

LABOUR DEPARTMENT — 1984.

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ROUX VAN DER MERWE

in my opinion

# Focus on employers' rights

Roux van der Merwe holds the Volkswagen Chair of Industrial Relations at the University of Port Elizabeth. This article by him is one in a series on the Industrial Court and labour law being published by the FM.

Maas van den Berg (*Current Affairs* December 2) raises among other matters concerning the Industrial Court, the broad question of "management prerogative," and arising from it the implications for employee assessment. I should like to comment on these two issues because, regrettably, so many employers will routinely and uncritically murmur their approval of his sentiments.

The average SA manager, given our rather conservative business climate, sees little reason to question those prerogatives which he has taken as given for so many years. When they also are representative of the norms of the larger society in which he moves, and are plainly convenient if not indispensable to his traditional style of management, then arguments for their retention must appear attractive.

Unfortunately what is personally convenient and desirable is not always in the best long-term interests of the rapidly changing society in which we live. It is thus particularly important that issues in labour relations are viewed against the criterion of constructive accommodation to the changes we have already seen, and those which are still to come.

To begin with, it is necessary to point out that once free trade unions are permitted to operate in a "free enterprise" context, employers can no longer lay any unilateral claim to previously accepted prerogatives. In fact labour relations could be succinctly defined as "continuous negotiation about re-adjustment and accommodation of the boundaries of control in the work situation."

Depending on the power of the union,

some or all of management's rights to unilateral decision-making become negotiable and unions will use their power to erode prerogatives wherever they can. Management in turn should use its not inconsiderable power to counter this challenge. What it should not do is react reflexively to seek an alliance with the State to help to enforce the employer's interests, for therein lie the seeds of rejection and overthrow of the system itself. We should all be grateful that the unions are using the courts to the extent that they do, a belief in the legitimacy of the system is a precondition for it to work and if a court's decisions are not always pro-employer, this should not be a cause to ring alarm-bells. By all means let us debate and question the Industrial Court, but in terms of legal drafting and procedure, rather than pious calls about management prerogatives.

The origins of these "prerogatives" — namely that authority arises out of the rights of ownership of property — can of course be questioned. The employer is not an island, he operates as part of a complex and inter-dependent society.

Where his actions may have a negative effect on that society, such as the unfair dismissal of an employee who loses everything which he may have worked for over many years or the retrenchment of a large number of workers who may then become a burden on social security — it is appropriate that his "prerogative" be questioned. Not to the extent that a court may "favour full employment in favour of retrenchment" (as Van den Berg puts it) but at least in calling for agreed procedures for dismissal and redundancy and putting a price on the "property rights" of an employee to his job. Once again, this price is a matter for negotiation.

Secondly, Van den Berg talks of the "traditional SA work ethic" which to

him implies that worth in the job must exceed the cost to the employer of retaining an employee. Worth, or merit in an employee, is notoriously difficult to measure objectively. Accordingly, where there may be subjectivity or discretion and where the assessments cannot be independently verified, the possibility for injustice and victimisation must be allowed.

It is important to note that it is not the principle of assessment that is at issue, but the method. Indeed, no employer should easily bargain away his right to discriminate on merit, for it is an important element in motivation. Rather, the argument with the union should centre on methods and criteria of assessment. Length of service is one such criterion, which is at least objective, while deficient in many other respects. In Germany the method and criteria are agreed with the Works Council, if these are followed, and seen to be followed, the employer is within his rights.

How many employers can honestly say that their appraisal methods are validated, and that their ratings are reliable? If not, there is no "prerogative" to make decisions which are favourable to the employer. In such a situation, the role of the State should be no more than to facilitate negotiated procedures, and the role of the court no more than to ask "Have the agreed procedures been fairly followed?"

Perhaps the court's ruling in the Mwasa case will have reassured Van den Berg. For all employers, the message of 1983 should be clear. Negotiate effectively and in good faith with representative unions. Lay down clear procedures, stick to them, and see that the union does too. In these circumstances, it is unlikely that any court of law as presently constituted, can or will make inroads into your rights.

# Flood of cases leads court to seek more staff

By Carolyn Dempster,  
Labour Reporter

The flood of cases being brought before the Industrial Court would necessitate the appointment of at least one more permanent staff member in 1984, the President of the court, Mr BJ Parsons, said this week

He was commenting on allegations that the Industrial Court might not be able to cope with the increasing number of matters being brought to court

'During 1983 the court handled more than 170 matters, four times more than the number of cases heard during 1982 "At this moment, we have received more matters than in January last year and we expect a further escalation, said Mr Parsons"

## TEMPORARY

Because of the rapid increase and the lengthy nature of many of the hearings, the court was forced to rely on the provisions of the Labour Relations Act and advertise for additional temporary staff during 1983

"On the couple of occasions when we appointed outside counsel on an ad hoc basis, it proved very able," added Mr Parsons

A number of unionists have expressed fears that temporary staff, without a thorough grounding in the specialised field of labour law, do not have the requisite skills to adjudicate cases brought before the court. However Mr Parsons dismissed these fears as unjustified

The long periods of time which elapsed between the lodging of a case and the actual hearing were often the result of requests by employers and unions rather than any delay on the part of

the court, he said

The majority of the matters brought before the court during 1983 were concerned with Section 43 status quo or reinstatement orders following the dismissal of employees, said Mr Parsons. He also confirmed that the majority of cases had been lodged by unions

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employees in the same industry. There are the different working conditions and obligations of the two groups.

The SFAWU's inability to take the whole question of financial disclosure to the Industrial Court does, of course, represent a setback to the growing number of unions which are taking an intense interest in this issue. But it will not necessarily deter them from placing a variety of pressures on managements to provide them with more financial information.

From a procedural point of view, those unions operating in industries where an industrial council exists have a distinct advantage in their efforts to get access to the court for hearings on unfair labour practice claims. Where there is an industrial council, the route to the court is far smoother. A party declaring a dispute does not have to apply for a conciliation board — and is therefore not subject to the discretionary powers held by the Minister in connection with the appointment of conciliation boards.

ation of SA Trade Unions (Fosatu), declared a dispute with an employer last year. One of the issues at stake was the company's alleged refusal to disclose adequate information about its finances during wage negotiations. This, the union claimed, constituted an unfair labour practice. It wanted this issue included in the board's terms of reference — a prerequisite for the matter to be dealt with by the court if it was not resolved by the board.

The Minister of Manpower has granted the union's application for a conciliation board, but has excluded the issue from the board's terms of reference. Therefore, in this particular case, the SFAWU will find it extremely difficult, if not impossible, to get a court hearing on whether an employer's refusal to disclose financial information amounts to an unfair labour practice.

#### Supreme Court

This is not the first time that the Minister has used such discretionary powers granted to him by the Labour Relations Act. Last year the Council of Mining Unions (CMU) applied to the Supreme Court to overrule the Minister's refusal to include an alleged unfair labour practice in the terms of reference of a conciliation board it had applied for.

The major issue in that dispute arose from the fact that certain conditions of employment of members of CMU affiliated unions were less beneficial than those enjoyed by some other mine employees. This, the CMU alleged, constituted an unfair labour practice.

In its judgment (reported in the *Industrial Law Journal*) the Supreme Court found that the Minister had not acted unreasonably and it provided guidelines for determining whether he had exercised his discretionary powers correctly. The court said that in analysing the definition of an unfair labour practice, it was evident that, except in the case of labour unrest, the test for unfairness revolved around the question of whether injustice, prejudice, jeopardy or detriment existed in the given circumstances. The discretion exercised by the Minister in a particular case should thus be tested against this background.

The court said it could hardly have been the intention of the legislature that any condition of service of a group of employees, which was less beneficial than a similar condition of service of another group of employees, should be regarded as an unfair labour practice. It said comprehensive conditions of service of a particular group of employees may inevitably differ in certain respects from those of another group of

## LABOUR LAW

### Ministerial powers

Employers concerned about the Industrial Court's wide-ranging authority, will be soothed by the Minister of Manpower's apparent willingness to prevent certain unfair labour practice cases from reaching the court.

The Sweet, Food and Allied Workers' Union (SFAWU), an affiliate of the Feder-

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From 13/1/88



# New Bill will protect health of all workers

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16/1/84

By Carolyn Dempster,  
Labour Reporter

For the first time, the health of all employees in the workplace is to be protected by a single piece of legislation

The first draft of the Occupational Medicine Bill 1984 was published in the weekly Government Gazette on Friday, seven years after the Erasmus Commission submitted its report on occupational health to Parliament

The new legislation is designed to complement the Machinery and Occupational Safety Act which was promulgated in March last year

The new Bill will cover the health and safety of employees everywhere with the exception of workers who fall under the Mines and Works Act and Industrial Diseases in Mines and Works Act

Among the more important provisions of the draft Occupational Medicine Bill are

- Employers will be obliged to prevent exposure of employees to certain substances, liquids, gases, vapour, radia-

tion, light, noise, biological material or organisms or ergonomic factors

- Employees may not work in certain prescribed areas without a medical examination — the responsibility of the employer — and a certificate of medical fitness

- Victimization of employees is forbidden and employers will be held responsible for medical treatment and rehabilitation arising from a medical condition caused by working conditions

- The Department of Health and Welfare is empowered to appoint inspectors to enter and examine premises and take samples for analysis

The penalty for the contravention of any of the regulations stipulated is a fine of R2 000 and/or imprisonment up to 12 months

The Bill also provides for the establishment of an advisory committee for occupational medicine

Comment on the legislation must be submitted to the Department of Health within the next 90 days

Call to death

20/1/84

LABOUR LEGISLATION  
**Changes on the way**

Four Acts which fall under the jurisdiction of the Department of Manpower will be amended during the coming session of Parliament

The amendments to the Wage, Workmen's Compensation, and Basic Conditions of Employment Acts are relatively minor ones, according to department sources. But there is no mistaking the widespread interest among employers and unions over a proposed amendment to the Labour Relations Act.

The main effect of this will be to transfer from the Industrial Court to the Minister of Manpower the power to make rulings on appeals by parties who are aggrieved by certain industrial council decisions. The Minister had this power until early last year when the Act was amended to grant authority to the court to rule on appeals against council decisions.

When the amendment was published in draft form in August last year, it provoked an angry response from some unions — and a certain degree of anxiety from employers. Both groups expressed reservations about the effect that the amendment would have in making it easier for some companies to obtain exemptions from council agreements — especially wage agreements.

Unions do not like such exemptions being granted because these result in lower pay for some of their members. Employers often argue that exemptions result in rival companies enjoying a competitive edge over them through the employment of cheap labour.

The department's view is that the Minister is the most appropriate person to deal with appeals over essentially non-legal matters. It also believes that the Act, in its present form, is discouraging job creation and the development of the small business sector.

Officials point to problems confronting an employer who is struggling to get his business on a sound footing and who cannot afford to pay wages in line with an industrial council agreement covering him. At the moment, such an employer faces the prospect of costly legal action through the Industrial Court to gain an exemption from the agreement should the council refuse to grant him one. The department feels it makes sense to provide a speedy and almost cost-free channel through which such appeals can be made.

It also appears that the proposed amendment has been prompted by complaints from employers in rural areas. They argue that they have to pay wage rates which may be appropriate for the cities — where employees face high housing, transport and other costs — but which are unrealistically high for rural areas, and are discouraging industrial growth in these regions.



WILLIE BENDIX

# The ambit of the Court



Professor Willie Bendix is director of the Industrial Relations Research Unit at the University of Stellenbosch business school

I could not agree more with Professor Johan Piron's comments on the unfair labour practice (*Current affairs* November 25 1983) Law should be explicit on "unfair labour practices" in preference to interpretations of a "definition" so wide that it is meaningless. Particularly in the case of trade union recognition for collective bargaining, the definition of the unfair labour practice is not only a "hole in the labour net," but a bottomless pit through which our industrial relations system might fall into limbo.

