THE PREVENTION OF OCCUPATIONAL DISEASES AND INDUSTRIAL ACCIDENTS IN SOUTH AFRICAN INDUSTRY.

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If asked, workers will convincingly confirm that most factories are dangerous and unpleasant places to work in. Workers have to put up with the incessant noise from machines, dust from grinders or drills, heat from furnaces or the exposure to chemicals and gas fumes that are involved in various production processes. Workers will also tell that in the majority of factories, protective clothing is at a minimum and protective devices such as hand covers on machines, or air blankets to blanket fumes, or fans to blow away dust, are not often provided. This lack of protection results in many injuries, and in 1974 it was estimated that 100 000 hands, 50 000 feet and 40 000 eyes were badly injured, 31 000 men and women would be permanently maimed, several hundred were injured severely enough not to be able to return to work, and 2 284 were killed.

Workers quite clearly are a marked part of the population in South Africa, and anyone in frequent contact with production workers will confirm the frequency of a disfigured finger, a scarred hand, a lost thumb, a broken nose, a limp and sometimes a lost hand or foot.

The workers view is confirmed by official reports. Reporting in 1975, the Government Commission of Enquiry into Occupational Health (the Erasmus Commission noted (R.P. 55/1976):

> '.... it is regrettably to be stated categorically that, except in the mining industry, industrial health not only occupies a secondary position in industry in this country, but that industrialists have put very little time, money and organisation into the prevention of occupational diseases' (para. 4.111).

This observation applies to the prevention of industrial accidents as well.

The figures that are available from the Workmen's Compensation Commissioner support these observations.

TABLE 1

Year	Total Accidents	Permanent Disability	Fatalities	Manhours lost through accidents
1974	359758	32019	2284	30191054
1975	355615	31819	2232	29927332
1976	340063	33752	2546	32534762

Source: Annual Reports of the Workmen's Compensation Commissioner. Note: The Report for 1976 notes that the lower figure for total accidents is a result of the decrease in employment in that year.

The accidents noted in table 1 are the reported accidents which take place in the factories. In most cases they are the more serious accidents. There is no reliable record of the number of minor accidents that do take place.

In addition, most of these accidents are those which result in external injury. There are no conclusive figures available for the incidence of internal injury sustained as a result of working in the dust and grind of many factories, or as a result of exposure to substances, chemicals and gases used in the production process. While it is known that injuries as a result of such exposure do occur (and the second schedule of the Workmen's Compensation Act provides compensation for diseases such as chrome ulceration, dermatitis, lead and phosphorus poisoning and silicosis) it is extremely difficult to isolate the

location and cause of such injuries and diseases. They develop over a long period of time and require large resources to establish the location of the cause. Large scale medical examinations are required, and back up services such as X-Ray and testing facilities are necessary. These are not available to any significant extent in South Africa, and it is therefore probable that internal injuries arising out of the workplace are far more widespread than can be proved statistically.

Now that the extent of industrial disease and industrial accidents has been noted, the obvious question becomes,why is it that in South Africa, industrial health has such a low priority?

The answer, I submit, is two fold:

1. Industrial accidents and disease (outside the mining industry perhaps) do not present a major cost to management.

2. The enforcement of protective measures is left to statutory bodies; in particular the Workmen's Compensation Commissioner and the Department ofLabour Factories Inspectorate.

I will examine these two propositions below.

INDUSTRIAL ACCIDENTS DO NOT PRESENT A MAJOR COST TO MANAGEMENT

When a worker is injured, aside from the manhours lost,there is no major cost to management. Normally the only cost management would have to pay is the levy to the Workmen's Compensation Commissioner. All further costs related to medical expenses and compensation are paid directly by the Commissioner.

It would also seem that it is cheaper for management to replace injured workers than to improve the protection for

them. This is of course truer for those workers who are employed in unskilled and semi-skilled positions, where the migrant labour system and the absence of formal collective bargaining rights allow workers to be available in large numbers at a low price. In situations such as foundries, for example, where protection is badly needed, workers are generally unskilled, migrant and paid at the lowest rates permitted in the Metal Industry, viz 70 cents per hour or R31.50 per week. Given these conditions, it is simply cheaper for management to replace such workers when they are hurt than to prevent them from being hurt.

Indeed, management is protected from any claims instituted directly against it by the injured worker. Section 7 of the Workmen's Compensation Act notes:

> 7. Substitute of Compensation for other Legal Remedy from and after the fixed date
> a) no action at law shall lie by the workman ... against such workman's employer to recover any damages in respect of an injury due to an accident resulting in the disablement or the death of such workman; and
> b) no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of any such disablement or death.

