

LABOUR LEGISLATION

1983

JAN. — DEC

FM 14/1/83
LABOUR 166 (1314) (1314)

Closed shop queries

Additional safeguards to prevent the abuse of the closed shop (CS) in SA are discussed in a working document being distributed by the National Manpower Commission (NMC)

The CS — which compels employees in a particular occupation, company or industry to belong to a specific union — is a controversial labour issue in SA. The document points out that by restricting the occupational mobility of an important part of the workforce, the CS can hamper the effective operation of the labour market.

At the same time, many emerging unions claim that some established unions have used the CS to gain a large, and possibly unwilling, black membership with a minimum of effort.

The document is being made available to all interested parties for comment. The NMC has emphasised that it should not be interpreted as a reflection of the NMC's views. Rather, it should be seen "simply as a document containing arguments, points of view, evaluations and suggestions that have been brought to the notice of the NMC in some way or another."

However, it is significant that the point of departure of the document is that the CS should continue to exist, subject to existing and certain additional safeguards. This is in line with the conclusion reached by the NMC in 1981 that although there are strong philosophical and practical objections to

113

14/1/83
~~166 (1314) (1314)~~ FM
the CS, on balance its retention will probably have more advantages than disadvantages.

Government accepted the NMC recommendation that the CS should be retained and agreed that a post-entry clause should be introduced into the Labour Relations Act (LRA) as an additional safeguard to prevent abuses. In practice this means that in a company or industry where a CS agreement exists, an employee is given 90 days in which to join a union.

The NMC did however foresee the need to investigate further safeguards. In the document it is now making available, it focuses on three main questions:

- Is it desirable that CS agreements concluded outside the ambit of the LRA should also be subject to safeguards contained in the Act? There are, for example, agreements in the mining industry, in government services and in certain in-house agreements in the iron and steel industry, which are not covered by the LRA.
- Should the LRA require a secret ballot among workers to establish whether they are for or against the CS if a significant proportion of workers petition the Minister of Manpower for such a ballot?, and
- If it is impossible or undesirable to make all CS agreements subject to the LRA, should provisions of the Maintenance and Promotion of Competition Act, 1979, be made applicable to CS arrangements not subject to the LRA?

Bearing in mind the strong feelings that exist about the CS, the NMC has given the assurance that all comments made about the document will be dealt with in the strictest confidence.

Pipeline saves bay *269*
19/1/83

From Page 1

and out of the harbour bringing a dismantled smelter plant from Nippon Light at Miigata - part of Alusaf's R280 million expansion to double aluminium at its existing 14 km-long factory there

Harbour improvements by the South African Transport Services (Sats) are substantial while the Richards Bay Coal Terminal Company's R360-million extension to its coal handling facilities for 44-million tons of exports annually is in full swing

A dredging pond being built by Richards Bay Minerals at a cost of R25 million, IA Bell's erection of a R10-million plant and Suncrush's R10-million bottling plant underway complete the line-up of main work

"A number of companies are believed to be finalising plans for lesser expansion work, so I cannot foresee any work shortages occurring in this field this year," said Van der Walt

Union rules under review

166 *Industrial Week 18/1/83*

By Priscilla Whyte

THE National Manpower Commission is working on a special injunction, the 5th Report of the Wiehahn Commission, to simplify and expedite trade union registration applications more speedily

This was disclosed to Industrial Week by Dr Hennie Reynder, chairman of the National Manpower Commission, who said that at present "registration of a trade

union into the traditional collective bargaining system can take between three months to a year"

There are 12-million registered trade union workers, as well as 50 unregistered unions involved in organising workers

Matt Le Roux the registrar of trade unions at the Department of Manpower said "The Labour

Relations Act requires all unions to submit their constitutions, details of their office bearers, financial statements, number of members and head office addresses

Applications for registration are time-consuming because applicant unions fail to submit their constitutions, in accordance with the Labour Relations Act

"The problem with the industrial council system is compounded by the rejection of it by unregistered black trade unions, which prefer plant level bargaining to industry level negotiations," said industrial analyst Geoff Mymin

Recommendations

Mymin believes this attitude had negated some of the Wiehahn Commission recommendations in instituting trade union rights for blacks

In the National Council for the Iron, Steel and Metallurgical Industries there are 45 registered employer organisations and 14 registered trade unions. Nine other unions in the industry are not party to the Industrial Council

In theory about 9 000 companies employing over half a million workers fall under this industrial council

"The present situation is in a state of flux

Confusion

"We are not in favour of shop floor bargaining. It would result in considerable confusion and destruction of a set of employment conditions established over the years," Sam van Coller, executive director of Seifsa, told Industrial Week

He added the National Manpower Commission was looking at changes to the Industrial Council system in terms of registration, but changes in legislation, if any, may be expected next year

Strikes will spread, warns labour expert

EMPLOYERS who believed the labour unrest of the Eastern Cape could not happen in other parts of the country were "burying their heads in the sand," writes Fred Roffey

This warning came from Prof Roux van der Merwe, professor of industrial relations at the University of Port Elizabeth - the city regarded as the crucible for South African industrial relations because of the strikes and labour unrest in the motor and allied industries

"Companies are living in a fool's paradise if they think they can avoid in-

dustrial unrest by avoiding or moving from the Eastern Cape," said Van der Merwe

"The show of strength by the unions over the past few years in Port Elizabeth and Uitenhage

is the precursor to the pattern of labour relations that will develop throughout the rest of the country"

However, he believed, the deepening economic recession in 1983 should have a helpful spin-off for both employers and trade unions - it would give them a period of consolidation after the "enormous" industrial relations stresses of the past few years

"After two years of frenetic industrial relations activity by trade unions and employers SA can expect less direct industrial relations conflict in 1983 because of the economic downturn"

Research group formed

THE CSIR has recently established the National Institute for Materials Research (NIMR)

It will be run on a multi-disciplinary basis and its staff will include physicists, chemists and engineers

ess Steel

ig

Distillation columns manufactured by Almaks



Floral drug blossoms

AFTER years of study a South African pharmaceutical company has achieved a break through with the development of two new floral based medi-

CAPE TIMES 2/2/83 166

Industrial disputes: Legislation tabled

Labour Reporter

NEW legislation designed to streamline the settling of industrial disputes was tabled in Parliament yesterday

The Labour Relations Amendment Bill, 1983, introduced by the Minister of Manpower, Mr Fanie Botha, differs only marginally from the draft Amending Bill which was published in August last year for general comment. The bill was first published in January last year.

In terms of the bill, unregistered unions and employer groups will be granted direct access to conciliation boards, the government's official dispute settling machinery.

Current legislation

Under current legislation, individual members of these organizations can apply for a conciliation board in their own right, but their union is legally excluded from doing so.

The bill empowers the Minister of Manpower to establish a conciliation board on his own initiative without consulting the parties concerned. This is if, in his opinion, the dispute should be settled without delay "in the public and national interest".

The bill aims to speed up disputes in essential services and disputes where an unfair labour practice is alleged.

In these cases the parties can refer their disputes to direct arbitration with-



Mr S P Botha

out going through a conciliation board or an industrial council.

A further proposed amendment allows the Minister to appoint a mediator acceptable to all parties if he thinks it will help settle the dispute.

Apart from financial and business affairs, the bill also aims to lift the secrecy on industrial court proceedings. The bill further makes provision for the registration and control of labour brokers and greater protection for workers hired out by them.

... And
a new ¹⁶⁶
deal on
women's
overtime

cf. Feb. 1983

A BILL which will make overtime work voluntary and limit it to 10 hours a week for shop, office and industrial workers, was introduced for a second reading

The Minister of Manpower, Mr Fanie Botha, proposed the second reading of the Basic Conditions of Employment Bill and said that it would replace the Shops and Offices Act and the Factories, Machinery and Building Work Act of 1941

Its terms would also extend to categories of workers who had not had legal protection before, such as nightwatchmen

The Bill was tailored to meet declared Government policy regarding the recommendations of the commission of inquiry into labour legislation

HYGIENE

The Government had accepted the commission's recommendations that the Factories, Machinery and Building Work Act be extended to provide occupational hygiene and safety to all employees

But the Government had decided that the sections of the Act which dealt with conditions of employment be contained in separate legislation which would be amalgamated with the Shops and Offices Act.

"The envisaged new Act will not be applicable only to factory, shop and office workers as at present," Mr Botha said

"The shortcoming in present legislation — that workers outside the areas of industrial council agreements and wage agreements and who are excluded from the present Acts and therefore have no protection regarding their conditions of employment — are largely rectified in this Bill"

SCRAPPED

Changed circumstances and the shortage of skilled manpower made it necessary to remove the restriction on women working overtime

The limit of two hours a day on a maximum of three consecutive days a week, and an annual limit of 60 hours for women factory workers, were being scrapped, as were the 30-hours-a-year limit for shops, the 100-hours-a-year limit for offices and the six-hours-a-week limit for both

"A limit of 10 hours a week and three hours a day will apply to all workers in future," the Minister said — Sapa

No industrial peace without political 'rights' for workers

ARGUS 8/2/83 (166)

JST enter in each question which it has (2) and



Dr Alex Boraine

Parliamentary Staff

WHILE most workers in South Africa continued to be denied meaningful and just political rights, there would never be industrial peace in the country

This was said yesterday by Dr Alex Boraine, Progressive Federal Party spokesman on labour

Dr Boraine was speaking during the second reading of the Labour Relations Amendment Bill, which he said his party would support

He said management and union leaders could not hope to meet the aspirations and expectations of countless workers in South Africa because many of the grievances workers expressed passively, and sometimes forcibly, were community-based

"Black workers in many instances use the same inadequate transport services, live in the

same community which bears the hallmarks of deprivation and poverty and will continue to reflect those grievances on the factory floor," he said

It was imperative that in attempting to resolve labour disputes the Government did not confine itself to the narrow area of labour reform, but moved as quickly as possible to a new dispensation in the social and political spheres

He predicted that labour disputes would continue and even increase this year

He based this belief on the fact that the major reason for work stoppages and strikes recently had centred on wages and monetary fringe benefits

The decline in the buying power of money, the deeply-felt recession and resulting retrench-

ments would all play their part in increasing labour unrest

Dr Boraine said the Bill enabled the Minister of Manpower to establish conciliation boards on his own initiative, but he urged that this provision should not be used unless absolutely necessary in the public or national interest

"I am sure he (the Minister) will agree it is far better for employers and employees to take the initiative in this regard," he said

Budget date

THE Budget will be introduced on March 30, the Leader of the House, Mr S P Botha, announced yesterday. The SA Transport Services budget will be introduced on March 2 and the Post Office budget on March 15

R1,3 m for VIP Boeing

Parliamentary Staff

THE COST of the Boeing aircraft set aside for the State President, the Prime Minister and the Cabinet is estimated at R1 344 000 a year

For the first five months of the aircraft's service from November 1981 it cost R723 555 of which R560 000 was standing costs and R163 555 running costs for 36 flights

According to part two of the Auditor-General's report for 1981/82 the standing costs included depreciation, interest on capital and the cost of conversion

(Information Paper)

(Information Paper)

	12	
Examiners' Initials	DR	

NOTE CAREFULLY

- The answers only on marked. The left hand side is for rough work, but no work should be done there.
- Enter at the top of each page the block on this cover you are answering.
- Blue or black ink must be used. The use of a ball point pen is acceptable. Red or green ink may be used only for underlining, emphasis or for diagrams, for which pencil may also be used.
- Names must be printed on each separate sheet (e.g. graph paper) where sheets additional to examination book(s) are used.

WARNING

- No books, notes, pieces of paper or other material may be brought into the examination room unless candidates are so instructed.
- Candidates are not to communicate with other candidates or with any person except the invigilator.
- No part of an answer book is to be torn out.
- All answer books must be handed to the commissioner or to an invigilator before leaving the examination.

Any dishonesty will render the candidate liable to disqualification and to possible exclusion from the University

claim is dismissed

Dr Allan Boesak

Argus Correspondent

WELLINGTON — Farmers are up in arms because of a claim by Dr Allan Boesak in a lecture at the University of Cape Town that labourers on Wellington wine farms are the victims of a streamlined form of slavery.

Dr Boesak, president of the World Alliance of Reformed Churches, said conditions in the Wellington district were an example of socio-economic oppression which had to be ended.

He quoted from a survey covering 190 farms in the Wellington district.

The secretary of the Wellington Farmers' Association, Mr Pierre Joubert, of the farm Groenendal, says that if Dr Boesak had taken the trouble to read beyond the first page of the survey he would have seen that after all the benefits on the farms were assessed the report estimated the average salary of labourers at R245.20 a month.

Adequate housing

One of the main benefits was adequate housing. The standard of accommodation had improved greatly over the past few years, said Mr Joubert.

Forty percent of the cottages were free-standing brick houses while many were wired electrically and had bathrooms with hot water. Thirty percent of the employees had flush sanitation inside their homes.

In many cases labourers were given food rations and had free access to farm products. Children on the farms and elderly labourers received special Government subsidies.

The survey said the quality of life on the farms was often superior to that of labourers' counterparts in towns as usually only one family occupied a house in contrast to crowded conditions in cities.

Earnings dropped

Because of the growing wine surplus and slump in the canning industry, the earnings of most farmers had dropped considerably. Yet in spite of this, farm labourers still received their normal annual rise and no one was retrenched.

Mr Joubert said Dr Boesak might be interested to know that 93 percent of the coloured people on farms in the Wellington district belonged to the Ned Cierief Sendingkerk.

There was a close relationship between farmers and their workers — "much closer than you will find in other sections of the economy."

The survey also found that 38 percent of the workers stayed on the same farm for more than 12 years and that most of the elderly were given housing and only light duties.

Fraser losing out to Hawke

Argus Correspondent

BRISBANE — The first opinion poll commissioned in the current election stakes puts the opposition Labour Party's new leader, Mr Bob Hawke, well in front of the Prime Minister, Mr Malcolm Fraser.

The poll shows that Mr Hawke has the support of 52 percent of the electorate compared with 31 percent opting for Mr Fraser.

The survey was undertaken only hours after Mr Hawke defeated Mr Bill Hayden as party leader.

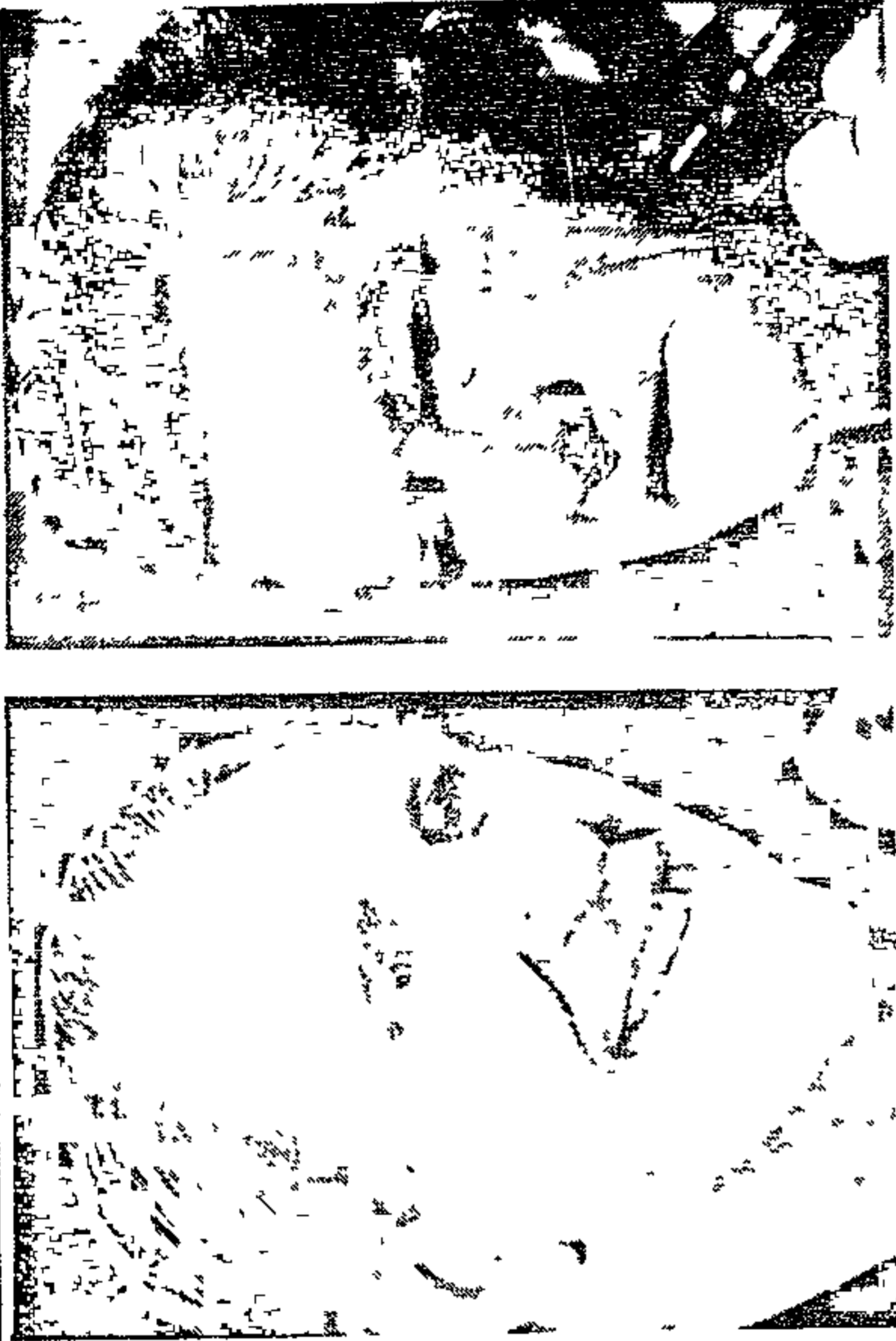
It also shows that if an election was held now, the Labour Party would win 46 percent of the votes compared with only 34 percent for the ruling coalition.

CAUTION

The figures need to be treated with some caution, however, as the poll was limited to the main cities.

It also showed that 16.6 of the respondents were uncommitted.

Nevertheless, it demonstrated that the Government faced an uphill battle to win the March 5 election.



Mr Malcolm Fraser

Mr Bob Hawke

Conciliation board for unregistered unions

Labour Reporter

UNREGISTERED unions will be allowed to apply for conciliation boards to resolve disputes if the new Labour Relations Bill becomes law.

The Bill which has been tabled in Parliament, also allows the Minister of Manpower to establish conciliation boards "on his own initiative if he is of the opinion that a dispute should be settled without delay in the public or national interest."

The Minister would not be obliged to consult the parties concerned in this case.

Under current legislation, unregistered unions do not have access to official machinery for settling disputes, but members of these unions can apply for a conciliation board.

The proposed amendment means

that unions will be able to represent members in their own name.

The purpose of the amendment, according to the explanatory memorandum on the Bill is "to create an official forum" for the settlement of disputes to be used by both registered unions, in industries and areas where no industrial council exists, and unregistered, representative unions.

Another proposed amendment enables unions, workers and employers in non-essential industries to apply for direct arbitration in a dispute.

At the moment only disputes in essential industries can be referred for arbitration.

In the event of a dispute between an employer and an individual employee, it is proposed that the matter be referred to the Industrial Court for a decision.

Sentence

~~for~~

'death'

~~letter~~

Mercury 10/2/87
Court Reporter

A 32-YEAR-OLD-black man who sent a 'death threat letter' to a black supervisor of the firm where they were both employed was sentenced to two years' imprisonment by Mr H W Weitz in the Durban Regional Court yesterday for contravening the Intimidation Act

The entire sentence on Themba Willmot Zwane was suspended for five years

Zwane, a shop steward with the S A Allied Workers' Union, admitted he had sent a letter containing a threat against the life of Mr Thamsagna Luthuli

The Court was told that Mr Luthuli was a supervisor at O T H Beier and Co in September last year

Betrayed

The letter claimed that Mr Luthuli did not 'behave' at work and was a white man's informer

It also said that Mr Luthuli betrayed his community and his fellow workers to the white people

It also said, 'All crooks like you are dead Where is Mr Griffiths Mxenge, a famous lawyer? Is he not dead? Why did he die? And who killed him?'

The letter warned Mr Luthuli to stop betraying his people

The letter also said that Mr Luthuli should stop using buses to go to work and that he should apologise to the African National Congress

The letter ended 'Stay in peace, brother, I am from the ANC'

LABOUR LEGISLATION

FM

11/2/83

132

166

DH

Botha's four Bills

Far reaching improvements to SA's occupational safety legislation are contained in a Bill being piloted through Parliament by Manpower Minister Fanie Botha

A significant feature of the Machinery and Occupational Safety Bill is the emphasis it places on co-operation between employers and employees on safety. This is wise given the growing interest that trade unions especially emergent ones are taking in occupational health and safety issues.

The Bill is one of four compiled by the Department of Manpower which are currently before Parliament. It replaces the old Factories Act of 1941 with more effective procedures and controls for the protection of employees.

Unlike the Factories Act, which protected only employees in factories and on building sites, it covers all people in employment. This includes those working in such diverse spheres as the public sector, agriculture, commerce, local government — and even domestic servants.

The Bill provides for the establishment of an Occupational Safety Advisory Council, comprising representatives of government, employers and labour, who will advise the Minister. The council will be served by technical committees which will help to minimise or eliminate hazards in specialised fields.

In terms of the Bill, an employer must appoint safety representatives who will act as health and safety watchdogs and carry out regular inspections. On average, there must be one representative for every 50 employees. In companies or plants where

more than one representative has been appointed, a safety committee must be formed to co-ordinate and analyse the health and safety needs of workers.

The Bill prohibits the sale of machinery or safety equipment that does not comply with prescribed safety and performance standards. In the past, the onus has been on the users of potentially dangerous machinery to ensure that prescribed standards were being complied with. Sources in the department say that far more effective control will be achieved by shifting this onus onto the seller of such machinery.

However, the Bill also empowers departmental inspectors to order an employer or user of machinery to immediately halt an activity or the use of machinery, which is hazardous.

"This power will not be exercised frivolously by an inspector and will be tightly controlled," says a department spokesman. "It is a powerful tool in the hands of an inspector but it may save lives."

The Bill also lays down a fine of R4 000, or imprisonment of up to two years or both, for cases where someone is injured through the negligence of an employer or user of machinery.

The other three Manpower Bills are:

- The Labour Relations Amendment Bill. This opens up official dispute-settling machinery to unregistered unions, and aims to streamline official conciliatory procedures. It also allows for more judgments and determinations of the Industrial Court to be made public. The Bill was published in draft form for comment last year and ap-

pears to be going through Parliament in basically the same form.

- The Basic Conditions of Employment Bill. This is a combination of those provisions of the Shops and Offices Act and the Factories Act which deal with conditions of employment. Unlike the Acts, it will replace the Bill will not be limited to only factories and employees in shops and offices. However, farm workers and domestic servants are excluded from its scope. The National Manpower Commission is investigating possible measures to regulate their employment conditions. The Bill also eliminates limitations on women working overtime or at night, and

- The Manpower Training Amendment Bill. This aims to enable government to help finance group training centres. Government stopped giving such assistance about two years ago, but it appears that some centres need State aid.



We fight for your rights

SPECIAL REPORT BY BERT VAN HEES

Black labour: Policy on "illegal" workers

Argus 23/2/83

MANY householders fear gardeners or chars working for them might be arrested, or that they themselves might be prosecuted, if they make inquiries about whether these workers are in the area "legally"

But Argus Action has been told by the Western Cape Administration Board's chief labour officer, Mr G N Lawrence, following queries from readers, that this will not happen

He said "There is no need to fear arrest or prosecution if, after making inquiries, it turns out that a gardener or char is in the area illegally. Neither the employer nor the worker will be prosecuted, and the board gives an unequivocal guarantee about this. If it turns out that a gardener or char is in the area illegally, he or she will be advised by the Local Labour Bureau in Langa what to do

Casually

"The Peninsula has a policy of coloured labour preference

"A black person who works casually for a householder for longer than three consecutive days in a given week becomes an 'employee', and anyone wanting to employ a black person for longer than three consecutive days a week must first obtain a certificate from the Department of Manpower, at the Thomas Boydell Building in Cape Town, to the effect that there is no suitable coloured worker available

"Before a black gardener or char is employed, it is important to establish that the person is in the area legally. This can be established from an en-

dorsement in the person's identity document. If there is no such endorsement, make inquiries at the labour bureau

Complaint

"Black people who are arrested are those who are found during routine inspections to be in the area illegally, or against whom the administration board has received a complaint

"Black people illegally in the area who are found on private premises will either be arrested, or given a notice to appear in court. Chars will not be arrested if this leaves no one to look after a house," he said

Here are the fines applicable to black people not legally entitled to be in the Western Cape, as well as to householders who employ them

● Black workers

1 Without an identity document, or unable to produce it. Between R10 to R15 per count

2 In the area illegally from R50 to R75 per count

● Employers

1 First offenders. The Act provides for a maximum fine of R500 or 60 days, but first offenders are given an opportunity to pay an admission of guilt of R100 or to appear in court to argue their case

2 For a second offence within two years, the maximum fine of R500 or 60 days becomes the minimum

166
173
179
NaG
20/2/83

'Govt prepared to negotiate with unregistered trade unions'

Mercury Reporter
PROPOSED changes relating to conditions of employment in industry meant the Government was now prepared to negotiate with unregistered trade unions, the Department of Manpower's director of labour relations, Mr Mike van Noordwyk, said yesterday.

Promulgation of the new legislation expected around mid-year would make it possible for unregistered unions to have full access to the Conciliation Board as a means of settling disputes

Mr van Noordwyk was addressing a Durban Chamber of Industries symposium yesterday

Shops Act

The department was aware of 53 current unregistered trade unions and, after communicating with each, only one had 'told us to go to hell — so far', Mr Van Noordwyk said.

He described the scrapping of the Shops and Offices Act and the Factories, Machinery and Building Works Act, which will be substituted by the Machinery and Occupational Safety Act and the Basic Conditions of Employment Act, as a 'wide rationalisation programme'

But he warned that problems could be anticipated in bringing about the new legislation — notwithstanding the improvements it heralded for employers and employees

Consensus among the more than 250 delegates appeared to be that the changes were welcomed

A point raised by Mr

Van Noordwyk was that a number of 'labour brokers' — some of whom operated from the backs of trucks — had started appearing around industrial sites and that it was proving difficult to control the numbers and categories of workers they recruited

Medical aid

The new legislation was also aimed at improving medical aid, sick leave and pension fund benefits for such employees, for example

Another provision was that all employees would have to be provided with certificates of service once they left a place of employment

The only sexually discriminatory legislation was a stipulation that pregnant women could not be required to work 'four weeks before or eight weeks after the occasion'

Cape Times
24/2/83

~~270~~ ~~145~~

PFP: Defuse SATS dispute

166

HOUSE OF ASSEMBLY
— The dispute between the General Workers Union (GWU) and the SA Transport Services (SATS) over labour representation could escalate into a national crisis if not defused, Dr Alex Boraine (PFP Pinelands) said yesterday.

He was speaking in support of an amendment moved by the PFP that the Conditions of Employment wants to get its fingers into the SA Transport Services?"

The bill resulted from negotiation between management and SATS workers.

"Where does the PFP come barging in from the side? The GWU uses the same language in its dispute with the SATS as the PFP used in the House."

Dr Boraine replied that the PFP held a brief for

CAP: Times 25/2/83 166

'Injustice' to blacks at Sats

HOUSE OF ASSEMBLY
— It was "basically unjust" to deny over one-third of the South African Transport Services' black labour force permanent employment status, Mr Graham McIntosh (PFP Pietermaritzburg North) said yesterday.

He was speaking in the Committee Stage debate on a clause of the Conditions of Employment

ment employees, he said.

Mr McIntosh proposed two amendments to the clause.

● That citizens of the black homelands and independent states created by the government should be allowed to become permanent employees.

● That employees should be able to apply for permanent status after two years.



Labour

(Sats) Bill which states that no person shall be appointed in a permanent capacity, or on probation, or in a temporary capacity unless he has — among other qualifications — SA citizenship.

Such persons may only be employed in a casual or regular capacity, according to the clause.

Referring to the Sats 1981/82 Annual Report tabled in Parliament yesterday, Mr McIntosh said more than one-third of the service's black labour force or about 50 000 people, did not have SA citizenship, having been "stripped" of it by the coming of independence to the national states.

"To deny them permanent employment status, even though they may have been born in South Africa, is basically unjust," Mr McIntosh said.

Other people could come from overseas countries, work for five years and then become perma-

Mr Ron Miller (NRP Durban North) said the PFP was missing the whole point and that the bill had nothing to do with citizenship.

"The prime consideration should be the conditions of service of the migrant labourers, and not their citizenship."

Migrant labourers came to fulfill an economic need and not to take out citizenship, he said.

Replying to the debate on this clause, the Minister of Transport Affairs, Mr Hendrik Schoeman, said no employees had lost their permanent status — they had not had it originally.

Mr Schoeman said he could not accept the amendments proposed by Mr McIntosh in the present circumstances.

"I have already explained the difficulties."

The clause was passed without amendments — Sapa

Act No. 2, 1983

LABOUR RELATIONS AMENDMENT ACT 1983

GENERAL EXPLANATORY NOTE:

- []** Words in bold type in square brackets indicate omissions from existing enactments
- Words underlined with solid line indicate insertions in existing enactments

(166)

ACT

To amend the Labour Relations Act, 1956, with respect to definitions; so as to provide for the control of labour brokers and the registration of labour brokers' offices; to further regulate the establishment and composition of conciliation boards; to further provide for voluntary arbitration in respect of certain disputes; to further regulate the mediation of certain disputes; to further provide for certain appeals to the industrial court; and to further regulate the exceptions to the prohibition of the disclosure of certain information, and to provide for matters connected therewith.

*(English text signed by the State President)
(Assented to 15 February 1983)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows —

Amendment of section 1 of Act 28 of 1956, as amended by section 1 of Act 41 of 1959 section 1 of Act 104 of 1967, section 1 of Act 94 of 1979, section 1 of Act 95 of 1980, section 1 of Act 57 of 1981 and section 1 of Act 51 of 1982

1. Section 1 of the Labour Relations Act, 1956 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution in subsection (1) for the definition of "employee" of the following definition 5
- "employee" means any person who is employed by or working for any employer and receiving or entitled to receive any remuneration, and, subject to subsection (3), any other person whomsoever who in 10 any manner assists in the carrying on or conducting of the business of an employer, and 'employed' and 'employment' have corresponding meanings,"
- (b) by the substitution in subsection (1) for the definition of "employer" of the following definition 15
- "employer" means any person whomsoever who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him or who, subject to subsection (3), permits any person whomsoever in any manner to 20 assist him in the carrying on or conducting of his business, and 'employ' and 'employment' have corresponding meanings,"
- (c) by the insertion in subsection (1) after the definition of "inspector" of the following definitions 25
- "labour broker" means any person who conducts or carries on a labour broker's office,
- "labour broker's office" means any business whereby a labour broker for reward provides a client with persons to render service to or perform work for the client or procures such persons for him, for which service or work such persons are remunerated by the labour broker," and 30

Strike threat after

Cape Herald
Reporters

R10 'fine'

Cape Herald 26/2/83

WORKERS at a Klapmuts brick factory have threatened to go on strike after their boss took R10 off each of their wages on Friday, "as punishment for stealing his grapes"

One of the employees of the company, Vlake Bricks, said "He (the boss) lined us up, told us to tear open our pay envelopes and personally removed the R10"

"Those who refused to open their envelopes were instructed to hand back their pay"

All the workers at the plant, which reportedly

produces 100 000 bricks a day, are housed on company property. On Sunday most of the 38 men and women involved in the dispute said they were prepared to strike to force their boss, Mr Johan Faure, who is also the owner of the factory, to hand back their money

One of the men said "Mr Fourie's been going on about his grapes for a long time, always accusing us or the children of stealing"

"A few weeks ago he said he had sprayed the

crop with poison, and beware anyone who tried to steal

"But that didn't help because on Friday at pay time, he called us all together and said he was sick and tired of 'this messing around' with his grapes"

"He said as punishment he was taking R10 off each of our wages. He then handed us our sealed envelopes, ordered us to open it and removed the money"

Another man said he and eight others had re-

fused to open their envelopes

"Mr Faure then took back our pay, telling us we'd get it back once we agreed to hand over our R10"

A woman who worked in the factory asked "Why should we be treated like animals? Our living quarters are bad enough and we can barely come out on what we get R10 is a lot of money to us"

In a telephonic interview on Monday morning, Mr Faure said "I don't have anything to say over the telephone. I would suggest that you come out here and have a look around to see the damage (*skade*) these workers are causing"

27/2/83

changes in the factories

LABOUR
EXECS
OUTLINE
REFORM

By Mike Peirson

TOP Natal industrialists and personnel chiefs were given the first detailed indication this week of what the government has in store over changes to the old Factories Act

In the hot seats, answering a barrage of questions confidently and with a surprising sense of humour, were two executives of the Department of Manpower in Pretoria, Mike van Noordwyk (director of labour relations) and Gus Weich (chief Factories inspector)

The centre of attention at the seminar, organised by the Natal Chamber of Industries, was the basic conditions of employment and machinery and occupational safety legislation which will become law later this year

It is a rationalised and up-dated form of the Factories Act, although most of the provisions of the existing legislation will stay intact

"We had to keep in mind the rights and privileges of those in the work place, and we have been able to make some subtle changes particularly in the field of employment of women," said van Noordwyk

It has been classified as the Magna Carta for female workers as sex discrimination in terms of conditions of service have been abolished — except when it comes to pregnancies. Women will not be allowed to work four weeks before they are due to give birth and for eight weeks afterwards

In fact, the new legislation will now encompass thousands of people who were not covered by the old law

Among the points made by Van Noordwyk were

- Victimization penalties have been increased

- Company records can now be kept on microfilm instead of gathering dust and taking up unnecessary space in storerooms

- Certificates of service must be given to employees when they leave a job

- A tighter rein is to be kept on labour brokers, many of whom even operate from the back of bakkies on building sites

They will be required to provide their workers with the benefits related to the industry in which they normally work, despite the fact that they

might be moving from company to company in the course of their contract work

Problems are anticipated but Van Noordwyk explained that disputes over individual workers as to which industry they might belong can be taken to the industrial court for a determination

- The 53 unregistered trade unions in the country will now be able to make use of the conciliation machinery which exists for registered unions

"We have had a very good response from the unregistered unions on this matter," said Van Noordwyk "Only one told us to go to hell"

- There will be no more compulsory overtime. Any overtime that is considered by the employer to be regularly necessary must be written into the contract of the employee before he starts the job

Details given by Weich of the new safety legislation included

- The formation of an advisory council for occupation safety comprising representatives of employers and employee, with technical experts co-opted whenever necessary to deal with specific topics

- The appointment

of safety representatives on the shop floor to a ratio of one to every 50 workers

"If we do nothing else in the next two years we will enforce these two factors," said Weich

- No-one may sell machinery in future which does not comply with South African safety regulations, and this includes imports

- The Ministry may appoint local authorities to assist the department in enforcing the new regulations. This could be some time off because of the finances involved

- The powers of factory inspectors are to be extended to the level where he can stop any machine or process (both mechanical and chemical) which he might deem dangerous to the worker

- For injuries to workers caused on the job through negligence and not necessarily the direct contravention of the regulations, an employer can be fined up to R4 000 or jailed for up to two years, or both

Record cash payment for fired workers

Labour Correspondent

AN OLIFANTSFONTEIN company, Stobar Reinforcing, has paid R38 000 in back pay to 51 Metal and Allied Workers Union members fired last year, according to Fosatu Worker News, journal of the Federation of SA

Trade Unions

This follows a recent landmark Industrial Court ruling in which the court granted the workers a "status quo" order, instructing the company to reinstate them temporarily while their dispute with it was being resolved. It is believed to be the big-

gest cash settlement paid by an employer to dismissed workers in the current series of disputes over dismissals and retrenchments

The court's order temporarily reinstating the Stobar workers was made in early January and was the first

such order made by the Industrial Court

The case arose out of dismissals last August. Management charged that the workers had been fired for engaging in a "go slow". The union disputed this and alleged that the firings were "disguised retrenchments".

RDM

1/3/83

ROM 2/3/83 (166) (160) (150)

Tswanas get labour deal

BOPHUTHATSWANA will strike out in a different direction from its sister "independent" territories of Transkei, Ciskei and Venda when it introduces a new law providing for the recognition of trade unions

Due to be tabled in the Bophuthatswana National Assembly in May, the law is being drafted under the aegis of Mr Rowan Cronjé, former Rhodesian Minister of Manpower and now Minister of Manpower and Co-ordination in Bophuthatswana

Legalisation of trade unions in Bophuthatswana under Mr Cronjé's new deal will stand in marked contrast to the hostility adopted towards trade unions in Transkei, Ciskei and Venda, where trade unionism is seen as a form of Western "decadence" or, worse still, as incipient "subversion"

But, Mr Cronjé makes clear, trade unions in Bophuthatswana will function within a tightly controlled structure

A point repeatedly emphasised by Mr Cronjé is that South African unions will not be allowed to move into Bophuthatswana and organise workers there, irrespective of their general ideological outlook

Referring to the envisaged Bophuthatswana Industrial Conciliation Act he says "Once our legislation is passed no union or association outside our borders will be allowed to operate or function inside Bophuthatswana"

It will allow only Bophuthatswana-based unions to function and thus bar both the Rightwing Mine Workers' Union — which remains a force on mines which straddle the Bophuthatswanan-South African border — and South Africa's vigorously growing black-based unions



Bophuthatswana, most industrial of South Africa's nominally independent polities, will soon legalise black trade unions and charter its own industrial relations system Political Editor **PATRICK LAURENCE** reports

ROWAN CRONJE Delicate Issues

Bophuthatswana's Industrial Conciliation Act, which is modelled largely on industrial relations law bequeathed by Mr Ian Smith's Rhodesia to Mr Robert Mugabe's Zimbabwe, will forbid all forms of race discrimination, including the obsolete clause in the South African Mines and Works Act which prevents blacks from holding blasting certificates

Mr Cronjé insists there can be compromise on this question but chooses his words carefully

"We accept that it is a delicate issue We will treat it accordingly It is something we will have to discuss But the one thing that our Act will forbid is any form of discrimination"

On the exclusion of South Africa's burgeoning black-based unions Mr Cronjé is again circumspect, but his message is clear

"Whether people agree or not with Bophuthatswana's independence, fact is that it is an independent country Just as any independent state will not allow another country's trade unions to interfere, so we won't either."

Though he does not say so specifically, there is another reason for the decision to exclude South Africa's black-

based unions anxiety that they will introduce "political" objectives and attitudes into Bophuthatswana

"Trade unionism outside Bophuthatswana is pretty complex There are certain influences we would rather not accommodate in Bophuthatswana Conditions under which trade unions will operate in Bophuthatswana differ from most countries in Southern Africa"

Pressed to be more specific, he replies "The moment I answer that, I antagonise someone But conditions in Bophuthatswana allow a trade union to concern itself with its proper function, which is to represent the interests of its members to the best of its ability"

He adds "There is no reason whatsoever in Bophuthatswana for a trade union to involve itself in political matters — because there is ample scope for people, of whatever political persuasion, to organise themselves into a political party and indulge in politics Our constitution guarantees that"

Mr Cronjé is too skilled a politician to say so outright but the inference is that the situation in South Africa has forced some black unions into the political arena and that their "political" outlook is best kept out of Bophuthatswana

But whether Bophuthatswana will succeed to seal

its border ideologically is doubtful, particularly as several parts of Bophuthatswana are adjacent to South African industrial areas

In these areas thousands of its citizens cross the border every day to work in South African factories and cities, where trade unions are free to organise them and influence their perception of the wider South African political situation

Mr Cronjé says "Those who work in South Africa will not be prevented from joining South African unions I will not try to stop them It is a South African problem"

Inside Bophuthatswana the pending Industrial Conciliation Act will rest on several underlying principles, the linch-pin of which is that it will create the legal machinery for unions and employer associations to "freely negotiate with as little government interference as possible"

Recognising the importance of unions as part of this bargaining process, the Bophuthatswana Government will encourage their emergence and even provide "experienced people to train them in their rights and responsibilities"

To conclude lawful agreements on behalf of workers, unions, like employer associations, will have to register with the government-established industrial registrar

But to register they will have to satisfy the registrar that they are representative of the trade within which they function To this end they will have to submit membership lists of fully paid-up members to the registrar

If the registrar concludes

from these lists that a union is less representative than another claimant to registration, the registered union will be deregistered and official recognition will be conferred on the rival

From this it follows that the practice of "closed shop" — where workers in a particular trade or industry are forced to belong to a particular union — will be outlawed Mr Cronjé describes "closed shop" as inimical to the principle of freedom of choice and association on which, he says, the law will be based

Bophuthatswana unions will, however, have to fulfil another criterion for registration They will have to submit audited financial statements to the registrar once a year If the registrar finds that membership fees are misappropriated the union faces deregistration

The smooth running of Bophuthatswana's proposed industrial relations system will depend further on two special institutions an industrial court and an industrial tribunal

The industrial court will serve as an appeal court in which decisions by the industrial registrar to deregister either unions or employer associations can be challenged

The industrial tribunal, which will be chaired by a judge or a person of equivalent standing, will settle disputes of interpretation over agreements made between unions and employers where these cannot be resolved through mediation or arbitration

Mr Cronjé is convinced that the new law provides a sound basis on which to construct healthy industrial relations, though he concedes much will depend on the "human factor"

He says "We have a mechanism which will effectively eliminate a lockout or strike situation But in the end the secret of success in industrial relations is determined by human relations and attitudes"

CAPE Times 8/3/83

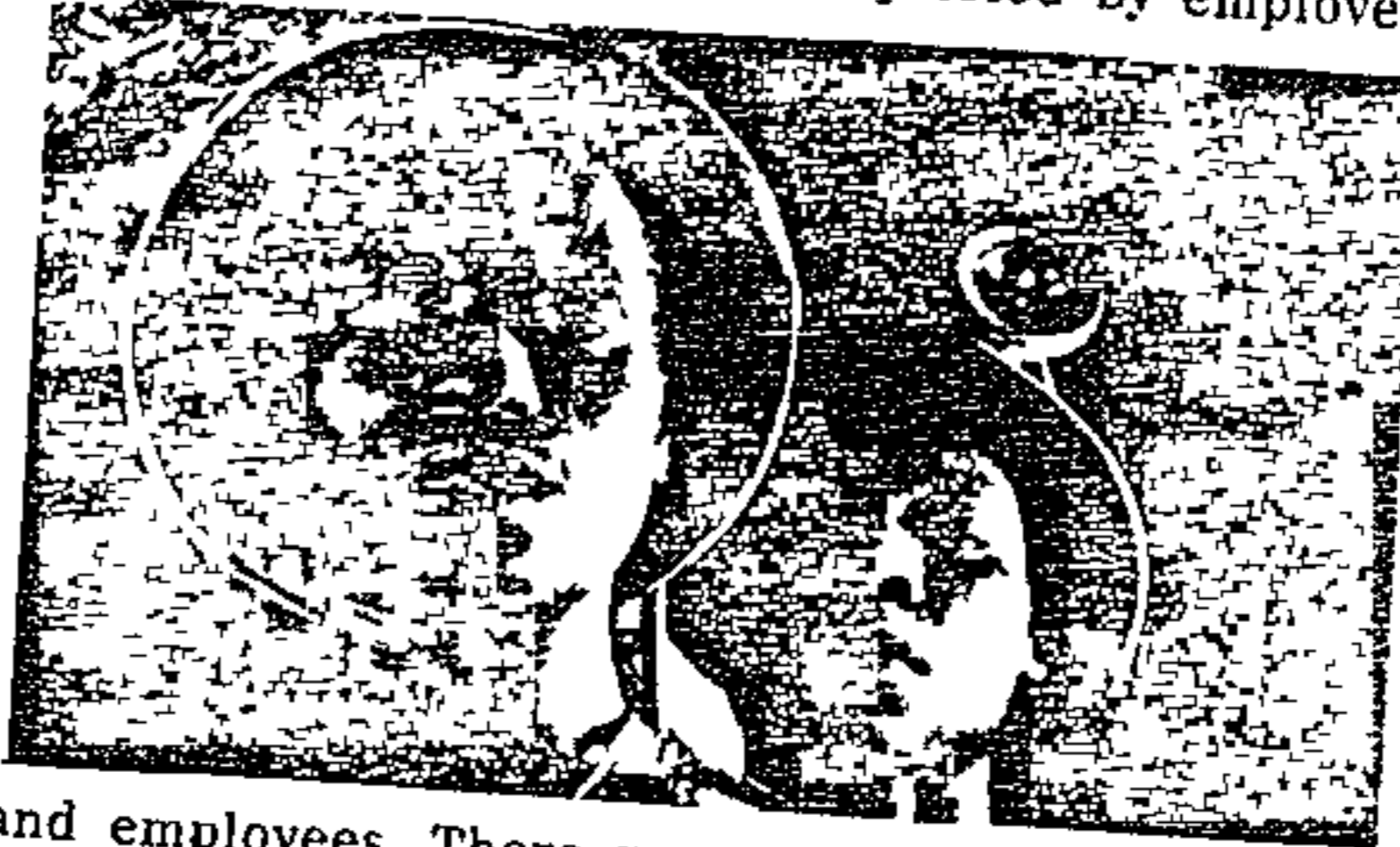
Industrial councils must be extended'

1521 1521 166

THE industrial council system would have to be improved and extended, the Minister of Manpower, Mr Fanie Botha, said in Durban yesterday.

Opening the conference of the South African Association of Municipal Employees, he said local authority employees not belonging to unions, and inexperienced in industrial council or conciliation board negotiations would increasingly seek union membership.

It was not possible to register more than one industrial board for the same local authority. The industrial council system had also been queried by employers



and employees. There was a tendency to deal with employers rather than on an industrial basis.

"The first question to which an answer must be found is how these newcomers to the trade union movement at local management level can be included in the statutory negotiating machinery — taking into account the principles of union autonomy, freedom of choice and maximum self-government."

Equally important was how to set up a uniform system for negotiating working conditions in local government — acceptable to employer and employee.

Mr Botha invited the Association of Municipal Employees and local authorities to present his department with concrete suggestions — Sapa

Women's pay is set lower than men's

By STEVEN FRIEDMAN
Labour Correspondent

AN OFFICIAL wage determination setting minimum pay in the catering trade sets lower minimum wages for women than for men — 16 months after a change in the law scrapped sex discrimination in wage determinations

The determination was published on Friday and the Wage Amendment Act, which outlawed sex discrimination in official wage determinations, became law on November 1, 1981

But the determination does contain new minimum rates to come into effect every six months which will ensure that sex discrimination in minimum pay will be scrapped in the trade in just over 18 months' time

According to a spokesman for the Department of Manpower, the reason for the anomaly is that the Wage Board investigation which led to Friday's determination began before the new law came into effect 16 months ago

At the time sex discrimination was scrapped, a clause was inserted in the Wage Act exempting determinations from the no-discrimination rule provided that the Wage Board probe which preceded them began before the Act came into force

The department's spokesman said the exemption was being inserted to give employ-

ers time to adjust to equal minimum pay for the sexes "After all, they are in business to make a profit," he said

Wage determinations set minimum pay for groups of workers who are not protected by industrial council agreements They are legally binding and are set by the Minister of Manpower following a recommendation by the Wage Board

There is often a long gap between the start of a board probe and the publication of a determination Trade unionists say this often means that rises in the cost of living make determinations outdated by the time they become law

The catering determination lays down different minimums for men and women in four job categories — general worker, waiter, grill hand and pantry hand

The determination sets different minimum rates for various areas

The lowest minimum is for general workers and the determination sets down a minimum of R21 a week for women and R25 for men in some country towns

The highest is in the Cape Peninsula where women must receive at least R36 and men R42

It also sets out a graded scale of new minimum wages which will come into effect every six months

This needs explaining

(166) (A73) 210 M 25/3/83

SA laws curtail union rights, says lawyer

Labour Correspondent

DESPITE recent labour reforms security legislation, the pass laws and other measures sharply hampered the rights of trade unions to operate freely a labour lawyer, Mr Rod Harper, said this week.

In a memorandum to this week's Urban Training Project meeting on "Freedom of Association", Mr Harper cited 17 laws which, he said, contained restrictions on

unions' freedom

He was discussing the extent to which South African laws conformed with International Labour Organisation conventions on freedom of association.

He said security laws made it "extremely difficult for unions to hold mass meetings of their members."

Some laws giving officials powers to ban gatherings, such as the Black Administration Act and the Develop-

ment Trust and Land Act, applied to blacks only.

These laws, with others such as those entrenching influx control, were a "Trojan horse" which sharply curtailed labour reform, Mr Harper said.

Labour laws also still sharply curtailed the right of workers to strike.

He noted that the Trespass Act was frequently used by the police and employers to remove strikers from their

employer's property. The Government now proposes to increase penalties for contravening this Act from R50 to R2 000.

Mr Harper also cited the Teargas Act which allows certain employers whose workers are housed in compounds to possess teargas, as a measure aimed at quelling worker unrest.

"This is obviously intended to be used against employees in mass strikes," Mr Harper

said.

The Armaments Act was another bar on union freedom he said, because it prohibited the formation of multiracial unions among Armscor employees.

But Mr Harper said industrial court decisions "give real hope of progress" towards greater union rights. "The court is gaining in confidence and is playing a growing role in guaranteeing worker rights," he said.

115/166 ROM 31/3/87

'Urgent need for union registration overhaul'

By STEVEN FRIEDMAN
Labour Correspondent

A MAJOR overhaul of the Government's trade union registration system is a "matter of extreme urgency", the general secretary of the SA Boilermakers' Society, Mr Ike van der Watt, told a meeting this week.

He said difficulties in the registration system were "holding up a normalisation of labour relations, not only in the mining industry but in South Africa".

He also called for the scrapping of a clause in the Labour Relations Act allowing unions on industrial councils to veto applications by new unions to join a council.

Mr Van der Watt said this clause, with controls in the registration process, were making emerging unions unwilling to register or join councils.

The reluctance of these unions was understandable but was having a 'profound effect' on labour relations in

key industries such as the mines.

Mr Van der Watt was addressing a meeting of the Manpower and Management Foundation on labour relations in the mining industry, where new black unions have refused to register or are opposed to joining councils.

The union registration system is being investigated by the official National Manpower Commission (NMC) and major changes aimed at removing control over unions from the registration process are expected.

In his address Mr Van der Watt predicted that the registration process would be changed to remove the 'exclusive rights' of registered unions to curtail the rights of new unions.

But he implied that progress in bringing about these changes was too slow.

"We understand that the proposed changes are being delayed by the time it is taking the NMC to bring out its

report on registration," he said.

"We should make it clear to the commission that changes in the law regarding registration are a matter of extreme urgency."

Mr Van der Watt said unions who sought registration were "subject to a long and complicated process which may well result in their not gaining the scope they believe they require to do their jobs properly."

They could theoretically be denied registration 'on the whim of an opposing union intent only on preserving the position of its leadership'.

Some established unions saw registration as a means of protecting the interests they believe they have acquired in the labour relations structure.

Mr Van der Watt urged that registration go no further than ensuring that similar organisations with similar aims are brought together.

~~15~~ 166 □ □ ~~13~~ RAOH
11/4/83

UNION registration perhaps the hottest labour issue in the early days of the new labour dispensation, has abated somewhat as an issue

Since then, the difference between emerging unions who registered and those who did not have diminished

But there are still controls over registered unions which do not apply to their counterparts. A Government official can decide who these unions can represent, in which industries they may bargain officially and so on

Generally, he does this after objections from already registered unions who do not want the new unions encroaching on their turf

On the other side of the coin, unregistered unions cannot have union dues deducted by employers without Ministerial permission

A consensus between major employer groups and emerging unions developed in

Ruling against Govt on unions

166 (E Post)

16/4/83

MARITZBURG — A full bench of the Natal Supreme Court has ruled that the Government does not have the right to limit the racial composition of a trade union

In May, 1982, the Minister of Manpower, Mr Fanie Botha, upheld a ruling by the Industrial Registrar that the Metal and Allied Workers' Union, the Transport and General Workers' Union, the Chemical Workers' Union, and the National Union of Textile Workers could not register as non-racial trade unions

The presiding judge, Mr Justice Leon, with Mr Justice Booyesen and Mr Jus-

tice Law concurring, said 'I find myself quite unable to accept that without evidence we must infer that different races necessarily have different interests

"In my opinion the contrary is true and industrial interests will usually be common to all employees irrespective of race in the absence of any evidence supporting these submissions on this topic I find their contentions to be wholly unacceptable"

In 1980, the unions applied to the Industrial Registrar for registration

They failed to say from which race groups their members were drawn and

they were registered with the condition that they could not admit white members

In April, 1981, the unions appealed against the ruling and a year later this was rejected by the Minister

This was in spite of the fact that the Minister had granted permission for their non-racial registration beforehand

He had in fact, exempted the four unions from some of the provisions of the Labour Relation Act

The unions submitted that a racial group did not, in terms of the Act, constitute an "interest" and the

Minister and the Registrar could not use race as a criterion in determining the interests served by them or the interests for which they should be registered

In allowing the four appeals Mr Justice Leon said the Registrar "plainly erred in imposing the limitation

He ordered the Registrar and the Minister to pay the costs

An all-white Pretoria union **Munisipale Werknemers**, which objected to the non-racial composition of the TGWU, was ordered, as a respondent, to share the union's costs — Sapa

Influx control laws: Govt thinks again

Staff Reporter
THE government is contemplating shifting the enforcement of "unpopular" influx control laws from the Department of Co-operation and Development to the Department of Internal Affairs, according to the second and third reports of the select committee on the constitution.

The reports, which were tabled in Parliament this week, quote evidence presented by the board of chairmen and chief directors of the administration boards to the committee, which is examining the proposed Black Communities Development Bill.

Dr P J Riekert, representing the board, said administration boards already acted as agents for the Department of Manpower by managing labour bureaus and "where the new bill provides, that influx control will henceforth be administered by the Department of Internal Affairs, we are also agents of that department."

This is the first indication that the government is preparing legislation to shift the application of influx control laws, which

could signal the further dismantling of the former Bantu Administration "empire".

Commenting on the application of influx control, Mr C H Kotze, also representing the board, said influx control was the "most sensitive area of political relations, an aspect which can easily bedevil matters".

He said "We see it as a very sensitive function, very closely linked to the spirit of man. Let us suppose that I, as an Afrikaner, should be responsible for the control over the influx of Afrikaners to Pretoria."

"That would be a real mess I would not be able to do it because for me it would be too emotional an issue. In my opinion, influx control is something the black man cannot handle."

"Because administration boards see themselves as human relations agents, we would like to suggest that this unpopular job be performed by someone else."

Earlier, Dr Riekert said the administration boards — with a few exceptions — were in the process of "completely going under financially".



Sir De Villiers Graaff

Villiersdorp h

Staff Reporter

THE conferring of the freedom of Villiersdorp on Sir De Villiers Graaff on Thursday celebrated a family association with the little town that started when a Graaff ancestor founded it 32km from Caledon 139 years ago.

The family has left an indelible stamp on the town, founded in 1844 by Field-Cornet Pieter Hen-

drik de Villiers on Rodyn, one of the original Dutch East India Company farms in the area.

The cadet band which led the Graaffs' horse-drawn carriage down the town's main street on Thursday belonged to the De Villiers Graaff High School, and so did the hall in which Sir De Villiers was honoured by the Mayor, Mr E N Kruger.

Slabbert tells PM 'stop double-talk'

Political Staff

THE Leader of the Opposition, Dr Van Zyl Slabbert, yesterday challenged the Prime Minister, Mr P W Botha, to stop his "double talk" over testing coloured and Indian opinion on the new constitution and say openly that there would be referendums for them as well.

His reaction came late yesterday following different interpretations by coloured and Indian leaders of the outcome of their meeting on Thursday with Mr Botha.

The Prime Minister said in a public statement that there would be a test of opinions, but that the "method and date" would be decided later.

The Labour Party leader, the Rev Allan Hendrickse, said he believed Mr Botha had promised a referendum.

Mr Amichand Rajbansi, chairman of the Indian Council executive com-

mittee, said that the Prime Minister had promised a plebescite.

In response to inquiries yesterday, a spokesman for the Prime Minister said that his statement on Thursday "does not preclude the possibility of a referendum".

Yesterday Dr Slabbert said "When are we going to get a straightforward and simple answer from this government?"

"Why can the Prime Minister not state in quite simple language that he is prepared to hold a referendum, either separately, or on the same day for whites, coloureds and Indians?"

Mr Botha should stop his "double-talk" — or was he waiting for the results of the by-elections in Waterberg and Soutpansberg?

The PFP believed that the only step which made sense was a referendum for all South Africans — blacks, coloureds, Asians and whites.

SA captain 'to be prosecuted'

MAPUTO — The captain of a South African fishing vessel seized about 20km off the Mozambique coast, would be prosecuted for fishing illegally within Mozambique's 320km economic zone, the official news agency Afp reported yesterday.

The vessel, the Morning Star, is captained by Paul Davids and has a 14-man crew. Its owner, Mr A R Shooter, of Durban, said Mozambique's claim to an economic zone of 320km was news to him.

Maputo's deputy harbour master, Mr Badrodin Mustafa, was yesterday quoted as saying that the Morning Star had been detained by a North Korean trawler.

Earlier it had been reported that two East German trawlers had threatened to ram the Morning Star.

Our correspondent reports that the South African Department of Foreign Affairs had by late yesterday received no information regarding the incident — Sapa-AP, Own Correspondent.

The Cape Times keeps on growing

IT'S another first for the Cape Times — street sales in the Northern areas.

From Monday Cape Town's fastest growing newspaper will be available from 22 street vendors serving Durbanville, Kraaifontein, Brackenfell, Kuils River, Somerset West, and the Strand.

The new vending points are at the following intersections and locations:

- N1 turnoffs at Durbanville and Kraaifontein

- Old Oak and D'Urban intersection

- Durbell & D'Urban intersection

- Van der Merwe Riebeeck Road

- Scottsdene station
- Brackenfell station
- Pick 'n Pay hypermarket

- Labelle & Strand
- Sarepta station
- Mitchell & Strand
- Blackheath station
- Eerste River station
- Firgrove station
- Somerset West/Steinbosch robots
- Somerset West station
- Victoria & N2 road
- Van der Stel station
- Broadway & Main
- Strand station
- Beach & Strand

- The multitude of vendors means the Cape Times will be only 100m away from the majority residents of the northern areas. This means that from Monday it will be much easier to get the newspaper and its interesting supplements including the industry leading Homefinder, Jobfinder, Carfinder and Funfinder.

HEAR AGAIN — UNDERSTAND AGAIN

Latest miniature hearing aids now available in Claremont

Call in for

- FREE HEARING TEST AND EVALUATION
- ALL-IN-THE-EAR HEARING AIDS FROM USA
- PROMPT & PROFESSIONAL SALES & SERVICE
- HOME VISITS FOR THE ELDERLY
- REPAIRS TO ALL MAKES

OUR HEARING AID ACCOUSTICIAN IS SOLELY DEDICATED TO THE CARE OF THE HARD OF HEARING

NOW IN BELLVILLE

Mondays only at L. C Hill Opticians, Olivetti House, 3B Blanckenberg Street, Bellville (opp Holiday Inn) TEL 97 4477

REPUBLIC HEARING AID CONSULTANTS (PTY) LTD

55 MAIN ROAD, CLAREMONT (Ample parking behind premises)

BRAAI?

Remember the best

Unions win battle on race ruling

164/83
Mercury
Pietermaritzburg Bureau
THE racial qualification placed on the registration of four trade unions by the Industrial Registrar was set aside in the Supreme Court in Pietermaritzburg yesterday

The trade unions successfully appealed against the decision by the Industrial Registrar to place a racial qualification on their registration when they registered in 1980

The appeal by the Metal and Allied Workers' Union, the Transport and General Workers' Union, the Chemical Workers' Industrial Union, and the National Union of Textile Workers is regarded as a test case which is likely to have an effect on the future registration of trade unions

In upholding the appeal by the unions, Mr Justice Leon, with Mr Justice Law and Mr Justice Booysen concurring, said the Industrial Registrar had erred in imposing the race limitation on the registration of the unions

He granted an order setting aside the racial qualification imposed on the registration

The decision by the Industrial Registrar to limit the registration to a particular race was supported by the Minister of Manpower, Mr Fanie Botha

'We are unable to accept the argument that

166
different races necessarily have different interests. In my opinion, the contrary is true and industrial interests will usually be common to all employees, irrespective of race,' Mr Justice Leon said

The Judge accepted the contention by the unions that the industrial interests of all races were the same and upheld the appeal against the Industrial Registrar and the Minister of Manpower

Fosatu hails Supreme Court ruling

APR 1983
166

THE Federation of South African Trade Union's (Fosatu) central committee this week heralded the Natal Supreme Court's judgment that race could no longer be considered an industrial interest.

A statement released by the general secretary, Mr Joe Foster, said the judgment delivered by a full bench marks a crucial victory in Fosatu's two-year battle against the State's insistence on giving affiliates certificates restricting them in terms of race.

"In line with Fosatu's policy of non-racialism, it rejected racial registration and appealed to the Minister of Manpower to overrule the registrar. However, the Minister turned down Fosatu's appeal which led the Federation to taking the matter to the Supreme Court. The judgment totally rejected the State's argument that race could be seen as an industrial interest and furthermore ruled that costs be paid by the State," the statement said.

The central committee now awaits the State's decision on whether they wish to proceed with the case to be heard in the Transvaal Supreme Court concerning racial registration of two Fosatu affiliates. It hopes the State will heed the Natal decision and drop the case and remove all references to race from registration certificates.

The federation also welcomed the fact that after a very difficult and disrupted meeting, seven unions committed themselves to building a new federation.

CAPE Times 25/4/83 (1407) (166) (177)

Fosatu praises court race ruling

Labour Reporter

THE Federation of South African Trade Unions (Fosatu) has hailed as a 'crucial victory' the decision by the Natal Supreme Court to set aside the racial qualification placed on the registration of four unions by the Industrial Registrar.

The court held that race could no longer be considered an industrial interest.

The four unions involved were the Metal and Allied Workers' Union, the Chemical Workers' Industrial Union, the Transport and General Workers' Union and the National Union of Textile Workers, all affiliates of Fosatu.

The unions were appealing against the decision by the Industrial Registrar to place a racial qualification on their registration when they registered in 1980, a decision which was supported by Mr Fanie Botha, the Minister of Manpower.

Fosatu said the judgment marked a crucial victory in their two-year battle against the State's insistence on giving affiliates certificates restricting them in terms of race. This was against Fosatu's policy of non-racialism.

● In papers filed to the industrial court, Fosatu's National Union of Textile Workers (NUTW) has charged that the Frame textile group threatened to fire members who did not join the Cape-based Textile Workers' Industrial Union (TWIU) and that management actively recruited members for this union.

The NUTW is to ask the court to restrain the company from recognizing the TWIU, an affiliate of the Trade Union Council of South Africa (Tucsa), or extending facilities to it.

CAPE TIMES 27/4/83
**Unions 'avenue
of reform' in SA**

Labour Reporter

POLITICS and trade unionism could not be completely separated, Mr Bobby Godsell, an industrial relations consultant for Anglo American, said at Stellenbosch University last night

He said unions could become an avenue of reform in a divided society such as South Africa

Mr Godsell was speaking at a Stellenbosch Aktuele Aangeleentheidskring seminar on trade unions and change in South Africa. He said the fear that black unions would become political was mainly responsible for their being excluded from bargaining processes

"Black workers do have power," he said. "They

can by actions passive and active disrupt and obstruct the normal and necessary functioning of society"

Mr Godsell said the collective bargaining process — "the habit and practice of compromise" — could be a source of growing racial unity

Mr Jaap Cilliers, former director-general of Manpower, said the new labour dispensation, which had become an "island of non-discrimination in a sea of discrimination", had created expectations of change

"It is unfortunate that the experience of these workers is that between 8 am and 5 pm they live in 1983, but when they leave their places of work they find themselves back in times long past"

copy

Attempts to control labour affairs usually end in failure — and South African legislation shows a similar pattern, says Mr Leon Louw, executive director of the Free Market Foundation

In an article in Training and Development Forum, Mr Louw argues that labour laws, whether they purport to be for or against workers, work to their disadvantage

Governments are concerned with what Mr Louw describes as the "meddle imperative" that is, governments always desire to exercise some form of control over workers

He details several examples of this meddling in South African labour laws

Labour laws don't help the worker, says expert

166 Haw 19/5/83

● The Government's decentralisation policy will prove to be a costly one and there is no evidence that the expected benefits of the policy will exceed the costs. It costs from two to five times as much to create a job in a decentralised development area as in a metropolitan area. Therefore there are less jobs to go round and less money to pay in wages

● Mr Louw criticises what he calls excessively strict provisions in building and factory laws which regulate the min-

utiae beyond the point which any reasonable person would consider appropriate. The passing of these laws is often the result of successful lobbying by some small vested interest group

● Minimum standard laws are detrimental to the lower socio-economic groups which have to pay for such provisions through money and jobs. These laws tend to be costly and need high skills and technology and thus render the most needy segment of the workforce, unskilled

blacks, unemployable
● Unemployment can be the result of minimum wage laws introduced at artificially high levels to protect skilled and experienced white workers from competition

Mr Louw also criticises high progressive tax rates, which encourage discriminatory employment practices

The best solution to problems in the labour market is to discontinue the cause, Mr Louw says

Registration: Yes
 Founded: 1912
 Area of Operation: Durban area
 Officials: Secretary: G.K. Verdon
 4001
 Durban
 West Street
 Address: 405 Cennewa House
 Telephone: (031) 32 4850

Year	Membership			
	African	Asian	Coloured	White
1980				71
1979				146
1978				146
1977				146
1976				202
1975				264
1974				264
1973				300
1972				..
1971				..
1970				..
Total				

166

May
1983

SALDRU
SCHOOL OF ECONOMICS
U. C. T.

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

LABOUR RELATIONS AMENDMENT BILL, 1983

REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF MANPOWER
EXPLANATORY MEMORANDUM ON THE LABOUR
RELATIONS AMENDMENT BILL, 1983

INTRODUCTION

The proposed amendments emanate partly from recommendations of the Commission of Inquiry into Labour Legislation which were accepted by the Government (see paragraphs 4 20 and 4 42 of the White Paper on Part 5 of the Commission's Report) These amendments concern—

- * the control of labour brokers and the registration of labour brokers' offices, and
- * the transfer of judicial and quasi-judicial decisions of the Minister of Manpower to the Industrial Court

The other proposed amendments relate to—

- * the further regulation of the establishment and composition of conciliation boards,
- * provision for direct voluntary arbitration in respect of certain disputes,
- * the further regulation of the mediation of certain disputes; and
- * exceptions to the prohibition on the disclosure of certain information.

Labour broking. In the White Paper on Part 5 of the Report of the Commission of Inquiry into Labour Legislation, the Government undertook to give attention to and to consider legislative amendments with a view to further regulating the activities of labour brokers. The extent, nature and variety of the activities of labour brokers, however, had to be thoroughly considered and required wide and time-consuming consultation [See paragraph 1 14 of the Department's annual report for 1981 (RP 86/1982)] The amendments now proposed make provision for the registration and control of labour brokers The primary goal is to ensure more stable conditions of employment and greater protection for workers hired out by labour brokers Owing to the temporary and varying nature of the circumstances of employment of these workers, they were thus far often not in a position to build up and make use of fringe benefits such as pension, sick benefit and medical aid funds Particular problems are being experienced in this regard especially in the Iron, Steel, Engineering and Metallurgical Industry as well as in the Building Industry

Establishment and composition of conciliation boards. The proposed amendment of section 35 of the Labour Relations Act, 1956 (hereinafter referred to as the principal Act), which relates to the establishment and composition of conciliation boards, is mainly aimed at making the official dispute settling machinery more easily accessible on a broader basis in industries and trades where industrial councils do not have jurisdiction This

is in the interests of promoting sound labour relations. The intention therefore is that trade unions and employers' organisations which do not have registration for specific areas and interests will also be given access to conciliation boards as official discussion forums to settle labour disputes, subject to specified provisos.

Conciliation boards and the public or national interest The other important amendment is aimed at enabling the Minister of Manpower to establish conciliation boards on his own initiative if he is of the opinion that a dispute should be settled without delay in the public or national interest.

Voluntary direct arbitration. In the case of disputes in essential services, such as for example passenger transportation and local authorities, as well as disputes involving an unfair labour practice, the parties concerned may agree to refer those disputes to direct arbitration, in other words without it having been considered by either a conciliation board or an industrial council. The proposed amendment of section 46 of the principal Act is intended to enable the parties to other labour disputes, that is those in non-essential industries, to also go direct to arbitration if they so agree.

Mediation. The aim of the amendment of section 44 of the principal Act is to extend the provisions in terms of which mediators are appointed so that the Minister, after consultation with the parties to any dispute, may appoint a mediator acceptable to all of the parties if he is of the opinion that it will assist in the settlement of the dispute.

Transfer of judicial and quasi-judicial decisions of the Minister to the Industrial Court In terms of section 51 (6) of the principal Act, any person who feels aggrieved by certain decisions of an industrial council, may appeal to the Minister. The aim of the proposed amendment is to transfer the Minister's powers in this regard to the Industrial Court and in this manner further to give effect to the Government's decision regarding the transfer of judicial and quasi-judicial labour decisions to the Industrial Court.

Secrecy provisions of the principal Act. The aim of the envisaged amendments is that secrecy shall be observed only in respect of financial or business affairs and to authorise the publication for general information of judgements, decisions, exemptions or awards of the Industrial Court so that wider cognisance can be taken thereof.

A draft Amending Bill was published in the *Government Gazette* on 29 January 1982 (General Notice 63 of 1982) and again on 13 August 1982 (General Notice 559 of 1982) for general information and comment and the Amendment Bill was altered in several respects as a result of representations received.

CLAUSE ONE

A labour broker is defined as any person who conducts or carries on a labour broker's office. A labour broker's office is defined as any business whereby a labour broker for reward provides a client with persons to render service to or to perform work for the client or procures such persons for him, for which service or work such persons are remunerated by the labour broker. The definitions of employer and employee are also amended. A labour broker is deemed to be an employer in that undertaking, industry, trade or occupation in which the contracted person ordinarily or naturally falls according to the nature of the activities or operations performed by the contracted person as determined by the scope of application of a

wage regulating measure (i.e. an agreement, notice, award, order or determination) and the client is not deemed to be the employer of such contracted person. The provisions of such a wage regulating measure apply in respect of such a labour broker as though he is the employer and in respect of the contracted person as if he is the employee.

CLAUSE TWO

The purpose of this amendment is to add to the functions of the Industrial Court appeals in terms of section 51 of the principal Act and the determination of the undertaking, industry, trade or occupation in which a labour broker's worker is employed.

CLAUSE THREE

The purpose of the amendment of section 35 of the principal Act, which deals with the establishment and composition of conciliation boards, is to create an official forum for the settlement of disputes in industries and areas where no industrial council has jurisdiction and where one of the parties is either a registered trade union or employers organisation which has members in a particular industry or area but which does not have registration for such industry or area or a representative unregistered trade union or an unregistered employers' organisation. At present the members of such a trade union or employers' organisation can apply for the establishment of a conciliation board in their own right, but the trade union or employers' organisation is not legally entitled to do so. The proposed amendment therefore makes provision for a registered trade union or employers' organisation which does not have registration for the specific industry or area or an unregistered trade union or employers' organisation to apply for the establishment of a conciliation board and to be able to represent its members on such a board in its own name. The amendment is proposed in the interests of maintaining and promoting sound labour relations between employers and employees. The Minister is also empowered to establish a conciliation board where no industrial council having jurisdiction exists without consulting the parties, when he is of the opinion that in the public or the national interest the dispute should be settled as soon as possible. The extension of the use of this conciliation machinery of the principal Act is, however, strictly qualified. In the case of an unregistered organisation it must have satisfied the provisions that require that a copy of its constitution be submitted to the Industrial Registrar and that he be provided with its head office address and the names of its office-bearers and officials. It must have maintained a membership register and proper books of account and its head office must be situated in the Republic. Provision is also made in this clause for direct arbitration in any dispute concerning any matter relating to the labour relationship between employer and employee, other than an alleged unfair labour practice, for which provision has already been made. This procedure applies where there is no industrial council and where the parties are satisfied that a conciliation board would not be able to settle the dispute.

CLAUSE FOUR

The purpose of this amendment is to extend the qualifications which apply to the appointment of representatives of employer and employee parties upon the composition of a conciliation board to unregistered trade unions and employers' organisations and is merely consequential in nature.

CLAUSE FIVE

In terms of this amendment the Minister of Manpower may, after consultation with the parties to a dispute, appoint a person acceptable to

all the parties, as a mediator if he is of the opinion that this appointment will assist in the settlement of the dispute. At present the dispute must first be considered by either an industrial council or a conciliation board.

CLAUSE SIX

This clause now provides for appeals against the decision of an industrial council on a matter of exemption to be made to the Industrial Court instead of the Minister.

CLAUSE SEVEN

This clause provides for the registration by the Director General of labour brokers with the Department of Manpower. Any labour brokers' office which does not register within three months after the coming into operation of the Amendment Act shall be guilty of an offence. Any person who feels aggrieved by any decision or action by the Director General regarding the application for registration or the cancellation or amendment of a certificate of registration of a labour brokers' office may appeal to the Minister.

CLAUSE EIGHT

The secrecy provision is brought into line with the Department of Manpower's other Acts in that secrecy in future has only to be observed in respect of the financial or business affairs of any person, firm or business. The President of the Industrial Court is granted the discretion to indicate which judgements, decisions, determinations or awards of that court may be published for general information. The written consent of the parties must be requested, but if they do not give it the final decision to publish rests with the President of the Industrial Court, if he is satisfied that consent was unreasonably withheld. Publication shall be in such a way that the identity of the parties is not revealed.

CLAUSE NINE

This clause provides that in the event of a dispute arising regarding the undertaking, industry, trade or occupation in which a labour broker is deemed to be an employer in respect of a specific employee, the dispute must be referred to the Industrial Court for a decision.

CLAUSE TEN

This clause amends the long title to make provision in it for the control of labour brokers and the registration of labour brokers' offices.

CLAUSE ELEVEN

This clause makes provision for the short title and the fixing in the *Government Gazette* of the date of the coming into operation of the Amendment Act.

Hierdie klousule maak voorsiening vir die kort titel en die bepaling in die *Staatskoerant* van die datum van inwerkingtreding van die Wysingswet.

KLOUSULE ELF

Hierdie klousule wysig die lang titel om daarin voorsiening te maak vir die beheer oor arbeidsmakelaars en die registrasie van arbeidsmakelaarskantore.

KLOUSULE TIEŒ

Hierdie klousule bepaal dat waar daar 'n geskil ontstaan met betrekking tot die onderneming, nywerheid, bedryf of beroep waarin 'n arbeidsmakelaar geag word 'n werkgever te wees ten opsigte van 'n spesifieke werknemer, die geskil na die Nywerheidshof vir 'n beslissing verwys moet word.

KLOUSULE NEGE

Die geheimhoudingsbepaling word in ooreenstemming met die Departement van Mannekrag se ander wette gebring deurdat geheimhouding voortaan bewaar moet word net ten opsigte van die finansiële of besigheid sake van enige persoon, firma of besigheid. Die President van die Nywerheidshof word die diskresie verleen om aan te dui welke uitsprake, beslissings, vassellings en toekennings van daardie hof vir algemene inligting gepubliseer kan word. Die partye se skriftelike toestemming moet gevra word maar as hulle dit nie gee nie lê die finale beslissing by die President van die Nywerheidshof om dit te laat publiseer indien hy oortuig is dat toestemming onredelik weerhou word. Publikasie moet op so 'n wyse geskied dat die identiteit van die partye nie openbaar gemaak word nie.

KLOUSULE AGT

Hierdie klousule maak voorsiening vir die registrasie deur die Direkteur-Generaal van arbeidsmakelaars by die Departement van Mannekrag. Enige arbeidsmakelaarskantoor wat nie binne drie maande na die datum van inwerkingtreding van die Wysingswet registreer nie, sal aan 'n misdryf skuldig wees. Enige persoon wat veronreg voel deur 'n beslissing of handeling van die Direkteur-Generaal met betrekking tot 'n aansoek om registrasie of die intrekking of wysiging van 'n registrasiesertifikaat van 'n arbeidsmakelaarskantoor, kan na die Minister appelleer.

KLOUSULE SEWE

Hierdie klousule maak nou voorsiening vir appellering teen die beslissing van 'n nywerheidsraad oor 'n vraagstuk van vlystelling na die Nywerheidshof in plaas van die Minister.

KLOUSULE SES

Ingevolge hierdie wysiging kan die Minister van Mannekrag, na oorlegging met die partye by 'n geskil, 'n persoon wat vir al die partye aanvaarbaar is, as bemiddelaar aanstel as hy van mening is dat sodanige aanstelling die beslegting van die geskil sal bevorder. Tans moet die geskies deur of 'n nywerheidsraad of 'n versoeningsraad oorweeg word.

KLOUSULE VYF

tye by die samestelling van 'n versoeningsraad, uit te bren na 'n ongeregtreede vakvereniging of werkgewersorganisasie en is gevolglik van aard

Die doel van hierdie wysiging is om die kwalifikasies wat geld vir die aanstelling van verteenwoordigers van die werknemers of werkgewerspar-

KLOUSULE VIER

soeningsraad nie in staat sal wees om die geskil te besleg nie daar nie 'n nywerheidsraad is nie en waar die partye oortuig is dat 'n ver-
waartoor daar reeds voorsiening gemaak is. Hierdie prosedure geld waar
gewer en werknemer, uitgesonderd 'n beweerde onbillike arbeidspraktyk
tot enige aangeleentheid betreffende die arbeidsverhouding tussen werk-
die klousule gemaak vir direkte arbitrasië van enige geskil met betrekking
kantoor moet in die Republiek geleë wees. Voorsiening word ook in hier-
registert in stand hou en behoorlike rekeningboeke gehou het en sy hoof-
name van sy ampsdraers en beamptes moet voorsien. Hy moet 'n lende-
registratuur voorgelê word en dat hy hom van die hoofkantooradres en die
bepalings wat vereis dat 'n afskryf van sy konstitusie aan die Nywerheids-
geval van 'n ongeregisterde organisasie moes hy voldoen het aan die
nomsmasjinerie van die Hooftwet is egter streng gekwalifiseerd. In die
oorteg te pleeg. Die uitbreiding van die gebruikmaking van die versoe-
nale belang onverwylid besleg behoort te word sonder om met die partye
bestaan nie, wanneer hy van mening is dat die geskil in openbare of nasio-
soeningsraad in te stel waar geen nywerheidsraad met regsbevoegdheid
werknemers. Die Minister word ook die bevoegdheid verleen om 'n ver-
en bevoording van gesonde arbeidsverhoudinge tussen werkgewers en
teenwoordig. Die wysiging word voorgestel in belang van die handhawing
soeningsraad aansoek kan doen en sy lende in 'n versoeningsraad kan ver-
ging of werkgewersorganisasie in sy eie naam om die instelling van 'n ver-
nywerheid en gebied registrasie het nie of 'n ongeregisterde vakveren-
streepte vakvereniging of werkgewersorganisasie wat nie vir die bepaalde
voorgestelde wysiging maak derhalwe daarvoor voorsiening dat 'n geregi-
vakvereniging of werkgewersorganisasie kan dit wetlik nie doen nie. Die
eie reg aansoek om die instelling van 'n versoeningsraad doen, maar die
Tans kan die lende van sodanige vakvereniging of werkgewersorganisasie in
streepte vakvereniging of 'n ongeregisterde werkgewersorganisasie is.
danige nywerheid en gebiede het nie of 'n verteenwoordigende ongeregi-
lede het in bepaalde nywerheid en gebiede maar wat nie registrasie vir so-
partye of 'n geregisterde vakvereniging of werkgewersorganisasie is wat
gebiede waar geen nywerheidsraad jurisdiksie het nie en waar een van die
ampelike forum te skep vir die beslegging van geskille in nywerheid en
king het op die instelling en samestelling van versoeningsrade, is om 'n
Die doel van die wysiging van artikel 35 van die Hooftwet, wat betrek-

KLOUSULE DRIE

heidshof se werksaamhede te voeg
beroop waarin 'n arbeidsmakelaar se werknemer in diens is, by die Nywer-
die Hooftwet en die vassstelling van die onderneming, nywerheid, bedryf of
Die doel van hierdie wysiging is om appèlle ingevolge artikel 51 van

KLOUSULE TWEE

opsigte van die gekontrakteerde persoon asof hy die werknemer is
sodanige arbeidsmakelaar van toepassing asof hy die werkgewer is en ten
nie. Die bepaling van sodanige loontreelende maatregel is ten opsigte van
nie gegag die werkgewer van sodanige gekontrakteerde persoon te wees
koms, kennisgewing, toekenning, order of vassstelling. Die klient word
die toepassingsbestek van 'n loontreelende maatregel (d.w.s. 'n ooreen-
werksaamhede wat die gekontrakteerde persoon verrig soos bepaal deur
gewoonlik of natuurlikerwys val volgens die aard van die aktiviteit of
ming, nywerheid, bedryf of beroep waarin die gekontrakteerde persoon
Arbidsmakelaar word gegag 'n werkgewer te wees in daardie onderne-

rade nie regsbevoegdheid het nie, makliker en op 'n breër grondslag toeganklik te maak. Dit is in belang van die bevordering van gesonde arbeidsverhoudinge. Die wysigings het derhalwe ten doel om vakverenigings en werkgewersorganisasies wat nie vir betrokke gebiede en belangeregistrasie het nie, ook toegang te gee, onderworpe aan bepaalde voorbepaalde, tot versoemingsrade as amptelike gesprekstorums om arbeidsgeskille by te lê.

Versoemingsrade en die openbare of nasionale belang. Die ander belangrike wysiging beoog om die Minister van Mannekrag in staat te stel om op eie inisiatief 'n versoemingsraad in te stel indien hy van mening is dat 'n geskil in openbare of nasionale belang onverwyld bygely behoort te word.

Vrywillinge direkte arbitrasie. In die geval van geskille in essensiele dienste, soos byvoorbeeld passasiersvervoer en plaaslike owerhede, asook geskille wat 'n onbillike arbeidspraktijk raak, kan die betrokke partye ooreenkom om daardie geskille direk na arbitrasie te verwys, met ander woorde sonder dat dit deur of 'n versoemingsraad of nywerheidsraad ooreweg word. Die voorgestelde wysiging van artikel 46 van die Hooftwet is bedoel om die partye by alle ander arbeidsgeskille, dit wil sê die in essensiele nywerhede, in staat te stel om ook direk na arbitrasie te gaan indien hulle so ooreenkom.

Bemiddeling. Die wysiging van artikel 44 van die Hooftwet het ten doel om die bepalinge waarkragens bemiddelaars aangestel word, uit te brei sodat die Minister, na oorlegplegning met die partye by enige geskil 'n bemiddelaar wat vir al die partye aanvaarbaar is, kan aanstel as hy van mening is dat dit die beslegting van die geskil sal bevorder.

Oordrag van geregtelike en kwasie-geregtelike beslissings van die Minister aan die Nywerheidshof. Ingevolge artikel 51 (6) van die Hooftwet kan enige persoon wat verontreg voel deur sekere beslissings van 'n nywerheidsraad appél by die Minister aanteken. Die voorgestelde wetswysiging beoog om die Minister se bevoegdheid in hierdie verband na die Nywerheidshof oor te dra en aldus verder gevolg te gee aan die Regering se bevoegdheid om daardie geskille direk na arbitrasie te verwys, met ander woorde sonder dat dit deur of 'n versoemingsraad of nywerheidsraad ooreweg word. Die voorgestelde wysiging van artikel 51 (6) van die Hooftwet het ten doel om die Minister se bevoegdheid in hierdie verband na die Nywerheidshof oor te dra en aldus verder gevolg te gee aan die Regering se bevoegdheid om daardie geskille direk na arbitrasie te verwys, met ander woorde sonder dat dit deur of 'n versoemingsraad of nywerheidsraad ooreweg word.

Geheimhoudingsbepalings van die Hooftwet. Die beoogde wysigings het ten doel dat geheimhouding bewaar moet word net ten opsigte van finansiele of besighedsake en om magtiging te verleen dat uitsprake, beslissings, vassellings of toekennings van die Nywerheidshof vir algemene inligting gepubliseer word sodat wyer kennis daarvan geneem kan word.

'n Konsepwysigingswetsontwerp is op 29 Januarie 1982 (Algemene Kennisgewing 63 van 1982) en weer op 13 Augustus 1982 (Algemene Kennisgewing 559 van 1982) in die *Staatskoerant* vir algemene inligting en kommentaar gepubliseer en die Wysigingswetsontwerp is in verskeie opsigte aangepas na aanleiding van verloop van ontvang is.

KLOUSULE EEN

'n Arbeidsmakelaar word omskryf as iemand wat 'n arbeidsmakelaarskantoor drywe of voorsit. 'n Arbeidsmakelaarskantoor word omskryf as 'n besigheid waardeur 'n arbeidsmakelaar teen vergoeding persone vir die lewering van diens aan of die verrigting van werk vir 'n klient aan die klient voorsien of vir hom verkry, vir welke diens of werk sodanige persone deur die arbeidsmakelaar beloon word. Die woorde "skrywing van werkgewer en werknemer" word ook aangepas. 'n

DEPARTAMENT VAN MANNKRAG
VERKLARENDE MEMORANDUM OOR DIE
WYSIGINGSWETSONTWERP OP
ARBEIDSVERHOUDINGE, 1983

INLEIDING

Die voorgestelde wysigings spruit deels voort uit aanbevelings van die Kommissie van Onderzoek na Arbeidswetgewing, wat deur die Regering aanvaar is (kyk paragrawe 4 20 en 4 42 van die Witskriit oor Deel 5 van die Kommissie se Verslag) Die wysigings gaan oor—

* die beheer oor arbeidsmakelaars en die registrasie van arbeidsmakelaarskantore; en

* die oordrag van geregtelike en kwasi-geregtelike beslissings van die Minister van Mannekrag na die Nywerheidshof

Die ander voorgestelde wysigings het betrekking op—

* die verdere reeling van die instelling en samestelling van versoeningsrade,

* voorsiening vir vrywillige direkte arbitrasie ten opsigte van sekere geskille,

* die verdere reeling van die bemiddeling van sekere geskille, en

* uitsonderings op die verbod op die openbaarmaking van sekere inligting

Arbeidsmakelary In die Witskriit oor Deel 5 van die Verslag van die Kommissie van Onderzoek na Arbeidswetgewing, het die Regering onderneem om aandag te gee en wetswysigings te oorweeg met die oog op die verdere reeling van die werksaamhede van arbeidsmakelaars. Die omvang, aard en verskeidenheid van die werksaamhede van arbeidsmakelaars het egter deeglike besinning en wye oorlegplegning geverg wat tyd in beslag geneem het [kyk paragraaf 1 14 van die Departement se Jaarverslag vir 1981 (RP 86/1982)] Die wysigings wat nou voorgestel word, maak voorsiening vir die registrasie van en beheer oor arbeidsmakelaars Die primêre doel is om meer stabiele diensvoorwaardes en groter beskerming vir werkers deur arbeidsmakelaars uitverhuur, te verseker Vanwee die tydelike en wisselende aard van hierdie werkers se diensomstandighede was hulle tot dusver dikwels nie in staat om byvoordele, soos pensioen-, siektebystand- en mediese hulpfondse, op te bou en te benut nie Besondere probleme word in die verband eraar, veral in die Yster-, Staat-, In- en Genieurs- en Metallurgiese Nywerheid asook in die Bounnywerheid.

Instelling en samestelling van versoeningsrade. Die voorgestelde wysigings van artikel 35 van die Wet op Arbeidsverhoudinge, 1956 (hierna die Hooftwet genoem), wat op die instelling en samestelling van versoeningsrade betrekking het, is in hoofsaak daarop gemik om die amptelike geskillebeslegingsmasjinerie in nywerhede en bedrywe waar nywerheids-

REPUBLIEK VAN SUID-AFRIKA

VERKLARENDE MEMORANDUM

OOR DIE

**WYSIGINGSWETSONTWERP OP
ARBEIDSVERHOUDINGE, 1983**

[W.P 5—'83]

ISBN 0 621 07644 9

CLOSED SHOP FM 27/5/83

Grafton's battle ¹⁶⁶

~~177~~
Grafton Everest's battle against the closed shop in the Natal furniture industry shows what a difficult issue this is becoming in labour relations in SA

A provision in an agreement negotiated at the Industrial Council for the Furniture Industry (Natal) stipulates that workers in the industry must belong to the National Union of Furniture and Allied Workers, an affiliate of the Trade Union Council of SA (Tucsa)

Grafton tried last year to obtain an Industrial Court declaration that the provision was an unfair labour practice. It approached the court after three of its employees refused to join the Tucsa union, and the industrial council declined to grant the company further exemptions from the closed shop provision. Such a refusal meant that Grafton would have had to dismiss the workers (who had worked for it for 16, 25 and 28 years respectively) if they persisted in their refusal to join the Tucsa union.

The court however, took the view that Grafton had not followed the procedure laid down by the Labour Relations Act (LRA). This stipulated that the company should have referred the matter first to the industrial council. The next step that Grafton could have taken, if it disagreed with the council's decision, was to appeal to the Minister of Manpower or

Not surprisingly Grafton was unhappy with this ruling. The company's legal representative had argued that it was inappropriate for the council to deal with the dispute because it was the very body whose competence was being questioned.

Grafton nevertheless decided to take the matter to the council. However, it appealed to the Minister after the council was not able to resolve the matter to the company's satisfaction.

A decision by the Minister may have then settled the matter. But just to make things more complicated, an amendment to the LRA earlier this year removed the Minister's power to grant exemptions from industrial council decisions — including those governing the closed shop. The authority to grant such exemptions was transferred to the Industrial Court.

A difference of opinion now exists over whether the Minister still has the authority to grant exemptions on matters referred to him before the amendment to the LRA came into effect on May 1. Grafton made its appeal to him before this date.

Some senior government men believe the Minister has the power to decide on issues referred to him before the LRA amendment but the industrial council disagrees. It is seeking a Supreme Court declaratory order prohibiting the Minister from making a decision — not on the Grafton appeal — but on an appeal by another company falling within its jurisdiction for an exemption totally unrelated to the closed shop.

However the effect of this legal challenge is that efforts to get the Minister to make a ruling on the Grafton appeal have been stalled. It now appears that a decision by the Minister on the Grafton appeal will have to be delayed, pending the outcome of the Supreme Court hearing on the other case.

There is a singular irony attached to this protracted process. If the Supreme Court prohibits the Minister from making a decision on matters referred to him before the LRA amendment, Grafton will be steered back in the direction of the Industrial Court — something that the industrial council resisted so fiercely in the first place.

**Union told
to submit
records of
members**

STAR 8/6/63
Labour Reporter 165
The Orange-Vaal General Workers' Union based in Vereeniging has been told to submit membership records to the Department of Manpower or appear in court

Several unregistered trade unions have been approached over the last few weeks with requests to submit their financial and membership records. These were required only from registered unions until recent amendments to the Labour Relations Act.

The union's secretary, Mr Philip Masia, said the union had received a warning from the Department of Manpower that it would be subpoenaed if it did not submit certain information.

Unions which refuse to comply with the department's requirements face a fine or jail term.

Senior Department of Manpower officials have said the requests for details are a minimum requirement under the Act and the department is in no way attempting to curb union activities.

Labour rule is criticised

Ray

2/6/83

(121)

(121)

166

(121)

Labour Correspondent
IN AN unusual move, the Chamber of Mines has criticised a key aspect of the labour law introduced in the wake of the Wiehahn Commission report.

In his address to the chamber's annual meeting yesterday, its outgoing president, Mr Willie Malan, criticised the clause in labour law which allows the Industrial Court to take action against employers for "unfair labour practice".

The clause had "potential for considerable damage to labour relations", he said.

The chamber wanted it changed so that a dispute of "interest" — for example, a wage dispute — would not fall within the definition of an "unfair labour practice". This should be left to negotiation rather than the law.

Meanwhile, the Anglo American Corporation said in its annual report yesterday that the emergence of black unions on the mines was "the most important development" in the industry over the past year.

166

Act damaged labour relations says Malan

UNFAIR labour practices implicit in the Labour Relations Act has caused "considerable damage" to labour relations and collective bargaining in South Africa.

In his presidential address to the Chamber of Mines, the outgoing president, Mr W W Malan, said that the application of the practice should therefore be handled with the greatest circumspection

He said the "very unsatisfactory" definition of the practice was of much concern to the chamber, although it was intended as a

measure of protection for labour against exploitation

The chamber has asked that the notion of an unfair labour practice should apply only to conflicts of rights and not to be extended to conflicts of interest

Conflicts of interest should be left to the ordinary process of negotiation between the parties, Mr Malan said

Referring to labour reforms in the country, he said that they had resulted in very "real and significant" advances in the min-

ing industry

Mr Malan said achievements resulting from amended labour legislation included

- The agreement reached with unions on the training of apprentices of all races in the full range of skilled artisan trades,
- The decision of the three official associations in the industry to open their ranks to all races,
- The agreement reached with the Underground Official's Association on the employment conditions of black, coloured and Asian officials

warnings he had received in the past, and whether these had been preceded by thorough investigations.

The court expressed doubts about whether Van Zyl was guilty of misconduct, and focused attention on an International Labour Organisation recommendation on dismissal. It states "Before a decision to dismiss a worker for serious misconduct becomes finally effective, the worker should be given an opportunity to state his case promptly, with the assistance, where appropriate, of a person representing him"

The court found that while Van Zyl was present at an initial disciplinary hearing, he was neither present nor represented at a second hearing. The court granted him interim reinstatement.

In the *Matshoba* case the court found that the company's disciplinary procedure was unclear in that it seemed to indicate that group disciplinary hearings — something wanted by the workers, but rejected by management — were possible. In addition, the company had recently changed hands and the appeal procedure stipulated an appeal to a person who no longer existed.

Overtime work

"In finding for the applicants, it is arguable that the court was indicating that the company was charged with the duty of ensuring that the disciplinary procedure was fair and comprehensible," says the lawyer.

The whole question of employees' obligation to work overtime was raised in this case. The court noted that it was a condition of employment that employees should work overtime when instructed to do so. In addition, as required by the relevant legislation, the company had obtained permission from a Department of Manpower inspector to allow employees to work more than the statutory maximum of 10 hours overtime a week.

However, it appears the court implicitly recognised the voluntary character of overtime and the fact that both the ordinary courts and the legislature have sought to protect employees from overly burdensome terms in employment contracts. The court placed great emphasis on the fact that a practice seemed to have developed whereby an employee in the company was entitled to give reasons why he was unable to work overtime.

The employees — whose dismissal arose from their refusal to work overtime — claimed they had told the company that they could not do overtime at short notice because they had other important commitments.

The court appears to have indirectly criticised the company for not informing them of the reason for the need to work overtime. It found that because of the short notice of such overtime, it appeared that the employees' failure to comply with the instruction could not be said to be unreasonable.

INDUSTRIAL COURT Dismissal rulings

Recent decisions by the Industrial Court have again demonstrated the risks involved in firing employees without adhering to an equitable dismissal procedure.

A labour lawyer, who has studied the decisions, emphasises that their full implications have yet to be tested and explored. But, he says, they "emphasise that *ad hoc* and reactive measures in the labour field are entirely unsatisfactory."

In both *Van Zyl versus O'Okiep Copper Company* and *Matshoba and Others versus Fry Metals*, the court dealt with applications for the reinstatement of dismissed employees. In the Van Zyl case the company ran into problems when it could not demonstrate to the court that it had a clearly formulated disciplinary procedure regulating warnings given to employees for misbehaviour. Consequently, in reviewing Van Zyl's earlier track record, the court noted that it was not clear how many oral

Fm 12/8/83

166 Exp Post 17/8/83

Official clarifies need for displaying Conditions of Employment Act forms

By CLAIRE PICKARD-CAMBRIDGE

EMPLOYERS of both farm workers and domestic workers in private households who have received forms saying they are legally required to have a copy of the Basic Conditions of Employment Act, 1983, on their premises, do not have to do so

This was confirmed today by the Divisional Inspector of the Department of Manpower in Port Elizabeth, Mr J C Greyling

The question arose when a group of domestic employers in Port Elizabeth received forms from an undertaking calling itself South African Regulations, in Excom, urging them to send off payment in exchange for summarised copies of the Act

Mr Greyling stressed it was only employers in commerce and industry who had to keep these summaries on their premises since the Act came into operation on June 1, according to Government Gazette No 8558 of February 23, 1983

Any of these employers failing to comply would be contravening Section 21 of the Act and would be liable, on conviction, to a maximum fine of R500 or imprisonment for a maximum period of six months

Employers were also required to make

the summaries available to employees for perusal in the event of such a request

But farm workers and domestic workers in private households were not defined as 'employees' in terms of the Act and their employers did not have to comply with its regulations, Mr Greyling said

Section 2 of the Act says the following are not regarded as "employees"

- People involved in charitable operations for which they are not entitled to remuneration
- People employed by the State or any organisation funded by the State
- Any person employed by a control board under the Marketing Act of 1968
- Anyone employed by an institution as defined in the Children's Act, 1960, or in the Cultural Institutions Act, 1969
- Anyone employed by a welfare organisation registered in terms of the National Welfare Act which receives State aid
- People employed on a vessel at sea in terms of the Merchant Shipping Act of 1951
- Anyone temporarily employed at any agricultural horticultural, industrial or similar show

Four years after Wiehahn unions are finding their feet

Sowetan

17/8/83

106

FOUR years after the Wiehahn Commission's recommendations on labour legislation were submitted to the Government the number of recognition agreements between trade unions and companies has grown by leaps and bounds.

Within the first seven months of this year far more recognition agreements were reached than during the same period last year, according to the Institute for Industrial Relations

Agreements are being reached so rapidly the institute admits that it could have missed some agreements which did not appear in newspapers.

So far this year there have been 22 known agreements between unions and companies. Recognition of unions flows from the first part of the Wiehahn report. On this crucial point it reads. "Trade unions and individuals should be afforded full freedom of association, and any trade union, regardless of the composition of its membership should be eligible for registration and participation in bargaining and dispute prevention and settlement machinery"

The recognition agreement is the first and major step for a union towards full representation of its members. But in almost all the cases the unions

have had to sweat for this victory. In some cases it came only after a strike and in others after the union had proved that it had a majority at the particular company

Most unionists and union members regard the signing of a recognition agreement as a victory worth celebrating. It makes things easier for the previously harassed union organisers. It means the organiser will be able to enter the premises of the company with the full knowledge of management. However, hereafter the agreements differ. The recognition agreement paves the way for other agreements like bargaining rights on wages and working conditions, grievances, disciplinary and retrenchment procedures

In the past when a union was not recognised, workers were reluctant to identify with it. This was because workers discovered that those working and trying to recruit for a union faced dismissal or victimisation. Recognition means that their activities will now be overt and no longer covert

Management on the other hand could not bring themselves to sit down at a table with workers or their representatives and negotiate with them. To

them the fate of the black worker was in their hands since they had done him a favour by hiring him. Managers, foreman, indunas and bossboys had the right to decide when to give a worker an increment and the amount. And if the worker was arbitrarily dismissed that was it

The right of a union to be granted recognition if it has a majority has been strengthened by recent decisions of the Industrial Court. One view is that an employer should have a free right to decide whether to recognise a representative union, and should be allowed to test its strength, and the other view is that an employer has a definite obligation to recognise and negotiate with a representative union

With more and more workers perceiving the advantages of a recognition agreement there has been a rise in black membership of unions. And new unions are born almost every second day. This is because they have now been granted statutory bargaining rights

Employers have since realised that it is better to avoid a long labour dispute which affects production by recognising a union once it shows it has a majority

By PHIL MTIMKULU

New Safety Act a boon to all workers

By Carolyn Dempster,
Labour Reporter

The new Machinery and Occupational Safety Act, 1983 is unique in South African history, claims the National Occupational Safety Association (NOSA)

For the first time provision has been made for the health and safety protection of virtually every worker in the country, and in addition employers will be held responsible for introducing safety programmes or modifying existing ones

These are two of the key points highlighted by the general manager of Nosa, Mr Bunny Matthyssen, in a pamphlet designed to explain the wide-reaching changes which the Act will effect

Other major points

- The Act covers every worker in employment except those who fall under the Mines and Works Act and the Explosives Act. This means that people in commerce, the civil service, educational institutions and even domestic employees are all protected in terms of the new Act

- Employers with a workforce of 20 or more will be required to appoint safety representatives and, in the case of large businesses with more than 100 employees, a safety committee will have to be chosen from the ranks of the employees on the ratio 1:100. This is the first time in

any South African legislation that the establishment of a safety committee is a requirement

- In future, nobody may offer for sale machinery or safety equipment that does not comply with prescribed safety and performance standards

This is a major innovation as under the old Factories and Machinery, and Building Work Act of 1941, manufacturers and merchants could market and sell equipment without adhering to any standards. There was nothing the purchaser could do if he found the equipment to be unsafe

It is noted that "sale" is widely interpreted to mean importation, exhibiting, exchange, donation or leasing

- The cost of complying with the Act and providing personal protective equipment will have to be borne by the employer. The employer is also responsible for ensuring that his employees can follow the provisions of the Act in working hours

- The employer can be held responsible for the acts or omissions of employees, and similarly, a representative of the State can be held responsible and charged for any act or omission which runs contrary to the Act

All of the existing regulations under the old Factories Act are still applicable as the new regulations will be introduced on a piecemeal basis

Work situation is the key race relations crucible — Wiehahn

Jan 07/8/83 166

The deep economic division between white "aboveness" and black "underness" which was encouraged to develop over the past century is the most regrettable of all the divisions existing in South Africa, says Dr Wiehahn

Tracing the pattern of labour relations established after the first Dutch settlers landed at the Cape in 1652, he comes to the conclusion that white superiority, chauvinism and colonialism soon "Europeanised" the country, while blacks remained "African". This dichotomy intensified as time moved on

In the course of centuries whites admirably succeeded in industrialising the country. But, like the Europeans in the rest of Africa during the period of colonisation, they dismally failed to involve the blacks in the process. It was as if the whites were jealous of sharing their skills and knowledge with the blacks in South Africa.

It was a subconscious awareness that as long as the black man continued to "slumber" on in his African type of "dark ages" he would constitute no danger to the white man's economic survival in the country

Of all the many divisions existing in the country, none is so regrettable and in the long term prejudicial, if not suicidal, to whites than this attitude

History teaches that man does not learn from history, according to Dr Wiehahn. This realisation speaks strongly from the words of the Latin poet who lamented the fall of Rome, as follows "Rome would never have died had we Romans but made Romans of all the people within her walls"

The same applied to the South African labour scene until the Government, on the recommendations of the Wiehahn and Riekert Commissions, made a complete break with the old labour dispensation which categorically excluded blacks from the industrial relations system

The effect of the recommendations of both reports was to bring the country's labour sys-

The Human Sciences Research Council has brought together in one book 17 in-depth discussions on change in the different spheres of South African society. This comprehensive collection, "Change in South Africa", will soon be published by Butterworths. The following evaluation by our Pretoria Correspondent was taken from the chapter written by Dr Nic Wiehahn, chairman of the Commission of Inquiry into Labour Legislation, which originated drastic changes on the South African labour scene.

tem more in line with the basic principles of a free enterprise economic system, that is, of freedom of participation and competition in the labour system, non-discrimination and merit, and minimum State intervention on mobility, both vertical and horizontal, of workers in the system

Dr Wiehahn points out that while the different race groups were segregated socially, educationally and politically, integration in the economic sphere had been on the increase since the previous century

South Africa did not have separate economies for whites, blacks, coloureds and Asians, but a single one for all the population groups

In this single economy all people worked together — the whites still in the "superior" or skilled jobs, and the blacks mainly in the "inferior" or unskilled positions, with the other non-white workers spread somewhere in-between

It was the sweat of the mental and muscular energy of all these workers that went into the production of a bar of gold, into the manufacture of a motorcar, into the running of trains etc

The undeniable truth, according to Dr Wiehahn, was that the work situation had long ago become the most important crucible for race relations in the country

For eight hours a day, 2 000 hours a year or 90 000 hours during a 45-year career, people

of all race groups rub shoulders and share the same space — be it in a factory, plant, shop, or office — to keep the country's industrial and commercial machine going

The withdrawal of any group would force the machine to a standstill

Other factors necessitating the break with the old dispensation, according to Dr Wiehahn, were

- A drastic decline in the white birthrate which, linked to the high economic growth rate, increasing multinational development and the resultant shortage of skilled manpower, dramatically boosted the industrial migration of rural blacks to the cities where their energies were in high demand

- Black trade unions, with large numbers of newly-arrived black workers and excluded from the industrial relations system, were susceptible to outside influences and were in fact receiving increasing financial and moral support from international sources

However, those who believed that the scrapping of statutory job reservation would leave many white workers without work because they would be replaced by lower-paid black workers, were proved wrong

Instead the demand for skilled workers continued to rise and no white has so far lost his job because of an employer's preference for blacks

The changes which have taken place in industrial rela-

tions have not only been rapid and dramatic, but have also made many apprehensive of what the future may hold in this dynamic field

Based on developments up to the present, according to him, it is possible to point to the following future developments

- The industrial relations scene will certainly be used as an avenue for the channelling of political energy and aspirations of the urban and industrialised blacks. This would have happened even if the 1979 changes had not been introduced. The point is that changes in the industrial system have far outstripped reforms in other areas of the South African scene

- The process of de-racialisation will continue because of the influence of the various codes of labour practices applicable to multinational companies, the Government policy with regard to the system, the concerted efforts of management to de-racialise, and finally the progress by and advancement of blacks

- Resistance to change and racial attitudes, particularly among white workers, will harden in the short term

It is difficult for them to accept that black workers have suddenly changed into human beings with exactly the same aspirations, ideals and stakes in the economy as whites

The result would be that white trade unionism will grow and like the black trade unions, will become more sophisticated, better organised and perhaps militant on white job security and advancement

Human intellect and human laws cannot prevent the tragedy of those who will not be persuaded of the necessity for change in society

Fate has dealt us a mixed hand of cards, Dr Wiehahn says, some good and some bad

Only good sense and faith in the future of our country will teach us to play it well, because our whole future depends on our capacity to adapt ourselves to the demands of inevitable changes

NA 0 500 NA 0

Unions against new labour Bill

By STEVEN FRIEDMAN
Labour Correspondent

A DRAFT labour law, which will remove from the industrial court the power to decide whether employers can be exempted from industrial agreements setting out minimum wages and conditions, has been published by the Department of Manpower

The Bill would transfer this power to the Minister of Manpower, thus reversing an earlier decision to remove it from the Minister and give it to the court. The move has already drawn angry reaction from unions.

They say it will make it easier for employers in outlying areas to escape the terms of industrial agreements, which are negotiated at official industrial councils by registered unions and employer associations.

And indications are that employer associations may also oppose the Bill on

the grounds that it would give some companies an edge over others by enabling them to escape minimum wage agreements

But Dr Piet van der Merwe, director-general of Manpower, yesterday defended the draft Bill, saying it had been drawn up to cater for the needs of small employers who were starting out in business

He said it would be of particular advantage to black and coloured employers

Industrial agreements setting out minimum wages are often extended to cover all factories in a particular area

Employers who believe they cannot pay the wages laid down may apply to the council for exemption and, if it refuses, may appeal to the industrial court

If the Bill becomes law, they will be

able to appeal to the Minister, rather than the court, thus reversing a recent change to the law

Dr Van der Merwe said yesterday the Department did not believe the court should be burdened with a "trivial" matter like exemptions from agreements "which is not a judicial function"

It also believed that small businesses, particularly in black and coloured areas, could often not afford to pay the laid-down minimum

They could also, he said, not afford the cost of fighting the issue before the court and the Bill aimed to make it easier for them to appeal

He gave the assurance that the Minister's powers to exempt employers would be used "very carefully" and in consultation with industrial councils to ensure that employers who could pay the minimum did not benefit

LABOUR LEGISLATION

Power to the Minister

A new draft amendment to the Labour Relations Act, which proposes to take away functions granted to the Industrial Court earlier this year, has been published for comment. It is likely to provoke an angry response from unions, while many employers will be closely examining its implications.

The main effect of the proposed amendment appears to be that the power to make rulings on appeals by parties who feel aggrieved by certain industrial council decisions will be transferred from the court to Manpower Minister Fanie Botha. This is a remarkable about-face the Minister made such rulings until earlier this year, when the Act was amended to transfer this power to the court. An explanatory memorandum on that amendment stated that it was intended to "further give effect to the government's decision regarding the transfer of judicial and quasi-judicial labour decisions to the Industrial Court."

Has government decided to clip the court's wings? Some unionists have feared that this would result from pressures on government by many employers who are becoming alarmed about its increasing influence.

Sources in the Department of Manpower deny that this is the case. They say the new amendment, published in last Friday's *Government Gazette*, has been prompted by the feeling that certain powers over essentially non-legal matters which have been granted to the court should be transferred back to the Minister, who is the more appropriate person to deal with them. Further, they say they have realised that the Act, in its present form, discourages job creation and the development of the small business sector.

Quick appeals

They point to problems confronting an employer who is struggling to get his business going and who cannot afford to pay wages in line with an industrial council agreement covering him. Under the Act at present, such an employer faces the prospect of a costly court action to obtain an exemption from the agreement should the council refuse to grant him one. The department therefore believes it makes sense to provide a quicker and almost cost-free channel through which such appeals can be made.

It seems the proposed amendment has also been prompted by arguments emanating from employers in rural areas. They say they have to pay wage rates which may be appropriate for the cities — where employees face high housing, transport and

other costs — but which are unrealistically high for rural areas, and are discouraging industrial growth in these regions.

Meanwhile, department officials emphasise that appeals for exemptions from closed shop provisions in industrial council agreements must still go through the court.

The whole question of exemptions from industrial council agreements is a sensitive

ment sources say the Bill will probably go before Parliament during the first half of next year.



Manpower's Botha ... the appropriate person?

one for both unions and employers. Unions don't like exemptions being granted because these result in lower pay for their members. Employers tend to argue that exemptions can result in rival companies enjoying a competitive edge over them through the employment of cheaper labour.

Ben Nicholson, general secretary of the SA Electrical Workers Association, takes a dim view of the proposed amendment, claiming that it will reduce the credibility of industrial councils at the time when government needs to reinforce their credibility.

A spokesman for the Steel and Engineering Industries Federation of SA (Seifsa) says that the amendment is being studied closely. He says employers have legitimate fears that exemptions can cause unfair competition which could jeopardise established interests. But he emphasises that the issue is a complex one and many factors need to be taken into account.