It is important to gain some clarity on the present conflicting ideas on the supposedly "voluntary" nature of our bargaining system and the opinion expressed in some quarters — and apparently also shared to some extent by the Industrial Court — that recognition can, and bargaining could and should, be enforced under certain circumstances. To do this, we have to go back to relevant recommendations in Part 5 of the Report of the Commission of Inquiry into Labour Legislation and government's White Paper response. Both were published only at the end of 1981.

The commission maintained, at the beginning of the section dealing with recognition, that "essentially the question of recognition by the employer is not a question for regulation by the State" and that even if a union is "most representative, it cannot yet necessarily lay claim to recognition by the employer."

However, the commission went on to point out that "voluntarism is not always quite adequate in ensuring that essential relationships be established"

Consequently, it expressed the belief that "issues of this nature should be actionable before the Industrial Court within the context of an unfair labour practice." It added that "only after judgment by the court should a strike over an issue of recognition be permissible."

The commission further foresaw that "a situation could arise in which an employer who had been found to have committed an unfair labour practice by refusing to recognise a workers' organisation might succumb to the moral pressure of such a finding and agree to

recognise the union, but then fail to 'bargain in good faith' "

Its solution to this "predicament" was that "such failure should in itself constitute an unfair labour practice." This, the commission thought, would place the employer under increased moral pressure to "establish a constructive relationship"

However, the commission did express the realisation that "that is the furthest extent to which extraneous 'compulsion' could be taken" Therefore, it felt that "should these measures all fail, the answer, in the ultimate analysis, would have to emerge from the power balance between the parties and the process of action, counteraction and interaction which lies at the heart of the employer-employee relationship"

The findings of the Commission, on the basis of these considerations, were as follows

- Provision should be made for secret and officially supervised ballots to determine the degree of representativeness of an organisation, and
- Recognition by an employer party of a workers' organisation should continue to be voluntary, provided that refusal to recognise a union which has been registered and which has been proved in a secret ballot to be adequately representative should constitute grounds for the submission of a complaint of an unfair labour practice to the Industrial Court. A strike over an issue of recognition should be permissible only when and if a positive finding by the court is ignored by the employer

The government, in its White Paper on Part 5 of the commission's report, refused to accept any of the recommendations. As regards the recognition of workers' organisations by employers, the White Paper stated that government has always held the view that recognition of any worker organisation by individual employers or groups of employers or registered employer organisations should be completely voluntary

### Negotiations

In answer to the recommendation that failure to recognise should constitute an "unfair labour practice," it stated that in the instances where employers or employer organisations are not prepared to recognise or to enter into negotiations with worker organisations, the latter can have recourse to the provisions of the Act in order to bring about such negotiations —

for example, through a system of conciliation boards, provided they are sufficiently representative

The suggestion that secret ballots be held was "sympathetically" received, but rejected for practical reasons

Finally, the government reiterated that it was committed to a policy of non-intervention in the regulation of labour relations, including reciprocal recognition agreements between employers and employees. Any element of compulsion which may be introduced into this voluntary relationship may constitute undesirable State intervention, it said

Thus, the recommendations of the commission, the most important of which was that failure to recognise a representative union and failure to bargain in good faith should constitute an "unfair labour practice," was not entrenched in law. Yet, even if by indirect means, unions are alleging "unfair labour practices" on these grounds, and, if the "abstract" judgment in the Fodens case is anything to go by, the Industrial Court might be inclined to regard as "unfair" the failure to recognise or bargain "in good faith" with a representative union

### No precedent

Again, it should be remembered that the only precedent set in the Fodens case, was that there was no precedent and that the judgment applied only in Fodens' "particular circumstances" Be this as it may, it appears that the court is, essentially, following the line adopted by the commission.

The purpose in reviewing the recommendations of the commission was not, however, to indulge in academic argumentation as to what should and should not be. Rather, I feel that, by looking at what some have described as the somewhat hazy and convoluted reasoning of the commission, observers may gain a better perception of, if not understanding for, the present "predicament" of the court and the entire dilemma of the "unfair labour practice." After all, it was this commission which was responsible for the present concept of an "unfair labour practice" and that of an Industrial Court

The conclusions to be drawn from the commission's arguments are.

- That it was in favour of a "voluntary" system, but, at the same time, wished to "ensure" that "essential relationships" were established,
- That it envisaged that this would be effected by a system of "non-compul-



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sory compulsion" (my own terminology);  
 That the vehicle towards achieving these somewhat anomalous ends would be the Industrial Court, which would exert moral pressure on the employer (We can, therefore, assume that even now, and particularly in the case of recognition disputes, this is the court's main purpose),

That the commission realised that, in the end effect, "moral pressure" had its limits and that the court's powers in this respect would, therefore, be restricted; and

It envisaged that, should the court's efforts at "urging reason" fail, the dispute would again revert to the collective bargaining machinery and be dependent on the respective power positions of the parties concerned. It therefore saw, in the case of "recognition" disputes, the court not as a legal body which could enforce its judgments, but rather as a "good uncle" or "mediator" which would "urge" employers in the right direction. The ultimate irony lies in the suggestion that the court's "judgment" be enforced by strike action.

#### Developments

Although subsequent developments have brought slightly changed circumstances, and even though the court maintains that it does not rely on the commission's opinions to formulate policy, I believe the above best illustrates the framework within which the court still operates and within which the concept of an "unfair labour practice" general is interpreted. The recommendations reveal not only an awareness as to the limitations of the court's powers, but also the remarkable confusion between value judgments and logical principles and between judgment of rights and negotiation of interests (if the suggestion that the Court be used as "intermediary" before a legal strike is called). In essence, this confusion still exists and, while it does, the concept of an unfair labour practice, as well as Industrial Court actions and judgments in this respect, will remain controversial issues.

There is no doubt that the court might, in some instances, be doing a good job, particularly in that it has obliged employers to carefully consider their actions. There is a need for a labour relations watchdog. However, the question is whether such watchdog can then be clothed in the garb of a court or act as one. If it is to be a court, the removal of the present confusion is vital.

## INDUSTRIAL RELATIONS Frame loses a round

The National Union of Textile Workers (NUTW) has won the first round in its battle for recognition at the Frame group's Pinetown plant. But its struggle for recognition as the most representative union in the textile industry's biggest single employer is far from over.

Two legal issues, which will have a vital impact on deciding whether the union will emerge triumphant over the Tucsa-affiliated Textile Workers Industrial Union (TWIU), still have to be decided by the Supreme Court.

This week a Durban magistrate ruled that Frame must stop deducting TWIU subs from the pay of workers who have resigned from the TWIU. The NUTW is using the resignations to show that it is truly representative at the Frametex plant and that Frame should be forced to grant it recognition. Frame demurred on the grounds that it had no right to cancel stop-orders without instructions from the TWIU.

Describing the judgment as "a good one," the NUTW's legal representative, Chris Albertyn, said: "This is just one more step in the union's struggle to be seen as the representative union."

But if the union thinks its chances of being recognised have been enhanced, it also knows it is not yet out of the woods.

Late last year, when the Frame group was on the point of recognising the TWIU, the NUTW successfully applied for an Industrial Court hearing on the grounds that it was an unfair labour practice to recognise a union that had not yet proved its representation. Frame subsequently brought an application in the Supreme Court in an attempt to restrain the Industrial Court from hearing the matter. It claimed the court had no right to intercede in an issue of union recognition. The matter will be argued on Friday.

The second matter being heard by the Supreme Court involves retrenchment procedures and is not really germane to the recognition issue, though there are links. Frame claims that it should have the right to decide who should be retrenched, and when. The NUTW argues, in response to a recent retrenchment at Frametex, that retrenchments should be handled on the last-in-first-out basis to avoid discrimination. The Industrial Court has granted the union a reinstatement order.

Frame is now requesting that the Supreme Court review that judgment.

Most observers, while conceding that the endless round of litigation delays matters, maintain that if the NUTW is as representative as it says it is, Frame will eventually be forced to recognise it.

Says NUTW general secretary, John Copelyn: "I'll say this for them they are putting up a good fight. But one of these days the workers will come out on strike and settle it in the streets. I'm sure they can."



Frametex worker ... recognition dispute

# New provisions in Bill on unregistered unions

PK&US 11/2/84

**Labour Reporter**  
**RECOGNITION**  
agreements between trade unions and employer bodies outside official industrial relations machinery would have to be submitted to the Department of Manpower in terms of the Labour Relations Amendment Bill

The Bill, published today, says that unless certain information is submitted to the industrial registrar by unregistered labour organisations, recognition agreements with employers would not be upheld in a court of law

All labour organisations would have to submit to the industrial registrar their constitutions, names of officials and office-bearers and membership returns

An explanatory memorandum says it has become common for trade unions to enter into recognition agreements with employers outside the official collective bargaining machinery

These domestic agreements laid down bargaining and grievance procedures, disciplinary

measures and the deduction of trade union subscriptions

"Wages and conditions of employment above the minimum prescribed in statutory wage measures are also negotiated with individual employers and the agreements arrived at are enforceable in common law, irrespective of whether the employers and employees are subject to an industrial council or conciliation board agreement"

### Membership

Unregistered unions would also have to maintain membership registers, keep accounts audited by a public accountant, prepare balance sheets once a year and submit statements of income and expenditure once a year to union members

They would also have to submit membership returns to the industrial registrar annually and keep "specified documents", such as financial statements and minutes of meetings for three years

The head office of the organisation would have to be in South Africa



## LABOUR LAW

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# Tightening all controls

The Labour Relations Amendment Bill, tabled in Parliament this week, seems designed to tighten government controls over the trade union movement. However, labour lawyers and academics are as yet undecided about the exact implications.

Initial comments indicate that the intention behind the Bill is to enable the Department of Manpower to keep a far closer eye on union activity than has been possible in the recent past. This is sure to be interpreted by some unions, especially the unregistered ones, as an attempt to whip them into line. As such it has the potential to spark vigorous objections and perhaps even labour unrest.

The most contentious elements of the Bill are those concerning private agreements about wages and working conditions signed between unions and employers outside the ambit of industrial councils or conciliation boards. In essence, it states that if unions or employer organisations do not comply with certain conditions specified in the Labour Relations Act, the agreements will not be enforceable by law in any court, including the Industrial Court.

Furthermore, if the parties to such an agreement do not comply with the provisions, they will be committing a criminal act. The provisions include

- Supplying the Industrial Registrar with a copy of their constitution, their head office address and the names of office bearers and officials,
- The maintenance of a membership register,
- Submitting membership returns annual-

ly to the Industrial Registrar;

- The keeping of proper books of account which must be audited annually,
- Making statements of income and expenditure available to members at a meeting to be held at least once annually;
- Such documents be retained for at least three years, and
- That the head office of a union or employers' organisation must be situated in SA.

The Bill adds a further condition that a copy of any private agreements must be submitted to the Department of Manpower. Again it seems that if unions or employer organisations fail to do this, any agreements they sign will not be legally enforceable in any court and they will be guilty of an offence.

"The idea is to get all unions to operate within the system created by government," a legal source told the FM. "Many unions, mostly those among the emerging union groupings, are not prepared to do so. Some have been operating outside the system and at the same time making use of institutions like the Industrial Court when it has suited their purposes. The Bill seems to be aimed at ending that kind of duality."

Other features of the Bill are

- Appeals for exemptions from industrial council agreements will be transferred from the Industrial Court to the Minister of Manpower. This affects mainly employers in "deconcentration" areas and small businessmen who cannot afford to pay the legally prescribed minimums, and
- The Minister of Manpower or the presi-

dent of the Industrial Court may appoint extra members to the court to fulfil specific purposes.

