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THE SOUTH AFRICAN LABOUR BULLETIN

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MAWU: RAPID GROWTH IN NATAL

In March this year, as the economic recession was gathering force, the Metal and Allied Workers Union (MAWU) branch in Natal numbered 2 900 paid up members. Most organisers and shop stewards looked at the year ahead with dread. The sword of retrenchments, short-time, wage freezes and the drought with its devastation of the rural households of the union's migrant membership, promised very little in terms of organisational growth. In fact, MAWU's organised membership reached 7 000 by September.

This growth was concentrated mainly in Pinetown and to a lesser extent in the Jacobs-Mobeni-Isipingo industrial complex and in Pietermaritzburg. Organised factories increased by 65%. Recognition agreements were signed with Dunlop, Caravan Industries (both giants employing more than 1000 workers) and Camcrons. In Pietermaritzburg, Sarmcol and Prestige Engineering, previously thought to be impenetrable, joined the flood. Finally all factories which had already been organised moved from temporary steering committees to proper shop steward structures. What then, caused this incredible growth?

According to the Secretary of the Natal branch it related to MAWU's refusal to be party to the wage increases offered by the Metal employers at the Industrial Council this year. Unlike most other unions that accepted the 10 cent an hour increase, MAWU went back to negotiate through at plant level. Through this, the union managed to negotiate wage increases 66-300% higher than the Industrial Council increases. Especially now with the pressures of the recession and the drought, this was a timely and honest act that rallied a tremendous amount of support. Whether through worker newspaper publicity

or word of mouth, MAWU became a magnet for discontented metal workers.

During recession workers are not only worried about wage increases. They are also worried about job security. Stories about retrenchments and closures circulate freely in industrial areas. According to the secretary of the union, MAWU's struggle to establish proper retrenchment procedures increased its credibility amongst metal workers of all colours. The most significant achievement in the union's fight against the effects of recession was that for the first time Indian and Coloured workers have also joined the union in large numbers.Many of these workers turned their back on their "benefit" unions to join their "African brothers and sisters".

Finally, the growth and consolidation that is taking place was facilitated by the participation of shop stewards from already organised factories. Crucial here was the effort of National and Branch Executive shop steward leaders who assumed much of the initiative in organising new workers and establishing democratic shop steward structures in the new factories. Without such committed worker leadership the feat of the last few months would have been unthinkable.

The union recognises that to sustain this momentum and at the same time gain real benefits for workers during the recession is going to be hard. But to erase its achievements will be harder still.

(Ari Sitas, Durban, September 1983)

TRADE UNIONS AND THE UDF

The formation of the United Democratic Front on the 20th of August at a national rally on Mitchells Plain in the Western Cape has opened a new stage in the the development of opposition to Apartheid and the state's reform proposals in South Africa. The rally drew an estimated 10000 to 15000 people from throughout South Africa with delegates and observers from 400 organisations. A declaration adopted at the rally states that the UDF stands for the "creation of true democracy" and "a single non-racial, unfragmented South Africa", and pledges to "fight against the constitutional proposals and the Koornhof Bills".

The UDF has been formed as a broad alliance of " community, worker, student, women, religious and other" organisations. It has established national and regional structures with the aim of organising and mobilising these organisations. The most important organisations, in terms of numerical and organisational strength, to join the UDF were the trade unions. Virtually all the emerging trade unions sent delegates or observers to the rally and thirteen union groupings joined the alliance immediately. However four groupings, including the most powerful independent federation and two large unaffiliated unions, decided not to join, though they all gave their support to the UDF.

Unions that decided to affiliate were the Council of Unions of South Africa, South African Allied Workers Union, General and Allied Workers Union, Orange Vaal General Workers Union, Municipal and General Workers Union of South Africa, Motor Assembly and Components Workers Union of South Africa, General Workers Union of South Africa, South African Tin Workers Union, Media Workers Association of South Africa (Western Cape), Johannesburg Scooter Drivers

Association, Commercial, Catering and Allied Workers Union of South Africa, National Federation of Workers and the African Workers Association. Those that gave their support but decided at this stage to remain unaffiliated were The Federation of South African Trade Unions, Food and Canning/African Food and Canning Workers Union, General Workers Union and the Cape Town Municipal Workers Association.

Mr Terror Lekota, until recently an organiser in the General Workers Union and presently the national publicity secretary of the UDF, explained why the organisation felt it was important for unions to join. "The struggle of the working class does not end at the factory floor. When workers who face management leave the factory they come up against the problems of high transport costs, rents and inadequate community facilities, all of which eat into their wages. To strengthen the community organisations is to improve the conditions of the working class; to fight high rents and bus fares is to fight the struggle of the working class. Unions must take up community struggles if they are to represent the interests of workers".

Asked whether such struggles could not be taken up by the unions themselves, without joining the UDF, he said, "The role of the UDF must not be to substitute organisations at the local level. Its strength lies in the strength of its member organisations. The UDF's role is to co-ordinate and give direction to their struggles".

The four trade union groupings which stayed out of the UDF re-iterated their support for all "progressive" organisations opposed to the new constitution and the Koornhof Bills. They have issued press statements explaining why they have taken the decision at this stage not to join the UDF, the National Forum or any other groups campaigning against the constitutional proposals and other apartheid laws.

Mr. Joe Foster, general secretary of Fosatu, said unions affiliated to the federation had members who supported a number of political arganisations - including the UDF, the National Forum and Inkatha - and to side with just one organisation would divide their membership. "While we are encouraging our membership to take part in progressive community organisations we are not as an organisation prepared to affiliate to the UDF at this stage though they can speak with us if they want". To join up with any particular organisation would be a decision which would have to be made by the membership and the affiliated unions - and such a decision would take a "long time". Mr Foster said the big tasks ahead for Fosatu were trade union unity and the development of working class leadership.

The GWU said they were busy with the formation of the new trade union federation - their top priority at the moment. The federation would give the workers greater unity and strength and enable them to play a greater part in political issues. "This is not to say we reject the UDF", the statement said. "We wholeheartedly support any organisation which is progressive and democratic and we are prepared to co-operate with them".

The AFCWU/FCWU said they supported the UDF's stand and encouraged their members to take part in campaigns against the new constitution and other apartheid laws. "However, our conference decided we should not join the UDF as a union. Our first responsibility as a union is to the workers, and their foremost need is for a federation which can unite workers' organisations and organise unorganised workers. Unless this is done it won't be possible for the working class to take the lead in the struggle for one united democratic South Africa".

Mr John Erentsen, the general secretary of the

CTMWA, said that in order to retain unity in the union, and with regard to the impending federation, the workers of the CTMWA had decided they would not formally join the UDF or any other body opposing the constitution. "However, our members will be encouraged to play an active role".

(Cape Town correspondent, September 1983)

THE MTHIYA CASE

On the second of September the Western Cape Administration Board (WCAB) and the Municipal Labour Officer, Langa, were refused leave to appeal against a Cape Supreme Court judgement granting Section 10 (1) b rights under the Urban Areas Act (the right to reside permanantly in a prescribed urban area) to Mr Mdwaneni Mthiya, a migrant worker. The judgement was made in April - a month before the historic Appeal Court ruling confirming the eligibility of Mr Mehlolo Tom Rikhoto to city rights as he had worked for one employer "continuously" for ten years even though he had been employed on yearly contracts.

Like Mr Rikhoto, Mr Mthyia had worked for one employer - Chick's Scrap Metals - for ten years and had in fact legally resided in Cape Town for more than fifteen years. But, unlike Mr Rikhoto, Mr Mthiya had taken three lengthy periods of unpaid leave of up to eight months during his ten year qualifying period.

Mr Justice Pat Tebbutt found that Mr Mthiya had proved he had worked continuously for one employer for longer than ten years and legally resided continuously in the area for fifteen years, despite the breaks at the end of each contract. Refering to the periods of leave, Justice Tebbutt said, "A man cannot be expected to work day in and day out for ten years without a break of any kind. Every man is entitled to a holiday. And during his holiday breaks he might go outside the prescribed area. He is, after all, entitled to see his wife and family from time to time.

However despite the Mthiya judgement the WCAB declared it would implement the Rhikoto judgement "strictly". Workers who took unpaid leave during their ten year qualifying period have all been

turned down. Up to the 9th of September 1200 workers had been granted residence rights in the Western Cape, while 1418 had been refused; many, if not most, because they had taken unpaid leave.

In refusing the WCAB leave to appeal, Justice Tebbutt said that there was no reasonable prospect of another court taking a different view. Quoting from a case cited in the Rikhoto judgement, Mr Tebbutt said a "temporary disability which prevents a party from fulfilling his obligations on a contract does not at common law bring the contract to an end". Meanwhile, WCAB'S legal team has given notice that they will be petitioning the Appeal Court in Bloemfontein to be granted leave to appeal against the judgement.

Cape Town lawyers are in agreement that, as there is no appeal pending against the judgement, the WCAB has no choice but to implement it. However, the WCAB is still refusing to implement the judgement and Mr Mthiya has not been granted his section 10 (1) b rights. Commenting on this situation, Mrs Sheena Duncan, the national director of the Black Sash, said, "Administration Boards are showing such disrespect for court judgements that they must not be surprised if people whose rights are denied show no respect for the law".

(Cape Town Correspondent, September 1983)

UNION REPRESSION ESCALATES

The past two months have witnessed a sharp escalation in overt state repression of trade unionists in South Africa. The most dramatic case of this is the outright banning by Ciskei of the South African Allied Workers Union (SAAWU) and the mass arrest and detention of union officials and members of this and other independent unions based in East London.

Although the heaviest attacks on unionists have been in the Ciskei/East London area, the spate of detentions has been restricted neither to this region nor to trade unionists. A report produced jointly by the South African Institute of Race Relations and the Detainees Parents Support Committee indicates that out of a total of 304 people detained between January and August this year, 143 were in the "Homelands" (the great majority in Ciskei) and 161 in "South Africa excluding the Homelands". At least 53 of the detainees, and probably many others for whom information is not available, were either union officials or workers. The majority of others detained were students and community activists.

The following account, which provides details of the experiences of unions in different parts of the country since June, was written in early September. Since then there has been a further intensification of repression in the Ciskei, aimed at crushing the three months old bus boycott by commutors travelling from Mdantsane to East London(See Briefings: Mdantsane Bus Boycott). In the course of this boycott at least 11 people have been shot dead by the Ciskeian Central Intelligence Agency (CCIS), and about 90 people are known to be in detention in the Ciskei (September 20). However there are unconfirmed reports of scores of killings and hundreds, rather

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than tens, of detentions(See Documents: SAAWU Banning).

In June a member of SAAWA (East London Branch), Nkululeko Wasa was detained by the CCIS for a week and another member, Cunningham Ngcukana, was detained briefly while travelling between Johannesburg and East London. He claimed he was assaulted by the South African Railways Police.

In July and August at least 5Ø trade unionists from SAAWU, The African Food and Canning Workers Union (AFCWU), General Workers Union (GWU) and Transport and Allied Workers Union (TAWU) were detained. About 25 of these people are still in detention (on September 2Øth SAAWU claimed that 5Ø of its members were still in detention). These people are being held under Section 26 of the Ciskei National Security Act of 1982, which allows them to be held indefinitely without charge.

In July the vice-president of SAAWU, Sisa Njikelana and an official of the union, Bonile Tuluma, were detained at a roadblock in Mdantsane. A spokesperson for SAAWU said the police had searched the vehicle but had confiscated nothing. Also in July the SAAWU offices in Queenstown were searched and several union documents were confiscated. Two SAAWU organisers who were in the office, Derick Smoko and Shepherd Mayekiso, were detained by security police. The police said that they were being detained for being in possession of banned literature. No charges were brought against them.

Early in August four SAAWU organisers, Eric Mntonga, Godfrey Shiba, Gardner Mambushe and Humphry Maxhegwana were detained. A few days later two more SAAWU organisers, Boyce Meletafa and Bongumpsi Sifingo, and the SAAWU branch secretary in East London, Yure Mdyogolo, were also detained. At about the same time the former president of the Media Workers Association of South Africa (MWASA), Charles

Nqakula, the East London branch secretary of AFCWU, Bonisile Norushe, and the general secretary of GWU, David Thandani, were detained. Commenting on these detentions at the time Mr Sidney Mafamudi, general secretary of the General and Allied Workers Union (GAWU), said it was "foolhardy" of the Ciskei government to attempt to stop the boycott by detaining trade unionists. "The root cause of the bus boycott lies in unreasonable fare increases. Therefore Sebe and his men have no cause to harass and intimidate unionists, and we call for their unconditional release". The president of SAAWU, Thozamile Gqweta, the only official of the East London branch of SAAWU not in detention, issued a statement from hiding in early September offering to negotiate between different groups to end the boycott. He said he would only negotiate on condition that all trade unionists were released.

Whereas in the Ciskei/East London area the recent detentions have been connected with attempts to suppress the bus boycott, the harassment of unionists elsewhere has intefered with day-to-day union work. In July, Dave Lewis, general secretary of the General Workers Union (GWU), and two members were refused entry into Mfuleni Township to meet striking workers at Blackheath's African Spun Concrete Company. Production came to a halt after months of dissatisfaction by workers because management failed to recognise the union. Mr Lewis said they were refused entry by the Administration Board security guards, who said they needed a permit. Mr Lewis pointed out that the union had been going into the township for eighteen months without any problems. He warned that the 2000 union members in the township might "read management's complicity with the Administration Board in preventing their entry", and that they might react to this.

In July three shop stewards from the Commercial, Catering and Allied Workers Union (CCAWUSA) in Johannesburg and four others from Potchefstroom and

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Newcastle were detained briefly. The three from Johannesburg, Lindy Nyoka, Nora Ntsaka and Ephraim Ntsele had their homes searched and were then detained for about ten hours at a Soweto police station. Reacting to the detentions, CCAWUSA said that it was "an open union working for the benefit of its members" and that "it had nothing to hide". The union alleged that the police were "intimidating" its its members and called on the employers of union members, Checkers and OK Bazaars, to take a more active role in opposing detention of their workers.

In late August workers travelling to the annual conference of the Food and Canning Workers/African Food and Canning Workers Union were detained and questioned by police in Roodepoort. Also in late August two organisers from GAWU, Amos Masondo and Elliot Shabango, both from the Transvaal, were detained overnight and had their houses thoroughly searched.

Since this briefing was originally drafted all the major independent trade union grouping have publicly protested against these detentions and the banning of SAAWU and harassment of union officials and workers in Ciskei and elsewhere in South Africa, and have vowed to take steps to resist further state repression against unionists(See Documents: Ciskei Repression).

(Johannesburg Correspondent, mid September 1983>

LEGAL STRIKE AT NATAL THREAD

The recession has placed unions under tremendous pressure over the last 9 months. It is also putting to test the meaning of the concessions extended to unions under the new Labour Relations Act. In these circumstances the outcome of the legal strike at Natal Thread Co, a textile factory in Hammarsdale, is highly significant as an indicator of the capacity of some emerging unions to combat retrenchment and the pressure from management to lower wages.

Background

Natal Thread employs about 400 workers, 350 of whom are members of the Fosatu-affiliated National Union of Textile Workers (NUTW). The union was recognised as the collective bargaining representative of its members by the company early in 1982 after a long recognition battle against several textile companies with which Natal Thread was associated.

In the face of the union's demand for collective bargaining rights Natal Thread and other textile employers gathered themselves together in the Textile Yarn and Fabric Manufacturers Association (TYFMA) and induced the union to conduct negotiations over recognition with the association rather than individual factories.

Negotiations between NUTW and TYFMA soon deadlocked (See SALB 7/4&5, p94) . TYFMA's idea of collective bargaining was that the union's sole concern should be to establish minimum wage levels and increases through an Industrial Council at industry level. The union wanted the right to negotiate increases at each factory separately, in addition to negotiating nationally.

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In an attempt to force the union to give way TYFMA circulated an internal memorandum marked "private and confidential". The document eventually surfaced when it was disclosed as part of court proceedings between the union and a Transvaal textile company. The memorandum "strongly urged" TYFMA members:

> bearing in mind the obdurate and uncompromising attitude of the Union, to resist, even to the extent of weathering industrial action, including strikes, the granting of any concessions in order to strengthen the Association,s hand in its efforts to conclude a recognition agreement on a national basis.

The TYFMA initiative floundered, coming as it did at the height of the boom in October 1981. Gelvenor Textiles, a factory next to Natal Thread, attempted to follow the TYFMA's advice to the letter. It experienced a strike and was forced to concede to the union's demand for plant bargaining. This concession provided sufficient momentum to the union to follow with a similar breakthrough at Natal Thread.

The First Collective Bargain:1982

Workers at Natal Thread made their way to the bargaining table after 9 months of fencing with management over union recognition, just as the boom was coming to an end.

The union's demand was for a R1Ø,ØØ across-the-board increase, to take effect from 31st May 1982. The company countered with a "final offer" of R4,Ø5 a week, and a further increase of R7,2Ø if the union would accept the retrenchment of 36 workers. The workers, however, were not prepared to accept an increase at the expense of their comrades and so the dispute dragged on into June.

On the 9 June 1982 the company decided to take the plunge. According to the personnel officer, individual workers had indicated that they were `happy' with management's `final' offer, and management apparently calculated that the union's rejection of it would not be supported by the workers. At 11 a.m. the company posted a notice on the canteen door stating that:

> The company has agreed with employees that an increase in wage rates of 9c/hour "across-the-board" will become effective immediately and will be back-dated to 31st May 1982...There will be no further wage increase until the end of November 1982.
>
> The company will continue to discuss wage rates with the NUTW and the employees' representatives and productivity will be the main topic of this discussion.

In the case of workers in a factory the sum of individual responses is not necessarily equal to the response of the collective whole. Lunch hour degenerated into a two day lunch break, after which the company issued another notice to employees in which it withdrew from its previous position and agreed to re-open discussions with the NUTW on the basis of a revised proposal from the union.

Negotiations were concluded speedily after the workers had returned to work. The company conceded the R10,00 increase, but for nine instead of six months.

Wage Negotiations:1983

The settlement in 1982 was the last move before the recession hit the textile industry. During these nine months workers were forced on to the defensive. The company retrenched twice, cutting back its workforce from 500 to under 400 workers. Shift work

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on Sundays and Saturdays was stopped. When wage negotiations started in January 1983 the advantage had swung in favour of management.