Comments or representations on the draft Bill must be lodged with the department within the next two weeks. Depart-

166 3/18/83

GOVERNMENT safety regulations seem to be running into flak from both sides
 Recently, the Government's new Machinery and Occupational Safety Act was attacked by visiting American Mr Barry Castelman for not providing enough protection for workers
 Now the Department of Manpower has asked its new Advisory Council on safety to appoint a committee to look at aspects of draft regulations drawn up in terms of the new Act
 This follows a meeting between it and key employer groups and seems to follow complaints by the employers that some standards in the regulations were too costly and impracticable
 It remains to be seen whether this will lead to major changes
 But a key criticism of our safety laws has been that they are passed without consultation with black workers, and the new Advisory Council has not a single black worker representative
 So, while both black workers and employers might object to some safety regulations, only one side takes part in official decision-making on safety

331.762 234 22 CML

17. London, Heineman, 1980
 lopment of corporate capitalism in

330.967 62 SWAI

0969

307.76 WILS

0964

Brindley, M.
 Western Coloured Town
 urban slum Johannesburg,

0965

Wiltworth, M.J.
 Strategies for su
 culture of poverty in
 township. Grahamstown,
 Economic Research, Rho

Western, J.
 Outcast Cape Town.
 Cape Town, Human and
 Rousseau, 1981

0963

307.2 WEST

Lacey, M.
 Working for Boroko - the origins of a coercive
 Labour system in South Africa. Johannesburg, Ravan
 Press, 1981

0968

331.544 096 B INTB

Cock, J.
 Maids and Madams : a study in the politics of
 exploitation. Johannesburg, Ravan Press, 1980

0962

331.761 640 46 COCK

Greenberg, S.B.
 Race and state in capitalist development -
 South Africa in comparative perspective.
 Johannesburg, Ravan Press and Yale Univ. Press,
 1980

0967

320.968 GREB

Rweyemamu, J.F. (ed.)
 Industrialisation and income distribution in
 Africa. Dakar, Codesria, 1980

0961

338.4 INDI

Cook, G. and Opland, J. (eds)
 Madantsane : transitional city. Grahamstown,
 Institute of Social and Economic Research, Rhodes
 University, 1980

0966

307.76 MDAN

Trade Unions Slain

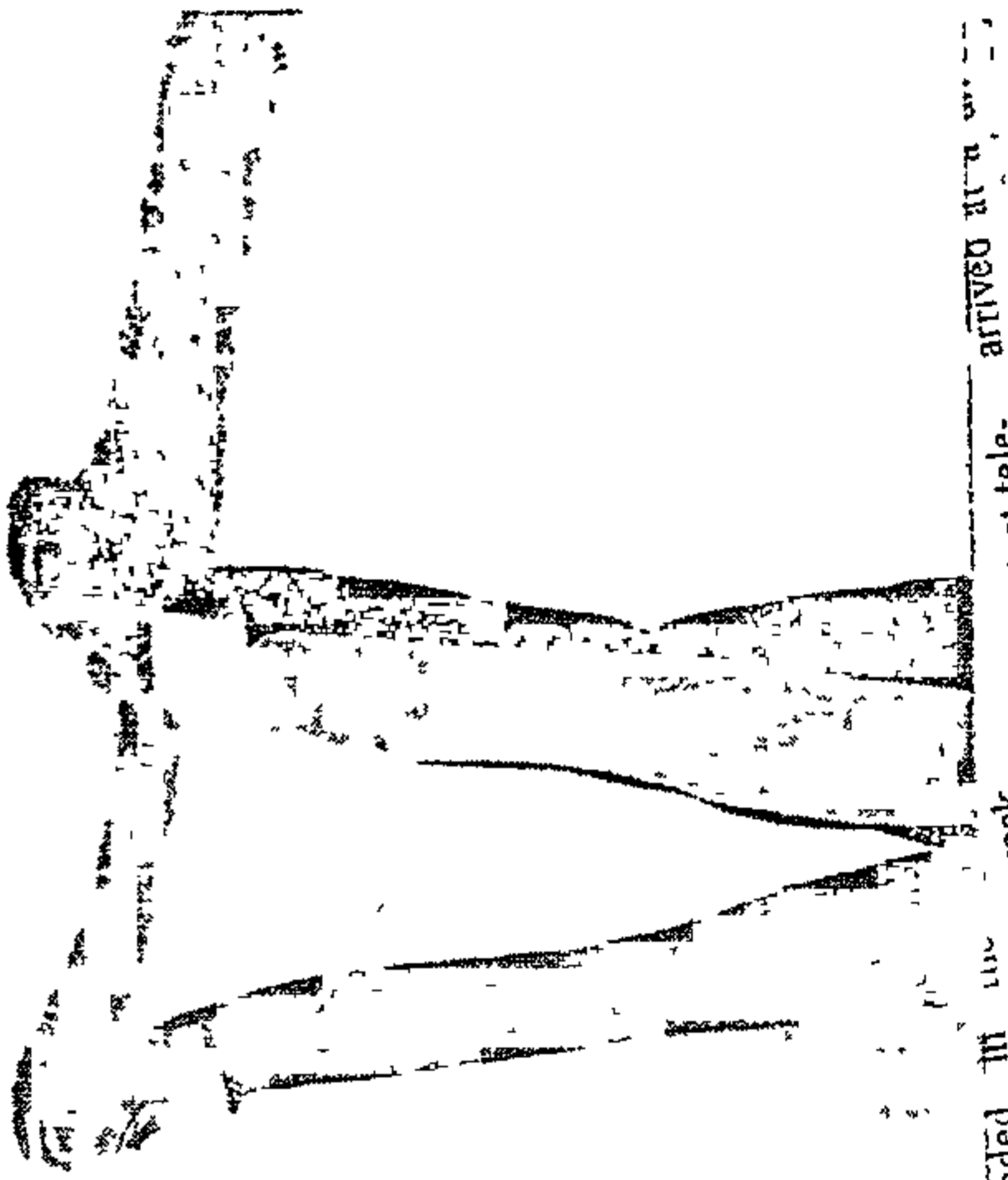
Tucsa's 'OUTLAW' CALL

21/07/83 P. Per
BLACK delegates at this week's Tucsa conference expressed shock and dismay at a conference resolution asking the Government to effectively ban all unregistered trade unions

One delegate said he could not blame those who thought Tucsa was a puppet "or a 'stooge'" of the Government

The motion, submitted by the right-wing Main Surface Officials Association, was passed with 125 votes in favour, 7 against, with four abstentions and could lead to a split from Tucsa by the 54 000 member SA Boiler-makers' Society

Society secretary Ike van der Walt described the motion as impractical and said it could lead to chaos if it was implemented



Soweto police public relations officer, Major Othaniel Paddy Mazibuko, gets to grips with the weights to show his team of wrestlers, how it's done. The team selected for the upcoming SA games was named this week. Mazibuko was once a top weight-lifter himself and still works out with the wrestlers. (See Page 15)

FEATHERS FOR THE MAJOR

Pic. EVANS MBOWENI

A spokesman for the unregistered Bank Employees Union, A M Mokoka, said white union members were able to give vent to their political frustrations in political parties, "but the black man is precluded by the powers that be"

Trade unions in the Transvaal greeted the Tucsa resolution with a mixture of scorn, anger and disbelief

Prushaw Canay of the 100 000-member Council of Unions of South Africa said Tucsa had shown itself to be

"even more conservative than the Government"

The resolution went against a basic principle of trade unionism, freedom of association, he added

Herbert Barnabas of Saawu said the resolution showed how scared Tucsa unions were of the independent black unions Tucsa had failed to organise black workers, and so was trying to outlaw those unions which were doing so effectively

Tucsa were a "group of renegades", he added

Samson Ndou of the General and Allied Workers' Union said the Government could force a revolutionary situation if it did what Tucsa was asking for.

Labour observers have meanwhile noted that the Tucsa resolution puts Tucsa on a par with the Ciskei Government, which recently banned the unregistered Saawu.

Another move which did little to enhance Tucsa's image was its refusal to speak out against the Government's constitutional proposals

when the Dr. M. D. M. stages a number of one man placard protests at various parts of the city to mark the committee's second anniversary

Dr. Coleman said among the main targets of the security police were students, especially university students, trade unionists, journalists, community workers as well as political activists

Solitary confinement was described as probably the most refined form of torture

Dr Anthony Zwi, the Wits community health registrar, said between 1981 and 1982 seven known detainees were admitted to psychiatric wards

He said, three months ago a detainee was admitted to such a ward with multiple wounds he had inflicted on himself

Dr David Webster, also of Wits said what he saw and learnt in the Ciskei chilled him

He said South Africa has a bad human rights record, but from what he saw in the Ciskei, the homeland has probably the worst record

"Nearly 90 people have been killed in Mdantsane," he said

NINE TO FIGHT NUM ACTION

DRIEFONTEIN Consolidated Limited intends opposing an application by the National Union of Mine-workers for the reinstatement of 17 workers dismissed from West Driefontein last week for refusing to work in an area they considered unsafe

The NUM gave notice of its application, in terms of the Labour Relations Act, to Driefontein on Wednesday

The Gold Fields Group said in a statement the dismissal of the workers was the culmination of a work stoppage

The work-place had been re-inspected over three days by experienced senior mine officials, Gold Fields said

Don't cast a vote — Azapo

139 166 RDM 17/10/83 X

registration should become, at most, a "neutral" process and not a means of controlling unions or deciding whether they will have official bargaining rights

But suggestions that legislation to implement this change would be introduced next Parliamentary session have been scotched by Manpower director-general Dr Piet van der Merwe.

He says there is simply not enough time between now and next session to draw up the necessary legislation

Intriguingly, though, he also says he expects there will be a need for "lengthy consultation" with some parties over planned changes

Since both emerging unions and key employer bodies have supported moves to decontrol registration, this must mean officials believe they will have to "sell" the changes to conservative unions, particularly after Tucsa's recent call for a bar on unregistered unions.

Tucsa general-secretary Mr Arthur Grobbelaar insists its stand was not an attempt to thwart the NMC report. He says Tucsa simply called for all unions to be subject to the same system and that this did not mean it should be the present controlled system

But this is not the interpretation placed on it by most labour-watchers — or, apparently, by the authorities. The all-white Confederation of Labour may well also balk at attempts to decontrol registration

It would still be a major surprise if these bodies, whose shop-floor influence is declining, were allowed to thwart changes which have such wide support

X 000

Vertical text on the left margin, likely bleed-through from the reverse side of the page.

BLACK LOCAL GOVERNMENT

A crucial test looms

Now that the white referendum is over, PM P W Botha faces a second crucial test of his reform programme

Black Local Authorities Act elections for the creation of independent local authorities to replace community councils are a key element in government's attempt to accommodate the political aspirations of urban blacks. The elections will be staged in 29 black urban residential areas from November 26 to December 2. Of these, 24 will be for fully autonomous town councils and the remainder for partially autonomous village councils. They will be the crucible for determining whether urban blacks will indeed be satisfied with local government autonomy when their right to "first-tier" political expression is limited to the homelands.

But while the Department of Co-operation and Development (CAD) prepares feverishly for the elections, question-marks still hang over the all-important issue of how these local authorities will be financed.

One thing is clear. The findings of the Permanent Finance Liaison Committee, appointed to investigate additional sources of revenue for local authorities after the release of the Browne Committee's report on local government, will not be available before the elections. This is bound to be seen by many as a serious omission.

Until now community council finances have been inextricably linked to those of the administration boards governing them. The Black Community Development Bill, which is due to come before Parliament next year, makes provision for the administration boards to become development boards. These will take over the administration boards' manpower functions. They will also play an important role in the development of new black residential areas as well as exercising control over those community councils which do not have enough resources to become independent.

In terms of the Black Local Authorities Act, the new local authorities will assume the administration boards' responsibilities in the townships. Both new bodies, however, face the problem of finding sufficient sources of revenue.

According to John Hitge, CAD's director of local government, administration boards' main sources of revenue at present are the labour levies paid by employers, surpluses from liquor and sorghum beer sales, interest on fixed deposits, township site rentals and service charges, trading site rentals, and administration fees charged to community councils.

Since their 1982-83 financial year,



CAD's Hitge .. confident, but questions remain unanswered

administration boards have also been paid a sum from the Treasury for "remaining services." This is intended to compensate them for services rendered on behalf of central government. Such services include operations like running labour bureaus, welfare and health services and aid centres. In the 1982-83 year, this sum was R15m. This year R45m will be made available.

What are the revenue prospects for the new local authorities? The intended sale of 350 000 units at discount prices in the Great House Sale which started in June means that they will not inherit income from rents on these houses. The houses are presently owned by either the administration boards or the Department of Community Development. But the authorities will in all likelihood acquire the right to the immovable property owned by the boards.

Revenue will be obtained from the transfer of movable assets from the community councils and administration boards (although they will also have to absorb the councils' and boards' liabilities). It will also be obtained from household service charges, as well as rentals from unsold houses, hostels and trading sites.

Income from the sale of liquor will not be made available. This is the result of government's decision that township bottle stores presently owned by the administration boards must be sold off to private black entrepreneurs.

It is not clear what will happen to in-

come generated from sorghum beer. For the meantime these moneys will go to the new authorities. But the entire sorghum beer issue is being investigated. Hitge says the investigation, which focuses on the question of rationalisation and privatisation of this industry, is in an advanced stage. To the FM it seems certain that it will be transferred to private enterprise.

Hitge tells the FM that with few exceptions the 29 new authorities will be able to meet their running expenses. This does not include capital projects, which will have to be funded by loans. Inevitably, the authorities will be forced to raise service charges to keep pace with inflation. This is a potential political flashpoint.

Hitge says any shortfalls in the authorities' running expenses will be made up from the sorghum beer surpluses. He also says the net profit from sorghum beer amounts to some R30m a year. Some observers doubt that this sum will be enough to cover shortfalls. Hitge, however, is confident that it will.

As the time for the elections fast approaches, there appear to be too many financial questions which have not been answered adequately. CAD is asking the black electorate to make a leap of faith without providing hard facts to back claims that the local authorities have a rosy future.

LABOUR LAW

Status quo queries

A recent decision of the Industrial Court raises intriguing questions about its issuing of *status quo* orders to aggrieved parties.

In terms of Section 43 of the Labour Relations Act, the court is empowered to provide temporary relief to applicants who claim they have been unfairly dismissed — pending a more thorough examination of the issue. The effect is that they will be temporarily reinstated, prior to a possible industrial council or conciliation board settlement, or a later court hearing on the dismissal.

Successful applications by unions for such orders during the past year have had the salutary effect of compelling many employers to adhere to equitable disciplinary, dismissal and grievance procedures. In addition, the fact that Section 43 provides such a potent remedy has meant that a growing number of unions have viewed legal action as a more attractive option than strike action in efforts to combat unfair dismissals.

P.T.O.

24/3

166 4/11/83

(145) (146) FM 4/11/83
Now some employers have begun to complain that it is far too easy to obtain a *status quo* order

The recent case of *Wahl vs AECI* may have worrying implications for both unions and employers. In April this year a fight broke out between two AECI employees — Kenneth Graham Wahl and a black worker. The company held an inquiry into the incident under its disciplinary procedure and decided to dismiss them both. When Wahl's later appeal under the procedure was unsuccessful, he applied to the Minister of Manpower for a statutory conciliation board and to the Industrial Court for temporary reinstatement.

The court decided in favour of Wahl. It said that suspension for a month, and not dismissal, was the appropriate penalty for his misconduct. It therefore ordered that his reinstatement should come into effect a month after his dismissal. The dispute which arose from his dismissal was later settled at a conciliation board.

Challenge

An important implication for employers appears to be that even when management has closely adhered to established disciplinary procedure, its decision to dismiss an employee can be successfully challenged through the use of Section 43. In addition, although the court was faced only with an application for temporary relief, it showed an apparent willingness to actually adjudicate on the dispute by pronouncing what it believed to be the appropriate sanction for an employee's misconduct.

Unions cannot be too happy with the case, either. The reason for this lies in the fact that the Act makes a clear distinction between different kinds of disputes which are eligible for Section 43 relief. Section 43(1)(a) refers to the actual or proposed dismissal or suspension of an employee, Section 43(1)(b) to the actual or proposed alteration of terms and conditions of employment, and section 43(1)(c) to the commission of an alleged unfair labour practice.

Some successful cases for reinstatement of an unfairly dismissed employee have in the past been based on Section 43(1)(c). And there has been one very good reason why an aggrieved party should plead that an unfair labour practice has been involved. This is because, should the dispute not be resolved by an industrial council or a conciliation board after temporary reinstatement has been granted, it can be referred back to the court for final adjudication. This is not the case with Section 43(1)(a) and (b) disputes. They cannot be referred to the court after being dealt with by an industrial council or conciliation board, unless the disputing parties specifically agree to this.

Some labour lawyers have, therefore, been concerned by the court's decision that Wahl's case was based not on the commission of an unfair labour practice — but that it was a Section 43(1)(a) application.

They fear this may set a precedent which will dictate that many future applications for the reinstatement of unfairly dismissed employees must be dealt with under Section 43(1)(a). A consequence will be that even though such employees gain temporary reinstatement through a *status quo* order, they may find it extremely difficult to gain access to the court for final adjudication of the dispute.

Meanwhile, the court has in recent weeks issued a number of important judgments. These include

□ A rejection of a Section 43 application by the Media Workers' Association of SA (Mwasa) for the reinstatement of more than 100 workers dismissed by *The Star* newspaper last year. The court's written judgment — which may provide useful guidelines about employers' rights to dismiss striking workers *en masse* — has still to be released. Mwasa has meanwhile rejected the newspaper's offer of an *ex gratia* severance payment of about R101 000 to 195 dismissed employees. *The Star* had no legal obligation to make such a payment, but decided to offer it in view of the long service of many of the employees, and the financial hardship they have suffered.

□ The court's rejection of a request by Barlows Manufacturing that it allow the Appeal Court to challenge its power to reinstate workers if they have been dismissed with proper notice. The court said the company's contention that the court cannot reinstate these workers had "no reasonable prospect" of being upheld by the Appeal Court.

BAN JOBS APARTHEID, SAYS NIC WIEHANN

on facts, race and colour should be outlawed and made criminally punishable, he said

He conceded that he will be the last person to expect the legislature to do the impossible as he was fully aware of this matter in the mining industry and of the political vulnerability of the government

"But I do not think that at the same stage, in the near future the legislature will have to make any further initiative to bring that industry into line with the rest where a statutory job reservation no longer exist"

THE SOUTH African Government should outlaw racial discrimination in the labour market and make it criminally punishable Professor Nic Wiehahn said this week

Prof Wiehahn, who is attached to the Unisa school of business leadership and is chairman of the Wiehahn Commis-

CP Reporter

sion, said that it was "embarrassing to admit" to the world community that despite the progress made in the labour field here, job reservation still existed in some circles

He said job reservations have been exposed in the mining industry

and it was up to employers and trade unions to negotiate that it be phased out in terms of his commission's recommendation

He said parliament will have to act soon to bring this industry into line with others in which racial discrimination no longer existed

Discrimination based

6/11/83

166
City Press

Industrial Councils

say no to 'change'

By STEVEN FRIEDMAN
Labour Correspondent

DELEGATES from the country's 104 industrial councils — which are cornerstones of the official bargaining system — met in Pretoria yesterday for a first-ever summit with the Department of Manpower and rejected the idea that councils were in need of major changes to survive.

But they agreed that a "water of professionalism" from unions and employers' councils could dispel criticisms of them by emerging unions and others, and also endorsed the idea that councils should publicise their work more.

At the meeting some delegates called for a law forcing registered unions to register with the Government, but there was no consensus on this.

And, in the wake of the meeting the Government will go ahead with a new Bill giving the Minister of Manpower the right to exempt small employers and those in rural areas from the minimum wages laid down in council agreements.

These points emerged yesterday at a Press conference after the summit, given by the Director General of Manpower, Dr Puel van der Merwe, and employer and union spokesmen.

The meeting was the first of its kind called by the Department and brought together about 270 delegates from councils, which are composed of employer and union spokesmen, and appointed officials.

Emerging unions opposed to councils were not invited to attend.

Dr Van der Merwe described the summit as "successful" and Dr Anna Scheepers of TUCSA said there was overwhelming support for councils at the meeting — despite criticisms from emerging unions — and that delegates believed no major changes were necessary.

Mr Rod Ironside, president of the Federated Chamber of Industries, said the councils played an important role in educating emerging unions on bargaining. Dr Van der Merwe said the

ery and that measures were being considered to ensure that council agreements were published — and thus made law — more speedily.

The meeting also discussed direct bargaining between employers and unions outside the councils and felt that more research and discussion was needed on this. But no legislation was planned.

On the measure to make it easier for employers to gain exemptions from minimum wages, Dr Scheepers said delegates were willing to meet the needs of employers in rural areas but felt this should be done by exemption rather than by excluding them from councils.

The fact that some councils do not fully representative was also discussed and changes to the criteria for representativeness could be made.

The couple with high treason in

By GEOFFREY ALLEN

GARL NIEHAUS and Jansie Lourens emerged as a sort of lion and mouse couple from the evidence given during their trial.

They came from similar backgrounds.

- Both were born to Afrikaner families with strong beliefs in the sanctity of Afrikanerdom.

- Both had strong religious upbringing to which they still adhered.

- Both went to the Rand Afrikaans University.

- Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

- They "shacked up" together (lived as man and wife) in open defiance of their parents' explicit wishes.

- For the next four years they shared a common future — in jail for high treason.

There the similarities appeared to end.

Research continues on education needs

By HELENE ZAMPETAKIS

THE Human Sciences Research Council education research programme, which led to the De Lange Commission, is now moving into its second phase of advising the Government on issues which

What a companion for top showjumper Anneli Wacherpfenning to share the time win of the World Cup showjumping championship than her horse. T carried her to victory. The Federation Equestre Internationale has just conferred the award to her next month in Amsterdam. She last won in 198

and from the evidence of their parents and the observations of the judge, they differed markedly in character.

JANSIE LOURENS

Throughout the trial the petite woman sat diffidently listening to the cascade of brown curls some times laughing frequently whispering to her lover.

Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

ganda. When she was being held in detention, her main concern was for a friend who was ill and not her own situation.

Her father asked her to break off the relationship with Niehaus because he had been told that Niehaus had a strong, violent personality.

He believed his daughter had once tried to broach the subject of the ANC with him.

"As I think back on it now, I think she once tried to talk to me about it."

A close friend, Lionel Marcott, said that Jansie was an excellent artist and poet who resented Carl Niehaus's strong influence over her and was increasingly concerned at his growing political involvement.

CARL NIEHAUS

Niehaus plays the brat role in the grand manner.

Slightly dishevelled, with fashionably long hair, a full beard and gold-rimmed glasses, he strikes hands, in

ENTERTAINMENT

The magic was

THE best news of Wednesday evening was that 'No-body's Perfect', that awful attempt at English we've seen through American eyes, was over. It won't be missed and we sincerely hope that it doesn't

TV REVIEW

JOHN MICHELÉ

were too high. True I had hoped for a dazzling show and was a little

councils — which are cornerstones of the official bargaining system — met in Pretoria yesterday for a first-ever "summit" with the Department of Manpower and rejected the idea that councils were in need of major changes to survive.

But they agreed that "real" professionalism from unions and employers on councils could dispel criticisms of them by emerging unions and others, and also endorsed the idea that councils should publicise their work more.

At the meeting, some delegates called for a law forcing unregistered unions to register with the Government, but there was no consensus on this.

And in the wake of the meeting, the Government will go ahead with a new Bill giving the Minister of Manpower the right to exempt small employers and those in rural areas from the minimum wages laid down in council agreements.

These points emerged yesterday at a Press conference after the summit, given by the Director-General of Manpower, Dr P. van der Merwe, and employer and union spokesmen.

The meeting was the first of its kind called by the department and brought together about 270 delegates from councils, which are composed of employer and union spokesmen, and appointed officials.

Emerging unions opposed to councils were not invited to attend.

Dr Van der Merwe described the summit as "successful" and Dr Anna Scheepers of TUCSA said there was overwhelming support for councils at the meeting — despite criticisms from emerging unions — and that delegates believed no major changes were necessary.

Mr Rod Ironside, president of the Federated Chamber of Industries, said the councils played an important role in educating emerging unions on bargaining.

Dr Van der Merwe's recommendations, but that certain problems had been identified.

These included the councils' image, which could be countered by publicising their role — including providing social security for workers.

The issue of union registration had also been seen as a problem and would be the subject of legislation in 1985.

Some delegates called for compulsory registration but Mr Sam van Coller, of SEIFSA, said there was also support for attempts to include unregistered unions — who cannot join councils — in aspects of council activities.

Dr Van der Merwe added that greater training was necessary for those involved in councils to make them more effective.

He said there was a need for councils to streamline their dispute settling mechanism.

The meeting also discussed direct bargaining between employers and unions outside the councils and felt that more research and discussion was needed on this. But no legislation was planned.

On the measure to make it easier for employers to gain exemptions from minimum wages, Dr Scheepers said delegates were willing to meet the needs of employers in rural areas but felt this should be done by exemption rather than by excluding them from councils.

The fact that some councils were not fully representative was also discussed and changes to the criteria for representative status could be made.

The couple with high tre

By GEOFFREY ALLEN

GARL NIEHAUS and Jansie Lourens emerged as a sort of lion and mouse couple from the evidence given during their trial.

They came from similar backgrounds.

Both were born to Afrikaner families with strong beliefs in the sanctity of Afrikanedom.

Both had strong religious upbringings to which they still adhere.

Both went to the Rand Afrikaans University.

Both rebelled at university against their strict upbringing and became friends with a largely English speaking crowd of students.

They "shacked up" together (lived as man and wife) in open defiance of their parents' explicit wishes.

For the next four years they share a common future — in jail for high treason.

There the similarities appear.

and from the evidence of their parents and lawyers, and from the deductions and observations of the judge, they differed markedly in character.

JANSIE LOURENS

Throughout the trial the petite Jansie listened to the evidence, some under shaking, some under a cascade of brown curls, some laughing frequently, whispering to her lover.

When her friends pressed her to testify she spent a childhood holiday in the wake of her father's profession up an academic spiral that took him to Cape Town, Grahamstown, the United States and eventually back to Johannesburg.

Her daughter, Lourens said, is a "bigger, impractical, difficult to get to know".

She "have" trusts people easily and is "a little" of political propaganda.

gandal, detention, friend who situation

the cause he had

He tried to in with him

"As I she once close

that and get strong

ing political

CARL NIEHAUS

the grand, Shig

ably rimmed

Research continues on education needs

By HELENE ZAMPETAKIS

THE Human Sciences Research Council education research programme, which led to the De Lange Commission, is now moving into its second phase of advising the Government on issues which were unresolved in its first report.

The committee, still chaired by Prof P J de Lange, met yesterday in Pretoria to discuss the Government's White Paper on education.

Dr S W H Engelbrecht, co-ordinator of the committee, said yesterday he was "quite satisfied" with the Government's new educational dispensation.

He believed that the major recommendations — and especially the educational recommendations — of the De Lange Commission had been implemented, or had at least been referred to the Research Committee on Educa-

tion Structures, or alternatively to the South African Council for Education. In the meantime, the committee was investigating topics which it identified as problems in the first phase, but had been unable to resolve as yet.

These included non-formal education, rural education and the implementation of research, for example, computer education, training, teaching and the training of artisans.

Separate groups would probe the upgrading of teaching qualification, the curriculum at black primary schools and third language education.

New members of the committee include Dr Robin Lee of the Urban Foundation, Mr J Terreblanche of the Transvaal Education Department and Mr M Moratch of the Soweto Teachers Training College.

ENTERTAIN

The m

THE best news on a Friday evening was that body's Perfecta — that attempt at English through American eyes.

It won't be missed and sincerely hope that it come back.

The second debut of W. Strydom's "Wilna" — first of a three-part series featuring local and the sort of budget would keep you and me clover for a year, was down.

The talent, alas, does not match its pretensions. This follow-up to "Die L. is" can be notched yet another little disaster.

I do not think my disappointment stems from fact that my exper

Full weekend tele

Railways cuts show there's plenty of fat

By GERALD REILLY

Pretoria Bureau

plied to the public service, the savings to the taxpayer would be enormous. Can

(166)
ROM 25/11/83

Curbs likely for industrial court

By STEVEN FRIEDMAN
Labour Correspondent

LEGISLATION to curb the powers of the Government's Industrial Court — which has played a major role in labour relations this year — is likely to be introduced

At a Press conference yesterday after a key summit of all the country's 104 industrial councils in Pretoria, the Director-General of Manpower, Dr Piet van der Merwe, said a law on the court's powers could be introduced in 1985

It is likely to strictly define an "unfair labour practice" — the concept trade unions have used to win unprecedented bargaining rights from employers in the court

This follows mounting employer concern over the role of the court. Employers have argued that, because the definition of an "unfair practice" is very wide, the

court's power to make law by setting precedents is too great

Dr Van der Merwe said yesterday that, at the meeting, industrial councils expressed concern at the wide definition of an "unfair practice" in the law

He said councils felt that this "created problems" for them "and could make them irrelevant"

According to Dr Van der Merwe, delegates to the meeting believed the problem could be met by strictly defining an "unfair practice"

In a statement, he said delegates believed that "greater clarity was desired on what the conciliatory function of the court should be"

Dr Anna Scheepers, immediate past president of Tucsa, said worker representatives at the meeting agreed that this change was necessary

● See Page 2

LABOUR LAW

Defining good faith

(166) (166) (166)
EM 25/11/83

Since the Industrial Court placed an apparent onus on employers to bargain in "good faith" with a representative union, question-marks have hung over defining exactly what is meant by this concept

Now, in a significant dispute, which could be headed for the court, the issue has been brought up by an employer against a trade union Howick company BTR Sarmcol has declared a dispute with the Metal and Allied Workers' Union (Mawu) The company charges that the union has committed an unfair labour practice for failing to bargain in good faith with it

Sarmcol has requested the Minister of Manpower to appoint a conciliation board to settle the dispute If the board does not succeed in doing so within 30 days, the matter may go before the court The outcome of such a case will have major implications for SA industry

At issue is a dispute over severance pay for a number of retrenched workers which arose after Sarmcol agreed to negotiate a recognition agreement with Mawu The union has demanded that the retrenched workers receive two weeks' severance pay for each year worked It wants to negotiate the pay issue at the same time as the recognition agreement

The company argues that the issues are different in nature and that Mawu is being inflexible for refusing to separate them This refusal, it says, is what constitutes the lack of good faith

Mawu denies these claims It says it has already reduced its demands for severance pay from four to two weeks, and indicated that it will fight the case if it gets to the Industrial Court

2) ROOM 28/11/83

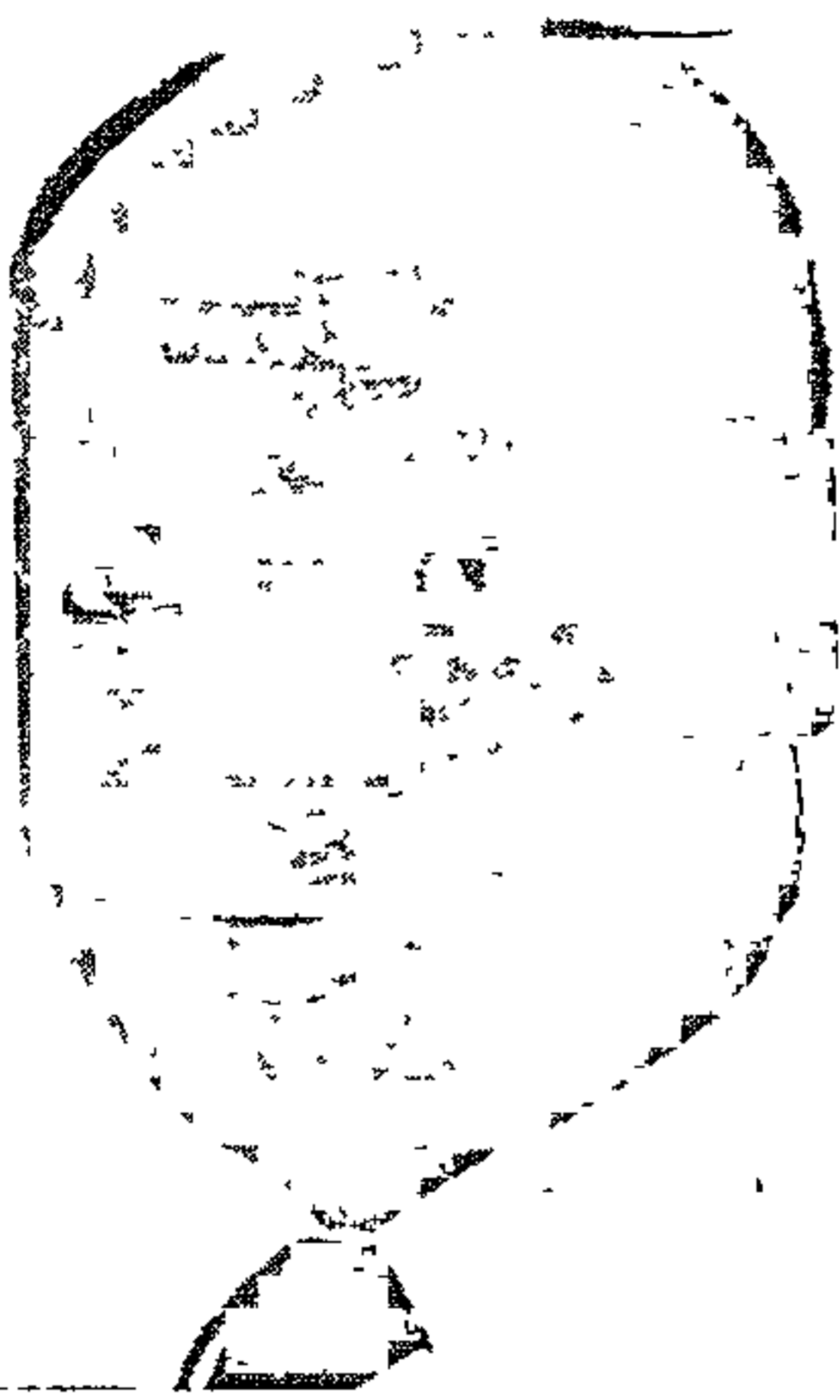
shake off trade shackles

trading partner of
e's determination to
on its wealthy neigh-
both in Africa and
ports from Harare

CC partners as well as nine
sub-Saharan African coun-

Harare economists ex-
concern at the declining
between Zimbabwe and South
One said the pattern of trade
the two countries was
evening out largely due to
such as a depressed consum-
market in Zimbabwe and last
devaluation of the dollar,
favoured Zimbabwean ex-

the downward trend could
later although he doubted
ever drop below 10% of
total foreign trade.



report says "If the advent of a more
accommodating system for that
country is imminent, the resource
costs of effecting what will then be
only a temporary diversion of trade
would be out of all proportion to any
effect it is likely to have precipitat-
ing events

"If, on the other hand, no early
change in the South African politi-
cal system can be expected, trade
diversion may turn out to be a
largely ineffectual but nonetheless
painfully self-damaging gesture"

A spokesman for the South Afri-
can Trade Mission in Harare said
economic stability in Zimbabwe
was in South Africa's interest and
he expected no major change in
trade between the two countries
"for at least 10 years"

Although trade with Zimbabwe
represented only a fraction of South
Africa's foreign trade, trade and
transport links through Zimbabwe
were "very important in a regional
context"

Aucor (Pty) Ltd
74 Slemmer
New Dornburg
Johannesburg 2099

If you own the cranes, are busy on a contract, or right away you keep your equipment completed - then Aucor can provide you with the advanced Aucor - leading industrial to quickly overcome your

R

the minimum wages in council agree-
ments
TUMMOIL hit Oltantsstonten, outside
Pretoria, in the past week
This centres on a dispute at
Cullinan Industrial Porcelain, where
some workers belong to Cusa's Build-
ing, Construction and Allied Workers
Union
Workers struck more than three
weeks ago and were fired. The plant
closed temporarily, then reopened last
week. Strikers were selectively re-
hired
There have been demonstrations
and a march by fired workers, police
have raided their hostel and arrested
over 100 on pass offences and manage-
ment claims fired strikers have as-
saulted CIP workers
Workers at three other BCAWU
plants in the area see the dispute as a
test and have written to CIP demand-
ing the reinstatement of the fired
men. They have also asked their own
managements to intervene
At one company, Johnson Tile, a
brief strike last week seems partially
related to the CIP dispute
CIP sees all this as a "militant"
campaign to gain recognition for
BCAWU at the plant where, it says, it
has only 25% membership
BCAWU insists the company is re-
fusing to negotiate with its workers
Whatever the truth, the incidents
show a cohesive BCAWU presence in
the area

But the fact that employers could
face 90-day orders to reinstate work-
ers in similar situations could act as a
powerful incentive to negotiate on
safety
166
28/11/83
The employer lobby calling for the
industrial court's wings to be clipped
seems to have won the day. A new
law is likely in 1985 to define
an "unfair labour practice" more
strictly
This follows last week's industrial
council summit at which it was ar-
gued that the wideness with which the
concept is defined in law gives the
court excessive powers which inter-
fere with the role of councils
Emerging unions have won major
gains from the court and the call for
change is a reaction to this. Estab-
lished unions back the employer view
There is nothing wrong with defin-
ing an "unfair practice" more strictly
It is preferable for the law to spell
out exactly what is "unfair", while
still leaving the court some leeway
But much will depend on the new
law's wording
If it "rolls back" union gains in the
court - particularly the right to bar-
gain where they represent a majority -
the measure will appear to be

5/11/83 FM 2/12/83

ago barely exceeds Z\$25m. Industrialists at the Harare meeting hammered away at the need to improve the investment climate, with economist John Robertson delivering an outspoken paper in which he called for substantial deregulation of the economy and a return to reliance on market forces

Unfortunately, no government ministers were there to hear the private sector economists — and representatives of the Central Bank and the Ministry of Finance — calling for export-led growth Too much

of the discussion was bogged down over how Zimbabwe might attract foreign investment It was difficult to avoid the conclusion that Zimbabwean industry is naively unrealistic in its expectations that the US cavalry, in the guise of foreign investment, will arrive in the nick of time to pull its chestnuts out of the fire

The good news, though, was the dialogue between private and public sectors — the second such session in only a week, reflecting what business hopes is a more prag-

matic attitude within the government But on the economic front itself, there was little immediate optimism

As Harare sweltered in the November sun, farmers' faces grew longer at the late start to the season with little rain having fallen in the main crop areas University economist Tony Hawkins predicted an upturn in the second half of 1984 "provided there are good rains and the fragile and pedestrian world economic recovery remains on course" — two very big provisos

in my opinion

166

services, and that your employer must perceive that excess of worth over cost.

Any subscriber to that ethic would conclude that the employer is obviously the appropriate judge of the question whether your services should be dispensed with or retained The legislature ought to impose some form of statutory constraint on the employer's freedom of action in regard to the arbitrary termination of the services of his employees However, the function of the court should be to decide not whether an employer acted correctly in coming to the decision to dismiss an employee, but whether that decision is one that could reasonably have been reached If the court concludes that it could, the court should uphold the employer's decision, even if the court, had it been the employer, would or might have come to a different conclusion.

This jurisdiction of the court would be tantamount to the jurisdiction of the Supreme Court to review the proceedings of an administrative or quasi-judicial body The Supreme Court will not interfere in the result of the proceedings under review unless it comes to the conclusion that the tribunal whose proceedings are under review misapplied or failed to apply its mind to the matter or acted in bad faith. Further, the Supreme Court will not interfere with the findings of fact of the tribunal whose proceedings are under review unless they are clearly wrong, or were made in bad faith

What has happened to date, however, is that the Industrial Court has placed itself in the position of the employer and treated reinstatement applications as if the court were the person or body in the employer's hierarchy responsible for discipline, and vested with the right of dismissing workers In one recent case the court found that the employer ought, instead of dismissing a worker, to have exacted a penalty that it would have been unlawful for the employer to exact

— suspension for a month On the basis of this finding, the court ordered the reinstatement of the worker in employment with effect from a date one month after his dismissal Clearly, the court intended that the suspension should have been without pay, since its order was designed to have that effect

This should not be construed as implied criticism of the court, but rather of the legislature for conferring on it such an impractically wide and all-embracing jurisdiction Suspension, whether with or without pay, requires the employee to keep his service available to the employer, and therefore if the suspension is without pay it is against public morals and unlawful It is nothing more nor less than slavery

Retrenchment

As far as I am aware, the court has not yet laid down retrenchment guidelines But if the court continues to adopt the attitude that employment in private enterprise ought to be regarded as a sheltered occupation, it may be expected to interfere in both the decision to retrench and the criteria used in the selection of employees for retrenchment

If my worst fears are realised, the court will favour full employment in favour of retrenchment, and thereby concern itself in the making of management decisions it is hardly qualified to make, such as building inventory which cannot be sold, working short time (with the resultant underutilisation of often expensive equipment), or the like

As regards the selection of employees for retrenchment, the trade unionists argue hotly against using the "opportunity" of retrenchment to apply discipline, thereby confusing the application of discipline with the assessment of merit If they had their way, retrenchment would take place on a strictly "last in, first out" basis (subject to some qualification in favour of a migrant worker who, by

virtue of length of service, is about to obtain his "Rikhoto rights") What has happened to the concept of reward for meritorious and dedicated service?

The assessment of the relative worth of an employee as opposed to his cost is one that only the employer, being at the workplace, can undertake The validity of this assessment as a criterion for selection of workers for retrenchment is likely to be tested before the court soon If the court negates the validity of that criterion, it will be equivalent to the acceptance of the, to me, undesirable, ethic that mediocrity rules in the workplace If the court accepts the validity of that criterion, it must surely concede that it is one that can be best be measured and applied by the employer

There is a crying need for the urgent amendment of the ruling labour relations dispensation in order to restore to employers the jurisdiction that they have traditionally enjoyed over the behaviour, composition and discipline of their workforces, while at the same time accepting some degree of control over arbitrary action The need for such amendment appears to have been recognised at the recent conference of industrial councils Its urgency was not, a department spokesman said the amendments could not be effected before 1985 Industrialists, who are hamstrung under the present dispensation, cannot afford that long a delay

In my opinion, the necessary amendments are

- A more precise definition of the concept "unfair labour practice," and
- The amendment of sections 43 and 46(9) of the Labour Relations Act, to limit the jurisdiction of the court to that of a court of review rather than a court of appeal From this would flow an acceptance of the employer's version of facts in dispute, unless sound reasons exist to doubt the employer's veracity, in which event evidence ought to be led and cross-examination allowed

166 (15) 243 (152) 137
Redressing the balance

Employers who have become nervous about the rising number of union victories at the Industrial Court will be comforted by the outcome of the court battle between the Media Workers' Association of SA (Mwasa) and *The Star* newspaper

In March this year, 209 black workers were dismissed by *The Star* for taking part in a strike. They had refused to work unless a fellow union member — Oupa Msimang — was reinstated, pending an appeal against his dismissal for allegedly threatening the life of a supervisor. After failing to persuade the newspaper's management to re-employ the strikers, the union sought their reinstatement through a court application under Section 43 of the Labour Relations Act.

This court action was significant because it raised important questions about the application of disciplinary and grievance procedures — and the ability of an employer to dismiss striking workers *en masse*. In October, the court announced that it had rejected the union's reinstatement application. But it has only been during the past week that copies of the full, written judgment have finally become available. The reasoning will soothe many employers who have begun to argue that they are hamstrung by unions' increasingly effective use of Section 43 *status quo* orders.

The union had claimed that management had precipitated a work stoppage by the irregular manner in which it dismissed

Msimang. But the court has determined that the workers did, indeed, take part in a strike, as defined by the Labour Relations Act. Further, according to some observers, it seems to have endorsed the traditional view that the existence of an alleged unfair labour practice is not necessarily a protection against dismissal of employees who take part in a strike.

An important issue at stake in this case was the legal status of the newspaper's disciplinary policy and procedure and its grievance procedure. Long before the dispute, the newspaper's management had submitted copies of these to Mwasa, but got no response beyond an indication that they had been referred to the union's lawyers. The court found that this therefore made the formal implementation of the policy and the procedures by management "a unilateral and subsequently futile operation".

However, the court found that there had, indeed, been informal adherence to the procedures and that this had in no way prejudiced Msimang. On the contrary, the court says, in dealing with offences committed by Msimang, management "revealed unsurpassed leniency towards him, rendering his dismissal totally justified".

An important feature of the judgment is the court's forthright criticism of the union's behaviour. It refers to Mwasa members' insistence that Msimang — "a potentially dangerous character" — should be reinstated as a condition for their return to work. Says the judgment: "The court finds it difficult to perceive why the applicants (the Mwasa members) under the prevailing circumstances did not reveal a compromising approach in an effort to restore the *status quo*". Later in the judgment, the court refers to their "defiant and unreasonable attitude".

It also says that if they truly believed that Msimang had been unfairly dismissed, it was "incomprehensible" why his case was not referred to the court in the manner prescribed by the Labour Relations Act.



The Star ... management's 'unsurpassed leniency'

R5 000 settlement for migrant workers

Labour Reporter

THIRTEEN migrant workers, who were dismissed from an Epping factory before their contracts had expired, have received more than R5 000 from their former employer in an out-of-court settlement

The workers, all members of the General Workers' Union, were dismissed from Epping Cold Storage in February last year, after a recognition dispute with the company

A GWU spokesman said the workers sued the company for unlawful dismissal

"The workers planned

to take the management to court on November 29, but just before the court case they agreed to pay the workers R5 347 in damages as well as their legal costs," the spokesman said

A dispute flared up at the factory when the management would not agree to recognise the workers' elected committee, the spokesman said

"Management announced that they were not going to renew the contracts of a number of workers who were members of the union. Other workers, still in the middle of their contracts, were dismissed," the spokesman said

SS

166
Dwasa

head

on lack
of legal
cover
19/12/83

Post Reporter

THE general secretary of the Domestic Workers and Sales Ladies Association (Dwasa), Mrs Pat Maqina, said that although the Department of Manpower promised to look into the situation of domestic workers and farm labourers last year, nothing had been heard yet.

Summing up issues facing Dwasa this year, Mrs Maqina said both categories of workers remained unprotected by labour laws governing conditions of service, although in August last year the department had given them a "glimmer of hope" that improvements would be made.

Next year Dwasa and its sister organisations in East London, Durban and Cape Town intended holding a big conference for all domestics throughout the country to focus on their plight, she said.

She especially appealed to housewives and employers to "do unto others what you would have done unto you" when dealing with their employees during this time of goodwill.

She said during 1983 Dwasa had also focused on the safety or security of domestic workers during hours of employment.

She alleged that many domestic workers had been raped, and even murdered, this year while in their employees' care, while many others had been arrested.

"The office here has also dealt with many cases of assault by the housewives or their husbands," she said.

For this reason Dwasa has scheduled an important seminar for early next year on the problem of "maid bashing and theft".

Details of this seminar would be released later, she said.

Handwritten notes and scribbles on the left side of the page, including a circled '1' and various lines and initials.

74-1

LABOUR LEGISLATION

1984

JANUARY — DEC.

BLACK TAXATION Employers' role

The Johannesburg Chamber of Commerce has highlighted the crucial role that employers will play in communicating the benefits of SA's new uniform tax system to black workers

The new system comes into effect on March 1, and will result in people of all races being taxed on the same basis. The Black Taxation Act of 1969, under which blacks were taxed, will be repealed

220 FM 6/1/84

The Johannesburg Chamber of Commerce has released guidelines aimed at helping its members to deal with the new system. It points out that although the changes that will come about as a result of the new tax structure are beyond the control of management, "it is management and not the Revenue authorities who will have to face the consequences of any adverse reaction"

The chamber believes the greatest potential for unfavourable reaction from black employees lies in uncertainty and a lack of understanding of the harmonised structure.

It emphasises that all people directly involved in industrial relations or personnel administration should be fully briefed on all aspects of the new structure to ensure that they can deal with queries

The chamber suggests that employees should be briefed on the new structure in small groups of not more than 20 people

Beyond helping black employees to complete IRP2 forms, employers should "stress the positive aspects of the new tax structure" They can, for example, point out that tax relief will be granted to married men who have children

ROUX VAN DER MERWE

Focus on employers' rights

Roux van der Merwe holds the Volkswagen Chair of Industrial Relations at the University of Port Elizabeth. This article by him is one in a series on the Industrial Court and labour law being published by the FM

Maas van den Berg (*Current Affairs* December 2) raises among other matters concerning the Industrial Court, the broad question of "management prerogative," and arising from it the implications for employee assessment. I should like to comment on these two issues because, regrettably, so many employers will routinely and uncritically murmur their approval of his sentiments

The average SA manager, given our rather conservative business climate, sees little reason to question those prerogatives which he has taken as given for so many years. When they also are representative of the norms of the larger society in which he moves, and are plainly convenient if not indispensable to his traditional style of management, then arguments for their retention must appear attractive

Unfortunately what is personally convenient and desirable is not always in the best long-term interests of the rapidly changing society in which we live. It is thus particularly important that issues in labour relations are viewed against the criterion of constructive accommodation to the changes we have already seen, and those which are still to come

To begin with, it is necessary to point out that once free trade unions are permitted to operate in a "free enterprise" context, employers can no longer lay any unilateral claim to previously accepted prerogatives. In fact labour relations could be succinctly defined as "continuous negotiation about re-adjustment and accommodation of the boundaries of control in the work situation"

Depending on the power of the union,

some or all of management's rights to unilateral decision-making become negotiable and unions will use their power to erode prerogatives wherever they can. Management in turn should use its not inconsiderable power to counter this challenge. What it should not do is react reflexively to seek an alliance with the State to help to enforce the employer's interests, for therein lie the seeds of rejection and overthrow of the system itself. We should all be grateful that the unions are using the courts to the extent that they do, a belief in the legitimacy of the system is a precondition for it to work and if a court's decisions are not always pro-employer, this should not be a cause to ring alarm-bells. By all means let us debate and question the Industrial Court, but in terms of legal drafting and procedure, rather than pious calls about management prerogatives

The origins of these "prerogatives" — namely that authority arises out of the rights of ownership of property — can of course be questioned. The employer is not an island, he operates as part of a complex and inter-dependent society

Where his actions may have a negative effect on that society, such as the unfair dismissal of an employee who loses everything which he may have worked for over many years or the retrenchment of a large number of workers who may then become a burden on social security — it is appropriate that his "prerogative" be questioned. Not to the extent that a court may "favour full employment in favour of retrenchment" (as Van den Berg puts it) but at least in calling for agreed procedures for dismissal and redundancy and putting a price on the "property rights" of an employee to his job. Once again, this price is a matter for negotiation

Secondly, Van den Berg talks of the "traditional SA work ethic" which to

him implies that worth in the job must exceed the cost to the employer of retaining an employee. Worth, or merit in an employee, is notoriously difficult to measure objectively. Accordingly, where there may be subjectivity or discretion and where the assessments cannot be independently verified, the possibility for injustice and victimisation must be allowed

It is important to note that it is not the principle of assessment that is at issue, but the method. Indeed, no employer should easily bargain away his right to discriminate on merit, for it is an important element in motivation. Rather, the argument with the union should centre on methods and criteria of assessment. Length of service is one such criterion, which is at least objective, while deficient in many other respects. In Germany the method and criteria are agreed with the Works Council, if these are followed, and seen to be followed, the employer is within his rights

How many employers can honestly say that their appraisal methods are validated, and that their ratings are reliable? If not, there is no "prerogative" to make decisions which are favourable to the employer. In such a situation, the role of the State should be no more than to facilitate negotiated procedures, and the role of the court no more than to ask "Have the agreed procedures been fairly followed?"

Perhaps the court's ruling in the Mwasa case will have reassured Van den Berg. For all employers, the message of 1983 should be clear. Negotiate effectively and in good faith with representative unions. Lay down clear procedures, stick to them, and see that the union does too. In these circumstances, it is unlikely that any court of law as presently constituted, can or will make inroads into your rights

12/11/84
Student shop assistant *roy*
seeks to sit and loses job

~~166~~ Mail Reporter ~~166~~

A LAW student from Maritzburg, working in an exclusive Sandton clothes boutique, was fired this week because she asked to be allowed to sit down while customers were not in the shop

The Basic Conditions of Employment Act of 1983 has omitted rest periods for women shop assistants, but the student would have been acting within her rights according to the old Shops and Offices Act of 1964. This Act made provision for women

shop assistants to sit down at reasonable times

According to the deputy director general of the Department of Manpower, Dr Chris Scheepers, the clause was omitted "because it is a matter of sex discrimination and applied specifically to women shop assistants"

"We like to treat all sexes on an equal footing these days," he said

Shop assistants cannot legally demand more than a lunch hour after "not more than five hours"

166 (166) (166)

29/1/84

LABOUR LEGISLATION

Changes on the way

Four Acts which fall under the jurisdiction of the Department of Manpower will be amended during the coming session of Parliament

The amendments to the Wage, Workmen's Compensation and Basic Conditions of Employment Acts are relatively minor ones, according to department sources. But there is no mistaking the widespread interest among employers and unions over a proposed amendment to the Labour Relations Act.

The main effect of this will be to transfer from the Industrial Court to the Minister of Manpower the power to make rulings on appeals by parties who are aggrieved by certain industrial council decisions. The Minister had this power until early last year when the Act was amended to grant authority to the court to rule on appeals against council decisions.

When the amendment was published in draft form in August last year, it provoked an angry response from some unions — and a certain degree of anxiety from employers. Both groups expressed reservations about the effect that the amendment would have in making it easier for some companies to obtain exemptions from council agreements — especially wage agreements.

Unions do not like such exemptions being granted because these result in lower pay for some of their members. Employers often argue that exemptions result in rival companies enjoying a competitive edge over them through the employment of cheap labour.

The department's view is that the Minister is the most appropriate person to deal with appeals over essentially non-legal matters. It also believes that the Act, in its present form, is discouraging job creation and the development of the small business sector.

Officials point to problems confronting an employer who is struggling to get his business on a sound footing and who cannot afford to pay wages in line with an industrial council agreement covering him. At the moment, such an employer faces the prospect of costly legal action through the Industrial Court to gain an exemption from the agreement should the council refuse to grant him one. The department feels it makes sense to provide a speedy and almost cost-free channel through which such appeals can be made.

It also appears that the proposed amendment has been prompted by complaints from employers in rural areas. They argue that they have to pay wage rates which may be appropriate for the cities — where employees face high housing, transport and other costs — but which are unrealistically high for rural areas, and are discouraging industrial growth in these regions.

UNION MAY ASK FOR PROTECTION

THE failure of this week's first legal national strike of black workers will lead to increasing pressure on the Government to provide legislation protecting strikers from dismissal, prominent trade unionists have warned.

The strike ended after less than a week on Friday when the employers threatened to dismiss all those on strike.

Trade unionists said the stand by AECI against almost 9 000 of its workers, "lays open the issue of whether it's worth going through the lengthy, time-and-

money consuming process of having a legal strike"

The only protection workers who strike legally have is that they cannot be arrested. But a prominent trade

Labour activists worry about strikes in local areas

Labour activists will increasingly press for some reform to the Act to prevent mass dismissals, or such threats of striking workers, or will agitate for a time period to be stipulated.

The last week has seen intense union activity around the country and a wave of strikes, dismissals and retrenchments.

Impala Platinum refineries started the week by dismissing their entire black workforce of 1 400 which had gone out in sympathy with seven co-workers who were fired after refusing to work after allegedly being assaulted and called "kaffirs" by white supervisors.

Three hundred workers went on strike at the Wayne Rubber Company in Isipingo demanding a 12 percent pay hike. By Wednesday agreement was reached and the workers returned.

In Pretoria, about 1 500 workers downed tools at the BMW factory in support of pay demands. Negotiations will begin on Monday.

Up to 800 workers went on strike at the Rietspruit colliery near Springs in support of a worker fired after a pre-arranged work stoppage to mourn two fellow workers who died in an accident at the mine the previous week.

186
Somerset
23/1/84

CAA-Times 23/1/84

116
~~117~~

Draft bill for workers' safety

From BARRY STREEK

A NEW draft law to promote the safety of workers in factories has been published by the Department of Health

The Occupational Medicine Bill will impose a duty on employers not to expose workers to prescribed agents for a longer period, or in a concentration higher, than prescribed

Employers will also have to ensure that ergonomic factors do not harm the health of workers

Ergonomic factors are defined in the draft bill as any workplace or any machine, appliance, equipment or article used by, or to which an employee is exposed in the performance of his duties which may cause a psychosomatic illness or which does not fit the anatomical and biological characteristics of man

The new bill will operate in conjunction with the Machinery and Occupational Safety Act which was passed by Parliament last year and which falls under the Department of Manpower

Both measures follow a long dispute between the two departments as to which one would be responsible for ensuring the safety of workers

Stronger action to ensure the protection of workers in South Africa was called for by the Erasmus Commission of Inquiry into Occupational Health which was published in 1976

Comment on the Occupational Medicine Bill has to be submitted by the end of February

Examinations

It provides for free medical examinations, at the cost of employers, where workers are exposed to prescribed agents or ergonomic factors and no employee may work under these conditions without this

examination

It will prohibit the victimization of any worker, either through dismissal or reduction of pay, if the employee provides any information to the Minister or department, or if he is suspected of doing so, about matters falling within the ambit of the law

Employers will also not be able to make any deductions from salaries if they are required to take steps to protect the safety of workers

The bill provides for inspectors who will be able to enter any premises without previous notice and they will be able to question any person

The inspectors will also be able to seize any certificate, report, book, document or sample

They will have the power to stop workers continuing working with an agent, order the medical examination of workers or rectify medical conditions

Provision

The bill also makes provision for the appointment of an Advisory Committee for Occupational Medicine

In addition it will apply to the state and employees of the state

Fines of R2 000, or imprisonment of 12 months, or both, can be imposed for contraventions of the new bill

New provisions in Bill on unregistered unions

12/84

PK&S 11/84

1/66

Labour Reporter

RECOGNITION agreements between trade unions and employer bodies outside official industrial relations machinery would have to be submitted to the Department of Manpower in terms of the Labour Relations Amendment Bill

The Bill, published today, says that unless certain information is submitted to the industrial registrar by unregistered labour organisations, recognition agreements with employers would not be upheld in a court of law

All labour organisations would have to submit to the industrial registrar their constitutions, names of officials and office-bearers and membership returns

An explanatory memorandum says it has become common for trade unions to enter into recognition agreements with employers outside the official collective bargaining machinery

These domestic agreements laid down bargaining and grievance procedures, disciplinary

measures and the deduction of trade union subscriptions

"Wages and conditions of employment above the minimum prescribed in statutory wage measures are also negotiated with individual employers and the agreements arrived at are enforceable in common law, irrespective of whether the employers and employees are subject to an industrial council or conciliation board agreement"

Membership

Unregistered unions would also have to maintain membership registers, keep accounts audited by a public accountant, prepare balance sheets once a year and submit statements of income and expenditure once a year to union members

They would also have to submit membership returns to the industrial registrar annually and keep "specified documents", such as financial statements and minutes of meetings for three years

The head office of the organisation would have to be in South Africa

Cusa challenges Bophuthatswana

By Carolyn Dempster,
Labour Reporter
The Council of Unions of
South Africa (Cusa), representing the combined membership of 11 unions, has challenged the Bophuthatswana Government over its new labour legislation

In a statement released yesterday, Cusa says it will not become the victim of a "Bophuthatswana regime and its misguided labour advisers"

The Bophuthatswana Industrial Conciliation Bill, which is expected to take effect next month,

bars "foreign" unions from operating in the homeland

It also prevents shop stewards or union representatives from being members of foreign unions and specifies that unions organising in Bophuthatswana have to have their base in the homeland

Cusa members daily go to work in South Africa and return to Bophuthatswana for the night

In a stronger warning to employers, and in particular to multinationals, Cusa states it is prepared

to fight the banning of "foreign" unions in every local and international forum

"We call upon employers to state immediately what their views on the matter are"

Cusa also expresses its support for members of the National Union of Mineworkers employed by Union Carbide in Bophuthatswana

About 300 workers at Union Carbide went on a three-day strike last week over wage grievances coupled with the introduction of the new legislation

2/2/84

3/aw

166

148

147

140

Labour Bill shocks

166
2/2/64 ROOM

unionists

Labour Correspondent

BLACK unionists fear a surprise new labour Bill tabled yesterday may be a first step towards State control over recognition agreements between employers and unions.

And a senior employer source said he believed the Labour Relations Amendment Bill was "a move against unregistered unions".

The Department of Manpower tabled the Bill without consulting employers, unions or its own National Manpower Commission (NMC), on which senior employer and union spokesmen sit and which advises the Government on labour matters.

But the director-general of manpower, Dr Piet van der Merwe, yesterday said there had been no time for consultation.

In terms of the Bill, all recognition agreements will have to be submitted to the department, and will have no force in law unless the relevant unions have submitted certain information to the department.

Dr Van der Merwe said this would ensure that unions showed their "bona fides".

The department only wanted to see the agreements, so it could get "a full statistical picture of the bargaining situation in South Africa".

The Bill was initiated by the department, but "certain representations" had been received.

Key emerging unions said they all furnished information to the department under existing legislation.

But the principle behind the new Bill was "unacceptable".

The general secretary of the Council of Unions of SA, Mr P Camay, said "This could be the first step towards control over agreements. Next they will want to dictate what they contain".

Unions were happy to reveal information, but agreements were "private arrangements which have nothing to do with the State".

Mercury 2/2/54

(256) (173) (166)

Govt won't ease labour restrictions

Parliamentary Correspondent

RECOMMENDATIONS made in a White Paper that 'the restrictions on the geographic mobility of labour be removed as far as possible' have essentially been rejected by the Government.

The recommendations are made in a White Paper on A Strategy for the Creation of Employment Opportunities which was released yesterday.

The White Paper adds that the regional development policy should be applied in such a way as to contribute as much as possible in order to create employment opportunities.

While the Government has accepted these proposals, it has done so only in as far as 'they are reconcilable with other national objectives'.

The Government agrees with the report in seeing 'the largest possible role for the private sector and the elimination, where possible, of measures that inhibit the satisfactory operation of a market-orientated system'.

In this regard, the Government also emphasises that 'all public institutions, while not disregarding other national objectives, must keep in mind the importance of employment creation when performing their functions'.

The Government accepts that market forces should be given free play as far as possible and also affirms its intention 'to eliminate measures which directly or indirectly distort the relative prices of production factors'.

It also restates its commitment to the promotion of small business development and accepts that steps be taken 'to identify and remove measures and practices that unnecessarily restrict the development of the formal and informal small business sectors'.

February 3 1984

7

Dismay over 'hasty' amendment to labour law

By Carolyn Dempster,
Labour Relations Amend-
ment Bill 1984, tabled before
Parliament this week, has been
described as a "hasty and half-
baked" piece of legislation
which could herald State con-
trol of recognition agreements
between unions and employers
In terms of the proposed leg-
islation, agreements reached
on the relationship between
employer and union will have
to be submitted to the Depart-
ment of Manpower to be rati-
fied

If it is found the agreement
does not comply with the speci-
fications of the Labour Rela-
tions Act, it will carry no
weight in either the Industrial
Court or the civil courts. The
parties concerned will also be
guilty of an offence.

Mr Piroshaw Camay, gener-
al secretary of the Council of
Unions of South Africa, said the
clause basically defeated the
principle of voluntarism advo-
cated in the Wiehahn Report.
"Once recognition agree-
ments are opened to scrutiny,
the next step will be to control
their contents. This is totally
unacceptable to us," he said.

MONITOR AGREEMENTS

"Depending upon how it is
implemented, the legislation
could have negative implica-
tions. It is going to be extreme-
ly difficult for the State to
monitor agreements and it is
likely some format will be pro-
vided. Naturally we would re-
sist this."

The relevant provision of the
Bill was described as "innocu-
ous in itself" by a prominent
labour lawyer.

He said the idea of giving
statutory recognition to agree-
ments was a good one, but it
depended on how the legisla-
tion was implemented.
"If it is for statistical pur-
poses or added to a pool of in-
formation benignly used, that
is fine," he said.

The Bill also obliges unregis-
tered federations to comply
with certain basic provisions of
the Labour Relations Act for
the first time. If the Bill be-
comes law, unregistered unions
will have to have their head of-
fices in the Republic of South
Africa.
They will also have to sub-
mit a copy of their constitu-
tions, membership registers, fi-
nancial accounts and balance
sheets to the Department of
Manpower.

LABOUR LAW

(100)
FM 3/2/84

Tightening all controls

The Labour Relations Amendment Bill, tabled in Parliament this week, seems designed to tighten government controls over the trade union movement. However, labour lawyers and academics are as yet undecided about the exact implications.

Initial comments indicate that the intention behind the Bill is to enable the Department of Manpower to keep a far closer eye on union activity than has been possible in the recent past. This is sure to be interpreted by some unions, especially the unregistered ones, as an attempt to whip them into line. As such it has the potential to spark vigorous objections and perhaps even labour unrest.

The most contentious elements of the Bill are those concerning private agreements about wages and working conditions signed between unions and employers outside the ambit of industrial councils or conciliation boards. In essence, it states that if unions or employer organisations do not comply with certain conditions specified in the Labour Relations Act, the agreements will not be enforceable by law in any court, including the Industrial Court.

Furthermore, if the parties to such an agreement do not comply with the provisions, they will be committing a criminal act. The provisions include

- Supplying the Industrial Registrar with a copy of their constitution, their head office address and the names of office bearers and officials;
- The maintenance of a membership register;
- Submitting membership returns annual-

ly to the Industrial Registrar;

- The keeping of proper books of account which must be audited annually;
- Making statements of income and expenditure available to members at a meeting to be held at least once annually;
- Such documents be retained for at least three years, and
- That the head office of a union or employers' organisation must be situated in SA.

The Bill adds a further condition that a copy of any private agreements must be submitted to the Department of Manpower. Again it seems that if unions or employer organisations fail to do this, any agreements they sign will not be legally enforceable in any court and they will be guilty of an offence.

"The idea is to get all unions to operate within the system created by government," a legal source told the *FM*. "Many unions, mostly those among the emerging union groupings, are not prepared to do so. Some have been operating outside the system and at the same time making use of institutions like the Industrial Court when it has suited their purposes. The Bill seems to be aimed at ending that kind of duality."

Other features of the Bill are

- Appeals for exemptions from industrial council agreements will be transferred from the Industrial Court to the Minister of Manpower. This affects mainly employers in "deconcentration" areas and small businessmen who cannot afford to pay the legally prescribed minimums, and
- The Minister of Manpower or the presi-

dent of the Industrial Court may appoint extra members to the court to fulfil specific purposes.

The Bill does not propose any controls over union activity or collective bargaining. If passed in its present form, however, it will ensure that the Department of Manpower knows at all times what is going on between employers and unions.

It may also be designed to ensure that emerging unions who obtain funds from overseas sources, as some are believed to do, reveal their sources or revenue in their audited accounts.

Opposition mounts to labour bill

By RIAAN DE VILLIERS
Labour Reporter

OPPOSITION is mounting among independent trade unions to a new labour bill which will require unions to submit copies of all plant-level recognition agreements with employers to the Department of Manpower

Several leading unionists this week expressed fears that the measure could be the start of an attempt by the State to extend its control over such agreements, which fall outside the official collective bargaining machinery

In terms of the Labour Relations Amendment Bill tabled in Parliament this week, recognition agreements will also be unenforceable in the courts if the unions concerned fail to supply the department with certain information

Mr Dave Lewis, general secretary of the General Workers' Union, said the GWU viewed the submission of agree-



Apple Times 4/2/84 Labour 166

ments with "grave suspicion"

"We can only see it as an ill-conceived attempt by the State to reassert its role in collective bargaining, and an attempt at further interference in internal trade union affairs," he said

Mr Piroshaw Camay, secretary of the Council of Unions of South Africa (Cusa), described the moves as a "veiled attempt at control" over trade unions which defeated the principle of voluntarism advocated in the Wiehahn Report

"If they want the agreements just for their

files it would be a waste of time and energy.

"However, the government may next say what should go into the agreements and draw up the formats as well"

Mr Jan Theron, secretary of the Food and Canning Workers' Union, said yesterday "We suspect this may be the thin edge of the wedge. There is no reason why the State should have this information"

Mr Joe Foster, general secretary of the Federation of South African Trade Unions (Fosatu), said earlier this week that the bill confirmed suspicions that the new

labour deal was aimed at "controlling the labour movement rather than bringing about reform"

Asked to explain the reasons for the move, Dr P J van der Merwe, Director-General of Manpower, said this week that it was aimed at obtaining a "broader picture of the total collective bargaining process in the country"

Also, such agreements often came into question when either employers or trade unions applied for official conciliation machinery

He denied that the State was extending its influence over labour relations and said the move was aimed "merely at obtaining more complete information"

Commenting on the penalty which will apply to unions which fail to submit information about their organizations, Dr Van Der Merwe said the measure was aimed at ensuring that parties to such agreements "prove their bona fides"

Stop this farce, Cusa tells Bop

THE POWERFUL trade union federation Cusa (Council of Unions of South Africa) has launched a stinging attack on Bophuthatswana's Manpower Minister Rowan Cronje following the ban on SA-based trade unions in the homeland.

The Cusa attack comes in the wake of letters sent to a number of trade unions operating

By ZB MOLEFE

in the homeland — among them SAAWU, CCAWUSA and NUM — warning them to stay out of the homeland

Cusa, which has hundreds of members in the homeland from its member unions which include the National Union of Mneworkers and the United African Motor and Allied Workers' Union, said it will not "become the victim of the Bophuthatswana regime and its misguided advances"

The Cusa statement also warned the giant multinational Union Carbide, which owns a number of mines in the homeland — including Ucar, which is refusing to grant NUM recognition — that it was "prepared to raise the issue at every local and international forum"

Cusa also alleged that the Bophuthatswana government had come to a deal with the white mine-workers of the Mine-work's Union, and warned that this would sow the seeds of discord and suffering among workers

It also slammed Mr Cronje for his "pious and sanctimonious utterances" in supporting the homeland ban.

be opposed whenever and wherever we encounter it"

On Monday members of CCAWUSA held a meeting to protest against the new Bophuthatswana labour legislation preventing any "foreign" unions organising in the homeland

The protest meeting, which lasted four hours, was held at Metro Cash and Carry's head office in Ormonde to express their dissatisfaction with the decision.

"For some time now we have been expecting the so-called government of Bophuthatswana to take this action," said Cusa

"Many of our members daily cross the road to work in so-called Bophuthatswana Cusa has constantly maintained that this charade will

Rowan Cronje's famous last words...

BOP Manpower Minister Rowan Cronje, a former member of Ian Smith's Rhodesian Front Cabinet, has apparently changed his tune about trade unions

The homeland's recent ban on SA-based trade unions is in glaring contrast with Mr Cronje's utterances at a conference of the Institute of Personnel Management last year.

He said at the time. "Many people regard trade unions as a monster. I believe that a trade union is an essential and a most important part in the process of industrial stability and sound relationships"

In grand fashion he continued "In the field of industrial relations the obvious objective ultimately is industrial peace and harmony. However, if 'peace' means to an employer a humble, docile labour force, peace could never be a possibility"

Mr Cronje said that Bop's new industrial relations legislation would "actively encourage and assist with the establishment and training of these unions"

Trade unionists might be wondering if he rather meant "assisting in the neutralising and taming" of these unions.

ROM
7/2/84
166

Bill offers more to injured workers

By STEVEN FRIEDMAN
Labour Correspondent

BENEFITS for injured or disabled workers under the Workmen's Compensation Act are set to rise — and higher-paid workers who have been excluded up to now are to be covered by the Act — in terms of a Bill tabled in Parliament.

Another key aspect of the Bill is that it allows unregistered trade unions who submit certain information to the Department of Manpower to represent injured workmen who claim benefits in terms of the Act.

These unions will also be able to make representations to two new appeals committees set up by the Bill. These committees would replace the present system whereby the Government's Workmen's Compensation Commissioner hears appeals against his own decisions with two assessors.

The Director-General of Manpower, Dr Piet van der Merwe, said yesterday the Bill, the Workmen's Compensation Amendment Bill, was the first step towards "modernising" the Act.

"There are still aspects of the Act which require modernising and we are looking at these," he added. He confirmed that the inclusion of unregistered unions meant the Government was granting rights to these unions which only registered unions had up to now — as long as they report to the department on their membership, finances and constitutions.

Until now, workers earning over R12 000 a year have not been covered by workmen's compensation. The new Bill raises this "ceiling" to R18 000.

It also allows this "ceiling" to be raised further by proclamation, rather than by changing the Act. A wide range of benefits will also be increased, if the Bill becomes law, including a 15% rise in pensions paid to disabled workmen.

The Bill also sets up an objections committee to which aggrieved unions, workers or employers may appeal against decisions of the commissioner.

This committee will have three members appointed by the Minister of Manpower, one of whom will represent employers and another workers.

The committee can recommend to the commissioner that he change his decision, but he will not be forced to do so. If he does not do so or if the objections committee does not uphold the objection, the aggrieved worker or employer can appeal to a new revision board, which will be presided over by a member of the Industrial Court.

(166) ROM 8/2/84

Professional musicians are looking for a better deal in '84

AFTER years of disorganisation and "discrimination", professional musicians in South Africa are hoping for a better deal

For the first time they are entitled under law to certain basic working conditions, instead of being classed as "migrant workers"

The ray of hope is the Basic Conditions of Employment Act, which came into force last year and, of course, protects workers generally. Even musicians

"There has been a deal of victimisation, mainly in theatre", says Harold Herbert, honorary president of the Transvaal Musicians' Union. "Even now some employers, mainly hotels and restaurants, spurn us under the new Act"

This is the root of the problem for professional musicians, whose bread-and-butter engagements are often in hotels and catering/entertainment establishments

"The important clauses are therefore those on victimisation, annual leave and sick leave", says Mr Herbert, who is himself a musician and agent

"Until now we've had no leave entitlement at all. They regarded us as casually employed"

"Yet about 90% of our members are professional, depending on music for a livelihood. The rest are not full time, having other jobs"

By the nature of their work, many musicians play on Saturdays and public holidays, but the position of weekend workers is still not clear

What is clear is that musicians are now entitled to 14 days' leave a year or *pro rata* for shorter employment, at 1½ days a month. The Act is also specific on public holidays

It is an ironic commentary on priorities, incidentally, that sales assistants, travellers, demonstrator-salesmen, property salesmen, insurance agents and security guards are guaranteed 21 days' consecutive annual leave. "Any other employees" (which must include musicians) get only 14 days

"Anyway, we seldom get musicians being employed for a year," says Mr Herbert

MUSIC

J RALPH DRAPER

"Our people do small shows on contract, and it's here that the question of proper notice becomes vital"

Sick leave is another source of relief for musicians, who claim they have been completely uncovered in this vital area. They are thus now entitled to similar redress as are freelance actors, whose new status was reported in *Funfinder* on January 20

Other things covered by the new Act (but whose application to musicians is a "grey area" until test cases have been settled) include hiring and firing, conditions of employment, payment records, meal breaks and overtime

Most vital of all to union musicians is the clause prohibiting victimisation, which has long been a bone of contention

"There has been quite a lot, mainly in theatre and TV

productions. Not by the SABC or theatre managements, but by musical directors. These are responsible for making up an ensemble and some tend to go on engaging the same people

"Yet we have about 600 musicians on our books, including some 300 who are fully paid up. Our membership in the last few months has increased enormously — we are getting about 15 new applications a month. And, I may say, we are also going multiracial"

TMU has a directory, with members listed under their instrumental specialities. Unfortunately this is rather out of date, what with changing phone numbers and addresses, and Mr Herbert says it won't be possible to revise and republish it this year

He added, though "Now we have gone national we are going to re-compile the list. Remember, we don't only cater for musicians but for associated professions such as cabaret artists, sound men, choristers and chorus masters"

"Gone national" refers to

developments since the disbandment of the South African Musicians' Association, with the Transvaal Musicians' Union now moving to fill the gap countrywide

Hopefully, a truly national body will be useful in the union's primary concern, reducing unemployment

"There is a certain amount of unemployment, which is why we fight overseas importations like mad," says Mr Herbert. "Of course, if certain things cannot be done by local musicians we do not object to importing"

"But we find that when locals are deprived of work by the use of musicians from overseas they turn away from music and take other jobs or at least a day job"

"Remember, a professional musician has to practise all his life if he is to match the standard of those brought from abroad as in the recent Lliberace show at Sun City"

"I'm not talking of pop groups, of course, but of the atrical TV session recording and orchestral players. They just have to keep at it — and they deserve a decent living"

'Spanish'

FM 10/2/84

165 225

PHYSICAL PLANNING ACT

Maintaining job destruction

Despite government's professed intention to repeal Section 3 of the Physical Planning Act (PPA), it is still being enforced. Enforcement seems less stringent than in the past — with applications for additional labour being granted more freely — but thousands of other applications have been turned down.

The Act is a nasty piece of work. It came into force on January 19 1968, and since then Section 3 has probably wreaked as much havoc with peoples' lives and the labour supply as the influx control laws. Despite government's acceptance of the Riekert Commission's recommendation made five years ago that it should be scrapped, the provision is still on the statute book.

The section limits the number of blacks that employers in various "controlled" urban areas can hire without government's permission. In general, it has meant that if the ratio of black workers to white exceeds 2,5 1, an application for a permit has to be lodged with a committee specially appointed to weigh up the merits of each case. Controlled areas include the PWV region, Bloemfontein and Sasolburg in the OFS, and large parts of the western Cape.

From government's point of view the rationale behind Section 3 is simple. It is to force the decentralisation of industry by making life difficult for urban employers and to buttress the influx control laws. Underlying it is a misguided attempt to bring jobs to people in rural areas and homelands in the hope of stemming the flow to the cities.

Until April 1982, when the most recent decentralisation package was introduced, with far more attractive incentives than before, decentralisation was hardly a success. Naturally enough, Section 3 became a much-hated piece of legislation among both employers and workers. Over the years hundreds of thousands of blacks have been denied jobs because of it. Much potential for wealth-creation was destroyed at the same time.

More than one employer has had to move out of an urban area simply to get sufficient workers to run his enterprise. For their part, trade unions objected strongly to the Act because of the low wages paid in many decentralised areas.

Government figures released in 1976 show that the number of potential black employees affected by the refusal of labour applications since the Act came into force totalled 92 645. In November 1981 the FM reported that in the years between then and 1977 government appeared to have relaxed its attitude towards granting exemptions

from Section 3. The number of blacks reported to be affected by it had dropped to around 5 000 a year.

The latest statistics, obtained from the Department of Industries and Commerce, show that in the five years between January 1979 and December last year, 28 402 applications involving black employees were refused nationwide in terms of Section 3. There is no indication of the number of workers involved.

During the same period a far greater number (155 699) of applications was granted. These figures do reveal a slackening of the fervour with which Section 3 was originally applied, and the department says there were no prosecutions for contravention of Section 3 during that time. But seven prosecutions are currently pending. They are apparently related to technical infringements of the Act rather than to defiance of the black/white labour ratio requirement.

Nonetheless, it remains true that more than 28 000 applications, with an unknown numerical effect on employment, have been turned down in the last five years in terms of an Act government said it was going to abolish.

Government's acceptance of the principle that Section 3 should go was, however, qualified. Ways and means of generating sufficient finance in the cities to recover the cost of infrastructural and other government services (which include transport and housing subsidies) had to be found before Section 3 could be repealed, it was stated.

The relationship between Section 3 and local government finance does not make very much sense. The quest for additional sources of revenue for local authorities has, for a number of years, been the task of the Permanent Finance Liaison Committee (formerly called the Croeser Working Group), under Gerhard Croeser, chief of public finance in the Department of Finance. Finding ways of fulfilling the pre-conditions for scrapping Section 3 is part of its job.

Recommendations from the committee have been submitted to government. It is probable that Croeser has recommended that more taxes need to be generated at the local level to pay for local infrastructure and services. This is not simply because of the need to scrap Section 3 of the PPA but, in the main, to finance black local authorities. This will obviously mean increased costs for all city dwellers.

Government's response to the Croeser recommendations is still awaited. But the underlying message is clear. Section 3 is going to be replaced with other measures

which will "encourage" decentralisation — possibly by pricing certain enterprises out of the cities through selective levies.

Even more worrying was the intention expressed in the draft Orderly Movement and Settlement of Black Persons Bill, now before a Parliamentary Select Committee, to impose heavy fines on employers who hire black workers who are not legally qualified to be in urban areas. If that Bill becomes law in anything like its original form, government will not need Section 3 of the PPA.

But it could be that in the current climate of reform, the Orderly Movement Bill will be allowed to float away in the wind. In which case, it makes even less sense to keep Section 3 on the books. Five years after the Riekert Commission recommended its repeal, it is surely time for the provision to become a dead letter.

S. Times X
166
12/2/84
**Clearer
code on
labour
sought**

Political Correspondent

A FIGHTER definition of unfair labour practice — an issue presently at the centre of a fierce industrial relations debate — has been recommended to the Government by the National Manpower Commission.

The proposal is contained in a report handed by the top industrial relations watchdog to the Government last year. It will be released soon.

Some unions and employer groups have clashed on the issue of unfair labour practices (ULP) with the Industrial Court at the centre of the row.

Originally the Wiehahn Commission of Inquiry into labour recommended the Industrial Court be allowed to build up its own concept of ULP on the basis of decided cases. Consequently the ULP definition was deliberately worded as broadly as possible in subsequent legislation.

But employer dissatisfaction with the interpretations which the industrial court has delivered — they argue they were too liberal — has stepped up pressure on the Government to define ULP more clearly.

Powerful lobby

The Government is also concerned that it will take too long to establish a workable ULP definition to meet immediate requirements and reconcile management and worker interests.

Commission sources said this week the report had examined all aspects of the functioning and role of the Industrial Court and had taken into account the powerful lobby in favour of letting the Industrial Court define the term ULP.

The report — it expresses the "desirability" of a defined ULP — is likely to be published soon for comment.

An acceptable definition will virtually provide a charter of worker/management rights.

Critical to the success of the definition will be the contribution of the Industrial Court, established in terms of the Wiehahn Commission recommendations.

(166) ~~161~~ Hammond
Labour Relations Act: alleged contraventions
Q. 601.161 15/2/84
*12 Mr F J LE ROUX asked the Minister
of Justice +

Whether the Attorney-General intends to institute further legal action against certain persons whose names have been furnished to the Minister's Department for

5 FEBRUARY 1984

162

the purposes of his reply who were on or about 24 January 1984 involved in a criminal case in the Pinetown magistrate's court on account of alleged contraventions of the Labour Relations Act if not why not if so, (a) what was the nature of the charges against them and (b) on what grounds will further legal action be instituted against them?

Call Times 1/3/84

GOVT 'wields big stick' against unions

166

Political Correspondent

HOUSE OF ASSEMBLY

The government was accused yesterday of jeopardizing years of labour reform by deciding to "wield the big stick" against trade unions against Dr Alex Boraine (PFP Pinelands) and chief Opposition labour spokesman objected in strong terms to the Labour Relations Amendment Bill.

He said during the second reading of the bill that, because of its potential effects on labour peace, the bill should be referred to a parliamentary select committee before its principles were entrenched at second reading.

Dr Boraine said provisions controversial for both unions and management had been added since the measure was published in draft form last year. These included the "far-reaching" requirement that copies of agreements between registered unions and unregistered unions had to be sent to the government and the imposition of penalties if this was not done within 30 days.

This had increased the suspicion of unions who believed the government was "out to get them" and would decide whether or not their agreements were good enough. It had already prevented the conclusion of a week-long agreement between a major company and its 1200 workers.

Years of patient labour reform, supported by the opposition, had produced a pattern of pragmatic accommodation on the horizon. "This is now a threat to the fragile peace emerging in labour relations," Dr Boraine said. The government should stay out of labour relations beyond providing the minimum rules and structures

Unions oppose State 'interference' in labour

By RIAAN DE VILLIERS
Labour Reporter

TRADE unionists yesterday expressed hopes that increased State intervention in labour relations contained in the Labour Relations Amendment Bill would be removed by the parliamentary select committee to which the bill has been referred

In a surprise move this week, the Minister of Manpower, Mr Pietie du Plessis, accepted a proposal by the Progressive Federal Party to refer the bill to a select committee before its second reading in Parliament

Trade unionists reacted sharply to

the bill when it was published for the first time earlier this year

They objected particularly to a new requirement that copies of all recognition agreements between unions and employers should be submitted to the Department of Manpower

A provision that recognition agreements would be unenforceable in the courts if the unions concerned failed to supply the department with information about their organization required in terms of the Labour Relations Act was also criticized.

In Parliament earlier this week, Mr Du Plessis accepted the PFP proposal

and said it was necessary to reach the "greatest possible degree of consensus" in the sensitive labour field.

He said he was prepared to listen to MPs who as elected representatives were responsible to the voters, and he was also not prepared to make a "rubber stamp" of Parliament

He said his acceptance of the motion did not mean he questioned the bill's contents or the motives behind it.

However, because of "misunderstandings and false interpretations", it was necessary for all parties to study the bill and see that it was sound

He denied it was aimed at clamping down on black unions

Yesterday, a spokeswoman for the Food and Canning Workers' Union said it believed the State had no part to play in the relationship between unions and employers.

"We hope the measures involving increased State interference will be removed by the committee," she added.

Mr Dave Lewis, general secretary of the General Workers' Union, said the union remained "completely opposed" to the notion that recognition agreements should be handed in to the State.

"This will be blatant interference in the process of collective bargaining"

Court under pressure

LABOUR WEEK



By STEVEN FRIEDMAN

RAM 5/3/83 (166)
THE industrial court's role in labour relations is under pressure again.

At issue is its role in unfair labour practice disputes — the majority of cases with which it deals

Union victories in some of these led to an employer backlash and the Department of Manpower plans to curb the court's powers in this area. It has also prevented many such cases coming before the court

Now a Pretoria Supreme Court has ruled that when it hears these cases, the industrial court is not acting as a court, but as an administrative body

The immediate effect is that the court cannot grant legal costs to parties who bring cases to it — even if they win.

This largely confirms the existing position — the court has granted costs rarely — but does make it harder for unions and workers with limited finances to use the court.

Some lawyers believe the judgment goes much further and will sharply weaken the court's power to act effectively in unfair practice cases — the most crucial area of its operation.

This may be over-hasty. Lawyers stress that the decision cannot be assessed fully until a written judgment becomes available.

The case is also being taken to the Appeal Court for a final ruling

Some lawyers argue that whether the industrial court is a fully-fledged court or not has little to do with its future role. Even if it is an administrative body, it can still take decisions and have them enforced

The key issue, they say, is whether the ruling has specifically curbed the industrial court's powers. And even if it has, the issue will not be settled until the Appeal Court has decided the issue finally.

□□□

THE Department of Manpower's Bill extending greater control over union recognition agreements has run into sub-

stantial opposition

The Bill would prevent the courts enforcing agreements if the union which signed them had not submitted information to the Department

It would also force unions and employers to submit these agreements to the Department

Last week, the Bill was referred to a select committee after being sharply criticised by the Opposition. It seems reasonable to assume that it also faced resistance in other quarters

Its referral to the committee means it will probably be delayed to next year's session of Parliament — if it is reintroduced at all.

X

THE LABOUR MARKET

When the referee joins in

Not to put too fine a point on it, government should get the hell out of labour. Its ideological fixations distort the supply, marketing and mobility of manpower, cause endless human suffering, and hamper the economy at a time when it can least afford restrictions.

Pretoria should, in fact, follow the advice of its own Director General of Manpower, Piet van der Merwe, who preaches a doctrine of minimal official intervention between management and workers. No doubt it would argue that it does so. But as is so often the case where racial ideology is concerned, such protestations reflect, at best, a half truth.

Certainly officialdom tries — not always successfully — to avoid entanglement in management-union disputes. But that is only a part, and not the largest part, of the interface between employment opportunities and people.

It's no use preaching, and even in some ways promoting, a free labour market and a free collective bargaining system while at the same time legislating thoroughgoing systems of control. But it is at Pretoria's discretion where all blacks may work or live.

The Labour Relations Act, for all its faults, is basically a fine and enlightened piece of legislation. It is the basis of SA's present industrial relations system. But it makes a bad partner for totally unenlightened laws like the influx regulations, the Blacks (Urban Areas) Consolidation Act, the Physical Planning Act, the Group Areas Act, and the proposed Aliens and Immigration Laws Amendment Act.

At present, a businessman who takes some workers from the West to the East Rand for a particular job could find himself in court for employing workers in an area where they have no legal right to be. In fact, in the Randburg courts recently, a magistrate, after dishing out a suspended sentence, advised the accused to write to Minister of Co-operation and Development Piet Koornhof, and ask him to amend the law.

Indeed, if anything gives the lie to the impression government is so carefully trying to create that reform is permeating all sectors of society, it is the annual figure for pass law convictions.

In February Koornhof revealed that 140 000 black people, many thousands of whom must have been in full employment, fell foul of the pass laws in 1983. Koornhof is the man responsible for administration of these laws — and also the man who declared war on the "dompas" and said that "apartheid is dead." Yet his own figures show that pass convictions have risen substantially from 98 000 in 1982 and even more from 75 000 in 1981.

So influx control, it seems, remains a

For a country which professes to endorse free enterprise, SA has a remarkably unfree labour system. It's time government stepped back and allowed employers and employees to sort out their problems. New legislation to place tighter controls on the market are badly timed and inequitable.

cornerstone of the National Party's ideology and strategy. And there is a great deal of truth in the observation that this kind of action significantly interferes with the functioning of a free enterprise system in labour.

The nature and degree of interference is diverse. Some of it covers purely labour issues while other elements are more oblique.

There are a number of different schools of thought on the role government should play. Free marketeers argue that any interference is too much interference. Others support the view that government must create the framework for labour relations and then act as the referee between employers and workers. But, generally speaking, some principles are regarded as inviolable.

It is acknowledged that since 1979, when the Wiehahn Commission of Inquiry into labour legislation tabled the first of its six reports, there has been a liberalisation of

labour matters. The key reform was that blacks, who had been excluded from the definition of "employee" in labour law, took their rightful place in the labour process. Black trade unions have mushroomed since then and the Department of Manpower (DM) has been hailed as the most progressive of all government departments.

Possibly as a result, there is tension between what the DM has been trying to achieve and actions by other departments. Influx control as applied by the Department of Co-operation and Development (CAD) is a major problem.

It cannot be argued that black workers have been granted the same freedom as their white counterparts when their right of movement is still restricted. Until June 1980 most blacks were condemned to remain in the area in which they were born — without the right to move in search of better job opportunities.

Since then a lucky few who qualify for Section 10 rights in terms of the Urban Areas Act have, theoretically, been granted the opportunity to move to other urban areas. But they must have a job there, and "approved" accommodation.

Housing shortage

That provides the sting in the tail. There is a housing shortage in all black townships. So in the critical area of mobility, even blacks with Section 10 rights are severely disadvantaged. Those without these rights are restricted to the homelands — or to a joyless hostel existence as short-term contract migrants.

This is not the only barrier to entry or mobility. The Laws on Co-operation and Development Amendment Act, passed last year, reduces the effect of the court victories won in the Rikhoto and Komani cases, which were supposed to extend the rights of certain migrants to claim urban residence. Again the possession of lawful — usually unobtainable — housing became the deciding factor.

Last week the first reading of the Aliens and Immigration Laws Amendment Bill, which will be implemented by the Department of Internal Affairs and CAD officials, signalled government's intention to extend its powers of control.

It is widely believed that this Bill will replace the draconian Orderly Movement and Settlement of Black People Bill as the main instrument of influx control — at least as far as citizens of independent homelands are concerned.

There are numerous other areas in which government interferes in labour. One is Section 3 of the Physical Planning Act. In general terms this measure stipulates that employers must maintain a ratio of 2,5:1 between blacks and whites in their labour



UCT's Jowell ... a matter of rights and duties

Fm 10/3/84

166

~~200~~

~~200~~ 1973

force If employers wish to exceed this, special permission must be obtained from a committee operating under the auspices of the Department of Industries and Commerce

Over the years hundreds of thousands of workers have been denied jobs through this mechanism Despite the fact that the Riekert Commission recommended in 1979 that Section 3 should be abolished, it remains on the statute book

Similarly, the definition of a "scheduled person" in the Mines and Works Act protects white miners by stopping blacks from taking up skilled jobs on the mines Despite government's acceptance of the Wiehahn Commission's recommendation that it be scrapped, it remains in force — seemingly out of fear of the conservative white mining unions

Then there is the issue of police and security police (SP) intervention in labour matters Almost since the advent of black trade unionism in SA unionists have been prime targets for harassment.

SP intervention in labour matters seems to be picking up again Last month witnessed the arrest of at least four unionists These include "Skakes" Sikhakhane, general secretary of the Food and Beverage Workers' Union, Jeremy Baskin of the Paper, Wood and Allied Workers' Union, and Robert Mkhize, a Commercial Catering and Allied Workers' Union shop steward Officials of the National Union of Mineworkers have also been harassed

The homelands policy causes other labour tensions A Federation of SA Trade Unions (Fosatu) spokesman cites the example of some workers resenting the fact that their tax rebates will have to be claimed from homeland governments now that the "harmonised" taxation system is in operation "The homelands policy is starting to bite more and more into our affairs"



Manpower's Van der Merwe ... minimal official intervention

Strikes are another source of tension Most strikes that take place in SA are illegal in terms of the Labour Relations Act But observers point out that even when unions take the long and complex road to a legal strike there are a number of other statutes — like the Intimidation Act and the Trespass Act — under which unionists and workers can be prosecuted for strike-related activities

These factors all constitute interference in the labour market which are beyond the control of the DM Even within the department's own domain there are questionable practices The ultimate power to appoint a conciliation board when disputes are declared lies with the Minister of Manpower He has the power to decide on its terms of reference, and this enables him to prevent disputes from reaching the Industrial

Court If the Minister does not define a dispute as involving an unfair labour practice the court cannot take up the matter

"The Minister's role should be to see that these things happen — like a referee — rather than make judgments and involve himself in the issues and perhaps hinder their resolution," Kate Jowell, assistant director of the University of Cape Town's Graduate School of Business told the FM

She sums up the debate "I expect government to establish a few ground rules for labour and management by which they can conduct their affairs The Queensberry rules for bargaining, if you like, which establish the rights of each party and also the duties which they must accept in exchange for these rights"

It's time for government to climb out of the ring



Grant to union

Argus 29/3/84

Argus Correspondent

166

PRETORIA — A grant of R16 545 was yesterday given to the Iron, Steel and Allied Industries Union by the Minister of Manpower, Mr Pietie du Plessis, at the biennial Congress of the Confederation of Labour

Mr du Plessis said it was the first grant paid to a union for training its office bearers in industrial relations

Job safety law 'could spark labour unrest'

166 Star
16/4/54

By Carolyn Dempster,
Labour Reporter

Occupational health and safety issues are set to move to the centre stage of industrial relations within the next couple of months — and could well become flashpoints for industrial action

This is the view adopted by labour relations consultants and experts with the imminent introduction of the Machinery and Occupational Safety Act

They feel employers and unions are simply not well enough prepared for the changes the legislation demands, and fear conflict may grow out of the confusion

The new Machinery and Occupational Safety Act, due to come into effect within the next two months, has been criticised by unions for giving management the sole right to appoint safety representatives.

The provision has been condemned by affiliates of both the Council of Unions of South Africa and the Federation of South African Trade Unions, and the issue of safety representatives is already being raised in union/management negotiations on procedural and recognition agreements.

The Occupational Medicine Bill, tabled before Parliament in January, is a complementary piece of legislation to MOSA.

One of the major defects of the Bill, as seen by unions, is that "neither individual employees nor organised workers are given a clear role in determining health and safety policy at the workplace"

● See Page 8.

LABOUR MARKET

Keep Pretoria's sticky fingers out

166

Fm 20/4/84

The functioning of labour markets throughout the West is bedevilled by interfering governments and trade unions. Sometimes they are well-meaning. Mostly they do more harm than good by inhibiting the natural tendency for these markets to function properly.

So it is just as well that the Labour Relations Amendment Bill has been referred to a parliamentary select committee. Few recent pieces of draft labour legislation have contained so much cause for controversy.

To some extent, the referral will compensate for a deplorable lack of consultation with the National Manpower Commission.

The passing of such an important piece of legislation must not be clouded by the slightest suspicion that opposition has not had ample time to consider its implications. But what is really so worrying about the Bill is that government is seeking extensive control over industrial relations and labour agreements that are freely negotiated between trade unions and employers. The Bill contains strict requirements for all agreements reached between unions and employers to be submitted to the Department of Manpower (DoM). Failure to submit an agreement will render it unenforceable by any court, including the Industrial Court, and the signatories will be guilty of a criminal offence.

DoM director general Piet van der Merwe says the purpose of the Bill is to provide the department with a full picture of the country's bargaining arrangements. Given the fact that Van der Merwe is an ardent campaigner for minimal government interference in labour matters, it is

difficult to credit his support for the measure. Were these provisions to apply, suspicion must be that the next step would be for government to take it upon itself to decide which agreements are acceptable and which are not.

That government be able to declare agreements null and void if they are not submitted to the department interferes with the legal status of recognition agreements. This amounts to no more than government being able to meddle in markets where it has no business.

There is nothing wrong with the present system under which agreements are enforceable in common law, providing the consenting parties are properly constituted. What Pretoria does not appear to realise is that situations sometimes arise in which sensitive disputes are resolved by verbal agreements — or in which minutes of meetings contain important points of agreement between parties which are not embodied in the final written agreements.

The Bill would deprive such agreements of legal standing and would discourage employers and unions from entering into such *sub rosa* undertakings. The implications for the cause of labour peace, if the Bill goes through, could be serious — even though that might not be government's intention.

Parliamentary select committees usually perform a useful function in allowing second thoughts, and the introduction of diverse opinions, on controversial proposed legislation. Too often, however, a built-in government majority on a committee is inclined to endorse the substance of a Bill as originally drafted. That should not be allowed to happen in this instance.

CARE TIMES

April 1984

Unfair labour practices: Tighter definition mooted

Political Staff
HOUSE OF ASSEMBLY.
 — The National Manpower Commission has recommended a tighter definition of unfair labour practices including the outlawing of consumer boycotts by workers during disputes.

At present an unfair labour practice, a concept introduced after the report of the Wiehahn Commission of Inquiry in 1979, is undefined and this has caused some problems as it has been left to the Industrial Court to define it.

The National Manpower Commission, whose report into levels of collective bargaining and

works councils, the registration of trade unions and the Industrial Court was tabled in Parliament yesterday, said the definition of an unfair labour practice should create new rights.

However, some flexibility should be incorporated and the final authoritative interpretation of the concept should rest with the Industrial Court.

It said unfair labour practices should be designed to protect individuals as well as organizations and that there should be direct access to the court in cases of disputes involving unfair labour practices.

It also said that al-

though a list of unfair practices should be given in the definition "this list must be capable of amendment as circumstances change".

It said the following practices should be included in the definition:

- "Employer interference in union affairs and union interference with an employer supporting, aiding or interfering in the establishment, management or administration of a union, or a union refusing to negotiate with management until a particular member of management is dismissed."
- "The victimization,

of the members, officials and office-bearers of trade unions, works councils or other similar organizations of workers."

● "The use of unconstitutional, unfair and misleading recruiting methods and arguments by a union or employers' organization."

● "The unjustifiable dismissal or termination of employment of workers and the replacement of employees with workers of another race group where the "ostensible purpose" is to provide less favourable terms and conditions of employment."

● "The unjustifiable refusal by a union or employers' organization to grant membership to a person who satisfies the criteria for membership of the organization concerned."

● "Secondary product boycotts by a trade union or employees resulting from a labour dispute."

● "The abuse of organizational or negotiating power by a trade union or a group of employees to the detriment of other groups or individuals, for example a union using its bargaining power to compel an employer to deal only with it and not negotiate with a minority."

● "The black-listing of employees and employers."



National Manpower Commission report

INDUSTRIAL LAW

The biggest reinstatement

In what is believed to be the largest reinstatement order yet issued, the Industrial Court has instructed Vereeniging cable manufacturer, African Cables, to temporarily reinstate 324 workers who were fired after a dispute in January.

The order, which remains valid for up to 90 days, came into effect on April 18. It requires that the company either pay the workers for the period of the order, without necessarily re-hiring them, or permit them to return to work.

A company spokesman told the *FM* that the workers have been paid for April 18-24. He would not comment further on the company's intentions regarding reinstatement. But a lawyer acting for the workers says he expects them to be back on the job by Monday.

The application for temporary reinstatement was brought by workers who are members of the Engineering and Allied Workers' Union. The background to the dispute is that the company cut its working week to four days in October 1983, because of depressed economic conditions. This year it returned to a five-day working week, beginning Monday January 9. Because Monday January 2 was a public holiday, Friday January 6 was meant to be a normal working day, so that the first week of the year would be a four-day one.

On the 6th some workers reported for work, while others did not. On the following Monday, the vast majority of workers reported for duty. They did not commence work, however, but demanded to speak to African Cables MD Peter Muller. According to a source close to the union, Muller refused to address them *en masse*. Later in the day, according to the same source, the police were called in and ordered the workers to disperse. The company disputes the details of this action.

Document

The next day, Tuesday, management set up tables inside the factory area at which workers were told that they had to sign a document agreeing to certain work conditions before they would be allowed to work. These included undertakings not to participate in illegal work stoppages. While 195 agreed to sign, 404 refused and were later fired.

Of the 404, 327 made application to the Industrial Court for reinstatement. Last week the court ruled that all but three of them should be reinstated.

In court, counsel for the union members argued that they had not been adequately informed by management of the change back to the normal working week. Counsel

also alleged that the company had been "unfair" in requiring workers to sign a new contract of employment or face dismissal.

It was also argued that mass dismissals can only be justified in situations in which companies are experiencing economic problems and in which the dismissal of workers is part of a retrenchment exercise.

Counsel for the company countered that the undertaking the workers had been required to sign did not constitute a new contract of employment, but was rather a confirmation of existing work conditions. Company counsel also argued that if the workers were reinstated, African Cables would have to fire workers who had been hired to replace them and that this would cause unrest and dissatisfaction.

The court found that management had taken adequate steps to inform the workers of the change to the working week and that there could not have been confusion about January 6 being a normal working day. It also found there was an element of coercion involved in the workers' decision not

to sign.

However, mass dismissal was not regarded as the appropriate remedy in the circumstances.

The court also found that African Cables had acted "overhastily" in recruiting new workers as quickly as it had, especially when it knew that the fired workers had taken steps to obtain reinstatement.

Labour law

Labour law requires that the dispute should now be discussed at the metal industry industrial council. If no resolution is reached, it could be referred back to the Industrial Court for a final decision. The decision to grant reinstatement could be indicative of the court's attitude towards the dispute.

Labour commentators say that even in a climate in which the Industrial Court is regarded as moving in a more conservative direction, this judgment indicates that it does not regard mass dismissal as the appropriate remedy to industrial unrest.

TEACHERS' UNION

SA's first trade union for teachers could be registered next month. It could also be the first labour union whose constitution expressly rules out strike action.

This follows a gazetted application to register by the 100-member SA Teachers' Guild (SATG), which was formed a few months ago. The Federal Council of Teachers' Associations (FCTA) has "regretted" the formation of the new "splinter" group.

The Guild, which consists of essentially the same members as the recently dissolved Transvaal Educators' Society (TES), has "only one objective: To negotiate competitive salaries and conditions for all teachers and thus enhance the status of the profession," says SATG chairman John Lambson, who also headed the short-lived TES.

Further, says Lambson, the union will be "completely apolitical." SATG membership is open to all white teachers at the moment, although applications from other race groups could possibly be considered "at a later stage," he says.

Lambson has his eye on the 21 000 white teachers (of a total 69 000) who, he says, do not belong to any association. Because of the "narrowness" of the objectives of the teachers' associations, Lambson hopes that those who are association members will remain so and join

his union as well.

The Guild has applied to the Trade Union Council of SA (Tuca) for membership, and Tuca general secretary Arthur Grobbelaar has indicated that he is well disposed.

Explaining his opposition to the formation of the Guild, Transvaal Teachers' Association (TTA) chairman Jack Ballard says he can see no need for it, in view of the national FCTA's "outstanding" work for teachers.

The associations, which are not unions, would much prefer a "professional body" to deal with their salaries and conditions, says Ballard. He feels that the guild is merely "another platform" for the TES, which he says was an unrecognised body with very few members.

The FCTA is already "pretty far down the road" in its negotiations with Minister of National Education Gerrit Viljoen to form a national body embracing teachers of all race groups.

However, the formation of the SATG is a "national issue" and will be more fully considered when the FCTA meets early in May. Since the teacher associations are not trade unions, says Ballard, he doubts that they are entitled to lodge objections to the SATG's registration.

Cape Times 1/5/84

'Change registration system'

By BARRY STREET

HOUSE OF ASSEMBLY — The system of registration for trade unions could be scrapped if the government accepts a recommendation of the National Manpower Commission

The commission wants the formal registration procedure replaced by a system where any organization wanting to operate as a trade union or as an employers' organization should comply with minimum legal requirements

This proposal was contained in the commission's report into levels of collective bargaining and works councils, registration of trade unions and employers' organizations and the industrial court.

'Catering for race'

The report, which was tabled in Parliament yesterday, urged the existing requirement that the race of union members is stipulated in the registration of unions "should not feature in the requirements, explicitly or otherwise, although organizations would indeed always retain the freedom to cater for only one race should they so wish"

It also said that existing provisions for objections for the registration of unions should not be retained and "no proof of representativeness would be required" However, requirements about constitutions, membership registers and financial statements should remain in force

The commission said it could be argued that the present system of registration should be retained as it had proved itself over a long period of time

But the events of recent times were making new demands on the system and many of the newer unions had registered "rather reluctantly"

A significant number of unions had also remained outside the statutory system and had indicated, mainly because of the issue of race and representativeness, "they will not, in the foreseeable future, seek registration and will, therefore, continue to operate outside the statutory framework"

"Moreover, the potential for a substantial in-

crease in the number of unions and their membership is great, in that at most 16 percent of the relevant black labour force is at present organized in trade unions while black workers comprise by far the largest part of the total relevant work force

"It is an open question whether the existing system would meet with their requirements once they have become organized"

The majority of the commission felt that it would be more satisfactory if there was no formal "registration/certification/listing on the part of the State, but only statutory provision that any organization wishing to operate as a trade union/employers' organization, inter alia for purposes of collective bargaining, should meet certain minimum requirements, and which would at the same time simplify the current statutory and administrative procedures relating to registration"

It said the existing definition of a trade in the Labour Relations Act should be retained in the proposed system so that "an organization will not be able to operate as a trade union without clearly specifying its interests by undertaking, industry, trade or occupation and area"

Unitary system

It also felt "some form of compulsion" was preferable "in that the protection of the interests of the members of the various organizations as well as those of the community at large, should be overriding"

A unitary system of labour relations should be the aim and the statutory provisions "should at least lay the foundation for such a system"

For this purpose "a certain degree of State intervention is required in the initial stage of statutory recognition of the existence of such organizations"

However, the commission said, the existing requirement of linking the representativeness of a trade with registration "negates the principle of freedom of association, particularly where minority groups are concerned".

Secreta 1/5/84

Leave it to bosses and workers

Report
urges

HOUSE OF ASSEMBLY — The recognition of a trade union for bargaining purposes should be left to the dynamics of the labour relations system, according to a National Manpower Commission report tabled in Parliament yesterday.

In the section of the NMC report dealing with the registration of trade unions, the commission said it was of the opinion that this was a matter to be dealt with by the employee and employer parties concerned in terms of their own preferences, including the question of representation

The commission also felt that the existing definition of a trade union in the Labour Relations Act should be retained in the proposed system, namely that an organisation would not be able to operate as a trade union without clearly specifying its interests by undertaking industry, trade or occupation and area

“Despite the formidable arguments in favour of a voluntary system, it was concluded that a system incorporating some form of

compulsion or other would be preferable, in that the protection of the interests of the members of the various organisations as well as those of the community at large, should be overriding

Simple

“Moreover, as envisaged, the actual process of ascertaining whether the requirements are complied with, will be so simple and the advantages so obvious that it should not raise much objection”

The NMC found that to promote a unitary system of labour relations and the interests of the members of trade

unions and employers' organisations and the community at large, a certain degree of State intervention was required in the initial stage of the statutory recognition of the existence of such organisations

“This intervention should take the form of the laying down of certain minimum requirements that must be met by all organisations wishing to operate as trade unions or employers' organisations and participate in the collective bargaining process, and the industrial registrar should be empowered to issue some form of acknowledgement or confirmation that the requirements have indeed been met”

2/5/84

~~166~~

166

D. Anjuttel DAILY DISPATCH, WEDNESDA

Unions angered by labour law proposals

JOHANNESBURG — The Council of Unions of SA, which represents more than 100 000 workers, says a report on labour relations by the government's National Manpower Commission would put the country's labour law "into the Dark Ages" if it is implemented.

In a brief statement yesterday, Cusa angrily slammed the report which recommends a tough new system of control over unions to re-

place the present union registration system.

It also proposes changes to the industrial court which would make it an "unfair labour practice" for unions to engage in consumer boycotts or to demand the expense of minority unions.

The report, which has come as a shock to supporters of labour reform, was tabled in Parliament on Monday by the Minister of Manpower, Mr Pietre du Plessis.

who said he was releasing it for comment by interested parties.

Informed sources said yesterday that they believed the government was committed to introducing the new 'certification' system for unions, even though this is expected to attract heated protest from emerging unions and is likely to be seen as a means of increasing government control over unions.

This system would give a government registrar

the power to issue unions with certificates stating that they had met certain "minimum requirements" laid down by the government.

Unions who did not hold these certificates would not be allowed to operate and their officials would risk prosecution.

The report also recommends, however, that race no longer play a part in union registration and that official industrial councils under-

go major reform.

In its statement yesterday, Cusa said it had not yet had an opportunity to study the report but, judging by press reports on it, the National Manpower Commission had "arrived at conclusions and recommendations which would have the effect of putting South Africa's labour legislation into the Dark Ages".

It said the report sought to place "power in the hands of civil servants through regulation

and other authority". This, it said, was "not acceptable" to Cusa.

Changes to the industrial court recommended by the report were, Cusa said, "such that they will erode the original intention of creating a speedy, inexpensive forum for the resolution of disputes".

A Cusa representative said yesterday that the council might issue a fuller statement on the report once it had studied it thoroughly — DDC

Report slated

BLACK trade unionists have expressed concern about the report of the National Manpower Commission tabled in Parliament this week.

The report — on collective bargaining and works councils, the registration of trade unions and employers' organisations and related matters — was released by the Minister of Manpower, Mr P T C du Plessis

The report recommended an industrial court, to be known as the Labour Court and a Labour Appeal Court, the scrapping of trade union registration for a new system of "minimum standards" for all trade unions and collective bargaining bodies

The Council of Unions of SA (Cusa) spokesman said that the report would put the country's labour laws "into the dark ages" if it was implemented

Section 3/5/84
166

Unions: 'report is a throwback to dark ages'

By Carolyn Dempster,
Labour Reporter

The National Manpower Commission's recommendations on crucial labour matters have been slammed as a retreat into the "dark ages" of labour legislation by angry union leaders.

Following the submission of the NMC's 450-page report to Parliament this week, reaction to the proposals from emergent union bodies has been scathing.

The Council of Unions of South Africa, representing 76 000 workers (according to Department of Manpower statistics), said the proposed changes in registration "would put the power in the hands of civil servants through regulations. This is not acceptable to us".

Changes to the Industrial Court would "erode

speedy inexpensive resolution of disputes", it added.

A spokesman for the Metal and Allied Workers' Union, an affiliate of the Federation of South African Trade Unions, said the union was "extremely unhappy with the recommendations".

"If we are to take as read press reports on the NMC submissions, the proposals are in line with what we see as a clamp-down by the State.

"This makes it quite clear that we can expect nothing of the National Manpower Commission," he added.

Mr Frank Horwitz, a lecturer in Industrial Relations at the University of the Witwatersrand's Graduate Business School, said he was loath to comment without first seeing the full report.

"I can only make a superficial assessment," he said.

"But if the implication is that employers are going to be prevented from bargaining with organisations which have not complied with State requirements, employers will find themselves in a predicament."

In its report, the NMC proposed that the current system of trade union registration should be abolished.

In its place would be a system whereby organisations wishing to bargain with employers would have to satisfy certain minimum requirements set down by the Department of Manpower.

If these requirements were not met, it would be a criminal offence for the organisation to bargain outside the system.

The report still has to be circulated for comment by interested labour, employer and union organisations.

Expert gives warning on trade union rivalry

166 ~~133~~ Labour Reporter Stan 4/5/84

Trade union rivalry is going to become one of the major labour issues in the next couple of years, a top labour lawyer has warned.

Mr Halton Cheadle, speaking at a seminar on critical issues in labour law in Johannesburg yesterday, said inter-union rivalry was already causing headaches for employers who found themselves caught in a vortex not of their own making.

The problem of inter-union rivalry, particularly between emergent and established unions, has been exacerbated by closed shop provisions.

When labour legislation was extended to cover black workers, the closed shop provision was merely extended to cover these workers, without their consent. In many cases, workers felt the established union was not representing their interests and wished to join another union without risk of losing their jobs. Industrial action often resulted.

Labour laws uncertainty 'costs cash'

166
Star
4/5/84

By Carolyn Dempster,
Labour Reporter

Uncertainty stemming from the structural deficiencies of the Labour Relations Act was not only costing vast amounts of money but also jeopardising the industrial relations climate, Professor Johan Piron of the University of South Africa said yesterday.