The Bill does not propose any controls over union activity or collective bargaining. If passed in its present form, however, it will ensure that the Department of Manpower knows at all times what is going on between employers and unions.

It may also be designed to ensure that emerging unions who obtain funds from overseas sources, as some are believed to do, reveal their sources or revenue in their audited accounts.



# DISPUTE GOES TO COURT

Sutton  
9/2/84  
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THE dispute between African Cables and the Engineering and Allied Workers' Union (EAWU) over the sacking of 700 workers will be brought

before the Industrial Court next month.

Lawyers acting for EAWU and the sacked workers, Mr William Lane, told The SOWE-

TAN, that management, in an attempt to reach an outside settlement with EAWU — who have threatened to take them to court — had opted to re-employ a hundred of the 700 sacked workers

The workers were sacked two months ago when they confronted management, demanding an explanation about the alteration in their four-day working shift to five days



## HEALTH

### Loop's heart view

South Africans are altogether too blasé about their health. The latest charge is that they are ignoring all the warnings about the contribution to coronary heart disease made by fatty diets, cigarette smoking and high blood pressure. The white male population is particularly at risk, according to US heart surgeon, Floyd Loop, who has been visiting this country.

Loop is chairman of the Department of Thoracic and Cardiovascular Surgery in Cleveland, and his hospital performs 3 500 by-pass heart operations a year. That's more than any other hospital in the world.

"Heart disease is the Western world's biggest killer," says Loop, "and despite medical and surgical advances, much of the change necessary to reduce the incidence of heart disease has to come from increased public awareness."

In the US, much of the population is aware of the facts. The result has been that the heart attack rate has been cut by 25% since 1968. A switch from animal fats to vegetable oils, reductions in amounts eaten, cutting down on smoking, and more exercise are factors which have contributed to the improvement.

"SA lags behind in this awareness," says Loop. So it has "the highest frequency of attacks likely to occur between the ages of 50 and 55."

Despite SA's reputation as a great outdoors nation, the muscles developed and maintained during sport-playing years and military service often turn to fat once people switch to armchair sports.

Loop says stress is an overrated cause of heart disease. "It is very difficult to make any generalisations about stress because it affects different people in different ways. However, in as much as it could lead to people smoking and raising their blood pressure, then it is a factor."

Women are no longer exempt from the scourge. What has, until recently, been mainly a man's disease is becoming increasingly common among women. "Whereas men have cut down their smoking dramatically in the US, the rate (of decrease) is smaller among women and their chances of developing coronary disease are higher than before," says Loop.

The old saying that the best things in life are bad for you seems true. But the choice would seem to be cut down now, or risk the possibility of death — or of open-heart surgery and a dramatic change in lifestyle.

## UNION MATTERS

### Cutting the cloth

The National Union of Textile Workers (NUTW) has won the first round in its battle with the Garment Workers' Industrial



Clothing workers ... targets of two unions

Union (GWIU). The stakes are supremacy in the Natal clothing industry. Industrial Court action which the NUTW now intends to launch could well signal new moves in the conflict.

A ballot to determine which union had majority support was held last Thursday among workers employed by protective clothing manufacturer James North Africa in New Germany. The NUTW got an overwhelming majority. The union, which is affiliated to the Federation of SA Trade Unions (Fosatu), garnered 219 votes to the Tucsa-affiliated GWIU's 43. This was the culmination of rivalry between the two, which began last year.

The GWIU, which is the sole union member of the Natal clothing industrial council, operates a closed shop in the areas falling under the council's jurisdiction. According to NUTW general secretary John Copelyn, his union has in the past organised clothing workers falling outside this area. Last year, however, the union signed up a number of clothing workers in the New Germany area, including the James North Africa workers, and applied for membership of the industrial council. The application was rejected on the grounds that the union did not have enough representation in the industry.

The GWIU's response was to change its constitution late last year to enable it to expel any members who joined another union. Because of the GWIU's closed shop, this meant that the jobs of workers within the industrial council jurisdiction who joined the NUTW were at risk. The closed shop prevents employers from employing

non-GWIU members — and if they do, they can be prosecuted by the industrial council under criminal law. The GWIU's action was clearly designed to discourage workers from joining the NUTW, and employers from employing those who did.

In the interim, attempts by the International Textile, Garment and Leather Workers' Federation to reach some kind of compromise between the rival unions proved futile. Matters came to a head at James North Africa.

#### Recognition

Commenting on the NUTW's victory Copelyn told the *FM* "Our recognition agreement with James North Africa, which has already been signed, will now come into force. We intend to break the GWIU's legal hold over workers. Initially we will appeal to the Industrial Court against the refusal of the industrial council to grant us exemptions for the (James North Africa) factory. We will also resist any attempt by the GWIU to expel workers from the industry because they join us. We regard that as an unfair labour practice."

GWIU general secretary Frankie Hansa says "Any organisation expects its members to be loyal. In view of that we decided to change our constitution."

A James North Africa spokesman indicates that the company will continue to employ the NUTW workers. "We now know which unions our staff would like to have," he says. Copelyn has indicated that his union will in future consider organising more clothing workers within the GWIU's area.



# Govt blocks union's bid

Mercury Correspondent

JOHANNESBURG—For the second time in a few months, the Department of Manpower has blocked an attempt by a union to have a key labour issue tested in the Industrial Court.

This move comes in the wake of employer resistance to the Court's role, which resulted in unions and workers winning several major advances last year.

The department's director-general, Dr Piet van der Merwe, has said the Government is planning to curb the Court's power by defining more strictly an 'unfair labour practice'. This is widely defined at the moment and unions have brought several successful 'unfair practices' cases before the Court.

The two moves prevent unions bringing alleged 'unfair labour practices' cases to the Court and have prompted speculation that the department is already moving to curb the Court's powers.

However, Dr van der Merwe denied yesterday that there had been any change in the department's attitude towards the Court.

'Any move to block 'unfair labour practices' cases was taken only after careful consideration and each case was treated on its merits, he said.

The department's decision on these cases could be challenged in the Supreme Court and it therefore did not take these decisions lightly, he said.

The latest move to block a court action is reported in *The Journalist*, journal of the Southern African Society of Journalists.

It says the SASJ has declared a dispute with the *Daily Dispatch* newspaper over its alleged refusal to join the unofficial conciliation board at which the SASJ bargains wages and conditions with newspaper managements.

## Stipulated

It asked the Minister of Manpower to appoint a conciliation board to settle the dispute and to include in its terms of reference the SASJ's charge that a refusal to bargain with it was an 'unfair labour practice'.

The minister has now granted the request for a board — but has stipulated that it must not consider the dispute as an alleged 'unfair labour practice'.

Unless there is an industrial council in an industry, 'unfair practices' disputes cannot be referred to the Court unless a conciliation board considers them first and this decision bars the union from taking the case to the Court.

SASJ sources said yesterday the dispute between it and the *Dispatch* was almost identical to an earlier dispute between it and other newspaper companies who had withdrawn from the conciliation board.

In the earlier case, the department allowed the case to go to court and the union won a temporary order instructing employers to bargain with it.

This, they suggested, meant the department had now changed its stance.

Dr van der Merwe said he was not aware of the details of the SASJ dispute.

But, he said, the department refused to allow a dispute to go to the Court only when the application did not meet the legal requirements or if it believed the applicant had no chance of success.

Mercury  
10/2/84

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# Migrants await

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1912 184 City Press  
MIGRANT workers are keenly awaiting a judgment which will determine under what conditions employers can re-trench them at the end of their contracts

## 'fair deal'

By  
**HOWARD  
BARRELL**

The Metal and Allied Workers' Union (MAWU) and 12 union members have asked the Industrial Court to rule that employers have to follow "reasonable and fair" procedures if bosses decide not to renew migrant workers' contracts because they want to cut down on staff

Until now employers have merely been able to

refuse to renew a migrant workers' contract

But MAWU argues that the Industrial Court should rule that migrant workers should have the same treatment as other workers facing retrenchment

Migrant workers should have proper warning that their contract is not going to be renewed, there should

be consultation with their trade union, employers should help them to find another job, and those who have been employed longest by the company should be the last people to be re-trenched, says MAWU

Judgment in the case brought against Screenex Wire Weaving Manufacturers has been reserved

Migrant workers in the metal industry have been amongst the worst affected by retrenchments.



## LABOUR NEWS

RAM 22/2/84  
165

# Issue of costs to be heard

Labour Correspondent

A KEY labour law issue — whether parties who win cases in the industrial court are entitled to costs — is to be argued in the Pretoria Supreme Court next week.

The issue is to be heard by the Supreme Court because the United African Motor and Allied Workers Union, an affiliate of the Council of Unions of SA, has appealed against an industrial court decision not to grant it costs in an action against Fodens, the motor components firm.

The union won the case — a landmark decision, extending the bargaining right of unions with a worker majority in a plant — but was not granted costs.

The union's lawyers said yesterday that the case would be argued on February 28.

The law setting up the industrial court does not make it automatic that the winning party is granted costs, except in exceptional circumstances.

Labour lawyers and unionists have argued that this sharply limits the ability of workers and unions with limited finances to take cases to the court.

In some cases, they say, unions or workers have decided against taking cases to the court — even though they have been told that they had a strong chance of winning — because of the knowledge that, even if they won, they would have to pay costs.

In the ordinary courts, the party which wins an action is usually granted costs by the court.

# Workers barred from industrial court decision

By STEVEN FRIEDMAN  
Labour Correspondent

FIVE fired workers have been prevented by the Department of Manpower from taking their sacking to the industrial court for a final decision — despite the fact that the court has already temporarily reinstated them.

This means the workers will not be entitled to any relief in the court once their temporary reinstatement order runs out at the end of this week.

The case comes in the wake of several others in which the department has intervened to prevent cases going to the court in which workers or unions have alleged an employer is guilty of an "unfair labour practice".

Unions and workers have won several key "unfair practice" cases in the court and this has led to a strong employer backlash against it. The department's decisions are seen as a reaction to this.

However, this is the first case in which workers have been prevented from going to the court after winning temporary reinstatement.

The case in which the department has intervened was brought by five members of the SA Chemical Workers Union, an affiliate of the Council of Unions of SA, against Pest Control (Transvaal).

The department has also intervened to prevent another alleged "unfair labour practice" case brought by the union reaching the court — this time against fertiliser company Triomf for allegedly refusing to disclose financial information to the union.

Labour law allows an "unfair practice" case to go to the court only if the department

agrees to appoint a conciliation board to consider the charge.

The department has been preventing these cases going to the court by appointing boards in disputes where the allegation is made, but excluding the alleged "unfair practice" from the board's ambit.

Before the department decides whether to appoint a board, however, parties claiming an "unfair practice" can go to the court to seek an interim order.

In the Pest Control case, the five workers, who were fired after not clocking in and out at lunchtime, asked the court to temporarily reinstate them in terms of a clause dealing with "unfair practices".

The court granted an order — but refused to do so under the "unfair practices" clause. Instead it granted the order under a section dealing with unfair dismissals.

The presiding officer, Advocate J Hiemstra, rejected argument by counsel for the workers that an unfair dismissal was also generally an "unfair practice".

While stressing the order did not mean the court had decided on the merits of the case, Adv Hiemstra found the five had made out a *prima facie* case by showing they were not given a hearing before being fired and that clocking in and out had been ignored by workers with the apparent agreement of the company.

Later, lawyers for the five received a letter from the department informing them that a board had been appointed to settle the dispute, but had been specifically told not to regard it as an "unfair practice" dispute.

The temporary order reinstating the workers expires at the weekend.



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FINANCE PORTFOLIO

Fm 24/2/84

# When Horwood goes

It now seems certain that Finance Minister Owen Horwood will be succeeded by "a technocrat" when he retires. Highly-placed government sources say Reserve Bank Governor Gerhard de Kock is most favoured by the power circle that surrounds Prime Minister P W Botha.

