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LABOUR BUREAUX SYSTEM

It has often been said that the central notion of the "free enterprise system" is that of a market upon which commodities, including labour itself, are bought and sold according to monetary exchange. If a single criteria of the market society is sought it is said it would be that man's labour is a commodity i.e. that man's energy and skills are his own, the use and disposal of which he is free to hand over to others for a price. The market is, therefore, a place into which "free" individuals enter out of choice to engage in free and equal exchange. The notion "free labour" is most clearly expressed in the employment contract itself - a voluntary agreement forged through bargaining over specific terms between the employer and employee.

For some years now it has been argued that South Africa does not allow the African Worker the freedom of choice in employment. The United Nations - I.L.O. Ad-hoc Committee on forced labour found in 1953 that there exists in South Africa "a legislative system applied only to the indigenous population and designed to maintain an insuperable barrier between these people and the inhabitants of European origins", that "the indirect effect of this legislation is to channel the bulk of the indigenous inhabitants into agricultural and manual work and thus to create a permanent, abundant and cheap labour force", and in that sense "a system of forced labour exists in South Africa". Apartheid, it is said, is a system ensuring an adequate distribution of African labour by means of state bureaucratic intervention rather than the operation of a free labour market. The two prime elements in this system have been influx control and a system of national labour bureaux both of which were extend - *not invented* - in the early years of nationalist rule.

In this edition we publish two articles which deal with the workings of influx control and the labour bureaux. These articles confirm that the labour bureaux are not really carrying out the function that they are formally proclaimed to do viz. to correlate supply and demand by *merely* introducing work seekers to potential employers. The *actual* function of this form of state intervention in the

labour market is firstly to control the employment and movement of African workers in such a manner that low wage sectors of the economy such as farming are ensured of labour. Secondly, it operates to inhibit collective bargaining through perpetuating the contract labour system. The worker is forced to return to his rural area at the end of the year thus increasing labour turnover. This, however, can be exaggerated as most workers stay only a short period in the rural area and often return to the same employer. More important is the vulnerability to victimization which the contract worker faces. When the contract worker is fired he has to return immediately to the rural area. It is also easier for the employer to keep weeding out "agitators" whenever their contracts expire. He can refuse to renew their contracts without risking retaliation from other workers or possible court action.

The Commission of Inquiry into Legislation affecting the Utilization of Manpower - The Rickert Commission- will no doubt address itself to this problem in some detail. In the light of our analysis and the articles in this issue we would like to make the following suggestions for the guidance of the Commission:

1. That the present dual system of labour exchange for coloured, white and Indians, and labour bureaux for Africans be abolished and a single labour exchange be established under the Department of Labour, with the sole task of registering work seekers and prospective employers and introducing them to each other as quickly and effectively as possible. Furthermore, that the occupational, industrial and regional mobility of Africans must not be restrained in any way by this labour exchange system.

2. The influx control system should be phased out within a definite time period. This could be done in stages starting with the amendment of Section 29 of the Urban Areas Act to state unambiguously that any person who qualifies to be in town in terms of Section 10 (1) has the right to have his family with him and remain there permanently with his family, even if he is too ill to work, or is unemployed or retired. The practice of"endorsing out" so-called "idles" or "undesirables" cannot

be justified when no employment opportunities exist in the rural areas, and many of those "endorsed out" have not links in the rural areas. As a second stage contract workers should be given the right to have their families at their place of work.

3. Regulation 13 (1) (d) of the 1968 Bantu Labour Regulations must be repealed so that migrant workers are not compelled to return to their homeland every year. This prevents them from qualifying to live in town in term of Section 10 of the Urban Areas Act. This must also be repealed so that if the migrant worker does return for leave he will not be disqualified from requiring rights to remain in town.

4. The individual worker should be given greater freedom to choose his type of employment. Sheena Duncan (of Black Sash) has described the present system as follows:

> "In 1968 new Regulations were published for Authorities. These provide that:
>
> Every black man domiciled in the area of a Tribal Labour Bureau *must* register as a work seeker within one month of becoming unemployed from the time he is 15 years old until he turns 65. Women are not compelled to register unless they wish to obtain employment. Bona fide full-time students are exempted as are owners of land who live on that land and cultivate it regularly.
>
> When a man registers for the first time he is placed in a category of employment. In theory he has the choice of which category he is placed in but the labour officer may refuse his choice on the grounds that that particular category is over-subscribed. The categories include agriculture, mining, forestry, domestic construction, manufacturing, government employ, local authorities, commerce, etc. Once a man has been placed in a category he may not change out of it for the rest of his working life unless given permission to do so. This, in effect, means that although he may be allowed to change downwards from relatively skilled work to areas where

labour is in short supply he has no upward mobility at all. If he is classified as a farm, mine or domestic worker he has very little hope of ever being able to change his type of employment.

Once a man is registered as a work seeker it does not mean that he is allowed to seek work. He must remain in his home area until he is recruited for work. Recruiting is done by licensed agents who may be acting for one large employer, for a group of employers in the same industry or for a collection of small businesses. These recruiting agents are told where they may recruit labour. This means that the worker cannot even choose the area in which he will accept work. He can only be offered work in the areas for which agents are permitted to recruit at his labour bureau." (Page 12)

5. The contract worker must be supplied with a copy of his contract signed by both parties. Marchand describes the system as follows:

"In practice, contracts are attested like a mass production line. The main terms are perfunctorily and verbally explained to the contracting workers in groups, who then raise their hands to indicate their assent. In an instance I observed recruitment for South Roodepoort Main Reef Mines was taking place. The thumbprint of the work seeker was placed on the contract before the hours of work and the rates of pay were specified. There is little, if any, bargaining between employer and employee." (Page 36)

Even if these changes in the system are introduced however, the market place will remain an unequal bargaining situation. It can only become less unequal when workers are able, through their own organisations to negotiate fair wages and working conditions.

THE CENTRAL INSTITUTION OF SOUTH AFRICAN LABOUR EXPLOITATION

By Sheena Duncan

(Text of the lecture delivered during N.U.S.A.S. Labour Week; 23rd to 27th May, 1977)

I am very pleased to have been invited to speak to you on this subject this week. The Nusas team which has planned this project is to be congratulated on their perception in seeing that no discussion of labour problems in this country can achieve anything without the understanding of the total control Government exercises over all black workers to an extent which entirely prevents the normal regulations of employer/employee relations. No black trade union can ignore the effect the pass laws have and the way in which they hamper workers organisations and the effective exercise of power by workers in disputes with employers.

Regulation 1 (1) of Chapter Vlil of the Bantu Labour Regulation reads: 'The Central Labour Bureau shall be in the office of the Director of Bantu Labour at Pretoria and shall in addition to the powers and functions set out in the Labour Act control the activities of District, Local and Regional Labour Bureaux and regulate the supply of labour on a country wide basis".

In this talk I hope to demonstrate just how complete this control is and what it means to the ordinary black worker. When I use the term 'black' I am throughout referring to the African community as this is the only group controlled by the pass laws.

The whole geographical area of the Republic is divided into three types of black labour control systems all of which are controlled by the Central Labour Bureau in Pretoria.

1. *Prescribed areas* which are simply any areas which have been declared to be prescribed which in practice means every town in the Republic outside the homelands. In prescribed areas there is a Regional Labour Commissioner who is attached to the Bantu Affairs Commissioner's office and is a State official whose function is to control the activities of the Local Labour Bureaux.

2. *Non-prescribed areas* are all the remaining, largely rural areas of the so-called white Republic and are served by a network of District Labour Bureaux who are also subject to the control of the Regional Labour Commissioner.

3. *Homeland areas* where there is a network of Tribal, District and Territorial Labour Bureaux.

In addition to this the whole area of South Africa outside the homelands is now divided into Administration Board Areas so that one Board controls several prescribed areas with the surrounding non-prescribed areas. District and Local Labour Bureaux are staffed by the Administration Boards. Their employees are not Government servants but are, of course, subject to the Regional Labour Commissioners and must administer the laws and regulations laid down by the Government. They have no powers to change the system within their Administration areas.
In no case is the system orientated towards assisting, advising, or furthering the interest of workers. Labour Bureaux are there to feed the needs of the economy and to control the movement of black people in and into areas where employment is available. This control is not only imposed in the interest of the economy. Where these interests clash with the ideological commitment to Apartheid the latter has priority.

There is no freedom of movement for any black person in South Africa. When I made this statement a few years ago a senior official in the Department of Bantu Administration said that I was talking absolute nonsense. "Of course all Bantu have total freedom of movement. They can go anywhere they like at any time - for seventy two hours".

Another point that must be made is that the whole grand policy of apartheid has fundamentally affected the way in which black people outside the big cities live and has deprived them of their ability to protest their conditions of employment on an individual basis.

Too many white South Africans still cherish the picture of the black man working for additional luxuries only while relying for the major part of his livelihood on his share in communally held land with ground to grow crops and space to keep livestock. This is no longer the case. With the removal of so-called black spots from agricultural land, the abolition of the labour tenant and squatter systems on white owned farms and agricultural renewal programmes inside the homelands more and more people are living in closer settlements inside the borders of over-populated homelands where they are not allowed to keep livestock and where they only have urban-sized plots which are not big enough to grow even enough mealies to supply a family's needs.

The average black worker cannot afford to risk losing his job by demanding more pay or better conditions. If he

becomes unemployed there is no basic net of security in knowing that there will always be enough food for his family.

The movement of people off the land is normal in any industrial revolution but the difference is that in free societies the movement is towards the cities where jobs lie. Here this has not been allowed to happen and an entirely unnatural situation has arisen where people are actually prevented, as I shall show, from exercising their ingenuity and initiative in the struggle for survival.

PRESCRIBED AREAS

In prescribed areas every black man must register at the Labour Bureau as a workseeker within 72 hours of becoming unemployed but whether the Labour Officer will agree to register him depends on his position in terms of section 10 of the Urban Areas Act:

No Bantu may remain in any prescribed area for more than 72 hours unless:

a) He has lived continuously in that area since the time of his birth.

b) He has lived lawfully and continuously in that area for 15 years or has worked continuously in that area for one employer for 10 years. (Effects of 1968 Regulations on this last - one years contracts, employer compelled to discharge at end of year therefore not continuous employment; also men who are not yet in the system tied to employer in order to avoid loosing all chance of ever qualifying).

c) Dependents - need not concern us now.

This section is the basic law which prevents the mobility of labour. It means that no black workers can come to any town or city to look for work. In theory he can do so provided he finds a job within 72 hours of arrival but in practice this is not so. The Labour Officer will not register such a man, or woman, in the job he has found and the employer may not submit an application to employ him except if the job is a domestic one. Also it has been our experience that people are frequently arrested immediately after their arrival in the town. They have no proof that they have not stayed longer than the 72 hours and do not know how to defend themselves in court. Even people who are domiciled in the town must prove to the satisfaction of the Labour Officer that they have the right to be there. People who cannot

produce satisfactory proof will not be registered as work-seekers. We have dealt over the years with many cases where people have been prevented in this way from making any satisfactory career for themselves. Because they cannot be registered they can only work in casual daily employment, unprotected by any law, the first to be totally unemployed in times of recession and with no chance of any upward mobility of any kind.

When the Administration Boards were introduced the Government said they would allow increased mobility of labour but prescribed areas retain their separate identity and only those with Section 10 qualifications can safely accept employment in another prescribed area within the same Administration Area and then only with the consent of the Labour Officer which will be withheld if he considers his prescribed area to be in need of the particular category of worker concerned. (Prescribed areas are relatively small, e.g. Johannesburg, Sandton, Alexandra are all prescribed areas and permission to seek work in Sandton does not give a person the same right to do so in Johannesburg).

Nor has the division of Administration Board Areas favoured the worker. On the Witwatersrand the greatest need for mobility lies between East and West Rand and this is not allowed as two different Boards are in control. The restraints this puts on a worker's advancement are illustrated by the following cases:

1. Driver with small employer who moved works to East Rand. Driver has rights in Johannesburg. Sympathetic employer kept him registered in Johannesburg to pretect his accommodation and family security and used him as a personal driver while assisting him to obtain an extra heavy duty licence. Firm taken over by a large concern which is totally unsympathetic and insists on registration in the E.R. area. Worker must now leave the job and lose all seniority.

2. E.R. Man with house - over 20 years with one employer who promoted him to be manager of store in Carletonville - W.R. area. Worked in this store 11 years, got 10 (1) (b) in Carletonville left job, endorsed out of E.R. area, ordered to vacate his house, told he could get one in Carletonville but W.R. Board has not built any significant number of houses in years and there is no chance that he would get one quickly. N.B. His wife and children could not get a transfer to live with him in Carletonville until

he had family accomodation but he cannot get on to the waiting list for such accomodation until his wife has permission to be in the prescribed area of Carletonville. His appeal to the R.A.C. in the E.R. was disallowed but as he was 'lucky' enough to know that we were available and after a Ministerial investigation he was allowed to remain in the E.R.

In practical terms the introduction of Administration Boards has been to the detriment of black workers. As each Board has jurisdiction over non-prescribed areas as well as over the towns it is now more common for a worker who has no Section 10 rights and no homeland ties to be ordered to take employment on the farms if local farmers are complaining of a shortage. I shall be returning to this question of forced farm labour later on.

The importance of Housing Regulations in urban areas must not be underestimated in the controls they impose on black workers - even on those who have right of permanent residence. A Superintendant may order a man to vacate his house if he is employed outside the area for more than 30 days, e.g. educated man who is qualified in Johannesburg and has a house. Employers promoted him to being an instructor in their training programme in the O.F.S. He has accepted and gone down there commuting to see his family at weekends. Wife terrified that the Superintendant will discover this and turn them out of the house.

