been hijacked and mishandled by the Council. These demands include:
- minimum R2 per hour
- retrenchment procedures
- layoffs instead of retrenchment
- recognition of shop stewards
- recognition agreements and dispute procedures
- bargaining in industrial sectors

Whether MAWU likes it or not the minimum conditions of employment are negotiated annually in the Industrial Council. Some of the unions now in the Council claim to speak for black workers. It is necessary to establish clearly that only MAWU and the very few other unions in the metal industry with similar policies are the only true representatives of the oppressed workers.

MAWU will review its decision to enter the Industrial Council at regular short intervals and will withdraw if necessary. Besides entering the Council, MAWU is also developing strategies to build its power in the industry. During 1983 the union has resolved to concentrate on organising and consolidating a few sectors of the metal industry in order to reach a dominant position.

MAWU will also continue to build its structures to face employers at all levels:
- in the factory
- joint company shop steward councils
- local shop steward councils
- shop steward councils for different sectors

25th March 1983

Collective Bargaining

An article by Anna Scheepers from Labour Mirror, Vol 2 No 13, June/July 1982, official newspaper of the Trade Union Council of South Africa.

Collective Bargaining can take on different forms. There can be collective bargaining on a factory or shop floor basis, industry- wide negotiations or through the legally provided means of collective bargaining at Conciliation Board meetings and, of course, the best known collective bargaining — that at industrial council level.

I do not want to decry plant level negotiations or bargaining as this can be useful under certain circumstances and can also serve a good purpose in the short term.

It is advantageous for emerging unions to enter into plant level negotiations at one or two plants where they have been able to enrol a majority or near majority of the workers as members.

This will give them a base, and not only will they be able to prove to the rest of the workers in that particular plant that they are able to achieve gains, but they can use it as a carrot at other plants.

Collective bargaining does not only include bargaining for wages. Our labour legislation lays down certain provisions that must be observed. The Factories, Machinery and Building Work Act lays down that workers are entitled to two weeks' annual leave; two weeks per annum sick leave; overtime rate at time-and-a-third, and so on.

Therefore workers have a certain amount of protection and if plant level negotiations can secure higher wages this may satisfy them in the short term, but workers have other needs and desires, for which provision can be made.

If a union shows any potential and is in a position to spread its wings in the industry, its task will become more difficult.

Unless it has a large and very competent staff it will be unable to monitor all agreements. It must always be remembered it is one thing negotiating an agreement but it is equally important to ensure its enforcement.

I cannot see an emerging union having the finances from contributions of members to employ a large army of capable people, unless such union receives assistance from outside sources.

On a number of occasions American trade union friends have said that trade unionism is too cheap in this country — in some cases members pay less in union contributions than they would pay for their Sunday newspaper. But the fact is that the majority of workers are low paid and cannot afford high contributions for anything, including their trade union.

For an expanding trade union ever to hope to monitor plant agreements will become an impossibility.

Private agreements do exist which are enforced. The mining unions have such agreements with the Chamber of Mines. But all the unions who are parties to such agreements are very powerful and have large bank balances to ensure enforcement either through court action or otherwise.

New unions cannot have such reserves and therefore must ask of members a great sacrifice to suggest strike action.

I have fought my whole life for workers to have the right to strike and I believe in it as firmly today as ever before. But I also believe that all other avenues should be explored before taking such drastic action.

In my view it should be the last resort. If strike action should become the weapon to enforce agreements it will be a sad day for the workers, the employers and South Africa.

Plant negotiations are also unable to do away with unequal terms on a geographic area and what they have achieved may be of short duration owing to unfair competition particularly in today's economic climate.

The only other way to enforce private agreements is by taking employers to court unless underpayments are rectified on demand. Civil court action is another expensive procedure to follow.

Shop floor negotiations are impossible to conduct in large industries unless only selected targets are tackled.

In reply to a question, I was told by a proponent of shop floor negotiations that they concentrate on the large firms. What about the poor workers in the small firms? Normally larger firms are more likely to comply with an agreement than the smaller ones anyway. Must the workers in the smaller firms then be thrown to the wolves?

Experienced trade unionists, leading well-established, representative and recognised unions, can only smile when 'shop floor negotiations' are advocated as the be-all and end-all of negotiations.

