racial or black unions could by no means be described as having very deep and wide organisational roots in the African working class. Their organised political and economic presence in the society was restricted and confined to particular factories and regions. Indeed, as an important index of this, it was significant that no national trade union organisation of major substance existed in or dominated any particular industry.

Secondly, it is true that the dominance accorded to monopoly capital in the South African economy was of significance. Black workers had increasingly come to occupy more skilled positions in the division of labour. As a result, monopoly capital, particularly in the context of external pressure, was, when forced, generally more susceptible to accepting strong organisational demands from African workers. This susceptibility, however, depended both on the extent to which non-monopoly capital also came under pressure from organised workers, and the general political climate in the country.

Finally, whilst it was true that capital and the state were not confronted with powerful working class organisations forcing national and political concessions, it was also not true that these working class struggles had a minimal or even minor effect. On the contrary, it was argued, capital and the state were forced to take cogniscance of, and respond to, the potential long term threat being posed by the existence of trade union organisation. While not strong enough to unilaterally force such major concessions, the unions were also not weak enough simply to be stamped out – *vide* the quick recovery of these trade unions after the banning of a large group of unionists in late 1976.

This issue of the long term threat of the working class, if it was left outside of the state apparatus of industrial relations, became of paramount importance in the context of the 1976 student revolts. Faced with a petty bourgeoisie in revolt both inside and outside the schools, calling on the workers when it suited them to support the student demands, capital in South Africa, and particularly monopoly capital, pushed strongly for a strategy of limited reforms to satisfy some of the aspirations of the the "new black middle class", and to try to separate the latter off politically from the black working class. In this context it was necessary to bring the working class into state structures of control in the realm of industrial relations. All this, it was argued, involved a policy of division (dividing workers from the "new black middle class", economic struggles from political struggles) as opposed to the previous policy which objectively tended to unite all classes in the black population and polarise them against capital and the state. Thus, when state registration of trade unions was extended to black workers, this perspective argued that the two principles underlying the strategy rested on control and division: a) to sap the organisational strength of black workers by containing them in tightly controlled industrial relations structures, and b) to divide skilled and unskilled

black workers, permanently urbanised from migrant workers trade union organisations from community organisations.

The organisational strategy that followed from this perspective was based on the following prescriptions: always base one's organisational strategy on the relative strength of the workers rather than their relative weakness; reject registration because the state controls and bureaucratic practices associated with industrial councils etc. would in the long run weaken rather than strengthen workers organisation; maintain one's links with the community organisations, since they are an essential aspect of one's strength; present a united front of independent unregistered trade unions rejecting registration; in this way exploit the potential divisions within the bourgeoisie, and hence acquire greater concessions than were in the White paper on the Wiehahn Commission.

Realignment of forces post Wiehahn

When the dust settled after the publication of the Government White paper on Wiehahn, two things were starkly evident. Firstly, because much of the protest had focussed on the exclusion of contract workers from the definition of employee, as well as the state's perpetuation of racially divided trade unions, attention had been diverted from the control functions in the new labour dispensation. Secondly, unity over registration within the unregistered trade union movement was clearly unattainable. A conference to achieve this aim agreed only on a broad statement of principle, but differed markedly on an appropriate practical strategy with respect to the issue.

The unregistered trade unions split radically over registration. The differences in perspective, which had previously remained hidden, became more consistently articulated and clarified. Some unions happily accepted what the state offerred. Some objected to the exclusion of migrant workers, but when the state made exemptions possible, they quickly announced their intention to register with no conditions attached. Some went further, objecting in principle, but claiming to test the racial and provisional registration clauses by applying for full registration as non-racial unions, in the process ignoring the question of state controls. Others flatly refused to submit their unions to such control. Clearly, the state had achieved some of its objectives. Instead of being presented with a united front of unregistered representative unions, it was able to capitalise on the divisions created over registration. Its first strategy in the context of this balance of forces was to hang the labour dispensation on the unrepresentative parallel unions; through the process of registration compelling those representative unions which aimed to test registration to radically alter their constitutions, policies, etc. in a bid for respectability, whilst at the same time keeping them hanging on a string; and finally attempting to facilitate the natural death of those recalcitrant unions that refused to register.

Unfortunately (or fortunately as the case may be) working class organisation has always had more strength and resilience than the state has bargained for.

Instead of dying a natural death through exclusion from the 'advantages' of registration, those unions which elected to remain unregistered in fact grew in strength and membership. And then to add insult to injury, a new grouping with its organisational centre in East London actually had the cheek to emerge in this period when unregistered unions were supposed to be approaching their nadir. Finally, apart from the growth of organised militancy, there was also a significant upsurge in spontaneous struggles on the part of the African working class.

Although statistics on such matters are somewhat problematic, the following figures give one some idea of the dimensions of this upsurge. In 1979 the Department of Manpower Development claimed that 100 labour disputes had taken place. In 1980 this figure had jumped to 207 'strikes and work stoppages' according to Dr H.L. Reynders. The figure given by the Minister of Manpower Development is even higher – 134 strikes and 131 labour disputes. Whatever the accuracy of these figures, it is clear that almost every day last year there was at least one strike in one of the major industrial centres of South Africa.

It was the growth and advance of the unregistered unions, taking advantage of the spontaneous upsurge, that caught the state, capital and much of the black trade union movement flat footed. Rather than suffering a major disadvantage, the unregistered trade unions benefited from their militant stand against state control and registration and increased their strength. Instead, it was the unions that opted for registration which seemed to be in a relatively worse situation.* Clearly, the latter had made a tactical mistake in their strategic under estimation of the spontaneous militancy of the African working class and in placing the greater emphasis on the relative weakness of black workers. Indeed, as if in answer to this underestimation, there were a number of instances in 1979/80 of the rank and file outpacing the union leadership. Perhaps if the Wiehahn Commission had come out sooner and the state had acted on it before 1979, then the scenario might have been very different. Instead it was clearly too little, too late.

Furthermore, the inability of the state to sell the labour dispensation overseas was of major significance. In this respect, the role played by the popular protests of the 1980's, which centred on education, rents and bus boycotts, should not be underestimated. For, if the overseas trade union federations and other organisations in Europe felt they were unable to embrace the Wiehahn Commission and overseas pressure did not abate, then the strategy of hanging the new labour dispensation on the parallels was likewise further discredited. Pressure from this quarter for the state and capital to take account of representivity as a major criterion, and the need to counter such pressure by incorporating representative unions within the Industrial Conciliation framework were not without their effects in South Africa.

This shift in the relative positions of the different tendencies in the trade union movement, supplemented by the effect of popular community struggles as well as international pressure, are undoubtedly of the utmost significance in assessing

the tendencies within capital towards representative black trade unions. For, on the one hand, the unregistered representative unions were increasingly becoming a militant force that could not easily be ignored. On the other hand, the registering representative unions became an increasingly more attractive proposition as a bulwark against the former. Agreement to register was not without its effects on these unions. The very process required administrative and constitutional alterations; it contained certain implicit and explicit guarantees with respect to Industrial Councils, bargaining procedures, etc.; it facilitated the tendency to respectable legality as a way of resolving industrial disputes already present in these unions. In short, it meant that these unions, whatever their subjective intentions and strategies, had objectively shifted towards the centre of the political spectrum in the trade union struggle.

Now, in the context of the upsurge of spontaneous economic struggles by workers, militant organised strikes by unregistered trade unions and direct and indirect links with community struggles, this shift towards the centre was of the utmost importance to capital. It was now being forced to abandon its previously favoured strategy of hanging the new labour dispensation on the puppet parallel unions. Real representivity in some form or other of black trade unions became increasingly important. Some substantial mass base and worker acceptance (i.e. representivity) of registered trade unions became a necessity. Thus we see the shift towards hanging the labour dispensation on the more representative registering black trade unions (with greater controls extended over them as well) as a counter to the increasing influence of the representative unregistered unions; whilst at the same time trying to cripple the latter through increased exertion of state pressure.

At the same time this shift in attention towards representative unions which had agreed to register contains its own internal contradictions. For, in the prevailing climate, the mere semblance of an attempt on the part of the state and capital to hang the new labour dispensation on these unions could just as well act to discredit them. If capital now needed representative unions to act as a bulwark against the militant unregistered unions, these representative unions in the process of registering did not at all need to be seen to be bolstering up a strategy designed to eliminate the unregistered unions. They could not allow themselves to be seen to be benefitting from state action at the expense of the unregistered unions, the effect of which would only discredit them with large sections of the working class (both organised and unorganised) as well as community organisations allying themselves with workers' struggles. It would also give added impetus to dissident groupings in their own ranks, whose sympathies lay with the unregistered unions. Hence we see, for example, clear warnings directed by some trade unions at the state that they could not tolerate a drastic move – *eg.* compulsory registration – against the unregistered trade unions.

Capital's responses

It is in this context that one should view the post-Wiehahn shifts and divergent responses within manufacturing capital to the question of black unregistered trade unions.

Although there are obviously many minor differences, two main positions have become apparent within manufacturing capital. On the right is the SEIFSA position, summarised in their guidelines of November 1979 and May 1980 ; "Guidelines" being a definite misnomer, for, in line with their content, they read (and indeed are intended to be) more as "Drummonds Decrees" than "SEIFSA Suggestions"!

SEIFSA's basic position can be summed up as hinging completely on a trade union's acceptance of state-imposed registration and *all* that registering implies, before *any* form of recognition would be extended to it. A refusal to register is to be regarded as a refusal to establish that union's credentials with SEIFSA. This, moreoever, necessitates *more* than just registering. It entails a particular type of negotiation – solely through Industrial Councils.

