SOUTH AFRICAN LABOUR BULLETIN

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STRIKES

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COMMENT

THE RIGHT TO STRIKE.

In this edition of the SALB we focus on the right to strike. The right to strike rests on certain basic assumptions.

THE RIGHT TO STRIKE IS INSEPARABLE FROM COLLECTIVE BARGAINING.

This right should be seen as an essential part of the mechanism of collective bargaining through which capitalism tries to accommodate conflict between workers and employers. Without the right to strike, workers have no leverage in bargaining with employers. Yet, although the right to strike is the ultimate weapon in the bargaining process, there can be few workers who actually welcome a strike. The worker nearly always lives very close to the margin, and any loss of income is a serious matter. "Contrary to popular imagination", writes Hyman of strikes in Britain, "striking is an exceptional habit. This fact is underlined by the findings of a survey carried out for the Donovan Commission. Only one trade union member in three and a slightly smaller proportion of managers, could recall a strike at their place of work since they had been there; and of this third roughly a half were aware of only one stoppage. Since the trade unionists interviewed had been with their existing firms for an average of ten years and works managers for nine, this indicates how rare strikes really are in most situations" (Hyman Strikes, p. 33-34).

2. THE RIGHT TO STRIKE MUST NOT BE RESTRICTED BY CUMBERSOME STATUTORY PROCEDURES.

The provision in the Industrial Conciliation Act requiring a

30 day cooling-off period after three consecutive I.C. meetings, constitutes a significant bargaining advantage for employers. This creates a further imbalance in bargaining powers, leading to frustration and unofficial strikes, as we saw in the recent white Mine Workers strike.

3. THE RIGHT TO STRIKE IS INSEPARABLE FROM THE RIGHT TO PICKET.

The union, as an organisation, requires some sort of sanction which can be used to ensure that the majority decision is carried out. When a minority of workers reject a democratic decision, and attempt to "scab" - that is, act as strike breakers - this usually results in great bitterness, and it is important that there should exist institutionalised ways for dealing with disputes of this kind, otherwise they are likely to be resolved by violence. Indeed scabbing of this sort is probably the most frequent cause of violence by workers in the course of industrial disputes. One of the most important institutions for this purpose is the picket. The picket is really a technique for bringing moral pressure to bear on would-be scabs. The individual worker should be morally bound by the majority decision to strike, and a peaceful picket of workers positioned at the place of work is designed to make this moral duty clearly visible.

This right, as our evidence submitted to the Wiehahn Commission (reproduced in this edition) argued, does not exist in South Africa. In particular chapter 11 of the Riotous Assembly Act makes picketing illegal.

4. THE RIGHT TO STRIKE IS VALUELESS WITHOUT PROTECTION AGAINST DISMISSAL WHEN ON STRIKE.

The strike at Eveready (see the article in this issue) reveals the anomalous situation where, even when workers

have undertaken a legal strike, the employer is able to discharge the employee on the grounds that he has refused to carry out his contractual obligation to work. This is legalising victimisation by the employer of his employees, while they are on a legal strike. (See Cheadle's article on Reflections on the Right to Strike and the Contract of Employment, in this issue)

5. <u>THE RIGHT TO STRIKE ASSUMES ORGANISATION AND THEREFORE SOLIDARITY IN THE WORK PLACE.</u>

In South Africa industrial legislation divides workers in a way that makes non-racial solidarity difficult to achieve. Organisation is crucial to maintain the solidarity of workers, particularly when, as in Eveready, the threat of unemployment encourages workers to scab. Furthermore, as this strike shows, unless the workers are under the same industrial relations system, the capacity of workers to act collectively is prevented by law, i.e., they cannot <u>all</u> legally strike at the same time.

6. <u>THE RIGHT TO STRIKE ASSUMES THAT THE STATE WILL NOT INTERVENE DIRECTLY IN FAVOUR OF EMPLOYERS.</u>

In South Africa the use of the legislation in favour of employers is illustrated in the Krommenie case, where instead of charging the employers with a lock-out, the Department of Labour charged the dismissed workers with striking. They were discharged by the court without their giving evidence, in spite of statutory presumptions in the Bantu Labour Relations Regulation Act. The Act creates a presumption that the accused are on strike once a work stoppage is proved. Though a work stoppage was proved in the Krommenie case, the state evidence was such that the presumption was rebutted. Clearly the state should have charged the employers with an alleged lock-out. In the Transvaal Meat case study, despite the fact that employees

were dismissed in circumstances that constituted a lock-out, attorneys had first to institute a private prosecution before the Department of Labour would charge the employers. Nineteen months after the lock-out, the employers were brought to court and convicted after pleading guilty. (These cases will be published in a later edition).

Furthermore, employers in South Africa have direct access to the repressive apparatus of the state, as can be seen from the repeated use of police and security police help in breaking strikes, particularly among African workers.

The extent to which employer interests are entrenched in the apparatus of the state, is illustrated by the fact that striking workers can be prosecuted not only in terms of industrial legislation, but also in terms of the Riotous Assemblies Act, the Internal Security Act, the General Law Amendment Act (Sabotage Act) and the Terrorism Act.

CONCLUSION.

It is clear from this edition that the right to strike in South Africa is no "right" at all. Until this right is given some content, South Africa cannot hope to be accepted back into international labour circles.

FOCUS ON FOSATU

Phil Bonner

Between the 13th to 15th April 1979, FOSATU held its Inaugural Congress in Hammanskraal, and became the first Federation of predominantly unregistered Trade Unions to operate openly in South Africa since the suppression of SACTU in the mid 1960s, and the self liquidation of FOFATUSA in 1965. This article examines the genesis of FOSATU, the policies to which it is committed and the repercussions of its formation on the South African Trade Union scene. It does so in the hope of dispelling a number of misapprehensions about the nature and objectives of FOSATU, and begins by examining the context out of which it emerged.

Since the decline of SACTU and FOFATUSA in the mid 1960s, no national coordinating bodies for unregistered trade unions inside of South Africa have emerged. Indeed, for a time, even the survival of individual African Trade Unions was in doubt in the climate of repression that characterised those years. Only from 1970 did things begin to change. In that year the Urban Training Project was founded in Johannesburg by officials from the defunct African Affairs section of TUCSA, which had been shut down after TUCSA had closed its doors to African trade unions. Its aim was to establish an educational body which would publicise the existing rights of African workers under current labour legislation, and which would assist Africans who wished to form a trade union or any other kind of workers organisation. As events in other parts of the country were to confirm, the time was ripe for African unionisation. Inflation was racing ahead; wages were not keeping pace; and a spate of industrial confrontations took place, beginning with the PUTCO drivers strike of June 1972, after which most of the UTP unions were formed. The UTP it should be stressed was not a worker or a worker controlled organisation. According to its constitution the Project itself was "at no time (to) become (either) a trade union or a trade union coordinating body ... nor shall it control a trade union or other workers

organisation". Yet with money being pumped through it from the outside to assist existing and new African worker organisation, and its own practice of employing organisers and taking leases on behalf of affiliated bodies, it inevitably in practice assumed some of these roles. So too, more formally did the Black Consultative. Formed at the end of 1973 this comprised by 1975 the National Union of Clothing Workers, Sweet, Food and Allied Workers Union, Building Construction and Allied Workers Union, Commercial, Catering and Allied Workers Union, Paper, Wood and Allied Workers Union, Glass and Allied Workers Union, Engineering and Allied Workers Union, Transport and Allied Workers Union, South African Chemical Workers Union, Laundry, Dry Cleaning and Dye Workers Association, Textile Workers Union, and had as its object the coordinated expression of views on matters of common interest for the affiliated African unions in the Transvaal. Precisely what that involved however is far from apparent, lacking any coercive sanction other than expulsion, it seemed reluctant to use even that. Thus it could even condone the affiliation of the National Union of Clothing Workers to the TUCSA, something apparently anathema to the rest of the Consultative members, all of which contrasts strangely with the capacity of the UTP which expelled Drake Coka and more recently other Trade Union bodies for activities of which it did not approve.

Meanwhile events in Durban were taking a similar turn. In April/May 1972 a General Factory Workers Benefit Fund was formed with the assistance of various registered unions in Durban based at Bolton Hall. Its objectives were to provide a basis for worker organisations in Natal through making workers aware of their rights (via, inter alia, its newspaper Isisebenzi) and making representations to Wage Boards for new unskilled worker determinations. In addition it had the longer term aim of using the benefit fund as a stepping stone to trade unionism proper, hiving off sections of its members into industrial unions when sufficient membership in that particular sector had been achieved. As in Johannesburg, though on a far grander scale, the strikes

in 1972-3 (first the Dock Strike of July 1972, and then the general wave of strikes which affected virtually all sectors of industry in Durban in Janauary 1973) greatly accelerated this process, precipitating the formation of unions much earlier than might otherwise have been the case. In the aftermath of the strikes, upwards of 500 workers crowded into the Fund's Bolton Hall premises each Saturday morning applying for membership, and sufficient strength in various sectors was rapidly attained. As a result the Metal and Allied Workers Union was formed in April 1973, followed by the National Union of Textile Workers a few months after that. By this stage the need for a coordinating body was becoming urgently felt to govern the rate of formation of new unions and to ensure energies were not continually being redirected into newer and newer unionisation without allowing a process of consolidation to take place. As a result the Trade Union Advisory and Coordinating Council was formed in October 1973, to which 2 new unions, the Chemical Workers Industrial Union and the Transport and General Workers Union ultimately affiliated. TUACC's constitution, which initially allowed a place for B.Dladla a KawZulu Government representative, was overhauled once again early in 1974 in response to the bannings of trade union officials earlier that year, which made the consolidation of existing unions all the more urgent, and in response to the experience of the textile strikes shortly before that, where the Department of Community Development of the KwaZulu Government assisted the Union in negotiations with the employers, and so highlighted the need for a worker controlled coordinating body which could liaise with other organisations. Nevertheless the structure of the Council remained largely the same. From the beginning it committed itself to open unions, nationally organised according to industrial sectors, and based on strong factory floor organisation and to a strong coordinating body which comprised at each level of a majority of worker representative, which decided policy for the affiliates and controlled the resources they jointly pooled. All of which has a bearing on the shape that FOSATU has ultimately assumed.

Finally, again in the Transvaal, the Industrial Aid Society was formed in 1974, to assist workers with their complaints and advise on factory organisation. This body, together with the Transvaal Branch of the Metal and Allied Workers Union, joined the Council of Industrial Workers of the Witwatersrand (C.I.W.W.) towards the end of 1976. The council was founded to co-ordinate the activities of these two bodies and and and other unions who might wish to affiliate, or who might be formed. From its inception it worked closely with the Durban based TUACC.

So by the end of 1973 both Natal and the Transvaal had their own coordinating bodies for unregistered trade unions. The Eastern and Western Cape lacked even this limited degree of coordination. In the Western Cape only two bodies catered for African workers, the African Food and Canning Workers Union, which by 1976 had 600 members (mostly outside of the Peninsula), and the Western Province Workers Advice Bureau, formed in 1972 with a membership of 5000 by 1976-between whom existed only tenuous links. In the Eastern Cape even less progress in this direction had been made, with only the African Food and Canning Workers Union showing the flag. Why was this so? In the Western Cape a number of particular conditions applied. Firstly, African workers represented only a small fraction of the workforce, accounting for only 15% in 1975. Secondly, after the intensification of influx control regulations in 1966 an increasing proportion of this fraction was migrant as opposed to settled, which encouraged high mobility of workers between different sectors of industry, (in contrast to the Witwatersrand, apparently where the call-in card system is widely used) and led the Western Province Workers Advice Bureau to set up a structure open to all workers irrespective of industrial sector. A coordinating body was thus to some extent redundant since in the Advice Bureau's eyes they represented one themselves. However, there were several other reasons for the relative absence of separate African unions, which in turn would require a coordinating mechanism, which applied equally to

the Eastern and Western Cape. These relate to the conservative stance of most of the mixed race or coloured registered unions, who were in many cases affiliated to the TUCSA. Bankrupt in policy and bureaucratic in structure these often neglected to organise even the unskilled worker eligible for membership in registered unions (i.e. coloured workers), let alone African workers who were not. As for encouraging African unionisation, they were either too frightened of the possibility of government reprisals, or too concerned about the possibility of being swamped to help in the organisation of unregistered unions in their respective fields. As a result, the organisations best placed to initiate the organisation of African workers did nothing. The situation did not materially change even after the decision of TUCSA to promote the formation of parallel unions and to accept affiliation of unregistered unions in 1972 and 1973. Most affiliates paid only lip service to this ideal, allegedly, so some have argued, to direct international funds and recognition away from the embryonic independent African Trade Union movement into its own hands. As a result, the unregistered movement as a whole remained sceptical of TUCSA's intentions,only six unregistered African trade unions affiliates to TUCSA, and parallel unionisation by TUCSA affiliates proceeded at the proverbial snail's pace.

Only one registered union significantly deviated from this pattern and this was the National Union of Motor Assembly and Rubber Workers Of South Africa (NUMARWOSA). This Union had removed its previous executive in 1968/9 and from the early 1970s had started looking for a wider cooperation with African workers. The United Automobile Workers Union (UAW) was formed as an unregistered union; the idea of a National Metal Workers Federation was actively pursued and at more or less the same time cooperation with the UTP group of unions was also promoted. Talks were held between the two bodies; and two organisers were sent down from the Transvaal (one from Engineering and Allied Workers Union and one from the UTP) who shared NUMARWOSA offices in Port Elizabeth. This was in 1975. By 1977 a split had already begun to open up.

The EAWU and the UTP organisers refused to accept NUMARWOSA's organisational regime (i.e. being at factories at certain times, meeting collectively on Mondays to assess progress and if necessary to hand out reprimands) nor would they accept the idea of a regional group and close regional coordination. Cooperation was accordingly ruptured and the two organisers moved to different premises. In Pretoria and Durban, on the other hand, a measure of cooperation was maintained with UAW officials sharing UTP union offices, which was only terminated in March 1979.

The situation prior to the TUCSA Conference of September 1976 was therefore as follows. Relations between NUMARWOSA and UTP were coming under strain in Port Elizabeth, but were more cordial between UAW and UTP in Pretoria and Durban. The UTP unions (or certain of them) had branches in the Transvaal as well as Port Elizabeth and Durban and TUACC had a branch of MAWU in the Transvaal (which occasioned bitter recriminations from the Consultative), and was considering extending a branch of its Chemical Union. Finally the African Food and Canning Workers Union held aloof from all as to a large extent did the Western Province Workers Advice Bureau in the Western Cape. The prospects for cooperation were thus not particularly bright. Unions were either remote from each other, or, where they were not, as in Port Elizabeth and the Transvaal, bitter fights either had or were on the point of breaking out.

It was against this inauspicious background that the first initiatives towards a National Federation were made. In September 1976 NUMARWOSA attended an annual Conference of TUCSA at which many of its inner contradictions were laid bare. The National Union of Furniture and Allied Workers of South Africa and the Boilermakers withdrew because they construed even TUCSA's luke warm attitude towards African unions as a threat to their members positions. NUMARWOSA for its part found that the attitude of the registered coloured unions remaining within TUCSA's ranks almost as inflexible and were almost thrown out of the Congress when they sponsored a motion that TUCSA affiliates should deregister

and admit African workers. This experience proved to be more or less the last straw. 'NUMARWOSA was already dissatisfied with TUCSA'S bureaucratic structure and its inability to promote worker co-operation at a regional level. In December 1976 they therefore decided to disaffiliate from TUCSA and almost immediately begun sounding out the idea of an alternative Federation of likeminded registered and unregistered unions. The UTP lent its support, TUACC and CIWU professed themselves keen, and in the Western Cape the Food and Canning Workers Union, the Breweries and Goldsmiths Unions, and the Western Province Motor Assembly Workers Union (which has removed out its executive in 1972 after a grass roots campaign, and had let its affiliations to TUCSA lapse) also expressed preliminary interest. With this the raw material of a National Federation had been brought together. It remained to be seen whether there was sufficient identity of interest and approach for it to be fused. The date set for this exercise for 23 March 1977, when the various interested parties agreed to meet together in Johannesburg.