It is, quite frankly, only justified as a cover up to conceal the weakness of the union, or if this is not the true reason it reveals a deplorable ignorance of labour relations and true trade union requirements which could, in the end result, be disastrous for the new emerging unions and the trade union movement as a whole.

Larger and medium-sized industries cannot be catered for by shop floor negotiations.

The clothing industry in the Transvaal, for instance, has 412 factories in 21 different centres stretching from Schagen in the Eastern Transvaal to Bloemhof in the Western Transvaal.

What would be considered a large firm? The average size of the workforce is 66 so if a 'large' factory employs more than 66 workers and a 'small' one fewer than 66, we will have 99 factories to negotiate with, covering 17,434 workers, leaving over 300 factories employing 7,442 workers with no agreements.

The union would then have to negotiate separate agreements in 99 factories with 17,434 workers and over 300 factories will be left with no agreement to cover the workers.

The whole concept of floor level negotiations as against industry wide negotiations is inconceivable.

I have no doubt that I could negotiate very favourable agreements with individual factories and then claim plant level negotiation to be better than industry wide negotiations.

But what would happen? These factories would soon find that they can

not meet competition and would either close or have their garments made in factories having no agreement or a more favourable agreement.

What would be the reaction of workers who became unemployed? Would the hardship caused to them make them supporters of the trade union movement or not?

The answer is obvious and the same result is achieved where plant level negotiation end or start with workers on strike followed by large scale dismissals. Obviously a successful plant level negotiation with or without strike action is good for recruiting members.

What then are the advantages and disadvantages of plant level and industry wide negotiations?

Plant level negotiation is extremely useful for weak emerging unions to gain a foothold, to gain recognition (hence recognition agreements) and to impress workers with their ability to achieve improvements.

But it can result in insecurity for workers. Unemployment is bound to follow either directly or as a result of an unsuccessful strike or in the long term where the factory reaching a favourable agreement will lose out against its competitors who need not comply wth the same conditions.

Workers will have to enforce their own agreements and flash strikes will have to be the constant weapon to ensure compliance with a reluctant employer. Hostility between employers and workers will be the result and the clock will be put right back to the concept that 'bosses are bastards' and trade unions are their sworn enemies.

I will not outline the advantages of industry-wide collective bargaining here because in South Africa industry-wide bargaining is done at the two legally established levels with all the advantages that working within the legally provided framework of the labour relations act gives to trade unions.

The emerging unions have generally rejected the officially recognised system and all the advantages bestowed by it. Therefore there should be valid reasons for doing so. Regrettably the valid reasons do not exist and the explanation again must be found in the weakness of emerging unions.

To obtain registration as a trade union, that union must show that it is representative; to be granted a conciliation board the union must prove that it represents at least 50 percent of the workers involved, and to participate in an industrial council requires 50 percent and better representation.

To hide the obvious, emerging unions also claim that they are opposing the 'established' system for political considerations. They will have nothing to do with the 'apartheid Government'. No doubt this will also be a good recruitment ploy but if the apartheid Government disappeared tomorrow a labour relations act would still have to be retained or an extremely good legal framework for promoting the interests of workers.

Whenever it is alleged that a dispute exists in an industry, trade or occupation in any area, any party can apply to the Minister of Manpower for the appointment of a conciliation board.

The party applying for a conciliation board must furnish proof to the minister that the contents of the matter in dispute have been served on the opposite party.

The case which led up to the dispute must be set out clealy to the minister. This can pose a difficulty for ordinary workers unless supported by a trade union or a legal advisor.

Employees and employers have equal representation on the board and normally the parties select a person from the Department of Manpower as chairman and the department supplies secretarial services.

Negotiations take place similar to those at an industrial council and if no agreement can be reached the unions or the workers (unless they try arbitration) can hold a strike ballot. If a majority vote in favour of a strike, the strike becomes legal.

Most of the strikes we had in latter years were 'illegal' as the procedure prescribed had not been followed.

The Government has become more lenient in respect of illegal strikes. I remember the days when strikers had been badly beaten up by police and arrested. I can speak from experience — I did not know whether I was blue or black or white spotted.

If agreement is reached, it is published in the Government Gazette when it becomes a legal document enforcible by criminal sanctions.

In addition, the conciliation board agreement is extended to cover everyone whether the workers are union members or not and whether the employers are association members or not.