> "Recognition of or negotiation with black trade unions should be . . . . through *final* legal registration of trade unions in terms of the provisions of the Industrial Conciliation Act and *contingent* upon the trade unions concerned becoming parties to the National Industrial Council. . . ." (Nov 1979 Guidelines)

Recognition of unregistered trade unions should definitely be withheld, but this also applies to unions which are only provisionally registered. Employers are warned against actively assisting trade union organisation in any way. Managements are also explicitly directed not to allow any 'in house' agreements under any circumstances on any issue which falls under the purview of the Industrial Councils, *even* for unions which are fully registered. At the individual company level, in place of 'in house' negotiation there should be 'in plant *consultative* systems' consisting of works committees and/or liaison committees and/or works councils, catering solely for communication of grievances. Shop steward or union factory committees are explicitly excluded and these consultative systems aim to cater for workers "irrespective of their membership or otherwise of trade unions". Finally, employers are warned that stop order facilities to unregistered unions are rendered *illegal* in terms of particular sections of the Industrial Council agreements. Hence, the SEIFSA guidelines are based on the fundamental tenet – no recognition of trade unions until final registration is completed *and* the trade union is sitting on the relevant Industrial Council.

In May 1980, due to objections from trade union circles, the 1979 guidelines were slightly modified to allow recognition of trade unions solely for the purpose of stop order agreements, if the union concerned had already applied for registration, if its constitution had already been approved by the Registrar, and if that trade union had given an undertaking to join the relevant Industrial Council. This was all summed up by Drummond : "We will certainly not permit unions to bargain with individual employers. All bargaining must take place through our Industrial

Council." (Rand Daily Mail 15/5/81)

These guidelines of SEIFSA have served as the beacon for the most reactionary wing of manufacturing capital, stressing the *existing* system as the *only* forum for negotiations over wages and conditions of service; suggesting *no* changes in registration procedures; and making recognition completely dependent on registration *and* acceptance of the Industrial Council system as the site of negotiations with trade unions over wages and conditions of service. We can conveniently call this the 'stick approach' – use state power to beat the workers into an industrial relations system which (a) takes all significant bargaining out of the hands of factory-based worker committees; (b) involves officials in bureaucratic forms of negotiation; (c) because of the Industrial Council apparatus, stacks most of the cards in negotiation in favour of management; and (d) steers the trade union towards bureaucratic forms of *organisation* as a consequence.

"Undoubtedly, as was expressed by someone in the FCI, Seifsa's role as the custodian of the IC system in the iron, steel and engineering industry plays an important rolein forming such policy. Seifsa is a party to the IC system, its agreements and operations, and therefore cannot urge negotiation outside of that system. Furthermore its very constitution, as an institutional body, occurred and re-occurs through the IC system. In a real sense the IC system provides Seifsa with much of its institutional rationale. In this respect Seifsa differs fundamentally from other corporate organisations of capital, such as the FCI and its regional chambers."

Not all manufacturing capital, however, responded to the upsurge in workers' struggles in this way. A more progressive position has been expressed by monopoly capitalist firms like Barlow Rand, and can also be found in some of the guidelines emanating from the FCI.

The FCI's first position was made public in September 1980, after it became clear that the labour unrest of the first few months of that year was not just a passing phenomenon. This response contained the first signs of an alternative strategy within capitalist circles to the 'stick approach'. The guidelines still placed all the emphasis on the industrial council system as the site of "collective bargaining over remuneration and conditions of work". The stress was on the advantages of "industry level bargaining and statutory protection" afforded by industrial council agreements. However, an important shift also manifested itself in this document. For, "in the transition period", it stated, there was a "clear need in some instances for employers to negotiate with unregistered worker groups which are representative of worker interests albeit on a conditional basis." It added that this would hold even if they "do not wish to seek registration and incorporation in an industrial council system." The important qualifications which the FCI added were that any *de facto* recognition should not undermined the IC system, and by implication, that there should be no permanent recognition of trade unions which refused to register and endorse the IC system.

In September 1980, Rosholt of Barlow Rand put forward that company's view

on recognition (whether it was being put into practice is obviously quite another matter altogether). Although vague and very general, it did contain a clear demonstration on the effect of the struggles of the previous year on some sections of monopoly capital. The following suggestions as to how to handle representative unregistered unions were put forward: Barlow Rand would *talk* with any union that approached them, irrespective of its registered status; as far as *negotiation* went, although they favoured registration and the IC system, its present form rendered it too "slow and cumbersome". Therefore, until the government "makes registration more attractive to black unions, we are going to have to continue to negotiate with unregistered unions – and we may have no option but to allow them some form of recognition." Finally, the principal criterion for recognition should be representativeness, *not* registration and willingness to enter the IC system. "Employers' chief concern should be the extent to which the union enjoys worker support. All other considerations are secondary." Interestingly enough, this stood in marked contrast to the Barlow groups published code of conduct for the previous year. There they state, "that in the interests of orderly negotiation and in the absence of special circumstances, recognition should be confined to registered and representative unions."

At the same time, Assocom also released its guidelines. Formulated in conservative tones, it basically upheld the *status quo*. Assocom called for fully integrated registered trade unions as the organisational form for black workers – their only major departure from the *status quo*. However, it still remained the prerogative of the employer as to whether such trade unions were to be recognised. The guidlines were opposed to recognising unregistered trade unions because that would produce a proliferation of unions in any one industry, as well as allow them to evade statutory obligations by standing outside the IC system. Nevertheless, where an unregistered trade union truly represented the majority of the workers in an establishment it might be necessary to "sometimes" negotiate "conditionally" with such a union. This specifically meant conditional on the "trade union giving an assurance that they will apply for registration" and that any negotiations "should at no time prejudice or undermine the long term positions of the IC system." The latter point, read in conjunction with Assocom's stress on liaison and works committees as "a useful forum for settlement of domestic problems", renders these guidelines a somewhat more moderate repetition of the SEIFSA position.

The FCI's Guidelines – The "carrot approach"

The most comprehensive and controversial guidelines were, however, still to come – from the FCI itself. They were originally formulated in late October 1980; but, apparently due to internal opposition within the FCI itself, they were not made public. In late January 1981 another version was released to the press differing in some important respects, particularly in tone, from the earlier version. The original document was more explicit, less open to misinterpretation and less

ambiguous in suggesting particular forms of recognition for unregistered representative trade unions. It contains some interesting and pertinent references to the social forces that needed to be accommodated. These references are interestingly enough omitted from the later guidelines.

The original guidlines unambiguously stated that the "issue of trade union recognition is basically one to be settled between worker organisation and not from outside". In this context, the document implied that the workers' struggle over the previous year had played an important part in the FCI's rethinking on registration and recognition, particularly insofar as the workers often put forward a demand for recognition of representative trade unions irrespective of their registered status. "It appears to the Chamber that a major part of the recent unrest involving Black (worker) organisations has been tied up with the recognition issue." The FCI concludes from this that "if an organisation can show its *bona fides* and convince management that it holds credibility among the workers, the question of whether it is formally registered or not, becoms irrelevant in the functional sense." Since, where "there are genuine grievances . . recalcitrance on the part of employers may well force the leaders of emergent employee organisations to demonstrate their standing by way of militant action and thus precipitate recognition."

The other source of pressure which had to be taken into account was from overseas quarters. Here, it is worthwhile quoting in full the FCI October statement:

> "It is very important to take into account the views of overseas advisory bodies to the local Black trade union movement (such as trade union federations, political bodies and various local interest groups). They must still be convinced that the processes of trade union development in South Africa are not aimed simply at establishing a substantial measure of control over Black workers, but are indeed credible and honest. They would, given their long experience in these matters, justifiably regard anything like a rigid approach in these areas as quite inappropriate – in short as a continuation of apartheid in labour affairs. . . . . There is a considerable task ahead to convince overseas labour interests of the real intentions of employers. It is the intention of the Chamber to approach international employer and trade union organisations with the objective of seeking their constructive support for the changes taking place in industrial relations in South Africa. Without a sincere and functional approach towards accommodating the interests of previously excluded black workers in South Africa, such a programme of action would simply be a waste of time."

This is all underlined by the FCI's statement that "in the recent past some unions have apparently been reluctant to register in the belief that the regulation and control element involved in registration is excessive and that the criteria should be changed to allow the whole process to become more automatic and less discretionary

In addition the requirements for registration have been described as complex and cumbersome, and in need of streamlining. The Chamber believes that these criti-

cisms have some validity at the present time."

This position is in effect repeated again in the FCI's recent calls for registration to "be made entirely neutral", by which they mean nominal registration, i.e. providing certain information to the state on the union's "title" and satisfying "minimal standards of financial management". In effect, it calls for the disappearance of "the process of registration, as a mechanism for controlling the activities of trade unions". (FM, 15/5/81, RDM 14/5/81).

With regard to the broad acceptance of the importance of the IC system as the proposed place for negotiation over wages and conditions of service the FCI guidelines do not differ substantially from those of SEIFSA.

> The second principle of the January 1981 guidelines stresses that "the ultimate objective is to work towards a unified industrial relations system in which collective bargaining over remuneration and other conditions of work take place predominantly at industry level within the industrial council system, where it tends to become more *depersonalised* and to acquire a more *professional* and *rational character.*" (my emphasis)

Furthermore they add, "where industrial councils do not exist, employer bodies and trade unions should work together to initiate and maintain such structures." However, they do accept that "a flexible approach to the development of appropriate institutional structures over time is vitally important."

Their reasons for accepting the IC system as a negotiating forum most suitable to them – its "depersonalised, professional and rational character" – is obviously not that dissimilar to the reasons for SEIFSA favouring the IC system. However, in regard to the system there are important differences between the two bodies. SEIFSA accepts the system as it stands, whilst the FCI hints at the possibility of streamlining it somewhat. But, ultimately what is envisaged by both corporate groups is an IC type system where negotiation over wages and conditions of service (the heart of trade union negotiation) occurs at an industry level between "professionalised" union officials and employers, whilst plant level committees deal with local conditions and problems.