The Superintendant may also order a man to leave his house if he is unemployed for more than thirty days. I am not saying that this is widely used because I have no evidence of this but the threat is there, written into the law and any worker with a house and family to support is going to think twice about coming into conflict with his employer if the loss of his job may also mean the loss of his house.

There is also a provision made for the Superintendant to order a man to vacate his house if in the opinion of the Superintendant "he has ceased to be a fit and proper person to reside in the Bantu Residential area." This is an obvious weapon which can be wielded by the authorities against people who involve themselves in what may be considered to be undesirable activities such as worker organisations.

People who do not qualify to be in a town in terms of Section 10 (1) (a), (b) or (c) of the Act may only be there if the Labour Officer gives them permission.

He will refuse to grant permission to anyone who has entered the area from the homelands unless a contract of employment has been attested at the worker's local labour bureau in his home area. He will refuse anyone who does not have authorised accomodation in the area. He will refuse anyone who does not qualify in terms of Section 10 (1) (a), (b) or (c) unless the regional labour commission has authorised him to grant such permission or unless he is satisfied that the person does belong in the area. Workers who are registered after application to the regional commissioner have trouble every time they change their jobs. They have to go through the whole process of producing proof that they should be allowed to register every time and many of them feel themselves to be tied to unsatisfactory employers because of the insecurity of their position.

The Labour Officer may also refuse to register a qualified man in employment if that man has not registered as a work-seeker within 72 hours of becoming unemployed and he may refuse to allow someone to take up employment if there are 'unemployed Bantu in the area concerned who are authorised under Section 10 (a), (b) or (c) of the Urban Areas Act to be in that area and who are suitable for employment'.

There is another weapon which is effective in preventing a black worker's independence and initiative: Section 29 allows any authorised officer to arrest without warrant any black person whom he has reason to believe is an idle or undesirable person.

An undesirable person is defined as being

1) one who is over the age of 15 and under the age of 60 if a woman or 65 if a man, who though capable of being employed is normally unemployed.

2) one who has refused or failed to accept suitable employment offered to him by a labour bureau unless he gives his reasons to the Bureau immediately on being offered the job or within three days.

3) one who has on more than two occasions during any six month period lost a job within one month of starting work "due to his own misconduct, neglect, intemperance or laziness".

4) one who has been discharged from employment on more than three occasions in one year due to his own misconduct.

A man who has been arrested under Section 29 must give the

Bantu Affairs Commissioner a "good and satisfactory" account of himself. If he fails to do so he is declared to be an idle or an undesirable person.

The Commissioner may then order him to be detained in custody pending his removal from the area by the police to his home or to "a place indicated" by the Commissioner. Or he may be sent to and detained at a retreat, rehabilitation centre, farm colony, or a rural village, settlement or institution in an African area. His dependants may be removed with him. If a person who is qualified under Section 10 is declared idle or undesirable he forfeits his right to remain in the prescribed area.

NON - PRESCRIBED AREAS

In non-prescribed areas a man must register as a workseeker at the District Labour Bureau if he is unemployed and desires to be placed in employment. Once he is registered as a workseeker he has no real choice as to where he will work or what kind of work he will do. His chances will depend on the labour supply in the erea in which he lives. If the farmers in the area are short of labour he will have an endorsement made in his reference book saying "for farm labour only". We get letters from all over the country from people in this position. It does not seem to matter what education qualifications they have obtained. If farmers need labour they cannot do anything else For example, the other day a young brother and sister from the Krugersdorp area came to see us. Both had been refused permission to work in the town of Krugersdorp and both were told that they must work on the farms because their father is a farm labourer and they have always lived with their parents on the farm where he worked. The mines have benefited from this system as well. A young man with JC wrote from Welkom to say that he had been told to go to work on the mines because his father was a mine worker. In these circumstances it is difficult to see how farmers are to be persuaded to improve wages and conditions.

If farmers in a particular area are not in need of labour then men may be recruited for work in towns but have as little control over their employment as do people in the homelands.

HOMELANDS

The conditions I am about to describe are so unbelievable that I find it difficult to present the facts in a way which will convey to you the horror of the South African labour system. I would like you to remember that this system of migrant labour

is being extended all the time. There is no question that the Government is making any attempt to reduce the number of people who have to work within the system and every evidence that it is being extended. I have already touched on the way in which the old process of organisation and the acquisition of Section 10 qualifications has been stopped by the 1968 regulations. Apart from this there is the policy of removing settled urban communities into the homelands which is being continued all over the country. An example of all this is the establishment of Itsosang in Bophutatswana.

Fourteen towns in the Western Transvaal are building houses at Itsosang and are removing families from their urban townships, demolishing the family accomodation there and providing hostels for workers instead. Thus people who have been living with their families in the town where they worked must now become migrants on annual contracts while their families remain in the homeland.

In 1968 new regulations were published for Labour Bureaux at Bantu Authorities.

These provide that:

Every black man domiciled in the area of a Tribal Labour Bureau must register as a workseeker within one month of becoming unemployed from the time he is 15 years old until he turns 65. Women are not compelled to register unless they wish to obtain employment. Bona fide full time students are exempted as are owners of land who live on that land and cultivate it regularly.

When a man registers for the first time he is placed in a catagory of employment. In theory he has the choice of which category he is placed in but the labour officer may refuse his choice on the grounds that that particular category is over subscribed. The categories include agriculture, mining, forestry, domestic, construction, manufacturing, government employ, local authorities, commerce etc. Once a man has been placed in a category he may not change out of it for the rest of his working life unless given permission to do so. This in effect means that although he may be allowed to change downwards from relatively skilled work to areas where labour is in short supply he has no upward mobility at all. If he is classified as a farm, mine or domestic worker he has very little hope of ever being allowed to change his type of employment.

Once a man is registered as a workseeker it does not mean that he is allowed to seek work. He must remain in his home area

until he is recruited for work. Recruiting is done by licensed agents who may be acting for one large employer, for a group of employers in the same industry or for a collection of small businesses. These recruiting agents are told where they may recruit labour. This means that a worker cannot even choose the area in which he will accept work. He can only be offered work in the areas for which agents are permitted to recruit at his labour bureau.

There is gross unemployment in the homeland areas and even before the current economic recession this seems to have been the case. Labour Bureaux are required to keep statistics of registered workseekers and of those placed in employment each month so it is incomprehensible that the Minister has never seen fit to issue figures for black unemployment. Mr. C.G.J. Marchand, a student of the University of Witwatersrand, undertook an investigation of Labour Bureaux as a Public Law project in 1975. I quote from his paper: "From unemployment statistics I gleaned from records for the Mapualaneng Tribal Buruea, District Bushbuckridge, Lebowa, during 1975, the number of unemployed fluctuated between its lowest figure of 5087 registered unemployed in January to its high of 7468 in July. The official census is 25,725 men. This means unemployment in 1975 ranged from 20% to 29% of the total 1970 male population".

In these circumstances you will readily appreciate that men seeking work have practically no chance of bargaining for higher wages before they accept work offered and sign a contract. Mr Marchand told me that when he arrived at one Bureau his car was immediately surrounded by men pushing to get near him and pleading for work. As he sat talking in the office to the labour officer the doorway and windows filled with faces crowding in on him. The people became quite hostile when it was made clear to them that he was not there to recruit.

There are other factors which prevent men from negotiating better wages. One recruiting agent in the East Rand area described how he operated. He would send a message before him to the Labour Bureaux to say he would be there the following week and would they please round up workseekers. He would perhaps be needing 50 workers for various companies. When he arrived at a Bureau there would be several hundred men lined up. He said he walked along the line pulling out those who looked strong, healthy, bright. He was asked what he would do if a man he had picked said he needed more money than he was offering. He said, "I don't take cheeky boys. He'd go straight back in the line."

Once the men are chosen each must enter into a contract which must be attested at the Tribal Labour Buruea. Mr Marchand says, "In practice, contracts are attested like a mass production line. The main terms are perfunctorily and verbally explained to the contracting workers in groups, who then raise their hands to indicate their assent. In an instance I observed recruitment for South Roodeport Main Reef Mines was taking place. The thumb-print of the workseeker was placed on the contract before the hours of work and rates of pay were specified. There is little, if any, bargaining between employer and employee."

The Regulations lay down that the employer and the Labour officers in the sending and in the work area have copies of the contract. The worker has no copy. This makes it exceedingly difficult for him if he believes that his employer is not fulfilling the conditions of the contract. Over and over again men have approached us claiming that they were offered a certain sum when they signed this contract but that they are receiving very much less in their pay packet.

The contract is for a maximum period of one year after which the employer musy discharge the worker and return him to the home area. Unscrupulous employers are enabled to commit all kinds of abuses because of this provision. People have complained to us that even if they return to the same job through the call-in card system, they are not paid leave pay, that they never reach a higher grade in the firm's wage structure because they are always "new" workers etc.

Under these Regulations the migrant worker, when attesting his employment contract may have to agree to the deferment of a proportion of his wages to his dependants. The employer is responsible for transport to and from the home area, accommodation, medical attention, rations and protective clothing, all of which costs may be deducted from the worker's wages. Paragraph (8) of the Contract of Employment reads as follows: "The Bantu acknowledges having received the advances set out below against their respective names and undertake that these amounts shall be repaid by deduction from the moneys in excess of R1 earned by them for each completed period of 30 days or 30 shifts worked until the whole of such amounts shall have been repaid after which the full earnings shall be paid to them". We get many complaints about deductions which are not understood by workers and often appear to us to be deliberate attempts by employers to defraud workers.

As if all of this is not enough there remains that central

control from Pretoria which I spoke about at the beginning. Pretoria can decree that a specific Labour Bureau is closed for recruitment except for a specific area or for a specific category of employment. For example, one man was registered as a workseeker at a Bureau where no recruitment was allowed except for the nearby border area. As you know wage determinations are oftern waived in border areas as one of the carrots extended to employers to move their concerns in the interest of decentralisation. This young man was earning half of what he would have earned in an urban area and there was no way he could obtain better employment. In this connection we have been told on several occasions by employers who have moved to border areas that they are actively discouraged from paying a fair wage by the Bantu Affairs Commissioners in the areas concerned. One big company which moved to Phalaborwa stated their intention of paying wages on the company's international scale. The Commissioner said they couldn't do it there because it would spoil the market for all other employers in the area.

Then there is the closing of a bureau except for one category of employment - usually for the benefit of the farmers. When this happens it means that men registered at that bureau cannot obtain any other sort of job, whatever kind of work he might have been doing before, whatever skills he has acquired and whatever his physical strength may be.

The best way for me to try and get this across to you is to tell you the story of just one man who came to us where we were in a position to check the whole process of what happened to him and to follow it through over a period of time.

Mr X came to our office one day. He said he had been employed in the steel industry and had acquired some skill and expertise. He had been discharged from his job in Johannesburg and had had to go back to his home area in the Eastern Transvaal to register as a workseeker and to wait for a new recruitment. He stated that he had waited for four months and during that time no recruiting agent of any kind had visited his Bureau. We happened to have a contact with a very large steel works in Witbank, and asked them whether they could do anything to assist. They interviewed the worker and agreed that he could fill a position with their company. They also investigated what he had said about his area and discovered that there had been no recruitment there for a very long time. They arranged to recruit there at once but it was explained to Mr X. that their recruiting officer would not be allowed to ask for him

by name and that he must be in the line on a fixed day. Arrangements were made for the recruiting officer to recognise him. All went well and he was duly registered in their employ. This company was so horrified at conditions in the area concerned that they resolved to recruit there regularly. However next time they asked for permission to do so they were refused and were told that all recruitment except for farm labour had been stopped.

This central control of labour supply is a most powerful political weapon in the hands of Government. The Minister of Bantu Administration has said that "privileges" will be accorded to those people who voluntarily accept citizenship of homelands and that Transkei citizens will be accorded preference in housing, employment, hospitalisation and in general terms. Those homelands which refuse to ask 'voluntarily' for independence may find themselves in a position where no recruitment in their areas is allowed and they will be left with enormous numbers of unemployed and hungry people while independant countries are rewarded for their co-operation by preference on the South African labour market. This aspect of the potential control through the pass laws must not be underestimated. Last year when the Soweto disturbances happened an average of 129 cases were heard daily in the Fordsburg Bantu Commissioner's court, compared to a daily average of 95 in 1975, but more significant are the comparative figures for prosecutions and convictions (offences relating to influx control and identity documents).

	1975	1976
Sent for trial	20 110	30 011
Convicted	19 725	11 702

It is obvious from this very incomplete summary of labour controls that black trade unions will have to attack the system if they are to be effective as worker organisations. No doubt, when they do so they will accused of being "political" and of meddling in things which have nothing to do with labour affairs.

I believe that there are certain areas where black trade unions are likely to be most effective at the present time. These are those urban areas where workers live in 'homeland' townships but commute daily to work in 'white' South Africa, e.g. Mdantsane outside East London, Kwa Mashu and Umlazi outside Durban, Ga Hankuwa and Mabopane outside Pretoria, together with those innumerable smaller places in the Transvaal and

Natal where homeland townships are in fact dormitory suburbs for nearby towns. In these areas it seems to me to be more possible for effective worker action to take place, because:

1) Pressure can be put on homeland Governments to make sure that they are forced to act in the interests of the workers.

2) Workers' accomodation and family stability need not be dependant on their employment.

3) There is nothing to stop homeland Governments from instituting training programmes to ensure that Labour officers are orientated towards assisting and supporting workers rather than the system.

4) The necessary power base for effective worker action can be more easily achieved.

None of this must be construed as an indication that I support the policy of Separate Developement but I believe that we must use the venues which the system gives us in order to achieve a more just dispensation for all South Africans.