The company made the most of this situation, and offered an increase of only 10c per hour for 11 months. This represented about a 6% increase. The union, for its part, held out for 22 cent per hour, but made no progress around the negotiating table. Its choice was a stark one: It could not possibly accept the company's offer and yet could ill afford a strike.

In March the company decided it would pay its increase of 10c unilaterally "in the interim", but "leave the door open" to the union to carry on negotiations if it chose to.

The union responded by applying for the appointment of a conciliation board, and serving notice to the company that it would make application for a status quo order against it on the grounds that the company would be committing an unfair labour practice by unilaterally imposing its 10c increase on workers. Rather than lose its advantage by having to face an unfair labour practice claim the company retreated. It undertook to back-pay the increase once agreement was reached, and gave up the idea of short-circuiting negotiations.

The application for the appointment of the Conciliation Board was originally opposed by the company. Their representations to the state were, however, not disclosed to the union. But in May the company became impatient at the impasse and decided to support the union's request for the board to be appointed.

On the 13th June the parties assembled, only to face another deadlock. The company was not prepared to budge from its offer of 10 cents. The best it could do was offer to re-arrange the package giving

marginally more in exchange for workers dropping any back-pay claims.
The union was not interested in mediation and the company was not interested in arbitration. Thus after three months of waiting for the Board to be appointed it proved incapable of averting conflict.

The Strike Ballot

The Union decided to put the company's offer to its members in the form of a strike ballot. The company, convinced that its workforce would not follow the union, agreed to hold the ballot on the premises during working times on condition that it counted the votes with the union. The result was clear enough: 8 in favour of the company's offer, 4 spoilt papers and 315 in favour of a strike.

These results were subsequently reported to a second meeting of the conciliation board. The union advised that it believed its members would accept 15c per hour with back pay and offered to put this to its members if the company were prepared to accept the figure. The company, however, was unyielding. It made no change in its offer, refused arbitration, mediation and further meetings with the board. Either its original offer had to be accepted or the union had to take action.

The Strike Starts

Workers waited until the weekend before deciding what to do, so that all shifts could attend the same meeting. The company used the respite simply to strengthen bars on factory windows . The police called on union offices to remind officials that outdoor meetings were prohibited. Rumours circulated freely from foremen that if there was a strike the company would fire everyone, employ workers who had previously been retrenched and selectively re-employ from amongst the strikers. But the workers' meeting

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on Sunday resolved to spring a surprise.

On Monday morning, 27th June, the company and the state braced itself for the strike. Special riot police from Pietermaritzburg were brought into Hammarsdale and set up patrols with dogs near the factory. The police hung around the whole day, but to little purpose. The factory was back to work that day.

At 3.40 p.m. the union sent a telex to the company:

> This serves to advise you that our union members have decided to apply legitimate economic pressure on the company in furtherance of their proposals for wages for the period commencing lst March 1983...Shift workers shall complete their ordinary hours of work each day but shall not work the overtime. Please advise such employees beforehand as to whether or not the machines should be left running or stopped at the end of their ordinary hours of work...

This request for instructions was made because the "unauthorised switching off of machines" was an offence in the company's disciplinary code. In order to avoid having unattended machines spewing out rejects, between the end of the day shift at 4:30 a.m. and the begining of the night shift at 7 p.m., the company issued a hand-written notice to one of the union's shopstewards at 4.15 p.m. instructing the workers to switch off at 4.30.

The factory was accordingly closed down for two-and-a-half hours per shift, the equivalent of thirteen-and-and-a-half hours a week. Since production in departments not working shifts was dependent on processing yarns produced by shift workers the overall effect was a 30 per cent cut back in production.

Negotiation Starts up

The company finally re-convened a meeting with the union negotiating committee on 1st July 1983. It informed the union that shift workers had no right to 20 minute tea breaks as they were not working 12 hour shifts. Day workers working 7 a.m. to 4.30 p.m. had 10 minute tea breaks. Now that the factory as a whole was only working from 7 a.m. to 4.30 p.m. it felt that shift workers should only be entitled to the breaks due to day workers. It advised the union that it proposed to take disciplinary action against workers who refused to work after the 10 minutes.

The union responded by insisting that the company fully concede the rights of workers to their 20 minute tea breaks, failing which it would bring a court application restraining the company from the unfair labour practice of requiring workers to work during tea intervals. After an hour of bickering the company backed off, deciding to reconsider its position and to notify the union by telex if it came to a decision to require its workers to work during tea breaks.

The second attempt the company made was to argue that workers were not entitled to leave at 4.30 p.m. because their normal working hours lasted until 4.45 p.m. Another round of discussion followed, with the union insisting that it was the company that had decided when the workers should knock off. The company had in fact acted with such haste that it seems not to have kept a copy of the fateful hand-written instruction. Eventually it dropped this demand.

The third issue raised by the company was that its exemption from the Factories Act permitting it to work 12 hour shifts had expired in February and that the Department of Manpower had requested a letter from the union confirming its acceptance of the

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shift system before renewing it. The company demanded this letter and threatened to change to a three x eight hour shift system if it did not receive it. However,it was eventually forced to concede to negotiating the change in the shift system with the union.

The preliminaries having been exhausted, negotiations returned to the question of wages. On this the company was unmoved: 1Ø cents per hour was the final offer. The union asked the company to disclose its financial position, but the company argued that the books belonged to the shareholders, not the directors. Disclosure, they stated, would be beyond their powers.

The union negotiating committee reiterated its view that the matter could be settled at 15c per hour, but the company insisted that the workers had not shown their support for the 15 cents increase and stated that, in any event, it was not prepared to pay the 15 cents increase.

As a result,the first week of the strike ended as it had begun: no wage settlement, no overtime.

The negotiating committee reported back to the membership and was authorised to put the demand for 15 cents to the company again. The meeting resolved to continue the overtime ban.

The union at this point rallied to the support of the striking shift workers. Day workers agreed to contribute a part of their wages to supplement the earnings of shift workers. The Branch resolved to collect money in other factories for a strike fund and the union convened a National Executive Committee meeting for the following weekend to discuss ways of supplementing the strike fund.

On Monday 4th July 1983 the union formally reiterated its 15 cents offer of settlement in the

following statement:

> "Should the company not be agreeable to this settlement proposal we wish to make it clear we do not hold ourselves bound to repeat this offer. The offer is open for acceptance until 4.3Ø p.m. on Tuesay 5th July 1983".

On Tuesday 5th July, 1983 the company telexed their rejection of the union's offer. Nevertheless it stated that it was willing to disclose its financial position on two conditions: 1) That the information would be confidential. 2) That the committee would recommend to members that they accept the 1Ø cents if the company proved its inability to pay more.

On Wednesday 6th July the union and the company met again at 9 a.m. The union made it clear from the outset that its officials would be unable to hold any negotiations with the company after 6th July until 18th July. The terms of the discussion were thus that a settlement should be reached that day or that there would be an over-time ban of at least a further month.

The union is tightlipped about the financial position disclosed by the company, as it is concerned to secure such disclosures in the future, but judging from the outcome of the negotiations it was not persuaded to recommend to its members that they accept the 1Ø cents increase.

The company complained that production was down to 5Ø percent of normal. It also accused some workers of being on a on a go-slow, in addition to the overtime ban, and threatened to serve them with warnings.

Of more importance, the company now disputed the voluntary nature of overtime. This grew to be the central issue in the negotiations. The relevant

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legislation provides that an employer "may require or permit" up to 1Ø hours overtime a week. The workers had agreed to work the shift system which incorporated overtime in each shift worked, and so the issue turned on whether such agreement made overtime obligatory or merely permitted the company to request voluntary overtime.

The union relied heavily on a precident set in the 195Ø's at Veldspun, a textile factory in Uitenhage, where a similar issue led to the prosecution of workers refusing to work overtime. In an appeal the Supreme Court decided that the workers were not guilty and it was specified that unless there was an express agreement that overtime was compulsory it had to be taken to be voluntary. At Natal Thread the agreement was by all accounts vague, and since it was tied to the expired exemption there was enough room for doubt as to a court finding on the matter.

At the end of an hour's caucus the company put another "final offer" to the union. It would pay 15 cents per hour with back pay to 28th February 1983 as demanded, provided workers accepted three conditions: 1) Their next increase would be delayed three weeks to 24th February 1984; 2) The overtime boycott had to be stopped with immediate effect; 3) Workers had to accept that the overtime relating to the 12 hour shifts would be compulsory in future.

The offer was virtually the entire claim put forward by the union in the second Conciliation Board meeting and it was obvious that the workers would accept it. The trap lay in the third condition. Accepting compulsory overtime outside of dispute situations was not in itself disadvantageous.The difficulty lay in losing this leverage during a dispute. Having discovered a very effective way of putting pressure on management without running the risk of selective dismissal, workers were being tempted to give up this weapon for the short term advantage of higher wages.

To their credit they rejected this condition. The workers mandated the committee to inform the company that the increase was acceptable but they were not prepared to give up this means of exerting leverage. As a result the negotiating committee was sent back to another six hour's of negotiating. Non-executive directors, company attorneys and also the directors doing the negotiating worked their first night shift for the factory.

The outcome was worth the effort. By midnight agreement had been reached, subject to approval by the union membership: 1) The overtime involved in the shift work would be compulsory, and 2) "The company agrees that, in the event of its employees engaging in a legal strike, it may either dismiss all strikers or none of them. The company also agrees that in the event of its having dismissed such strikers, it may only either re-employ all of them or re-employ none of them".

The clause was duly accepted by the membership and the strike settled. For the first time they had won the crucial right to strike without fear of selective dismissal or re-engagement. The company was forced either to find an entirely new workforce or to live with its existing one. It may no longer threaten to keep its experienced workers while excluding their leadership.

Conclusion

The strike is the only legal strike won by workers for decades. The gains were significant in three areas: The workers won their wage demand, the company opened its books to the union and a right was established whereby all or no workers would be dismissed during a strike.

(Durban Correspondent, August 1983)

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SHOP FLOOR STRUGGLE : MANAGERIAL PERCEPTIONS

The independent Trade Union movement's organisational emphasis is shop floor structures, worker participation, and the development of strong, class conscious shop stewards. In the years since Wiehahn, the power position of key unions has strengthened immensely at this level, and supervisors have been the first to experience this change. Clearly one purpose of such organisation is to break the arbitrary power of the foreman.

One hundred and ninety leading managers, many of them line managers, met in Durban recently to attend a conference sponsored by the Institute of Personnel Management, which focused on the implications for management of this shifting balance of power. The speakers, well known Industrial Relations strategists, such as Theo Heffer of Grinaker, Fred Ferreira of Ford, Shadrack Sibiya of C.G.Smith, and Anglo American's Bobby Godsell, outlined strategies being adopted by leading companies to respond respond to these changes.

Bobby Godsell of Anglo American, identified the crucial issue for management:

> Supervisors have ended up in a terrible no man's land. When they lost the right to fire, they became dogs without teeth and in conflict situations management has tended to bypass the supervisor and take decisions over his head. Supervisors must be given authority.

He argued that in bypassing the supervisor, morale was undermined, and the effectiveness of the management team thereby weakened .

Theo Heffer stressed that it is vital for

supervisors to be thoroughly knowledgeable about the **structures** that management has established to negotiate issues with the unions. Supervisors must be made aware of the fundamental principles underlying these procedures, and this should be done within the context of the principles of South Africa's new manpower policy.

Ford representatives discussed their extremely sophisticated six month training programme for supervisors, which aimed at improving "the trainees management and supervisory skills" and "the utilizing of the latest behaviour modelling techniques to improve interpersonal communication skills". The training included modules on "improving employee performance", i.e. "rectifying problems of below standard quality and quantity of work". It included a course on "improving work habits" and thereby helping to change "an unsafe or undesirable work habit". Prospective supervisors were also trained in "effective disciplinary action". Great stress is now being laid on the "labour relations policies of the company" which includes defining the rights of labour and their representatives which "obviously represent limitation to the freedom of supervision". Supervisors are also trained in the "understanding of strikes".

> It is our experience that strikes generally have a negative effect on the relationships between the labour force and the various levels of supervision. Deterioration of the relationship in respect of supervision is usually marked by a hardening of attitudes towards labour and often a desire on their part to `get even' , especially during the period immediately following the strikes..... It is our perception that a large section of our supervision review strike action on the part of the subordinates or team as a personal insult to themselves.

The company's training effort in regard to strikes should accordingly involve the following:

- that the free enterprise system implies the right to strike;
- that there is an inherent conflict of interest that separates workers and employers and that strike action is an open expression of this conflict of interest;
- that strikes should be seen as a natural and acceptable component of the collective bargaining system and that they should not be viewed as a malfunction of the system;
- that strikes are, in the main, aimed at obtaining concessions from the company;
- that politics and unions cannot be completely divorced from one another and, therefore, unions may utilize strike action to further the political interest of any particular group.

They went on to say that while there may be hardening of attitudes in the part of supervision after the strike, the reverse reaction may also be evident.

> The second reaction may be termed `gun shy' behaviour in that a tendency may develop amongst certain supervisors not to implement this reaction against employees, even when such action is completely justifiable, for fear of precipitating further industrial action. This form of behaviour should be avoided.

All speakers stressed the usefulness of behaviour modelling programmes where "the individuals are taught the correct behaviour and skills to deal with interpersonal relationships".

Thus great stress was placed on the training of supervisors, not just in technical competence but in

"dealing with people and that this training should start at the top, and that once there was a new approach on the part of top management to the new dispensation, supervisors would fall more into line.

The conference is indicative of the fairly dramatic shift in managerial style since 1979. With the recognition of "the inherent conflict of interest that separates employers from employees" arises sophisticated new strategies. One such strategy is that adopted by Ford, who stressed the importance of the "quality cricles" that they established in the company. Management believes that these newly established circles are working well. Their purpose is to involve workers in discussions over the production targets that have been set, so that a sense of participation in the company is developed. this management also has a close working relationship with Roux van der Merwe of the Industrial Relations Unit at Port Elizabeth and are keen to involve themselves in sponsoring training programmes for shop stewards. Accoring to Ford the advent of unionism has heralded the end of "authoritarian management", and the new "participatory" style is the most effective strategy for the stabilisation of labour relations.

The more supervisor power is limited and constrained, the harder the unions can push on crucial shop floor issues. For it was at the Ford company, Liverpool, that shop stewards argued that to gain any control over the production process, they had to "break the power of the supervisor". It is a sign of the growing strength of the independent unions that, in many instances, the arbitrary power of the supervisor has been broken. The essence of managements' dilemma in the current phase was articulated during discussion and debate. Removal of the right to fire weakens the supervisor, and thereby weakens managerial authority. It creates divisions within the managerial team.

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In many factories unions have indeed pushed supervisors into that "terrible no man's land". The conference did not explicitly indicate that there would be an attempt to re-assert this authority, but rather stressed training and psychological techniques in an effort to help the supervisor cope with the new stress-creating situation.

It is as a result of the changing balance of forces in industrial relations that leading elements in management have had to recognise trade union rights on the shop floor. This and the recent Industrial Court decisions on unfair labour practices make it judicious for managements to restrain their front line soldiers - the supervisors.

(R Lambert, Durban, September 1983)

MDANTSANE BUS BOYCOTT

The supreme irony of the Mdantsane bus boycott, now approaching its third month (September 12), is that the Ciskeian Government's strong-arm tactics were applied at a time when support for the boycott was not widespread. Rather than crushing the boycott, the effect was to strengthen enormously the support for it amongst people angered by the brutality of the government's intervention.

An all-out Ciskeian police campaign to break the boycott saw at least seven dead, several injured and dozens in detention. Mdantsane, the second largest black township in Southern Africa, seethed with discontent.

South Africa's foreign Minister Pik Botha flew to Ciskei for talks with Life-President Lennox Sebe. The bus fare increase was halved and the massive police presence in Mdantsane all but withdrawn.

Mdantsane residents, however, were not appeased by the fare concession. "Five cents won't bring back the dead", said one, Vuyiswa Maqubela.Bus patronage remained low and the transport company introduced short-time for its employees.

Ms Maqubela's intransigence is significant. At the outset of the boycott in July, she complained of intimidation by organisers. As a member of the ruling Ciskei National Independence Party she was at first apathetic about the fare increase and reluctant to jeopardise her job as a cleaner at an East London hotel. But, she said, bus commuters had been threatened with petrol bomb attacks on their homes, so she was prepared to endure the hardship of walking an extra 24 km daily to board trains.

Ms Maqubelas views changed radically after August 4,

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when at least 45 people fell to a hail of police bullets before sunrise at Mdantsane railway sidings. The authorities reported five dead and another two subsequent fatalities. Victims who had survived said they had been shot at in cold blood. These people were strangers to Ms Maqubela, and yet she wept. She tore up her CNIP membership card.

Mdantsane is still angry. Venting this anger publicly has been virtually impossible; a state of emergency confines residents to their homes between 1Ø pm and 4.3Ø am and prohibits gatherings of more than four. Weekend funerals have been banned.

Trade union officials, their ranks trimmed by indefinite detention under Ciskei's harsh security laws, called a meeting in Duncan Village - on South African soil - to discuss the future of the boycott and mourn the dead. It was banned.

A committee of ten - chosen from the local branches of the South African Allied Workers Union, The African Food and Canning Workers Union, General Workers Union and the Council of South African Students - was appointed to negotiate with the transport company, Ciskei Transport Corporation, which is jointly owned by the South African and Ciskeian Governments. Eight members of the committee are now behind bars.

In the absence of any legal venue, train carriages have provided an ideal setting for boycotters to meet and pass on information. Packed to overflowing, commuters prostrate on roofs and balancing on couplings learnt daily of the latest deaths, detentions and arrests for alleged curfew violations.

Cries of "amandla" and "away with Sebe" disturbed sleepy white suburbs as trains carried East London's labour force to the industrial area. Between freedom songs, commuters heard eye witness accounts of

police violence and of numerous assaults by CNIP-supporting vigilante groups operating with Ciskein Government sanction.

Passengers relayed personal experiences, recounting how they had been forced at gunpoint out of taxis and private vehicles or turned away from railway stations and ordered onto buses.

Friends of 16-year-old Sisa Faku spent hours on trains telling of his death - contradicting official reports that he had been apprehended stoning a rent office and had then turned on (heavily armed) police with a knife. No, they said, he was not shot in self defence. He was killed after police converged on a group of boys playing soccer. Sisa was shot as he and the others tried to flee.

Mdantsane residents insist that police bullets have claimed more than 7 lives. They say police threatened people with cremation at the East London mortuary, a place where the dead were kept before they were identified and handed over to undertakers. But hospital, state and mortuary authorities are adamant when they peg the toll at 7.