Professor Piron, lecturer in industrial relations at Unisa's School of Business Leadership, was a guest speaker at a one-day seminar in Johannesburg on critical issues in labour law.

He repudiated recent claims that the Industrial Court showed bias towards unions in its judgments.

"I cannot detect in any of the members who have sat in that court any bias at all. There are latent defects of the court system . . . with a structure like that there is not much one can do with it," he said.

Professor Piron added that it was unfortunate that virtually none of the Industrial Court staff had any industrial relations practical experience.

"I think the addition of a representative from the trade union side and a representative from the employer side would go a long way towards calming down attitudes and opinions people have formed concerning the industrial court."

Arguing in favour of "the need for an interventionist court", Mr Clive Thompson, a labour lawyer with the Centre for Applied Legal Studies, said that in view of South Africa's limited and inglorious tradition of collective bargaining, "a lot of ground must be made up in a relatively short period".

Recent decisions by the Minister of Manpower to prevent certain matters from reaching the Industrial Court — which he is empowered to do — meant that the court had been "blocked from performing its rule-making function", said Mr Thompson.

"Whatever the statutes may say, it is evident that political considerations play a role in guiding the process of decision-making," he added. "The Minister's conduct can only be interpreted as a vote of no-confidence in the industrial court."

1
2
3
4
5
6
7
8
9
10
11
12

Workers cry 'fowl' over farm rule

City Press

6/5/84



IS THE slaughter house at Rainbow Chickens a farm or a factory?

That's the question to be decided by the Industrial Court, and the outcome could vitally affect hundreds of workers

The issue was raised this week when seven workers from Rainbow Chickens, sacked on February 6 when they refused to do overtime, applied to be re-instated.

Lawyers for the Chicken giant said the court had no jurisdiction over the seven men because they were farm workers and are therefore excluded from taking action through the court

The seven want to be re-instated because they claim their dismissal was an unfair labour practice, and that they were given no hearing before being sacked

Their lawyers, Durban's legal resources centre, argued that they were busy with industrial rather than farm work, and that the court could therefore rule that they be re-instated.

According to the lawyers

The plant is in the Hammarsdale industrial

area The land is zoned for industrial use

The company pays rates on the plant land assessed as factory not farm land ..

They argued that if relief was not granted to the seven, it would indicate to the workers that management was entitled to do what they liked.

Workers at the plant would know they had no rights and everyone would live in fear of being dismissed as the seven.

Parliament and Politics

Parliament and Politics

CRC TAVIS 9/5/84
Mampower report moots removal of discrimination

Political Staff

SWEEEPING changes, including the removal of discrimination on the grounds of race, are suggested in a National Manpower Commission report tabled in Parliament yesterday.

The report covers the investigation into the small-business sector in South Africa with specific reference to legislators possibly retarding growth and development.

The Minister of Manpower, Mr Pletie du Plessis, said yesterday the broad guidelines of the report had been accepted by the government in principle "having regard to other goals and the provisions of over-arching legislation in respect of the geographical establishment of undertakings".

Essentially involves the Group Areas Act. The report concludes that from the information collected the obvious way of alleviating legal restrictions would be the setting up of guidelines for government institutions. The guidelines, it states, should take into account:

- Elimination of legislation which discriminates between races.
- The possibility of being more lenient with African businessmen because of their greater development needs
- That both formal and informal small business sectors should be considered.

The public sector, the report states, should care for the needs of small businesses in:

- Drafting and revising legislation.
- In the administration of legislative implementation of legislation.
- The attitudes of officials in general.
- And, it adds, where the needs of a small business sector cannot be accommodated in legislation, or a graded standard system "they should be taken into account in the administrative implementation of particular legislation".

The report states that its investigations showed that small businesses were hampered by legislation and other factors. These included:

- The Group Areas Act.
- The Liquor Act.
- Tax concessions that do not benefit the small businessman.
- Problems involved in getting a business licence.
- The complicated Companies Act.
- Strict housing standards.
- Regulations in respect of business premises in terms of the Factories Act.
- Requirements in respect of street vendors and African entrepreneurs.

R.D.M. 10/5/84 (166) (167) (168) (169)

Chicken farm men reinstated by court

Mail Reporter

THE industrial court has ordered the reinstatement of six Rainbow Chicken employees after finding they were industrial and not agricultural workers

The case, brought by the Legal Resources Centre, followed the dismissal of the six workers from Rainbow's processing plant at the Hammarisdale industrial township in Natal for refusing to work overtime

Mr Arthur Chaskalson, SC, for the workers, charged that they had been unfairly dismissed because, in terms of the Basic Conditions of Employment Act, they had a right to refuse to work overtime

Mr Roy Alloway, SC, for the company, said the Act excluded farm workers and domestic workers. In addition, such workers had no right of access to the industrial court.

Mr Chaskalson argued that workers in Rainbow's processing plant did work which was in essence no different from any other industrial operation.

Mr D B Ehlers found that the plant was an industrial and not a farming operation, that the workers were subject to the protective legislation and found their dismissal was an unfair labour practice

He ordered the company to reinstate the workers

Members in 1983

Parliament and Politics

Unregistered unions had 140 004

CAPE TIMES 19/5/84 12:15/17 (166)

By BARRY STREEK

HOUSE OF ASSEMBLY.
The 59 known unregistered unions had 140 004 members, including 544 whites, last year, the Department of Manpower said in its annual report yesterday.

The report, which was tabled in Parliament, revealed that there were 194 registered trade unions last year with a total membership of 1 288 748, an increase of various

groups of the opportunity to establish and register trade unions and to use the official bargaining and conciliation machinery."

This had been reflected by the new applications of 54 unions for registration since the introduction of the reforms in 1979.

One notable result had been the intensive campaign by existing and new trade unions to re-

cruit members from unorganized black workers.

"Although this had a positive result, it also gave rise to keen competition, particularly among the newly-established unions, to gain the support of the workers and in some cases this gave rise to labour unrest.

"This sometimes created high expectations among the workers as to the improvements in ser-



vice benefits that the trade unions would be able to obtain. "However, many of these expectations cannot be realized because of their unrealistic nature."

It also said the increasing work load of the Industrial Court was "an indication that, in the view of both employer and employee parties, it has an important function to fulfil in the regu-

lating of orderly and stable labour relations".

The number of cases referred to the court had quadrupled: During 1983 a total of 190 cases had been reviewed by the court, compared to 49 in 1982.

The department also said that although a "significant part of the labour force" remained unorganized these workers were becoming increasingly aware of the

opportunities of being organized into unions.

"It appears that new black trade unions (registered and unregistered) are being formed in steadily growing numbers which, as may be expected, is resulting in greater competition in certain areas and industries.

"Some of these unions prefer not to make use of the existing statutory negotiating structures, and

are not prepared to avail themselves of the dispute-settling machinery that is provided for in the Labour Relations Act.

"During 1983 there were however indications that the so-called new trade unions were willing to make use of the existing labour relations systems, especially the conciliation board system and the Industrial Court."

Sowetan 23/5/84

Worker safety govt acts

THE Government has passed legislation, aimed at protecting the safety and health of workers at workplaces country-wide.

The Minister of Manpower, Mr P T C du Plessis, said that the important feature of this legislation — the Machinery and Occupational Act of 1983 — required employers and employees to consult each other about hazards which might exist.

The legislation also required employers and employees to form a consensus through a system of safety committees. The legislation will soon replace the Factories, Machinery and Building Works Act of 1941.

“The legislation spreads its protective umbrella over everybody who is in employment in South Africa with the exception of those who work in the mining industry and who are protected by the Mines and Works Act.

“If there is a healthy relationship between the employers and employees and a genuine desire to ensure the safety of the workplace, infinitely more can be done to safeguarding the safety and health of the worker in that workplace,” the minister said.

The minister appealed to employers to appoint representatives and give them a “fair hearing” when they come with requests or suggestions.

Employers should ensure that senior management took an interest in the workings of safety committees so that these committees could be meaningful and make a “real contribution towards the safety of workers,” he said.

A premature act?

A question which has been worrying many people about the Labour Relations Amendment Bill (LRAB) was raised in Parliament this week by the Progressive Federal Party's chief manpower spokesman, Alex Boraine.

Speaking during the debate on the Department of Manpower's budget vote, Boraine highlighted the fact that a recent National Manpower Commission (NMC) report covers much the same ground — yet makes different recommendations — as one of the Bill's most contentious provisions

The LRAB, which is currently being considered by a Parliamentary select committee, states that if employers' organisations or unions do not comply with certain conditions laid down in the Labour Relations Act any agreements they reach will not be enforceable in any court, including the Industrial Court

The conditions include supplying the department with details of constitutions, head office addresses, names of office-bearers and officials, maintaining a register of members, keeping books of account, preparing annual financial statements, having books audited, and submitting annual financial statements to members

Furthermore, the LRAB says that if parties do not submit details of any agreements they reach to the Department of Manpower within 30 days of concluding them, they will be guilty of a criminal offence

The Bill was tabled during the first week of the current parliament sitting. These provisions in it have been interpreted unfavourably in many quarters — including some in the employer camp

Not consulted

Several members of the NMC, which is charged with making recommendations to government on labour matters, are known to be angry that the commission was not consulted about the Bill

The NMC's report — which the Minister of Manpower received in July-August last year — deals with the levels of collective bargaining and works councils, the registration of trade unions and employers' organisations and related matters, and the Industrial Court. It was tabled in Parliament earlier this month

Government is now awaiting comment on it before publishing its response in a White Paper

Regarding registration, the majority of NMC members recommended that the current provisions in the Labour Relations Act should be repealed and replaced by a system in terms of which all organisations wishing to operate as trade unions or employer organisations should comply with certain minimum requirements.

They said race and representativeness should not be included in these requirements. But trade unions or employer organisations should meet the following criteria

- Their main objective should be to serve their members,
- They should have a proper constitution, and not affiliated to any political party,
- They should depend on contributions from their own members or income derived from their own sources, while any other funds should be disclosed in annual audited statements stating from which source they came and the purposes for which they were used, and
- They should submit audited statements

on their membership as well as financial statements annually to the Department of Manpower

The majority recommendation says only organisations complying with these criteria should have the right to make use of the collective bargaining and dispute settling procedures of the Labour Relations Act, the right to enter into agreements, and the right to negotiate check-off facilities. Organisations which do not comply should be guilty of an offence

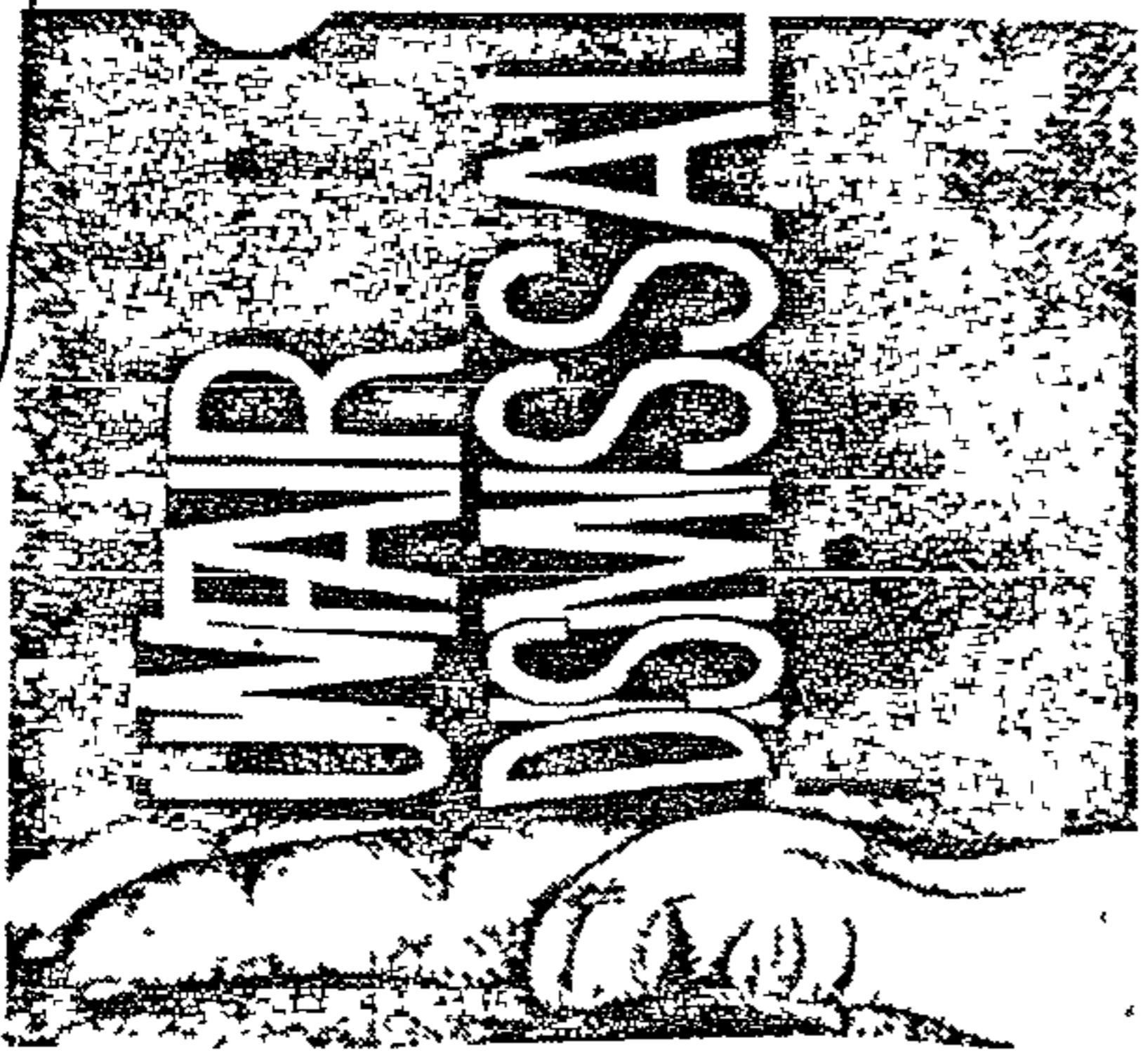
A number of minority reports on the registration issue were submitted. Five NMC members recommended that the present registration system be retained. Four others, while agreeing with the recommendations, said registration should be a

voluntary procedure. One member agreed to the need for a new system, but recommended one of compulsory registration

The LRAB provisions and the NMC's registration recommendations, although different, will bring about far-reaching changes to the SA labour relations system if either is implemented in its present form

In Parliament this week, Boraine said that in light of the fact that government is awaiting responses to the NMC report, it would be premature, "unwise and even foolhardy" to proceed with any legislation relating to the report until after the White Paper has been published

It seems he has a point. Whether or not government will pay heed to what he has said is another matter



Workers can prevent dismissals

A legal device has been used with devastating effect by the trade union movement to prevent employers from dismissing striking workers.

This view is expressed by industrial relations consultant Andrew Levy in his new book "Unfair Dismissal," published by Davaris Stein Publishers.

In the book, Levy says the strategy is for the union to allege that the employer has committed an unfair labour practice by dismissing

Andrew Levy's new book "Unfair Dismissal" gives a new turn to industrial relations in South Africa.

his striking workers and to apply to the Industrial Court for relief.

If the union can show the court that the sacked employees suffer more inconvenience than the employer suffers, the court will usually grant a "reinstatement" order compelling the employer to reinstate the employee.

This does not mean, says Levy, the employees actually have to go back on the job but

do not reach this low point.

According to Levy, the Industrial Court stunned the business world with a stinging judgment in a labour relations case involving the United South African Motor Workers' Union and Fodens Pty Ltd.

The judgment reinstated three Fodens employees who it ruled had been wrongfully dismissed, forced the firm to recognise and negotiate with the union, ordered it to cease making derogatory remarks about the union and demanded it to stop victimising employees for being union members.

"This case was an important first in South African industrial relations, according to Levy, who said "it heralded a new age of collective bargaining."

He says one of the most important and confusing issues in industrial relations is the concept of unfair labour practice. It is one of the important factors which spark off strikes.

"An incorrect decision to dismiss a worker may lead to fines, damages, reinstatements or costly out-of-court settlements," he says.

The importance of the Fodens case is, irrespective of law or the contract of employment, the company was found guilty of committing an "unfair labour practice" (ULP) purely because it had reacted in an entirely predictable way to the presence of a black trade union.

"The concept of ULP is based on a consideration of equity or fair play. Although the law should be fair, it sometimes is not and the question of fairness becomes a determining factor," he says.

In his contention, three things have to be looked into before employees are fired. These are "Could I, or should I or will I get away with it?" If the answer to these questions is no then "You can fire any worker at your own peril."

"What was good law," Levy continues, "is not a necessarily good practice nor good labour relations. If a company finds out that its best heavy equipment operator has a fake licence, it might be proper to fire the worker but be more practical and help him find another licence."

He says it is important that managers should know about the labour legislation because the less equipped managers will be forced to know

Consistent
Managers should have rules of conduct which should be generally known right down the line, consistently applied and allow differing circumstances. The book deals with several issues that warrant the dismissal of workers, including absenteeism, drunkenness, poor performance, theft, refusal to carry out orders and perform work, dishonesty, strikes and incompetence to a serious degree.

There is no mystery involved in the achievement of fairness, Levy writes. Most people have an innate sense of fair play. All that is required is the ability to exercise it without prejudice by any vested interest.

"This treatment should be fair enough to ensure fairness and to avoid an unfair labour practice," he says.

"There is no doubt that dismissal — especially unfair dismissal — is a major factor contributing to industrial unrest and wildcat strikes. Research during the last four years has confirmed this point in South Africa. It has shown that, on average, it has seldom stood lower than 20 per cent as a causative factor in triggering strikes and has, on occasions, risen to as high as 43 per cent."

Director slates new labour Bill

Pretoria Bureau

"The Labour Relations Amendment Bill indicates that the Government is trying to over control a situation that is in the process of evolution."

This was said yesterday by Mr Peter Morum, managing director of Firestone in South Africa. He was speaking at a seminar of the Natal Chamber of Industries in Durban at which changing industrial relations were discussed.

"We have a proliferation of trade unions, we have inexperienced management and we have an over-reactive Government," he said.

No good was done for labour peace when the police locked up labour leaders, Mr Morum said, as their replacements were even more distrustful.

Mr Morum also noted that the proposed Bill did not allow for verbal agreements which would now have no validity in law.

He said SA had barely started along the road to enlightened labour negotiations and the gap between workers and management had to be reduced.

CAPL Times 6/6/84 166

Ill-fed children: No valid estimates

PFP attacks 'big stick' labour bill

Ill-fed children: No valid estimates

HOUSE OF ASSEMBLY — The government has no "general and valid" estimate of the number of children in South Africa suffering from malnutrition, the Minister of Health and Welfare, Dr Nak van der Merwe, has said in a written reply to a parliamentary question.

Dr Van der Merwe told Dr Marius Barnard (PFP Parktown) that because the term "malnutrition" was ill-defined, and the standards used to assess it were not "universally applicable", there were "no general and valid estimates of the number of children suffering from malnutrition per population group" in South Africa — Sapa

Political Staff
HOUSE OF ASSEMBLY — Apart from two minor amendments, a controversial new labour law has been left basically unchanged by a parliamentary select committee.

The Labour Relations Amendment Bill will make most agreements between unions and employers unenforceable in courts, including the industrial court, and it will make it a criminal offence for employers not to submit particulars of agreements to the Department of Manpower.

The bill was attacked by a number of unregistered unions when it was first introduced.

Yesterday, the Progressive Federal Party spokesman on manpower, Dr Alex Boraine, MP for Pinelands, said the decision to go ahead with the bill was "cynical in the extreme".

One of the changes proposed by the select committee is that "particulars" of agreements will have to be provided

to Department of Manpower inspectors instead of copies of agreements, as originally proposed.

The other change is that employers or employer groups will be responsible for forwarding these particulars and they will have 90 days to do so, instead of 30 days. In the original draft "parties" to the agree-

ment continually states it believes in freedom of association in labour matters."

He did, however, welcome the changes that had been proposed by the select committee.

In future, agreements, unless they complied with the regulations, would not be enforceable in any court, including

interests of employers or employees or in the public or national interest."

Dr Boraine said this gave the minister new powers, which were essentially political, and the select committee had refused to change this.

"In general, the big stick is still in the proposed law instead of the carrot."

"They are taking a strange step to deal with a small part of the labour movement, and it seems to me they are merely trying to please the right-wing trade unions."

"A large number of bodies, including the Federated Chamber of Industries, sent memoranda to the select committee, asking the government not to proceed with the measure."

"If the government is committed to industrial peace they are going about it in a very funny way and if they are to continue the enlightened approach of Wiehahn, they have a very remarkable way of showing it," Dr Boraine said.



ment had to forward copies of the agreements.

Dr Boraine said the government action was "bad planning" and a "stupid way" to deal with labour legislation.

"This can only antagonise workers, who will see it as an attack on them and as an attempt to control them, although the government

the industrial court

"I think that is pathetic and a cause of trouble," Dr Boraine said.

He was also strongly opposed to a provision in the bill which will enable the minister to order all or any of the provisions of agreements to be inoperative if he considers it to be "in the

con.

CAPL Times 8/6/84 (166) 134

Go-ahead for 'half-baked' bill

Political Staff

HOUSE OF ASSEMBLY

The government yesterday pushed ahead with the controversial Labour Relations Amendment Bill, in spite of calls from two opposition parties and the Federated Chamber of Industries for it to delay the measure

The chief Opposition spokesman on manpower, Dr Alex Boraine (PFP Pinelands), said during the second reading debate of the bill that it was not only "premature and illogical" but also "potentially disruptive"

He also said it was "half-baked and quite out of step with the spirit of legislation which has been introduced into this House since the appointment of the Wiehahn Commission"

Dr Boraine called on the government to postpone consideration of the proposed legislation until after it had received representations on the 400-page National Manpower Commission report on trade union affairs

In his speech, he quoted telegrams from the Federated Chamber of Industries and the Transvaal Chamber of Industries also calling on the government to

defer the bill until after comments had been received on the Manpower Commission report

The FCI had said it was "unwise" to proceed with the measure, particularly in view of the need to maintain labour peace in South Africa and the TCI had said it was "illogical" to proceed with a measure which could be changed

who said there was tangible evidence that it was premature to proceed with the bill until the commission report had been considered

Replying, the Minister of Manpower, Mr Pietie du Plessis, said one of the basic issues was whether one wanted orderly coexistence in South Africa or not

The vast majority of

must we comply with the regulations but you allow these unions to do what they want"

Mr Du Plessis accused Dr Boraine of pleading for organizations "which do not want to do anything at all to comply with the requirements of the law"

These unions wanted to sign agreements and enjoy the benefit of the law but they did not want to comply with the requirements of the law

The government did not prohibit anyone from signing agreements but these agreements should be in accordance with the provisions of the law

Asked by Mr Miller what would happen if the new law led to illegal strikes, Mr Du Plessis replied "If they take part in illegal action they know they are heading for trouble"

He also said the cornerstone of the measure was that it was reasonable and in keeping with the feelings of the majority of people who wanted peace in the labour field In particular, the bill was welcomed by established unions, Mr Du Plessis said

"If we just let this matter die, we are going to get chaos in the labour field"



after representations on the Manpower Commission report had been considered

Dr Boraine accused the government of using "the big stick of compulsion" instead of the "carrot of encouragement"

He was supported by the New Republic Party spokesman on manpower, Mr Ron Miller MP

unions in South Africa complied with the minimum requirements of the law but there were about six unions who refused to do so, Mr Du Plessis said

The government did not want to perpetuate permissiveness in the labour field and it wanted to establish order

The established unions had asked "why

Labour Bill 'half baked' — opposition

AKGGS 8/6/84 ~~165~~ 166 ~~167~~

Parliamentary Staff

A BILL on labour relations has been attacked by opposition speakers in the Assembly as "half-baked", potentially disruptive and out of character with the Government's earlier labour reforms

Both the Progressive Federal Party and the New Republic Party opposed the second reading of the Labour Relations Amendment Bill. The Conservative Party supported the measure.

The proposed legislation, which has been under investigation by a parliamentary select committee, was introduced by the Minister of Manpower, Mr P T C du Plessis.

The Bill provides among other matters for agreements between trade unions and employers, under certain circumstances, to be unenforceable in courts, including industrial courts.

It makes it a criminal offence for employers not to submit particulars of agreements to the Department of Manpower.

A further contentious provision takes away from the industrial court appeals by persons who feel aggrieved by any decision of an industrial council and empowers the Minister to handle such appeals.

Dr Alex Boraine (PFP Pinelands) said the Bill was not only premature and illogical, but was also potentially disruptive.

Speaking in yesterday's second-reading debate, he said the Bill was also "half-baked" and out of step with the spirit of labour legislation introduced since the appointment of the Wiehahn Commission.

The Government's "stubborn determination" to proceed with the Bill at this stage was not helpful to the maintenance of labour peace in South Africa.

Dr Boraine said that although certain improvements had been made by the select committee, the Bill was being proceeded with in spite of the fact that important representations on a recent National Manpower Commission report about labour matters were still being awaited.

The Government had also not yet tabled its White Paper on the matter.

Dr Boraine said he would have

thought that if the Government wished to build on the success of recent labour legislation, it would proceed with discretion, sensitivity and patience. The Government's approach in this instance was a contradiction of all these qualities.

"To rush this Bill through at this stage will help no one. It may indeed widen the already existing distrust between some labour unions and the Government and make the task of the employer even more difficult than it is."

The evidence called for by the select committee had been almost equally divided between those who supported, with qualifications, the legislation on those who opposed it. Major reservations had been expressed.

Dr Boraine moved an amendment declining to pass the second reading of the Bill until such time as the Government had published its White Paper on the report of the National Manpower Commission.

Mr Ron Miller (NRP Durban North) said the provision disallowing certain unions the right to take their disagreements to court was a drastic step to coerce a few unions.

Mr Miller said he agreed with Dr Boraine that the matter should wait until all evidence had been received.

He warned that trade unions could resort to strike action if they were prevented from taking part in bargaining procedures.

Speakers on the Government side defended the Bill and rejected the main opposition criticism.

Mr G C Ballot (NP Overvaal) said Dr Boraine had certain valid arguments.

However, he could not agree with Dr Boraine's viewpoint that the Government was using "the big stick". The mere fact that the Government had referred the Bill to a select committee showed that it regarded labour matters as "sensitive" and was prepared to handle them accordingly.

Mr Casper Uys (CP Barberton) said his party had serious misgivings about certain aspects of the Bill, but agreed with other aspects.

Bill may lead to strikes

THE controversial Labour Relations Amendment Bill passed its final stage yesterday with the official Opposition and the New Republic Party warning that it could lead to increased strike action.

The Bill provides, among other matters, for agreements between trade unions and employers, under certain circumstances, to be unenforceable in courts, including Industrial Courts.

The Progressive Federal Party and the New Republic Party opposed the Bill, while the Conservative Party supported it. Speaking during the third-reading debate yesterday morning, Dr Alex Boraine (PFP Pinelands) said the Bill struck at the freedom of contract for both workers and employees

Dr Boraine warned that the labour field was "sensitive and volatile" and urged the Government not to wreck the excellent developments that had taken place over the past years with unnecessary action

Militant

He warned the Government not to be lulled into a false sense of security because of the decline of strike action

recently. "When the upturn in the economy comes it is possible that we will be faced with a militant labour force," he said.

Mr Ron Miller (NRP Durban North) said his party agreed there was a need to regulate trade unions but they disagreed that the Bill would do what it purported to do

The Bill would cause more discontent than

total registration

Rejecting Opposition arguments, he said the Bill would result in "orderliness" and would force trade unions to "play according to the rules"

The Bill did not detract from collective bargaining. It would in fact, protect workers and employers. Employers would now know who they were dealing with, he said

It would not persuade unregistered unions to register but would rather "drive them into a corner" and they would resort to strike action, he said

Replying, the Minister of Manpower, Mr Pieter du Plessis said the Bill would have the effect of forcing trade unions to comply with the law and would help to achieve the ideal of

Bill 'encourages total registration'

HOUSE OF ASSEMBLY.

— The "ideal" of total registration of trade unions would be encouraged by the Labour Relations Amendment Bill, the Minister of Manpower, Mr Pietie du Plessis, said yesterday

The bill, which went through its final stages in Parliament yesterday in spite of the opposition of the Progressive Federal Party and New Republic Party, will limit the power of unions which do not comply with the minimum requirements of the law to negotiate enforceable agreements with employers.

Mr Du Plessis said the bill would not take away the rights of anyone to act collectively "provided there is compliance with the minimum requirements, as laid down in this law"

Some unions did not want to comply with these requirements but wanted to take advantage of the system.

"The department, and in many case workers in particular factories, do not know the bona fides of those people, yet those people act on their behalf.

"They could be ordinary agitators or people

who have motives other than the advancement of the interests of the employers

"They could be people with strange motives who want to slip in through the backdoor to achieve certain political objectives by making use



of the machinery which has been introduced into the labour market," Mr Du Plessis said

The minimum requirements of unions included the duty to keep records and report back annually to their members on how their money was spent, and to spell out their aims in a constitution.

"If such an organization or trade union is restricted by its constitution, then its members will know if the organization is busy with other matters and is not serv-

ing their interests

"In other words there must be protection to the worker and members of trade unions, by ensuring that a discipline is imposed on the trade union," he said

A principle which was important was certainty

union to use the dispute-settlement procedure provided in the law

What had happened, however, was that people who in no way complied with the requirements of the law were entering the collective bargaining terrain.

The bill would protect workers against trade unions which possibly wanted to exploit them and lead them on the wrong road, Mr Du Plessis said

"Unions such as Tucs were always in favour of extending rights to black workers and workers of other colours.

"They are today in the kraal They work within the system.

"Must I now ignore them because there are now a few organizations which say to Parliament they will not take any notice of its law and carry on as they like — to drive on the right-hand side of the road, and if necessary even upside down

"We simply cannot allow it The whole point of departure of this legislation is to bring about order and discipline and to bring security for everyone," Mr Du Plessis said

and security and this would be brought about with the bill

The effect of the measure would be "the realization to a greater degree that we take trade unions and employers' bodies so far that they move closer to the ideal of total registration"

His predecessor had in the past followed a very reasonable path, particularly as both the Wiehahn Commission and the National Manpower Commission had recommended that registration be the absolute minimum condition for a

Saweta (166) 13/6/84 132 11321

Call to resist Labour Bill

THE BLACK Allied Mining and Construction Workers' Union (BAMCWU) has called on the black community and organisations to resist the Labour Relations Amendment Bill which puts stricter control on trade unions and employers.

The resolution was taken at the union's national congress held at St Peters, Hammanskraal at the weekend

In terms of the Bill, all recognition agreements will have to be submitted to the Department of Manpower, and will have no force in law unless the relevant unions have submitted certain information to the Department

The emotion-charged congress said that it noted the latest ploy by

By JOSHUA RABOROKO

the State to further entrench itself in worker organisations as shown by the Bill

Resist

"We call upon all black worker organisations and the black community to resist such inroads into the freedom of the workers," the resolutions read

The congress also strongly condemned the

latest exploitation and oppression of black workers. It committed itself to resisting new forms of exploitation, especially low wages for workers

Referring to a trade union federation, BAMCWU said it fully supported the initiative of forming a principled alliance with other worker organisations

BAMCWU is one of

the seven trade unions which established a new alliance of unregistered, independent trade unions

Diseases

Among resolutions passed at the congress was one noting the high rate of diseases caused by the environment at workplaces

The newly re-elected president, Mr Letsatsi Mosala, told The SO-WETAN yesterday that the union was committed to working closely with other unions. The union's strength

was growing rapidly and "we intend signing recognition agreements with several companies where we have membership"

New office bearers are Mr Mosala, president, Mr M Rakoena, senior vice president, Mr W Mashigo, vice president, Mr P Nefolohodwe, general secretary, Mr W Mafifi, national organiser, Mr Simon Mokoena, second vice president, Mr M Mokhine, publicity secretary, Mr Patrick Make and Mr W Mbalane, committee members

Collective criticism

~~172~~ ~~165~~ 166

The National Manpower Commission (NMC) report on collective bargaining and related matters continues to arouse controversy

The report was tabled in Parliament a few weeks ago. It covers levels of collective bargaining and works councils, the registration of trade unions and employers' organisations, and the Industrial Court. At that stage government took the laudable step of announcing that it would not publish its response in a White Paper before it had received comment from labour circles. It is now becoming clear that at least some sectors have serious criticism of the recommendations.

Many of them were aired last week in a debate at the SA Institute of Race Relations. NMC chairman Hennie Reynders fielded questions on the report from labour lawyers, trade unionists, employer representatives and academics.

The questions centered mainly on the two most controversial aspects of the report: those relating to the registration of trade unions, and proposals to tighten up the definition of an unfair labour practice in the Labour Relations Act (LRA).

Race out

The majority of the commissioners recommended that the Industrial Registrar should not take race and representativeness into account when considering applications for trade union registration. This is generally seen in a positive light. But it was also recommended that unions should not be able to operate and participate in collective bargaining unless they comply with certain minimum requirements. These include supplying the Department of Manpower with basic information about union constitutions, the scope and purposes of the organisation, office addresses, membership, and lists of office-bearers. Proper accounting procedures would also have to be complied with.

These requirements are essentially the same as those laid down in the LRA at present. Most unions comply with them. But the sting in the tail introduced in the NMC report is that the commission has recommended that unions which do not comply with them will be liable for prosecution. Despite denials, this has been widely interpreted as a move to clamp down on unregistered unions — some of which have a high profile outside the workplace in the political arena.

At present an unfair labour practice (ULP) is very loosely defined in the LRA. Unions have taken full advantage of this. Assessing allegations of ULPs has become a major part of the Industrial Court's work and unions have won significant victories through this mechanism. The NMC has

recommended that the definition should be narrowed and has listed a number of examples of what should in future be regarded as ULPs.

Legal Resources Centre attorney Geoff Budlender asked a number of key questions in the Race Relations session. He pointed out that since the publication of the Wiehahn commission's reports, and the subsequent changes to legislation, a new era of accommodation had come about in the SA labour field. Government appeared to be endorsing the view that there should not be

in which management is prepared to recognise such unions once their representivity has been tested. The NMC recommendations, he said, appeared to be designed to protect such union members from themselves. As such, he found it difficult to reconcile them with statements from the Director-General of Manpower that the age of paternalism in labour was dead.

Objections

Other speakers raised numerous objections to the NMC's examples of proposed ULPs. A number of the labour lawyers objected to the fact that many of the instances of ULPs which have been upheld in the Industrial Court were not included in the NMC's list.

Attorney John Brand objected to one of the proposed ULPs. This proposal states that the unjustifiable dismissal with the replacement of an employee by an employee of another population group, where the ostensible purpose is to provide less favourable terms and conditions of employment, should be regarded as an ULP. Brand said he did not know of any cases in the Industrial Court regarding ULPs in which these particular points had been contested.

Objections were also raised to the NMC's proposal that "union interference with employer affairs" should be an ULP. In the debate, it became apparent that if unions take up any issue which management regards as its own prerogative, and which it has not agreed to negotiate with unions, this could be an ULP. Brand said union challenges of management prerogative are the essence of collective bargaining. If that was to be regarded as interference, there would be nothing left to negotiate, he argued.

Another NMC proposal debated was that "the abuse of its organisational or negotiating power by a trade union to the detriment of other groups" should be an ULP. The NMC qualified this proposal by stating that it should apply in situations of "unions using their bargaining power to compel an employer to deal with it only and not to negotiate with a minority union." Many emerging unions demand that employers negotiate only with majority unions. Brand said the proposal was intended to protect minority racial unions, without stating it openly.

Reynders conceded that the present wording of the ULP proposals created room for misunderstanding. But he stated the proposals were merely guidelines. If they were finally accepted by government legal experts would have a hand in drawing up and clarifying them. He appealed to the participants not to be too sceptical about them as faults would be ironed out in the drafting process.



Reynders ... defending NMC report

State interference in union-management relationships. What had happened in that time, he asked, that influenced the NMC to propose making fundamental changes to the system by requiring a tightening-up on registration?

Reynders replied saying that in ideal free enterprise societies individual employees and employers should be allowed to negotiate work contracts between themselves. In line with this, he said that trade unions *per se* are inimical to free enterprise societies because — as they have scope to operate in specific areas or industries or for specific types of workers — they can create a monopsonistic situation. While the NMC accepted that they had a right to this, it felt that if unions wanted to participate in collective bargaining they should comply with the minimum conditions laid down in the report. The aim was primarily to protect union members as well as society in general.

Grinaker Holdings group manpower consultant, Theo Heffer, had strenuous objections to this view. Heffer argued that there are situations in which workers are happy to join unregistered unions voluntarily and

FM (166)
15/6/84

LABOUR LEGISLATION A troubling change

The basis for the fragile peace in labour relations in SA could well have been broken by the adoption of the Labour Relations Amendment Bill in Parliament this week. At present the Labour Relations Act

(LRA) requires both registered and unregistered trade unions to comply with certain minimum requirements. These include supplying the Department of Manpower with details of constitutions, head office addresses, names of office-bearers and officials as well as financial information. The most contentious aspect of the amendment is that if unions do not comply with these minimum requirements, any agreements they reach will not be enforceable in any court, including the Industrial Court.

Not only were there sharp divisions about whether or not to proceed with the Bill, but the warnings about the negative effects among workers — by bodies like the Federated Chamber of Industries (FCI) and opposition manpower spokesmen — were ignored.

Moreover, it is by no means clear why it was necessary to proceed with the legislation now. As both PFP and NRP manpower spokesmen Alex Boraine and Ron Miller pointed out, government has asked for comments on the National Manpower Commission (NMC) report on collective bargaining and related matters — which covers some of the same issues — before it publishes a White Paper on the report. The FCI made the same point in a telex sent to the Select Committee which considered the original draft of the Bill.

Boraine lashed out during this week's Parliamentary debate. "Government is using a large hammer to deal with a problem which has the signs of working itself out. I say that the stubborn determination to proceed with this Bill at this stage is not helpful to the maintenance of labour

peace in SA."

Miller was equally emphatic. "Inevitably there are going to be more strikes in the future, as a result of this clause (dealing with the non-enforceability of agreements). In the final analysis, those trade unions will resort to strike action, which in itself will be illegal. We are, however, leaving them no alternative. We are driving them into a corner and when they are in a corner and have nothing to lose, they will go for illegal striking."

But Manpower Minister Pietie du Plessis — who has said that the new law would only apply to "five or six" unregistered unions who refuse to comply with the LRA's minimum requirements — would not back down.

He argued that these unions wanted to benefit from the advantages of the labour

THOSE FOR AND AGAINST

Unusually, the report of the select committee which considered the original draft of the Labour Relations Amendment Bill was not published before the measure was debated in Parliament.

Chief Opposition labour spokesman Alex Boraine, describing this as an "undesirable state of affairs," said "One would have thought that under normal circumstances a report of a select committee would be available when one was debating a new Bill that emanated from that committee."

By the time the debate was over, the select committee report still had not been published.

But another Opposition MP, Nic Olivier, gave an indication of the division of opinion about the measure.

He said those who had submitted evidence in support of the Bill included the Department of Manpower, Motor Industry Employees' Union, Transport Own-

ers' Association, Mine Workers' Union, National Union of Furniture and Allied Workers' Union, Industrial Council for the Clothing Industry of the Cape, Sigma Motor Corporation, Textile Workers' Industrial Union, SA Confederation of Labour, and the SA Police.

Olivier said those who had opposed the measure included the Steel and Engineering Industries' Federation of SA, General Workers' Union, Leyland SA, Natal Chamber of Industries, Federated Chamber of Industries, Midlands Chamber of Industries, Transvaal Chamber of Industries, Mine Surface Officials' Association, Assocom, Food and Canning Workers' Union, University of Cape Town's Graduate School of Business, University of Port Elizabeth's Industrial Relations Unit, Premier Group Holdings, SA Bus Employers' Association, SA Labour and Development Research Unit, as well as the Association of Attorneys and other bodies.

relations system but refused to accept any of the obligations that went along with it. This "permissive" situation could not continue. It was necessary to have "order" and "discipline" to ensure compliance with the minimum requirements of the law. He also said that both the Wiehahn Commission and the NMC had recommended compulsory registration.

In many cases, he said, the Manpower Department and factory workers did not know the *bona fides* of these unions. Yet their officials acted on behalf of workers. "They could be ordinary agitators or people who have motives other than the advancement of the interests of the employers. They could be people with strange motives who want to slip in through the back door to achieve certain political objectives by making use of the machinery which has been introduced into the labour market," Du Plessis said. The Bill would be a protection to workers and union members.

While no one would argue that the minimum requirements demanded of unions are excessive, the Bill does amount to compelling unions to register. In the labour field — which Du Plessis himself has described as "sensitive" — such a move could turn out to be dynamite.

166

22/6/84 FM

THE CLOSED SHOP

Controlling the entry points

Few labour issues can heat emotions like that of the closed shop. The practice of employers hiring only workers who are members of specific unions is controversial — and particularly so in SA, where race is an ever-present factor in the workplace.

Before 1979, in the pre-Wiehahn period, Africans could not be members of legally-recognised trade unions. The closed shop was widely condemned by labour reformists as entrenching job reservation. Only recognised unions could enter into closed shop agreements prohibiting employers from hiring non-union labour — and all these unions excluded Africans.

Since government accorded legal recognition to black trade unions, much has changed. Unions mainly representing unskilled black workers — founded both before and after Wiehahn — have flourished. And as they gained strength they began to challenge the closed shop prerogatives held by the older unions. Some have applied for, and been granted exemptions. The Federation of SA Trade Unions (Fosatu) affiliate, the Paper Wood and Allied Workers' Union, has, for instance, been exempted from the SA Typographical Union's closed shop at a number of Nampak factories.

At one stage it seemed that if the emerging unions continued to gain exemptions, there would be a long-term erosion of the closed shop. But, recently, the older unions have begun to use the closed shop to resist the organisational gains made by the newer unions. One defensive tactic has been to develop a mechanism to expel workers from established unions if they join emerging ones — and so bringing down closed shop penalties on the employer.

This seems to be the case in the present battle between Fosatu's National Union of Textile Workers (NUTW) and the Garment Workers' Industrial Union (GWIU). Both have members at the Pinetown protective

The principle of the closed shop has come into focus because of two current court actions relating to inter-union rivalry. Many feel that the system is too entrenched in SA to be easily abolished. Nonetheless, it runs counter to the ideal of freedom of association.

clothing manufacturer, James North (Africa). Conflict started last year when the NUTW applied to the Natal clothing industrial council for membership. The application was refused on the grounds that the NUTW did not have sufficient representation in the industry. The NUTW subsequently announced that it would challenge the industrial council's decision in the Industrial Court.

The GWIU, which is affiliated to the Trade Union Council of SA (Tucsa), followed up late last year by amending its constitution to allow it to expel any member who joined another trade union. It was a masterful tactic. Labour law does not prevent workers from belonging to two trade unions. But in terms of the GWIU's closed shop agreement with James North, it meant that the company would be liable for censure and prosecution by the industri-

FOCUS ON OIL PRICES

At the beginning of this year the *FM* created a markets section to focus on and extend its coverage of foreign and domestic financial and commodity markets. This week it extends that coverage by including key oil prices, both spot and forward, quoted in international markets. See page 104.

al council if it continued to employ NUTW members.

While the GWIU's tactic was undoubtedly aimed at ensuring its survival against the NUTW onslaught, it posed a gigantic headache for James North. No company enjoys being caught in the middle of a trade union membership war. James North took the sensible decision to test the workers' true feelings by conducting a secret ballot. The result was a resounding victory for the NUTW. Some 219 workers voted in favour of it, while only 43 opted for the GWIU.

But the GWIU did not take the matter lying down. It alleged ballot irregularities and worker intimidation, and has questioned the impartiality of James North's ballot auditors.

The NUTW's challenge of the Natal clothing industrial council's rejection was heard in the Industrial Court last week. No decision had been handed down by the time the *FM* went to press. But the GWIU did concede in court that the ballot results were accurate. The judgment will be crucial for determining the future of the GWIU's closed shop in the Natal clothing industry, into which the NUTW has made significant inroads. NUTW general secretary John Copelyn tells the *FM* his union has organised some 5 500 Natal clothing workers — although not all fall within the GWIU's closed shop.

The closed shop emerged as a point of contention in another case heard last week in the Rand Supreme Court. This arose out of an application lodged in March by the National Union of Furniture and Allied Workers (NUFAW) for an urgent interdict preventing the Paper Wood and Allied Workers' Union (PWAWU) from recruiting workers in the furniture manufacturing industry. The furniture union, which disaffiliated from Tucsa recently, argued that the PWAWU was acting in contravention of its

166

Financial Mail June 22 1984

own constitution, which did not cover furniture workers. The NUFAW's action stemmed out of the PWAU's encroachment at Brits furniture factory Pat Cornick. But the NUFAW obviously intended to stop its Fosatu rival from organising anywhere in the furniture manufacturing industry.

A complicating factor in the case is that the PWAU had applied to have its scope extended before the NUFAW's application to the Supreme Court. By the time the matter came up for hearing last week, the extension had been granted. The hearing therefore revolved around costs and whether the NUFAW had been entitled to prevent the PWAU from recruiting furniture workers at the time the application was lodged.

The NUFAW argued that employees who joined the PWAU would be endangering their right to continued employment in the furniture industry because it has a closed shop. The PWAU's legal representatives countered by saying employees had every right to belong to more than one union. The NUFAW stated in court that it intended amending its constitution to prevent this — as did the GWIU. The *FM* went to press before the court passed judgment.

Flashpoint issue

These two cases vividly illustrate how the closed shop has become a flashpoint between the emerging and older unions. Tucsas general secretary Arthur Grobbelaar is a staunch supporter of the concept. "It is a legitimate means whereby trade unions can ensure that they retain their representation and representativeness. The Labour Relations Act provides various escape routes to keep them on their toes."

But while the emerging unions seldom have much in common with Tucsas, it would be far off the mark to assume that they are against the closed shop in principle. A leading Fosatu representative told the *FM*: "We feel the closed shop is a legitimate union demand. Fosatu does not accept that the closed shop is against freedom of association, but it has been abused in SA because of minority and racist unionism. The closed shop must be based on representivity. The industrial closed shop that some SA trade unions have was not based on that. Workers must also have a way of getting out of a closed shop in the event of a union losing support."

According to a National Manpower Commission (NMC) report on the closed shop issued in 1981, 50 industrial councils out of a total of 104 had 57 closed shop agreements. These covered about 250 000 workers, 23 000 of them union members. The report stated that certain unions are involved in up to eight closed shops. Of the exclusively white unions, 25% had closed shops, while of the unions which catered for whites, coloureds and Asians, 82% had closed shops. Only one black union had a closed shop. A senior gov-



NUTW's Copelyn ... onslaught into clothing

ernment spokesman tells the *FM* these figures remain roughly valid.

The majority of these agreements contain a reciprocal clause — that employees are obliged to work only for employers who are party to the agreement, while employers can only hire union labour.

The NMC's investigation of the closed shop arose from the Wiehahn commission's consideration of the practice. It reveals exactly how contentious the closed shop is. In Part I of the Wiehahn report the majority of commissioners recommended that the closed shop should be maintained, subject to constant surveillance by the NMC. However, government in its responding White Paper, favoured the minority view that future closed shops should be prohibited and that existing agreements should be maintained depending on the wishes of the participating parties. But it instructed the NMC to investigate the matter further.

After much deliberation the NMC's 1981 report recommended that the capacity to negotiate closed shops should be retained but that more safeguards should be considered. The NMC stated that "although there are strong philosophical and practical objections to the closed shop it is a long-established practice in SA the retention of which will have more advantages than disadvantages. It is a way of recognising that trade unions need some sort of security arrangement which is justified because of the role they play in the maintenance of industrial peace."

It added that a prohibition on future closed shops, despite possible merits, would result in profound disruption of a large number of stable employer-employee relationships.

In its White Paper on the fifth Wiehahn report government accepted the NMC's recommendation — but decreed that a 90-day period should be allowed before an employee has to become a union member.

That will not be the NMC's last word on the closed shop. It is shortly to release another report on safeguards.

There are many arguments for and against the closed shop — and they are not restricted to SA. According to Kate Jowell of UCT's Business School, the International Labour Organisation (ILO) has not taken a stand on the issue despite the fact that it has adopted more than 156 conventions on labour issues. This, she says, could be seen as indicating the conference's acceptance of the practice. However, it could also be indicative of the difficulty of formulating a convention acceptable to the three parties involved in the ILO — international labour, management, and the organisation's various states' representatives.

- Arguments for closed shops are
- They contribute to industrial peace since they lead to the development of larger and stronger trade unions. This obliges employers to pay due heed to them and to comply with agreements.
 - They help prevent the establishment of a large number of trade unions in the same industry, so contributing to greater trade union stability.
 - They aid trade union discipline, and consequently help employers too.
 - It would be unfair for non-union members to derive benefits from the actions of trade unions without bearing the obligations of membership, and
 - They are so entrenched in SA that abolition will lead to disruption.

Some find these arguments compelling. But in the final analysis closed shops restrict both employees' and employers' labour choices. This goes against the grain of all that free enterprise represents. Just as workers should have the freedom to associate, and to join the trade union of their choice, they should also have the freedom not to associate. In a country like SA this is a vital principle.

140A 197 135 66 D

RAM 29/6/84 (166)

STANDING OF INDUSTRIAL COURT

By BRENDAN RYAN

THERE is an urgent need to clarify the status of the Industrial Court, according to the directors of Anglo American Corporation.

In their review for the year to end-March they say the Industrial Court must be more fully integrated into the judicial system

"An equally pressing requirement is that of clarifying the court's role in the settlement of disputes and collective bargaining.

"An important step in this process would be a clearer definition of the 'unfair labour practices' concept," they say.

"This is likely to prove complex and difficult — should the court deal only with conflicts of rights or also conflicts of interest?

"How are the two important characteristics of justice, namely certainty (clear knowledge of what is unfair) and equity (the judgment of fairness in a particular set of circumstances) to be reconciled in this area?"

Anglo's directors say the corporation strongly supports the need for a branch of the judiciary that specialises in industrial relations.

One of the functions of the court is to adjudicate on allegations of unfair labour practice while, at the same time the court was created, legislation concerning unfair labour practices was introduced.

The Anglo directors say this legislation is extremely widely defined. There was a significant

decrease in both the frequency and intensity of strikes during 1983

"Even though deteriorating economic circumstances will have played a role, this decline is also related to increased use of dispute-resolution machinery in the form of industrial councils, conciliation boards and, especially, the Industrial Court."

The directors say a multiplicity of unions is likely to persist in mining for some time as the unions presently work on ethnic occupational lines.

"Although the existence of a number of unions does not in itself create difficulties, the mining industry currently lacks a collective-bargaining structure to enable parties to bargain in a common forum," they add.

FM 29/6/84
INDUSTRIAL COUNCILS
Whose jurisdiction?

A demarcation dispute that has bedevilled industrial relations in the building and furniture industries for almost 30 years is close to being resolved

At issue is whether workers making built-in kitchen and laboratory cupboards, as well as other fine woodwork such as church fittings, should fall under the jurisdiction of the industrial councils for the building industry or those of the furniture industries

All involved are believed to have agreed, in principle, on a solution. Clarification is still awaited on a few minor areas of disagreement. No-one is prepared to reveal details of the settlement. It is claimed that the matter is extremely sensitive and any premature discussion "could be prejudicial to the final negotiations"

However, the FM has learnt that, in essence, the agreement provides for dividing the contested functions between the jurisdictions of the different industrial councils. The seemingly logical solution, however, is more complex than appears at first sight. The dispute has a legacy that stretches back to the post-war days and it has taken a year of "extremely sensitive negotiations" to get the parties to the point where they are now.

One of the problems is that employer groups insisted that no employees should be prejudiced in any way by the final settlement. There are thousands of employees involved together with a number of trade unions and employers. With some employees destined for a change in status in terms of the new demarcation agreement, which could mean they will be entitled to changed benefits under their new industrial council, negotiations became extremely tricky.

In addition legal sources say that there were principles of labour law at stake. The splintering of big industries through the emergence of new technology is leading to the demise of some large industries and the fragmentation of trade union groups. This has major implications for SA labour law.

However there seems to be a degree of elation that a settlement is finally in the offing. Industry spokesmen say an anarchic situation existed with employers playing one industrial council off against the other — often to the detriment of employees.

DISMISSALS ~~(S)~~ ~~(S)~~ Following procedure ~~(S)~~ ~~(S)~~ (66)

Anyone who fails to comply with negotiated grievance and disciplinary procedures in labour matters does so at his peril. This is clear from an Industrial Court judgment which strongly endorses the concept that the law will support those who comply with negotiated procedures against those who deviate from them

The court refused to reinstate a Siemens worker who claimed he had been unfairly dismissed because he had been selectively punished for a group decision taken by a number of workers. The company argued that disciplinary and grievance procedures negotiated with the Metal and Allied Workers' Union (Mawu) had been ignored

The worker was employed in the winding section of Siemens's Isando plant, which operates a system of production target times. He had been warned for failing to reach his targets. A Mawu shop steward said workers found it difficult to comply with the target times and this had been drawn to management's attention.

The worker claimed that, in accordance with a group decision by workers in his section by which he felt bound, he refused to go to the supervisor's office to be warned for working slowly. He was fired for refusing to obey orders. This led to a strike involving 350 workers which was eventually settled after management threatened to fire workers who failed to report for work.

The company argued that the worker had not been dismissed selectively, since he had been fired before the strike for refusing to obey an order and that the workers had failed to follow the prescribed grievance procedure.

The court found that because the worker had not obeyed an order, his dismissal was lawful in terms of common law. It also found that there was no factual evidence that Mabizela had been dismissed in order

to punish him selectively for participating in a collective decision.

Summing up the implications of the case, Siemens group industrial relations manager Bill Doyle told the *FM*: "This case shows that both parties are bound by the principle of fairness with regard to discipline and grievance procedures. If you have procedures, you must apply them. By applying them, you make sure that you eventually reach the best and fairest decision."

INDUSTRIAL COURT

Union loses a case

Fm 29/6/84

Employers will be heartened, and trade unionists dismayed, by a new Industrial Court finding in a case involving the selective rehiring of workers fired during a strike. The case is fairly clearcut and its outcome could give important guidelines for future employer conduct in strike situations.

It evolved from the dismissal in January

Financial Mail June 29 1984

That the re-employment of workers was a separate issue. Two workers, who were not involved in the strike, were found to have been dismissed unfairly and reinstated. The company had reinstated two others before the court hearing.

The case arose out of demands, for a pay increase and union stop-order facilities, made by Mawu shop stewards during a meeting with Vetsak's personnel manager. At a subsequent meeting management refused the demands and the personnel manager undertook to convey this news to Vetsak workers the next day. However, he could not attend the meeting and sent an assistant in his place.

The workers were dissatisfied with this and insisted that the personnel manager should address them.

The personnel manager and another management representative then arrived and asked the workers to appoint shop stewards to represent them. The workers did so and then returned to work. The shop stewards were told of management's decision. This message was conveyed to the workers who decided that they would clock in the next morning but would not work until management explained its decision to them.

According to the workers' statement, they gathered in the factory yard the next morning. Vetsak's chief manager Piet de Jager arrived and asked why they were not working. After wrangling about which management representative should address the workers, De Jager told them a wage increase was out of the question.

Recognition

A discussion about recognition of the union followed. De Jager then said that if the workers did not return to work their action would be regarded as an illegal strike. Management finally said that if work did not resume by 3pm the workers should collect their wages. At 4:30pm the workers clocked out and left.

On January 30 the workers arrived and found the factory gates locked. They were told that management was seeking advice from the industrial council. Later they were told to return the next day to be re-employed. On the Tuesday the workers applied for re-employment and were told to return the next day to find out whether they had jobs.

In court, counsel for the workers argued that there was no reason why the 29% of workers who were not re-employed should have been treated more severely than the 71% who were. All the workers who participated in the work stoppage, Vetsak's legal representative argued that workers had participated in an illegal strike and had therefore been fired. In weighing up the fairness of the dismissal, the court found that all the workers had been treated in the same way. There was no room, therefore, for a submission that some workers had been treated more

fairly than others. The court also found that the workers' refusal to return to work constituted a breach of their contract of employment and that in view of management's attempts to explain why their requests had been turned down, their action was unreasonable.

Dismissal

The court said the workers' counsel had not attacked the reason for the dismissal, but the result of the re-employment. From this he had tried to infer that the dismissal was unfair. "The fallacy of the argument seems to lie in the fact that the unfairness of the dismissal is not sought in the reasons for the dismissal, but in the result of the conclusion of the contract of employment. These two concepts differ completely," the court ruled. As a result there was no onus on Vetsak to explain why it had re-em-

ployed some workers and not others.

The court's decision has led to union fears that employers may be deemed to be justified in dismissing any workers participating in a work stoppage no matter what circumstances led up to it.

If this is the case, some labour lawyers argue, the court will invalidate certain important sections of the unfair labour practice definition.

However, as the court's order is only temporary the matter is not yet settled. Some of the workers fall under the jurisdiction of industrial councils, although the majority do not. The majority have applied to the Minister of Manpower to appoint a conciliation board to hear the dispute. If the board fails to resolve it, the workers can apply for the court to hear the matter again.

But if the Minister refuses their request, or if he excludes the allegation of unfair dismissal from the conciliation board's terms of reference, they will have no further legal recourse.

The metal industry industrial council has failed to resolve the dispute and has been refused an extension to consider it. The 12 workers who fall under its jurisdiction may now apply to the Industrial Court for a final determination. The motor industry industrial council, which covers four of the workers, has been granted an extension to hear the matter. If it fails to settle the matter, those workers can also return to court.

FOUNDATION'S CREED

The Urban Foundation — now seven years old — was established not only to eliminate injustice but to fight against institutionalised discrimination. Addressing the organisation's annual meeting its chief executive, Jan Steyn, said "The foundation is — and has to be — as businesslike and efficient as possible in its activities, but the commitment with which it identifies and addresses its tasks comes from a desire to see a more just society in which the worth and dignity of every individual in SA is recognised and preserved."

The foundation, he added, should never forget that it is dealing with people, real individuals and families, with aspirations and emotions, with a desire to secure a better living for themselves and their families. It should continue to contribute to the reform of society and thus provide the avenues through which people can improve the quality of their own lives.

"Only thus can the reform process in SA achieve its objectives of a more just society without forfeiting stability and plunging into the abyss of violence, where the future of all our people, whatever their race, colour or creed, will be jeopardised for generations to come," he said.



Steyn ... staving off 'the abyss of violence'

THE credibility of the Industrial Court as an avenue for resolving industrial unrest was on line this week, until an 11th hour settlement was made by a chicken company.

Rainbow Chickens was reported to the police on Friday for failing to comply with an Industrial Court order made in early May and criminal charges were to follow.

However, late yesterday, following a Sunday Tribunal probe, a settlement was reached — staving off a serious knock to the country's new labour dispensa-

Lawyers believed that if employers ignored rulings of the industrial court, workers would believe the court did not have teeth and would resort to other means of voicing their grievances — with serious implications for industrial peace.

At the centre of the issue were seven chicken slaughterers. The seven are young Muslim men who are employed to pray to Allah as they cut chicken parts (135 a minute) to fulfil Halaal requirements.

The slaughterers were employed by Rainbow Chickens at Hammarsdale. They were sacked in February for refusing to work overtime.

They went to the Industrial Court and asked to be reinstated on the grounds that they had not contracted to work overtime. They said their dismissal was unlawful under the labour practice.

The company's lawyers argued that they could not bring the case to the Industrial Court because they regarded the slaughtering area as a farm, not a factory. The workers were therefore not protected by the country's Basic Conditions of Employment Act, they

However, the Legal Resources Centre revealed that the area was zoned and rated as an industrial area that for all intents and purposes the slaughterers were a factory and its workers, industrial work-

The court accepted this. This signified a major breakthrough for other Rainbow employees because it granted them legal protection which they had not been afforded as farm workers.

The court also granted the seven slaughterers a reinstatement order.

But more negotiations followed after the company,

rather than take the workers back, decided to pay reinstatement and redundancy compensation.

A lawyer for Rainbow, Mr Malcolm Douglas, emphasised that the company had not ignored the court order and said it had, up until Friday, "by arrangement" postponed the settlement from one month to the next.

In dispute is what redundancy pay the seven workers should receive over and above the five months' salary they are to get in lieu of reinstatement. Mr Douglas said this last amount had not been paid as Rainbow was "considering" taking the case on appeal.

On Friday, the dismissed workers refused to accept an offer of two months' redundancy pay. Their lawyers sent a telegram to Rainbow, formally recording the company's refusal to reinstate the workers in spite of the order.

But after the Tribune contacted Rainbow's lawyers, a last-minute settlement was reached, which the slaughterers' lawyers say was effected only because of the newspaper's probe.

The implications of a company's refusal to comply with court orders were spelled out by a prominent labour lawyer, who cannot be named for professional reasons. "If employers are seen by the workers to be able to disregard the orders of the industrial court without fear of serious sanctions, then the credibility the industrial court has achieved in the minds of workers — an important factor in the maintenance of industrial peace — will be severely eroded."

"If they see that employers can ignore the orders with impunity, they will just go on strike — the only other alternative."

He suggested that the National Manpower Commission consider giving the Industrial Court more power, for example by granting it the jurisdiction to impose additional penalties if companies ignore court orders.

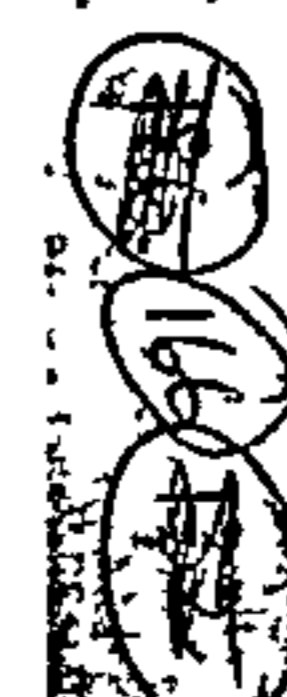
A lecturer in labour law at Natal University, Mr Nazeer Cassim, warned that workers would lose confidence in the Industrial Court if its orders were ignored by employers.

"Workers will lose respect for the Industrial Court and look for other avenues to voice their grievances."

He said it was unheard of for orders by the courts to be disregarded. To do so was a serious breach of justice.

Chicken firm toes line after report to police

By CAROLYN MCGIBBON



'Courts have key role in disputes'

By STEVEN FRIEDMAN
Labour Correspondent

DURBAN. — Factory conflict would grow and the State would lose its remaining credibility in the eyes of black workers if the Government's industrial court was prevented from playing an active role in labour disputes, a conference on labour law here was told yesterday.

Lawyers and legal academics made repeated pleas for the court to continue intervening in disputes and some speakers argued that the court's role in disputes should be increased.

But a prominent company lawyer told the meeting that, since the court had begun operating, "the pendulum has swung too far" and the labour balance of power had increasingly favoured workers.

Meanwhile the court's president, Mr BJ Parsons, revealed at the conference that the court heard over 400 cases since 1980 — and more than half involved applications for temporary orders reinstating the "status quo" in disputes.

The pleas to preserve the court's role in labour disputes come amid growing signs that the Government is moving to curb its powers.

This follows employer dissatisfaction with the law setting up the court, which they believe is too favourable to workers. The granting of "status quo" orders reinstating fired workers has been a key source of this opposition.

Mr Parsons revealed that the court heard

402 cases since 1980, of which 232 had involved requests for "status quo" orders. Another 74 involved allegations of "unfair labour practices" — also a target of employer discontent.

A labour lawyer, Mr Chris Albertyn, told the conference that the key reason for the introduction of Government labour reforms had been the need to win credibility with black workers in the wake of the 1976 Soweto unrest.

The court had played a major role in both reducing shop floor conflict and in winning some credibility for the authorities among black workers. If it ceased playing that role, the credibility of the State would suffer, he said.

Mr Chiman Patel, lecturer in public law at the University of Natal, also pleaded for a continuing active role by the court.

Mr Nicholas Haysom, of Wits University, said the contract of employment placed employers in a position of "domination" and that bodies like the court could play a key role in redressing this.

Several speakers from the floor rejected the view that the court had favoured workers, arguing that it had simply acted against "intransigent" employers. Some argued that the court could take an even more active role.

However, Mr Maas van den Berg, a company lawyer, argued that the law setting up the court favoured workers and had "shaken" employers.

The definition of an "unfair practice" was so wide that workers could — in theory — win a case even if they did not prove an employer acted unfairly.

Wednesday, July 11, 1984

Mercury 182/110A 166

Change destructive industrial councils'

Labour Reporter

A CALL for drastic changes to the industrial-council system to make it more representative of workers was made by trade unionist Johnny Copelyn at a conference on labour law in Durban yesterday

Mr Copelyn said industrial councils were collective-bargaining institutions, destructive of trade unionism and unrepresentative of most workers.

He said they adopted

undemocratic practices

Mr Copelyn, who is general secretary of the Fosatu-affiliated National Union of Textile Workers, called for amendments to the legislation governing industrial councils to make it an obligation on unions in the council to consult workers before committing themselves to agreements about wages or conditions of employment.

Membership of the council should be opened

to anybody with seating being based on a pro-rata representation in the industry, he said

Speaking in defence of the industrial council as a collective-bargaining institution, Johannesburg labour lawyer Arthur de Kock said the system provided a number of benefits to employers and employees

There was no law setting minimum wages for workers, but through the council employers could fix minimum wages by negotiation

12/7/1969

Law should protect legal strikers — Prof

Labour Correspondent

DURBAN — A University of the Orange Free State law professor yesterday called for major changes to South Africa's strike laws which would offer legal strikers greater protection against firing.

Professor Y J Claasens told a labour law conference that no right to strike existed in South African law and that labour law paid only "lip service" to the right to strike.

The key reason, he argued, was that common law allowed employers to fire strikers, even if their strike was legal. The courts reinforced this by applying common law standards

to legal strikers rather than standards in labour law, which were more lenient.

It was necessary, he added, to offer workers who engaged in a legal strike some protection against dismissal.

Prof Claasens also argued that there should be a time limit of 21 days to these strikes. After this, the dispute which gave rise to the strike should be referred to the Industrial Court for arbitration.

The law should also stipulate that, for a strike to be legal, workers would have had to follow the dispute procedures laid down in labour law and the

strike would have had to be led by a trade union.

If, however, workers struck legally, an employer would have to give them 14 days' notice before dismissing them.

If he did decide to dismiss them, he should be forced to fire all the workers or none of them, Prof Claasens argued, so that employers could not react to strikes by dismissing worker leaders.

An employer would not be allowed to re-employ strikers selectively.

Prof Claasens acknowledged that most strikes were illegal because workers did not feel they could delay

seeking redress until the official disputes machinery had run its course, but said it was in society's interests to "set some limit" to the right to strike.

His proposed changes should thus cover legal strikers only.

In another paper, Mr Martin Brassey, a labour lawyer, urged the Industrial Court to adopt the standards used by American courts in deciding whether mass dismissals of workers after a strike were unfair.

In strikes over wages, employers should be allowed to fire strikers who demanded higher wages only if they had a "legitimate commercial reason" for doing so.

R0M12/184 116 022

Progress of labour law is hampered.

Labour Correspondent

DURBAN. — Recent judgments by temporary members of the Industrial Court were hampering the developments of laws to protect workers from unfair dismissal, a leading labour lawyer told a labour law conference in Durban yesterday.

Mr John Brand said that employer resistance to the court and attempts by the Department of Manpower to prevent alleged "unfair labour practices" cases coming before the court were also an obstacle.

"The inevitable consequences of these developments are to return the conflict over dismissals to the shop floor," he said.

He added that common law protection for fired workers was inadequate and that additional safeguards through Industrial Court decisions were necessary to protect workers against unfair firing.

Mr Brand also argued that recent developments had brought South Africa's law on dismissals into conflict with both conventions of the International Labour Organisation which were "universally accepted" as well as with recommendations of the Wiehahn Commission.

Mr Brand said the growing trend for workers and unions to use the court had meant its permanent members could not handle the volume of cases, and temporary appointments had to be made.

~~16b~~ ~~16b~~ ~~16b~~ ~~16b~~ D. Disputch

Owner seeks ^{19/7/84} legal aid

EAST LONDON — A case in which a Quigney boarding house owner is charged with contravening employment regulations was postponed until tomorrow

Mr H W W Stuart of Belvedere Lodging House applied yesterday for an adjournment to enable him to seek legal assistance

He has pleaded not guilty to charges of underpaying his staff, not giving the required notice before terminating their employment, not giving them leave pay, not giving them the

prescribed amount of leave a year, failing to register the boarding house, failing to provide the Department of Manpower with wage records, not complying with the Unemployment Insurance Act, not providing the department with an attendance register and not registering for Workman's Compensation

Mr Stuart denied allegations that he had been unwilling to communicate with the Department of Manpower

Under cross-examination yesterday,

Mrs Nozipho Priscila Mtywaku and Mrs Muriel Nowandile Koko told the court that they had had no paid leave while employed by Mr Stuart. They said they were not given notice and leave pay on the termination of their employment

Mr Stuart in reply that they had been off every Saturday for 21 months in lieu of leave, and he was of the opinion that they were upset at "having to leave a little gold mine"

They told the court that they earned R50 a

month and did not complain to Mr Stuart because they experienced difficulty in approaching him

They said they worked Mondays to Fridays from 7 am to 4 30 pm and had been given no set lunch of tea break, no food or transport fare. They signed no attendance register or pay slips and were given no unemployment insurance cards on the termination of their employment — DDR

The magistrate was Mrs H C Niemand, Mrs A. du Plessis prosecuted. Mr Stuart was not represented

FT 272
GEOFF BUDLENDER

FIM 20/7/84

in my opinion

The policy contradictions



Geoff Budlender is an attorney with the Legal Resources Centre. This extract is based on a speech he gave last week at a conference on labour law.

The question of citizenship is at the heart of modern influx control. As a result of the homelands policy, there are now at least three different citizenship categories for black people

□ People who are SA citizens in the full sense of the word — citizens of homelands which have not taken independence,

□ "New foreigners" former SA citizens who became foreigners when their homelands — Transkei, Bophuthatswana, Venda and Ciskei (TBVC countries) — became independent, and

□ "Aliens" people who have never been SA citizens. They include citizens of countries like Zambia and people born after the date that the TBVC countries became independent.

As the homelands take independence, the proportion of blacks who are SA citizens drops. They become "new foreigners" and their children "aliens". The "aliens" category therefore grows as the other two categories decline. That is a consequence which has not yet begun to bite because, for a variety of reasons — political as well as administrative — it has not yet begun to be enforced. But if the policy unfolds to its full conclusion, there will be no black South Africans, and therefore no blacks with a right in terms of Section 10 of the Blacks (Urban Areas) Act to remain in the cities.

Of course, workers will still be needed in cities. The consequence of the removal of SA citizenship is therefore an enlargement and an entrenchment of the migrant labour system. This will be a gradual process.

Some of the homelands may, of course, not take independence. But in parallel to the use of citizenship as a means of restricting and eliminating Section 10 rights, there is another process taking place. It is quite separate from the fiction of homeland independence and takes three forms

□ In some areas, black townships fall outside the prescribed area of the town. The classic examples are KwaMashu and Umlazi in Durban. People living in these areas are called frontier commuters, crossing the border each day between SA and KwaZulu,

□ In some areas, the homelands fiction is dispensed with completely. In Pretoria, for example, there is a policy to freeze land acquisition and home-building inside the prescribed area and to develop a new township, Soshanguve, just outside the prescribed area. Young people living in Atteridgeville or Mamelodi needing their own homes are faced with the choice of potentially having a home offered to them in Soshanguve. But this is a cruel choice, as it is done at the price of their right to remain in the urban area, because taking up residence in Soshanguve means losing Section 10 rights in Pretoria, and

□ Where urban relocation takes place, the new township is sometimes placed outside the prescribed area. The consequence is that when township residents are moved, they lose the Section 10 rights which they had previously. Examples of this are Valspan and Badplaas.

If one steps back and looks at what is happening in the arena of the Department of Manpower and the Industrial Court, one sees different developments taking place. The policy arrived at after the Wiehahn Commission was that the manpower process would be one of incorporation — if you like, of co-option — of trying to bring people inside the system. The fundamental reference point of these institutions is therefore promotion of industrial peace.

Government's first response to the Wiehahn Commission was to accept only partial incorporation. It said that the right to become a union member would be restricted to permanent residents, which meant people with Section 10 rights. This was an attempt to reconcile two conflicting policy imperatives by partial incorporation.

It rapidly became clear that it simply could not work. Government then reversed its stand and took up the position that all workers were entitled to become trade union members.

The consequence is that a policy conflict is now starting to emerge. At a

time when people are said to be foreigners with no rights in SA, they are enticed into becoming participants in the industrial council system and are to be involved in the creation of industrial council agreements.

This conflict emerges in practical terms around issues involving job security. At a time when more and more people are to become migrant workers, the Industrial Court says that there is a right to security of employment. This right has its origin in the definition of an unfair labour practice, which includes unfairly prejudicing a worker's job security.

Further, at a time when people are increasingly to be required to leave the area at the end of their migrant labour contracts, we have an Industrial Court judgment which states that it can be an unfair labour practice to refuse to re-employ a migrant worker at the end of a contract.

There is thus a conflict which is not theoretical, but which has real and immediate meaning.

Loss of employment is always a serious matter for workers. The influx control policy raises the costs very substantially. Migrant workers who lose their jobs are required to leave the area immediately, to register at the tribal labour bureau in a homeland as a workseeker and to sit and wait there until recruited. The prospects of this are very poor.

This factor raises the stakes within the factory in disputes over dismissals or over retrenchment, because the price increasingly becomes very high. The potential for conflict within the industrial structure is thus raised enormously. If employment and dismissal are major issues around which industrial conflict is arising today, how much more will it be so in 10 or 15 years' time, when the influx control and citizenship policies bite even more deeply?

In my opinion, this is where one of the great political dramas of our times is likely to be played out and is being played out at the moment. It's a debate which will, of necessity, involve worker organisations and management, because the conflict and consequences will be manifest in management and trade union policies and on the factory floor.

13/7/84

The PFP's Alex Boraine called the whole investigation "lukewarm." His colleague, Roger Hulley, said that in view of the staggering amounts of money involved, a far more thorough investigation would have been warranted.

The form of the report also suggests that the AG did not make wide use of his powers of subpoena — both of people and documents. Consequently, the continued uncertainty about the activities of Italian millionaire Marino Chivelli — who is a SA resident and could have been subpoenaed.

Opposition speakers were shouted down by government supporters who accused them of sour grapes. But there is substance to the PFP's call for a select committee, with the power to call and question witnesses and to receive and examine evidence.

The Opposition questioned the number of witnesses who were called — and the number who were not. Hulley said the report was "strangely silent" on the role played by F W de Klerk, who is a former Minister of Mineral and Energy Affairs. The burden of responsibility was on De Klerk, he said, and he wondered why De Klerk was not interviewed by the AG. "In summing up, I believe there are more than enough unanswered questions to more than justify the appointment of a select committee to investigate in depth."

Harsh words

These are harsh words to be uttered in the public and privileged forum of Parliament. No aspersions were cast on the AG, but the public may be left with the impression that the full story remains untold.

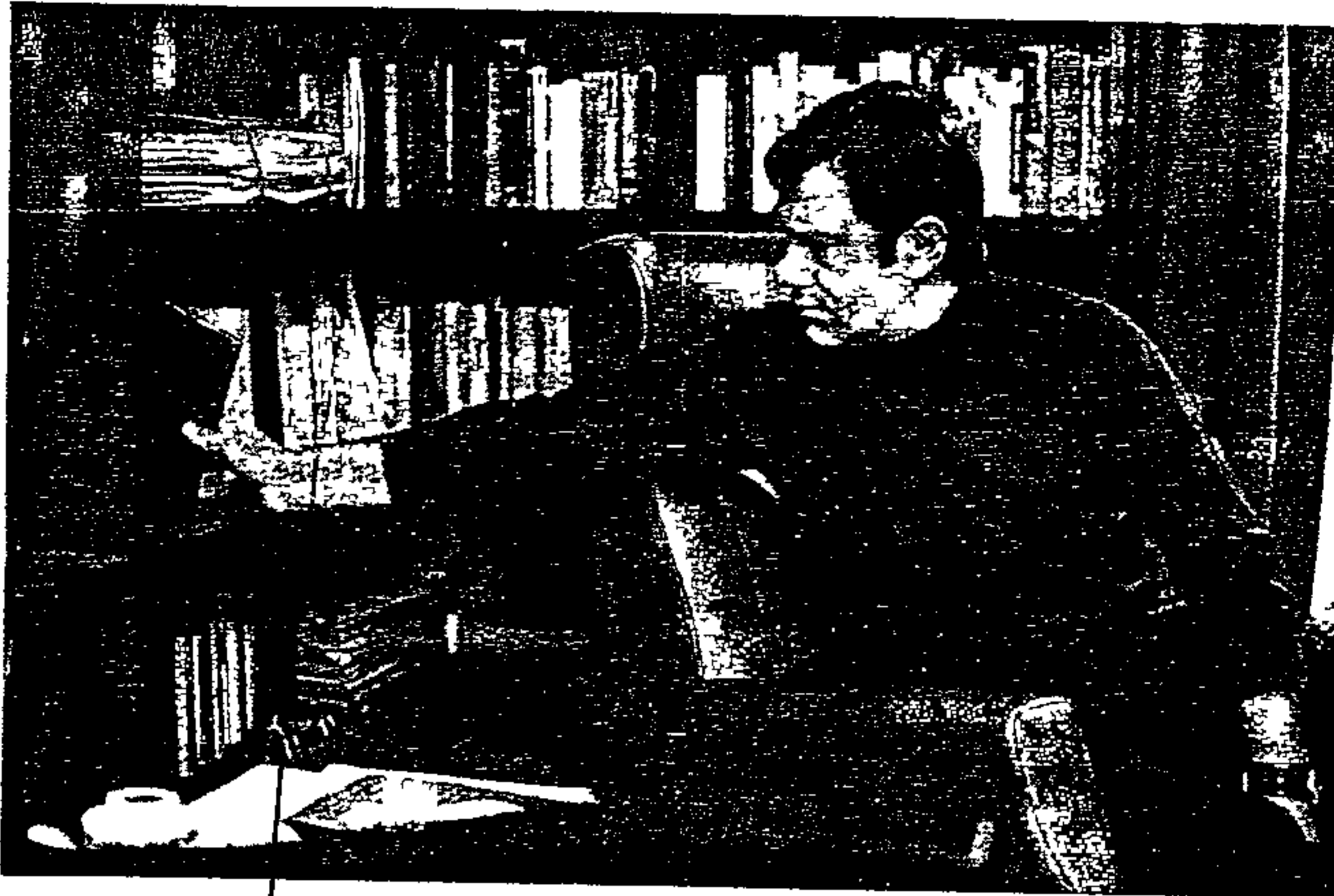
There were encouraging signs that oil dealings might become subject to parliamentary control through the Auditor-General. The AG went to lengths in his report to stress that had there been such control, "criticism and gossip of the kind that necessitated this inquiry would largely have been forestalled."

His recommendations called for a fresh look at SA's crude oil purchasing set-up, particularly with regard to financial control. He said that despite the confidential and sensitive nature of oil deals, it was desirable that State monies levied in terms of the State Oil Fund (SOF) be subject to parliamentary control and preferably also audited by the Auditor-General.

The PFP contends that the root of the problem is government's refusal to concede that money controlled by the Strategic Fuel Fund Association (SFFA) and the SOF is in fact public money.

That point at least has been cleared up. The AG is explicit in his report in that he considers money involved in oil deals as "public moneys."

Mineral and Energy Affairs Minister Dame Steyn said in a radio interview this week that he had indicated before that government was considering parliamentary control of oil deals through the Auditor-



Slabbert ... has the 'oil bomb' backfired?

General. True, but Steyn has also argued that neither the SFFA nor the SOF should be subject to the Auditor-General's scrutiny because they are private companies.

A final interesting point in the AG's report, overlooked by many, was his recommendation that consideration be given to a Fuel Energy Corporation along the same lines as the Atomic Energy Corporation or Armscor.

In this way, he said, the whole structure of crude oil purchases, plus the search for and exploitation of oil resources and the synthesis of fuel from coal and other substances could be combined and brought under effective control with the parliamentary auditing of State monies.

LABOUR LAW

Scope of the court

When the Industrial Court (IC) was first established in October 1979, SA trade unions were not much interested. In 1980 only 15 disputes were referred to the court. But with each year that has passed it has adjudicated a growing number of cases and the last two years have seen its case load growing by leaps and bounds.

This emerged from figures supplied this week by the president of the court, B J Parsons. He was speaking at a conference on labour law in Durban organised jointly by the Centre for Applied Legal Studies and Natal University's Department of Public Law.

According to Parsons, the IC heard 30 cases in 1980, 41 in 1982 and in 1983 there was an enormous increase with the IC presiding over 168 cases. In the first six months of this year, 148 cases were referred.

The figures provide overwhelming evi-

dence that the IC has become a major factor in industrial relations. They also signal the success government has achieved in persuading reluctant unions to use the formal dispute settling procedures provided by the Labour Relations Act.

It is no coincidence that the giant leap in the number of cases heard occurred in the latter part of 1982 after the court's jurisdiction was extended to cover applications for temporary reinstatement, *status quo* orders, in terms of Section 43 of the Labour Relations Act. According to Parsons' figures, the IC has adjudicated 232 applications for *status quo* orders since then.

The other major function of the IC has been to preside over disputes involving allegations of unfair labour practice (ULPs). It has heard 74 such matters since 1980. The remainder of the court's work has largely been devoted to arbitrations (46) and demarcation disputes (25).

Applications for *status quo* orders can be made for:

The suspension or termination of the employment of an employee (or employees) or a decision by an employer to fire workers;

A change or proposed change in the terms or conditions of employment of an employee (or employees). This excludes action to give effect to any relevant law or major regulating measure, and

An alleged ULP.

Allegations of ULPs have been the basis of most of the IC's work. Unions have won major legal victories through this mechanism. This phenomenon has caused alarm in some employer circles who have come to regard the functions of the court as being weighted in favour of unions.

The alarm is related mainly to the fact that an ULP is very widely defined in the Labour Relations Act and there have been growing calls from employers to introduce



Cheadle ... emphasising the role of the court

limits to the definition.

Although many criticisms of the IC were aired at the labour law conference, a number of speakers devoted time to defending the IC's functions — especially in relation to the ULP concept.

Halton Cheadle, assistant director of Wits University's Centre for Applied Legal Studies, pointed out that the primary function of the Labour Relations Act is to promote industrial peace. Collective bargaining is a key element in this process. According to Cheadle, the ULP concept helps to develop a set of rules for orderly collective bargaining.

Cheadle said the IC had already a number of determinations about what constitutes an ULP. One of these was that improper interference in trade union recruitment campaigns is a ULP. The precise ambit of improper interference will have to be defined in the future. But the IC also would have to decide on a number of other crucial issues in which allegations of ULPs formed the basis of the application. These included:

- Determining what the appropriate bargaining unit is in a factory when a union seeks recognition from a company. Should it be a factory department, the factory itself or the entire complex in situations in which the company operates more than one factory?;
- Determining whether an employer can unilaterally alter conditions of employment without consulting a trade union or its employees. This relates to situations in which employers implement pay increases when negotiations with unions are deadlocked,
- Making determinations in situations involving trade union rivalry. According to

Cheadle, this will become one of the major legal, social and political problems in the future as there are two union movements in SA with very different views of collective bargaining and organising, and

- Making determinations in disputes arising out of tension between plant and industry level bargaining

REGIONAL AFFAIRS ^{FM 13/7/84} SADCC's chances ^①

Is the existence of the Southern African Development Coordination Conference (SADCC) threatened by the signing of the Nkomati Accord? "No," says Professor Gavin Maasdorp, head of Natal University's economic research unit and a specialist in southern African affairs. Far from undermining the economic goals of member states by drawing SA closer to its neighbours, he argues, the agreement could help the SADCC.

But there are provisos. The key, he believes, lies in Mozambique's role in the SADCC transport network.

The organisation's transport links through Angola and Mozambique, plagued as they are by guerrilla attacks and staffing difficulties, are tenuous. Consequently, SADCC countries rely on SA to move their goods to and from the coast.

Maasdorp argues that if the accord promotes political stability by neutralising the operations of Mozambique insurgents, and if Mozambique comes to grips with its transport inefficiencies, then "the overseas trade of the landlocked states will be able to resume its traditional flows via east coast ports, thus eliminating a major aspect of dependence."

SA membership of SADCC, which some suggest has become more likely as a result of SA's improved relations with some neighbour states, seems unlikely.

The problem, Maasdorp believes, is that SADCC countries face being overshadowed by SA's economic muscle — unless they can wring concessions out of Pretoria such as the Zimbabwe/SA preferential trade agreement.

Says Maasdorp "SADCC's relationship with SA must be summed up as follows: normal trade — yes, concessionary preferential trade — yes, but preferential trade on equal terms — no"

On the wider implications of the Nkomati Accord, Maasdorp says Mozambique's principal aspiration, that of attracting foreign investment, will not be achieved unless it can control the security situation and improve the efficiency of the public administration. Not an easy task.

No economic rescue can be expected from SA, he says. The accord has been signed at a low point in the business cycle and at a time when SA is being buffeted by world recession, a low gold price and crippling drought.



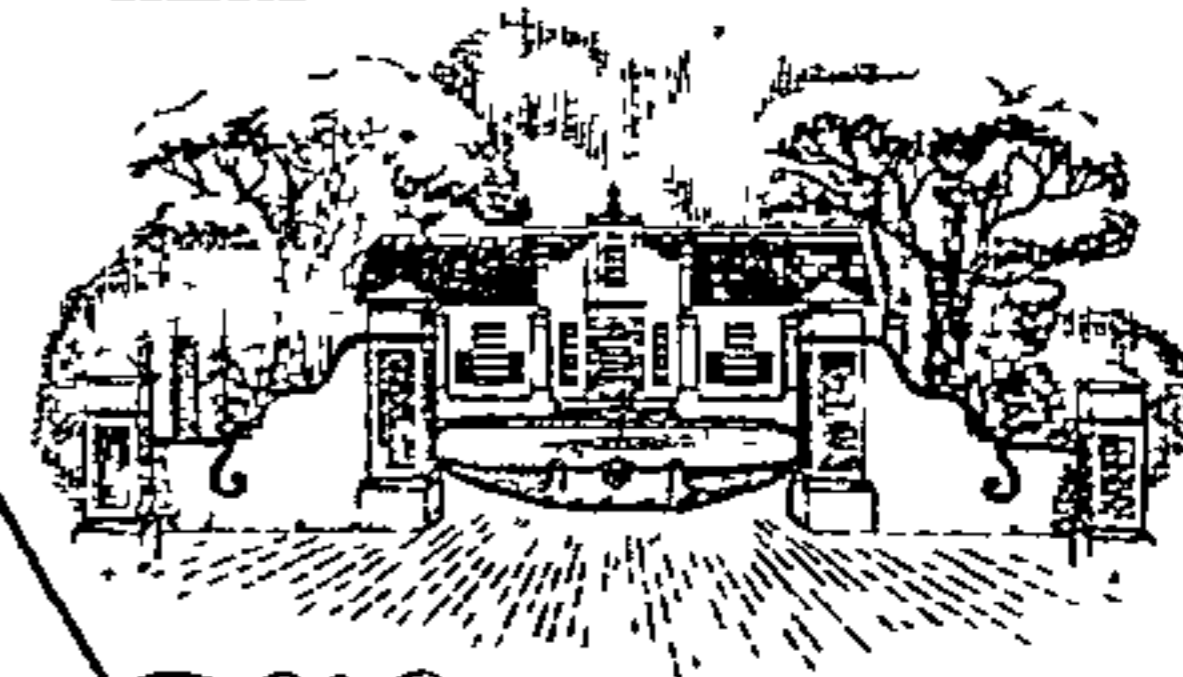
Harvesting grapes at night at L'Ormarins

*Everything
you have heard
about L'Ormarins
is true!*

- L'Ormarins is situated on high cool slopes fed by pure snow waters of the unique Great Drakenstein waterfall

- L'Ormarins produces select cultivars such as Riesling, Rhine Riesling and Sauvignon Blanc which are harvested in the cool of the night to preserve colour, taste and flavour

- But the proof of the making is in the tasting. L'Ormarins produced the champion South African white table wine in the 1982/83 season.



L'Ormarins

RIESLING • RHINE RIESLING
SAUVIGNON BLANC
BLANC FUMÉ
(OAK-AGED SAUVIGNON BLANC)

*The proof of the making
is in the tasting!*

LOR 100E

THE definition of an 'unfair practice' under the Labour Relations Act was so wide that workers could — in theory — win a case even if they did not prove an employer acted unfairly, it was stated at a conference on labour law in Durban last week.

The Act and its far-reaching implications on black workers in South Africa were put under the spotlight at the three-day conference

While some leading labour lawyers and academics hailed the legislation as a move away from racial discrimination against black workers

Labour laws in South Africa put under the spotlight

166
5 few

17/7/84

However, a word of warning was sounded that factory conflict would grow and the State would lose its credibility in the eyes of the black workers if

shop-floor conflict and in winning some credibility for the authorities among black workers. If it ceased playing that role the credibility of the State would suffer

Natal University law lecturer and conference co-convenor Chiman Patel, in a review of the Industrial Court, said employers should have no need to fear the court as thus far none of its judgments had been in conflict with the accepted practice of the more reputable firms

A leading company lawyer, Mr Maas van den Bergh, argued that since the court was established the 'pendulum has swung too far' and the labour balance of power had increasingly favoured workers

U S standards

Another labour lawyer, Mr Martin Brassey, urged the Industrial Court to adopt the standards used by American courts in deciding whether mass dismissals of workers after a strike were unfair

He said that in strikes over wages employers should be allowed to sack workers only if they had a 'legitimate commercial reason for doing so'

In a paper on recent developments in labour law and influx control Mr Geoff Budlender of the Legal Resources Centre warned that government moves to toughen influx control would lead to a 'great political drama' being played out in the factories

He said labour law was guided by conflicting principles — a desire to keep some black workers in the cities and to keep others out. The tightening of pass laws would not only mean black workers losing their jobs if they

other enactments work in a more subtle way. The system of influx control which ensures that blacks are in a perpetually vulnerable position serves to act as a severe deterrent against potential union activity'

In South African law there was no fundamental right to the freedom of assembly or association which was unhindered by legislative controls. South African courts had, on occasion, recognised the importance of the right to gather together and express opinions

'Despite the commendable sentiments expressed on occasion by judges of the Supreme Court the freedoms of assembly, association, movement and speech have been substantially eroded by drastic legislative measures,' he said

There had been a discernible trend in the past four years indicating that the full force of South African security legislation had been increasingly brought to bear on trade unions and their leaders

Potent weapon

'However, what the law gives in the Labour Relations Act it takes away in the Internal Security Act,' he said, adding that the provisions of the Internal Security Act constituted the 'most potent weapon' for the prevention of gatherings

The Black Labour Act No 38 of 1953 totally prohibited strikes by black workers as well as the instigation of such strikes and the incitement of black workers by any person to take part in or continue such a strike

In 1973 the prohibition of strikes by black workers had been repealed

By **Mariah Vengtas**
Labour Reporter

others argued for changes, especially in matters relating to unfair labour practice

In a paper on unfair dismissal labour lawyer John Brand summed up 'The South African unfair-labour-practice jurisdiction permits us to develop a jurisprudence of fair dismissal which could compare with the best in the world'

'However, because of employer obstruction and ambivalence by the Industrial Court and the Department of Manpower the prospects of that jurisprudence being developed do not appear to be good at present

'Accordingly enlightened employers and trade unions will have to place greater emphasis on developing their own system through collective bargaining and arbitration'

Another feature to emerge from the conference was the role of the Government's Industrial Courts in helping to resolve worker disputes

the Court was prevented from playing an active role in labour disputes

Criticism was also levelled against recent judgments by temporary members of the Industrial Court which it was claimed were hampering the development of laws to protect workers from unfair dismissal

'The development of a fair-dismissal jurisprudence arose from the judgments of lawyers with very limited knowledge of labour law and labour relations who have been appointed to serve on a temporary basis on Industrial Courts

'As a result their judgments often conflict not only with the International Labour Organisation Conventions and accepted labour-law principles but also with the early decisions of the permanent members of the court,' Mr Brand told the conference

Durban labour lawyer Chris Albertyn said the Court had played a major role both in reducing

7
S
n
r
e
n
t
l

and payments received from employees
 that creates fictitious employees
 them to the courts.
 concerning that no. and return
 unpaid wages packets, etc as
 both payments will get the no. of
 this can be not possible as

can doing
 unpaid
 payment
 item
 like will
 it with

the migrant-labour system is to say to workers "You will be here while we need your labour and you will be somewhere else when we don't" In that way, at least in theory, the potential conflict between the two demands for political security and labour is met,' he pointed out

In a paper on freedom of association and the labour movement in South Africa Mr Gilbert Marcus of the Centre for Applied Legal Studies at the University of the Witwatersrand said the provisions of the Labour Relations Act merely served to facilitate the formation and membership of trade unions but the actual practise of trade unionism was nowhere guaranteed and was in fact subject to a stanglehold of restrictive laws

He said that what was strikingly apparent was the use of security legislation to stifle union activity
 'This constitutes a direct interference with the freedom to organise But

The prohibitions of strikes were so far-reaching that few strikes were legal, he said, adding that accordingly, in the legal sense, the strike weapon as an essential component of the collective bargaining process was rendered practically useless by the limitations contained in the Act

Liability

Not only did a participant in an illegal strike render himself liable to criminal prosecution but he might also be dismissed as a result of his participation in the strike.

Summing up the proceedings at the end of the three-day meeting at the University of Natal, labour lawyer and conference co-convenor Halton Cheadle said 'In the diverse political and social dimension we have to serve the role as lawyers and industrial-relation consultants with severe limitations on advising clients what they should do or can do within the perimeters of the law'

the parties of
 wages do
 could do
 employees
 receive
 this can be

3

(1) This is +
 the parties of
 wages do
 could do
 employees
 receive
 this can be

The signature is by someone who
 must check that the quantity of goods
 is correct, the quality is right (if they
 don't receive (goods) and the
 prices, costs and extensive billings between
 delivery note and invoice.
 It is also evidence that the
 person has checked to see that
 the goods have been received.

2

(c) This is to see who

Law changed without consultation, says Cusa

By Carolyn Dempster
Labour Reporter

Unions slam Govt on new labour Act

Star 23/7/84

The Government's action in pushing through the controversial Labour Relations Amendment Act without waiting for comment on the recommendations of the National Manpower Commission (NMC) report has been slammed as "duplicitous" by the Council of Unions of South Africa (Cusa)

"It shows the Government is merely pretending to consult unions, but is determined to push through its repressive legislation at all costs behind closed doors," Cusa says in the most recent issue of its newsletter Iz-wilethu

COVERED

The Act came into effect this month with publication in the government gazette of July 11.

But the deadline for comment on the NMC report has been extended to August 31 — although a portion of what it deals with is covered by the new legislation

When the issue was debated in Parliament in

June, the chief Opposition spokesman on manpower, Dr Alex Borame urged the Government to defer the Bill until after comments had been received on the NMC report.

The same plea was made in telegrams to the Minister of Manpower by the Federated Chamber of Industries and the Transvaal Chamber of Industries

However, the Government turned aside these objections after debate and passed the Bill through its final stages with two minor amendments by a parliamentary select committee.

This means from now on that agreements negotiated between unregistered unions and employ-

ers, which are not "passed" by the Department of Manpower, will be unenforceable in court, including the Industrial Court, and it will also be a criminal offence for employers not to submit details of the agreements to the Department of Manpower.

Not only does this herald increased government control, it could also be seen as a tougher line on emerging unions, states Cusa

Provision has also been made in the Act for the Minister of Manpower to order all or any of the clauses of an agreement to be inoperative, if he considers it to be in the interests of employers, employees, or the public

or national interest

"This gives the Minister powers of an overtly political nature — an extremely ominous sign," comments Cusa

The comments add weight to criticism that the legislation is premature, half-baked, and out of step with the spirit of reform as envisaged in the Wiehahn report which advocates less state interference in labour matters

SUPERFLUOUS

But Dr Piet van der Merwe, Director-General of the Department of Manpower said today that the same points had been raised and thoroughly debated in Parliament

"To comment at this stage when the legislation is on the statute books would be superfluous"

He added that the NMC report went much further than the changes promulgated in the Amendment Act and the NMC recommendations would have to run their own course and be considered in time.

Govt presses ahead with unpopular Bill

rem 11/6/84 (166)

LABOUR WEEK
By PHILIP VAN NIEKERK

Is the the reintroduction to Parliament last week of the Labour Relations Amendment Bill the beginning of a tougher line by the department towards emerging unions?

DEPARTMENT of Manpower-watchers keen to figure out the direction of the department under its new ministerial head, Mr Pietie du Plessis, are even more in the dark after the reintroduction to Parliament last week of the Labour Relations Amendment Bill.

The Bill has re-emerged from a parliamentary Select Committee with only two minor changes. Its most important feature is that it seeks to prevent unions who do not submit certain information to the department from having recognition agreements enforced in court.

The Bill provides that "particulars" of all recognition agreements must be submitted to the department. It also contains a provision enabling the Minister to declare an agreement inoperative if he "considers it to be in the interests of employers or employees or in the public or national interest".

At the time it was first tabled it was pointed out that the Labour Relations Act already compels unregistered unions to submit this information and they can be prosecuted anyway.

The reintroduction of virtually the same Bill four months later appears even more lacking in reason than when it was first tabled.

Apart from trade union opposition to it, the Bill has been strongly criticised by nearly all the leading

employer groups, including the Federated Chamber of Industries.

The main criticism is that, in direct contrast to the department's stated policy in recent years of employer-employee self-governance in industrial relations, the Bill extends Government interference into the area of employer-trade union agreement. In Parliament, the Progressive Federal Party — who often voted on the same side as the Government on labour issues during the Fanie Botha era — have vociferously criticised the Bill.

And in the interim, while the Bill was apparently gathering dust with the parliamentary Select Committee, the department has called for comments on the National Manpower Commission's report on collective bargaining and related matters, which should lead to major changes in labour legislation.

Thus, without even waiting for the process which they themselves set up to be completed, and in the face of criticism by just about all concerned, the Government is pressing ahead with this Bill. Why?

Even Mr Du Plessis concedes most unions in South Africa comply with the regulations — and the new legislation is, in his own words, aimed at just six "undisciplined" unions.

The inference can be drawn that the new Bill is the beginning of a tougher line by the department towards emerging unions, and this can be backed up by his rhetoric in Parliament. If that is the case the Minister has not started moving in his new direction in the most consistent, clear or effective manner.

(3)
(174)

'Sharp increase' in SA strikes

166

C. Times

30/7/84

POTCHEFSTROOM — There had been a sharp increase in the number of strikes and work stoppages in South Africa since 1978, the Director-General of Manpower, Dr Piet van der Merwe, said at the weekend.

Addressing the University of Potchefstroom Post-Graduate School of Business on Saturday night, he said that in the

first five months of this year there had been 160 strikes involving 35 754 workers, against 54 strikes in which 7 098 workers were involved during the first five months of last year.

Strikes had increased from 106 in 1978 to 394 in 1982, but decreased slightly in 1983 to 336 — although this decline had not continued dur-

ing the first five months of this year, Dr Van der Merwe said.

He said there had also been a sharp increase in the number of workers involved in strikes.

Altogether 14 160 workers were involved in strikes in 1978, against 141 571 in 1982.

Most of the strikes had, however, lasted for relatively short periods. In 1983, 47 percent of the strikes lasted a day or less and 83 percent less than three days. The average duration of strikes was only about 1,9 days, he said.

The average duration of strikes during the first five months of this year was 2,6 days.

"This is an encouraging sign and indicates that the parties involved are succeeding in finding one another in a short time," he said.

He said greater use had been made in recent years than in the past of "machinery provided for in legislation to settle disputes".

Dr Van der Merwe said membership of registered trade unions in South Africa had escalated in recent years, from 730 000 in 1978 to 1,3 million in 1983 — an increase of 78,1 percent.

'Vital'

"Black workers in particular have been joining registered trade unions in great numbers, and their numbers have increased from nil in 1978 to 470 000 in 1983."

Membership of registered trade unions representing workers of different race groups had also risen sharply, from 200 000 in 1978 to 600 000 in 1983 — an increase of 300 percent.

Dr Van der Merwe said healthy relations between employers and employees were vital for economic growth and development in South Africa.

"That is why the government pays continual attention to the effectiveness of labour policy and legislation with a view to the establishment of machinery which can be used by the parties involved to maintain and promote healthy relations," he said — Sapa

Tucsa to debate union registration

JOHANNESBURG — The Trade Union Council of SA is to debate two resolutions at its annual conference in September which reject reforms of the government's controversial union-registration system proposed by the National Manpower Commission (NMC)

Both reject a suggestion by the NMC that already-registered unions should lose their right to attempt to block applications for registration by rivals

Last year, Tucsa adopted a resolution calling for the outlawing of unregistered unions

The NMC, which

advises the government on labour issues, has compiled a report on registration which calls for major changes in the present system

Among its recommendations were that unions who do not win approval from a government registrar be outlawed

But it also suggested that the present law, which links registration to the representation strength of a union, be changed

It noted that this allowed registered unions to block or delay the registration of rivals on the grounds that they

were not representative

In some cases, this objection has been on racial grounds, with the registered union trying to block a rival on the grounds that it does not represent enough workers of a particular race

A first agenda for Tucsa's conference reveals that the the Garment Workers Union of SA will propose a resolution calling for union representation strength to "remain a key factor in their registrations."

It says this is necessary because there is a need "for strong unions to represent workers" — DDC

~~106~~

166

~~175~~

D. Asjatch

No basic wage law for Ciskei

22/8/84

EAST LONDON — Workers in Ciskei are not protected by a minimum wage law and the new labour laws would not provide for basic wages, a government spokesman confirmed yesterday

The Basic Conditions of Employment Act, which is to determine maximum working hours, annual leave, overtime and other benefits in the interests of workers, has been passed by the Ciskei Parliament but has to be signed by the President before it passes into law

Mr D J Migcau, Director-General of the Department of Manpower Utilisation, said that the Act would "hopefully" become effective from September 1

"Once the legislation is enforced, we will have labour inspectors but

there will be no basic wage," he said

"Forcing demands for basic wages down investors' throats will be counterproductive to a developing country like Ciskei as investors would take their money somewhere else," Mr Wessels van Wyk, of the Ciskei People's Development Bank (CPDB) said

He said that the CPDB's policy was to encourage all investors in Ciskei and explained that legislation enforcing a basic wage would directly contradict Ciskei's free enterprise policies

"Supply and demand is the bottom line of free enterprise. The alternative is a socialist system, the only system where one really finds legislation for a basic wage," he said

Mr Van Wyk said that it was "unfortunate that Ciskeians are living badly and being deprived but that is why the CPDB is here — to improve their lot.

"As far as possible, we encourage industry to pay reasonable wages and ensure social security for workers. With our huge backlog of unemployed people, our first priority is to provide jobs and training," he said

"We do get occasional situations of labour exploitation brought to our attention and we try to convince the employers not to exploit their workers," he said

Mr Van Wyk said that no checks were conducted into working conditions because there was no legislation governing these conditions — DDR

Strike was legal, staff were fired

Dispute process fails the worker

The face of South African labour relations has undergone rapid and dramatic change in the five years since Wiehahn, but one crucial feature remains unchanged

Under the Labour Relations Act, South African workers still face the threat of dismissal in the event of strike action — legal or illegal

The lack of protection for the worker who has religiously followed the official dispute-settling procedures, only to be faced with firing at the end of the process, may be the rock on which a system of sound industrial relations will founder

There is growing consensus among labour experts that there is little incentive for unions to observe the legislation if they gain nothing by it

To facilitate sound industrial relations, South Africa's strike law will have to change to afford some protection to strikers, and employers will have to recognise the employee's right to strike, they argue

At present employers can resort to lock-outs, mass dismissal and the threat of dismissal to coerce striking employees to go back to work

This happened in South Africa in January this year when a national legal strike by 8 560 members of the SA Chemical Workers' Union (SACWU) was broken by threats of dismissal by AECI management

SACWU general secretary Mr Maneni Samela stated the union's case simply "There was nothing we could do. The workers were in a position where they were not protected by legislation and management could have carried out the threat"

Last week at Dunlop Tyre in Durban 1 200 members of the Metal and Allied Workers' Union (Mawu) were fired

shortly after embarking on a legal strike

"The fact that workers can be dismissed within the first hour of a strike in terms of the Labour Relations Act proves how totally inadequate current labour legislation is," said Mawu "There is obviously little incentive for workers to follow the law in respect of strike action"

Professor Loet Douwes Dekker of Wits Graduate School of Business has said the practice of dismissing striking workers is unfair and the ability to strike must be protected

Within an hour of embarking on a legal strike 1 200 workers at a Natal company were fired en masse last week. The action has focused attention on a growing debate of critical importance in industrial relations: why should a union follow statutory dispute-settling procedures if an employer can still legally resort to mass dismissal — and what are the implications for the resolution of future industrial conflicts? CAROLYN DEMPSTER reports.

In a recent paper on "The right to strike" he says the AECI case demonstrated that employers in South Africa "are not prepared to grant workers the right to strike"

This runs counter to current practice in Britain and on the Continent where striking workers are protected against being dismissed although they do forfeit all pay and benefits for the period

In Professor Nic Wiehahn's view the dismissal of workers participating in a legal strike could be considered an unfair labour practice — of both the statutory and non-statutory kinds

"If the employee has chosen the legal strike route he should be afforded some protection. I don't think we can allow a system in South Africa where there is no distinction between the effects of a legal and an illegal strike," he added

Unions that faced the prospect of mass dismissal of their members on a legal strike should be able to challenge the dismissal in the Industrial Court and seek a Section 43 reinstatement order on the basis of an unfair labour practice. Alternatively they should be able to seek damages and take the matter to the Supreme Court

The past few years have seen an increasing use by emergent and largely black unions of official dispute-settling machinery. This trend could well change if unions see no point in fol-

lowing the lengthy procedures for dispute resolution, he said

Professor Johann Piron of the University of South Africa's School of Business Leadership agreed that workers should have greater rights in a legal strike

"But you have to remember the whole industrial relations system in this country is in the melting pot. Up until now strike law hasn't been touched"

Mr Clive Thompson, a prominent labour lawyer and lecturer at the Wits Centre for Applied Legal Studies, has said it is likely that unions, to guard against mass dismissal, will build some protection into recognition agreements with employers

However, this was likely to happen only with enlightened employers "The inadequacies of our law are not conducive to sound industrial relations"

course, building societies

Van Staden elaborates "I tried to take the shortest route to get there. One has to accommodate what one can, cater for a transition period, and hope to reach one piece of legislation as soon as practicable" In the meantime, many amendments can be expected during a period of education and diversification

The outcome is likely to be fewer institutions in the monetary system with building society parentage — and maybe with banking parentage, too. Any future all-embracing Act for the industry will accelerate the move towards one-stop financial service in-

stitutions that can offer cheques, debit cards, deposit facilities, insurance, mortgage bonds, participation bonds, and hire purchase — to name only a few services. Competition will see that they are further brought together under one roof.

The big question remains will the societies meet the challenge? Some certainly will. But the writing is on the wall for the mutual society. In the end, this institution may have no option but to become a bank, or "get broken," in the words of one society spokesman. And the faster a society adapts to change, the better; since those in the lead will push for an all-embracing Act to ac-

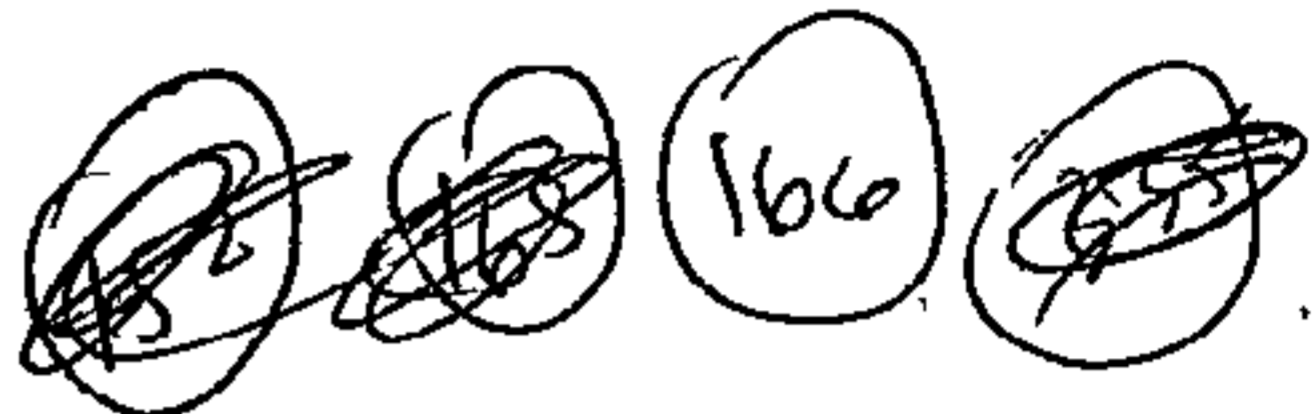
commodate their further development

Meanwhile, Pretoria's door is open to suggestions — until September 10 1984. Societies wishing to remain structured on a mutual basis are likely to provide the greatest criticisms of the draft Bill. But they may as well face the fact that it is probably too late to change the proposed law. They won't be the only institutions in SA that will have to cope with confusing and restrictive legislation.

The societies should turn the situation to their advantage. That, ultimately, is what free enterprise is all about — in the monetary sphere as well as any other.

UNFAIR DISMISSAL

Employers on the line



Industrial relations in SA have undergone a revolution in the past five years. Labour legislation introduced in response to the Wiehahn Commission's recommendations has seen to that. In the process, a new and vigorous generation of trade unionists has emerged. Strikes are up — and escalating each year — and litigation reaching the Industrial Court is at an all-time high.

One area of employer-employee relations that has been highlighted to an extent never seen in the past is that of dismissal. Specifically, when is dismissal unfair? The matter has become highly sensitive, with newly-aware labour bodies challenging employers at every turn, and even the most sophisticated managements have floundered. This is unfortunate since, worldwide, it is accepted that unfair dismissal is sufficient cause for a strike.

That fact is being felt at home. Statistics compiled by leading South African industri-

The new breed of union has begun to focus on the concept of unfair dismissal as one in which many employers have proved vulnerable. Many Industrial Court hearings have gone in their favour. Businessmen are learning that this is an area in which they have to act with great circumspection and sensitivity.