Present at this first preliminary meeting were eleven Consultative Committee Unions (engineering, sweet and food, chemical,transport, glass, laundry and dry cleaning, paper and wood, building, clothing, textile, commercial distributive); the TUACC unions and CIWW (metal, textile, transport and general, chemical, furniture and the IAS); NUMARWOSA and UAW; and the Western Province Workers Advice Bureau. Despite or because of this impressive list of participants, disagreements almost immediately began to emerge. Even before proceedings had been opened the Consultative Committee had distributed a mimeographed resolution which welcomed the idea of a Federation but then went on to detail a whole series of objections to it. These were that:

1. Most of the Unions have very weak membership and therefore they need to strengthen it first.

2. Some Unions have acted in such a way that they have

lost the trust and respect of the committee. For instance the Metal and Allied Workers Union deliberately and knowingly established a counter union in the reef thereby fostering a split or competition and confusion in an area where a union was in existence already.

3. The Committee has been informed (informally) of the dismissal of the National Secretary of the United Automobile Union with shock. The Committee views this action as a weapon used in order to get some people into power and absolute control of the union.

"With these points in mind " the Resolution went on,

> it would not be possible to work with organisations which did not have the trust and respect of the committeee. We respect deeply the freedom and advancement of black leadership without any strings attached. We feel strongly that the black man should not be confused further than he is at the moment by creating bodies that are aimed at dividing him further and further...
>
> The Committee cannot perceive how in the present situation can it agree to the formation of a National Federation if it is not sure whether its Unions participate fully and democratically without becoming stooges to a few number of individuals.

And it concluded with an ultimatum. The Consultative would only consider closer cooperation

> if TUACC and the Auto Unions came to a decision that their way of operating should be amended to suit the needs of the Consultative Committee.

With this resolution tabled the first general meeting of the Federation got off to a start. Suspicions were aired about coloured trade unions, there was opposition to the participation of service organisation which allowed positions to whites, and the Consultative gave every indication of wanting to reject the Federation out of hand.

Passions were further inflamed when it was learnt that the Chemical Union associated with TUACC was considering establishing a branch on the Reef. Nevertheless, after some angry exchanges, the Consultative reversed its position, and TUACC put its position which was that there should be worker control of any potential Federation at all levels, and that only a tight federation was desirable which would pool resources and decide on important issues of policy, both of which were already the practise of TUACC.

As a result the eventual outcome was far more promising than could have been imagined when this meeting began. With the sole exceptions of the National Union of Clothing Workers and the Textile Workers Union it was agreed that "a Federation of unregistered and registered unions acceptable to our general membership be formed"; that a Feasibility Committee be established consisting of three Johannesburg Trade Unions, two from the Consultative and one from the Council of Industrial Workers; two from TUACC; one from Port Elizabeth and one from Cape Town; that the Feasibility Committee should facilitate and establish lines of cooperation between unions nationally and in geographical area (the latter being obviously vital in the Transvaal), and that it should consider a draft constitution and financial structure for the proposed Federation.

At this stage three areas of contention can be discerned in the debate over Federation, which were to crop up repeatedly in the course of the following months. First was the idea that unregistered unions were by and large weak and it was premature to erect over this an inflated and cumbersome national coordinating structure which might become a bureaucratic monster. Second was the idea that white or coloured representation in the Federation (through service bodies like the Industrial Aid Society on the one hand, and NUMARWOSA on the other) would "confuse ... and divide the black man." And third, was the fear that a federal structure would be imposed before differences between potential affiliates of the Federation had been satisfactorily ironed out.

The first and the third problems were raised at the First Feasibility Committee meeting held on 14 April in Johannesburg. Following the initial exploratory meeting in March, C.I.W.W. submitted a letter for consideration at the Feasibility Committee meeting suggesting certain principles of cooperation for the participating bodies. The first was that discussions should proceed on the assumption that the federation would be based not on "a loose working relationship, but on a formal close active involvement". As a background document later submitted by TUACC put it "The principle of cooperation is not one of basically independent bodies cooperating with each other when and as they feel like it ... Rather the principle is one of the unions pooling their resources and placing them under the control of the federation. In this way membership of the Federation gives one access to the pooled resources (transport, administration, offices etc.) and the benefits of membership are considerable and the costs of withdrawal higher". The second was that regional meetings should be held in all areas to establish lines of communication and to iron out difficulties that existed. And the third was that regional meetings should be arranged so as to accord every opportunity for membership participation. This last was in line with the general TUACC position, that worker representatives should have final control of the Federation and all its policy making decisions should be controlled by a majority of elected worker representatives (as opposed to paid officials).

Each of these positions was endorsed by the Feasibility Committee but they almost immediately gave rise to disputes and complications. In Natal and the Eastern Cape regional meetings went ahead with a considerable degree of success (although in the Eastern Cape neither the UTP associated Sweet Food and Allied Workers Union nor the Engineering and Allied Workers Union could be persuaded to take part). In the Western Cape on the other hand each of the unions which took part in the first regional meeting of (The Western Province Workers Advice Bureau, the Western Province Motor

Assembly Workers Union, The Food and Canning Workers Union, The Musicians Union) felt the time was not yet ripe for a Federation, that unions needed more development at grass root levels first, and that there was danger of rushing things at that point when there had been minimal previous cooperation between the participating bodies in the Western Cape. (It should be remembered that there was in any case a traditional hostility to national coordinating bodies in the Western Cape). The W.P.W.A.B. accordingly withdrew from the Feasibility Committee and was not subsequently to take any further part.

It was in the Transvaal however that the most contorted situation arose. Both the Consultative Committee and CIWW met individually to consider ways of cooperation, but agreement could not be reached on what was at once a trivial and yet a more fundamental issue. In accordance with its previous policy and with the emerging practice in other regions, CIWW insisted that the regional meeting should involve worker representatives and that it should take place at a time that worker representatives could attend. The Consultative on the other hand, in keeping with its previous activities, felt otherwise, demanding a meeting of secretaries only, upon which discussions immediately broke down.

It was against this background that a second Feasibility Committee meeting was held on 13 June 1977. Here another recurrent issue surfaced once again. At the first Feasibility Committee meeting in April 1977 a draft budget had been presented for R31,000, which would have provided resources for a permanenet office and a permanenet official. Both TUACC and CIWW took exception to this proposal on the grounds that it amounted to the creation of a bureaucratic super structure before effective regional cooperation had been achieved, and it was shelved until such time as regional cooperation was taking place. (R14 000 was eventually raised for Feasiblity Committee expenses). With that issue provisionally resolved, attention again reverted to the problems in the Transvaal and it was decided that the

Chairman of the Committee should attempt to bring the parties together in circumstances suitable to both. A meeting was accordingly arranged for Tuesday 21 June at 5.00 p.m., which would decide on an agenda for a further meeting and a date suitable to both groups. This finally brought the parties together, but still it transpired to be of little avail. Present were the Consultative Committee Secretaries from EAWU, SFAWU, Transport and Allied, South Africa Chemical Workers Union, Glass and Allied, Building and Allied, together with the Chairman, and two organisers from MAWU and one representative from the IAS. Mr. Sikhakhane of the Consultative was elected to the chair. The first issue brought up at the discussions was the composition of the bodies that could legitimately be involved (i.e. the second general area of contention mentioned earlier). The Secretary of EAWU insisted that it should be only unions and not educational bodies such as the IAS involved in the discussions, in which attitude she was supported by the other Black Consultative secretaries. The CIWW delegation responded by saying that since CIWW had been the body involved in the discussions on the Federation (both the first general meeting and the later Feasibility Committees) it had been assumed that its participation had been accepted in principle, adding that its concern now was to arrange a meeting at a time when executive members were present. Here the third bone of contention was once more exhumed, with the Secretary of the Chemical Workers Union replying that the Consultative saw this as the first of the regional meetings at which issues would be sorted out before the executives could be brought in. The MAWU Chairman (a worker executive member) expressed his surprise, but before any further discussion could take place Mrs. Hlongwane (EAWU) deadlocked the meeting by insisting that her executive were not prepared to engage in further discussions with CIWW until the guidelines laid out in the Consultative resolution of the first general meeting of the Federation were met. Matters were now effectively back to the situation that existed prior to when the first Federation meeting took place. And at this point Mrs. Hlongwane and other

Consultative secretaries withdrew leaving three Consultative secretaries to salvage what they could of the wreckage, a further meeting being tentatively agreed after the Consultative had had a chance to meet.

Cooperation in the Transvaal was thus effectively stalled and this proved to be a major stumbling block to the Federation for most of the next year. A further attempt to hold a Transvaal regional meeting early in September 1977 broke down over the same issue of whether executives should attend, while the attempt to present joint evidence to the Wiehahn Commission (in November) collapsed when the Consultative refused to take part (partly on the grounds it would appear, of giving evidence together with a registered union). All that remained was to hope that time and further contact might heal some of these divisions, and at a second general meeting of the Federation held in September 1977 (at which only the Glass and Allied Workers Union of the Consultative attended) it was decided to attempt to do jus that. Regional meetings of the executives of the different groups were to be held at least every 3 months over the next year; a general meeting was to be called in 7 months to consider the progress of the regional meetings; and a further general meeting was to be called in a years time to discuss the formation of the Federation.

With the exception of the Transvaal these meetings took place, but there the situation remained as intractable as ever. What was not apparent to the outside observer however was that differences were beginning to emerge in UTP and the Consultative, which would lead to some of these unions reconsidering their position. The presence of the GAWU at the second general meeting of the Federation was an early intimation of that, but more significant were differences of opinion emerging in the much larger EAWU. It is not the purpose of this article to detail or comment on these conflicts, which still reverberate today, nor on the ones that subsequently arose in several of the other UTP unions. Suffice it to say that the common complaint of the

executives who outsed Mrs. Hlongwane and other Consultative Union General Secretaries, was that their officials were behaving autocratically and were not informing their executives of correspondence or other dealings of the union (including the Union's attitude towards the proposed Federation) - the General Secretaries' reply being that it was they and not the executive that had membership backing.

These differences rumbled on through much of 1978 until a turning point was reached somewhere in August/September of that year. In the middle of the year Henry Chipeya, Secretary of UTP, had paid a visit overseas. He returned with various ideas about how to make the Consultative more effective, such as making it responsible for monitoring codes of conduct, commenting on the activities of the Urban Foundation and making representations in regard to Labour Legislation, all of which he set down in a letter to the Consultative unions. Most important of all however were his suggestions for structural change. He recommended that a conference of all the executive committees of the nine unions party to the consultative should be called to discuss forming or extending a coordinating committee which included executive members of the union and which was based on a strong constitution. Clearly the idea of an alternative federation was in the air, as was the first whiff of involvement from outside South Africa.

The Consultative secretaries however appear to have been luke warm to the idea and for this reason Henry Chipeya convened a meeting of the UTP unions' National and Branch Presidents and Vice presidents on 14 August 1978. The main business - which was to reform the Consultative into a strong and more representative coordinating body-only served to crystallise earlier differences. The Paper, Wood and Allied Workers Union position was that the Consultative Committee was non-existent as far as the presidents were concerned, since there was no compulsory responsibility to report back. GAWU pursued the same point by asserting that since the Consultative was neither efficient nor effective,

the long proposed Federation should get off the ground.

The Commercial, Catering and Allied Workers Union on the other hand spoke in support of their President's (Chipeya's) motion of strengthening the Consultative prior to Federation, while the Central Branch of the EAWU suggested that the question of federating be thrown to the members of the various unions. Finally Mr. Mhlangu (GAWU) pointed out that there was going to be a meeting of all the Transvaal unions involved in the Federation on 9 September 1978, and suggested that all the executives and union members attend this meeting so as to acquire more information about the feasibility of federating. Put to the vote this was carried with two abstensions.

The meeting of 30 August 1978 (which appears to have been the suggestion of the above UTP Presidents) marked a major step forward for the Federation. It was attended by a TUACC (Transvaal) delegation (CIWW having merged with TUACC earlier that year), one from UAW, Pretoria representatives from NUMARWOSA and a large number of delegates from the East Rand Branchs of Commercial and Catering and the EAWU and the Vereeniging branch of the latter union. GAWU were represented by their President, Vice President, Treasurer, and Secretary, while there were also workers in attendance from Paper, Wood and Allied and Sweet, Food and Allied. An initial objection was registered on the right of the UTP unions to attend, in a letter from Emma Mashinini, General Secretary of CCAWUSA, in which she claimed the UTP President's meeting which had sanctioned attendance at the meeting, was unconstitutionally held, but this was concluded to be ill founded. Thereafter much time was taken up with complaints from the UTP unions' delegates and observers about how they had been left uninformed about the progress of the Federation, and attacking their secretaries for this. Concern was also expressed about how delegates could oblige the calling of executive meetings of their unions to consider setting up a regional Transvaal committee. Finally, it was agreed to set up a regional committee, and to have

this referred back to constituent unions for discussion, which would also hopefully serve the purpose of establishing the representivity of the unions present.

The long anticipated regional committee finally met on 1 October in Sharpville, on the outskirts of Vereeniging. About 150 trade unionists and officials were present including most of the Consultative secretaries. Familiar objections were raised once again by them, in a somewhat filibustering fashion, notably the failure to receive the assurances demanded the first General Meeting of the Federation, the inclusion of service organisations, and the novel charge that what was in the offing was not a federation but a "general union".

Nevertheless, the question of the formation of a regional committee was eventually put to the vote, and five unions pledged their support (MAWU, UAW, EAWU, GAWU, PWAWU). Two other unions represented by their officials (the CCAWUSA and the BCAWU) informed the meeting that they had not had a chance of establishing the feelings of their members, while Mr. Sikhakhane of the SFAWU refused to say what the decision of his union was.

With the Transvaal regional committee set up the Federation was able finally to get moving. A seminar was arranged for 21 and 22 October attended by delegates of all the participating bodies (by this stage the Cape was represented by WPMAU) and both the constitution and basic policies of the Federation were provisionally thrashed out. These were returned for discussion and ratification to the executives of the participating bodies and were further polished in a meeting on 10-11 March 1979. Finally on 13-15 April 1979, the inaugural Congress of FOSATU was held, capping two years of frustration and hard work. It only remains now to detail the structure and the policies of the Federation before providing a concluding evaluation.

STRUCTURE OF FOSATU

1. The National Congress. The National Congress is the highest policy making body of the Federation. Each affiliated union is entitled to representation according to its size, up to a maximum of 20 representatives. It meets ordinarily once every three years, laying down general policy for the union and electing its main office bearers.

2. The Central Committee. Between meetings of the National Congress management of the Federation is vested in a central committee, which meets at least twice a year. The Central Committee is composed of two representatives from each affiliated union, at least one of whom must be a worker, three representatives from each regional council of which at least two must be workers; the President, the Vice-President an the General Secretary - this structure guaranteeing a worker majority.

3. The Executive Committee. Between meetings of the Central Committee the Executive Committee carries out the day to day administration of the Federation in accordance with the policy laid down by the National Congress and the Central Committee. It comprises the President, Vice President and General Secretary, and one representative from each regional council. It meets every two months.

4. Regional Councils. In each of the regions in which the Federation is established, regional councils will be set up. Each affiliate which has a branch or branches within the area of jurisdiction of the Regional Council is entitled to representation on the Regional Council in proportion to its size up to a maximum of 10 representatives. The Regional Council will meet ordinarily once every quarter, and will have jurisdiction over a wide range of regional issues.

5. <u>Regional Executive Committee.</u> Within each region, regional executive committees will be established to carry out the day to day business of the region in between regional council meetings. They will meet at least once every month and be comprised of two representatives from each affiliate with an active branch or branches in the region, provided that only one such representative shall be an official of such an affiliate. The regional office bearers of the regional council will be the office bearers of the Regional Executive Committee.

6. <u>Locals.</u> The Federation will strive to encourage affiliates to set up local offices of their unions, so as to facilitate closer liaison between affiliated unions. It will further endeavour to persuade such affiliates to set up a local executive committee to run the affairs of the local.

POLICY OF FOSATU

1. <u>Open Federation.</u> The Federation is open to all races and creeds as specified in the Consitution. It takes this position because it believes that only by achieving the maximum unity of workers at the workplace can worker interests be adequately protected and advanced.

2. <u>A Worker Controlled Federation.</u>

    i. The Federation is controlled by majorities of worker representatives at all policy making levels.
    ii. Those workers must be the authentic representatives of organised factory groups who have the capacity to report back to and be controlled by the workers they represent.
    iii. The workers concerned will be primarily production workers.

iv. No non-worker controlled bodies, e.g. service bodies like the IAS, will be represented on the Federation with the right to vote.
v. Most of the activity of the Federation will take place at a regional level where workers can most easily exercise control.