Convincing reasons are advanced for his candidacy. It is argued that under the new constitutional dispensation the Finance portfolio, traditionally the second most important Cabinet post, will be depoliticised to enable the incumbent to carry out his "general affairs" job of broad monetary and fiscal planning under the new constitution. Although there may be fierce bouts of sectional interest bargaining between whites, coloureds and Indians, it is hoped that exchanges will not descend to the political level — as they now do.

It's a fair bet that the mild-mannered, donnish De Kock would not relish a party political job that would require him to bat for the NP in the House of Assembly as it is now constituted. He would make a poor party hack.

It is even being argued that the job of Finance Minister in the "Second Republic" could be taken out of the Cabinet and attached to the Executive Presidency as a symbol of its non-political status and commitment to the common weal. This is how De Kock likes to operate.

As a technocratic Finance Minister, backed by a large department of specialists, he would be relieved of many of the tedious chores that Horwood now has to perform. It would mean that his appearances in Parliament would be limited to once or twice a year — at Budget time and for the Part Appropriation debate — with the routine work going to a couple of deputies, one of whom could be brown.

It is argued, too, that a man like De Kock, with no visible party affiliations, would be better suited to carry out a mandate of impartial negotiation. That's what the new constitution is supposed to be about.

Obviously a technocrat would be exposed to a certain degree of political recrimination in forums like the interracial standing committees on finance and economic affairs. But this will clearly not be the same as having to defend policies and actions in the heated atmosphere of a public debating chamber.

If the Exchequer and its related agencies were to be transferred to the State Presidency as a function of broad government, it would remove yet another possible objection to De Kock's candidacy — that he is not thick-skinned or tough enough to with-



De Kock ... in line for the Cabinet?

stand the financial demands of ambitious Cabinet colleagues. If the Exchequer were to become an extension of the Presidency that would presuppose the full support of the President who, after all, is answerable to no one.

But what of Constitutional Affairs Minister Chris Heunis? It's an open secret that he has coveted the Finance portfolio since 1975 when the late Nico Diederichs became State President. He is an obvious personal favourite of PM Botha and a member of the most influential family in George, the PM's constituency. The job would seem to be his for the asking.

Perhaps not. In fact, there is talk in high circles that P W Botha has told Heunis he is "too valuable" at this stage of the country's new deal to be taken out of constitution-building. Whether this is enough of a sop remains to be seen. Heunis may insist upon being named House majority leader in the white chamber, which would elevate him to the position of a kind of premier. But Botha may find it necessary to give the job to a Transvaaler to offset charges that the country is being run by a cabal of white *Kapenaars*.

## DISPUTES Fm 24/2/84 Ministerial muscle

Labour lawyers and industrial relations experts are watching with interest the Minister of Manpower's apparent moves to stamp his authority on the way certain disputes are handled.

The issue this time is a dispute involving five members of the SA Chemical Workers Union who won temporary reinstatement orders from the Industrial Court after being sacked by Pest Control (Transvaal) (Pty) Ltd. They were sacked after they failed to clock in and out during a lunch break.

Although the court granted a temporary reinstatement order, it refused to do so on the grounds that the sackings could constitute an unfair labour practice. Instead, it was granted on the grounds that the five had made a *prima facie* case of unfair dismissal — something that does not necessarily constitute an unfair labour practice.

The union in this case is a party to the Industrial Council for the Chemical Industry, Transvaal. It asked the Minister to appoint a conciliation board — which he has now done — to examine the cases of four of the workers.

Why the fifth worker was excluded is not known — except that the Department of Manpower says that "no doubt the Minister has good reason for his decision."

The board's terms of reference, however, effectively debar the union from returning to the Industrial Court to allege an unfair labour practice in this case. Unfair labour practice allegations can usually be heard by the court only if the Minister agrees to appoint a conciliation board whose terms of reference include the allegation.

Conciliation boards are generally made up of an equal number of members from each side in a dispute. In the case of failure by one of the sides to capitulate or compromise, this makes it extremely difficult for



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 (151) (187) (167) (143)



Minister P T du Plessis ...  
 terms of reference

them to reach a decision

In the event of failure by a board to reach a compromise, the way is open for the union concerned to take further action up to and including a strike. But most disputes are not carried that far. However, the union cannot go to the Industrial Court on matters not contained in the terms of reference decided by the Minister.

Unions have had several significant successes in unfair labour practice cases in the Industrial Court which has led to some agitation by employers to have the court's powers reduced — or the definition of an unfair practice to be more closely defined.

Department of Manpower officials deny, however, that the interpretation of the Pest Control decision which is causing most concern is accurate. Some observers believe the Minister's decision means that the workers will not be entitled to relief once the temporary reinstatement order expires — which it does this weekend.

Manpower officials, however, assure the FM that there is nothing to prevent the workers returning to the court to have the order extended pending the outcome of the conciliation board. "It has happened before and there is nothing to stop it happening again," an official source said.

## BY-ELECTIONS

### The why of winning

There was understandable jubilation within both the Progressive Federal Party (PFP) and the Conservative Party (CP) at the results of last week's by-elections. Each scored what it was entitled to regard as "a famous victory" — although the circum-

stances, and likely consequences, were very different.

The PFP probably has more reason for celebration, although the CP certainly does not need to go into mourning. The official opposition party was widely regarded as being in deep trouble following the mass defection of its supporters in the referendum, plus its municipal troubles in Johannesburg and Randburg.

That it could hold the Pinetown seat serves to demonstrate that it is not a spent force and that its voters, having demonstrated their disagreement with party policy on the referendum issue, are now prepared to return to the fold.

Whether this is true countrywide will not be known until some sort of elections are held in comparable Transvaal and Cape areas. However, the result does give the PFP a new lease on life as it prepares to cope with the complexities of opposition under the new constitution. It also demonstrates that the party decision to work within the new system was the correct one.

The CP, by contrast, achieved less in its Soutpansberg win. It certainly turned a small National Party (NP) majority into an equally tiny CP one. But there were unusual circumstances surrounding the resignation of the previous MP — former Manpower Minister Fame Botha.

The victory was also within one of the CP's accepted areas of strength. Soutpansberg falls within the only region to return a "no" majority in the referendum. What the party still has to demonstrate is that it can muster significant support outside the platteland plus a few urban constituencies where the mineworker vote is large.

Nonetheless the signs are that the CP could probably carry between 25 and 35 seats in a general election. The NP, after all, started from a smaller base in the Thirties.

What the by-elections have also shown is that the way people voted in the referendum is no guide to which parties they will support in future.

## BROWN ELECTIONS

### Positions for August

It is expected that the four Indian political parties will take part in the August 22 election for the Indian house of the new tricameral Parliament. They are the National People's Party (NPP), the Democratic Party, the Reform Party, and Solidarity. Three of them, however — Solidarity being the exception — originally demanded that government hold an Indian referendum to measure the acceptability of the new deal.

Amichand Rajbansi, leader of the NPP and executive chairman of the SA Indian Council, says although he is disappointed by the government's decision, his party will



Rajbansi ... 'disappointed, but willing to take part'

contest the election.

Solidarity party leader Pat Poovalingham, who preferred an election, welcomed the decision. He says the various congress organisations — the Natal Indian Congress and the Transvaal Indian Congress (TIC) — would use a referendum to cause confusion in the community.

But Yantilal Bhailal Patel, Democratic Party leader, says he is disappointed by the election decision. "Prime Minister P W Botha and Constitutional Affairs Minister Chris Heunis had said it was for us to decide whether we wanted elections or a referendum," he says. "Almost all us, including the SA Indian Council (SAIC), asked for a referendum. So I don't know on what basis the government made its decision."

"The government should have taken into consideration the feelings of groups rather than individuals. I'm terribly disappointed." A decision on whether the party would participate is expected soon.

Yelman Chinsamy, leader of the Reform Party, was not available for comment — but it is widely expected that his party will decide to contest the election.

Organisations opposed to the new constitution interpreted the election decision as justifying their opposition. Essop Jassat, president of TIC, says "The government's decision reinforces our view that this is a fraudulent scheme perpetrated by the government on the people of this country." He says the TIC, as an affiliate of the United Democratic Front, would continue calling for an election boycott. Meanwhile Allan Hendrickse, leader of the coloured Labour Party, says his party is already registering voters for the election.



By Sheryl Raine,  
Pretoria Bureau

The Industrial Court has become the centre of controversy and some managerial criticism in the past two years.

Management has become increasingly uneasy over the court's intervention in industrial relations matters and the certain inroads it appears to be making into traditional areas of management activity.

At a seminar in Pretoria on Monday, a leading labour lawyer, who has been touring the country talking to industrialists about the court and its important purpose in South Africa's growing field of labour relations, spelled out the guidelines already set by it in dealing with potential conflict areas.

The lawyer, who may not be named for professional reasons, also dispelled some of the myths and allayed managerial fears regarding the court.

"Certain employers believe that South Africa does not need an interventionist court and that the rules of collective bargaining should be left to collective bargaining

itself," the lawyer said. "To me that is the same as leaving gynaecology to babies."

"In South Africa we have a new system of labour relations being grafted on to an established system and the industrial court has a valuable role to play in thrashing out guidelines to make the two systems compatible and workable."

The South African labour scene, unlike that in countries such as Britain or Germany, involved the mass mobilisation of black workers, partially industrialised workforces, a long history of organised labour and a large proportion of the workforce which was as yet not organised.

"In Britain, the union federations themselves have laid down rules to deal with rivalry between trade unions."

"Here competition between unions is rife and it is unlikely that such rules to establish clear procedures regarding rivalry will come from the unions or rival federations."

# Industrial Court has important role in labour relations

165 Star  
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"This is an area where the industrial court has an important role to play," the lawyer said.

He said the court to date had not been interventionist. Most of its rulings and recommendations went no further than labour practices already recognised and recommended by most reputable companies.

"The industrial court has not imposed recognition of trade unions on a single employer. Most employers had already recognised unions long before the industrial court made its ruling on recognition."

"Employers have changed their approach radically in the last five years. They are now more flexible. A good employer is not usually brought before the court. The court has generally whipped up employers or those ignorant of the law."

## Important guidelines

which had been clearly defined by the court in various cases included:

- It is unfair labour practice to improperly interfere with a trade union's organising activities.

- In a situation of rival trade unions, the employer has to be neutral and cannot influence in any way at all the individual employee's choice of union membership.

- Management has a duty to negotiate in good faith with a representative or recognised trade union and any proposed changes which will affect the interest or conditions of service of employees must be discussed with the workers and their representatives.

- It is unfair labour practice for an employer or trade union to withdraw from a collective bargaining agreement or procedure without good cause.

Management has become increasingly uneasy about the intervention of the Industrial Court into what has traditionally been its areas of activity. In defence of its role, a leading labour lawyer talks about the court's importance in South Africa's growing field of labour relations.

has to have valid reasons for dismissal and there must be some kind of inquiry where the employee has the opportunity to put his case.

- Retrenchment guidelines have been clearly laid down. Management has an obligation to consult with representative trade unions or, in their absence, the employees themselves, before retrenchments begin.

- Criteria for retrenchment must be objective and the onus is on the employer to justify his selection criteria.

The lawyer said there was nothing in the court's guidelines on retrenchment that was not already included in over 150 retrenchment agreements drawn up and signed by employers and trade unions.

In the near future, he believed the court was likely to rule on these issues.

- The establishment of a clear set of guidelines on the relationship between bargaining at industry level versus plant level bargaining.

- The powers of discovery and the rights of trade unions to examine the books of companies which claim inability to pay when faced with wage demands.

- The relationship between new unions and closed shop unions within the same industry. A case involving the textile industry in Natal is about to come before the court and is expected to result in a clear ruling on this issue.