The major divide between the FCI and SEIFSA lies elsewhere; and it is a critical difference at that. It lies in the different strategies put forward to bring about the end goal of all negotiation taking place within an IC type system. As I have stressed SEIFSA adopt a "stick approach". The FCI, on the other hand, puts forward what can only be called a "carrot approach". This can be summed up in the following terms. The January 1981 guidelines stress that the goal is *"effective* communication between *representative* employer and employee groups" and *"bona fide* collective *bargaining* between *representative* employee and employer groups". (my emphasis)

Now, however, the FCI is clearly faced with a problem. As soon as it stresses " representivity " as the most important criterion for effective communication and collective bargaining, a potential conflict arises with their oft-stated goal of working towards a unified IC system. The state has been unsuccessful in forcing all

the representative unions to register. Furthermore, in not registering, these unions have increased in strength and stature within the context of diverse popular struggles centred around factory and community. Hence, the FCI document concludes that, notwithstanding their stress on the goal of negotiating within the framework of state sanctioned registration and industrial councils, "individual employers face the possibility that at this fluid stage of development they may have to enter into agreements falling outside the established IC system". Given therefore, that the "industrial relations system in South Africa is presently in transition" – with the implication that, depending on the balance of forces, it could go a number of ways – "there will be instances where employers find it necessary to negotiate with unregistered worker groups which are representative of worker interests, albeit on a conditional basis. The virtues of collective bargaining and protection of trade union and employer rights and obligations in a formal and structured industrial relations system must be demonstrated to those sceptical of the whole framework."

Obviously all this depends on what the FCI means by *"conditional"*. First and foremost, it refers to the conditions under which employers should consider recognising trade unions. But this is where the guidlines become ambiguous, particularly those of January 1981. This is because two meanings can be attached to the term 'conditional'. On the one hand it can mean conditional on such trade unions being representative. In other words, when faced with a union that has organised power in a factory, recognise and negotiate with that union even though it is not registered. The FCI guidelines then become a more sophisticated variant of the Barlow Rand public position. This is certainly the meaning that has been seized upon by the more progressive sections of capital both verbally and in practice – *vide* the stevedore managements in Cape Town, Port Elizabeth and East London; Chloride and Johnson & Johnson in East London; Fattis and Monis in Cape Town etc. It has also been the meaning pushed by the FCI public relations squad in Pretoria and largely accepted by the press. It is clearly reinforced by the following statement in the October 1980 guidelines. "This (*ie*. recognition) would hold even if certain employer and also worker groups do not wish to seek registration and incorporation in an industrial council system". Significantly though, the latter sentence referring to trade unions who refuse to register does not appear in the January guidelines.

The second interpretation that can be placed on the use of the term 'conditional' in the FCI guidelines could well mean 'conditional on a representative union agreeing to register and enter the IC system in the near future'. The October 1980 guidelines state this quite clearly:

> "If the recognition agreement is to be entered into with a *bona fide* unregistered union, the union should preferably indicate its intention to register within a specified period of time and its willingness to become party to the industrial council system. If the agreement is made conditional in this way, all reasonable facilities for the normal functioning of the union should be the subject of

negotiation. These areas as well as those that are excluded should however be clearly stipulated."

This meaning of 'conditional' then is closer to the SEIFSA position with important differences, *viz.* in that recognition is only tied up with the *intention* to register and enter the IC system. Hence, if such an undertaking is given or is likely to be given, then it is better to grant recognition at an early stage as a carrot to early entrance to the official industrial relations system.

This is indeed the interpretation that is dominant within the FCI, rather than the more unqualified 'conditional on representivity' interpretation. There is clearly a struggle between these two tendencies within the organisation. Since the January 1981 guidelines are sufficiently ambiguous to accommodate both interpretations, one finds in discussion with various managements and in published statements different positions being read into these guidelines. They are said to be either in contradiction with, or in broad conformity with, SEIFSA's proposals on the question of 'conditional representation'.

If one looks at it from the perspective of the guidelines' strategic purposes, then both these tendencies have one thing in common: 'conditional' recognition has the aim of ultimately drawing the representative unregistered trade union into the IC system whether in its present form or in a modified, streamlined form. Given the FCI's stated commitment to industrial councils as the long term strategic goal, it is clear that 'conditional' also has the meaning of 'temporary until the trade union can be persuaded, lured, enticed etc. into accepting the IC system'. The "carrot strategy" now becomes much clearer – negotiate with representative unregistered trade unions if one has to, but in the very process of doing so (eg. in the recognition agreement), attempt to shift them towards accepting registration and industrial council level bargaining and negotiation.

This is the very nub of the FCI's strategy. Offer some of the cake now and promise more if the trade union accepts industrial councils; involve them in certain practices now and in so doing attempt to shift the locus of trade union activity away from factory level negotiation. Of course as long as, and only if, the unregistered trade unions refuse to commit themselves to the IC 'cake' and instead carry on basing themselves on strong shop floor organisation, it contains risks for the IC system. For it can just as well backfire. The unregistered trade unions can precisely consolidate themselves and in the process, having refused the industrial council option, persuade management that it is also not in their long term interest to carry on pushing for industrial councils. A startlingly clear example of this is the stevedoring industry where management have now publicly stated as a result of their experience in direct negotiation with the union factory committees, "that . . . .shop floor bargaining is more effective than bargaining which is removed from the workplace, such as through the industrial councils." (FM 8/5/81).

Notwithstanding the issue of what is meant by 'conditional', there is another ambiguity in the FCI guideline which has more than semantic implications – *viz*

the meaning of 'recognition'. Does it mean recognise the unregistered trade union's existence and hence engage in a dialogue without any commitments? This would be the ordinary language meaning of 'recognise'. Or does it mean recognise in the sense in which trade unions use the term – *ie.* recognise the trade union's right to represent its members with correspondingly mutual commitments and rights in a particular factory? Now, the FCI is indeed vague on this question and once again different managements interpret it pretty much as they like depending on what tendency they represent in the FCI. Both positions on 'recognise' can in fact be found in the guidelines.

This question has very definite implications and it is best to pose them around the question of the "scope of bargaining" with reference to 'in-house' agreements. Put in another way, how do the FCI guidelines allow for 'in-house' agreements, and yet in doing so in their own words, "ensure that *de facto* recognition of trade unions does not undermine the existing industrial council system"?

Firstly, the two sets of guidelines seem to imply that negotiation at factory floor level ('in-house' agreements) should avoid including within its terms of reference wages and conditions of service – par excellence the preserve of the industrial council.

Significantly, the 'scope of bargaining' in both sets of guidelines does not mention trade union negotiation over wages and conditions of service at the factory level. The October 1980 document in fact makes it quite clear that with respect to representative trade unions that refuse to register, "employers should still consider seriously entering into a recognition agreement with such a union, at least to cover specific areas of negotiation such as access to employer premises, the use of working hours for union duties, etc." The final principle of the January 1981 FCI guidelines throws important light on this question. It states, "to ensure *de facto* recognition of trade unions does not undermine the existing Industrial Council system, negotiations should, where applicable, take cognisance of the conditions set in Industrial Council agreements".

Thus, 'in-house' agreements are either to exclude negotiation over new wages and conditions of service, or if they do allow for such negotiation, wages and conditions of service are not to differ markedly from those set at the Industrial Council level. Clearly, this is an area of major controversy within the FCI (SEIFSA, on the other hand, is absolutely and unequivocally against 'in-house' agreements) and the only way in which 'in-house' agreements covering wages and conditions of service can be assured is by strong organisational struggles on the factory floor.

Managements are definitely not going to grant such concessions without a struggle. Certainly, if they perceive any likelihood of containing and restricting negotiation to the Industrial Council, they will most definitely attempt to do so. Given the FCI commitment to the Industrial Council system, and hence negotiation of wages and conditions of service at this level, it would be just as well for representative trade unions not to fool themselves that capital – either individual man-

agements or organised in the Industrial Councils – will allow a stated commitment to participate in Industrial Councils to be suddenly superceded by a subsequent demand for an in-house agreement which overturns the Industrial Council determination. Capital organised within the Industrial Council system certainly has at its disposal an array of mechanisms to pressure individual managements to toe the Industrial Council line. Ultimately, it will not be tricks that break the monopolistic hold of he Industrial Councils over such negotiation, but strong shop floor organisation forcing direct negotiation with union factory committees.

This is borne out in a recent inter-office memo of the FCI (1/4/81) warning members against signing recognition agreements with the trade unions without carefully checking out the implications of the wording. as they point out, "signing a recognition agreement with a particular union implies that the employer binds himself to negotiate with that union any problem which might arise in the future which concerns employment conditions and related matters. The exact commitment depends on the wording of the agreement." They warn that "the intention is to exclude all the provisions of the Industrial Conciliation Act so that the relations between the parties will not be subject to Conciliation Board agreements or arbitration under the Industrial Conciliation Act or even intervention by the Industrial Councils or the Industrial Court."

To conclude by summarising this discussion of the FCI guidelines: the guidelines ar open to different interpretations, reflecting different tendencies. The one interpretation basically says: when one is forced to, extend recognition and negotiation rights to unregistered trade unions, conditional upon their being representative. The other says: establish a 'relationship agreement' with representative unregistered trade unions that refuse to register which opens the way for dialogue and holds out the promise of better things to come if the trade union registers. As for representative trade unions that are as yet unregistered, but not in principle opposed to registering, recognise them if they agree to register and enter the Industrial Council system. Grant them much greater rights in the factory and make clear "what the consequences of non-registration within the specified time period shall be". Both tendencies, however, fall within a carrot approach, since they extend certain rights concomitant with 'recognition', holding out the promise of more to come if the trade unions take the next few steps by registering *and* entering the Industrial Council system.