A CONSIDERATION OF THE LEGAL BASIS AND SOME PRACTICAL OPERATIONS OF LABOUR BUREAUX

By C.G.J. Marchand

(This paper was written in July 1976)

INTRODUCTION:

"The labour bureaux is the key through which contact is maintained between employers and employees so as to equate the demand for and supply of labour. Labour bureaux were established to ensure that the existing Bantu manpower in their legal areas is efficiently utilised by channeling it to employers in White areas, border areas and industrial growth points in the homelands themselves. A further aim is to motivate the "unproductive" and concealed unemployed to participate in the developed economy of the homeland. Labour bureaux also aim at placing skilled workers in jobs in which their talents and education can be utilised to the maximum extent." (1)

"Migrant workers from the Bantustans are processed through labour bureaux which are more like cattle markets than anything else. Men register there as work seekers then hang around to wait recruitment. They wait for days, weeks, months. Then comes the great day. The recruiting agent arrives. Two hundred and fifty men line up. He wants one hundred and eighty-four labour units for the company he represents. He walks along the line and beckons those he chooses. This one looks wrong, this one looks young and teachable, this one is too old, this one looks too thin. This one says he doesn't want to work at eight rand per week because he was paid eleven rand in his last job. He must be too cheeky. "Get back in the line, I don't want cheeky boys." Those who are not picked must wait weeks, maybe months, until the next recruiting agent comes. The "cheeky" one won't argue next time. He will be ready to accept whatever wage is offered. His children are starving and a little is better than nothing." (2)

Pivotal in the web of proclamations and regulations by which blacks have been traditionally ruled are the labour bureaux. Their importance derives from their function of registration and recruitment of native labour. For, without following such

procedures, no black wage labourer can legitimately obtain employment in South Africa. Although not the invention of the present government, labour bureaux have conveniently fitted into the Apartheid Design. Thus, the apologists of the government write propaganda for labour bureaux such as the first quote above. The second quote seeks, albeit in a generalised way, to convey some sense of what labour bureaux are really like. The camouflaged verbiage of the first quote, viz. the harmonious equilibrium of industrial, mining and agricultural relationships and the dignity of labour, gives way to the essence of South African labour relations in the second quote. That is, a raw, brute process of recruitment for inferior jobs, demarcated on racial lines, with a minimum of bargaining and a maximum of coercion. But this project does not intend to discuss the theoretical implications of labour bureaux. Instead, it will outline the general legal framework from which they derive their authority. It concludes by offering a few comments on the functioning of labour bureaux in their allotted tasks.

THE AIMS OF LABOUR BUREAUX:

Chapter VIII of the 1965 Regulations entitled "Labour Bureaux and Employment of Bantu" lists six aims for the labour bureaux. They are:-

* Placing Bantu in employment and harmonising supply and demand.
* Maintaining co-operation between employers and work seekers.
* Collecting and correlating data about work seekers and the availability of jobs.
* Endeavouring to place work seekers in jobs for which they are best suited.
* Informing the Bantu Reference Bureau of movements of Bantu workers.
* Taking all steps necessary to ensure the efficient functioning of labour bureaux.

Although other aims are defined in the literature of the Department of Bantu Administration & Development and elsewhere, this statement remains the most concise and authoratative yet published on the purposes of labour bureaux.

THE HISTORY OF BLACK LABOUR RECRUITMENT:

Labour bureaux are a relatively new innovation in the South African labour scene. As late as the turn of the Century, the four South African colonies' legislation on native labour made no provision for labour bureaux. The Native Labour Agent Act, 6 of 1899, applicable to the Cape Colony and the Coloured Persons Native Labour Ordinance, 6 of 1906, applicable in the Orange River Colony, made provision for native labour recruitment by licensed permits in districts specially proclaimed for this purpose. In Natal, Law No. 15 of 1871 made the Resident Magistrate the nexus of the labour supply. He received the orders for servants and recruited the supply. Excesses of demand or supply were advertised in the Government Gazette and in each of the newspapers. Deficiencies in the number of servants ready and able to work were remedied by imports of the same from outside the Colony.

Only in the Transvaal was the control exercised similar to that of today. A blend of protective paternalism and latent exploitation, the Native Passes Proclamation, 37 of 1901 and the Labour Agents and Compound Overseers Proclamation, 38 of 1901, introduced a system of native recruitment by licensed labour agents. Recruiting could only take place for one employer. All employers who engaged more than twenty natives had to be registered. It was illegal to "seduce" servants from one contract of employment to another. A native had to carry an "Identification Labour Passport" which would be held by him during his period of service. Such a pass was to be issued in the labour district where the native worked. Only after the Pass Officer was sure that the native fully understood the terms of contract was the passport issued. No minimum wages or social security benefits for the worker were prescribed. Employers had to seek permission to transfer his native employee from one labour district to another.

With Union, these laws were repealed and replaced by the Native Labour Regulation Act, 15 of 1911. Section 23 (1) (o) provided that the Governor-General had the authority to issue regulations establishing bureaux and for the registration,

housing and feeding of native labour at any such bureau depot. Fees would also have to be paid by employers for each native they employed. Government Notice No. 1988 of 1 December 1911, prescribed many of the procedures used at the labour bureaux today: defined labour districts under a bureau's jurisdiction, registration of work seekers, recruitment by labour agents,provision for medical examinations and the attestation of contracts to which verbal knowledge of its provisions by the contracting native as happens today, was deemed sufficient.

Section 13 of the Native Laws Amendment Act, 56 of 1949 redefined Section 13 (1) (o) of the 1911 Act. Their powers were defined, inter alia, as registering unemployed native labourers, placing work seekers in jobs and conrolling the movement of native labourers into the prescribed areas. Pursuant to this amendment, updated Regulations were promulgated in 1952. Thereafter, Government Notice No. 63 of 9 January 1959 repealed the 1952 Regulations and proclaimed a new set of Regulations more detailed and along the lines of the 1965/68 Regulations in force today. These included registering natives placed in employment, further controlling their inflow into the prescribed areas and outlining detailed provisions for medical examinations, depots, offences and exemptions.

THE FRAMEWORK OF LABOUR BUREAUX:

In 1964, the old 1911 Act was repealed when Parliament passed a new enabling Act - the Bantu Labour Act, 67 of 1964. This Act became applicable throughout South Africa and the homelands save the Transkei, where, by Item 13 of the First Schedule, read with Section 37(3), of the Transkei Constitution Act, 48 of 1963, the South African Parliament bestowed its legislative competence in respect of labour matters in the Transkei on the Transkeian Legislative Assembly. Thus, in the Transkei, the 1911 Act and the 1959 Regulations still apply.

Sections 21 of the Bantu Labour Act defines a complex, hierarchial network of labour bureaux. A central labour bureau has been established in the office of the Director of Bantu Labour in Pretoria. Regional labour bureaux are created, managed by a

Regional Labour Commissioner, in the area of jurisdiction of every Chief Bantu Affairs Commissioner. District labour bueaux, in the charge of a district labour officer, have been set up in the office of every Bantu Affairs Commissioner, magistrate, detached additional or assistant magistrate or J.P. in the area of their jurisdiction. They have seniority of status in the order outlined i.e. the jurisdiction of a higher district labour officer excluding that of a lesser district labour officer in the same area. In every prescribed area, local labour bureaux are maintained and administered by a municipal labour officer. As at 31 December 1975, there were 294 local, 241 district and 8 regional labour bureaux in the Republic. (3)

In 1968, by proclamation R.74, the Government extended the labour bureax system to the homelands. A tribal labour bureau controlled by a tribal labour officer was established in the office of every tribal or communal authority as defined by the Bantu Authorities Act, 58 of 1951, for the regulation of labour matters in such authority. At every Administrative Office, a district labour bureau manned by a district labour officer was created with authority over the tribal bureau. In the office of the Territorial Authority, a territorial labour bureau was founded under a Territorial Labour Officer who exercised overall authority. As at 30 April 1976, there were 518 tribal, 96 district and 8 territorial labour bureaux in the homelands. (4)

The powers and functions of labour officers are defined by Section 22 of the Bantu Labour Act. All labour officers must manage their bureau according to regulations prescribed by the Minister of Bantu Administration and Developement. (5) Additionally, in his urban area, the Regional Labour Commissioner is responsible for inspecting any labour bureau, including the records, books and accounts of that bureau and premises on which blacks live. Also, he must confer with the Bantu Affairs Commissioner and magisterial and labour bureaux authorities in seeking to improve the efficiency of all labour bureaux. (6) Similar functions pertain to the Territorial Labour Officer in respect of the district and tribal labour officers under his jurisdiction.

District, municipal and tribal labour officers must maintain records and furnish returns and information as required by the Territorial Labour Officer and the Director of Bantu Labour. The same officers must cop-operate with other labour officers, employers and other recognised bodies to ensure the efficient functioning of their bureau. They also have powers of inspection over inferior labour officers.

Section 22 (6) of the Act prescribes that municipal labour officers must issue permission in terms of Section 10 (1) (d) of the Urban Areas Act, 25 of 1945, for the employment of any black worker from outside their area in the area. It is these 10 (1) (d) people who constitute in law the migrant labour force. Permission for the employment of any black in his area may be refused if the municipal officer considers the contract of employment to be invalid for a variety of reasons:-

* The contract is mala fide.
* The black is not permitted to be in his area or is under a removal order from that area.
* The black is legally prohibited from being employed.
* The worker refuses to undergo a medical examination, or alternatively, is found to be suffering from T.B. or V.D.
* The labour officer considers that Bantu to be suffering from a disease dangerous to public health (unspecified).
* Where adequate accomodation is unavailable.
* The black's employment is likely to impair the safety of the State, the public, a section of the public or the maintainance of public order. (7)

In terms of Section 22 (8) of the Act, where such permission is refused, the Bantu may be referred to an aid centre or ordered to leave the prescribed area. Section 22 (10) requires that this sentence be confirmed by the Chief Bantu Affairs Commissioner. Where a black fails to leave the area after such an order is issued, then he will lose his Section 10 rights in terms of Section 22 (9) of the Act. My enquiries at the West Rand Bantu Administration Board (WRAB) seem to indicate that this provision is never used. Black people with Section 10 rights are

endorsed out, not under Section 22 (8) of the Bantu Labour Act but under Section 29 of the Urban Areas Act. A similar situation prevails in the Pretoria Administration Board area where these Sections of the Act have never been invoked. Presumably it is easier to standardise procedures by only applying the test of whether a Bantu is idle or undesirable!

Remaining relevant clauses of the Bantu Labour Act dealing with labour bureaux relate to fees payable to labour bureaux and their disposal, appeals and permitting ministerial exemptions to be granted from paying labour bureau fees. These clauses are expanded on by the 1965/68 Regulations issued by the State President under Section 28 (1) (u) of the Act. This was modified by Section 15 of the Bantu Laws Amendment Act, 70 of 1974, to provide that the Minister acquires the sole capacity to make regulations under Section 28 (1) (u) consistent with the Act. These relate to the management and control of labour bureaux. Then follows an exhaustive list of topics for which regulations may be issued. (8)

Item 13 of Schedule 1 of the Bantu Homelands Constitution Act, 21 of 1971, provided that any Bantu self-governing territory shall have jurisdiction over all labour matters including the establishment, maintainance, management and control of labour bureaux and the registration and placing in employment of work seekers. The territory may also determine the availability of work seekers for employment outside the homeland. No homeland has altered the labour bureaux system. On the contrary, the Transkei Labour Laws Amendment Act, 4 of 1967, prescribed that the Minister of the interior of the Transkei would henceforth promulgate regulations relating to Transkeian labour bureaux. The system is so entrenched that it cannot be changed by the homelands who heavily rely on the revenues generated by migrant labourers.

THE 1965/68 REGULATIONS. REGISTRATION OF EMPLOYERS AND WORK SEEKERS:

Two major sets of regulations have been promulgated by the Government to provide a modus vivendi for the labour bureaux. The 1965 Regulations (9) concentrate more on the control of black labour in the prescribed areas while the 1968 regulations

(10) focus mainly on the recruitment of black labour in the homelands. However, many of the provisions overlap, and, in the case of conflict of the regulations, Regulation 27 of the 1968 regulations provides that the provisions of the 1968 Regulations are to prevail.

Any employer of one or more Bantu labourers in the Republic or the homelands must be registered at the local/tribal bureau. Vacancies in employment must be notified with the bureau within 14 days. The labour bureau must keep records of all employers and their employees. A tribal labour officer shall not refuse to register an employer if such employment has not previously been registered but in S. versus Somana (11), it was held that the onus was on the employer to register a service contract with his black employee with the labour bureau.

In the prescribed areas, all blacks qualifying to be there under Section 10 of the Urban Areas Act, shall register as work seekers at the local labour bureau of the area where they reside within three days of becoming employed or fourteen days of turning fifteen of ceasing to be a full time student at an educational institution (unless awaiting admission as a full time student to another educational institution). These provisions are not applicable to blacks under 15 or over 65 or to black women or those whom the labour officer considers unemployable because of physical or mental infirmities. Certain classes of blacks viz. professional men and women, ministers of religion who are marriage officers and certain categories of teachers and public servants are exempted from registering if they are lawfully in the prescribed area. (Regulation 28, 1965). In the homelands, registration procedures apply to any person dependant on wage labour for a livelihood or desirous of taking up such employment. The time measures, however, are one month rather than three or fourteen days. Failure to register is an offence. Two lists are kept - registered employment composed of workers with contracts of employment and registered unemployment comprising workers without these contracts.

Two noteworthy judicial decisions have been handed down in explanation of this requirement. In R.

versus Diale (12), Hiemstra J. held that "awaiting admission" to an educational institution meant that there has to be indication by the institution to which the applicant seeks admission that at a date in the reasonably near future he will be admitted, or there is reason to believe he will be admitted. "To say that a person is 'awaiting admission' because he has applied and has been refused entry to an educational institution and intends to apply again, gives an extended meaning to the expression 'awaiting admission' which could stultify the enactment."