A curious aspect of the boycott has been the attitude of South African Transport Services (railway) police, who worked at cross purposes with the Ciskeian police. Railway loud hailers announcing the arrival of trains added: "Passengers can board freely. No one will stop you or point a gun at you", while armed Ciskeian police prevented people from entering stations.

Undeterred, but cleary afraid, the bus boycotters followed circuitous routes, avoiding road-blocks, and boarded trains with railway police encouragement and assistance from the opposite side of the railway line - which forms Ciskei's border with the rest of South Africa. Trains were seen stopping between stations, allowing commuters to board.

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The bus boycott has also affected attendance at 10 of Mdantsane's 12 secondary schools. Male pupils, in particular, stayed away from classes on the grounds that their older female relatives needed protection when commuting to East London.

Apparently for the first time in the history of Eastern Cape school boycotts parents failed to make representations to principals about measures to end the stay-away.

On the face of it, the East London Chambers of Commerce and Industry, concerned about the economy's disruption, sympathised with the bus boycotters as well. An "internationl boundary" separating the city from its labour pool prevented negotiations with the Sebe government, and the businessmen and industrialists turned to Pik Botha. Nevertheless, managements docked off wages of late-comers.

Management of the Ciskei Transport Corporation was also constrained - by President Sebe's insistence that the bus schedules should not be altered, when buses were running empty. The company, already battling to break even financially, lost well over one million rands in fare revenue and damages as a result of scores of stoning incidents.

And the boycott continues, coinciding with a palace revolt linked with an unsuccessful coup and the detention of 17 security officers; among them the once all-powerful General Charles Sebe.

President Sebe blames the trade unionists. On the contrary, he has himself to thank for inadvertently mobilising the people of Mdantsane on a scale unparalleled in the township's recent history.

(Eastern Cape Correspondent, early September 1983)

LECTURES FOR WORKERS

Most workers are accustomed to receiving lectures from their supervisors and from management. The series of public talks organised by Fosatu's Education Unit and presented at the University of Witwatersrand in July presented something of an exception to this.

The talks, held on 4 separate evenings, were well attended by an audience that was made up of rank and file Fosatu members, workers from other unions, trade union officials and interested members of the public.

A controversial theme was chosen for discussion each evening. Various shop steward locals in Fosatu took responsibility for preparing and presenting the different themes.

The first topic for discussion was the shop steward movement in Fosatu. This was presented by the Pinetown shop steward local from Natal.Their talk outlined the role of shop steward leadership within Fosatu's structure. Comparisons were made with the factory council movement in Italy after World War I and the shop steward system that exists in British trade unions. The speakers pointed to the weaknesses of these kinds of worker organisation. They felt that the ultimate failure of the Italian factory councils was due to the fact that the Italian Communist Party was dominated by leaders who came from outside the working class and were therefore unable to give the factory council movement the political direction it needed. The speakers then argued that the model of British trade unions allowed trade union officials to dominate the shop stewards as worker representatives - thus preventing workers from exercising control of the direction of their union and it's officials. The speakers argued

that the building of a strong shop stewards movement in Fosatu was one way to overcome the weaknesses in the Italian and British examples and to ensure a strong working class leadership and direction within their organisation.

A vibrant debate from the floor followed the presentation on this evening. The key issue of the relationship between workers' and other organisations was raised and the example of Inkatha was taken up. After much discussion the Pinetown shop stewards argued that it was necessary for organised workers to evaluate the possibility of workers exerting their influence within these organisations before joining or entering into a relationship with them.

The second talk was presented by the Benoni shop steward local. On this occasion the topic was **Workers and Democracy** and the panel of speakers presented a detailed discussion of the duties of a shop steward within democratic worker organisation on the factory floor. This time discussion and debate from the floor was less lively. The speakers were uncomfortable when confronted with questions about state harassment of trade unions and the effects of this on democracy within worker organisations. The role of the workers' movement in the building of a wider political democracy was as a result not discussed in any detail.

The next evening saw the Springs shop steward local, headed by Fosatu President Chris Dlamini, discussing the relationship between worker and community organisations. The panel of speakers chose to do this by presenting an account of their shop steward local's entry into community issues in Kwathema - the township of Springs. They stressed that they were talking about the experience of their own local rather than about the Fosatu policy.

The speakers argued that the existing community

organisations in Kwathema - such as the community council, the burial societies and Azapo - were not able to act in the interest of workers. Workers and residents in the township often did not know who the leadership of these organisations were and where they could be contacted.

As a result the Springs local had decided to extend its activities to the sphere of community organisation in Kwathema. Much discussion about the methods used to do this then took place. The speaker mentioned successful efforts to pressurize managements in the Springs area to take up workers' section ten rights with the administration board, to buy land in the township for workers to build their own houses and to be directly involved in the payment of rentals from workers wages to the administration board. He also spoke about the formation of zone committees in Kwathema to allow for discussion with the community on these and other issues. These zone committees were also seen as a means of extending the organisational skills learnt in the trade union to the sphere of community.

Two broad themes emerged out of these and the wide range of other issues that were discussed on this night. Firstly, the speakers and workers from the floor displayed an awareness of capital's involvement historically in the creation of the township of Kwathema and the role that township housing plays in accommodating the labour force that is needed for industry to operate profitably in the area. As a result they were prepared to use their organised strength in the factories to break down the apparent division between community and factory issues and to force management to take responsibility for the conditions in the townships that capital helped create and that it continues to benefit from. (This theme emerged crisply when in response to a question about how to handle rent increases an old worker replied from the floor;

"It's simple. We force management to add the increase to our wages".)

Secondly the speakers and workers displayed a strong awareness of themselves as an organised force separate from other classes in the community and capable of giving direction to and "disciplining" these classes in the course of community struggles. Much of this discussion centred around accounts from the floor about the unreliability of taxi drivers as working class allies in various bus boycotts. Some speakers argued that workers should as a result refuse to enter into alliances with such groups whilst others argued that the organised strength of the working class would enable them to control and direct groups like the taxi drivers in the course of joint struggles in the townships. The questions of how the organised working class should relate to other groups in the community - like students and the unemployed-was also raised from the floor but not discussed much. At various stages in the discusions it was also stressed that workers should never overestimate their strength and should remember that building a strong workers' organisation could take decades of hard work. The fact that workers in one community could belong to many different trade unions was also discussed as a problem when attempting to link up shop floor and community struggles and the importance of trade union unity as a means of overcoming this problem was stressed.

A noticeable characteristic of all the talks was the lack of participation by women both in the presentation of topics and in discussion from the floor - an issue that was raised in the final talk on the role of women in trade unions that was presented by a group of women from Fosatu. During the talk the women raised issues like the absence of a strong women's presence in the leadership of Fosatu at all levels, the difficulties that women face in attending trade union meetings due to their

domestic "duties" and pressure from their husbands and the particular problems that women workers experience in the factories. The weakening of worker organisation through the separation between men and women and the ways in which capital benefitted from this were also discussed. The debate that followed was the most enthusiastic of all the discussions - possibly because the topic concerned is not one of the issues that relates to current divisions between trade unions in the worker movement.

The highlight of the series of presentations was a day of worker culture held on the Saturday, between lectures. More than 600 people attended a series of cultural events that included workers songs by a trade union choir from Pretoria, a worker talking about his perceptions of Modikwe Dikobes novel, the Marabi Dance - which describes working class life in Johannesburg in the twenties and thirties and a play by the workers from the Dunlop factory in Durban about their struggle for recognition. These events marked a new development in worker education and showed that workers are becoming aware that culture is an important area of struggle. Cultural events are obviously now being seen as an important way of countering the ideas that are put forward to workers by other classes through things like radio,television, films, and newspapers.

Except for the shaky discussion about workers and democracy at a national level - the overall impression left by the talks and presentations was that the speakers and workers in the audience were able to conduct debate and discussion on controversial issues in an open and non-sectarian way - possibly because this debate was rooted in the workers awareness of and confidence in themselves and their organisation as a strong and growing force.

(Eddie Koch, Johannesburg, 1983)

UNFAIR LABOUR PRACTICES AND THE INDUSTRIAL COURT

by Charles Nupen

Introduction

Labour law in South Africa is a highly specialised field. This article is intended for those involved or interested in the labour movement who would not ordinarily be well acquainted with recent developments in labour legislation, more particularly with the introduction into our law of the concept of the unfair labour practice.

The article seeks initially to explain some of the limitations in our common law (1) in affording protection and redress to workers and why the conventional courts are inappropriate institutions to hear industrial disputes. It seeks also to clarify the concept of an unfair labour practice by examining some decisions of the Industrial Court in unfair labour practice cases. Finally the article examines whether the Industrial Court is fulfilling its objective of determining industrial disputes expeditiously and at low cost.

The Common Law

Kahn Freund has described the employment relationship thus:

> The relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination however the submission and subordination may be concealed by that

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> indispensable figment of the legal mind known as the contract of employment.(2)

The common law operates on the premise that individuals are equal before the law and as such does not recognise the inherent inequality in bargaining power that exists between the parties to a contract of employment. The employer is largely free to impose his will in determining the terms and conditions of the contract.

Motive on the part of an employer in dismissing an employee is irrelevant at common law.(3) The traditional management prerogative to fire at will no matter how arbitrary or unfair such action might appear, is endorsed. As long as an employer gives reasonable notice he may terminate a contract of employment for whatever reason and the worker has no legal redress.

There is for example no common law protection against victimisation and in this context the right to freedom of association is merely notional.

To the extent that workers have for many years organised themselves into trade unions as a protection against exploitation, this development has gone largely unrecognised by the common law. There is no principle that requires employers to recognise and bargain collectively with representative trade unions.

> However, the common law knows nothing of a balance of collective forces. It is (and this is its strength and weakness) inspired by the belief in the equality (real or fictitious) of individuals, it operates between individuals and not otherwise.(4)

Even in circumstances where an employer terminates a contract of employment wrongfully, for example, summarily without good cause, a worker's only

redress until recently has been to claim damages and not reinstatement.(5) A recent Supreme Court judgement (6) has however suggested that in certain circumstances an employee at common law might claim reinstatement when he has been wrongfully dismissed.

The prospect of workers securing such relief at common law is nevertheless largely academic. Civil litigation in the conventional courts is expensive and beyond the reach of workers and many unions. It is also characterised by long delays which render these courts highly inappropriate fora for determining industrial disputes.

State Intervention

Historically the state has been forced to intervene to offset the severe limitations in the common law in affording protection to workers against unfair treatment. It has enacted legislation setting minimum standards in respect of the terms and conditions of employment.(7)

It has also sought to contain and regulate industrial conflict. Its key enactment in this area is the Labour Relations Act 28 of 1956. Originally known as the Industrial Conciliation Act it was first introduced in 1924 in the aftermath of the 1922 Rand Strike and it has been amended substantially since then. The Act seeks to maintain industrial peace and to regulate industrial conflict by requiring employers and trade unions to follow prescribed conciliation procedures before resorting to force.It does this by prohibiting strikes and lock-outs unless such procedures have been exhausted. Severe penalties are attached to transgressions.(8) It accordingly makes provision for comprehensive conciliation procedures through which conflicting parties might resolve disputes and it institutionalises collective bargaining arrangements between employers and trade unions through a system of industry based industrial councils.

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The Act provides also for a system of trade union registration (9) which is a prerequisite to participation in the Industrial Council system. Freedom of association is protected (10) and victimization outlawed.(11)

Until recently this statutory machinery was not available to black workers who were simply excluded from the definition of employee under the Act. There was no law which prevented black workers from forming trade unions but these unions were accorded no formal recognition in law. Where black unions emerged they generally failed to secure management recognition and were subject to state harassment. The state in fact sought to undermine the development of these unions by introducing an in-plant committee system for black workers under the Black Labour Relations Regulation Act of 1953.(12) This Act provided machinery for the settlement of disputes not by direct negotiation but through the intervention of state appointed officials. Strikes were declared illegal under all circumstances until 1973. No machinery existed for collective bargaining until in 1977 it was introduced in limited form.(13)

The legislation, then, gave rise to a dualistic structure of industrial relations. White workers comprised a labour elite. They were for the most part unionised and their unions enjoyed management recognition. They held skilled jobs protected by the closed shop and job reservation and earned relatively high wages. Nevertheless incorporation into the state regulated industrial relations systems meant greater state control. Unqualified participation in the machinery created by the Act with its emphasis on constitutionalism, complicated procedures for the resolution of disputes and industry-level as opposed to plant based bargaining did much to bureaucratize and limit the power of the unions which had access to it.

The industrial relations machinery set up under the Black Labour Relations Regulation Act found little favour with black workers. Between 1953 and 1973 only 30 statutory works committees were formed. In 1973 following unprecedented strike activity by black workers, the state introduced the liaison committee system. In the ensuing four years prior to the appointment of the Wiehahn Commission over 2 000 liaison committees were launched primarily at the insistence of management. These institutions were clearly ineffective in representing the interests of black workers. This was apparent from the incidence of strikes and work stoppages in which black workers were involved and from the manner in which they were dealt with.

The main features of this kind of industrial action became more or less predictable. Workers would strike to express grievances or to secure demands. Relying on the agitator thesis management would often seek police intervention. Workers would be ordered back to work or dispersed, on occasion by force. Worker leaders would be arrested and workers fired en masse. Depending on the skill requirements of the industry, management would recruit a new work force or selectively re-employ, weeding out what it perceived to be the `principal trouble makers'.

By the end of the 1970's the state was forced to address this essentially crude approach to industrial relations. It was affecting production. It had attracted national and international criticism. The disinvestment lobby abroad was gaining momentum and some overseas unions were threatening to boycott the handling of South African products. The domestic political implications were readily apparent. As one commentator put it:

> After the urban uprisings of 1976 the threat of the politicization of strike action was much feared if no effective trade union rights were granted - a

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> prospect all too real as the class of '76 began entering the factories.(14)

Equally significant was a resurgence of an independent black trade union movement during the 1970's which was growing in strength and influence as workers percieved their interests best protected and advanced through these unions.

With a strong democratic base the independent unions were proving resilient in the face of state and employer harassment. Though they lacked formal recognition from employers their membership clearly exerted an influence on the shop floor. There were other considerations. The independent unions operated outside the state regulated industrial relations system. They emphasised the importance of plant level bargaining and dispute resolution. This loomed as a potential threat to the statutory industrial council system. Some of the independent unions had developed ties with international worker federations and received considerable financial support from abroad.

There were stirrings in certain management circles as well which began to pose a challenge to the prevailing state dispensation for black workers. Faced with increasing criticism at home for reaping the profits of apartheid, multinationals began to put pressure on their South African subsidiaries to desegregate facilities, increase wages and recognise black unions.

When the Wiehahn Commission was appointed in 1977 it had to address these issues and anticipate their consequences. Acting on its recommendations the state sought to incorporate black workers within the ambit of a unitary industrial relations system.

In 1979 black workers were included in the definition of employee (15) under the Industrial Conciliation Act. Migrant workers were excluded from

this definition though the Minister was given the discretion to extend the scope of the definition to include such workers. In 1981 the qualification on migrants was removed and the procedures for collective bargaining and dispute resolution were opened to all employees apart from specific categories like farm workers, domestic workers and state employees.(16)

The independent black unions were encouraged to register under the Act and to participate in industry based collective bargaining arrangements through the Industrial Council system.

This attempt at incorporation was treated to a greater or lesser extent with suspicion and some unions percieved it as a blatant strategy to secure state control of the independent union movement. It sparked off a heated debate among the independent unions which centred mainly on the issue of registration.(17) Two developments, the significance of which has only recently become apparent for the independent unions, were not canvassed in this debate.

The state had to provide additional incentives to unions and workers to use the conciliation machinery under the Act. To this end it introduced an Industrial Court intended, inter alia, to determine disputes quickly and at low cost and introduced the concept of the `unfair labour practice'.

The Unfair Labour Practice

An unfair labour practice was initially defined as meaning `any labour practice which in the opinion of the Industrial Court was an unfair labour practice'.(18) The state intended the Industrial Court to have an unfettered discretion to develop a body of law relating to fair employment practices. If parties could be encouraged to bring their disputes to the Industrial Court the state hoped to

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avoid the negative consequences of unilateral industrial action.

The concept, as initially defined, provoked immediate criticism for not providing any guidelines or framework in which to categorise unfair labour practices.

This criticism resulted in a framework being set by subsequent amendments to the Act,(19) which ultimately defined the concept as follows:

> An unfair Labour Practice means
> (a) any labour practice or any change in labour practice, other than a strike or lock-out, which has or may have the effect that
> (i) any employee or class of employees is or may be unfairly affected or that his or their employment opportunities, work security or physical, economic, moral or social welfare is or may be prejudiced or jeopardised thereby;
> (ii) the business of any employer or class of employers is or may be unfairly affected or disrupted thereby;
> (iii) labour unrest is or may be created or promoted thereby;
> (iv) the relationship between employer and employee is or may be detrimentally affected thereby;
>
> or
>
> (b) any other labour practice or any other change in any labour practice which has or may have an effect which is similar or related to any effect mentioned in paragraph (a).

The most exhaustive explanation of the definition was attempted by the Industrial Court in the Diamond

Cutters case.

> Labour practice might be intended to encompass one or more acts, actions, deeds or doings concerning the situation in whic.. bodily or mental toil is being rendered in the context of the relationship between employer and employee.(20)

By methodical reference to dictionary definitions of key words the court deduced that in respect of paragraph (a) (i) of the definition:

> What the legislature had in mind was that any labour practice or change therein which has or may have inequitable or unjust consequences for an employee or a category of employees has to be deemed to be unfair. This is the first criterion. The second and apparently the more appropriate criterion in casu seems to be the chances of finding an occupational work or experience tenure of employment, or the well being materially, financially, morally or in respect of the association with others which may not be injured, harmed or endangered.(21)

Paragraph (a) (iii) of the definition:

> is evidently aimed at disturbances or trouble that is or may be caused or aggravated in regard to the relationship between employer or employee or employees.(22)

Paragraph (a) (iv) of the definition:

> is obviously intended to cover the damage or prejudice to the mutual situation which exists between employer and employee.(23)

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The court then noted that paragraph (b) of the definition of an unfair labour practice extended the scope of the expression even further.