Conclusion

It is quite clear, to even the most uninformed observer, that there is a great fluidity in both the black trade union movement and capital's attitude towards it. There have been increasing noises from some managements and sections of capital for a radical revision of the registration process. Others are calling for greater control over trade unions that enjoy popularity with African workers. The FCI has recently gone so far as to call for a system of nominal registration,

not far removed from the demands of some representative black trade unions themselves. Recently Ferreira at Ford threw into doubt the efficacy of the Industrial Council system for much the same reason that the unregistered unions have rejected it – *eg.* bureaucratising of the union leadership through officials doing the negotiating. On the other hand, there are strong forces within the National Party calling for a halt to any more labour reforms, and the state's new Labour Relations Bill showed little hope for significant change this year. In the FCI's own words, the industrial relations framework of this country is very much "in transition".

However, if it is fluid and in transition, it is also open to a number of possible resolutions which will be more or less favourable to the trade union movement extending mass support, depending on the manner in which these unions respond. I stress the role of the trade unions because, as is clear from the earlier discussion, it has been mass-based organisation and struggle, that has forced a shift and a fluidity into capital's approach to the black trade union movement.

Notwithstanding the divisions that exist still within the representative trade union movement over registration, it is definitely in a stronger position with respect to capital and the state than it was a few years back.

The representative unregistered unions have shown the resilience and strength of their position. This has played an important part, along with other forces, in shifting the debate around trade union recognition away from 'registration' *per se* towards 'representativeness' as a key criterion for management and the state to consider. Whether this can be capitalised on in the short term, whether further gains can be made, whether the rifts within capital on this issue can be exploited and the state forced to make greater concessions than were planned in the new Bill, all depends on what position the representative unions that choose to register now adopt.

As we have seen, the changing balance of forces has resulted in important shifts within both labour and capital. Important sections of the trade union movement and management have shifted towards the centre of the spectrum on the question of registration and recognition of black trade unions. This clearly opens up new problems and advantages for the trade unions that have chosen to register. On the one hand, there are great temptations posed for them – acceptability, respectability and managerial credibility. On the other hand, if they are seen to be bolstering up the states new dispensation in the labour field and hence partaking in the attack on the unregistered unions, then in the long term they stand to lose much popular credibility. By compromising on industrial councils they also stand to lose shop floor strength and organisation – precisely that which has played, directly and indirectly, the principal role in raising the importance of "representativeness" as the key criterion for recognition of black trade unions.

Yet paradoxically, these trade unions, although in a highly difficult and contradictory position, squeezed in between the pressure of the state and management on the one side, and the militancy of the black working class on the other side,

are in a potentially fairly strong position by virtue of capital and the state's need for more representative unions to enter the industrial relations framework. Notwithstanding the acrimony of the debate over registration, the possibilities of a new united front against increased state controls, both directly through registration and indirectly through the IC system has been opened up again.

NOTES

1. Apart from the material cited in the paper, many of the ideas contained in it are also based on a number of interviews with various managements in Johannesburg, Durban and East London, as well as some more confidential material which I had limited access to. Unfortunately, I have not been at liberty to quote from these interviews, but I used them extensively in analysing and verifying my analysis of the different tendencies and approaches existant within capital at present.

Manufacturing Capital and the Question of African Trade Union Recognition 1960-64

David Kaplan

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I. Introduction

This paper is concerned with approaches made to the government over the question of African trade unions in the period from May 1960 to February 1964 on the part of the two largest industrial employer's organisations – the Federated Chamber of Industries (FCI) and the Steel and Engineering Federation of South Africa (SEIFSA).

It spells out these aproaches as well as the negotiations by which these employer organisations attempted to secure agreement amongst themselves and also with other employer's organisations in order to make joint submissions to the government on the issue. The central source materials are a number of unpublished and hitherto unavailable documents. Indeed, one major purpose of this article is to make this material more widely available, and hence we have presented the material in some detail.

The subject of this article is limited. In the period under consideration, the actual impact of the discussions on the question of trade union recognition for black workers was decidedly limited. No significant alterations in the structure of industrial relations resulted and the question never surfaced in an open and public debate.

However, the discussions do illuminate a number of important issues. They are enlightening on why the question was, at this time, re-opened and in particular, the significance of the political struggle of the day in placing this issue on the agenda; the role of the corporate organisations of capital as one of the mediating structures present in the class struggle; and finally, the similarity, in form and content, between the proposed institutions of trade union regulations of this period and the Wiehahn proposals in the contemporary period.

By the beginning of 1960 the struggles of the popular classes and their organisation reached an unprecedented pitch. The previous decade had seen the launching of a number of defiance campaigns, boycotts and stay aways. It had seen the formation of the Congress Alliance and the emergence of the PAC.

The popular struggles organised by the Contress Alliance, and later the PAC, ended the decade of the 1950s with plans for the launching of a major anti-pass campaign in the first half of 1960. The result was the Sharpeville massacre in March 1960 which sent major shockwaves throughout the country.

These popular struggles, coupled with decolonisation elsewhere in Africa, seemed to underline the 'inevitability of change' in South Africa. In *direct response* to these struggles the FCI, the major industrial employer's organisation, urgently requested that the government institute political changes which included some form of African trade union recognition.

This produced a period of debate, discussion and disagreement within the ranks of the corporate organisations of manufacturing capital as the FCI attempted to organise a consensus on its proposals for containing the popular struggles. The collapse of the popular upsurge and the success of the state's policy of repressive containment removed the issue from the agenda. The question of trade union recognition in the context of political reform disappeared, leaving little trace in state policy, political party programmes and even FCI policy.

The substantive part of this article summarises the discussion on the issue of trade union recognition for black workers,while the material is tentatively analysed in the concluding section.

II. The Policy of Organised Industry in Regard to African Representation in Collective Bargaining

Four 'periods' can be discerned. The first culminated early in May 1960, with the unilateral approach to the government by the FCI. The second, occurring later in May 1960, concerns representations made to the government jointly by the FCI, Afrikaanse Handelsinstituut, Associated Chambers of Commerce, SEIFSA and the Chamber of Mines. The third concerns the abortive discussions held between the FCI and the Confederation of Employer Organisations (CEO) between May and November 1960. The fourth 'period' encompasses the FCI-SEIFSA negotiations, November 1960–February 1964, resulting in the presentation to the government of a joint memorandum.

1. *Federated Chamber of Industries – May 1960*

In 1946, an FCI ad hoc committee on industrial legislation ". . . . recommended a policy of full recognition of Native trade unions under the Industrial Conciliation Act".[1]

Before the Botha Commission, 1948–51, the FCI took no policy, leaving this to its constituent Chambers. The Cape recommended full recognition; Midlands felt itself unqualified to take a position; Natal recommended some form of official recognition short of full recognition under the Industrial Conciliation Act; and the Transvaal Chamber stated –

> "Native workers are still predominately illiterate and unenlightened . . . this being so it would be unwise in one step to accord them recognition on the par with non-African trade unions. Until they have reached a stage of development, at least comparable with that of the Asiatics and Coloureds, their trade unions

should be subject to official vigilance and guidance."[2]

The differences within the FCI were not resolved and they surfaced again in 1957, when, prompted by the Natal Chamber, the Executive Council attempted to draw up memoranda towards the preparation of a blueprint on "Consultation with Non-Europeans".[3] The Cape was strongly opposed, and other Chambers delayed. However, the Natal Chamber circulated a Memorandum,[4] outlining the series of 'disturbances' – strikes, stay-aways and boycotts – in all of which the Congress movement is said to be intimately involved. The support given by African workers to "communistically orientated bodies" is noted with much disquiet, as is the recent radicalisation of the Congress movement.

According to the Secretary of the FCI's Non-European Affairs Committee, Natal's sudden urging for an FCI approach to the government was quite explicable.

> "In preparing this memorandum the Natal Chamber has been influenced by the apparent development of complete solidarity between Indian, Coloured and Native political organisations and the tendency for these organisations to fall under communistic influences. It is thought that basically this is due to resentment of, and opposition to recent apartheid legislations."[5]

The Chamber recommended discretionary recognition of African Trade Unions under the Industrial Conciliation Act. "So that Native Trade Unions will become subject to the controls contained in the Industrial Conciliation Act, The Chamber recommends that the Industrial Conciliation Act should be amended, so that it will confer on the Industrial Registrar discretionary power . . . to grant, or vary the registration of Native Trade Unions. . . "[6] Inter alia, the Industrial Registrar should have regard as to whether ". . . . . the union takes part in undesirable activities".[7]

But, there were severe internal dissensions within the FCI, with the Cape and Northern Transvaal dissociating themselves from these proposals, and no memorandum resulted.

However, when by 1960, following Sharpeville and Langa, labour unrest had become far more widespread, three special meetings of the FCI President's Committee were held. The Committee drew up a 'Statement of Principles'. On May 3rd 1960, a high level meeting occurred between the FCI and the government at which this statement was presented. On the FCI side, the Presidents of the Border, Natal, Transvaal and Northern Transvaal Chambers as well as the President, Vice President and two Past Presidents of the FCI itself were present. The government side was represented by P O Sauer, the Chairman of the Cabinet, and four other Cabinet Ministers – the Ministers of Finance, Labour, Bantu Administration and Economic Affairs. The FCI Director and the Parliamentary Secretary were also present.

In the wake of Sharpeville and Langa, the declaration of a state of emergency

over half of the country and the consequent outflows of capital, the FCI called for changes in government policy as a matter of great urgency.