There has always been a problem with the enforcement of conciliation board agreements but the position is far more acute today. The Department of Manpower must see to the enforcement of these agreements but with the acute shortage of staff it is impossible for the Department to do the job as it should be done.

In terms of the new labour relations act a dispute on an alleged unfair labour practice cannot be settled by a conciliation board, whereas all other disputes must first be submitted to an industrial council or conciliation board before they can be submitted to the the industrial court.

The Department of Manpower also does not approve demands for fringe benefits in a conciliation board agreement because they do not have the machinery to operate medical benefit, provident or other funds.

I am a very strong advocate of industrial councils run efficiently. There are many, if not all, of the emerging unions who are opposed to industrial councils. Some may have had experience with badly-run councils. Others, I think, speak against councils owing to ignorance and inexperience.

The industrial council system is as good as the trade unions and employers' organisations make it to be.

We must remember that before the first industrial conciliation act of 1924 came into operation industrial relations were at a very low ebb.

The Act, in making provision for industrial councils, created the machinery for trade union and employer representatives to meet around the table to negotiate and deliberate on a permanent basis. This, over the years, has contributed to a much better industrial climate.

The only big flaw in the 1924, 1937 and 1956 Acts was that Black workers were not defined as 'employees'.

However, my union found a loophole in the 1937 Act in that it did not exclude Black persons but excluded persons falling under the urban areas and other Acts which all dealt with the pass laws. As Black women did not bear passes in those days we applied, in 1942, to the Supreme Court for a declaratory order. We were successful in getting Black women declared as 'employees' in terms of the industrial conciliation act, but failed on the application in respect of an exempted Black male worker.

This action on our part was a blessing to thousands of Black women workers throughout the country.

Where agreements had not been extended to cover non-employees, Black women became covered immediately as employees. In the clothing industry alone many thousands of pounds in back pay were claimed for these workers.

Industrial councils served the workers well including large sections of Black workers, even though they had no direct representation.

The great advantage of industrial councils is that at a low contribution from both sides you can set up first-class machinery to monitor and enforce agreements.

The advantage of legally negotiated and published industrial council agreements (and conciliation board agreements as mentioned earlier) is that they carry criminal sanction.

If infringements take place and the employers are not prepared to rectify these on request, the cases can be submitted to the public prosecutor and the court will decide. Workers and employers can get justice without paying any legal costs.

A further advantage is that you do not only negotiate on wages and salaries, but also on hours of work and overtime; annual leave and paid public holidays; right of entry to factories; supply of protective clothing and overalls; medical benefit and sick pay funds; provident or pension funds and other funds to protect workers in the event of short-time being worked; other funds to protect workers' wages and holiday pay in the event of insolvency, etc.

This almost complete cover you can never have under shop floor

negotiations or conciliation board agreements.

Another advantage here too, is that the industrial council agreement can be extended to cover all 'non-parties' — that is the workers of employers who are not party to the industrial council and also non-union members.

Even if one could obtain all these provisions through shop floor collective bargaining, the question remains who will monitor the agreement, who will administer all the benefit funds which are of tremendous importance to the workers?

Today Black workers, like any other workers, can be represented on industrial councils and have full rights.

We, the pioneers in the trade union movement, fought for these rights long before many present here were born.

If there is anything wrong with the system, campaign to have it changed or improved but don't destroy it because the workers will be the ones to suffer.

Even before Blacks were given the rights they have at present, my union, for instance, never negotiated agreements without consulting the Black workers on the proposals.

No industrial council agreement was ever concluded unless the Black workers gave their approval. Therefore it is not the system but the people who operate under it who must be reformed.

Black workers could not have enjoyed the conditions they are enjoying today had it not been for industrial councils. Normally at the request of the trade union, council agreements are extended in terms of the act to cover non-employees and non- parties and this gives to Black workers the same security as union members directly involved.

The anti-industrial council advocates of whom I asked what they would do to protect all the benefits obtained by unions and administered by industrial councils have still not given me an answer.

Industrial councils cannot prevent all strikes, but they are a deterrent. Industrial councils and union officials intervene whenever there is a problem which the shop stewards are unable to settle. These officials, together with the shop stewards, negotiate on the shop floor.

In the earlier part of this year we had some strikes when employers were slow in commencing negotiations but no strike lasted longer than one and a half days and most were for a few hours only.

Union and council officials always managed to settle these strikes. Normally throughout the currency of an agreement there is peace in the industry.