> The notion `unfair' contained in the definition therefore may be said to be intended to embrace not only those factual or possible results specifically mentioned therein but in addition also consequences that are such like, congenial or kindred to those so mentioned.(24)

The wide meaning given to the expression `unfair labour practice' admitted of the possibility that certain labour practices entirely consistent with common law principles might yet be declared unfair and allow the victim to pursue the remedies available under the Labour Relations Act.

This significant development was recognised by the court in the Diamond Cutters case:

> It would however, appear that even acts which may otherwise be quite lawful and permissible could be said to fall within the ambit of the meaning of the expression as it is defined in the act.(25)

As previously stated, it would be entirely consistent with common law principles to terminate the services of an employee on reasonable notice for whatever reason, no matter how unfair such dismissal might appear. However, in so far as the employee may be unfairly affected, or his employment opportunities, work security or physical, economic, moral or social welfare is or may be prejudiced or jeopardised by the dismissal, such dismissal could constitute an unfair labour practice.

Dismissal as an Unfair Labour Practice

The question as to whether dismissal in certain

circumstances constitutes an unfair labour practice has in fact been considered by the Industrial Court which has also ruled on what remedies might be available to a dismissed employee.

In Maponya's case,(26) the applicant, a union activist, was employed by a company trading under the name of Precision Tools, under a migrant labour contract. In terms of the appropriate regulations(27) this contract could not be for more than one year. Upon the expiry of this period, it was administrative practice that employees like Maponya on migrant labour contracts would be required to return to their `homelands' to attest new one year contracts as a prerequisite to resuming their employment. The annual renewal of contracts is widely regarded as little more than a formality, usually attended to during annual leave periods, which does not affect the continuous nature of the employment relationship.

When Maponya's contract expired his employer refused to agree to its renewal allegedly on the grounds of Maponya's trade union activities.

It was contended before the Industrial Court that it was unfair to rely on the natural termination of a fixed term contract where there was the expectation of renewal, on the grounds of belonging to a trade union or participating in its activities.

The court held that the unfair labour practice as alleged could constitute an unfair labour practice, but it declined to decide the issue there and then "without first establishing the true relationship between the parties and the issues in dispute".

In the Diamond Cutters case, the contracts of service of certain skilled employees employed by different members of the Diamond Cutters Association of South Africa were terminated on notice. The dismissals took place during a downturn in the

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industry and amidst allegations that employers continued to employ unskilled workers in jobs traditionally reserved for skilled workers. The S.A. Diamond Workers Union alleged that these dismissals constituted an unfair labour practice in that they were not effected in compliance with a `Termination of Employment Agreement' applicable to the industry. The Industrial Court upheld this view on the basis that the employment opportunities, work security or economic welfare of the skilled employees were or might have been jeopardised by the dismissals.

In deciding what remedies might be available to the aggrieved employees the court decided that the concept of reinstatement was not foreign to industrial legislation.(28)

It concluded also that when determining an unfair labour practice in terms of Section 46(9) (29) it was intended that the court be allowed to give such decision as it deemed fair having regard to the circumstances of each particular case.(30)

It noted that in respect of common law our courts would not ordinarily decree specific performance of a contract of employment.(31)

It however presumed that in introducing the new concept of an unfair labour practice into our law the legislature probably intended to change the common law position as it had obtained up to that stage (32) and it suggested that in making a determination in regard to an unfair labour practice the Industrial Court need not necessarily follow the common law.(33)

It distinguished termination of contracts of employment which could be deemed to be un fair labour practices from the common law concept of wrongful dismissals.

Whereas wrongful dismissals require common

> law remedies, unfair labour practices are to be determined in accordance with the statutory provisions as intended by the legislature.(34)

It decided that the only satisfactory determination that could possibly be made (in this case) was to order reinstatement of the contract in the case where the contract of employment had been unfairly terminated.(35)

Particularly significant then was the attitude of the Industrial Court that in determining an unfair labour practice it was neither bound by common law principles nor common law remedies.

In the Fodens case, a recent important judgement, the question as to whether the dismissal of two union shop stewards and a migrant worker constituted unfair labour practices was considered.(36)

The court cited Sigwebela's case (37) as authority for the proposition that where an employer terminates an employees services the onus rests on the employer to establish that such termination was justified on good grounds.The employer had claimed that the two shop stewards had been retrenched, that it was not obliged to give them more than 24 hours notice. It had to concede that overtime was worked at the time and could not offer an explanation as to why it had failed to respond expeditiously to the unions request to discuss the dismissals.

The court detailed certain general principles regarding retrenchment, namely, prior proper warning of proposed retrenchments; fair application of agreed retrenchment selection criteria, prior consultation with a representative trade union, adequate steps to look for alternative employment and first-in last-out.

In circumstances where the employer had displayed a

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hostile attitude to the union and its own employees, the failure to follow general principles of fair retrenchment constituted an unfair labour practice.

In the case of the migrant worker who had allegedly been dismissed for disobedience it found his summary dismissal prior to the expiry of his fixed term contract of employment was an unfair labour practice because the employer had failed to prove on the balance of probability that the dismissal was justifiable.

In the event, the Court made substantial monetary awards to the two shop stewards (who did not pursue a claim for reinstatement) and required the company to pay the migrant contract worker his average wages from the date of his dismissal until the date of expiry of his fixed term of contract.

Other Unfair Labour Practices

In the Fodens case the court was required to consider numerous other allegations of unfair labour practices.

The following picture emerged from evidence placed before the court. The union, which was registered and representative of the majority of workers in the company, had endeavoured without success for several months to secure recognition from management. Management was hostile to the union and attempted actively to dissuade its employees from having anything to do with the union. Management attitudes and practices towards its employees were at best anachronistic. Employees were addressed in insulting and humiliating terms. The Court noted:

> There was on the part of management an absence and lack of any understanding of industrial relations or even a personnel function and also no disciplinary policy and procedure or retrenchment policy or

> guidelines as requested by the union and no recognition of the union.
>
> After the dismissal of the two shop stewards referred to above, the company managing director failed to discuss the dismissal on a meaningful basis with union representatives and when at a meeting he was offered the unions certificate of registration he is alleged to have said: `What should I do with it. I am not interested in it. You have been shouting the whole week about me dismissing these two boys', and `You want me to recognise the union, but already you tell me what to do. What kind of union is it that tells management when to dismiss and when not to dismiss'.

The union alleged in papers before the court that the company had committed all-in-all thirty seven unfair labour practices. Apart from the dismissals referred to above, these were classified by the court into seven broad categories:

(a) refusal by the company to negotiate with a representative trade union;

(b) interference by the company with its employees' freedom of association protected by Section 78 of the Labour Relations Act;

(c) the use of derogatory terms by members of management when referring to company employees;

(d) the company's failure to furnish within a reasonable time an unconditional and permanent undertaking that its employees would not be victimised;

(e) the non-existence of a disciplinary code and procedure and grievance procedure for company employees seen against the background of a representative union having approached the company with a request to discuss, negotiate and introduce the relevant code and procedures;

(f) the company's failure, despite an undertaking,

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to refund unemployment insurance fund contribution deductions to employees who, as non-South African citizens, were not covered by the fund;
(g) derogatory references made by managerial staff about the union in relation to the question of pensions.

The court found that all 37 of the labour practices established by the applicants were unfair on the grounds that they seemed to have or may have the effect of detrimentally affecting the relationship between employer and employee. In making the finding however the court emphasised:

> that the various unfair labour practices should not be seen in isolation, but only in so far as they are inter-related to each other.They should also essentially be seen in particular circumstances which surrounded the situation in which they occured, such as the hostile attitude displayed by Respondent (the company) towards First Applicant (the union) and its humiliating conduct concerning its employees involved.

In the matter of Bleazard and others v the Argus Printing and Publishing Co Ltd (38) the applicants, approximately 600 in number, were journalists on newspapers owned by the Respondent newspaper companies.

For some years the South African Society of Journalists (SASJ), an unregistered trade union, representing a significant number of journalists on the Respondent newspapers had negotiated salaries and working conditions annually with the newspaper companies in terms of a collective bargaining agreement like most `recognition' agreements but in this case called a `non-statutory conciliation board' agreement. The wage agreements concluded through these negotiations were across-the-board and

applied nationally.

In October 1982 the newspaper companies gave notice of their intention to withdraw from the conciliation board.

Different reasons were advanced but a recurring theme in the dispute was an objection to negotiating across the board increases when different economic considerations applied in the regions where the companies were based.

The SASJ contended that the threatened withdrawal, without good cause, constituted an unfair labour practice and sought interim relief in the form of a status quo order (39) directing the Respondents:
i) to remain members of the South African Press (Editorial) Conciliation Board(the name of the collective bargaining agreement);
ii) to negotiate in good faith with the SASJ upon such matters as may properly fall within the scope for which it was constituted.

In its judgement the court noted:

> that the Respondents(the employers) contemplated withdrawal from the board would bring about a change in a practice which had continued for nearly four decades. The said change could possibly have some of the effects regarding applicants as set out in the definition of `unfair labour practice'.(40)

In considering if the applicants were entitled to a status quo order the court decided that the applicants must show the prima facie existence of a right, apprehension of irreparable harm and the absence of an alternative remedy.(41) Where the right is prima facie established but was open to some doubt, it would apply the `balance of convenience' test in deciding whether the relief

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sought should be granted. It would weigh up the prejudice to the union if the relief was withheld against the prejudice to the company if it was granted.

In this regard the court found that the applicant had established a prima facie right, but one open to some doubt.(42)

In applying the balance of convenience test it held:

> In this matter a complete breakdown in the collective bargaining mechanism could follow if respondents withdrawal from the board became a reality. While the continued operation of the board would facilitate negotiation of agreements on a national basis SASJ would no longer be in the position to so negotiate if the board ceased to function. Negotiations would then have to be conducted at another level, probably through SASJ's editorial chapels. The board, being inoperative, would no longer be assisting in ensuring compliance with the agreements reached. On the other hand the possible prejudice caused respondents by the making of the order had not been shown. It is not clear how the restoration of a position which had prevailed for so long could place any undue hardships on respondents.
>
> The court is of the view that the prejudice to applicants had the order not been made may have outweighed the prejudice which in the absence of other immediate alternative relief could ensue with reference to respondents should an order be made, which in effect is to continue a prevailing practice. The balance of convenience therefore clearly favoured the applicants.(43)

The court then confirmed its order (44) requiring the newspaper owners not to withdraw from the collective bargaining agreement. This enabled the parties to the board to endeavour to achieve the objects as specified in clause 3 of the agreement (45) and for the purposes of achieving these objectives, it ordered that negotiations should commence within one month of the date of the order or at any other time the parties might agree to.

The cases cited above provide an insight into the kind of labour practices which might be classified as unfair and the relief granted to victims of such practices. In respect of crucial issues of job security, union recognition and the duty to bargain in good faith, they indicate significant advances on the common law.

Proceedings in the Industrial Court

What remains to be examined is whether the Industrial Court is able to provide relief expeditiously at low cost to parties in unfair labour practice cases.

The Industrial Court has held that, as a creature of statute, it has no jurisdiction beyond that granted by the statute creating it.(46)

In so far as the Act prescribes specific procedures for referring disputes concerning alleged unfair labour practices to the court, these procedures would have to be followed as a necessary prerequisite to such referrals.

The procedure is as follows:
(a) where a dispute has arisen concerning an alleged unfair labour practice it must be refered for settlement to an Industrial Council having jurisdiction.(47) Where no Industrial Council has jurisdiction, application must be made to the

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Minister for the appointment of a Conciliation Board.(48)
(b) should the Industrial Council or Conciliation Board fail to settle the dispute within a period of 3Ø days from the date upon which it was referred to the Council, or from the date upon which the Minister approved the establishment of the Conciliation Board, or within such further period or periods as the Minister may determine, then the dispute shall be referred to the Industrial Court for determination.(49)

In practice parties to the dispute can expect that they may spend days, perhaps weeks, attempting to resolve the dispute by direct negotiation. Only when such negotiations fail, might will the parties decide to refer the dispute for resolution to an Industrial Council or, where appropriate, apply for the establishment of a Conciliation Board. It may take several weeks before the Minister makes known his decision on such application. The statutory 3Ø day period must then take its course and if the dispute is not settled at the Industrial Council or Conciliation Board level only then may it be referred to the Industrial Court for determination.

The dispute has to be formally pleaded in the form of a statement of case to the Industrial Court by the parties who are each given the opportunity to reply.(5Ø) When pleadings are closed the parties may then arrange a date for hearing which is likely to be two to three months later.It can therefore reasonably be expected that a period of several months will elapse before it will be finally determined by the Industrial Court.

The Act therefore provides for interim relief in the form of a status quo order.(51) The effect of such an order is to preserve or restore the status quo pending the settlement of the dispute in terms of the conciliation procedures provided for in the Act or the determination of the dispute by the

Industrial Court. The granting of such orders has proved in practice to be a significant inducement to the parties to settle the dispute.

A period of several weeks can be expected to elapse before an application for a status quo order will be heard by the Industrial Court. This delay can, however, be redressed to some extent by the fact that status quo orders may be made retrospective.(52)

While the delays involved in bringing disputes before the Industrial Court reflect to some extent on the appropriateness of this institution as an effective mechanism, the delays are substantially less than those experienced by litigants in the convential courts.

Proceedings in the Industrial Court are also clearly less formal than those in the convential courts. Nevertheless the complexity of the law and the procedural technicalities required to be observed when presenting a case make it unfeasible for parties not to resort to lawyers. This can make litigation in the Industrial Court a costly exercise. Unions and workers can ordinarily expect to have to meet their own legal costs as the Court will only in exceptional circumstances award costs to a successful party.(53)

Conclusion

The critics of legalism might not be convinced that the introduction of the Industrial Court and the concept of the unfair labour practice has materially changed things. They might argue that it is counterproductive to relocate the site of workers struggle from the shop floor to the court room. In their view this relocation would inhibit workers developing the necessary confidence and degree of organisation to win their own struggles. By placing the issue in the hands of lawyers the critics might

argue that workers sacrifice control of the dispute and place their faith in disinterested outsiders who may understand the law but not the politics of the shop floor.

It is readily conceded that resort to the Industrial Court is no permanent substitute for direct plant level negotiations to resolve disputes. But the prospect of Industrial Court action on unfair labour practices must surely become an important tactical consideration in such negotiations, and in this respect the body of law relating to fair employment practices which is emerging from that Court is an important card in the union movement's pack. Then again not all disputes get to the negotiating table or can be resolved there, and in this event only the most hardy critic would rule out the option of going to the Industrial Court.

Footnotes

1. Common law is the law of the land created by custom and judicial decisions but excluding that created by legislation.
2. Otto Kahn Freund : Labour and the Law 2nd ed. p. 6.
3. Kubheka and another v Imextra (Pty) Ltd. South African Law Reports (SALR) 4, 1975 p.488.
4. Kahn-Freund (supra) p.l.
5. Schierhout v Minister of Justice 1926 AD 1Ø7. See also Kubheka's case (supra).
6. National Union of Textile Workers and Others vs Stag Packings (Pty) Ltd SALR 4, 1982 p. 15l. Also in the Industrial Law Journal.
7. Provisions relating to minimum standards in respect of hours of work, overtime, leave and notice are now contained in the Basic Condition of Employment Act, 3 of 1983. Similar protection was previously afforded in terms of the Factories Machinery and Building Work Act No 22 of 1941 and the Shops and

Offices Act, 75 of 1964, now repealed. Wage regulating measures (Industrial Council Agreements and Wage Determinations) set in terms of regulations published in terms ofthe Labour Relations Act and the Wage Act are given force of law by the Minister of Manpower Utilization. These wage regulating measures set minimum wages and conditions of employment in defined industries.

8. See Section 65(3) read with Section 82(1)(b) of the Labour Relations Act, 28 of 1956.
9. Section 4 of the Labour Relations Act 28 of 1956.
10. Section 78 of the Labour Relations Act 28 of 1956.
11. Section 66 of the Labour Relations Act 28 of 1956
12. Works committees comprising worker representatives were introduced in 1953. In 1973 liaison committees comprising joint worker-management representation were introduced.
13. Under the liaison committee system, the intention was to exclude trade unions.
14. Phil Bonner, `Independent Trade Unions since Wiehahn,' SALB Vol.8 No.4 - February 1983.
15. An amendment in terms of the Industrial Conciliation Amendment Act 94 of 1979.
16. An amendment in terms of the Labour Relations Amendment Act No. 57 of 1981.
17. See eg Fine, de Clercq, Innes `Trade Unions and the State: the question of legality', SALB Vol 7, No 1 and 2, September 1981; GWU `Reply to Fine, de Clercq, Innes'; Fink Haysom `In Search of Concessions - a reply'; Hirsch, Nicol `Trade Unions and the State - a response', SALB Vol 7. No. 3 November 1981.
18. Definition introduced by the Industrial Conciliation Amendment Act 94 of 1979.
19. Amendments to the definition in terms of the Industrial Conciliation Act 95 of 1980 and the Labour Relations Amendment Act 51 of 1981.

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20. S.A. Diamond Workers Union vs The Master Diamond Cutters Association of S.A. Industrial Law Journal, 3/2, p. 115H.
21. ibid p. 119G.
22. ibid p. 119H.
23. ibid p. 119H.
24. ibid p. 120 C-D.
25. ibid p.120G.
26. Metal and Allied Workers Union vs A.Mauchle (Pty)Ltd. (ILJ) 1980, 227. Reviewed by H.Cheadle, Annual Survey of S.A. Law 1980, p.37.
27. Regulation 13 (1) (d) of Proclamation R74/1968.
28. Diamond Cutters case p. 109H.
29. Section 46(9) of the Labour Relations Act 28 of 1956. The Industrial Court determines a dispute concerning an unfair labour practice in terms of Section 46(9) where an Industrial Council having jurisdiction or a Conciliation Board has failed within 30 days to settle the dispute.
30. Diamond Cutters case p.135 C.
31. op cit p.138F. As a general rule the innocent party in the case where a contract is breached is entitled to enforce performance of the contract.
32. ibid p. 139 C.
33. ibid p. 139 C.
34. ibid pp 139H - 140A.
35. ibid p. 139 C-D.
36. United African and Allied Workers Union v Fodens (Pty) Ltd (To be reported in Vol 4 No 3 of the Industrial Law Journal). In these proceedings the Court was required to determine a dispute concerning several unfair labour practices in terms of Sec 46(9) of the Labour Relations Act.
37. Sigwebela v Huletts Refineries Ltd (1980), ILJ, 1/1, p 51.
38. ILJ, 4/1, p. 60.
39. Under Section 43(4) of the Labour Relations

Act. Status quo orders are explained later in this paper under the sub-head `Proceedings in the Industrial Court.'