In another judgement, on a charge brought against a black man in Kroonstad for failing to re-register at the labour bureau until two weeks after becoming unemployed, the Court held in R. versus Seroto (12) that:

> "Artikel 9 (1) bepaal dat versuim om binne drie dae die verpligtings daarin genoem na te kom, strafbaar is, maar dit bepaal nie daar 'n voortdurende verpligting op hom rus nie en dat indien 'n verdere versuim van drie dae plaasvind, 'n tweede skuldigbevinding kan plaas nie." (13)

The defence of autrefois convict, that no man may be twice convicted for the same offence, was sustained.

1965/68 REGULATIONS. LABOUR RECRUITMENT

On registration at the tribal bureau, work seekers are placed in particular categories of employment. These are seventeen occupations outlined by Regulation 7 or the 1968 regulations. (Including a category "unemployable.") The practical consequences of this requirement are unclear. Section 6 (2) (a) of these regulations require the tribal labour officer to take the work seeker's preferences into account but there is no law obliging him to do so. Mrs Duncan writes that work seekers are often placed in categories against their will e.g. mining, because their fathers worked in such occupations. (14) Furthermore, Regulation 9 or the 1968 regulations enables the Director of Bantu Labour to zone areas for which Bantu labourers from a specific tribal bureau are, or are not, made available for recruitment. This device forces work seekers at that

bureau to take jobs only in agriculture or mining as the case may be, e.g. Eastern Transvaal Bureaux are zoned so as not to provide labourers for the Witwatersrand. This means that workers have little option but to work on the Witbank Coal Mines.

The Department of Bantu Administration and Developement (DBAD) claim to have no statistics on which bureaux are thus zoned. They intimated that only by asking each of the Bantu Administration Boards in the Republic can one ascertain for what areas bureaux are zoned. To what extent work seekers are placed in and remain in unwanted occupations I could not gauge statistically at the tribal bureaux I visited; but in a labour market where an employer can pick and choose, unquestionably many work seekers must have unwanted jobs for the alternative is no job at all. Regulation 21 of the 1968 Regulations stipulates that no black person may leave the area of their tribal bureau for employment outside the homeland unless registered as a work seeker and with an attested contract of employment, which means the only way they get a job is to be recruited.

Regulation 10 of the 1968 Regulations requires that requisitions for labour be addressed to the Territorial Labour Officer usually, but not always, from a Regional Labour Commissioner. They are then distributed to district labour officers who distribute them to tribal labour officers on a basis of proportional distribution of work opportunities. Recruiting may be performed either by the tribal or district labour officer or by a registered labour agent. In practice, recruitments are often effected by specified criteria prescribed by the employer. These are usually age (ideally 19 - 35 years, the most common criteria), physical health, experience and apparent intelligence. Recruitment can be done on an agency basis. This is most prevalent in raising work seekers for mining and agriculture. Prominent mine recruiting organisations are the Mine Labour Organisation Ltd, and the Natal Coal Owners' Native Labour Association. In 1972, the Mine Labour Organisations Ltd, recruited 87 177 black workers from the labour bureaux of the Republic. (15)

In terms of the 40th Schedule to the 1965 Regulations

a "call in" card is deemed to be a requisition for labour. If produced during its period of validity and it contains all the necessary permissions, it will serve as authority for registering the holder as a work seeker and attesting a contract of employment with his previous employer on the terms and conditions set out in the "call-in" card.

In the rural areas of the Republic, the position is less clear. The 1965 Regulations established a system of district labour bureaux under the management of district labour officers. Work seekers and employers must register with the bureaux. Labour recruitment in the rural areas is not specifically catered for in the Regulations. According to Dudley Horner, the bulk of workers are engaged as full time farm workers or else as workers in the rural towns with their families sent to the homelands. However, the lack of knowledge of conditions in the White rural areas is very pronounced and needs to be extensively investigated. No doubt the Regulations are vague in outlining employment procedures in the rural areas so as to contribute to the general lack of outside information on practices there. (16)

1965/1968 REGULATIONS; ATTESTATION AND RECORDING OF CONTRACTS:

On being recruited, a Bantu labourer at a tribal bureau will enter into a written contract of employment (in quadruplicate) as prescribed by the 1968 Regulations. Arrangements can be made for deferring a part of the labourer's wages or they can be refunded to his dependants. The contract is signed by the labourer and the employer or his representative, in the presence of an attesting officer who must ensure that the Bantu fully understands and assents to the contract's terms. Section 13 (2) of the 1968 Regulations provides that the Bantu's thumbprints are prima facie evidence that the Bantu has bound himself to perform under the contract. Section 15 of the Bantu Labour Act, 67 of 1964, made it a criminal offence to desert, neglect to perform work, present oneself for work in an unfit state, use insulting language in the presence of one's employer or fail to obey an employer's lawful command. However, this provision was abolished by Section 51 of the Second General Law Amendment Act,

94 of 1974, but employers may still institute civil actions against deserters.

Section 16 of the 1968 Regulations provide that four copies of the contract are held by the tribal labour officer, the attesting officer, the employer and the municipal/district labour officer in whose area the black worker goes to work. Should the worker wish to dispute any conditions of his employment, he has no copy of the contract to produce the proof. When I asked the DBAD whether they would amend the Regulations to provide for the worker to receive a copy of his contract, I received the following reply: "The Bantu Labour Regulations, 1965, and the Bantu Labour Regulations (Bantu Areas), 1968, provide sufficiently for the entering into between employee and employer of contracts and no further amendments are considered necessary."

There are a number of conditions which control contracts of employment:

* To be valid the contract must be fully completed, properly understood and must not contravene any law. (Reg. 13 (1) (a) (b) and (c), 1968).
* No contract must last more than one year or 360 shifts (whichever is shorter) or, if the Bantu is under 18, Nine months or 70 shifts (whichever is shorter) unless the Director of Bantu Labour authorises otherwise. (Reg. 13 (1) (d), 1968). This is to prevent any worker from qualifying for permanent residence under Section 10 of the Urban Areas Act. So, even if a worker returns to the same employer for ten years it is not continuous employment as the contract was renewed each year.
* A contract involving a black boy/girl under 16, is only valid if the consent of the guardian is obtained. (Reg. 13 (1) (g), 1968).
* If the contracting party is a black woman, the consent of her guardian must also be obtained to the contract. (Reg. 13 (1) (h), 1968).
* If the contract of employment is for an occupation other than that for which the Bantu is registered as a work seeker (mining or farming contracts excepted) (Reg. 13 (1) (1) 1968).
* No contract of employment shall be attested if a labour tenant contract or contract of employ-

ment remains outstanding.

* A municipal/district officer may also prevent performance of a contract of employment attested in a tribal area (Section 22 (6) of the Bantu Labour Act - supra).

Other stipulations for a vaild attestation of a contract are that there must be adequate arrangements made for transport of the black worker to and from the place of employment, security that he will be repatriated home on termination of the contract and that he has a Reference Book or Document of Identification. If the contract does not fall foul of any of these requirements the labourer may enter the Republic as a contract worker for one year.

1965/1968 REGULATIONS. THE PRESCRIBED AREAS:

In the prescribed areas more latitude is allowed in the search for jobs. Unlike the contract worker, a black person may change occupations by re-registering as a work seeker after leaving his old job and entering into a contract of employment with his new employer. A black worker's Reference Book must be signed before the 8th day of every month by his employer indicating that the Bantu is still in his employ (Reg. 19, 1965). The local labour bureau may refuse to sanction such contracts of employment if the Bantu or his employer are not properly registered with the bureau or if the bureau was not advised by the employer of any job vacancy. (Reg. 14, 1965.) In practice, this Regulation is rarely invoked. The contract is negotiated between the employer and employee and a copy is sent to the local bureau within three days as required by Regulation 16 (1) (b) of the 1965 Regulations, which bureau acts as a recording agency and receives all due fees.

It is the Environmental Planning Act, 88 of 1967, which primarily restricts the Section 10 worker's freedom of choice. According to one labour officer this Act is the most effective legal weapon labour bureaux have against black work seekers in the prescribed areas. Section 3 of the Act provides that ministerial consent is required for the extension or establishment of new factories or classes of factories in proclaimed areas defined by Proc-

lamation R.6. of 19 January 1968, as including all factories in metropolitan areas with the exception of Durban/Pinetown. An "extension" of a factory is defined as an increase in the number of blacks there employed. The intention of the Act, said the Minister of Planning, is to freeze the number of Bantu employees in industries in the industrialised urban areas and if possible to reduce their numbers through industrial decentralisation. (17)

In particular, this has hit the Wiwatersrand - work seekers often cannot get or engage in the job they want because an employer's quota is full or because the labour bureau will refuse to register the employment contract even if vacancies or opportunities exist e.g. in the Transvaal clothing industry. Because the worker does not get his desired job and must take another, high labour turnover, absenteeism and unproductiveness often result. From 1 February 1971 to 31 January 1976, 45503 black workers in the Transvaal were affected by refusal to extend work quotas under the Act when it was flexibly applied (18) If the Act is rigorously applied, as seems increasingly evident, an estimated 100 000 workers could be affected. (19)

Furthermore, exclusion from desired jobs does not necessarily mean that the thwarted work seeker will take up registered employment in other jobs. Officials in both the West Rand and East Rand Boards told me that often workers so affected are officially registered as unemployed while illegally engaging in a desired occupation or else turn to crime or do not work at all. Thus, despite registered unemployment figures in the prescribed areas, labour has to be imported into the prescribed areas from the homelands to fill unwanted job vacancies thereby defeating the purpose of the Act. The vicious cycle completes its circle with Regulation 13 of the 1965 Labour Regulations and Section 29 of the Urban Areas Act.

Regulation 13 stipulates that when a Bantu fails to obtain work within a specified time or refuses to accept "suitable" work offered him by the municipal labour officer he may be dealt with by Section 29. (20) Section 29 (2) defines as "idle" any Bantu who, inter alia, is normally unemployed though cap-

able of employment; who has three times refused employment offered by a labour bureau without due cause; who has on three or more occasions during any six months lost employment offered him by a labour bureau due to his own misconduct, intemperance or laziness after less than one month; or has on four or more occasions been discharged from employment due to his own misconduct. "Undesirable" persons are related to non-labour bureau offences. Any Bantu declared "idle" or "undesirable" may be endorsed-out to any rural area, sent to a work colony or placed in a contract of employment under suspended sentence of being endorsed-out if the worker loses that employment. This must surely rank as one of the worst provisions of control of black people, for one does not have to commit a crime to be so punished.

However, because of strict review and interpretation of this Section by the courts, few blacks have suffered under its provisions. More often than not, a person being tried under its provisions, can prove for purposes of the law that he has adequate means of support from family or friends, even if only irregularly employed. This has been held by the courts to be an acceptable defence. (21) In 1975, of 44 cases heard at the Germiston Magistrates Court, no-one was endorsed-out and only one person was sent to a work colony. In the Johannesburg Magistrates Court during the same period, 2631 cases were heard, 18 were sent to work colonies for periods of 12-18 months, 207 were given suspended sentences and no-one was endorsed-out. (22)

1965/1968 REGULATIONS. MISCELLANEOUS.

If the employer or attesting officer so requires, the contract labourer may be obliged to undergo a medical examination. No contract of employment shall be attested where he is declared medically unfit, suffers from V.D. or T.B. or any other ailment the medical practitioner considers dangerous to public health. (22a) This requirement can have unpleasant consequences. In the Mahla District, Gazankulu, there are four tribal bureaux but the nearest clinic is 30 kms away in Massana, Lebowa. There are no buses and the taxi fare costs R2

payable by the black work seeker - a hefty slice out of meagre assets. One can presume that in any of the homelands, with their chronic underdevelopment, similar instances arise necessitating work seekers travelling great distances at considerable cost to the nearest clinic. The morality too, can be challenged of a labour system that provides no medical care benefits yet picks and chooses, ruthlessly discarding the aged, ill and weak.

Provision is made for seasonal workers in agriculture. In their regard procedural requirements are modified, only the team leader (as contractee) being registered by the tribal bureau. (Reg. 20, 1968). In the prescribed areas, the municipal labour officer may grant permission for a black qualifying under Section 10 (1) (a), (b) or (c) of the Urban Areas Act, to work as a casual labourer or independant contractor. Such permission is entirely discretionary and may be withdrawn at any time. Business and artisinal activities are the main independant contracting occupations (Reg. 22, 1965).

Fees are prescribed in the Regulations. Every employer of black labour pays a monthly R1 fee to the labour bureau where the contract of employment is attested/registered. (Reg. 26, 1965; Reg. 23 (1) 1968). Fees are also charged by the bureau for registering or attesting the contract itself (25c at local bureaux, R1 at tribal bureaux). At KwaZulu Labour Bureaux, however, Act 11 of 1974 of the Kwa Zulu Legislative Assembly, assented to by the State President in Proclamation R.1543 of 30 August 1974, provides that the fee for attesting contracts is R3. These monies are paid into Administrative Board Funds or to the homelamd authorities. Failure to pay is a criminal offence under Section 24 (4) of the Bantu Labour Act, 67 of 1964. Under Section 24 (3) of the Act the Minister may grant exemptions from paying labour bureau fees. By Proclamation No. R.361 in G.G. No. 2009 of 15th March 1968, the Minister exempted mine-owners from paying service contract fees to local or tribal labour bureaux in respect of black mine workers in gold or uranium mines in the prescribed areas. Remissions of fees paid may be reclaimed by an employer in respect of a worker who has deserted from service, on a pro

rata basis for every month for which the worker failed to perform his contractual obligations. (Reg. 23 (5), 1968). Fees may also be repaid by the local labour officer at his discretion to any bona fida farmer whose sole occupation is farming. (Reg. 25, 1965).