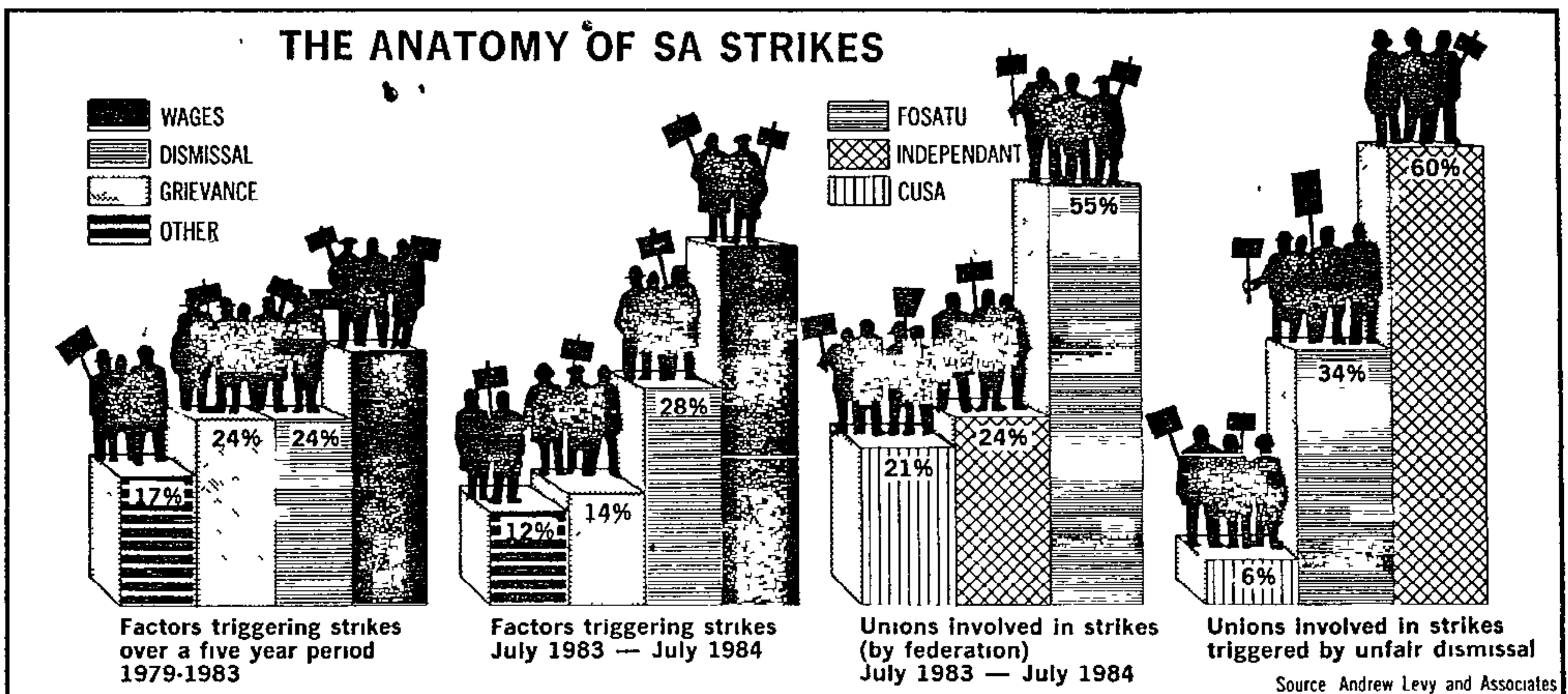
al relations consultant Andrew Levy show that, in 1979-1983, 34% of all strikes were triggered by wage disputes. But a high 24% were caused by dismissals which employees felt were unfair — and, in the last year, measured from July to July, strikes over dismissals increased to 28% of the total.

These figures should be enough to set alarm bells ringing for employers. Traditionally, it is management's prerogative to dismiss. It is also commonly held that it is unnecessary to have strikes over dismissals, after all, management and workers have a common interest in uninterrupted production. Why, then, the rising trend of strikes over dismissals?

Obviously, not all strikes triggered by dismissals can be traced back to unwarranted and high-handed decisions. But even when dismissal is warranted, clumsy handling of this most sensitive of management functions is all too likely to lead to adverse worker reaction.

Dismissal is one issue on which the emerging unions have proved deadly serious — perhaps naturally so. Organising largely among unskilled black workers, much of their strength lies in numbers, and they don't want to lose it.

Underlying much of the debate about dismissal are two principal notions that the



relationship between employers and employees is not one of equals, and that the common law contract of employment (allowing either management or workers to terminate service, provided notice is given) does not offer workers sufficient protection

Employers are clearly in a more powerful position, and in most situations are able to replace workers fairly easily. But for many workers, loss of a job has far more serious consequences. In SA this situation is uniquely exacerbated in that the majority of dismissed workers also face the prospect of losing their urban residential rights — and stand little chance of finding work in the homelands if this happens

Most countries have introduced protective systems for workers. In some, legislation requires justification for dismissal. In others, like the US, considerable reliance has been placed on collective bargaining agreements which lay down the essential requirements. And in yet others, employers have introduced disciplinary procedures in terms of which they undertake not to dismiss without cause

Many countries use more than one device to ensure fair dismissal. It is acknowledged that the incidence of wildcat strikes has been reduced in those countries which have instituted such systems

Recognition agreements

SA labour law does not contain specific provisions against unfair dismissal. But many unions have signed recognition agreements with employers which stipulate procedures which must be followed when dismissal is being considered. And in a number of landmark judgments the Industrial Court — which uses fairness as its criterion for judging disputes — has ruled that unfair dismissal can constitute an unfair labour practice

The most commonly adopted line of action for unions in cases of alleged unfair dismissals has been to apply to the court for a *status quo* order. This means that affected employees are reinstated in terms of Section 43 of the Labour Relations Act, and they simultaneously apply to the Minister of Manpower to appoint a conciliation board to judge the merits of the dispute

Status quo orders are temporary — usually valid for 90 days unless they are extended. But while they are in force employers are obliged to either physically re-employ workers covered by the order, or pay their wages. Application for a conciliation board ensures that if the dispute is not settled within that forum it will go to the Industrial Court for final determination. Most applications in these situations allege that the dismissal was an unfair labour practice

If in the course of a Section 43 application a union can show that, on balance, the dismissed workers suffer greater inconvenience than their employers, the court will generally grant the order if it finds the dis-

RETRENCHMENT 'RULES'

Most countries acknowledge that employers may terminate employment for economic and technological reasons. But termination should occur with the least possible prejudice to the worker, it's argued. SA has not codified the criteria that should apply in these circumstances — but the Industrial Court has given some guidelines. Employers must have

- Notified a representative union at the earliest opportunity of the intention to retrench,
- Met a representative union or employee body before retrenching, to discuss possible alternatives — such as layoffs, short time and transfer — as well as to agree on selection criteria. If there is no consensus on the criteria, employers must adopt objective ones such as a last-in-first-out basis for retrenchment unless they can give good reasons for departing from them. The agreed criteria must be fairly applied

If a representative union is not involved, employers must have

- Considered possible ways to avoid retrenchment, such as transfers, eliminating overtime and working short time,
- Consulted with employee representatives on criteria to be applied in selecting employees for retrenchment,
- Ensured that the criteria, as far as possible, do not depend solely on the opinion of the person making the selection, but can be objectively checked against such factors as attendance records, job efficiency, experience or length of service,
- Given sufficient prior warning to employees who may be affected and their representatives,
- Ensured that selection is made fairly in accordance with the criteria adopted, and considered any representations employee representatives may make, and
- Consulted affected employees

missal was not justified. More than one employer has been known to settle out of court if the *status quo* order is used in tandem with an unfair labour practice allegation in a conciliation board application. Dismissals which occur while a *status quo* order is in force are prohibited by law

Victimisation for union membership, or participation in union activities, is the prime example of situations in which the law prohibits dismissal. The very fact that the law favours employees in these circumstances indicates how gravely victim-

isation is viewed. Such cases are heard in criminal courts, as the concept is entrenched in statute. The State usually brings the application — but instances of private prosecution have been recorded. If victimisation is proved the courts can rule that the dismissal is void. Reinstatement can be ordered

"Constructive dismissal," the term applied to employers who use tactics designed to coerce employees to resign, is closely linked to victimisation. Although no cases of this nature have come before the

WATERY WOES

Black workers have been the main beneficiaries of Industrial Court rulings in cases involving allegations of unfair dismissal. But there are growing signs that white workers are also beginning to seize upon the protection offered by the court

Take the case of the female horticulturist dismissed by the Welkom municipality. The woman was responsible for a number of the city's parks. During the drought householders were prohibited from watering their gardens and the municipality itself made use of sewerage water

One day, according to evidence heard in the Industrial Court, she noticed a municipal hosepipe draped over the wall of a private home belonging to Welkom's director of parks. When she asked the black worker attending the hosepipe who had given him instructions to water the garden, he replied "The big baas". She ordered the pipe to be removed and reported the incident to her superior

When the director found out about the event, she alleged that he became most aggressive towards her and denied that

he had issued an order to water his garden. He claimed he had instructed the worker to water the pavement outside his home

However, soon thereafter the horticulturist said she found a private hosepipe attached to a municipal tap in the same park. She impounded it, established that it belonged to the director, and reported this to her superior. Later, after an inquiry held in terms of the municipal by-laws, she was dismissed on the grounds that she had failed to obey instructions

The woman consulted Johannesburg labour lawyers Cheadle, Haysom, Thompson. They took the matter to the Industrial Court alleging that the charges against her had been "trumped up"

The municipality did not defend the action and the court granted the woman temporary reinstatement in terms of Section 43 of the Labour Relations Act. The Minister of Manpower is currently considering establishing a conciliation board to hear the dispute

Pr 31/8/84



Industrial Court to date, there is little doubt that the allegation that it is an unfair labour practice to commit constructive dismissal is certain to surface at some stage

According to a leading labour lawyer, John Brand, who spoke at a recent conference on labour law, the SA legal system contains two major requirements for guaranteeing that dismissals are justified or fair. Firstly, employers must have a valid, substantive reason to dismiss. Secondly, there must be a procedure to ensure that an employer does have a valid reason.

Valid reasons cover three crucial areas: the worker's conduct, the worker's capacity, and the operational requirements of the undertaking. Besides victimisation, employers weighing up workers' conduct should bear in mind that

The law provides that an employee may not be disciplined if he has filed a complaint or is participating in proceedings against an employer involving alleged violation of laws or regulations,

A worker's race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinions, national or social origins may not be used as a reason for dismissal, and

Dismissal for absence from work during maternity leave is universally accepted as unfair.

Another requirement of fairness is that workers must know — or be presumed to know — the consequences of their misconduct. In cases where workers are fired for infringing company rules it would be necessary to establish that they knew the rules.

Generally speaking, it would be unwise for employers to dismiss a worker on the grounds of incapacity unless appropriate instructions have been issued, written warnings delivered, and the worker given both the opportunity and a reasonable time to improve.

These provisions apply unless the worker can be shown to be acting in a wilful manner. Then the reason for dismissal must be considered as misconduct.

As far as retrenchment is concerned, there is a growing body of criteria mainly arising out of Industrial Court rulings (see box). But in all cases of dismissal employ-



Levy ... some conflict is inevitable

ers should adopt the following procedures:

Workers must be warned, except in situations involving incidents such as theft and violence — where summary dismissal is justified,

The nature of what constitutes misconduct must be clearly spelled out so that workers can defend themselves adequately,

An inquiry must be held within a reasonable time, under the auspices of a neutral management person. Workers must be present throughout such an inquiry, and must be able to request representation, be allowed to question witnesses, and make use of an interpreter if necessary.

In weighing up the facts the convener must consider whether the misconduct has been established by sufficient evidence. Only thereafter should decisions be made about appropriate punishment. Then factors which should be considered are the nature and severity of the misconduct, sanctions imposed on other employees for similar misconduct, and the service record and personal circumstances of the worker. Findings must be communicated to the worker in writing. Above all, workers must have the right to appeal against dismissal.

As Levy has stated in his book on the subject, even fair dismissal will not always give good results or be accepted by employees. "Ultimately," he notes, "an employer faces two tribunals: the Industrial Court and the populist court of the employees themselves. One of the greatest mistakes that many personnel managers make is to believe that (dismissal) procedures in themselves bring industrial peace. Perceptions and interpretations of facts and events differ, and some conflict is inevitable."

For those perturbed by union successes in the field of unfair dismissal, it is worth noting what another leading labour lawyer has to say: "The Industrial Court's decisions have influenced employers to negotiate their own disciplinary procedures and to voluntarily adopt safeguards against arbitrary dismissal, thereby removing such disputes from the street and the court. In addition the court has only given the judicial rubber stamp to practices which have long been accepted by enlightened employers."

In short, sensitivity is — and in many cases always has been — the watchword in industrial relations.

RICHARD SCHUSTER

Passing the buck

(166)



Richard Schuster is the industrial relations adviser to Reunert Ltd, a division of Barlow Rand.

The Labour Relations Amendment Act of 1984, which came into effect two weeks ago, introduces some startling new principles into our law, some of which are of great importance to businessmen and trade unionists alike

Section 3(1) sets out to compel unions and employer organisations to comply with certain administrative provisions in the Labour Relations Act. It does so by making contracts reached between unions or employer organisations which have not complied with these provisions, unenforceable in any court, including the Industrial Court.

The administrative provisions referred to cover relatively mundane matters such as the maintenance by all unions and employers' organisations of registers of members, the retention of these and other important documents for at least three years; and the duty to furnish the Industrial Registrar with details of membership, office bearers and similar information

No doubt, the Department of Manpower's intention was to give employers a reason to refuse to contract with unions that do not comply with these provisions and thereby put pressure on them to comply. An effect of this sub-section is that, for example, a wage agreement between an employer and a union will be unenforceable from the outset if the union has accidentally failed to notify the Registrar of the election of a new office-bearer

The union may also escape the wage agreement during its period of operation

if it believes it expedient to do so by the simple device of appointing a new office bearer and deliberately not informing the department

It is a fundamental principle of our law, however, that contracts should be enforceable by legal action. To allow a person unilaterally to escape his contractual obligations would be to destroy the element of certainty that is essential to commercial relations.

Although certainty might be less important in labour relations than in commerce, and although it is unlikely that there will be much litigation in this country based on collective agreements between employers and unions, both employers and unions in SA do believe that their agreements, whether procedural or substantive, should be enforceable by legal action

It is also undesirable in principle to penalise a party to a contract for the oversight or deliberate misconduct of the other party

Civil law sanction

One may even question the use of a civil law sanction to enforce purely administrative provisions. A more common and logical way is to enforce compliance via the criminal law. Perhaps it was deemed politically inadvisable for the State to have the task of prosecuting the so-called emergent unions to procure compliance with these provisions. The onus was therefore shifted onto employers

Other practical consequences of this sub-section are

- An agreement between an employer and his works council will now always be unenforceable, and
- If an employer lends money to an employee to assist him in buying a house, and that employee is a member of a union which has not complied with the prescribed administrative provisions, the employer will not be able to

recover his loan by legal action if the employee defaults. This will only happen if the loan agreement was not part of the employee's service contract.

Conversely, if the employee and his employer entered into a profit-sharing scheme, the employee will not be able to hold the employer to his contractual obligations if his union has not complied with the prescribed administrative provisions.

Another possible result, although it may seem absurd, is that if a housewife who is an employer because she employs a domestic servant contracts with a builder who is a union member to extend her house, she will not be able to enforce that contract in court unless the builder's union has complied with the prescribed administrative provisions. The builder will also not be able to claim payment from the housewife.

Section 3(2) is intended to oblige employers to send copies of their recognition agreements with unions to the department

However, the actual wording means that only legally unenforceable agreements need be sent. Although this is presumably a mistake, it does mean that employers will not be obliged to supply the department with copies of enforceable agreements until the wording is changed

The sub-section also requires that certain "implied agreements" should be sent to the department. By "implied agreements," the draftsman probably meant tacit agreements. However, this imposes an intolerable burden on employers as many informal agreements between them and their employees, although of no interest to any outsider, would be affected

Finally, it is difficult to reconcile the department's stated policy on non-intervention in plant level bargaining, with a provision which looks like a first step towards State involvement

Unionists and employers slam new Labour law

166

Stew
27/9/84

Controversy and haste have characterised the path of the Labour Relations Amendment Act of 1984.

In spite of employers' urging that the legislation be shelved until the National Manpower Commission completes its crucial reports on union registration and collective bargaining, and in spite of strong opposition to the proposed changes from unions and the PFP, the Bill was pushed through Parliament without significant revision in July this year.

As the Act stands, there is a lack of clarity, and several anomalies and the amendments have engendered doubt and suspicion.

STATE CONTROL

SA Institute of Race Relations senior researcher Ms Carole Cooper states that much of the criticism has been levelled because of perceived "increased State control over the collective bargaining process, undermining the fundamental principle of self-governance in labour relations that was the guiding principle of the Wiehahn Commission".

Critics maintain that certain of the amendments will lead to instability and an increase in labour unrest, she adds.

Nonetheless, the Act looks set to remain in force until at least the end of 1985, says Mr MH van Noordwyk, the Department of Manpower's chief director of labour relations.

This has since been confirmed by the deputy Director-General of Manpower, Dr CP Scheepers.

13 GROUPS

However, there are at least 13 large employer organisations and unions who would argue that not a great deal has been achieved by the key amendments to the Act, among them the SA Federated Chamber of Industries, the General Workers' Union, the Premier Group and the Steel and Engineering Industries Federation of South Africa (Seifsa).

Major clauses of contention are:

● That henceforth no agreements between an employer organisation

The Labour Relations Amendment Act of 1984, which came into effect on September 1, has been described as an "illogical, half-baked and ill-conceived" piece of legislation, by employer organisations and unions. But it is likely to remain in force until 1986 when new legislation is introduced. CAROLYN DEMPSTER REPORTS.

and a trade union will be enforceable in any court (including the Industrial Court) unless both the union and the employer organisation have complied with certain requirements.

● Any unregistered federation must, within three months of the commencement of the Act, submit to the registrar a copy of its constitution, head office address and names of officials and office-bearers.

● The right to hear appeals against decisions of the Industrial Court regarding exemptions from Industrial Council agreements has been vested in the Minister of Manpower again.

His rights now also extend to the interests of employers, employees or the public or national interest.

These three controversial amendments to the Act have important ramifications.

Details of in-house agreements have to be submitted within 90 days of conclusion to the relevant labour inspector.

If union and employer do not comply with the requirements of the Department of Manpower, the agreement will not be legally binding and neither party will be compelled to abide by it.

In addition, those employer organisations who do not supply details of

agreements reached with unions to the Department of Manpower will be criminally liable.

Under the new legislation, unregistered unions have been placed in line with registered unions and will have to comply with the same requirements in future.

At least part of the pressure to bring unregistered unions within the structured fold of the Labour Relations Act came from established unions.

This was revealed by the Minister, Mr Pietie du Plessis, in Parliament when he said established unions had complained of "having to abide by the regulations when unregistered unions were left to do as they pleased".

LOW WAGES

Finally, points out Ms Cooper in her topical briefing, exemptions from Industrial Council agreements would enable employers in border areas to pay lower wages and would encourage the growth of low-paying small businesses if employers were not bound to minimum wages set down in the national agreements.

It also remains to be seen whether unregistered trade unions will go through the lengthy process of concluding agreements with employers, only to have them invalidated by the State.



Professor Nic Wiehahn — the new Labour Act conflicts with his ideals.



Minister of Manpower Mr Pietie du Plessis has extended powers.



PRIESTS: The priests who attended the Katchong meeting yesterday. From left to right, Rev T D Kakaza, Rev Z A T Mohutsioa, Rev I E Tiholwe, Bishop Simeon Nkoane and Rev B D Yanta. Pic. ROBERT MAGWAZA

Parents urge pupils to return to school

HUNDREDS of parents yesterday urged boycotting pupils to return to class when schools reopen tomorrow.

This decision was taken at a meeting held at the P H Williams Hall in Katchong. The meeting was attended by pupils, parents, teachers and priests. The call follows another made by the Azanian Students' Movement (Azasm) that pupils should go back to school, "but under protest".

The organisation yesterday released a statement calling on Soweto students to return to school on Thursday so as to allow them to attend the Bongani Khumalo funeral tomorrow.

Resolutions

"Azasm calls on students to exhibit their reluctance to be used as chattels and their ability to take decisions about and control their own lives and environment. This could be demonstrated by staying away from school tomorrow, to give Bongani Khumalo the honour he deserves," said the statement.

Resolutions taken at the Katchong meeting were:

- That police should keep away from the schools tomorrow,

By SELLO RABOTHATA

- That pupils continue with their demands from the Department of Education and Training;
 - That an umbrella body of school committees countrywide be formed to take up the issue with DET;
 - That teachers should keep the community informed about developments in the department; and
 - That parents should not turn a blind eye to the present crisis in education.
- Parents assured the pupils of their 100 percent backing for their demands and expressed solidarity with them in their struggle for "a just and equal education". Most of the pupils who addressed the meeting expressed concern at having to write the final examinations because "we are way behind the present syllabus and most of us will not be able to catch up".
- Meanwhile the mayor of Wattyale, Mr Noel Mlokothe, said he was surprised to learn that parents were worried about the safety of their children when schools reopen tomorrow. The fear follows talk in the township that close to 100 Zulu tribesmen have been organised to be on hand should there be trouble when schools commence.

W
S

RICH
AFRIC

BILLY
AFRIC



JOHANNESBURG
10-11-1976

Unions ready to go illegal again

TRADE unionists' honeymoon with the new labour laws is over.

Some are threatening to discard the legal process, the consequences of which could be disastrous for commerce and industry.

Illegal strikes look set to increase sharply. Disillusionment with the legal process has become rife in union ranks following, in particular, police action on legal strikes.

"If workers can secure no advantage from legal strikes there is every possibility they will resort to illegal strike action," says a leading labour lawyer who may not be named for professional reasons.

"Workers have resorted to legal strike action to avoid prosecution, and to seek protection against claims of damages and court interdicts. Recent strike activity has, however, shown that the

By Amrit Manga

Labour Relations Act has been unable to provide this protection

"Unless the Act is geared to encourage legal strikes by guaranteeing protection, the future for industrial relations looks ominous," he adds

The major reason for this abrupt change in attitude was the authorities' reaction to the "legal" strike by the National Union of Mineworkers a fortnight ago

Wildcat

General Secretary Cyril Ramaphosa says "Workers no longer feel committed to legal dispute regulating avenues and there is no guarantee that they will not in future opt for wildcat strikes instead

"Having examined the Labour Relations Act it is clear that it neutralises the work-

ers' most effective weapon — the surprise element of a strike

"Our experience during the recent wage dispute proves that co-operating with the State by following procedures laid down in its labour laws does not serve our purpose," says Ramaphosa

High on the agenda of the NUM annual congress in December this year is a review of the legal dispute-settling procedures.

The widespread dissatisfaction with existing industrial relations legislation does not end with the mineworkers

Rulings

The National Union of Textile Workers recently charged that Industrial Court rulings have provided little protection for dismissed workers

"There is growing dissatisfaction in union circles with the Industrial Court," the NUTW says

"Recent judgments have shown that the court will not consider reinstating strikers even if they were provoked by an unfair labour practice

"This clearly alters the balance of power in favour of employers and gives workers little choice but to continue their strike action," it adds

Union sources say that the only alternative open to workers in cases like this is a lengthy strike. The Industrial Court has failed to provide equal and fair rights for both employers and unions. This will prevent it from becoming an important means of peacefully settling labour disputes, the union adds

In another dispute over the

dismissal of five workers, a "legal" strike by 2 000 members of the Metal and Allied Workers Union has been declared illegal in terms of a temporary interdict granted by the Natal Supreme Court

The interdict was granted although the union had followed all the procedures laid down in the Labour Relations Act.

"This included applying for a conciliation board, allowing a 30-day grace period and conducting a strike ballot before opting for a legal strike," says Geoff Schreiner, a Metal and Allied Workers Union official

But the company involved, Dunlop, says a multiplicity of factors influenced the strike decision and that the reinstatement of the five workers was not the only motive

Peace

Dr Piet van der Merwe, Director of the Department of Manpower, says the controversial Act is geared to ensuring industrial peace. But if aspects of the Act present problems, these will be examined and reviewed if necessary

Andre Malherbe, labour relations adviser to the Johannesburg Chamber of Commerce, says that it is grossly unfair to legally compel companies to retain striking workers

While he agrees that lawfully striking workers should be afforded some degree of protection, "the right to dismiss workers cannot be deemed to management".

"However, the Act should make provision for a notice of dismissal rather than allowing summary termination of the employment contract," says Mr Malherbe

CLIVE THOMPSON

Problems with strike law

(166) ~~(151)~~



Clive Thompson is an attorney and a researcher with the Centre for Applied Legal Studies

In the field of labour law, the tension between *lawful* conduct and *fair* conduct continues to plague the development of a coherent body of rules for the regulation of the major areas of conflict between employers and unions

After some initial hesitation, the Industrial Court tackled the question of individual unfair dismissals head-on and proceeded to apply the International Labour Organisation's standards with remarkable alacrity. Notwithstanding perfunctory notice periods in employment contracts, the court decided that a dismissal should be for good cause only and be preceded by a fair inquiry

An employer's contention that a dismissal which complied with the contractual notice period and which was otherwise lawful could not be unfair was effectively rejected by the court in *Mawu v Barlows Manufacturing*. The objects of labour peace advanced by the Labour Relations Act were to take precedence over the formal and artificial "agreement" on termination assumed by the individual contract

Unfortunately the court's treatment of larger-scale issues, usually involving trials of strength between unions (as opposed to employees) and employers, has been rather less salutatory. Perhaps struck by the stridency of recent criticisms which have come its way from certain employer parties and over-awed by the prospect of challenging the boundaries of managerial prerogative on really telling issues, the court has de-

monstrated a conservatism that comes close to an abdication of its rule-making function. The result has been that the emerging law on strikes is shot through with confusions and that one looks largely in vain to the 1984 clutch of decisions for guidance on the subject

At least one steady theme does emerge: workers who ignore negotiated and statutory dispute procedures and who engage in wildcat action will have a tough time in securing relief through the court. This judicial attitude underscores the premium placed by the Act on collective bargaining. However, the virtues of the bargaining process have apparently been overlooked in pronouncements on other features of labour disputes

Trade unions like to argue that all strikes are provoked by management. The Industrial Court could not be accused of being uncharitable if it regarded this proposition with a measure of scepticism. Nonetheless, where mass dismissals have followed in the wake of strike action, the court's first inquiry should be to ascertain who was responsible for the breakdown. Should it be established that the strike was indeed triggered by provocative managerial behaviour, especially behaviour which itself amounts to an unfair labour practice, the court should not be chary in reinstating the affected workers. Instead it has tended to engage in an exercise to determine whether the parties' conduct has been lawful rather than fair. The practice has been to assess whether the dispute can be characterised as a lock-out or a strike and, if it decides on the latter (which, given the nature of labour disputes, it usually must), it declines to give relief. Only the grossest managerial action meets with a reinstatement order, and then normally a qualified one

Arbitrary and selective dismissals or

rehirings in the course of labour disputes are also expedients which deserve short shrift before the court. They lend themselves to abuse and are a deviation from the basic legal principle that like cases should be treated in like manner. In *Ngobeni v Vetsak*, however, the court was not impressed by these considerations and came to the startling conclusion that, provided an employer was legally entitled to dismiss, he was also at liberty to rehire as he saw fit. Instead of viewing the dispute in question as a whole, it scanned the sequence of events and then homed in on a particular segment which it declared to be decisive. If one accepts that only a careful assessment of the equities of the total situation can lead to sound industrial relations and labour stability, this piecemeal approach grounded in narrow common law notions must be eschewed

A more discerning and contextual treatment can be found in the decision of *Raad van Mynvakbonde v Kamer van Mynwese*. Here the court had to decide whether the otherwise lawful dismissal of workers on a legal strike would also be fair. It concluded that under certain circumstances such dismissals could be unfair, and noted that one of the factors that needed to be taken into account was whether the parties had negotiated in good faith during the strike. It also indicated that selective dismissals and rehiring could constitute unfair labour practices

The principles regulating individual unfair dismissal have crystallised out after a relatively short period of uncertainty. Despite the clear guidance available in the more developed jurisdictions abroad, and despite an accommodating domestic statute, the weighty issues of collective action and mass dismissals remain unresolved in this country. In the interregnum, self-help will presumably prevail on all sides

OCCUPATIONAL SAFETY

New Act, new issues

The long delayed implementation of the Machinery and Occupational Safety Act (Mosa) took place this week. It has raised expectations that safety will in future become a hotly contested bargaining point between employers and trade unions.

The Act has important implications for SA's employers as it covers all workers except those falling under the Mines and Works Act and the Explosives Act. It is the first safety law to fully cover people employed in commerce, the civil service and educational institutions. It also covers domestic servants.

This is not the only innovation in Mosa. In broad terms it requires all employers who employ more than 20 workers to appoint one safety representative (SR) for every 50 workers. In companies in which two or more SRs are appointed, a safety committee must be created.

From the ranks

The Act stipulates that SRs have to be appointed from the ranks of a company's employees and that they should be allowed to perform their safety functions within working hours. It obliges SRs to conduct monthly workplace safety inspections and to report any threat or potential threat to the safety of any employee to their employers or a safety committee (if one has been created.) SRs may also make reports to a government inspector about serious accidents at the workplace, or injuries or deaths resulting from exposure to hazardous working conditions.

Mosa also prohibits the sale of machinery or safety equipment that does not comply with its prescribed safety standards. This represents a significant shift of onus from the Factories Act which only made the users of potentially dangerous machinery responsible for ensuring that prescribed standards were being maintained.

The Act makes provision for fines of up to R1 000 or imprisonment for not longer than six months, or both, to be imposed on people who contravene its regulations. If a court finds negligence the penalty can be extended to a maximum fine of R4 000, or up to two years' imprisonment, or both.

Mosa was passed by Parliament last February. The key reason why implementation of the Act was delayed so long was a wrangle over its regulations. Meanwhile all the regulations of the Factories Act have remained in force.

Some draft regulations for Mosa were published for comment in government gazettes last year. But at a meeting last August organised by the Federated Chamber of Industries, the Steel, Engineering

and Allied Industries of SA and the Afrikaanse Handelsinstituut so many objections were raised about them that they were withdrawn. Among the contentious issues were those relating to thermal conditions in factories. Unions also objected. The Trade Union Council of SA, for instance, took issue on proposals to limit the floor space allocated per worker.

Mosa makes provision for an Occupational Advisory Council to advise the Minister of Manpower on the administration of the Act and any other matters. The council is empowered to appoint technical committees on a temporary basis to give expert advice. A committee has been established to consider regulations for thermal conditions, lighting and ventilation.

Rewriting regulations for Mosa is a massive task. The department expects it to take three years.

Mosa has been hailed as a major advance in health and safety legislation as it has brought these issues directly into the workplace and helps avoid the pitfalls of the previous Factories Act system. Says Gus Weich, the Department of Manpower's chief director of occupational safety: "The main feature of Mosa is self-regulation. Much of the responsibility falls on SRs, safety committees and employers. The Factories Act relied on employers and inspectors. Now we have brought in the employees. We are going to see that this system works."

But some unions have raised objections to Mosa. Chief among them is criticism of the fact that employers are empowered to appoint the SRs instead of allowing workers to elect or nominate them. The unions argue that the definition of "employee" in Mosa is too wide making it theoretically possible for management to appoint supervisors, middle management and even MDs (provided they are not the owners of a concern) as SRs. They also argue that SR's rights are limited in comparison with overseas countries and that the safety committees are "toothless" as they are merely consultative bodies with no decision-making powers.

Collective bargaining

These are factors which employers will, no doubt, have to face. It is almost a certainty that unions will use collective bargaining machinery to persuade employers to nominate people in whom they have confidence as SRs. This battle will echo previous union battles against the liaison committee system.

In these situations employers would do well to remember Manpower director general Piet van der Merwe's sentiments on the issue. He has stated that employers would be wise to consult employees about such appointments. Consultation could make the representatives more credible and help them to carry out their duties more effectively.



Manpower's Van der Merwe ... urging consultation with employees

Labour guidelines vital lawyers

By Carolyn Dempester,
Labour Reporter

CAPE TOWN — Labour lawyers say urgent steps must be taken to rectify the deficiencies of the Industrial Court, or labour relations in South Africa will suffer

Speaking at a one-day seminar on emergent unions in the Western Cape, Professor Pieter le Roux, of the University of South Africa's law faculty, criticised the vagueness surrounding unfair labour practice and the application of status quo/reinstatement orders

"If the court does not start developing guidelines in the near future, the whole issue (of the unfair labour practice) will be thrown back to the political arena.

"Unfortunately I am not certain that the Government is in a position to make the correct decisions"

The Minister of Manpower had in recent months circumscribed the jurisdiction of Conciliation Boards to effectively bar unfair labour practice disputes from reaching the Industrial Court, he said

This damaged the image and status of the court, said the professor

Mr John Brand, also a prominent labour lawyer, argued that the lack of clear guidelines on the question of unfair labour practice and the actions of the Minister was contributing to potential collapse of the "institutionalisation of conflict" procedures

The first part of the paper examines the scope of South Africa's Unemployment Insurance Fund in terms of people covered, the nature and duration of benefits, and compares this with unemployment funds in a number of other, mainly Western, countries. It argues that in comparison to many of the above, the South African Fund is extremely restrictive, offering cover to a limited number of people only. In addition it differs from these other funds because rather than attempt to maintain the unemployed at a standard of living as close as possible to that enjoyed previously, it merely, at best, prevents undue hardship. The second part of the paper looks at the inefficiencies in the administration of the fund — in particular employers' abuses and departmental mismanagement. This is exacerbated by workers' ignorance of their rights. The above problems mean that the fund is totally inadequate to deal with the already severe and growing level of unemployment in South Africa.

and Shipping

Seifsa head calls for clarity on labour law

JOHANNESBURG — Uncertainty arising out of the current legal definition of an unfair labour practice is inhibiting employers in the conduct of their industrial relations

This was stated today by the president of the Steel and Engineering Industries Federation of SA (Seifsa), Mr J W Nelson, at the federation's annual meeting here

Delivering his presidential address, he said intention of the revised industrial council dispute procedure introduced last year was to encourage parties to resolve their differences through agreed procedures rather than through strike action

"This appears to have happened. The industrial council has handled over 150 disputes in the past 12 months and it is encouraging to report that approximately a third of these have been resolved at industrial council level," he said

"The increased use of official procedures by trade unions to take up matters on behalf of their members has also meant that the Industrial Court had to play a far more prominent role in the industrial relations arena. Over 300 cases have been referred to it since the start of 1983

"This has led to a widespread debate on the role of the court and, during the course of the year, the Department of Manpower invited comment on the National Manpower Commission report in this regard

"The uncertainty arising out of the current definition of an unfair labour practice is inhibiting employers in the conduct of their industrial relations and it is important that a formula be found whereby the court can assist in ensuring fair employment practices without becoming directly involved in both the structure and practice of collective bargaining"

The past year had also seen increasing fragmentation of the trade union movement in the industry

"Some of the traditional alliances in the trade union movement appear to be changing and inter-union rivalry has continued at a high level

"This makes it difficult for employers to maintain stable collective bargaining and joint consultation arrangements"

The federation had continued to encourage maximum participation in the National Industrial Council on a voluntary basis by both employers and trade unions

"The National Manpower Commission has continued its investigation into collective bargaining by inviting comment on a working document dealing with levels of collective bargaining and the extension of agreements to cover non-parties

Seifsa has responded to this invitation with a detailed submission and it is hoped that the National Manpower Commission will complete its investigation as speedily as possible so as to bring to an end the damaging speculation that continues to take place regarding some of the key provisions of the Labour Relations Act

"The continuing imbalance in the supply and demand for artisans constituted a serious limitation both in the development of the industry and in the wage structure

"In view of this a plan to increase the intake and improve the training of apprentices has been formulated

"The plan seeks to encourage 'off-the-job' training in the industry by allocating a fixed proportion of income from the training levy to the establishment of industry apprentice training centres and by adapting the grant system so as to provide higher payments to companies in respect of apprentices who qualify by trade test"

Mr Nelson said activity in the engineering industry continued at a depressed level though the steep decline in production levels during 1982 up to mid-year '83 appears to have been halted — Sapa

'Unclear' labour laws irk Seifsa

By **DAVID FURLONGER**
Industrial Editor

UNCERTAINTY over the legal definition of unfair labour practices is hampering the development of industrial relations, it was claimed yesterday.

Mr J W Nelson, president of the Steel and Engineering Industries Federation of SA (Seifsa), said that although the new industrial council procedure encouraged unions to resolve differences through agreed procedures rather than strike action, there were still serious problems.

The Industrial Court was causing widespread debate with its increasingly prominent role in the industrial relations field, while there remained widespread ignorance of what constituted an unfair labour practice.

"The uncertainty arising out of the current definition of an unfair labour practice is inhibiting employers in the conduct of their industrial relations.

"It is important that a formula be found whereby the court can assist in ensuring fair employment practices without becoming directly involved in both the structure and practice of collective bargaining."

Mr Nelson was addressing Seifsa's annual meeting in Johannesburg.

He said increasing fragmentation of the trade union movement through breakaway groups made it difficult for employers to maintain stable bargaining and consultation arrangements.

He rejected claims that this could be overcome by fragmenting existing collective bargaining arrangements within industrial councils.

"It is difficult to see how this could function on a practical basis. This would, in fact, lead to a highly unstable business environment which would make long-term investment in the metal industries unattractive."

Mr Nelson said metal industry employers had experienced a difficult year in the labour relations field.

He criticised the rejection by the Metal and Allied Workers' Union and SA Boilermakers' Society of wage rise offers ranging from 9,1% and 13,1%. He said they rejected the deal because of the minimum wage for lower-paid employees.

"The severe recessionary conditions

limited the ability of the employers to meet the aspirations of the trade unions. Employers face a serious dilemma in that major increases in wages in this area must lead to further reduction in employment levels at a time when unemployment is already high."

Mr Nelson expressed concern at the declining number of apprentices entering the metal industries. The 1983 apprentice intake was 35% down on 1982, confirming the inadequacy of a system in which on-the-job training played so important a role.

Even the establishment of a Metal Industry Training Centre had earned little support from employers.

"The continuing imbalance in the supply and demand for artisans constitutes a serious limitation, not only on the development of the industry, but also on the wage structure, because it inhibits the attainment of a more equitable distribution of income between skilled and unskilled employees."

Mr Nelson said engineering industry activity continued at depressed levels last year, although the steep decline from 1982 to mid-1983 appeared to have been halted.

After falling 13% in 1983, steel production in the first seven months of this year had risen 15,8%. Ferrous casting, after a 20% slump in 1983, was up 2,3% so far this year.

The exception to last year's decline was ferro-alloy. The industry increased production by 12% in 1983, and prospects this year remained strong in anticipation of continuing growth in demand and improved prices from Europe and the US.

Mr Nelson predicted a continued cutback in economic activity in the immediate future and said Government expenditure must be curtailed.

Recent "corrective action", such as increases in GST and company tax, curtailment of tax allowances and high interest rates, were all inevitable. But the extent of the economic problem had led to unwelcome side-effects.

"The economy is clearly in an extremely serious situation and the recent social unrest, while possibly sparked by other factors, is not unrelated to the very difficult economic conditions and unemployment levels pertaining."

Pay: Tek charged

(166) ~~11/10/24~~
EAST LONDON — Tek Corporation has been charged here with contravening basic conditions of the Employment Act.

D. Disputch 11/10/24

The Department of Manpower alleged the company had not paid all the leave pay due to some employees who had been retrenched

The case was postponed to December 20.
— DDR.

Span

Blue-collar years taught sensitivity

166 Labour laws' chief surgeon

By Sue Leeman,
Pretoria Bureau

When Professor Nic Wiehahn talks about the revolution in labour legislation occasioned by his commission's report, he refers descriptively to a patient undergoing major surgery.

As chief surgeon, he is responsible for having performed that surgery and introducing a new era of conciliation, particularly for the black labourer

This quiet-spoken man who began his own working life as a labourer on the railways has just recently been appointed head of the University of South Africa's School of Business Leadership (SBL)

He believes his early experience as a blue-collar worker probably made him that much more sensitive to the labour situation

By 1977 after many years in the labour field he had seen enough of what he calls the "sporadic pains" of South Africa's old race-based labour relations system

The then Minister of Manpower, Mr Fanie Botha, approached him for advice and the rest is history

It is now more than five years since his report and the legislation it provoked. And there has been time for an evaluation

What he once described as "the deep economic division between white 'aboveness' and black 'underness' is starting to disappear he believes, although the recession has slowed things down.

Management, he feels, is generally far more aware of the need for sound industrial relations and most have initiated a company negotiation system of their own



Professor Nic Wiehahn new head of Unisa's business school.

"The short duration of most strikes shows that management is involved and talking to workers"

Most workers, he says are prepared to use their unions constructively as tools to engineer better working conditions

And although he feels politicisation is inevitable, he nevertheless believes most black unions want negotiation rather than violent confrontation

He is satisfied that job reservation has been done away with in most major sectors of the South African economy, but points out that the mines still lag behind in this respect

"If you prevent a black man from becoming a blaster because of security reasons, you are taking a vote of no confidence in someone who may have been loyal to the industry for many years

"Maybe the Government should have gone ahead in 1979 and just scrapped job reservation on the mines. While the patient — the mining industry itself — is under anaesthetic you have to perform as much of the operation as you can."

The Government, however, had encountered a

lot of political resistance from the mining quarter, he said

Professor Wiehahn points out that white mineworkers are traditionally conservative in outlook and expects white unions in general to take a tougher stand on most things in the future

Asked whether he thinks the term unfair labour practice needs to be more closely defined, Professor Wiehahn is emphatic that any closer definition would place restriction on the Industrial Court, which he believes is working well.

"Unfair labour practice is a concept, it is a chameleon-like term which depends very much on circumstances

"We must keep it as wide as possible."

Regarding the country's latest catchword "productivity" Professor Wiehahn says sound industrial relations are a cure for this labour "pain".

"Allowing workers a greater role in decision-making is also conducive to productivity."

He has always managed to be thoroughly productive himself, even in the early days with the railways when he had still to get his matric

He recalls wryly how he saved the enormous sum of 18 pounds from his railway salary and went back to school full-time to do his matric

At the University of the Orange Free State he studied law during the day and "moonlighted" at night to pay his way

With his BA LLB finally tucked under his arm he went on to become an advocate in the Supreme Court

This was followed by several university teaching posts and finally his appointment to the staff of the SBL.

106

Ciskei plans big changes in tax, labour legislation

Argus Bureau

EAST LONDON — Ciskei is expected to introduce far-reaching changes to personal tax and labour legislation soon

The homeland, committed to developing free enterprise and free market principles, has already abolished company tax, introduced major land reforms and lifted restrictions on small business development

Legislation, substantially reducing personal taxation and placing it on a flat-rate system, could be passed by early next year, according to reliable sources

Separate taxation for husbands and wives is also said to be on the cards

JAPANESE PRINCIPLES

Big changes to labour legislation, largely inherited from South Africa at independence, are also likely to be made within the next few months

It is understood these could be based on Japanese economic principles designed to encourage competition between companies and promote productivity

President Lennox Sebe, on the recommendation of the Swart Commission report last January, has set Ciskei on a path to a free market and free enterprise system

Company tax for industries not using decentralisation concessions was abolished earlier this year

PERMANENT RESIDENCE

Major land reforms, permitting freehold and leasehold title, have also been introduced

Chief Sebe has also offered foreign industrialists indefinite permanent residence in Ciskei and the option of buying the land on which their businesses are built in an endeavour to attract foreign investment to the homeland

Numerous restrictions on the establishment of small businesses were also abolished when the Small Business Deregulation Act was passed earlier this year

PE firm
S. Post 1/66
guilty
23/10/84
of not
paying
R19 758

Court Reporter

THE COMPANY, M Govan Niekerk and Sons (Pty) Limited, was found guilty yesterday on 26 counts of not paying a total of R19 758,72 in contributions in terms of the Labour Relations Act

Two men, who are directors of the company, Mr Michael Henry van Niekerk, of Davy Street, Sidwell, and Mr Harold Raymond van Niekerk, of Jamano Court, Adcockvale, had the charges against them withdrawn

The court found that the company had failed to pay contributions to the National Industrial Council for the Iron, Steel, Engineering and Metallurgical Industry between April and July last year

The company had failed to pay contributions to the council in terms of the Administration Expenses agreement, the Technological Fund agreement, the Pension Fund agreement, the Group Life Provident Fund agreement, the Education and Training Fund agreement and the Education and Training Supplementary scheme

Mr F Wilke, for the State, accepted the company's offer to pay R750 a month. He asked the court for an order of repayment

Mr R J Cloete, for the defence, said that if the company was fined they would have to close down

Two payments of R750 had made already

Sentence was postponed until December 2, 1986

Mr I S van der Merwe was on the Bench

THERE are still some "holes" in the new labour laws. One of these is the predicament of farm workers.

The Labour Relations Act specifically excludes these workers from registering trade unions. The issue is politically sensitive but I understand that the prohibition is being reviewed in Pretoria, although no conclusion has been reached.

Baasskap is more entrenched on the farm than in any other sector of the economy. The mind boggles at the reaction of many farmers — particularly in present economic conditions — to unions coming to negotiate the full panoply of disciplinary and grievance procedures, not to mention wages and conditions.

In discussion with Professor Nic Wiehahn, architect in the late 1970s of the revised labour laws, I asked about the gaps which remained, specifically those involving farm workers.

He pointed out that these people were not the only ones excluded. The right of civil servants to strike was circumscribed. Also workers at keypoints such as Sasol were not able to withdraw their labour legally.

He added "I still believe agricultural workers should be included under the system. The exclusion should be scrapped because those farmers who do not want trade

PEOPLE IN BUSINESS

Bryan Deans



Farm workers' unions under the spotlight

union representation on their farms would still have the right of admission.

"I doubt whether it is possible to organise farm-workers in the conventional, formal way, except possibly at estates such as Zebediela where there are hundreds of orange pluckers who have at present no way of negotiating a dispute."

Professor Wiehahn observed that under the labour dispensation any discrimination on the grounds of colour, sex or race was prohibited. If that were carried to the ultimate, to include the most under-privileged working group of all, it would be possible to make considerable "image" capital overseas.

For Professor Wiehahn it has been an eventful month in which he has been appointed Director of Unisa's School of Business Leadership and has accepted the chairmanship of the Care Enterprises group.

It seems likely that under his leadership Unisa's SBL will continue to have a high profile in human relations. "After all, approximately 50 percent of management success depends upon how you handle people."

These people skills have to be applied more subtly in South Africa than anywhere else. The responses of blacks, it has been proved, are totally different to those of whites.

It was for this reason that "productivity" became such a dirty word because a concept which seemed reasonable to a white was seen by blacks, as Professor Wiehahn puts it, "more exploitation — management wants us to work harder."

Now a similar dilemma arises from the report "Project Free Enterprise" which also came out of a Unisa study and which showed virtually all blacks — and a good many whites —

have rejected the capitalist system.

Since that report came out in July, its co-ordinator, Professor Martin Nasser and some of the country's leaders have been engaging in think tanks to consider its implications.

Professor Wiehahn says he has frequently been urged to start politicising the worker movement and explaining the benefits of free enterprise.

The dangers inherent in that are great. One can just imagine the glee of agitators if it were to be announced that private enterprise had voted R5-million, or whatever, to a campaign to teach the workers to love their managements.

The answer to that particular dilemma will come, not from propaganda, but from sound industrial relations. As a more equitable industrial system evolves — and great strides have been made — the labour force will feel in its living standards the reasons for liking capitalism.

Asked about his private sector role with the Care Group, Professor Wiehahn explained "It is developing into an organisation exclusively concerned with human resources — medical care, personnel selection, employee benefits and training. Because it is a specialist group it can be prognostic and plan well ahead for the human resource needs of the future."

166
[Handwritten scribbles]

S. S. Jan
28/10/84

LABOUR NEW

31/10/74
New law
on unions
likely

Mail Reporter

NEW labour legislation dealing with the registration of trade unions is likely early next year, according to Dr C F Scheepers, Deputy Director-General of Manpower.

Dr Scheepers said last week that some employers and trade unions were urging that unions should be compelled to register before they could exist and communicate or bargain with employers.

"These are thorny issues and it was for this reason that the National Manpower Commission (NMC) was asked to investigate the whole issue," he said.

In its report earlier this year, the NMC recommended that trade unions be made to comply with certain minimum requirements and that the industrial registrar issue some form of acknowledgement that the conditions have been complied with.

"It is expected that the department will introduce possible legislation in the first half of 1985."

He said the Government had passed legislation earlier this year determining that no agreement between an employer and a union which had not met the minimum requirements of law could be ratified in a court of law.

RDM 5/11/84 □ □ □ ~~16/10/83~~
ONE wonders what new legislation on registration the Department of Manpower has in mind for the next session of Parliament

Last week, Dr C F Scheepers, the deputy director-general of Manpower, said the legislation would probably be ready early next year.

He said it followed urgings by some employers and trade unions for registration to be made compulsory.

Given last year's amendment to the Labour Relations Act, the National Manpower Commission's proposals on the subject and the apparent shift of the department under its new Minister, one could well see a tightening up on unregistered unions and on the registration process

If that is the case, the department could succeed in further alienating emerging unions, many of are already questioning their involvement in the official labour relations system.

Mercury 14/11/84

166

Firm would need R100m to meet Govt health law

Finance Editor

A LARGE Durban company would have to invest more than R100m to comply with the original health proposals made by the Government in its new industrial health laws

But Mr Roland Freakes, the executive director of the Natal Chamber of Industries said the company has 'a performance record of 670 million man hours without a single instance of heat exhaustion or stress'

He was opening a seminar of the Chartered Institute of Industrial Safety Engineering yesterday on 'People, Production and Profits'

Mr Freakes said that the Government's thermal regulations under the Machinery and Occupational Safety Act had been rejected by industry and referred back to a Technical Committee for reconsideration

Valid case

'No amount of persuasive rhetoric, no amount of official dogmatism will ever satisfy me that there is a valid case for imposing such demands upon a company

'Let me assure you that this is not an isolated example. There are many other companies which would be called upon to outlay tens of millions to meet these idealistic rules'

Mr Freakes said the country could not afford 'that kind of unessential expenditure'

The money should be devoted to the expansion of industries, the creation of new jobs and upgrading economic growth and prosperity

'That is what our future is all about.'

He said that industry accepted that employees had to be protected against biological and chemical hazards and so on

HALTON CHEADLE

Labouring the law

166

Halton Cheadle spent last week in the eye of the Sasol storm. As assistant director of Wits's Centre for Applied Legal Studies and a widely respected expert in labour law, he's played a prominent role in hammering out guidelines and precedents in SA's rapidly evolving labour relations field for some time now

Cheadle (35) handles public-interest and test cases, usually for trade unions. As legal representative of the Chemical Workers' Industrial Union (CWIU), the Sasol case in which 6 500 workers were dismissed and sent home for participating in last week's stayaway has been one of the most harrowing he has handled.

"The company set 11.30 Tuesday morning as the deadline for the workers' return. Normal production would have resumed a mere 10½ hours later. Now a new workforce must be trained, and normal production is months away."

Sasol's motive could have been a crude

attempt to "teach the union a lesson," Cheadle believes, or even a straightforward move to break the union. "If the move was sanctioned by government, then most likely it's intended to break the stayaway weapon once and for all"

Cheadle speaks fast and directly, not pulling punches. He's forceful, routinely dominates any gathering he's in, and can be boisterous. He's hyperactive — and needs to be, with the workload he shifts. In addition to teaching a full LL B in labour law, he's often away from Johannesburg, where he lives with his wife and two daughters, sorting out strikes and handling delicate negotiations between management and workers. "But I'm going to have to start pacing myself," he admits.

Cheadle's concern with labour goes back to the beginning of the Seventies' wave of black unionisation. Very much the golden boy, both his political science honours degree and his Wits LL B were attained *cum*

laude. He captained the Natal Currie Cup swimming team, won university colours, and was news editor of the university newspaper — the type who normally ends up a Rhodes scholar. But Cheadle took a different route.

While still a political science honours student in Durban, he became involved in organising textile workers. This grew out of his involvement in the Wages Commission, a Nusas research project, and led to the formation in 1973 of the National Union of Textile Workers (NUTW), now one of Fosatu's most successful and aggressive unions.

Nostalgically, he recalls "We were absolutely green, but 10 years ahead of anybody else. Few people knew anything about labour relations or labour law. We negotiated the first recognition agreement in SA, with Smith and Nephew, drawn from an American factory agreement I'd got hold of. That was the beginning of the strategy of fac-



Cheadle . . . handling delicate negotiations between management and workers

166 FM
16/11/84

tory-based organisation.

"Textile workers were at the vortex of the 1973 strike wave," Cheadle says "Because we knew enough to predict it, they thought we caused it," and government slapped a banning order on him and fellow unionists early the following year. During the hiatus, he studied law. When his order was lifted in 1976, he was armed to tackle the booming labour law field.

Among the test cases he's handled are Metal and Allied Workers' Union versus Stobar in 1982, the first case in which employees were reinstated by the Industrial Court when the court adopted the International Labour Organisation's principles of fair termination, NUTW versus Stag Packing, which changed the common-law rule of reinstatement of employees; and the James North case, in which the NUTW cracked a Tucsa union's closed shop.

Cheadle is also involved in NUTW's current recognition battle with the Frame Group and recently won the first interdict in the Industrial Court in a case involving NUTW and Jaguar Shoes. On top of that, he edits SA's first industrial law journal, and a layman's publication on employment law.

The most exciting creative period for labour law is probably over now, he thinks "But in a few years we've established legal rights that took decades to achieve elsewhere."

Though the Industrial Court is becoming more conservative, and unions will increasingly be thrown on the defensive, there's still plenty of scope for development in the field, Cheadle says. "Major issues like the closed shop have to be hammered out. The duty to bargain in good faith is another instance — an employer may enter into an agreement and then not consult the union as agreed. New types of recognition agreements, industrial council constitutions and, of course, arbitrations will provide a lot of work."

He argues that the State, by placing limits on the Industrial Court's jurisdiction, is effectively diluting its function as a moderator in collective bargaining. "Disputes won't be eliminated, they'll just take another channel"

Similarly, as homelands crack down on unionisation, so unions will take their bargaining to SA head offices and press for industry agreements. After the East Rand and the Witwatersrand are organised, Cheadle thinks, Bophuthatswana will become "the new frontier." If so, this will provide more than adequate scope for this combative labour fundi.

2
-
64
r
1

FM. 23/11/84

132
100

torpedoed a feasibility study for the Highlands Project for damming the upper reaches of the Orange River. Avenues of political co-operation such as the Nkomati Accord and an agreement with Swaziland on the development and sharing of water resources are, however, an important start.

Midgley believes another source of water to service the Pretoria-Witwatersrand-Ver-eemzing complex could be the Zambezi River. But that could also succumb to similar political vicissitudes as Lesotho.

To implement such a scheme would involve high-level negotiations with Zambia, Zimbabwe, Botswana, Malawi, Mozambique and possibly Namibia as well. "In the present political climate that seems an impossible task," says Midgley.

Over the next two decades SA's power needs are expected to triple from the current installed capacity of 20 000 mW. "And yet," says Midgley, "more than 50 000 mW is being dissipated in turbulence by the rivers of neighbouring countries to the north as they flow uselessly to the sea." Midgley believes it would be possible to harness about 40 000 mW at a single site on the Congo river Inga in Zaïre.

Currently Eskom feeds the grid at about 1,6c/kWh. Hydro-power tapped from the Inga input alone would cost 0,2c/kWh — by far the cheapest in the world. The financial benefits to be derived by participating states are enormous. Midgley says that in some cases revenues through co-shared power and water schemes could match the gap's of some states.

LOCAL AUTHORITIES

Another casualty

FM 23/11/84

A fourth black mayor has quit his post. This reinforces speculation that councils established late last year under the Black Local Authorities Act seem doomed as a result of pressure from residents on councillors to resign.

Veteran Pretoria civic leader Z Z Mashao, chairman of Atteridgeville/Saaisville Council and the latest man to quit, gives as reason for his resignation "pressure from members of his family."

They apparently believe his continued participation in the council poses a threat to his life.

Mashao, who resigned last week, is the fourth council chairman in the PWV area to quit. Others are Kebane Moloi of Duduza (Nigel), Maluka Mohlomi of Ratanda (Heidelberg) and S B Masilo at Tsakane in Boksburg.

Moloi resigned with seven members of his council, leaving behind only one man.

Three councillors in Tembisa (Kempton Park) also quit during the recent two-day work stoppage. Four councillors were murdered in the Vaal Triangle and four others resigned when the unrest first erupted at the beginning of September.

LABOUR RELATIONS Future challenges

Much of the debate about labour has now shifted from considerations of overall policy to questions of technical and administrative detail — about which there are wide differences of opinion in employer and trade union circles.

This was said by Director General of Manpower Piet van der Merwe in his speech on *The Manpower Scene: Developments and Challenges* at the FM's annual Investment Conference last week. Van der Merwe said the major challenge which lies ahead is to achieve the greatest possible measure of consensus on the way these technical problems should be handled.

One of the major areas of contention is the question of the registration of trade unions. This issue was addressed in an amendment to the Labour Relations Act (LRA) which came into effect on September 1. The LRA now states that any agreements reached between unions and employers will not be enforceable in court unless unions comply with certain requirements. Among them is the provision that unions must supply the Department of Manpower with details of their constitutions, membership, office addresses, names of office-bearers and that they must maintain their financial affairs in good order.

The National Manpower Commission (NMC) also raised the question of registration in a recent report which was released for comment. The Manpower Department is expected to react to the issues raised in

the report early next year. The majority of the commissioners recommended that race and representativeness should not be taken into account when registration is considered, but that certain minimum requirements be met. These are similar to the provisions now in the LRA. However, the NMC majority recommendation was that if unions do not comply with them, they should be prevented from operating.

Van der Merwe said his department had received comments on the NMC report from 41 organisations. At least five lines of thought are discernible from these comments:

- That the *status quo* obtained before September 1 be retained,
- That the present position be retained,
- That registration in accordance with the existing statutory provisions should be compulsory;
- That the present system should be replaced with the majority recommendation of the NMC, and
- That compliance with the minimum prescribed requirements should be voluntary.

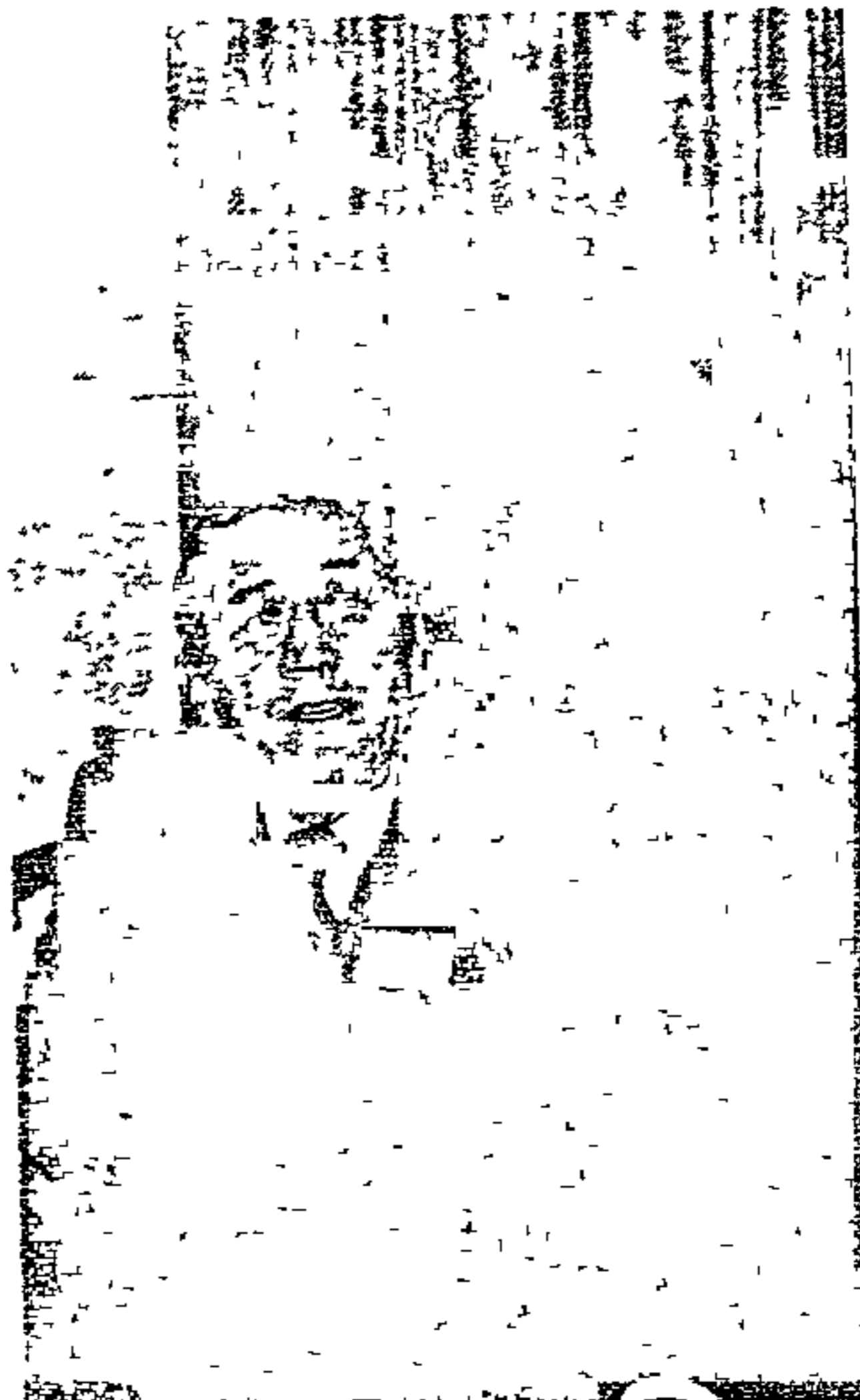
Another highly contentious issue, Van der Merwe said, is the definition of the unfair labour practice in the LRA. The only thing that labour commentators agree on is that the definition is very wide, he said. Many say there is nothing wrong with it, while others say it should be changed as the broadness of the definition is making industrial relations impossible to manage.

Legal strikes

Legal strikes have also become a contentious point. Said Van der Merwe: "Trade unions in general appear to favour a greater degree of protection for workers involved in legal strikes. It has been suggested that employers should be statutorily prohibited from terminating the contracts (of employment) of such workers or from requiring them to vacate the accommodation provided them. The suspension of contracts and charges for accommodation are suggested instead. Employers, on the other hand, argue that this would place them in an untenable position in so far as the conduct and continuation of their business activities are concerned."

The way strikes — and more particularly illegal strikes — should be handled is another point of debate, Van der Merwe said. One lobby argues that strikes should be decriminalised. Another says that the present provisions in the LRA should be more rigorously enforced by the Manpower Department. As for actually handling strikes, the major challenge facing union leaders and employers is how to prevent them from spilling over into violence and damage to property, which necessitates police involvement to restore order, he said.

Van der Merwe said the Manpower Department finds itself in a difficult position when it is asked to comment or advise on a particular line of action taken by either union leaders or employers in strike situa-



Manpower's Van der Merwe
... looking for consensus

~~166~~ (166) FM 23/11/84

tions "The department can and is prepared to explain the provisions of the LRA to any party that approaches it, but cannot advise on actions or purported actions by individual parties. Actions by individual parties may at any time result in a dispute being declared (and) prior comment or opinion would put the department and the Minister (of Manpower) in an invidious position should this occur," he said.

Strike ballots and ballots to determine the support for a closed shop agreement among union members are yet another problem. According to Van der Merwe, there is a strong feeling in some employer quarters that ballots should be secret, that they should be officially supervised and that statutory provision should be made for this. In union quarters it is generally argued that unions are autonomous bodies and that there should be a minimum amount of outside interference in the management of their affairs. A third school of thought suggests that the supervision of ballots should be a matter entirely for regulation between management and unions.

Van der Merwe also answered critics who claim that the Manpower Department has been blocking conciliation boards from considering allegations of unfair labour practices (ULPs). This means that the Industrial Court is also prevented from considering ULP allegations if a board fails to resolve the dispute referred to it.

"Both the Minister and the department are required to act within the framework of the LRA, which lays down the criteria (for the appointment of conciliation boards). The department is anxious that the widest possible voluntary use should be made of the conciliation machinery provided for in labour legislation and would do nothing untoward to inhibit its use," he said.

CRIME Statistical evidence

A special study for the London *Daily Telegraph* by Gallup International indicates that SA is the third most crime-ridden country in the world after Colombia and Brazil. The study was restricted to SA whites and experts agree that if blacks were included, the picture would even be bleaker.

The 1984 annual report of the Commissioner of Police gives a statistical breakdown of crime for the year to June 1983. During this period, 1 210 178 "offences" were reported — a 4% increase on the previous year. "Offences" consist of murder, robbery, rape and other serious crimes.

Figures for the 12 months to June 1984 will not be available until the next parliamentary session in January. However a spokesman for the SA Police tells the FM that the pattern for 1983-1984 remains virtually unchanged from the previous year.

There has been a marginal increase in

the number of murders (see chart). Robbery figures appear to have remained virtually static since 1980, as have those for rape. The number of burglaries has increased dramatically and car theft is also on the increase. Serious assault has declined slightly from the previous year under review. The statistics show only the number of cases reported to the police.

The rape figure, in particular, is subject to wide interpretation since many cases go unreported. Of the 15 535 rapes reported in the 1982-1983 period, nearly 9 000 prosecutions were instituted — about 1 000 less than the previous year.

Police statistics divide crime into "offences" and "infringements of the law". According to Mana Slabbert, of the Department of Criminology at the University of Cape Town, 40% of infringements consist of "apartheid law" contraventions, such as pass offences. If these were to be decriminalised, the figures would slump radically.

The number of cases in this category has increased dramatically, from 612 576 in 1981-1982 to 782 470 in 1982-1983.

Police statistics have come under increasing criticism for their lack of information. Progressive Federal Party spokesman Helen Suzman said in Parliament that the report is "getting more slen-

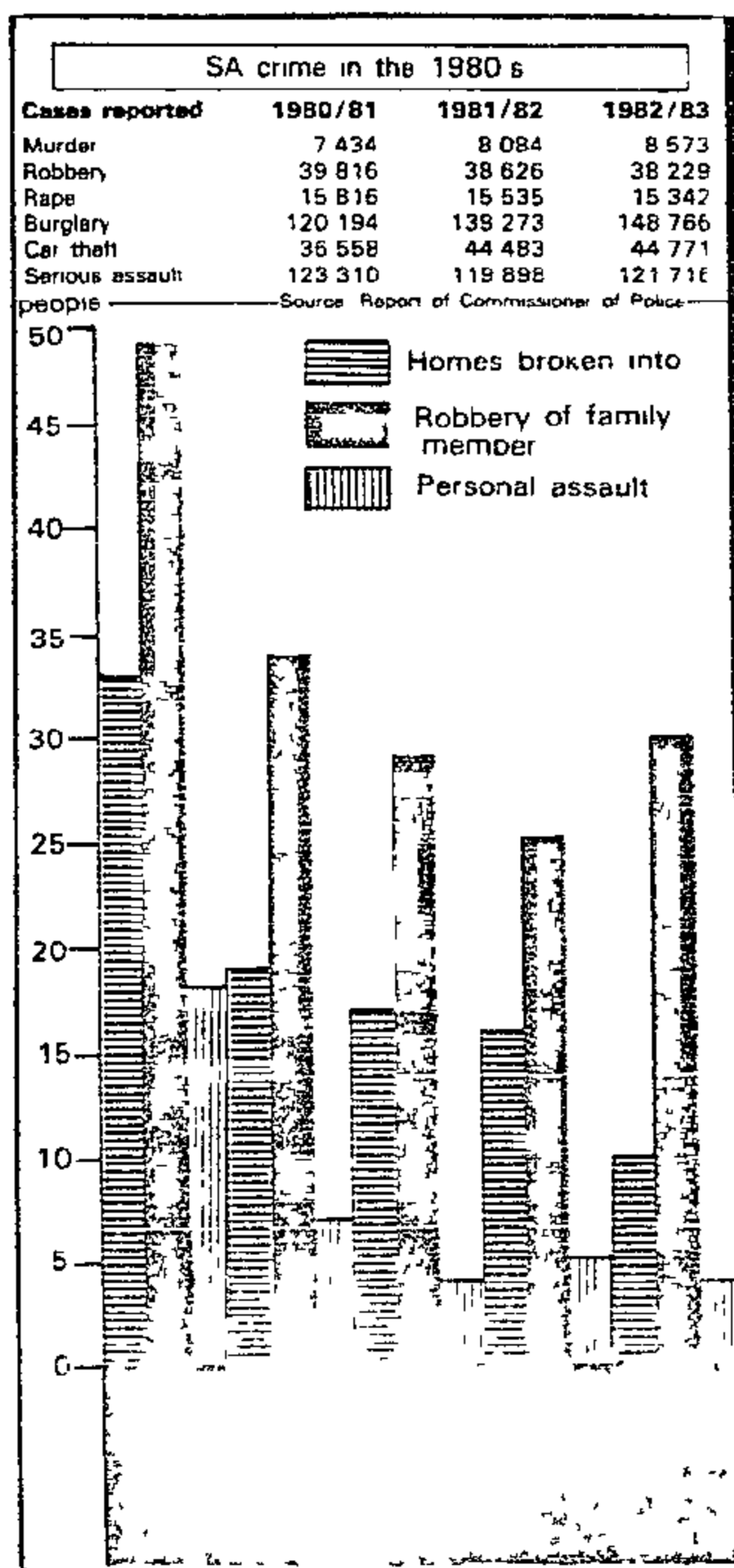
der as the years go by." The number of categories has diminished drastically over the last 10 years and there is now no racial breakdown.

SA not only has one of the world's highest crime rates, but also one of the highest rates of judicial executions. Between 1978 and 1980, executions peaked at around 130 a year, after declining markedly in the mid-Seventies. Since 1980 the numbers have levelled off to around 95 a year.

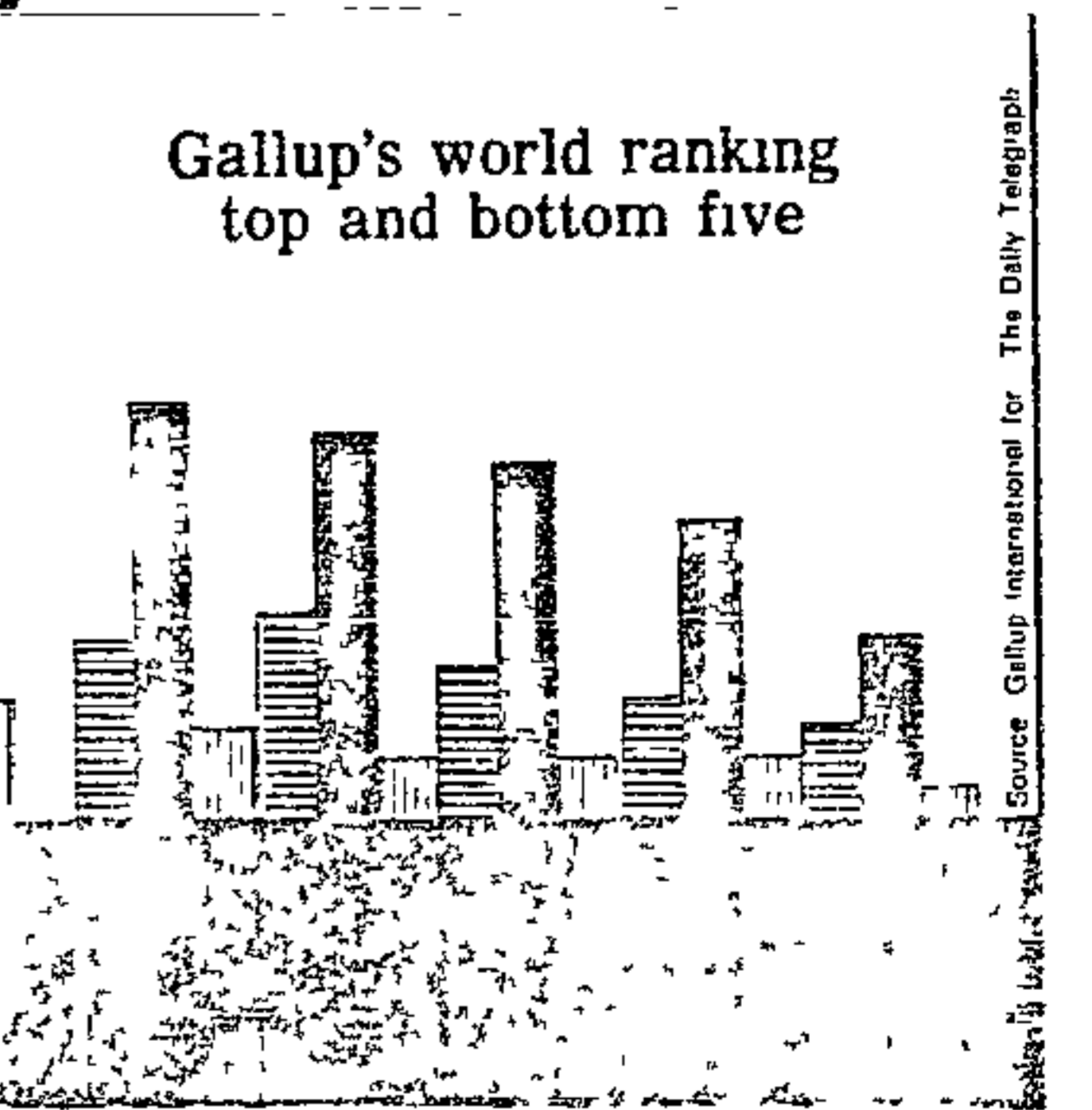
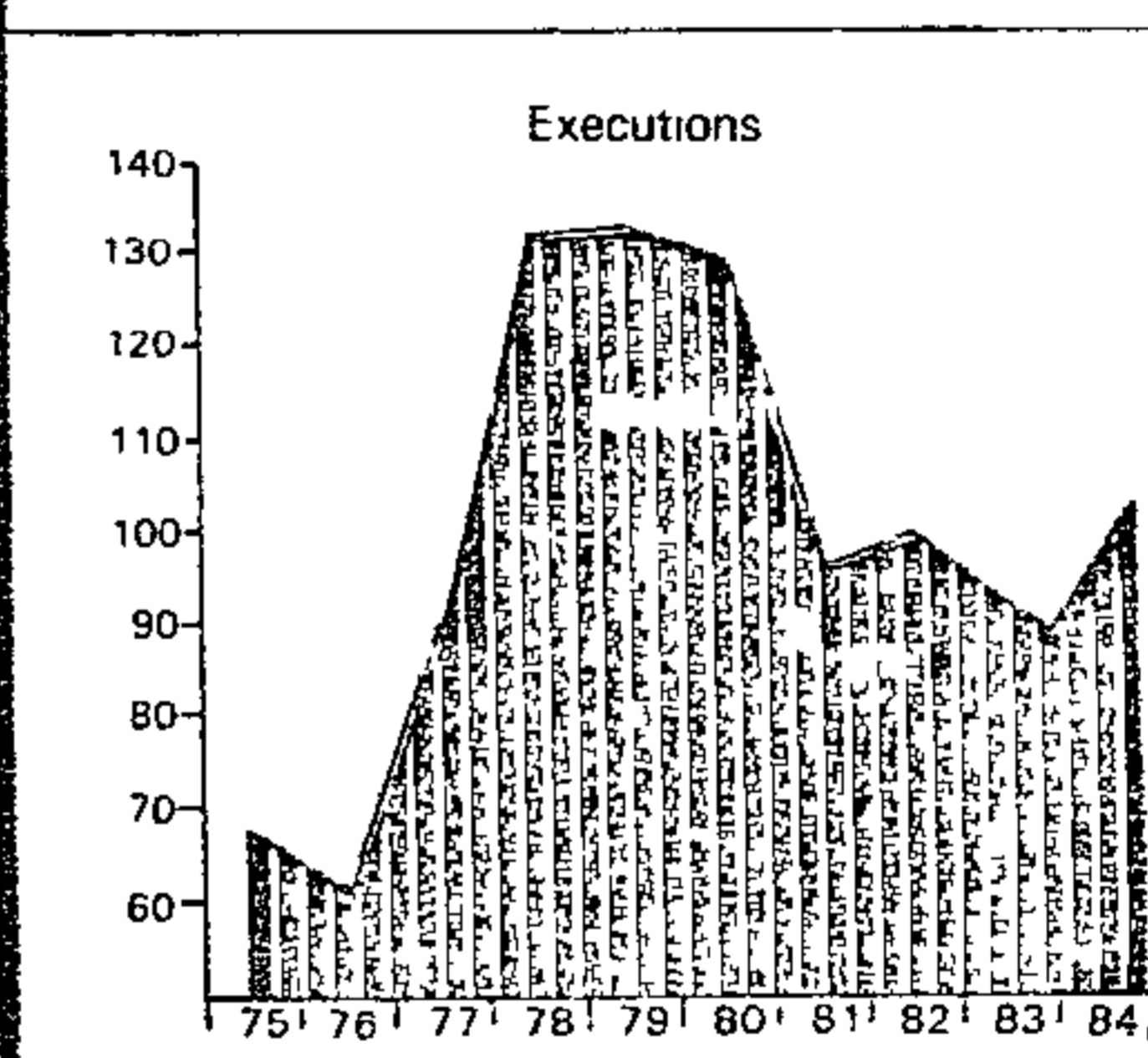
According to the Prisons Department, 97 people have been hanged in Pretoria's Central Prison this year, with 175 in death row. Statistics show the reprieve power is being used less now than in the early Sixties and mid-Seventies.

The high proportion of black executions does not appear to be simply a question of demographics and the notorious murder rate in the black community. Says John Dugard, director of applied legal studies at Wits University: "I do not believe judges pass the death penalty more readily on blacks than whites, but subconsciously this happens. Studies in the US have shown this to be the case and there is no reason to think SA to be any different."

A contentious issue is legal representation for capital offences. The majority of blacks, because they cannot afford their own attorneys and advocates, are assigned



CRIME! SA's NEARLY TOPS



SUN. Times 25/11/82

AMID the turmoil of union organisation and disorganisation precipitated by the events of recent months there remains at least one person whose optimism is undiminished.

Professor Nic Wiehahn, father of the country's new labour dispensation, believes the country has endured worse before and has survived.

Now head of Unisa's Business Leadership School, the man whose name is synonymous with the dramatic changes in industrial relations since 1979, took time out to share some views on the state of the country's industrial relations.

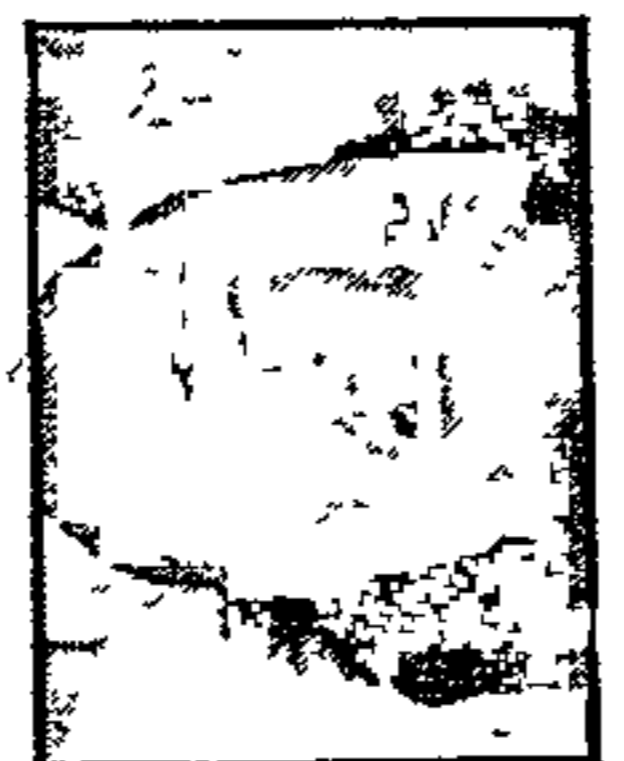
For one thing he is optimistic about the future. And secondly, he does not regret the pioneering moves he initiated in 1979 which led to the recognition of black trade unions.

Move to moderation

His response to the significant decision of the Federation of South African Trade Unions to take part in this month's two-day stay-away... "My sense is that this should not be seen as a growing trend towards politicising of the unions." "One must accept development in the unions and the fact that some will become more radical." "It is known all over the world that trade unions are

Stay-aways a futile war, says Nic Wiehahn

By BRIAN POTTINGER



used for many purposes and that one can expect them to be used for political motives and movements." But, Professor Wiehahn claims, there is a discernible movement towards moderation among most of the unions and a generally better situation between employers and employees. The political stay-away -- he argues -- is a futile war. "To aim at the employers is to hit at the wrong target. If the stay-away is political there is very little the employers can do. It is fighting a war in an arena where the other party can do nothing. In the end, employers can be expected to respond."

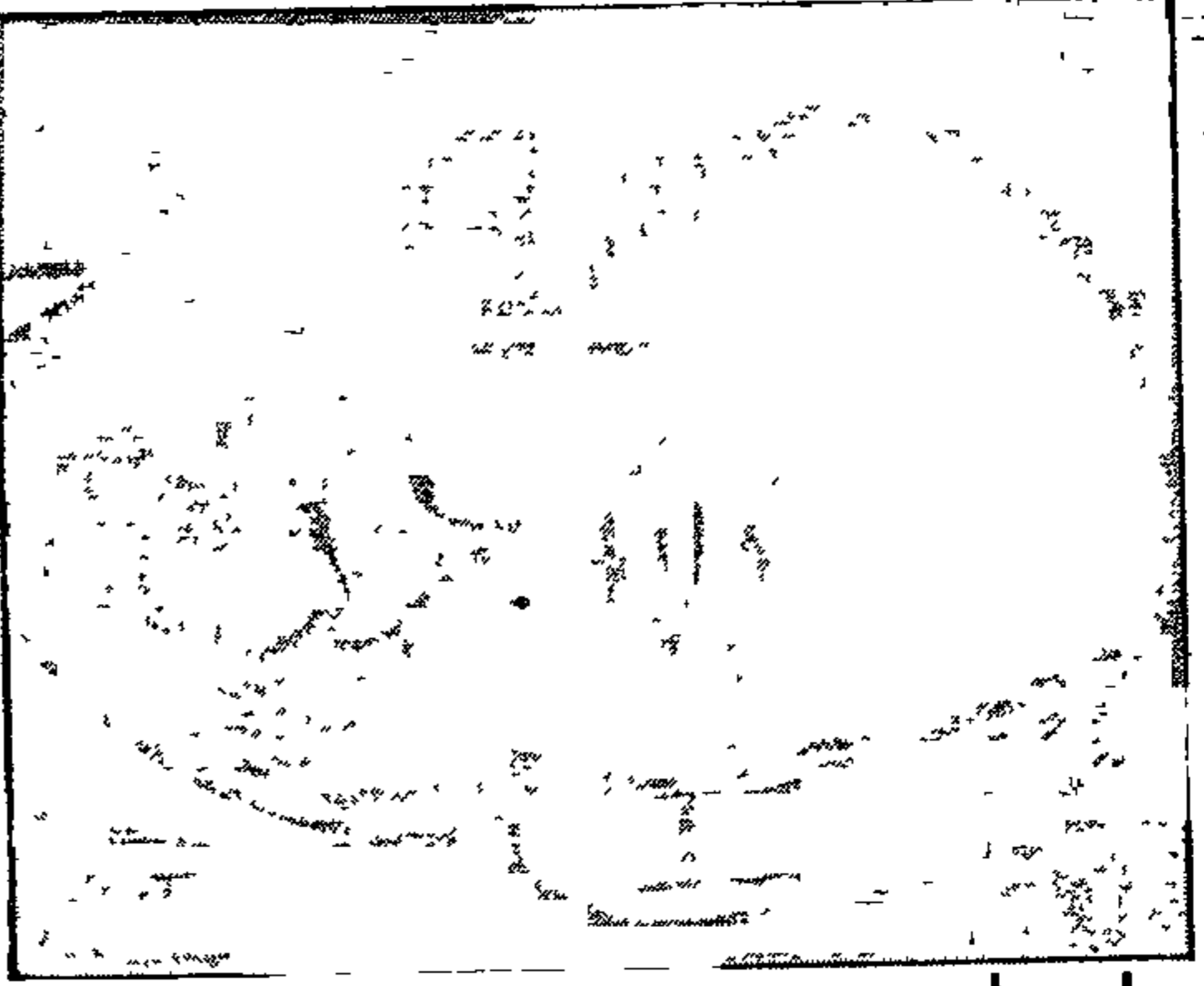
Choice of dangers
Has he created a monster which is now difficult to control? "Had we not taken the steps we did we would most certainly have created a monster," he says. The position at which the country had arrived in 1979 was no longer a simple

choice between what was safe and what was dangerous. "It had become a choice between what was more dangerous and what was less dangerous." At least six major factors underlie the need to change the laws, the lack of immediate, decline in white birth-rate, the multinational pressure for change, the slow internationalisation of the trade union movement, the dangers of exploitation of the situation by radicals and, lastly, the political developments around South Africa. "We are no longer Robinson Crusoe living on an island. We are part of a world which is getting smaller and smaller. Had we not changed the laws, we would have had a monster even more vicious." Professor Wiehahn sketched a situation in which the entire black work force would have turned against the country. "We would not have had a single, intelligent, thinking

black person with the desire to preserve the system -- not one." But he admits there are certain areas of concern. In the first instance there appears to be a growing internationalisation of the black trade union movement rather than the development of an indigenous South African character which the commission advocated. "The second was the indications of Government re-entry in the industrial relations set-up. The legislative amendments to the scope of the Industrial Court recently were "unfortunate."

Unfortunate amendments
Government attempts to define an "unfair labour practice" -- the subject of an ongoing debate inside the Industrial Court -- were also unfortunate. "The court should be allowed on the basis of equity to develop its concept and in that way stimulate the development of the labour law system." Professor Wiehahn was cautious about commenting on detentions of trade union members. "The bottom of the balance sheet must show one is either in the red or in the black. Again it is very much a question of not what is safe and what is dangerous, but what is more dangerous and what is less dangerous."

Professor Wiehahn -- Still optimistic



IF WE, and the country, are to reap the benefit of investments we have to be able to rely on the on-going use of more skilled labour without the disruptions of a migratory labour system

To achieve greater productivity from our workforce, employees must be allowed to become committed to a particular place of work and acquire a stake in the local community

If we are to realise the full potential of a free enterprise society it is not enough only to be racially integrated on a work basis

Job satisfaction is not merely derived from gainfully employing a man from eight to five — his quality of life is vitally dependent upon his 24-hour experience

If one is to expect a man of colour to want to participate in the management structure, he must be allowed to enjoy the trappings of his success

He should be allowed the same residential privileges and social opportunities as his white counterpart

South Africa needs to achieve certain essential objectives if we are going to create the circumstances which will allow viable mining to take place in this area into the middle of the next century

Firstly, we need to resolve the issue of a "scheduled person" in the Mines and Works Act

This affects the advancement of mining engineers and engineers of colour in that only certain racially qualified people are allowed

Sum Title 2/12/84

Change the labour laws or prepare to bury S Africa's mining industry

By GAVIN RELLY, chairman of Anglo American

to accept legal responsibility for a number of acts essential to the operation of a mine

It is to the Government's credit that they so readily implemented most of the Wiehahn Commission's recommendations for a dramatically different labour dispensation

As a result, job reservation does not exist in any industry in South Africa other than mining

Government, in keeping with a new spirit of non-interference, set employers and the unions the task arriving at mutually satisfactory arrangements which would allow for the proper incorporation of black people into the mining structure

Four years later, this simply stated objective has not been achieved

Important changes to the Group Areas Act are needed if we are to be able to attract

professional people of colour to manage our mining operations

It is impossible to foster an *esprit de corps* and generate a sense of belonging if people are not allowed to live together and partake of the same recreational facilities

Moreover, the country, with its very limited financial resources, cannot afford the luxury of dual facilities

Challenge

Economies of scale dictate that it is much more efficient to erect one integrated Technikon and invest the balance of the capital in a commercial undertaking which would provide employment for the artisans who qualify in the multiracial facility

Another objective should be to facilitate the maturing process of our trade union relationships

Black unionism, despite its rapid growth in numbers, is still very much in its infancy

A balanced industrial relations structure is absolutely vital for the economic prosperity of our country, but nobody has ever pretended this could be achieved overnight.

Employers, union leaders and workers alike need the time and understanding of all to make mistakes and learn from their experiences

The final goal is perhaps the most elusive. It will prove extremely difficult to overcome the racial prejudices of several generations, but overcome them we must

It is not just the on-the-job interaction that encourages a man's participation, but his overall standing in the community and the respect accorded him.

While this may be the greatest challenge, it is also the one that is within the

reach of each of us to do something about

These arguments have essentially been predicated on basic business issues. However, the rationale is more broadly based than that.

We would make a grave mistake if we too readily discarded the absolutely essential ingredient of good government — this is, to give people a realistic hope as to their future prospects

If we are to stabilise the whirling undercurrents which stress our social fabric, we must promote and encourage an emerging black middle class who can reasonably fulfil all the normal aspirations which we ourselves hold dear

Let us not fool ourselves as to the consequences of trying to avoid these challenges

Without dramatic changes it will not be possible for mining operations to make their contribution to the economy

Without the investment opportunities, there would be no foreign fund flows to the country and no opportunity to put domestic monies to productive use.

This would severely impair the economy's ability to generate employment opportunities

And let there be no doubt that idle hands and idle minds, driven by hungry bellies, will sure as night follows day, bring great waves of social unrest such as this country has never seen before

(Extracted from a recent speech at the opening of a new shaft at Vaal Reef)

Industrial laws under fire

SOUTH African law pertaining to strikes and the workers' right to strike came in for some criticism in the Springbok Radio programme "Top Level" broadcast last night.

An industrial relations consultant, Mr Eddie Nicholson, said the fact that employers have the right to fire strikers after they have followed the legal procedures required for a strike, made the South African industrial relations procedure suspect.

He added that the system's credibility had to be questioned if in spite of following procedure, the consequences of the strike action may result in firing just as it would in an illegal strike.

Unions, he said, would then be justified in questioning why they should go through the long list of requirements for a legal strike when the same end effect would be achieved if a strike was illegal.

Speaking on the same programme, the Professor of Law at the University of the Orange Free State, Professor Jimmy Claasens, said without the freedom to strike without being fired, there could be no equilibrium in industrial relations.

He said only lip service was paid to use of the strike as a legitimate tool of negotiation.

The acting general secretary of the Trades Union Council of South Africa, Mrs Ruth Imrie, said Tucsas, which represents 400 000 union members, had taken a policy decision to oppose the retention of the common law right to fire strikers.

It was recommended that strikers' service contracts be retained —

Sapa



166

3/12/84

Savetru

RAM 7/12/84 (166)

3 unions protest

Labour Correspondent

A DELEGATION from three unions representing domestic workers went to Pretoria yesterday to protest over delays in an official Government inquiry aimed at improving laws affecting these workers.

A statement issued by a lawyer representing the unions said they would hand over a letter to the Minister of Manpower, Mr Piet du Plessis, urging him to speed up an investigation by the National Manpower Commission into domestic workers' conditions.

They would also demand that the Minister agree to meet them before the next session of Parliament.

The three are the Johannesburg-based SA Domestic Workers Association (SADWA), Cape Town's Domestic Workers Association, and the Domestic Workers Association of SA.

13/12/84 (160) (161)

Key labour law report

By STEVEN FRIEDMAN
Labour Correspondent

A KEY official report on labour laws affecting farm and domestic workers has been completed — but the laws are unlikely to be changed before 1986, according to the director-general for Manpower, Dr Piet van der Merwe.

He said the Government would only decide early next year how to react to the report.

The report is the result of a National Manpower Commission inquiry into the conditions of farm and domestic workers which was launched in May, 1982.

Both groups of workers are excluded from most of the clauses in labour law

granting workers protection, bargaining rights and social security. They have therefore been described as "the most exploited" workers in the country.

Delays in completing the report have angered three domestic workers unions, who last week sent a deputation to Pretoria to demand a meeting with the Minister of Manpower, Mr Piet du Plessis.

They said they had repeatedly asked for progress reports on the NMC's work but received no reply. There had also, they charged, been no response to their submissions to the NMC besides a letter of acknowledgement almost a year later.

Their deputation delivered a letter asking for a meeting with Mr du Plessis before the beginning of the next session of Parliament.

Recently, the chairman of the NMC, Dr Hennie Reynders, said the report on farm and domestic workers was handed to Mr Du Plessis about a month ago.

Dr Van der Merwe said the report was with the Government translators at present. The Government could not, he said, take a decision on it until their work was finished early in the new year.

If the Government did decide to change the law, it would only be able to do so "in 1986 at the earliest".

LABOUR LEGISLATION - 1985

1. This agreement prescribes different wages for Worcester and all other areas. Other conditions of employment are the same.
2. Asst Factory Clerk Qualifying period 9 months.
3. Boiler Attd Not a separate category. Included in grade C until October 1974 agreement; grade B thereafter.
4. Factory Clerk Qualifying period 18 months until January 1983; 9 months thereafter.
5. Grade A (1) Refers to all grade A employees excluding maintenance men. Qualifying period until May 1977 amendment; thereafter 9 months.
6. Grade A (2) Refers to all grade A0 employees excluding maintenance men. Qualifying period 15 months until May 1977 amendment; thereafter 9 months.
7. Grade B, Grade C and C combined into grade B between October 1974 agreement and August 1981 amendment. Separated again in August 1981 amendment with some changes. Qualifying period 9 months.
8. Grade D Called labourer until August 1981.
9. Mob Hoist Op Included in grade B until October 1974 agreement. Qualifying period 9 months until October 1974; 3 months until August 1981; 9 months thereafter.
10. Sec Guar Before August amendment 1981 there was a distinction between S.G. Day & Night S.G. Day followed back.
11. Senior Factory Clerk Qualifying period 9 months.

Footnotes Worsted Textile Manufacturing Industry (Cape)

Parties Employer Organisation: National Association of Worsted Textile Manufacturers
Trade Union: Textile Workers' Industrial Union (South Africa)
Area Worsted Textile WO - Magisterial District of Worcester
Worsted Textiles of -Cape*, Simonstown, Wynberg*, Goodwood and Bellville*

WORSTED TEXTILE MANUFACTURING INDUSTRY (CAPE)

CAIR TIMES 12/11/85

National strike looms

Own Correspondent

JOHANNESBURG — South Africa could face its first legal national strike next month unless the Minister of Manpower appoints a conciliation board to hear the dispute between Sasol and the Chemical Workers' Industrial Union (CWIU).

Labour lawyers said yesterday that if the minister failed or refused to appoint a conciliation board within 30 days of the application being lodged, a legal strike could be held.

Stayaway

The CWIU lodged its application on Thursday, which means that if a conciliation board has not been appointed by February 8 the national strike can go ahead.

The dispute between Sasol and the CWIU centres around the reinstatement of the 6 000 workers dismissed by Sasol last year for their participation in the two-day work stayaway.

The 24 unions, who are currently involved in unity talks, have all threatened to go on strike unless the minister appoints a conciliation board. They will all be in a position to strike legally, since the law does not define that only parties to a conciliation board may go on strike.

Labour lawyers interpret the law as meaning that all unions who support the same demand on the same issue can go on strike.

A national legal strike will present extraordinary difficulties for em-

ployers, and although workers can be dismissed in a legal strike, they can seek legal recourse. But such action would herald industrial unrest and confrontation throughout the country on a massive scale.

The dispute with Sasol arose when the 24 unions jointly demanded that Sasol reinstate all the dismissed workers and negotiate their reinstatement with the CWIU.

Sasol would not concede to the demand and has said it will reinstate only those workers who have "satisfied" Sasol that they were not "intimidators or instigators" in the strike.

Sasol would not comment on the situation yesterday apart from saying that the 1 500 workers it has reinstated so far and the processing of applications from at least 4 000 dismissed workers are not a result of union pressure.

Re-employed

Meanwhile Sapa reports that Sasol said yesterday that more than 1 800 of the 5 000 Sasol workers dismissed after last November's stayaway had been re-employed over the past eight weeks.

However, it warned that it could not tolerate stayaway action "which is not work-related and which could jeopardize the safety of its staff, innocent third parties and/or the (Sasol) plants".

In a statement issued in Johannesburg, Sasol said it had received more than 4 000 applications from former employees since November 20.

(16) ROM 26/3/85

Union decides to register

By PHILLIP VAN NIEKERK

THE General Workers' Union (GWU), which represents workers in the transport, construction, engineering and other industries, has made a key policy change in deciding to register in terms of the Labour Relations Act

The decision was taken at a special congress of the union at the weekend, and means the GWU is the second leading emerging union, after the National Union of Mineworkers (NUM), to take this decision this year

The question of registration was a raging issue within the trade union movement until a few years ago when changes to the law diminished the difference between registered and unregistered unions

Unregistered unions still have difficulty in obtaining stop order facilities — they have to apply to the Minister of Manpower for these — and this is regarded as a major inconvenience

There is also speculation that the GWU could be contemplating the formation of an industrial council in the stevedoring

industry, where the GWU is the majority union

In a statement yesterday, Mr Dave Lewis, general secretary of the GWU, said the question of registration had been discussed over the past six months in each of the factories of the union

"After careful consideration of the issues involved the union decided that at this stage the realisation of our objectives would be better served by registration"

● The GWU passed a resolution expressing its outrage at the killing of innocent people by police at Uitenhage and said that escalating unrest in the country was an "expression of the mounting anger of the workers of South Africa and their children"

"Violence can only end when the Government lifts its ban on political organisations and recognises the political representatives of the majority"

The statement condemned President Ronald Reagan of the United States for "condoning the killings", and said that by so doing he had revealed the truth of the policy of constructive engagement

NICHOLAS HAYSON

A separate development

IN MY
OPINION



Nicholas Haysom of the Centre of Applied Legal Studies at Wits has researched and contributed a number of articles to law journals on the legal aspects of labour in the homelands.

Homelands labour law is confusing. But it has not had the chaotic impact it might have done, mainly because there is very limited industrialisation or union organisation in homeland areas other than in the Ciskei, KwaZulu and Bophuthatswana.

To untangle the web you need the collected SA statutes for each year since 1970, all regulations issued in terms of these statutes, all homeland regulations, and all proclamations or statutes altering the constitutional status or legislative capacity of each of the 10 homelands.

The Black States Constitution Act of 1971 sets out a three-stage constitutional path to homeland independence. The first begins with the creation of a legislative assembly, a body which may issue its own labour regulations to override those issued in terms of SA statutes. So Factories Machinery and Building Works Act regulations, for example, may be changed, though the provisions for centralised funds like the workmen's compensation and unemployment insurance funds, as provided for in SA statutes, may not be altered at this stage.

But the most significant date for legal purposes is when a homeland enters the second constitutional phase — that of "self-government."

After this date, any subsequent amendments to SA legislation do not apply within this homeland. It may now repeal or amend SA statutes, and create its own labour statutes. (The third stage, "independence," is not as significant: the homeland need no longer submit its legislation to the SA government for approval.)

All of SA's homelands accepted self-governing status at different times, and are thus frozen into the operation of different stages of post-1971 SA labour law. But, in the Seventies, each year has seen amendments, minor and major, to SA's labour laws and regulations, so any attempt to ascertain the statutory regime inherited at the time self-governing status was conferred upon the homelands requires more than a mere exami-

nation of the principal Act in its original form.

In Transkei and Venda, the works and liaison committee system of earlier SA labour law concerning blacks is perpetuated.

Only KaNgwane, which accepted self-governing status last year, inherited the 1979 Wiehahn reforms to the Industrial Conciliation Act. These gave non-racial or African unions the right to participate in existing and new conciliation machinery, and recognised their *de facto* legitimacy.

The diligent researcher will also find that the independent homelands of Transkei, Venda and Bophuthatswana, and the self-governing homeland of KwaZulu, have each passed their own statutes regulating collec-

tion in the homelands. Presumably this was intended to enable ultra-cheap labour to give a boost to the border areas strategy of the time. Unfortunately, this proclamation's existence appears to have been forgotten. KwaZulu legislation to introduce the Wiehahn reforms into that homeland amends the Industrial Conciliation Act — overlooking the fact that it does not apply to any homeland blacks. Legal opinion is divided as to whether the KwaZulu Act can have its intended legal effect.

The main features of labour law and official conduct in the three most industrialised homelands give an idea of the range of factors at work. Bophuthatswana has mining development and some light industrial spin-

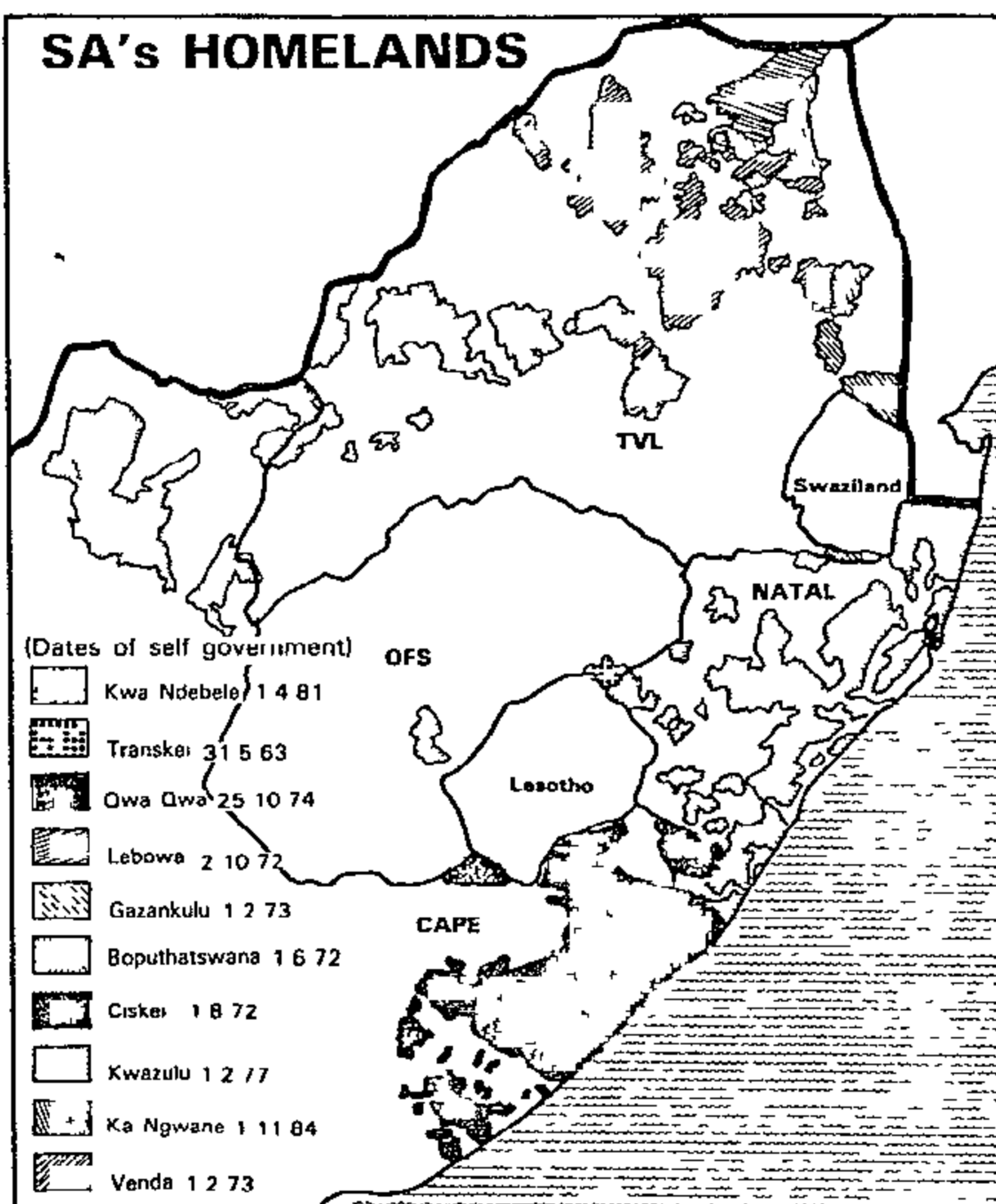
offs from the PWV area in Babelo. KwaZulu's Isithebe and Ciskei's Mdantsane are also seeing some industrialisation. Importantly, these homelands also contain dormitory towns for major industrial areas like Brits/Pretoria, Durban and East London. In Bophuthatswana, collective bargaining is now governed by the homeland's own Industrial Conciliation Act. Its most significant feature is its ban on "foreign" unions. The government is hostile to non-ethnic unions and supports officially approved ones, particularly in the mining sector. Strike procedure as laid down in the Bophuthatswana Act may effectively prevent legal strikes taking place at all, and union registration procedure grants undue discretion to the Registrar of Unions. In fact, some of its provisions may prove to be at odds with the Bophuthatswana Bill of Rights.

The KwaZulu Act (if it is assumed to apply) is primarily distinguished from its SA counterpart by the fact that it allows unions to join political parties, which is in line with the ruling party's desire that unions should affiliate to Inkatha.

The Ciskei's approach to labour organisation is notoriously severe.

The applicable labour legislation appears to be the archaic Black Labour Relations Regulation Act, buttressed by security laws.

Trade unions are generally urban-based, non-ethnic, democratic structures. This contrasts sharply with homeland political structures, which are founded on traditional rural tribal and ethnic structures. And, in general, homeland regimes are autocratic, and plagued by instability. It can be expected that they would respond with hostility to the prospect of autonomous mass-based organisations challenging their power. ■



tive bargaining and minimum wages.

Having tracked down these Acts, and the SA Acts in their amended form up to the date of the relevant area's self-government, one may begin to set out its industrial relations parameters.

But there is a joker in the legal pack. Proclamation R84 of 1970 was issued by the SA State President, as empowered by the Black Administration Act. As amended, it sets aside the applicability of the Industrial Conciliation Act and of all wage determinations (though not the Wage Act) to all blacks.

In a judicial limbo

166

The Wiehahn Commission knew exactly what it was doing, back in '79, when it recommended that black workers should enjoy the same statutory protection as any others. In so doing it initiated a process from which there could be no turning back.

The cutting edge was Wiehahn's recommendation that the definition of "employee" in the Industrial Conciliation Act (now the Labour Relations Act) be extended to cover blacks. This would have the effect not only of giving legitimacy to the black trade unions which existed at the time — but would also boost unionisation. To resolve conflict the old Industrial Tribunal was to be upgraded into a body with sufficient power and authority to adjudicate labour disputes. Therein lay the origins of our current Industrial Court (IC).

Wiehahn wanted the right of appeal

Born out of the Wiehahn reforms, the Industrial Court has reached the stage where its authority and powers need tighter definition. Without this employers and employees will be left to find their way through a maze of often contradictory judgments.

against any decision of the new IC to be to the Supreme Court. However, in its responding White Paper, government did not give unqualified support to this. The unfortunate upshot is that instead of falling under the Department of Justice, the labour court falls under Manpower.

For a few years after its inauguration in

October 1979 the court had a quiet time. It was seldom used by either labour or management. But since September 1 1982 — when the IC's powers were expanded to allow it to grant *status quo* orders providing temporary relief to aggrieved parties — its caseload has increased each year. In 1982 49 matters were referred to it. In 1983 this figure leapt to 190, and last year an all-time high of 475 matters came before it.

On the surface, therefore, it would seem that the IC has come into its own. But there is a fatal flaw: a number of judgments make it clear that the court is not really a court at all, and the problem of the IC's status has become acute.

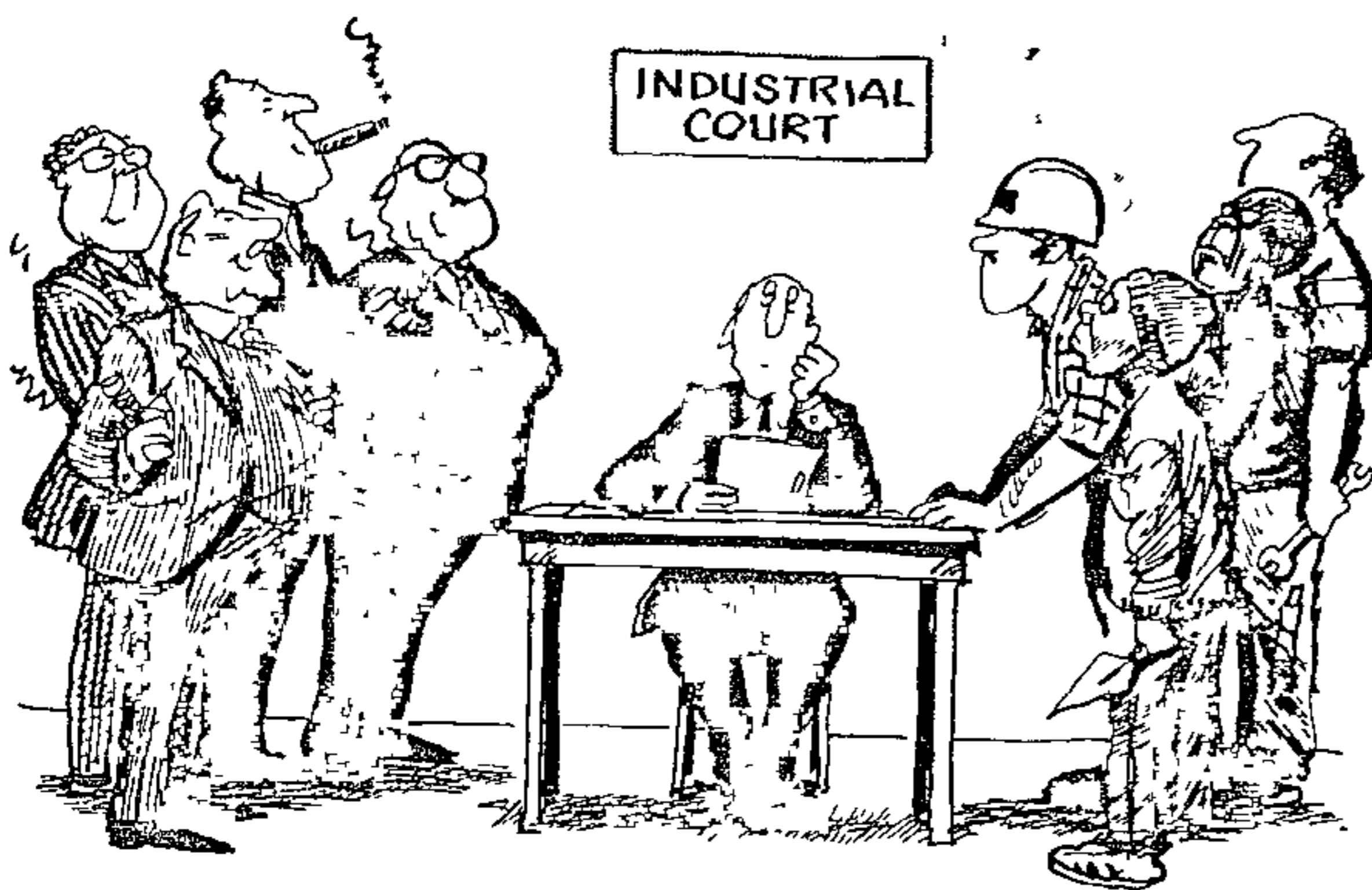
Two cases illustrate this. In *United African Motor and Allied Workers' Union (Uamawu) v Fodens (SA) Pty* the union won its claim that the company had committed 37 unfair labour practices, but could not claim costs as the IC ruled it did not have the power to make such awards. Uamawu appealed to the Supreme Court — which ruled that the union couldn't do so because the IC does not sit as a court of law when it adjudicates unfair labour practice disputes.

If *Fodens* raised uncomfortable questions about the IC's status, the case of the *SA Technical Officials Association (Satoa) v The President of the Industrial Court and others* proved even more disquieting.

Government agency

After complicated arguments in the IC and the Supreme Court, the Appellate Division ruled that the IC is *not* a court — merely a government agency.