40. Bleazard's case p. 82 A.

41 These are the accepted requirements for obtaining an interim interdict at common law. An interim interdict is a court order preserving or restoring the status quo pending the final determination of the rights of parties. They are:

(i) to show the prima facie existence of a right a party must produce proof of facts which, in the absence of countervailing evidence, establishes the existence of a right.

(ii) the party must show a reasonable apprehension or fear that continuance of the alleged wrong will cause him harm that cannot be remedied or repaired.

(iii) the party must show that there is no other adequate course of action open to him to obtain the relief he seeks.

42. Bleazards case p. 82 B.

43. ibid p. 82 D-G.

44. Made previously on 28 December 1982.

45. (a) to promote between the parties good relationships, co-operation and a recognition of mutual interests.

(b) to secure the voluntary adherence to the Board of all members of the Newspaper Press Union of South Africa.

(c) to negotiate agreements between the parties on working conditions and salaries.

(d) To secure the observances of any agreements relating to working conditions and salaries negotiated by and entered into between the parties.

(e) to do all such things as may tend to the furtherance of the above objects on a basis of conciliation and without resort to arbitration except as is provided in Section 1Ø.

46. Moses Nkadimeng v Raleigh Cycles (Pty) Ltd,

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ILJ, 2, p 40G.

47. Section 23 of Labour Relations Act 28 of 1956.

48. Section 35 of Labour Relations Act 28 of 1956.

49. Section 46(9) of Labour Relations Act 28 of 1956.

50. Rule 25 read with Rule 6(1) of the Industrial Court Rules, ILJ, 3/3.

51. Section 43 of Labour Relations Act 28 of 1956. Sec 43(4)(a) requires that such an application be made within 30 days of the date upon which notice was given of the alleged unfair labour practice or if no such notice was given, of the date on which the alleged unfair labour practice was introduced. Section 43(2) requires that the dispute must be referred to an industrial council having jurisdiction or that application be made for a conciliation board. The application for a status quo order may be made at the same time or within 7 days of the date of such reference or application.

52. Section 43(5) of Labour Relations Act 28 of 1956.

53. Section 43(4) (c) of Labour Relations Acts vests the Industrial Court with the power to make an order as to costs in proceedings under Section 43 (status quo order) on the ground of unreasonableness or frivolity on the part of a party to the proceedings. The Industrial Court has also found, in the Fodens case referred to above, that it has no jurisdiction to award costs when determining a dispute concerning an alleged unfair labour practice in terms of Section 46(9) of the Labour Relations Act.

HOMELAND LABOUR RELATIONS LAWS

A Lawyer

Introduction

As the South African independent trade union movement grows it is increasingly coming into contact with the policies and legisla tion of the homeland governments. In Ciskei, for instance, SAAWU has faced constant harassment from the Security Police and has recently been banned there. In Bophuthatswana a FOSATU organiser was charged last year under the security laws for his trade union activities, although the charges were ultimately withdrawn. When the African Food and Canning Workers Union approached a company in Bophuthatswana regarding a recognition agreement the company was reticent to enter any agreement, arguing to do so could be illegal in terms of Bophuthatswanan law.

In this context it becomes important to examine the laws affecting trade unions in the various homelands. For instance, is it legal to form or belong to a trade union in a homeland? Can unions negotiate legally binding agreements with employers? Do South African labour law concepts such as the "unfair labour practice" apply? Can trade unions lawfully hold meetings? Can the dispute resolving mechanisms of the Labour Relations Act be invoked?

This topic is complex and cannot be dealt with comprehensively in an article of this nature. The legal position is by no means clear and the writer is not certain that the views expressed below are correct in all respects. Our aim here is merely to provide an introductory overview.(1)

This will be done by considering, firstly, what

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powers homelands have to pass laws at the various stages of their development. We will attempt to set out briefly what labour law is applicable in the various homelands. Thereafter we will look more closely at the position in three homelands presently of most significance to trade unions, namely Bophuthatswana, KwaZulu and Ciskei.

The Legislative Powers of Homelands

A homeland may pass through various stages of constitutional development. We need only concern ourselves with the last three stages, namely the stage of establishment of a legislative assembly, self-government and full "independence".

At the stage of the establishment of a legislative assembly in a homeland it acquires the right to pass laws relating to various matters, including labour matters. However, no laws passed by a homeland at this stage may amend or repeal any South African Act of Parliament (known as a statute).(2) New South African statutes on the matters that the homeland has power over apply in the homelands, but it appears that new regulations in terms of these statutes do not.(3)

Since most of the laws which affect trade unions are statutory, it can be seen that at this stage a homeland has very little power to pass laws affecting trade unions. This phase cannot be ignored, however, since new regulations (for example in terms of the Factories Act) do not apply in the homeland once this phase is reached.(4)

Once a homeland achieves self-government its powers to pass laws on labour matters are considerably increased.(5) At this stage it is entitled to make laws which amend or repeal South African statutes. No South African statute on labour matters made after the date of self-government applies in a homeland. In other words, the South African law

taken over by the homeland is "frozen" as it stood at the date of self-government, and is only changed by laws made in the homeland concerned.

Finally, once full "independence" is achieved a homeland is free to legislate on all matters. Any rule of law in force at the time of independence continues to apply until repealed or amended.(6)

What Labour Law Applies in the Homeland?

From the above it is clear that with respect to labour matters an important factor determining what law applies is the date of self-government in the homeland concerned. One must establish what the South African law was at that date, and then establish whether this has been amended by the homeland.

Unfortunately the matter is somewhat more complex than this, as a result of a little known proclamation in a 1970 Government Gazette.(7) This proclamation by the State President:

a) Repeals the Industrial Conciliation Act (8) (now called Labour Relations Act) in the homelands.
b) Declares that wage determinations (in terms of the Wage Act) (9) do not apply in the homelands.
c) Declares that notwithstanding (a) and (b) above no "employee" shall, while he is employed by the same employer, be liable to a reduction of the wage or other benefits of the Industrial Conciliation Act or Wage Act, at the date of the publication of the proclamation.

The proclamation does not apply to "persons other than Blacks".(10)

To the best of the writers knowledge this proclamation has never been repealed by the South African Government, nor by any of the self-governing or "independent" homelands.

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When assessing the importance of this proclamation it must be borne in mind that most homelands became self-governing prior to 1979. This was the year in which the South African government started to amend the Labour Relations Act in line with the recommendations of the Wiehahn Commission. Prior to these amendments blacks were excluded from the definition of employee, so that all provisions giving rights to employees did not affect them. Trade unions with black members could not register or join industrial councils, nor invoke the conciliation procedures. The establishment of the Industrial Court and the introduction of the concept of the "unfair labour practice" are post-Wiehahn amendments, and would therefore not have applied in homelands that were already self-governing by the time of their introduction.

One provision of the earlier Labour Relations Act that did affect blacks was the prohibition of strikes in Section 65. The proclamation clearly repeals this provision. It should be noted however that similar provisions contained in other legislation continue to apply, as mentioned below.

In order to establish what legislation is still applicable in the homelands it is necessary to have regard to the dates of self-government of the various homelands. This information is set out in Table 1(see page 69).

From Table 1 it is apparent that all homelands apart from KaNgwane and KwaNdebele, which need not concern us, were self-governing by 1977. At that date in South Africa the principal legislation affecting black workers and trade unions was the 1953 Black Labour Relations Regulation Act (B.L.R.R.A.) (11) as well as the Wage Act. These Acts therefore still apply in the homelands, until repealed.

The B.L.R.R.A. set up the system of works committees (from 1953) and liaison committees (from 1973). It

Table 1 HOMELAND LABOUR LAWS

Homeland	Date of Self-Government	Date of Independence	Labour Law Applicable
Kangwane	Not yet self-governing	-	The presently applicable S.A. law excluding the Labour Relations Act
KwaNdebele	20/3/81	-	S.A. law as it stood at the date of self-government, excluding the Labour Relations Act
QwaQwa	1/11/74	-	
Lebowa	2/10/75	-	
Gazankulu	1/2/73	-	
Ciskei	1/8/72	4/12/81	
Bophuthatswana	1/6/72	6/12/77	
KwaZulu	1/2/77	-	As above, except it passed its own Act purporting to amend the Labour Relations Act.
Transkei	30/5/63	26/10/76	Have passed their own labour legislation
Venda	1/2/73	13/9/79	

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provides that whenever a labour dispute involving Black workers occurs the employer must notify an inspector. This inspector must attempt to settle the dispute, failing which he may refer the dispute to various bodies. It prohibits strikes unless a long procedure has been complied with. This Act contains no protection for members of trade unions from victimisation.

However, whilst the 1970 proclamation repeals determinations in terms of the Wage Act, the Wage Act itself is not repealed. This is important since Section 25 thereof prohibits victimisation of members of trade unions or similar organisations. Victimisation of trade union members is thus still an offence in the homelands, except in those homelands which have repealed the Wage Act, namely Transkei and Venda.(12) If it is an offence to victimise a worker for his membership of a trade union, it seems it must be legal to belong to a trade union. This view is enforced by the general principle accepted in our law that conduct which is not specifically prohibited is not illegal.

To summarise, the general position in the homelands is that the Labour Relations Act does not apply. The main body of applicable law is to be found in the B.L.R.R.A. and the Wage Act, together with the common law on the contract of employment. From the date of self-government a homeland is entitled to pass its own laws on labour matters, including laws which repeal or amend South African statutes.

To the best of the writer's knowledge the only homelands which have passed their own labour legislation (other than legislation about the labour recruitment process) are Transkei, Venda and Kwazulu.

The Transkeian and Vendan statutes are somewhat similar.(13) They provide for liaison committees very similar to their South African model. Labour

disputes are to be investigated by inspectors who must endeavour to settle them, and possibly refer them for further investigation to a wage board. The KwaZulu legislation is discussed below.

One further general point must be made. The various constitution acts of the "independent" homelands contain provisions to the effect that from the date of "independence" no South African authority or person has any power to perform any function in regard to retained legislation.(14) Thus although a particular law may have been theoretically retained, if no new administration comes into existence to administer the law it becomes no more than a dead letter.

Security Legislation

It is necessary to consider briefly the significance of security legislation on trade unions in the homelands. South African Trade Unions are well aware of the extent to which security laws have been used to intimidate them. This is all the more true in some of the homelands, Ciskei being the prime example. Until full "independence" a homeland has no power to pass its own security legislation, nor does it have any power to control South African security police activities in its territory.(15) The "independent" homelands have all passed their own security laws, some of them even more draconian than their South African counterparts.

An example of this is the prohibition on the holding of meetings of more than twenty persons without prior permission of a magistrate in Ciskei and Bophuthatswana.(16) South African law prohibits gatherings outdoors. This is a significant distinction since it allows unions legally to hold meetings of workers, as long as they take place indoors. Further examples are mentioned in the discussion on Ciskei below.

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Some Case Studies

A) Bophuthatswana

Bophuthatswana became self-governing in 1972 and "independent" in 1977. Thus South African legislation as it stood in 1972 still applies, although not the Labour Relations Act.(17)

It is understood that Bophuthatswana is currently drafting its own legislation, which will probably follow the South African model to some extent. It is rumoured that the legislation will permit some form of trade unionism, but will prohibit the involvement of "foreign" (including South African) trade unions. If so, unions with a presence in Bophuthatswana (like the African Food and Canning Workers Union) will clearly face difficult decisions about their further involvement there.

The legal position in Bophuthatswana is unique because of the legally enforceable "declaration of fundamental rights" contained in its constitution. This declaration guarantees (subject to defined exceptions) equality before the law, the right to liberty and the freedom of peaceful assembly and association.(18) Any legislation in Bophuthatswana, whether passed before or after independence, which infringes upon these rights (as qualified in the declaration) is void.(19)

In stark contrast to this stand certain provisions of Bophuthatswana's Internal Security Act(2Ø). The Act provides, like its South African counterparts, for the declaration of organisations as unlawful, the banning of persons, preventative detention, etc. Meetings at which more than twenty persons are present at any one time are illegal, unless authorised by a magistrate. Inducing persons to strike, and intimidation of persons in relation to their employment is illegal.

The exact extent to which these and other provisions

may be void is a complex matter and cannot adequately be dealt with here. It is understood though that the Bophuthatswanan government has been advised that some of these provisions are unconstitutional. It is known that when a Federation of South African Trade Unions (FOSATU) organiser was charged last year in connection with allegedly having organised an illegal meeting, the charges were dropped after his lawyers intimated that the constitutionality of the law would be challenged. Despite this, various unions with members who live in Bophuthatswana are understandably reluctant to organise meetings of workers there and risk prosecution and costly legal battles.

B) KwaZulu

KwaZulu presents a perplexing problem to the labour lawyer. It became self-governing in 1977 and thus inherited South African labour legislation as it then stood. In the light of the 1970 proclamation referred to above the Labour Relations Act does not apply to Blacks in KwaZulu.

In apparent ignorance of the 1970 proclamation KwaZulu passed its own amendment to the Labour Relations Act, on much the same lines as the 1979 amendments to the South African legislation.(21) The definition of "employee" was amended so that unions with Black members could be registered, the concept of the "unfair labour practice" was adopted, and provision was made for the establishment of a KwaZulu Industrial Court with its seat at Ulundi.

This legislation was clearly introduced on the assumption that the pre-Wiehahn Labour Relations Act was applicable in KwaZulu. To the best of the writer's knowledge this is not the case, as no legislation over-riding the 1970 proclamation has been traced. Assuming this to be correct it becomes difficult to know how to interpret the KwaZulu legislation. In the writer's view it cannot be

accepted that by passing the amending legislation the KwaZulu legislature intended to re-introduce the Labour Relations Act **in toto.**

Besides this problem KwaZulu offers an example of a situation where the lack of administation renders legislation a dead letter. To the best of the writer's knowledge no union has sought registration in KwaZulu, no industrial council has been formed and the Industrial Court at Ulundi has never sat. All this despite the fact that trade unions are gaining a foothold in certain KwaZulu industrial areas. FOSATU's Paper, Wood and Allied Workers Union is well entrenched at Sappi's Mandini Plant. MAWU have members in KwaZulu factories, and NUTW were involved in a dispute at the Bata factory. In the latter dispute the KwaZulu Ministry of the Interior is alleged to have played a part in assisting management to bypass the union.

It is understood that South African security police based at Empangeni have been harassing trade unionists at Isithebe and the nearby Sundumbile township.

C) Ciskei:

Ciskei became "self-governing" in 1972 and independent in 1981. To date it has not passed its own labour legislation, so that South African labour law (excluding the Labour Relations Act), as it stood in 1972, still applies.

Ciskei offers the starkest example of security police harassment of trade unions. SAAWU has been accused of being a front organisation for the ANC and has been vigorously intimidated by General Charles Sebe and his security police, and has recently been banned there.

The Ciskeian National Security Act (22) is a draconian act by any standards. Organisations and

persons may be banned, as may songs, slogans or salutes which serve to propogate any of the objects of a (very widely defined) "doctrine hostile to the state". The detention provisions are very similar to the South African legislation. Gatherings of more than twenty persons are prohibited unless previously authorised by a magistrate. The section prohibiting "intimidation" is far wider than the equivalent South African legislation (23) which itself has been used to harass trade unionists. In certain circumstances breach of contract by any employee can be a criminal offence.

Any person who with intent to promote any industial, social or economic aim interrupts any industry or undertaking, or attempts to do so, is guilty of the offence of "subversion", and is liable for up to twenty years imprisonment. The Act provides, however, that a strike which is not in contravention of the Industrial Conciliation Act is not illegal. Once again, it appears that the 1970 proclamation has been ignored, since prima facie the Industrial Conciliation Act does not apply in Ciskei. The legal implications of this provision are therefore unclear.

We may conclude, though, that the security legislation in Ciskei (as opposed to labour legislation) constitutes a serious obstacle to the establishment of effective legal trade unionism in that homeland.

Conclusion

The legal position of trade unions in homelands is confused and complex. An outdated system of industrial relations, the liaison and works-committees system, is generally theoretically applicable. In practice though, this system does not appear to exist. At least two homeland governments appear to be under a mis-apprehension as to what law applies.

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Nevertheless, trade unionism in itself is not, in the writer's view, illegal in any homeland at present, and there is no reason why unions should not explore the possibilities of organising workers in those homelands that have some degree of industrial development.

Footnotes

1. This article is intended as an overview of labour relations laws in all the homelands. It does not provide the exhaustive examination which would be necessary if advice were to be given to deal with specific legal problems. Readers seeking such advice should refer directly to the original sources of law.

2. Section 3 of the National States Constitution Act, No 21 of 1971, read with Schedule 1 to the Act. Note that in this context "labour matters" excludes workmens' compensation and unemployment insurance.

3. See Section 3 (2) of the above mentioned Act. The Act provides that "any Act of Parliament" on such matters passed at this stage of constitutional development applies in such a homeland. In the writer's view the wording of the section precludes the application of new regulations promulgated in terms of applicable statutes. The consequences of this could be so absurd in certain situations that it could be argued that the legislature intended such regulations to apply.
(ii) Note that laws "made by the State President" at this stage also apply. Proclamations made by the State President (including proclamation R84/1970 referred to below) appear to fall into this category.

4. Factories, Machinery and Building Work Act, No 22 of 1941. Note that the relevant sections of this Act have been repealed in South Africa by the Basic Conditions of Employment Act, No 3 of 1983 and the Machinery and Occupational Safety Act, No 6 of 1983, the latter is not yet in force. As the article explains these new South African Acts do not apply in most homelands, so that the Factories Act regulations, as they stood at the dates of establishment of the legislative assemblies, apply. Note that industrial council agreements do not apply in any event, because of Proclamation R84 of 1970, referred to below.

5. Section 30 of Act 21 of 1971.

6. See the various South African statutes conferring independence on homelands, as well as their own constitutions.

7. Proclamation R84/1970, as amended by R124/1971, R102/1972 and R94/1972.

8. Act 28/1956.

9. Act 5/ 1957.

10. The proclamation does not apply in Transkei. At this stage this makes no difference since Transkei has passed its own Act, referred to below, repealing the Labour Relations Act and Wage Act.

11. Act 48 of 1953.

12. Transkei's Wage Act, No 15 of 1977, and Venda's Wage Act No 5 of 1981. These Acts do prohibit victimisation but the protection does not cover victimisation of trade union membership.