3. Industrial Unions. The Federation will be composed in the main of industrial union, believing that within the existing industrial relations structure this is the best way of promoting worker unity and worker interests and believing that this is the best way of focussing on areas of worker concern. This does not however reflect a belief in the ultimate desirability of the present industrial relations structure.

4. A Tight Federation. FOSATU will be a tight Federation:

i. by selectively granting admission and so ensuring a high degree of policy concensus among its affiliates.
ii. through its structure which obliges the joint pooling of resources and their sharing out at a local/regional level, and which establishes Regional Area Councils as the key decision making bodies on a wide range of regional policy issues, whose policies are binding on affiliates, thereby effecting a balance between certral and regional power.
iii. by constitutionally requiring, in contrast to earlier federations, cooperation at all levels of the federation, in each of which worker majorities will have control.

CONCLUSION

It should be apparent from the foregoing account that many of the criticisms levelled against FOSATU do not hold up. Rather than creating an unresponsive bureaucratic structure, it is organised in such a way as to concentrate most

decision making and activities in the regions, where workers can exercise maximum control. Rather than dividing workers it seeks to achieve the maximum unity through further amalgamated industrial unions (for example, a National Metal Union), and has attempted to banish any remaining fears on this score by acting in the most accomodating way possible. Finally, so far from according non-worker bodies influence, as is the case for example with the UTP, it specifically excludes them from direct affiliation. It must be considered a pity, in this context, that at or shortly after a meeting called by the African American Labour Centre in Botswana on 21-22 October 1978, the Consultative announced a decision to set up a black counter federation, and so sabotaged any hopes of a wider trade union unity.

It is of course true that some branches of affiliate unions remain relatively weak on the ground, but it is believed that close regional co-operation through the Federation will assist in strengthening them. In any case, such are the transformations taking place both in the superstructure and the grass roots of the industrial relations scene (e.g. the Wiehahn Commission on the one hand, and the movement of African workers into skilled jobs on the other), that a powerful and united organisation of labour is imperative, if the opportunities offered by the situation are not to slip away. FOSATU it is hoped, will be able to fulfill this role, allowing workers some control over their future, rather than being the passive objects of employers and the state.

(The sources on which this article has drawn are the records of the FOSATU affiliated unions, interviews with FOSATU officials and office bearers and press reports in the Rand Daily Mail, the Financial Mail, the Post, the Star, and the Spings Advertiser).

EVEREADY STRIKE

Riaan de Villiers

There are several features which lend unusual significance to the Eveready strike. It was the first legal strike by a registered union for a considerable period. Even more unusual is the fact that the strike centred around the refusal by an employer to recognise a registered trade union. The dispute has also become unusually complex and at the time of writing - some three and a half months after the strike began - it is still continuing with the final outcome unclear. This is due mainly to the fact that there was a highly organised attempt from the start by the union, the National Union of Motor Assembly and Rubber Workers of South Africa (NUMARWOSA), to exploit national and international labour links in support of its dispute against the company, a multi-national with its headquarters in England and therefore subject to the EEC code of conduct. It has therefore been something of a test case in the developing matrix of international accountability regarding South African Labour, and in the process has revealed much about the present potentiality and limitations of international action. Also, the strike triggered off considerable inter-union conflict in South Africa and brought to light some of the issues dividing the labour movement.

The strike started on Monday October 30, at the battery manufacturing plant of Eveready South Africa Limited in Port Elizabeth, a subsidiary of Berec SA (Pty) Ltd, in turn a wholly owned subsidiary of the Berec Group Limited, based in London.

On October 31, it was reported that a group of about 230 Coloured women, all members of NUMARWOSA, had gone on strike after the company had ignored an ultimatum to recognise the union and negotiate employment conditions with it.

Union spokesman said the strike followed a long struggle to win formal recognition in the plant, where it claimed a

membership of 396 workers out of a total of 475. They revealed for the first time that the union had declared a dispute with the firm earlier last year, which a conciliation boardd had failed to resolve. The board proceedings were later to become the subject of considerable controversy later.

On October 19, 62% of the union members in the plant voted to go on strike in a 66% poll. Their decision was backed up by a mass meeting of 1 300 union members in the Port Elizabeth area on October 25. At this meeting, seeds were sown for the later attempts to invoke international solidarity action. The meeting resolved that the union should petition the International Metalworkers' Federation, to which it is affiliated, for solidarity action if any workers were victimised because of strike action.

An ultimatum to the company to recognise the union expired at 12 noon on October 30, and the workers went on strike shortly afterwards.

Mr John Poulton, factory manager, denied that the company had refused to negotiate with the union. He said negotiations had broken down after the union had made ridiculous and unrealistic demands. He confirmed that the firm had warned workers the previous Friday that they would be sacked for breach of contract after being absent for one shift.

Union spokesman warned that they would appeal to the IMF if workers were fired. Mr Fred Sauls, general secretary, said the union leadership had advised the women to return to work, but they were adamant that they would not return unless the union was recognised, even if it cost them their jobs (1).

It did. The next day, all the striking workers were fired. Mr Poulton said they had done virtually unskilled labour and could be replaced very quickly. Many applications had already been received and production would not be affected

as new workers could be trained in a few hours. There were already many people at the gates looking for jobs (2).

For some time, there was confusion about exactly how many workers were involved. Union spokesmen consistently claimed about 230 women were involved, while Mr Poulton told the press that about 160 women had been sacked. This was disputed by the union, which accused Eveready of trying to play down the strike.

On the Tuesday, the union held the first of a series of meetings for the striking workers, said to be attended by about 230 women. At the meeting, the workers reaffirmed their decision not to return to work unless the firm recognised the union, and also decided to meet every day to keep up with developments. At that stage there had been no further contact between the union and the firm (3).

The next day, the union announced it was to launch a boycott of all Eveready products, and would request the IMF and the International Federation of Chemical and Energy Workers' Unions for solidarity action at all Eveready plants where they had members.

At the same time it was reported from London that Mr Lawrence Orchard, chairman and chief executive of Berec, had said the firm wanted a "genuinely multi-racial union to represent its employees in South Africa", and that it did not like segregated unions. The firm was waiting for the results of the Wiehahn Commission and hoped that such a development would then be possible. Also, the somewhat puzzling statement was attributed to him that the "strike was already old history and the women had already been recalled by their own shop stewards".

This statement was slated by a union organiser, Mr Brian Fredericks as "absolutely ridiculous" in view of the fact that the women had already been fired and were in the process of being replaced. "He obviously doesn't have the faintest idea of what's going on."

Meanwhile, the campaign to secure South African and international labour backing was getting under way.

On November 2, Mr Sauls attended an IMF meeting in *Mauritius. On the* same day, the IMF general secretary, Mr Herman Rebhan, issued a statement calling on the company to re-open negotiations with the union and pledging all assistance necessary to the union for a successful conclusion of the dispute. The union also announced that it had called for a special meeting of the IMF South African Coordinating Council to enlist its aid in the dispute (4).

In Port Elizabeth, another reality was making itself felt. On November 2, two days after the strikers had been fired, hundreds of women were reportedly braving downpours of rain outside the factory gates in an effort to get the jobs of the sacked workers. They refused to be turned away although most of the dismissed staff had already been replaced. Management said production was expected to return to normal within a few days (5).

The situation worsened still further. The next Monday, November 6, police with dogs were called in to control what was described as "thousands of angry work-seekers" at the gates. The crowd, mainly women, started throwing stones, shouting and raising their fists in black power salutes after being told that all vacancies at the factory had been filled. A lorry driver said his vehicle had been stoned (6). A union spokesman said he was disgusted at the women's "lack of dignity" in seeking work (9).

The next day, Eveready's managing director, Mr Ron Allin, said that 198 strikers had lost their jobs. The last 40 people had been taken on the previous day to bring the labour force back to full strength. He said production would be affected slightly while the newcomers were being trained - but not to any great extent (8).

On Monday November 6, the IMF South African Coordinating Council met to consider the dispute. The council, consisting of 11 South African metal unions affiliated to the IMF, is the only labour body on which registered unions and independent unregistered unions cooperate. This cooperation was to be severely strained, as differences over the strike triggered off long-standing friction between the council's so-called black caucus and registered unions, which later led to its temporary break-up.

After discussing the strike, the council issued a statement deploring Eveready's refusal to recognise the union. But it stopped short of backing the union's boycott campaign, saying the council would use all the means at its disposal "within the framework of industrial legislation" to get negotiations resumed.

More unqualified support came from the 12 registered and unregistered trade unions for black and coloured workers intending to form the new Federation of South African Trade Unions - FOSATU - which NUMARWOSA has played a leading role in forming.

In a statement the unions said they were appalled that a British company could be so intransigent as to force a legal strike - a rare event in South Africa - over recognition of a registered union. They also rejected as spurious the reason given by Eveready's British management that it wanted to recognise a multi-racial union.

"As representatives of black, coloured and Indian workers who have shown their commitment to non-racialism in forming the federation, we reject such management duplicity," the statement said.

A spokesman for the group said steps were being taken to help the dismissed workers financially and enlist support for the boycott campaign (9).

In Port Elizabeth a strike committee had been formed. The striking women were still meeting regularly and were running the local boycott campaign. Three weeks after the strike started, five women were arrested in Gelvandale and charged with littering. The charges related to the handing out of pamphlets setting out the background to the dispute and calling on workers to boycott Eveready products.

By then, stores in coloured areas in Port Elizabeth had taken Eveready products off their shelves, and in the Western Cape, a Coloured business association, which includes two large supermarket chains, had asked affiliated traders to join the boycott (10).

Meanwhile, there were events behind the scenes which were to lead to the near breakup of the IMF council.

As it later emerged, the council, at its special meeting on the 8th November, adopted a resolution that a delegation should meet the Minister of Labour, Mr Botha, to discuss the role the Department of Labour had played in the dispute. The decision was opposed by NUMARWOSA as it was satisfied with the role the department had played.

When the delegation, consisting of representatives of unions affiliated to the Confederation of Metal and Building Union (CMBU) met the Minister and department officials, they were informed about the proceedings of the conciliation board meeting and given other information.

As a result of the meeting, the CMBU delegates decided to launch an investigation into the strike and circumstances leading to it. CMBU representatives in Port Elizabeth met Department of Labour officials and together with a representative of the Suid Afrikaanse Yster en Staalwerkersunie, which has members in the plant, met the company management and spoke to workers.

They did not met NUMARWOSA or any of the fired workers. Matters came to a head when the CMBU men reported back on their findings at a council meeting held on November 29. There was a heated clash with Mr Sauls and he walked out, accompanied by representatives of all the unregistered unions in the council.

According to various press reports, NUMARWOSA and the other unions involved in the walkout charged registered unions with siding against NUMARWOSA with the Government and management. Delegates involved in the walkout said they had done so because a member union had been undermined by an independent investigation without being consulted. Mr Sauls said the delegation had acted outside its mandate, which was only to discuss the role of the Department of Labour. He objected to the fact that his union and the strikers had not been consulted which, he claimed, resulted in one-sided allegations. The most outrageous of these was that the union had engaged in gangster activities and intimidation such as threatening to blow up the homes of workers who did not take part in the strike.

He said the walkout was the culmination of a long-standing failure of some white unions on the council to cooperate. "They don't treat us as equals. They don't consult us and seem to care more about talking to management and the Government than us."

CMBU unionists involved in the investigation said it had been aimed at establishing the facts in order to help resolve the dispute. They had found that the union had misled them about the strike and had been unreasonable in breaking off negotiations with the company.

The then council chairman, the late Mr Barney Bouwer, said Eveready treated its workers well and he believed the union broke off negotiations without good reason. The union had misled the IMF about the reasons for the strike (11).

The walkout was seen by both sides as tantamount to the break-up of the council. Mr Bouwer wrote an urgent letter to the IMF headquarters in Geneva, pointing out that NUMARWOSA was acting irresponsible and appealing to the body to send a mediator to South Africa to resolve the dispute (12).

Meanwhile, the British Government had started to take an interest. A week later, it was reported that the Foreign Office in London had ordered a senior official at the British Embassy in Pretoria to fly to Port Elizabeth to investigate the dispute. The Foreign Office had also informed Berec that it was following developments in South Africa with close interest. A company official confirmed that some of the company's shareholders as well as trade unions - including the TUC - had taken an interest in the issue. Letters had been exchanged between unions and the company (13).

On 6 November, the IMF called on all affiliate unions world-wide to boycott Eveready products (14). The next day, it was reported that Mr Bouwer strongly objected to the call, "How can I support a boycott when the union concerned refused to negotiate. We are not saying that Eveready was not at fault. But the union did not follow the provisions laid down under the Industrial Conciliation Act." He said his view was shared by all the unions on the IMF council which had not joined in the walkout (15).

Controversy deepened in mid-December when the Minister of Labour and the Secretary for Labour, Mr Jaap Cilliers, joined the fray.

The Minister said the union had wrecked the conciliation board hearing, intimidation had definitely taken place during the strike, and the union had hampered negotiations by making derogatory and untrue remarks about conditions at Eveready. He claimed the firm had in fact negotiated with the union, and also slated the union for rejecting offers of mediation from the department. The Secretary for Labour said

the conciliation board had been called to discuss grievances about work conditions but the union had demanded recognition. Conciliation boards only handled disputes where conditions of employment were at issue, and recognition disputes were purely a matter between employer and union. He said Eveready had been prepared to discuss work conditions and his department had been prepared to do everything it could to resolve the dispute. The union however had been talking about recognition.

This account was rejected by Mr Sauls. He said the conciliation board floundered when management was not prepared to discuss union grievances because it would not recognise the union. "So there was nothing to discuss." The union had rejected the appointment of an arbitrator, as he could not pronounce on recognition.

Mr Fredericks rejected allegations of intimidation of workers, and said: "We appear to be up against on alliance of Eveready, the authorities and some registered unions" (16).

What really happened at the conciliation board meeting - and what was at the core of the dispute about the union's actions?

It appears to have been this: Union recognition normally falls outside the terms of reference of conciliation boards. It was nevertheless included as a negotiating point on the agenda, at the insistence of the union.

Management was prepared to negotiate employment conditions with the union provided it changed its "unreasonable" attitude and dropped some proposals which the firm was not prepared to consider at all. But it was not prepared to grant formal recognition to the union.

The union in turn demanded recognition as its first priority and would not negotiate employment condition without it. The meeting failed on this deadlock - and the later disputes about this difference in approach to trade unionism.

In mid-January, Dr Werner Thonessen, assistant general secretary of the IMF, came to South Africa and after a week of negotiations convened a council meeting on Saturday 20 January where the rift was healed. A concilatory statement was issued, saying that affiliates had agreed that a lack of co-operation may have led to misunderstandings. Council procedures would be investigated to ensure closer co-operation and affiliates reaffirmed their determination to work in accordance with and in the spirit of the council's constitution. A full-time secretary would be appointed to improve the council's services to its affiliates (17).

Meanwhile, the IMF had hardened its stand still further. On January 8 it was reported that the IMF had decided to increase pressure on Eveready and its parent company, Berec. It had also requested affiliates in Great Britain, Sweden, Germany and Norway to approach managements of Berec subsidiaries and demand the reinstatement of the sacked workers and recognition of the union in South Africa.

At the time of writing, the Eveready dispute appeared far from over, especially as regarded overseas action. Information was scanty but it was believed that the IMF and British unions would continue to exert pressure.

According to available information, the Eveready dispute was not mentioned in the first British government report on the EEC code released in the House of Commons. But the Foreign Office was believed to be bringing pressure to bear on the company. The IMF was also said to have gone a long way to promote action in European countries.

Some conclusions about the strike can however already be drawn, and certain characteristics pointed out.

It seems clear that the right to fire worker involved in a legal strike seriously weakens the strike weapon - especially at a time of unemployment like the present.

The sad events outside the factory gates in Port Elizabeth despite an intensive campaign to involve a politically closely knit community in the dispute, strikingly illustrated how mass unemployment weakens worker solidarity and demonstrated what drastic implications unemployment holds for organised labour.

From the conciliation board preceedings and the clash in the council, a clear and simple difference of principle emerged. "Establishment" unionists felt NUMARWOSA was unreasonable in demanding formal recognition as a first priority and should have negotiated without formal recognition, thus making incremental progress. They viewed the company's pay and other employment conditions as good and saw this as a material reason for branding the union's strike action as irresponsible.

For the union, the issue was the principle of formal recognition above all else - a priority they share, despite being a registered union with unregistered unions and reflecting the different value framework in terms of which FOSATU will be formed.