It is true that a worker may proceed legally against any third party responsible for the accident (Section 8) and that where accidents do occur as a result of the negligence of the employer, the workman may apply for increased compensation (Section 43). It is also true that where a factory is accident prone, the employer can be forced to pay a higher levy to the Commissioner (Section 7). However, none of these measures seem to have had the desired effect and the fact still remains that the costs of an accident are mainly borne through the Commissioner and that there is no way of significantly forcing employers to pay for accidents which are a result of their negligence.

This is true, as we have seen, even if the accident is a result of the employer's negligence. Workers must be content with the highly inadequate compensation paid out by the Commissioner (2). Hence the lower income groups are hit harder by the loss of a limb.

While employers are protected by the Act for damages arising out of their own negligence, the same allowance is not given to the worker. In terms of Section 27 of the Act:

27. Rights of a Workman to Compensation

b) if the accident is attributed to the serious and wilful misconduct of the workman, no compensation shall be payable under this Act unless the accident results in serious disablement or the workman dies in consequence thereof leaving a dependent wholly dependent upon him, and the Commissioner or, if authorised by the Commissioner, the employer individually liable may further refuse to pay the cost of medical aid or such portion thereof as the Commissioner may determine.

In this way the Workmen's Compensation Act defeats its own objectives. It does not protect workers adequately and it does not encourage management to observe the workers' right to protection. In cost terms, management escapes from bearing the damages.

THE ENFORCEMENT OF PROTECTIVE AND PREVENTATIVE MEASURES

The drawing up of the requirements for the physical protection of workers and the enforcement of these requirements is the responsibility of the Department of Labour. Within the Department there is a factory inspectorate whose broad mandate is to enforce the Factories, Machinery and Building Work Act. The broad outlines for industrial protection are laid down in Chapter V of the Act, and in Chapter lll of the published regulations of the Act. The Inspectorate then enforces these rules at its

discretion, and guided by professional groups such as the C.S.I.R. and the National Institute for Research into Occupational Diseases, formulates more specific rules within these very broad guidelines.

The first problem that confronts one here is the non-availability of the detailed rules concerning the prevention and protection measures. These are not public documents, and one's access to them depends on the whim of the individual factory inspector. In some cases the documentation has been made available, in most this is not so.

The workers' ability to enforce the right to protection therefore becomes a very ad hoc affair. Denied knowledge of what the requirements are, workers and their organisations are very much at a disadvantage when dealing with management. They are unable to state with certainty what the legal requirements are. They also need to go to an enormous amount of trouble by way of research, discussions with professional bodies and comparative examination to find out what are considered normal protection measures. In most cases this is beyond the means of individual workers, and barely within the resources of most unregistered trade unions in particular. The result once more is that the workers' right to protection suffers.

A second problem relates to the use by the Factory Inspectorate of the secrecy provisions in the Factories Act. Workers have no right to hear the outcome of any investigation they might have requested. They do not have the legal right to know whether the investigation they requested had been instituted. We have on record a reply from a factory inspector in relation to an investigation which was requested, which notes:

> This office cannot furnish any organisation with reports of investigations carried out by officials of this office.This matter is strictly a matter between the employer and the department.

The Metal and Allied Workers Union had requested an investigation into the fact that some of its members in a factory were handling fibre glass without any protection. Its investigation revealed that constant exposure to fibre glass could lead to a form of industrial dermatitis. Recommended protection measures were: a) the issuing of gloves b) the provision of cleansing cream c) the provision of proper washing up facilities d) the provision of overalls which could be left on the factory premises.

To this day the Union does not know the outcome of the investigation it requested. Its members have reported that no gloves were issued and no special measures taken to protect workers. Once more we see that management has a right which workers are denied.

The third major problem relates to the fact that the Factory Inspectorate at this point in time has the sole legally sanctioned mandate to enforce protection in the factories and that it does not have the staff to do so.

Table 2, drawn from the Erasmus Commission Report vividly illustrates the point:

From a practical point of view, therefore, it becomes impossible for the Factory Inspectorate, however well intentioned, to perform its tasks adequately. They do not have the manpower to do so, especially in view of the massive neglect of protection measures in the factories.

TABLE 2

POSTS ALLOCATED AND FILLED - OCCUPATIONAL SAFETY SECTION (FACTORIES) DEPARTMENT OF LABOUR

INSPECTORATE	POSTS ALLOCATED	POSTS FILLED	FACTORIES	EMPLOYEES
Johannesburg	14	4	5713	268299
Benoni	4	2	2058	132454
Vereeniging	3	1	1401	77823
Germiston	5	2	2337	159534
Durban	10	6	4904	330837
Cape Town	10	5	4763	254301
Port Elizabeth	4	3	1892	98664
East London	3	2	1195	51440
Pretoria	7	3	3214	158331
Bloemfontein	6	1	2620	66393
TOTALS	66	29	30097	1598076

Source: Commission of Enquiry into Occupational Health. RP 55/76, Table XXI.