- The exclusion of discrimination on the grounds of sex, race, union activity, political conviction, religious affiliation in job selection.

The lawyer said the court should not be seen as part of a process of compulsory arbitration.

"Management can avoid being accused of unfair labour practice simply by going through all the procedures laid down for the prevention of industrial unrest in good faith," he said.

- The court has also implied that management is obliged to recognise a representative trade union and the employer must show good cause if he wishes to dismantle the negotiating structures.

- The grounds for dismissal include incapacity, misconduct and retrenchment. Management

RAM 27/2/84 □□□ (165)  
THERE seems no doubt now that the Department of Manpower is sharply limiting the number of unfair labour practice cases coming before the industrial court

A growing number of unions report having unfair practice disputes blocked by the department

Last week, members of Cusa's SA Chemical Workers' Union found themselves in the unusual position of having won temporary reinstatement from the court — but being prevented from taking the case back to the court for a final hearing.

So the department seems to be dismantling one of its own reforms in response to employer pressure.

This will weaken unions during the recession — but is likely to do little for the credibility of labour reform or for factory stability once the economy picks up.



Parliament and Politics

Labour

Provincial Council

# Unions oppose State 'interference' in labour

By RIAAN DE VILLIERS  
Labour Reporter

TRADE unionists yesterday expressed hopes that increased State intervention in labour relations contained in the Labour Relations Amendment Bill would be removed by the parliamentary select committee to which the bill has been referred.

In a surprise move this week, the Minister of Manpower, Mr Piete du Plessis, accepted a proposal by the Progressive Federal Party to refer the bill to a select committee before its second reading in Parliament

Trade unionists reacted sharply to

the bill when it was published for the first time earlier this year

They objected particularly to a new requirement that copies of all recognition agreements between unions and employers should be submitted to the Department of Manpower.

A provision that recognition agreements would be unenforceable in the courts if the unions concerned failed to supply the department with information about their organization required in terms of the Labour Relations Act was also criticized.

In Parliament earlier this week, Mr Du Plessis accepted the PFP proposal

and said it was necessary to reach the "greatest possible degree of consensus" in the sensitive labour field.

He said he was prepared to listen to MPs who as elected representatives were responsible to the voters, and he was also not prepared to make a "rubber stamp" of Parliament.

He said his acceptance of the motion did not mean he questioned the bill's contents or the motives behind it.

However, because of "misunderstandings and false interpretations", it was necessary for all parties to study the bill and see that it was sound.

He denied it was aimed at clamping down on black unions.

Yesterday, a spokeswoman for the Food and Canning Workers' Union said it believed the State had no part to play in the relationship between unions and employers.

"We hope the measures involving increased State interference will be removed by the committee," she added.

Mr Dave Lewis, general secretary of the General Workers' Union, said the union remained "completely opposed" to the notion that recognition agreements should be handed in to the State.

"This will be blatant interference in the process of collective bargaining."

## LABOUR LAW

(165) fm 2/3/84 (192) (124) (15)

# When the court is not a court

A landmark decision this week by the Transvaal Supreme Court has thrown doubt on the status and powers of the Industrial Court (IC). In essence the ruling, by Judges Enslin and Bliss, is that when it decides on unfair labour practice matters the IC does not have the authority of a court.

Labour lawyers say the finding casts doubt on when the IC does act as a court, and when it does not. The enforceability of its rulings is also called into question. Because the Supreme Court ruled only on the specific matter before it, and did not consider the overall functions and powers of the IC, it is not possible to say how the ruling could affect other areas of IC activity.

However, deciding on claims of unfair labour practices constitutes one of the most important areas of the IC's jurisdiction. Its powers are now in doubt.

The Supreme Court ruling came in an appeal from the IC in the case of the United African Motor and Allied Workers Union vs Fodens (SA) (Pty) Ltd. In the IC hearing the union established 37 unfair labour practices by Fodens against its members and won compensation for some of them.

## Appeal

However, the IC refused to grant costs against Fodens on the grounds that there was no specific statutory provision for it to do so. The union appealed to the Supreme Court in an effort to get its costs.

The Supreme Court, in ruling that the IC did not function as a court when considering unfair labour practice matters in terms

of Section 46/9 of the Labour Relations Act said it had no power to grant costs. The advocate for the union, Dan Bregman SC, immediately applied for leave to appeal to the Appellate Division in Bloemfontein.

A labour lawyer, Rod Harper, tells the FM that the decision "whether right or wrong, introduces legal chaos. It will have substantial repercussions on the development of labour law and its effect on the IC."

He adds that it is of interest that the IC "surprisingly" can, in terms of the relevant legislation, grant an order of costs where a frivolous application for an interim order concerning an unfair labour practice is concerned — but now may not do so when making a permanent finding.

More seriously, the decision casts doubts on the IC's powers and on the development of labour case law.

The ruling that in one of its major functions the IC is not a court leaves open the possibility that it also does not function as a court in other functions. The closest labour lawyers have so far been able to come to deciding what the IC is when it is not a court is that "it is some sort of quasi-judicial body — such as a tribunal."

In addition, no one now seems sure whether an IC ruling can be enforced if it is not the decision of a court.

It also seems that IC decisions in unfair labour practice cases cannot now form part of what had become a rapidly-developing body of labour case law. The decisions — not being the decisions of a court — cannot form precedents and are not binding in sub-

sequent cases.

And, Harper says, the Supreme Court seemed of the opinion that the Minister of Manpower could "clarify or vary" IC decisions in unfair labour practice cases. If that is so, the IC in such cases certainly does not function as a court whose decisions could only be varied on appeal to a higher court.

Harper says that part of the problem is that the Labour Relations Act is extremely badly drafted and that amending acts — of which there have been an average of one a year since 1979 — have been built onto the existing badly-drafted measure.

The result, he says, is confusion both among attorneys and laymen — and in the workplace, where an understanding of the Act is essential to both workers and employers.

## BUSINESS AREAS

### Confused reform

As it so often does, government handled this week's announcement that CBDs would be opened to all races in a stumbling and uncertain fashion. There is some reason to believe that Community Development Minister Pen Kotze jumped the gun on his ministerial colleagues. Hence some of the confusion.

The original intention seemed to be to tie the announcement to the findings of the Strydom Commission of Inquiry into the issue, and to make it when the report was

## SASOL IN MYSTERY COURT CASE

A case — innocuously titled "M Sellier and others vs Sasol Ltd and others" — is due to begin in the Rand Supreme Court on March 12. It may be one of the biggest legal hearings ever to come before a SA court.

The case is expected to be heard *in camera* and lawyers say that everyone connected, including the opposing legal teams, have been asked to sign undertakings not to reveal details. However, talk surrounding the case indicates that "hundreds of millions" could be involved.

No details are available about "M Sellier" — but he is believed to be part of a business consortium representing both SA and overseas interests.

High-powered legal teams are representing both sides, and there are believed to be three defendants: Sasol, the

Strategic Fuel Fund Association (SFFA), and an as-yet unidentified party.

The SFFA is a commodities-purchasing organisation with both State and private connections. It was identified in Parliament as the organisation that, in all innocence, bought the *Salem's* oil cargo before that ship was scuttled by international racketeers to hide the fact that they had sold the SFFA oil that properly belonged to Shell.

The SFFA has some directors in common with Sasol. A tight-lipped Sasol spokesman told the FM this week "Sasol is exempt from any action resulting from a SFFA transaction." He was not prepared to comment further.

Sellier (the man in whose name the case is being brought) and his associates are represented by Des Williams of Werksmans, and by Sidney Kentridge

SC, Clive Cohen SC, and Peter Solomon Cohen and Solomon refused to discuss the case with the FM this week.

The attorney for Sasol and the SFFA is Billy van der Merwe of Hofmeyr, Van der Merwe and Botha, and the advocates on the Sasol team are Fanie Cilliers SC, and Wim Trengrove.

J F Vos of the Pretoria firm of Gildenhuys and Liebenberg with W Cooper SC and J du Plessis, represent the mystery third defendant. Vos refuses to disclose the identity of his client.

Nothing was known about Sellier or his partners at the time of going to press — apart from the fact that some of them are from London. Talk in legal circles suggests that one could be a "top businessman," another "a foreign ambassador," and a third "the wife of a leading SA politician."



# Court under pressure

LABOUR WEEK

By STEVEN FRIEDMAN

ROM 5/3/83 (165) ~~166~~  
THE industrial court's role in labour relations is under pressure again.

At issue is its role in unfair labour practice disputes — the majority of cases with which it deals

Union victories in some of these led to an employer backlash and the Department of Manpower plans to curb the court's powers in this area. It has also prevented many such cases coming before the court.

Now a Pretoria Supreme Court has ruled that when it hears these cases, the industrial court is not acting as a court, but as an administrative body

The immediate effect is that the court cannot grant legal costs to parties who bring cases to it — even if they win.

This largely confirms the existing position — the court has granted costs rarely — but does make it harder for unions and workers with limited finances to use the court

Some lawyers believe the judgment goes much further and will sharply weaken the court's power to act effectively in unfair practice cases — the most crucial area of its operation.

This may be over-hasty. Lawyers stress that the decision cannot be assessed fully until a written judgment becomes available.

The case is also being taken to the Appeal Court for a final ruling

Some lawyers argue that whether the industrial court is a fully-fledged court or not has little to do with its future role. Even if it is an administrative body, it can still take decisions and have them enforced

The key issue, they say, is whether the ruling has specifically curbed the industrial court's powers. And even if it has, the issue will not be settled until the Appeal Court has decided the issue finally

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THE Department of Manpower's Bill extending greater control over union recognition agreements has run into sub-

stantial opposition.

The Bill would prevent the courts enforcing agreements if the union which signed them had not submitted information to the Department.

It would also force unions and employers to submit these agreements to the Department.

Last week, the Bill was referred to a select committee after being sharply criticised by the Opposition. It seems reasonable to assume that it also faced resistance in other quarters.

Its referral to the committee means it will probably be delayed to next year's session of Parliament — if it is reintroduced at all

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# Saucy slip-up cost Willard the waiter his five-star job

By PIPPA GREEN, Labour Reporter

A FIVE-STAR city hotel has been ordered by the Industrial Court to re-instate temporarily a waiter who claims he was unfairly dismissed.

It was alleged that a major reason given for the dismissal of Mr Willard Nodlela, who worked at the Mount Nelson Hotel for nine years, was that he had served tartare sauce in a stainless steel instead of a silver bowl.

It was alleged that, at the time, he was serving the then managing director of the hotel, Mr K Morton-Chance, and his guests.

Mr Nodlela, who is on the executive committee of his union, the Liquor and Catering Trades Employees' Union, alleged he was unfairly dismissed.

"I have been a waiter for nine years I think they were trying to get rid of me because of my union involvement," he said after his reinstatement.

He was temporarily reinstated for three months, pending settlement of the dispute.

The general secretary of the union, Mr Ted Frazer, alleged the dismissal was "victimisation".



Mr Willard Nodlela smiles after hearing the Industrial Court has temporarily reinstated him.

"The waiters were very busy on the night of Mr Nodlela's dismissal. Everyone was under pressure, and Mr Nodlela put the tartare sauce on the table for people to help themselves. This was not an unusual thing to do."

Mr Frazer alleged it was also not the first time waiters had served tartare sauce out of stainless steel bowls.

"Sometimes when there is a function at the hotel, the silver bowls are used elsewhere," he said.

KSM 4384 165

# Tucsa threatens to quit Manpower Commission

By STEVEN FRIEDMAN  
Labour Correspondent

IN A surprise move the Trade Union Council of SA (Tucsa) has threatened to quit the National Manpower Commission — a key element in the labour reforms introduced by the Wiehahn Commission

The NMC was set up to advise the Government on labour issues and is made up of employer, Government and union representatives and some academics. No emerging unionists have been appointed to it and Tucsa is the main union body serving on it.