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13. Transkei's Labour Act, No 14 of 1977, and Venda's Labour Act, No 18 of 1982 (which only came into operation on 29 April 1983).

14. e.g. Section 2 of the Status of Bophuthatswana Act, No 89 of 1977.

15. Section 4 of Act 21 of 1971.

16. Section 43 of Ciskei's National Security Act, No 32 of 1982; Bophuthatswana's Internal Security Act, No 32 of 1979.

17. It is curious to note that Bophuthatswana's Internal Security Act specifically refers to the Industrial Conciliation Act, No 36 of 1937. This Act was repealed by the presently applicable 1956 Act.

18. Chapter 2, Republic of Bophuthatswana Constitution Act, No 18 of 1977.

19. S.V.Marwane, 1982(3)S.A. 717 (A.D.)

20. No 32 of 1979.

21. KwaZulu's Industrial Conciliation Amendment Act, No 10 of 1981.

22. Act 13 of 1982.

23. The Intimidation Act, No 72 of 1982.

HEALTH AND SAFETY ORGANISATION:

A Perspective on the Machinery and Occupational Safety Act

by Jonny Myers and
Malcolm Steinberg*

This article is in two parts. Part I gives a background to the Machinery and Occupational Safety Act which replaces the old Factories Act of 1944. Part II is concerned with the practical implications for trade union organisation around health and safety in terms of the new structures introduced by this Act. It looks at the effects of the new safety representatives and safety committees.(1)

Part I

The Machinery and Occupational Safety Act 6/1983 (MOSA) which became law this year, replaces the old Factories Act, and will probably come into operation by the end of the year. MOSA has come at the end of a decade of change in the labour scene. This period has been characterised by attempts to change the law relating to the organisation of trade unions and the regulation of industrial relations.

The strange thing, however, is that this new law is totally out of line with the spirit of reforms that were introduced in the reports of the recommendations of the Wiehahn Commission from 1979 onwards.

The whole idea behind the Wiehahn recommendations

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was that a situation in which management controlled all - in the factory and in setting wages and conditions of work generally - and were backed up by the strong arm of the state in enforcing these conditions, should be changed to a tripartite system where management, workers/unions, and the state would participate in industrial relations.

MOSA, however, sees things in terms of management and the state only, and there is no provision whatsoever in this act for the participation of workers/unions.

In this article only the organisational aspects of health and safety at work will be discussed. In particular the safety representatives (SR's) and safety committees(SC's) that have been introduced by MOSA, and their implications for worker organisation around health and safety will be dealt with.

Initially, in 1981, the Department of Manpower put forward a draft proposal which was based on the American Occupational Health and Safety Act (OSHA) act of 1970. OSHA includes a comprehensive list of limit values for exposure to various toxic substances together with detailed regulations governing safety at work. American legislation provides for either separate workers' safety committees which meet regularly with management, or joint labour-management committees. It is quite flexible in this regard. There is legal protection for the right of workers to set up their own committee of safety representatives even if management does not co-operate. The main emphasis is upon the legal obligation on the employer to provide a safe and healthy workplace and on workers' statutory rights in relation to health and safety under the act.

The current, MOSA, seems, however, to have been modelled on the British Health and Safety at Work

Act of 1974.

The British Health and Safety at Work Bill was first introduced by a Conservative government (1970-1974). This bill placed emphasis on joint labour-management health and safety committees. Before the bill could be passed however the government collapsed and Labour took power. The same bill with one important addition - trade union elected SR's - became law in 1974. In this act health and safety committees were played down considerably and made optional.

British trade unions do not favour these committees, and their policy has been to concentrate on trade union appointed safety representatives and their rights. They have avoided joint labour-management safety committees.

Their feeling is that in SC's health issues are taken away from negotiations between the shop stewards committees and management and channeled through a separate joint committee which lacks significant powers, but where management and the company health professionals and technical experts dominate. In this way, health and safety issues are removed from the bargaining table and defused by passing them through a committee which can do little about them, but may nevertheless delay their resolution.

MOSA makes no provision for independent worker or Trade Union participation in health and safety at work. It is left to management to designate the Safey Representatives, and to determine the composition of the Safety Committees. It is this aspect of the law that is out of line with the spirit of the Wiehahn commission which saw labour and management in a conflict situation which could be resolved by direct negotiation between both parties. The state was seen as playing a minimal role in this process as a third party.

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Within the South African unions there have been various attempts to set up health and safety committees over the past three years. None of these have been particularly successful. There are probably a number of reasons for this which include having to deal with more pressing issues like wages and retrenchment as well as the lack of resources to deal adequately with health and safety issues. In addition, factory based organisation may possibly not be sufficiently developed to handle another whole committee system dealing with complicated and often new and technical matters in the area of health and safety.

It is in this context that the state has brought in MOSA which makes SR's and SC's mandatory.

It is also apparent that management has already been quick off the mark and has in a number of instances tried to foist SC's onto workers in factories in terms of MOSA. The requirements of the act are being interpreted by management in their own interest and conveyed to the workers as what the law demands. In addition, the National Occupational Safety Association (NOSA), a self defined management organisation financed from Workman's Compensation Commission funds is providing education and guidance to management on how to choose SR's and how to set up SC's.(2) Furthermore, NOSA continues to provide management with detailed monitoring systems and well worked out training programmes in the area of safety prevention as it affects productivity. It is not unreasonable to argue that these new management determined SC's and designated SR's will be made to use these production incentive programmes.

Management is aware that health and safety is increasingly becoming an issue that trade unions are taking seriously. They also seem to be aware that in many cases this is not an area where they are in a strong position. It is well known that working conditions in many workplaces are unsafe and

unhealthy. Even the minimal legislation to date has generally not been adhered to.

Health and Safety issues are therefore often perceived as a threat to managerial prerogatives. Management are also concerned that if the workforce became militantly aware of dangers to their health, this could lead to disruption of production and increased costs.

What MOSA amounts to, then, is a move by state and management to pre-empt organisation around health and safety that is controlled by workers/unions, and to put in its place a system that is more easily dominated by management, and in which the workers have no real say by law. This danger or pre-emption is particularly serious in factories that are not yet organised.

Part II: What are the Main Problems with this Act?

1. Who Chooses the Safety Representatives?

The employers are obliged by law to **designate** the safety reps. Nowhere in the law does it say that management is obliged to do more than put pen to paper. It does not say that management has to **choose** the SR's and that it is against the law for workers to elect their own representatives. Workers, especially if organised may use this provision to their advantage by ensuring that managment designates their elected SR's.

It has already happened that management has interpreted the legal requirement to designate SR's as their right to **nominate** these SR's. This interpretation allows management to appear magnanimous when it agrees with workers to allow them to elect a percentage (say 50% or 30%) of the SR's. This type of compromise also creates the possibility for division among the rank and file workers who will serve on the SC, if some of them

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are elected by workers and others of them are nominated by management.

2. From Whom will the SR's be Chosen?

SR's are to be chosen from among the employees in the workplace. The definition of employee in the act makes it quite possible for management to nominate supervisors, middle level management, and even the managing director(if he/she is not an owner), as SR's. In fact NOSA is encouraging management to appoint supervisors and upwards as SR's, as is made clear by the folowing quote: "... The safety representative in all probability will be appointed by management from the ranks of supervisory staff as well as certain members of the workforce with the proviso that these persons so appointed have a detailed knowledge of the workplace and can make a meaningful contribution to the safety programme".(3) All such management nominees will be cut off from rank and file workers, who will exercise no democratic control over them.

3. What are the Rights of the SR's?

These are extremely limited if one compares them to the rights of Trade Union safety representatives. Under the British act on which MOSA was based. Possible SR rights are appended below in a model agreement put together by a S.A. union. The rights of SR's are the basis for the protection of workers, as even the most democratically elected SR's are powerless without them.

Under MOSA the SR's have two rights. These are the right to once-monthly inspections of the workplace, and the right to report a threat to safety and health to management or to the safety committee. With these inadequate rights the SR's will be completely toothless.

Given the fact that everything will depend on the

minimal rights of SR's, and that in this act the SR's could and most probably will be mostly management of one sort or another, the act is not likely to be of much benefit to workers. In fact in this context the powers of management SR's could even be used to report workers for not obeying management safety regulations, like not wearing protective clothing. The SR's might thus become an effective health police force in the factory enforcing management rules.

4. The Structure of Safety Committees?

The first problem with the SC's is that there can be more than one SC which could lead to confusion, fragmentation and division among workers especially in big plants. The possibility exists that worker SR's could even be totally excluded from one or some of these committees, particularly if such a committee was set up to monitor technical conditions and to take measurements in the workplace. There is no overall structure provided for in MOSA that necessarily unites the different committees.

One type of structure that is already being employed at present is as follows: The principal decision-making committee consists of the loss control officer, the factory nurse/doctor, top management, and the departmental heads. Below this is the second committee consisting of the departmental heads and supervisors. The decision- making committee relays decisions via the second committee down to the third committee consisting of supervisors and workers. What one has is a transmission belt for management orders.

The second problem is that the entire structure of the committees and their membership is determined by management. So even if all the SR's were elected by the workers the management could still unbalance the committee in its favour by appointing additional members.

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5. Do the SC's have any Rights?

The SC's have no rights at all. They only have a procedure for reporting or making recommendations to management or to the factory inspectorate. From the workers' point of view, they are completely toothless. They have no decision- making powers and are consultative only. They have no power to ensure that their recommendations are implemented. The channels for discussion are between themselves, the management, and the factory inspectorate only. Workers are not necessarily involved.

The SC's are also cut off from rank and file workers in that there are no procedures for reporting back to them, and no necessary election processes. Together with the SR's they may thus easily become policing structures in the workplace.

All this means that the SC has great potential for dividing the negotiating power of the workers by removing negotiation about health and safety matters from the more effective shop stewards committee. This amounts to a backward step for the shop stewards committee and the workers. Activity around health and safety is removed to a management packed structure where, with the help of technical and professional advisors, matters are removed even further from the hands of the workers.

For example, it is well known that the workers are blamed for not wearing protective clothing when they develop industrial illness or are involved in an accident. Even though most personal protective clothing is not very effective, under MOSA, it is now a criminal offence not to use personal protective clothing where it is provided. Workers may be fined R2000 or receive 12 months imprisonment or both for not using protective equipment. Taken together with the fact that the whole issue of clothing may in fact be removed from the collective

bargaining process, one can begin to see how these new structures may operate to blame and police the workers more effectivley.

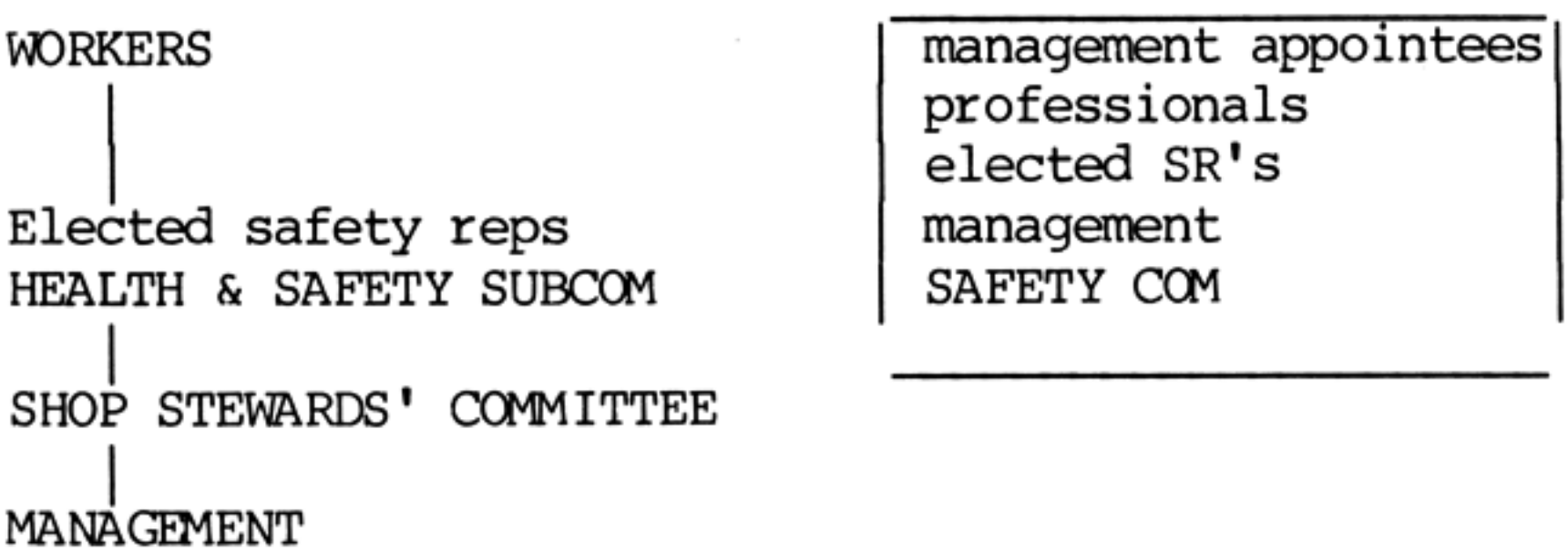
Can the Trade Unions Make Use of This Act?

In order to answer this we need to understand the different possible models for health ans safety organisation. The presentation of these models are drawn from the experience and views of trade unions and trade unionists in S.A. and other countries. The type of health and safety organisation will obviously depend on the strength of the workers in their particular workplace, as well as on the particular type of work process involved.

There are different models for the type of health and safety organisation that will result when the act comes into operation.

On the one extreme is the model that would be in the best interests of the workers :

THE WORKER MODEL



The interests of the workers in most workplaces would seem to be best served by ensuring that the SR's are elected democratically.

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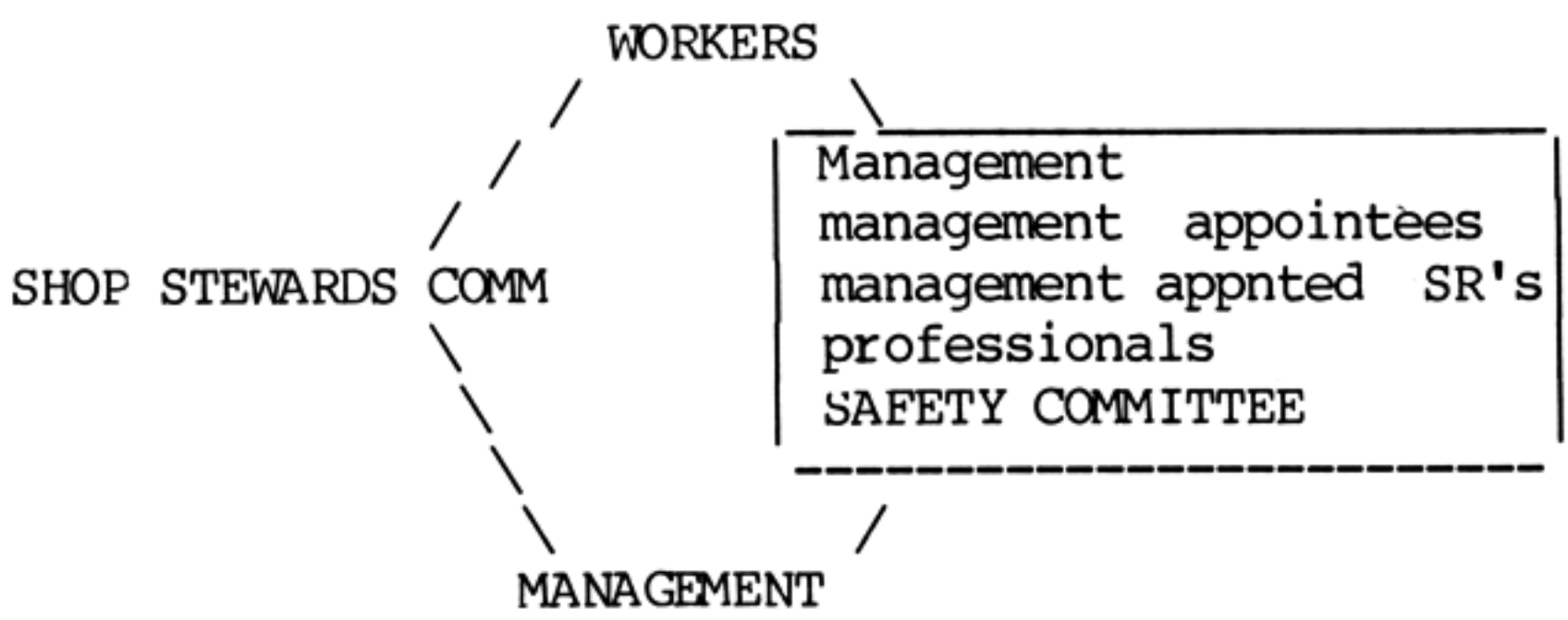
The rights of these elected SR's should be as wide as possible giving them maximum power to ensure safe and healthy working conditions.

These elected SR's together with some shop stewards could sit on a health and safety subcommittee of the shop stewards' committee. The members of this subcommittee could then be designated as safety representatives by management. They would then sit on the SC.

Negotitions about health and safety, should however, go through the already established factory shop stewards committee which has the power to negotiate directly with the top level management. This will strengthen already existing factory based organisation. Joint structures like a worker-management SC should not take the place of, or take over the functions of the shop stewards' committee.

On the other extreme is the model that would be in the best interests of Management:

THE MANAGEMENT MODEL



The interests of management seem to be best served by putting all the emphasis on joint committees which, from the workers point of view, have no

teeth; and which serve to dominate the worker representatives by technical and professional expertise from the management appointees.

The SR's who sit on these SC's are all nominated by management and comprise mainly non-workers. This type of SC is like the old liaison committee.

SR's rights are kept to the bare minimum.

Negotiation around health and safety issues is separated from the shop stewards' committees and also from the workers. It is replaced by discussion and consultation within the SC, thereby diminishing the powers of the shop stewards' committee and creating the possibility of division and confusion.

There are of course many different models between these two extremes, depending on the relative strengths of management and workers. In practice, it is very likely that some SR's will be elected by the workers, and others nominated by management. The SSC may or may not have the power to nominate workers as SR's. In some factories there may be more than one union present and SR's may have to represent the different memberships proportionally.

Whatever the combinations involved it would seem that everything will depend on whether the SSC allows management to draw negotiation and action about health and safety away from themselves and worker control, to a joint SC, and a situation more under the control of management.