Appeals also lie from the decisions of tribal or district labour officers to the Territorial Labour Officer. They must be filed and heard in accordance with prescribed procedures. (Reg. 25, 1968). Similarly the same right of appeal from or review of a decision of a municipal/district officer lies to the Chief Bantu Affairs Commissioner. Again they must be filed and heard following given procedures. (Regs. 30 and 31, 1965). Section 23 (2) (b) of the Bantu Labour Act, 67 of 1964, provides that the Chief Bantu Affairs Commissioner may confirm, vary or rescind any decision of a lower labour officer - his decision will be final. However, Section 23 (4) of the same Act cynically adds that the noting of such appeal or review will not "suspend the operation of any decision or order appealed against or taken on review". In Shidiock versus Union Government (23), it was held that a decision of the Chief Native Affairs Commissioner can be reviewed by courts of law if he acted mala fide, for ulterior reasons, dishonestly, grossly unreasonably or failed to exercise his discretion in the proper way. But this does not mean that the decision is reversed but that it is only referred back to the Chief Bantu Affairs Commissioner for reconsideration.

HAVE LABOUR BUREAUX BEEN SUCCESSFUL?

There has been a great discrepancy between stated aims and the performance of labour bureaux. In theory, they harmonise the supply and demand of labour, but this raises the question of unemployment. There have never been official statistics of unemployment in South Africa. Answering a question in Parliament on 4 March 1975, the Minister rejected the idea of keeping a special Bantu Unemployment Register as these figures were kept at the labour bureaux. Detractors have long argued that what labour bureaux achieve is to keep the unemployed out of sight in the Bantustans. From unemployment statistics I gleaned from DBAD records for

the Mapulaneng Tribal Bureau, District Bushbuckbridge, Lebowa, during 1975, the number of unemployed fluctuated between its lowest figure of 5087 registered unemployed in January to its high of 7468. The official census is 25 725 men. (24) This means unemployment in 1975 ranged from 20% to 29% of the total 1970 male population. If one assumes 1/15th of Lebowa work seekers are women, one may reduce the figures proportionately. (25) Certainly, the statistics are faulty, but they represent official records which are underestimates because many blacks do not register although desirous of wage-labour or else seel work illegally. The "Financial Mail" has estimated that unemployment in South Africa stood at the end of 1975 at a total of 20% of the black work force as compared with 9% of the black work force in 1961. (26)

The Unemployment Insurance Fund is doing little to alleviate this problem. At Mahla District Labour Bureaux, a mere 16 applications were awarded in 1975. (27) Criticisms of the stinginess of the Fund abounds. The Fund's assets stand at R196,5m. yet Black farming, mining and domestic workers are excluded from its provisions. (28)

A high rate of desertions from contracts of employment further indicates a lack of harmonisation between the interests of employers and employees. At both the homeland district labour bureaux I visited, the Magistrate and the Labour Officer I interviewed, indicated that they saw the breaching of contracts and the consequent refunding of fees as their prime problem. Section 15 of the Bantu Labour Act, 67 of 1964, making desertions a criminal offence may have been abolished but it can be argued that the supply of workers was so ample, that the dropping of statutory provisions outlawing desertions has effected no change. Historically, the whole labour system has been based on compulsion with white employers' of cheap black labour in white areas, forcing South Africa's migrant labour system. It is significant that it is an offence both to fail to register if wanting work and to report for recruitment on a day specified by the tribal labour officer. (Reg26. (1) (a) and (b), 1968). I could not gather statistical evidence of any prosecutions

instituted under the regulations, but they are in the Statute Book ready for use if necessary.

Inevitably, the frequency of desertions raises the question of workers' awareness of their rights and the role of labour officers in protecting these rights. In practice, contracts are attested like a mass production line. The main terms are perfunctorily and verbally explained to the contracting workers in groups, who then raises their hands to indicate their assent. In an instance I observed, recruitment for South Roodepoort Main Reef Mines was taking place. The thumbprint of the work seeker was placed on the contract before the hours of work and the rates of pay were specified. There is little, if any, bargaining between employer and employee. A glance through the record cards of the Black Sash Advice Office reveals an endless number of cases of advice seekers complaining that they have never had their legal or factual position explained to them. The most common complaints focus on a lack of knowledge of the procedure for obtaining or reobtaining work and of the terms of the contract. The official standpoint of the DBAD is that:

> "Although it is not specifically a function of the labour bureau, it is general practice to provide advice to work seekers. No specific regulations about providing such advice have been promulgated." (29)

Enquiries as to what labour training officers receive, met with no response from the DBAD in Pretoria. The WRAB informed me that little formal training was carried out as most workers were employed by large firms who engage Personnel Managers to handle their problems.

Further problems centre on the relationship between employers and labour bureaux. Frequently, employers get into trouble for infringing the regulations. Statistics at the WRAB reveal that in April 1976, of 1386 routine inspections of employers' premises in Johannesburg, 657 convictions were secured against employers for contraventions of the regulations e.g. employing black workers without registering their employ, failing to pay labour bureau fees, unlawful accomodation etc. Criticism is also directed against

the cumbersome procedures of labour bureaux. Labour recruitment forms from employers are handed to the local or district labour officers who hand them to the Regional Labour Commissioner who hands them to the Territorial Labour Officer in the homelands who hands them to the district labour officers who hand them to the tribal labour officers. There is hardly any direct communication between tribal and local labour bureaux.

Workers, too, despairing of recruitment at a tribal bureau will enter the prescribed areas illegally seeking employment. Once a job is found, he will present himself at an urban bureau seeking registration in an attempt to gain legal recognition for his job. These workers, called "new arrivals" because they voluntarily report to the labour bureau for registration but are illegally in the prescribed area, are endorsed-out. The 1975 figures for endorsements-out of new arrivals in the WRAB was 1814 men and 991 women. (30) Often what then happens is that the employer will continue to engage the worker's services. This means that the worker gets his contract attested at his tribal bureau after being endorsed-out and can then re-enter the prescribed area, this time legally. Thus, one gets a subsequent legitimisation of an illegal act which is bad in law and is a tremendous waste of time and manpower.

There is inefficiency in collecting and correlating data - a third aim of the labour bureaux. The whole structure is grossly duplicated and achieves expansion in the numbers of the bureaucracy but little else. The stipulation that four copies of the attested contract must be made and distributed leads to a massive flow of paperwork. This problem is accentuated by the requirement in 1968 Regulations that contract labourers renew their contracts annually. The whole question of administrative skills, especially in the homeland bureaux, also needs to be examined. Statistical sheets I glanced through at Bushbuckridge District Bureau are littered with copies returned from Pretoria saying, "Statistics incorrect", "Re-do", "Inadequate information" etc.

Another big failure has come in labour bureaux

attempts to place blacks in employment for which they are best suited. Originally, it was envisaged having aptitude tests. But this system has never worked. The objective has been suborned to the wider requirements of influx control which dictate that the only blacks allowed into white areas are those required to fill certain jobs and for whom adequate accomodation is available, or of the Environmental Planning Act which rations black expansion into jobs.

APPENDIX

1. *Benbo* - Bureau for Economic Research re Bantu Development. Bophuthastwana Survey. 63-65.

2. *"Sash"* : May 1974. Article entitled "The Legal Background" by Sheena Duncan. 4.

3. Statistics given to me by the Department of Bantu Administration and Development, Pretoria during an interview.

4. Statistics given to me by the Department of Bantu Administration and Development, Pretoria during an interview.

5. Hereinafter referred to as the Minister.

6. Orinally, the local labour bureaux officers were officials of the local municipalities. But by the Bantu Affairs Administration Act, 45 of 1971, control of local labour bureaux passed into the hands of the Bantu Administration Boards, of which there are 22 in the Republic.

7. Section 22 (7) of the Bantu Labour Act, 67 of 1964, provides that refusal to sanction employment for this reason requires the concurrence of the Secretary for Bantu Administration and Development.

8. Proclamation R.1063 in G.G. No. 2158 of 30 May 1975, amended the definition of "Minister" to include any officer of the Department of Bantu Administration and Development acting under his authority.

9. Proclamation No. R.1892 og G.G. No. 1292 of 3 December 1965.

10. Proclamation No. R. 74 of G.C. No. 2029 of 29 March 1968.
11. 1963 (3) SA 792 (T)
12. 1960 (2) SA 670 (0) especially at 673
13. Article 9 (1) of the 1959 Regulations relating to the registering of work seekers proposes similar requirements to those in Section 10 (1)of the 1965 Regulations, which is the Regulation requiring the registration of work seekers in the prescribed areas.
14. *Sash* op. cit. 4.
15. "South African Labour Bulletin" May 1974 Vol. 1 No. 2 article by Dudley Horner entitled "Control of movement and employment of African workers" 29.
16. Ibid. 26-27
17. Hansard 21 col. 6767, 26 May 1967.
18. Hansard 7 Questions & Answers 493-496, 8 March 1976.
19. Financial Mail, 7 May 1976, 455.
20. Where a black cannot find employment for some reasonable cause, he may be referred to a district labour bureau, an aid centre or be dealt with in terms of instructions from the Regional Labour Commissioner.
21. See: Rex Vs Kgengo 1948 (3) SA 167 (T)
In Re Ndungwane 1961 (1) SA 636 (O)
S. vs Monaisa 1969 (3) SA 460 (T)
22. These figures were given to me by the Department of Bantu Administration and Development, Pretoria.

22a Reg. 30, 1965; Reg. 19, 1968.

23. 1912 A.D. 575
24. Estimated population statistics for Tribal Bureau Mapulaneng as at 24 July 1970. Department of Census & Statistics, Pretoria.
25. Answering a question in Parliament this year

the Minister said that in 1975 in Lebowa 120 438 contracts were attested for men and 8044 were attested for women. This means that contracts attested for women were approximately 1/15th the number of those attested for men

26. Financial Mail, 16th July 1976, 192.

27. Figures given by the Magistrate at Mahla to me.

28. Hansard to Wednesday, 4 February 1976.

29. Comment in a Memorandum sent to me.

30. Figures given me by the WRAB at an interview.

MAX GORDON AND AFRICAN TRADE UNIONISM ON THE WITWATERSRAND, 1935 - 1940

By Mark Stein

Max Gordon's death in Cape Town on Monday 16th May 1977 was noted by few besides his family and friends. Yet he was a crucial figure in the history of South African trade unionism.

In 1935 Gordon became the secretary of the almost defunct African Laundry Workers Union in Johannesburg. The African Laundry Workers Union was one of only two African trade unions on the Witwatersrand (the other was the South African Clothing Workers Union) to survive the Great Depression. All the other unions formed in the years 1927-1929 had collapsed. (1) The need for organisation was evident in the very low wages which were being paid to the (black) unskilled labourers. (2) By 1940 Gordon was secretary of a Joint Committee of African Trade Unions consisting of seven unions with a total membership of between 16,000 and 20,000 workers. These unions comprised at least six-sevenths of the total number of organised black workers in Johannesburg at this time. (3) Gordon's achievement provided the foundation for the massive expansion of African trade unionism which took place during the Second World War.

The great handicap for African trade unions was of course that they were excluded from the Industrial Conciliation Act (which gave white workers collective bargaining machinery, with strike action as a last resort). Gordon was involved in an illegal strike of black laundry workers in 1936, but from 1937 to 1939 he was able to build up his unions without resort to the strike weapon. He did so essentially by enforcing the minimum wages laid down in wage determinations and submitting evidence to the Wage Board when it carried out new investigations into particular industries. (4)

Gordon would not have got anywhere with his 'law-abiding' strategy for building up African trade unions without a great deal of cooperation from the Department of Labour. Present day officials of the Department of Labour are decidedly unsympathetic to African trade unions. No matter how law-abiding and apolitical they may strive to appear they are perceived as a political threat. Why then did the Department of Labour behave differently in Gordon's time?

In the 1920's and 1930's South Africa was in many ways a racially oppressive society. This generalisation applies particularly to the treatment of black workers on the mines and farms. (5) However the South African State was not at

this time a very well co-orinated body. The Department of Labour shared with the Department of Native Affairs jurisdiction over blacks employed in commerce and industry in the towns. In October 1929 the Secretary for Labour, C.W. Cousins, wrote privately to J.D. Rheinallt Jones about the need for a more liberal 'native policy': 'We have madly gone out of our way to unsettle and alienate a people without whose goodwill our future is dark indeed.' (6)

Three months before Cousins had received a memorandum from his Under-Secretary which advocated that:

> The attitude of this Department... should be to have nothing to do with questions of general native policy: but in matters affecting wages and conditions of employment etc., in industry, the Department should regard the natives exactly as it does in regard to other employees. (7)

Such attitudes survived to smooth Gordon's path in the late 1930's. This is illustrated by the 1939 negotiations for the 'non-statutory' recognition of African trade unions. The government proposed that African trade unions should thenceforth come under the Department of Native Affairs.

This was rejected on the grounds that the Department of Native Affairs had always oppressed blacks while they had received comparatively fair treatment from the Department Of Labour. (A decade later the same controversy split the Industrial Legislation Commission of Inquiry, with Van Den Berg and Slabbert arguing that African trade unions should come under the Department of Native Affairs while the Chairman, Dr. J.H. Botha, wanted them to remain under the Department of Labour.)

The limits on the generosity of the Department of Labour to black workers should be appreciated. Not all Labour officials held 'liberal' views. Moreover the Department had to work within a legal framework which discriminated against black workers, e.g. the exclusion of blacks from the definition of 'employee' in the Industrial Conciliation Act and the provision of the Wage Act that the Board should consider not only the cost of living of the workers but also the 'ability to pay' of an industry which led repeatedly to the Board fixing sub-subsistence wages for black labourers.)

Having established the existence of 'liberal' attitudes in the Department of Labour, it remains to explain them.

There seem to be two explanations: firstly black unions were not regarded as an immediate political threat, and secondly their existence was not incompatible with the United Party government's expressed policy of making (some) increases in unskilled wages in commerce and industry.