In the latest edition of its journal, Labour Mirror, Tucsa says a recent meeting of its national executive was "overwhelmingly critical" of the NMC.

It said the NMC had become "irrelevant". Tucsa felt its presence on it was "lending credibility" to the NMC and thus harming Tucsa's reputation.

Its attack means the NMC is the second key body introduced after the Wiehahn reforms to come under attack recently. The industrial court has been criticised by employers and faces a curbing of its powers.

Tucsa says the NMC was supposed to be a "tripartite body" composed of unionists, employers and the Government but is "weighted" with civil servants and academics "who have no direct involvement in labour matters".

It adds that it has become "bogged down and remote" and is "churning out huge documents which mean nothing". Some academics on the NMC, Tucsa says, are serving as "surrogate representatives of emerging unions".

It says several employer members of the

NMC are "known to be unhappy" with its direction.

Tucsa also attacks NMC spokesmen, including its chairman Dr Hennie Reynders, for statements they made on a current NMC probe into farm labour.

Tucsa wants the NMC to recommend minimum standards for farm workers' conditions but an NMC spokesman said recently it was not the job of the inquiry to recommend actual standards.

Labour Mirror criticises this and says that, in a letter to Tucsa's general secretary Mr Arthur Grobbelaar, Dr Reynders defended the statement.

Dr Reynders could not be reached for comment yesterday, but the director-general of Manpower, Dr Piet van der Merwe — whose department appoints the NMC — said he had received no formal approach from Tucsa on the issue.

He was reluctant to comment as he had not studied the article and because "the NMC is an independent body and we do not intervene in its work".

Tucsa's views on the NMC's membership "might not be shared by others".

The Tucsa attack comes in the wake of suggestions that some NMC members are frustrated with its direction, arguing that it is too large and that key recommendations for reform are sometimes "sabotaged" by NMC members.

There is also hostility towards the NMC among Department of Manpower officials and some NMC members believe this has led to the commission not being consulted on recent labour legislation.

JOHANNESBURG —  
The chairman of the  
National Manpower  
Commission, Dr Hennie  
Reynders, has replied to  
an attack on the inquiry  
into farm labour

The Trade Union  
Council of SA (Tucsa)  
has threatened to quit  
the commission in an  
article in the latest issue  
of its journal, Labour  
Mirror

The article also  
charged that Dr Reyn-  
ders had rejected the  
idea that the NMC  
should lay down specific

165  
NMC chief  
replies  
to Tucsa  
attack

8/3/84  
minimum work condi-  
tions for farm workers  
Dr Reynders said  
yesterday the attack had  
"come as a complete sur-  
prise" Tucsa, he said,  
had not raised criticisms  
of the NMC at its recent  
meetings, nor had it

approached him on the  
issue

Its attack on his farm  
labour stance, he added,  
"seems to misunder-  
stand what I have been  
saying"

Dr Reynders said he  
had said the NMC should  
not lay down actual  
minimum wages or con-  
ditions for farm workers

"Instead, our role is to  
suggest machinery for  
ensuring these stan-  
dards are laid down —  
which is exactly what  
Tucsa itself is deman-  
ding," he said — DDC



RDM 8/3/84 (165)

# Tucsa's manpower body pull-out threat 'could be a publicity stunt'

By STEVEN FRIEDMAN  
Labour Correspondent

THE threat of the Trade Union Council of SA (Tucsa) to quit the Government's National Manpower Commission seemed to be an "image building exercise" to counter criticism that Tucsa has moved too close to the Government, NMC sources charged yesterday.

In the latest issue of its journal, Labour Mirror, Tucsa launches a sharp attack on the NMC — an advisory body which is a key element in Government labour reforms — and threatens to withdraw from it.

It says the NMC is "weighted" with civil servants and academics "who have no direct involvement in labour matters" and charged that some of the academics were "surrogate representatives of emerging unions".

The NMC, Tucsa charged, had become "bogged down" and was "churning out huge documents which mean nothing".

It also attacked the stance of the NMC's chairman, Dr Henrie Reynders, on a current NMC probe into farm la-

bour — charging that he had rejected the idea that the NMC should lay down specific minimum work conditions for farm workers.

Dr Reynders said yesterday the attack had "come as a complete surprise". Tucsa, he said, had not raised criticisms of the NMC at its recent meetings, nor had it approached him on the issue.

Its attack on his farm labour stance, he added, "seems to misunderstand what I have been saying".

Dr Reynders said he had said the NMC should not lay down actual minimum wages or conditions for farm workers.

"Instead, our role is to suggest machinery for ensuring these standards are laid down — which is exactly what Tucsa itself is demanding," he said.

NMC sources yesterday suggested that Tucsa's attack on academics within the NMC could have been prompted by a fear that they favoured labour relations reforms which might threaten Tucsa unions.

The NMC is currently investigating

the "closed shop" and the industrial council system — both of which Tucsa strongly supports.

One source said some academics on the NMC believed the inquiry into councils should "question all aspects of the system and accept nothing as given".

But Tucsa, he said, believed "that we should simply accept the council system in its present form".

But the sources added that they believed the attack was prompted mainly by a desire to strengthen Tucsa's image as a body independent of the Government.

Tucsa has suffered a sharp decline in its image, among black workers and overseas, partly because it has been accused of being too allied with Government policy.

Last year it announced a campaign to revive its public image.

NMC sources confirmed Dr Reynders's charge that Tucsa had not voiced any dissatisfaction within the NMC and said this seemed to indicate that the attack was aimed chiefly at attracting publicity.

~~FM~~ ~~165~~ ~~14/15~~  
FM 9/3/84 (165)

**MINE LABOUR**

The final resolution of an important dispute between the 15 000-strong Mine Surface Officials' Association (MSOA) and the Chamber of Mines has been delayed

Indications are, however, that unless the dispute can be settled during extended conciliation board (CB) hearings the union is prepared to take a tough stand — including legal action before the Industrial Court

The dispute, which could have important implications for racial harmony and black advancement on the mines, arises basically from the interpretation of what constitutes a "surface official"

The MSOA claims the chamber has been guilty of an unfair labour practice in the appointment of blacks to jobs traditionally held by MSOA members under a closed shop arrangement

Last year the Minister of Manpower appointed a CB to try and settle the dispute. The board was to have held its final sitting on Thursday of this week but Robbie Botha, MSOA's general secre-

tary, tells the FM it has been decided to extend the CB's life by 30 days

Botha says the union's council was to meet on Friday this week to decide on what action to take if the CB failed to resolve the issue

The MSOA is not opposed to the advancement of blacks on the mines. In fact in July last year the previously all-white union obtained permission to open its ranks to blacks

However, a 1973 agreement obliged chamber-affiliated mines to obtain the MSOA's consent before appointing blacks to "occupations or aspects of occupations which either legally or traditionally, have been regarded as those of members of the MSOA"

When the union approached the chamber in 1980 for a list of occupations which, if filled by blacks, would be regarded as falling under its jurisdiction it found that, potentially, 18 000 blacks qualified

The union holds that their appointment is a violation of its agreement. It

also claims their appointment is a violation of the closed shop and that the black incumbents are paid less than would be paid to whites in the same jobs

The union wants all blacks appointed to surface officials' jobs to be forced to become members of the MSOA in terms of the closed shop arrangement. This would prevent them joining emerging unions such as the fast-growing National Union of Mineworkers

The chamber disputes the union position — pointing out that when the agreement was signed there was no prospect of blacks becoming surface officials. It also claims that the agreement did not specify that if blacks were appointed to such positions they would be subject to the closed shop

The CB has agreed that the talks on the issue should remain confidential. It is believed that there has been considerable difficulty in reaching an agreement. However, the extension of the CB's life indicates that both sides feel a solution is possible

and for the cessation of hostilities in Namibia itself"

The FM understands it is likely that Toivo was consulted before the statement was released

In contrast, the People's Liberation Army of Namibia (Plan), Swapo's armed wing, has sent some 800 guerrillas into Namibia and at the same time opened up a new front in the east near Gobabis. It is believed that the guerrillas are trying to establish a "presence" inside the country before the border is sealed off by the MPLA and SA

SA's strategy seems to be to avoid meeting Swapo directly, but to try to involve the organisation in talks with Namibia's internal parties. It is believed that Lucia Hamutenya, Swapo's assistant secretary for legal affairs and sister of Swapo strongman Hideo Hamutenya, has returned to Namibia. She is the first external leader to return and others are expected to follow. SA is not expected to put obstacles in their way

In addition the FM was told that other political detainees would be released — with releases being phased to keep momentum

Much could still go wrong, but diplomatic sources are convinced that the momentum will indeed not be lost

**US ELECTION**

**Hart to the fore**

"As Maine goes, so goes the nation," was a favourite 19th-century American political aphorism, writes our Washington correspondent. It may no longer be true that the

northernmost US state mirrors America's mood — on the other hand it may, because days after winning the Maine Democratic presidential caucus Senator Gary Hart also carried the Vermont state poll

Two weeks ago, Gary Warren Hart, aged 46 or 47 (he says he can't remember), was a US Senator from Colorado who was mentioned way back in the list of eight announced candidates for the Democratic Party nomination to face Ronald Reagan in November. Often he would be named second-last, after Reuben Askew and Senator Ernest Hollings (both conservatives) and Senator Alan Cranston. And usually just before the phrase "and the Rev Jesse Jackson"

This was because two weeks ago, the frontrunner was Walter "Fritz" Mondale, the Jimmy Carter Vice-President who was the choice of congressional Democratic leaders, the party's permanent hierarchy and fundraisers, the powerful labour unions, and, it must be confessed, most of the American press

The number two spot went to former astronaut Senator John Glenn. After that, the litany began, usually with George McGovern, the arch-liberal whose 1972 nomination was disastrously defeated by Richard Nixon. Hart had been McGovern's campaign manager in 1972 and, liberals reasoned, why not stick with the genuine goods?

But that was two weeks ago. In Iowa, Hart ran a stunning second to Mondale. A week later, he beat Mondale handily in the first primary vote — in New Hampshire. Going further north to Maine last weekend, he dealt a serious, if not fatal, blow to Mondale's campaign by garnering 50.7% of the Democratic votes in that primary tally

to Mondale's 43.7%. And in Vermont on Tuesday, with 32% of the vote counted when the FM went to press, Hart was leading with 71% of the vote to Mondale's 19%

In terms of the delegates, votes that have been tied up for the Democratic convention in San Francisco in July, fewer than 3% of the 3 933 votes are committed. Mondale has 131, Hart only 29 — Glenn with 17 and Jackson with 10 are running behind. Almost 100 of those committed delegates were a free gift to Mondale from the leaders of the party in the US Congress

**Real test**

In short, pollsters, campaign fundraisers and party leaders aside, the voters appear to be lining up behind Hart and balking at Mondale's candidacy. The real test, however, lies ahead. Between now and March 13 ("Super Tuesday," the press has dubbed it), fully one third of the delegates will be chosen in primaries that range from liberal Massachusetts on the Atlantic coast to Hawaii and American Samoa in the Pacific. By mid-April, fully half of the convention vote will be committed

Mondale has spent millions of dollars of his own and millions more of union money to build up campaign organisations in the southern states where primaries will be held between now and "Super Tuesday". Hart is relatively unknown there and he shifted his campaign focus in that direction only a week ago

Can he do it? His stunning performance in the first three contests of "Campaign '84" have won him all the free TV and press attention he can handle

The media aside, his message appears saleable. Hart espouses a brand of "neo-lib-

FM 9/3/84



# R2 a month farm wage row threatens to turn into a major labour dispute

By Barney Mthombathi

A MONTHLY wage of R2 earned by a Northern Natal farmworker is at the centre of a major dispute which is threatening to force the Trade Union Council of South Africa out of the National Manpower Commission.