One advocate concluded that the case has placed the whole authority of the IC in question. "It is merely a government agency from which there is no meaningful right of appeal. There is furthermore no adequate



166 (165) FM 12/4/85

way of enforcing IC judgments One can act in contempt of "court" but not in contempt of an agency "

This highlights another problem The IC does not have the power to hear cases arising out of contraventions of its orders This must be done by the criminal courts and some lawyers see this as a further failing, arguing that it diminishes the IC's status

But others see it differently "The debate is meaningless The court has image problems — not power problems," says a Johannesburg attorney However, he does acknowledge that because the IC's image has taken a knock employers could be inclined to dismiss it This undermines the IC's credibility — a serious matter

Criminal prosecution

Furthermore, there seems to be uncertainty about whether the Labour Relations Act as it stands makes provision for criminal prosecution for violations of *status quo* orders Since such orders form the bulk of the IC's work this is little short of alarming A top labour lawyer tells the FM the whole question of criminal sanctions for *status quo* orders is a "fairly murky area There are provisions which say failure to abide by IC awards is a criminal offence But they are not very tight and it is possible that there may have been a legislative oversight " But he adds "This is the sort of point that only rogue employers will seize upon "

There are several other serious criticisms of the IC They concern the court's staffing position, and pay levels of IC staff Perhaps most disquieting of all is that IC officials do not necessarily have to have any knowledge of labour law or industrial relations

One of the IC's basic problems is that it cannot find the right people to fill its posts Salaries offered to members are hardly what could be called realistic These have been increased of late, though officials say they cannot reveal the actual sums Nevertheless, the FM understands they are still paltry compared to what advocates earn in the private sector

The result is that the IC relies heavily on *ad hoc* members to deal with its increasingly heavy caseload Labour lawyers complain that sometimes these people do not have sufficient background in labour law and industrial relations to perform their function effectively. They charge that this factor underlies the contradictory judgments which have come out of the IC

It would be impossible to expect consensus on labour issues But have the contradictions that have arisen been more confusing than those from other courts? A prominent labour law academic thinks so. "Overall the need for guidelines is probably more urgent for this court Employers must be able to plan what they can do "

André Lamprecht, Barlow Rand's group industrial relations legal adviser, has also commented on the contradictions "When the court hands down differing decisions, not only does development of a coherent labour

POINTING THE FINGER

The prime target of the criticism of *ad hoc* members overturning principles in Industrial Court judgments is J.A. "Nolhe" Erasmus, an advocate at the Pretoria bar

Labour lawyers point to comments contained in an Anglo American handbook on labour law for managers about one of the cases he adjudicated — *Mawu v Vetsak* "This case attracted serious criticism from labour lawyers and the press, mainly because it seems to condone selective re-employment What the court in effect did was to undermine the whole purpose of Section 43, which is to restore the *status quo ante* in order to allow for settlement of a dispute by collective bargaining By refusing interim relief, the court prejudged the position Should collective bargaining have failed the matter would have gone back to the court for a final determination of an alleged unfair labour practice Although the court is perfectly entitled to exercise its discretion in any way it sees fit, it would be advisable for managers not to throw their hats in the air because of this decision Sound industrial relations principles call for greater circumspection "

Labour lawyers also quote Erasmus's statement in the judgment in *Mawu v Screenex Wire Weaving Manufacturers* "As neither the two directors of the respondent in this case, nor the white employees, gave evidence, it is difficult to assess the situation properly in this case " An attorney comments "The impression one gets from this statement is that fuller facts would have been put before the court had white employees given evidence "

The FM understands that the General Bar Council has had meetings to consider the fact that Erasmus has appeared before the Industrial Court on at least one occasion — despite the fact that he also sits on it

□ Erasmus told the FM it was "highly improper" to approach him

jurisprudence suffer as a result, but it produces uncertainty about the law Businessmen require certainty to run their affairs properly Industrial relations is a very important area and uncertainty about the law is not only uncomfortable to employers, their employees and unions, but introduces unnecessary conflict into an already volatile area "

One of the problems, as Lamprecht sees it, is that the law the court has to adjudicate on is vague and unspecific, as with the current definition of an unfair labour practice The law should be more defined, he says, and this would create less risk of conflicting judgments Barlow Rand holds that the court's status would be best secured if it becomes

part of the Supreme Court

Daan Ehlers took over as IC president from Benjamin Parsons at the beginning of the year His former post of deputy president, as well as three other permanent positions for IC members are vacant Ehlers is widely respected for the role he plays in the court — and so is the other permanent member But complaints about the *ad hoc* members have reached fever pitch (see box)

A leading labour lawyer comments "A court has the status of its officers The real failing of the IC is the quality of the people manning it " He charges that the authorities have "studiously avoided" inviting anybody who knows anything about labour law to act as *ad hoc* members "We need a separate court with people who understand the rationale behind collective rights and duties The IC won't attract the right people unless they are paid as well as Supreme Court judges," he says He claims matters have got so bad that he generally advises people to avoid the court "They would be wasting their time and money "

Unions are also fed up A spokesman for the Metal and Allied Workers' Union told the FM "Mawu has made a decision to avoid the IC as much as possible — particularly in the Transvaal because of the record of judgments against us when *ad hoc* members have sat in the court We may, however, be prepared to take things up in Natal or the other divisions of the court "

Own building

The FM understands that moves are being made to improve some of the court's functions Already it seems that administration has been jacked up considerably It also appears that the IC will be moving into its own building in Pretoria on June 1 and that it will soon be deciding *status quo* applications on papers before it instead of travelling round the country to hear these matters This should speed up its processes

This is welcome news but does not get away from the fact that the IC faces a crisis of confidence Government should show good faith by responding to this criticism by taking the IC out of the Department of Manpower and putting it under Justice But whether the court should become part of the Supreme Court or not is moot As one lawyer points out "It seems to me to be very important that workers and unions as well as employers have access to the court without necessarily having legal representation It is important that the court should not develop too formally But you do want sound judgments with sound principles "

Perhaps the solution will be found somewhere between the extremes of a popular — and clearly fallible — tribunal and a body with Supreme Court status What is certain is that Government should not leave the protagonists in the labour arena languishing in uncertainty The IC has demonstrated that it has a valuable role to play in conflict resolution But its authority and powers clearly require closer definition ■

Cottage industry restrictions criticised

By TESSA COURTENAY

EAST LONDON — The strictures imposed by the Machinery and Occupational Safety Act on the establishment of cottage industries have been criticised by businessmen in the Border area

With employment running at more than 60 per cent in the Border, individuals attempting to establish cottage industries have come up against a brickwall of restrictions imposed by the Act.

The Department of Manpower's chief factories inspector in Pretoria, Mr B Vorster, said the Act applied to all employer/employee situations. Once seven or more people were employed, the operation concerned would have to register as a factory and would then be subject to the regulations pertaining to factories under the Act.

The regulations imposed often created the need for costly altera-

tions to the premises used for the operation and often caused the closure of cottage industries unable to meet the requirements of the regulations and still employ the people needed to run the operation

Mrs Adele Cutten of Albany is one prospective small industrialist faced with this problem. Two years ago she trained some of the women on her farm to spin and knit. More women from neighbouring farms expressed their interest in her project.

Mrs Cutten said she had then had some of the outbuildings on her farm converted for the purpose and was able to employ up to 75 people.

According to the Machinery and Occupational Safety Act she was allowed to employ only seven people. Once she employed more she was no longer a cottage industry and would fall under the legislation of the Act.

To comply with the

Act, Mrs Cutten would have to build new premises or alter the existing outbuildings on her farm extensively. Flush toilets would have to be installed, the roof would have to be raised to a determined height and a ceiling put in. There were also other costly alterations which would have to be completed.

The Cuttens' farm falls into a decentralised area, placing Mrs Cutten in a position to apply for various concessions for the first seven years of her operation.

The wage concession which Mrs Cutten would be entitled to would give her 80 per cent up to a maximum of R80 a month of the wages she would be able to pay her employees.

To legally remain a cottage industry she would have to restrict the number of her workers, turn away aspiring trainees and inhibit an operation which she hoped to expand.

Mr Vorster said he understood the prob-

lems that many cottage industries were faced with because of the regulations imposed on an operation employing seven or more people, but said it was up to the individual entrepreneur to decide whether or not to close or register as a factory. "We have to draw the line somewhere, and it is difficult", he said.

In Ciskei cottage industries were thriving as a result of the government's decision to deregulate the small business sector.

The PFP MP for Albany, Mr Errol Moorcroft, has visited many of these "mini-factories" in Ciskei.

"The people are comfortably accommodated and they are producing the goods," he said.

"As far as I am concerned, the more people who can provide employment, the better. While I think that workers' accommodation should comply with certain minimum health standards, unnecessary restrictions should be re-

laxed.

"The growth of these cottage industries, vital during this time of unemployment and recession, is being stifled by the over-conscientious application of these stringent measures," he said.

The director of the Border Metropolitan Development Corporation, Mr Ted Walsh, said the restrictions imposed by the Act had created a "burning question" which made it difficult for small manufacturers to "get off the ground".

"I feel strongly that it is the small business sector which is by far the greatest and quickest employer of labour", he said.

Mr Walsh said that compared with an "organised" factory which could employ up to 300 people, the capital which went into establishing a small business was a "dream situation".

"The two should go hand in hand. That is precisely why the Small

Business Development Corporation has opened an office here — to encourage and advise small business operators in the area," he said.

The president of the Border Chamber of Industries, Mr Mike Strong, said cottage industries were part of the "total mix" and were very important to the country's and region's economy.

"The majority of organised industry probably doesn't give as much thought to cottage industry as it should," he said.

The Ciskei director of communications, Mr Wessel van Wyk, said the small business sector was recognised worldwide as one of the major creators of employment in modern times.

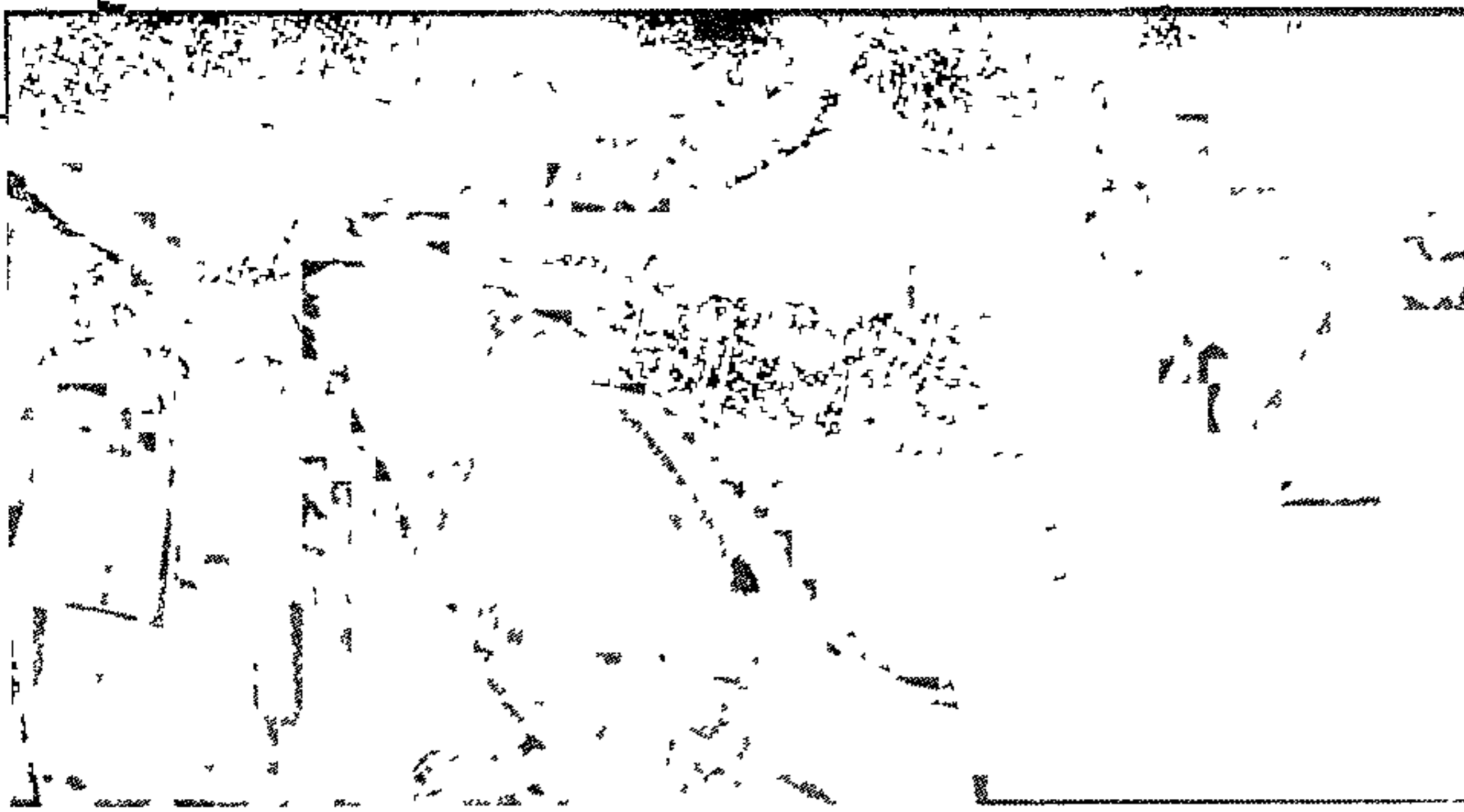
In accordance with this belief Ciskei had regulated its small business sector, stimulating the growth of cottage industries and employment.

Mr Van Wyk said Ciskei's definition of a small business was any industry or company employing 20 or less people, irrespective of its size or turnover.

"The small business sector is and must be a major creator of jobs. It should be allowed to take its natural course and should be stimulated. Ciskei has done this by deregulating the small business sector."

Mr Van Wyk said that small businesses should not be subjected to the "prohibitive" regulations normally applicable to organised business and industry.

"South Africa's prohibitive regulations controlling the growth of small businesses will eventually kill it," he said — DDR



Dam-busting Guy Gibson ... "The most brilliant feat of arms"

... raine continually falls into the trap of relying on *post hoc* judgments, on the ethics of it all — something Harris's biographer, Charles Messenger, so astutely avoids (*Books March 1*) A section entitled "Prescription for Massacre" leaves the reader in no doubt where the author's sentiments lie, but allowing the heart to rule the mind on this issue is as abrasive as the concept of fighting for peace

For all the bluster, Harris's words stand "They have sown the wind, now they shall reap the whirlwind" *Hamish McIndoe*

Artist and enigma

DEGAS: His Life, Times and Work by Roy McMullen (*Secker & Warburg, 517pp, R36,95*)

About the quality and significance of Edgar Degas' art, there is no longer any argument.



The Baker's Wife

Yet, Degas the man has remained a frustrating enigma to historians who have tried, since his death in 1917, to come to grips with what one has called the "great mystery artist of the age"

McMullen, who died as this book was going to press, has aimed at gaining a better understanding of his subject by placing him in his social class and historical context, by concentrating on primary sources and, above all, by re-examining his hotly debated attitude to women

As a painter of women — in brothels, cafés, the theatre, the ballet, the circus, and especially the intimacy of the bathroom — he fashioned the most tantalising contradiction of his life, not only by never marrying and never keeping a concubine, but also, as far as even his close acquaintances could tell, by avoiding sexual gratification altogether

This aspect of his life has given rise to speculation that he was a repressed homosexual, a voyeur, a victim of either psychic or physical impotence, or a downright misogynist

His nudes do not suggest a sensual response to what he saw and drew (in contrast to, for instance, his contemporary Renoir's alluring, delicately brushworked women), rather, they suggest a detachment, what Picasso saw as "uncommitted looking"

Degas himself once said "There is love, there is our art, and we have only one heart" And Van Gogh commented "He looks at the human animals who are stronger than he is and are kissing each other and having erections, and he paints them well, precisely because he himself is not at all pretentious about having erections"

Whether Degas was being truthful or merely covering up a genuine defect, and whether Van Gogh had read his fellow artist correctly, must be left to posterity to ponder

What is important is that Degas left art with a matchless legacy his later pastels place him among the greatest draughtsmen of modern times, and his studies of the ballet bear a mark of superlative craftsmanship that has deterred other major painters from daring to take the ballet as their theme

The only disappointment of McMullen's sweeping prose canvas of a volatile period is that, with the exception of the dustcover, all

the reproductions of Degas' work are monochromatic Had they been in colour, though, this book would have been placed beyond the reach of all but the well-heeled *Denis Hands*

Live with labour law

EMPLOYMENT LAW edited by John Brand, Martin Brassey and Halton Cheadle (*Journal published six times a year Subscription R87,50/year*) *FM 12/5/85*

The rapid growth of the trade union movement since the Wiehahn reforms has forced SA managements to examine their employment practices with a far more critical eye

Employers are having to learn to live with the uncomfortable knowledge that if their plants are unionised — and especially by an emerging union — the chances are very high that their decisions in a whole host of areas will be challenged They are not even immune on issues usually regarded as "management's prerogative" And as consciousness spreads of what workers have achieved in institutions like the Industrial Court, it is certain that unorganised employees will also be demanding more sensitive attention

Even the officials of emergent unions generally know far more about labour law than the vast majority of SA employers This has repeatedly given the unions the edge Several managements have learnt at great cost that all people with authority in the workplace need to respond appropriately at all times.

Luckily, many labour experts are willing to help and advise Frantic managements are providing a lucrative market for labour-related publications Some, like the *Industrial Law Journal*, are highly specialised; others are more accessible

Easy authority

For the layman, *Employment Law* has the double virtue of being easy to read and authoritative Four editions have been published so far The first aimed to inform and educate on matters of basic legal principle arising out of employment relationships, and to keep subscribers in touch with the frequent judicial and legislative changes

- Issues dealt with so far include
- A series of guidelines on union recognition;
 - Analyses of the Basic Conditions of Employment Act, the Labour Relations Act and the Machinery and Occupational Safety Act,
 - A checklist to enable employers to assess the fairness of their disciplinary practices;
 - Various important Industrial Court cases and a review of all cases reported before the beginning of 1984,
 - Plant level bargaining vs industrial councils, and
 - Mass dismissal and selective re-employment

Quotes from eminent legal men, the International Labour Organisation and other labour bodies are scattered throughout *Employment Law*

166 ~~166~~ P 7/1/85

Conflict is inherent in the relationship between labour and management, so it is only natural that labour law should be contentious.

In addition, conflicting views are ensured by the Labour Relations Act's extremely broad definition of an unfair labour practice. This had the express purpose of allowing the Industrial Court to build up a body of opinion.

Yet now, six years after the Industrial Court was established, those seeking clear guidelines are often confused because some of the more recent judgments contradict principles laid down in earlier cases.

The analysis in *Employment Law* of course reflects the views of the editors and they are not above criticism. Some employers feel, for example, that the editors have been too ready to generalise from particular cases. Others think the analysis is sound.

Either way, each of the editors was a pioneer and is highly experienced in the labour law field, and they have a thorough knowledge of labour practices in other countries. *Employment Law* has much to recommend it.

Robyn Rafel

Circumstantial case

TOO SECRET TOO LONG by Chapman Pincher (Sidgwick and Jackson, 638pp, R27,95)

Pincher is an ex-journalist and prolific author of books and articles on the British secret service establishment. His latest book examines in depth the career of Roger Hollis, a former director-general of MI5, the counter-espionage service, and concludes he was a Soviet spy. Hollis served in that position from 1956 to 1965 and was previously the head of the section responsible for investigating Soviet spying activities against Britain.

That this book caused a storm when published in Britain is not surprising. If the allegations against Hollis are true it means that most British secret service efforts against the USSR were directed by agents of that country for a lengthy period — given the now known role of Kim Philby, who headed the MI6 department which conducted espionage against the Soviet Union.

The British secret service and other sensitive areas of government like the Foreign Office and nuclear research bodies were riddled with spies from the Thirties until at least the mid-Sixties. Familiar names include Donald MacLean, Guy Burgess, Klaus Fuchs and Anthony Blunt.

Dangerous naivety

Numerous publications — including one by Philby himself — have examined these incidents. What emerges strongly is that many of the spies were able to operate undetected for a long time because of the naive establishment belief that a member of the English upper class (which most of these people were) would never turn his back on his heritage.

In addition, alleges Pincher, they were assisted by the fact that the person largely responsible for sniffing them out was Hollis, one of their comrades.

Pincher has put a vast amount of research into this book. It traces Hollis's life from his student days at Oxford in 1924, through his entry into MI5 in the late Thirties, his retirement in 1965, to his death in 1973. The area of his research — secrets — is a notoriously difficult one, and he deserves credit for his exposés of government cover-ups of incompetence.

Having said this, the book's approach is irritating. It consists of more than 600 pages of mostly weak circumstantial evidence against Hollis, linking him with almost every British secret service disaster since World

REVIEW BOOKS

Books reviewed by the FM are generally sent to us by the publishers, or their SA representatives, as reviewers' copies. While every effort is made to ensure that books not generally available are not reviewed, the FM can take no responsibility for the unavailability of reviewed books in bookshops. We ask that inquiries be directed to the publishers or their agents.

War 2. The author did not approach his investigation with anything like an open mind. He formed his conclusion first and then proceeded to mould each piece of evidence to support his case.

Even though no single part of Pincher's case is conclusive on its own, it is tempting to accept it in total simply because the book is so long. But the critical reader will note, firstly, that it is littered with qualifying phrases like "It could be of significance" and "if almost surely."

Secondly, Pincher makes a number of references to two books written by Soviet agents: Philby's *My Secret War* and another by the person he believes originally recruited Hollis. He approvingly quotes passages that apparently support his case. But when referring to others that do not he puts this down to deliberate KGB disinformation. This is a questionable methodology.

Thirdly, although the book is liberally sprinkled with footnotes, many of the allegations are merely attributed to "confidential information." While one can understand the reason for this, one always has to ask oneself how reliable these secret informants are.

Fourthly, much of Pincher's case relies on the fact that Hollis had access to items of information that landed in Soviet hands. Given Hollis's senior position in his organisation, it was his job to be knowledgeable.

Pincher has collected sufficient evidence to prove beyond reasonable doubt that there was high-level Soviet infiltration into MI5 in the years between the war and the mid-Sixties. But the overriding impression is that the evidence he brings against Hollis could apply equally to other operatives. He fails to adequately examine MI5 structures and provide readers with the identity of all other possible suspects. He looks at only two others who came under suspicion and dismisses the cases against them too cursorily.

Pincher has illustrated several examples of extreme negligence committed by the British secret service and the senior government officials responsible. Further, it seems incapable that at least one instance of Soviet infiltration (and perhaps it was Hollis) remains undetected to this day. It is also vital for the UK's national security that, as Pincher demands, an "oversight" body be appointed to detect such negligence in future. Had Pincher limited his conclusions to these points, and been less concerned with nailing Hollis in particular, *Too Secret Too Long* would be far more credible.

Alan Fine

STILL CONFUSED

FROM CONTROL TO CONFUSION: The Changing Role of administration Boards in SA, 1971-1983 by Simon Bekker and Richard Humphries (Shuter and Shooter, 258pp, R20).

Controversy has surrounded administration boards (now renamed development boards) from the early Seventies, when they were created, up to the present. So much so that any study which glosses over this fact is disappointing.

Even now, for instance, argument rages — particularly in black communities — over who really runs the townships. Is it the rejected community councils and local authorities or the administration boards themselves? What tangible powers — if any — do these new institutions, set up under the Black Local Au-

thorities Act of 1983, enjoy?

These and many other questions, especially those related to township purse-strings, need clear-cut, unambiguous answers in any serious study. But one isn't any wiser after reading *From Control to Confusion*.

The book fails even to live up adequately to its promise to "establish and assess the ways in which administration boards have changed as a result of the introduction of this new form of State administration."

Perhaps the fault lies not so much in the book itself, but rather in its subject matter which is too contemporary. As such, it has been so flogged by the national media as to now read like an official tract. One learns absolutely nothing new.

Harry Mashabela

INDUSTRIAL COURT

Blow for Cape union

The longest wage arbitration ever conducted by the Industrial Court — the dispute between the Cape Town Municipal Workers' Association (CTMWA) and the local city council — has been concluded. The court's award — way below what the union demanded — is seen as a blow to unions'

campaign for a "living wage" and has elicited scathing comment from the CTMWA

The scene was set for bitter negotiations early last year when a general meeting of the CTMWA mandated the union to demand a minimum "living wage" of R116/week for the lowest-paid council workers — a 100% increase — rising to a 15% increase for higher-paid workers. When talks broke down, both sides agreed to submit to arbitration by the Industrial Court. This was done,

24/5/85
according to council sources, since it was clear that the union's mandate did not allow it any flexibility and that conciliation procedures would not resolve the differences. Arbitration hearings got under way in October. They broke off in December and resumed for a few days in April, soon after the union had rejected a final council offer.

In the interim, however, the council unilaterally implemented wage increases on July 1 that raised pay levels for the lowest-level labourers from R1,29/hour to R1,64/hour (R59,34/week and R75,44/week respectively).

In what is probably the most sophisticated union presentation on wages, the CTMWA based its claim at the arbitration hearings on interviews conducted with over 6 000 of its members and a highly critical analysis of the various poverty datum lines. The council, while stating that it sympathised with the plight of the workers, argued that it could not afford the demands. Events took an unfortunate turn for the union when it was revealed that some entries about wages on a computer printout presented as evidence had been altered by one of its employees.

In terms of the court's order made last week, all employees earning between R73,20/week and R87,92/week will receive a one-notch increase worth about R4,59 per worker. Thus, a labourer earning R75,78/week now earns R79,83/week. In addition, the pay scales of all employees earning less than labourers' wages will be brought in line with labourers' rates. The order, which is valid for 15 months from January 1985, excludes all workers who were not on the council's payroll on July 1 last year and any others who have received a pay increase since January 1 this year.

Erntzen is very unhappy with the order. He comments "A large number of the union's lower-paid members — some 4 500 in all — will derive some benefits from the award. About 6 000 will not. On the whole, we regard it as most unsatisfactory." Erntzen says the union will report back to its members on June 4 at a protest meeting to consider what action to take.

One factor sure to be highlighted is the problem the union faced because its members were not allowed to strike, since local authority work is classified as an "essential service." Says Erntzen "This provision robs workers of their most powerful weapon in the collective bargaining process — namely, the strike weapon. We want it to be removed so as to enable us to exercise, if we so choose, the right to take industrial action."

Cape Town town clerk Stanley Evans comments "We would have preferred not to engage in this way, but the union's mandate did not give it the capacity for flexibility. The award must be considered fair in the western Cape environment. We know of many industries which are paying less than us. We were a guinea-pig case, and I think the other side regarded it as a big test case for the establishment of a living wage." ■



For 21/5/85 (106)

CLOTHING INDUSTRY

Tucsa strikes back

In a serious blow to the National Union of Textile Workers' (NUTW) recruitment campaign in the Natal clothing industry, Tucsa's Garment Workers' Industrial Union (GWIU) has won majority support in a secret ballot conducted among workers at Pinetown manufacturer Natal Overall

The GWIU affirmed the validity of its representation at Natal Overall when it won 533 votes compared with its Fosatu rival's 321 in a ballot in which 864 of the company's labour force of 883 workers participated

The ballot was conducted in terms of an order made by the Industrial Court after the NUTW and Natal Overall reached an out-of-court settlement in a dispute over the retrenchment of several NUTW members. Despite the GWIU closed shop at the factory, the NUTW alleged that the company had committed an unfair labour practice by retrenching without consultation

Now that the NUTW has lost, it will have to abide by another condition in the order it may not compel the company to deal with it on any matter for the next year. If it had won, the NUTW would have found a unique method to deal with the problems posed by the GWIU's closed shop. The order obliged Natal Overall to consult with the NUTW before retrenching any of its members, to deduct union dues from NUTW members (which would have entailed applying for an exemption from the province's clothing industrial council), and to negotiate in good faith with the NUTW or conclude a recognition agreement with it

Closed shop war

NUTW and the GWIU have been locked in a closed shop war for some time now. First indications of how seriously the GWIU took the threat from the Fosatu union came when it amended its constitution to empower it to expel any worker who joins another union. Because of the GWIU's closed shop agreement this meant that members of the Natal Clothing Manufacturers' Association commit an offence if they employ workers who are not members of the GWIU

Despite this action, the NUTW scored a decisive win against the GWIU when it broke its hold at James North (Africa) in the first successful legal challenge of the closed shop. Inter-union rivalry over this issue reached such proportions last year that the Tucsa union staged a mass rally in Durban to show the depth of its support

The GWIU agreed to participate in the ballot at Natal Overall only after it had threatened to take the Industrial Court's order on review on the grounds that it had not been consulted when the order was drawn up. However, it later withdrew the threat

Says GWIU general secretary Frankie Hansa "The ballot went off very peacefully. Now we will have to continue working hard

to maintain our position on the shopfloor and to keep worker support" The victory has buoyed Hansa's confidence. He says NUTW has requested secret ballots at a number of other factories and that the GWIU will agree to participate

An NUTW spokesman comments "We asked for a ballot because of the difficulties we have had with the GWIU's closed shop agreement and with getting onto the clothing industry industrial council. The workers voted for the union of their choice. But it must be borne in mind that we did not set out to smash the GWIU and that we did not start organising at Natal Overall — the workers came to us"

Cape Times 6/6/85

166

Law blamed for strike 'defeat'

from workers that they will socially ostracize fellow workers who do not participate in the strike any more intimidation than the threat from management that people will be fired for striking?

"The kind of power that the Act allows management to exercise may be far more gentlemanly but it is far more devastating than anything the workers could do"

The Act, in Mr Lewis's view, was designed with the philosophy "not that agreement should be reached but that it should serve as mechanism for 'cooling off' workers' demands"

By MARTINE BARKER
ONE OF the country's biggest independent trade unions, the General Workers' Union, is unlikely to advise workers to make use of South Africa's legal dispute machinery again.

Two recent tries at making the machinery work ended in legal strikes which failed to achieve their objectives. One ended in the sacking of the workers, the other in a situation of stalemate when the company concerned refused to negotiate further.

Mr David Lewis, general secretary of the General Workers' Union (GWU), said this week "Unless the Industrial

Conciliation Act is revised to give management and workers equal bargaining power, there seems to be absolutely no incentive for workers to go through the long and arduous procedures laid down in the law"

He was speaking in the wake of the legal strike at five Corobrik factories — the biggest legal strike in the history of the Western Cape — which ended last Wednesday.

Mr Lewis said the fact that workers were not able to obtain bigger increases as a result of tak-

ing strike action could be seen in one sense as a "defeat"

"But rightly or wrongly, the workers don't believe they were defeated. They believe they showed tremendous strength. Their decision to return to work was a very mature decision to conserve strength," he said.

Insofar as the strike did fail to achieve its objectives, the GWU feels blame lies with current legislation which grants workers the right to strike but leaves room

for management to wield power that will always outweigh that of the workers.

A key issue is that striking workers can be dismissed at any time, even when strike action is undertaken in terms of legally-determined procedures. This was the fate of workers from the African Spun Concrete factory who embarked on a legal strike last month.

In the recent Corobrik dispute, management refused to negotiate an improved package with the strikers, on the grounds

that the act of striking was an act of bad faith, even though it was legal.

The Western Cape managing director, Mr Graham Bounds, told the Cape Times the company had negotiated in good faith on the conciliation board.

"But once the strike began, which we considered in itself an act of bad faith, it was very difficult to continue negotiating," he said.

According to Mr Lewis this position, which the company is entitled to take in terms of the law, reinforces the unwor-

king legitimacy of the Act "It is legitimate for people to draw final lines but if final lines are drawn by management expressly because workers are on a legal strike there again seems no reason to use the machinery which allows legal strikes"

The question of intimidation, which both sides claimed the other was guilty of during the Corobrik strike, is "in the eye of the beholder", said Mr Lewis.

"While the union does not condone the use of intimidation under any circumstances, is the threat

Supreme Court rules sympathy strikes OK

By LINDA ENSOR

A RAND Supreme Court judge established two precedents in labour law yesterday when he ruled sympathy strikes and the continuation of a legal strike following a conditional return to work were both lawful.

Mr Justice B O'Donovan dismissed with costs the urgent application which African Explosives and Chemicals Industries (AECI) brought against the SA Chemical Workers' Union (SACWU) and its national organiser, Daniel Samela.

He said — "not without hesitation" — that no illegal action, actual or threatening, had been disclosed. The reasons for his finding will be handed down at a later stage.

AECI and its wholly-owned subsidiary, AECI Chlor-Alkali Plastics, were granted leave to appeal.

They had applied for the strike at Chlor's Ballengeich factory in Newcastle to be declared unlawful, as well as the sympathy strikes being organised at Chlor's plants in Sasolburg (OFS) and Umbogintwini (Natal) and at AECI's factories in Modderfontein (East Rand) and Somerset West.

SACWU has been holding ballots at these factories to test worker opinion about a sympathy strike.

The strike of 500 workers at Ballengeich over wages for 1985 started on June 3. Negotiations broke down at a meeting of the Industrial Conciliation Board on March 18.

Chlor's offer of a R9,55 wage increase, which would have brought the minimum monthly wage to R373, was rejected by SACWU, which demanded a monthly, across-the-board increase of R100 as well as a leave bonus and standby allowance.

Chlor said it could not meet this demand because it had forecast a loss of R800 000 for 1984 for Ballengeich, and a R2,2m loss for 1985. The plant was threatened with closure, it said.

SACWU held a ballot and a legal strike took place from March 21 to 28, ending when Chlor issued an ultimatum that the strikers who did not return to work the next day faced dismissal.

SACWU claimed this constituted an unfair labour practice, adding that although the basic dispute remained unresolved, the workers, to protect their jobs, would return to work "pending legal advice on the matter."

The union, keeping its options open, refused to give an undertaking that there would be no further strikes and on June 3 the second strike began.

Roland Sutherland, representing AECI, argued that the second strike was unlawful as the Labour Relations Act did not provide for a strike to be suspended in order to be resumed at a later stage.

Tim Trollip, appearing for SACWU, argued that the second strike was legal.

The requirements for a legal strike, namely the establishment of a conciliation board and the holding of a ballot, had been satisfied.

Judge O'Donovan in effect ratified this unprecedented union tactic.

Regarding the sympathy strikes, Trollip argued that were lawful both because workers at other AECI plants shared the interests of the Ballengeich workers, and because the conciliation board already had jurisdiction over the wage dispute.

Sutherland was instructed by Webber Wentzel & Co and Trollip by Cheadle, Thompson and Haysom.

166

AECI sympathy strike plans still a grey issue

166

B. Day 14/6/85

By LINDA ENSOR

AECI workers planning to go out on sympathy strikes will be acting within a grey area of the law

Assumptions that Judge Brian O'Donovan had established a precedent last week, by declaring sympathy strikes legal, were not supported by the judgment he handed down yesterday

The judge confined himself to the documents and arguments presented in court and dealt with AECI's application on the basis of a concession made by AECI that, if the Ballengeich strike were declared lawful, then this would dispose of the whole matter

A ruling on sympathy strikes was therefore not necessary because the concession made by AECI limited the dispute to be decided to the issue of the Ballengeich, Natal, strike

Judge O'Donovan did, however, establish a precedent by ruling that the temporary suspension of a strike to pursue negotiations was in principle lawful

This emerged in the judge's explanation of why he had dismissed AECI's application brought against the SA Chemical Workers' Industrial Union last week.

AECI applied to have a strike at AECI Chlor-Alkali Plastic's Ballengeich plant in Newcastle, as well as sympathy strikes planned at its other plants, declared unlawful

AECI group personnel manager Bokkie Botha, in court yesterday to hear the judgement, said "I think it is clear that a lot of speculation about the legality of sympathy strikes has been proved wrong. The judge in fact has not ruled on sympathy strikes at all"

Botha implied that AECI would adopt a tough stance on sympathy strikes being planned at eight plants which could involve 14 000 workers

Some labour lawyers sharply dis-

agree with Botha's view

Halton Cheadle, of the legal firm Cheadle, Thomson & Haysom, said "I believe the definition of strikes is wide enough to incorporate sympathy strikes and so do other leading labour academics"

Other labour lawyers felt the question of the legality of sympathy strikes remained as open as ever

AECI and its subsidiary instituted legal action last week after the outbreak of a strike at its Ballengeich plant

At a meeting in March the Industrial Conciliation Board failed to resolve a wage dispute at Ballengeich and 600 workers went out on a legal strike which ended about a week later when management issued an ultimatum saying that the workers faced dismissal if they did not indicate by March 28 whether they accepted management's offer of a 9,5% increase

The workers returned to work conditionally and came out on strike again on June 3. Negotiations have failed to resolve the dispute

Judge O'Donovan dealt with AECI's application on the basis of its concession that, if the Ballengeich strike were declared lawful, this would dispose of the whole matter

AECI argued that only one conciliation board had been established, that for the wage dispute at Ballengeich

For a strike to be legal a board must have jurisdiction over the dispute giving rise to it and a ballot must be held

Therefore, AECI argued, if the judge found that the Ballengeich workers could not rely on the board established prior to its first strike to legitimise the second one, neither could the sympathy strikers.

The argument for the illegality of the sympathy strikes thus was entirely dependent on the one for the illegality of the Ballengeich strike

The judge said the interdict sought by AECI was more widely framed than the argument presented by AECI in court, which was addressed mainly towards the illegality of the Ballengeich strike

However, attorneys for the SA Chemical Workers' Union said they were not aware that AECI had made this concession as counsel had argued the issue of sympathy strikes in court.

Regarding the legality of conditionally suspending a strike and continuing it later, Judge O'Donovan said "I am not aware of any provision in the Labour Relations Act which prohibits a union from temporarily suspending a strike in order to pursue negotiations further"

He said in his view the question of whether the second strike was a new strike or merely a continuation of the earlier one was "ultimately a question of fact" and cited the following facts of the Ballengeich strike as relevant

The original wage dispute remained unresolved,

The long delay between the strike and its resumption had to be viewed in the context of the long-standing nature of the wage dispute. In this context the delay was "not so excessive as to amount to abandonment by the union of the strike called in March"

The union's letter to the Ballengeich management saying that workers would return to work to protect their jobs despite the fact that the dispute remained unresolved. Judge O'Donovan said this amounted to "a reservation by the union of its rights to resume strike action which has been lawfully commenced"

We're rubber stamps - Kunene

By MOJALEFA MOSEKI

THE mayor of Soweto, Mr Edward Kunene, has claimed that he and seven of his fellow councillors were being used as rubber stamps by the West Rand Development Board and Urban Foundation on the Protea North development project.

The chairman of the Wradebo, Mr John Knoetze, and the general manager of the Urban Foundation, Mr Matthew Nell, have refuted Mr Kunene's claim

They said a steering committee had been formed to deliberate on issues concerning the Protea North area. It consisted of members of the council, the Wradebo and Urban Foundation. All decisions taken were discussed and agreed upon by the three parties

Mr Nell said the council had a financial stake in the deal

However, Mr Kunene said the land belonged to Wradebo which appointed the Urban Foundation to develop it. Members of the council, including him and the chairman of the management committee, Mr Letsatsi Radebe, were co-opted to the steering committee

of the Protea project to make it work

"We were brought in to sign contracts because the land fell within the boundaries of Soweto, but have no power to effect decision or veto those made by the other parties. If we had power, the price of sites could never have been fixed at R6 500 and more because that is above what most residents without accommodation can afford to pay," said Mr Kunene.

The claim was first made by councillors during a heated debate over the ownership of the Protea North area in the last council meeting. They were backed by Mr Radebe, but Mr Kunene refrained from contributing to the debate

Protea North will be transferred to the Soweto City Council with other assets and lands by Wradebo soon

29
25
120

Fire brigade on recruitment drive

Dispatch Reporter

EAST LONDON — The East London Fire Brigade launched a recruitment campaign yesterday, because of a change in regulations under the employment act which was approved on July 1

The present 84-hour work-week for the firemen would have to be changed to accommodate the new rule. Under the new rule, workers employed in continuous 24-hour per day occupations such as fire, ambulance and hospital workers will be permitted a 56 hour per week work schedule

The chief fire officer, Mr W G Kenny, explained there are two platoons at present. The staff is split in half and work on alternate shifts

"We have to increase our staff to conform to the new conditions of employment," he said. "At any one time, there must be 35 men on duty."

To fulfil the new act, a three platoon system would be introduced. One watch would work for two days on a nine hour shift and a second watch would work for two days on the other 15-hour shift in the 24 hour period, while the third watch would be off.

Mr Kenny and 17 other senior South African fire chiefs travelled to the United States, the United Kingdom and Europe to determine the requirements needed to establish a fire service college

"They are going to establish a fire service college in South Africa, but the plans are currently at a government level," Mr Kenny said

The deputy chief fire officer, Mr D Busse, said "We are very stringent on standards for the recruits because we

can't take a chance. One man's life depends on the others."

During an ordinary recruitment drive, about six people would be sought, but the fire departments is presently looking for 31 recruits

One of the applicants, Mr Victor Thomas, said he wanted to be a fireman since childhood. "The firemen serve the community and they service the public. It's helping South Africa."

Many other applicants also said they had childhood dreams of becoming firemen

At the East London fire station, established in 1905, the applicants were tested for claustrophobia and fear of heights

The applicants had to come down on a rope from a height of seven stories. They also had to walk and run a distance while carrying an oxygen tank. It takes a day to test 12 applicants

Mr Busse said the training of a fireman never stopped. There were always new chemicals and equipment that even men who had been in the department for 20 years needed to study, he said

The chosen applicants would first have to complete four months of basic training before becoming operational firemen

There are 22 subjects, including maths, science, building construction, electricity, common law, criminal and maritime law which must be successfully completed

The department prefers applicants with a Standard 10, but they would consider a Standard 8 applicant provided they met all the requirements.



A potential recruit runs with an oxygen tank strapped to his back during a test for claustrophobia



Hang in there! An aspirant fireman, Mr David Oliphant, leaves the safety of the cage seven stories high during preliminary testing.

THE demand for shop-floor bargaining by striking members of the Metal and Allied Workers Union at Siemens highlighted the controversy over the level at which negotiation should take place

At one extreme are those advocating collective bargaining at the centralised or industrial council level, with no union facilities for those outside the council. At the other are those claiming the industrial council system is so inadequate it is in danger of collapsing and that bargaining should take place only at plant or company level.

However, many unions and managements believe it profitable to "dance at both weddings" arguing that a dual system provides the flexibility needed to maintain industrial peace

Industrial councils were established by the Industrial Conciliation Act of 1924, passed in the stormy aftermath of 1922 labour unrest

The councils are a negotiating forum created by registered unions and employer organisations in a specific industry, occupation or trade

It was only after the Act's amendment in 1979 — allowing blacks to form or join registered trade unions — that their unions could apply for industrial council membership. Prior to that official negotiations took place through management-initiated liaison and works committees

However, the decision by a party to participate in centralised or local bargaining depends on where their power is most effective and the specific circumstances of their industry

Thus distinctions need to be drawn about industrial councils. For instance, the prime motive of the General Workers Union in applying for registration is to consider an industrial council for the stevedoring industry

The stevedoring industry is a small one and most of the stevedores are members of the union. In the case of the stevedoring industry, the union feels they would be meeting employers with strength and not bargaining alongside a great number of other unions as occurs in the metal industry

The situation on the metal and engineering industry's industrial council is particularly tense at present. This is because there is a united employer body, the Steel and Engineering Industries Federation of South Africa (Seifsa), facing unions who battle to reach agreement among themselves owing to widely differing memberships and needs

Last year both the SA Boilermakers Society and Mawu rejected the agreement signed by the other unions on the council, and a long impasse existed this year with Mawu finally remaining outside the agreement

The unions — particularly the four International Metalworkers Federation (IMF) unions, which include Mawu — are fighting for additional

Unions seek solution to striking a balance

There is controversy over whether unions should press for shop-floor bargaining or adhere to the collective principle. A dual system may have merits

CLAIRE PICKARD-CAMBRIDGE

plant-level facilities with some employers where they are well represented. They have warned that union members will consider strike action at companies which are approached about plant-level bargaining and reject this

However, Seifsa has advised employer members to avoid plant-level bargaining. Seifsa argues that similar issues cannot be bargained effectively on two levels and that shop floor bargaining will lead to a highly disorderly situation in their industry

Many managements believe centralised bargaining protects a company from "leapfrogging," when unions use one company's settlement as a base at the next

However, the IMF unions and Mawu are so dissatisfied with bargaining arrangements on their industrial council that they are threatening to abandon the council if their proposals for restructuring it are rejected. They believe the balance of power in the industrial council protects larger employers who can hide behind minimum rates suiting smaller companies

Seifsa, in turn, is prepared to discuss collective bargaining arrangements with members, but is waiting for the IMF proposals

Today most black unions — who initially rejected industrial councils as a symbol of apartheid and a body always favouring employers — are rethinking their stand

The Federation of South African Trade Unions (Fosatu) reversed its initial rejection of industrial councils and most affiliates are party to one, although they still prefer plant-level bargaining

Their change of stance has largely been attributed to their establishment of a sound shop floor presence and the difficulty in administering a growing multitude of different plant-level agreements

Some general advantages of industrial councils include their provision for industry wide pension funds, medical aid schemes and minimum wage safeguards for the industry

which are legally enforceable

Disadvantages are that they do not cater for specific local problems and can lead to wildcat strikes at plant level. Problems flare up at factories and cannot be speedily resolved through the council

It is also argued that the industrial councils are losing control of wage levels and of the whole remuneration structure in the industry because the gap between published minima and actual wages can be so great

Plant-level bargaining in turn can cater for diverse and unique interests, diminishes tension at the workplace and provides for control of incentive schemes, job evaluation, productivity and bargaining. Conversely, many plant-level agreements become difficult for unions to administer and unions cannot negotiate with the hundreds of smaller employers in an industry

Most black unions see plant-level bargaining as more democratic because shop stewards can remain an advising power behind union negotiators. But another Fosatu affiliate, the National Automobile and Allied Workers Union (Naawu), was one of the first emerging unions to utilise both plant and centralised bargaining in the early Eighties

The fear that council bargaining removed talks from worker control was overcome by arranging continual report backs to members and receiving fresh mandates during all stages of negotiation

The multiracial Trade Union Council of South Africa (Tucsa) stresses that supplementary agreements can exist side by side with centralised agreements. Most members of the Council of Unions of South Africa (Cusa) now utilise centralised bargaining as well, but also see plant-level bargaining for companies who can and do pay above minimum rates as an essential complement

There is no industrial council for the mining industry and this led many employers to conclude recognition agreements with the National Union of Mineworkers at mines where it is representative. However, the NUM has previously said it would not want

to become a council because employer

Another: that some bureaucratic inadequate unions

A majority of be outvoted

tative un-

ments they

Therefore

the industrial

equates on it-

like more

council rule-

One pro-

right of exist-

ations of

cils. An

tween Fosatu

Textile Work-

established T-

since merg-

ers Union

Clothing Work-

cess to the T

try's council.

court event-

tions

It's been

Industrial Council

rules on 'stri-

bour peace.

recent in-

industrial

ily minim-

these work-

set of press-

There is

that a dual

extended wit'

enable collec'

op at its own

This system

British one

creasingly

position at plant

decades

Germany,

turn have fail-

ing systems

for decentral-

have made a

minimum wa-

try

Judgement

a key industri-

Hart Ltd, in

questing plant

ties to nego-

above industri-

The outcom-

cant effect on

and engineeri-

few years st-

sphere of co-

rangements

Unions seek solutions to striking a bargain

Day 31/7/87

There is controversy over whether unions should press for shop-floor bargaining or adhere to the collective principle. A dual system may have merits

CLAIRE PICKARD-CAMBRIDGE

plant-level facilities with some employers where they are well represented. They have warned that union members will consider strike action at companies which are approached about plant-level bargaining and reject this.

However, Seifsa has advised employer members to avoid plant-level bargaining. Seifsa argues that similar issues cannot be bargained effectively on two levels and that shop floor bargaining will lead to a highly disorderly situation in their industry.

Many managements believe centralised bargaining protects a company from "leapfrogging," when unions use one company's settlement as a base at the next.

However, the IMF unions and Mawu are so dissatisfied with bargaining arrangements on their industrial council that they are threatening to abandon the council if their proposals for restructuring it are rejected. They believe the balance of power in the industrial council protects larger employers who can hide behind minimum rates suiting smaller companies.

Seifsa, in turn, is prepared to discuss collective bargaining arrangements with members, but is waiting for the IMF proposals.

Today most black unions — who initially rejected industrial councils as a symbol of apartheid and a body always favouring employers — are rethinking their stand.

The Federation of South African Trade Unions (Fosatu) reversed its initial rejection of industrial councils and most affiliates are party to one, although they still prefer plant-level bargaining.

Their change of stance has largely been attributed to their establishment of a sound shop floor presence and the difficulty in administering a growing multitude of different plant-level agreements.

Some general advantages of industrial councils include their provision for industry wide pension funds, medical aid schemes and minimum wage safeguards for the industry

which are legally enforceable.

Disadvantages are that they do not cater for specific local problems and can lead to wildcat strikes at plant level. Problems flare up at factories and cannot be speedily resolved through the council.

It is also argued that the industrial councils are losing control of wage levels and of the whole remuneration structure in the industry because the gap between published minima and actual wages can be so great.

Plant-level bargaining in turn can cater for diverse and unique interests, diminishes tension at the workplace and provides for control of incentive schemes, job evaluation, productivity and bargaining. Conversely, many plant-level agreements become difficult for unions to administer and unions cannot negotiate with the hundreds of smaller employers in an industry.

Most black unions see plant-level bargaining as more democratic because shop stewards can remain an advising power behind union negotiators. But another Fosatu affiliate, the National Automobile and Allied Workers Union (Naawu), was one of the first emerging unions to utilise both plant and centralised bargaining in the early Eighties.

The fear that council bargaining removed talks from worker control was overcome by arranging continual report backs to members and receiving fresh mandates during all stages of negotiation.

The multiracial Trade Union Council of South Africa (Tucsa) stresses that supplementary agreements can exist side by side with centralised agreements. Most members of the Council of Unions of South Africa (Cusa) now utilise centralised bargaining as well, but also see plant-level bargaining for companies who can and do pay above minimum rates as an essential complement.

There is no industrial council for the mining industry and this led many employers to conclude recognition agreements with the National Union of Mineworkers at mines where it is representative. However, the NUM has previously said it would not want

to become party to an industrial council because it believed it would be employer dominated.

Another burning issue is the charge that some industrial councils are bureaucratic and undemocratic, giving inadequate representation to black unions. Although representing the majority of workers, black unions can be outvoted by smaller, less representative unions and be bound by agreements they rejected.

Therefore most black unions see the industrial council system as inadequate on its own and would at least like more involvement in drawing up council rules.

One problem for employers is the right of existing parties to veto applications of other unions to join councils. An example is the collision between Fosatu's National Union of Textile Workers (NUTW) and two established Tucsa unions which have since merged — the Garment Workers Union and the National Union of Clothing Workers (NUCW) — over access to the Transvaal knitting industry's council. However, the industrial court eventually overruled the objections.

It's been contended that the Industrial Council system and its tough rules on strike action promotes labour peace. However, the more recent involvement of black unions in industrial councils has not necessarily minimised strike action among these workers who have a different set of pressures and grievances.

There is now increasing opinion that a dual system of bargaining be extended with sufficient flexibility to enable collective bargaining to develop at its own pace.

This system would be similar to the British one where unions have increasingly sought and obtained recognition at plant level over the past few decades.

Germany, Greece and Japan in turn have fairly centralised bargaining systems although Japan allows for decentralised talks after unions have made a united opening bid for minimum wages throughout the country.

Judgement is presently awaited on a key industrial court case, Mawu vs Hart Ltd, in which the union is requesting plant-level bargaining facilities to negotiate wages over and above industrial council minima.

The outcome could have a significant effect on employers in the metal and engineering industry and the next few years should prove decisive in the sphere of collective bargaining arrangements.

floor bargaining members of the Workmen's High Court over the union should

advocate at the central level, those outside are those council systems in danger of being should or company

and man- profitable to "arguing the flexi- industrial

estab- Conciliation the stormy unrest

uating fo- unions and a specific trade

of's amend- blacks to trade unions apply for ship Prior took place dated liai-

a party to or local where their the spe- industry to be drawn For in- of the Gen- applying for an industri- ing indus-

y is a small odors are the case of the union ing employ- be bargain- er of other metal indus-

al and engi- cal council esent This employer meeting In- uth Africa battle to themselves member-

SA Boiler- rejected the other a long im- with Mawu the agree-

ly the four ers Feder- h include additional

To keep readers abreast of developments in the manpower and industrial relations field, Contractor publishes regular features on important subject matters in this field.

The editorial primarily focusses on manpower and industrial relations in the civil engineering industry and expands on information communicated via the weekly SAFCEC Bulletins. The SAFCEC Manager, Manpower Affairs, Jan Nel, compiles the articles and readers are welcome to contribute editorial for publication, which should be forwarded to the SAFCEC Manpower Affairs Division, head office, Johannesburg

'Homeland' Labour Legislation

by Jan Nel

Contractors usually have a daunting task in establishing which, if any, labour legislation is applicable, especially with regard to the workforce when operating outside of the Republic of South Africa, ie when working in the so-called homelands and newly independent states. Questions that immediately come to mind, even at the tendering stage, are for instance, which minimum hourly rate of pay, if any, is applicable, and what the contractor's obligations are in the areas of safety and health?

This article although it provides for some basic facts with regard to applicable labour legislation in the homelands, more importantly provides for the addresses (and if possible the name of a contact person) of the Departments of Manpower of such countries. Contractors are advised that minimum wages and conditions of employment regulated by a country's labour legislation and (if none is in existence by its Legislative Assembly) are continuously amended. Contractors should, therefore, of their own accord

contact the authorities concerned directly, in order to establish the correct position. In addition the addresses of the Departments of Manpower in Botswana, Swaziland and Lesotho are also provided. Obviously there exists no confusion in the latter countries in this regard as they have been independent for many years and have never been part of the Republic.

It is not the intention here to dwell on the independence process and to take the reader on a sojourn of constitutional law. Therefore, this is not a technical article, neither does it pretend to be definitive of in the first instance, the position of labour legislation in the countries concerned and in the second instance, of the constitutional independence process. A future article may well deal with the latter aspects. It rather sets out to provide for a much needed reference point from which contractors themselves can set out to establish what the correct state of affairs are. It is a fact that in lesser developed countries there are closer and more direct relationships between company policies and the State. Generally the role of trade unions is strictly limited in scope and controlled by direct legislation. It is also a fact that managerial prerogatives are clearer and much more protected by the State. Employees in the homelands and independent states therefore, find themselves without exceptions subject to less beneficial protective legislation and an extremely restrictive collective bargaining framework. The lesser and indeed underdeveloped economies of these countries has led their

governments to attempt to attract investment by providing cheaper labour with maximum freedom to the employer and *entrepreneur*. In other words, employers are subjected to as little legislative obligations as possible. A direct result of the aforementioned was, for instance, that minimum wage instruments have been suspended in the homelands since 1970. It follows that the Wage Order for the Civil Engineering Industry is not applicable in any of the 10 homelands concerned. The contractor himself must establish whether minimum legislation with regard to wages and conditions apply. In addition, the contractor is strongly advised to take cognisance of his 'South African' workforce in the event of transfers to contracts in the homelands and to ensure that (for the sake of good relations, no major deviations in wages and conditions of employment occur.

Summary

The addresses of the Departments of Manpower of each homeland is summarised in this article. Contractors are urged to communicate directly with the Department of Manpower concerned when it is necessary to do so. In addition of course, this Federation may be approached for assistance.

Contractors are finally advised that this summary was valid at the time of going to print, and that amendments, unless otherwise advised should be effected by contractors themselves.

Addresses of Departments of Manpower in Lesotho, Botswana, Swaziland, and independent states within South Africa

BOTSWANA

	Tel Number
Commissioner of Labour Private Bag 0072 GABORONE	
Contact person Gaborone — Mr Motshedisi	(019231) 71-406
Johannesburg — Mr Lefhoko	(011) 766 3303

LESOTHO

Department of Labour
PO Box 2121
MASERU

Contact person
Maseru — Mr Mabathoana (050) 32 5050
Johannesburg — Mr Peter Ntsane (011) 331-2931/2

SWAZILAND

Commissioner of Labour
PO Box 198
MBABANE

Contact person
Mbabane — Mr Pembe (0194, 2-2966)
Johannesburg — Mr Dlamini (011) 864 7306

LEBOWA

Department of Manpower
PO Box 4002
SESHEGO
0742

Contact person
Mr Manshane or his secretary (01527) 5235

GAZANKULU

Department of Manpower
Private Bag X574
GIYANI
0826

Contact person
Chief S J Hlaniki or his secretary (01526) 3314
ext 111

QWAQWA

Department of Manpower
Witsieshoek
4

Private Bag X814
WITSIESHOEK
9870

KWAZULU

Department of Manpower
Private Bag X01
ULUNDI
3838

Ulundi (0355,
1

KANGWANE

Department of Manpower
Private Bag X1001
LOUWS CREEK
1302

or

KaNgwane Government Service
PO Box 12748
KATLEHONG
1832

KWANDEBELE

Department of Manpower
Private Bag X9322
PIETERSBURG
0700 (01521) 4731

TRANSKEI

Department of Manpower
Private Bag X5006
UMTATA

Contact person
Mr Soldat (0471) 2 5191
(Commerce, Industry & Tourism)
Labour Attache Mr Dweba (012) 21-5626
(also at Consulate General
Republic of Transkei, Private Bag X8
TEMBISA 1622)

BOPHUTHATSWANA

Department of Manpower
Private Bag X2040
MAFIKENG
6870

Contact person
Mr Maleka (01401) 29 2004
Mr Thomas Hoff (Pretoria) (012) 43-4194
(Bophuthatswana Development Corp)
Labour Attache Vacant (012) 43-6001

VENDA

Department of Internal Affairs
Private Bag X2249
SIBASA

Contact person
Mr R Ndou (015581/2) Y79
or Y51

(Director General Department of
Internal Affairs)
Labour Attache Mr R N NemaKonde (012) 21-6248

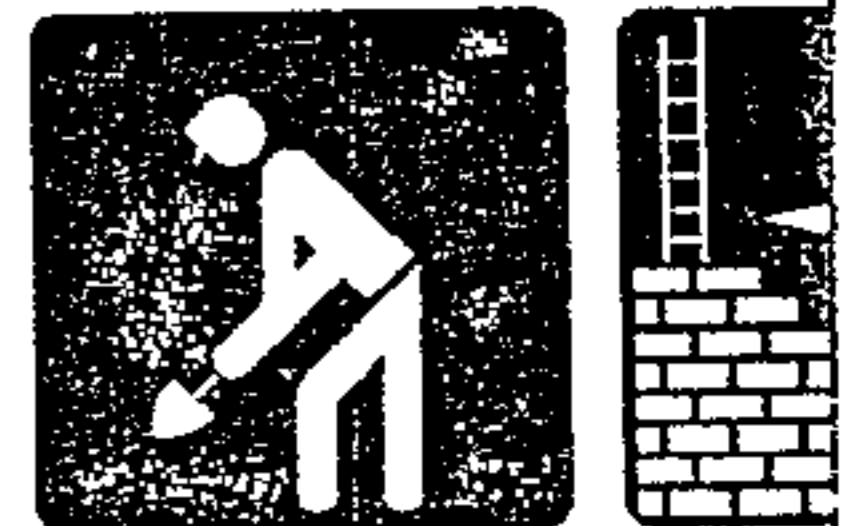
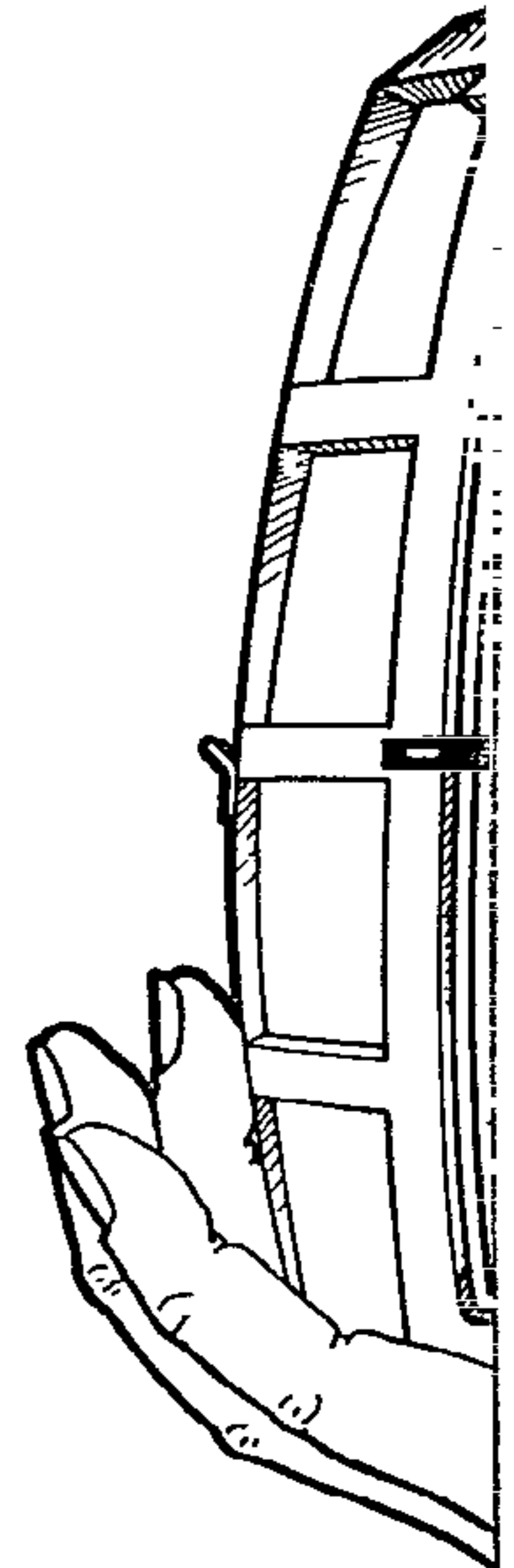
CISKEI

Department of Manpower Utilisation
Private Bag X514
ZWELITSHA
5608

Contact person
Mr Michau (0433) 4721
Labour Attache Mr Joseph J Mani (012) 28-3154

Ref 214

**The
IN**



We've got to hand
cheap, effective and easy
Made from virgin plastic
the KONSTRUKTA-LOC
as the motor car was to t
Bright, hygienic and
transport the KONSTRU

- Construction
- Work gang
- Farm labour
- The week-end

PO Box 38664,
Booyens 2016
Telephone (011) 680-2555

many benefits derive from using local contractors. To this end a report has been commissioned which will highlight in detail these benefits, as compared with the disadvantages of employing externally based contractors for example, the loss of import tax duty on plant, company tax and income tax on individuals, to mention a few.

In discussions with the Minister of Labour he has indicated his support for local companies who employ Zimbabweans and therefore train Zimbabweans and for local preference of 20% applicable to World Bank and other aid projects. However, under existing World Bank conditions local preference is not allowed within Zimbabwe because the country is considered rich in the sense of resources compared with some countries to the north. In the case of World Bank funded projects in Kenya, for example, a preference percentage is allowed to local contractors.

The local industry has also been requested by aid agents to submit details of its capability on an annual

basis for both rural roads and the establishment of large irrigation projects and Garnett stated that he was optimistic that work will become available once details are finalised with the Zimbabwean government.

On labour matters, the retiring president said that much progress along the way towards the establishment of an Industrial Council for the civil engineering industry had been made in the past year with the proposed updating of the industrial agreement and the introduction of a disciplinary code.

In his address Garnett paid tribute to the late Pieter Swart, FCEC's chief executive, and he said that in the relatively short time that Swart had been with the Federation, he had contributed greatly to its affairs, particularly in the labour field, where he went out of his way to assist members with their numerous problems.

He announced that Stanley Fynes-Clinton (ex Cementation) had been appointed the new chief

executive of CIFOZ with effect from August 1, 1985.

At March 31, 1985, membership for full members stood at 51, with four new members and three resignations during the year. In the case of associate members, with one resignation, membership was 25.

New minimum wages

New minimum wages, effective from July 1, 1985, were gazetted in Harare at the end of June giving a minimum wage of Z\$ 143,75 a month to commercial, mining and industrial workers and at least \$75 a month to farm and domestic workers.

Also gazetted were the Emergency Powers (Control of Income Increases) Regulations 1985 which allow maximum increases of 19% for those earning less than \$300 and nothing for those earning more than \$3 000 a month.

Ref 215

**GEARED
TO SOLVE
YOUR
PLANT
HIRE
PROBLEMS!**



FOR GRADERS, TRAXCAVATORS, LOADERS,
PADFOOTS, SMOOTH DRUMS AND WATER CARTS



JOHANNESBURG (011) 786-1126
TRICHARDT (01363) 42255

Insert reference no. 23 on reply paid card

T
B

DIAMOND CORE BORING CONCRETE & METAL CUTTING

Using the Thermal Lance Technique
to avoid Noise, Vibration and Concussion.
CSIR TESTED



THERMO-BORE (PTY) LTD.

12 BUNDO ROAD SEBENZA EDENVALE P O BOX 818 EDENVALE, 1610

609-5253

Insert reference no. 24 on reply paid card

New labour laws

Industrialists may have hidden behind the myriad of conflicting labour law in KwaZulu for the last time. The KwaZulu government has accepted SA's labour statutes *en masse* and is also drawing up a code of conduct to govern employment practices in the homeland.

The move, which is clearly designed to bring KwaZulu labour legislation into line with SA's and end abuses under the previous legislation, is likely to be welcomed by trade unionists. More enlightened employers, too, will no doubt also see some merit.

While the KwaZulu government has never been averse to trade union activity, its previous labour law made heavy going for trade unionists. It had adopted some SA statutes in full and others with amendments. But because of a presidential proclamation in 1970, repealing the Industrial Conciliation Act in the homelands, there was doubt as to whether some aspects of KwaZulu's labour law had any legality at all. Certainly, as far as can be ascertained, the Basic Conditions of Employment Act and the Labour Relations Act did not apply in KwaZulu.

Financial Mail August 9 1985

This provided a convenient loophole for some employers. It meant that they did not have to recognise and negotiate with representative trade unions, abide by wage determinations, or face the possibility of disputes being referred to the Industrial Court.

Predictably, there were abuses. Latterly the problems were exacerbated by the increasing industrialisation of decentralised growth points like Ezakheni and Madadeni near Ladysmith and Newcastle.

KwaZulu's Chief Minister, Mangosuthu Buthelezi, confirms that the code of practice and the changes to KwaZulu's labour law are designed to put an end to persistent "allegations of exploitation." It is expected that it will broadly follow the principles of established codes such as the Sullivan and EEC codes, without being too onerous on industrialists. Having benefited from recent rapid industrialisation, KwaZulu is unlikely to do anything that will prejudice future opportunities for growth.

Chief Buthelezi stresses the code is "not a device to corner anyone." He says it will contain "no more than our own minimal expectations from industrialists established in KwaZulu in conjunction with the KwaZulu Finance Corporation (KFC)." KFC officials are still working on the details and the code is not expected to become effective until some time next year.

One of the most bitter KwaZulu labour disputes may be resolved soon. For several months the Metal and Allied Workers' Union (Mawu) has been in dispute with US company Tidwell Housing over wages, working conditions, union recognition and the alleged victimisation and unfair dismissal of some of its members.

Expectations of a settlement have been raised following the news that Tidwell has been acquired by local company CI Industries, a subsidiary of Murray and Roberts.

Tidwell, located at the new industrial area of Pieters inside KwaZulu (*FM* May 3), was accused of blatant exploitation and abusing workers' lack of legal protection. At one stage Tidwell was paying its employees R23/week compared to the average R78/week that workers in similar industries were receiving in nearby Ladysmith. It also refused to recognise Mawu which had majority membership at the plant.

CI Industries has already had dealings with Mawu, and financial director Bob Hoole says the matters which have been in dispute at Tidwell are generally "dealt with at plant-level in our organisation and we expect this policy to continue." Mawu has welcomed the change of ownership, claiming it was the result of a year-long campaign for Tidwell "to recognise the union or get out of SA."

Miners seeking unfettered right to strike

THE National Union of Mineworkers has switched its wage battle to the Industrial Court and is challenging large-scale dismissals — the strongest weapon employers have in fighting strikes

The union's change of tactics this week averted a nationwide stoppage that could have involved 260 000 members

The union had threatened to respond to dismissals with widespread strikes

Whatever the Industrial Court's ruling, it will set a precedent. A favourable outcome for the miners would remove employers' right to fire strikers. A verdict in favour of employers would open the way for wildcat strikes without workers following procedure laid down in the Labour Relations Act.

Inadequate

The legal battle has prompted labour analysts and academics to call for changes in the labour law. They say the law is inadequate.

The union says it will go ahead with a strike after the court's verdict, which could be handed down in months or weeks.

The union says "The

By Amrit Manga

strikes have not been called off — they have merely been suspended."

NUM general secretary Cyril Ramaphosa said yesterday "If the court rules in our favour, we will be protected and can bring the employers to their knees. But if we don't win in court, we will fight on."

Unfair

The Industrial Court will have to determine whether the dismissals amount to an unfair labour practice or not.

The closest it has come to ruling on the issue was in the Council of Mining Unions-Chamber of Mines case last year. It upheld a claim by the chamber that employers had a right to dismiss workers taking part in any strike — legal or illegal.

However, the court said that there might be circumstances in which dismissal of a legal striker could be an unfair labour practice. One of the considerations could be the consequences and results of the strike.

The presence or absence of bargaining in good faith during a strike and the behaviour of employees could also influence the decision.

In the present dispute, the

court will also have to establish whether there was commonality of purpose in strikes on at least four mines that were not part of the wage dispute.

Sympathy strikes are a grey area. Earlier this year the Rand Supreme Court stopped short of addressing the issue in the SA Chemical Workers Union dispute with AECI.

The Chamber of Mines says "employers have the common law right to terminate a worker's service for not fulfilling contractual obligations."

Professor Johan Piron, of the University of South-Africa's School of Business Leadership, says "Protection for striking workers is no longer a policy consideration."

Protection

"The law governing strikes is inadequate and must be changed so workers have some recourse to legal action in the event of dismissal."

"Unions and employers should negotiate a contractual agreement that overrides strike laws to protect workers striking legally."

"But with millions of workers still not unionised, protec-

□ To Page 3

Strike battle in court

□ From Page 1

tion will have to be legislated."

Labour consultant Brian Allen says the legality of strikes is a moot point. "Strikes should be decriminalised and employers should enter into agreements that protect workers."

About 1 000 workers at Gencor's Marievale mine on the East Rand lost their jobs after this week's three-day strike.

Dismissed Marievale workers were granted a Rand Supreme Court injunction to stop their eviction from mine hostels. But the union accused Gencor of disregarding the injunction, which ordered that workers could not be evicted without a final court order.

The Supreme Court post-

poned the hearing until Tuesday.

Estimates of the number of workers who went on strike range from 28 000 to a few thousand.

Worked on

Eleven coal and gold mines were affected by the strikes. The union says seven Gencor mines were affected to some degree. It has, however, declared disputes at only three Gencor mines.

More than 18 000 miners at Anglovaal's Hartebeestfontein mine near Klerksdorp continued working in spite of the strike vote.

Gold Fields says shift attendances averaged 15% on Monday and Tuesday. It is processing 5 000 dismissals

9/9/85 (166) B. Dey

Strike sackings for hot debate

AN URGENT call for the introduction of laws to protect employees on a legal strike will be debated at the annual conference of the Trade Union Council of South Africa (Tucsa) next week.

The motion, submitted by Tucsa's National Executive Committee, is expected to gain strong support at a time when many unions are intensifying their demand for laws to restrain employers from dismissing legal strikers.

The conference will be opened in Johannesburg on Monday by Nic Wiehahn, director of Unisa's School of Business Leadership, and key speakers include Urban Foundation MD Robin Lee and Bok Marais, vice-president of the Human Sciences Research Council (HSRC).

The grave unemployment situation is mirrored by the Sweet Workers' Union's call for local au-



● Nic Wiehahn ● Robin Lee

thorities to stop evicting families when a breadwinner is unemployed and to allow payment of arrears when they are re-employed.

There is also a proposed call for government funds to support the unemployed because the Unemployment Insurance Fund was never intended to meet the present crisis.

Tucsa is dissatisfied with a new government scheme granting cash

handouts to white families affected by retrenchments. It sees this as "blatant discrimination" and wants a nationally co-ordinated scheme.

Further proposals emphasise Tucsa's opposition to banning, detention without trial, removals and influx control, its protest against police action and a call for black freehold rights.

The National Union of Clothing Workers has re-iterated demands for housing authorities to ensure the planning and construction of sub-economic housing prevents degeneration into slums.

Hot debate may follow a proposal that the Minister of Manpower re-examine the registration process.

Tucsa has supported the registration system over the years, but many of its affiliates now feel this is a dead issue.

166
211
115
115
w. mail
12/9/85

Precedent-setting court ruling on mine strike likely

Sept

By PHILLIP VAN NIEKERK

The Industrial Court case in which the National Union of Mineworkers (NUM) is challenging the right of employers to fire workers on a legal strike could be the most important aspect to emerge from this year's wage dispute between the NUM and the Chamber of Mines.

dismissal threats before the union suspended it pending the Industrial Court case.

In some instances, says the union, workers were forced underground at gunpoint.

If the court does rule that after following the exhaustive legal channels — as the NUM has done in this year's wage talks with the Chamber — it is an unfair labour practice to fire workers en masse, an important precedent will have been set.

Cyril Ramaphosa, general secretary of the NUM, believes that workers were intimidated into not striking, while management makes the same claims from the other end.

According to Ramaphosa, the "despicable behaviour" of mine management demands that the union seriously examine a change of strategy.

The union is arguing that if it does not accept this argument, the court will have removed the major incentive for legal strike action and will be giving unions carte blanche to go on wildcat strikes.

"We warned three weeks in advance that we were striking so that we could mobilise our members. It turns out that management was also mobilising."

This year's wage negotiation shows a responsible union which was prepared to go patiently through the whole process of negotiation before opting for strike action.

"Some of our most effective strikes were taken at short notice when management was not prepared."

On the other hand, if the court does accept the NUM's case, it will remove the strongest weapon in the hands of the mining houses — the right to fire thousands of workers.

However, the actual reason for the strike's relative failure could be a combination of factors, including the particular circumstances at the various mines.

Even before the start of this year's strike, all three mining houses facing industrial action issued their employees with pamphlets warning them that to strike would mean instant dismissal.

At East Driefontein and Hartebeesfontein, for instance, the union was largely gutted after the strikes earlier this year in which the top leadership was fired.

This very real threat plus the heavy police presence are given by the union as the main reason why the strike failed on the bigger mines.

Mass dismissals, now looming at Marievale and Deelkraal as well, often mean a weakening of the union's strength, though NUM sources say the union has recovered at Vaal Reefs South, where 14 000 workers were dismissed in April, many to be rehired.

Some 23 000 workers on Gencor, Gold Fields and Anglovaal mines struck in support of higher wages — less than half the number the NUM said they would pull out.

Either way, the union played its weakest card by bringing out Gold Fields, Gencor and Anglovaal mines while 86 percent of its membership are at Anglo American — though Ramaphosa says the NUM had no choice.

In all, some 11 gold mines and collieries were hit by action, but the biggest mines — Gold Fields' Kloof and West and East Driefontein and Anglovaal's Hartebeesfontein — did not come out in force.

The split offer meant the union could not reject the Anglo American-Rand Mines package while at the same time it could not accept the offer of the other three.

And after three days, the strike was collapsing in the face of mass

ey

nt houses accomplishment which max

Labour lawyer Cheadle predicts major test cases on vital issues

OUTSTANDING issues which needed testing in South African labour relations included the dismissal of legal strikers, negotiation practices and levels of bargaining, according to labour lawyer Halton Cheadle. Speaking at a labour conference yesterday, Cheadle said major test cases would be witnessed on whether or not employers could continue dismissing workers on a legal strike. The outcome of some of these cases would be known shortly, while the question of sympathy strikes would also be put to the legal test.

He said the development of a more unitary legal system of labour law was also required because the SA Labour Relations Act did not apply in the homelands.

The Industrial Court would also have to deal with executive dismissal where different rules were necessary to set standards for the re-instate-

166
B Day
12 5 87

—CLAIRE PICKARD-CAMBRIDGE—

ment of directors and middle management.

Another disputed question was whether the Industrial Court should compel managements to recognise representative unions. Though most employers had finally agreed to recognising unions and having plant-level negotiations, some still refused and this was one of the issues in the key Industrial Court case between the Metal and Allied Workers' Union (Mawu) and Hart Ltd.

The next major issue which had to be tested was on levels of bargaining, also being examined in the Mawu vs Hart case. Cheadle said he believed bargaining both at plant level, to establish actual wage levels, and at industrial council level, to set minimum standards, could be compatible. Greater legal clarity also had to be

set on practices of negotiation because there had been an increasing use by employers of the introduction of unilateral increases, despite the fact they had a recognised union.

He believed this was an unfair labour practice.

Other speakers included Prof Lawrence Schlemmer, director of the Centre for Applied Social Sciences at the University of Natal, who called for employers to become more sensitive to the extreme stresses faced by workers in the townships.

Employers should start making specific representations to government about improving conditions for employees outside the workplace. A vital issue to be lobbied for was to persuade government to buy more land for black housing; the shortage was a critically depressing factor on an employee's circumstances.

1-22/166

FM 20/9/85

whether they were acting within their rights in dismissing more than 1 000 strikers earlier this month. And at its annual conference last week, the Trade Union Council of SA called on government to introduce legislation limiting the right of employers to discharge lawful strikers.

Labour lawyer Halton Cheadle introduced some new thoughts on the subject at a labour conference last week organised by industrial relations consultants Andrew Levy and Associates. He compared the laws and practices related to the dismissal of strikers as they apply in various parts of the Western world.

In SA the Labour Relations Act protects registered trade unions embarking on legal strikes from two types of action:

- Employers may not sue for losses incurred due to strike action, and
- The courts will not grant interdicts prohibiting such a strike.

As far as the FM can ascertain, no unions have faced civil claims from companies in SA, although there have been some applications for interdicts prohibiting unlawful



Cheadle . . . comparing SA labour law to that elsewhere

strike action. There were two such cases last year: one involving Gold Fields of SA and the NUM, while the other was between Dunlop and the Metal and Allied Workers Union.

But there is no protection from dismissal for lawful strikers. In arguing that there should be, Cheadle described the situation in other parts of the world. Striking is normally not a criminal offence in Western democracies, although the Thatcher government has outlawed certain types of sympathy action.

In most of Western Europe, strikers may not be dismissed. In the UK, the law forbids the selective dismissal and rehiring of strikers. Some unions in SA have built similar provisions into their recognition agreements with employers.

In the US, a complex system applies. According to rulings made by the National Labour Relations Board, the US equivalent of the Industrial Court, strikes are divided into three categories — unprotected, protected and relatively protected.

Strikes are "unprotected," and employees are liable to dismissal, when they or their

FM 20/9/85

LEGAL STRIKES (166)

Protection in law

The question of whether lawful strikers should be afforded some kind of legal protection from dismissal is becoming a burning issue in SA.

The National Union of Mineworkers (NUM) is to challenge — through the Industrial Court — three mining houses on

A judgment handed down by the Industrial Court last week concerning former "Prime Time" television producer Miss Moira Tuck and the SABC has made it clear that the public's right to know what happens in Industrial Court cases is far from secure. SHERYL RAINE reports.

'In camera' decision means public can be kept in the dark

Fears expressed by labour relations consultants and labour lawyers about the public's right to know about Industrial Court cases and its decisions appear to have been justified.

In a ruling handed down by the president of the Industrial Court, Dr Daan Ehlers, the right of one or both parties to a dispute to demand secrecy has been entrenched in the interests of conciliation.

While observers concede that there may be a need at times for the court to withhold sensitive financial and other information pertaining to employers or unions, they have expressed concern that, in future, parties to disputes before the Industrial Court could demand secrecy purely on the grounds of embarrassment — or for ulterior motives

Lawyers point out that the Industrial Court is a precedent-setting body playing a vital role in the interpretation of the country's new labour dispensation, and as such should operate publicly

Dr Ehlers explained why he had ruled that the case involving Miss Moira Tuck and the SABC be held behind closed doors

While Miss Tuck's legal team placed on record that it believed it was better for the public to know and see what happened in court, rather than be excluded, the SABC, without supplying reasons, asked that the case be heard in camera — and the court agreed

PRIVACY

Quoting several sections of the Labour Relations Act, Dr Ehlers said the provisions in the Act tended towards the "maintenance of privacy in proceedings before this court, especially where a party so requests"

He pointed out that the Act also allowed the president of the court to authorise the disclosure of any information which he deemed to be unreasonably withheld

Dr Ehlers believed there were indications that secrecy in some instances was deemed desirable, if the Act's provisions in their entirety were considered

PUBLICITY

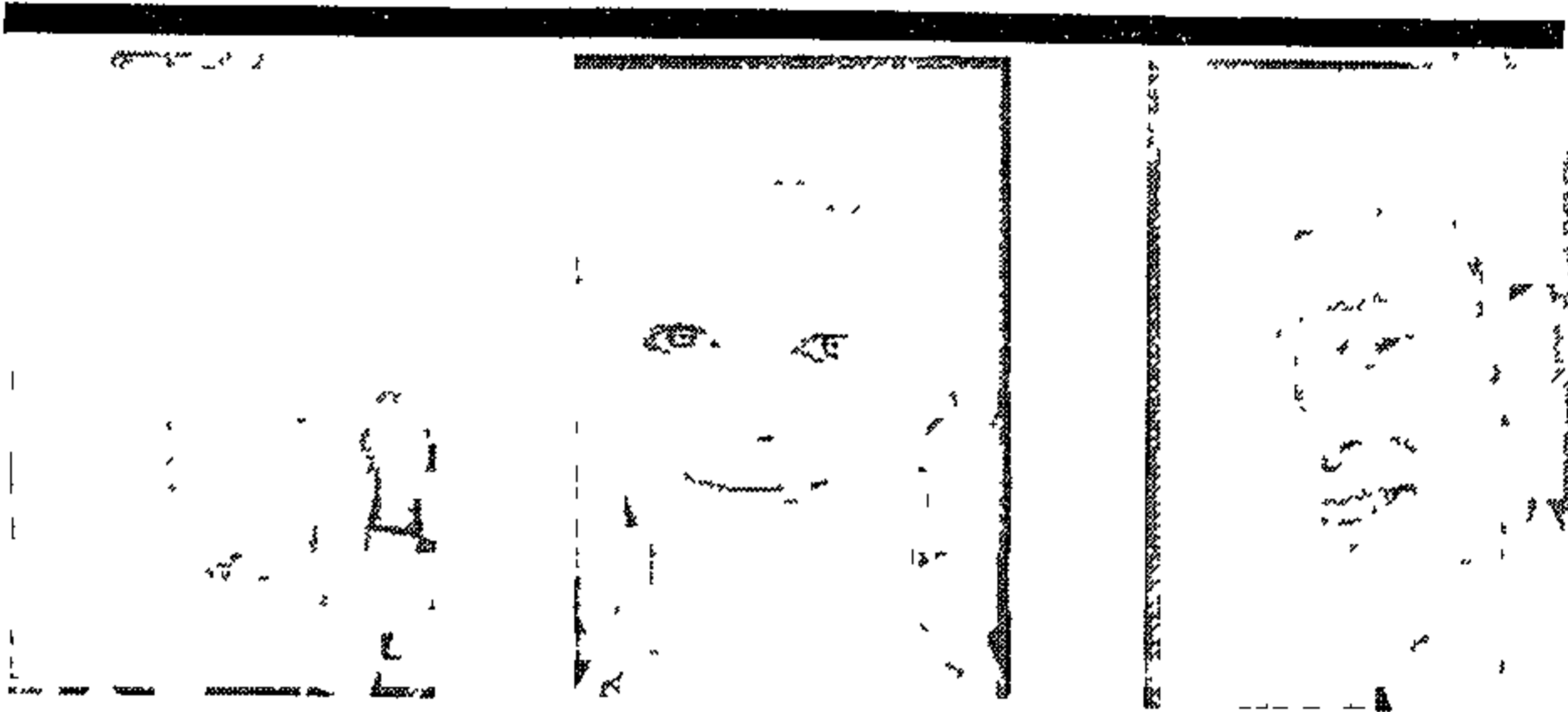
The full name of the Labour Relations Act indicated that the law was intended to prevent and settle disputes between employers and employees "which could probably hardly be achieved if the particulars of such disputes are being publicised", he said.

The Act's predecessor was called the "Industrial Conciliation Act", which implied that its main objective was conciliation.

Dr Ehlers said meetings of industrial councils were conducted in private unless the council decided otherwise.

Conciliation boards also met privately.

Referring to the sta-



Miss Dorianne Berry

Miss Moira Tuck

Mr Robin Knox-Grant

Tuck: SABC to get Supreme Court ruling on freelances

An SABC lawyer yesterday said the corporation intended to take the case to the Supreme Court and to seek clarity on the status of freelances and the right to secrecy in industrial court hearings.

The industrial court last week found that the dispute involving "Prime Time" producer Miss Moira Tuck and the SABC had not been attended to in a professional manner and there had been an obvious lack of impartiality on the part of the SABC.

Miss Tuck, a freelance on contract to the SABC to produce the television programme "Prime Time", was dismissed earlier this year and was reinstated by the court last week.

In his ruling the president of the industrial court, Dr Daan Ehlers, said it was not clear why TV1's director of programmes, Mr Robin Knox-Grant, had not recused himself from an SABC investigation of the Tuck matter

Mr Knox-Grant is married to "Prime Time" presenter Miss Dorianne Berry who had clashed with Miss Tuck over the programme

Miss Tuck claimed in papers before the court that Miss Berry had made it impossible for her to impose her authority on the programme and that on various occasions Miss Berry had threatened to go to her husband when she disagreed with Miss Tuck

Evidence before the court indicated that Miss Tuck had not had an opportunity to explain her position to the SABC and that Mr Knox-Grant had been directly involved in investigating the matter.

Dr Ehlers said "one is left with the impression that she has not had a fair deal"

tus of the court, Dr Ehlers said that when hearing applications for temporary relief, such as the one involving Miss Tuck, the court "could be deemed not to be regarded as a court of law"

The "court" could be regarded rather as an

administrative body performing the duties of a court

"Therefore, it follows that it is at least questionable whether admission to the proceedings of this court could be equated to that of a court of law," he said

"It is not clear why the director (Mr Knox-Grant) had not recused himself from the situation in which his wife was involved. This involvement occurred in spite of an unsolicited (earlier) assurance that the director would recuse himself when matters relating to his wife were to be discussed or considered

"The involvement continued further notwithstanding the recommendation of the SABC's general manager that the director should recuse himself in future."

"The obvious lack of impartiality, especially if compared with modern procedures of personnel management, leaves much to be desired in an employer/employee relationship."

An SABC lawyer, Mr Manie Roode, said yesterday the corporation intended to take the case to the Supreme Court and to seek clarity on the status of freelances and the right to secrecy in industrial court hearings

OBJECTIVE PROCEDURES

The SABC's proceedings should not be interpreted as being aimed at Miss Tuck but were in the interests of thousands of other freelances employed by the SABC and who had up until now not been regarded as full employees

Commenting on the industrial court's findings on the role of Mr Knox-Grant Mr Roode said: "There are objective procedures laid down for disciplinary hearings and investigations at the SABC as far as employees are concerned and these would have been followed in Miss Tuck's case had she been regarded at the time as an employee and not as a freelance."

In the Tuck case, he said, it would not have been conducive to the "possible conciliatory efforts which might be attempted, should the court be instrumental to the disclosure of the particulars of the dispute against the wishes of one of the parties"

(166) (B Day) 9/10/31

Employers and workers, it's illegal to work unsafely

FROM now on it is illegal to work unsafely.

The new Machinery and Occupational Safety Act (Mosact), effective from last Saturday, places responsibility on almost all employers in SA to provide employees with a safe working environment.

Fines of up to R2 000, or 12 month's imprisonment, can be imposed on employers — or employees, under certain sections — not complying with the Act.

The National Occupational Safety Association (Nosa) this month published a booklet setting out guidelines for managers in interpreting the new Act.

Every company which employs more than 20 workers shall, in terms of the Act, appoint a safety representative. Factories and industrial concerns have to appoint a safety representative for every 50 employees.

FRED STIGLINGH

Shops and offices are required to appoint an additional representative for every 100 employees.

Mosact will operate in place of the Factories, Machinery and Building Work Act of 1941.

The old Act provided only for protection of employees in factories and buildings. The new Act covers all people in commerce and industry. Exclusions are workers who fall under the Mines and Works Act, and the Explosives Act.

Employers of domestic servants and farmers do not have to appoint safety representatives, but are compelled to supply safe equipment and train workers to carry out their tasks.

According to the Act, machinery or safety equipment offered for sale must comply with prescribed standards.

The Zebra option

While much is said and written about deregulation, very little has been done — except in the Ciskei, where the government has done away with virtually all restrictive legislation

Another exception is Natal-KwaZulu, where a new developmental concept — Zero Based Regulation Areas (Zebra) — is being investigated to speed along deregulation

Zebra is designed to create areas where a minimum of regulations apply. It is the result of ongoing discussions between the Natal Provincial Administration's Town and Regional Planning Division (TRPD) and the KwaZulu government

Representatives of the two initiating institutions, as well as other public and private sector bodies, last week held a top-level meeting in Maritzburg to take the initial concept, first devised last November, a step further

Describing the meeting as "very successful," a TRPD spokesman told the *FM* the joint Natal-KwaZulu work group was briefed to "go ahead as soon as possible with the implementation of the first Zebra area" The work group will hold a follow-up meeting on October 14

Representatives from the Trade Unions Council of SA, the Small Business Development Corporation, the Free Market Foundation, the KwaZulu Department of Economic Affairs, the regional development council of region E, the Urban Foundation and the Natal chambers of commerce and industry attended the meeting

Local authorities were notably absent, although they were invited, said the spokesman

"SA in general, and Natal-KwaZulu in particular, are burdened with a huge and growing unemployment problem," he noted "The great need is to create more job opportunities, and one of the ways to achieve this is

Financial Mail October 11 1985

11/10/85
407
333
166
Ray

to cut meaningless and unproductive red tape"
Deregulation would provide easier and cheaper access to the productive system of the economy, he said, and the removal of unnecessary red tape "will hopefully provide a cheaper cost structure by reducing the cost of entry and of running a business"
"The basic Zebra concept is to wipe the slate clean of all rules and regulations in specific target areas, and then to build it up again from this base. In other words, we first scrap all regulations and then see which are, in fact, essential. These will then be applied in the area," he said
The Zebra concept was derived from the zero-based budgeting system, which operated on the same principle

"The concept is now being pursued at the highest levels of our two regional governments," the spokesman said "If successful, it could be implemented countrywide — depending on central government. We are also looking seriously at Ciskei's deregulation experiment, although we are not tied to any particular approach at this stage"
Administrative and Economic Advisory Services Minister Eh Louw recently announced that government accepted, in principle, that the establishment and development of small businesses "should be facilitated by means of deregulation and other appropriate methods"
The State President has asked Louw and the economic committee of the President's Council to make proposals before Parlia-

ment is reopened, on "how the matter should be expedited"
A spokesman for Louw's office said he strongly favoured the Zebra concept, as this implied the deregulation of the informal sector specifically
Small Business Development Corporation spokesman Francois Baird said he hoped the successful implementation of the Zebra concept would be an inspiration to local government bodies
"Central government is publicly in favour of deregulation, and this concept must now be put into practice at the municipal level. In fact, it is far easier to implement at this level because it only means the cancellation of municipal by-laws and regulations," he said

Call to amend Labour Act after strike judgment

MERICUM
166 17/10/85

Labour Reporter

IF WORKERS on a legal strike were to be dismissed it would make a mockery of the provisions in the Labour Relations Act, a Durban labour lawyer, Mr Richard Lyster, said yesterday

He was commenting on a Rand Supreme Court judgment of Mr Justice E Stafford that to dismiss workers after they had taken part in a legal strike was not victimisation as suggested by the Act

Mr Lyster, who is based at the Legal Resources Centre, said it would be pointless for workers to follow the complicated procedures laid down in the Act before going on strike if there were insufficient safeguards to prevent workers from dismissal

The Act should be amended, he said, adding that it was clear that Mr Justice Stafford's judgment was a strict interpretation of the law 'I am not critical of the judgment'

He said the Act went as far as drawing a distinction between a lawful striker and an unlawful striker. While a lawful striker cannot be criminally prosecuted, he could be dismissed the

same way as an unlawful striker

Mr Justice Stafford handed down judgment after an urgent application was brought by Marievale Consolidated Mines (Pty) Ltd against 62 of its workers.

The Judge said it was not relevant that the strike in which the workers took part was not prohibited by the Labour Relations Act

He found that the Act did not amend the Common Law 'Workers are not given the right to strike without being punished. There is nothing in the law that indicates that a worker can insist that his employers fulfill their contractual duties'

Victimise

If the law intended to protect workers who took part in organised strikes, then it should have been specifically stated

Mr Justice Stafford found, according to evidence before the Court, that the company did not act unfairly or victimise the workers

It had proved that the workers had intentionally contravened their contractual duties which justified their dismissal. There was no lawful reason for their absence from work, Judge Stafford found

Industry hails govt action

166

Tough new asbestos laws

B. Day
24/11/87

GOVERNMENT has stepped into the asbestos debate with a set of draft regulations designed to curb asbestos-related diseases

Controversy has raged for years over the health hazards posed by asbestos. Campaigns to ban it have been waged in SA and overseas while statistics on deaths attributable to the mineral are hotly disputed by producers. Medical research continues but the dangers of overexposure to asbestos fibres are indisputable.

Draft regulations apply only to the industrial use and not the mining of asbestos. They have been warmly welcomed by the industry, which says the controls are tighter than those overseas except in Britain.

They provide for a maximum exposure limit to asbestos fibres and detail requirements for the handling, disposal and processing of asbestos as well as the education and training of employees.

The draft regulations have been

ALAN RUDDOCK

welcomed by the Fibre Cement Manufacturers' Association which represents all three SA asbestos manufacturers.

Chairman M C Pretorius said his members "have been operating under similar self-imposed controls for many years and the monitoring procedures suggested by the regulations will give our efforts added credibility".

The regulations allow for a maximum exposure limit of one asbestos fibre per millilitre of air (1f/ml). No differentiation has been made between the various types of asbestos. Experts disagree whether differentiation is necessary, but the bulk of opinion suggests white asbestos (chrysotile) is less dangerous than brown (amosite) and blue (crocidolite).

The EEC has announced new regulations effective from January 1987 of 0.5f/ml for blue asbestos and 1f/ml for all others. Britain's limits are 0.2f/ml on brown and blue and 0.5f/ml on white.

Industrial council deregulation 'could create problems'

One of the country's most powerful industrial councils, that of the metal industry, stands to be most affected by current suggestions from the Department of Manpower to change the nature of industrial council agreements.

The SA Boilermakers' Society (SABS), a party to the council and a member of the International Metalworkers' Federation, is, with other unions, preparing its reply to the government.

Mr Ike van der Watt, president of the SABS, believes many of the suggestions need more thought before changes to existing legislation can be contemplated.

His union's main objection concerns proposals to change the criteria for representation of employers on the industrial council (IC).

At present representation on the council is determined by the number of workers an employer employs and this means large employers have virtual control.

Once agreement is reached on a minimum wage

the agreement is signed and the Minister of Manpower can extend the agreement to smaller employers who have to implement approved wage rates. Small employers complain they cannot bear the financial burden, many go out of business and hundreds of jobs are lost.

But are the current suggestions a solution to the problem?

It is being suggested that representation in the IC should be determined by the number of employers who belong to the council. This would mean small employers would have an equal say in the council.

However, the majority of small employers do not belong to the council and Mr van der Watt and others fear the IC's representativeness would decline with serious consequences, if the new criteria were adopted. And he is not convinced the suggestions would ensure sufficient protection for workers even if more jobs were created in the short term.

"The fact that the department has focused its attention on the representativeness of the IC as being

The Department of Manpower has invited trade unions and employer organisations to comment by tomorrow on a memorandum containing suggested changes to industrial councils aimed at deregulation for the benefit of small employers, job protection and job creation. The memo has sparked lively debate. SHERYL RAINE reports.

the major problem indicates a lack of understanding in my view," said Mr van der Watt.

"The problem is negotiation structures within the council system. At the moment, once parties have agreed in the council to a minimum wage rate and signed an agreement, the unions are largely barred from engaging in decentralised bargaining at plant level for increases above the minimum rate.

"This has resulted in unions pushing for the highest minimum rate possible and the minimum rate has become unrealistically high for job creation and for

small businesses. The negotiating forum needs to be changed so that a true minimum rate can be negotiated and the way should be left open for increases above the minimum for employers who can afford to pay more."

In the metal industry he believed the solution was within reach of parties to the IC and did not warrant direct government intervention or changes to the law.

"The negotiating structure of industrial councils is not prescribed by the Labour Relations Act and it is a question of employers and trade unions getting together to change the structure by mutual agreement."

He also believed the metal industry, which had 23 unions and 48 employers' associations within its industrial council, needed to diversify and further differentiate among its members.

"The unions and employers negotiate a national agreement which covers diverse industries ranging from battleship builders to those which manufacture

lapel badges. Covering such a wide spectrum of industries with one minimum wage agreement is not feasible."

Up until now the IC has been resisting change to the negotiating structure but the suggestions in the memorandum may serve as a catalyst for change because they constitute, in the view of Mr van der Watt, a tremendous threat to employers.

"There is an imbalance of power in the council right now. Employers are far too powerful and unions have been fighting for a balance of power for some time. The suggestions in the memo will however, greatly reduce the power and real representativeness of the council as far as employers are concerned."

As far as the prospects of job creation were concerned Mr van der Watt believed the suggestions were short-sighted.

"By deregulating industrial councils, jobs are created in the short term but such deregulation would create serious problems, including exploitation of workers."

101

(166) FM 22/11/85

DEREGULATION

Opening doors

The President's Council's (PC) economic affairs committee has called for the scrapping of all but the minimum regulations for entry into business

If accepted and implemented by government, the report could make it far easier for entrepreneurs of all races to get into business

Standards and requirements currently demanded before a business can begin operation will be eased considerably and opportunities in the informal business sector would be broadened

In a wide-ranging report tabled at the PC's plenary session in Cape Town this week, the committee called for immediate steps to deregulate business. It recommended "That legislative measures describing standards and entry qualifications in respect of economic activities should be limited to a statement of minimum standards only, and that they should emphasise control of business activity after the businessman has entered into the activity, rather than emphasise his meeting certain requirements before being allowed to enter into that activity"

The committee said deregulation could contribute to the establishment and continued operation of some small businesses which are not being established or are folding because of complex regulations and unattainable standards

The committee found that the transition from the informal to the formal sector was severely hampered by regulations resulting from "unnecessarily high standards" and from government intervention in the economy and in business decision-making

"A move towards a less burdensome legislative system that would be sufficiently simple and inexpensive to permit parts of the informal sector to be integrated gradually into the modern formal sector could make a valuable contribution to orderly economic development," the committee reported

The committee, chaired by Francois Jacobsz, had been asked by President P W Botha to determine a strategy for small business development and for deregulation. Apart from recommending the easing of strict regulations and standards, the committee called for the scrapping of apartheid in business (see *Current Affairs*)

The committee emphasised the important role that both the small and informal business sectors can and should play in economic activity. It concluded that the relatively small contribution by small business to job creation was due to over-regulation of entry and operation

The committee suggested two stages for deregulation, first, the repeal or amendment of legislation and the creation of a statutory framework to ensure continuing deregulation, and, secondly, the implementation of the statutory framework. It proposed the establishment of a statutory Council for

Small Business (CSB) with executive powers, to replace the Council for the Promotion of Small Business

While the CSB could initiate deregulation it was suggested that the Competition Board, with expanded powers, would implement deregulation of both small and bigger business

The committee listed restrictive measures which it suggested could be reviewed immediately under the umbrella of the National Manpower Commission. These include

- Licensing laws, which should be streamlined and their strict requirements eased,
- The Machinery and Occupational Safety Act, which lays down standards often inappropriate to small industry,
- The Basic Conditions of Employment Act,
- The Workmen's Compensation Act,
- The Unemployment Insurance Act,
- The Health Act, and
- Professional and trade restrictions enforced by professional, trade or statutory bodies

The committee recommended that the President's powers be extended to allow him to suspend legislation affecting small business or reinstate measures at his discretion or implement new measures as needed with the proviso that his action be ratified by Parliament in the next session

The committee also urged government to

- Allow the Small Business Development Corporation (SBDC) to issue Small Business Development Bonds which would qualify for inclusion in the prescribed investment portfolios of financial institutions, and
- Replace the SBDC's Bank Indemnity Scheme with a Small Business Credit Guarantee Fund with capital from public and private sector contributions

It suggested that the proposed Council for Small Business should have executive powers. Its functions would include advice to government on small business policy, co-ordination of the implementation of the policy, allocation of public funds voted for small business development and the evaluation of existing and proposed legislation as far as it affected small business

UNION CARBIDE

Dropping metals

US interests in two mining and processing operations in SA are set to fall into local hands. Word is that Ucar's vanadium mine at Brits and its Tubatse ferro-chrome plant at Skierpoort Valley are on the market

Both companies are currently owned by Umetco, the minerals and metals arm of US chemical heavyweight Union Carbide (UC). UC has wanted out of the metal business for at least two years, but has been unwilling to break up Umetco's assets

Umetco's asking price is believed to be around \$100m, and so far there have been no takers. But the market believes that UC is



Highveld's Boyd ... looking for growth

now willing to carve up Umetco in its bid to divest from metals

This seems to be borne out by UC's announcement in September that the company would write-off \$900m in losses and speed up sales of its overseas assets in a sweeping rationalisation programme

Adding to UC's problems is the much-publicised trek through the courts over the chemical leak at its Bhopal pesticides plant in India and a similar occurrence at a sister plant in Dunbar, West Virginia

Anglo American subsidiary Highveld Steel & Vanadium has been after Ucar for a long time, but was unable to move because of UC's refusal to sell-off Umetco's holdings piecemeal

Highveld chairman Leslie Boyd describes as "nonsense" speculation that Highveld is considering buying Umetco lock, stock and barrel and selling off other assets except Ucar

"We are interested in Ucar, but we wouldn't even consider a package that included, for instance, Umetco's two US vanadium conversion plants. We have no intention of establishing a US presence"

On paper, ownership of Ucar would give Highveld an 80% share of the world's vanadium market. The SA Mineral Bureau reckons that SA has total vanadium reserves of 7,8 Mt, about 47% of the world total

Boyd agrees that taking over Ucar would lead to greater price stability in the vanadium market. "But don't assume that means price rises," he says

Highveld and Ucar follow each other's pricing leads — SA vanadium pentoxide slag is currently trading at around \$2,40/lb — but there is continual pressure from lower spot prices

Gencor also stands to benefit if UC does agree to carve up Umetco. It would seek to take Umetco's 49% shareholding in the Tubatse ferro-chrome plant, giving it total control

It would then probably sell Tubatse to

LABOUR LEGISLATION

1986

The bottom half of the page is filled with a grid of graph paper. The grid consists of approximately 20 columns and 20 rows of small squares. A vertical margin line is present on the right side of the grid, creating a narrow column for notes. The grid is mostly empty, with only a few faint marks and a small scribble at the bottom right corner.

Legislation on domestics not on the cards

WORKERS' DIARY — By JOSHUA RABOROKO

THE Government has announced that the long-awaited legislation on domestic and farm workers is unlikely to be introduced at the current session of Parliament

Dr Piet van der Merwe, director-general of the Department of Manpower, said a report from the National Manpower Commission (NMC) had been completed and was under consideration but "we do not envisage legislation this year"

The news has disappointed the Domestic Workers Association, the Black Domestic Workers Association, the South African Domestic Workers Union and the Domestic Workers Employment Project. The organisations have been pressing for years to get legal provisions covering employment of domestic workers.

The NMC was instructed in 1982 to begin an inquiry into employment conditions for the two groups and the long delay in proclaiming legislation has been strongly criticised and several questions have been asked in Parliament

Strike Ballot

• The Black Allied Mining and Construction Workers Union (Bamcwu) is to hold strike ballot at Samcor plants following the failure by the Minister to appoint a conciliation board to resolve the wage dispute with the company. The ballot is to be held today

• Changes to unemployment insurance

legislation are expected to be introduced before Parliament early in the session, Dr van der Merwe announced this week

Trade unions and other labour experts have been lobbying for changes to the fund for sometime

• Negotiations between Matthey Rustenburg Refiners in Wadeville and the Chemical Workers Industrial Union (CWIU) are continuing in an effort to solve a wage dispute

Agreement

• The Transport and General Workers' Union (TGWU) and the General Workers Union (GWU) have signed an agreement with the Renfreight group which will raise the group's wage bill by more than 12 percent

This was confirmed by the unions and management.

• The Trade Union Council of SA (Tucsa) has appointed eight specialists to deal with various interests of the federation and its members. Unions are urged to contact them about matters which concern them

Any information, evidence, or suggestion that unions may wish to have taken up may be sent to the secretariat of Tucsa for submission to the committee concerned

• A new trade union, the National Union of Forestry and Allied Workers which has won increasing support in the Eastern Transvaal, has joined Tucsa

• The most authoritative and complete annual trade union directory is now available. The 1985-86 edition of Tucsa's trade union directory is being sent to all affiliated unions. All interested parties may contact Tucsa at (011) 838-3824

• Hard Labour — a pictorial survey of labour relations in SA since 1979, by Gavin Brown, has been published. The book concentrates exclusively on newer emerging unions and does not cover the activities of Tucsa or unaffiliated unions

It is published by IR Date Publication of Box 52711, Saxonwold, 2132

• A spokesman of the Oranje-Vaal Development Board indicated the existence of a misconception among employers in its area, to the effect that the Act of contributions in respect of Black Labour (Act 29 of 1972) has been abolished

• The process of bringing to justice those responsible for

the murder of two white policemen in Bekkersdal township is underway, while from the industrial relations viewpoint, the focus now centres on the dismissal of over 500 workers from Randfontein Estates Gold Mine

• The Black Allied Mining and Construction Workers Union holds its annual national council in Soweto on March 7/8/9 in Soweto

• The Bamcwu has applied for a conciliation board and an industrial court action against Triting Plant Rentals and Stocks Construction respectively over unfair dismissal of workers

• The Congress of South African Trade Unions is to hold a meeting on Friday to discuss various issues, including the action which will be taken against Gencor for firing over 20 000 miners at Impala Platinum mines in Bophuthatswana

• Moves are afoot to decriminalise strike action in South Africa. The National Manpower Commission hopes to release a report containing suggested changes to the strike laws within the next few weeks.

Mr Joel Fourie, director of Labour Relations in the Department of Manpower, said the NMC was investigating the changes to Section 65 of the Labour Relations Act which makes strike action under certain circumstances a criminal offence

• The Black Domestic Workers Association is going ahead with plans to take over 100 employers to court following their unfair dismissal of domestics. The first of these will face prosecution next week

• The South African Allied Workers Union (Saawu) has applied for a conciliation board to resolve their dispute with Metal Box, Rosslyn plant, near Pretoria

The union is fighting the retrenchment of 25 workers and the employment of three whites at the plant. It contends that management was acting in a discriminatory fashion by retrenching blacks and hiring whites

The dispute resulted in a strike by about 500 workers who were later dismissed. Workers have since launched a boycott of the company's products in an attempt to have their colleagues reinstated. However, the company has sort an urgent Supreme Court action restraining the workers from continuing the boycott.

• The Azanian Confederation of Trade Unions (Azactu) and

the Council of Unions of South Africa (Cousa) held an urgent meeting in Johannesburg last week to discuss various ways and means of working together

The talks have been going on for a long time after the two pulled out of the trade union unity talks aimed at forming Co-satu last December. Sources close to the unions said another giant federation might be formed by the two federations

Another meeting of the two unions will take place late this month

• The Media Workers Association of SA (Mwasa) is to hold a meeting with management of Perskor in Johannesburg on Friday to explore various means of having a recognition agreement with the newspaper company

• South Africa faces a future of escalating unrest with business and labour becoming more hardline in their dealings with each other, says Prof P L Bonner, Professor of African History at Wits University

Professor Bonner predicts an increased strike action and demands for greater say in management by trade unions. This tougher trade union action will come about as a result of threats to neutralise the industrial court's powers and a hardening of big business attitude towards labour.

166
SOWETAN 5/2/86

Seminar on labour law

SMK
10/2/82
166

The Institute for Industrial Relations will start the year with a one-day seminar to bring managers up to date on labour law

Two leading labour lawyers will address the seminar at the Protea Gardens Hotel, Berea, Johannesburg, on February 20.

Subjects to be discussed include limits on protection against dismissal for lawfully striking workers, the legality of primary and secondary strikes, provoked or unfair labour practice strikes, the lock-out remedy, legal strikes and evictions, the relationship between Supreme Court and industrial court decisions, and new provisions in recognition agreements

Next on the institute's diary on March 6 is a seminar on quality of work life programmes and their feasibility in South Africa.

Pioneered by the United Automobile Workers' Union and General Motors in the United States, quality of work life programmes have become an established component of labour management relations there

Inquiries to Mrs Mabel Mlaba (339-3751)

Parliament and Politics

Farm workers *CMT TMS 13/2/86* 'defenceless' *166*

Political Reporter

HOUSE OF REPRESENTATIVES — Seven million South African farm workers had no legal protection against unfair labour practices, exploitation and victimization, the House of Representatives was told yesterday.

A private member's motion tabled by Mr Edward Poole (LP Belhar) proposed that a parliamentary select committee be appointed to form a joint committee in a bid to ensure that farm workers were governed by existing labour laws.

Strike

He said farmers were the most protected entrepreneurs in the country but their workers were defenceless against exploitation.

Mr Poole said existing labour laws did not protect farm workers.

against victimization nor were they allowed to participate in a legal strike.

Although there was no prohibition against farm labourers from forming trade unions the necessary components for union activities in terms of law were absent specifically because of victimization.

Farm workers daily faced the harsh consequences of unfair labour practices against which they had no legal redress.

Mr Poole proposed amendments to the Wage Act, Labour Relations Act, Unemployment Insurance Act and the Basic Conditions of Employment Act so that it included farm workers.

The absence of legislation that protected farm workers resulted in "legalized exploitation", Mr Poole said.

Conventions

He stated that the International Labour Organization (ILO), from which South Africa had been suspended, prescribed conventions providing certain special guarantees for the protection of farm workers.

Several LP and opposition MPs directed an urgent plea to the government to make the

necessary amendments.

Mr Yusuf Rhoda, Democratic Workers Party (DWP), said that there were hundreds of cases of farm workers who after years of service were ordered by farmers to leave the farms with no pension or unemployment benefit when they could no longer work because of age.

Replying to the motion, Mr Pietie du Plessis, Minister of Manpower, was repeatedly booed, heckled and jeered as Labour Party MPs accused him of not answering their questions and evading the issue.

Contract

Mr Du Plessis said farm labourers could enter into a contract with farmers under existing common-law provisions.

He referred to a government White Paper which acknowledged that certain agricultural unions had to be involved with regard to farm labour legislation.

Mr Du Plessis said the government recognized that a large number of factors were involved in the formulation of a system regulating farm labourers and that very few countries had one.

The motion was carried by a majority vote.

CAME Times 22/2/86

~~166~~
166
~~166~~

President to be given wider powers

Political Staff

THE State President, Mr P W Botha, is to be given wider powers enabling him to by-pass Parliament to suspend laws and cut through red tape impacting on business and impeding economic development in South Africa.

In terms of the Temporary Removal of Restrictions on Economic Activities Bill tabled in the House of Assembly on Thursday, Mr Botha will, by proclamation, be able to suspend any legislation which in his opinion impedes economic pro-

gress or competition in commerce

These extraordinary powers are to be granted for three years, but may be extended by an Act of Parliament if the need exists.

The primary purpose of the new draft legislation is to facilitate and speed up the participation of the small entrepreneur and the informal sector in the economy.

Areas over which Mr Botha may exercise this executive power include:

● Requirements for

the registration and licensing of businesses, undertakings, industries, trades and occupations, and the employment and use of land and premises

● Registration of employees. †

● Payment of contributions to the Unemployment Insurance Fund and the Workmen's Compensation Fund.

● Registration of and control over factories.

● Regulations of conditions of service and working hours and the days on which and times when business may be

done.:

● Supervision of and use of machines

● Protection of the health and safety of employees

● Health requirements for premises and buildings where activities are carried out.

● The prohibition, or regulation of, or restriction on, the erection of dwellings, buildings and other structures.

● The conveyance of persons and goods within, from and to a specific area.

● The establishment of towns and town planning.

Labour laws successful

SOUTH Africa's laws on unfair labour practices are proving to be among the most successful in the world and hold great promise for labour relations in the future.

Mr Tony Cadman, a regional manager of management consultants, FSA, Natal, said while this was the situation, medium and small firms tended to be ignorant of the laws and were running the risk of being regularly taken to the industrial court (IC).

He said as black trade unions grew stronger, more ended up in court.

He added that many small managements did not realise they could not simply dismiss an employee without valid reasons. It was surprising to find that small employers were still "dismissing workers for invalid reasons", for example dismissing a worker after a personality clash.

Political

In contrast, the larger firms have made a careful study of the laws and tended to apply them impartially. Medium and small firms were not so careful in their application of the laws.