The Chamber, in response to government questioning, began by explaining why they were making a unilateral approach to the government, rather than acting in concert with other 'main employer groups'. The two primary reasons given for this were firstly that –

"Whilst a large measure of agreement is likely to be reached in respect of matters of detail, the Chamber is of opinion that improvements of the legal provisions and their administration, however essential that might be, is not a complete solution and that attention should also be given to more fundamental changes in official policy. Since a consideration of this was thought by some of the other bodies to fall outside the ambit of their organisations, there was a disinclination on their part to consider basic policy. This, coupled with the fact that some were not directly concerned in the development of a stable urban labour force, compelled the Chamber, as the senior organisation speaking on behalf of manufacturing industry with a preponderant interest in peaceful labour conditions to pursue questions of policy on its own."[8]

Secondly –

"Whilst it is conceivable that if pursued, a measure of agreement on basic policy might have been reached, this would have meant protracted discussions which the urgency of the present circumstances did not justify."[9]

The Chamber stressed that, like the government, they were concerned to prevent a recurrence of the unrest "on the part of the urban Native people". The FCI delegation was concerned that "a completely unconciliatory approach to the needs of the urbanised Natives not only contain the danger of more outbreaks of unrest . . . but may also result in further repercussions internationally". This would necessitate the government adopting a conciliatory policy toward "the law-abiding completely urbanised Native". Such policy, however, necessarily required "government to recognise the permanency of the completely urbanised Natives and to adapt policy to their needs and requirements". While adequate machinery existed for keeping in touch with tribal Natives, no similar machinery existed in respect of urban Natives. Creation of such machinery would " . . . serve a two-fold purpose; firstly, it would give the law-abiding Native something to hope for and to hang on to, secondly it would have a salutary effect on overseas critics".[10]

The Chamber went on –

"Government may be well advised to make informal contact as a first step with certain Native personalities on the Rand with whom contact had been maintained over a number of years by leaders of Industry and Commerce and who have shown themselves as most responsible and cooperative."[11]

The Chamber was prepared to play an even more active role in this process –

"If necessary members of the Chamber would be prepared to act as intermediaries in arranging an interview between Members of the Cabinet and some of those

people whose views on different aspects of consultation might be fruitful as a starting point in the determination of government machinery."[12]

Under the head of 'Points of Friction', the Chamber stressed the frustrations caused by job reservation, inadequate transport, lack of police protection for law-abiding citizens in the townships and "the complete withholding of all trade union facilities". In respect of the latter –

> "Whilst the Chamber agrees with the Government that a large body of Native workers lack sufficient experience and development to assume the responsibilities attached to trade unions, it nevertheless feels that the time is not inopportune to grant them *some facilities short of full trade union rights* e.g. by way of mixed unions or branch unions under the supervision of established European unions"[13] (our emphasis).

The Chamber also called for government enforcement of adequate wage levels for Native employees – a process that should not be left to competition.

Thus, while the FCI's recommendations were not spelt out in detail, their import is clear. The recommendations were in the form of a fairly comprehensive package which focussed on the settled urban Africans, recommending, as their main thrust, economic reforms to defuse essentially political demands. Within this package they advocated that some form of recognition, though short of full union rights, should be accorded to African workers. In addition, they advocated wage increases, specially in respect of lower paid workers, and that such increases should be prescribed throughout the industry concerned.

2. *FCI – AHI, ASSOCOM, SEIFSA and the Chamber of Mines – May 1960*

The government's failure to act upon the FCI recommendations was probably seen as being, in part at least, a function of the unilateral approach of the Chamber. But if the FCI had unilaterally approached the government they were not the only corporate organisation of capital that was concerned. In direct response to the unrest of the time, discussions between the main corporate organisations of capital were also taking place.

A series of intensive discussions took place between the "representatives of five of the greatest employer organisations" - Die Afrikaanse Handelinstuut, Association of Chambers of Commerce of South Africa. South African Federated Chamber of Industries, Steel and Engineering Federation of South Africa and the Transvaal and Orange Free State Chamber of Mines. These discussions were conducted " with a view to submitting to the government constructive practical suggestions, within a limited field, having as their object the easing of the situation that has contributed to the present state of emergency that exists throughout the country".[14] They resulted in a Joint Memorandum which was submitted to the Prime Minister on May 12th 1960.

What is striking about the Memorandum, in contradistinction to the earlier FCI "Statement of Principles", was indeed its 'limited field'. The Memorandum proposed some simplification of the pass laws (not their eradication), a streamlining of influx control, the controlled selling of liquor to Africans and some minor changes in tax collection. There is no statement concerning the recognition of the permanent status of African workers in the urban areas, no demands for the abolition of job reservation and, in particular, no mention of the extension of trade union rights to any section of Black workers.

3. FCI-CEO-May 1960–November 1960

The FCI next attempted to gain a wider measure of support, from amongst other employer organisations which could be expected to be somewhat sympathetic, for a further submission to the government based upon its "Statement of Principles".

A resolution was passed by the FCI Executive on 7th July 1960 " . . to place on record its agreement in principle that legal machinery should be established whereby Native industrial workers in their specific industries may collectively negotiate directly with the employers in such industries in regard to their conditions of employment and that existing obstacles to such consultation should be removed."[15]

Again, the FCI position was not specified in detail, the precise terms were to be left to the FCI Convention in November 1960. However, the principle of collective negotiation over wages and working conditions *directly* with African industrial workers is clearly advocated. Discussions were now begun between the Presidents of the FCI and SEIFSA. These discussions were, according to the FCI, " . . . with a view to obtaining the concurrence of that organisation."[16]

Probably wider contracts were made since a meeting was then held between th FCI and the Confederation of Employer's Organisations (CEO)* at Presidential level on October *5th 1960, where the FCI resolution was discussed.* The FCI resolution was strongly opposed –

"During this meeting all the constituent bodies of the Confederation voiced their opposition to the unconditional recognition of Bantu Trade Unions."[17]

A number of objections to the FCI proposals were raised. The problem of according recognition to Black trade unions in the context of their support for SACTU was stressed –

"The majority of employees are probably not at this stage concerned with or as individuals actively engaged in the acquisition of trade union rights. Experience has, however, shown that they follow without question the lead of such organisatins as the S A Congress of Trade Unions."[18]

SACTU was also blamed for the rejection by African employees of the Native

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* (The CEO included SEIFSA, Motor Industry Employers Association, National Federation of Building Trade Employers and Associated Commercial Employers of South Africa.)

Labour (Settlement of Disputes) Act.

Since employers, government and opposition were opposed to full rights for African trade unions, the question of the separate recognition and registration of African workers was discussed. But, there were difficulties here for if there were to be a common industrial council for African and white trade unions, the latter will " . . .almost without exception refuse to take part in the proceedings".[19] Two separate industrial council systems would be unworkable. At the same time, the Native Labour (Settlement of Disputes) Act had not worked well and only 14 factories were known to have established works councils under the Act.

The meeting concluded lamely with a suggestion for an expanded role for the Wage Board to ensure payment of a living wage to Africans combined with "conferment of some form of self expression in wage fixation".[20] The latter was undefined.

The FCI then drafted a Memorandum entitled 'Bantu Participation in Labour Negotiations'. A further meeting was held between the FCI and the CEO on the 18th November 1960, based on this Memorandum. The President of the FCI explained that the Memorandum –

" . . . . represented a compromise in that it has been framed in such a manner as to take into account the various views and particular circumstances of all sections of Industry."[21]

The results of that meeting were summarised in an internal FCI letter –

"The Confederation's response was most disappointing and can be described as a complete rejection of our proposals.

The general tenor of the discussions with the Confederation suggested that the lessons of past Bantu unrests have not been taken to heart and that it was not so much a question of accommodating the aspirations and needs of the Bantu workers as to find extraneous reasons for refraining from taking any action."[22]

The FCI Memorandum did contain the FCI Executive Council resolution, but also went on to declare that the right to collective bargaining on behalf of African industrial workers was not something that could be put into immediate effect, but was part of a "Natural (sic!) evolutionary process". Indeed an ". . abrupt transition from the present non-vocal stage to the ultimate one envisaged, may well precipitate serious difficulties which can only aggravate the present situation. . ."[23]

As "a first practical step", therefore, the FCI recommended substantial amendment of the Native Labour (Settlement of Disputes) Act. These recommendations were in two parts.

Where no industrial council existed, in the event of a dispute, "either a group of Bantu or one or more domestic committees" who are parties to the dispute, could apply for a Conciliation Board. " . . . in the event of a Board being appointed the Bantu themselves will be entitled to elect delegates to the Board from amongst their own numbers direct, or call in the assistance of any trade union registered

under the Industrial Conciliation Act.

This means that if the Bantu wish to be assisted by a non-Bantu spokesman, they can do so. This also means that as far as the appointment of delegates to the Board is concerned, domestic committees will have a definite voice."[24]

A government appointed Native Labour Officer should be the Chairman at the Conciliation Board proceedings. Where the Board was unable to reach an agreement, the dispute would be compulsorily submitted to the Wage Board for binding arbitration.

Where an Industrial Council already existed, the Central Native Labour Board was only required to " . . . .consult Bantu workers employed in the industry before making representation to the Industrial Council". In addition, it was recommended that work's committee representatives be allowed to attend the industrial council proceedings.

What is quite clear is that the FCI resolution on "direct collective negotiation", was left with very little teeth. In the interim, what was advocated fell *far* short of recognition of African trade unions under the same terms as applied to non-African unions. The Native Labour (Settlement of Disputes) Act was to be retained – an Act which specifically recorded Africans as not covered by the Industrial Conciliation Act. The amendments to this act envisaged did no more than allow for African representation on Conciliation Boards – directly from their own members or via a representative from an already registered trade union. Where Industrial Councils already exist consultation with African workers was to be indirect via the Central Native Labour Board and the attendance of work's committees' representatives at Industrial Council proceedings.

Given the very limited nature of the FCI's proposals, it was quite remarkable how much opposition they generated on the part of the CEO.

Much of the opposition was directed at the FCI resolution which accepted the principle of direct negotiation with African employees. These objections were diverse. The Memorandum was labelled as too ambitious and unacceptable to government or workers (presumably white workers). It was stressed that there was a need for some form of restraint to be exercised over African trade unions and initially African workers should be organised under 'European supervision and guidance'. Most particularly, it was repeatedly emphasised that a distinction had to be drawn between migrant and permanent workers. Only the latter were entitled to any trade union rights. Representation to the Wage Board was said to be an adequate form of Black representation. Finally, the commercial employers within the CEO raised objections to the procedure of appointing a Conciliation Board and hence its extension to Black workers.