The ability of the SSC to continue to be the sole channel for negotiations, including health and safety negotiations, in the workplace will be of primary importance. In this way division between the SC and the SSC will be avoided. Because the really important negotiating committee would continue to be the SSC, division between the workers and SR's, or between elected and management-nominated SR's would

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also be avoided.

Conclusion

Over the last three years unions have been busy with other priorities and have only been able to take up health and safety issues in an ad-hoc way. Now MOSA imposes a structure for health and safety organisation onto unions that is potentially unrepresentative and divisive for workers and their organisations. These undemocratic structures may actually take organisation backwards from a situation where a shop stewards' committee negotiates all matters affecting members, to one where they may lose control over the health problems of workers and cede negotiation about them to a new form of liaison committee, the safety committee.

It is suggested here that by focusing on SR's and extending their rights in factory or industry based agreements as much as possible, the unions will gain maximally. It is also suggested by entering a SC system and allowing health and safety matters to be excluded from the SSC's, unions may be allowing their members and structures to be divided while they receive few benefits in return. However possibilities exist for entering such a joint SC in such a way so as not to diminish the powers of their shop stewards committee.

Footnotes

1. The original article submitted to the SALB contained a Part III consisting of a model health and safety agreement. This has been reproduced as a document in the documents section of this edition. Ed.

2. Safety Management, May 1983, p 7.

3. Machinery and Occupational Safety Act, No 6, 1983, Section 28(1) a.

HEALTH AND SAFETY AGREEMENT

This document was drawn up by a trade union in South Africa and was submitted to the SALB with the article by Malcolm Steinberg and Jonny Meyers on "Health and Safety Organisation" published in this edition.

Model Health and Safety Agreement

1. Notification:

Management will be informed in writing by or on behalf of the union of the names of safety representatives and the group or groups of employees they represent at the earliest opportunity after election.

2. Access:

Safety representatives will be allowed access to all plant and work areas, all health and safety equipment and all processes and materials.

3. Inspections:

Safety Representatives shall have the right on a rotation basis and at agreed times, to undertake a thorough inspection of all plant and work areas within their jurisdiction when necessary. Except in an emergency, management will be given notice of any inspection. The inspection will cover all plant and machinery, all activities and processes, and all safety equipment. The Representatives shall be permitted to take systematic samples of dangerous activities, processes or areas. Management will provide all the necessary facilities for an effective inspection. If the Safety Representatives require the assistance or attendance

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of the Safety Officer then this will not be unreasonably refused. If the Safety Representatives require the assistance of an independent advisor or trade union official then he/she will be allowed to accompany the Safety Representative. The Safety Representative shall be given facilities for private discussion with their members and other employees who they represent.

4. Accidents/Near Misses:

In case of an accident or near miss or a hazard arising from unsafe working practice the Safety Representatives will be entitled to leave their work to inspect the situation. Until this inspection has taken place, nothing will be removed unless it constitutes a hazard.

5. Changes in Condition of Work:

Safety Representatives will be fully informed and consulted in conjunction with the Workers Committee on any proposed substantial change in the conditions of work, whether because of the introduction of new machinery or other changes and be given full facilities for an immediate inspection arising from this change. If the Management receive new information as to the dangers arising from substances or processes or equipment, they shall immediately inform the Safety Representatives concerned and consult on what steps should be taken and co-operate in whatever inspections or other action may be necessary.

Should Management propose to take any steps to safeguard against further hazards they shall give prior notice to Safety Representatives unless it is an emergency. When it is an emergency, they shall notify the Safety Representatives as soon as possible and confirm the steps taken and the reason for such steps in writing.

documents

6. Reports:

When the Safety Representatives become aware of any unsafe or unhealthy conditions, or working practices, or unsatisfactory arrangements at work, they shall make a report. Such reports be submitted to Management, through the Workers Committee, for discussion and remedial action.

7. Times Off:

Safety Representatives shall be entitled to an agreed upon period of time off without loss of pay to carry out any of their duties and to attend training and retraining provided by the union and any other courses approved by the union.

8. The Right To Stop Work:

The Safety Representatives have the right to stop the work in any area where he/she feels that there is a breach of any regulation or possibility of imminent risk of personal injury.

9. Facilities:

Safety Representatives will be provided with the following facilities:
(i) Meeting facilities;
(ii) Notice Boards in each department;
(iii) Access to any monitoring equipment.

lO. Information:

The Management recognise that it is their duty to provide Safety Representatives with the information that they will require to carry out their duties effectively. Safety Representatives will therefore have free access at all times to all relevant health and safety laws.

The Management will provide the following

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information to Safety Representatives to include the right to inspect and take copies of all relevant documents:

(i) Health and Safety Regulations;
(ii) Information about the plans, performance of the undertaking to include any Production and Development Plans or Investment Plans and any changes proposed insofar as they affect the health and safety at work of their employees;
(iii) Information of a technical nature, hazards and precautions necessary to eliminate or minimize them in respect of machinery, plant equipment, processes, systems of work and substances in use at work, including any relevant information provided by the designer, manufacturer, importer or supplier of any article or substance in use at work by their employees;
(iv) The Accident Book and all other certificates, orders and reports relating to the occurence of any accident, danger at work or industrial disease and any statistical records relating to such accidents, danger or cases in industrial disease;
(v) Any other information specifically related to matters affecting the health and safety at work of employees, including the results of any measurements taken by the employer or persons acting on the employers behalf in the course of checking the effectiveness of the health and safety policy;
(vi) Results and samples of tests taken in connection with safety;
(vii) Results of any statistical analysis taken by Management of workers health and workplace. A complete breakdown of all substances used at work with the nature of them and the possible effects on workers.

11. Full Time Officials:

Safety Representatives will have the right in

accordance with agreed procedure to call in a Union official who will then have access to the same facilities and informations outlined above.

12. Health and Safety Inspectors:

Safety Representatives will be immediately notified when a Health and Safety Inspector is on the premises and each Representative will be entitled to tour his/her constituency with the Inspector and communicate with him/her privately.

13. Meetings of Safety Representatives:

Safety Representatives will have the right to meet together, independently of Management, to discuss problems as and when they arise and to inform the Workers Committee on health and safety matters.

CISKEI REPRESSION: JOINT STATEMENT

This joint statement was issued by the United Democratic Front, Federation of South African Trade Unions, South African Allied Workers Union, Orange Vaal General Workers Union, General and Allied Workers Union, Commercial, Catering and Allied Workers Union, African Food and Canning Workers Union, Johannesburg Scooter Drivers Association, Council of Unions of South Africa and the Detainees Support Committee.

We, the United Democratic Front, Fosatu, Saawu, Gawu, OVGWU, Ccawusa, FCWU, Josda, Sacwu (an affiliate of CUSA ed.), SALDCWU (an affiliate of CUSA ed.), Cusa, and Descom condemn the banning of the South African Allied Workers Union and the repression of the people in the Ciskei bantustan.

This ban on Saawu must be seen in the broader context of the South African political scene in which there is the intensification of repression and the unfolding of the grand design of Apartheid.

By this act the Apartheid government has illustrated that the bantustan structures will increasingly be used to suppress any resistance to their Apartheid policies.

Alongside this ban is reported excesses comparable with those in Nazi Germany. A stadium in Mdantsane has now been converted into a concentration camp. Scores of our defenceless people are being herded into and tortured there.

The ban on Saawu must also be seen as a climax of the persecution of that union and its leadership. All unions in the area have suffered under the

current assault on resistance organisations. The aim is to strip the large workforce in Mdantsane of any leadership in its struggle against exploitation.

Viewed in this light the ban on Saawu is the begining of the process of eradication of whatever unions and resistance organisations there are in the Ciskei. Not only has Saawu been banned but local offices of the other unions have virtually closed down due to detentions. Henceforth any union which comes out in full support of worker resistance against bus fare hikes, rent hikes and so on will follow Saawu into banning. And yet unions cannot but support struggles beyond factory boundaries if they are to be of any lasting consequence to workers.

The ban on Saawu is a veiled threat to other unions to stay away from community struggles like the Mdantsane bus boycott. But bus fare hikes eat into the worker's pay packets and unions are obliged to support the campaigns of the working people. To permit the Ciskei puppet government to suppress union involvement in community struggles is to give away a fundamental element of unionism. Without the right to use their organisations to defend themselves workers are utterly defenceless. And there can be no compromise on this right to take up issues beyond the factory floor.

The UDF takes a very serious view of the right of workers to their unions and the employment of those unions to defend themselves against exploitation. It joins all unions here in condemning this ban.

In keeping with that condemnation it appeals to all progressive unions to stand together in this critical period and jointly oppose the ban.

2Ø September, 1983.
KHOTSO HOUSE.

THE UDF: A "WORKERIST" RESPONSE

The following comments are offered not in the spirit of divisiveness nor as an invective against popular movement but should rather be viewed as a contribution to a debate which the authors of this article believe should neither be confined to organisational leadership nor intellectuals but should be carried as far and as broadly as possible. The comments in this article have been formed by the authors' experience of the UDF in Cape Town; it could conceivably be different in other centres.

The nature of the UDF

The UDF is generally viewed as a popular front. As we understand the term, a popular front is a loose working alliance of organisations representing more than one class. All organisations enter into the front with their own ideological positions yet all are united behind the minimum program of the front. Any organisation willing to subscribe to the minimum programme can become a member of the front. The front is not an organisation in itself - ie. it does not have its own constitution and has a minimum of office bearers.

The UDF has some aspects of a front, some of an organisation. It was formed with a constitution and a plethora of office bearers and executives. Organisation proceeds locally in the name of the UDF yet the impetus from local committees to the executive is channeled via representatives of the signatory organisations. For example, a committee on the Cape Flats might have a dozen members of a women's organisation; the local committee of the UDF might eventually reach the size of 100, including individuals who are not members of organisations affiliated to the UDF. In such cases it would remain the province of the 12 members of the women's

organisation, via their organisation's membership of the UDF as a whole, to be chosen as representatives on the central committee. What this means is that the UDF operates locally as an organisation, regionally or provincially as a front. Objectively this diminishes the democratic character of the UDF.

Decision making in the UDF

As we have pointed out, the channels for participation of the local committees in the executive decision making are poorly constructed. Those that exist seem to run mostly in the other direction - to implement policy rather than form it.

A word must be said about the current fashion for debating issues by means of workshops. Proponents of "small groups" claim that people are shy to talk in big meetings; and are scared for security reasons of saying what they think. To which we must reply: what security reasons? The UDF is not a clandestine organisation - all debate and opinion should be freely and openly expressed. And what kind of leadership training is being offered members if they are not encouraged and taught to speak in big meetings? While we might concede that workshops enable the issues at hand to be discussed fully we regard small groups as being entirely unsuitable for decision making. By selection of group leaders and with undue attention being paid in the report backs to minority opinions within the group, workshops function either to paralyse decision making or else to reinforce our opinion that very often these meetings are used to rubber stamp decisions taken elsewhere.

This also explains partly the attitude towards trade unionists. Because the UDF is not run on decisions taken at the base and carried upwards, when unionists speak of "The workers feeling that..." or "The workers say this...", it is assumed that these are the personal opinions of the speaker merely

projected as the desires of the workers. The essence of trade union democracy, the big meeting with opinions from the floor expressed for or against resulting in a decision binding on oficials, is absent from the UDF. And hence the myth that union officials and office bearers are holding the workers back from joining the UDF.

Constituent organisations of the UDF and the nature of the ideology expressed

A closer look must be paid to the organisations which have joined the UDF. These can be divided into three groups:

1) "Non-mainline" organisations (eg Church groups, Trades Organisations etcetera). These clearly are petit bourgeois in membership and program.

2) Student/Youth organisations. These are mixed in membership and program with the radical petit bourgeoisie probably dominating working class elements overall.

3) Community organisations (eg The Cape Housing Action Committee (CAHAC) and the United Women's Organisation (UWO)). These are a little more difficult to pigeon-hole. Clearly both organisations do have working class members and even working class branches. However, it we look at these organisations several tendencies can be drawn out:

a) The organisations are locally very weak with a small membership mostly confined to people with experience of other opposition organisations.

b) Their programs are generally limited, eg. agitation around the issue of rents without drawing out clearly the link to wages and hence economic exploitation at the site of production.

c) Within the organisations attempts are made to blur class distinctions and consequent differences in aims - the "We are all oppressed women" or "We are all oppressed residents" approach. The fact that

the political aims of a working class woman and a non-working class woman living in the same community would be very different is glossed over.

d) While we cannot identify accurately the class composition of the membership of these organisations, the leadership is on the whole dominated by intellectuals with a reformist ideology.

This ideology tends to play down the class nature of society and instead makes a fetish of the racial aspect. All attention is focused on the political, on Apartheid, leading to the assumption that the dismantling of the Apartheid state will necessarily lead to a "free, democratic, united South Africa". The question of class domination by the bourgeoisie is left unattended. There is little or no attempt to develop a class analysis of the society and to illustrate to the working class who the real enemy is and that inequality, domination, poverty and unemployment are intrinsic to the capitalist system. The radical petit bourgeoisie instead sees the working class as too unsophisticated to understand the nature of their exploitation. From this premise flows the belief that race is to be concentrated upon as the most overt form that domination takes in South Africa. This in turn accentuates the tendency often to organise on colour lines and secondly often to view genuine working class organisations with disdain.

The platform of the UDF is simple: down with the Constitutional Proposals, an end to Apartheid. While no progressive would argue with these admirable aims it is obvious that these are not the priorities of the working class. The workers seek an end to economic exploitation which is not necessarily synonymous with the end to Apartheid.

The UDF might argue that this is the minimum program alluded to earlier. But where is the evidence that any more thoroughgoing socialist program would be

acceptable to the UDF? Where are the different ideological trends in the UDF in accordance with the multi-class alliance we are led to believe exists?

We have seen recently in Zimbabwe just where such a populism - called "reconciliation" there - has lead: to the complete suppression of working class politics and the institution of a classical neo-colonialist solution (ie. unabated exploitation with a change of personnel at the top).

In summary we can catagorise the political program of the UDF as radical petit bourgeois.

And the Workers?

While there definitely are individual workers who are members of the UDF there is as yet no working class organisation of any size which has joined. We are not ashamed to express the view that the working class should lead the opposition movement. This is for many reasons - mainly that only the working class has clear objective reasons for pursuing an alternative to the present system of economic exploitation. While other classes and groups, notably the radical middle class and radical intellectuals, might oppose the system with great courage and persistence the alternative they envisage, because of their class position, will generally fall short of that of the working class.

The UDF might answer that they have tried every method to include working class organisations in this "popular front"; that this failure is short-sightedness on the part of the Trade Unions rather than the UDF. The authors of this article cannot agree. While one may justifiably criticise the unions for failing to open up the debate on the UDF, their affiliation would have been foolhardy. The UDF offered its constitution to the unions on a take-it-or-leave-it basis. There was no room for compromise, no suggestion that the existing leadership should

step aside for the workers' leaders. Taken in conjunction with the anti-democratic tendencies touched upon above plus the reluctance of the UDF to situate their opposition in class terms, any formal contribution by the unions to the UDF would have been a betrayal to their hard won independence.

Ideological Intolerance

We cannot leave the question of the UDF without looking briefly at the pervasive attempts to smother progressive opposition to its central propositions. The line of the UDF, emanating from somewhere, is not to be opposed, we are told. To criticise the UDF is tantamount to being an impimpi, to running with the nationalist government. Former friends cross the road when they see a "workerist" approaching; a series of pitched battles is being fought in academic circles and even on committees only marginally political in operation.

The Future

We criticise the UDF harshly; but only in terms of what it should be. The UDF with the dynamism and hard work of the its militants has opened a whole new vista of struggle and, we freely admit, has in places organised the previously unorganised workers and non-workers.

We do not believe the UDF is an adequate vehicle to carry forward the struggle for a democratic socialist South Africa - but it could be.

We call upon all progressive workers and intellectuals to enter the UDF. Most of all to re-open the debate on the place of the working class in the opposition movement; to carry on the debate loudly, broadly and publicly so that a new re-alignmet in opposition can be realised.

A United Democratic Front under the leadership of

the working class committed to ending exploitation at home and in the factory - that is a front we will support.

In conclusion we reiterate that we would welcome a response to our brief comments either in these columns or in any other.

(Isabella Silver and Alexia Sfarnas, Cape Town, September, 1983)

TUCSA IN A DONGA?

The Crucible, official journal of the S.A.Boilermakers, Iron and Steel Workers', Ship Builders' and Welders' Society, interviewed General Secretary Ike van der Watt. The Crucible, Vol. 36 No. 8, August 1983.

Is TUCSA still relevant in the current trade union and labour relations situation?

Yes, TUCSA, as the largest co-ordinating body is still relevant. The basic reason for the existence of such an organisation is still there.

What are your complaints then?

TUCSA has lost credibility mainly I believe, because it is not adapting fast enough to the fast changing circumstances of labour. In my view TUCSA has lost its flexibility. It has ground itself into a rut and now it seems that it cannot get out of that rut. Worse still, the indications are that there are affiliates that do not want to get out of that rut. They want to be protected from the wind that is blowing over the donga of ideas and attitudes they have eroded for themselves. They are even prepared to roof the donga so that outsiders cannot reach them.

How can this situation be set right?

TUCSA must heave itself out of the donga into the open, where it can get at people and people can get at it. TUCSA must see what is going on and must make contact, even if this initial contact amounts to little more than confrontation.

interviews-statements-debates

How long has TUCSA been in this rut?

Ironically enough the decline began with the acceptance by the Government of the main recommendations of the Wiehahn Commission. These recommendations and the consequent legislation to a large extent satisfied the aspirations which had kept TUCSA active and significant through the years. TUCSA lost its objective and, to a large extent its motivating power.

Is this loss not final?

No TUCSA must now move to its next objective and that is to work towards co-operation between the whole of the trade union movement, or at least as much of it as is possible. This is not an easy task and should extend TUCSA fully for some time to come.

Won't these efforts be wasted? Some unions say that the rift between the various schools of thought on trade unionism is so deep that it cannot be bridged.

That is not really so. The basic objectives of all trade unions are the same. By that I mean their policies have much in common. Their strategies differ. It is by no means impossible for all unions to find common ground. TUCSA should be in the ideal position to provide the impetus for such a move. The trouble is that TUCSA's image is dead against it.

How would you describe TUCSA's image?

Very poor, both here in South Africa and overseas.

Why is this the case and is it deserved?