He said black trade unions were rapidly becoming aware of political issues. This was worrying businessmen.

Mr Cadman said South Africa still experiences relatively short strikes (the average being about two days), and many large firms have obtained co-operation in their retrenchment of thousands of employees in Natal.

Retrench

This was so because most of the big companies had tried to stick to the law. Most of them negotiated the retrenchments with the respective unions.

He said one positive aspect of this was the fact that trade union leadership in South Af-

rica had to retain the interests of members uppermost in mind. In general their leaders were not being sponsored, as in some British unions, by overseas sources.

He said that in order to assist firms in understanding the unfair labour laws, his company had produced two volumes of books as a guide to business to avoid the use of complicated legal language.

The *Guide to Unfair Labour Practices*, updated every two months with the latest court decisions and commentary on them, will be presented at a series of seminars starting in Durban on January 27.

166
SECRETAN
5/1/86

Domestics out in cold

SOWETAN



LONG-AWAITED legislation on domestic and farm workers is unlikely to be introduced in this session of Parliament.

The news has disappointed the Domestic Workers' Association (DWA), one of several unions which have been pressing for several years to get legal provisions covering employment of domestic work-

ers
Dr Piet van der Merwe, director-general of the Department of Manpower, said a report from the National Manpower Commission (NMC) had been completed and was under consideration but "we do not envisage legislation this year"

He said consultations were in progress with

30/1/86.
many people and organisations about the NMC report

Mrs Florne de Villiers, secretary of the DWA, said it proved yet again how lightly the Government took the matter

The NMC was instructed in 1982 to begin an inquiry into employment conditions for the two groups and the long

delay in producing legislation has been strongly criticised and several questions have been asked in Parliament

In December 1984 a delegation from three groups — the South African Domestic Workers' Association, the Domestic Workers' Association of South Africa and the DWA — travelled to Pretoria to protest to the Minister of Manpower, Mr Pietie du Plessis, about the delay.

Mrs de Villiers said domestic workers were an important workforce making a significant contribution to a stable society.

"Having domestic workers allows many skilled and professional women to enter the economy who would otherwise have to stay at home or work part-time," she said

41386
115

Court rules that strikers can't burn down plant

An urgent application to prevent striking workers at the Alberton Terranova paint manufacturing plant — owned by Plascon Evans (Transvaal) — from burning down the premises, was yesterday granted in the Rand Supreme Court.

The strikers are demanding the reinstatement of workers dismissed after disciplinary action, and after subsequent solidarity strikes at plants in Krugersdorp and Alrode.

Plascon Evans submitted the application late yesterday, fearing strikers would set fire to the premises, where highly inflammable chemicals are stored.

QUOTED

The replacement value of the plant — considered to be the most modern in the Southern Hemisphere and South Africa's largest — was quoted as more than R25 million.

The court ruling also ordered that:

- Workers leave the premises unless they are there to return to work as normal.

PREVENT

- Nobody may prevent employees from going to work.
- Nobody may intimidate or unlawfully threaten the safety or property of any employees.
- Nobody may create disturbances or interfere with the conduct of Plascon Evans business at the Alberton premises.

Plascon Evans production director Mr John Foyn said in an affidavit the illegal strike started at 7:20 am yesterday. It was in sympathy with workers who were dismissed from Plascon Evans' plants in Krugersdorp and Alrode after disciplinary action.

He said: "Vehicles were being stoned and people were being attacked as well as physically prevented from leaving and entering the premises."

"The workers had cited police involvement in the affair as the immediate reason to set the premises alight."

Bill 'threatens' worker rights

By ANTHONY JOHNSON
Political Correspondent

21/3/86
166

FEARS have been raised in trade-union and civil-rights circles over proposed legislation to grant President P W Botha vast discretionary powers to "undermine" trade unions and scrap employees' rights and benefits

Concern reached a peak yesterday as groups opposing the Temporary Removal of the Restriction on Economic Activities Bill learned that today is the deadline for submission of representations to the parliamentary standing committee on home affairs which is considering the legislation

The president of the Black Sash, Mrs Mary Burton, yesterday appealed for an extension of the deadline for presenting evidence as many interested parties were unaware of the impending legislation

She said the proposed law could lead to the removal of workers' rights and "create opportunities for tremendous exploitation"

'Red tape'

Cosatu, apparently caught off guard by the early cut-off date for submissions on the bill, is to send an urgent telex to Cape Town today to detail its objections to the proposed legislation which empowers President Botha to bypass Parliament and suspend measures restricting

"entrepreneurial activity" by slashing "red tape"

Cosatu will argue that the new measure allows the rights and protections workers have won over the years to be whittled away in the name of promoting small business

Strongest criticism of the proposed measure yesterday came from the National Committee Against Removals (NCAR)

A spokesman for the NCAR said "If this bill becomes law the State President will be granted vast discretionary powers to undermine the trade union movement and introduce 'sweatshop' conditions wherever and whenever he may wish"

Standards

The NCAR said it saw the bill as part of the move towards implementing "orderly urbanization" as outlined by the President's Council report on urbanization

"This report clearly recommends the lowering of standards with regard to housing, health and safety for workers. It urged the government to recognize South Africa as a 'Third World' country and then to scrap controls which inhibit the free enterprise system"

The NCAR said it viewed the possible scrapping of health and safety protections, of en-

forcement of contributions to UIF and workmen's compensation funds, and of provisions such as the supervision and use of machines "as irresponsible in any society"

"South Africa has evolved a system of commendable labour legislation over the past six years. Is this all to be scrapped in the name of providing employment or extension of benefits of the free enterprise system to the black entrepreneur?"

'Bantustans'

The NCAR said that while the provision of employment was clearly necessary, "this country cannot afford extending the appalling lack of protection and widespread exploitation of black workers in the bantustans to the rest of the country"

The NCAR pointed out that in the homelands unions were not allowed to organize there were no minimum wages or maximum hours, no protection from injury or disability during working hours

It was not uncommon for workers to be earning as little as R12 a week in factories located on the edge of relocation areas such as Ezakheni in KwaZulu, Onverwacht near Bloemfontein, Phatutshaba in QuaQua or Itsoseng in Bophuthatswana, the NCAR said

W/ARGAS 5/4/86

166

LABOUR
AFFAIRS
DICK
USHER

Moves to put curbs on closed shops

By DICK USHER
Labour Reporter

THE National Manpower Commission has recommended that all closed shop agreements should be subject to the safeguards in the Labour Relations Act

The recommendation is contained in an NMC report on certain aspects of the closed shop system tabled in Parliament recently

Such a step would strengthen one of the most important cornerstones of the community, maximum economic freedom and responsibility for the individual, says the report.

"It would at least ensure that the artificial power base to which closed shop arrangements sometimes give rise could not be used arbitrarily and to the disadvantage of certain individuals or groups of people"

Extension would create uniform standards for all agreements and would contribute to the promotion of industrial peace and stable labour relations

Applying the safeguards to closed shop arrangements outside the sphere of the Labour Relations Act should be done through a self-regulating system. It would then not be a matter of statutorily enforceable agreements, but of establishing stan-

dards or restrictions that could be incorporated into private labour agreements, said the report

Misapplication or non-application of the safeguards should be subject to criminal sanctions in terms of the LRA

It also recommended that the present method of establishing employee support for a closed shop system be retained, subject to the safeguards in the Labour Relations Act, but that a secret ballot be held if at least 20 percent of affected workers request it

A strong minority of the commission opposed this

They said there were several problems associated with calling a secret ballot. In their view the executive committee of any trade union was elected on a democratic basis and should therefore have the power to act for its members in deciding whether or not to implement a closed shop agreement

On the question of making closed shop arrangements subject to the Maintenance and Promotion of Competition Act, the NMC recommended that if the LRA was amended to regulate protection of closed shop agreements no further statutory amendments would be needed.

Labour laws need revamping, says Wiehahn

By DICK USHER Labour Reporter

DEVELOPMENTS on the South African labour front make a revamp of the industrial council system necessary, says Professor Nick Wiehahn, "father" of the existing labour legislation

Professor Wiehahn, head of the Wiehahn Commission of Inquiry into labour legislation which gave rise to the legislation, said the emergence of dynamic new federations on the "macro" level of unionism and shopfloor bargaining at the "micro" level were tending to



Professor Wiehahn

short-circuit the industrial council system at the "middle" level

"If the industrial council system is to be saved in terms of these developments, we have to take a new look at it," said Professor Wiehahn

Legislation needed to develop in the direction of compulsory registration for unions and federations and the whole process of registration needed to become easier and more flexible.

"All that should be required is that the new union applying for registration should fulfill certain criteria

"As it stands, the legislation can be used to block the registration of a dynamic new union because a dormant union is already registered.

"The legislation needs to be changed to allow for competition between unions," he said.

This would mean a good look at the industrial council system — already being undertaken by the National Manpower Commission — because under existing legislation it took only one dissenting vote to bar a new member from an industrial council

LINK TIP 16/4/86

Bill on IC this session

A PROPOSAL that the Industrial Court be upgraded from its existing administrative tribunal status to a judicial court is likely to be contained in draft legislation to be tabled in Parliament this session.

This was confirmed yesterday by sources within the Department of Manpower.

Placing the IC on the status of a superior court was first mooted by the Wiehahn Commission, but turned down by government on the grounds that it was necessary first to gain some experience at adjudicating labour disputes at a lower level.

The changes apparently envisaged now flow from a report by the National Manpower Commission (NMC) on levels of collective bargaining, which was published to solicit comment last year.

The Manpower Director General, Mr Piet van der Merwe, said in an interview yesterday that most of this comment has been collected and legislation amending the Labour Relations Act is now being framed.

He said a bill covering these amendments is to be tabled in Parliament towards the end of May for further comment.

Legislation is, therefore, only likely to be passed during the 1987 parliamentary session.

Labour lawyers yesterday welcomed the possibility of the IC being upgraded to judicial level.

It would have important implications for the status of decisions taken by the IC.

Current decisions can now be used only as guidelines for considering future disputes of a similar nature.

Advocate slams labour rulings

By Sheryl Raine

A leading labour advocate has called on the legal profession to take a stand against the exclusion of many categories of workers from the benefits of the Labour Relations Act.

Mr Tim Trollip last night made the appeal during an address to the Friends of the Law School at the University of the Witwatersrand

He said farm labourers, domestic servants, many State employees and others were currently excluded from the ambit of the Labour Relations Act (LRA).

"The State has essentially chosen to place itself above the law. However, neither the State nor we as a society will escape the power implications of so large a segment of our country's labour force," Mr Trollip said

He said Section 2 (2) of the LRA provided that the act did not apply to persons employed by the State.

The Wiehahn Commission report had recommended that collective bargaining rights be extended to public sector employees and that compulsory arbitration be substituted for the right to strike in the public sector. So far nothing had been done to extend these rights to Government and provincial employees

POWER DYNAMICS

Mr Trollip focused on the power dynamics involved in labour relations, stressing the need for labour lawyers to come to an understanding of the wider dynamics of power and labour law so that collective bargaining could be encouraged

"Good lawyers concern themselves as much with power as the law," he said "Lesser lawyers, or perhaps lawyers badly instructed by clients rush off to courts for ex parte interdicts to stop workers burning down factories or to evict sit-in strikers"

There has been a rash of cases lately in which employers have gone to the Supreme Court for interdicts against workers and have received such interdicts, ex parte, without the court's hearing any reply from the workers or unions concerned

Mr Trollip was critical of the judiciary in granting such interdicts without hearing the other side of the case

"I fear this pattern (of ex parte orders) — it invites workers to flout the authority of the courts," he said

"We are entering a time when in my view, the Supreme Court, and I speak as an officer of the Supreme Court and with the greatest respect for the Supreme Court, is going to have to enter the realm of collective bargaining and collectively bargain for its authority.

"Such authority may be bargained for, and achieved, if the Supreme Court steeps itself more deeply in an understanding of the dynamics of power and labour law, accords to labour and management interests, without fear or favour, their just desserts, and ceases so readily to afford umbrella relief ex parte

"The majority of our present judges are, with respect, products of capitalism. Very few of them ever held a brief for a trade union while practising at the bar

"For them the challenge must be to endeavour to understand issues from the perspective of labour and to come to impartial judgment," Mr Trollip said

STAR
23/4/86
166

Workers protected in legal strike action?

Cape Times 25/7/66 (152) (166)
Labour Reporter

WORKERS who take part in legal strikes may be protected from summary dismissal for breach of contract following a recommendation from the National Manpower Commission to the Department of Manpower.

The recommendation to "decriminalize" strikes was leaked this week to the Financial Mail, which speculated that the distinction between legal and illegal strikes could fall away and that workers may no longer be prosecuted for wildcat strikes. It implied that the proposal could lead to the exemption from prosecution of both legal and illegal strikers.

A labour-relations consultant in Cape Town, Mr Steve Woods, has dismissed this interpretation, saying it was more likely that the commission was trying to scrap a legal contradiction which enabled employers to fire workers even if they had followed the correct procedure for a legal strike.

"As I see it, the commission is more likely to have made a recommendation which would give workers an incentive to follow the procedure laid down for a legal strike.

"In terms of current legislation, employers can fire workers for breach of contract for refusing to work, even if their strike is legal."

Monday, August 11, 1986

Commerce calls for Labour Day holiday

Finance Editor
MTUNZINI—It was, in a way, the bicycle congress. Should, congress delegates were to be asked, bicycles be more firmly regulated and every rider required to hold a bicycle licence or would private free enterprise be allowed to pedal where it liked?

Representatives of Natal's commerce gathered here for Assocom's regional congress at the weekend.

They heard talks on privatisation and de-regulation and on tourism. And they were to debate the abolition of minimum wages, making Labour Day a statutory holiday and requiring cyclists to pass an examination.

The bicycle debate did not start because the Ladysmith Chamber of Commerce withdrew its resolution.

Perhaps it was timely in terms of the early talks about privatisation (defined as when business takes over the activities of municipalities and govern-

ment) and de-regulation the removal of the many rules that govern business life.

Delegates were told that privatisation was best thought of from the bottom up. It was of little use considering putting Iscor and Escom into business but of considerable merit to look at commerce bidding for a municipal rubbish removal project.

They heard that municipalities are heavily over-regulated, also that in recent interviews the State President was to give, in the laws on the matter, a three-year deadline to private enterprise to indicate what rules should be scrapped.

The comment that put the debate into perspective came from Johannesburg's management committee chairman, Mr J P Oberholzer, who opposed privatisation of municipal services because of the em-

ployment they provided which was paid for by 'allocating money from elsewhere'.

The thought that ratepayers subsidise poor labour practices galvanised delegates into support for privatisation.

The Zululand Chamber of Commerce was all for persuading government to abandon the concept of minimum wages as prescribed in Industrial Council agreements.

But it was not a simple matter, and setting aside prescribed wages would lead to exploitation or in some situations higher wages were being paid because of the lack of skills.

Labour Day was one issue which might have landed on next year's agenda but for Durban Metropolitan Chamber of Commerce's demand for rapid action so that labour hassles would not be repeated next year.

The holiday had to be on

May 1 and should be swapped for Founders Day.

Dr John Vincent, of the Natal Parks Board, put up the dilemma between conservation and tourism if the infrastructure was left to commerce to develop one would get the 'intensely focussed and somewhat selfish' Sun City schemes, but government did not always have the money to develop rapidly enough to meet the needs of tourists.

- (b) bedoelde opheffing deur my goedgekeur is om op die datum van publikasie hiervan in werking te tree, en
- (c) Goewermentskennisgewing R 560 van 27 Maart 1986 met ingang van die datum van publikasie hiervan herroep word.

J. J. G. WENTZEL,
Minister van Landbou-ekonomie.

- (b) the said revocation was approved by me to come into operation on the date of publication hereof; and
- (c) Government Notice R 560 of 27 March 1986 is repealed with effects from the date of publication hereof.

J. J. G. WENTZEL,
Minister of Agricultural Economics.

DEPARTEMENT VAN MANNEKRAG

No. R. 1811 5 September 1986

WET OP ARBEIDSVERHOUDINGE, 1956

BOUNYWERHEID, KIMBERLEY — HERNUWING VAN DIE OOREENKOMS VIR DIE ELEKTRIESE INSTALLERINGSEKSIE

Ek, Mattheus Willem Johannes le Roux, Direkteur Mannekrag, behoorlik daartoe gemagtig deur die Minister van Mannekrag, verklaar hierby, kragtens artikel 48 (4) (a) (ii) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalinge van Goewermentskennisgewings R 2153 van 16 Oktober 1981, R. 1384 van 9 Julie 1982, R. 2199 van 15 Oktober 1982, R. 1096 van 20 Mei 1983, R. 1090 van 30 Mei 1984, R. 509 van 8 Maart 1985 en R. 17 van 3 Januarie 1986, van krag is vanaf die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 31 Oktober 1986 eindig.

M. W. J. LE ROUX,
Direkteur: Mannekrag.

DEPARTMENT OF MANPOWER

No. R. 1811 5 September 1986

LABOUR RELATIONS ACT, 1956

BUILDING INDUSTRY, KIMBERLEY — RENEWAL OF THE AGREEMENT FOR THE ELECTRICAL INSTALLATION SECTION

I, Mattheus Willem Johannes le Roux, Director. Manpower, duly authorised thereto by the Minister of Manpower, hereby, in terms of section 48 (4) (a) (ii) of the Labour Relations Act, 1956, declare the provisions of Government Notices R 2153 of 16 October 1981, R. 1384 of 9 July 1982, R. 2199 of 15 October 1982, R. 1096 of 20 May 1983, R. 1090 of 30 May 1984, R. 509 of 8 March 1985 and R. 17 of 3 January 1986, to be effective from the date of publication of this notice and for the period ending 31 October 1986

M. W. J. LE ROUX,
Director. Manpower.

No. R. 1846 5 September 1986

WET OP ARBEIDSVERHOUDINGE, 1956

MOTORNYWERHEID.—PENSIOENFONDS VIR MOTORWERKERS—VERBETERINGSKENNISGEWING

Die onderstaande verbetering aan Goewermentskennisgewing R. 1725 wat in *Staatskoerant* 10386 van 15 Augustus 1986 verskyn, word hierby vir algemene inligting gepubliseer:

In klousule 1 van die Bylae, vervang subklousule (2) (f) deur die volgende:

“(f) ’n werknemer vir ses maande vanaf die datum waarop hy by die Motornywerheid in diens tree. Met dien verstande dat ’n werkgever na goeëdunke van hierdie uitsluiting kan afsien.”.

No. R. 1846 5 September 1986

LABOUR RELATIONS ACT, 1956

MOTOR INDUSTRY — AUTO WORKERS' PENSION FUND—CORRECTION NOTICE

The following correction to Government Notice R 1725 appearing in *Government Gazette* 10386 of 15 August 1986, is hereby published for general information

In clause 1 of the Schedule, substitute the following for subclause (2) (f):

“(f) any employee for six months from the date on which he begins employment in the Motor Industry. Provided that any employer may in his discretion waive this exclusion.”.

NOU BESKIKBAAR

VERSLAE VAN DIE APPELHOWE VIR KOMMISSARISHOWE

(In boekvorm)
1972-1974 (484 bladsye)
1975-1977 (338 bladsye)

NOW AVAILABLE

REPORTS OF THE APPEAL COURTS FOR COMMISSIONERS' COURTS

(In book form)
1972-1974 (484 pages)
1975-1977 (338 pages)

Selling price (GST excluded)

1972-1974: Local, R2.20; other countries, R10.90; post free
1975-1977: Local, R7.40; other countries, R8.70; post free

2. In the Afrikaanse teks van die Bylae:
- (1) In Afdeling A, klousule 3 (48), vervang die syfer "46" deur die syfer "45".
 - (2) In Afdeling A, klousule 30 (d), vervang die syfer "46" deur die syfer "45".
 - (3) In Afdeling B, klousule 3 (1) (f), vervang die uitdrukking "een-ses-en-veertigste" deur die uitdrukking "een-vyf-en-veertigste".
 - (4) In Afdeling B, in die voorbehoudsbepaling by klousule 5 (4), vervang die syfer "46" deur die syfer "45".

2. In the Afrikaans text of the Schedule.
- (1) In Division A, clause 3 (48), substitute the figure "45" for the figure "46".
 - (2) In Division A, clause 30 (d), substitute the figure "45" for the figure "46".
 - (3) In Division B, clause 3 (1) (f), substitute the expression "een-vyf-en-veertigste" for the expression "een-ses-en-veertigste".
 - (4) In Division B, in the proviso to clause 5 (4), substitute the figure "45" for the figure "46".

No. R. 2042

26 September 1986

WET OP MANNEKRAGOPLEIDING, 1981

MANNEKRAGOPLEIDINGSKOMITEE VIR DIE SUIKERVERVAARDIGINGS- EN RAFFINEERNYWERHEID—WYSIGING VAN LEERVOORWAARDES

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, handelende kragtens artikel 13 van die Wet op Mannekragopleiding, 1981—

- (a) wysig hierby, met ingang van die derde Maandag na die datum van publikasie van hierdie kennisgewing, Goewermentskennisgewing R. 1257 van 14 Junie 1985 deur klousule 3 (1) van die Leervoordes deur die volgende klousule te vervang:

“(1) 'n Werkgewer moet 'n vakleerling besoldiging teen minstens ondergemelde persentasies van die loon wat aan 'n ambagsman betaalbaar is ingevolge enige nywerheidsraadooreenkoms wat op die betrokke ambag en gebied van toepassing is:

4-jaar ambagte	5-jaar ambagte
Eerste jaar: 40%	Eerste jaar: 40%
Tweede jaar: 45%	Tweede jaar: 45%
Derde jaar: 55%	Derde jaar: 55%
Vierde jaar: 100%	Vierde jaar: 70%
	Vyfde jaar: 100%”;

- (b) wysig hierby klousule 9 van die Leervoordes deur die voorgeskrewe opleidingsbylae vir die aangewese ambag van Passer deur die volgende opleidingsbylae te vervang:

No. R. 2042

26 September 1986

MANPOWER TRAINING ACT, 1981

MANPOWER TRAINING COMMITTEE FOR THE SUGAR MANUFACTURING AND REFINING INDUSTRY —AMENDMENT OF CONDITIONS OF APPRENTICESHIP

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, acting in terms of section 13 of the Manpower Training Act, 1981, hereby—

- (a) amend, with effect from the third Monday after the date of publication of this notice, Government Notice R. 1257 of 14 June 1985 by the substitution for clause 3 (1) of the Conditions of the following clause:

“(1) An employer shall remunerate an apprentice at not less than the following percentages of the remuneration payable to an artisan in terms of any industrial council agreement applicable to the relevant trade and area:

4-year trades	5-year trades
First year: 40%	First year: 40%
Second year: 45%	Second year: 45%
Third year: 55%	Third year: 55%
Fourth year: 100%	Fourth year: 70%
	Fifth year: 100%”;

- (b) amend clause 9 of the Conditions by the substitution for the prescribed Training Schedule for the designated trade Fitter of the following Schedule:

“Logboek simbool	Soort werk	Praktiese opleiding	Getal ure aanbeveel vir onderrig in elke soort werk
		7. AMBAG: PASSER (4)	
1.	Veiligheid	Basiese veiligheidsmaatreëls van toepassing in die ambag moet die hele leertyd deur nagekom word, met besondere aandag aan die veilige hantering en versorging van handgereedskap, skadelike en vlambare gasse, vloeistowwe en gasse onder druk, warm en gesmelte metaal, elektriese installasies, masjienbeveiliging, masjien- en drukkluggereedskap, slypwiele, bewegende en oorhoofse masjinerie, en die gebruik van draagbare brandblussers. Behandeling vir elektriese skok	45
2.	Basiese hand- en werkwinkelgereedskap	Die versorging en gebruik van gereedskap Die maak van werkstukke en/of onderdele met gebruikmaking van die tegnieke kap, boor, vyl, ruim, saag, skraap, skroefdraadsny en moerdraadsny Snygereedskap skerpmak, die gebruik van trekkers en perse Die keuse n gebruik van smeermiddels en snymengsels Wiele van slypmasjien bywerk, rond, nagaan en monteer Die gebruik van gasuitrusting vir sny- en verhitingsdoeleindes Elektriese hegswiswerk	450
3.	Afmerkwark	Van tekeninge en/of monsters af afmerk, met gebruikmaking van afmerkgereedskap, bv hoekplate, flesdomkragte, senterponse, verdeelpassers, afmerktafels, gradeboë, liniale, kraspenne, winkelhake, krasblokke en V-blokke Die gebruik van meetinstrumente en meters	180
4.	Tekeninge en sketse .	Tekeninge en/of sketse maak Tekeninge lees en begryp	180
5.	Materiale	Kennis en identifisering van materiale	45
6.	Koppelings.	Die montering, rigting en onderhoud van en foutdiagnosering by verskillende soorte koppelings, bv buigsame, soliede en selfkoppelings	180

LEGALISING PICKETS WOULD LOWER VIOLENCE, SAYS NEW STUDY

116 WEEKLY MAIL 9/10/76

THE legalisation of industrial picketing could play a significant role in lowering the level of violent conflict in South Africa

This is the view of Wits Business School graduates, Clive Napier and Sterling McBride, who conducted a survey of 100 South African industrial pickets in the United Kingdom and other Western countries. But picketing remains outlawed here, despite recommendations for its acceptance by the Wiehahn Commission and the National Manpower Commission

Napier and McBride say South Africans tend to ignore the fact that intimidatory tactics are being used for the same purposes as the picket — to induce co-operation among striking workers. Picketing, as a peaceful measure, could achieve the same effect

By CLAIRE PICKARD-CAMBRIDGE

They describe a picket as a non-violent device to bring moral pressure to bear on strike breakers. This is to dissuade union members from providing "scab" labour, or to prevent the filling of "black legs" (i.e. empty jobs) to replace strikers.

Picketing has been infrequent here, mainly because the authorities have awesome legal powers which can be used against pickets. Such gatherings can be suppressed by the Internal Security Act, the Riotous Assemblies Act, the Trespass Act and Municipal by-laws

The authors say picketing and intimidation are often confused in this country. Because there are no specific provisions for picketing, what might be seen as a real picket in the United States and Britain is seen as intimidation by South African authorities

In many countries the law sets out the organisation of pickets, the relationship between pickets and essential supplies and services, the role of police and limits the number of pickets

But owing to fear of the law, South African strikers have often resorted to intimidation, to reinforce a strike

The authors' interviews with a representative sample of labour and management in the PWV area, revealed much confusion about picketing. Opinion in management ranks ranged from outright rejection to full acceptance

Some said industrial relations needed more time to mature. They felt the divided nature of South African society could cause pickets to escalate into violence

Other managements felt picketing should be permitted, provided conditions were laid down to provide

for a peaceful picket which did not interfere with anyone else's freedom of movement, rather than intimidation and consumer boycotts, was preferred for communicating with a target population

More cautious unions felt picketing should be allowed, but strictly controlled because they were afraid of violence. Others said moral persuasion was already being used outside the workplace and the institutionalisation of picketing would form part of the democratic process

Napier and McBride suggest certain preconditions be met to ensure the viability of picketing in South Africa. Necessary amendments would have to be made to accommodate picketing in the Labour Relations Act, and incongruencies between this Act and other restrictive laws removed

They say the Act should define picketing and specify the levels (such as industrial council or plant level) at which picketing rules may be

negotiated. Certain parties should be empowered to impose sanctions for non-compliance with rules

For picketing to become a viable device during a strike, there must be acceptance by all parties on picketing guidelines and procedures. And a strike should not be called off by a few individuals

Should the picket line become uncontrollable or violent, the normal laws of the country should apply in seeking redress for injuries and damage to property

"The industrial environment has become a battleground for both industrial conflict and greater societal conflict. By recognising the right of the workforce to freedom of expression through the ordinary picket, this could surely play a significant role in lowering the level of violent conflict prevalent in South Africa today," the authors say

2. In the Afrikaans text of the Schedule, in clause 3, paragraph (a), insert the following after "Winkelkontroleur..... 172,50":
 "Snyer 85,00"

2. In die Afrikaanse teks van die Bylae, in klousule 3, paragraaf (a), voeg die volgende in na "Winkelkontroleur..... 172,50":
 "Snyer... 85,00"

No. R. 2256 **31 October 1986**
LABOUR RELATIONS ACT, 1956
BUILDING INDUSTRY, EAST CAPE —AMENDMENT OF MAIN AGREEMENT

No. R. 2256 **31 Oktober 1986**
WET OP ARBEIDSVERHOUDINGE, 1956
BOUNYWERHEID, OOS-KAAP.—WYSIGING VAN HOOFOORENKOMS

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, hereby—

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, verklaar hierby—

- (a) in terms of section 48 (1) (a) of the Labour Relations Act, 1956, declare that the provisions of the Agreement (hereinafter referred to as the Amending Agreement) which appears in the Schedule hereto and which relates to the Undertaking, Industry, Trade or Occupation referred to in the heading to this notice, shall be binding, with effect from the second Monday after the date of publication of this notice and for the period ending 31 March 1987, upon the employers' organisations and the trade unions which entered into the Amending Agreement and upon the employers and employees who are members of the said organisations or unions; and
- (b) in terms of section 48 (1) (b) of the said Act, declare that the provisions of the Amending Agreement, excluding those contained in clauses 1 (1) (a), 2 and 4 of Part I and clauses 1 (1) (a), 2 and 4 of Part II shall be binding, with effect from the second Monday after the date of publication of this notice and for the period ending 31 March 1987, upon all employers and employees, other than those referred to in paragraph (a) of this notice, who are engaged or employed in the said Undertaking, Industry, Trade or Occupation in the areas specified in clause 1 of the Amending Agreement.

- (a) kragtens artikel 48 (1) (a) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van die Ooreenkoms (hierna die Wysigingsooreenkoms genoem) wat in die Bylae hiervan verskyn en betrekking het op die Onderneming, Nywerheid, Bedryf of Beroep in die opskrif by hierdie kennisgewing vermeld, met ingang van die tweede Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 31 Maart 1987 eindig, bindend is vir die werkgewersorganisasies en die vakverenigings wat die Wysigingsooreenkoms aangegaan het en vir die werkgewers en werknemers wat lede van genoemde organisasies of verenigings is; en
- (b) kragtens artikel 48 (1) (b) van genoemde Wet, dat die bepalings van die Wysigingsooreenkoms, uitgesonderd dié vervat in klousules 1 (1) (a), 2 en 4 van Deel I en klousules 1 (1) (a), 2 en 4 van Deel II met ingang van die tweede Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 31 Maart 1987 eindig, bindend is vir alle ander werkgewers en werknemers as dié genoem in paragraaf (a) van hierdie kennisgewing wat betrokke is by of in diens is in genoemde Onderneming, Nywerheid, Bedryf of Beroep in die gebiede in klousule 1 van die Wysigingsooreenkoms gespesifiseer.

P. T. C. DU PLESSIS,
 Minister of Manpower.

P. T. C. DU PLESSIS,
 Minister van Mannekrag

SCHEDULE

INDUSTRIAL COUNCIL FOR THE BUILDING INDUSTRY, EAST CAPE AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1956, made and entered into by and between the

Master Builders' and Allied Trades Association, East Cape
Electrical Contracting and Allied Industries Association (Eastern Cape)

and the

Electrical Contractors' Association (South Africa)

(hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

Amalgamated Society of Woodworkers of South Africa
Amalgamated Union of Building Trade Workers of South Africa
South African Electrical Workers' Association
Electrical and Allied Trade Workers' Union of South Africa

and the

Operative Plumbers' Association of Port Elizabeth

(hereinafter referred to as the "employees" or the "trade unions"), of the other part,

being the parties to the Industrial Council for the Building Industry, East Cape,

to amend the Agreement published under Government Notice R 2192 of 5 October 1984 (hereinafter referred to as the Re-enacting Agreement), as amended and renewed by Government Notices R 800 of 12 April 1985, R 1973 of 6 September 1985, R 462 of 14 March 1986 and R 557 of 27 March 1986

BYLAE

NYWERHEIDSRAAD VIR DIE BOUNYWERHEID, OOS-KAAP OOREENKOMS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1956, gesluit deur en aangegaan tussen die

Master Builders' and Allied Trades Association, East Cape
Electrical Contracting and Allied Industries Association (Eastern Cape)

en die

Electrical Contractors' Association (South Africa)

(hierna die "werkgewers" of die "werkgewersorganisasies" genoem), aan die een kant, en die

Amalgamated Society of Woodworkers of South Africa
Amalgamated Union of Building Trade Workers of South Africa
South African Electrical Workers' Association
Electrical and Allied Trade Workers' Union of South Africa

en die

Operative Plumbers' Association of Port Elizabeth

(hierna die "werknemers" of the "vakverenigings" genoem), aan die anderkant

wat die partye is by die Nywerheidsraad vir die Bounywerheid, Oos-Kaap, om die Ooreenkoms gepubliseer by Goewermentskennisgewing R 2192 van 5 Oktober 1984 (hierna die Herbekragtigingsooreenkoms genoem), soos gewysig en hernieu by Goewermentskennisgewings R 800 van 12 April 1985, R 1973 van 6 September 1985, R 462 van 14 Maart 1986 en R 557 van 27 Maart 1986, te wysig

PART I**1. SCOPE OF APPLICATION OF AGREEMENT**

(1) The terms of this Agreement shall be observed in the Building Industry—

(a) by all employers and employees who are members of the employers' organisations and the trade unions, respectively,

(b) in the Magisterial Districts of Alexandria, Bathurst, Beaufort West, Calitzdorp, George, Humansdorp, Joubertina, Ladismith, Knysna, Mossel Bay, Oudtshoorn, Port Elizabeth (excluding that portion which, prior to the publication of Government Notice R 1974 of 26 September 1980, fell within the Magisterial District of Hankey), Riversdale, Uitenhage, Uniondale and in that portion of the Magisterial District of Hankey which, prior to 1 November 1963, fell within the Magisterial District of Port Elizabeth

(2) Notwithstanding the provisions of subclause (1) (a), the terms of this Agreement shall—

(a) only apply to those classes of employees for whom wages are prescribed in this Agreement and to learners;

(b) apply to apprentices and trainees only in so far as they are not inconsistent with the provisions of the Manpower Training Act, 1981, or any conditions prescribed or any notice served in terms thereof;

(c) apply to labour-only contractors, working partners and working directors;

(d) not apply to university students and graduates in building science and construction supervisors, construction surveyors and other such persons doing practical work in the completion of their academic training,

(e) not apply to clerical employees or to employees engaged in administrative duties or to any member of an administrative staff

(3) Notwithstanding the provisions of subclause (1) (a), the provisions of clauses 12, 13, 15 (2) and (3), 27 and 40 of Part I of the Agreement published under Government Notice R 2217 of 30 October 1980, as amended, and re-enacted shall not apply to Areas B, C and D.

2. CLAUSE 3.—SPECIAL PROVISIONS

Substitute the following for clause 3.

“3. SPECIAL PROVISIONS

The provisions contained in clauses 27, 29, 33 (as amended by clause 9 of the Re-enacting Agreement, clause 5 of Government Notice R 1973 of 6 September 1985, clause 5 of Government Notice R 557 of 27 March 1986 and clause 4 hereunder), 34 and 43 of Part I of the Agreement published under Government Notice R 2217 of 31 October 1980, as amended by Government Notices R 1435 of 10 July 1981, R 2284 of 28 October 1981, R 1865 of 3 September 1982, R 2206 of 7 October 1983 (hereinafter referred to as the “Former Agreement”) and as re-enacted by Government Notice R 2192 of 5 October 1984 and renewed by Government Notice R 800 of 12 April 1985 (as corrected by Government Notice R 881 of 19 April 1985), amended by Government Notice R 1973 of 6 September 1985, renewed by Government Notice R 462 of 14 March 1986 and amended by Government Notice R 557 of 27 March 1986, shall apply to employers and employees”.

3. CLAUSE 4.—GENERAL PROVISIONS

Substitute the following for clause 4

“4. GENERAL PROVISIONS

The provisions contained in clauses 3 (as amended by clause 5 of the Re-enacting Agreement), 4 to 7 inclusive, 8 (as amended by clause 6 of the Re-enacting Agreement, clause 4 of Government Notice R 1973 of 6 September 1985 and clause 4 of Government Notice R 557 of 27 March 1986), 9, 10 and 11 (as amended by clauses 7 and 8 of the Re-enacting Agreement), 12 to 26 inclusive, 28, 30 to 32 inclusive, 35, 36, 37 (as amended by clause 10 of the Re-enacting Agreement, clause 6 of Government Notice R 1973 of 6 September 1985 and clause 6 of Government Notice R 557 of 27 March 1986), 38 (as amended by clause 5 hereunder), 39 (as amended by clause 11 of Re-enacting Agreement), 40 to 42 inclusive, 44 and 45 of Part I of the Former Agreement shall apply to employers and employees.”

4. CLAUSE 33 OF PART I OF THE FORMER AGREEMENT.—EMPLOYER ORGANISATION LEVY

In subclause (1) (a), substitute the figure “27c” for the figure “18c”

5. CLAUSE 38 OF PART I OF THE FORMER AGREEMENT.—BUILDING INDUSTRIES RECRUITMENT AND TRAINING FUND

Substitute the following for clause 38

“38. BUILDING INDUSTRY TRAINING FUND

(1) The Council having been advised of the establishment of the Building Industry Training Fund (inaugurated by the Building Industries Federation (South Africa)) (hereinafter referred to as the “Training Fund”), hereby authorises, for the purpose of implementing the objects of the

DEEL I**1. TOEPASSINGSBESTEK VAN OOREENKOMS**

(1) Hierdie Ooreenkoms moet in die Bounywerheid nagekom word—

(a) deur alle werkgewers en werknemers wat lede is van onderskeidelik die werkgewersorganisasies en die vakverenigings,

(b) in die landdrostdistrikte Alexandria, Bathurst, Beaufort-Wes, Calitzdorp, George, Humansdorp, Joubertina, Ladismith, Knysna, Mosselbaai, Oudtshoorn, Port Elizabeth (uitgesonderd daardie gedeelte wat voor die publikasie van Goewermentskennisgewing R 1974 van 26 September 1980 binne die landdrostdistrik Hankey geval het), Riversdal, Uitenhage, Uniondale en in daardie gedeelte van die landdrostdistrik Hankey wat voor 1 November 1963 binne die landdrostdistrik Port Elizabeth geval het

(2) Ondanks subklousule (1) (a), is hierdie Ooreenkoms—

(a) van toepassing slegs op dié klasse werknemers vir wie lone in hierdie Ooreenkoms voorgeskryf word en op leerlinge,

(b) van toepassing op vakleerlinge en kwekelinge slegs vir sover dit nie strydig is met die Wet op Mannekragopleiding, 1981, of met voorwaardes of kennisgewings wat daarkragtens voorgeskryf of bestel is nie,

(c) van toepassing op slegs-arbeid-kontrakteurs, werkende vennote en werkende direkteurs,

(d) nie van toepassing nie op universiteitstudente en gegraduatees in die bouwetenskap en konstruksietoetsinghouers, konstruksieopmeters en ander persone wat besig is met praktiese werk ter voltooiing van hul akademiese opleiding,

(e) nie van toepassing nie op klerke of op werknemers wat administratiewe pligte verrig of op 'n lid van 'n administratiewe personeel

(3) Ondanks subklousule (1) (a) is klousules 12, 13, 15 (2) en (3) 27 en 40 van Deel I van die Ooreenkoms gepubliseer by Goewermentskennisgewing R 2217 van 30 Oktober 1980, soos gewysig en herbekragtig, nie van toepassing in Gebiede B, C en D nie

2. KLOUSULE 3.—SPESIALE BEPALINGS

Vervang klousule 3 deur die volgende

“3. SPESIALE BEPALINGS

Klousules 27, 29, 33 (soos gewysig by klousule 9 van die Herbekragtigingsooreenkoms, klousule 5 van Goewermentskennisgewing R 1973 van 6 September 1985, klousule 5 van Goewermentskennisgewing R 557 van 27 Maart 1986 en klousule 4 hieronder), 34 en 43 van Deel I van die Ooreenkoms gepubliseer by Goewermentskennisgewing R 2217 van 31 Oktober 1980, soos gewysig by Goewermentskennisgewings R 1435 van 10 Julie 1981, R 2284 van 28 Oktober 1981, R 1865 van 3 September 1982, R 2206 van 7 Oktober 1983 (hierna die “Vorige Ooreenkoms” genoem), en soos herbekragtig by Goewermentskennisgewing R 2192 van 5 Oktober 1984 en hernieu by Goewermentskennisgewing R 800 van 12 April 1985 (soos verbeter by Goewermentskennisgewing R 881 van 19 April 1985), gewysig by Goewermentskennisgewing R 1973 van 6 September 1985, hernieu by Goewermentskennisgewing R 462 van 14 Maart 1986 en gewysig by Goewermentskennisgewing R 557 van 27 Maart 1986, is van toepassing op werkgewers en werknemers”

3. KLOUSULE 4.—ALGEMENE BEPALINGS

Vervang klousule 4 deur die volgende

“4. ALGEMENE BEPALINGS

Klousules 3 (soos gewysig by klousule 5 van die Herbekragtigingsooreenkoms), 4 tot en met 7, 8 (soos gewysig by klousule 6 van die Herbekragtigingsooreenkoms, klousule 4 van Goewermentskennisgewing R 1973 van 6 September 1985 en klousule 4 van Goewermentskennisgewing R 557 van 27 Maart 1986), 9, 10 en 11 (soos gewysig by klousules 7 en 8 van die Herbekragtigingsooreenkoms), 12 tot en met 26, 28, 30 tot en met 32, 35, 36, 37 (soos gewysig by klousule 10 van die Herbekragtigingsooreenkoms, klousule 6 van Goewermentskennisgewing R 1973 van 6 September 1985 en klousule 6 van Goewermentskennisgewing R 557 van 27 Maart 1986), 38 (soos gewysig by klousule 5 hieronder), 39 (soos gewysig by klousule 11 van die Herbekragtigingsooreenkoms), 40 tot en met 42, 44 en 45 van Deel I van die Vorige Ooreenkoms is van toepassing op werkgewers en werknemers”

4. KLOUSULE 33 VAN DEEL I VAN DIE VORIGE OOREENKOMS —HEFFING VIR WERKGEWERSORGANISASIE

In subklousule (1) (a), vervang die syfer “18c” deur die syfer “27c”

5. KLOUSULE 38 VAN DEEL I VAN DIE VORIGE OOREENKOMS.—WERWINGS- EN OPLEIDINGSFONDS VAN DIE BOUNYWERHEID

Vervang klousule 38 deur die volgende

“38. OPLEIDINGSFONDS VAN DIE BOUNYWERHEID

(1) Nademaal die Raad verwittig is van die instelling van die Opleidingsfonds van die Bounywerheid (ingestel deur die Building Industries Federation (South Africa)) (hierna die “Opleidingsfonds” genoem), magtig hy hierby, vir die doel om uitvoering te gee aan die doelstellings van die

Building Industry Training Scheme set forth in clause 4 of the Scheme in terms of the Manpower Training Act, 1981, published under Government Notice R 1886 of 31 August 1984, the collection of contributions in accordance with the procedure stated hereunder

(2) Every employer shall pay to the Secretary of the Council the amount which he is required to contribute to the Training Fund in terms of clause 7 (3) of the said Government Notice

(3) The amounts paid by employers in terms of subclause (2) less a collection fee of 2½ per cent, shall be paid by the Council from time to time to the Training Fund."

PART II

SPECIAL PROVISIONS APPLICABLE TO THE TIMBER TRADE IN THE BUILDING INDUSTRY

1. SCOPE OF APPLICATION

(1) The terms of Part II of this Agreement shall be observed in the Timber Trade of the Building Industry—

- (a) by all employers and employees who are members of the employers' organisations and the trade unions, respectively,
- (b) in the Magisterial Districts of Alexandria, Bathurst, Beaufort West, Calitzdorp, George, Humansdorp, Joubertina, Ladismith, Knysna, Mossel Bay, Oudtshoorn, Port Elizabeth (excluding that portion which, prior to the publication of Government Notice R 1974 of 26 September 1980, fell within the Magisterial District of Hankey), Riversdale, Uitenhage, Uniondale and in that portion of the Magisterial District of Hankey which, prior to 1 November 1963, fell within the Magisterial District of Port Elizabeth

2. CLAUSE 2.—SPECIAL PROVISIONS

Substitute the following for clause 2

"2. SPECIAL PROVISIONS

The provisions contained in clauses 2 (2), 13 (as amended by clause 9 of the Re-enacting Agreement and clause 7 of Government Notice R 557 of 27 March 1986 and clause 4 hereunder) to 15 (1) inclusive of Part II of the Former Agreement shall apply to employers and employees "

3. CLAUSE 3.—GENERAL PROVISIONS

Substitute the following for clause 3.

"3. GENERAL PROVISIONS

The provisions contained in clauses 1 (2), 2 (1), 3 (as amended by clause 4 of the Re-enacting Agreement), 4 (as amended by clause 5 of the Re-enacting Agreement, clause 4 of Government Notice R 1973 of 6 September 1985 and clause 4 of Government Notice R 557 of 27 March 1986), 5, 6 (as amended by clause 6 of the Re-enacting Agreement), 7 (as amended by clause 7 of the Re-enacting Agreement, clause 5 of Government Notice R 1973 of 6 September 1985 and clause 5 of Government Notice R 557 of 27 March 1986), 8, 9, 10 (as amended by clause 8 of the Re-enacting Agreement and clause 6 of Government Notice R 1973 of 6 September 1985), 11, 12 and 15 (2) to 18 of Part II of the Former Agreement shall apply to employers and employees "

4. CLAUSE 13 OF PART II OF THE FORMER AGREEMENT.—EMPLOYERS' ORGANISATION LEVY

In subclause (1), substitute the figure "27c" for the figure "18c"

Signed at Port Elizabeth, on behalf of the parties, this 30th day of May 1986.

E. A. CILLIERS,
Chairman of the Council.

J. P. ERASMUS,
Vice-Chairman of the Council

V. H. LE ROUX,
General Secretary of the Council.

No. R. 2266

31 October 1986

LABOUR RELATIONS ACT, 1956

INDUSTRIAL COUNCIL FOR THE MOTOR TRANSPORT UNDERTAKING (GOODS).—AMENDMENT OF AGREEMENT

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, hereby—

- (a) in terms of section 48 (1) (a) of the Labour Relations Act, 1956, declare that the provisions of the Agreement (hereinafter referred to as the Amending

Opleidingskema vir die Bounywerheid uiteengesit in klousule 4 van die Skema kragtens die Wet op Mannekragopleiding, 1981, gepubliseer by Goewermentskennisgewing R 1886 van 31 Augustus 1984, die invordering van bydraes ooreenkomstig die prosedure hieronder uiteengesit

(2) Elke werkgewer moet die bedrag wat hy ingevolge klousule 7 (3) van genoemde Goewermentskennisgewing tot die Opleidingsfonds moet bydra, aan die Sekretaris van die Raad betaal

(3) Die bedrag wat ingevolge subklousule (2) deur werkgewers betaal word, min invorderingskoste van 2½ persent, moet deur die Raad van tyd tot tyd aan die Opleidingsfonds betaal word "

DEEL II

SPESIALE BEPALINGS WAT OP DIE HOUTNYWERHEID IN DIE BOUNYWERHEID VAN TOEPASSING IS

1. TOEPASSINGSBESTEK

(1) Deel II van hierdie Ooreenkoms moet in die Houtnywerheid van die Bounywerheid nagekom word—

- (a) deur alle werkgewers en werknemers wat lede is van onderskeidelik die werkgewersorganisasies en die vakverenigings,
- (b) in die landdrostdistrikte Alexandria, Bathurst, Beaufort-Wes, Calitzdorp, George, Humansdorp, Joubertina, Ladismith, Knysna, Mosselbaai, Oudtshoorn, Port Elizabeth (uitgesonderd daardie gedeelte wat voor die publikasie van Goewermentskennisgewing R 1974 van 26 September 1980 binne die landdrostdistrik Hankey geval het), Riversdal, Uitenhage, Uniondale en in daardie gedeelte van die landdrostdistrik Hankey wat voor 1 November 1963 binne die landdrostdistrik Port Elizabeth geval het

2. KLOUSULE 2.—SPESIALE BEPALINGS

Vervang klousule 2 deur die volgende

"2. SPESIALE BEPALINGS

Klousules 2 (2), 13 (soos gewysig by klousule 9 van die herbekragtigingsooreenkoms en klousule 7 van Goewermentskennisgewing R 557 van 27 Maart 1986 en klousule 4 hieronder) tot en met 15 (1) van Deel II van die vorige Ooreenkoms is van toepassing op werkgewers en werknemers "

3. KLOUSULE 3.—ALGEMENE BEPALINGS

Vervang klousule 3 deur die volgende:

"3. ALGEMENE BEPALINGS

Klousules 1 (2), 2 (1), 3 (soos gewysig by klousule 4 van die Herbekragtigingsooreenkoms), 4 (soos gewysig by klousule 5 van die Herbekragtigingsooreenkoms, klousule 4 van Goewermentskennisgewing R 1973 van 6 September 1985 en klousule 4 van Goewermentskennisgewing R 557 van 27 Maart 1986), 5, 6 (soos gewysig by klousule 6 van die Herbekragtigingsooreenkoms), 7 (soos gewysig by klousule 7 van die Herbekragtigingsooreenkoms, klousule 5 van Goewermentskennisgewing R 1973 van 6 September 1985 en klousule 5 van Goewermentskennisgewing R 557 van 27 Maart 1986), 8, 9, 10 (soos gewysig by klousule 8 van die Herbekragtigingsooreenkoms en klousule 6 van Goewermentskennisgewing R 1973 van 6 September 1985), 11, 12 en 15 (2) tot en met 18 van Deel II van die Vorige Ooreenkoms is van toepassing op werkgewers en werknemers "

4. KLOUSULE 13 VAN DEEL II VAN DIE VORIGE OOREENKOMS.—HEFFING VIR WERKGEWERSORGANISASIE

In subklousule (1), vervang die syfer "18c" deur die syfer "27c"

Namens die partye op hede die 30ste dag van Mei 1986 te Port Elizabeth onderteken

E. A. CILLIERS,
Voorsitter van die Raad

J. P. ERASMUS,
Ondervoorsitter van die Raad

V. H. LE ROUX,
Hoofsekretaris van die Raad

No. R. 2266

31 Oktober 1986

WET OP ARBEIDSVERHOUDINGE, 1956

NYWERHEIDSRAAD VIR DIE MOTORVERVOER-ONDERNEMING (GOEDERE).—WYSIGING VAN OOREENKOMS

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, verklaar hierby—

- (a) kragtens artikel 48 (1) (a) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalinge van die Ooreenkoms (hierna die Wysigingsooreenkoms genoem) wat

BYLAE

I Tarief Item	II Tariefpos en Beskrywing	III Skaal van Reg	
		Aksyns	Doeane
128 65	Deur tariefpos No 92 12 deur die volgende te vervang "92 12 Grammofoonplate en ander klank- of dergelike opnames (uitgesonderd opnames vir die leer van tale, godsdienstige opnames wat hoofsaaklik 'n weergawe van spraak is, opnames, wat nie rekenaar- of videospelletjies is nie, uitkenbaar as vir gebruik met rekenaars of dergelike masjiene vir verwerking van data en opnames gewoonlik bekend as boeke-op-band), bereide bande, drade, stroke en soortgelyke artikels van 'n soort gewoonlik vir klank- of dergelike opname gebruik (uitgesonderd media vir outomatiese dataverwerkmasjiene)	35%	35%"

Opmerking —Die uitwerking van hierdie kennisgewing is dat opnames gewoonlik bekend as boeke-op-band nie meer sinsbare produkte is nie

No. R. 2262

31 October 1986

CUSTOMS AND EXCISE ACT, 1964

AMENDMENT OF SCHEDULE 4 (No. 4/404)

Under section 75 of the Customs and Excise Act, 1964, Schedule 4 to the said Act is hereby amended to the extent set out in the Schedule hereto

K. D. S. DURR,
Deputy Minister of Finance and of Trade
and Industry.

No. R. 2262

31 Oktober 1986

DOEANE- EN AKSYNSWET, 1964

WYSIGING VAN BYLAE 4 (No. 4/404)

Kragtens artikel 75 van die Doeane- en Aksynswet, 1964, word Bylae 4 by genoemde Wet hiermee gewysig in die mate in die Bylae hiervan aangetoon.

K. D. S. DURR,
Adjunk-minister van Finansies en van Handel
en Nywerheid

SCHEDULE

I Item	II Tariff Heading and Description	III Extent of Rebate
411 00	By the insertion after tariff heading No 85 01 of the following "85.15 Surveillance systems, incorporating a thermal imaging camera, monitor, power supply unit, control console and telemetry transmitter and receiver	Full duty"

Note —Provision is made for a rebate of the full duty on surveillance systems incorporating a thermal imaging camera, monitor, power supply unit, control console and telemetry transmitter and receiver

BYLAE

I Item	II Tariefpos en Beskrywing	III Mate van Korting
411.00	Deur na tariefpos No 85 01 die volgende in te voeg "85 15 Waarnemingstelsels, wat 'n termiese beeldkamera, monitor, kragtoevoereenheid, beheerkonsole en telemetriese sender en ontvanger inkoopereer	Volle reg"

Opmerking.—Voorsiening word gemaak vir 'n volle korting op reg op waarnemingstelsels, wat 'n termiese beeldkamera, monitor, kragtoevoereenheid, beheerkonsole en telemetriese sender en ontvanger inkoopereer

DEPARTMENT OF MANPOWER

No. R. 2243 166 31 October 1986

LABOUR RELATIONS ACT, 1956

TOBACCO MANUFACTURING INDUSTRY (RUSTENBURG) —AMENDMENT OF AGREEMENT

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, hereby—

- (a) in terms of section 48 (1) (a) of the Labour Relations Act, 1956, declare that the provisions of the Agreement (hereinafter referred to as the Amending Agreement) which appears in the Schedule hereto and which relates to the Undertaking, Industry, Trade or Occupation referred to in the heading to this notice, shall be binding, with effect from the second Monday after the date of publication of this notice and for the

DEPARTEMENT VAN MANNEKRAG

No. R. 2243 31 Oktober 1986

WET OP ARBEIDSVERHOUDINGE, 1956

TABAKNYWERHEID (RUSTENBURG).—WYSIGING VAN OOREENKOMS

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, verklaar hierby—

- (a) kragtens artikel 48 (1) (a) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van die Ooreenkoms (hierna die Wysigingsooreenkoms genoem) wat in die Bylae hiervan verskyn en betrekking het op die Onderneming, Nywerheid, Bedryf of Beroep in die opskrif by hierdie kennisgewing vermeld, met ingang van die tweede Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 31

(ii) this shall not affect increases applicable to employees who have completed 12 months' service with the employing company and who earn in excess of the prescribed wages, where such increases have been negotiated at plant level and ratified and recorded by the Industrial Council.

	Per week R
Foreman	313,50
Assistant foreman.....	146,10
Leading hand/Production technician	286,80
Artisan	260,85
Boiler plant supervisor	164,90
Quality assurance—shift controller	168,60
Quality assurance—assistant shift controller	153,15
Quality inspector—	
during first year of experience.....	129,15
during second year of experience	132,90
thereafter	139,30
Supervisor (cigarette manufacturing)—	
during first year of experience	129,15
during second year of experience	132,90
thereafter	139,30
Supervisor (pipe tobacco).....	115,05
Examiner, unqualified—	
during first six months of experience	96,55
during second six months of experience	102,85
Examiner, qualified.. ..	111,15
Sectionman, unqualified—	
during first year of experience	129,15
during second year of experience	137,95
during third year of experience.....	151,75
Sectionman, qualified	168,60
Senior sectionman	185,35
Machine minder, unqualified—	
during first year of experience	123,65
during second year of experience	130,40
during third year of experience.....	140,45
Machine minder, qualified	153,15
Security officer, A and B	121,65
Groundsman	117,65
Factory clerical employee, despatch clerk, receiving clerk and storeman, unqualified—	
during first year of experience	99,35
during second year of experience	103,10
during third year of experience	107,20
during fourth year of experience	111,90
Factory clerical employee, despatch clerk, receiving clerk and storeman, qualified	118,90
Stores attendant, unqualified—	
during first three months of experience	94,35
during next six months of experience	97,20
during next six months of experience	100,60
during next six months of experience	104,35
during next three months of experience	108,75
Stores attendant, qualified	113,70
Motor vehicle driver of—	
cars and station wagons	107,35
vans and lorries with an unladen mass of—	
up to 1 362 kg	107,35
over 1 362 kg and up to 2 723 kg	112,45
over 2 724 kg and up to 3 632 kg	116,30
over 3 632 kg	120,40
Part-time motor vehicle driver	100,90
Canteen supervisor	107,35
Handyman—	
during first three months experience	96,55
during next three months of experience	98,45
during next three months of experience	100,95
thereafter	104,70
Chargehand	104,70
Team leader—	
of Grade IA employees	109,90
of Grade IB employees	107,35
of Grade II employees	102,15
of Grade III employees and labourers	98,35
Grade IA employee, unqualified—	
during first three months of experience	94,35
during next six months of experience	96,85
during next six months of experience	99,70
during next six months of experience	102,50
during next three months of experience	105,35

(ii) verhogings van toepassing op werknemers wat 12 maande diens by die werkgewersmaatskappy voltooi het en wat meer as die voorgeskrewe lone verdien, waar sodanige verhogings op fabrieksvlak beding en deur die Nywerheidsraad bekragtig en aangeteken is nie hierdeur geraak word nie

	Per week R
Voorman	313,50
Assistent-voorman	146,10
Leierwerksman/Produksietegnikus	286,80
Ambagsman	260,85
Ketelinstallasie-toesighouer	164,90
Skofkontroleur (gehalteversekering)	168,60
Assistent-skofkontroleur (gehalteversekering)	153,15
Gehalte-inspekteur—	
gedurende eerste jaar ondervinding	129,15
gedurende tweede jaar ondervinding	132,90
daarna	139,30
Toesighouer (sigaretvervaardiging)—	
gedurende eerste jaar ondervinding	129,15
gedurende tweede jaar ondervinding	132,90
daarna	139,30
Toesighouer (pyptabak)	115,05
Ondersoeker, ongekwalifiseer—	
gedurende eerste ses maande ondervinding	96,55
gedurende tweede ses maande ondervinding	102,85
Ondersoeker, gekwalifiseer	111,15
Seksieman, ongekwalifiseer—	
gedurende eerste jaar ondervinding	129,15
gedurende tweede jaar ondervinding	137,95
gedurende derde jaar ondervinding	151,75
Seksieman, gekwalifiseer	168,60
Senior seksieman	185,35
Masjienbediener, ongekwalifiseer—	
gedurende eerste jaar ondervinding	123,65
gedurende tweede jaar ondervinding	130,40
gedurende derde jaar ondervinding	140,45
Masjienbediener, gekwalifiseer	153,15
Veiligheidsbeampte, A en B	121,65
Terreinopsigter	117,65
Fabrieksklerk, versendingsklerk, ontvangsklerk en magazynman, ongekwalifiseer—	
gedurende eerste jaar ondervinding	99,35
gedurende tweede jaar ondervinding	103,10
gedurende derde jaar ondervinding	107,20
gedurende vierde jaar ondervinding	111,90
Fabrieksklerk, versendingsklerk, ontvangsklerk en magazynman, gekwalifiseer	118,90
Voorraadbediener, ongekwalifiseer—	
gedurende eerste drie maande ondervinding	94,35
gedurende volgende ses maande ondervinding	97,20
gedurende volgende ses maande ondervinding	100,60
gedurende volgende ses maande ondervinding	104,35
gedurende volgende drie maande ondervinding	108,75
Voorraadbediener, gekwalifiseer	113,70
Motorvoertuigdrywer van—	
motorkarre en stasiewaens	107,35
bestel- en vragwaens met 'n onbelaste massa van hoogstens 1 362 kg	107,35
meer as 1 362 kg maar hoogstens 2 724 kg	112,45
meer as 2 724 kg maar hoogstens 3 632 kg	116,30
meer as 3 632 kg	120,40
Deeltydse motorvoertuigdrywer	100,90
Eethuistoetsighouer	107,35
Faktotum—	
gedurende eerste drie maande ondervinding	96,55
gedurende volgende drie maande ondervinding	98,45
gedurende volgende drie maande ondervinding	100,95
daarna	104,70
Onderbaas	104,70
Spanleier—	
van werknemers graad IA	109,90
van werknemers graad IB	107,35
van werknemers graad II	102,15
van werknemers graad III en arbeiders	98,35
Werknemer graad IA, ongekwalifiseer—	
gedurende eerste drie maande ondervinding	94,35
gedurende volgende ses maande ondervinding	96,85
gedurende volgende ses maande ondervinding	99,70
gedurende volgende ses maande ondervinding	102,50
gedurende volgende drie maande ondervinding	105,35

	Per week R
Grade IA employee, qualified	108,60
Grade IB employee, unqualified—	
during first three months of experience ...	94,35
during next six months of experience	96,55
during next six months of experience	98,70
during next six months of experience	100,95
during next three months of experience	103,10
Grade IB employee, qualified	106,00
Tobacco packer, unqualified—	
during first three months of experience ...	94,35
during next three months of experience	96,20
during next three months of experience	98,45
during next three months of experience	100,60
Tobacco packer, qualified	103,45
Grade II employee, unqualified—	
during first six months of experience	94,35
during next six months of experience	96,55
Grade II employee, qualified	99,60
Watchman	97,00
Grade III employee	95,70
Labourer	94,35
Employee not elsewhere specified in this Agreement	99,60"

4. CLAUSE 7.—ANNUAL LEAVE

In subclause (3), substitute the following for paragraphs (a) (b) and (c)

- who has been in his employ for a continuous period of five years or more, four weeks' wages based on actual earnings at the time,
- with less than five years' continuous service engaged prior to 15 January of the current year, 2,9 weeks' wages at the actual rate being paid at the time,
- engaged after 15 January of the current year, one twelfth of 2,9 weeks' wages at the actual rate being paid at the time in respect of each calendar month of service, calculated from the first day of the month nearest to the date of engagement and to include the month of December"

5. CLAUSE 16.—COUNCIL FUNDS

Substitute the following for paragraphs (a) (b) and (c).

- "On the first pay-day after this Agreement comes into operation and on each pay-day thereafter, every employee shall contribute an amount of 20 cents per week,
- the employer shall contribute 20 cents per week in respect of each of his employees,
- in the case of monthly paid employees contributions referred to in paragraphs (a) and (b) shall be 86 cents per month."

6. CLAUSE 17.—SICK BENEFIT FUND

Substitute the following for subclause (1) (a) (i) and (ii)

- "Weekly-paid employees. R1,20 per week,
- monthly-paid employees. R5,20 per month "

Signed at Rustenburg, on behalf of the parties, this 4th day of April 1986

L. J. ROELOFSE,
Chairman of the Council.

C. DU PREEZ,
Representative for both trade union parties.

H. J. VAN REENEN,
Secretary of the Council



No. R. 2255

31 October 1986

CORRECTION NOTICE

MEAT TRADE, EAST LONDON

The following corrections to Government Notice R. 2083 appearing in *Government Gazette* 10465 of 26 September 1986, are hereby published for general information:

- In the English text of the Schedule, in clause 3, paragraph (a), insert the following after "Shop Controller 172,50".
"Cutter 85,00".

	Per week R
Werknemer graad IA, gekwalifiseer	108,60
Werknemer graad IB, ongekwalifiseer—	
gedurende eerste drie maande ondervinding	94,35
gedurende volgende ses maande ondervinding	96,55
gedurende volgende ses maande ondervinding	98,70
gedurende volgende ses maande ondervinding	100,95
gedurende volgende drie maande ondervinding	103,10
Werknemer graad IB, gekwalifiseer	106,00
Tabakverpakker, ongekwalifiseer—	
gedurende eerste drie maande ondervinding	94,35
gedurende volgende drie maande ondervinding	96,20
gedurende volgende drie maande ondervinding	98,45
gedurende volgende drie maande ondervinding	100,60
Tabakverpakker, gekwalifiseer	103,45
Werknemer graad II, ongekwalifiseer—	
gedurende eerste ses maande ondervinding	94,35
gedurende volgende ses maande ondervinding	96,55
Werknemer graad II gekwalifiseer	99,60
Wag	97,00
Werknemer graad III	95,70
Arbeider	94,35
Werknemers nie elders in hierdie Ooreenkoms vermeld nie ...	99,60"

4. KLOUSULE 7.—JAARLIKSE VERLOF

In subklousule (3), vervang paragrawe (a) (b) en (c) deur die volgende

- wat 'n ononderbroke tydperk van vyfjaar of langer by hom in diens was, vier weke se lone betaal gebaseer op die werklike verdienste op daardie tydstop,
- met minder as vyf jaar ononderbroke diens wat voor 15 Januarie van die selfde jaar in diens geneem is, 2,9 weke se lone betaal teen die werklike tarief wat op daardie tydstop betaal word,
- wat na 15 Januarie van dieselfde jaar in diens geneem is, ten opsigte van elke kalendermaand diens, bereken vanaf die eerste dag van die maand naaste aan die indiensnemingsdatum, en met inbegrip van die maand Desember, een twaalfde betaal van 2,9 weke se loon teen die werklike tarief wat op daardie tydstop betaal word."

5. KLOUSULE 16.—RAADSFONDSE

Vervang paragrawe (a) (b) en (c) deur die volgende

- Op die eerste betaaldag nadat hierdie Ooreenkoms in werking tree en op elke betaaldag daarna moet elke werknemer 'n bedrag van 20 sent per week bydra,
- die werkgewer moet ten opsigte van elkeen van sy werknemers 20 sent per week bydra,
- in die geval van werknemers wat maandeliks betaal word, moet die bydraes in paragrawe (a) en (b) bedoel 86 sent per maand wees."

6 KLOUSULE 17.—SIEKTEBYSTANDSFONDS

Vervang subklousule (1) (a) (i) en (ii) deur die volgende.

- "Weekliks besoldigde werknemers R1,20 per week,
- maandeliks besoldigde werknemers R5,20 per maand "

Namens die partye op hede die 4de dag van April 1986 te Rustenburg onderteken

L. J. ROELOFSE,
Voorsitter van die Raad.

H. J. VAN REENEN,
Sekretaris van die Raad

C. DU PREEZ,
Verteenwoordiger vir albei vakverenigings

No. R. 2255

31 Oktober 1986

VERBETERINGSKENNISGEWING

VLEISBEDRYF, OOS-LONDEN

Die onderstaande verbeterings aan Goewermementskennisgewing R. 2083 wat in *Staatskoerant* 10465 van 26 September 1986 verskyn, word hierby vir algemene inligting gepubliseer

- In die Engelse teks van die Bylae, in klousule 3, paragraaf (a), voeg die volgende in na "Shop Controller 172,50".
"Cutter 85,00".

Farming scene

Labour laws in the spotlight

DD
31/10/86
166

The desirability of agriculture's inclusion under labour law was discussed at the annual congress of the South African Agricultural Union in Bloemfontein

"Despite the measure of labour peace in agriculture and satisfactory relations between farmers and farm workers, activities in this regard must be kept up in order to further raise the level of manpower manage-

ment in agriculture," the president of the union, Mr Kobus Jooste, said

"There is a growing need among farmers and agricultural organisations for guidance regarding developments in this field," he said

It was decided the general council of the union should adopt the line of action which would best serve agriculture, a press release

from the SA Agricultural Union said

Primary agriculture is excluded from certain labour legislation

"The desirability of agriculture's inclusion under the relevant acts was considered, as well as amendments which would have to be introduced to render statutory arrangements in this regard acceptable to agriculture," the statement said

- (ii) In the case of an employee who is a member of the South African Transport Workers' Union . . . R 1,00
- (iii) In the case of an employee who is a member of the Transport Workers' Union of South Africa . . . 1,00''

Signed at Johannesburg for and on behalf of the parties to the Council this 17th day of June 1986.

G. F. VAN NIEKERK,
Chairman.

S. TSHABALALA,
Vice-Chairman

E. NEL,
Secretary

No. R. 2267

31 October 1986

BASIC CONDITIONS OF EMPLOYMENT ACT, 1983

CONTINUOUS WORKING

I, Joël Daniël Fourie, Chief Director: Labour Relations, duly authorised thereto by the Minister of Manpower, hereby in terms of section 33 (1) of the Basic Conditions of Employment Act, 1983, declare the manufacture of particleboard from raw wood, as carried out by Interboard SA (Pty) Limited at Wadeville, to be an activity with respect to which work may be performed continuously in three shifts per 24 hours, seven days a week. Provided that the conditions of employment, as published under Government Notice R. 2167 of 28 September 1984, or any Government Notice published in substitution thereof, be adhered to.

J. D. FOURIE,
Chief Director: Labour Relations.

No. R. 2286

31 October 1986

LABOUR RELATIONS ACT, 1956

BUILDING AND MONUMENTAL MASONRY INDUSTRIES (TRANSVAAL).—AMENDMENT OF MAIN AGREEMENT

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, hereby—

- (a) in terms of section 48 (1) (a) of the Labour Relations Act, 1956, declare that the provisions of the Agreement (hereinafter referred to as the Amending Agreement) which appears in the Schedule hereto and which relates to the Undertaking, Industry, Trade or Occupation referred to in the heading to this notice, shall be binding, with effect from the first Monday after the date of publication of this notice and for the period ending 30 April 1987, upon the employers' organisations and the trade unions which entered into the Amending Agreement and upon the employers and employees who are members of the said organisations or unions; and
- (b) in terms of section 48 (1) (b) of the said Act, declare that the provisions of the Amending Agreement, excluding those contained in clauses 1 (1) (a), 2 and 3 (4) shall be binding, with effect from the first Monday after the date of publication of this notice and for the period ending 30 April 1987, upon all employers and employees, other than those referred to in paragraph (a) of this notice, who are engaged or employed in the said Undertaking, Industry, Trade or Occupation in the areas specified in clause 1 of the Amending Agreement.

P. T. C. DU PLESSIS,
Minister of Manpower

- (ii) In die geval van 'n werknemer wat lid is van die South African Transport Workers' Union . . . R 1,00
- (iii) In die geval van 'n werknemer wat lid is van die Transport Workers' Union of South Africa . . . 1,00''

Geteken te Johannesburg vir en namens die partye by die Raad op hede die 17de dag van Junie 1986

G. F. VAN NIEKERK,
Voorsitter

S. TSHABALALA,
Ondervoorsitter

E. NEL,
Sekretaris

No. R. 2267

31 Oktober 1986

WET OP BASIESE DIENSVOORWAARDES, 1983

AANEENLOPENDE WERK

Ek, Joël Daniel Fourie, Hoofdirekteur: Arbeidsverhoudinge, behoorlik daartoe gemagtig deur die Minister van Mannekrag, verklaar hierby kragtens artikel 33 (1) van die Wet op Basiese Diensvoorwaardes, 1983, dat die vervaardiging van spaanderbord uit onverwerkte hout, soos uitgevoer deur Interboard SA (Pty) Limited te Wadeville, 'n bedrywigheid is met betrekking waartoe daar aaneenlopend in drie skofte per 24 uur, sewe dae per week, gewerk kan word. Met dien verstande dat die diensvoorwaardes, soos gepubliseer by Goewermentskennisgewing R 2167 van 28 September 1984, of enige Goewermentskennisgewing gepubliseer ter vervanging daarvan, nagekom word.

J. D. FOURIE,
Hoofdirekteur: Arbeidsverhoudinge.

No. R. 2286

31 Oktober 1986

WET OP ARBEIDSVERHOUDINGE, 1956

BOU- EN MONUMENTKLIPMESSSELNYWERHEID (TRANSVAAL)—WYSIGING VAN HOOFOOREENKOMS

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, verklaar hierby—

- (a) kragtens artikel 48 (1) (a) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van die Ooreenkoms (hierna die Wysigingsooreenkoms genoem) wat in die Bylae hiervan verskyn en betrekking het op die Onderneming, Nywerheid, Bedryf of Beroep in die opskrif by hierdie kennisgewing vermeld, met ingang van die eerste Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 30 April 1987 eindig, bindend is vir die werkgewersorganisasies en die vakverenigings wat die Wysigingsooreenkoms aangegaan het en vir die werkgewers en werknemers wat lede van genoemde organisasies of verenigings is; en
- (b) kragtens artikel 48 (1) (b) van genoemde Wet, dat die bepalings van die Wysigingsooreenkoms, uitgesonderd dié vervat in klousules 1 (1) (a), (2) en 3 (4), met ingang van die eerste Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 30 April 1987 eindig, bindend is vir alle ander werkgewers en werknemers as dié genoem in paragraaf (a) van hierdie kennisgewing wat betrokke is by of in diens is in genoemde Onderneming, Nywerheid, Bedryf of Beroep in die gebiede in klousule 1 van die Wysigingsooreenkoms gespesifiseer.

P. T. C. DU PLESSIS,
Minister van Mannekrag

SCHEDULE

INDUSTRIAL COUNCIL FOR THE BUILDING INDUSTRY
(TRANSVAAL)

AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1956, made and entered into by and between the

Master Builders' Association (Witwatersrand and Transvaal South);

Master Builders' and Allied Trades Association (Pretoria and Country Areas); and

Master Masons' and Quarry Owners' Association (South Africa) representing its members in the Monumental Masonry Industry (hereinafter referred to as the "employers" or the "employers' organisations"), of the one part, and the

Amalgamated Union of Building Trade Workers of South Africa and

White Building Workers' Union

(hereinafter referred to as the "employees" or the "trade unions"), of the other part,

being the parties to the Industrial Council for the Building Industry (Transvaal),

to amend the Agreement published under Government Notice R 4 of 7 January 1983, as extended and amended under Government Notices R 2315 and R 2316 of 21 October 1983, R 2214 and R 2215 of 5 October 1984, R 954 and R 955 of 26 April 1985, R 2374 of 18 October 1985 and R 2161 of 17 October 1986

CHAPTER I

1. AREA AND SCOPE OF APPLICATION OF AGREEMENT

(1) The terms of this Agreement shall be observed in the Building and Monumental Masonry Industries—

- (a) by all employers who are members of the employers' organisations and by all employees who are members of the trade unions,
- (b) (i) in the Magisterial Districts of Alberton, Balfour, Benoni, Boksburg, Brakpan, Delmas, Germiston, Heidelberg (Transvaal), Johannesburg, Nigel, Randburg, Randfontein (excluding that portion which falls outside a radius of 48,28 km of the General Post Office, Krugersdorp), Roodepoort, Springs and Wonderboom (excluding that portion which falls outside a radius of 32,18 km of the General Post Office, Pretoria), the area within a radius of 48,28 km from the General Post Office, Krugersdorp; the area within a radius of 32,18 km from the General Post Office, Vereeniging, the area within a radius of 32,18 km from the General Post Office, Pretoria (excluding that portion of the Black Area Uitvalgrond JQ 4341 which falls within the said radius), the areas within a radius of 16,09 km from the General Post Offices, Klerksdorp, Potchefstroom, Witbank and Middelburg (Transvaal) respectively, and in the Magisterial District of Kempton Park (excluding that portion which falls outside a radius of 32,18 km from the General Post Office, Pretoria, and which, prior to the publication of Government Notice 551 of 29 March 1956, fell within the Magisterial District of Pretoria),
- (ii) in the Magisterial District of Bethal (including that portion of the Magisterial District of Hoëveldrif which, prior to 1 March 1979, fell within the Magisterial District of Bethal)

(2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall—

- (a) only apply to those classes of employees for whom wages are prescribed in this Agreement and to learner artisans,
- (b) apply to apprentices and trainees only in so far as they are not inconsistent with the provisions of the Manpower Training Act, 1981, or any conditions prescribed or any notice served in terms thereof,
- (c) apply to "labour-only" contractors, working partners and working directors, principals and contractors,
- (d) apply to foremen and general foremen,
- (e) not apply to clerical employees and administrative staff,
- (f) not apply to persons who are engaged in the installation or wiring of lighting, heating or other permanent electrical fixtures in buildings or the repair or maintenance of lifts in buildings,
- (g) not apply to university students and graduates in building science and construction supervisors, construction surveyors and other such persons doing practical work in the completion of their academic training,
- (h) not include the Iron, Steel, Engineering and Metallurgical Industries as defined in paragraph G of the Certificate of Registration of the National Industrial Council for the Iron, Steel, Engineering and Metallurgical Industry of South Africa,
- (i) be subject to the provisions of any determination by the Industrial Court in relation to the Building Industry and the Furniture Industry

BYLAE

NYWERHEIDSRAAD VIR DIE BOUNYWERHEID (TRANSVAAL)

OOREENKOMS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1956, gesluit deur en aangegaan tussen die

Master Builders' Association (Witwatersrand and Transvaal South);

Master Builders' and Allied Trades Association (Pretoria and Country Areas); en

Master Masons' and Quarry Owners' Association (South Africa) wat sy lede in die Monumentklipmesselnywerheid verteenwoordig, (hierna die "werkgewers" of die "werkgewersorganisasies" genoem), aan die een kant, en die

Amalgamated Union of Building Trade Workers of South Africa en

Blanke Bouwerkersvakbond

(hierna die "werknemers" of die "vakverenigings" genoem), aan die ander kant,

wat die partye is by die Nywerheidsraad vir die Bounywerheid (Transvaal), om die Ooreenkoms, gepubliseer by Goewermentskennisgewing R. 4 van 7 Januarie 1983, soos verleng en gewysig by Goewermentskennisgewings R 2315 en R 2316 van 21 Oktober 1983, R 2214 en R 2215 van 5 Oktober 1984, R 954 en R 955 van 26 April 1985, R 2374 van 18 Oktober 1985 en R 2161 van 17 Oktober 1986 te wysig

HOOFSTUK I

1. GEBIED EN TOEPASSINGSBESTEK VAN OOREENKOMS

(1) Hierdie Ooreenkoms moet in die Bou- en Monumentklipmesselnywerheid nagekom word—

- (a) deur alle werkgewers wat lede is van die werkgewersorganisasies en deur alle werknemers wat lede is van die vakverenigings,
- (b) (i) in die landdrostdistrikte Alberton, Balfour, Benoni, Boksburg, Brakpan, Delmas, Germiston, Heidelberg (Transvaal), Johannesburg, Nigel, Randburg, Randfontein (uitgesonderd daardie gedeelte wat buite 'n straal van 48,28 km vanaf die Hoofposkantoor, Krugersdorp, val), Roodepoort, Springs en Wonderboom (uitgesonderd daardie gedeelte wat buite 'n straal van 32,18 km vanaf die Hoofposkantoor, Pretoria, val), die gebied binne 'n straal van 48,28 km vanaf die Hoofposkantoor, Krugersdorp, die gebied binne 'n straal van 32,18 km vanaf die Hoofposkantoor, Vereeniging, die gebied binne 'n straal van 32,18 km vanaf die Hoofposkantoor, Pretoria (uitgesonderd daardie gedeelte van die Swart Gebied Uitvalgrond JQ 4341 wat binne genoemde straal val), die gebiede binne 'n straal van 16,09 km vanaf die Hoofposkantoor op onderskeidelik Klerksdorp, Potchefstroom, Witbank en Middelburg (Transvaal); en in die landdrostdistrik Kempton Park (uitgesonderd daardie gedeelte wat buite 'n straal van 32,18 km vanaf die Hoofposkantoor, Pretoria, val en wat voor die publikasie van Goewermentskennisgewing 551 van 29 Maart 1956, binne die landdrostdistrik Pretoria geval het),
- (ii) in die landdrostdistrik Bethal (met inbegrip van daardie gedeelte van die landdrostdistrik Hoëveldrif wat voor 1 Maart 1979 binne die landdrostdistrik Bethal geval het).

(2) Ondanks subklousule (1), is hierdie Ooreenkoms—

- (a) slegs van toepassing op dié klasse werknemers vir wie lone in hierdie Ooreenkoms voorgeskryf word en op leerling-ambagsmanne,
- (b) van toepassing op vakleerlinge en kwekelinge slegs vir sover dit nie strydig is met die Wet op Mannekragopleiding, 1981, of met voorwaardes of kennisgewings wat daarkragtens voorgeskryf of bestel is nie,
- (c) van toepassing op "slegs-arbeid"—kontraakteurs, werkende vennote en werkende direkteurs, prinsipale en aannemers,
- (d) van toepassing op voormanne en algemene voormanne,
- (e) nie van toepassing op klerke en administratiewe personeel nie,
- (f) nie van toepassing nie op persone wat betrokke is by die installering en/of bedrading van elektriese lig, verwarmings- of ander permanente vaste elektriese toebehore in geboue of die herstel of onderhoud van hysers in geboue,
- (g) nie van toepassing nie op universiteitstudente en -gegradueerdes in die bouwetenskap en konstruksietoetsighouers, konstruksieopmeters en ander persone wat besig is met praktiese werk ter voltooiing van hul akademiese opleiding,
- (h) nie van toepassing nie op die Yster-, Staal-, Ingenieurs- en Metallurgiese Nywerhede soos omskryf in paragraaf G van die Registrasiesertifikaat van die Nasionale Nywerheidsraad vir die Yster-, Staal-, Ingenieurs- en Metallurgiese Nywerheid van Suid-Afrika,
- (i) onderworpe aan die bepalings van alle vasstellings gemaak deur die Nywerheidshof met betrekking tot die Bounywerheid en die Meubelnywerheid

2. CHAPTER I—CLAUSE 4 WAGES

(1) Substitute the following for subclause (1)

“(1) (a) *General*.—No employer shall pay and no employee shall accept wages at rates lower than the following, read with the remaining provisions of this clause”

Employees	Wages
	Per hour
	R
1 Master craftsman	7,07
2 Craftsman	6,37
3 Artisan	5,66
4 Artisan (waterproofing)	5,66
5 Waterproofing team leader	2,84
6 Waterproofing worker	2,24
7 Artisan (ceiling and/or partition erector)	5,66
8 Ceiling and partition worker	2,24
9 Learner ceiling and/or partition erector: First year	1,83
10 Learner ceiling and/or partition erector: Second year	2,24
11 Learner ceiling and/or partition erector: Third year	2,84
12 Artisan (resilient floor layer)	5,66
13 Resilient floor layer	4,04
14 Learner resilient floor layer: First year	1,83
15 Learner resilient floor layer: Second year	2,24
16 Learner resilient floor layer: Third year	2,84
17 Artisan (carpet layer)	5,66
18 Carpet fitter	4,04
19 Learner carpet fitter: First year	1,83
20 Learner carpet fitter: Second year	2,24
21 Learner carpet fitter: Third year	2,84
22 Artisan (mass manufacturing)	5,66
23 Machine operator (mass manufacturing)	4,04
24 Joinery assembler (mass manufacturing)	2,80
25 Manufacturing worker (mass manufacturing)	1,47
26 Learner artisan (mass manufacturing): First year	1,47
27 Learner artisan (mass manufacturing): Second year	1,91
28 Learner artisan (mass manufacturing): Third year	2,57
29 Learner artisan (mass manufacturing): Fourth year	3,71
30 Artisan's assistant	3,85
31 Block layer	2,84
32 Learner block layer	2,24
33 Plant operator	2,44
34 Learner artisan: First year	1,83
35 Learner artisan: Second year	2,24
36 Learner artisan: Third year	2,84
37 Learner artisan: Fourth year	3,85
38 Apprentice: First year	—
39 Apprentice: Second year	—
40 Apprentice: Third year	—
41 General worker—Area A, on construction	1,63
42 General worker—Area B, on construction	1,47
43 General worker—Area C, on construction	1,25
44 General worker—Not on construction	1,25
45 General worker—Waterproofing	1,63
46 General worker—Ceiling and partitioning	1,63
47 General worker—Resilient floor laying	1,63
48 General worker—Carpet laying	1,63
49 General worker—Mass manufacturing	1,28
50 Cleaner	1,14
51. Night watchman. (per shift)	12,01

(2) Insert the following new subclause.

“(1) (b) The wage rate for Artisans who are registered with the Council as such and who have required that status through the learnership scheme of the Council shall remain at the rate as published by Government Notice R. 2374 in *Government Gazette* 9971 of 18 October 1985”

3. CHAPTER IV.—CONTRIBUTIONS TO FUNDS

CLAUSE I.—GENERAL

- (1) In subclause (5), delete paragraph (c).
- (2) Reduce all contributions in subclause (5) by R1,50.
- (3) Insert the following new subclause after subclause (5)

“(5A) Every employer shall pay to the Secretary of the Council the amount which he is required to contribute to the Building Industry Training Fund in terms of clause 7 (3) of Government Notice R 1886 of 31 August 1984. The amounts collected in terms of this subclause shall from time to time be paid over to the Building Industries Federation (South Africa)”

2. HOOFSTUK I KLOUSULE 4. LONE

(1) Vervang subklousule (1) deur die volgende:

“(1) (a) *Algemeen*.—Geen lone wat laer is as dié hieronder genoem, geëes met die res van die bepalings van hierdie klousule, mag deur 'n werkgever betaal en deur 'n werknemer aangeneem word nie

Werknemers	Lone
	Per uur
	R
1 Meestervakman	7,07
2 Vakman	6,37
3 Ambagsman	5,66
4 Ambagsman (waterdigting)	5,66
5 Waterdigtingspanleier	2,84
6 Waterdigtingswerker	2,24
7 Ambagsman (plafon- en/of afskortingsoprigter)	5,66
8 Plafon- en afskortingswerker	2,24
9 Leerling-plafon- en/of -afskortingsoprigter Eerste jaar	1,83
10 Leerling-plafon- en/of -afskortingsoprigter Tweede jaar	2,24
11 Leerling-plafon- en/of -afskortingsoprigter Derde jaar	2,84
12 Ambagsman (veerkragtigevloerlêer)	5,66
13 Veerkragtigevloerlêer	4,04
14 Leerling-veerkragtigevloerlêer Eerste jaar	1,83
15 Leerling-veerkragtigevloerlêer Tweede jaar	2,24
16 Leerling-veerkragtigevloerlêer Derde jaar	2,84
17 Ambagsman (matlêer)	5,66
18 Matinstalleerder	4,04
19 Leerling-matinstalleerder Eerste jaar	1,83
20 Leerling-matinstalleerder Tweede jaar	2,24
21 Leerling-matinstalleerder Derde jaar	2,84
22 Ambagsman (massavervaardiging)	5,66
23 Masjienbediener (massavervaardiging)	4,04
24 Skrynwermonteerder (massavervaardiging)	2,80
25 Vervaardigingswerker (massavervaardiging)	1,47
26 Leerling-ambagsman (massavervaardiging) Eerste jaar	1,47
27 Leerling-ambagsman (massavervaardiging) Tweede jaar	1,91
28 Leerling-ambagsman (massavervaardiging) Derde jaar	2,57
29 Leerling-ambagsman (massavervaardiging) Vierde jaar	3,71
30 Ambagsassistent	3,85
31 Bloklêer	2,84
32 Leerling-bloklêer	2,24
33 Toerustingbediener	2,44
34 Leerling-ambagsman Eerste jaar	1,83
35 Leerling-ambagsman Tweede jaar	2,24
36 Leerling-ambagsman Derde jaar	2,84
37 Leerling-ambagsman Vierde jaar	3,85
38 Vakleerling Eerste jaar	—
39 Vakleerling Tweede jaar	—
40 Vakleerling Derde jaar	—
41 Algemene werker—Gebied A, op konstruksie	1,63
42 Algemene werker—Gebied B, op konstruksie	1,47
43 Algemene werker—Gebied C, op konstruksie	1,25
44 Algemene werker—Nie op konstruksie nie	1,25
45 Algemene werker—Waterdigting	1,63
46 Algemene werker—Plafonne en afskortings	1,63
47 Algemene werker—Veerkragtigevloerlêer	1,63
48 Algemene werker—Matlêer	1,63
49 Algemene werker—Massavervaardiging	1,28
50 Skoonmaker	1,14
51. Nagwag (per skof)	12,01

(2) Voeg die volgende nuwe subklousule in

“(1) (b) Die loonskaal vir ambagsmanne wat as sodanig by die Raad geregistreer is en wat daardie status verkry het deur die leerlingskema van die Raad, bly soos gepubliseer by Goewermentskennisgewing R 2374 in *Staatskoerant* 9971 van 18 Oktober 1985”

3. HOOFSTUK IV.—BYDRAES TOT FONDSE

KLOUSULE I.—ALGEMEEN

- (1) In subklousule (5), skrap paragraaf (c)
- (2) Verminder alle bedrae in subklousule (5) met R1,50
- (3) Voeg die volgende nuwe subklousule in na subklousule (5)

“(5A) Elke werkgever moet die bedrag wat hy verplig is om tot die Opleidingsfonds van die Bounywerheid ingevolge klousule 7 (3) van Goewermentskennisgewing R 1886 van 31 Augustus 1984 by te dra, aan die Sekretaris van die Raad betaal. Die bedrae ingevorder ingevolge hierdie subklousule moet van tyd tot tyd aan die Building Industries Federation (South Africa) oorbetaal word

(4) In subclause 11, substitute the amount of R0,19 for the amount of R0,12 wherever it appears

Signed at Johannesburg this 27th day of March 1986

J. A. BARROW (Jr),
Chairman.

G. H. BEETGE,
Vice-Chairman.

W. DE J. STAPELBERG,
General Secretary

No. R. 2287 **31 October 1986**

LABOUR RELATIONS ACT, 1956

**LIQUOR AND CATERING TRADE, CAPE.—
RENEWAL OF MAIN AGREEMENT**

I, Mattheus Willem Johannes Le Roux, Director: Manpower, duly authorised thereto by the Minister of Manpower, hereby in terms of section 48 (4) (a) (ii) of the Labour Relations Act, 1956, declare the provisions of Government Notices R 1297 of 24 June 1983, R 2096 of 21 September 1984 and R. 736 of 18 April 1986, to be effective from 1 November 1986 and for the period ending 31 January 1987.

M. W. J. LE ROUX,
Director: Manpower.

No. R. 2288 **31 October 1986**

LABOUR RELATIONS ACT, 1956

**LIQUOR AND CATERING TRADE, CAPE.—
RENEWAL OF MAIN AGREEMENT**

I, Mattheus Willem Johannes Le Roux, Director: Manpower, duly authorised thereto by the Minister of Manpower, hereby, in terms of section 48 (4) (a) (ii) of the Labour Relations Act, 1956, declare the provisions of Government Notice R. 1298 of 24 June 1983 to be effective from 1 November 1986 and for the period ending 31 January 1987.

M. W. J. LE ROUX,
Director: Manpower.

**DEPARTMENT OF MINERAL AND
ENERGY AFFAIRS**

No. R. 2264 **31 October 1986**

MINES AND WORKS ACT, 1956 (ACT 27 OF 1956)

AMENDMENT OF REGULATIONS

The Minister of Mineral and Energy Affairs has, under section 12 of the Mines and Works Act, 1956 (Act 27 of 1956), made the regulations set out in the Schedule.

SCHEDULE

1. In these regulations "the Regulations" means the Regulations published under Government Notice R. 992 of 26 June 1970, as amended by Government Notices R. 303, R. 304 and R. 305 of 1 March 1972, R. 1346 of 4 August 1972, R. 2101, R. 2102 and R. 2103 of 15 November 1974, R. 513 of 1 April 1977, R. 1189 of 8 June 1979, R. 537 of 21 March 1980, R. 2227 and R. 2228 of 31 October 1980 and R. 2703 of 11 December 1981.

(4) In subklousule 11, vervang die bedrag R0,12 oral waar dit voorkom deur die bedrag R0,19

Geteken te Johannesburg op hede die 27ste dag van Maart 1986

J. A. BARROW (Jr),
Voorsitter

G. H. BEETGE,
Ondervoorsitter

W. DE J. STAPELBERG,
Hoofsekretaris

No. R. 2287 **31 Oktober 1986**

WET OP ARBEIDSVERHOUDINGE, 1956

**DRANK- EN SPYSENIERSBEDRYF, KAAP.—
HERNUWING VAN HOOFOOREENKOMS**

Ek, Mattheus Willem Johannes Le Roux, Direkteur: Mannekrag, behoorlik daartoe gemagtig deur die Minister van Mannekrag, verklaar hierby, kragtens artikel 48 (4) (a) (ii) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van Goewermentskennisgewings R. 1297 van 24 Junie 1983, R. 2096 van 21 September 1984 en R. 736 van 18 April 1986, van krag is vanaf 1 November 1986 en vir die tydperk wat op 31 Januarie 1987 eindig.

M. W. J. LE ROUX,
Direkteur: Mannekrag.

No. R. 2288 **31 Oktober 1986**

WET OP ARBEIDSVERHOUDINGE, 1956

**DRANK- EN SPYSENIERSBEDRYF, KAAP.—
HERNUWING VAN HOOFOOREENKOMS**

Ek, Mattheus Willem Johannes Le Roux, Direkteur: Mannekrag, behoorlik daartoe gemagtig deur die Minister van Mannekrag, verklaar hierby, kragtens artikel 48 (4) (a) (ii) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van Goewermentskennisgewing R. 1298 van 24 Junie 1983, van krag is vanaf 1 November 1986 en vir die tydperk wat op 31 Januarie 1987 eindig.

M. W. J. LE ROUX,
Direkteur: Mannekrag

**DEPARTEMENT VAN MINERAAL-
EN ENERGIESAKE**

No. R. 2264 **31 Oktober 1986**

**WET OP MYNE EN BEDRYWE, 1956
(WET 27 VAN 1956)**

WYSIGING VAN REGULASIES

Die Minister van Mineraal- en Energiesake het kragtens artikel 12 van die Wet op Myne en Bedrywe, 1956 (Wet 27 van 1956), die regulasies uiteengesit in die Bylae uitgevaardig

BYLAE

1. In hierdie regulasies beteken "die Regulasies" die Regulasies afgekondig by Goewermentskennisgewing R. 992 van 26 Junie 1970, soos gewysig by Goewermentskennisgewings R. 303, R. 304 en R. 305 van 1 Maart 1972, R. 1346 van 4 Augustus 1972, R. 2101, R. 2102 en R. 2103 van 15 November 1974, R. 513 van 1 April 1977, R. 1189 van 8 Junie 1979, R. 537 of 21 Maart 1980, R. 2227 en R. 2228 van 31 Oktober 1980 en R. 2703 van 11 Desember 1981.

Building Industry Training Scheme set forth in clause 4 of the Scheme in terms of the Manpower Training Act, 1981, published under Government Notice R 1886 of 31 August 1984, the collection of contributions in accordance with the procedure stated hereunder

(2) Every employer shall pay to the Secretary of the Council the amount which he is required to contribute to the Training Fund in terms of clause 7 (3) of the said Government Notice

(3) The amounts paid by employers in terms of subclause (2) less a collection fee of 2½ per cent, shall be paid by the Council from time to time to the Training Fund "

PART II

SPECIAL PROVISIONS APPLICABLE TO THE TIMBER TRADE IN THE BUILDING INDUSTRY

1. SCOPE OF APPLICATION

(1) The terms of Part II of this Agreement shall be observed in the Timber Trade of the Building Industry—

- (a) by all employers and employees who are members of the employers' organisations and the trade unions, respectively,
- (b) in the Magisterial Districts of Alexandria, Bathurst, Beaufort West, Calitzdorp, George, Humansdorp, Joubertina, Ladismith, Knysna, Mossel Bay, Oudtshoorn, Port Elizabeth (excluding that portion which, prior to the publication of Government Notice R 1974 of 26 September 1980, fell within the Magisterial District of Hankey), Riversdale, Uitenhage, Uniondale and in that portion of the Magisterial District of Hankey which, prior to 1 November 1963, fell within the Magisterial District of Port Elizabeth

2. CLAUSE 2.—SPECIAL PROVISIONS

Substitute the following for clause 2:

"2. SPECIAL PROVISIONS

The provisions contained in clauses 2 (2), 13 (as amended by clause 9 of the Re-enacting Agreement and clause 7 of Government Notice R 557 of 27 March 1986 and clause 4 hereunder) to 15 (1) inclusive of Part II of the Former Agreement shall apply to employers and employees."

3. CLAUSE 3.—GENERAL PROVISIONS

Substitute the following for clause 3:

"3. GENERAL PROVISIONS

The provisions contained in clauses 1 (2), 2 (1), 3 (as amended by clause 4 of the Re-enacting Agreement), 4 (as amended by clause 5 of the Re-enacting Agreement, clause 4 of Government Notice R 1973 of 6 September 1985 and clause 4 of Government Notice R 557 of 27 March 1986), 5, 6 (as amended by clause 6 of the Re-enacting Agreement), 7 (as amended by clause 7 of the Re-enacting Agreement, clause 5 of Government Notice R 1973 of 6 September 1985 and clause 5 of Government Notice R 557 of 27 March 1986), 8, 9, 10 (as amended by clause 8 of the Re-enacting Agreement and clause 6 of Government Notice R 1973 of 6 September 1985), 11, 12 and 15 (2) to 18 of Part II of the Former Agreement shall apply to employers and employees "

4. CLAUSE 13 OF PART II OF THE FORMER AGREEMENT.—EMPLOYERS' ORGANISATION LEVY

In subclause (1), substitute the figure "27c" for the figure "18c"

Signed at Port Elizabeth, on behalf of the parties, this 30th day of May 1986.

E. A. CILLIERS,
Chairman of the Council.

J. P. ERASMUS,
Vice-Chairman of the Council.

V. H. LE ROUX,
General Secretary of the Council.

No. R. 2266

31 October 1986

LABOUR RELATIONS ACT, 1956

INDUSTRIAL COUNCIL FOR THE MOTOR TRANSPORT UNDERTAKING (GOODS)—AMENDMENT OF AGREEMENT

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, hereby—

- (a) in terms of section 48 (1) (a) of the Labour Relations Act, 1956, declare that the provisions of the Agreement (hereinafter referred to as the Amending

Opleidingskema vir die Bounywerheid uiteengesit in klousule 4 van die Skema kragtens die Wet op Mannekragopleiding, 1981, gepubliseer by Goewermentskennisgewing R 1886 van 31 Augustus 1984, die invordering van bydraes ooreenkomstig die prosedure hieronder uiteengesit

(2) Elke werkgever moet die bedrag wat hy ingevolge klousule 7 (3) van genoemde Goewermentskennisgewing tot die Opleidingsfonds moet bydra, aan die Sekretaris van die Raad betaal

(3) Die bedrae wat ingevolge subklousule (2) deur werkgewers betaal word, min invorderingskoste van 2½ persent, moet deur die Raad van tyd tot tyd aan die Opleidingsfonds betaal word."

DEEL II

SPEZIALE BEPALINGS WAT OP DIE HOUTNYWERHEID IN DIE BOUNYWERHEID VAN TOEPASSING IS

1. TOEPASSINGSBESTEK

(1) Deel II van hierdie Ooreenkoms moet in die Houtnywerheid van die Bounywerheid nagekom word—

- (a) deur alle werkgewers en werknemers wat lede is van onderskeidelik die werkgewersorganisasies en die vakverenigings;
- (b) in die landdrostdistrikte Alexandria, Bathurst, Beaufort-Wes, Calitzdorp, George, Humansdorp, Joubertina, Ladismith, Knysna, Mosselbaai, Oudtshoorn, Port Elizabeth (uitgesonderd daardie gedeelte wat voor die publikasie van Goewermentskennisgewing R 1974 van 26 September 1980 binne die landdrostdistrik Hankey geval het), Riversdal, Uitenhage, Uniondale en in daardie gedeelte van die landdrostdistrik Hankey wat voor 1 November 1963 binne die landdrostdistrik Port Elizabeth geval het

2. KLOUSULE 2.—SPEZIALE BEPALINGS

Vervang klousule 2 deur die volgende

"2. SPEZIALE BEPALINGS

Klousules 2 (2), 13 (soos gewysig by klousule 9 van die herbekragtigingsooreenkoms en klousule 7 van Goewermentskennisgewing R 557 van 27 Maart 1986 en klousule 4 hieronder) tot en met 15 (1) van Deel II van die vorige Ooreenkoms is van toepassing op werkgewers en werknemers "

3. KLOUSULE 3.—ALGEMENE BEPALINGS

Vervang klousule 3 deur die volgende

"3. ALGEMENE BEPALINGS

Klousules 1 (2), 2 (1), 3 (soos gewysig by klousule 4 van die Herbekragtigingsooreenkoms), 4 (soos gewysig by klousule 5 van die Herbekragtigingsooreenkoms, klousule 4 van Goewermentskennisgewing R 1973 van 6 September 1985 en klousule 4 van Goewermentskennisgewing R 557 van 27 Maart 1986), 5, 6 (soos gewysig by klousule 6 van die Herbekragtigingsooreenkoms), 7 (soos gewysig by klousule 7 van die Herbekragtigingsooreenkoms, klousule 5 van Goewermentskennisgewing R 1973 van 6 September 1985 en klousule 5 van Goewermentskennisgewing R 557 van 27 Maart 1986), 8, 9, 10 (soos gewysig by klousule 8 van die Herbekragtigingsooreenkoms en klousule 6 van Goewermentskennisgewing R 1973 van 6 September 1985), 11, 12 en 15 (2) tot en met 18 van Deel II van die Vorige Ooreenkoms is van toepassing op werkgewers en werknemers "

4 KLOUSULE 13 VAN DEEL II VAN DIE VORIGE OOREENKOMS —HEFFING VIR WERKGEWERSORGANISASIE

In subklousule (1), vervang die syfer "18c" deur die syfer "27c"

Namens die partye op hede die 30ste dag van Mei 1986 te Port Elizabeth onderteken

E. A. CILLIERS,
Voorsitter van die Raad

J. P. ERASMUS,
Ondervoorsitter van die Raad

V. H. LE ROUX,
Hoofsekretaris van die Raad.

No. R. 2266

31 Oktober 1986

WET OP ARBEIDSVERHOUDINGE, 1956

NYWERHEIDSRAAD VIR DIE MOTORVERVOER-ONDERNEMING (GOEDERE)—WYSIGING VAN OOREENKOMS

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, verklaar hierby—

- (a) kragtens artikel 48 (1) (a) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalinge van die Ooreenkoms (hierna die Wysigingsooreenkoms genoem) wat

Agreement) which appears in the Schedule hereto and which relates to the Undertaking, Industry, Trade or Occupation referred to in the heading to this notice, shall be binding, with effect from the second Monday after the date of publication of this notice and for the period ending 31 December 1986, upon the employers' organisation and the trade unions which entered into the Amending Agreement and upon the employers and employees who are members of the said organisation or unions; and

- (b) in terms of section 48 (1) (b) of the said Act, declare that the provisions of the Amending Agreement, excluding those contained in clauses 1 (1) (a) and 3 shall be binding, with effect from the second Monday after the date of publication of this notice and for the period ending 31 December 1986, upon all employers and employees, other than those referred to in paragraph (a) of this notice, who are engaged or employed in the said Undertaking, Industry, Trade or Occupation in the areas specified in clause 1 of the Amending Agreement.

P. T. C. DU PLESSIS,
Minister of Manpower.

SCHEDULE

INDUSTRIAL COUNCIL FOR THE MOTOR TRANSPORT UNDERTAKING (GOODS)

AGREEMENT

in accordance with the provisions of the Labour Relations Act, 1956, made and entered into by and between the

Motor Transport Owners' Association of South Africa

(hereinafter referred to as the "employers" or the "employers' organisation"), of the one part, and the

Motor Transport Workers' Union (South Africa)

the

South African Transport Workers' Union

and the

Transport Workers' Union of South Africa

(hereinafter referred to as the "employees" or the "trade unions"), of the other part,

being the parties to the Industrial Council for the Motor Transport Undertaking (Goods),

to amend the Agreement published under Government Notice R 2253 of 14 October 1983, as amended by Government Notices R 1131 of 8 June 1984 and R. 2789 of 20 December 1985

1. SCOPE OF APPLICATION

(1) The terms of this Agreement shall be observed in the Motor Transport Undertaking (Goods)—

- (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions, who are engaged or employed therein, respectively,
- (b) in the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan [excluding those portions of the Magisterial Districts of Boksburg and Brakpan which, prior to the publication of Government Notice 1779 of 6 November 1964, fell within the Magisterial District of Heidelberg, and excluding those portions of the Magisterial District of Brakpan which, prior to 1 April 1966 and 1 July 1972 (Government Notices 498 and 871 of 1 April 1966 and 26 May 1972, respectively), fell within the Magisterial District of Nigel], Delmas, Germiston, Johannesburg, Kempton Park [excluding those portions which, prior to 29 March 1956 and 1 November 1970 (Government Notices 556 and 1618 of 29 March 1956 and 2 October 1970, respectively), fell within the Magisterial District of Pretoria], Krugersdorp [including those portions of the Magisterial Districts of Koster and Brits which, prior to 26 July 1963 and 1 June 1972, respectively (Government Notices 1105 of 26 July 1963 and 872 of 26 May 1972), fell within the Magisterial District of Krugersdorp], Oberholzer (excluding that portion of the Magisterial District of Oberholzer which, prior to the publication of Government Notice 1745 of 1 September 1978, fell within the Magisterial

in die Bylae hiervan verskyn en betrekking het op die Onderneming, Nywerheid, Bedryf of Beroep in die opskrif by hierdie kennisgewing vermeld, met ingang van die tweede Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 31 Desember 1986 eindig, bindend is vir die werkgeversorganisasie en die vakverenigings wat die Wysigingsooreenkoms aangegaan het en vir die werkgevers en werknemers wat lede van genoemde organisasie of verenigings is, en

- (b) kragtens artikel 48 (1) (b) van genoemde Wet, dat die bepalings van die Wysigingsooreenkoms, uitgesonderd dié vervat in klousules 1 (1) (a) en 3 met ingang van die tweede Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 31 Desember 1986 eindig, bindend is vir alle ander werkgevers en werknemers as dié genoem in paragraaf (a) van hierdie kennisgewing wat betrokke is by of in diens is in genoemde Onderneming, Nywerheid, Bedryf of Beroep in die gebiede in klousule 1 van die Wysigingsooreenkoms gespesifiseer.

P. T. C. DU PLESSIS,
Minister van Mannekrag.

BYLAE

NYWERHEIDSRaad VIR DIE MOTORVERVOER- ONDERNEMING (GOEDERE)

OOREENKOMS

ooreenkomstig die Wet op Arbeidsverhoudinge, 1956, gesluit deur en aangegaan tussen die

Motor Transport Owners' Association of South Africa

(hierna die "werkgevers" of die "werkgeversorganisasie" genoem), aan die een kant, en die

Motor Transport Workers' Union (South Africa)

die

South African Transport Worker's Union

en die

Transport Workers' Union of South Africa

(hierna die "werknemers" of die "vakverenigings" genoem), aan die ander kant,

wat die partye is by die Nywerheidsraad vir die Motorvervoeronderneming (Goedere),

om die Ooreenkoms gepubliseer by Goewermentskennisgewing R 2253 van 14 Oktober 1983, soos gewysig by Goewermentskennisgewings R 1131 van 8 Junie 1984 en R 2789 van 20 Desember 1985, te wysig

1. TOEPASSINGSBESTEK

(1) Hierdie Ooreenkoms moet in die Motorvervoeronderneming (Goedere) nagekom word—

- (a) deur alle werkgevers wat lede van die werkgeversorganisasie is en deur alle werknemers wat lede van die vakverenigings is, wat onderskeidelik by bogenoemde Onderneming betrokke of daarin werksaam is,
- (b) in die landdrostdistrikte Alberton, Benoni, Boksburg, Brakpan [uitgesonderd daardie gedeeltes van die landdrostdistrikte Boksburg en Brakpan wat voor die publikasie van Goewermentskennisgewing 1779 van 6 November 1964 binne die landdrostdistrik Heidelberg verval het, en uitgesonderd daardie gedeeltes van die landdrostdistrik Brakpan wat voor 1 April 1966 en 1 Julie 1972 (Goewermentskennisgewings 498 en 871 van onderskeidelik 1 April 1966 en 26 Mei 1972) binne die landdrostdistrik Nigel geval het], Delmas, Germiston, Johannesburg, Kempton Park [uitgesonderd daardie gedeeltes wat voor 29 Maart 1956 en 1 November 1970 (Goewermentskennisgewings 556 en 1618 van onderskeidelik 29 Maart 1956 en 2 Oktober 1970) binne die landdrostdistrik Pretoria geval het], Krugersdorp [met inbegrip van daardie gedeeltes van die landdrostdistrikte Koster en Brits wat voor onderskeidelik 26 Julie 1963 en 1 Junie 1972 (Goewermentskennisgewings 1105 van 26 Julie 1963 en 872 van 26 Mei 1972) binne die landdrostdistrik Krugersdorp geval het], Oberholzer (uitgesonderd daardie gedeelte van die landdrostdistrik Oberholzer wat voor die publikasie van Goewermentskennisgewing 1745 van 1 September 1978 binne die landdrostdistrik Potchefstroom geval het), Randburg (uitgesonderd

District of Potchefstroom), Randburg (excluding that portion which, prior to the publication of Government Notice 2152 of 22 November 1974, fell within the Magisterial District of Pretoria), Randfontein (including that portion of the Magisterial District of Koster which, prior to the publication of Government Notice 1105 of 26 July 1963, fell within the Magisterial District of Randfontein, but excluding the farms Moadowns 1, Holfontein 17, Leeuwpan 18, Ireton 19, Pahtiki 20, Bospan 21 and Rietfontein 48), Roodepoort, Springs, Vanderbijlpark, Vereeniging and Westonaria

(2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall only apply to employees for whom minimum wages are prescribed in this Agreement and to employers of such employees

(3) Notwithstanding the provisions of subclause (1), the provisions of this Agreement shall not apply to—

- (a) an owner who drives his own vehicle and the employees employed in connection with such a vehicle, and
- (b) an employer who operates one truck with one driver and the employees employed by such an employer

2. CLAUSE 15.—SICK FUND

(1) Substitute the following for subclauses (2) and (3)

“(2) (a) *Sick leave payments*—The Council shall, subject to the provisos contained herein and the provisions of subclause (3), pay out of the Sick Fund to a driver, security officer, Grade A, or general worker who is absent from work through illness or accident not due to his own misconduct or neglect an amount equal to the monthly sick leave contributions specified in subclause (1) (a) for an employee of his class for every working day of his absence on sick leave. Provided that—

- (i) the Council holds money for the credit of such employee,
- (ii) he produces a medical certificate or any other suitable medical evidence in respect of his absence from work through illness and produces satisfactory evidence of identification,
- (iii) no employee shall qualify for sick pay during his first month of employment in the Undertaking with the same employer, and thereafter only to the extent of one month's sick leave contributions for every completed 21 shifts of employment in the Undertaking,
- (iv) no payment shall be made for the absence of less than eight hours' working time on any one working day,
- (v) payment for absence owing to injury compensable under the Workmen's Compensation Act shall be limited to the rates specified in subclause (1) (a), less any amount payable to the injured employee under the Workmen's Compensation Act for loss of wages

(b) *Sick leave bonus payment*—Subject to the provisions of subclause (3), a driver, security officer, Grade A, and general worker shall for every completed 252-shift cycle of service in the Undertaking be entitled to a sick leave bonus consisting of the sick leave contribution remitted for him in terms of subclause (1) (a) for the 252-shift period, less any sick pay actually paid to him during such 252-shift cycle of service in the Undertaking. The first sick leave bonus shall accrue 252 shifts or 52 weeks (whichever is the sooner) after completion of the first cycle of 252 shifts. Each successive bonus shall accrue in a like manner 252 shifts or 52 weeks (whichever is the sooner) after completion of every cycle of 252 shifts or 52 weeks' service”

(2) Insert the following new subclause (3)

“(3) The Council shall, subject to the provisos contained herein, pay monthly, by not later than the seventh day of the succeeding month, to a registered insurance company nominated by an employee's trade union an amount of R2,00 in respect of every employee who has completed a shift cycle of 21 shifts during the month preceding the past month and who is a member of one of the following trade unions: Motor Transport Workers' Union (South Africa), South African Transport Workers' Union, Transport Workers' Union of South Africa and who has had the Sick Fund contribution, prescribed in terms of subclause (1) (a), remitted for his credit to this Council by his employer for the premium due by the employee in respect of the trade union's Death and Burial Insurance Scheme

Provided that—

- (i) if called upon by the Secretary of the Council, the trade union shall furnish proof of current membership for any employee who it is claimed is a trade union member, and
- (ii) the employer's relevant monthly contribution cheque has been honoured by his bankers”

3. CLAUSE 19.—TRADE UNION AND EMPLOYERS' ORGANISATION SUBSCRIPTIONS

Substitute the following for subclause (1) (b)

“(1) (b) The weekly subscriptions to be deducted from the wage of every employee who is a member of a trade union which is a party to the Agreement are

	R
(1) In the case of an employee who is a member of the Motor Transport Workers' Union (South Africa)	2,00

daardie gedeelte wat voor die publikasie van Goewermenskennisgewing 2152 van 22 November 1974 binne die landdrosdistrik Pretoria geval het), Randfontein (met inbegrip van daardie gedeelte van die landdrosdistrik Koster wat voor die publikasie van Goewermenskennisgewing 1105 van 26 Julie 1963 binne die landdrosdistrik Randfontein geval het maar uitgesonderd die plase Moadowns 1, Holfontein 17, Leeuwpan 18, Ireton 19, Pahtiki 20, Bospan 21 en Rietfontein 48), Roodepoort, Springs, Vanderbijlpark, Vereeniging en Westonaria

(2) Ondanks subklousule (1) is hierdie Ooreenkoms slegs van toepassing op werknemers vir wie minimum lone in hierdie Ooreenkoms voorgeskryf word en op die werkgewers van sodanige werknemers

(3) Ondanks subklousule (1) is hierdie Ooreenkoms nie van toepassing nie op—

- (a) 'n eienaar wat sy eie voertuig dryf en die werknemers wat in verband met die gebruik van sodanige voertuig in diens is, en
- (b) 'n werkgewer met een vragmotor en een drywer en die werknemers van sodanige werkgewer.