In 1928 the Under-Secretary for Labour recommended the recognition of black unions under the Industrial Conciliation Act on the grounds that the industrial organisation of black workers (under the guidance of officials of the Department of Labour) would create

> legitimate channels for the ventilation of grievances and the settlement of disputes by conciliatory methods similar to those approved of by the State for Europeans. By these means the activities of those communists who see in the large masses of South African natives fertile ground for revolutionary action would best be circumvented. (8)

This is of course the present-day 'liberal' standpoint, which meets with the counter-argument that at a time when white supremacy is endangered any black union organisation - no matter how innocent-seeming - is a potential political threat. One was inclined to conclude that Gordon was allowed to build up his unions because in the late 1930's white supremacy in South Africa still appeared unchallenged: the African National Congress and the Communist Party were both at a low ebb. Considerable suspicion was aroused in official circles by Gordon's Trotskyism. On the other hand Gordon kept his political convictions to himself and refrained from using his unions as propaganda platforms. Moreover, in his trade union work, his closest associates were not members of the tiny group of Trotskites in Johannesburg but white 'liberals', who wanted African trade unionism to be law-abiding and apolitical. Gordon found their aid indispensable. It was not only that W.G. Ballinger and A.D. Saffery (secretary of the S.A.I.R.R.) assisted Gordon in submitting evidence to the Wage Board. Wage Board investigations took up to two years from start to finish while it also took some weeks or even months before the Department of Labour would reimburse workers who had been underpaid. Consequently it took a long time before a sufficient number of workers had been convinced unions were a good idea. There were thus many months in which the income from subscriptions was not sufficient to pay for office expenses and Gordon's upkeep - months

in which he often went hungry. Gordon would have never been able to carry on without the financial aid as he received from the Bantu Welfare Trust, of which Saffery was the secretary and Rheinallt Jones (the leading white liberal figure and Saffery's colleague at the S.A.I.R.R.) was a Trustee. In 1937 Gordon received some financial aid from Ballinger, who had received a Bantu Welfare Trust grant. In January 1938 the Trust decided to give a grant of £10 per month directly to Gordon. (This continued until mid-1939 by which time Gordon's unions were financially self-sufficient.) The reasons given in the Minutes of the Bantu Welfare Trust for the grant are worthy of note. (9) The Trustees were concerned that so little money was being donated by the white public to swell the initial gift of £50,000 with which Col. James Donaldson had founded the trust. Instead of frittering the money away in small projects, it was resolved to spend large sums on two projects which were considered to catch the public eye and attract sizeable donations - a legal aid scheme for blacks and the organisation of African trade unions.

The authorities were no doubt aware that economic circumstances in the late 1930's made some sort of black labour unrest almost inevitable. It was officially acknowledged that the urban black population was deeply impoverished. The rapid expansion of commerce and industry was leading to relatively full employment even among unskilled labourers. This was reducing the deterrent to strike action which large scale unemployment had been during the Depression. In Durban permanent worker organisation was much slower to emerge than on the Witwatersrand, probably because the percentage of 'rural natives' in the labour force and the rate of job turnover were both much higher than on the Witwatersrand. The absence of permanent worker organisation did not however prevent a wave of strikes by blacks in Durban in 1937. (10) The Labour Department officials may have felt that it was preferable to have somebody like Gordon to organise the workers because they could negotiate with him far more easily than with an unorganised mass. In return for certain concessions, Gordon could be expected to restrain the workers for fear that action on their part would disrupt his relations with the Department of Labour. Gordon's unions must also have seemed decidedly preferable to the Communist-led unions of 1927-1929, which made no secret of their revolutionary leanings and struck at the drop of a hat. (11)

Gordon's unions were assisted to obtain wage increases by the acceptance by the U.P. government of the recommendation of

the 1934 Industrial Legislation Commission that unskilled wages should be raised. Part of the motive for raising unskilled wages was to provide employment for the so-called 'Poor Whites', by making it possible for them to enter unskilled work. However if the U.P. government had intended to raise only white unskilled wages it would have followed the suggestion of the Nationalist Opposition that in the amended Wage Act of 1947 the Board should be empowered to fix higher wages for whites doing the same kind of work as blacks. (12) Instead the government retained the provision of the 1925 Wage Act that wage determinations should not discriminate on lines of race or colour. In 1936 W.G. Ballinger requested the Department of Labour to fix a national minimum wage for unskilled workers. This request was refused on the grounds that some industries could only make a profit if they paid wages much lower than others could afford. (13) The Department did however promise that it would attempt to get unskilled wages raised in as many industries as possible through either Wage Board investigations or the exertion of pressure on industrial councils.

The 1937 Industrial Conciliation Act maintained the exclusion of blacks from the collective bargaining machinery. However it provided for their interests to be represented by an official of the Department of Labour. In the past industrial councils have often fixed (increased) wages only for the skilled jobs filled by white workers. The (black) labourers were left without wage regulation, at the mercy of individual employers. In the late 1930's the Minister of Labour began to insist that before he gazetted an industrial council agreement, it must fix wages for labourers. In this way the black workers in building and iron, steel and engineering (two of the largest and most important industries) were given wage regulation for the first time. When the new Industrial Conciliation Act became law in December 1937, it made it for the first time possible for black workers falling under an agreement to recover arrears of wages consequent upon underpayment. (14) This change in the law no doubt encouraged Max Gordon to take the step in January 1938 of founding an African General Worker's Union catering for black workers in industries controlled by industrial councils, including building, iron and steel, restaurants and tea rooms and the motor trade. However the minimum wages fixed for black workers by industrial councils were usually very low. The industrial council system tended to promote collusion between the employers and the registered trade unions in that white workers would acquiesce in low wages for

(black) unskilled workers provided they themselves got relatively high wages. The Department of Labour officials on industrial councils did not in practise achieve very much for the black workers they purported to represent. Low though minimum wages might be, they at least gave trade union organisers something to enforce but African unions in industries covered by agreements often found it difficult to recover arrears because the industrial councils themselves were responsible for enforcing the minimum wage and not the Labour Department. (In August 1939 the Department of Labour issued a circular instructing industrial councils to pay over arrear wages to claimants - both black and white - without the unnecessary delay they had hitherto often displayed.)

The obstacles to black unionism in industry dominated by industrial councils explained why Gordon's greatest successes were achieved in those industries where no strong registered trade union existed, and minimum wages were laid down by the Wages Board and enforced by officials of the Department of Labour.

Even in the 1920's the Wage Board had shown itself to be the government body most accommodating towards black workers organisations. One example in the 1929 Bloemfontein wage determination for unskilled labour which affected almost entirely blacks and fixed a minimum wage of 18/- per week rising to 20/- in 1930, in many cases a considerable improvement on existing rates. (The Bloemfontein Wage Board investigation arose out of an application from the ICU in 1926, which was also supported by many of the white citizens who were anxious to avoid any recurrence of the rioting which had broken out in Bloemfontein in 1925.) During 1928-1929 the Board fixed wages for the baking, laundering, furniture and clothing industries. It is not mere coincidence that the four strongest unions of the Communist-led S.A. Federation of Native Trade Unions which emerged on the Witwatersrand in 1928-1929 were in these four industries. (In the case of baking, the formation of the African union early in 1928 was reportedly intended to facilitate the enforcement of the wage determination, which was just due to be gazetted.)

The favourable attitude to African trade unions of the Chairman of the Wage Board, Frank McGregor (1936-1943), is particularly well-documented. In January 1940 McGregor made the following public statement:-

> The interests of Native workers are represented, often very ably,by such organisations as the Institute of Race Relations and the Friends of Africa frequently acting in conjunction with representatives of the unregistered but none the less active Native Trade Unions. These unions appear generally to be organised by interested Europeans who usually lead the case for their members at private and public sittings of the Board. It is beyond....question that European leadership in this connection is of great value to the workers whose cause they represent; their presentation of evidence and their grasp of the issues at stake and of the ebb and flow of argument is generally more effective than is the case when presentation is in the hands of the less experienced Natives....I hope I have said sufficient....to emphasise the value of the organised assistance that is being afforded to unskilled workers both through their own unions and from such interested bodies as I have referred to; this aid is also of service to the Wage Board. (15)

In September 1941 McGregor wrote to Rheinallt Jones, who was a close personal friend, that within six months or so the Board would have provided a basic wage for practically all unskilled and semi-skilled in the larger industrial areas, something like 250 000 'non-Europeans' and 150 000 Europeans.

> I do not claim that the minimum we are paying are adequate - but they are a big advance on existing wages and conditions and there will be no going back. In fact once we have completed the first round (of wage increases), efforts should be directed at a second round and it is to be hoped that productivity will justify further permanent increases ... The old type of Trade Unionist ... thinks that strike action and the class war are the best media of progress and the only food on which small trade unions thrive. But I agree with you ... that no army of inspectors ... will be able effectively to enforce wage regulation

> - that can only be done by organisation amongst employees and employers. And that is to my mind a sufficient reason for the existence of trade unions ... (16)

The resemblance is obvious between McGregor's conception of how African trade unions should function and Max Gordon's practice.

It was because Gordon had submitted evidence to the Wage Board in the course of its investigation that he received much of the credit when the Board fixed higher wages for black workers, as in the case of Wage Determination 60 for the Baking and/or Confectionery Industry, Witwatersrand and Pretoria (gazetted in June 1938) and Wage Determination 70 for the Commercial Distributive Trade (gazetted in December 1939).

The baking determination increased the wages of labourers from 16/6 to £1.9.3. per week. This latter figure was not only one of the highest wages fixed for black labourers on the Witwatersrand at this time but also approximated to the minimum estimate of the cost of the weekly necessities of life for an urban African Family.(17) The fixing by the Board of relatively high wages for blacks in these industries can be attributed not only to Max Gordon's evidence but to the fact that employers in these industries appear to have been split on the issue of higher black wages (rather than united against them). Baking was one of the relatively few industries on the Witwatersrand where Africans had moved into skilled work. That half of the 150 (skilled) 'bakers' in the industry were black can be attributed to there being two types of employers in the industry. This division manifested itself in the existence of two employers associations in the industry, the 'Price Protection Association' and the 'Master Bakers' Association.' The Master Bakers' Association represented the larger and better capitalised employers, who prided themselves upon employing white labour: their 'bakers' were paid the wage laid down in the industrial council agreement. The members of the M.B.A. were being undercut by the Price Protection Association, who employed as many blacks as possible because they were not covered by any minimum wage since the industrial council agreement had not been extended to blacks. The Master Bakers urged the white public to buy only bread made by white labour, but they found to their chagrin that many whites persisted in buying bread made from 'dough mixed with kaffir sweat' because it was cheaper. The Master Bakers then tries to get the

industrial council to extend the agreement to blacks. They succeeded in doing this because they had a preponderance of voting power in the council. However the agreement was declared null and void by the Supreme Court on a technicality in June 1935 and to forestall a new agreement the other employers withdrew from the industrial council, causing it to break down.(18) Since the industry was left without wage regulation, the registered union applied in September 1936 for a Wage Board investigation, which was granted. The Board fixed a minimum of £4.10.0. per week for 'bakers' and £2.0.0. per week for 'bakers' assistants'. This meant a dramatic increase in wages for blacks doing these jobs. That black 'bakers' were no longer much cheaper to employ than whites must be accounted a success for the Master Bakers' Association and a blow to the Price Protection Association. The wage determination's impact on the African union was recorded by Gordon himself. At the end of 1938 he wrote that:

> This union has increased its membership on the Reef from about 300 to nearly 600 members. It intends establishing a branch in Pretoria as the Determination for the Industry has now been extended to cover ... Pretoria ... For the first two or three months of the operation of the Determination, nearly every employer in the industry was underpaying his employees. The Department of Labour was intrumental in obtaining arrear wages for many of our members... well over £800 has already been paid out... A full-time organiser is employed by the Union, and has been provided with a bicycle to facilitate his work.(19)

It is probably no coincidence that the other major increase recommended by the Board was also where employers were divided in their attitude to higher black wages. The smaller employers in the commercial distributive trade were much harder hit by the £6.0.0. per month for labourers recommended by the Board than were the larger employers, some of whom had already conceded increases to the African Commercial & Distributive Workers' Union. The Board indicated that if some of the smaller employers were driven out of business by the new wages they would not be missed for:

> If the relatively low profit of the small establishments is due to what may be called general overtrading, the number of establishments is probably too great for the needs of the community.(20)

The Board rejected objections from the Chamber of Mines and white farmer organisations that £6 per month for blacks in the Johannesburg commercial distributive trade would upset their labour supplies. On 22nd December 1939 Wage Determination 70 was gazetted. W.G.Ballinger describes the impact of the determination:

> The African workers gathered in Johannesburg in an open-air meeting in numbers that have not been equalled since the days when Clements Kadalie ... held mass meetings spellbound with his Demagogic oratory. It is confidently anticipated that this Determination will give a new impetus to the whole African Trade Union Movement. African industrial organisations in general are formulating plans for an extension of the Determination to other trades. (21)

As the African trade union movement grew in strength during the last years of the decade, it reiterated the demand for recognition of African trade unions under the Industrial Conciliation Act. The government was not prepared to concede African unions the rights to strike and participate in collective bargaining because it feared the political and economical consequences. This was rationalised by saying that the 'native' had not yet reached a 'sufficiently high level of development' to be granted full trade union rights. The recognition scheme with which the government did come up was openly described by the Minister of Labour as intended

> To afford the Native worker and the State some protection against the activities of unsrupulous persons who exploit Native workers' organisations for their own ends and whose subversive influences are a menace both to the European and the Native. (22)

The proposals which the government put forward in mid-1939 were for 'non-statutory' recognition. (This was in

itself undesirable from the point of view of the African unions since a 'recognition' which was not incorporated in an Act of Parliament could be withdrawn at very short notice.) The government proposals stipulated that the black unions would co-operate with Divisional Inspectors of Labour in the enforcement of wage regulating instruments affecting their members. This, black unions had of course been doing for some time and were anxious to continue to do. Two of the proposals were however objectionable to the representatives of the black unions. The government wanted to replace the existing practice whereby African trade unions made direct representations to the Department of Labour by having them make representations ' in the first instance' to the Native Affairs Department. The objection made to this was that the Native Affairs Department tended to 'oppress' blacks while the Department of Labour treated them with comparitive fairness. (It was also pointed out that Native Affairs Department officials lacked the technical knowledge of industry possessed by the Department of Labour.) The government proposals also made provision for the withdrawal of recognition from any organisation or its officers if it or they had committed an unlawful act (such as strike). The negotiations culminated in deadlock. The government could conceivably have gone ahead with its own proposals, but it did not do so, probably because of the strong objections raised by the Chamber of Mines to even a limited recognition of African trade unions.