> "In no circumstances would commercial employers be prepared to accept in the Native Labour (Settlement of Disputes) Act or Conciliation Board proceedings for the reason that the European trade unions have consistently abused these facilities with the result that the employers have been inundated with applica-

tions for the establishment of such Boards;"[25]

Since no agreement could be reached, the FCI informed the meeting that " . . . . the Chamber would now proceed independently in an approach to the Government on the matter." The FCI Memorandum was accordingly sent to the Minister of Labour and Mines, Senator J de Klerk, on the 22nd November 1960.[26]

4. *FCI–SEIFSA – November 1960–February 1964*

How exactly the FCI Memorandum was received by the government is unclear,[27] but, at the instigation of the Natal Chamber of Industries, the question of a joint approach to the government on the part of the FCI and SEIFSA was soon revived. A SEIFSA document which set out that organisation's official policy on African trade unions was circulated within the FCI. This document entitled "Bantu Representation in Industry", departs from the FCI Memorandum in important respects and contains some of the objections to the FCI Memorandum that were expressed at the FCI-CEO meeting.

With popular resistance now posing no immediate political threat, and the first signs of economical revival, the September 1961 document began by stating –

"The need to consider a policy in this matter is not immediately acute; public interest being less than it was when the outbreaks of last year concentrated anxious attention on the problem to a degree that might have been less objective than it should have been."[28]

The implicit criticism of the FCI Memorandum is extended in the document's central assertion – namely that Black labour is not homogenous.

"Basically proper consideration does not appear to have been given to the fact that it is not in any sense practical to consider the Bantu as an homogenous whole, and few of the suggestions dealing with his representation in Industry appear to have been framed in accordance with the situation which exists.

Under the term "native" are grouped all types of Bantu; diverse ethnic groups, comprising civilised, uncivilised, skilled, semi-skilled, unskilled, urban, rural and presumably, both South African and foreign.

It is necessary, in considering the regulation of industrial relationships to keep this starting-point in mind, since segments of practically all the foregoing groups are employed in the Metal Industries."[29]

Foreign and unskilled workers – described unabashedly as the "more primitive types" – are said, in the overtly racist language of the document to be " culturally incapable of rational organisation among themselves." Moreover they " . . . . . are increasingly subject to intensive propaganda conducive to false assessment of their social aptitudes".[30] They should be looked after by a Central Authority. This body " . . . would be constantly employed in the study of the needs of the Bantu" and it would make representations to a Wage Court on their behalf.

As to whom should receive any of the rights of collective representation –

" . . . . . it would seem that criteria of wage income, skill and habitation might be evolved. Workers employed in operative occupations, who are permanently resident in urban areas, might firstly be considered as suitable for collective representation, and permitted to organise under direct official supervision."[31]

The terms of supervision are widely drawn and these are set out in detail –

"As to the type of trade unionism to be encouraged, the law might provide:

(i) the procedure to be followed before Registration could be achieved;
(ii) the classes of worker eligible (perhaps urban residents, other than labourers, in the first instance);
(iii) the creation of the necessary official supervision;
(iv) the methods of control, and of obtaining increased powers;
(v) the scope of trade unionism (the matters that a union might deal with), the method of working (what action may or may not be taken and the procedures to be followed in regard thereto);
(vi) the system of representation under official guidance, either to employers, and subsequently, and more practicably, to a Wage Court;
(vii) clauses governing the choice and conduct of officials, and permissible affiliations;
(viii) financial control;
(ix) generally, a system of evolutionary organisation built on past experience of trade unionism with a view to avoiding its errors while providing channels of representation."[32]

The SEIFSA document concludes with a quite candid assessment of the continued need for state repression –

" . . it is beyond logic to imagine that the present situation of the Bantu, working next to more privileged groups with which he is partially integrated by legislation, can continue under any other system than that of active repression.

Neither is it suggested that the Western interpretation of the term "democracy" can be successfully applied to a large majority of the Bantu at this stage."

A programme of imaginative paternalism, and the giving of gradual concessions is seen as the only "alternative to chaos".

"Idealistic concessions are as dangerous as the present position of laissez-faire."[33]

Overall, while the SEIFSA document heavily qualified the issue of African trade union recognition, especially by confining it to urbanised and skilled Africans (a small minority of the work force.(See conclusion)and by emeshing such recognition within a very tight system of supervision, it nonetheless did make provision for the

recognition of African trade unions. In that sense, it actually went further than the FCI's Memorandum – at least in respect of the latter's immediate programme of simply amending the Native Labour (Settlement of Disputes) Act so as to allow some form of worker representation on Conciliation Boards and Industrial Councils.

Representatives of the FCI and SEIFSA met on 23rd February 1962. ". . . .with a view to formulating a common approach to the Bantu's representation in industry".[34] The meeting also agreed that " . . . . full recognition of Bantu trade unions at this stage would be impracticable, but considered that the time was most opportune that some foundation be created which could be developed as a long-term policy to guide the evolution of the Bantu and to create the proper atmosphere at the time when the Bantu can assume more responsibility".[35]

The Non-European Affairs Committees of the two organisations met to discuss the SEIFSA document on May 1st 1962.[36] One of the SEIFSA representatives stressed that –

> "The urbanised Bantu was by no means properly civilised; especially the lower classes of Natives were unripe for trade unionism."[37]

Others voiced support for the confining of rights of representation to semi-skilled workers. J M Burger, the FCI Director, attempted to define the common ground –

> "He (Mr Burger) said that at the previous meeting he was somewhat critical in respect of the recommendations of SEIFSA,but recommended that the suggestions be further considered. He wondered whether employers as a group could not support the following line, namely that recognition be limited to the urbanised Bantu and to certain classes of workers. Such an approach would eliminate the purely unskilled worker as well as the migrant labourer. Recognition of Bantu trade unions for the aforementioned group should be subject to a fairly rigid legislative control as indicated by SEIFSA. The question which would require further consideration was the facilities and the rights which would be extended, having given them limited registration or recognition as trade unions, eg. whether they could appear before an industrial council; and if there were no industrial council,what rights would be extended to them in law to negotiate on behalf of their members?"[38]

Following on from these discussions, SEIFSA drafted a further document entitled "Representation of Bantu Interests in Industry" designed to reflect the view of the FCI-SEIFSA Joint Committee. This was discussed with the FCI on the 11th June 1962.

The latter document stressed the heterogeneity of African labour. It recommended the creation of "Bantu Representative Bodies" (it had been suggested that the government might take more kindly to such terminology) –

> " . . membership of such bodies should at least at this stage, be confined to urban Bantu. It may even be desirable initially to confine membership to workers performing other than labourer's work. There is justification in confining membership to urban workers, since they have an enduring stake in European indus-

try, as opposed to rural workers, who are itinerant and likely to be decreasingly employed in urban areas; while labourers, whether urban, rural or foreign, have a more or less common standard prescribed by Wage Determinations, and generally comprise the types of Bantu less likely to be capable of a rational approach to association."[39]

Like the earlier SEIFSA document, it clearly recommended the creation of such Bantu Representative Bodies outside of the Native Labour (Settlement of Disputes) Act. Suggested legislation surrounding the creation of these bodies was exactly as laid down in the SEIFSA document "Bantu Representation in Industry", ie. entailing a system of very tight control.

With regard to other workers –

"Accepting that a large majority of Bantu workers are not suited even to such restricted organisation, the Joint Committee feels that more active steps are desirable to safeguard and protect the interests of inferior classes of worker, with running surveys of the conditions under which they work in various industries, and creation of machinery to bring about adjustments without dangerous or unjust delays. Obviously the Wage Act and the Native Labour (Settlement of Disputes) Act are designed to this end, but the Joint Committee feels that a review of these measures is urgently necessary to effect such amendments as will assist in furthering the object the Joint Committee has in mind."[40]

A second document for the consideration of the Joint Committee was drawn up by a Mr A D Lee on behalf of the FCI. This document stated that, given governmental opposition to African participation within the IC Act, the only alternative was to propose a broadening of the provisions of the Native Labour (Settlement of Disputes) Act. This would entail provision for separate discussions between Bantu workers and the employer's side of an Industrial Council. It recommended that a system of voluntary deduction of Bantu trade union subscriptions ". . . could well be used in the early days of Bantu trade unionism to exercise control and to keep the organisations out of the hands of agitators".[41] In any case, trade unions were only possible with regard to a stable urban Bantu labour force, and thus, on the mines for example, trade unions were " . . . . of course, incapable of formation and proper functioning".[42]

The final Memorandum prepared by the Joint Committee is closer to the SEIFSA Memorandum than that of Mr Lee. The Memorandum, drawn up in July 1962, is in three parts.

Part 1 exactly reproduces the SEIFSA document. It reiterates that there is now no crisis situation and "therefore no immediate urgency surrounding the question under consideration". A whole section details "The Diverse Sociological Circumstances of the Bantu in Industry", stressing that Africans who are urbanised and skilled alone ". . . .are on a cultural level where they are capable of appreciating the modern concept of trade unionism".[43]

Part 2 criticises existent policy. Works Committees are supported, but under

the Native Labour (Settlement of Disputes) Act, they might become the ". . elected representatives of maybe discontented workers". Moreover – "It is also probable that such Committees in concentrated areas will inter-communicate, either at work or at home in the townships, and thus create an undirected and unofficial organisation which may fall into undesirable hands".[44]

Deficiencies in the Act are said to have allowed the ANC to build up a base amongst the workers –

"The Joint Committee is aware that certain interests, particularly the ANC, have campaigned against the Native Labour (Settlement of Disputes) Act for the stated reason that full recognition of Bantu trade unions was desired. Whatever their real purpose may have been, it is considered that certain deficiencies in the Act have furnished a basis on which to build opposition."[45]

In addition, there is no representation for African workers above the level of works committee and thus –

"Another serious defect is the absence of any appropriate machinery for negotiating conditions of employment for Bantu workers on an industrial basis."[46]

This has particularly affected the whole issue of raising African wage levels.