2. KLOUSULE 15.—SIEKTEFONDS

(1) Vervang subklousules (2) en (3) deur die volgende

“(2) (a) *Siekteverlofbetalings*—Behoudens die voorbehoudsbepalings hierin vervat en die bepaling van subklousule (3) moet die Raad aan 'n drywer, 'n veiligheidsbeampte graad A of 'n algemene werker wat van die werk afwesig is weens siekte of 'n ongeluk wat nie aan sy eie wangedrag of nalatigheid te wyte is nie, ten opsigte van elke werkdag waarop hy met siekteverlof afwesig is 'n bedrag uit die Siektefonds betaal wat gelyk is aan die maandelikse siekteverlofbydraes wat in subklousule (1) (a) vir 'n werknemer van sy klas gespesifiseer word met dien verstande dat—

- (i) die Raad geld in die kredit van sodanige werknemer het,
- (ii) die werknemer 'n doktersertifikaat of ander geskikte mediese bewys ten opsigte van sy afwesigheid van werk weens siekte, asook 'n bevredigende bewys van sy identiteit, voorlê,
- (iii) geen werknemer gedurende sy eerste maand diens in die Onderneming by dieselfde werkgewer vir siektesoldy mag kwalifiseer nie, en daarna slegs ten bedrae van een maand se siekteverlofbydraes vir elke voltooië 21 skofte diens in die Onderneming,
- (iv) geen betaling vir afwesigheid van minder as agt uur werktyd op 'n bepaalde werkdag gedoen moet word nie,
- (v) betaling vir afwesigheid te wyte aan 'n besering waarvoor vergoeding ingevolge die Ongevallewet betaalbaar is, beperk moet word tot die skale wat in subklousule (1) (a) vasgestel is, min alle bedrae wat ingevolge die Ongevallewet vir verlies aan lone aan die be-seerde werknemer betaalbaar is

(b) *Siekteverlofbonusbetalings*—Behoudens subklousule (3) is 'n drywer, veiligheidsbeampte graad A en 'n algemene werker vir elke voltooië dienssiklus van 252 skofte in die Onderneming geregtig op 'n siekteverlofbonus wat bestaan uit die siekteverlofbydraes wat ingevolge subklousule (1) (a) vir die tydperk van 252 skofte vir hom ingestuur is, min alle siektebetalings wat gedurende dié dienssiklus van 252 skofte in die Onderneming werklik aan hom uitbetaal is. Die eerste siekteverlofbonus moet 252 skofte of 52 weke beloop (naamlik die korste tydperk) na voltooiing van die eerste siklus van 252 skofte. Elke daaropvolgende bonus moet op soortgelyke wyse 252 skofte of 52 weke beloop (naamlik die kortste tydperk) ná voltooiing van elke siklus van 252 skofte of 52 weke diens”

(2) Voeg die volgende nuwe subklousule (3) in

“(3) Die Raad moet behoudens die voorbehoudsbepalings hierin vervat maandeliks, voor of op die sewende dag van die daaropvolgende maand aan 'n geregistreerde assuransiemaatskappy deur die werknemer se vakverenigings aangewys 'n bedrag van R2,00 betaal ten opsigte van elke werknemer wat 'n skofsiklus van 21 skofte voltooi het gedurende die maand wat die vorige maand voorafgaan en wat lid is van een van die volgende vakverenigings: Motor Transport Workers' Union (South Africa), South African Transport Workers' Union, Transport Workers' Union of South Africa en wie se siektefondsbysdraes soos in subklousule (1) (a) voorgeskryf, deur sy werkgewer vir sy kredit aan die Raad gestuur is vir die premie verskuldig deur die werknemer t o v die vakvereniging sterfte- en begrafnisassuransie skema

Met dien verstande dat—

- (i) die vakvereniging op aanvraag van die Sekretaris van die Raad die nodige bewyse moet voorlê van huidige lidmaatskap van 'n werknemer wat daarop aanspraak maak dat hy lid van die vakvereniging is, en
- (ii) die werkgewer se tjek t o v maandelikse bydraes deur sy bankiers gehonoreer is”

3. KLOUSULE 19.—LEDEGELD VAN VAKVERENIGINGS EN WERKGEWERSORGANISASIE

Vervang subklousule (1) (b) deur die volgende.

“(1) (b) Die weeklikse ledegeld wat afgetrek moet word van die loon van elke werknemer wat lid is van 'n vakvereniging wat 'n party by die Ooreenkoms is, is

	R
(1) In die geval van 'n werknemer wat lid is van die Motor Transport Workers' Union (South Africa)	2,00

- | | |
|--|-----------|
| (ii) In the case of an employee who is a member of the South African Transport Workers' Union | R
1,00 |
| (iii) In the case of an employee who is a member of the Transport Workers' Union of South Africa | 1,00'' |

Signed at Johannesburg for and on behalf of the parties to the Council this 17th day of June 1986.

G. F. VAN NIEKERK,
Chairman.

S. TSHABALALA,
Vice-Chairman.

E. NEL,
Secretary.

- | | |
|---|-----------|
| (ii) In die geval van 'n werknemer wat lid is van die South African Transport Workers' Union | R
1,00 |
| (iii) In die geval van 'n werknemer wat lid is van die Transport Workers' Union of South Africa | 1,00 '' |

Geteken te Johannesburg vir en namens die partye by die Raad op hede die 17de dag van Junie 1986

G. F. VAN NIEKERK,
Voorsitter.

S. TSHABALALA,
Ondervoorsitter

E. NEL,
Sekretaris

No. R. 2267

31 October 1986

BASIC CONDITIONS OF EMPLOYMENT ACT, 1983

CONTINUOUS WORKING

I, Joël Daniël Fourie, Chief Director: Labour Relations, duly authorised thereto by the Minister of Manpower, hereby in terms of section 33 (1) of the Basic Conditions of Employment Act, 1983, declare the manufacture of particleboard from raw wood, as carried out by Interboard SA (Pty) Limited at Wadeville, to be an activity with respect to which work may be performed continuously in three shifts per 24 hours, seven days a week. Provided that the conditions of employment, as published under Government Notice R 2167 of 28 September 1984, or any Government Notice published in substitution thereof, be adhered to.

J. D. FOURIE,
Chief Director: Labour Relations.

No. R. 2286

31 October 1986

LABOUR RELATIONS ACT, 1956

BUILDING AND MONUMENTAL MASONRY INDUSTRIES (TRANSVAAL).—AMENDMENT OF MAIN AGREEMENT

I, Pieter Theunis Christiaan du Plessis, Minister of Manpower, hereby—

- (a) in terms of section 48 (1) (a) of the Labour Relations Act, 1956, declare that the provisions of the Agreement (hereinafter referred to as the Amending Agreement) which appears in the Schedule hereto and which relates to the Undertaking, Industry, Trade or Occupation referred to in the heading to this notice, shall be binding, with effect from the first Monday after the date of publication of this notice and for the period ending 30 April 1987, upon the employers' organisations and the trade unions which entered into the Amending Agreement and upon the employers and employees who are members of the said organisations or unions; and
- (b) in terms of section 48 (1) (b) of the said Act, declare that the provisions of the Amending Agreement, excluding those contained in clauses 1 (1) (a), 2 and 3 (4) shall be binding, with effect from the first Monday after the date of publication of this notice and for the period ending 30 April 1987, upon all employers and employees, other than those referred to in paragraph (a) of this notice, who are engaged or employed in the said Undertaking, Industry, Trade or Occupation in the areas specified in clause 1 of the Amending Agreement

P. T. C. DU PLESSIS,
Minister of Manpower.

No. R. 2267

31 Oktober 1986

WET OP BASIESE DIENSVOORWAARDES, 1983

AANEENLOPENDE WERK

Ek, Joël Daniël Fourie, Hoofdirekteur: Arbeidsverhoudinge, behoorlik daartoe gemagtig deur die Minister van Mannekrag, verklaar hierby kragtens artikel 33 (1) van die Wet op Basiese Diensvoorwaardes, 1983, dat die vervaardiging van spaanderbord uit onverwerkte hout, soos uitgevoer deur Interboard SA (Pty) Limited te Wadeville, 'n bedrywigheid is met betrekking waartoe daar aaneenlopend in drie skofte per 24 uur, sewe dae per week, gewerk kan word. Met dien verstande dat die diensvoorwaardes, soos gepubliseer by Goewermentskennisgewing R. 2167 van 28 September 1984, of enige Goewermentskennisgewing gepubliseer ter vervanging daarvan, nagekom word.

J. D. FOURIE,
Hoofdirekteur: Arbeidsverhoudinge.

No. R. 2286

31 Oktober 1986

WET OP ARBEIDSVERHOUDINGE, 1956

BOU- EN MONUMENTKLIPMESSSELNYWERHEID (TRANSVAAL)—WYSIGING VAN HOOFOOREENKOMS

Ek, Pieter Theunis Christiaan du Plessis, Minister van Mannekrag, verklaar hierby—

- (a) kragtens artikel 48 (1) (a) van die Wet op Arbeidsverhoudinge, 1956, dat die bepalings van die Ooreenkoms (hierna die Wysigingsooreenkoms genoem) wat in die Bylae hiervan verskyn en betrekking het op die Onderneming, Nywerheid, Bedryf of Beroep in die opskrif by hierdie kennisgewing vermeld, met ingang van die eerste Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 30 April 1987 eindig, bindend is vir die werkgewersorganisasies en die vakverenigings wat die Wysigingsooreenkoms aangegaan het en vir die werkgewers en werknemers wat lede van genoemde organisasies of verenigings is; en
- (b) kragtens artikel 48 (1) (b) van genoemde Wet, dat die bepalings van die Wysigingsooreenkoms, uitgesonderd dié vervat in klousules 1 (1) (a), (2) en 3 (4), met ingang van die eerste Maandag na die datum van publikasie van hierdie kennisgewing en vir die tydperk wat op 30 April 1987 eindig, bindend is vir alle ander werkgewers en werknemers as dié genoem in paragraaf (a) van hierdie kennisgewing wat betrokke is by of in diens is in genoemde Onderneming, Nywerheid, Bedryf of Beroep in die gebiede in klousule 1 van die Wysigingsooreenkoms gespesifiseer.

P. T. C. DU PLESSIS,
Minister van Mannekrag.

Department of Manpower preparing important changes to SA's labour laws

By Sheryl Raine

Important changes will be made shortly to key South Africa's labour laws, according to the director-general of the Department of Manpower, Dr Piet van der Merwe.

Speaking at the German Chamber of Commerce monthly luncheon in Johannesburg yesterday, Dr van der Merwe spelled out proposed changes concerning

- The industrial court
- The establishment of conciliation boards for settling disputes
- Training and industry's responsibilities
- Definitions of an unfair labour practice and unfair dismissal.

Dr Piet van der Merwe . . . new improved procedures for settling industrial disputes.



He hoped the amendments would be tabled in Parliament next year.

On changes to the Labour Relations Act he said the status and functions of the industrial court were to be enhanced.

"Proposals include the right of parties to appeal against decisions of the industrial court directly to the Supreme Court."

At present, parties only have the right to get an industrial court case reviewed by the Supreme Court in limited circumstances.

Definition

In addition, Dr van der Merwe said a more precise definition of what constitutes an unfair labour practice will be included in the Act as well as a completely new concept of what constitutes an unfair dismissal.

"We also intend to do away completely with ministerial discretion in the appointment of conciliation boards to settle disputes," he said. These tasks would become the responsibility of the feuding parties.

Following changes to the Manpower Training Act, industry would have to take greater responsibility for the training of artisans and technicians.

Changes to the Unemployment Insurance Act and the Workmen's Compensation Act would mean greater responsibility for industry.

The labour field had been relatively stable and peaceful because of significant developments.

These included the growth of credible and acceptable trade union structures.

"In 1979 there were 164 trade unions and today there are 267," he said.

He was encouraged to see that the legal mechanisms for resolving conflict were being used increasingly.

"In 1979 there were between 20 and 24 applications for conciliation boards. So far this year the department has appointed over 1 100."

On the "negative side", there was a danger that the trade union movement would become increasingly politicised and used as a vehicle for obtaining political power.

Intimidation by minority groups of the masses created problems for employers.

"What we have to face in the year ahead is not an apartheid society but the real question of what happens after apartheid has gone. We must decide what type of economic system, society, political system and freedoms will remain after apartheid has gone," he added.

W/E ARMS 15/11/86

LABOUR
AFFAIRS
DICK
USHER



Mixed reaction to proposed changes

166

PROPOSED changes to industrial legislation have received a lukewarm reception from Cape labour lawyers and academics

Dr Piet van der Merwe, director general of Manpower, spelt out the changes in Johannesburg this week concerning the Industrial Court, conciliation boards and the definitions of an unfair labour practice and unfair dismissal

He said the role of the Industrial Court would be enhanced and parties given the right to appeal directly to the Supreme Court

At present parties only have the right to have an Industrial Court case reviewed by the Supreme Court in very limited circumstances

Although many labour lawyers have called for a full right of appeal, especially in the light of some contradictory industrial court rulings, an attorney with the Legal Resources Centre, Mr Lee Bozalek, said an unqualified or automatic right of appeal could mean prolonged and expensive litigation over Industrial Court rulings

"This would be a blow to one of

the Industrial Court's chief strengths, being a direct and quick route for the remedy of industrial problems," he said

Experts forecast problems with making legal definitions of unfairness in dismissals and labour practices and said attempts to do this would probably create loopholes

Professor Willie Bendix, of the Stellenbosch Business School, said the exercise would be useful if it separated unfair labour practice and unfair dismissal, but apart from that making definitions looked impossible in technical terms

The abolition of ministerial discretion in the appointment of conciliation boards was well-received

Dr van der Merwe said parties would choose their own board chairmen and if no settlement was reached the dispute would go to the Industrial Court. The court would decide whether or not the parties had made an effort to resolve their differences. If not, it would order them back to the negotiating table.

Experts said this would eliminate delays and the "untenable" situation in which refusal to appoint a board blocked access to the Industrial Court

Special high court to hear disputes

SA labour laws are to be given a new look by draft Bill

19/12/86

166

STAR

Proposals to revamp South Africa's labour laws are detailed in a draft Bill published in the Government Gazette today.

Far-reaching changes to the judicial machinery governing labour relations, definitions of unfair labour practices and dismissals, and the settlement of disputes are envisaged.

Yesterday, at a Press conference in Pretoria, the Director-General of the Department of Manpower, Dr Piet van der Merwe, said he hoped the Bill represented a measure of consensus of the divergent views of participants in the labour scene

Due date for comments

He said comment would be welcome from all interested parties, and the Bill was not by any means the final form of amendments to the Labour Relations Act

Comment must be submitted to the department by February 6.

He added that it was hoped the Bill could be put before Parliament during the 1987 session

The additions to the Labour Relations Act were aimed at streamlining the dispute settlement process, he said

The contents of the draft Bill come from the National Manpower Commission, his department, and various employer and employee organisations

The major amendments relate to the establishment of a second tier in the judicial process — a special labour court which will be part of the Supreme Court of South Africa.

Its officers will be judges, and it will fall under the control of the Minister of Justice.

The court will be empowered to hear appeals against Industrial Court decisions, and go some way to alleviate the workload at the Industrial Court

Since the establishment of the Industrial Court in 1979, the number of cases submitted has risen dramatically, Dr van der Merwe pointed out

In 1974 there were four, in 1980 15 — and 801 last year. Projections for this year are more than 2 000

The Bill also provides for a right to apply for leave to appeal to the Appellate Division, and gives the court the power to award costs

A second major aspect is the redefinition of the term "unfair labour practice" This fol-



Dr P van der Merwe . . . Department of Manpower blueprint for streamlining the dispute procedures.

By Kym Hamilton,
Pretoria Bureau

lows much criticism that the present definition is too wide

Labour practices which will be "unfair" include.

- The use by a trade union or employer organisation of unconstitutional, unfair or misleading methods to canvass members

- The replacement of one employee by another on less favourable employment conditions.

- The indirect or direct support or participation in a boycott by an employee, trade union or federation not involved in a dispute with the relevant employer.

Exclusions

- Discrimination on the grounds of race, sex or religion

- An employer who unreasonably fails to negotiate on an industrial council or with a representative trade union or group of employees.

- A trade union which hinders an employer's negotiations

with employees not represented by the union

- The failure by an employer or trade union to comply with an agreement, or acts without authorisation of its members.

- Any labour practice which has the effect of jeopardising or prejudicing the employment opportunities or work security of an employee, unfairly disrupting the business of an employer, promoting or creating labour unrest and detrimentally affecting the relationship between an employer and employee.

Certain labour practices have been excluded from the definition.

These are the dismissal of illegal strikers and the selective re-employment of dismissed workers, provided objective criteria are used

What constitutes "objective criteria" will have to be determined by the Industrial Court

The draft Bill also provides for the insertion of a definition of an "unfair dismissal".

The definition will make it necessary for retrenchments to be negotiated, and will give employees the right to be heard

Major changes to SA labour laws are published

Dispatch Correspondent

JOHANNESBURG — Major amendments to the Labour Relations Act (LRA), aimed at extending and simplifying South Africa's official dispute settling machinery, were published in Pretoria yesterday

Comment on the draft legislation, parts of which were disclosed yesterday by the Manpower Director General, Mr Piet van der Merwe, has been invited

The new bill provides for the establishment of a special labour court (SLC) to consider appeals from the Industrial Court, allows access to the Appellate Division for appeals against some SLC decisions, sets out new definitions on what constitutes an unfair labour practice (ULP) and an unfair dismissal, and deregulates the establishment of conciliation boards

It contains various other minor amendments

The SLC will operate under the jurisdiction of the Ministry of Justice and will be manned by Supreme Court judges. It will make decisions on the basis of law, justice and fairness. Appeals from the SLC to the Appellate Division will be permitted on questions of law, and not on questions of fact

The new definitions of ULPs and unfair dismissals are based largely on previous Industrial Court judgments. However, there are aspects which are likely to prove highly controversial

Among the proposed ULPs are failing to comply with prohibitions in the LRA, replacing one employee by another under less favourable conditions, unfairly discriminating on the grounds of race, sex or religion, and unreasonably refusing to negotiate with a representative party

Others include concluding an agreement without authorisation from members, failing to comply with an enforceable collective agreement, and unfairly disrupting the business of employers and promoting labour unrest

Another aspect is a union's support for a boycott of a company not directly involved in a dispute with it. Thus, it appears, unions may not take "secondary" boycott action. Also, a union not directly involved in a dispute may apparently not support a boycott called by another.

No lawful strike can constitute an ULP. The selective re-employment of dismissed workers, too, is not in itself an ULP. However, selection criteria must be objective and fair

According to the bill, a dismissal is unfair if there is no valid and fair reason for it, the affected employee has not been given a fair opportunity to state his case, and an agreed procedure has not been followed. Retrenchments are unfair where reasonable notice has not been given, selection criteria are not reasonable, and employees or their unions have not been consulted

The fourth major aspect of the bill is the withdrawal of ministerial prerogative for the establishment of a conciliation board. This is expected to expedite the process. From now on boards will be established, as a right, by divisional inspectors of the Manpower Department, subject only to the applications being technically correct

Mr Clive Thompson of the Centre for Applied Legal Studies at the University of the Witwatersrand described the bill as "mostly an advance"

However, he added, some aspects should be carefully reconsidered to iron out certain perversions and anomalies

Court^{17/12/86} instituted to consider^{DO} (966) labour appeals

PRETORIA — A special labour court, to consider appeals against Industrial Court decisions, is provided for in proposed amendments to the Labour Relations Act published in yesterday's Government Gazette in Pretoria

The draft Amendment Labour Relations Bill also introduces a new definition — that of an "unfair dismissal", and contains adjustments to the definition of an "unfair labour practice", and provides for simplified procedures whereby conciliation boards are established

The proposed definition for an "unfair dismissal" includes the dismissal of an employee without "a valid and fair reason," or without reasonable notice and consultation with employees or their trade union, or the making of an unreasonable selection of employees to be dismissed

An employee should also be given "a fair opportunity to state his case prior to dismissal"

The director-general of Manpower, Dr Piet van der Merwe, told a news conference in Pretoria yesterday the definition of an "unfair la-

bour practice" had been amended to obtain greater clarity on what the term meant

According to the draft bill, it would be an unfair labour practice to discriminate against an employee — but not job applicant — or employer on the grounds of race, sex or religion

A dismissal arising from an illegal strike would, however, not be considered unfair

Dr van der Merwe invited comment and suggestions by February 6, so that these could be incorporated, if necessary, into the bill, which was to be tabled in Parliament during the next session.

Dr van der Merwe said the establishment of a special labour court would alleviate the pressures on the Industrial Court, which was expected to hear 2 000 cases this year compared with 800 last year

The Minister of Justice would appoint Supreme Court judges to act as judges of the special labour court.

Comment may be addressed to the Director-General Manpower, Private Bag X117, Pretoria, 0001 — Sapa

Later report P17

New Govt guidelines on labour

Sowetan 19/12/86 (166)

A SPECIAL court consisting of Supreme Court judges has been proposed by the Minister of Manpower and Public Works to deal with the escalating labour disputes, the Director-General of Manpower, Dr P J van der Merwe, announced yesterday.

Speaking at a press conference in Pretoria, Dr van der Merwe said a proposed Draft Bill containing amendments of the Labour Relations Act of 1956, will be published in the *Government Gazette* today. The proposal followed recommendations from various bodies including trade unions and employers, Dr van der Merwe said.

The purpose for the establishment of a special labour court consisting of judges, he added, was to consider appeals against decisions of the Industrial Court. The judges would be appointed by the Minister of Justice.

The proposal follows the escalating work load of labour disputes in the Industrial Court, he said. Other amendments in the Draft Bill included guidelines on unfair dismissals and labour practices.

By MONK NKOMO

Dr van der Merwe stressed that the Bill was not yet finalised and asked for interested parties for comments or recommendations to reach his department before February 6 next year.

Some of the proposed amendments on unfair dismissals included:

- The dismissal of an employee without a valid and fair reason.
- When reasonable notice has not been given before hand by the employer to the workers.
- When the employer have not given the employee a fair opportunity to state his case prior to dismissal, and
- When a procedure

agreed upon has not been followed at termination of employment.

Guidelines defining unfair labour practice included:

- A trade union or employers' organisation which made use of unconstitutional unfair or misleading methods of canvassing members.
- An employee or employer who is unfairly discriminated against on the grounds of race, sex or religion, and
- A trade union which directly or indirectly hinders an employer to negotiate with workers employed by him or some of them who are not members of such a trade union.

Cast Times
19/12/86

1986

Special courts for labour

Own Correspondent

PRETORIA. — Major amendments to the Labour Relations Act, aimed at extending and simplifying South Africa's official dispute-settling machinery were published yesterday

The bill provides for the establishment of a special labour court to consider appeals from the Industrial Court, allows access to the Appellate Division for appeals against some special court decisions, sets out new definitions on what constitutes an unfair labour practice and an unfair dismissal and deregulates the establishment of conciliation boards

It also contains various other minor amendments

The new definitions of unfair labour practices and unfair dismissals are based largely on previous Industrial Court judgments

Mr Clive Thompson of the Centre for Applied Legal Studies at Wits University described the bill as "mostly an advance"

However, he said some aspects should be carefully reconsidered to iron out certain perversions and anomalies

He then served in wei-

1911/2/12
Minimum
wages

166
Dispatch Reporter

EAST LONDON — The Department of Manpower has drawn attention to a new order in terms of the Labour Relations Act which lays down minimum wages for cleaning staff.

A spokesman for the department said yesterday the order, which became effective on December 1, applied to firms cleaning buildings.

The minimum pay laid down for cleaning staff is R51, 52c a week

New SA labour laws get wide approval

20/12/06
WKE Post
166

Weekend Post
Correspondent

JOHANNESBURG
Sweeping proposals to re-
vamp South Africa's labour
laws have been widely wel-
comed by industrial rela-
tions experts, and some
said the proposals were
among the most enlight-
ened in the world

Prof Nic Wiehahn, the
father of labour reform in
South Africa and head of
Unisa's School of Business
Leadership, told a Johan-
nesburg newspaper today
he was particularly im-
pressed with moves to de-
clare as unfair labour prac-
tice discrimination against
employees on the grounds
of race, sex or religion

Although it was implied
in the existing Labour Re-
lations Act (LRA) that dis-
crimination was an unfair
labour practice, it was the
first time in South African
labour history that dis-
crimination had been
clearly and officially con-
demned

"I believe the law should
go even further and make
this type of discrimination
punishable," said Prof
Wiehahn

He also welcomed pro-
posals to establish a labour
appeal court as a division
of the Supreme Court

The new proposals gov-
erning definitions of an un-
fair labour practice,
dismissals and the settle-
ment of disputes were pub-
lished in the Government
Gazette for comment yes-
terday

Labour lawyers largely
welcomed the proposals
but pointed out that there
were now some fundamen-
tal contradictions in the
country's labour laws
"The Mines and Works
Act still reserves 13 jobs for
whites on the mines," said
one

Another lawyer said "A
particularly far-reaching
proposal concerns the
recommendation that an
employer who unreason-
ably fails to negotiate on an
industrial council, or with a
representative trade union
or group of employees, is
guilty of an unfair labour
practice"

Lawyers also said the
unions' ability to mobilise
broad support in disputes
with employers would be
limited

1470
21

44

232

Labour changes hailed

By Sheryl Raine

Sweeping proposals to revamp South Africa's labour laws have been widely welcomed by industrial relations experts and some say the proposals are among the most enlightened in the world.

Professor Nic Wiehahn, the father of labour reform in South Africa and head of Unisa's School of Business Leadership was particularly impressed with moves to declare as unfair labour practice discrimination against employees on the grounds of race, sex or religion

Although it was implied in the existing Labour Relations Act (LRA) that discrimination was an unfair labour practice, this is the first time in South African labour history that discrimination has been clearly and officially condemned.

"I believe the law should go even further to make this type of discrimination punishable," said Professor Wiehahn.

He also welcomed proposals to establish a labour appeal court as a division of the Supreme Court.

The new proposals governing definitions of an unfair labour practice, dismissals and the settlement of disputes were published in the Government Gazette for comment yesterday.

CONTRADICTIONS

Labour lawyers largely welcomed the proposals but pointed out that there were now some fundamental contradictions in the country's labour laws.

"The Mines and Works Act still reserves 13 jobs for whites on the mines," said one.

Although a draft Bill to scrap job reservation on the mines was tabled in Parliament last year, amendments to the Mines and Works Act have still to be passed.

Another lawyer said "A particularly far-reaching proposal concerns the recommendation that an employer who unreasonably fails to negotiate on an industrial council, or with a representative trade union or group of employees, is guilty of an unfair labour practice."

Lawyers also said the unions' ability to mobilise broad support in disputes with employers would be limited



Sharon Benard (17) of Redhill High School received distinctions in seven subjects. The matriculation certificate she is holding belongs to her sister Annemarie (19) who received seven distinctions in the same subjects two years ago. ● Picture by Ruvan Boshoff

Labour Act amendments

SPMC
19/12/86
Pretoria Bureau 166

Draft amendments to the Labour Relations Act published in the Government Gazette today outlaw certain boycotts and restructure the definition of an "unfair labour practice".

The Bill also provides for:

- A special labour court to hear appeals from the industrial court

- A definition of an "unfair dismissal"

- Streamlining the appointment of conciliation boards.

The Director-General of the Department of Manpower, Dr Piet van der Merwe, said yesterday that the amendments would streamline the Act and keep pace with the latest developments.

● See Page 13

22/12/56

166. BUSDAI

LABOUR lawyers and other specialists have been studying the draft Bill published on Friday amending the Labour Relations Act (LRA).

While the overall response has been positive, a number of anomalies have been noted and they will no doubt be the subject of representations to the Department of Manpower in the coming weeks.

Various components of the unfair labour practice (ULP) definition, particularly, have drawn comment. For one, unlawful strike action is to be considered an ULP. This is seen as one the most anomalous aspects because an unpublished National Manpower Commission report actually recommends the decriminalisation of strike action.

The Bill also clearly sets out to prevent secondary industrial action. A strike would be unlawful if the employer or employees involved are not *directly* involved in the dispute which gives rise to it. And boycotts involving unions or employers not involved in a dispute are deemed to be unfair.

It is now a simple administrative matter to declare a dispute and apply for the establishment of a conciliation board (CB).

But it remains to be seen whether the courts would rule that it is legitimate, say, to declare a dispute against a retailer who refuses to discontinue stocking the goods of a manufacturer involved in a dispute. The key seems to be the interpretation of the word "directly".

Employers are likely to be unhappy at being unconditionally barred from replacing one employee with another at less favourable

Anomalies in draft Bill Uncovered

The Labour Relations Amendment Act published last Friday has been applauded for its enlightened contents. But many anomalies still need to be ironed out. ALAN FINE reports.

terms of employment. One attorney described this as "a strange inroad into management prerogative".

The prohibition on unfairly discriminating on the grounds of race, sex or religion has been welcomed. But there is some concern as to how the word "unfairly" will be interpreted.

Lawyers warn that the clause preventing the conclusion of an agreement "without the prior authorisation of members" is a potential problem. While the intention — a commitment to the democratic process — is sound, agreements are often ratified after the fact.

And the exclusion from the ULP definition of "any practice which has been agreed upon" opens up the possibility of an agreement, inherently unfair to a third party, nullifying the latter's rights.

The Bill also appears to contain some procedural anomalies.

While it removes from the Minister the prerogative to decide whether or not to appoint a CB, it has given similar powers to the Industrial Court on the question whether to arbitrate over an unfair dismissal. The court is empowered to make this decision based merely on the report on the dispute by the chairman of the CB or industrial council which considered it.

This is seen as an obstacle to automatic access to the court. In addition, the Bill lays down no clear criteria for such decisions.

The Bill also does not appear to give the new special labour court the power to act as a court of appeal on unfair dismissal arbitrations heard by the Industrial Court. Section 8 of the Bill, which

amends section 35 of the LRA, apparently sets out to expedite the dispute-resolving process. It does this by barring the establishment of a CB (and hence access to the Industrial Court) unless the application is lodged within 30 days of the dispute arising, or 14 days in the case of an alleged unfair dismissal.

The intention is laudable. But the strict time limits are likely to discourage the use of procedural arrangements agreed between unions and employers, because those procedures often take longer than the period prescribed in the Bill.

Another area of concern is section 9 of the bill which gives departmental officials wide powers to delay the completion of the work of a CB, and hence lawful strike action.

Finally, the Bill completely deletes section 17(1)(a) of the Act. This clause has recently been widely used to give urgent relief to allegedly wronged parties. For example, GM won an order preventing the National Automobile and Allied Workers' Union from supporting the recent strike there.

And the National Union of Mineworkers won an order against Gold Fields for the holding of strike ballots — a case now on appeal.

One labour lawyer says it is a pity there is nothing to replace this section. In terms of the Bill there is no allowance for urgent applications, a process which has often facilitated settlements.

In conclusion, despite the advanced thinking reflected in the Bill, there are many aspects which will have to be amended prior to passage through Parliament to correct anomalies, poor draftsmanship and mistranslations.

Businessmen in Zimbabwe get racism warning

The Star's Africa News Service

HARARE — White business executives in Zimbabwe have been accused by the chairman of the Industrial Relations Board of continuing to practise discrimination in favour of white employees

Mr Ignatius Chigwendere hinted at Government intervention unless what he called "negative attitudes" changed.

He told a seminar on personnel management that there appeared to be a concerted effort among whites to deny aspects of job responsibility to blacks when blacks took over certain functions

He also claimed in most cases when blacks occupied posts that had formerly been held by whites, they were paid less.

Mr Chigwendere said he also had the impression that generally whites were not asked about their qualifications whereas blacks had to produce good O-level school results to get a job in a factory as a sweeper.

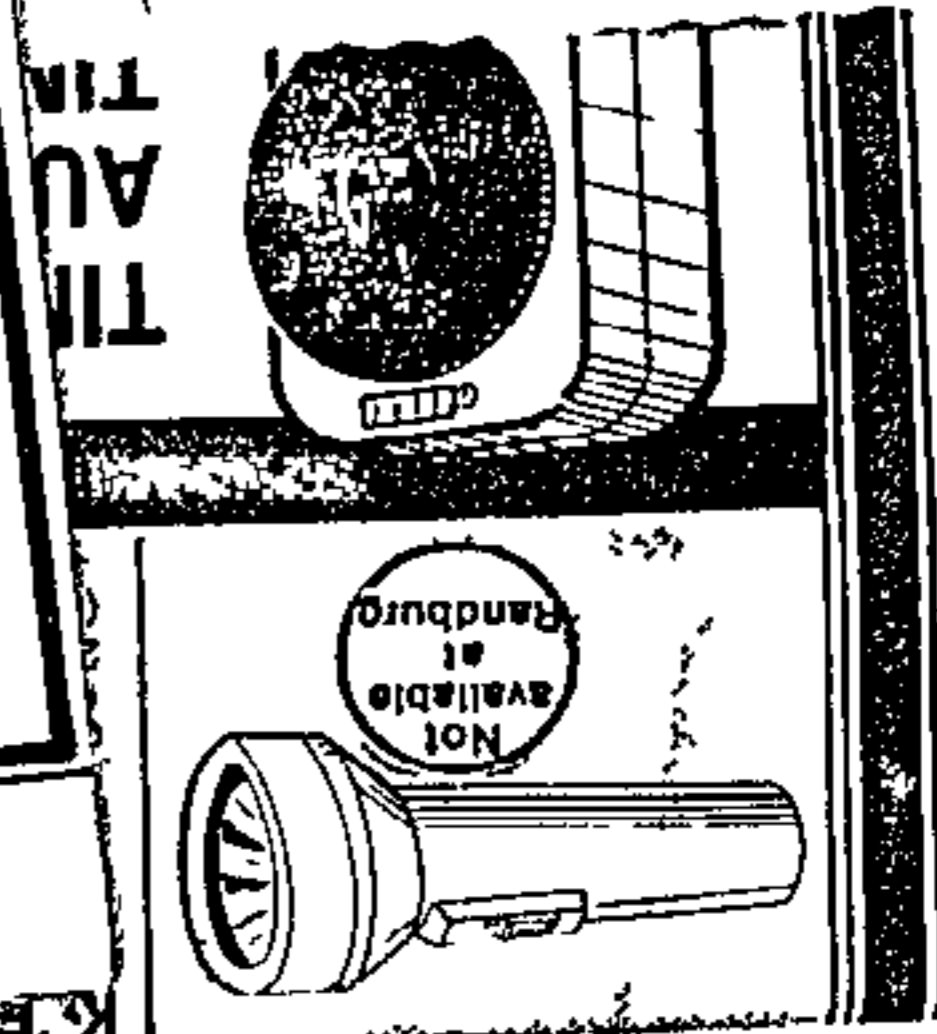
He alleged insurance companies were taking on white school leavers as brokers while blacks were only taken on as clerks.

To expect the Government would continue to accept situations like this was to misunderstand completely the policy of reconciliation, he said

Footballer fined for



flavours!



FIN MAIL 26/12/86.
LABOUR LAW 166

Changing the rules

Sweeping changes to existing procedures for resolving labour disputes, adjustments to the unfair labour practice definition, and several major innovations are proposed in the draft Labour Relations Amendment Bill, published in the *Government Gazette* last Friday.

The draft Bill is the product of the Department of Manpower's deliberations on the 1984 report of the National Manpower Commission (NMC). This investigated the levels of collective bargaining, the registration of trade unions and employer organisations and the Industrial Court, as well as input it has received on various labour-related issues from the Economic Advisory Council and other bodies. Farm workers, domestic servants and State employees are excluded from the draft Bill's provisions. In line with previous practice, the department has invited all parties interested in submitting comments on the Bill to do so by February 6 next year.

The key features of the draft Bill are proposals providing for

- The establishment of a special labour court, manned by Supreme Court judges, which will, among other things, consider appeals against decisions of the Industrial Court,
- Appeals against decisions of the special labour court on questions of law to be heard by the Appellate division,
- A tightening up of the definition of an unfair labour practice,
- The introduction into the law of a new concept of "unfair dismissal," and

- New and simplified procedure governing applications for and the workings of conciliation boards

Changes proposed for conciliation boards (CBs) are likely to have the greatest impact on labour relations as they make provision for dispute resolution to be speeded up considerably.

In essence, the draft Bill proposes that the Minister of Manpower should no longer be able to exercise any discretion over the appointment and terms of reference of CBs. The issue has been the subject of a great deal of controversy. Instead, it says that all CB applications should in future be handled by local divisions of the Manpower Department whose sole concern should be to ensure that boards meet the technical requirements of the Labour Relations Act (LRA), and that it should be left to the disputing parties to determine what the board's terms of reference should be.

Provision is, however, made for the Director General of Manpower to set the terms of reference if the parties cannot reach consensus within seven days of the establishment of a CB.

If parties fail to resolve their dispute at CB level, and the point at issue concerns an alleged unfair labour practice, or an unfair dismissal, the Bill provides that either side can refer the matter directly to the Industrial Court or the special labour court.

The intention behind the proposals is to bring the procedures pertaining to CBs into line with the dispute-settling procedures applied by industrial councils. As such they are likely to be welcomed.

The draft proposals about what should be regarded as unfair dismissals go a long way towards codifying decisions handed down by the Industrial Court on this issue in the past few years. According to the Bill, a dismissal will be regarded as unfair if

- A worker's employment is terminated without a valid and fair reason,
- An employer retrenches employees without first giving them reasonable notice, consulting with the employees or their trade union, or if the selection of employees to be retrenched is "not reasonable,"
- An employer has not given employees a fair opportunity to state their case prior to

- their dismissal, or
 - Agreed procedures had not been followed
- While retaining the present unfair labour practice definition, the draft Bill also stipulates that certain practices should be regarded as unfair. These include practices by which
- A trade union uses misleading methods to canvass members,
 - There has been a failure by any party to observe the provisions of the LRA,
 - Employers replace employees with other workers on less favourable conditions of employment,
 - A union or union federation supports a product boycott of a company if it is not directly involved in the dispute,
 - Employees are discriminated against on the grounds of race, sex or religion, or
 - Employers unreasonably fail or refuse to negotiate with a representative trade union.
- Legal strikes and lock-outs, any practices agreed upon by unions and companies (provided the agreement has not been in force for longer than three years), and selective re-employment of dismissed workers (provided objective criteria are applied), will not be deemed to be unfair labour practices. ■

LABOUR LEGISLATION

1987

15/11/87 STAR

Litigation anticipated over new changes to labour laws

166

By Sheryl Raine

Draft proposals to change the Labour Relations Act conflict with other laws which uphold apartheid and could lead to major law suits, labour experts warned today

At the first of a series of seminars in Kempton Park, leading labour law specialist Mr Rod Harper and a labour relations consultant from FSA Limited, Mr Mike Beaumont, discussed the implications of the proposed changes to the law

In general, the proposals have been welcomed and are expected to have wide impact on industrial relations. However, there are certain clauses which have been criticised

"Some clauses conflict directly with statutes upholding apartheid

policies and could lead to major litigation if the Bill becomes law," said Mr Harper

"For instance, a company taking advantage of the incentive schemes in the homelands in terms of the Government's decentralisation policy could run foul of a section of the Bill that makes it an unfair labour practice to replace an employee with another employee on conditions of employment that are less favourable than those of the first employee

"This unfair labour practice has so many potential meanings that if it becomes part of the Act major litigation will ensue on the basis that companies should not relocate from urban areas to incentive areas because this would be an unfair labour practice"

"No doubt such an interpretation was not intended to be placed on that section by the Department of Manpower, but the definitions are broad enough to encompass such actions"

Unions have long complained that companies leave urban areas, abandon their workforce, and set up shop in the homelands where wage bills are more than halved and conditions of employment go unmonitored.

MAJOR ISSUE

South Africa-based unions are prevented by law from operating in homelands, which have enacted their own labour legislation different to that of white South Africa

Mr Beaumont expects that discrimination in the workplace will become a major issue if the Bill becomes law

It has been proposed that discrimination on the grounds of race, sex, religion or creed be declared unfair labour practice.

He said allegations of unfair discrimination could become a major source of union activity, and these demands could be pursued with the full backing of the law if the Bill is accepted

Striking at the heart of labour relations

16/1/87
16/1
16/1
WEEKLY MAIL

UNDERNEATH the shiny face of the draft Bill amending South Africa's Labour Relations Act are some dark, worrying features

The feeling among legal experts is that the main aspects of the draft legislation are beneficial — but there are some retrogressive and ambiguous provisions

A key proposal is the creation of a special labour court manned by Supreme Court judges, which will hear appeals against Industrial Court decisions and could handle cases brought to it directly if Ministerial regulations allow this

Labour experts agree that a special labour appeal body is needed, but say its success will depend on the appointment of judges with a sensitivity to labour matters

A serious concern will be the inability of these courts and the existing industrial courts to hear applications for urgent relief following the proposed scrapping of section 17 (11)(a)

The industrial courts currently have the power to hear urgent disputes of right, but the new Bill could remove this — the only mechanism in labour law for the resolution of immediate problems

One leading labour lawyer says "Time is of the essence in labour disputes. Without this provision, parties will only be able to go to the Supreme Court, which doesn't always understand the urgency and complexity of labour matters"

Another legal expert disapproves of the special labour court's potential to serve as a court of first instance in hearing unfair dismissal and unfair labour practice (ULP) cases. This would give it almost the same powers as the industrial court, he says, raising fears that the authorities could be downscaling the industrial courts

New secrecy provisions, making it a criminal offence to disclose the outcome of industrial court cases without the consent of the court's president, have been widely condemned

Clive Thompson, editor of the *Industrial Law Journal*, says the development of a coherent legal approach would be seriously hampered by the secrecy provision

"It is in the public interest that judgements be published. The only exception should be to allow a party to argue before the industrial court that certain evidence is confidential and should not be made available for general distribution when the judgement is published," he said

The creation of new ULPs in the Bill is likely to generate the most controversy because their terms are so wide-ranging

Sympathy strikes may be outlawed if a new draft Bill on labour relations becomes law. CLAIRE PICKARD-CAMBRIDGE looks at suggested changes in the draft legislation.

Professor PAK le Roux of Unisa's mercantile law department says some of the new ULP definitions are vague and still need a lot of work. One example is a clause making it unfair for one worker to be replaced by another under less favourable circumstances — apparently a sop to white workers by discouraging racial undercutting

While most unions are likely to welcome this clause, it will mean employers' hands will be tied. Even salaries, irrespective of seniority, will have to be retained if the clause isn't redefined clearly

Le Roux says the exact scope of new clauses which make it illegal to have sympathy strikes, and unfair to launch secondary boycotts involving employers and employees not directly party to a dispute, are unclear

The clause making discrimination on grounds of race, sex or religion unfair has been welcomed, although it is largely of symbolic importance because the old ULP definition could encompass this. But at least one lawyer suspects that the remaining job reservation provisions in the Mines and Works Act will continue to take precedence over the new ULP amendments

The most critical clause in the new ULP definition makes it a duty, for the first time, for representative unions and employers to bargain with one another. This could signal the end of the recognition disputes between companies and representative unions

The clause is vital because it gives the court the power to decide whether employers have to bargain at plant level rather than at industrial council level, if unions request this. A leading lawyer says this clause may reverse the *Metal and Allied Workers' Union v Hart* case, where the court found there could not be a duty to bargain at plant level if this duty already existed at industrial council level

Legal strikes have still not been decriminalised and the Bill does not clarify the circumstances under which legal strikers should enjoy protection. However, it will still have to be seen whether the courts will treat illegal strikes as ULPs

Mark Anstey, new director of the University of Port Elizabeth's Industrial Relations Unit, is also concerned about a new ULP in the

draft Bill which applies to an employer organisation or union taking action without authorisation from its members

"Some unions give representatives a fairly open mandate, while others do not. Who will decide what kind of mandate is fair and under what circumstances? I suspect this is the product of employers looking for certainty in circumstances which do not lend themselves to it," he says

Another important feature of the Bill is the separation of an unfair dismissal from an ULP. Some feel this is a positive move — but critics say there's no clear provision against selective dismissals and selective rehiring, and arbitration procedures for an unfair dismissal seem unnecessarily convoluted

In terms of the Bill, it is no longer a ULP to selectively re-hire dismissed workers according to objective criteria. This allows employers to hire new workers after a strike and only re-engage a portion of their old staff, albeit using "objective criteria". This is retrogressive because any selective re-engagement may be unfair under the existing ULP definition

Simplified procedures for conciliation board applications will speed up dispute resolution, and allow quicker access to the industrial court if board meetings fail to result in agreement

In future, the appointment of a conciliation board will not depend on Ministerial discretion but will be an automatic procedure, handled by a Manpower Department official. This has been welcomed because it will prevent controversies arising, as in the past, over suspected political interference. But the new time limits in which conciliation board applications have to be lodged are felt to be a little stringent. Grievance procedures at factory level could be undermined if parties have to apply for a board before initial negotiations have stalemated

There is confusion about whether industrial councils are still obliged to settle disputes only with the consent of affected parties. If the Bill allows industrial councils to resolve disputes without the consent of parties (who may not be directly represented on the council), this could block opposing parties from going to the industrial court

This question, and others, will receive more attention when the Bill is discussed at a conference at the Wits Law School from January 22 to 24

The coming month will also, clearly, be a crucial period for parties wanting to make representations to the Manpower Department before the deadline lapses on February 6

CAP & TRADES 17/1/87 (166)

Labour law changes 'will favour bosses'

Labour Reporter

MANAGEMENT has more to gain than the unions from proposed changes in the labour law due to be debated in Parliament later this year, according to two South African labour experts

A labour law specialist, Mr Rod Harper, and a top industrial relations consultant, Mr Mike Beaumont, have warned that the Draft Labour Relations Amendment Bill, published in December, would be seen by some trade unions as "union bashing"

Speaking at an industrial relations seminar in Cape Town, the two described the bill as "compromise legislation" but primarily a "management bill"

They referred specifically to one of the new definitions of an unfair labour practice which prohibits a trade union from "directly or indirectly hindering" an employer from negotiating with workers who are not union members

The bill favoured a "multi-union situation" and was in direct conflict with the Congress of South African Trade Unions whose aim is "one union, one industry", Mr Harper said

He said a clause requiring both unions and employer bodies to obtain "prior authorization" from members

before taking any action or concluding an agreement was a "contentious provision" as unions would resent being questioned on authorization

One of the compromises in the new legislation is that it permits consumer boycotts under certain conditions

Although it would be considered an unfair labour practice to launch boycotts against a company not involved in a dispute with its employees, the same does not apply where the employer and employees are in dispute

The bill also outlaws sympathy strikes at plants not directly involved in a dispute, industrial action while a dispute is still being processed by the Industrial Court, and intermittent strikes

Mr Beaumont said one of the major developments embodied in the bill was the clause which outlawed unfair discrimination on the grounds of race, sex or religion

Mr Beaumont and Mr Harper welcomed the establishment of a special labour court, staffed by Supreme Court judges, to hear appeals against Industrial Court decisions, saying this would eliminate the tension between Industrial Court decisions based on fairness, and Supreme Court decisions based on common law

New labour laws 'may herald a Bill of Rights'

21/1/87 (166) STAR

Proposed changes to South Africa's labour laws, which will outlaw job discrimination based on sex, race or religion, may lead to a complete Bill of Rights, says a leading labour expert.

Mr Mike Beaumont of FSA Ltd addressed a Kempton Park seminar on the proposed changes to the Labour Relations Act. Delegates noted that the country's labour laws were racing ahead of many other pieces of apartheid legislation.

The Department of Manpower has published lengthy proposals to change the Act. If they become law, it will be an unfair labour practice to discriminate against an employee or employer on grounds of race, sex or religion. Complaints can be taken to the Industrial Court.

The forerunner?

"A clause like this entrenches civil rights in the workplace," said Mr Beaumont. "It is possible that this clause could be the forerunner of a Bill of Rights in South Africa and that the Government may have additional intentions."

Asked to comment, the chief director of labour relations in the Department of Manpower, Mr JD Fourie, said the discrimination clause was purely a Manpower Department issue at present. It was not possible at this stage to link the clause with a Bill of Rights.

However, he noted that the Law Commission was conducting an investigation into a Bill of Rights and could make recommendations to the Government.

"In countries like the United States civil rights provisions are applied within the context of the American Constitution. In South Africa, if the new labour laws are adopted, we will have different standards inside and

If Manpower Department proposals become law, civil rights will be entrenched in the workplace, a labour expert told a recent seminar, which is being repeated in Johannesburg this week. Sheryl Raine reports.

unless employees on strike are directly involved in a dispute with an employer.

Employers will be guilty of an unfair labour practice if they do not give employees or their representatives reasonable notice, consult them and select people for retrenchment by applying reasonable criteria.

A more detailed breakdown of what constitutes an unfair labour practice will place constraints on the actions of trade unions until such time as they have authorisation from members.

In good faith

It will be an unfair labour practice if an employer unreasonably fails or refuses to negotiate on an industrial council or otherwise with a trade union or group of employers who represent a specific interest. This means that the concept of good faith bargaining will be firmly entrenched in labour law.

Employers will be able to selectively re-employ workers who have been dismissed as long as they are selected on objective criteria.

There are several proposals which place the responsibility for settling labour disputes firmly in the laps of the warring parties. The Industrial Court will become more of a last resort in the event of deadlock and will have the right to refer disputes back to the parties if it is not satisfied that enough attempts have been made at conciliation.

The Industrial Court will be allowed to award costs for the first time, except in the case of temporary orders under section 43 of the Act.

The days of conflict over jurisdiction between the Industrial Court and the Supreme Court will soon be over. The role of the Supreme Court in labour lawsuits will be considerably reduced.

A Special Labour Court which will be staffed by judges and controlled by the Department of Justice will hear appeals against Industrial Court rulings and will be allowed to base its rulings on law, justice or fairness.

Unions, companies and other interested parties have been asked to send their comments on the recommendations to the Department of Manpower by February 6.

166 FUMAL 23/1/87

Drafting labour compromises



Mike Beaumont, senior consultant at FSA Industrial Relations, comments on the draft Labour Relations Amendment Bill.

The draft Bill amending the Labour Relations Act should be seen as a compromise package which addresses a variety of labour relations problems. Like all compromises, parts will be pleasing to some, while for others some elements will be a source of concern.

The parts of the Bill that will be welcomed are those addressing concerns common to both management and labour — for example, streamlining the various dispute procedures, and making the appointment of conciliation boards mandatory. However, certain proposals perceived to be addressing a unitary interest (such as further prohibitions against industrial action) are likely to be contentious.

The draft Bill can be seen as both reactive and proactive. It is reactive in that it seeks, for example, to limit product boycotts, secondary or sympathy strike action and industrial action over unfair dismissals — all of which were a feature of industrial relations in 1986. Amendments to the unfair labour practice definition to include unfair discrimination on certain grounds, and employment of replacement employees on terms less favourable than those which applied to the original employees are, on the other hand, proactive.

Also noteworthy is that the draft Bill encourages parties to limit their exposure to allegations of unfair dismissal and unfair labour practices by entering into agreements. It encourages parties to settle disputes by themselves which might otherwise be referred to the Industrial Court or to

compulsory arbitration. In both instances the efforts made by the parties will be taken into account by the court or the arbitrator.

There also appears to be a deliberate effort in the draft Bill to identify certain disputes of right (for example, unfair dismissals), and to provide avenues for these disputes to be settled without recourse to industrial action. Multiple procedures are envisaged for handling disputes regarding unfair dismissals. They involve a mixture of processes and involve both courts and arbitrations.

Unfair dismissal cases can be referred to the Industrial Court under Section 43, which provides for the parallel process of reinstatement and conciliation, including compulsory establishment of conciliation boards. In the event of a failure of a conciliation process within a 30-day period, there is a new supplementary process, under Section 45A, which involves arbitration by the Industrial Court should any of the parties to the dispute so wish. Over and above this, there is the proposal to establish the Special Labour Court, to be staffed by judges, which can hear appeals from the Industrial Court.

It is envisaged that strikes or lockouts over unfair dismissals should be prohibited where the arbitration process has been invoked. This mirrors the approach adopted in certain overseas countries.

These measures are, no doubt, designed to reduce industrial action over unfair dismissals. The quid pro quo is compulsory establishment of conciliation boards and access to arbitration. Within this proposed new structure arbitrations concerning unfair dismissals can be held within 60 days of disputes arising. The efficacy of these provisions will depend on the expeditious handling of disputes and the reputation of the arbitrators.

The proposed definition of "unfair dismissal" refers to individual dismissals and retrenchments. Individual dismissals are to be subject to valid and fair reasons. In addi-

tion, employees should be given a fair opportunity to state their case prior to dismissal, and re-instatement will not result automatically unless this has occurred.

In such cases the court will be required to investigate whether it was necessary to have given the employee such an opportunity. Sound industrial relations practices would, however, support the holding of inquiries, and it must be borne in mind that the prejudice which the employee suffers in cases where inquiries are not held will be a determining factor in reinstatement cases.

The proposed definition of "unfair dismissal" also calls for a number of actions by the employer in retrenchments; it largely codifies the current approach of the Industrial Court. One major proposal concerns the selection of retrenched employees on "reasonable grounds." This seems wider than the "objective criteria" approach envisaged by the Industrial Court, and is much broader than the last-in first-out principle so often advocated by trade unions.

The definition of "unfair dismissal" is wide, and the rights and obligations of parties is open to interpretation. In practice, this may cause confusion. Disputes cannot always be neatly pigeonholed. They often involve multiple causes, the proposals do not spell out how these multiple disputes are to be handled. It might therefore not be possible for the objective of avoiding industrial action in unfair dismissal cases to be realised in all circumstances.

However, the draft Bill does allow for the parties themselves to tackle these difficulties and uncertainties, and to reach appropriate agreements. It would then be an unfair dismissal if such agreements were not adhered to at termination. The emphasis will still be on self-government, and interested parties should see the draft Bill's provisions as guidelines — not alternatives — to direct dealings with one another.

THE passage through Parliament of the Labour Relations Amendment Bill, planned for this year, will be substantially delayed.

The Bill, published for comment last December, defines an unfair labour practice (ULP), establishes a Special Labour Court to act as a court of appeal from the Industrial Court, and attempts to streamline dispute-resolving procedures.

Talking at an FSA Management Consultants conference recently, Manpower Department labour relations director Joel Fourie said comment received showed widely divergent views, particularly on the ULP definition.

The most fundamental issue is whether a new ULP definition is needed at all. The present definition is brief and open-ended, leaving discretion with the Industrial Court.

The government view is that guidelines are needed to provide more certainty to those with limited access to court decisions. In many respects the definition does reflect past decisions. But it also covers some areas

Big rethink needed on labour Bill

Employers, unions and the legal fraternity are all critical of aspects of the Labour Relations Amendment Bill, particularly its definition of a ULP. Government is unlikely to rework it in time for passage through Parliament this year.

where the court has made contradictory findings on different occasions.

The other view is that the proposed ULP definition is both unnecessary and potentially destructive.

Labour consultant Gavin Brown asserts that government is now legislating for a problem which did exist four years ago. But, with the large body of decisions made since, basic principles have been clarified and there is no need for legislation.

Further, he argues that the answer to the problem of conflicting judgments lies in allocating more money to the court. Offering better salaries and conditions will attract more ex-

perienced and competent personnel.

Another point widely made is that each case has its own circumstances, the line between what is fair and unfair can be very thin, and legislation could force the court to make a finding it believes is wrong in terms of equity.

On the question of unfair dismissals, the Bill provides little additional clarity.

It requires there be a valid and fair reason for any dismissal. And employees should be given a fair chance to state their case, if the court finds it necessary. But it is not specified when this is so.

This clause may reflect a recent tendency to award damages, rather than reinstatement, when a dismissal was justified although proper procedures had not been followed.

The court also now seems to accept a formal inquiry is not always essential, provided the employee has had an opportunity to state his case.

At a recent seminar, labour lawyer Graham Giles noted that the court is becoming more concerned that procedures be strictly followed in dismissals due to alleged misconduct. Where it is due to inability to perform the task, warnings and counselling are more important.

Recent decisions have also clarified that employers must be sensitive to the social environment. More than one dismissed worker has successfully argued that his participation in a political stayaway was unavoidable. There is no clarity in the Bill on the

standards the court should apply in determining whether a dismissal is fair. Some members inquire closely into the merits of each case and decide on that basis. But others accept the "range of reasonable responses of an employer" test. They do not interfere unless the employer's decision is clearly wrong, unjust or unfair.

Regarding the ULP definition, Fourie conceded that, technically, the draft Bill leaves a lot to be desired. He also said some of the principles enshrined therein were designed merely to draw public comment. They have certainly done that.

From the union side, there has been an outcry over provisions which would stop a union preventing an employer negotiating with non-union representatives. The philosophy of majoritarianism, whereby the majority union is recognised as the sole bargaining repre-

sentative — is entrenched in emerging union ranks. The unions see the new clause as an attempt to weaken them by encouraging splinter groups and employer attempts to set up tame, in-company unions.

The unions are also unhappy that unlawful strikes and secondary industrial action may become ULPs.

The court has not yet been called upon to adjudicate on the former. And in some cases, the court has argued that unlawful strikes are legitimate in certain circumstances.

A further union objection is that the Bill does not provide protection from dismissal for lawful strikers.

Meanwhile, employers, said Fourie, have expressed misgivings about the clause making it an ULP to replace one employee with another under less favourable employment conditions. This was designed to create job se-

curry. But it has been pointed out that there are circumstances — for example when a plant relocates — where this would be legitimate.

Another problem is the clause making discrimination on the grounds of race, sex or religion an ULP. There are fears that, as worded, the clause could prevent discrimination on other legitimate grounds.

Finally, the department has received objections to the clause declaring non-adherence to an agreement an ULP. Some agreements, they say, may be inherently unfair.

Fourie made it clear major changes will be made before the Bill becomes law. The major question is how this can be done without watering down the ULP definition to a point where it becomes so vague as to be meaningless.

This would be another argument for those who believe further ULP law is undesirable. The ball is back in the Manpower Department's court. The course it will follow in bringing the Bill to Parliament is undecided. But it would seem so much rethinking is required, passage during 1987 is not possible.

ARGUS 24/3/87

New measure gives Sats the right to fire strikers

Labour Reporter

A SPECIAL Government Gazette has been published giving South African Transport Services' general manager the right to summarily dismiss strikers.

The strike of rail workers on the Rand, which started at the City Deep container depot 11 days ago, was spreading to the East Rand, according to the South African Railways and Harbours Workers' Union (SARHWU), an affiliate of the Congress of South African Trade Unions.

At least 8 000 workers are now involved.

The Minister of Transport Affairs, Mr Eli Louw, yesterday gazetted amendments to the Sats personnel regulations giving the general manager discretion to treat striking workers as having terminated their their jobs without notice with effect from the date of the strike.

The general manager had not yet invoked the regulation and it was expected that Sats would warn strikers of the new regulation before applying it.

Sats spokeswoman Miss Jenne Jordaan said it was not known how many places and workers were now involved in the strike.

JAN SMUTS

Mr Themba Khuzwayo, assistant general secretary of railways and harbours union, said workers at Jan Smuts Airport and Johannesburg station had joined the strike today.

He said about three-quarters of the strikers were members of his union.

Miss Jordaan said drivers had been flown in from Cape Town, Pretoria and Durban and local staff with heavy-duty licences were also helping to move containers.

The City Deep "inland harbour" normally handles about 1 300 containers a day.

LABOUR
AFFAIRS
DICK
USHER



Supreme Court gives protection to strikers

W/E ARGUS 28/3/87

100
103
166

AN important Supreme Court judgment about the right to strike and protection of strikers' jobs was handed down in the Natal Division recently

It involves an Industrial Court case sent for review in which 113 workers, members of the Metal and Allied Workers' Union (Mawu) dismissed by Natal Die Casting in May 1985 were reinstated retrospectively to September 1985

The Industrial Court held that the dismissal was an unfair labour practice and that the failure or refusal by the company to negotiate in good faith was an unfair labour practice.

The company applied to the Supreme Court in February 1986 to review the decision and to interdict Mawu and the workers from giving effect to the decision

According to a statement from Mawu, the Supreme Court rejected the company's arguments and confirmed the Industrial Court's decision

Mr Justice Kriek said that the fact that a strike was unlawful might be relevant in determining the fairness or otherwise of a company's response, but it did not automatically deprive the Industrial Court of jurisdiction to consider whether the company had acted fairly in all the circumstances

He pointed out that the company's argument overlooked the approach to labour

relations into the Act as a result of the recommendations of the Wiehahn Commission

"This finding is very important. It indicates that not only may the Industrial Court protect lawful strikers but it also has the jurisdiction to protect unlawful strikers in certain circumstances," said Mawu

"The decision also states quite unequivocally that the Industrial Court does have the power to reinstate striking workers under Section 46(9) whether the strike is lawful or not

"Although the court found that the illegality of the strike is relevant to the fairness, it does not hold that illegality is decisive"

Mawu said this was the first decision of the Supreme Court which considered and ap-

proved the reinstatement of strikers under Section 46(9) of the Labour Relations Act

Previously the Supreme Court in the Transvaal had only considered the temporary reinstatement of strikers under Section 43 in the Marievale case

"This decision makes it clear that the dismissal of strikers may in appropriate circumstances constitute an unfair labour practice

"The Supreme Court's decision also makes it quite plain that a failure to negotiate in good faith with the trade union may in appropriate circumstances constitute an unfair labour practice"

Basically, the decision confers a limited right to protection from dismissal in the case of strike action

Govt plans new laws to deal with strikes

Political Staff / 66
PRETORIA - The Government is planning to introduce new legislation to deal with labour strikes, according to Mr Alwyn Schlebusch

Reported on television news last night, Mr Schlebusch, Minister in the State President's Office entrusted with Administration and Broadcasting Services, said the new legislation would be introduced in the coming session of Parliament

Neither Mr Schlebusch nor Minister of Manpower Mr Pietie du Plessis could be reached for further details today, but a spokesman for the Department of Manpower said the legislation had already been pub-

lished for comment
Entitled the Draft Labour Relations Amendment Bill, the proposed legislation would establish a special labour court, adjust the definition of an unfair labour practice and amend and simplify procedures to set up conciliation boards

Wider powers to be given to the industrial court are among several other proposed adjustments to the Labour Relations Act

It is understood amendments are being considered to legislation dealing with SA Transport Services to bring its labour practices in line with South Africa's other labour laws
(Report by David Braun, 47 Sauer Street, Johannesburg)

May 13
May 20
Apr 28
May 6

1812
1716

TURES

11 deg C
16 deg C

14,5 deg C
16,5 deg C

yesterday

verage for the month)

18,5 (22,8) deg C
10,2 (11,3) deg C
14,4 (16,5) deg C

92 (97) %
50 (50) %

250
166
Disputes put focus on govt sector

Call for study of labour laws

B/day
27/4/87

LEGISLATION dealing with labour disputes in government sectors should be examined to see whether it was effective or should be expanded, Director-General of Manpower Piet Van der Merwe said yesterday.

The present situation has been highlighted by the prolonged, unresolved strikes involving up to 22 000 transport workers and 4 800 post office workers.

Central and provincial government — including the post office and transport services — are excluded from the dispute machinery laid down in the Labour Relations Act. They are each covered by separate legislation.

Van der Merwe said that in the past the government sector had not faced much industrial action, possibly because of its particular legislation and the conditions of service of its workers.

In view of the recent strikes, he suggested that government-sector conciliatory machinery be studied to decide whether it was adequate.

He said the separate legislation used in the government sectors had

THELMA TUCH

sparked off criticism. One of the Wiehahn Commission's recommendations had been that all employers — including government — be subject to the Labour Relations Act.

"One must weigh up the pros and cons of the government either providing for conciliation machinery in its own legislation or adopting the Labour Relations Act," he said.

The mechanisms provided for in the Labour Relations Act, such as industrial councils, conciliation boards and industrial courts, had been exhaustively used by the private sector and local authorities.

They had been successful in settling many disputes, he said. In 1986, industrial councils handled 1 983 disputes, the majority of which were settled. More than 2 000 cases of alleged unfair labour practices were referred to the industrial court. Most cases were settled before being heard.

Van der Merwe added that 50% of all strikes in the private sector ended within a day.

w/c Affairs
25/4/87

State's plans for trade unions

LABOUR
AFFAIRS
DICK
USHER



THERE are strong signs, if statements by Cabinet Ministers in a pre-election situation mean anything, that the Government has plans for trade unionism in South Africa

Early this month Foreign Minister Pik Botha told an election meeting in Benoni that the Government was very concerned about the increasing militancy of some black trade unions and was giving it serious attention

He spoke about the

"outrageous and irresponsible" demands of elements in trade unions and warned that if they continued it could lead to the end of trade unionism in South Africa

He advised militant trade unionists to look at "their comrades north of the Limpopo"

In Zimbabwe trade unions had virtually no power and were controlled by the Minister of Labour who could decide on working hours and wages

One objective difference between the two situations which Mr Botha either ignored or was not aware of is that at least unionists in Zimbabwe have some say in deciding who shall govern them

This week Minister in the Office of the State President Alwyn Schibusch told a meeting in George that further legislation in the labour field was in the pipeline to eliminate situations such as the South African Transport Services strike

He gave his audience an assurance, which can only be seen as ominous that after the May 6 election the situation would be "normalised"

SMOTHERED

He also claimed that the country's enemies had chosen the labour field to make political capital before the election and that if certain subversive actions had been planned for the election these would be smothered at birth

And, if you go back to last year, there was a speech by Manpower Minister Pietie du Plessis to the congress of the South African Iron, Steel and Allied Industries Union in which he said that the Government would act against trade unions which pursued "dubious political goals"

He said it was "deplorable" that attempts were being made to use the labour arena to achieve political aims

"The South African labour system's freedom lends itself to misuse by trade unions," said Mr du Plessis

The Government had not shut its eyes to this.

© (News by D Usher, 122 St George's Street Cape Town)

turned to the applicant for rectification. However, the applicant failed to respond. A further application was received on 7 May 1987 by the Natal Provincial Administration via the Regional Office of the Department of Development Planning in Pietermaritzburg. This application also was incomplete and a letter was addressed to the applicant on 15 May 1987 requesting the required information.

- (2) Yes On 15 May 1987
- (3) No The application will be considered on receipt of the additional information called for
 - (a), (b) and (c) Fall away
- (4) Falls away
- (5) Yes

- (a) A notice in terms of section 41 (1) of the Act has been issued
- (b) The SA Police was requested on 22 April 1987 to serve a notice on the accused
- (c) The person concerned owns and occupies immovable property contrary to the provisions of the Act
- (d) The Government

Regional services councils

*4 Mr S S VAN DER MERWE asked the Minister of Constitutional Development and Planning

Whether any regional services councils have been constituted, if so, (a) in respect of what regions and (b) when in each case, if not when are they to be constituted in respect of each region?

The MINISTER OF NATIONAL EDUCATION (for the Minister of Constitutional Development and Planning)

- (a) The Bloem-Area Regional Services Council

2/6/87
Howard
HOA

The Walvis Bay Regional Services Council
During May 1987

The following regional services councils have already been established in terms of section 3 of the Regional Services Council Act, 1985, and will shortly be constituted

- The Central Witwatersrand Regional Services Council,
- The East Rand Regional Services Council,
- The West Rand Regional Services Council,
- The Greater Pretoria Regional Services Council,
- The Western Cape Regional Services Council,
- The Algoa Regional Services Council

It is the intention to have regional services councils established in the rest of the country as soon as is practically possible having regard to the legally prescribed procedures which must be followed

Internal Security Act

*5 Mrs H SUZMAN asked the Minister of Law and Order

How many persons were detained in terms of section 29 of the Internal Security Act, No 74 of 1982, during the period 6 February 1987 up to the latest specified date for which information is available?

The MINISTER OF LAW AND ORDER
79 persons until 21 May 1987

Group Areas Act

*6 Mr S S VAN DER MERWE asked the Minister of Constitutional Development and Planning

- (1) Whether, since 1 January 1987, his Department has in terms of the Group Areas Act served any mixed couples with notices requiring them to vacate the dwellings occupied by them, if so, how many such notices had been served in respect of (a)

2/6/87
Howard
HOA

White and (b) other group areas as at the latest specified date for which information is available,

- (2) whether his Department has received any responses to these notices, if so, (a) what responses, and (b) from whom, in each case?

The MINISTER OF NATIONAL EDUCATION (for the Minister of Constitutional Development and Planning)

- (1) No
- (2) Falls away

National Manpower Commission

*7 Mr P H P GASTROW asked the Minister of Manpower

- (1) Whether his Department has received a report from the National Manpower Commission relating to the possible application of the provisions of the Labour Relation Act, No 28 of 1956, to farm and domestic workers, if so, on what date
- (2) whether he intends to respond to this report if so when,
- (3) whether he intends to make the contents of the report public, if so when, if not, why not
- (4) whether he will make a statement on the matter?

The MINISTER OF MANPOWER

- (1) Yes, in final form on 3 July 1985
- (2) Yes once consultations with organised agriculture have been finalised
- (3) The release of this report if deemed advisable, will be considered after consultations with organised agriculture, which take place on an ongoing basis, have reached finality
- (4) No

Notices to evict occupants

*8 Mr P H P GASTROW asked the Minister of Constitutional Development and Planning

Whether any owners of properties in

2/6/87
Howard
HOA

White group areas who leased such properties to non-White occupants, have been served with notices to evict the occupants concerned, if so, (a) (i) how many, (ii) why, (iii) when and (iv) on whose instructions during the latest specified 12-month period for which information is available and (b) in which towns or cities were these notices served?

The MINISTER OF NATIONAL EDUCATION (for the Minister of Constitutional Development and Planning)

- No

Notices to vacate premises

*9 Mr P H P GASTROW asked the Minister of Constitutional Development and Planning

Whether any notices have been served on non-White occupants of premises situated in White group areas (a) to vacate rented premises and (b) to sell premises owned by them, if so (i) (aa) how many, (bb) why, (cc) when and (dd) on whose instructions in each case during the latest specified 12-month period for which information is available and (ii) in which towns or cities were these notices served?

The MINISTER OF NATIONAL EDUCATION (for the Minister of Constitutional Development and Planning)

No

Regional Development Advisory Committee

*10 Mr D J N MATHEWS asked the Minister of Constitutional Development and Planning

- (1) (a) How many times did the Regional Development Advisory Committee for the Port Elizabeth-Uitenhage area meet in 1986 and (b) when is it anticipated that it will complete its business,
- (2) whether this body has issued any publications in connection with its activities, if so, (a) what publications and (b) when,
- (3) whether this body has reported to his Department on the results of its ac-

2/6/87
Howard
HOA

NIC WIEHAHN

Bearing the labour pains

FACE TO FACE



Professor Nic Wiehahn was chairman of the 1977 commission of inquiry which led to a new labour deal for SA including the legalisation of black trade unions. With clampdowns on union

activity now mooted, he comments on the effects of the new dispensation and likely future patterns in labour relations.

FM: How has SA's labour system developed since the Wiehahn report?

Wiehahn: Our labour system has been deracialised. Industrial power sharing is evident as managements and trade unions negotiate on a much more sophisticated level.

Six labour rights have been established. The rights to work, associate, bargain collectively, lockout and strike, of protection against abuse and the right to development. Despite the recession and accompanying increase in strikes, SA still has one of the most responsible labour systems.

Has the system not become too politicised?

The politicisation of our labour system is unwelcome, but inevitable. Oliver Tambo and Joe Slovo said they would this year concentrate on trade unions in which they see possibly the only and most important short-term vehicle for creating a climate of revolution in SA. Hence we must expect a "steep rise of temperature" in the field of labour.

But one cannot stop it by going against it.

One must create other political structures to conduct it — some negotiating body.

Only three South African trade unions can be considered highly politicised to the left. We have 265 trade unions, 46 of which are white only and the vast majority among the rest are either integrated or semi-integrated.

These heterogeneous unions are not as vulnerable to leftist politics as most people believe. In fact, management could find in them perceptible workers' organisations which could be "converted or politicised" for the free enterprise system.

To what extent should government interfere in the labour system?

Government must interfere as little as possible. Its function is to maintain a system within which employers and trade unions can have maximum freedom to negotiate the contents of their relationship. If it were to prohibit union activity, the union would just become something else, or it would go underground.

Negotiations the key

Negotiation remains the most important means of settling a dispute — and we have had a great deal of success through negotiations — even if the unions' demands at first seem irrational. Government should interfere only when matters get out of hand.

One must beware not to always read politics into strikes — they are primarily about economics. We need a proper and much deeper analysis of the causes of politicisation of trade unions. The intimidation and incitement factor should be isolated and dealt with

very effectively. But shotgun tactics against trade unions would not be the right remedy.

We must not be alarmed by the noises made by the trade unions. Although some unions tend to pose a threat to law and order, they are by far in the minority — only 2% of strikes last longer than two weeks — and the problem is blown up by some sources who tend to accentuate minorities' viewpoints and threats.

The majority of unions are moderate and peace-loving — we must encourage them to bring the others into line.

I do believe, however, that union funding should be controlled. Government has the responsibility to protect union members' money from exploitation by union management.

And what of companies who often feel threatened by unions because they have lost the right to dismiss workers?

Every company should have a disciplinary code. Companies have a social responsibility and must adhere to certain principles. If they want to retrench workers, they have to plan ahead. The employer-employee relationship is somewhat like marriage. You cannot force people to remain married, but neither can you simply kick your partner out.

A social revolution

We are in a social revolution, and manpower planning is part of that revolution. Companies must understand that they have to progress from a paternalistic labour relationship to one of consensus to create a happy working relationship. ■

Proposal to allow picketing

New move to decriminalise strike action

CRIMINAL sanctions attached to strikes and lock-outs should be abolished, except possibly in regard to essential services, the National Manpower Commission (NMC) said in its report tabled in Parliament yesterday.

It also said the freedom to strike should be extended to include certain categories of workers in the public service

The commission suggested that the law could be changed to allow a certain amount of picketing and related forms of action in industrial disputes

But the NMC felt this proposal should be investigated further

It recommended that no legislation be introduced to govern the non-statutory collective bargaining systems that have developed over the past decade.

A spokesman for Manpower Minister Pietie du Plessis said legislation based on the report would probably be introduced next year.

The report recommended that the distinction between lawful and unlawful strikes (and lock-outs) be replaced by the concept of "acceptability"

Only strikes by workers in essential services would be considered unlawful under the proposals

And the NMC proposed further study aimed at narrowing the area of essential

ALAN FINE

services and creating improved dispute-resolving procedures for them

The Industrial Court, it said, should be given the power to determine the acceptability of a strike, based on guidelines such as the nature of the dispute and whether adequate attempts had been made at settlement

These did not need to include the use of statutory conciliation boards or industrial councils — privately negotiated procedures would be sufficient

Employers would be able to apply for interdicts against "unacceptable"

● More Parliament — Page 8

strikes Should an interdict be ignored, they would be able to claim damages The court could also declare such a strike an unfair labour practice.

However, the NMC recommended that workers participating in acceptable strikes be protected against prosecution in terms of security legislation and by-laws

It also expressed support for decisions of the Industrial Court protecting strikers from dismissal in certain circumstances

The NMC said it was in favour of

● To Page 2

Call to decriminalise strikes

legislation permitting "certain forms of picketing" and planned to investigate this further

The report adopted a hands-off approach to the question of the relationship between industrial council and plant-level bargaining — a burning issue, particularly in the metal industry. It should be left to negotiation, the NMC said

It laid down a series of guidelines for the Minister to follow when considering whether to extend industrial council agreements to non-parties

The report recommended more advantageous channels for parties applying for exemptions from the provisions of agreements

It also suggested the repeal of sections 21a and 31a of the Labour Relations Act

The former gives existing members of industrial councils the right to veto any new application for membership. The re-

port said conditions of admission should be contained in council constitutions

The controversial section 31a, introduced in 1984, makes agreements with unregistered unions unenforceable in law. Its purpose was to encourage registration, but employers protested at the time that it would give these unions the right to contravene agreements at will.

Certain areas of the report, such as the speeding up of the process of establishing conciliation boards, have been overtaken by the publication late last year of the Labour Relations Amendment Bill, which is being re-drafted in the light of comments received.

The report is dated July 1986. A ministerial spokesman said the delay in its tabling was due to translation and printing problems

● From Page 1

Govt ideas get cool reception

Crackdown on unions is taking shape

B/Dery
5/8/87
166

LEGISLATION is apparently being prepared to give expression to government's determination to crack down on "militant" labour unions that are seen to be fomenting industrial relations strife for political purposes

The target will be those unions which participate in wildcat strikes and other summary actions which fall outside, or bypass industrial agreements and accepted negotiation processes between employers and employees

One legislative proposal being floated in Cape Town is that unions which indulge in wildcat strikes be forced to financially recompense affected employers for loss of business incurred by major work stoppages

The idea has so far received a cool reception in some business circles, the immediate view being that it sets a dangerous precedent and has the potential to heighten tensions within the industrial relations environment

CHRIS CAIRNCROSS

Like the "Rent Bill" — the Promotion of Local Government Affairs Amendment Bill now before the parliamentary standing committee on constitutional development — such legislation could further polarise relations between employers and employees

The Manpower and Public Works budget vote is set down for debate in the House of Assembly on Friday, and it is expected that indications of government's intentions concerning the trade union movement will be spelt out by Manpower Minister Pietie du Plessis

Another contentious labour issue attracting attention in Parliament is the Mines and Works Amendment Bill — which aims at eliminating the last vestiges of job reservation from the mining industry

The issue is a "hot potato" as it is vigorously opposed by the Official Opposition, the CP. However it might be debated this week

BUSINESS IN PROFILE

THE president of the Chamber of Mines, TI "Naas" Steenkamp, speaks to HILARY JOFFE about labour relations in the mining industry and proposed amendments to the Mines and Works Act

What is your reaction to the National Union of Mineworkers' threat of a legal strike?

Increases ranging from 17 percent for category eight employees to 23 percent for category one employees were implemented on July 1 this year. We sincerely hope that the NUM will not carry out its threat to strike as these increases are in excess of the average increases other unions have negotiated over the past six months and were well received by the employees.

What is the purpose of maintaining the Chamber of Mines as a unified bargaining unit if every year the various mining houses make different wage offers?

The chamber industrial relations

system is flexible and supple and needs to be so to satisfy the needs of its members. There have been occasions in the past when the individual members wished to make different wage offers to the NUM and the chamber industrial relations system coped admirably. This year the increases did not differ. All the mines that are chamber members implemented the same percentage increase.

What plans are there to set up an industrial council?

The chamber and nine trade unions and officials' associations reached an agreement last year to establish an industrial council for the mines and the employees that wish to regulate their relationship on a more formal basis. The constitution of this industrial council is currently being finalised. Only employers and unions that voluntarily wish to be subject to the jurisdiction of the industrial council will be members.

The amendment to the Mines and Works Act seems to give the minister discretionary power to a blasting certificate. What are your views?

This is a misinterpretation of the Mines and Works Amendment Bill. The provisions the Bill will introduce into the Mines and Works Act will give the minister the right to appoint a committee to advise him on the entry qualifications for certificates of competency, provided that these qualifications may not discriminate on the basis of race or colour. The cham-

What changes does the chamber want to see to the legislation regarding the job reservation issue?

The chamber would have preferred the "scheduled person" definition to be excised clearly from the Act without any new provisions being added.

What will the chamber do if the legislative changes are not satisfactory?

The chamber will now wait to see whether the minister actually appoints the advisory committees the law will permit him to establish and if he does, how these committees will function before considering any action. However, we have had repeated assurances from the minister that he will invoke these provisions only for health or safety reasons. We take him at his word and are confident that the provisions will not be used in any retrograde manner.

Now that influx control has been abolished, what is the chamber doing about working towards a settled mine labour force?

Manning mines with migrant employees is not the most efficient or desirable method of manning and various mining houses are pursuing a variety of plans to make their mines less dependant on migrant labour and to provide jobs to more employees who reside with their families on the mines or in near proximity to the mines. For many years to come mines will, however, remain dependant on migrant labour.



Naas Steenkamp

ber's main objection to this new provision is that in our view it is not necessary to consider new entry qualifications. The qualifications required for certificates of competency are well defined and have been used for many years to ensure that persons who acquire the certificates are competent.

Will employment practices in the mining industry alter very much with the change in legislation?

Yes. The 13 jobs currently reserved for persons of certain specified races will legally be opened to persons of all races and gradually persons of all races will in fact be employed in these 13 jobs.

W/Made 3/17-6/8/87
166

**First in
accommodating
your property
needs.**

ANGLO-AMERICAN
PROPERTY SERVICES

TELEPHONE: 833-4811

New laws to curb unions

CAPE TIMES 8/8/87

166

(152) (134)

By ANTHONY JOHNSON
Political Correspondent

LEGISLATION to curb militant trade unions who participate in wildcat strikes or other actions that bypass industrial agreements and accepted negotiation processes will be introduced in Parliament this session.

The news comes as over 200 000 miners are expected to take part in industrial action on 46 gold and coal mines — the largest legal strike ever organized by the giant National Union of Mineworkers

A source close to the cabinet yesterday indicated that industrial courts would be given "more teeth" to deal with radical unions who refuse to play by the rules

Unions engaging in illegal industrial actions could, in terms of the legislation, be forced to financially recompense the affected employer for loss of business, the source confirmed

However, it was stressed that the industrial court would treat each case on its particular merits and no blanket executive action by government against troublesome unions was being contemplated at this stage

A court of appeal to deal with cases

of industrial strife would probably also be introduced

Big business has been lobbying against further legislative intervention in labour relations, but the government has been coming under strong pressure from the Conservative Party and within National Party ranks to clamp down on unions seen to be fomenting politically-motivated industrial relations strife

In Parliament yesterday, the Minister of Manpower, Mr Pietie du Plessis said legislative steps could be expected soon "to bring order" to the trade union movement and restore the balance of power between workers and employers

He said it was essential to have a "balance of power" between the two, since too much power to one side would lead to a revolution

Mr Du Plessis said intimidation was one of the biggest problems in the

labour field at the moment. Thousands of people were being forced by radicals to participate in strikes and work stoppages as a result of threats of violence like the "necklace" method

However, the minister also noted that South Africa had one of the lowest strikes rates in the world. Furthermore, more than half of all strikes were resolved in one day and the average duration of a strike in the country was just over three days

Earlier, Mr J H Cunningham (NP Stilfontein) warned that if certain trade unions and their leaders acted "irresponsibly," they should not complain if the state acted

The Progressive Federal Party's chief manpower spokesman, Mr Peter Gastrow, said that as long as black workers had no representation in Parliament the use of trade unions for political purposes could be justified

FARM LABOUR

Getting organised

Labour strife on Tongaat coast canefields underlines a development union-backed labour reform have reached

Countrywide, farmers have accepted the need for some reform conditions. But the prospective agriculture willingly conceded issue of formal recognition of procedures regulated by the LRA are remote

The sound and fury of the dispute extends to such an attack by the SA Allied V (Saawu) on the KwaNata threats of protest marches Hurley's house in Durban

But stripped of rhetoric, the to Saawu's representations on seasonal cane cutters is forming the Farm Workers Union, a Saawu.

Talks on grievances raised taking place, and Tongaat Phillips says while these talks company will issue no statement Phillips emphasises the talks on working conditions

Isaac Ngcobo, Natal chairman told the *FM* this week the talks nowhere and unless union

recognition were accepted by July 5 the threatened march was likely to take place. Workers, he said, wished Archbishop Hurley to intervene and argue their case with Tongaat-Hulett management

Currently farmworkers are excluded from the provisions of the LRA, which means they cannot use the collective bargaining or dispute resolution machinery provided by the Act. Belonging to a union is not prohibited but is an academic exercise anyway since the union would not formally have access to the machinery of the Act

Farmworkers are also currently excluded from protection afforded under the Basic Conditions of Employment Act, which means their conditions of employment are governed only by common law. The huge wage differential between urban and rural workers is attributed in major part by unionists to this lack of protection

The SA Agricultural Union (SAAU) admits that reform of agriculture's employment practice is inevitable and is negotiating with government amendments to the Basic Conditions of Employment Act. However, it believes farmers are not ready to accept the LRA in any form

Since the enactment of the Industrial Conciliation Act in 1924, agriculture has been excluded from most labour statutes, with the exception of the Workmen's Compensation Act, the Machinery and Occupational Safety Act, and the Manpower Training Act. The historical explanation according to SAAU Deputy Director Hans van der Merwe, is that agriculture's production demands differ fundamentally from those of industry and commerce

However, the cautious view now expressed by the SAAU is that the situation is "dynamic"

No doubt contributing to this change of heart was the inquiry by the National Manpower Commission (NMC) into the merits of extending labour legislation to farmworkers (and domestics). Organised agriculture was a major lobbyist during the NMC's two-year inquiry. Its report was presented to government in December 1985 but to date remains unpublished

At the SAAU congress which followed the NMC report its general council was mandated to "investigate certain adaptations" to labour practices. A report-back is expected at this year's congress in Durban and is likely to focus on amendments sought to the Basic Conditions of Employment Act to make it acceptable to agriculture

Key issues, says Van der Merwe, involve changes to provisions dealing with maximum working hours, sick leave and leave arrangements to accommodate the seasonal production demands of farmers

But the LRA, which institutionalises rights of trade unions and negotiation and dispute procedures is "not acceptable in its present form and at this point in time". It would introduce "mechanisms of communication that agriculture is not familiar with and will not fit in," says Van der Merwe



Farmworkers . . . sowing recognition

This hesitancy is criticised by labour lawyer Chris Albertyn of the University of Natal's Centre for Socio-legal Studies. Albertyn suggests farmers should accept the inevitable and reform while they hold the initiative rather than be forced to reform when it might not suit them

There is no question that pressure on farmers to acknowledge unions is likely to mount. A Cosatu founding resolution commits the congress to unionising farmworkers and domestics and the current dispute between cane cutters and Tongaat Hulett management may prove to be only the first salvo in what is likely to become a long campaign

CP opposes new mining legislation

Bill takes 'a stand against discrimination'

11/8/87

(scribble)

(166)

Star

Political Staff

The scrapping of the last statutory job reservation clause in the South African mining industry had "nothing to do with rights of groups and everything to do with the rights of ordinary people", the Deputy Minister of Economic Affairs and Technology, Mr George Bartlett, said in the House of Assembly yesterday

In the second reading debate on the Mines and Works Amendment Bill he said the scrapping of legislation which provided that only whites and some coloureds could qualify for 13 of the industry's different Certificates of Competence, including the blasting certificate, was a "stand in principle against discrimination".

The Progressive Federal Party supported the Bill but Mr Roger Hulley, spokesman for this department, said he did not believe it was appropriate to congratulate the National Party, just as one would not congratulate a man who had stopped beating his wife

"Blacks have been excluded from skilled positions in the mining industry since its early days," he said

The Opposition opposed the Bill and their spokesman, Mr Arrie

Paulus, former general secretary of the National Mineworkers' Union, said the NP had guarded jobs for whites on the mines for years but was now "leaving them in the lurch by saying that blacks can get a blasting certificate"

The Chamber of Mines claimed there were not enough white workers to fulfil the requirements of the industry, said Mr Paulus This was untrue

"There is no need for this legislation There are enough whites to do the job but this Bill will mean that white workers will have to make way for black labourers from other states, most of which are not well-disposed to South Africa So here we are in white South Africa giving blasting certificates to foreign blacks"

The Government was brought to power in 1948 by the miners' vote and it was a Government which rightly believed that giving blasting certificates to blacks was the beginning of Communism

"The white miner is not prepared to work under blacks and he will defend his blasting certificate," said Mr Paulus

Both Mr Bartlett and Mr Hulley expressed concern that Mr Paulus



might have intended this as a threat

Mr Hulley expressed his party's reservation about seven new requirements to be met by the individual seeking a certificate After such a long history of discrimination, these requirements would be greeted with suspicion as they could be applied as a subtle form of discrimination

He asked why the requirements — which include command of language, educational qualifications and security — had been built into the legislation and not left to the discernment of those applying the certification tests

Mr Bartlett said the requirements were designed to promote the safety and health of the mineworkers and not as potential discriminatory measures

Scrapping of last

MP backs

THE ECONOMY

THE statutory job colour bar, which has been entrenched in the mining industry since the 1890s, will probably be scrapped this year — on paper at least.

Unless the Department of Mineral and Energy Affairs or the cabinet lose their collective nerve before the expected Conservative Party onslaught, the Mines and Works Amendment Bill, now in the second reading stage in parliament, will theoretically kill the last legally prescribed industrial colour bar before the year's end.

None of the parties most closely involved are happy about the manner of the Bill's passage. True, the Amendment Bill scraps the notorious "scheduled persons" concept whereby the necessary certificates of competency required for entry to the more skilled mining jobs are denied to black miners. But other sections of the new Bill give the minister of mineral and energy affairs key discretionary powers.

The ultra-rightwing white Mine Workers' Union believe that the new ministerial powers have been introduced to please the Chamber of Mines. The largest trade union on the mines, the 300 000 strong National Union of Mineworkers, argued that its mainly black membership would suffer discrimination due to the specific wording of the Bill.

The Bill contains three controversial new clauses, 12(1) (nA), (nB) and (nC). Clause (nA) empowers the minister to issue new mining regulations laying down the qualifications required by candidates for training for the newly-opened certificates of competency, in particular the blasting certificate, the key certificated skill of the underground miner. These qualifications may, for the first time, stipulate the educational standard, linguistic proficiency and physical health required of would-be miners.

The second clause (nB) allows the minister to appoint advisory committees to guide him in matters on which he wishes advice, including apparent-

Exit the colour bar. But will it still haunt the mine shafts?

The colour bar is likely to leave the statute books this year, if the cabinet don't lose their collective nerve. But there's good reason to believe that the new dispensation won't make much difference. **WILMOT JAMES and JEFF LEVER report**

ly issues arising from clause (nA) and the question of "overtraining" which some unions regard as the secret intention of the Chamber of Mines.

Clause (nC) requires that the minister, in setting up these advisory committees, should consult organisation(s) representing the majority of holders of certificates of competency, other mining trade unions and representatives of mine owners. The first part of this clause thus requires the minister to consult the MWU, since the union represents some 63 percent of holders of blasting certificates.

The ministerial powers and their vagueness with regard to actual implementation reflect the complicated genesis of the Bill in the years since the Wichahn Commission. The government accepted for the most part the Wichahn recommendation that the colour bar be scrapped. Implementing this in the mining industry was left up to employers and trade unions to negotiate within a reasonable time.

The key problem, as dictated by Wichahn and accepted by all trade unions except the MWU and later the NUM, was to negotiate job security and other safeguards for the existing white mine labour force while scrapping statutory job reservation. The government indicated it would approve any such deal provided it com-



Black miners' leader Cyril Ramaphosa not consulted

Picture: TREVOR SAMPSON, AFP

manded an industry consensus.

The latter possibility, however, never seemed more than a pious hope in the light of the stand of the MWU and Arrie Paulus, its redoubtable general secretary. Paulus demanded the retention of the colour bar, denying that a shortage of white miners existed.

When the chamber and the mining unions got down to serious talks on a package which would include a request to the minister to scrap the scheduled persons clause in the Mines and Works Act, the MWU attended as observers only.

Part six of the Wichahn report on the mining industry recommended that the abolition of the job colour bar go hand in hand with a restructuring of the mines' industrial relations system, buttressing employment security guarantees for white employees. The way to do this, argued Wichahn, was to form of a mining industrial council in terms of the Labour Relations Act, giving employer/union collective agreements greater credibility and enforceability.

The opening rounds of negotiations after 1981 were spent on fruitless arguments over the issue of an industrial council, with the chamber willing but a number of unions at most lukewarm. A spirit of urgency was only injected into the talks by the initiative of the Department of Mineral and Energy Affairs, which first set a target deadline of December 31 1985 for an agreement. When that failed it produced its first draft Mines and Works Amendment Bill in January 1986. This proposed to give the MWU such power to regulate entry to scheduled jobs by way of an obligatory mine labour selection board. The chamber and nine union negotiating partners were galvanised into signing a comprehensive three-part agreement in

July 1986.

This chamber/union agreement came up with an interlocked series of proposals. Both chamber and union signatories would request the scrapping of the racially discriminatory aspects of the M&W Act. In return the unions were guaranteed their closed shop, participation in an industrial council and the protection of a formal Industrial Council Security of Employment Agreement.

Besides conceding standard union demands regarding equal pay for equal work and maintenance of uniform training requirements, the security agreements also offered the protection of a Dismissals Appeal Board and, most important, a mechanism to monitor and stop cases of alleged overtraining for certificates of competency by mine management.

Observing that these guarantees were worthless, the MWU and its much smaller ally of convenience, the Technical Officials Association, refused to touch the agreement.

By July 1986 the upshot was that white mining employees were being offered two separate forms of job security protection — one in the form of a much watered down draft M&W Amendment Bill with the ministerial powers, the other an employer/trade union collective agreement with the statutory backing of the Labour Relations Act. Both however entailed the scrapping of job reservation, in its explicit form at least.

The snag for the unions which had signed the agreement with the chamber was that the latter has intimated it will not proceed with its side of the bargain if a new M&W Act is implemented in a way which amounts to racial discrimination. The minister in turn hinted last year that his discretionary powers need not be put into operation if the proposed mining industrial council and the accompanying agreements worked satisfactorily.

Who is then to move first? Given the continued hold out of the MWU and the political threat from the right, the government seems likely to appoint committees and amend the mining regulations in the light of their advice. The chamber, in the meantime, will watch developments and consider whether or not to implement one or more aspects of its agreements with the nine mining unions.

Whether the upshot of present moves is thus training control mechanisms instituted by government or by a mining industrial council, the consequences will probably be similar. A slow move away from the rigid colour division of the past.

Something similar has happened in other areas of the white workforce where black advancement has not been blocked by the requirement of certificates of competency. After the six artisan unions operating on the mines in 1981 agreed to the indenturing of black apprentices, mine management began the integrated training of black apprentices. In 1985 some 140 black apprentices were newly indentured in mining, compared to 1 560 whites indentured. Similarly, by 1986 blacks in official occupations formerly considered "white jobs" constituted around 10 percent of the total number of officials.

Given the likely constraints on training black workers for blasting certificates in particular, no rapid shift in black/white employment patterns in jobs hitherto reserved for scheduled persons over the next five years is likely to materialise, other things being equal.

● Wilmot James is a lecturer in the Department of Sociology, University of Cape Town, and Jeff Lever is in the Department of Sociology at the University of Stellenbosch.

(T66) 7-13/8/87

By CHARLOTTE BAUER and HILARY JO

UNTIL very recently in South Africa, the fastest way to lose your job in a shop or factory was to become pregnant.

For many workers this meant instant dismissal. No severance pay. No guarantee of future employment. No guarantee of much future at all.

Desperation has led some into back-alley abortions or dangerous ploys to try hiding the fact from employers as long as possible (one woman strapped down her stomach until she miscarried), it has led others into private re-hiring deals with their bosses which have forced them to return to work almost immediately after the birth.

This was accepted practice, not even questioned by the workers themselves, who received dismissal as a necessary evil. And as far as employers were concerned, such Dickensian methods were not only acceptable but desirable ("There is no need to make concessions as there is a large working group to choose from," was one argument).

South African labour legislation, which stipulates that women must stop working for a month before and two months after a birth, has never offered protection from dismissal — if anything, this law exacerbates the problem by paving the way for employers to get rid of pregnant women altogether.

The historic first maternity agreement reached in this country was negotiated by the Commercial, Catering and Allied Workers' Union of South Africa and the OK Bazaars in 1983. A proposal, encompassing mostly job security and health and safety aspects of confinement, was put forward to a stunned management who refused for a solid year to agree even to negotiate such an issue. They referred scathingly to the document as the "maternity scenario", although today are quick to capitalise on having been "the first".

It is only in the last four years that, largely through the efforts of Congress of South African Trade Union affiliates, some workers have won such fundamental rights as the ability to bear children without losing their jobs, along with a degree of financial security during the period of absence — rights established by the International Labour Organisation 68 years ago.

Since then, significant victories have been gained in the retail, chemical, metal, food and textile industries.

Many of the agreements unions have signed with employers afford women six months' maternity leave. And some of the agreements further commit employers to pay workers part of their wages while they are away. The more comprehensive maternity agreements protect pregnant women from health hazards in the workplace and allow them paid time off to attend ante and post natal clinics.

It is telling of the level at which unions are having to push employers on this issue when it is revealed that negotiating points include the demand that pregnant workers be allowed to "go to the toilet whenever they wish and this shall not be monitored". It makes agreements such as those struck by Ccaawusa with Metro Cash and Carry in 1985 and Chemical Workers' Industrial Union with Rolfe a year later, all the more astonishing.

The Metro agreement, regarded as the most all-round comprehensive deal struck to date, includes 12 months maternity leave with the guaranteed right to return to work, paternity leave, health and safety protection for pregnant and nursing workers and free baby goods. The Rolfe agreement, the most far-reaching yet on the pay issue, makes available six-and-a-half

The liberate

South African law, which stipulates that women stop working a month before and two months after a birth, has never offered protection from dismissal — if anything, the law lays the way for employers to get rid of pregnant women. But some landmark agreements between employers and unions are changing that



months leave at full pay.

It is not only in individual factories that maternity rights are being won. Two national industrial council agreements gazetted within the last month have made maternity rights statutory in the steel and engineering industry and in the textile industry. The leave periods and pay specified in these agreements are not as good as unions have been winning in factory level negotiations. But what is significant about minimum conditions won in the industrial councils is they cover entire industries — and give protection to unorganised workers.

The unions in these industries will be using the industrial council minimums as bases from which to negotiate more comprehensive agreements for workers in individual workplaces.

Some of Cosatu's unions have called for paternity leave as well — and in certain cases, particularly in retail, this right has been won, albeit at a basic level (two to three days). However, the principle of paternity rights is significant in terms of the new thinking emerging in union circles.

If only four years ago employers were outraged

by the notion of maternity rights, there is no telling — yet — how they may react to Ccaawusa's latest proposal that both men and women receive the same benefits when a child is born under the sweeping new banner of "Parental Rights".

Pick 'n Pay is about to become the other team in South Africa's first parental rights agreement, compliments of Ccaawusa which has used Sweden as its model on the subject. It leaves 'maternity rights' standing alongside "bra-burning" in the archive of outdated concepts for change.

The objective of this agreement is to ensure that "women employees are not unfairly discriminated against on the grounds of pregnancy and that male and female employees who are parents of young children are able to fully exercise their parental responsibilities". The proposal further requires the company to acknowledge that the family carries the major expense of childrearing, that young workers entering the workplace were fed, clothed and educated by present workers, that the company profits from the labour of workers, and

that therefore the company agree to contribute "directly towards the making of the next generation of workers".

Demands contained within this novel proposal, which will reach other companies within the year, include:

- Fourteen months leave until the child is four years old. Of the 14 months, parents may save leave for later occasions until the child's fourth birthday. Both parents may share the leave if they both work for the company. This provision also applies to adoptive parents.
- Full normal weekly wages for the parent for 10 of the 14 months.
- Full pension fund and medical aid coverage during parental absence.
- The transfer of pregnant employees with physically demanding jobs with the proviso that if the company is unable to do this, they should be given an extra two months leave.
- That employees returning to work be entitled to any increase awarded during the leave period including bonuses.

THE NEW AGREEMENTS: BETTER JOB SECURITY, BETTER PAY WHILE ON LEAVE

THE basic right which all the maternity agreements negotiated by Cosatu unions has given workers is job security. The agreements, at plant or industrial council level, provide leave for or guaranteed re-employment for women due to give birth.

In addition, many of the agreements oblige employers to pay women at least part of their wages while they are on leave.

And some of them contain health and safety clauses which protect pregnant and nursing workers.

South African labour legislation provides no protection against dismissal for pregnant women. The Basic Conditions of Employment Act, which sets minimum working conditions for all manual workers, prevents women from continuing to work for a month before and two months after confinement. It's this provision which has often resulted in women losing their jobs.

Most of the maternity agreements which the trade unions have negotiated guarantee that their jobs will be kept for them for up to six months.

National industrial council agreements in the steel and engineering industry and in the textile manufacturing industry allow women to take six months off, to cover the period before and during and after the birth.

The textile workers have won six months authorised unpaid leave, while in terms of the steel and engineering agreement, pregnant workers have to resign but are guaranteed their jobs back

What is significant about both these agreements is that they cover all workplaces in these industries — thus providing protection even for unorganised workers — and their provisions have the force of law.

However, industrial council agreements, because they cover all employers in an industry, tend to cater to the lowest common denominator.

Trade unions which have negotiated maternity rights on a factory by factory basis have in some cases won much better terms. The Ccaawusa agreement with Metro Cash and Carry gives 12 months leave. Some of the agreements in the chemical industry provide 10 months.

But in other industries trade unions have only succeeded in winning three months' job security. The maternity agreement at BMW, for example, only grants three months' leave. Agreements which the National Union of Mineworkers has negotiated also provide only three months.

Not all workers qualify for maternity leave. Usually, only those who have been on the company's payroll for at least 12 months are entitled to take time off.

Metro agreement is again an exception. There is only a one-day qualifying period and the company may not refuse to employ workers on the grounds that they are pregnant. But particularly stringent on this score is the engineering agreement — which grants rights only to women who have been with a company for two years.

This was a contested issue in negotiations, says

Numsa's Adrienne Burd. The engineering employers initially insisted that there should be a qualifying period of five years. This would have meant women workers were limited to one pregnancy every five years if they wanted to keep their jobs. Numsa's members refused to accept this clause and the employers compromised on this as they did on their initial demand that plants employing fewer than 10 women be excluded from the agreement.

The qualifying period is not the only problem in this industrial council agreement. In both textiles and engineering, the maternity clauses cover only those workers whose wages are prescribed by the industrial council agreement. This tends to exclude some women, for example teamakers.

Ensuring that all workers are entitled to these rights will be one of Numsa's priorities in plant level negotiations.

Job security is an important victory for the unions. But perhaps even more significant is what is being won now in terms of pay.

For women workers, usually in very low paid jobs and often the sole breadwinners for their families, taking six months off work to have a baby may be an intolerable financial burden.

A survey of 885 black women workers by Jackie Cock, Erica Emdon and Barbara Klugman in 1983 indicated that over half of the mothers interviewed went back to work when their last child was six months old or younger. "Economic necessity propels most of these African women

into wage labour — often reluctantly," the three researchers conclude.

The consequences for the health of the babies — and of the mothers — can be serious.

The Health Information Centre has emphasised the importance of breastfeeding to combat diseases such as gastro enteritis and diarrhoea. 140 of every 1 000 black babies in South Africa die each year and the main cause is gastro enteritis, a disease related to socio-economic conditions.

"If a mother returns to work before her infant is six months old it will significantly affect the health of the infant. It will prevent optimum nutrition. The child will be liable to diarrhoeal and respiratory infections which are potentially fatal," says a document compiled by HIC.

Women who stop work to have babies can claim from the Unemployment Insurance Fund.

But there are many problems for these women in the workings of the UIF system and it is these that the unions are trying to address in their negotiations for maternity pay.

UIF offers women maternity pay — but to get UIF benefits for a full six months a worker would have had to contribute to the fund continuously for three years.

The amount paid out is 45 percent of normal wages — and that is on condition the worker is not getting paid more than a third of her wages by her employer.

Many maternity agreements — Metro, for example — thus provide for employers to pay

JOFFE

ed baby



Graphic: CARL BECKER

Case study: The model creche at the factory

would not be left financially destitute and with no guarantee of getting my job back, eased the pressure on the whole family. Now we must fight very hard for proper child care facilities."

Current moves to broaden maternity issues into not only family issues, but by implication, social and community responsibility, is still embryonic and mostly paper-bound. But then, so was practical progression on basic maternity rights five years ago. Education programmes in support of these issues are ceaseless.

Union negotiators agree that the mechanics of change in this area, as in many others, is a long, hard haggle. First you establish principles, most are rejected, a few accepted, you expect that. You put them forward again. Next time round a couple more are accepted and the stakes are upped on others and so it goes on.

CWIU's Chris Bonner is frank about the present limitations of the battlefield. "In practice the fight is still squarely on the maternity front in factories. This is now seen as an automatic issue and is pushed pretty hard. Company resistance has lessened and it is now very rare to find a company who won't countenance some kind of agreement."

"For the first time this year we tried to involve everyone, not only women because it is a social, political and economic issue not just a women's issue."

A heady resolution about women passed at the first national congress of Cosatu in 1985 made an enormous impact on workers' goals in this area.

Mooted by Ccawusa, the resolution resolved, among other things, to fight

- For full maternity rights, including paid maternity and paternity leave and job security

- For the protection of men and women from all types of work proved to be harmful to them, including work which interferes with their ability to have children and

- For child care and family facilities to meet workers' needs and make it easier for them to combine work and family responsibilities.

A point significantly left out of the resolution dealt with contraception — it was considered by most unions too controversial.

But Ccawusa believes that the issue of contraception education is vital. Says Daphne, "Companies like Pick 'n Pay give family planning clinics free access to workers who are then given contraceptive shots with no information back up. We say the company must take responsibility for informing workers about various forms of contraception — and the drawbacks."

"Managements will still put across the view that it is better to have fewer children — not because they are concerned about population control, but because it becomes expensive for them to bear the costs of pregnant women. Some companies even build in conditions on maternity agreements whose available benefits relate directly to the number and spacing of children a woman has."

Child care is beginning to nudge its way forward as a vital and logical next step. Some progress has been made in terms of women being allowed to visit post and ante natal clinics and maternity leave obviously addresses some of the basic physical requirements of babies. But further than that, more comprehensive care of children up to the age of 12 remains principle bound.

Again, as sociologist Jacklyn Cock remarks, "this campaign is not a 'women's issue' but a campaign about social responsibility for the care of children."

Cock points to the way in which Cosatu has been stressing the link between the exploitation of workers in the workplace and their oppression outside it. She sees struggles about maternity or paternity rights and childcare as another aspect of trade unions taking up issues affecting workers in the wider community.

This new thinking is becoming less tentative among unions generally, as more begin to address the subject as a working class right.

Ccawusa, again using as a blueprint rights that have been established in Sweden, have put together a package on child care that has not yet been tested.

In the South African context, it appears no less than radical, its recommendations including a six-hour working day for all parents of children under the age of eight, two days paid leave for parents when their children start school, pre-school and after-school child care facilities, a child minding allowance of R50 a month for each child under the age of six, and 18 days paid leave a year to enable parents to care for a sick child under the age of 12.

The priority is for the immediate creation of workplace nurseries to enable mothers to nurse their children during working hours.

The unions themselves have adopted a realistic approach to these seemingly utopian ideals and make no bones about how long some of these demands will take to materialise.

A daunting reminder of the arduous road ahead for the trade unions is that even the rights won to date affect no more than a few thousand workers in a limited number of industries.

Most black women are employed in agriculture and domestic service where there is no labour legislation to protect them at all and unionisation remains in its infancy.

That it is agreed that women and men must have equal opportunity to combine gainful employment with family life.

A criticism of this non-sexist, family concerned approach is that many men will abuse such rights and not use the hard-bargained time off playing responsible parent.

Some labour movement sources have expressed reservations about the commitment of male workers to this issue and profess reluctance to negotiate extensively on their behalf.

Ccawusa negotiations co-ordinator, Jeremy Daphne, disagrees. While admitting that the possibility existed of some men using parental leave as an opportunity to broaden their experience of shebeens, he asserts that a start must be made somewhere.

"It is important to establish the principle and provide the necessary space for men to at least start moving in the right direction in terms of being properly responsible parents," Daphne adds that as these provisions are being negotiated, the union is running education programmes on this

subject. "These days we're getting some very surprising and positive responses from men — especially the worker leadership, who are putting across the idea that responsible parenthood is an admirable characteristic for men too."

Turning around chauvinistic attitudes is not merely a matter of appealing intellectually and morally to die-hard prejudice, but increasingly, a practical necessity. Metro Cash and Carry shop steward Georgina Mbileni points out that, with the urban disintegration of the extended family in favour of the nuclear unit, men have little choice but to participate in child care.

"Many young couples don't live with their families anymore, so men are being forced to help at home because often there is no-one else."

Mbileni, who was on the negotiating team of the watershed agreement with Metro, has three children — two born before it (the agreement) and one after. She comments that the financial and psychological effects on her own family after benefits became available, improved substantially.

"To know that with the birth of my third child I

women one third of their wages during the maternity leave period. The assumption is a worker will be receiving 78 percent of her usual wage.

But the UIF system is inflexible on maternity — women can only get paid for four months before and two months after the birth. And it means that a woman who can take six months off after the baby is born can claim UIF money for only two of these months.

This is a problem unions still have to address.

But certain unions have won far-reaching victories on the maternity pay issue. The Rolfs agreement negotiated by the CWIU gives workers six-and-a-half months' leave at full pay. CWIU now has maternity agreements at 32 factories, of which 18 are paying full leave.

While all the agreements guarantee women their jobs, many still do not provide for pay. The two industrial council agreements in textiles and engineering cover job security but not maternity pay.

But in the steel and engineering industries, women workers can now claim maternity pay for six months from the Sick Pay Fund administered by the industrial council. The amount they can claim is 50 percent of the minimum wage for their pay grade. Since payments from the fund do not count as wages, women on maternity leave can claim these and still get UIF.

The National Union of Metal Workers is negotiating in individual workplaces for employers to make up the difference between amounts received from UIF and the Sick Pay Fund and women

workers' full wages.

In the homelands, getting UIF payments can be particularly difficult. At BMW the agreement negotiated by the union provides for women to be paid by the company in cases where they cannot get UIF, since many live in homeland townships.

Unions such as the NUM, Ccawusa, and CWIU have also been demanding paternity leave for the biological fathers. Here, there has not been much success.

The NUM's demands for paternity leave have not been met by any employers. CWIU was the first union to win paternity leave for workers and now has this at 20 factories. Ccawusa, too, has negotiated paternity leave in some retail chains.

An important issue in negotiations for maternity — or parental — rights for workers are those around health and safety. Unions have demanded that pregnant women be relieved of jobs which could endanger their health. And they have called for paid time off for pregnant women to attend ante natal clinics.

Neither of the industrial council agreements include such provisions, but health and safety clauses are a feature of many of the plant level maternity agreements.

Many of these maternity agreements have been negotiated by unions in industries where women workers are not a majority. This is an indication of the unions' commitment to the question as a broader working class issue rather than simply a "woman's issue."

AFTER workers at BMW negotiated a maternity agreement with employers in 1985, they said to themselves. But we still haven't solved the problem who is going to look after these children?"

And so the idea of the BMW creche was born. Two years later, the creche is nearing the final planning stage and could be in operation early next year.