This difference, together with others which emerged during the clash in the council, reflects a substantial gulf between even the moderate white CMBU unions on the one hand and the FOSATU grouping on the other.

The healing of the breach in the council seems fragile. But perhaps more important is the way in which these differences may solidify on a broader scale after FOSATU is formed and the effects this may have in future.

At the time of writing overseas developments could still follow, but it seemed valid to conclude that international solidarity action takes long to mobilise and may not yet be an effective weapon where prompt redress, for example reinstatement, is required.

Questions must also be raised about the form such action takes. The firm was subjected only to moral pressure and embarassment, this it appeared able to ignore.

FOOTNOTES:

1. Rand Daily Mail,31/10/78
2. Transvaler, 1/11/78, Star, 31/10/78
3. Rand Daily Mail, 1/11/78
4. Rand Daily Mail, 2,3/11/78
5. Star, 2/11/78
6. Star, 6/11/78
7. Rand Daily Mail, 7/11/78
8. Star, 7/11/78
9. Rand Daily Mail, 7/11/78
10. Rand Daily Mail, 23/11/78
11. Financial Mail, 8/12/78
12. Rand Daily Mail, 1/12/78
13. Financial Mail,8/12/78
14. Rand Daily Mail,7/12/78
15. Star, 7/12/78
16. Financial Mail, 15/12/78
17. Rand Daily Mail,22/1/79

REFLECTIONS ON THE RIGHT TO STRIKE

AND THE CONTRACT OF EMPLOYMENT

Halton Cheadle

> 'The main object of Labour Law has always been, and I venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship' (1).

INTRODUCTION

The inequality of bargaining power between employer and employee is the key to understanding the peculiar nature of the employment relationship in our law. It is generally accepted that the individual employee has no bargaining power, except in exceptional circumstances (2). It follows that the 'contract of employment' which embodies the results of such a bargain, is no more than an acceptance by the employee of conditions already stipulated by the employer. The contract of employment has been succinctly described:

> 'In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and the subordination may be concealed by the indispensible figment of the legal mind known as the "contract of employment"' (3).'

There have been basically two responses to this inequality of contract, namely: the development of trade unions resulting in collective bargaining, and statutory intervention.

STATUTORY INTERVENTION

Throughout the 18th and 19th centuries, the state did not interfere in the workings of the laissez faire economy. Adam

Smith, reflecting the prevailing attitude at the time, stated in his Wealth of Nations that legislation regulating employment would be 'a plain violation of ..... (a worker's) most sacred property. It is a manifest encroachment upon the just liberty, both of the workman, and of those who might be disposed to employ him' (4). The American Supreme Court provides a good example of this attitude (5), towards legislation regulating conditions of employment. In Lochner v State of New York 198 US 45, it was held that legislation limiting the ordinary hours of a day in the Baking Industry was an arbitrary interference with the liberty of the individual protected by the 14th Amendment of the American Constitution. Mr Justice Peckham held:

> 'There is no reasonable ground for interfering with the liberty of a person or the right of free contract, by determining the hours of labour in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State interfering with their independence of judgement and action.'

The attitude of the State changed in the late 19th century in response to the increasing conflict between the forces of capital and labour which had begun to threaten the very existence of the State itself. In order to avoid the revolutionary development of this conflict, the State intervened by instituting legislation for minumum wages and working conditions, and indirectly by promoting conflict resolution through collective bargaining. In South Africa the Factories, Machinery and Building Work Act 22 of 1941 and wage determinations promulgated in terms of the Wage Act 5 of 1957 are examples of the former; whereas the Industrial Conciliation Act 28 of 1956 is an example of the latter.

COLLECTIVE BARGAINING

The fundamental premise of the 'collective bargain' is the

collectivity. On the employer's side, whether singly or association, the employer is a collectivity. 'The individual employer represents an accumulation of material and human resources, socially speaking, the enterprise is itself in this sense a collective power' (6). For the employee, the traditional collectivity has been the trade union, a voluntary association for the protection of workers and the furtherance of their interests.

The system of collective bargaining can be defined as negotiations between collectivities (or 'social powers' as Otto Kahn Freund calls them) culminating in the 'collective agreement'. For a proper understanding of the role of law in such a bargain or agreement 'the notion of countervailing powers is indispensable ... The principle interest of management in collective bargaining has always been the maintenance of industrial peace over a given area and period, and that the principle interest of labour is the creation and the maintenance of certain standards over a given area and period, standards of distribution of work, of rewards and of stability of employment ....' (7).

LAW OF DISMISSAL

It is with this background that the problem of the contract of employment and its termination should be introduced. In terms of the common law, either of the parties (employer or employee) may terminate the contract of employment in one of three possible ways, namely:

i. by notice defined in the contract or in the common law;

ii. by minimum notice prescribed by law;

iii. by summary termination for a material breach of contract.

No motive is required and no reason need be given. 'It is clear that the motive on the part of the employer, when

dismissing the employee, is irrelevant at common law' (see Kubheka and Another v Imextra (Pty) Ltd 1975 (4) SA 484 (WLD) at 488 B and Mustapha and Another v Receiver of Revenue Lichtenburg and Others 1958 (3) SA 343 (AD) at 358 F).

In legal terms this freedom to terminate the contract of employment applies equally to both the employer and employee. It is a necessary corollary of what is called the 'freedom of contract' which may in many spheres of life (not only in labour relations) be no more than the freedom to restrict or to give up one's freedom. Conversely to restrain a person's freedom of contract may be necessary to protect his freedom. The social constraints on an employee are in the vast majority of cases: his replacability; structural unemployment; loss of income without capital resources; demands to feed dependants who rely almost entirely on his income, and the short period of notice. On the other hand, the employer normally has large capital resources. Given the replacability of most employees, there are few social constraints on termination. It is in this social situation that demands for 'job security' and protection against 'unfair dismissal' have acquired such importance. The issue of 'unfair dismissal' has only recently surfaced as a demand being made by the registered unions (8). The introduction of collective bargaining as a means of peacefully resolving the conflict of interests in a modern capitalist society has had to contend with the employer's power to dismiss. The State had to intervene in order to protect the collectivity by curtailing this power of dismissal. The victimisation provisions in the Industrial Conciliation Act and the Wage Act outlaw dismissal for reasons of being a member of a collectivity or carrying out its lawful activities (9). The victimisation provisions are an explicit awareness of the social power of the employer and the threat it holds to the orderly development of collective bargaining. In Rooiberg Minerals Development Company v Du Toit 1953 (2) SA 505 (T) it was argued on behalf of the employer that the victimisation provisions did not forbid the actual dismissal of the employee, but merely attached a penalty to the

performance of such an act. Mr Justice Blackwell rejected this argument stating:

> 'That an employer could be allowed to victimise at will, so long as he was prepared to pay the penalty? I have no hesitation in answering this question in the negative. So far from such a construction carrying out the intention of the legislature, it would, in my opinion, frustrate it. How could the cause of industrial peace, and, in particular, the protection of legitimate trade union activities on the part of the employee be safeguarded, if an employer were allowed to take up the attitude contended in this present case? Instead of industrial peace, there will be industrial war' (10).

It is important to note that the victimisation provisions also provide for the enforcement of the collective agreements in that they protect workers who may report breaches of the agreement in their particular factory.

STRIKES AND DISMISSAL

It will be the central argument of this article that the lawful strike be accorded similar protection either through explicit statutory intervention (ie. by widening the definition of victimisation to include lawful strikes) or through judicial recognition of the policy considerations that underly the 'right to strike'. The position at present is that if workers go on unlawful strike, they breach their contract of employment in that they refuse to work, thereby entitling the employer to dismiss them for a material breach of contract. The central case is Rex v Smit 1955 (1) SA 239 (CPD). The facts were that 300 employees went on strike over the dismissal of 3 of their co-employees. They were dismissed and when they refused to leave the premises they were charged with trespassing. Smit was charged and convicted. No evidence was led as to the unlawfulness of the strike and an appeal the court proceeded on the assumption

that the strike was lawful. The appellant argued that because the strike was lawful, the employer was not permitted to terminate the services of the strikers for refusing to work, and therefore the strikers were not illegally on the premises of the employer. Watermeyer AJ (with Steyn J concurring) rejected the argument as fallacious:

> 'At common law an employer clearly has the right to dismiss a servant who refuses to carry out his contractual obligations to work.... I have not been able to find any provision in the (Industrial Conciliation) Act ...... which 'legalises' strikes in the sense that it authorises an employee to break his contract of employment by participating in a strike. All that the Act has done is to declare that striking in certain circumstances constitutes a criminal offence. If these circumstances are not present, then no criminal offence is committed and in that limited sense, the strike is legal. It does not follow that an employer is deprived of his common law right to dismiss an employee who refuses to work'.

It is evident that the learned Judge distinguishes between a 'right' and a 'freedom' to strike. The difference is decisive because, if employees have no right to strike, they cannot break their contracts in the lawful exercise of such rights. In Italy and France there is a constitutional guarantee of the right to strike and the courts there have interpreted the strike, not as a breach of contract, but as a form of suspension. If, on the other hand, it is a 'freedom', a power or a capacity, then on the face of it there appears to conflict between one's contract and one's freedom to strike. When an employee enters into a contract, he must implicitly accept the condition that he will not exercise this freedom. Though he is free to strike in terms of the criminal law (in certain circumstances), his exercise of it is restricted by the contract into which he has voluntarily entered.

The learned Judge has recently been criticised. In an article Status en Kontrak in die Suidafrikaanse Arbeidsreg the author states:

> '(Die saak).... is die enigste geval waar die moontlike regmatigheid van die staking bepleit het, maar ongelukkig het die hof hom hier teen die dienskontrak blindgestaar en die hele arbeidverhouding uit die oog verloor. Dit is betreur dat ons howe nog dikwels behep is met die beginsels van die gemeensregtelike dienskontrak terwyl die wetgewer al hoe meer klelm lê op die arbeidsverhouding se kollektiewe elemente wat so 'n belangrik rol speel.' (11)

Professor Claasen in his article Stakingreg, 'n Nuwe Teorie (12) also rejects the view that a strike should constitute a breach of contract. He accepts the implicit distinction made by the learned Judge, namely that the strike must be conceived as a capacity rather than a right. However, he states that a strike must be seen as an integral part of the collective bargaining process. There must be a state of equilibrium in order for the process to function. The employee's capacity to strike balances the employer's right to terminate work. Otto Kahn Freund's view in Labour and the Law on p. 224 is thus approved of:

> 'These are the ultimate sanctions without which the bargaining powers of the two sides lack credibility. There can be no equilibrium in industrial relations without freedom to strike' (13).

It is important to note that the criminal provisions relating to strikes in South Africa are directly related to the underlying doctrine of collective bargaining. On one level, the criminal provisions (14) create the basis for a form of pacta servanda in that strikes arising from the existing provisions of an Industrial Agreement are outlawed during the currency of that Agreement (See section 65 (1) (a). On another level, the purpose of the provisions is to

legally ensure that the strike is the ultimate sanction: the lawful strike may only occur after attempts have been made collectively to resolve a dispute. Section 65 (1) (b) of the Industrial Conciliation Act requires Industrial Councils to consider a dispute before a strike can lawfully take place. In the Black Labour Relations Regulation Act (15) a lawful strike can only take place after the matter giving occasion for the strike has been referred to one of the Committees provided for in the Act (see section 18 (1) (b)).

The strike has a function beyond the mere protection or improvement of particular workers' interests. It serves to maintain the whole system of collective bargaining. The right to strike must then be understood in terms of the policy considerations underlying the different labour laws. It might be more important to understand the strike as a form of 'collective right' than an as an individual right. Jurists have tended to overlook the functional role of the strike in collective bargaining in interpreting the strike provisions as a 'power' (or a freedom) rather than as a 'right'.

The attempts to resolve the dilemma posed by the conflicting principles of collective bargaining and the contract of employment have tended to be in terms of the contract itself. In Morgan v Fry (2) Qb 710 CA, Lord Denning relies upon the 'implies term'(16):

> 'It is an implication read into the contract (of employment) by modern law as to trade disputes.... if the strike takes place, the contract of employment is not terminated. It is suspended during the strike; and revives again when the strike is over.'

In Rooks v Barnard 1964 AC 1129 Donovan AJ (17) held that the modern tendency was to accept the contract of employment, with its unique prerequisites of collective bargaining and equilibrium, as suspended during a strike and lock-out, ie. the basis of suspension is that of 'silent consensus' represented by the fact that the striking employees are not generally dismissed.

> 'The strikers do not want to give up their job; they simply want to be paid more for it or secure some other advantage in connection with it. The employer does not want to lose his labour force; he simply wants to resist the claim.'

Professor Claasen argues that the 'defective performance' theory is juridically more sound. In terms of this theory a strike constitutes non-fulfilment of the employee's obligations under the contract of employment, but in the form of a 'temporary supervening impossibility of the performance'. With a supervening impossibility the contract is suspended and only comes back into force as soon as the supervening circumstances disappear.

It is his intention to give a Roman-Dutch basis to the same legal principle espoused by Lord Denning. It is a pity that our judicial thinking requires old legal authorities to explain new phenomena. In modern industrial societies the contract of employment is fast becoming a species of contract sui generis, and it is contrived legal thinking to rely on pre-industrial principles of contract.

It is submitted that the answer to the dilemma is not to be found in the common law of contract. Fourie states:

> 'Ons howe behoort, veral in die lug daarvan dat arbeidsregtelike bepalings oorgewend kollektiewe karakter het, die begrippe "diens-kontrak" met groot versigtigheid te benadig, aangesien die kollektiewe arbeidsverhouding, waar kontraktuele bedinging 'n ondergeskikte rôl speel, die belangrikste verhouding is ' (18).

Accordingly, the strike is not a mere refusal to work, it plays an essential role in the workings of collective bargaining, nurtured and promoted by the Industrial Conciliation Act. By refusing to see its collective character, the courts have overlooked the policy consider-

ations underlying the system and thereby inadvertently subverted it. By virtue of the collective character of the employment relationship, a lawful strike in South Africa should not constitute a breach of contract, and if judges do not give effect to these considerations, then the victimisation provisions should be widened so as to prohibit dismissals for lawful strikes.

FOOTNOTES:

1. Otton Kahn Freund Labour and the Law 2nd ed. (Stephens) p. 6. I have drawn extensively from this work in order to recommend it as an essential text for the study and understanding of labour law.

2. Freund op. cit. p. 6 and see Allen Fox Beyond Contract, Work, Power and Trust Relations.

3. Freund op. cit. p. 6.

4. Adam Smith Wealth of Nations Vol. 11 p. 225.

5. In Godcharles v Wigeman 113 Pa St 429 the court held that a statute requiring labourers to be paid wages in money and not in goods was degrading and insulting to the labourers in that it prevented them, as persons having full legal capacity, from making their own contracts for the payment of wages. In State v Fire Creek Coal and Coke Company 33 W Va 185 the court held that legislation prohibiting mine and factory owners from selling their own merchandise to their employees at a greater profit than the sale of such merchandise to the public, was invalid because it was an unwarrented restriction on the freedom of contract. These cases, together with further examples, are cited on p. 7 and p. 9 in Aronstam Consumer Protection, Freedom of Contract and the Law (Juta 1979).

6. Freund op. cit. p. 6.

7. Freund op. cit. p. 51.

8. This has largely taken place because of three factors:

   i. The control of the official collective bargaining system has been in the hands of whites who provided for 'job security' by other means (such as job reservation, closed shop and racial discrimination).

   ii. Blacks were not part of the collective bargaining system and were not able to make their presence felt. Agreements entered into between the unregistered unions and employers stipulated dismissal procedures.

   iii. With the gradual process of deskilling and dismantling of job reservation, there has been new concern for 'unfair dismissal' as is evidenced by clause 35 of the Iron and Steel Industrial Council Agreement.

9. s 66 of the Industrial Conciliation Act and s 25 of the Wage Act. Note that the provisions of the Wage Act are generally held to apply to unregistered union as well.

10. Rooiberg Minerals Development Company v Du Toit 1953(2) SA 505 (T) p.508.

11. J.S.A. Fourie Tydskrif vir Hedendaagse Romeins Hollandse Reg 42 (1) February 1979. See also the discussion of this article in Labour Law Bulletin Vol. 1 No. 5 April 1979.

    The case is the only example where the possible lawfulness of the strike was dealt with,but unfortunately the court looked no further than the contract of employment thereby losing sight of the whole employment relationship. It is unfortunate that our courts are still concerned with the principles of the common law contract of employment while the lawgiver has

accentuated the collective element of the employment relationship, which plays such an important role.