This is very largely a case of attitudes, and it is by no means entirely deserved. Take, for example, TUCSA's relations with the press. TUCSA does a lot of good, but if you read the newspapers you are not likely to notice this. This is partly due to TUCSA's

past tussles with newsmen. It is also partly due to the tendency not to share with unions outside TUCSA and, in fact, hiding its light under a bushel. The result is that TUCSA is criticised for anything anybody does not agree with, but it never gets credit when credit is due.

Can this situation be corrected?

Most definitely. But let me warn TUCSA right away they cannot buy a new image. They will have to work for it and this will entail a change of attitudes.

Is anything being done about it?

One could say 'yes' and 'no'. Recently TUCSA's secretariat drew up a project to expand some of the organisation's activities. It included expenditure on the improvement of TUCSA's media relations, its educational activities, its research facilities, its organisational services and its legal services. I don't entirely agree with the details, but the plan is worthwhile considering because it provided a starting point for planning and discussion and it shows that the secretariat is aware that something must be done.

Would you support the proposals at the conference in September?

I will go so far as to say that I will support the principle that TUCSA must get on and plan along those lines and that such plans should not be dismissed out of hand or shelved. I think all affiliates should then get stuck in and assist the secretariat. Then there is always the matter of costs. Trade unionists are notoriously slow in parting with money in the form of contributions and any plan which is introduced must be fully justified. I would find it difficult to sell a major increase in my union's contributions to TUCSA to my executive committee at this stage. I do not say

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that, under other circumstances, I could not do so, but at present my executive would grumble at even a small increase.

Are the proposed services within the scope of TUCSA's constitution?

Yes, entirely. I would, however, feel unhappy if I felt that the proposed developments were merely being introduced as a means of going into competition with other trade union co-ordiating bodies. ALso, I think that TUCSA should be more concerned at the present moment with making contact outside its own ranks.

What would be the first step?

It would be to make constructive contact with the media. And let me say that this cannot be done overnight. There will have to be a basic change in attitude to the press and other media and a far more open policy towards them. As I have said TUCSA does newsworthy things, but these never see the light of day. One does not nead expensive publicity campaigns. All one needs is a healthy relationship with the media. And let me add that, without that, it will be very difficult to achieve anything.

And after that?

TUCSA will have to create dialogue with a wide range of trade unions. By that I mean all trade unions, not only those who will accept approaches from TUCSA without too much resistance. A lot of spade-work needs to be done and very flexible strategies will have to be followed.

By "all unions" do you means unions which are referred to in the press as "left" and "right"?

Yes. If that is not done and TUCSA follows only one direction it will be contributing to polarisation.

If only one type of union is approached it could even lead to some unions leaving TUCSA. But what I must stress is that TUCSA's attitude that it does not want to become involved as an organisation but that contact should be made by individual affiliates, is unacceptable. It has led to the Biolermakers being out on a limb and frequently accused of going counter to TUCSA largely because we have been making contact outside the ranks.

Have there been no other attempts to make contact?

There has been. Lately TUCSA has been cicularising all unions, not only affiliates, for comment on issues of common interest and some unions have responded. This is a step in the right direction, but we must go further than that.

You mentioned the possibility of polarisation under certain circumstances. Do you think TUCSA should risk the possibility of conflict within its ranks in order to expand its liaison with unions outside its ranks?

Personally I see no reason why contact with unions outside TUCSA should necessary cause conflict. I believe that once TUCSA has accepted the idea of wider contact and once the more careful and conservative members have become used to it, it will serve as a tremendous stimulus. At any rate, avoiding conflict, confrontation and debate just for the sake of some artificial surface peace can only lead to stagnation.

Don't you forsee a split in TUCSA over the issue?

No, I don't. But if the alternative is slow death by stagnation. I wonder whether it is worth arguing about whether you prefer to be bombed or to be smothered. In the end the result will be the same, whether TUCSA dies through stagnation or whether it splits up. What we are concerned with is avoiding

the two alternatives and invigorating the organisation.

Some years ago the Boilermakers' Society resigned from TUCSA and then rejoined. Some people say that the possibility exists that the Boilermakers may resign once more. Is there any truth in this?

If we leave TUCSA it will be because we are forced to do so.

Have you hope for the future?

Yes. That is why we have put forward our resolution in connection with a special conference. I believe that many problems could be solved if TUCSA were to be bold enough to say it is prepared to disband and form a new confederation for the sake of unity. This would enable TUCSA to dispose of outdated ideas and place it in the position where it can give a lead towards unity. It could then perform its function as the largest and potentially the most viable labour organisation in bringing about meaningful contact between the various labour confederations.

THE SURPLUS PEOPLES PROJECT

A review of the **Report of the Surplus Peoples Project**, published by the Surplus Peoples Project, January 1983.

The five-volume, 1644-page report of the Surplus Peoples Project is, quite simply, one of the best pieces of research to emerge recently in South Africa.

The thoroughness and detail of that research and its up-to-dateness, particularly because of the government strategy of concealing the horrors of relocation, is remarkable enough.

But when one considers the administrative and logistical implications of uncovering those horrors, and producing such an extensive report, the SPP report becomes even more remarkable.

What is more, the three year investigation cost just R25 ØØØ.

There was only one part-time employee, although field workers were hired from time to time, particularly for interviewing purposes.

And those were the full costs, without any indirect institutional support, as is often the case with, for example, academic research.

A large number of people from all around South Africa contributed to the compilation of the report and it is not possible, nor fair, to isolate any particular individual contribution.

However, the government by its inability to challenge or question the SPP findings has, perhaps, paid the greatest tribute to the people involved.

My assessment of the SPP report is subjective. Towards the end I got involved in a very small way and I am therefore not an impartial reviewer.

But my understanding of the depth of the study was certainly supported by an incident last year in the Western Transvaal with two of the people involved.

We came to a dirt road, turned off and then travelled for some kilometers along an ever-deteriorating road, nearly getting stuck in the sand and scraping the grass on the middelmannetjie. Eventually, we came to a piece of land, now overgrown with grass and anthills.

This, we were told, had once been a black spot.

There is no evidence today that it had been a black spot, but SPP knew that it had been home for a number of people who the government had subsequently moved into what has become BophuthaTswana.

It is that kind of detail which makes the five volumes so important and so good.

The SPP estimates are horrific : more than three and a half million South Africans, most of them black, have been relocated over the last 2Ø years.

And another two million are under threat of removal.

The SPP research emphasises the extent of social engineering the government has undertaken to divide the country between black and white people as an alternative to universal suffrage.

It has tried to document every one of the removals in South Africa since 196Ø - and of the removals still to come before, theoretically, the government's policies will have been completed.

SPP said these removals or threats of removals had

been "in the name of apartheid".

> "The people who have been moved have, with the exception of a tiny number of whites affected Group Areas Act, been black : disenfranchised, debarred from participating in the government that has passed the laws and enforces the regulations that govern these removals."

The removals had been forced, either through structural coercion or by violence.

> "Coercion is built into the web of discriminatory and oppressive laws and institutions restricting black freedom of movement and access to land- and specific to the particular instances of relocation."

> "Sometimes the violence with which people are removed is direct - police and guns, bulldozers, demolished houses, arrests."

> "Sometimes the violence is less overt - intimidation, rumour, co-option of community leaders, the pressure of shops and schools being closed and building restrictions imposed in areas due for removal."

> "In these situations, people may move themselves, without the state actively providing the transport, or they may agree to make use of state transport."

> "Pretoria has been quick to describe these cases as 'voluntary removals' - the age of forced removals, like apartheid, is dead, according to the Department of Co-operation and Development."

But, the report said, these claims, based on its research, were "false- a cynical misrepresentation of the submission of rightless people to the dictates of a repressive minority government as an

reviews

act of positive choice."

SPP said eleven different mechanisms had been used by the South African Government to relocate people.

They included the Group Areas Act, one of the first laws passed by the Nationalist Government after it came to power in 1948, in terms of which parts of town and cities were zoned for seperate occupation by various racial groups; the removal of "black spots", areas of black-owned land, usually farms, in white areas; the eviction of people from white-owned farms, particularly those who were given occupation rights in return for their labour or a share of their crops; urban relocation, when black residential areas were moved into the bantustans or when black townships were demolished; people sent to the bantustans in terms of the influx control or pass law measures, in terms of which every black person has to carry identification with them at all times and have official permission to be in urban areas; people moved because of development projects such as dams and roads; people moved for strategic or military reasons; and betterment schemes, a move by the government to bring people in rural areas into towns.

Ultimately, however, "all relocation of Africans has to be seen in relation to the development of the bantustan policy, even that where the primary motivation has not been to boost that policy."

SPP said the precise number of people who had been moved over the last twenty years would never be known. But between 1960 and 1982 it had been able to quantify "a massive 3 500 000 - well over ten percent of the present population of the country."

SPP said the biggest single relocation area in South Africa was at Onverwacht, in the Southern Orange Free State, with about 160 000 residents.

After the biggest-ever survey of people in relocation areas - 1671 households involving 1Ø 719 people in 19 different areas were surveyed - it found that conditions in the different areas were "very poor and most people suffer material loss when they are relocated, particularly those moved from situations where they had agricultural land into situations where they do not."

More significant in the long term than the degree of material deprivation suffered by the people moved into the relocation areas was the damaging social and psychological effects inflicted on communities and individuals.

> "For most people, the process of being relocated is one that only serves to emphasise their lack of personal control over their families' lives."

> "The dominant mood in relocation areas is often one of passivity and helplessness in the face of the enormous problems and the hidden bureaucracy that controls their lives."

In general, SPP said, the further away from a metropolitan area a relocation site was, the poorer and more desperate the facilities were likely to be : "crude, temporary shelters on arrival (generally wooden tomato box structures in the Eastern Cape and tin huts known by their brand name, Fletcraft, in other parts of the country or tents), pit latrines, sparse water points."

SPP concluded that it had not found any evidence to suggest the government's policies on removals were being reversed.

> "At the time of writing, 4Ø ØØØ people are being removed off eight black spots in the Eastern Cape corrider into the Ciskei; several major reserve areas in Natal have been excised from KwaZulu as a preparation for the declaration of these areas as

> white; people living in informal settlements in the Western Cape, Natal and Transvaal are being harried and evicted by Administration Board officials; there are signs of a renewed clampdown from the State on the numbers of African people living on white farms.
>
> "Exclusion - and hence relocation - still lies at the heart of apartheid."

SPP said if the removals were suddenly stopped this would not alter the position of the millions of people already moved "nor, undermine, substantially, the major restructuring of South Africa into a 'white' core and ten ethnic bantustans on the periphery that is already far advanced."

It is not possible to do much more than to touch on the surface of the five volumes, but all this analysis is backed by facts, tables and interviews. And the extracts quoted do show, on one level, how the apartheid state has been constructed, with three-and-a-half million people as pawns.

Thank goodness this has now been documented - and thank goodness it has been done so well.

(Barry Streek, Cape Town, August 1983).

INDEPENDENT LABOUR

A review of D. du Toit's Capital and Labour in South Africa, Kegan Paul, 1981.

The Durban strikes, the rise of the independent labour movement and the crises of the mid '70s underlay State initiated reforms in the labour sphere, giving priority to industrial relations. Labour was a non-issue prior to the '73 strikes. The militant political unionism of SACTU had been vigorously repressed during the 1960s and the essentially bureaucratic and quiescent TUCSA unions posed no threat to established practices. African workers were voiceless, and the induna system appeared to meet the needs of managerial control and direction. Why did this model of 'order and stability' change so dramatically during the 1970s? What social forces underlay the dynamism of the new labour movement, the escalating conflict within factories and at certain points across whole industries, and why did the State initiate significant reform through the recognition of African Trade Unions?

Those who turn to du Toit's book for insights into these central questions will be disappointed, for it has little to offer other than a superficial and general discription of events. His interpretation of these events is inaccurate because he utilizes a crude 'theoretical' framework, and because he writes from a distance. The author clearly has had little or no direct contact with the various levels of union organisation he analyses, and thus relies exclusively on secondary material - primarily the South African Labour Bulletin and the Institute of Industrial Education's book on the Durban Strikes. The SALB has endeavoured to monitor closely and record labour struggles and management and State

reactions during the 70s. This provides a useful record of individual events and particular policies, but is not a substitute for original empirical research, particularly for a study with objectives as ambitious as those of du Toit's. Let me illustrate these points of criticism with a specific example.

In Chapter 10, he discusses state reaction to the emerging independent labour movement. It is remarkable that in a 41 page chapter, he devotes only half a page to the proposals of the Wiehahn Commission, despite their central importance to all future developments in South Africa, not only in the industrial sphere but also in the wider political arena.

In his view the reforms are a trap designed to subject the working class to increasing discipline and State control in accordance with the needs of the capitalist class (p.364). He develops no theory of the state, and is therefore unable to see the character of the state determined by changing relations between classes. In his view the state is merely repressive and thus the Wiehahn reforms are seen only as an attempt to extend control.

The Wiehahn reforms are clearly contradictory. The intention is to control by drawing the independent unions into the official bargaining procedures. This requires the granting of rights in the form of official recognition of African trade unions and gaining those rights is a vital part of the programme of any labour movement. As a result of this change the independent labour movement has grown rapidly and is now permanently established. Furthermore, workers have become far more assertive as they attempt to win a living wage and transform authoritarian practices on the shop floor, as is evidenced in the increased level of strike action since 1979. In short, the granting of rights has created space which has enabled the working class to

make permanent gains. Du Toit's framework prevents him from capturing any of these developments.

The book fails to address the all-important question: is the State capable of extending the reforms at a political level in a way that would deracialize politics and initiate a shift from racial to liberal capitalism? What are the implications of its inability to move in this direction? Does this mean that South Africa is headed for revolutionary change, and if so, what form will this struggle take - a national struggle, a class struggle, or a struggle for socialism within a national struggle? On the latter question, the book describes some of the tensions within the ANC, but adds little to what is generally known.

Those interested in gaining insights into the labour movement should continue to read the Labour Bulletin, and await the publication of more substantial research in this field. Superficial works such as Du Toit's should be left well alone.

(Rob Lambert, Durban, September, 1983)

A FILM ON THE FUNERAL OF NEIL AGGETT

A film directed by Mark Newman. 15 minutes.

Trade unionist Neil Agget died in detention on 5 February 1982. Directed by Mark Newman and funded by the InterChurch Media Programme,**A Film on the Funeral of Neil Aggett** records one more incident in the struggle for democracy in South Africa. The film begins with brief white captions on a black background outlining the history of detention, the reaction of workers to Aggett's death and the subsequent 1ØØ ØØØ strong worker protest... that is all.

The film does not examine the context of Aggett's death, the context is taken as given, the mourners are the film's audience, its inner working their everyday experience. This assumption locates funerals as acts of resistance. In a country where mass processions and open air political gatherings are banned, funerals have become sites of ideological struggle, the terrain on which those who have died in the cause of freedom provide the inspiration for those who remain. Death is part of the process of freeing life from repression. It is for this reason that the film focuses on the funeral of Neil Aggett rather than on some aspect of his life, his medical work or his dedication to trade unionism.

While the opening and closing shots are of the cemetry and graveside, the greater part of the film shows the procession of the 15 ØØØ mourners as they move from the church to the graveside.

Crowds singing and chanting, carrying posters of Aggett (bearing the inscription "Lived for his Country - Died in Detention), shaking tins, throwing pamphlets out of buses, and raising clenched fists

as they move urgently towards the camera en masse suggests the forward movement of the struggle. Recurring symbols of crosses, candles, fists and feet punctuate the image. The crosses and candles have connotations of religion, legitimacy and matyrdom, the fists and moving feet indicate the ongoing action, active resistance, and the idea that the struggle continues despite casualties. A close-up of a fist punching the air is a symbol of black power and relates the person to the class struggle as a whole.

The mourners are not weeping as might be expected, but angry, determined. The death of Aggett is not a setback, but an encouragement to march forward. Though they acknowledge his loss (in the speeches), they do not retreat. Blacks and whites stand together and their grim faces are juxtaposed with a close up of a white toddler. The background music that accompanies this shot is **Nkosi Sikelel'i Africa,** over which a speaker states that "all these brutal suppressions of leaders by the state are done under the justification that they are for the 'security of the state'". Juxtaposed with the image of the white girl, this rings very hollow indeed.

When the coffin leaves the church the mourners reaffirm their commitment in a freedom song : "Aggett wethu Somlandela noba siyaboshwa" ("we shall follow our Aggett even if we are being detained or killed"). Juxtaposed with this shot is the crowd of mourners running in the streets, followed by busses and cars. There is a great rush forward. By contrast, the camouflaged security police with their dogs are moving ineffectually against the direction of the human tide. Their confusion is heightened by the change in song from eulogising Aggett to "Ayesaba amagwala ayadidizela" ("cowards are afraid and confused"). The camera is part of the procession, it moves with the crowd and sees the three policemen from this perspective. A convential news camera might have emphasised the power of the

police over the unruly workers. Newman's camera, however, shows them as the 'enemy' and powerless against the march of history.

The film emphasises the process of resistance. Unlike **Awake from Mourning** which isolates the Soweto school riots of 1976 from the general struggle, or **This We can do for Justice and Peace**, which imagines that a humanist intervention will alleviate suffering, this film is part of the class struggle. It derives out of working class experience and though a lesser act of resistance than Aggett's fate, as cinema, the film "is a struggle at one remove", to quote Jean-Paul Fargier. It is not a political weapon in the same way as is trade unionism, but is connected through ideology. This film is not aimed at an intellectual petty bourgeois audience, but the working class itself. The way it is made, what it takes for granted, its use of direct address in the form of speeches in English and Zulu and use of song make it immediately accessible to this audience.

The final scene in the film shows Neil Aggett's grave being filled and covered with earth. In the background people are singing, which continues after the picture has faded: the struggle goes on; the event may be over, but the process which occasioned the event has yet to be overcome.

A Film on the Funeral of Neil Aggett is derived from a working class consciousness, was produced in an organic relationship with it. Its audience is its actors; its momentum is dependent on their experience.

(Kenyan Tomaselli, Nofikile Nxumalo and Claire van der Merwe, Grahamstown, September, 1983)

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RATE: _____

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RATES FOR EIGHT ISSUES

	SOUTH AFRICA	OVERSEAS
Workers	R 5,00	
Students	R10,00	£ 8/$18/R15
Salaried Individuals	R20,00	£14/$30/R28
Institutions, Companies	R40,00	£25/$55/R50

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