When the trade union, then the National Automobile and Allied Workers' Union, approached BMW, the German auto manufacturer agreed to the creche proposal in principle. A committee consisting of worker and employer representatives was set up to implement the plan.

The creche, which will cater for the children of all employees at BMW's Rosslyn and Garankuwa plants, is the first such facility negotiated by a trade union.

"We proposed to the company that it was part of their social responsibility to do something about childcare," says BMW shop stewards Solomon Ndlovana and Albert Maceunche.

They see the creche as playing an important role in educating workers' children, equipping them for school and hopefully university.

The committee visited other childcare centres and chose the Montessori model. It hopes to recruit a trained nursery school teacher as principal.

So the object of this creche won't just be to keep the kids off the streets.

At a seminar run in March this year by the Health Information Centre, which has assisted in research for the project, participants identified six objectives for the creche:

- It should give parents the peace of mind that comes with knowing their children are safe.
- Mothers will have a chance to breastfeed. The children's growth will be monitored and they will receive adequate medical care.
- Proper nutritious food should be provided.
- Children will get a sense of love and security, stimulating the development of their minds and bodies.

Another benefit is the creche will be non-racial. "We believe it's a very good opportunity for black and white kids to mix," says BMW communications manager Michael Brandt.

BMW is to finance the building of the creche and will subsidise its running costs. But administration of the creche will be in the hands of a social responsibility committee made up of representatives of the company, parents and the union (now the National Union of Metalworkers of South Africa). It is hoped that the creche principal will join the team soon and be involved in the final planning stages.

Setting up a creche is not an easy nor a cheap matter. Stringent regulations, governing such things as the minimum space per child and the number of toilets, have to be met. Creches which take children under the age of two years have to meet particularly strict standards, in terms of facilities.

The BMW creche will cater for children from two to six years old but a decision has not been made on whether it will also take babies.

The major problem holding up the project was finding a site. The creche is likely to be situated at the Rosslyn plant and the company is negotiating the land.

There is a company medical clinic at the Rosslyn plant, with a full time nurse and a doctor who visits regularly. An advantage of having the creche at Rosslyn is children would have access to medical care.

Architects have started working on the plans — in consultation with the committee — but can't go much further until the site is finalised.

The creche planners favoured siting the creche at the Rosslyn plant — rather than where the workers live — because BMW draws its workers from a range of townships, such as Soshanguve, Mabopane, Garankuwa, which are far apart.

As the first project of its kind the creche may serve as a model to other trade unions pushing for employers to get involved in childcare and in the education of workers' children.

UNTIL very recently in South Africa, the fastest way to lose your job in a shop or factory was to become pregnant.

For many workers this meant instant dismissal. No severance pay. No guarantee of future employment. No guarantee of much future at all.

Desperation has led some into back-alley abortions or dangerous ploys to try hiding the fact from employers as long as possible (one woman strapped down her stomach until she miscarried), it has led others into private re-hiring deals with their bosses which have forced them to return to work almost immediately after the birth.

This was accepted practice, not even questioned by the workers themselves, who received dismissal as a necessary evil. And as far as employers were concerned, such Dickensian methods were not only acceptable but desirable ("There is no need to make concessions as there is a large working group to choose from," was one argument).

South African labour legislation, which stipulates that women must stop working for a month before and two months after a birth, has never offered protection from dismissal — if anything, this law exacerbates the problem by paving the way for employers to get rid of pregnant women altogether.

The historic first maternity agreement reached in this country was negotiated by the Commercial, Catering and Allied Workers' Union of South Africa and the OK Bazaars in 1983. A proposal, encompassing mostly job security and health and safety aspects of confinement, was put forward to a stunned management who refused for a solid year to agree even to negotiate such an issue. They referred scathingly to the document as the "maternity scenario", although today are quick to capitalise on having been "the first".

It is only in the last four years that largely through the efforts of Congress of South African Trade Union affiliates some workers have won such fundamental rights as the ability to bear children without losing their jobs, along with a degree of financial security during the period of absence — rights established by the International Labour Organisation 68 years ago.

Since then, significant victories have been gained in the retail, chemical, metal, food and textile industries.

Many of the agreements unions have signed with employers afford women six months' maternity leave. And some of the agreements further commit employers to pay workers part of their wages while they are away. The more comprehensive maternity agreements protect pregnant women from health hazards in the workplace and allow them paid time off to attend ante and post natal clinics.

It is telling of the level at which unions are having to push employers on this issue when it is revealed that negotiating points include the demand that pregnant workers be allowed to "go to the toilet whenever they wish and this shall not be monitored". It makes agreements such as those struck by Ccawusa with Metro Cash and Carry in 1985 and Chemical Workers' Industrial Union with Rolles a year later, all the more astonishing.

The Metro agreement, regarded as the most all-round comprehensive deal struck to date, includes 12 months maternity leave with the guaranteed right to return to work, paternity leave, health and safety protection for pregnant and nursing workers and free baby goods. The Rolles agreement, the most far-reaching yet on the pay issue, makes available six-and-a-half

The liberate

South African law, which stipulates that women stop working a month before and two months after a birth, has never offered protection from dismissal — if anything, the law lays the way for employers to get rid of pregnant women. But some landmark agreements between employers and unions are changing that



months leave at full pay.

It is not only in individual factories that maternity rights are being won. Two national industrial council agreements gazetted within the last month have made maternity rights statutory in the steel and engineering industry and in the textile industry. The leave periods and pay specified in these agreements are not as good as unions have been winning in factory level negotiations. But what is significant about minimum conditions won in the industrial councils is they cover entire industries — and give protection to unorganised workers.

The unions in these industries will be using the industrial council minimums as bases from which to negotiate more comprehensive agreements for workers in individual workplaces.

Some of Cosatu's unions have called for paternity leave as well — and in certain cases, particularly in retail, this right has been won, albeit at a basic level (two to three days). However, the principle of paternity rights is significant in terms of the new thinking emerging in union circles.

If only four years ago employers were outraged

by the notion of maternity rights, there is no telling — yet — how they may react to Ccawusa's latest proposal that both men and women receive the same benefits when a child is born under the sweeping new banner of "Parental Rights".

Pick 'n Pay is about to become the other team in South Africa's first parental rights agreement, compliments of Ccawusa which has used Sweden as its model on the subject. It leaves "maternity rights" standing alongside "bra-burning" in the archive of outdated concepts for change.

The objective of this agreement is to ensure that "women employees are not unfairly discriminated against on the grounds of pregnancy and that male and female employees who are parents of young children are able to fully exercise their parental responsibilities". The proposal further requires the company to acknowledge that the family carries the major expense of childrearing, that young workers entering the workplace were fed, clothed and educated by present workers, that the company profits from the labour of workers, and

that therefore the company agree to contribute "directly towards the making of the next generation of workers".

Demands contained within this novel proposal, which will reach other companies within the year, include:

- Fourteen months leave until the child is four years old. Of the 14 months, parents may save leave for later occasions until the child's fourth birthday. Both parents may share the leave if they both work for the company. This provision also applies to adoptive parents.
- Full normal weekly wages for the parent for 10 of the 14 months.
- Full pension fund and medical aid coverage during parental absence.
- The transfer of pregnant employees with physically demanding jobs with the proviso that if the company is unable to do this, they should be given an extra two months leave.
- That employees returning to work be entitled to any increase awarded during the leave period including bonuses.

THE NEW AGREEMENTS: BETTER JOB SECURITY, BETTER PAY WHILE ON LEAVE

THE basic right which all the maternity agreements negotiated by Cosatu unions has given workers is job security. The agreements, at plant or industrial council level, provide leave for or guaranteed re-employment for women due to give birth.

In addition, many of the agreements oblige employers to pay women at least part of their wages while they are on leave.

And some of them contain health and safety clauses which protect pregnant and nursing workers.

South African labour legislation provides no protection against dismissal for pregnant women. The Basic Conditions of Employment Act, which sets minimum working conditions for all manual workers, prevents women from continuing to work for a month before and two months after confinement. It's this provision which has often resulted in women losing their jobs.

Most of the maternity agreements which the trade unions have negotiated guarantee that their jobs will be kept for them for up to six months.

National industrial council agreements in the steel and engineering industry and in the textile manufacturing industry allow women to take six months off, to cover the period before during and after the birth.

The textile workers have won six months authorised unpaid leave, while in terms of the steel and engineering agreement, pregnant workers have to resign but are guaranteed their jobs back.

What is significant about both these agreements is that they cover all workplaces in these industries — thus providing protection even for unorganised workers — and their provisions have the force of law.

However, industrial council agreements, because they cover all employers in an industry, tend to cater to the lowest common denominator.

Trade unions which have negotiated maternity rights on a factory by factory basis have in some cases won much better terms. The Ccawusa agreement with Metro Cash and Carry gives 12 months leave. Some of the agreements in the chemical industry provide 10 months.

But in other industries trade unions have only succeeded in winning three months' job security. The maternity agreement at BMW, for example, only grants three months' leave. Agreements which the National Union of Mineworkers has negotiated also provide only three months.

Not all workers qualify for maternity leave. Usually, only those who have been on the company's payroll for at least 12 months are entitled to take time off.

Metro agreement is again an exception. There is only a one-day qualifying period and the company may not refuse to employ workers on the grounds that they are pregnant. But particularly stringent on this score is the engineering agreement — which grants rights only to women who have been with a company for two years.

This was a contested issue in negotiations, says

Numsa's Adrienne Bird. The engineering employers initially insisted that there should be a qualifying period of five years. This would have meant women workers were limited to one pregnancy every five years if they wanted to keep their jobs. Numsa's members refused to accept this clause and the employers compromised on this, as they did on their initial demand that plants employing fewer than 10 women be excluded from the agreement.

The qualifying period is not the only problem in this industrial council agreement. In both textiles and engineering, the maternity clauses cover only those workers whose wages are prescribed by the industrial council agreement. This tends to exclude some women, for example teamakers.

Ensuring that all workers are entitled to these rights will be one of Numsa's priorities in plant level negotiations.

Job security is an important victory for the unions. But perhaps even more significant is what is being won now in terms of pay.

For women workers, usually in very low paid jobs and often the sole breadwinners for their families, taking six months off work to have a baby may be an intolerable financial burden.

A survey of 885 black women workers by Jackie Cock, Erica Emdon and Barbara Klugman in 1983 indicated that over half of the mothers interviewed went back to work when their last child was six months old or younger. "Economic necessity propels most of these African women

into wage labour — often reluctantly," the three researchers conclude.

The consequences for the health of the babies — and of the mothers — can be serious.

The Health Information Centre has emphasised the importance of breastfeeding to combat diseases such as gastro enteritis and diarrhoea. 140 of every 1 000 black babies in South Africa die each year and the main cause is gastro enteritis, a disease related to socio-economic conditions.

"If a mother returns to work before her infant is six months old it will significantly affect the health of the infant. It will prevent optimum nutrition. The child will be liable to diarrhoeal and respiratory infections which are potentially fatal," says a document compiled by HIC.

Women who stop work to have babies can claim from the Unemployment Insurance Fund.

But there are many problems for these women in the workings of the UIF system and it is these that the unions are trying to address in their negotiations for maternity pay.

UIF offers women maternity pay — but to get UIF benefits for a full six months a worker would have had to contribute to the fund continuously for three years.

The amount paid out is 45 percent of normal wages — and that is on condition the worker is not getting paid more than a third of her wages by her employer.

Many maternity agreements — Metro, for example — thus provide for employers to pay

JOFFE

ed baby



CARL BECKER

Case study: The model creche at the factory

would not be left financially destitute and with no guarantee of getting my job back, eased the pressure on the whole family. Now we must fight very hard for proper child care facilities."

Current moves to broaden maternity issues into not only family issues, but by implication, social and community responsibility, is still embryonic and mostly paper-bound. But then, so was practical progression on basic maternity rights five years ago. Education programmes in support of these issues are ceaseless.

Union negotiators agree that the mechanics of change in this area, as in many others, is a long, hard haggle. First you establish principles, most are rejected, a few accepted, you expect that. You put them forward again. Next time round a couple more are accepted and the stakes are upped on others — and so it goes on.

CWIU's Chris Bonner is frank about the present limitations of the battlefield. "In practice the fight is still squarely on the maternity front in factories. This is now seen as an automatic issue and is pushed pretty hard. Company resistance has lessened and it is now very rare to find a company who won't countenance some kind of agreement."

"For the first time this year we tried to involve everyone — not only women because it is a social, political and economic issue not just a 'women's' issue."

A heady resolution about women passed at the first national congress of Cosatu in 1985 made an enormous impact on workers' goals in this area.

Mooted by Ccawusa, the resolution resolved, among other things, to fight:

- For full maternity rights, including paid maternity and paternity leave and job security
- For the protection of men and women from all types of work proved to be harmful to them, including work which interferes with their ability to have children and
- For child care and family facilities to meet workers' needs and make it easier for them to combine work and family responsibilities.

A point significantly left out of the resolution dealt with contraception — it was considered by most unions 'too controversial'.

But Ccawusa believes that the issue of contraception education is vital. Says Daphne: "Companies like Pick 'n Pay give family planning clinics free access to workers who are then given contraceptive shots with no information back up. We say the company must take responsibility for informing workers about various forms of contraception — and the drawbacks."

"Managements will still put across the view that it is better to have fewer children — not because they are concerned about population control, but because it becomes expensive for them to bear the costs of pregnant women. Some companies even build in conditions on maternity agreements whose available benefits relate directly to the number and spacing of children a woman has."

Child care is beginning to nudge its way forward as a vital and logical next step. Some progress has been made in terms of women being allowed to visit post and ante natal clinics and maternity leave obviously addresses some of the basic physical requirements of babies. But further than that, more comprehensive care of children up to the age of 12 remains principle-bound.

Agun, as sociologist Jacklyn Cock remarks, "this campaign is not a 'women's issue' but a campaign about social responsibility for the care of children."

Cock points to the way in which Cosatu has been stressing the link between the exploitation of workers in the workplace and their oppression outside it. She sees struggles about maternity or paternity rights and childcare as another aspect of trade unions taking up issues affecting workers in the wider community.

This new thinking is becoming less tentative among unions generally, as more begin to address the subject as a working class right.

Ccawusa, again using as a blueprint rights that have been established in Sweden, have put together a package on child care that has not yet been tested.

In the South African context, it appears no less than radical, its recommendations including: A six hour working day for all parents of children under the age of eight; two days paid leave for parents when their children start school, pre-school and after school child care facilities; a child minding allowance of R50 a month for each child under the age of six; and 18 days paid leave a year to enable parents to care for a sick child under the age of 12.

The priority is for the immediate creation of workplace nurseries to enable mothers to nurse their children during working hours.

The unions themselves have adopted a realistic approach to these seemingly utopian ideals and make no bones about how long some of these demands will take to materialise.

A daunting reminder of the arduous road ahead for the trade unions is that even the rights won to date affect no more than a few thousand workers in a limited number of industries.

Most black women are employed in agriculture and domestic service where there is no labour legislation to protect them at all and unionisation remains in its infancy.

That it is agreed that women and men must have equal opportunity to combine gainful employment with family life.

A criticism of this non-sexist, family concerned approach is that many men will abuse such rights and not use the hard-bargained time off playing responsible parent.

Some labour movement sources have expressed reservations about the commitment of male workers to this issue and profess reluctance to negotiate extensively on their behalf.

Ccawusa negotiations co-ordinator, Jeremy Daphne, disagrees. While admitting that the possibility existed of some men using parental leave as an opportunity to broaden their experience of shebeens, he asserts that a start must be made somewhere.

"It is important to establish the principle and provide the necessary space for men to at least start moving in the right direction in terms of being properly responsible parents," Daphne adds that as these provisions are being negotiated, the union is running education programmes on this

subject. "These days we're getting some very surprising and positive responses from men — especially the worker leadership, who are putting across the idea that responsible parenthood is an admirable characteristic for men too."

Turning around chauvinistic attitudes is not merely a matter of appealing intellectually and morally to die-hard prejudice, but increasingly, a practical necessity. Metro Cash and Carry shop steward Georgina Mbileni points out that, with the urban disintegration of the extended family in favour of the nuclear unit, men have little choice but to participate in child-care.

"Many young couples don't live with their families anymore, so men are being forced to help at home because often there is no-one else."

Mbileni, who was on the negotiating team of the watershed agreement with Metro, has three children — two born before it (the agreement) and one after. She comments that the financial and psychological effects on her own family after benefits became available, improved substantially.

"To know that with the birth of my third child I

women one third of their wages during the maternity leave period. The assumption is a worker will be receiving 78 percent of her usual wage.

But the UIF system is inflexible on maternity — women can only get paid for four months before and two months after the birth. And it means that a woman who can take six months off after the baby is born can claim UIF money for only two of these months.

This is a problem unions still have to address.

But certain unions have won far-reaching victories on the maternity pay issue. The Rolfe agreement negotiated by the CWIU gives workers six-and-a-half months' leave at full pay. CWIU now has maternity agreements at 32 factories, of which 18 are paying full leave.

While all the agreements guarantee women their jobs, many still do not provide for pay. The two industrial council agreements in textiles and engineering cover job security but not maternity pay.

But in the steel and engineering industries, women workers can now claim maternity pay for six months from the Sick Pay Fund administered by the industrial council. The amount they can claim is 50 percent of the minimum wage for their pay grade. Since payments from the fund do not count as wages, women on maternity leave can claim these and still get UIF.

The National Union of Metal Workers is negotiating in individual workplaces for employers to make up the difference between amounts received from UIF and the Sick Pay Fund and women

workers' full wages.

In the homelands, getting UIF payments can be particularly difficult. At BMW the agreement negotiated by the union provides for women to be paid by the company in cases where they cannot get UIF since many live in homeland townships.

Unions such as the NUM, Ccawusa, and CWIU have also been demanding paternity leave for the biological fathers. Here, there has not been much success.

The NUM's demands for paternity leave have not been met by any employers. CWIU was the first union to win paternity leave for workers and now has this at 20 factories. Ccawusa, too, has negotiated paternity leave in some retail chains.

An important issue in negotiations for maternity — or parental — rights for workers are those around health and safety. Unions have demanded that pregnant women be relieved of jobs which could endanger their health. And they have called for paid time off for pregnant women to attend ante natal clinics.

Neither of the industrial council agreements include such provisions, but health and safety clauses are a feature of many of the plant level maternity agreements.

Many of these maternity agreements have been negotiated by unions in industries where women workers are not a majority. This is an indication of the unions' commitment to the question as a broader working class issue rather than simply a 'woman's issue'.

Paulus blasts new mining job regulations

Soweto 11/8/87

166

THE white miner would defend his blasting certificate as he had done in the strike of 1922 unless the Government acted to curb the appointment of blacks to senior posts in the mining industry, Mr Arrie Paulus (CP Carletonville) said yesterday.

Moving in the second reading debate on the measure that the Mines and Works Amendment Bill be read "this day six months," he said every blasting certificate given to a black worker has a step towards communism.

The 1914 and 1964 strikes were over the chamber of mines' attempts to replace white workers with black labour.

The National Party had, over all those years, guarded the jobs of white workers.

But now it was leaving them in the lurch.

The Minister of Mineral and Energy Affairs, Mr Danie Steyn, had said in his explanatory memorandum to the Bill that there was a shortage of labour on the mines. This was devoid of all truth, Mr Paulus said. The chamber was trying to persuade the Government that there was a shortage so that it

would have an excuse to bring blacks in to these posts.

Mr Paulus said that there was in fact unemployment at the moment and this was the first time in his memory that white workers were unable to get jobs in the industry.

Needs

The NP newspaper, *The Nationalist*, had said white workers alone could not meet the growing labour needs of the mines. This was not true. There were enough whites, he said. The only reason the Government was changing the law was to satisfy the chamber and the outside world.

A total of 2088

blasting certificates had been issued in 1985 and 1821 in 1986. This year, with four months still to go, 1700 certificates had been issued. This showed that the white worker still attached importance to working in the industry, Mr Paulus said.

The Government was even bringing in black workers from "hostile" states such as Mozambique for training for blasting certificates.

The white mineworker was prepared to help train black workers, even up to managerial level, but only in their own territories.

He was not prepared to work under a black man in white South Africa, he said — Sapa.

Num slams new mine regulations

THE repeal by Parliament of the scheduled persons definition in the Mines and Works Act has come in for criticism by the National Union of Mineworkers, although it was promulgated to do away with discriminatory legislation.

The Num's assistant General-Secretary, Mr Marcel Golding, said yesterday some of the new criteria, like language, security and age, had been included to regulate the number of black miners getting blasting certificates

"The Num feels that a worker's competency should be decided by the worker's ability to perform," he said

He added that the committee to monitor the entrance qualifications was "completely unacceptable" and had been included to "allay the fears of white miners to limit the number of blacks getting blasting certificates"

Mr Golding added "Conditions of employment and job advancement should be regulated by employer and employee organisations and not by a statutory third party" Sapa

Sanjivan
12/8/87

166



340 000 out in biggest strike

MINERS,

BOSSES,

STAND

FIRM

By
NAT DISEKO
and THEMBA
MOLEFE

Going home



MORE than 340 000 miners are on strike and other workers were prepared to make sacrifices because the issue at stake is a living wage, the National Union of Mineworkers said yesterday.

Mr Cyril Ramaphosa, NUM's general secretary, told a press conference in Johannesburg that his organisation had made it impossible to management that any increase in wages would be granted.

"The workers will take as long as it takes to attain their goals. Our demands are negotiable and we still give the Chamber a chance. Mr Ramaphosa said the Chamber of Mines' view has been that in percentage terms the increases that miners received last month were

leave the mines and go home, strike committees at different mines would be prepared to those who remained.

There were workers like those who came from Johannesburg who could not go home because of the problems at the mine.

Valid

Asked whether he thought it was the mine's obligation to feed striking workers, Mr Ramaphosa said the workers had to be fed at the mine because they were absent from work because of a valid reason as required by their contracts.

Miners stand firm

From Page 1

informing workers NUM's national executive committee had called off the strike.

Union members involved in organising the strike at Buffelsfontein Gold Mine, Randfontein Estates, Braken Gold Mine and at Vaal Reefs, have been arrested in all, nine NUM members have been allegedly arrested. Mine workers attending union meetings have been attacked. One worker has been injured at Lorraine Gold Mines after mine security fired rubber bullets birdshot.

The union's offices in Westonaria and Klerksdorp have been raided.

Workers have been forced to go underground a number of times. Work required protection.

Killed

NUM claimed that a man had been killed at the Lorraine gold mine. The union also said NUM officials have been unable to gain access to union members because the Chamber of Mines members have erected roadblocks to seal off the

11/8/77 Sowetan

213



Safe 213

11/8/77

Changes to Labour Act outlined

Significant changes to labour legislation, including the establishment of a new court, were outlined by the Minister of Manpower, Mr Piet du Plessis, at a joint meeting of the Benoni Chamber of Commerce and Industries and the Afrikaanse Sakekamer last night.

The Minister said legislation had been tabled in Parliament which would:

- Create a Special Labour Court which would be a branch of the Supreme Court. It would have appeal jurisdiction and decide on costs and damages.
- Create a schedule to the Act defining unfair labour practice and unfair dismissal.
- Disallow unions and workers engaged in illegal strikes recourse to the Industrial Court.
- Declare unequivocally that sympathy strikes were unfair labour practices.
- Make the creation of conciliation boards an administrative function to cut down on delays.

Mr du Plessis said employees had to ask themselves only one question. Was I reasonable? If the answer was "yes" then they should not hesitate in applying to the Industrial Court for a favourable judgment.

He said it was implicit in the Act that workers could not be forced to join a union.

166 B/Day 17/8/87

Changes to labour relations legislation

CHRIS CAIRNCROSS

CAPE TOWN — Fundamental changes to existing labour laws, which could materially influence industrial relations, are to be tabled in Parliament later this year

The purpose is to fine-tune existing legislation and tackle those pressure points in labour relations which are still creating problems, says Manpower director-general Piet van der Merwe

The changes to be introduced are mainly the result of submissions made by employer and employee organisations on the draft Labour Relations Amendment Bill, published for comment in the Government Gazette last December

Van der Merwe said a large number of organisations submitted their views, and there was a remarkable degree of consensus

The main changes to legislation envisaged, but by no means finalised, concern the appointment of a special labour court; a court of appeal, changes in the numbers and streamlining of conciliation board procedures, and refinements to the definition of an unfair labour practice

The legislation is expected to signal a much harder government line against "illegal" union strike action

New provisions will make it far simpler/easier for employers to seek recompense from unions who take action outside agreed procedures

B/Day 17/8/87

Restructure SA's economy — Cosatu

ALAN FINE

A 90-page booklet, Political Economy — SA in Crisis, published by Cosatu last week, criticises solutions put forward by SA's big business establishment as being unable to solve the country's deep-seated economic problems

It calls for the economy to be restructured, but warns that to merely talk of socialism as if it were a "magic formula" also fails to answer key questions

The booklet, produced by Cosatu's Durban-based education division, is aimed at union membership

It argues privatisation will mean a hand over of parastatals to large monopolies. This process, it says, will not constitute new investment or create jobs

A more likely outcome will be higher levels of retrenchment as the new owners rationalise the corporations

to make them more profitable

And profits from these new private ventures are unlikely to be invested in the creation of new jobs, because of a lack of business confidence and shrinking local markets

It further argues privatisation of areas of "social consumption" like housing, health care and education will be counterproductive, in that these products and services cannot be made available to the mass black market at affordable prices

The final chapter of the booklet raises a number of issues which Cosatu believes need to be addressed. These include the nature of political structures for a future democracy and protection of individual rights

Access to archives denied

DIANNA GAMES

THE Department of Foreign Affairs says that, but for some exceptions, documents from its archives are not made available to the public

Use of its documents for research has long been a matter of confusion for researchers and academics

The matter came to light again with the recent launch of a book by Sara Pienaar, history lecturer at Unisa, in which she says she was denied access to certain documents — but only in the past few years

Several prominent SA academics say they have experienced difficulties in getting access to the records

In the preface to her new book, South African and International Re-

lations Between the Two World Wars — The League of Nations Dimension, Pienaar writes the department appears to have placed a blanket ban on all documents in the State Archives dealing with SA's foreign relations since 1910

In 1979 she used Foreign Affairs documents without any obstruction from Archives officials but four years later, when needing to check them for another project, she was told she could not do so. A letter to her from the State Archives in 1983 said the department was not willing to allow any research into its archives

Govt to tighten up on militant unions

198/8/1 B Day 165

CAPE TOWN — Legislation to curb militant trade unions who take part in wildcat strikes or other actions which bypass industrial agreements will be introduced in Parliament this session.

A source close to the Cabinet on Friday indicated industrial courts would be given "more teeth" to deal with radical unions who refused to play by the rules.

The source said unions engaging in illegal industrial actions could, in terms of the legislation, be forced to financially recompense the affected employer for loss of business. However, it was stressed the in-

Political Staff

Industrial court would treat each case on its merits and no blanket executive action by government against troublesome unions was being contemplated yet.

Business has been lobbying against more legislative intervention in labour relations, but government has been under strong pressure from the CP and within NP ranks to clamp down on unions seen to be fomenting politically-motivated industrial relations strife. In Parliament on Friday, Man-

power Minister Manpower Phele said legislative steps could be expected soon "to bring order" to the trade union movement and restore the balance of power between workers and employers.

He said it was essential to have a "balance of power" between the two, since too much power on one side would lead to a revolution.

Du Plessis said intimidation was one of the biggest problems in the labour field.

Earlier, J H Cunningham (NP Stillfontein) warned that if trade unions and their leaders acted "irresponsibly", they should not complain if the state acted to safeguard its interests.

He said legislation should be introduced allowing the industrial court to award damages against a trade union that had proceeded with an illegal strike.

Arrie Paulus (CP Carletonville) said government had a responsibility to ensure that legal action was taken against illegal strikes.

PFP chief manpower spokesman Peter Gastrow said as long as black workers had no representation in Parliament the use of trade unions for political purposes could be justified.

ive told the SABC this week that Anglo was "further down the learning curve" than other mining houses that were not hit by the current miners' strike

At the end of the second week of this costly and volatile event, one could ask whether Anglo American have now learnt an important principle of collective bargaining — never say never

Had Peter Gush, chief executive of Anglo's gold and uranium division, not refused to countenance a further increase in wages, the strike may well have been over by now

His statement bound Anglo to a rigid position. It was not based on whether or not the corporation could afford increases but on the premise that workers were happy with the increases

What cost to the mines? Some brave analysts try..

By HILARY JOFFE

THE mine houses won't comment on how much the mines strike is costing them. The Chamber of Mines won't give any estimates either. And many industry observers say the calculation is too difficult to do — especially in the absence of detailed information from the mine houses

But some researchers have been brave enough to try

The Labour Monitoring Group estimated earlier this week that the strike was potentially costing the affected mining houses R17-million a day — or R90-million for the first six days — figures which were disputed by the chamber and by some industry analysts

One who doubts the figures is mining analyst Dave Giese, of stockbrokers Davis Borkum Hare. But he has his own calculations of the maximum amounts the mines could be losing

Assuming a total loss of production of one week, Giese argues, the working profit of Anglo American's gold mines could drop by R55-million — R20-million of which would have gone in tax. This would represent a cut in distributable income of 10,7 percent for this quarter. On the same assumptions, Gencor gold mines' distributable income could fall by 7,8 percent

But Giese points to "the unlikelihood of a total disruption of a week's production" and reassures shareholders that "the loss in distributable earnings on the gold mines is unlikely to exceed five percent"

Both Giese's figures and those of the LMG are speculative ones of potential losses the mines could incur

In the absence of accurate information any figures on the cost of the strikes can only be guesstimates — although analysts concede that educated guesses are quite possible. And the mine houses themselves are likely to be keeping tabs on the costs, whatever they might say publicly

Chamber industrial relations adviser Johan Liebenberg said earlier this week that the chamber had not assessed the loss yet. "The mines are only really incurring a loss if no ore is coming up and they have no stockpiles," he argued, adding that the size of the stockpiles was "a closely guarded secret"

Investors in gold shares certainly seem to believe the mines have made contingency plans and stockpiled ore. Although gold share prices dropped a little towards the end of last week, on the whole the stockmarket has hardly responded to the strike. Investors appear to be under the impression the strike will be a short term "hiccup" and most observers predict the strike would have to last for a month or so before shareholders got nervous

But what's not clear is whether the mining houses have laid in special stockpiles of ore for this strike. According to one mining analyst, the mines have routinely kept one month to six weeks' worth of gold ore in stock for the last two to three years, as insurance against labour militancy

What the bruising mine strike taught Anglo: NEVER say NEVER

By PHILLIP VAN NIEKERK and JEAN LEGER

Instead there is deadlock — and it is difficult to imagine any scenario which could break it

The strike has been a dramatic illustration of the level of worker militancy in the industry

Even so, for a settlement to be reached, the National Union of Mineworkers leadership would probably not have to bring home the full 30 percent. They have said all the while that they are open to negotiation

However, even a 0,1 percent offer on wages would spell defeat for Anglo

As it would mean climbing down from the Gush position which the corporation now feels obliged to maintain

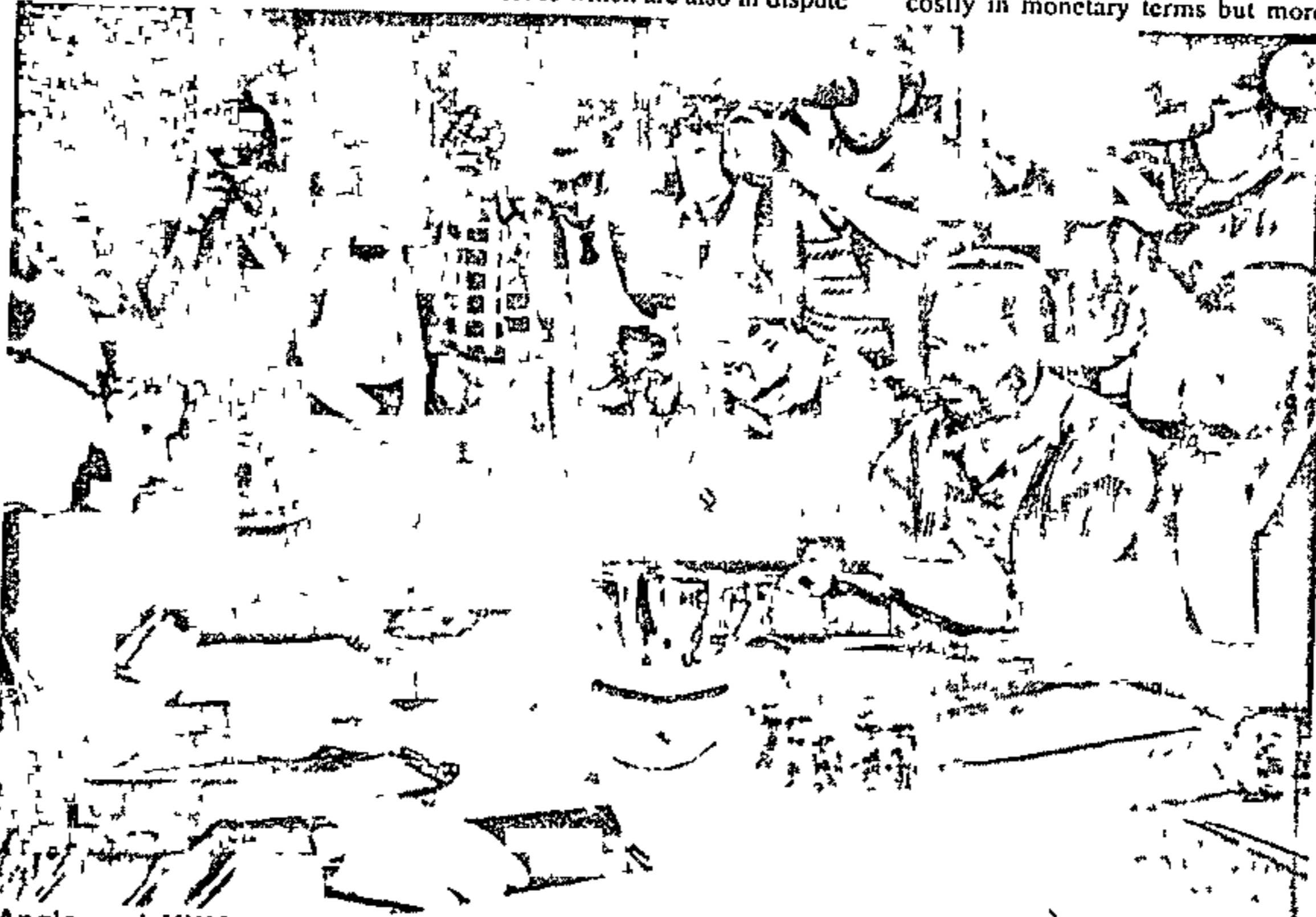
The chamber has moved on the overall pick-ups since the strike began. After saying that the final offer had been implemented in July, it has pussyfooted around wages and said it is willing to talk about fringe benefits — issues which are also in dispute

But there is no way the union leaders could sell this to the rank and file

For Anglo American, the hardest hit mining house, there are at least four options

● Wait, at enormous cost for the strike to crumble of its own accord. This might have been the strategy from the beginning although it is doubtful that its senior executives foresaw such a sustained stoppage

● Increase the wage offer and thus admit defeat. This would be less costly in monetary terms but more



Anglo and NUM open talks on preventing strike violence facing each other across the table are Anglo's Bobby Godsell and Kallie van der Kolf and the NUM's Cuban Pillay, James Mollatsi and Cyril Ramaphosa (right). The talks collapsed after two sessions

Another analyst adds that although it's common knowledge that the vast majority of Anglo's shafts are closed, the mines could in theory produce between 20 to 40 percent of their normal output during the strike by processing the stocks of ore kept underground or on the surface

The mines have probably also kept back stocks of bullion which they will declare during the strike, to keep the cash coming in

To calculate lost production one would have to know the grade of ore mined at each individual mine as well as the whether the shafts were open and the size of the stockpiles being processed above ground

And one would need to know the number of mines and miners on strike, a subject on which there is no consensus. The chamber figure provided by Liebenberg at the beginning of this week was one third of the mines on strike and 40 percent of the

labour force. The union's total count was 340 000 while the chamber's was 220 000 to 230 000. The LMG calculations are based on a total of 315 000. Liebenberg refuted the LMG's calculations as inaccurate because they had counted as strike hit 11 mines which were producing

But it's not enough to know total numbers. Calculating the costs also requires knowledge of which workers and at what kind of mine

Thus, for example, analyst speculate that at very mechanised mines which operate with relatively skilled workers, it would be quite easy for white workers to do the jobs of the striking miners. Randfontein Estates, which has implemented trackless mining, is cited as an example

And if the mines are trying to keep their cash flows going by processing stockpiles of ore, the question is not just which shafts have closed down but whether the strikes have been effective at the processing plants

While Anglo admitted last week that all its mines had been affected, and Gencor has given breakdowns of its affected mines, the mining houses have kept details to themselves

Except that is, regarding the costs of the strike in relation to the marginal gold mine shafts, where Anglo threatened closure of a shaft at Vaal Reefs and one at Western Holdings. However, says one analyst, the Vaal Reefs number six shaft was due for replacement anyway. And the strike may just have provided a useful excuse

The coal mines situation differs from the gold mines and no-one as yet has tried to calculate the strike's costs in coal. Given the world oversupply of coal, the collieries could probably sit out a long strike

As a clearer picture emerges of the strike and the strikers, it will be back to the calculator for another round of estimates

painful in political terms. The strike has already probably cost more in lost profits than the wage increase of 30 percent paid out over a year

● Call in the troops to smash the strike — an unlikely scenario given Anglo's awareness of its liberal public image, but possible if the state takes matters into its own hands

● Attempt lock-outs — which would be legal in the same way that the strike is legal — and bring in replacement labour. Success is certainly not guaranteed given the vast number of skilled and semi-skilled workers which would have to be found

This strategy — most effective as a threat — appears to have already been used on the fringes of the strike — on those mines which Anglo claims are marginal. The lock-out/close-down strategy included Landau Colliery, Vaal Reefs number six shaft and a shaft at Western Holdings in the Free State

But while these options would indicate that Anglo has a difficult path to resolve the dispute, the NUM itself has few options to increase the pressure on the chamber

The union still holds the powerful "mass exodus" card — that workers could at any stage return home, deepening the logjam. There were indications that this strategy may be used towards the end of this week

The solidarity option has not really come into play yet and the prospect of extending the strike was set back this week when the NUM lost a crucial round failing to bring out a substantial portion of Gold Fields' 75 000 workers

This has meant that the union has been unable to hit the country's richest mines and has weakened its ability to push the chamber into an industry-wide offer

The union thus sets itself up for what it sought to avoid — a split offer

Any settlement would further widen the gap between Anglo, the highest payer in the industry, and the mining houses closest to the chamber minima — Gold Fields and Anglovaal

Ironically these two mining houses are the most hard-line and least liberal in the industry

NUM assistant general secretary Marcel Golding said the union's difficulties at Gold Fields were due to the problems the union has with access to Gold Fields' mines, the fact that while the union does have support at the corporations' mines, members are spread throughout the grades while the NUM is recognised for only a few, and the repressive approach both of Gold Fields security and management, who have arrested and dismissed key union leadership after work stoppages in the past

This seeming proof that repression contains conflict more effectively will provide ammunition to those Gold Fields executives who (as an Anglo official once described) laugh at what they regard as Anglo's "naive" pluralist approach

"Every dog has its day," said one unionist this week as the NUM vowed to redouble its efforts at taking on Gold Fields

THE DECENT WAGE: CHOOSE YOUR STATISTICIAN

By JEAN LEGER and PHILLIP VAN NIEKERK

THE mineworkers' strike has led to a war of words on statistics about black miners' wages

Johan Liebenberg, industrial relations adviser to the Chamber, accused the NUM of "misinformation" for focussing on the minimum wage and for saying it had not risen in a decade

"Employees do not tuck minimum wages into their back pockets, but actual wages," said Liebenberg, spurring an interest in what the difference between the two actually is

"There has been a significant increase in the actual basic pay of unskilled and semi-skilled mineworkers from 1975 to 1986," he said. "Actual basic pay increased in real terms for unskilled and semi-skilled mineworkers throughout the industry by 32 percent"

Anglo American's industrial relations adviser, Bobby Godsell, last week released figures which showed that the average wage for all gold and uranium miners is 12 percent above the minimum rates, with all overtime and pay bonuses included

He described this gap as

significant' and said the minimum wage figures reflect an artificial collective bargaining rate

"Ninety percent of employees are in grades above the lowest job grade. The majority of Anglo workers are in pay grade four," he said

"The Anglo group and the mining industry are committed to a real increase in the earnings of all their employees, we are keen to see the take-home pay of our employees increase over time

"But the increase over time has to be in a responsible and incremental way — the viability of the industry over time has to be protected"

While both sides in such a battle are likely to use figures selectively, the Anglo method of working out the average pay is questionable as it includes overtime and production bonuses

This assumes that a worker will have to work overtime to achieve his basic pay

It is also of no consequence in the

dispute which concerns minimum wages — the so-called artificial collective bargaining rates

The second question involves how one sets about establishing a base date for increases in real wages

The Chamber and Anglo often use 1972 as a base date because of the massive lift-off in wages shortly thereafter. However, wages were appallingly low at this time — less in real terms than before the Boer war

What is of interest is the trend, which is not at all helped by arbitrarily using an arbitrary base date

The important year was 1983, which was when the NUM first negotiated wages with the Chamber. According to the Labour Research Services, after climbing to a peak in 1984, the average wage in real terms in 1986 dropped below that in 1983

These figures were not disputed by the Chamber — and in fact were drawn from their annual reports. However, they contradict the claim by the Chamber that they are committed to real increases for black miners

The 30 percent increase which the Chamber has so fervently resisted

would in real terms bring the average wage only slightly above 1984 earnings

Thirdly, averages are misleading. While category four has more workers in than any other, more than half of all workers are spread through categories one to three — the lowest paying job grades

Only about 13 percent of workers are in grades five to eight — the highest-paying jobs, which inflate the average

Because grade four workers are receiving wages around the most basic of poverty datum lines (the minimum living level), more than half of all black miners are earning well below this mark

The Labour Research Centre estimates a minimum living wage of R850 a month

This fundamental issue — of whether or not workers earn a living wage — have not been touched on either by Liebenberg or Godsell in their responses to the NUM

Nor at any stage of the debate have they denied that the mines could afford much bigger increases



William - 2/1/87

166

Chamber 'bent over to allay fears'

5/10/87

THE Chamber of Mines and government had "more than bent over backwards" to allay white fears over the scrapping of job reservation in the mining industry, chamber president Naas Steenkamp said yesterday.

12/8/87

Steenkamp welcomed the enabling legislation which will remove the Scheduled Person Provision in the Mines and Works Act.

He said the Security of Employment Agreement which will apply, would satisfy most white workers who could be affected by the scrapping of job reservation.

The Mines and Works Amendment Bill went through its second reading in the Assembly yesterday.

Steenkamp said the chamber had earlier opposed the amendment Bill because it provided for a special board to control the entry of candidates into previously reserved jobs, which could have had the same effect as job reservation.

It had since been changed and the minister had assured that government would only exercise control over health and safety matters — Sapa.

SA labour relations 'set for big advances'

GERALD REILLY

PRETORIA — Amendments to labour legislation, now with the Parliamentary Standing Committee on Manpower, would mean big advances in the sophistication of the country's labour relations, Manpower Director General Piet van der Merwe said yesterday.

The draft Bill to amend the legislation would hopefully be submitted to Parliament before the end of the current session.

On labour unrest, Van der Merwe said he rejected allegations that the labour scene was in turmoil because of widespread industrial strikes.

The large numbers involved in the mineworkers' strike had given some the impression the situation had got out of hand, he said.

Part and parcel

"We have to accept that strikes and work stoppages are part and parcel of the modern industrial scene. Confrontations between unions and management are normal and we must just learn to live with the situation."

Perhaps the most important amendment to labour legislation was the proposed special labour courts, which would hear appeals from the Industrial Court, Van der Merwe said.

The courts would also have the power to award legal costs and damages.

Another major advance, he said, were the guidelines laid down for defining more precisely the grey areas of unfair labour practices.

Also provided for was the streamlining of procedures for the appointment of conciliation boards.

Because of the large volume of applications, there was currently a large time gap between applications and the appointment of boards.

what extent and (b) what quotas are applied at each of these technikons, (4) whether he will make a statement on the matter?

The MINISTER OF EDUCATION AND CULTURE

- (1) Yes, talks are currently in progress with the rectors regarding a policy for the admission of non-Whites to the technikons which is in accordance with the provisions and the spirit of the Constitution and which serves the interests of the country. The discussions have not been concluded.
- (2) Yes, subject to the policy of admission
- (3) No, pending completion of the discussions on policy in this regard (a) and (b) Fall away
- (4) No

TUESDAY, 1 SEPTEMBER 1987

†Indicates translated version

For oral reply

General Affairs

State President

Newspaper proprietors/publishers: talks

*1 Mr D J DALLING asked the State President

Whether he or any person delegated by him recently held talks with any representatives of newspaper proprietors or publishers, if so (a) when were these talks held in each case and (b) (i) who was present at (ii) what was the purpose of, and (iii) what resulted from the talks in each case?

The DEPUTY MINISTER OF INFORMATION (for the State President)

I refer the hon member to my address in the House of Assembly on 17 August

HoA

1987 I have no further comments, considering that I do not supply details of my conversations with other parties, unless prior agreement has been reached with those parties

Mr P G SOAL Or they have been taped.

Ministers

Waterpoort Police Force: representations

*1 Mr T LANGLEY asked the Minister of Law and Order †

- (1) Whether the South African Police has received any (a) complaints and (b) representations in connection with certain members of the Police Force at Waterpoort if so, (i) when, (ii) what was the nature of the (aa) complaints and (bb) representations and (iii) what was the response to the representations.
- (2) whether the complaints have been investigated, if so, (a) when and (b) what were the ranks of the investigating officers,
- (3) whether he has received a report on this investigation, if so (a) when (b) what was the purport thereof and (c) what were the findings,
- (4) whether he will make a statement on the matter?

†The MINISTER OF LAW AND ORDER

- (1) (a) and (b) Yes

(i) 23 June 1987

- (ii) and (iii) The complaints and representations dealt with departmental policy which I regard as an internal matter. I am therefore not prepared to furnish this information

(2) Yes

(a) From 7 until 31 July 1987

- (b) The Divisional Commissioner of the Far Northern Transvaal Police Division investigated the complaints and representations

(3) Yes

(a) 21 August 1987

(b) I refer the hon member to my answer to paragraph (1) (ii) and (iii) above

(c) The complaints and representations were false

- (4) Yes. The policy of the South African Police determines that members of the Force should serve all groups of the community impartially, irrespective of race, colour, religion and political affiliation. The security of South Africa and all its people is an absolute priority with the South African Police, and it is for this reason, therefore, that I disapprove in the strongest terms of any attempt, whatsoever, to involve the Force or any member of the Force in petty party politicizing. In any event, Standing Orders prohibit members of the Force from becoming members of any leftist or rightist radical organizations such as the ANC or AWB and from participating in party politics

Nieuwenhuizen Report

*2 Mr P J PAULUS asked the Minister of National Health and Population Development †

- (1) Whether any amendments have been effected to the White Paper on the Nieuwenhuizen Report, if so, (a) when (b) by whom and (c) what amendments.

(2) whether these amendments are to be tabled in the present session of Parliament, if so, when, if not, (a) why not and (b) when they are expected to be tabled.

- (3) whether all employers' and employees organizations will have an opportunity to discuss and/or comment on the proposed amendments, if not, why not?

The DEPUTY MINISTER OF NATIONAL HEALTH

(1) Yes

(a) 19 March 1986

(b) Cabinet

(c) That

- (i) the instruction by the Government in the White Paper that the uniform occupational diseases dispensation should be based completely on the principles of the Occupational Diseases in Mines and Works Act, 1973, be amended.

(ii) the Interdepartmental working committee be authorised to prepare draft legislation whereby the administration of the compensation of occupational diseases could be in tandem with the Workmen's Compensation Act, 1941 of the Department of Manpower, and

- (iii) if necessary, separate draft legislation for occupational medicine be prepared

(2) No

(a) As the amendments have a small effect on the work of the interdepartmental Committee and as the draft legislation prepared by the committee will be published for discussion by employers and employee institutions tabling of these minor amendments to the White Paper were not necessary

(b) Falls away

(3) Yes

†Mr F J LE ROUX Mr Speaker arising from the hon the Deputy Minister's reply, I should like to ask him whether he is aware that in the original Nieuwenhuizen report the recommendation was that that payments in respect of accidents and so forth should be based on the pneumoconiosis legislation of 1973, and secondly, whether he knows that this matter now has been outstanding since the end of 1980

†The DEPUTY MINISTER Mr Speaker, it is true that this proposed legislation has been outstanding since 1980, but the inter-depart-

HoA

166

Howard 1/9/87

CAC-101F 2/9/87

166

Draft laws for farm workers

HOUSE OF DELEGATES. — Draft legislation to protect agricultural workers could be expected in the foreseeable future, the Minister of Manpower, Mr Pietie du Plessis, said yesterday.

Replying to the debate on the Manpower vote, he said discussions taking place within the agricultural industry were complex and had not been completed.

“I can’t say when discussions will be finalized, but it is probable that draft legislation will be ready in the foreseeable future,” he said.

Mr Du Plessis was responding to points raised by Mr Mahmoud Rajab (PRP Springfield), who said the protection of the Labour Relations Act should be extended to agricultural workers.

Consensus

As matters stood, farm workers enjoyed protection neither under this Act nor under the Basic Conditions of Employment Act.

He said it had been reported that in Natal and the Transvaal, children were being forced to work on farms for up to six months a year in exchange for being allowed to live there.

Replying, Mr Du Plessis said he shared concern for farm workers.

He said employee-employer relationships on farms were different to those in the industrial sector. Many farm workers were unskilled.

Because of the nature of agriculture, the matter should be treated with trust and consensus rather than coercion, he said. → Sapa

CNC 11/16/66
2/19/66
166
11/16/66

Unions can pay strikers

Political Staff

TRADE unions could, by law, provide financial assistance to striking workers, the Minister of Manpower, Mr Pietie du Plessis, said yesterday

As long as trade unions abided by their constitutions, there was no reason to investigate the matter, he said in reply to Mr Arrie Paulus (CP, Carletonville)

In terms of the Labour Relations Act, the constitution of a trade union "must explicitly provide for the purposes for which its funds can be utilized

"If a trade union's constitution provides that financial assistance can be given to striking workers, it is not contrary to the Act"

His department did not investigate the matter "unless there are actions contrary to the Act", he said.

TKG 45-15/1/86
Wiehahn for SWA labour inquiry

WINDHOEK. — The transitional government has appointed a commission of inquiry into labour matters in SWA/Namibia. South African labour expert Professor Nic Wiehahn will be chairman of the nine-man body. — Argus Africa News Service.

Strikers' 3-day deadline

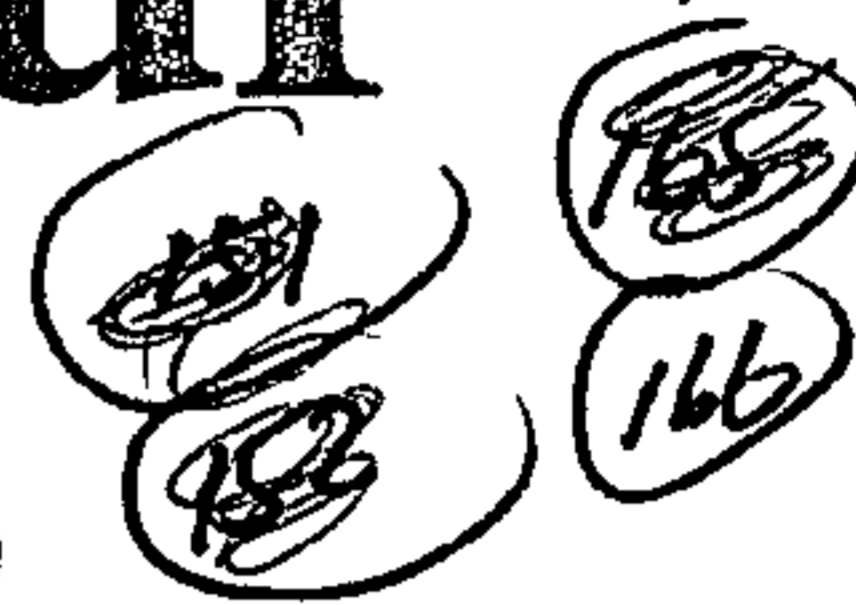
CAT/ TMS
24/9/87

HOUSE OF DELEGATES. — The SATS Amendment Bill would give a worker who joined a strike against his will a period of three days in which to tell SATS management that he had been intimidated, the Minister of Transport Affairs, Mr Eli Louw, said while replying to second-reading debate on the bill. Earlier Mr Mahmoud Rajab (PRP Springfield) criticised the bill for not providing any right of recourse for SATS strikers who were dismissed. Mr Louw said: "I maintain clause 5 (the section of the bill dealing with strikes) is giving an exceptional recourse to workers, recourse that you won't find in any other Act." It gave the worker "three days to come and tell us he hasn't been taking part in the strike — that he was intimidated in fact". — Political Staff and Sapa

~~168~~
~~168~~
168

Govt moves on labour disputes

CARL THOMAS
26/9/87



Political Staff

THE government has moved to crack down on the undisciplined or "unprincipled" efforts of employers and employees to break any deadlock which may occur in labour disputes

The target appears to be lock-outs, wild-cat strikes and other industrial action which have been occurring with increasing frequency

The government's new disciplinary procedures — long speculated on — form the basis of major changes to existing labour legislation contained in the the Labour Relations Amendment Bill finally tabled in Parliament yesterday.

The nature of the projected changes has already been widely opposed by organized commerce and industry

The crucial clauses contained in the 63-page draft bill set out new increased powers for a special labour or industrial court, and spell out a more detailed definition of what it has decided is definitely not an "unfair labour practice"

Of particular significance, the legislation provides for this special labour court to order punitive financial action to be taken against a labour organization whose members, through their actions, are found to have caused financial damage to the companies concerned

The government's definition of what is not an unfair labour practice is contained in 64 clauses.

One is the dismissal of an employee

or employees who at the time of dismissal, have not been employed by the same employer for a continuous period of at least 12 months

Some of the other reasons for an unfair labour practice are

- The dismissal of an employee where an employer fails to hold a hearing or a disciplinary inquiry and the industrial court thereafter decides that it could not reasonably have been expected of an employer to hold such a hearing

- Any dismissals takes place after substantial compliance with the terms and conditions of an agreement relevant to the dismissal

- The selective re-employment of employees dismissed for disciplinary reasons.

- The termination of the employment of an employee on grounds other than disciplinary action unless reasonable prior notice of such termination of service, and the reasons thereof, have been given to the employee; or where prior consultation has taken place with the employee.

- The unfair unilateral suspension of an employee

- The use of misleading or unfair methods of recruiting members by any trade union, employers' organization or official of any trade union.

- The refusal or failure by any trade union or employer's organization to comply with this act

- Any act whereby an employee or employer is intimidated to agree or not agree to any action which affects the relationship between employer and employee

CMC THIS 29/9/87

166

Labour reform 'a model' for other fields

By CHRIS CAIRNCROSS

THE reformation taking place in labour relations in South Africa provides the guidelines for resolving the racial problems which exist elsewhere within the country, according to Manpower director general Mr Pietre van der Merwe

In a briefing to political correspondents in Cape Town, Mr Van der Merwe maintained that the "far-reaching changes now occurring to labour legislation and policy" are rapidly outstripping what is happening in practice

There is no differentiation in legislation on the basis of either race or sex in the workplace—and many employers have yet to catch up with this fact, Mr Van der Merwe said. Mr Van der Merwe suggested that what was happening legislatively in

the labour field could be used as a model to provide for equally non-discriminatory legislation by other state departments

He said that several major developments have occurred in the labour field which have gone unnoticed.

In Mr Van der Merwe's view the most important of these included:

- The creation of structures permitting the freedom of association, which has led to the credible creation of more than 300 new registered unions in South Africa representing a combined membership of more than two million workers
- A rearrangement of trade union structures reducing the number that are racially exclusive
- The emergence of a new leadership cadre within the unions

● An explosion in the extent and quality of communication between labour and management which provides for a more healthy and positive relationship

● The creation of workable mechanisms, such as industrial courts, for resolving conflict situations between labour and management

The workings of the industrial councils provide an excellent example of limited state intervention and practical self-governance, according to Mr Van der Merwe

This has been demonstrated by the remarkable increase in applications for conciliation board hearings, which are expected to approach more than 2 000 this year. Mr Van der Merwe maintained that an important principle now

embodied in labour legislation, and destined to be reinforced in time, is that of equity and fairness.

This principle is now accommodated in the form of several definitions of an "unfair labour practice" listed in the schedule attached to the Labour Relations Amendment Bill tabled in Parliament last week.

This Bill is now before the parliamentary standing committee on manpower and is unlikely to be dealt with during the current session of Parliament, according to Mr Van der Merwe

The schedule declares in part that the "dismissal, by reason of any disciplinary action against one or more employees, without a valid and fair reason" shall not be regarded as an unfair labour practice, under the following conditions,

among others:

- If such employees have not been employed for a continuous period of at least 12 months, providing such dismissal does not take place contrary to any agreement, notice, award, or in any unfair manner.
- If an employer fails to hold a disciplinary inquiry and the industrial court thereafter decides that it could not reasonably have expected an employer to hold such an inquiry.
- If any dismissal takes place after substantial compliance with the terms and conditions of an agreement relevant to the dismissal.
- If the selective re-employment of employees dismissed for disciplinary reasons takes place in accordance with fair criteria.

Changes in the rules of Parliament

Political Staff

JOINT debates of all three Houses will be held from next year

All three Houses passed the report of the Joint Meeting of Committees on Standing Rules and Orders yesterday—the House of Assembly after a debate lasting more than 7½ hours

The rules and orders effectively control the ordering of Parliament

- The main changes to the system are
- Joint debates of all three Houses
- Joint debates will still remain separate
- An end to the no-confidence de-

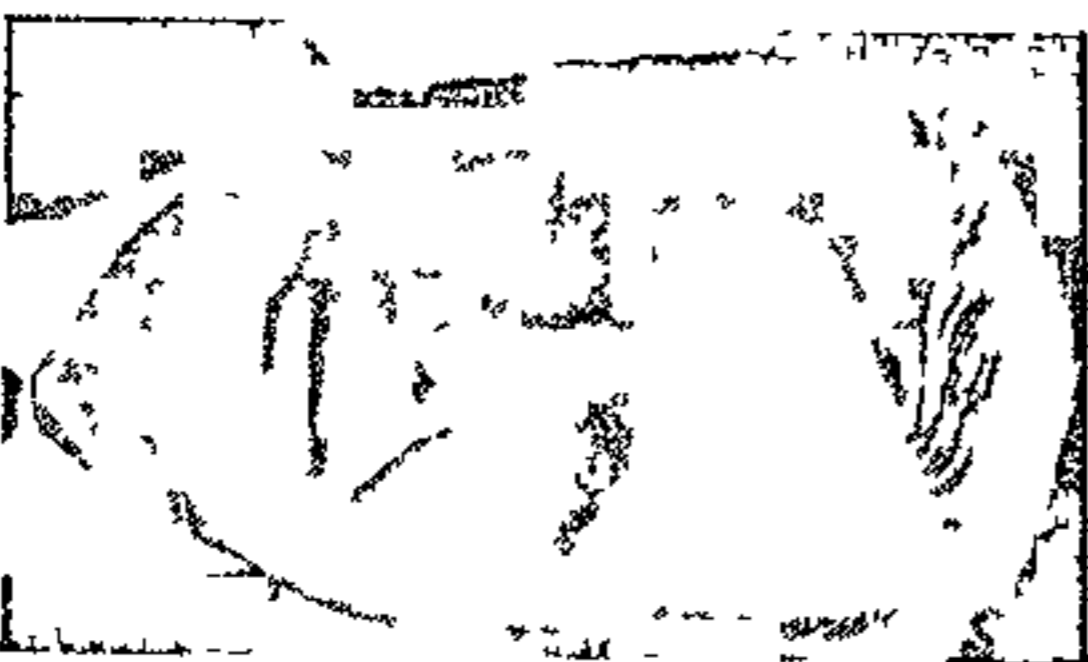
bate with a joint debate on the State President's address taking its place

● Extensive powers for the chief whip of Parliament who will decide on whether a debate will be conducted jointly or by each House individually or in an extended public committee and how much time will be allocated to each debate

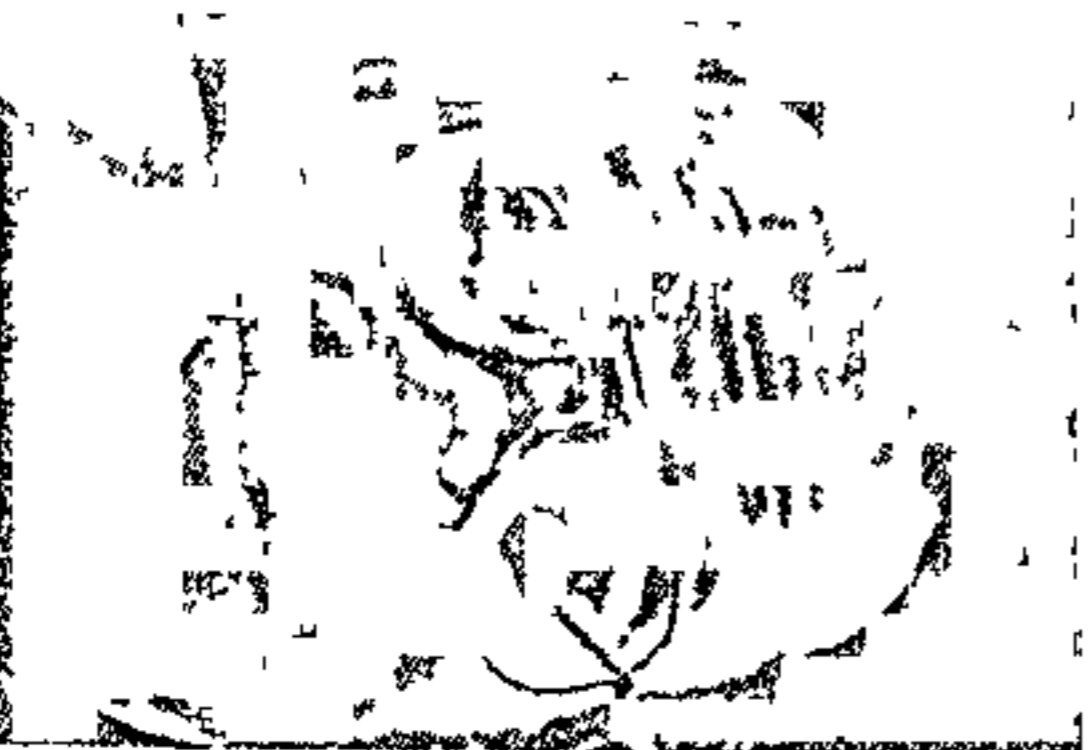
The report was accepted after a division by 81 votes to 33 with both the Conservative Party and PFP voting against

The House of Assembly rose at 11 20 last night and all three Houses will not sit again till Monday

Care THIS 29/9/87



Chris Heunis



Chief Buthelezi



Ray Swart

Chief's call on council

ULUNDI — Immense pressure needed to be put on the South African government to establish the National Council as an instrument of real transition, Chief Mangosuthu Buthelezi told West Germany's new ambassador to Pretoria here yesterday

LABOUR RELATIONS

Tightening the Act

Assocom has generally approved the proposals of the Labour Relations Amendment Bill, the big employers were busy studying them when the *FM* went to press.

Specifically welcomed are the calls for establishing a Special Labour Court, presided over by Supreme Court judges with the power to overrule decisions of the industrial court, and award costs, and the streamlining of conciliation board procedures

There are minor misgivings, says Assocom spokesman Vince Brett. For instance, he says, the definition of unfair labour practices is too tight — it should have evolved through the industrial court.

Although the industrial court has always had the power to award costs and compensation for lost production, this was never used. It will be if the Bill is enacted. Employers will be especially comforted by the further prohibition on sympathy strikes.

The memorandum on the objectives of the Bill states "that although the labour legislation is fundamentally sound, there are certain aspects which may give rise to concern and may require adjustment." The workload of the industrial court had increased from four cases in 1979 to 2 042 last year. Applications for conciliation boards rose from 23 in 1980 to 1 294 in 1986.

Labour lawyers, however, are highly critical of the Bill's close definition of unfair labour practice. Their submissions earlier this year are generally ignored in the Bill.

According to Paul Benjamin, senior lecturer at Wits's Centre for Applied Legal Studies, the schedule of unfair practices could well be "stultifying"

He believes the larger schedule is misguided, for, in terms of the Bill, the legislature would virtually set in concrete what is unfair industrial relations

The existing system works well, he maintains, as it allows the industrial court scope to develop the definition. Despite being an inferior court in the sense that no strict rules of precedence apply to its judgments, these have been respected by all parties

In their submissions to the National Manpower Commission, labour lawyers opposed

the idea of a special labour court. According to Benjamin, they felt that Supreme Court judges may not be the best people for cases which need special knowledge of labour law and practice. He points out that the idea underlying the Wiehahn Commission's labour dispensation was to have an informal court, in order to prevent technical point-scoring by advocates. "In general, there's an over-legalistic stamp about the Bill," which entails "the mistaken belief that you can simply define everything and it'll work."

Another criticism is that the Bill apparently does not deem it unfair to deal with minority unions. "To say in all circumstances it cannot be an unfair labour practice to deal with a minority union, is unfortunate," says Benjamin, especially since the majoritarian principle has worked well. Most likely here will be Cosatu unions.

A further problem area, he feels, is the question of temporary re-instatement orders (section 42 of the Act). In terms of the Bill, the court is in effect being compelled to adopt a particular approach — to "show that the applicant will suffer greater prejudice than the respondent if an order is refused" — which would be difficult to show. ■

Labour Relations Amendment Bill a sure recipe for conflict

CAT Times 6/10/87 166

By CLIVE THOMPSON

IF THE primary function of labour legislation is to mediate the manner in which organized labour and capital exercise power, then the draft Labour Relations Amendment Bill, which is before Parliament, must belong to a contrary tradition

While certain of the early comments on the bill have been cautiously favourable, a close reading of its terms reveals some utterly perverse features. Some may see it as anti-union but it would be more accurate to describe it as subversive of a coherent and effective system of collective bargaining. It appears to be the product of myopic bureaucrats rather than of ideologues.

To begin with, the bill undermines the critical rule-making function of the industrial court. The Wiehahn Commission envisaged a body that would be able to develop a set of standards for the guidance of all. In this connection, it is noteworthy that more than two thirds of the cases that come before the court involve applications to reverse precipitate and unilateral action by one or other party — so-called status quo applications.

Currently the court can use the relevant provision to strike down rogue behaviour from whatever quarter. In future the unrepentant rogue will be able to carry on regardless as the bill proposes that a status quo order should only be issued if it will "assist the parties in reaching a settlement". A cunning respondent will always be able to avoid a court rebuff by pleading hostility to settlement prospects.

Secrecy provisions

More significantly still, with the proposed repeal of its special "court of law" functions, the industrial court will be deprived of all powers to hear matters on an urgent basis. An employer seeking to interdict an illegitimate work stoppage or an employee facing imminent victimization for lawful trade union activities will be unable to receive quick relief from the labour court, at best their cases will be ripe — or rotten — for hearings some months later. The draftsman seems to be unaware that industrial disputes nearly always require prompt attention.

The decisions that the industrial court or the special labour court do eventually deliver will remain unknown for a lengthy period or perhaps even forever, given the secrecy provisions that have been mooted. It goes without saying that it is difficult to develop a body of law under such circumstances.

The bill also offers lawyers a most lucrative future, not only in the industrial court but in the new special labour court as well. This comes courtesy of the bill's contorted and often unintelligible language which threatens the now well-established jurisprudence on unfair dismissal.

The existing case law is clear. No employer may dismiss an employee with-

out a good reason and, unless circumstances render this impractical, without a fair hearing. The proposed definition of unfair dismissal is loaded with ambiguity. A dismissal without good reason, for instance, will be unfair unless the employee concerned has been employed for less than 12 months, but even here the dismissal will again become unfair if it is effected "in any unfair manner".

When this and other vexed provisions wend their way to the special labour court, as they inevitably will do, the parties will find (if they are corporate entities such as trade unions or companies) that they cannot represent themselves in that forum. Nor can they make do with the services of an attorney. Only an advocate will be entitled to appear there, duly instructed of course by an attorney.

A troubled issue in labour law today concerns the position of those unions which enjoy minority support, whether at plant, enterprise or industry level. These unions are typically the established and more conservative ones, although this is not always so. There is a case for minority unions under the banner of freedom of association, but the bill does not make it

Instead it introduces an insidious contradiction. While bolstering the already entrenched position of minority unions on industrial councils — where they can exploit existing closed-shops and engineer decisions that bind the majority unions and their members — the bill declares that outside of these councils it will be an unfair labour practice for a majority union to press for exclusive bargaining rights.

The conflict that this promises to generate between industrial council and plant bargaining will be nothing short of spectacular. What is more, the iniquity of the scheme will not be lost on the leadership or members of the emerging unions, either now or in the future.

While the emergency regulations reflect the failure of the state to accommodate the political aspirations of South African citizens, the bill's provisions on strike action bear testimony to the inability of the political economy to meet worker demands. There the points of similarity end for, unlike the disenfranchised and unenfranchised majority, the unionized work force disposes of very real power.

The Wiehahn Commission acknowledged this and advocated a system that would institutionalize conflict. The bill negates this principle. Contrary to the recommendations of a recently-released National Manpower Commission report, it perseveres with the crass expedient of criminalizing strike action.

By introducing still more protracted and even indeterminate preconditions to lawful strike action, it naively believes that the phenomenon can be curtailed or eliminated. It is quite probable, however, that workers will perceive that lawful strikes have receded beyond their reach

and will therefore resort to wild-cat strikes, the most uncontrollable species of industrial action.

Uncontrolled is no doubt how the action will remain, for a new deeming provision imposes a presumption of complicity upon union officials that are seen to be involved in the conflict. Unions must henceforth wash their hands of illegal strike action in order to avoid incurring financial penalties.

Striking inadequacies

The bill is not without some redeeming qualities. In principle the formation of a special labour court to reconcile conflicting industrial court decisions at regional level and to lend status to the adjudicative process generally is to be welcomed.

Again, the proposals regarding the streamlining of conciliation board applications through the removal of a ministerial discretion represents a salutary development. None the less, the overall impact of the provisions is retrogressive and ultimately self-defeating, and only the most striking inadequacies have been highlighted here.

The existing act is marked by a surprising sophistication and subtlety in the area of conflict regulation. It has been found wanting not so much because of its own shortcomings, but because of the pressures emanating from a deteriorating political environment.

The legislature, however, does not have the will to address the latter, fundamental predicament. Instead it has allowed lesser functionaries with little grasp of the issue at stake to tamper with a complex scheme of labour legislation. The Department of Manpower could do worse than to rethink the future of the bill in the context of the original recommendations of the Wiehahn Commission.

(Clive Thompson is Director, Labour Law Unit, UCT, and Co-editor, Industrial Law Journal).

bedien word, en
(iv) deur museums wat dit vir demonstrasiedoeleindes vervaardig en daarna aan *bona fide* besoekers verkoop,

DEPARTEMENT VAN MANNEKRAG

No. R. 2161

2 Oktober 1987

WYSIGING VAN DIE REGULASIES UITGEVAARDIG KRAGTENS DIE WERKLOOSHEIDVERSEKERINGSWET, 1966

Die Minister van Mannekrag het kragtens artikel 62 van die Werkloosheidversekeringswet, 1966 (Wet 30 van 1966), die regulasies uiteengesit in die Bylae uitgevaardig

the places of manufacture of those products, and
(iv) by museums manufacturing it for demonstration purposes and thereafter selling it to *bona fide* visitors,

DEPARTMENT OF MANPOWER

No. R. 2161

2 October 1987

AMENDMENT OF THE REGULATIONS MADE UNDER THE UNEMPLOYMENT INSURANCE ACT, 1966

The Minister of Manpower has under section 62 of the Unemployment Insurance Act, 1966 (Act 30 of 1966), made the regulations set out in the Schedule

GG 15958

2/10/87

Putting the unions

THE proposed new labour legislation will roll back painfully-won trade union rights by ten years

The Labour Relations Amendment Bill has the potential to prevent even legal strike action

As the Bill allows a Department of Manpower official indefinitely to extend, at the request of any party, the 30-day "cooling-off period" which applies when a dispute is referred to conciliation boards, pending strike action may be infinitely suspended. Until now the freedom to strike has been subject to a finite period only.

The new Bill may have a major effect on the timing of legal strikes which unions usually plan to occur in the periods of acute employer vulnerability.

The timing of the Commercial Catering and Allied Workers' Union strike to coincide with the Christmas rush period last year had a great effect on the OK Bazaars.

And the South African Railways and Harbours Workers' Union strike affected the SA Transport Services severely during the Easter period when most migrant workers boycotted using buses and trains to the "homelands".

With parliament rapidly approaching the end of this season, it is unlikely that the Labour Rela-

tions Amendment Bill — or aspects of it — will be passed into law this year.

But still there is little comfort for trade unions in the new Bill.

Should strike action be allowed to proceed, it will place even greater responsibility on the union and its officials.

Although unions and their officials remain indemnified against company losses caused by a lawful strike, the onus to prove that they did not incite unlawful action has been shifted to union officials, office bearers and members, thus making a mockery of the common law principle that an individual is innocent until proven guilty.

The effect of this is that union leaders, who generally exercise a moderating influence on mil-

itant members would become unwilling to involve themselves in wildcat strikes out of fear that failure to influence membership would render them liable for damages.

On the other hand, union leaders may be forced to act to avoid charges of complicity in unlawful action.

In three of the major strikes recently — involving the OK Bazaars, the mines, railways and the postal services — there were several allegations from management of violence which in some cases involved murder and destruction of property.

The unions countered the allegations by claiming that the violence was a direct response of workers to violence from the side of manage-

The new labour bill has prompted employers and unionists' leaders on proposed recipe for cooling off labour invitation to wildcat strikes. SEF

ment. During the height of some of the strikes the largest trade union federation, Cosatu — and the unions themselves — looked at the possibility of engaging in sympathy strikes, rolling strike action and boycotts. These possibilities, theoretically enabled by current legislation, are specifically removed in the new Bill.



Bullets won't stop us, says the placard. But

Another high-handed intervention

THE new Labour Relations Bill is another high-handed and ill-advised government intervention in the labour relations system so agonisingly built up since 1979.

All of the provisions — except the simplification of the procedure for applying for a conciliation board — undermine the potential for sound labour relations and reverse gains made by the unions in the sphere of established worker rights.

Cosatu has studied the Bill and views it as a serious and massive attack on trade union rights in this country. Already there is great scepticism amongst our members about following all the procedures laid down in the Act to press home worker demands. With the new Bill, this scepticism will almost certainly turn to militant conviction.

Just look at the way employers "reward" unions following the legal procedures. The National Union of Mineworkers dutifully kept to the letter of the law in the recent strike. The result — nearly 50 000 members dismissed and still unemployed, in the space of three weeks. If the strike had been unlawful, the chamber employers would have had immediate interdicts against the NUM — not to mention the usual turnout of the mine and/or state security forces against workers.

The struggle workers are waging for better wages and conditions is not being dealt with — especially by the most liberal employers — according to moral notions of "right" or "wrong", "fair" or "unfair" or even "legal" or "illegal". For employees there is only one law — the law of profits. It seems anything, no matter how much havoc it causes to people's lives, is permissible so long as the law of profits is obeyed.

What will happen if workers elevate their needs to an unbreakable law? Workers' needs versus

UNION VIEW

By FRANK MEINTJIES, Publicity Secretary of the Congress of South African Trade Unions

Our law against their profits. Where will the new Bill come in then?

If this kind of situation is to be avoided, then the new Bill should be repealed in its entirety, strike action should be decriminalised and guarantees should be built into labour legislation — which should be extended to include all workers — around things like a national minimum wage, a 40-hour week and job security. These things, which are taken for granted in democratic countries, are necessary if workers are to perceive the law as anything other than a boss' weapon against them.

But in our country the struggle for a living wage is branded a criminal communist plot. Police intervention in strikes is an almost daily activity. Bombs, bannings of our meetings, detentions, murder of our members, confiscation of our literature — these things are commonplace for Cosatu in 1987.

That the new Bill is aimed at drastically undercutting our rights in the area of the government's greatest reform is therefore no surprise after all this. We hope, against hope, that the employers and their government will come to their senses and have this Bill repealed.

As to our broad objections to some of the many aspects of the Bill itself, it is legalistic and complicated. The situation which the Wichahn Commission envisaged of an industrial court func-

tioning on informal and flexible lines has been severely undermined. The courts' equitable jurisdiction to determine unfair labour practices has been all but destroyed.

The new and lengthy definition of "unfair labour practice" adds no new worker rights to those established in the industrial court over the past five years and directly or indirectly undermines many rights established by the court. We expect that employers will argue that the failure to mention specific practices as unfair means that the legislature did not intend these to be unfair labour practices. The failure by an employer to deal with a representative trade union is, for example, not part of the new definition of an unfair labour practice.

The Bill completely outlaws sympathy strikes and strikes over the same issue within the previous year. This illegalises the very basis on which Cosatu stands — an injury to one is an injury to all.

Unions involved in illegal strike action could now wind up facing damages claims running into millions of rands. Successful cases could even involve seizing the assets of the union. This is because the new legislation modifies the indemnity provided for registered unions in the Act. In these cases, actions by union members or officials will be assumed as acting on behalf of the union.

The new Bill provides for a special labour court as a court of appeal which will hear appeals and review decisions of the industrial court. The special labour court is likely to be more conservative than the Supreme Court.

While employers are not obliged to deal with majority unions, any attempt to enforce collective bargaining will be regarded as an unfair labour practice. This is a direct attack on majority unions. It will also increase the power of management to deal with workers directly behind the backs of the union.

THE WHIP'S BEING CRACKING AT UNIONS EVER SINCE

THE declaration of the State of Emergency on June 12 1986 signalled the end of the twilight period for unions as the whip of state repression came cracking down on the trade union movement.

The Criminal Procedure Act, the Internal Security Act, the Intimidation Act and the Emergency had been used to limit and curtail the activities of independent unions, lawyer Peter Harris said at the recent Interservice Law Students' Council conference in Johannesburg.

Citing the last two States of Emergency as the worst to hit trade unions, he said police involvement in labour relations had taken place for decades. Police intervention in the 1946 African Mine Workers' strike and the "onslaught" on the South African Congress of Trade Unions in the Fifties effectively banished these unions.

Despite such pressure the independent trade union movement had grown rapidly in the last few years and signalled to employers that the unions were a force to be reckoned with, Harris said. The Congress of South African Trade Unions was launched in 1985.

In the first few days of the Emergency over 170 unionists were detained and police seized membership records, telex machines and other items essential for day-to-day union business.

The union movement, Harris pointed out, was not passive in the face of such repression. Responding creatively to the crisis, shop floor workers and shop stewards breached the gap left by officials and administrative staff, took over

and became responsible for wage negotiations at plant and sectoral level.

As a number of office bearers were compelled to avoid union premises and the shop floor, workers from the respective factories became part of the negotiating teams and often consulted lawyers for legal advice.

The effect of repression on industrial relations resulted in strikes at various factories and more than 100 sympathy strikes in the retail industry against the State of Emergency in the first month of the third Emergency, Harris said.

Negotiations in the metal, mining and chemical industries were adversely affected and in outlying areas such as Phalaborwa and Witbank they ground to a halt.

Lawyers were unable to consult officials held incommunicado who had been involved in sensitive negotiations with employers until the Metal and Allied Workers' Union vs the State President case in Durban in which the rights of detainees to be visited by a lawyer were secured.

Harris said it was significant that the court decision came in the wake of widespread allegations of torture and abuse that had emerged in the Port Elizabeth case of Wendy Orr vs the Minister of Law and Order.

The first three weeks of the third Emergency appeared to have made the police believe they were licensed to stamp out resistance to government policy, he said. Until the successful appli-

TOPS
The Other Press Service
A media workers co-operative

We
• Write
• Edit
• Design
• Produce
media such as
• Newsletters
• Posters
• Stickers
• Pamphlets
for
• Trade unions
• Youth congresses
• Student groups
• Community organisations
• Research groups
• Advice offices
• Churches
We also do skills training for
• Workers
• Youth groups
• Students
• Community papers
and anyone else who is interested
In improving the quality of alternative media

Phone us at
(011) 233018

No fancy slogans
No fancy prices

SRC ACADEMIC FREEDOM COMMITTEE
RICHARD FEETHAM MEMORIAL LECTURE

SPEAKERS
PROF. HUGH PHILLPOTT
Director of student support services,
Univ of Natal
MOULANA FARIED ESACK
S A Vice President World Conference of
Religion & Peace

DATE: 20th October
TIME: 8 00 pm
VENUE: Wits Great Hall

Tickets available at Wits SRC offices or
phone 716-3101

By THAMI MKHWANAZI

and from
plant and sectoral level
As a number of office bearers were compelled to avoid union premises and the shop floor, workers from the respective factories became part of the negotiating teams and often consulted lawyers for legal advice.

The effect of repression on industrial relations resulted in strikes at various factories and more than 100 sympathy strikes in the retail industry against the State of Emergency in the first month of the third Emergency, Harris said.

Negotiations in the metal, mining and chemical industries were adversely affected and in outlying areas such as Phalaborwa and Witbank they ground to a halt.

Lawyers were unable to consult officials held incommunicado who had been involved in sensitive negotiations with employers until the Metal and Allied Workers' Union vs the State President case in Durban in which the rights of detainees to be visited by a lawyer were secured.

Harris said it was significant that the court decision came in the wake of widespread allegations of torture and abuse that had emerged in the Port Elizabeth case of Wendy Orr vs the Minister of Law and Order.

The first three weeks of the third Emergency appeared to have made the police believe they were licensed to stamp out resistance to government policy, he said. Until the successful appli-

THE NEW LABOUR BILL

Pushes into the cooler

prompted rare agreement between leaders on both sides regard the off-labour disputes as a dangerous strikes. SEFAKO NYAKA reports

Had the Bill been law this week, it would have strikes the posed a problem for the Food and Allied Workers' Union

workers at three South African Breweries plants went out on strike in sympathy with theoreti colleagues who had been dismissed from one of are specific the plants

This week the Rand Supreme Court dismissed

with costs an application by the SAB to declare the strike at two of the plants illegal.

Rolling strikes — or actions where union members at a factory or plant refuse to handle products of a company involved in a dispute with a sister or fraternal union — are also likely to be ruled out by the new Bill

During the three month OK Bazaars dispute that ended in February, members of the Food and Allied Workers Union were ready to refuse to handle or pack goods destined for the OK warehouse. And members of the Transport General Workers' Union would have refused to deliver stocks to the OK had the strike continued.

In the past unions have used, with much success, consumer boycotts to force the employer to

the negotiating table.

The new Bill would remove that weapon by defining such action as an unfair labour practice

Under the Bill, a court could order punitive financial action to be taken against a labour organisation whose members were found to have caused financial damage to the companies concerned

The removal of the unfair labour practice definition from the main body of the Act into a schedule is bound to cause problems in the future

It means in essence that the state may make ad hoc adjustments to the labour relations system without warning or due parliamentary process

The government's definition of what is not an unfair labour practice and hence may be removed

from the ambit of the industrial court is contained in 64 clauses and includes

●The dismissal of an employee or employees with less than one year's service

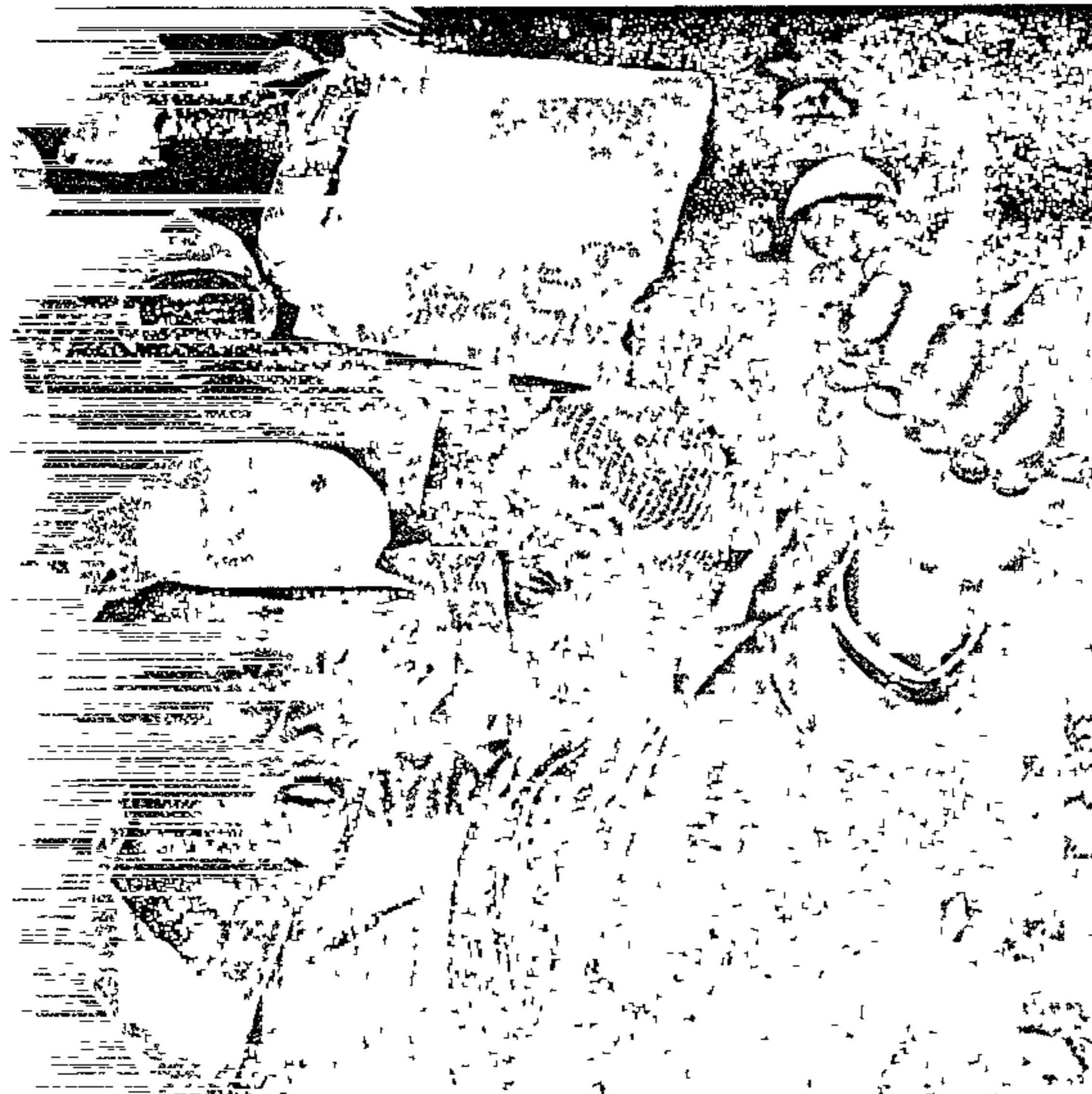
●The selective re employment of employees dismissed for disciplinary reasons and, in some cases, where an employee is dismissed without the holding of a disciplinary enquiry

The other contentious issue is the establishment of a special law court which will be superior to the existing industrial court and which will handle appeals against decisions made by the industrial court

The court which will be presided over by a supreme court judge sitting with specialist assessors, will be administered and staffed by the Department of Justice rather than Manpower Appeals against decisions by this court will be filed by the appellate division in Bloemfontein

This is sure to push up the costs of court action — something the unions can afford much less than can management.

Although a memorandum attached to the Bill states that the legislative changes have been brought about by the increasing extent to which existing conciliation machinery has been used to settle disputes, the Bill appears to be a product of an electoral shift to the right — which coincides with a massive heightening of union militancy



the placard. But the proposed new legislation may roll back the rights they've won
Picture WALTER DHLADHLA, AFP

EVER SINCE JUNE '86

ations of the National Union of Mine Workers and Mawu, Cosatu affiliates were prohibited from holding meetings and publishing certain material. In the Free State unionists were not allowed to wear union t-shirts

During the legal 1986/1987 OK Bazaars strike involving 11 000 workers as another example of the dent state repression left on industrial relations. Despite the fact that a wage dispute had been referred to mediation and involved delicate issues that affected a major portion of the retail sector, police intervened on a large scale

During the Ccawusa/OK Bazaars strike there were 141 detentions under Emergency regulations, 55 individual court cases involving over 90 Ccawusa members (to date there have been more than 10 convictions on charges other than criminal offences such as displaying a placard without permission) and 237 people had their rights withdrawn

During the Ccawusa/OK Bazaars strike there were 141 detentions under Emergency regulations of 74 members at the OK Conti Montana warehouse. The were arrested when they had gathered outside the locked warehouse gates

An application for their release was filed in the supreme court but as soon as the application was

filed the police released the detainees. In the Nels Dairy dispute last year, police detained the entire workforce of 700 workers under Emergency regulations

Harris charged that Emergency regulations were used by the SAP as a protective screen from which they can launch "unnecessary and destructive forays" into the arena of industrial relations

Police action had taken place against the backdrop of a sophisticated and concerted media campaign against unionists, particularly Cosatu members, the lawyer said. The SAP and certain media organs had consistently portrayed Cosatu as an organisation that had sought to violently overthrow the government

This year's South African Transport Services vs Cosatu application received extensive exposure on SABC-TV but no coverage when the application was withdrawn by Sats after the federation had filed its answering affidavit, he said.

Cosatu had also been victim to people other than known policemen, said Harris and quoted Cosatu general secretary Jay Naidoo's affidavit.

In it Naidoo said mass arrests, detentions and police harassment created a climate that would result in the isolation of the federation and subject Cosatu to right-wing attacks. An example of these attacks were the bombing of Cosatu premises at Nelspruit, Krugersdorp, Kroonstad, Kimberly, Germiston, East London and the East Rand. The bombing of Cosatu House Johannesburg in April this year rendered the building uninhabitable

Equity? fairness? Not much sign of it here

CAN anyone be surprised if unionists begin to see the legal and orderly routes as less and less attractive?

The director general of manpower recently stated that the reformation taking place in labour relations in South Africa provided guidelines for resolving racial and other problems which exist elsewhere in South Africa, and that the important principle of equity and fairness would be reinforced. I doubt very much whether this Bill moves in that direction

The most disturbing aspect of the Bill is that while some of the errors and most negative proposals of the December 1986 draft have been eliminated, some altogether new changes have been introduced which can only have a very harmful effect on industrial relations

By far the worst of these is the removal of the unfair labour practice definition from the main body of the Act into a schedule which can be amended by the minister of manpower from time to time, merely by notice in the Government Gazette. Legislation which has since its introduction led to the most important real reforms in industrial relations practices, and the extension of worker rights, now becomes the tool of a party politician. I can't think of anything more retrogressive than that

True, the minister acts on advice of the standing committee of parliament on manpower, but this is a body controlled by the governing party. And the minister must publish a draft of any proposed notice in the gazette, but after interested persons have lodged any objections or representations he can amend the law merely by publishing his altered version in the gazette

The effect of this sort of arbitrary power can be seen in the present Bill. When the draft was published for comment in December 1986, no changes were envisaged in the persons to whom the Labour Relations Act would apply. The Bill now before parliament will exclude university lecturers and private school teachers, amongst others, from any protection under the Act. Previously this exclusion applied only to work performed as part of their training

One of the most valid criticisms of the Act has been that it is already too restrictive in excluding employees of the state, domestic servants and agricultural workers. What can be the justification for adding a further category of employees to be excluded from the rights and protection afforded by the Act?

The amendments to the unfair labour practice definition incorporated in the Bill are also cause for grave concern. Some union critics viewed the post Wiehahn "new labour dispensation" as nothing more than an attempt by government (and management, who are perceived to have a symbiotic relationship with government) to control workers and their unions. To a great extent this sceptical view was countered by the industrial court's rulings in regard to unfair labour practices, especially unfair dismissals. These amendments will undermine any trust in the benefits of due process, and strengthen the hand of those who believe that industrial action is a weapon of first action rather than an instrument of last resort. In the current socio-political and economic

MANAGEMENT VIEW

By THEO HEFFER, Group Human Resources Director Premier Group Holdings

climate this is most unfortunate

The trouble about the definition of the unfair labour practice is that it interferes with the useful jurisprudence which has been built up since the industrial court started giving its judgement in this regard. The outcry initiated by employers in 1983 for a clearer definition came before this had happened and has led to this belated and unnecessary amendment when it is no longer needed, if indeed it ever was

Some of the specific amendments will have to be examined closely when the hopefully, tidied up wording becomes law

The inclusion of the refusal of trade unions to comply with any provision of the Labour Relations Act, as an unfair labour practice, is puzzling. One wonders what the remedy would be?

More ominous is the inclusion of a clause that appears to alter the principle of majoritarianism which is widely acknowledged in democratic societies. A union may not prevent employers from negotiating with employees who are not its members. If this clause facilitates divide and rule tactics, it can only have a very detrimental effect on industrial relations

There is also an amendment which purports to prevent intermittent strikes. This could have the effect of encouraging strikers to prolong legal strike action. The move to make sympathy strikes illegal is also unlikely to diminish the use of this form of industrial action. To date, a significant proportion of strikes have been illegal, but this has hardly prevented them from occurring. The industrial court's emphasis on fairness and reasonableness as opposed to mere legality has had a positive effect on relations in the workplace. One cannot legislate or command good industrial relations

The Amendment Bill provides for what the departmental memorandum calls "the adjustment and streamlining of procedure concerning the publication of judgements of the industrial court". The lawyers will have more to say on this change, but it is disturbing that there will be an even greater veil of secrecy regarding the publication of the industrial court's judgements. This can hardly serve the purpose of a continued building up of jurisprudence

An amendment "to extend the indemnification of certain bodies and persons against losses incurred as a result of strikes or lock-outs" has the effect of considerably weakening this indemnity in respect of trade unions. Should any trade unionist (member or official) be involved in organising a legal community stayaway, or any strike action which is not legal in terms of the Act, the union itself could become liable for company losses even if the unionist had been acting in his personal capacity

But worse still, the union would be presumed guilty until proven innocent, in that the Act places the onus on the union to show that the person concerned was not acting on its behalf

Call to restore legal aid labour cases

NRG 15/10/87

166 120

By **DICK USHER**, Labour Reporter
URGENT representations by the Association of Law Societies for legal aid in labour cases to be restored have been requested by a group of Cape Town lawyers.

The lawyers, from private firms and the Legal Resources Centre, warn that the withdrawal of assistance for labour matters by the Legal Aid Board earlier this year could have serious consequences for industrial peace, restrict access to the courts, diminish the Industrial Court's credibility and result in fewer employers being "brought to book" for unfair labour practices.

This week the president of the Law Society of the Cape of Good Hope, Mr Mervyn Smith, said South Africa's legal aid budget was "hopelessly inadequate" to meet the needs of the majority of the population.

Addressing the society's annual meeting, Mr Smith drew attention to the exclusion of labour cases.

Undermining justice

"If legal aid is not increased drastically we may find the very system of justice itself being undermined simply because there is no money available

to help the needy to gain their rightful access to the legal system," he said.

The lawyers said the withdrawal had severely restricted access to the Industrial Court because "faced with the complex task before them, a large sector of aggrieved employees with deserving cases will not be able to utilise the court without legal representation".

"Inevitably, aggrieved employees would increasingly resort to strike action or industrial unrest to resolve their grievances with management.

"In view of the fact that the standards and codes of conduct laid down by the court are relatively new, added to which there has been considerable resistance on the part of many employers to changing attitudes to labour relations, it is absolutely essential that contraventions and breaches of Industrial Court guidelines and codes are properly enforced."

They urged that society should not allow a situation where, in a climate of large-scale unemployment, a person who might be the sole breadwinner would have no access to machinery created to protect rights to reinstatement or any other rights as an employee.

GOVERNMENT has published a controversial draft proclamation which will see the suspension of several laws, by-laws and municipal ordinances in Kew, Johannesburg, and open the way for massive deregulation

The proclamation by President P W Botha, follows an application by Barlow Rand-backed Job Creation SA to the Competition Board (CB) for the setting up of an informal industrial centre

Among the laws to come under scrutiny will be the Labour Relations Act, the Machinery and Occupational Safety Act, the Wage Act of 1957 and the Transvaal Licensing Ordinance Act

The test case, strongly contested from many quarters, could see up to 100 small industrial centres set up around SA and allow the informal sector to boom.

In papers outlining the case to government, CB chairman Stef Naude says in line with the rest of Africa and the Third World, unemployment is one of the most serious problems with which SA has to cope.

"The negative impact of regulation on employment and economic growth has, for some time, been a cause of considerable disquiet for government. The Committee for Economic Affairs of the President's Council declared the economy had come to be regulated to such an extent that regulations were stifling private initiative"

Govt move on laws

5/ day
22/10/87

166

MICK COLLINS

Even if SA could get to and maintain a growth rate of 3,1%, the excess of labour supply over demand by 2000 could increase to as much as 7,9-million

"If a growth rate of 4,4% is achieved, this excess could be reduced to 5,8-million."

Paul Harrison, author of Inside the Third World, concludes that one-billion new jobs have to be created before the end of the century. Naude says compare that with the fact that the US economy created 21-million new jobs during the decade ending in 1985 — more jobs than were created in all the other Western industrial nations combined.

"The effect of granting this application would be to create an island of relative freedom amid a sea of regulation."

"The operation of an industrial centre of this nature will promote the creation of job opportunities where none existed before, and this will open up a critically important avenue of escape from unemployment"

MEET THE BLUES

(166) 3/day 2/11/87

Deregulation vital to create more jobs

THE VITAL importance of creating new jobs through deregulation was stressed in Pretoria by National Health Director General Francois Retief.

Speaking last Thursday at the congress of the Institute of Public Health, Retief said there was no doubt any longer about the need for deregulation.

The success of deregulating health services specifically would depend mainly on the dedication of the professions involved.

SA was plagued by the dilemma of an unacceptably low economic growth and 300 000 new workers looking for jobs every year.

"It is no secret that with economic growth of 1,1% a year between 1981 and 1985 we will have to cope with a growing problem of unemployment,"

GERALD REILLY

he said.

The problem could only result in further unrest, as well as a further decline in living standards. If the problem was not actively addressed the national objectives of the population development programme could not be attained.

The creation of jobs through deregulation was not a new concept. Small undertakings had supplied 70% of all new jobs in Taiwan, 81,4% in Japan and 40% in the US.

Retief said certain health regulations had no important bearing on the safety of a product. It was the duty of all regulating bodies to review regulations and by-laws.

It was imperative that regulations drafted primarily for the First World

section of the population be adapted to fit the needs of the developing Third World section, where there was neither the money nor the knowledge to comply with First World standards.

It was necessary to re-evaluate health priorities. Retief asked why the hawking of vegetables, for example, should be forbidden because a hawker had no storeroom of a specific size, and why there was so much concern with maintaining high standards in towns when people living in nearby areas were often without potable water, latrine facilities and proper housing?

Was it justified to demand that a businessman should build a storeroom or tile the walls in his shop just because it was required by law, without serving an important purpose from a health viewpoint?

CALC 7/11/66 16/11/66
**NP to introduce new
anti-strike legislation**

166 Political Correspondent

PRETORIA. — Changes in labour legislation next year would bring irresponsible and militant unions to heel, the Minister of Manpower, Mr Pietie du Plessis, said at the weekend.

Mr Du Plessis was replying to delegates at the National Party's Transvaal congress who complained that the politicization in the union movement had "become a monster", that South Africa could no longer afford "the luxury of unnecessary strikes" and that certain unions were "hell-bent on destabilizing the economy and the social order".

Mr Du Plessis said that in terms of new legislation, an "unfair labour practice" would from next year include cases of union intimidation, the encouragement of boycotts and sympathy strikes

Unions would in future also not be allowed to strike over the same issue more than once in a 12-month period.

The most important provision of the new legislation would allow courts to award damages against unions which had contravened agreed procedures or engaged in wildcat strikes, he said

However, Mr Du Plessis stressed that local trade unions were going through an "evolutionary education process" and that in the past four years "some of the most radical unions had calmed down and it is obvious that many are becoming more realistic".

Statistics showed that strike figures in South Africa were "much lower" than in the United States, the United Kingdom, the Netherlands and even Japan

Strikes in South Africa had not reached unmanageable proportions as the average strike lasted only three days, 49% were settled in the first day and only 7% lasted longer than two weeks.

17/11/87 (166) - - -

By Mike Siluma,
Labour Reporter

Labour relations Bill criticised

The Congress of SA Trade Unions (Cosatu) has pledged itself to opposing the Labour Relations Amendment Bill, which it says is a threat to the entire industrial relations system

Addressing a press conference yesterday, Cosatu general secretary Mr Jay Naidoo said Cosatu viewed the proposed legislation, expected to be passed next year, as an attack on workers by both

the State and employers

"Cosatu warns that, if passed, (the Bill) could precipitate the collapse of the entire industrial relations system

"We have resolved to mount an international and national campaign to prevent this Bill from being passed, and our affiliates will meet in early February to work out the form of ac-

tion we will take"

Mr Naidoo said the effect of the Bill would be to

- Outlaw sympathy strikes
- Allow employers to interdict all strikes, legal or illegal
- Encourage "sweetheart" unions by allowing employers to recognise minority unions
- Allow "racial" unions to regis-

ter, even where they did not have a majority

- Enable employers to re-employ workers selectively after a strike, as well as make it possible for employers to sue unions for damages caused by illegal strikes
- Illegalise strikes or any form of industrial action on the same issue for a period of 15 months

BEFORE one comments on the proposed changes, it is necessary to note that labour law in South Africa has developed as a result of a number of conflicts

The first and primary conflict is that between labour and capital. The second conflict is that between the requirements of capital and the requirements for political security by the white community in general.

Every effort to resolve the second conflict has invariably resulted in a spiral of further conflicts. It is suggested that the present Bill be seen in the context of continued efforts to resolve such contradictions.

Industrial Court

According to the present law, the President, Deputy President and other members of the court were appointed on the basis "of their knowledge of the law".

When the Bill becomes law, these officials will be appointed on the basis that the Minister of Manpower holds the opinion that they are competent.

Under the present law, the Industrial Court performs all functions which ordinary courts can perform with regard to labour law — the power to adjudicate over alleged offences was specifically withheld.

The Bill proposes that the Industrial Court should no longer have such "law court" functions.

This removal of "law court" functions seems to be related to the fact that officials of the court will no longer be required to have knowledge of the law.

Should the court be urged to reserve a

THE Government intends amending the Labour Relations Act. In this two-part article, labour expert Mandla Seleokane analyses the effect or intentions of the amendments to be introduced by the Minister of Manpower, Mr Pietie du Plessis, during the next session of Parliament.

FOCUS

How new laws could affect labour

spans a period of 12 months. The Bill extends this period to 15 months. It is suggested that this can only work a hardship on workers, and is completely unnecessary because the Manpower Minister has the power in all events to extend the 12 months.

Unfair Labour Practices

Presently an unfair labour practice is defined in general terms, which allows the Industrial Court some elbow room in establishing precedents.

The amendment seeks to identify concrete instances which the court must recognise as such practices. While doing that, it nonetheless retains the open definition now existing.

The attempt to tabulate instances of unfair labour practices is untenable. An exhaustive list of such practices could never be compiled. If it were attempted, it would undermine the fact that values (which underpin the whole idea of fairness) change with changing social circumstances.

At any rate, it is not understandable why the legislature tries to codify unfair labour practices, while retaining the open definition now prevailing.

The Bill allows the Minister of Manpower to amend Schedule 1 of the Act. The definition of an unfair labour practice is at the same time transposed to that schedule. The effect is that the Minister will have power to amend whatever definition of unfairness which may exist.

question of law for the consideration of the Special Labour Court envisaged in the Bill, this amendment may introduce a problem. The Bill requires that, for such a legal question to be reserved (stated), the Industrial Court must be satisfied that it is sufficiently important for "the proper adjudication of the dispute".

If the court does not have any knowledge of the law, how will it know which legal questions are sufficiently important for the proper adjudication of which disputes?

Special Labour Court

The Bill proposes to establish a Special Labour Court which will have the same status as the Supreme Court. Its functions will be to entertain questions of law reserved from the Industrial Court, to review proceedings of the

Industrial Court, and to act as a court of appeal from decisions of the Industrial Court.

The Wichahn Commission's idea in proposing an Industrial Court was that there should be an inexpensive forum, free from the formalities which characterise the "law courts" for settling industrial disputes.

The formal and complicated procedures of the Supreme Court have been a deterrent for a long time now for poor people approaching that forum.

The Labour Forum has suggested, it seems pertinently, that appeals from decisions of the Industrial Court be referred to the Full Bench of that court.

The Industrial Court has been accessible both to management and to the workers. We have not heard that it has been functioning in any manner prejudicial to management.

There seems to be an air of cynicism, therefore, in now creating an institution which will be accessible only to one of the warring factions.

The Bill proposes that such disputes be resolved

The Industrial Council and the Conciliation Board consist of an equal number of representatives of employees and of employers. Presently, agreement has to be unanimous in all instances where an unfair labour practice is alleged, otherwise the dispute is unresolved by the agreement of two thirds of the representatives who are present and who are entitled to vote.

The consequences of this change will be that the success rate of these proceedings can be expected to increase. Clearly it is easier to procure a two-thirds agreement, rather than strive for unanimity.

Disputes

The corollary for this is that the number of unfinalised disputes for reference to the Industrial Court can be expected to drop. Therefore there does not seem to be any objective need for relieving that court of some of its duties, as the Bill proposes.

According to the law as it now exists, the currency of an Industrial Council decision and of a Conciliation Board's

166 Gumbi 30/11/87

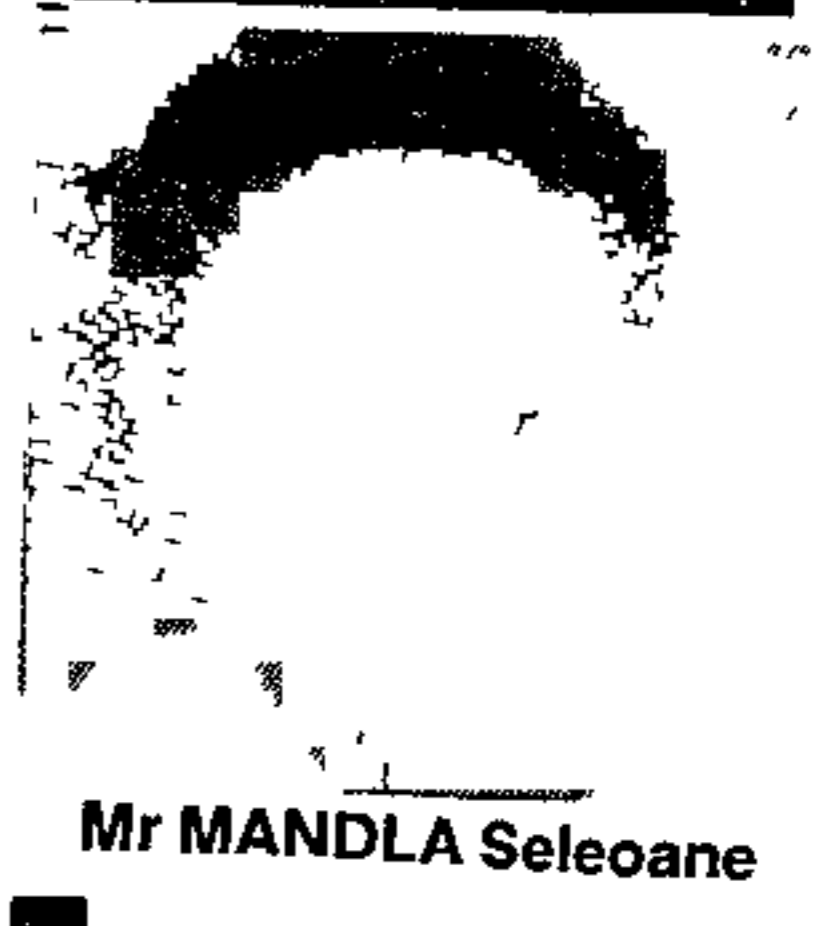
FOCUS

WHAT is crucial to understand is that the Minister is a politician. And politicians are susceptible to political pressure. We saw this recently with the **Mines and Works Amendment Bill**. The idea behind the last Bill was to deracialise certain jobs on the mines. This displeased white voters.

The Government duly passed the Bill but, being pliable to pressure from conservatives, the Minister formulated regulations which render on deracialisation quite nugatory.

If the Minister, then, is given power to redefine unfair labour practices in this manner, we run the risk that court decisions may be corrected by notice in the *Government Gazette* whenever conservative whites disagree with them.

Govt move to stamp out politics in labour arena?



Mr MANDLA Seleokane

Compulsory Arbitration

The position under the current law is that whenever the Industrial Council or the Conciliation Board has failed to settle a dispute, the matter is referred to the Industrial Court.

The amendment provides for the contending parties to agree that the dispute be not referred to the court. The effect of this would once more be to lighten the burden of the Industrial Court and increase the difficulty in understanding why the Government is so keen on relieving it of some of its work.

A disturbing feature of this amendment is that the court is given power to refuse to determine a dispute referred to it after the Industrial Council or the Conciliation Board's failure to settle. It is difficult to reconcile the court's right to refuse to adjudicate with the idea of the arbitration being compulsory.

The workers that are envisaged in this section seem to be those who would not have the right to strike. Under those circumstances, it would seem unfair if the court were to shirk its responsibility.

Under the existing law, an unregistered trade union was not bound to

THE Government intends amending the Labour Relations Act in the final part of this article, labour expert Mandla Seleokane analyses the effect or intentions of the amendments to be introduced by the Minister of Manpower, Mr Pietie du Plessis, during the next session of Parliament.

ballot its members before embarking on a strike. When the Bill becomes law, it will be obliged to do so.

Under the existing law a registered union could apply that the Minister should publish a notice in the *Government Gazette*, obliging an employer to deduct from the employees' income membership fees.

Provided that certain requirements are met, the employer would be bound to make such deductions. Failure to do so was an offence. When the Bill becomes law, no such obligation will rest on an employer.

What emerges from these provisions is that the lot of unions is being made more unbearable. While certain duties

hitherto accompanying registered unions are being extended to unregistered unions, benefits accruing to the former are not being extended to the latter.

Employers are known to have been very mean with stop orders for trade unions even when it was obligatory for them to provide the facility. When the sanction of the law is removed from such meanness, heaven knows what is in store for unions.

Another striking feature is that, while trying to protect employers in so many ways, no effort is made to protect workers against dismissal for embarking on a lawful strike.

So while employers are being given a free hand, the hands of the workers are being tried systematically.

Indemnity in respect of wrongful acts during a strike or lockout remains for registered unions. Therefore, while unregistered unions will have to go through the same channels as if they were registered, they shall not enjoy any measure of protection in this regard.

For registered unions the law is that they are indemnified against civil proceedings if the strike is lawful.

Columnist Aggrey Klaaste is on leave. On The Line will appear when he returns.



MR PIETIE du Plessis . . Minister of Manpower

The amendment provides that the indemnity shall not be available in the event of "any stoppage which does not constitute a strike or any act which constitutes an offence". This seems to be a response to the 1985/6 stayaways. Therefore if a stayaway occurs and the employer loses profit, he will be able to sue the trade union concerned for damages.

No claim is made that the assessment is exhaustive. There seems to be no doubt that the Bill is the Government's way of making true the threat made by the Minister of Manpower on the SABC news bulletin on July 9, 1987, against those who are "politicising" the labour arena.

Whether or not the

proposed law will bring about the behavioural patterns required by the Government and by the employers, remains to be seen.

On historical grounds, it does not look like, in the long run, the Government will succeed.

Before the "new labour dispensation" was introduced, workers were doing a lot of the things which the Government wishes to curb, although the legal odds were much worse.