12. Published in Tydskrif vir Regswetenskap Vol. 3 No. 1 1978. See also Labour Law Bulletin Vol. 1 No. 2 January 1979.

13. Freund op. cit. p. 224.

14. Industrial Conciliation Act No 28 of 1956 s 65.

15. No. 48 of 1953 s 18.

16. Morgan's case is still the most authoritative decision in this regard. However, it was distinguished in Simmonds v Hoover Ltd (1977) 1 All ER 775. In this case the position prior to Lord Denning's judgement was reverted to.

17. Lord Donovan has subsequently questioned the suitability of the suspension theory. See the discussion on the Donovan Report in Modern Law Review Vol. 34 1971 p. 275 by K Foster.

18. Fourie op. cit.

    Because of the collective element in labour law, our courts ought to approach the contract of employment with great care. The collective relationship in employment is the most important aspect of the relationship whereas the contractual agreement plays a subsidiary role.

STRIKE AT RAINBOW CHICKENS HAMMARSDALE, NATAL

JANUARY 1979.

Liz Hosken

INTRODUCTION

Rainbow Chickens (Pty) Ltd is a South African Company, 90% owned by Stanley Methven (MD) and family. The balance is held by Irvin and Johnson, which is a subsidiary of Anglovaal, in turn a subsidiary of Anglo-American.

Rainbow Chickens is registered with the Industrial Development Corporation (IDC), which operates in border areas. This means that the enterprise receives tax and plant concessions and is exempt from wage regulating measures - incentives required to entice industries to the peripherally located border areas. Reduced wages are a particularly important cost factor in a labour intensive chicken-processing operation.

The main breeding houses supplying the Rainbow Chicken processing plant in Natal, lie within approximately 30 km of the plant, which is located in the Hammarsdale border area. This was declared a border area in 1960, but by 1968 it was considered to be fully developed, and consequently the concessions were withdrawn. It would appear that Rainbow Chickens falls under no wage regulating machinery. Recently the Labour Department indicated that it too was unclear of Rainbow's position, but considered that these workers were probably classified as farm labourers until 1977. They have asked Pretoria for clarification.

The Factories Act does provide certain basic rights for workers in stipulating hours of work, periods of leave and requiring factories to have certain basic facilities, such as toilets etc, but it does not set down minimum wage

levels. However it is worth noting that Hammarsdale is predominantly a textile manufacturing area, an industry notorious for its low wages.

In December 1973 Rainbow Chickens began expanding from this Natal base into the lucrative Cape poultry market. The scheme involved the establishment of a breeding farm, about 20 maturing houses, each able to contain 300 000 mature chickens (broilers), and a processing plant. The Cape processing plant is one of the most modern in the world.

This processing plant began production in February 1976, employing 1140 workers and producing 270 000 broilers a week. By the end of 1976, R20 million had been invested in the project. Although largely financed by way of retained earnings from Rainbow, Natal, the company borrowed R4 million from the IDC.

Rainbow made a taxed profit of R2 504 185 million in the year ending June 1975, which was an increase of R1 266 on the 1973 profits. The media reported this as a slowdown in profit growth, despite a 43% increase in turnover to R25 million over the same period. At that stage Rainbow had fixed assets of R26,6 million and was going ahead with plans to increase them to R41,6 million.

In May 1976 it was reported that South Africa's per capita chicken consumption had surpassed that of mutton. However by the following month temporary overproduction of white meat had lowered the chicken prices. During the same period the large feed companies began buying into the broiler industry, causing considerable difficulties for small producers.

This new trend has resulted in the centralisation of the broiler industry to the extent that four companies now supply 75% of the country's broilers. Rainbow chickens, although independent of the large feed companies, claim approximately 40% of the domestic market. The second and third largest producers, Farm Fare and Country Fare, are controlled by Premier Milling and Tiger Oats respectively.

Despite the fierce competition in the industry in 1976, it has been estimated that there was an almost 30% increase on the 1975 sales figures. Compared with other countries however there would seem to be room for much more growth. (UK per capita consumption was 12,6 kg, U.S. 13,4 kg, Israel 30 kg and South Africa 8,9 kg in 1976, Sunday Times, 20.6.76).

Mr Lurie of Country Fare, estimates that "Non-whites consume 50% of the South African chicken production" (Sunday Times 20.6.77). In view of the growing black earning power, the higher cost of fish and the ever rising cost of red meat, chicken producers consider themselves poised to exploit a lucrative market.

By April 1977 recessionary trends in the economy, together with a higher price of feed and fierce competition, had reduced Rainbow's growth from 25% per annum to 5% per annum. Under these conditions it was obliged to find new outlets. Rainbow elected the Middle and Far East as a target area and by 1978 had a fixed contract with Japan for 100 000 kg of deboned chickens per month, which could yield up to R2 million per annum in foreign earnings.

Despite an expanded market Rainbow felt it necessary to retrench staff in August 1977 (details are not obtainable). Since this period there have been few newspaper reports, but it is rumoured that times are hard for Rainbow, primarily because it has lost its Japanese contract.

It is against this background that the worker's experience and conditions in the Rainbow factory should be related.

CONDITIONS AT HAMMARSDALE, AS RELATED BY A GROUP OF WORKERS.

On Tuesday 2nd January 1979 approximately 150 workers went on strike just after 2.30 pm. when their shift was due to start. By the next day almost 600 workers were on strike, as

the other shift workers joined the first striking shift, the ostensible grievance being the failure of management to advise them how much their increases were to be.

Before going into the details of the strike, the factors leading up to the strike will be briefly recounted.

Until June 1976, workers claim that they were receiving an increase every 6 months. That year management claimed they had grave financial problems which prevented them from giving an increment.

The following year, 1977, workers were informed that because of the rising prices of food they would have to begin paying 55c per week for their company meals, which had previously been gratis. Meals have apparently deteriorated since 1977 and now consist largely of "chicken insides and cabbage", according to workers.

The workers were not sure exactly how many people were retrenched in August 1977. Nevertheless this seems to have reinforced the worker's insecurity, as they feel they might be "dismissed for no reason "or" sometimes when(they)are off sick, (they) come back to find (their) jobs have gone."

One of their main grievances is that the assembly line moves too fast, so that they are not able to keep up with it.

They always have to work at a very high speed - except apparently when the manager comes to inspect the factory and the machines are slowed down.

The Hammarsdale plant operates on a double shift system. Workers complain that the length of their shifts are unclear. The shifts start at 6 am. and 2.30 pm, but workers never know when they will finish. Sometimes a shift may be from 2.30 pm. to 1 or 2am. the next morning, while other times they might finish at 10 or 11 pm. This often results in fluctuating earnings, which together with the other factors set out above, creates a most insecure working environment.

THE STRIKE.

On Wednesday 28 December 1978, a few workers approached the personnel officer for an increase that week. He replied that he could do nothing until Mr. Mansfield the manager, returned from leave. Mansfield returned later that week, but workers were not approached on the issue.

On Tuesday 2nd January 1979, the workers found that there was no increase marked on their clock-cards. The 6am, A shift of the 2 neighbouring plants, P1 and P2, started work. When, however, the B shift of plant P2 came to work at 2.30 pm and saw no change in wages indicated on their cards, they refused to work. The few who did begin working were eventually required to stop work when management stopped the assembly lines.

The workers then assembled outside the factory and explained their grievances to management. Firstly, management had promised them an increase in January which was not marked on their cards secondly they requested a larger increase, some said 10c, others 15c and others 20c.

Management told them not to shout all at once, but to elect a committee of 5 men and 5 women, to represent them. The workers refused, saying they wanted to speak for themselves. Managements' response was to say that they in fact had more expenses than the workers. Management conveyed the impression that they would have explained this to the workers, if the workers had been capable of understanding the complexities of business management. However, management assured them that costs were so great that they might have to close the factory.

Eventually management told the workers to go home if they did not want to work. The whole of shift B from Plant 2 left the factory premises.

The next day, Wednesday 3 January, shift A arrived at 6am., to find shift B at the gates, where they learnt of the strike by the P2, shift B workers. All the P2 plant workers then went to plant P1 and persuaded the A shift to come out on strike. The workshop staff also came out on strike, and the guards shut the workers out of the gates.

Management came to the gate and told workers that they should go back to work before they would be told how much their increase would be. The workers refused to return until they had agreed to the increment. Management then told them to return the next day at 2.30 pm.

When the workers arrived on the Thursday, management, one government car, approximately 3 uniformed policemen and what appeared to be about 10 plainclothes policemen "who were all over the place, some looking through binoculars" - were waiting at the factory. These people said and did nothing, they simply watched.

Management greeted the workers and told them they would be given full pay for the 3 days on which they were on strike. However, management was not keen to "shout out the increase", according to the workers, who again refused to return to work until they knew what their increment would be.

Eventually management said they would give an increase of 7c/hour. Although not all the workers were satisfied with the increase, they decided to return to work, more particularly because they were being paid for the days during which they had been on strike.

The workers were then taken back to their homes in Hammarsdale, by transport provided by the company. Management had told them to start work again the following day, Friday 5th January.

The workers felt that this strike was successful because firstly they had won a reasonable increment, secondly

because they had been paid for the days they were out on strike, thirdly worker solidarity had been enhanced throughout this period and workers were now more unified and fourthly they felt that a strike "makes things straight" for both workers and management.

CONCLUSION.

This last point seems to have indicated that where workers have no form of trade union representation, they have no alternative but to strike when grievances mount up, as this is then the only way left "to make things straight" between workers and management.

An interesting point is that no workers were fired as a result of this strike. This is uncommon as usually management fires "ring leaders" or agitators in order to divide the workforce and indicate to the strikers that they never wholly succeed, because they sacrifice a worker or maybe a few workers in the process. Perhaps a determining factor was worker's refusal to elect a representative committee of 5 men and 5 women to negotiate with management, so that the leaders could not be identified, and were thus protected from victimisation.

Moreover, with prevailing high unemployment, management could have employed new workers, thereby decreasing the duration of the strike and saving itself from having to pay wages for the period when the workers were on strike. Perhaps this is because workers have to acquire a certain amount of dexterity and speed on the production line which takes time. To have to train a large group of new workers may therefore be very costly.

In April this year, however a female worker was fired "because she was too slow", in spite of the fact that she had already been working for the firm for several years. Two men were also fired because they allegedly refused to give management certain information on the union.

In response to this workers demanded a meeting with management that week. In spite of the fact that the Labour Department agreed to attend, management postponed the meeting at the last minute, to the next week. At this second meeting management told workers that their dismissed colleagues would be re-employed the next day.

The workers had also requested the formation of a Works Committee, as at this stage there were no committees in the factory. Such a committee was formed early in May this year, and is in operation despite the fact that it is unregistered. The Labour Department is apparently investigating the sector under which Rainbow would fall, because if it is farming, then the Works Committee cannot be registered.

In conclusion, it is clear that Rainbow management have handled their "labour problems" in a fairly sophisticated manner, as compared with other South African management in that, despite bad working conditions and the very belated formation of a Works Committee, they defused the issues that arose fairly rapidly, thereby curtailing the development of any further "labour unrest". It could be speculated that this was in response to a high potential for unrest in the compact and volatile Hammarsdale area. In this area, unemployment is high and wages are exceptionally low, both because of the dominance of the textile industry and its status as a border area where wages are usually low. Alternatively, given the company's somewhat precarious position at present they might have been sensitive to an extended period of production loss.

DETAILS OF STRIKES DURING 1978

Carole Cooper

On the 30th January about 800 building workers employed by Ilco Homes (Pty) Ltd staged a three hour work stoppage outside the company's Phoenix yard, just north of Durban. The workers, mainly Africans but also some Indian and coloured craftsmen, said the dispute arose after Ilco Homes gave them only 3 weeks pay in their last wage packets. Workers were also dissatisfied with the company's policy of deducting a full one-hour's pay from those workers who reported even 5 minutes late for work. Police were on standby during the dispute. The men returned to work after management had agreed to investigate their complaints (Daily News, 30.1.78).

In February about 1 000 African workers went on strike at the Isithebe township near Mandini because they were paid less than Indian and coloured workers; they were not entitled to sick leave pay; the workmen's compensation forms were not completed by some firms, and because of the appointment of Indians to managerial positions. All 28 factories in the townships were involved, bringing production to a halt. Strikers urged workers in vehicles and buses entering the township to join the strike and several vehicles and buses were stoned, as well as the beerhall owned by the Corporation for Economic Development. Police were called in and fired teargas. Order was restored at about 1 pm. A deputation was appointed to discuss the workers' grievances with the KwaZulu government. After a meeting with employers KwaZulu's Minister of the Interior, Dr. Dennis Madide stated that they had made no specific proposals but seemed prepared to negotiate. He said that the problem was that the workers themselves had made no specific wage demands, although they clearly felt exploited by some employers who were paying as little as R6,50 a week.

About 200 workers protested in February over the lack of work at a Durban stevedoring firm. Police were called in to ensure that no trouble broke out when the workers gathered at the Albert Terrace depot near the docks. The company's chairman Mr. Graham, stated that the firm offered employment to workers on a daily basis and that not all workers could be placed each day. Another reason for the workers' dissatisfaction was a misunderstanding about the method of deducting hostel fees from workers' wages. Mr. Graham said the firm deducted the fees and paid the money to the Department of Plural Relations and Development (Natal Mercury, 17.2.78).

About 100 workers walked out at Epol (Pty) Ltd in Vereeniging in March because of dissatisfaction with Mr. D Roux, the transport manager. Among their complaints about Mr Roux was that he had unfairly sacked several workers over a period of time, sometimes giving no reasons; he docked their wages and they failed to receive all their overtime pay; he made unreasonable demands on the workers, for instance, that only two crew members be used for one truck and that each truck do two loads a day. The workers stated that they had complained to the management on several occasions but nothing had been done. The striking workers demanded that Mr Roux be removed and that consultation between the company's manager and officials from the Johannesburg head office and themselves be held to discuss their grievances. Commenting on the strike, Mr Tony Bloem, a director of Epol and deputy chairman of Premier Milling, stated that top officials had visited the plant to try to settle the dispute. Mr Peter Wrighton, another director of Epol, stated that after the workers had refused to negotiate they were given an ultimatum to return to work or be dismissed. At first they all opted for dismissal but then began to return. In the intervening period management employed 30 new workers to man its transport operation and four of the 70 workers who returned were unable to get their jobs back. The issue was apparently settled through consultation with the liaison committee, Mr Roux retaining his job (Rand Daily Mail, 11.4.78).

On 8 April about 2 000 African surface workers at the Blyvooruitzicht Gold Mine near Carletonville struck, as they felt they should also receive pay increases which had been granted to underground workers, following a strike by approximately 7 000 of them over pay, the previous week. By the following Monday more than 90% of the workers had resumed work. Management pointed out to the workers that, unlike the underground workers, they were not eligible for an increase as they were being paid in line with the rest of the mining industry. The workers accepted this (Rand Daily Mail, 11.4.78).

The West Rand Administration Board fired 307 garbage workers, mostly Transkeians, in April as they had refused to work during the Easter weekend unless they were paid before the weekend. Mr J Bosman said WRAB regarded the men's refusal to work as a breach of contract and that the accounts department could not accommodate their demands. The men were replaced by 310 workers from the north eastern Transvaal. (Rand Daily Mail, 5.4.78).

In April 600 construction workers stopped work at Ilco Homes in Mitchell's Plain. The reasons for the strike were disputed by the employers and the Administration Board. The firm held that the strike was due to the Administration Board's increase in housing service fees. However the Board's chairman, in a statement, said that "the officials of the Board were advised by the workers that they stopped work because of a difference with their employers over the payment they had to make for accommodation, and they did not stop work to protest against the increased rates for services provided by the Board". Ilco Homes provided housing at Guguletu for contract workers and charged them R2 a week as well as the employer's fee. The workers paid Board charges which had increased from R3.25 to R6.00 per month. Workers were receiving R35.10 for a 45 hour week (1). When an ultimatum was put to the workers either to end the strike or return to the Transkei, 500 decided to return home (Cape Times 26.4.78).