From the above statement by the Minister of Labour it is obvious that by 1939 the authorities were starting to regard African trade unions as a political threat. The Emergency Regulations promulgated by the government after the outbreak of War gave it wide powers to intern people suspected of subversive activities. The government promised the South African Trades & Labour Council (SATLC) that it would not take action against people engaged in legitimate union work. However in May 1940 Max Gordon was interned, and held for a year in the 'Anti-Nazi Section' of Ganspan Internment Camp.

In December 1940 Gordon was given an interview with the Chief Control Officer at which he was told the reasons for his internment. These were:

1. That he had organised trade unions for the purpose of exploiting them and pocketing the money.
2. That in 1936 he had organised a strike in the Laundry Trade and since constantly agitated to bring about

unrest and hostility between African workers and employers

3. That he was a communist and had used the trade union for propoganda purposes.

4. That he had intended to incite hostility between black and white by organising a mass meeting after the shooting of seventeen black mine workers at Nkana in Northern Rhodesia in 1940 and was responsible for the issuing of a very inflammatory pamphlet calling this meeting.

5. That study classes conducted in the union offices for Bookkeeping, English, Geography etc. were used as a means to inculcate communism into black workers.

The first, second and fourth charges were completely or substantially false, while - whatever the truth of the allegation made about him - the study classes mentioned in the final charge involved only four to six people. It would however appear that the government genuinely believed that Gordon was a political threat. This was in spite of the fact, as Rheinallt Jones pointed out, Gordon had eschewed political agitation and confined himself purely to 'legitimate trade union work'.

Depreived of the promised aid and advice from Gordon in Johannesburg, the newly formed Pretoria branch of the ACDWU collapsed because its organisers were too inexperienced to handle the members' complaints properly. Even in Johannesburg the union suffered from Gordon's absence. Saffery complained that money was being squandered, that the Post Office Savings Book of one of the unions - which contained £1000 - had vanished, that regular meetings were not being held as formerly to report back to the membership, that complaints were not being properly attended to and proper representations were not being made to the Wage Board for industrial councils. In consequence subscriptions being paid had fallen to one-third of their previous total.

While in detention camp Gordon was allowed by the authorities to communicate with Saffery by letter. He therefore tried to run the unions by remote control, using Saffery as his intermediary. It was apparently proposed that Saffery take Gordon's place at the head of the Joint Committee. However the African trade unionists whom Gordon had trained were impatient of continued white supervision. The Joint Committee split. The dairy and chemical unions, under the leadership of A.M. Thipe, seemed to have remained loyal to Gordon. But the four unions which opted for all-black

control included the two largest and most important organisations: the African Commercial & Distributive Workers Union and the African General Workers Union. (The other two were the African Laundry Workers Union and the African Printing Workers Union.) The leading figure to reject Gordon was Daniel Koza of the ACDWU. Ten years later Rheinallt Jones testified to Koza being 'the most competent of the Native Trade Union organisers', and this judgment is borne out by a variety of sources.(23) Jones' assessment of Koza had changed considerably over those ten years. In 1940 he had - without mentioning him by name - denounced Koza to the authorities as a dangerous and subversive influence. This was intended to frighten the government into releasing Gordon so that he could steer the unions into 'moderate and constitutional channels' ! It is not very suprising that the government paid little heed to the proposal. What is perhaps more suprising is that it did not act against Koza as well, although this must be seen as part of a general toleration by the wartime U.P. government of industrial and political activists who were to be proscribed later on.

The break with Koza in 1940 was not the first time Gordon had run into opposition from 'black racism'. In mid-1938 an attempt was made to unite all the 'non-European' unions in Johannesburg into a single Co-ordinating Committee. Gordon initially participated in this attempt but withdrew after encountering opposition from J.F. Mackay of the African Furniture Workers Union and Gana Makabeni of the S.A. Clothing Workers Union. Mackay said that:

> As non-Europeans we want the help and advice of European Trade Union leaders, but if we are going to have European Officials at the head of the Non-European Trade Union Co-ordinating Committee, we will be ridiculed by all thinking Non-Europeans throughout the country and also by the official European Trade Union Movement of South Africa. (24)

Gordon protested his dedication to the African trade union movement.

> He ... stated that he could have got a job as Labour Inspector, and also a job at his profession as a chemist at Pretoria at £50 per month, but he is quite prepared to make every sacrifice for the sake of the Bantu workers.

Makabeni:

> in a heated reply to Gordon said he is pleased that Gordon has come out in his true colours, by his attitude he has definitely shown that he wants to be the 'Leader' and is not prepared to accept the wish of the majority, his whole conduct has shown that he is not sincere in his efforts to help the African workers, but is only out for self. (25)

W.G. Ballinger states that the black members of the NETUCC accused Gordon of withholding a financial statement from them. Ballinger's opinion was that there was nothing wrong with the books but Gordon was a Trotskyist and therefore not liked by the 'Stalin Communists'. (26) By throwing doubt on his financial integrity the NETUCC hoped to get control over one of Gordon's major assets - the £10 grant from the Bantu Welfare Trust. The SATLC requested the Bantu Welfare Trust to give its grant only to the NETUCC (i.e. to withhold it from Gordon) but without success. By 1940 the NETUCC had not more than 3 000 workers in thirteen unions, which was far outstripped by the Joint Committee with between 16 000 and 20 000 workers in seven unions. During the 1939 negotiations re recognition of African trade unions, in a effort to strengthen the NETUCC and weaken Max Gordon, the SATLC proposed that recognition be extended not to all African trade unions but to the Co-ordinating Committee alone. This proposal also fell through. It is thus scarcely suprising that when Gordon was interned in May 1940 the National Executive Committee of the SATLC refused to intervene on his behalf. It professed to accept the government's assurance that Gordon's internment 'had nothing to do with legitimate trade union activities'. (27) There is moreover evidence to suggest that when Koza broke with Gordon and Saffery, he did so with encouragement and offers of support from the SATLC. (28)

Max Gordon's Trotskyism tended to cut him off somewhat from those white trade union officials who were Stalinist in tendency. However his most vocal opponents in the SATLC seemed to have not been Stalinists but politically conservative 'craft' unionists like T.C. Rutherford of the S.A. Typographical Union, who at the 1940 Conference bitterly attacked Gordon for 'interfering' in the printing industry by organising the African Printing Workers Union. (Rutherford expressed his preference for a 'parallel' African union which would be safely under the thumb of the registered

union, and this is precisely what the SATU set out to create a few years later.) The National Executive Committee's refusal to intercede for Gordon was paralleled by its refusal to intercede for the Stalinist Issie Wolfson when the latter was threatened with internment during 1940.

In the 1938 split Gordon had been able to keep control over the unions which he had created. But by the time of his release from internment in June 1941 there was no place left for him in the African trade union movement in Johannesburg. In January 1942 he was sent to Port Elizabeth to organise black workers there under the auspices of the Southern African Committee on Industrial Relations, a small group centreing around his old collegue Saffery. He stayed in Port Elizabeth until early April. From the point of view of trade union organisation, Gordon's visit was a great success. He founded six new unions for Coloured and African Workers. However, Madely, the Minister of Labour, apparently accused him of having once again taken part in subversive activities. Those who had cooperated with Gordon in Port Elizabeth denied these charges and stated that Gordon had confined himself purely to legitimate trade union work.)The local Department of Labour had expressed its gratitude that the black workers were being organised because this would make possible the enforcement of existing wage regulation measures.)

However after Gordon's return from Port Elizabeth there are no more recorded references to his taking part in trade union activities and his career falls into obscurity. He may have feared re-internment if he continued his trade union work. He was probably also disillusioned at the way he had been rejected by the black trade unions in Johannesburg, unions which he had created and whose leaders he had trained. Gordon seems consequently to have escaped the repression which overtook so many trade union leaders after the Nationalist victory in 1948. At the time of his death in 1977 he was working for the Cape Town finance company, Gerber Goldschmidt and living in a home in the exclusive suburb of Constantia.

1. Roux, E., *Time Longer Than Rope*; Roux, E. & W., *Rebel Pity*.
2. Phillips, R., *The Bantu in the City*, pp. 30-39.
3. Saffery, A.L., 'African Trade Unions and the Institute', *Race Relations*.
   W.H. Andrews, *Class Struggles in South Africa*.
   The 1938 census showed that the total number of blacks employed in Johannesburg was 86 000. The Joint Committee must however have drawn some of its membership from other centres on the Witwatersrand.
4. Then as now very considerable evasion of the minimum wage levels laid down for blacks in wage determinations and industrial council agreements was taking place. Individual workers were afraid to complain because they feared they would be victimized. However a trade union could take up the claims for arrear wages of the whole labour force at once.
5. In the late 1930's and early 1940's the mine-owners and white farmers were probably the groups most vehemently opposed to any recognition of African trade unions. This was the case because their labour was being drawn away by the higher wages and better conditions in urban employment. The existence of African trade unions was deplored because they tended to push urban African wages even further up and consequently to increase unrest among the black mine and farm labourers.
6. C.W. Cousins to J.D. Rheinallt Jones, 23.10.29., Rheinallt Jones Papers (R.J.P.)
7. Memorandum: 'Proposed Recognition and Attitude towards the ICU', 14.11.28., Department of Labour Records, State Archives.
8. Ibid.
9. Bantu Welfare Trust Minutes, 10.1.38., 9.7.38., R.J.P.
10. *Report of the Department of Labour for 1937*, p.3.
11. The strikes however were not politically motivated. They were called over instances of victimisation or non-observance of the wage dterminations. If the workers needed to strike to get the wage determination enforced, this implies that the Department of Labour was reluctant to assist in such enforcements (i.e. by prosecuting delinquent employers).
12. House of Assembly Debates,

13. The proponents of a national minimum wage claimed that it would stimulate commerce and industry by increasing the size of the market. See R. Phillips, The Bantu in the City, p.63. Its opponents stated that low wages were necessary to accumulate capital, while under-consumption was a problem only of mature industrial economies like Britian or America. See *Report of the Board of Trade and Industries*, No. 282 (1945),

14. S.A.I.R.R. Records, B38(a).

15.

16. F. McGregor to Rheinallt Jones, 5.9.41., S.A.I.R.R. Records. He seems to be referring to both black and white trade unions.

17. R. Phillips, *The Bantu in the City*, p.38.

18. *Report to the Department of Labour for 1935*, p.73; *Sunday Times*, 16.6.35., 'Report of the Wage Board... Baking and/or Confectionery Industry, Witwatersrand and Pretoria', No. 394 (1937) p.3.

19. 'Report to the Bantu Welfare Trust', 20.12.38., S.A.I.R.R. Records.

20. *Report of the Wage Board ... Commercial Distributive Trade* (1940), p.8.

21. 'Report of the Friends of Africa', October/December 1939, Ballinger Papers.

22. H.G. Lawrence quoted in *The Star*, 20.4.39.

23. Rheinallt Jones to H.F. Oppenheimer, 16.2.51., R.J.P. C12/20. Koza's obituary in South African Trade Union Council, *Report of the National Executive Committee for the year ended March 1960*.

24. Minutes of NETUCC Conference, 7.8.38., SATLC Records.

25. Minutes of NETUCC Conference, 14.8.38., SATLC Records.

26. W.G. Ballinger to W.Lowe, 25.7.38., Ballinger Papers.

27. W.J. de Vries (General Secretary: SATLC) to M. Gordon, SATLC Records.

26. SATLC, National Executive Committee Minutes, 10.6.40.

THE INDUSTRIAL AID SOCIETY COMPLAINTS AND LEGAL SERVICE 1977.

The Industrial Aid Society Complaints and Legal Service was founded in 1974 to help workers with their employment problems, without charge. It advises workers, mainly blacks, on their conditions of service, and acts to secure their legal rights. It is the only service of its kind on the Witwatersrand.

The maze of South Africa's industrial law is often inadequate, confusing and poorly administered. Employers frequently ignore their black workers' rights. Workers rarely know about laws for their protection. They are often intimidated by the rebuffs of employers and other authorities, and by a system which they do not understand.

By the time the worker consults the Complaints and Legal Aid Service he may have tried many channels to solve his problems, perhaps involving days of waiting outside different offices - the paymaster of his firm; the unemployment office at the Labour Department. The result is often that his problem is not clarified, let alone solved. Even if the employer, Labour Department or Industrial Council (where one exists for his industry) has investigated the problem without referring it to another office, this does not mean it will be adequately handled.

The Complaints and Legal Aid Service tries to ensure that problems are adequately handled. Its voluntary counsellors must often sift through vast amounts of detail with the employee and his employer to fully understand the problem. If a complaint is found to be legitimate counsellors must then deal in the labyrinth of the law: obtain adequate proof, find the relevant industrial legislation and apply it according to the correct procedure. This may involve negotiating with the employer directly, or with Industrial Councils, the Labour Department, the Workman's Compensation Commissioner and the Legal Aid Board.