"From many quarters representations have been made as to the necessity for improving the conditions of Bantu industrial workers and the response that is sometimes made to the effect that there is nothing to prevent an employer from raising wages is unrealistic. In these days of severe competition within an industry, normally such competition effectively prevents the most sympathetic employer from taking such action on his own, particularly where he is in an industry in which the Bantu form a substantial proportion of the labour force.

Furthermore; no machinery exists to enable a group of employers who may wish to improve their Bantu wage structure to give legal effect to their proposals. Thus, in a competitive industry, where such a group of employers desires to achieve this end, they may be prevented by the fact that any action that they may wish to take does not apply to their non-cooperative competitors, who are free to operate to their advantage under inferior conditions."[47]

Part 3 contains the recommendations. For that minority of the Bantu labour force to whom some form of collective representation will eventually have to be allowed, legislation should provide for the development of "Bantu representative bodies". The legislation would firstly define migratory workers, occupational status, period of service etc. ie., the criteria for participation. Secondly, the controls envisaged are exactly those contained in the earlier SEIFSA Memorandum "Representation of the Bantu Interests in Industry".[48]

In respect of the 'unorganised Bantu', the Memorandum seeks an expanded role for the Wage Board in order to facilitate the easier and more comprehensive determination governing increases in African wages.

This joint Memorandum was presented to the Department of Labour, and once again, the government rejected it. The Minister of Labour was not prepared to

abolish or even to amend the Native Labour (Settlement of Disputes) Act. He was only prepared to discuss how administrative action, within the scope of the Act, could improve the position.[49]

The FCI held further discussions to decide the next course of action on September 13th 1963. The upshot was yet further discussions with SEIFSA and the drafting of a further joint memorandum. This memorandum, entitled "Bantu Representation in Industry", was drawn up by the Joint Committee in February 1964. It appears to have been the FCI and SEIFSA's final word on the subject until the early 1970s.

The memorandum proposed " . . . . .means whereby better representation might be achieved through administrative action under *the existing Native Labour (Settlement of Disputes) Act".*[50] It did, however, make further proposals that would have required the amending of the Act. It was the quintessential compromise. Part 1 detailed the area in respect of which SEIFSA and the FCI were in agreement. The SEIFSA view on representation within the metal industries was spelt out in Part 2. Part 3 contains the FCI view.

Part 1 condemned works committees and recommended a system of Welfare Committees. The grounds of opposition were –

"a) they cannot be finally prevented from discussion of Wages and Conditions;
b) in an organised industry having many establishments in the same area, there is no means of co-ordination provided in the Act, so that great diversity of approach to individual employers can result;
c) alternatively, extra-works collaboration between Committees can result in a form of trade unionism which, being entirely uncontrolled . . . . . can fall into undesirable hands and be utilised subversively."[51]

But, the Joint Committee does advocate the setting up of Bantu Welfare Committees – "purely domestic committees brought into existence by employers", without any reference to the Native Labour (Settlement of Disputes) Act. These committees were seen as a means of liaison between workers and management and would be empowered to discuss matters affecting working conditions, accident prevention, employee services – canteen, pension funds etc., training and education, reduction of absenteeism, avoidance of wastage, "practical implication of legislative measures" and issues such as hospitalisation and transport.

Part 2, setting out SEIFSA's view in regard to the metal industries, stated that some machinery would need to be created for the discussion of African wages and conditions and to this end recommended the creation of Regional Industrial Liaison Committees. These should be comprised of –

"(1) Native Labour Officer as Chairman;
(2) a representative of the industry concerned in each area appointed by SEIFSA . . .;
(3) a determined number of Bantu representatives appointed through SEIFSA on the recommendation of the employer interests . . ."[52]

This system might be extended to an individual province and finally "where practicable, on a national scale".

Part 3 simply repeated the FCI recommendations as contained in their Memorandum entitled "Bantu Participation in Labour Negotiations" drawn up in October 1960. To reiterate, this Memorandum was a compromise document following the CEO's rejection of the FCI's recommendations contained in its earlier "Statement of Principles". However, the FCI Executive Council Resolution which had prefaced their 1960 Memorandum, stating the need for legal machinery to be established to allow for direct negotiation between African industrial workers and their employers (Appendix B) was now omitted. Until the early 1970s, following the Durban strikes, the FCI were henceforth prepared to confine their proposals to more minor amendments of the Native Labour (Settlement of Disputes) Act.

Conclusion

The struggles of the popular classes in the period culminating in the early 1960s produced divergent responses from the various corporate organisations of capital; playing an important role in delineating and drawing out different positions within the bourgeoisie.

The bourgeoisie was forced to respond to the totality of the popular struggle of the period – i.e. to a political struggle for national liberation. The response of sections of the bourgeoisie to this struggle was to advocate a total package of reform, only one element of which was concerned with limited trade union concessions for black workers.

One cannot understand the question of trade union recognition in this period – from whence it arose, why it never surfaced openly, and why it disappeared from the discourse of the FCI – unless it is placed within this context. For the thrust for trade union recognition did not come from a strong and organised black working class expressing its organisational presence in the economic and political struggle. Rather it was derived from the national, political struggle of the African nationalist movements.

In and of itself the issue of trade union recognition for black workers always remained of limited significance. It was never the principal demand of the popular struggles of the time; nor was it ever the most urgent priority of the state or capital in attempting to control/defuse the popular upsurge of the early 1960s.

On the question of trade union reform the corporate organisations of the bourgeoisie (minus the South African Agricultural Union) reached agreement on the need for only minor reforms, and the FCI proposals for trade union recognition were strongly opposed within the CEO. But even manufacturing capital did not display a homogenous and unified interest in the face of these popular struggles. On the contrary, it articulated different positions, arriving at a common position only later in the day, after a process of organised compromise had been completed. One can clearly see the role of the corporate institutions in articulating and organis-

ing the different class interests and positions within the industrial bourgeoisie.

The divergent responses within manufacturing capital were not simply the result of popular pressure from below. They also reflected different relations of exploitation. SEIFSA's position on African trade union recognition for example, notably that recognition should only be contemplated in respect of non-migrant workers engaged in operative occupations, more than likely reflected its greater reliance on a migrant African workforce. This position committed it to recognition only in respect of a minority of its African workers.[53] Significantly, it was amongst African operatives in Base Metal industries that SACTU was, at this time, making some headway.[54]

Our understanding of the different responses from the corporate organisation of capital is, however, still very unclear. Much more research needs to be undertaken on the specific conditions of different kinds of manufacturing activity.

What of the difference in response to the popular struggles within the FCI itself? Here both lack of information and an inadequate understanding of the structure and functioning of these corporate organisations of capital is an obstacle. The FCI is a corporate body and its statements reflect a certain derived consensus among its members. Thus divisions among its members are often not apparent from its statements and submissions to the government. For example, divisions between larger, more established firms which would generally have a lower labour/output ratio and the smaller firms, often relatively new and tending to a higher labour/output ratio, are not apparent at the level of the data. Impressions gathered from a few interviews however, suggest that the former tended to adopt a more progressive policy in respect of trade union recognition for Africans.

Since the FCI is organised on a regional basis, differences also often take a regional form. It would seem for example that the Natal Chamber's more 'progressive' outlook in the later 1950s reflected the greater intensity of the struggle there at the time. Once again regional differences may also reflect a different 'mix' of industries with different production relations. It is the particular interplay of these two factors at the regional level that will generally determine the corporate responses of regionally organised capitals.

What is also of general significance is that once the state showed its ability to contain popular struggles, the position of the FCI shifted away from its conciliatory position adopted at the height of the pressure from the popular struggle. Class positions are clearly a function of struggle itself and must be seen to be formulated in the class struggle. They are not simple reflections of essential class interests. The class struggle is not just a playing out of the tactics and interests devised in the changing rooms of history from whence the classes emerge and to which they return at the end of each game.

In the formulation of a unified class position with respect to the popular struggles (in this respect trade union recognition) two further propositions can be drawn from the material presented. Firstly, strategies stemming from a 'narrow corporate'

position are unlikely to be directly reflected in state policy. Rather, a wider process of compromise and organisation has to be effected. But, secondly, at the same time, this process is limited by the differing relations of exploitation that exists within the bourgeoisie. Within these limits, compromise is far more easily effected with those 'elements' of the bourgeoisie characterised by similar relations of exploitation.

The urgent approach made by the FCI to the government on May 3rd 1960 is therefore revealing. Firstly, the government was concerned to know why a *unilateral* approach had been made. Secondly the Chamber's response to this question revealed the stultifying effect of the divisions between the FCI and the other corporate organisations – divisions derived from their differing relations of exploitation – on the acceptance of a policy which embodied the FCI's basic demands. The FCI argued in the following terms: the other organisations were not prepared to "consider basic policy", and in addition the FCI represented manufacturing industry which, unlike the other organisations, was "concerned . . . .in the development of a stable urban labour force", ie. the preservation of particular relations of exploitation and domination.

Following government rejection, the FCI was compelled to seek a *broader consensus* for its particular programme. This involved them in a series of negotiated compromises with the other corporate organisations of capital. The position that the FCI put forward at this point in time was already the outcome of a negotiated compromise. It already had built in it a cognisance of the existence of other positions and interests within the bourgeoisie,and reflected that corporate organisation's perception of its position within the balance of forces comprising bourgeois class rule. For example,the FCI's initial call to the government, when they approached them unilaterally in May 1960, was more extensive than the position they upheld after the process of compromise with other corporate organisations had been completed.