About 1 500 African and Coloured workers downed tools at the Sigma Motor Corporation assembly plant at Silverton near Pretoria in May, as they wanted immediate details regarding their demands for a wage increase of 50c per hour for the year. One account said that the workers claimed they had not received an increase since the plant had been taken over by Sigma eighteen months previously, despite promises made to the liaison committee by management. Another account stated that the liaison committee told workers that no rise would be given because of thefts. Management issued a statement stating that the plant's liaison committee had met regularly since 12 April to negotiate an increase. They commented that "as far as we can ascertain the cause of the stoppage is that workers have requested an immediate indication of the time and extent of the increase" (Rand Daily Mail, 2.5.78).

The workers returned to work after two days and later received pay rises in which the minimum rate was raised from 58c per hour to 61c per hour. The average pay for Africans before the increase was given as 75c per hour, with novices being employed at 64c an hour (Star, 5.5.78). Two of the unions active in the plant, the registered (coloured) National Union of Motor Assembly and Rubber Workers and the unregistered (African) United Auto Workers stated they believed the incident was caused by worker dissatisfaction with the liaison committee's handling of pay negotiations. They also complained that management had been using the committee to thwart them. After the strike, management met Mr Fred Sauls, secretary of NUMARWOSA, to discuss the firm's relations with the unions. Management informed Sauls that both unions could organize in the factory, but as they only represented 200 of the 1 500 strong workforce the firm would not recognize the unions as yet. In the meantime management stated it would continue with the liaison committee structure (Financial Mail, 12.5.78).

In May, about 400 drivers of the Vaal Transport Corporation went on strike as they were dissatisfied with their revised annual increment and stated they would reject their wages if

the increment was included. When the increment was included, they refused to work until given their normal pay. When negotiations involving the works committee ended in deadlock, a government official was called in to mediate. Buses were running again in the afternoon and apparently all drivers had received their normal wages (Rand Daily Mail, 19.5.78).

On the 25th May the entire African labour force at the huge Blaikie Johnstone timber yard at Mobeni stopped work in support of a demand for a pay increase. Company officials talked to the men after a works committee delegation held discussions with management. The workers returned to work the following day (Daily News, 26.5.78).

About 800 members of the SA Airways Engineering Association threatened at the second of two lunchtime protest meetings in May to implement a go-slow, as they had had no reply from the Minister regarding their demands to be given union recognition, and as the SAA had not yet completed its investigations into the Association's pay demands. The meeting had followed a breakdown in wage negotiations between the Artisan Staff Association on the SA Engineering Association's behalf, and airways officials. Strike action was averted when the Association decided instead to approach the Minister a second time.

One hundred and sixty women employees of Transkei Hillmond Weavers were fired after they downed tools in May over a pay dispute. The women claimed some workers received 60% increases and others only 2,5%. An official, confirmed these percentages, saying they were adjusted on merit. Those who received the highest increases had been promoted to responsible jobs in the factory. Workers were also dissatisfied with the liaison committee's handling of the matter. The issue was handed over to the Transkei Department of the Interior for investigation (Rand Daily Mail, 4.5.78).

On the 5th July, about 50 black workers at Cardoso Cigarette Depot, Doornfontein, stopped work for about 4 hours and demanded higher wages and better working conditions. Their spokesman said the main complaint was that nine drivers were replaced by whites during May. Other grievances included a bar on sick pay, no lunch and tea breaks and vulgar language used by some white workers, who assaulted their black colleagues, without reason. The men also complained that they were made to work nine hours a day without overtime pay. The workers demanded a R5 increase. After consulting management, the firm's spokesman offered them a R2 increase. The men were not satisfied with this. They returned to work after reading an agreement with management through a Department of Labour official. He assured them that management would recitfy all grievances (Daily News, 6.6.78).

On 1 August, bus drivers working for the Alberton municipalty were convicted in the magistrates' court after having gone on strike for an increase greater than the 5% given to all municipal workers. They were sentenced to four month's imprisonment suspended conditionally for five years provided they did not engage in similar action for that period (Star, 2.8.78).

More than 100 African workers refused to go to their posts at Escom's Germiston plant in August because of pay grievances. Some reported that they had not received pay increases of R6 promised to them in July. Workers resumed work in the afternoon after Escom officials had held discussions with them, explaining the pay structure. A spokesman for Escom said it was "quite possible" that some workers received increases while others had not (Rand Daily Mail, 1.8.78).

Three hundred workers at Klip Power Stations went on strike over dissatisfaction with wages in August, but resumed work

the following day. Management said it was considering their demands, the nature of which were not however specified in reports (Post 23.8.78).

Fifty two contract workers employed by DURA Construction Cape (Pty) Ltd were dismissed after a five month dispute with management over their demands that management recognise the workers' right to form a democratically elected works committee in terms of the Bantu Labour Relations Regulation Act. Twenty two workers returned to work of whom 14 later changed their minds and asked to be released from their contracts. The Western Province Workers' Advice Bureau said that the men who resigned had done so in protest, as eight workers who had been dismissed had not been offered their jobs back (Cape Times, 2.8.78).

On the 28th September 200 workers at Port Natal Administration Board housing site at Kwa Dabeka downed tools in a strike for higher pay. The men agreed to return to work two days later after the establishment of a works committee (Daily News, 29.9.78).

A wildcat strike involving 1 100 workers broke out at the Indumeni Colliery near Dundee in Natal in September, due to a "misunderstanding concerning bonuses paid to certain categories of workers". Sixty-five workers broke contracts but the remainder returned to work after talks between workers and management (Star, 14.7.78).

About 850 women workers downed tools in a wildcat strike at the Langeberg canning factory in East London over dissatisfaction regarding overtime pay. Department of Labour officials mediated and almost all the workers resumed work the same day (Daily Dispatch 4.10.78).

A meat firm, South African Meat Supply, paid admission of guilt fines of R100 and R50 in the Johannesburg magistrate's court in October, 19 months after charges were laid against them for illegally locking out 39 African workers after a

wage dispute and making them work excessive overtime. A "lock out" is an offence under the Industrial Conciliation Act (Rand Daily Mail 20.10.78). The Industrial Aid Society (I.A.S.) which had taken up the case, pointed out that the Department of Labour had at first turned the workers away from the complaints' office.

In October 200 coloured employees at Eveready SA in Port Elizabeth struck in protest after the company ignored an ultimatum to deal with the registered National Union of Motor Assembly and Rubber Workers which represented them. The union had declared a dispute with Eveready earlier in the year after the firm had allegedly refused to negotiate with it on wages and conditions of employment. A conciliation board appointed by the Minister of Labour had failed to settle the dispute. On 19 October 62% of union members in the plant voted to go on strike. The company's management paid off about 160 of the striking workers on the third day of the strike and hired replacements (Star, 1.11.78). Angry women job seekers who demonstrated when they were told there were no more posts, were dispersed by police and dogs outside the factory.

In commenting on the strike Mr J Poulton, Eveready's manager, denied that the company had refused to deal with the union and stated negotiations had broken down after the union had made "ridiculous and unrealistic" demands (Rand Daily Mail, 31.10.78). Mr L Orchard, chairman of Berec, Eveready's British parent company, stated they preferred negotiating with a multiracial union (Rand Daily Mail, 2.11.78). This excuse was interpreted as a weak attempt to sidestep the issue, and was rejected by trade unionists. The union stated it would boycott all Eveready products and the 15 million strong International Metal Workers' Federation (IMF) promised financial, technical and moral support. The dispute was of particular importance as it is unusual for employers to refuse to negotiate with a registered union.

Discussion of the strike at a meeting of the South African Coordinating Council of the IMF led to a walkout by

representatives of five Coloured and African trade unions. They were protesting against white delegate's lack of support of the motor union in its disputes with Eveready (Rand Daily Mail, 30.11.78). The walkout was seen as heralding a split in the council. (See Article on Eveready Strike by R.de Villiers in this issue. At the time of writing the dispute was not settled).

About 54 coloured diamond cutters walked out of the Transvaal Diamond Cutting Works factory in Braamfontein in September after one of their colleagues was allegedly dismissed for taking up their grievances. Workers were dissatisfied with the new employment conditions to be introduced which were less favourable than those in existence. A letter to all 700 members of the Diamond Cutters' Union said that the downing of tools in protest against the changed conditions would not constitute a strike (Star, 26.9.78). A confrontation was defused when employers in most factories told workers that the conditions would not apply and a circular with amended conditions would be sent to them (Star, 28.9.78). Legal action brought against the firm for the alleged victimisation of the dismissed person was dropped as the union could not afford the costs involved (Star, 9.11.78).

In November, 30 employees of Tracy's Diamond Cutting Works pleaded not guilty in court to a charge of striking in protest at having to work on Kruger Day. The hearing was postponed to November 29 (Rand Daily Mail, 10.11.78).

Eighty African labourers employed by the Amanzimtoti Municipality were dismissed in November for refusing to work until they were assured of a wage increase. They demanded increases of R5 to R15 on their weekly pay packets which averaged R27. The municipality had awarded a 5% across the board increase to its black workers effective from 1 November (Rand Daily Mail, 16.11.78).

About 160 African bus drivers of the Johannesburg municipality went on strike in protest against the suspension and

then dismissal of the chairman of their works committee. The dismissal was later annulled, after representations had been made by union officials (Star, 11.11.78).

THE RIGHT TO STRIKE IN SOUTH AFRICAN LAW.

Fink Haysom

"In a free society the right to strike is regarded as the ultimate social sanction that can be applied by organised labour in disputes with employers. The right to strike and of employers to lock workers out are widely regarded subject to certain restrictions, as essential safeguards for freedom of Collective Bargaining."

(Transport, journal of the South African Transport workers Jan. 1963.)

The purpose of this article is to examine the very circumscribed right to strike in South African law. However before doing this it is of some value to make some observations about what strike action represents in relation to the social processes that lie beneath the surface of legal reality.

Essential to an understanding of labour law is an awareness of the conditions on which is predicated the employer - employees relationship. The employer - employee relationship as crystallised in the labour contract presupposes particular relations of production. One class of persons must offer their labour for sale and another group has the means to buy that labour. The appearance of symmetry in this contract conceals the real inequality of bargaining power between the parties. Not only is the employer a "representative of organised wealth" (1) but in normal economic conditions he is free to hire and fire as he pleases. The employee however is eager normally to keep his job lest he join the reserve army of the unemployed.

The failure of the laissez - faire principle of contract to express the reality of the status of the parties is matched by its failure to express the lop-sided content of that

contract (2). The employer is allowed to treat labour as a market commodity while the employee is regulated by a feudal notion of hierarchical duty. Certainly there is no question of the employee having a right in the product of his labour.

Even legal commentators have pointed out that in this context it is erroneous to assert an identity of interests between employer and employee (3). Rather, conflict is to be seen as built in to the relationship. The focus of labour law is the means for expressing such conflict and the machinery to be used in reconciling the parties.

Strike action, the conscious withdrawal of labour, is but one form of expression of this conflict. It can be regarded as the most structured and organised form. Other forms include absenteeism, sabotage, high turnover and the withdrawal of efficiency. "Unplanned smashing and spontaneous destruction are signs of a powerless groups .... occurring principally in industries which are in a "pre-trade union state" (4). The suppression of strike action as a form of expression of dissatisfaction invariably leads to an increase in other less ordered forms. It is strike action that is regarded by workers as their ultimate instrument in bargaining. This is so because of the hardships and risks that strike expose the workers to. This is particularly the case with African workers in South Africa who have no reserve funds and no security of employment.

HISTORY OF THE LEGISLATION.

Industrialisation in South Afica and the consequent growth of a heterogeneous working class placed serious pressure on the inadequate Masters and Servants Laws. The Masters and Servants Act of the Cape Colony had been enacted in 1841 to cope with a situation formerly regulated by slave laws. Similar laws were enacted in the Transvaal in 1880 and the Orange Free State in 1904. Natal was known as the ' lashing colony' because of severe corporal punishment meted out for

infringements of the 'proper behaviour of a servant' in terms of the Law of 1850. Thus striking workers in the 1880's were charged with being absent from work without leave. In 1889 striking painters in Durban were charged with desertion. However militant strikes by white workers, mainly in the mines in 1907, 1913 and 1922 brought home the fact that more 'sophisticated machinery was required to resolve disputes.

Thereafter followed the proposal, and enactment 10 later of legislation to establish machinery for collective bargaining for white, Indian and coloured workers. One of the motivating reasons for enacting this legislation, The Industrial Concilation Act No 11 of 1924, was to prevent 'the natives' learning from the militancy of the white workers (5). Thus it was not surprising that the Act should have excluded from the term 'employee' all pass-bearing Africans.

The enactment of the 1924 legislation led to a sharp reduction in the number of strikes by white workers. Between 1919 and 1922 42,000 employees were involved in strikes. The corresponding figures for the period 1923 to 1929 is 400. While the legislation is more permissive than legislation directed at African workers, it is more restrictive than similar legislation in European countries. A unionist of the time, W.H. Andrews commented that strikes were made an impossibility in legal form. The 1956 Amendment to the Act, retained the lengthy 'cooling off' periods and broadened the scope of the prohibition against striking.

African workers had in effect always been prohibited from striking under the desertion clause of the Masters and Servants Acts. There was also the more explicit prohibitions in the Native Labour Regulation Act No. 12 of 1911 and War Measure No. 145 of 1942. Act 17 of 1953, The Native Labour Act, re-enacted the absolute prohibition. After the widespread strikes in Durban in 1973, when approximately 98,029 Africans went on strike, new legislation was enacted to give African workers a limited right to strike. This Act,

The Bantu Labour Relations Regulation Act, was claimed (incorrectly) to have brought the laws regarding strikes for African workers into line with the principles applying to other workers under the Industrial Conciliation Act.

THE DEFINITION OF A STRIKE.

The definition of a 'strike' is the same for both the Bantu Labour Relations Regulation Act and the Industrial Conciliation Act. One must examine the scope of the definition in the Industrial Conciliation Act not only to appreciate its scope in the former Act but also to appreciate how limited is the call for equal applicability of its provisions to all racial groups.

Both Acts define a strike as meaning one or more acts or omissions by a number of persons who are or have been employed by the same or different employers. These acts being the refusal or failure to continue to work whether discontinuance is partial or complete, or refusal to resume work or comply with the conditions of employment, or the retardation of progress of work or the breach or termination of contracts of employment (Sec 1). These do not amount to a strike unless accompanied by an understanding between the persons concerned, the purpose being to induce or compel the employer to agree to any demands concerning terms or conditions of employment or to refrain from making changes in the conditions of employment (bb) or from discharging one or more persons from employment (cc).

The 1956 Amendment made it no longer necessary for the act to be 'wilful' nor need the act follow a dispute to be considered a strike. This does away with the onus on the state to prove that a dispute existed (b). The inclusion of section (cc) followed on the decision in Rv Schroeder where it was held that a refusal to work until a dismissed employee was re-instated, consituted a strike. The addition of the particularly problematical section (bb) whereby the definition of a strike was extended to include cases formerly defined as a 'lock-out' will be dealt with below.

ABSOLUTE PROHIBITIONS.

It must be pointed out that strikes per se are not illegal, but become illegal if they contravene the relevant provisions of the relevant Acts.

Strikes are prohibited absolutely in certain circumstances by the Industrial Conciliation Act. Employees may not strike at all if they are employed by a local authority or in an essential service, nor may they strike if they are covered by an industrial council agreement, during the currency of that agreement. They may not strike if they are covered by an order or determination in terms of the Wage Act of 1957 which has been in operation for less than a year, nor where the Industrial Council constitution provides for compulsory reference of disputes to arbitration.

As a result of a series of stoppages on the Rand which arose out of internal union squabbles, Act 61 of 1966 prohibited absolutely any strike which arose from a dispute unconnected to the conditions of employment. Prior to this amendment such a dispute could not lead to a strike. Thus in R v Tshongongo, workers were held not to be striking when they stopped work because an employee representative had been excluded from the Conciliation Board (7). Nor were workers held to be striking when they stayed at home in protest against the pass laws (8). It appears that this amendment applies only to workers covered by the Industrial Conciliation Act and not African workers. The amendment in effect creates an ancilliary category of strikes and does not disturb the original definition contained in the Act. Consequently the 'presumptions' arising out of Sec 74, which makes the burden of proof much lighter for the state, do not apply.

If none of the above absolute prohibitions apply, striking is still illegal unless the dispute has been considered by the relevant Industrial Council or Conciliation board and they have reported to the Minister or 30 days has elapsed

since the dispute was submitted to the Council or board. If the matter has been referred to voluntary arbitration, pending the outcome of an award, the prohibition will continue to operate.

Even if all these conditions have been complied with a strike cannot be declared by a registered union unless the majority of paid-up members of the union in the area and industry have voted by ballot in favour of striking.