Because of the Service's relatively high success rate in solving problems, more workers are hearing of its existence and are using it - and its staff and resources are being severely strained. Expansion has been particularly marked recently. In 1975, for instance, the service handled about 100 work-related complaints and successfully resolved about 50 per cent of them. In the first three months of 1977 it handled 386 cases of which 126 have already been successfully resolved (see table).

This means that the service is handling about 30 new cases a week - some group complaints and others of an individual nature. Since most complaints necessitate several trips to the office, this represents a flow of between 75 and 100 people a week.

At present the service is operated with entirely voluntary assistance. The rising number of cases emphasises the need for the service, but also for a more permanent and professional backing for it. This would undoubtedly make a constructive contribution to the improvement of industrial relations in South Africa.

OBJECTIVES

The Complaints and Legal Aid Service has four major objectives:

1. To handle individual workers' problems, including underpayment of wages, non-payment of wages, non-payment of leave pay and notice pay, excessive overtime, non-registration with the Bantu Affairs Commissioner and the Unemployment Insurance Fund, Workmen's Compensation claims, sick pay claims, bad factory conditions, wrongful dismissals, non-payment of pensions and assaults by supervisors. Complaints of a more general nature are referred to other bodies like the Black Sash, Legal Aid Bureau, Domestic Worker's Project (Institute of Race Relations), which in turn refer industrial cases to the Industrial Aid Society.

2. To improve the administration of labour laws in South Africa. At present the industrial legislation is administered by statutory bodies such as Industrial Councils and the Labour Department. Often the statutes themselves are confusing or ambiguous, and officials are too overworked to deal satisfactorily with individual complaints.

   The Industrial Aid Society takes up many of these cases, dealing with some itself and referring others back to the statutory bodies when appropriate action has not been taken. It also tries to clarify complicated legislation by referring problems to the Legal Clinic. It is hoped that in the future the Industrial Aid Society will have the means to initiate test cases in matters of general importance, such as lock outs, breaches of contracts, failure to register employees and unilateral alteration of contracts (see Appendix - Case i).

3. To interest and train law students in the theory and practise of industrial law. Where the case is legally

too complex for the Complaints Service, it is referred to the Students' Law Clinic held every Saturday in the Industrial Aid Society offices. About six law students, supervised by an attorney, operate the clinic, researching the common and statute law relevant to cases referred to them, and negotiating with employer and employee bodies. Some cases are reffered to practising attorneys. The procedures being established contribute to making South Africa's ill-defined industrial law more precise.

4. To educate workers on their legal rights and responsibilities. Many who consult the service are illiterate and unable to read their own pay slips, the regulations governing their employments, or literature on obtaining benefits due to them. Even literate workers are usually ignorant of their rights.

   Management and official bodies often underestimate the problem of communication and misunderstandings arise. The service tries to resolve these by providing clear and careful information. Booklets on matters of employment are being published by the Industrial Aid Society, as well as educative newspaper articles.

STATISTICS

CASES HANDLED BETWEEN JANUARY 1977 AND MARCH 31, 1977.

	Resolved	Unresolved/ Pending*	Reffered to Legal Aid Clinic
Wage complaints (under-payment; overtime; unlawful deductions etc.)	24	53	31
Workmen's Compensation	9	17	
Sick Pay	2	6	
Leave Pay	20	32	16
Notice Pay	29	49	18
Pension	11	6	
References	4	1	
Registration		7	
UIF	27	23	
TOTALS	126	194	66

*Referrals not included

SPECIFIC FUNCTIONS

1. WAGES

a. Underpayment of wages: This is often an offence because the employer is paying a rate lower than the minimum permitted by an Industrial Council Agreement or Wage Determination covering his industry. Or he is paying incorrect overtime rates, or allowing more than the statutory maximum overtime to be worked, and for inadequate remuneration.

A settlement is sometimes reached by merely pointing out the infringement to the employer, but in many cases it is necessary to instigate an ivestigation by the Industrial Council concerned (see Appendix - Case iii), and failing this, initiate prosecution through the Industrial Prosecutor (see Appendix - Case ii).

b. Non-payment of wages and unlawful deductions: this generally occurs in one of three circumstances:

i. On dismissal, the wages for the preceeding week or month are witheld. This usually happens when there is a dispute - for example when the employee owes the employer money or the employer alleges theft from the company. Employers are not normally allowed to withold wages or deduct from wages merely on grounds of suspicion. Some cases are settled on first demand (see Appendix - Case iv) but most require legal action, and clients are often referred to the Legal Aid Board for assistance.

ii. When a company is liquidated, workers are often told there is no money for wages. They generally have little idea of how to claim from the liquidator. The Industrial Aid Society contact the liquidator on their behalf.

iii. When an employee is alleged to have company property - like boots or overalls. Here the original agreement regarding possession of protective clothing must be determined.

2. WORKMEN'S COMPENSATION

These cases are common. They usually stem from the failure of the employer to report accidents, and submit claims on the worker's behalf to the Workmen's Compensation Commissioner. But sometimes the doctor is at fault,

and sometimes the worker through ignorance of the procedure to be adopted. The Industrial Aid Society has built good links with the Workmen's Compensation Commissioner, and most cases are satisfactorily resolved (see Appendix - Case v).

3. LEAVE PAY

These usually occur when workers are dismissed or resign and are not paid for leave due to them, and are solved by approaching the employer or referring to the Industrial Council concerned, or to the IAS Legal Clinic.

4. NOTICE PAY

Often workers are dismissed without being given the appropriate notice on payment in lieu of notice, as laid down by law in the Industrial Council Agreement or the Wage Determination. The reasons for dismissal are often contested in these cases, and the onus is on the employer to prove that the summary dismissal is justified. Sometimes settlement is obtained by informing the employer of the worker's rights under the law; in many cases legal assistance is necessary. An extra week's pay is often vital to a newly unemployed worker, who will not qualify for Unemployment Insurance Fund benefits for several weeks.

5. SICK PAY

The minimum number of days sick pay, as laid down by the Factories Act, Industrial Council Agreements or Wage Determination is sometimes not granted. Very often sickness is used as an excuse to dismiss the worker. In the current economic climate some smaller, more unsrupulous employers sign the worker off as from the last day he attended work before his illness, thereby attempting to avoid paying for the period of sick leave. Settlement is generally obtained by pointing out the injustice (and sometimes illegality) of this procedure. (See Appendix - Case vi).

6. PENSION

Two major types of complaints emerge:

a. Misunderstanding of the operation of a pension fund. Often on leaving the firm a worker expects a lump sum payment of pension money paid by him to be repaid. The rules of most funds allow the worker to draw this sum, but often stipulate a period of one

year before it can be drawn. Alternatively drawing involves an administrative delay. This is often inadequately explained to the worker, and a phone call to the firm followed by a sympathetic explanation can often dispel the resentment felt.

b. Lack of long service bonus or pension. Workers who have worked for twenty or thirty years for one firm are sometimes dismissed as being too old. The manner of dismissal is often harsh, no long service bonus or pension is provided, and the workers feel aggrieved. The law makes little provision for long service bonuses or pensions, particularly for employees not covered by Industrial Council Agreements, and appeals to the employer on humanitarian grounds or the use of the press, are the only mechanisms available. Both have been used successfully. (see Appendix - Case vii).

7. UNEMPLOYMENT INSURANCE FUND

There has been considerable press publicity regarding unemployed workers' difficulties in obtaining Unemployment Insurance Fund benefits, due to red tape in the government departments involved. The cases dealt with by the Industrial Aid Society usually concern:

i. Non-registration of employee with the Unemployment Insurance Fund. This is very common. Although deductions are made, the employer fails to carry out his obligations, and when the worker leaves the firm he finds that he has no 'blue card' (the card necessary for obtaining benefits). He therefore finds his claim for benefits considerably delayed. Often workers are employed as 'temporary' or 'casual' workers (although working 5 or 6 days a week) for months or years, and are not registered with the Unemployment Insurance Fund at all.

ii. Complaints regarding the inability to obtain a 'special' (a workseeker's permit). This is the first step only in the lengthy process leading up to the claiming of benefits. The solution is usually to appeal to a sympathetic Government official on behalf of the worker.

iii. General ignorance about the procedure for claiming unemployment, sick and maternity benefits. The Industrial Aid Society tries to educate people about these procedures.

Many cases are referred by the Black Sash Advice Office.

8. REFERENCES

Sometimes employers fail to give their employees references, despite repeated requests. This naturally jeopardises the worker's chance of finding further employment. The Industrial Aid Society has helped a number of workers to obtain references.

APPENDIX

Case i - Underpayment of Wages.

Recently, forty workers from a wholesale firm consulted the Industrial Aid Society, having been referred by the Black Sash. They had already consulted the Labour Department, with no success. They complained that they had been underpaid, and had been working excessive overtime hours, and had been summarily dismissed. Initially it had appeared that they had been guilty of desertion after they had refused to work for their existing rate of pay, but on clear investigation it emerged that:

1. Two companies in the wholesale field had amalgamated three months before, and that the black employees of one of the companies had had their wages unilaterally reduced from R26 to R20. This was clearly unlawful, being a breach of their contract of employment.

2. The whole work force (including those from the second company who had previously been working for R15 a week, and had had their wages increased to R19 on amalgamation) now demanded that the wage rate be restored to R26 a week. This was eventually agreed to by the local manager at a meeting between him and the workers. The next day, however, another manager arrived. He called a meeting, revoked the R26 a week offer, and said the workers should either accept R22 or leave. The workers left. This, in the view of our Legal Aid Clinic, constituted a lock out in terms of the Bantu Labour Regulations Act, and the Industrial Aid Society is considering taking the case to court to establish a precedent in an opaque area of law, should the workers not be re-employed.

3. Workers from both companies had been working grossly excessive overtime hours. The Wage Determination covering their industry stipulates a maximum of 46 hours a week ordinary time and a maximum of ten hours a week overtime.

The overtime rate laid down is 'time and a third'. The workers concerned were working 77 hours or more a week, or about 14 hours a day, and were being paid for only 14 hours of the total weekly overtime. The Industrial Aid Society is acting to see how this can be recovered.

4. About a quarter of the combined work force was not registered with the Bantu Affairs Commissioner or the Unemployment Insurance Fund, which left them doubly disadvantaged after their dismissal.

We have sent a letter to the company requesting reinstatement of these workers with improved conditions of service as detailed above. Industrial Aid Society members have accompanied the workers to the Labour Department, which has now taken affidavits from each worker and is investigating.

Case ii - Non-payment of overtime work.

Two men who had worked for the same company for 7 and 14 years respectively approached the Industrial Aid Society with a complaint as to their conditions of service. It was established that these three men were working a 6 day week, 12 hours a day, and had been doing so for the duration of their service with the company. Their overtime hours thus amounted to 26 hours per week, as the Wage Determination covering their industry stipulated that 46 hours per week constituted ordinary time. However, they only received pay for 14 hours overtime per week from the company. The workers laid a claim with the Labour Department concerning the excessive overtime. The Department in turn complained to the company, which summarily dismissed the workers. At this stage workers approached the Industrial Aid Society for legal assistance.

The IAS referred the matter to the Labour Department which said that the case was closed. However, the attorney insisted that the Labour Department reopen the case or else refer it to the Industrial Prosecutor. The Industrial Prosecutor decided that the claim was a legitimate one, and subsequently charged the company. An out of court settlement was agreed upon and the workers were paid R500 each.

Case iii - A referral to an Industrial Council.

Mr. A. and Miss S. worked at a beerhall/restaurant in a suburb of Johannesburg. Although they worked excessive overtime they were paid less than the statutory minimum weekly wage for ordinary time in the agreement (in terms of the Industrial Conciliation Act). The total underpayment was more than R1000.

When they approached the employer to discuss these conditions of service they were summarily dismissed and accused of theft. The employer used the theft allegation to justify his malpractice in terms of the agreement in reply to the Industrial Aid Society's letter of demand. The IAS referred the case to the Industrial Council for Liquor and Catering Trade, which sent inspectors to investigate, and obtained a settlement.

Case iv - Illegal deduction.

Mr. M. was employed as a driver for a biscuit company for five years. In February 1977 the storeman alleged that he stole a full truckload of biscuits after an invoice went missing, Mr. M. was summarily dismissed and the value of the missing truckload was deducted from his final pay packet. The IAS immediately notified the manager of the company that the deduction was unlawful because the theft had not been proved. Although at first the company assured the IAS of Mr. M's 'guilt' it accepted that it had acted illegally and reimbursed him. Subsequently the company's storeman admitted responsibilty for the missing invoice; the 'theft' was found to be an administrative slip.

Case v - Workmen's Compensation.

Mr. B. has worked as a labourer (pouring molten ore) in a foundry of a large factory on the Witwatersrand since 1971. He has been injured four times at work between 1974 and 1977. Three of these were severe burns, each necessitating treatment and extended periods of absence from work.

Mr. B. complained to the IAS that he had not received Workmen's Compensation for any of these accidents. The Workmen's Compensation Commissioner's office in Pretoria told the IAS that no claim had been filed for the injuries. The IAS ascertained that the doctors who treated Mr. B. had sent the requisite medical forms to the factory, and informed officials of the company that it was their duty in terms of the Workmen's Compensation Act to claim compensation for Mr. B. This the company agreed to do.

Case vi - Sick Leave Pay.

Mr. T. was dismissed from his job after returning from three weeks' sick leave. The reason given was that he had not informed the firm of his illness. The IAS established that he had done so. On querying his final pay packet he was told that there was no sick pay because his discharge became operative from the last day of work at the firm (that is the day before he fell ill). The IAS pointed out the

illegality and the injustice of the situation to the employer and the firm agreed to pay Mr.T. sick leave pay for the full period.

Case vii - Pensions.

Two old men were dismissed from their employment after 20 years and 30 years service. They complained that they had not received any long service bonus or pension. Because there was no provision for bonus or pension in the Wage Determination covering their employment the IAS sent them to the press.

After publication of the story the men received donations totalling R1000.

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