The non-acceptance of the negotiated strategy put forward by SEIFSA and the FCI is in part indicative of the balance of class forces prevailing at the time within the bourgeoisie and its allies.But it is also, and even more centrally, a result of the success of state policy in containing the popular struggles by resort to repression. Given the fact that the trade union question was only one part of a general programme of limited reform being proposed by certain sections within manufacturing capital as a direct response to the popular upsurge, the general success of the state's repressive policy clearly rendered the FCI's initiatives redundant. It is instructive that there were no further calls for the *immediate* recognition of African trade unions until after the Durban strikes of 1973.

With reference to the concrete proposals made by the FCI,it is particularly interesting that the extension of trade union rights to black workers was clearly perceived as a means of disorganising the African working class. What is especially pertinent about the porposals under discussion at this point is that in many senses

they presaged the Wiehahn proposals of the later 1970s, and laid down the requirements for recognition which in the eyes of industrial capital would have been likely to ensure an "acceptable" industrial relations structure. The basic underlying principles being (a) to bring the African trade unions under state control. (b) to divide African workers with respect to trade union rights, and (c) to bring African workers into a particular institutionalised form of negotiation centred around the industrial council system. For example, the discretionary power vested in the industrial registrar to determine the status of such trade unions, financial controls, exclusion of migrant workers, the matters that a union was entitled to deal with, control over elections of officials etc., etc.

Finally, as we have stressed, the critical element in the upsurge of the popular struggles was the close interlinking between economic and political struggle – a fact borne out by the bourgeoisie's own response. This was reflected in organisational terms in the fact that most black trade unions belonged to SACTU – organisationally part of the Congress Alliance. SACTU itself, not being extensively and deeply organised enough within the black working class, was in the long run unable to sustain a protracted struggle through the 1960s which might have ensured trade union recognition for blacks. The pressure from below placing recognition of black trade unions on the agenda of the corporate organisations of capital, came largely from the totality of the popular struggles led primarily by the Congress Alliance and the PAC. Hence,once the popular struggles were quelled,the question of the recognition of trade unions for African workers disappeared from the discourse of the bourgeoisie and the state.

Of course the direct link between SACTU and the Congress movement also posed problems for the bourgeoisie and the state, which partly accounts both for the FCI's strategy of limited reform *and* the resistance to extending trade union rights to black workers. On the one hand, it was precisely the involvement of SACTU in political issues, their refusal to radically separate economic and political struggles, that prompted some sections of the bourgeoisie to propose a form of trade union recognition which was precisely designed to achieve a radical separation of economic and political struggles, and hence drastically weaken the role that organised workers could play in the national popular struggle. On the other hand, recognising black trade unions meant recognising SACTU. But recognising SACTU would effectively mean recognising the right of Congress organisations to political legitimacy. Furthermore, given the significant overlap between Congress leadership and SACTU leadership recognition of the trade union leadership effectively became conflated with recognising many of the leaders of the African nationalist movement. Similarly, state repression of the Congress movement also necessarily meant state repression of SACTU. For they were organisationally linked and shared much of their leadership.

We suggest that it is incorrect to conclude that therefore the workers and their union organisations should not have got involved in politics. For, as we have shown,

it was precisely their involvement in that sphere that brought about pressure for trade union reform. Given the close correlation between economic and political struggles, the failure of the initiative to bring about reforms in industrial relations ultimately rests with the inability of the popular classes to follow through the 1960 initiative and henceforth to resist the massive onslaught unleashed on them by the state.

Footnotes

1. The position adopted by the FCI in regard to the recognition of Unions is outlined in an FCI letter bearing the signature of J A R Massyn, Secretary Labour Division.
   'Bantu Trade Unions : A Historical Survey'.
   29th June, 1960.
2. ibid. p.5
3. FCI. Letter from C D C Bain, Non-European Affairs Secretary.
   'Consultation with Non-Europeans – Blueprint'
   23rd October, 1957.
4. Natal Chamber of Industries: "Memorandum in regard to "Unrest Among Non-European Industrial Workers in Particular and the Non-European Communities as a Whole Leading to Threats of General Strikes and of Organised Boycotts Against South African Manufactured Products'. (Undated 1957).
5. Letter from C D C Bain . . . . op cit
   23rd October, 1957.
6. Natal Chamber of Industries: "Memorandum . . ." op cit p.11.
7. ibid. p 12
8. FCI. Record of Discussions with the Hon. P O Sauer, Chairman of the Cabinet and the Hon. the Ministers of Finance, Labour, Bantu Administration and Economic Affairs, on 3rd May, 1960.
   p.1 (Includes FCI: "Statement of Principles").
9. ibid.
10. ibid. p.2
11. ibid. p.2–3
12. ibid.
13. ibid. p.4
14. FCI et al: Memorandum to Dr the Honourable H F Verwoerd, Prime Minister. "Bantu Unrest."
    The Memorandum was presented to Dr Verwoerd at the General Hospital, Pretoria on May 12th, 1960.
15. FCI. Letter from J A R Massyn, Secretary Labour Division.
    'Participation by Native Workers in the Negotiation of Conditions of Employment'
    29th July, 1960.
16. ibid.
17. FCI. 'Report on a Meeting of the Officials of the CEO and the FCI held on the 5th of October, 1960, In Pursuance of a Joint Presidential Directive to Enquire Into and Report Upon the Participation of Native Workers in Labour Negotiation.'
18. ibid. p.1
19. ibid. p.3
20. ibid. p.6

21 FCI. Letter from J A R Massyn, Secretary Labour Division.
'Bantu Participation in Labour Negotiations'
5th December, 1960.

22 ibid.

23 FCI. Memorandum 'Bantu Participaton in Labour Negotiations'
21st November, 1961.

24 ibid.

25 ibid.

26 The FCI wrote to the Minister to request an interview, in the following terms –
"Whilst the Chamber agrees that they ('Natives') have not yet reached a stage of development where the granting to them of full trade union rights should be contemplated, we nonetheless feel that our legal machinery should be adapted in such a way as to induce them to organise away from political associations and that they should have some legal facility for negotiating conditions of employment with their employers".
FCI. Letter from L Lulofs, President to the Hon. J de Klerk, Minister of Labour and of Mines.
22nd November, 1960

27 From the correspondence and subsequent events, it seems clear that no substantial agreement was reached.

28 SEIFSA. 'Bantu Representation in Industry'
September, 1961.

29 ibid. p.1

30 ibid. p.4

31 ibid. p.3

32 ibid. p.3–4

33 ibid. p.4–5

34 FCI. Letter from J G Toerine, Secretary, Non-European Affairs Committee: 'Bantu Participation in Labour Negotiations'
27th February, 1962.

35 ibid. p.2

36 FCI. 'Minutes of a Joint Meeting held between the Non-European Affairs Committees of the Steel and Engineering Industries Federation of South Africa and the South African Federated Chamber of Industries, to discuss Bantu Participation in Labour Negotiations, on the 1st May, 1962.'

37 ibid. p.2

38 ibid. p.3

39 SEIFSA. 'Representation of the Bantu Interests in Industry' tentative draft, (FCI files) p.3

40 ibid. p.4

41 FCI. 'Bantu Participation in Labour Negotiations. Notes Prepared by Mr A D Lee'
7th June, 1962.

42 ibid. Also contains a document of the Cape Chamber of Industries Memorandum 'Native Participation in Labour Negotiations'.

43 FCI. 'Memorandum Prepared by a Joint Committee of the South African Federated Chamber of Industries and the Steel and Engineering Industries Federation of South Africa on the Representation of the Bantu Interests in Industry'
6th July, 1962.

44 ibid. p.3

45 ibid. p.2

46 ibid.

47 ibid.

48 op cit

49 This emerges from subsequent discussions with the FCI. FCI. 'Minutes of the Labour Coordinating Committee Meeting held on 26th August, 1963.'
50 FCI. 'Bantu Representation in Industry'
7th February, 1964.
51 ibid. p.2
52 ibid. p.3
53 It would seem that even today, close to 70 percent of the African labour force in the engineering industry are migrants – the proportion was almost certainly even higher in the early 1960s.
Correspondence with Project on Labour and the Sociology of the Factory in the Engineering Industry in the Witwatersrand.
54 ibid.

Appendix "A"

FCI "Statement of Principles"

1. The South African Federated Chamber of Industries condemns lawlessness and acknowledges the essentiality that the immediate position requires correction in order to re-establish law and order.
2. Examining the long-term position, the Chamber strongly believes that the only alternative to the recurrent rule of the country under emergency regulations – a situation which no one can accept as a possible basis for peaceful and prosperous development and sound international relations – is the early arrangement for consultation with the leaders acceptable to the urban Native people.
3. This suggestion flows from the strong conviction that the present wave of lawlessness and past eruptions have a genuine basis of grievance and dissatisfaction which the agitators and irresponsible elements have been able to exploit.
4. The long-term requirements of the country necessitate new machinery of consultation to elicit and to eliminate these genuine grievances and causes of unrest.
5. The Chamber proceeds from the premise that the Natives are accepted as part of the permanent structure of the country and that the fully urbanised Natives in particular are largely detribalised and that their tribal chiefs are no longer in a position to express their point of view.
6. Whilst consultation as recommended will reveal the causes of friction and unrest, by way of illustration the following contributory circumstances are mentioned in respect of which a modified approach may well assist in gaining the goodwill of the Natives:
   (a) an unduly severe form of administration of the pass laws which fails to distinguish between the law-abiding and the subversive elements;
   (b) the frustration caused by some discriminatory legislation;
   (c) the complete withholding of trade union facilities.

7. In requesting an interview with members of the Cabinet to discuss those submissions, the Chamber must record its absolute conviction that our country stands at the crossroads and that the only alternative to a continuance of lawlessness and riotous outbursts, is a new approach based on consultation as the key to a peaceful solution.

JOHANNESBURG
13.5.60

Appendix "B"

Executive Council of the FCI Resolution – 7 July, 1960 –

"to place on record its agreement in principle that legal machinery should be established whereby Native industrial workers in their specific industries may collectively negotiate directly with the employers in such industries in regard to their conditions of employment and that existing obstacles to such consultation should be removed."

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