Finally mention must be made of the presumptions enacted in sec. 74 of the Act. Such presumptions exist to assist the state in the proof of its case. They are contained mutatis mutandis in the Bantu Labour Relations Regulation Act of 1953. The most important presumption that concerns us is that when a person is charged under the Act and is proved to have committed one of the acts or omission which are elements in the definition of the strike, it is presumed that he did so for the purpose set out in the definition. For example it was argued in R v Pereira and others, that the Crown must prove not only that a worker refused to work but that he did so by associating himself with the strike (9). But it was held that once the failure to work was proved and the charge was properly framed all the circumstances which arise under the definition of a strike are presumed to have been present until the contrary is proved.

THE COMMON LAW AND OTHER PROVISIONS.

The fact that a worker is legally on strike does not protect him from being fired. It only protects him from criminal prosecution. It was held in R v Smit (10) that the Act, while making certain strikes legal, does not deprive the employer of his common law right to dismiss an employee summarily for breach of contract. Despite the academic contention that this might not be the correct interpretation of Roman Dutch Law it is submitted that it is now the South African Law.

An employer may even obtain an interdict, pending action to be instituted, to restrain those who take part in an illegal strike (11). Employees may be liable for striking illegally where they are not physically on duty at the time (12) or even where the employer antedates the period of employment to a date before the strike took place, for purposes of wage assessment (13).

No benefits from unemployment insurance may be paid to workers on strike.

While registered unions have limited protection against a civil claim by management for the loss and damages suffered by them as a result of a strike (14), unregistered unions enjoy no such protection. This is of particular relevance to black trade unions who cannot be registered in terms of the Act.

Where an employer tells his employees that they may leave his employment and look elsewhere if they are not satisfied with the conditions he has offered them, then they can not be held to be striking if they then walk out. In effect the employer has waived his right to expect notice from the employees of their termination of their contracts (15).

Picketing is punishable under the Riotous Assemblies Act 17 of 1956, and/or municipal by-laws. It must be mentioned that the right to picket is part and parcel of the right to strike. The right to picket is no more than the right to maximise solidarity and discipline amongst workers.

Any collective action, such as the collective withdrawal of labour, is rendered impotent if the collectivity is denied the means to organise and discipline its members. In South Africa the simple congregation of workers outside the factory gate, while negotiating with their employer has been sufficient to bring about the arrival of the S.A.P. riot squads and to lay charges under the Riotous Assemblies Act. Any call for the extension of the freedom for workers to

collectively withdraw their labour must incorporate a call for the repeal of the relevant provisions of the Riotous Assemblies Act.

THE BANTU LABOUR RELATIONS REGULATION ACT.

The definition of a strike in this Act is the same as that in the Industrial Conciliation Act and the same absolute prohibitions apply. The fact that African workers may not strike during the currency of Agreements reached by Industrial Councils from which they are excluded belies the assertion that this Act brings African workers into line with other workers.

It has been noted that African workers are not forbidden from striking when the purpose of the strike is unrelated to their conditions of employment. However section 18 expressly forbids 'sympathy' strikes.

Strikes are further prohibited when an industrial council agreement which a Central Bantu Labour Board has found unsatisfactory, has been referred to the Minister for a Wage Board determination. This prohibition lasts while the Board is considering it and for a year thereafter a dispute must go through one of the committees created by the Act i.e. the 'works' or 'liaison' committees. A strike is still prohibited until the committee, having failed to resolve the dispute with management, has referred it to the Bantu Labour Officer and 30 days has elapsed since the dispute was submitted. Even then, if the Minister refers the dispute to the Wage Board for consideration, striking remains illegal.

If white workers regard their right to strike as a near 'impossibility in legal form', it is not surprising that black workers ignore the procedure altogether. The entire bargaining machinery provided by the act inspires little or no faith on the part of African workers (16). Since 1973 there has been one legal strike, at Pilkingston Armourplate Safety Glass at Springs. Yet in 1974/5 alone there were 493 strikes and stoppages (17). In the one legal strike all the

employees were fired and subsequently charged under the Riotous Assemblies Act, despite the fact that the strikers were meticulous in their observance of the correct procedures (18).

The employers work closely with the Department of Labour and the Police. Openly repressive measures are adopted against African strikers. Frequently the entire Labour force is dismissed and the workers are sent out of the urban areas to seek out a precarious existence in the disintegrating economies of the so-called 'homelands'. Workers themselves fear being black listed by employers or the Labour Bureaux (19). In a time of high unemployment, without protection from unfair dismissal, with rising inflation and no social security, the arbitrary dismissal of so- called agitators and strikers is the most sinister and threatening of the weapons that employers and the state posseses.

The penalties for contravening the Act are considerably higher than the equivalent penalties laid down by the Industrial Conciliation Act. Sec 18 (2) lays down a maximum fine of R1000 or imprisonment not exceeding three years, or both.

In addition to the above there is other legislation which may penalise illegal strikers. A normal strike may open the striker to prosecution under The Riotous Assemblies Act (20); Internal Security Act (21), The General Law Amendment Act (22), the Terrorism Act (23). All these Acts contain wide provisions which may make an act that, for example, disrupts production an offence carrying severe penalties. In 1961, 194 African bus drivers went on strike for better wages. Four years after they had been punished for this, 10 of the strikers were charged with furthering the aims of communism by taking part in the strike and sentenced to a years imprisonment (24).

LOCK OUT OR STRIKE.

It stands to reason that a prima facie defence for those charged with holding an illegal strike is that the stoppage was the result of a 'lock-out'.

A lock-out arises, according to the relevant Acts, where an employer either discontinues his business in whole or in part, or excludes any employee from his premises, or breaches their contracts of employment, or refuses to re-employ any employee, if his purpose is to compel his employees to accept any demand concerning conditions of employment, or to accept changes in the conditions, or to agreee to the employment or dismissal of any person. The provisions on the legality of 'lock-outs' are the same as those relating to 'strikes'.

The central problem is to draw a distinction between the two, given the fact that "the legislature did not intend that the same facts should constitute both a lock-out and a strike" (25). Prior to the amending Act 17 of 1956, the simple test to be applied was to ask "who created the dispute which resulted in the cessation of work".

There are two cases which illustrate this. In R v Cangan (26), African workers who were told to work overtime went on strike when they failed to negotiate an overtime rate. The court held that they had ceased work, not to compel the employer to accept a term of their contract but because he had tried to force a new term on them. Thus they had not been on "strike". In De Beer v Walker (27) the employer advised workers that he was going to reduce their wages. After their contracts had been terminated the employees refused to go back to work. They were then charged with participating in an illegal strike. They argued that this was precisely the situation that the legislature had intended to deal with when inserting the definition of a lock-out, otherwise there could never be a lock-out. The judge ruled that the dispute had arisen from the action of the employer.

Using the same test the court found that in Freinkel v Garment Workers Union (28) it was the workers who had gone

on strike to compel their employer to agree to a demand concerning working conditions and not the other way round.

Thus prior to 1956 the position was that a "strike could not arise where the employer seeks to induce a change in the conditions of employment" (29). However the amending legislation of 1956 extended the definition of a strike to include those acts (eg. strikes) intended to compel the employer "to refrain from giving effect to any intention to change the terms of conditions of employment." This is an explicit reversal of the earlier court decisions and suggests that the test of who created the dispute is no longer applicable.

The conseqences of this amendment are harsh. For example if an employer were to reduce substantially the wages of his employees, what legal remedies would be open to the employees? If they stop work they will be open to criminal prosecution for participating in an illegal strike. If they continue to work they will be tacitly accepting the new terms of the contract of employment. By doing so they will waive their right to claim on the basis of the terms of the old contract.

The employees do have the right to receive notice of the termination of the old contract before new conditions can be introduced. In the case of contract workers this lasts till the end of their contract and for other workers either the notice period prescribed by the relevant council agreement as statutory order, or by common law. Under the common law the notice period is inferred from the manner of payment ie. weekly, monthly.

The only path open to employees in that position is to notify their employer or his representative that they do not accept the new terms of employment, but that they will work under the old terms. They must then report for work, and work. If the employer refuses to allow them to work he will be guilty of locking his workers out. If, however there is a

dispute as to what the conditions are, the workers may attempt to settle the matter through an civil action, or, preferably, through collective bargaining.

As noted above, even the Legal strike is a risky act which African workers will not eagerly pursue because of the precariousness of their position. As far as civil proceedings are concerned, where there has been a contravention of the Act, the employee may only institute such action where the employer has been acquitted in a criminal prosecution or the attorney general declines to prosecute. The possible 'catch 22' here is that where the terms of the contract are below the mimimum laid down by the relevant Industrial Council Agreement, the courts regard these contracts as void and they cannot be the basis of a civil action (30).

CONCLUSION

From this review of the right to strike in South Africa it is clear that it is highly circumscribed not only for black workers but for all workers. At the same time the definition of the lock-out has been so narrowed that it is difficult to see how an employer could contravene the Act, no matter to what extent he provokes the dispute.

At the same time there could hardly be a clearer indication that African workers have no faith in the existing machinery than with one exception they have chosen to ignore it. No matter how one conceives of the right to strike or even to picket, the fact of the matter is that these expressions of a very real industrial conflict will continue, despite the risks and hardships that workers endure.

Professor Kahn Freund has stated that the purpose of labour law is to regulate the bargaining process by levelling the bargaining power of the two parties:

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"It is an attempt to infuse law into a relation of command and subordination" (31).

This perspective on labour law is idealistic in the philosophical sense of the term. Labour Law in South Africa has on the contrary, played a major role in maintaining the inequality inherent in the employment relationship. The right to strike, the right to picket, the right to job security are rights that all over the world have been bitterly contested and reluctantly conceded. Of one thing we can be sure, the site of that contest never has been, and will never be, the law courts themselves.

FOOTNOTES:

Footnotes have been substantially reduced and a full list is available from the author.

1. O. Kahn Freund 'Labour and Law' p.18.
2. Freedland 'The Labour Contract'. Hyman 'Industrial Relations' ch.1. P. Galt, SALB Vol. 3 No. 7.
3. Kahn Freund op.cit.
4. Taylor and Walton, Images of Deviance' p.237.
5. Union Government Economic Commission. U.G. 12/1914.
6. Cf. Dada Osman R v 1939 NPD 383 ; R v Boschoff and Others 1955 (3) S A 628 (N).
7. R v Tshongongo 1952 (2) SA 486 (C).
8. R v Pereira and others 1942 PH K 112 (T).
9. R v Sengale 1959 (1) S A 589 (T).
10. R v Smit 1955 1 SA 239 (C).
11. Freinkel v Garment Workers Union 1961 (1) SA 507 (W).
12. S v Chingwangwa 1973 (2) SA 49 RAD.
13. R v Jangali 1961 (3) SA 823 N.
14. Sec 79 Act 28 of 1956.
15. Makhaza and Others v S, 1962(2)PH K 40.
16. Horner (ed.) 'Labour Organisation and the African Worker' SAIRR 1975.
17. I L O 12th Report on Apartheid.
18. SALB Vol. 3 No. 7.
19. See the case of Nautilus Marine SALB Vol. 2 No. 10.

20. In R v Segale and Others 1960 1 SA 721 AD an incitement to break a contract of employment is a contravention of sec 14 (1) of Act 17 of 1956. It is an offence to trespass in order to induce workers thereon to cease work (S12). The ambit of sec 14 (1) and 14 (2) is very wide.
21. S1 (i) (ii) of Act 44 of 1950. The definition of communism includes any scheme which aims at bringing about economic or social change through unlawful acts or omissions.
22. The offence of sabotage as defined, includes any wrongful act which may obstruct the supply or distribution of certain commodities such as food, fuel etc. Sec 21 (1) of Act 16 of 1962.
23. It is a criminal offence to do any act with the intention of endangering law and order if the act had, or was likely to cripple an industry or cause financial loss to a person or the state. Sec 2(2) of Act 83 of 1967. In the case of Act 83 of 1967 there is a minimum of five years' imprisonment and a maximum of the death penalty.
24. Quoted in J. Bloch 'The Industrial Relations Legislation in S.A.' L.L.M. thesis 1977.
25. De Beer v Walker 1948 (4) SA 708 AD.
26. R v Canqan 1956 (3) SA 366 (E).
27. Supra.
28. Supra.
29. R v Mtiyana 1952 (4) SA 103 (N) De Kock 'Industrial Laws of SA' p620 Shafeller and Hegne 'Industrial Law in SA' p. 134.
30. Telford v Prinsloo 1954 (3) SA 622 (T).
31. Kahn Freund op.cit.p. 8.

BRIEFING ON INTERNATIONAL SOLIDARITY OF LABOUR

D. Massey, Boston

Until October 1974, black mineworkers who broke their contracts, to go home, were liable to punitive measures under the South African Masters and Servants Act. Once a worker had started on a contract he was legally required to work out his time - usually either 9 or 12 months. If there was a death at home or if he was badly treated, he could be refused permission to break his contract and imprisoned if he tried to desert. For men assigned to hazardous work on a dangerous mine, a 9-month contract could be like a death sentence.

In 1974, there was a coal miners' strike in the U.S. Some of the big power companies started to import coal from foreign countries, including South Africa. Acting in support of the coal miners, longshoremen in Alabama - many of whom were black - refused to unload "scab" coal from South Africa. Alerted to workers' conditions in South Africa, the American Mineworkers' Union later brought suit in Federal Court to stop the importation of South African coal on the basis of a tariff law which forbade the importation of goods produced under conditions of forced labour. The Masters and Servants law binding workers to their contracts, it was argued, constituted a forced labour system. In a good example of international workers' solidarity, the suit brought by the American mineworkers led to the repeal of the Masters and Servants laws in South Africa.

In most sectors of the economy, the laws had already been supplanted by more effective bureaucratic approaches to labour control - most notably the establishment of labour bureaux in the Bantustans. In the mining sector, however, the repeal has had a substantial impact. Figures from the South African Chamber of Mines reveal that since 1974, workers have increasingly exercised their new right to simply walk off the job.

Year	Number of Deserters	% of Workforce
1974	10 851	2,6
1975	28 456	7,4
1976	44 150	10,8
1977	49 286	11,2

The notoriously dangerous mines have been the hardest hit by desertion. Usually these are old "deep level" mines where there is a constant danger of rock bursts. Digging tunnels 2-3 kilometers underground naturally creates tremendous stress with the result that from time to time tunnels just fold up as the surrounding rock fractures. These rock bursts are the number one killer in the mines - accounting for 261 of the total of 796 deaths in the mines in 1976. Not surprisingly, the two deepest mines are among the hardest hit by the increased desertion rates. One of them has even gone so far as to build new showcase hostels with electric heat, carpeting, television and greater privacy in an attempt to stabilize the work force there.

The simple ability to leave a mine has given workers some minimal leverage in their struggle for decent living and working conditions.

EVIDENCE SUBMITTED TO THE WIEHAHN COMMISSION BY THE SALB ON THE SETTLEMENT OF INDUSTRIAL DISPUTES

A. Freedom of Association (ILO Resolutions)

1. The Right to Strike

"The Right to Strike is one of the essential means through which workers and their organisations may promote and defend their occupational interest" (293/Freedom of Association - ILO).

2. The Right to Picket

"Pickets acting in accordance with the law should not be subject to interference by the public authorities" (345/Freedom of Association - ILO).

The right to have a trade union is nothing without the right to strike; the right to combine in refusing to work unless satisfactory conditions are provided. This is the only real power workers can have. Other kinds of behaviour such as the withdrawal of efficiency, industrial sabotage, malingering, are all strategies of impotence.