Tucsa is also unhappy with the composition of the NMC, which, it claims, is "loaded with civil servants and academics who have no direct involvement in labour matters".

Tucsa, regarded as conservative to the point of seeing eye-to-eye with managements, says the commission is now irrelevant and insincere, and is seriously considering opting out unless the issues raised are put right.

The NMC was established in November, 1979, following recommendations flowing from the Wiehahn Commission's report. Its main tasks are to advise the Government through the Minister of Manpower on labour matters by conducting research and to investigate proposals of the Wiehahn Commission which may lead to change or the introduction of new labour laws.

Although the NMC is conducting an investigation into the conditions of employment of agricultural and domestic workers, it has refused to hear verbal evidence from farm labourers, much to the chagrin of Tucsa.

Tucsa had specifically requested the commission to hear evidence from Mr Sikhala Masengemu, during whose trial for stock theft last December it was learned was paid R2 a month by his employer, a wealthy Colenso farmer.

Mr Masengemu said in mitigation he was compelled to steal to support his wife and two small children. He got a nine-month suspended sentence from the magistrate who said Mr Masengemu was so badly off he "was left with no alternative but to steal".

Tucsa feels Mr Masengemu's evidence was among matters central to the investigation and therefore cannot be ignored by the commission.

The NMC's Dr Andries du Toit responded by saying it was not the inquiry's aim to set up minimum conditions of employment for farm labourers. He was supported by his chairman, Dr Henne Reynders.

Tucsa general-secretary Arthur Grobbelaar said in a letter that the NMC's response to this issue was most unfortunate and would seriously embarrass the various members of the committee conducting the investigation.



□ Tucsa boss Grobbelaar

## Tucsa gets tough

The other is the composition of the commission itself.

"We want to see a true tripartite system — workers, employers and government representatives in the NMC," he said.

"Our basic attitude if the NMC doesn't do what we say must be done, is that we don't want to be associated with the NMC."

### Harmed

Tucsa feels its presence on the commission is lending credibility to it while the council's reputation is being harmed in the process. Tucsa says the commission has been taken over by civil servants and academic with no direct involvement in labour matters.

"As a result the commission has become bogged down and remote and is churning out huge documents that mean nothing," says the Labour Mirror, Tucsa's mouthpiece.

In an editorial the paper says it will be a disaster if the NMC — so recently a source of hope — is allowed to founder as a result of bureaucratic inter-

ference.

"But founder it will unless the Government moves quickly to get it back on course. The White Paper advocating its establishment spoke of a body sufficiently representative of all parties though not so large as to be ineffectual.

"But Government ignored its own guideline and the result is an unwieldy monolith loaded with civil servants and academics remote from the industrial relations interface."

The paper says Tucsa unions, which make up the majority of worker representation on the commission, "are frustrated to the point of anger."

"They feel that they are being used to lend credibility to an organisation that has ceased to be sincere in its efforts to guide the country towards enlightened labour practices."

Tucsa calls on the Government to revitalise the commission in line with its original objectives if it is to retain substantial worker input.

"If not, it is likely to become a farcical body with little significant employee — and, perhaps, employer — support."

# Conflicting laws 'source of strife'

By MARTINE BARKER

THE potential for conflict in South Africa was being increased by the government's entrenchment of contradictory policies concerning the control of the black population's movement, Mr Geoff Budlender, an attorney with the Legal Resources Centre in Johannesburg, told a seminar on labour law last week.

Addressing the seminar in Houhoek, Mr Budlender said the contradiction lay in the government's need for a black presence in urban areas to serve labour demands and the government's need to keep blacks out of urban areas because of the perceived threat to

white security.

On the one hand, influx control, based increasingly on the question of citizenship, was being entrenched, while in the arena of labour legislation, blacks were being afforded rights they never had before.

Conflict would be caused by the contradiction involved in allowing blacks the rights to participate through trade unions in forming industrial councils, and thus the right to participate in creating law. At the same time, they were being denied all other rights by being denied South African citizenship.

Mr Budlender described three categories of citizenship applicable to blacks — South African, for non-independent homeland inhabitants; new foreigners, who were inhabitants of newly-independent homelands, and aliens who had never been South African.

This last category included for example all children born after independence of Xhosa parents, who were all now Transkeian or Ciskeian citizens. Conflicts would become apparent

as Xhosa parents working in urban areas began trying to send their children to school.

As aliens, the children would be subject to deportation for being in the area illegally.

At the same time, the government was entrenching the migrant labour system, with the denial of rights that this implied. The Industrial Court in one of its rulings had stated that blacks had the right to security of employment in their jobs in South Africa.

While it could be expected that more and more blacks would acquire the right to live in urban areas in the wake of the Rikhotso and Komani judgments, the opposite was in fact happening.

In some areas, such as KwaMashu outside Durban, black townships were being rezoned to fall outside prescribed urban areas, removing the right of the inhabitants to live and work in the city.

In other areas, development in existing townships was being frozen and new adjoining townships just beyond the prescribed area were being built.



# Race counts least for employers

By BARRY STREEK  
HOUSE OF ASSEMBLY.  
— Race is ranked the least-important criterion used by employers in selecting people for jobs, a National Manpower Commission study has found.

Sex was found to be the next least-important criterion, the study of in-service training in South Africa in 1980-81 found. The study findings, tabled in Parliament yesterday, show that work experience, intelligence, specific expertise and basic educational levels were the highest-ranked criteria.

The study, conducted among 2 194 organizations representing 43 percent of the labour force in sectors involved, also found that although unemployed people were one of the largest pools available for recruitment, they were not used as the largest source of employment by these organizations.

It found that although whites constituted 20 percent of the economically-active population, they formed 30 percent of the labour force, while blacks, who constituted

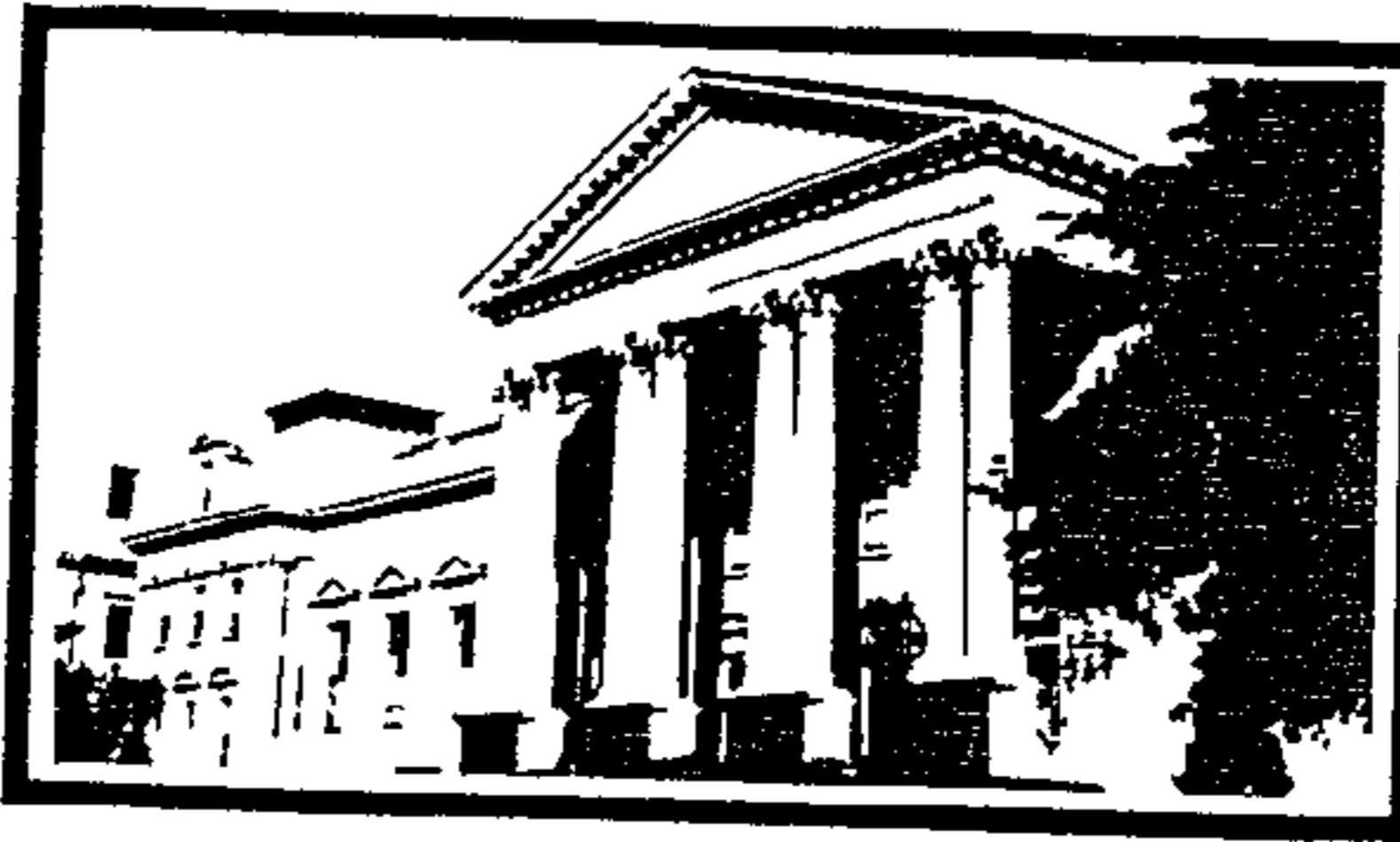
become so in the future. The survey, conducted by the National Productivity Institute on behalf of the National Manpower Commission, found that subjective methods

skilled was rated as more adequate than the education of other population groups

But the percentage of organizations which rated the education of black people as poor or fair was more than twice as large as the number which rated it as good and very good.

It also found that the labour turnover of unskilled employees was more than three times as high as that of highly-skilled employees.

The survey showed that 6,8 percent of the organizations felt they had "many" black workers capable of being trained as artisans, 26,7 percent felt "some" black workers were capable of being trained as artisans, 32,6 percent felt "few" of their black workers were capable of being trained as artisans while 17,5 percent felt "none" were capable of being trained.



68 percent of the economically-active population, held only 59 percent of the jobs.

Although people completing their military service were not yet numerically an important source of recruitment for organizations, they could

such as recommendation by a supervisor were much more common than more objective methods that might lead to more realistic levels of selection for training.

The education of whites working at all skill levels except un-

# Union has training subsidy

Star  
29/3/84  
Labour Reporter

The first Government subsidy to be paid to a trade union for a training course in labour relations has been handed to the SA Iron, Steel and Allied Industries' Union by the Minister of Manpower, Mr P T C du Plessis

The Treasury order for R16 545,91 was presented to the union in Pretoria at today's opening of the eighth biennial congress of the all-white South African Confederation of Labour

Mr du Plessis told confederation members it will not help to shut one's eyes to certain developments in the labour field  
He pointed to

- The increase in black membership of trade unions Membership rose from 0,7 million in 1979 to 1,2 million in 1982, a 68,6 percent increase of which white membership amounted to 7,7 percent
- The proliferation of trade unions and federations At the end of 1983 the Department of Manpower recorded 18 federations and 243 unions
- Competition between unions which "has led to strained relations between the unions and the creation of uncertainty among members".
- Differing interpretations of such things as registration, the definition of an unfair labour practice, the advantages and disadvantages of closed shop agreements and the Industrial Council system



# NUTW wins right to take dispute to Industrial Court

165 By Carolyn Dempster,  
Labour Reporter

3/3/84

port from the majority of workers in  
the New Germany complex

In an important development in the long recognition dispute between the Frame textile group and the National Union of Textile Workers, the Durban Supreme Court yesterday handed down a judgment allowing for the dispute to be heard in the Industrial Court

The ruling, in favour of the NUTW, means the case can be debated in the Industrial Court

Frame had fought against this since the union first brought an unfair labour practice claim against the Frametex Mill

The dispute is over the Frametex Mill's recognition of the Tucsa-affiliated Textile Workers' Industrial Union and not the NUTW which gained sup-

"It is a very important judgment because if the court had ruled in favour of the Frame Group it probably would have resulted in a violent response by the workers," said Mr John Copelyn, acting general secretary of the NUTW

In April, the NUTW asked the Minister of Manpower to appoint a conciliation board to resolve the dispute

Frame opposed the request on the basis that the dispute be settled by a "trial of strength" between the two unions

The conciliation board failed to resolve the dispute

The NUTW then applied for an interim court order restraining Frametex Mill, with 3 500 employees, from recognising the Tucsa union

PAUL PRETORIUS

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# 'Yes' to the Industrial Court



The Industrial Court has become an increasingly important factor in settling labour disputes. During 1983 it became a vital component of union strategy,

particularly for applications involving allegations of unfair labour practices. This trend has alarmed some employers who have called for the court's jurisdiction to be curbed. Paul Pretorius, an advocate with the Legal Resources Centre, comments.