STATUTORY ENFORCEMENT OF WORKERS' RIGHTS TO PROTECTION FROM INDUSTRIAL DISEASE AND INDUSTRIAL ACCIDENTS.

Thus far I have outlined the rights (and the limitations of those rights) presently offered to workers under the Workmen's Compensation Act and the Factories, Machinery and Building Work Act. The discussion has been limited to pointing out the problems that arise out of the establishment and administration of these two Acts.

However, I wish to argue that the dismal picture I painted in the introduction to this paper is a result, not of imperfect administration of the Acts, but of the principle underlying them.

The basic principle is that through the enforcement of

legislation by statutory bodies, adequate protection can be established in the factories. Through neutral state agencies a common standard of protection can be achieved and maintained. This standard will be acceptable to both workers and management.

The reason that the principle is wrong is because, like everything else in the factories, adequate protection is not an agreed constant standard plucked from the mutual desire of employers and workers to have good conditions. The status of industrial health in the factories is a result of a process wherein employers and workers have bargained over conditions. As a general rule it will be possible to show that high standards of industrial protection exist where a) the production process has demanded this and where lack of protection does represent a significant cost to management (some chemical processes or some of the more technical engineering processes, for example) b) where workers organisations have been strong enough to demand adequate protection over a period of time. Where the production process is not overtly highly dangerous and very clearly the prevention of industrial accidents are a major cost, and where workers are not strongly organised, protection against industrial health hazards will be poor.

It is therefore not adequate to leave the enforcement of industrial health protection entirely in the hands of statutory bodies. It is wrong in principle, because those most intimately concerned with the maintenance of standards, the workers, are excluded from the setting and maintenance of standards. It is wrong in practice, because the statutory agencies are vastly understaffed and undertrained.

However, it would not be possible to remedy the problems simply by hiring more factory inspectors and providing better training. It is clear that at this stage it is necessary for certain minimum standards to be laid down by law. The Factory Acts here and in other countries are a

result ofthe struggles of workers for better working conditions and of the recognition of society that it cannot continue to bear the heavy financial and social cost of irresponsible management.

To really obtain good working conditions, they must be seen as one aspect of the collective bargaining process. Clearly,wages and healthy and safe working conditions (e.g. good protective clothing, safety guards on machines, safe but expensive processes) are a cost to management which tend to reduce profits. Both wages and working conditions can only be significantly improved by collective bargaining, not by reliance on the good intentions of employers, who are primarily concerned with good year-end results. Employers must be forced to accept good working conditions by organised labour. The State can only confirm these conditions, since the State is not "on the firing line" in any way remotely approaching the position of the workers directly involved.

How can workers achieve better conditions? Collective bargaining implies the recognition of their trade unions, and of the right of those unions to bargain on behalf of their members on all matters concerning their work situation. It is very clear that in countries where unions are strong, industrial health standards are high. Further, the effective policing of these standards can only be done by the workers on the shop floor, whc are every day exposed to these conditions. The effective enforcement can then only be carried out by the unions of which these workers are members,through collective bargaining.

At present, these basic conditions for good industrial health are explicitly denied to the majority of workers in this country. Unions of African workers cannot be registered, and so suffer from being unable to take part in national bargaining. Further, unions are widely denied recognition and are prevented from establishing an effective bargaining role in most companies, at least in part through the use of the statutorily established

Liaison and Works Committees. Secondly, the participation of unions (and, indeed, of workers) in the enforcement of industrial health standards is explicitly prevented (for all unions) by the use of the secrecy provisions of the various Acts and by the exclusion in the Workmen's Compensation Act of civil actions against negligent employers. Thus, the statutorily established standards are not seen as basic minima, but are the only standards and policing procedures allowed. The essential role of collective bargaining is excluded.

We therefore suggest that the following are basic for the improvement of the very sorry industrial health record which we have outlined:

1 The establishment of free collective bargaining rights for all workers;
2. The recognition of the right of unions to include working conditions and the enforcement thereof in the arena of collective bargaining and in industrial agreements;
3. Right of access by workers and unions to standards and research of semi-government bodies such as the C.S.I.R. and the N.R.I.O.D.;
4. The withdrawal of the secrecy provisions in the various Acts covering industrial health;
5. The withdrawal of the clause in the Workmen's Compensation Act preventing civil actions for damages by workers against negligent employers. This would allow workers, primarily through their unions, to make employer's negligence a very expensive matter, and the award of punitive damages in a few cases would greatly assist the unions engaged in collective bargaining in obtaining safer conditions.