Yet, though workers' power and influence rest on the right to strike, there can be few workers who actually welcome a strike. The worker nearly always lives very close to the margin, and any loss of income is a serious matter. A strike always means personal deprivation for workers, but it rarely does so for employers. Trade union officials enter strikes reluctantly, since a strike, if it is lost, will weaken the organisation, and if it is won, will place a severe

strain on the union's usually slim reserves. It is important to grasp fully these two obvious points, since continuous irresponsible reporting of strikes in countries where they are legal has built up a stereotypical picture in the middle class white mind - a picture of workers longing to down tools on the slightest pretext; striking from mere bloody-mindedness, and bringing their societies to the edge of chaos. This picture is quite false and a moment's reflection will show that, for the reasons given, it is not even coherent. Nevertheless, because this reaction to strikes is so widespread, it is worthwhile quoting at length the following comments by Hyman on the significance of strikes in Britain, a country widely believed in South Africa to have been "ruined by strikes":

> "Contrary to popular imagination, then, striking is an exceptional habit. This fact is underlined by the findings of a survey carried out for the Donovan Commission. Only one trade union member in three and a slightly smaller proportion of managers could recall a strike at their place of work since they had been there; and of this third, roughly a half were aware of only one stoppage. Since the trade unionists interviewed had been with their existing firms for an average of ten years, and works managers for nine, this indicates how rare strikes really are in most work situations. Another way of putting strikes into perspective is to compare them with other eventualities which affect industrial production. In 1971, when strike days reached a new post-war peak, the total was just over ten million. By contrast, industrial accidents cost twenty million working days. An unemployment level near the million mark is the equivalent of over two hundred million working days, and in recent years, loss of time through certified sickness has accounted for over three hundred million working days. An effective influenza vaccine - or stricter control over safe working conditions - would be likely to save far more working time than the most draconian anti-strike laws" (Hyman, Strikes, pp. 33-34)

Thus, in societies where strikes are legal they are relatively rare occurrences, and in all societies workers and trade unionists dislike striking. But what is important is that the threat of strike action should be available to the workers when they negotiate with employers over wages and conditions. In these circumstances, where each side has some power, it is likely that the resulting bargain will not be dramatically unjust, and that the workers will accept the legitimacy of the employment contract, rather than see it as purely coercive.

The trade union then, is the means whereby the workers can combine to exercise some power over their own destinies. Through their representatives they can bargain with management. By pooling their limited individual funds they can employ full time organisers and can equip themselves with the necessary information. This is a vital function of the full time union officials. One of the main weaknesses of the works committee system is that without any outside assistance the workers are not in a position to get the information which they need in order to evaluate management proposals. Under these circumstances they are not in a position to dispute management's version of the facts or to put forward well conceived alternative proposals. There is no two-way communication.

In order to carry out these functions the trade union organisation must be organised internally in such a way as to ensure that solidarity is maintained by the members. This requires that on the one hand, decisions be taken democratically and so reflect the will of the majority of the members, and on the other hand, it requires that members be willing to accept majority decisions with which they disagree. In practice this means that the union as an organisation will require some sort of sanctions which can be used to ensure that the majority decision is carried out. When a minority of workers reject a democratic decision and attempt to "scab" - that is, act as strike breakers - this usually results in great bitterness, and it is important

that there should exist institutionalised ways for dealing with disputes of this kind, otherwise they are likely to be resolved by violence. Indeed, scabbing of this sort is probably the most frequent cause of violence by workers in the course of industrial disputes. One of the most important institutions for this purpose is the picket.

The picket is really a technique for bringing moral pressure to bear on would-be scabs. The individual worker should be morally bound by the majority decision to strike, and a peaceful picket of workers at the entrance to the place of work is designed to make this moral duty clearly visible.

In his recent inaugural address to the University of South Africa in July 1977, Professor Wiehahn indicated clearly his support for the right to strike:

> "This right follows systematically after the rights to associate and to bargain. It is generally accepted that an association of workers who cannot arrive at any agreement with their employers through bargaining may then exercise their right to strike."

However, it is clear from our argument that the right to strike is of no value without the right to conduct a lawful picket.

B. Freedom of Association in South Africa

1. The Right to Strike

Since 1973 the Bantu Labour Relations Regulation Act has permitted legal stikes by African workers in certain very restrictive circumstances. It is important to realise how narrowly circumscribed those circumstances are. Striking is prohibited either during the currency of an industrial council agreement or within one year of a Wage Board determination referring to the matter in question or if the matter has been referred by the Minister to the Wage Board. When these

> conditions do not apply, then, if the relevant works or liaison committee has failed to negotiate an agreement, after thirty days notice, a strike may take place. What this means is that if the Minister refuses to refer the matter to the Wage Board, then the workers may strike. That is, the legislation regarding strikes is essentially an avenue whereby the workers in an industry in which there is no industrial council, can demand a Wage Board enquiry. However, once the Wage Board has introduced a determination they cannot oppose it. This gives the workers hardly any power at all. It is likely that low wage employers, faced with the prospect of a Wage Board investigation, will make greater concessions than they might otherwise have made. Nevertheless, it means that the final say rests with the Wage Board and this body has tended until now to make determinations rather more favourable to employers than to workers.

In the inaugural address that we have referred to, Professor Wiehahn goes on to say that:

> "In South Africa the right to strike is recognised in the Industrial Conciliation Act and for the black workers in the Bantu Labour Relations Regulation Act".

The implication of Professor Wiehahn's comment is that Afrian workers have the same strike rights as other workers. This ignores the obvious differences between them - the set of rights of whites, coloureds and Indians under the Industrial Conciliation Act embraces the concept of collective bargaining by recognising trade unions, the Bantu Labour Relations Regulation Act does not. Let us illustrate. An industrial council agreement can only be reached with the consent of the unionised white, coloured and Indian workers to whom it applies. They can therefore use the threat of strike action, and after conciliation procedures have been exhausted, they can actually strike in order to obtain a better agreement. As the African workers have no vote in the

industrial council, this procedure is not in fact open to them, and it is this procedure which is the real source of the power which unionised workers have in industrial councils. It is clear, therefore, that the right to strike means nothing without the right to a trade union.

We have reported two cases of attempted legal strikes. The first one (Mbali v. Pinetex, South African Labour Bulletin, Volume 2, Nos. 9 and 10, pp. 40-58) was found to be illegal, as the trade union concerned, the Textile Workers Industrial Union, acting on instructions from the shop steward committee, culpably misconstrued the provisions of the Act and misdirected the complaints of its members. The second example is that of Armourplate (South African Labour Bulletin, Volume 3, No. 7, pp. 60-72), where the workers apparently met the legal requirements for a strike, but pickets were arrested and charged under the Riotous Assemblies Act and Management simply refused to negotiate with the unregistered union, the Glass and Allied Workers Union.

Thus with the exception of Duens Bakery (South African Labour Bulletin, Vol. 3, No. 2, pp. 98-9) and Armourplate - whose legal status has not been made clear, as the Minister of Labour made no mention of a legal strike in 1976 when he was asked a question in the House of Assembly (24th February 1971) - the numerous and often extensive strikes by African workers that have occurred since the introduction of the Act have presumably all been illegal.

2. The Right to Picket

Evidence from the Armourplate strike suggests that the right to picket has not been established in our law:

> "On September 23rd, striking workers began to picket Armourplate. Workers holding placards walked at deliberately big intervals along the payment up to the firm and back. The first to appear was management who

> took a close look and went into the factory. Shortly after one, 1 pm. policemen arrived by car. Later, police vans arrived and 27 workers were taken to the police station. Within a few hours they were in front of a magistrate and convicted under the Riotous Assemblies Act. They were each fined R50,00 or 75 days and detained at Modder Bee prison. The following day the union borrowed the money necessary and had the 27 men released".

The unusual speed with which this case was handled surprised everyone including the legal advisers and the men were not represented in Court. They also did not realise that they could be represented and thus declined when asked by the magistrate. Those convicted had an appeal noted in the Supreme Court. (All convictions and sentences against accused were set aside on appeal in May 1977 in the Supreme Court on the grounds that there were irregularities in the trial of the accused).

In a letter to Mr. Breakspear MD of Armourplate dated the 28th September, the union told him that the workers believed that the company was calling in the police, and asked him, if it were true, to desist, as ugly feelings were aroused by this type of action. The union had arranged for application to be made to the magistrate at Springs for permission to hold a picket. This application was refused. No reason was given. Armourplate regarded the workers as having resigned and would not negotiate with the workers committee."
(South African Labour Bulletin, Volume 3, No. 7, pp. 65/)

C. <u>The Nature of African Worker Grievances</u>

There is a popular misconception that when African workers strike, their action must be the result of "agitators". It needs to be emphasised that to point to agitators is not an explanation of strikes; one cannot agitate successfully without widespread grievances. These grievances range from low wages, unfair treatment in the work place, issues of victimisation or unfair dismissals, lack of recognition, dangerous and

strenuous work conditions, crude racial discrimination and bad treatment from supervisors and managers. Where situations are likely to lead to conflict there will generally be leaders to organise it; the ability of such individuals to create conflict in the absence of circumstances that would induce it in any way, seems to be highly unlikely. Of course this does not mean that in certain circumstances "agitators" do not perform a significant role in articulating these grievances. For grievances to take on a collective character in the form of a strike, it is usually necessary for someone, initially at least, to give this expression to workers' grievances. To attribute strikes to agitators is therefore, at best, to point to the instrument of conflict rather than its cause.

D. The Nature of African Strikes

Since our inception in 1974 we have carried numerous reports on strikes. If we exclude the mines, we see the following pattern: firstly workers do not perceive Department of Labour officials as their representatives although in terms of the Bantu Labour Relations Regulation Amendment Act they are formally so. See for example, the case of Reynolds, (South African Labour Bulletin, Volume 1, No. 3, pp. 36-39). To allow Africans to attend industrial council meetings but to deny them a vote, is not a solution. To amend the legislation to allow Africans to sit on the Central Bantu Labour Board, to become Bantu Labour officers or assistant Bantu Labour officers, as the present legislation does, is not a solution either. What our reports reveal is a serious lack of communication between the African workers and the official representatives - the Department of Labour. Secondly, these reports reveal managements' intransigence and their unilateral power to ignore both officially approved worker organisation such as work committees, (see Duens Bakery, South African Labour Bulletin, Volume 2, Nos. 9 and 10, and Volume 3, No. 2, and the Armourplate Strike, Volume 3, No. 7), and

democratically elected trade union leadership, (Report on Leyland, Volume 1, No. 3, and Report on Heinemann Volume 2, No. 5 and Natal Cotton, Volume 3, No. 7). Thirdly, the workers used the little power they are able to exercise in reformist rather than violent or revolutionary ways. The demands for higher wages, better conditions, more rights, are all expressed in quantitative terms and are understood by those demanding them to provide a fair share or equal rights within the system. These demands represent the immediate self-interest of the workers involved, usually workers in one factory. In general the demands are sectionalist in nature, being limited to the sector involved. They try to negotiate through the channels that are open to them, but management fails to respond in a creative way to demands made of them. Fourthly, all these case studies reveal a more central pattern - the tendency for management to rely on the police, both criminal and the security section - to settle disputes in the factory.

E. Recommendations

The ambiguity surrounding African strikes and their consequences is surely unsatisfactory and detrimental to good industrial relations. It is a product of inadequate industrial legislation based on a dangerous perception of the issues at stake. What should be realised is that for workers, a strike is the ultimate weapon they have. The point of industrial legislation is to provide a bargaining process satisfactory to both parties that will obviate the need to go this far in the vast majority of cases. One cannot, however, deny workers their final recourse. Good industrial legislation makes this final recourse a calculated move with both parties aware of the implications. For African workers in South Africa these basic requirements of industrial legislation do not exist.

Strikes by African workers are stark, sudden events. The situation polarises immediately, both because the legal structure is such that the State is perforce involved and because management all too often adopts an intransigent position, encouraging or even soliciting police (and security police) assistance.

In the light of the preceding argument and information, we make the following recommendations:-

(a) The right to strike means nothing without the right to a recognised trade union.

(b) The right to strike is of no value without the right to conduct a lawful picket. In essence this involves removing Chapter II of the Riotous Assemblies Act of 1956. As Professor A.S. Mathews has written:-

> "The total effect of all the sections of Chapter II of the Act is to prevent employees from using their position as workers to secure an improvement in their conditions. If they take any action that is likely to be effective they run the risk of drastic criminal punishment. Most of the provisions of the Chapter were introduced by the Botha government following the labour unrest in 1914 and the summary deportation by Smuts of nine labour leaders to England. The enactment of these measures reduced the workers to a position of political impotence" Mathews, Law, Order & Liberty in South Africa, P.195).

(c) The right to strike must be extended to all races on the same terms. This would mean the complete abolition of the Bantu Labour Relations Regulation Act and the inclusion of Africans under the category of employee in the Industrial Conciliation Act.

(d) However, Sec. 65 of the Industrial Conciliation Act (which provides for legal strikes) is too cumbersome and restrictive and we suggest the Act be amended in the following four ways:-

1) Abolish the requirement that provides for a 30 day cooling-off period. This is not necessary as the dispute has to be discussed at three consecutive Industrial Council meetings.

2) Remove the specification that a majority of the paid-up members of the union must by secret ballot, have indicated that they are in favour of a strike. As long as a majority agree, it should be left to the union to decide how the voting should take place.

3) The employer's right to discharge an employee who refuses to carry out his contractual obligation to work, by striking, must be removed. This is legalising victimization by the employer of his employees while they are on a legal strike.

4) We are opposed to a prohibition on strikes in "essential services". The term is too wide and we suggest that the Act make provision for a court to declare strikes illegal in certain essential services if the public interest is at stake. This would be decided by a jurisdictional body, such as a labour court.

OBITUARY TO IGNEOUS MAKHAYE

Igneous Makhaye was beaten to death in his compound at Non-Ferrous Metal Works in Jacobs, Durban, by an induna of the factory on Friday 16 June 1978. He was a member of the Metal and Allied Workers Union (MAWU) Branch Executive Committee (BEC) from an early stage and played an increasingly active role in the Trade Union Advisory and Co-ordinating Council (TUACC) after the 1976 bannings.

Those who worked with him on TUACC never had any doubt that Makhaye was one of the most influential leaders within TUACC, and felt that he would develop into a major voice within the movement.

A leader of high quality, capable of both criticising and being criticised in the interests of the worker movement, Igneous Makhaye came to be deeply admired and respected. His actions need to be understood in terms of his growing belief that there was a need for real worker organisation that had a base in the factory.

Born in Pietermaritzburg in 1932, Mr Makhaye attended the Gesubuso School in that area, until standard 6, when his father died. Being the eldest of 5 children he had to go to work, his first job being a machine operator at Metal Box. His second and last job was at Non-Ferrous Metal Works in Durban, where he worked as a dispatcher of bronze, for 15 years, until his death.

Mr. Makhaye's first wife died after a year, leaving one child, Bongani. His second wife died in 1976, while giving birth to her sixth child, who lived. His mother-in-law now looks after his 7 children.

Mr Makhaye led an active political life, being involved in the burning of passes and other activities in the late fifties.

It was the renewed worker activity of the early 1970's that were once again to involve Igneous Makhaye, this time in trade union activity. Makhaye increasingly came to believe that worker organisation based in the factories was the only way that worker rights could be protected and expanded.

During the strikes in 1973, he stopped the workers from striking, persuading them to try and negotiate with management first. Management gave the workers a R2 increase and allowed them to elect a works committee after Makhaye and 'Ma'Shabalala, a working colleague, had approached them. The committee consisted of 8 people, Makhaye being the strongest member.

This Works Committee essentially represented a union platform within the factory, but its success did cause tension with the older structures of management control.

The indunas were very resentful of Makhaye, particularly during 1976 and 1977, as they felt he commanded more respect from both management and workers than they did - even though they had been there longer. They considered this situation to have arisen because of Makhaye's union support and advice.

There were in fact, rumours that Makhaye would be killed so as to lessen the influence of the union with management. This was reported to management who called a meeting and warned older workers and indunas that if they threatened Makhaye or any works committee members, they would be fired.

Later in 1977 Makhaye was visited by the Special Branch, who wanted to visit his home because they had been told he was politicising workers and had much information. They searched his house and took all his union books and works committee and union meeting minutes. They returned these after 2 months, saying they found nothing and left him alone thereafter.

During 1978 a works committee member reports that there was no antagonism towards them or Makhaye, from either management or the indunas. Then on Friday 16 June, 1978, Makhaye went to the union offices in Jacobs with union cards and he then returned to his compound to explain his job to two young workers who were standing in for him the next day, as he was going to attend a seminar that day. As he was explaining the job, his killer, an induna, came behind him and told him to stop instigating the young boys with his union nonsense. Makhaye eventually became angry and told him to go away.

As Makhaye was walking down the passage, having left the room of the young workers, he was hit on the back of the neck from behind. As he fell, his killer continued to thrash him with his stick, so that his body was badly mutilated.

The killer was charged with culpable homicide, convicted and sentenced to 16 months imprisonment, which was however suspended for 3 years.

Makhaye, had, like many before, fallen in the struggle and he had done so in the factory where he had committed his effort in the building of an organised labour movement in South Africa.

He will be deeply missed, both as an outstanding person and as a strong and loyal committed trade unionist.