In order to assess the role of the Industrial Court (IC) in the exercise of its unfair labour practice (ULP) jurisdiction, one first has to establish what the guidelines for fair employment are

This can only be defined negatively. In other words, anything which falls outside the definition of a ULP must logically constitute a "fair" employment practice.

In general terms the SA Labour Relations Act defines a ULP as any practice involving any change in practice at the workplace, other than a strike or a lockout, which has, or may have, the following, or similar, effects

- That any employee may be unfairly affected or that his employment opportunities, work security or physical, economic, moral or social welfare may be prejudiced or jeopardised,
- That the business of any employer may be unfairly affected or disrupted,
- That labour unrest is or may be created or promoted, or
- That the relationship between employer and employee may be detrimentally affected.

## Definition

Before this definition was adopted, ULP was defined as any labour practice which the IC regarded as being unfair. The current definition is somewhat more precise than its predecessor, but is substantially different from its counterpart in US law

By framing the definition as it did, the SA legislature deliberately allotted to the IC the task of establishing in more precise terms what should or should not become ULPs. Every case concerning the ULP concept that comes before the IC is therefore one in which new guidelines of fairness — new law in fact — are potentially created

A question which many people may ask in the light of this is what happens to the individual contract of employment? And how is the individual employer/employee relationship affected by the concept of the ULP?

The answer is that the individual contract of employment becomes of incidental importance. It is the *relationship* between employer and employee which is of primary importance — not the contract as such. And it is a dispute about that relationship which will lead to allegations of a ULP, rather than a breach of contractual obligation.

The implication for the employer/employee relationship is that acts which may previously have been perfectly legal in terms of the common law may now be prohibited as being unfair. It follows that the managerial prerogative has been limited and that those limits are the limits of fairness and responsibility as defined in the Act.

In the few short years of its existence, the IC has begun to establish clear guidelines for the management of the employer/employee relationship on a fair basis. In doing so it has performed no more and no less than the task it has been set by the legislature. It has done so at a time when the new unionism is making its presence felt in a substantial way in SA industry and commerce. And it has done so in a political and economic climate that is at best uneven.

The IC has achieved three things

- It has managed to draw some of the conflict between workers and management into the terrain of judicial or quasi-judicial structures,
- It has begun, as many Western countries have already done, to confine the managerial prerogative to limits of fairness and social responsibility; and
- As a trade-off with unions it has begun to curb the use of unilateral union action, such as the strike, and many unions have sought to make use of the court's machinery to achieve their short-term goals.

Despite this, the IC has recently come under heavy fire. Some of the criticisms have been directed at the legal soundness of some of the court's judgments. Such criticism is perhaps inevitable, especially at such a formative stage of the court's development. Of more significance is the concerted attack on the concept of the ULP itself.

The most extreme form of this argument is the contention that the ULP should be severely restricted, or even

abolished, and that the parties to the collective bargaining process should be left to their own devices. In other words, that the State should not intervene to restrict the managerial prerogative.

## Intervention

It is nothing new for the State to intervene in this way. Labour law contains many examples. Provisions about child labour or maximum hours of work were passed in Western countries over a century ago. One can hardly argue that these provisions should have been left to the collective bargaining process.

Similarly, no one has argued that the other provisions in SA labour law should have been scrapped and left to collective bargaining. I refer, for instance, to provisions protecting workers against victimisation, those for health and safety, and those for minimum working conditions.

The relationship between employer and the individual employee (he who suffers the ULP) is an unequal one. It is trite that employers wield far more power than the employee. For this reason the employee needs the protection of statute and the introduction of the ULP is one such protection.

To say that the question of the ULP should be left to collective bargaining has as its assumption the fact that the employee is represented by unions which have sufficient bargaining power to establish these practices. This is clearly not the case in SA. Even where there is such representation — and this is not the rule — unions are simply not powerful enough to redesign SA's employment practices without the assistance of the State.

In addition, the major union weapon in the collective bargaining process, the strike, has been all but removed as a viable instrument of pressure. This has been done firstly by the employers' habit of firing striking workers and secondly by State action in the form of legislation and police intervention. It is difficult to avoid the conclusion that the cry for a return to free collective bargaining is no more than a request for a return to the traditional unequal bargaining positions.

In time I am sure we will be able to look back and see the ULP as having taken its place alongside its statutory predecessors and as just one more step in the development of an industrial relations system more suited to its times.



3/13/84

# Reply on wages of sheltered workers

S. Post

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SIR — I would like to comment on the letter from Mr Chris Beer under the heading "Pay rise needed for disabled workers" (Weekend Post, February 25)

An investigation has revealed that your correspondent was admitted as a sheltered employee to Service Products (N'Dabeni) in Cape Town, on November 3, 1980, where he was employed until he resigned voluntarily on January 12, 1982

In regard to the matters raised by Mr Beer, the department wishes to comment as follows

The Sheltered Employment Scheme administered by the Department of Manpower provides for the establishment of factories where persons may be employed who suffer from physical and mental disabilities and who, as a result of their disabilities, are unable to undertake or retain work in the open labour market, but who are nevertheless able to do worthwhile remunerative work under sheltered conditions

The various factories where persons eligible for sheltered employment are employed operate as autonomous bodies which

are subsidised by the department, and sheltered employees can, therefore, not be classified as public servants. The projects where they are employed are also not "Government shelters", as stated by your correspondent

The aim of sheltered employment is to foster the self-respect and sense of independence of a disabled person and to give meaning and content to his existence by providing him with security in employment and wages

The conditions of service of sheltered employees are determined with the emphasis perhaps not so much on their productivity but on their willingness to work and to earn their own keep

The scheme also serves to prepare employees for ultimate selective placement in ordinary employment in the open labour market and the wages offered must, therefore, be such that the incentive to accept outside employment is not stifled

In determining the wages payable to sheltered employees, regard must, however, be had to the fact that the workers employed at sheltered employment factories do not possess the capabilities required to

maintain a quality and production level comparable to that of workers employed in the open labour market under competitive conditions, nor are they required to do so

As a result most sheltered employment factories operate at a considerable loss, thus requiring a substantial subsidy by the State towards operating costs to ensure the continuation of the sheltered employment scheme

In this connection sight must not be lost of the fact that employees in sheltered employment factories enjoy certain other privileges which, in terms of their monetary value, would amount to several rands — such as annual bonuses, the provision of protective clothing free of charge and free medical services, to mention but a few. Furthermore, employees with large families may apply to the Department of Health and Welfare for further assistance

It is considered that all these privileges contribute towards easing the lot of sheltered employees and must also be taken into account, apart from the wages they receive, if their employment conditions are to be viewed in proper per-

spective

They enjoy permanent employment irrespective of their production and losses incurred by factories and whether or not there is sufficient work to keep them fully occupied

Regarding the remark that sheltered employees are not allowed to become members of the Public Servants Association, it must be pointed out that membership of this association is restricted to public servants. Employees are, however, free to become members of other staff associations or trade unions at their own expense

The statutory public holidays are applicable to and enjoyed by employees of sheltered employment factories

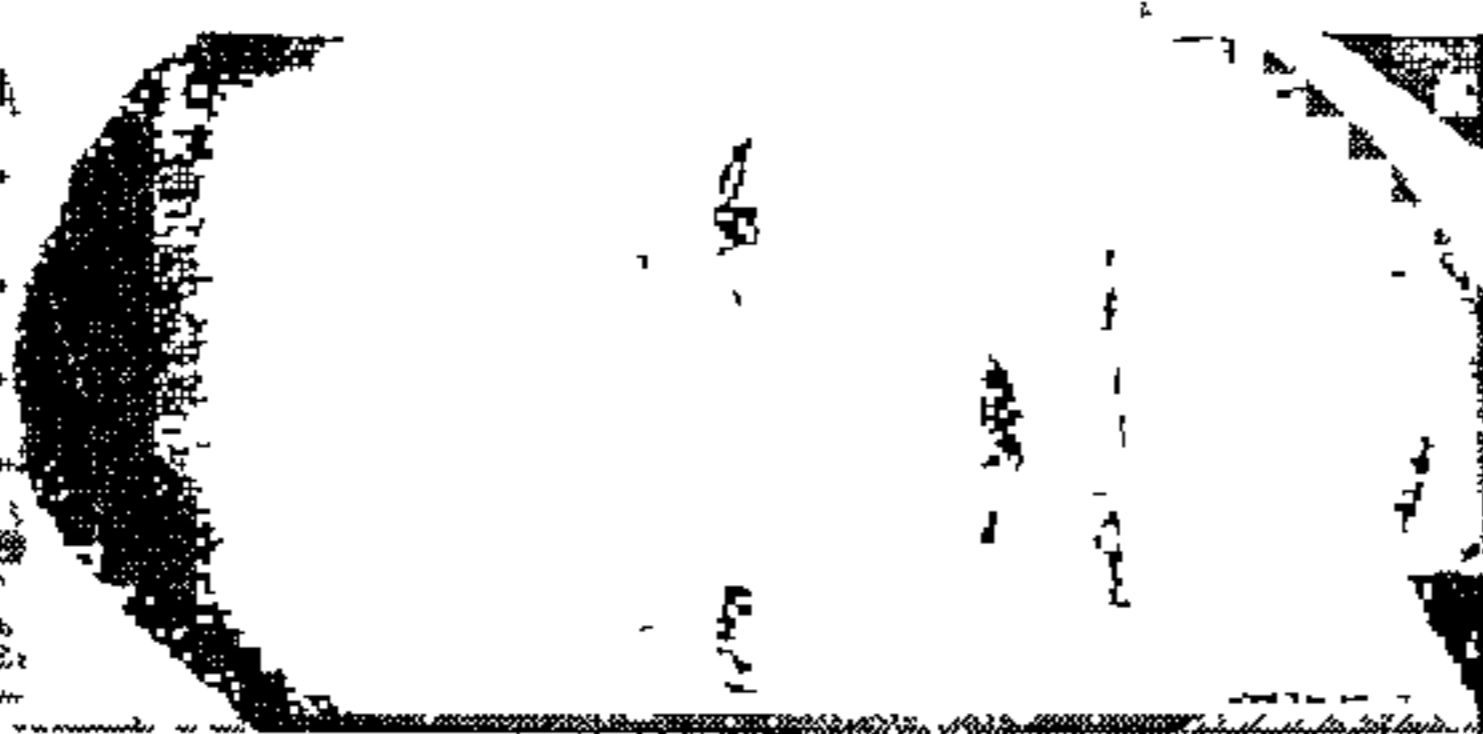
The Department is fully aware of the needs of sheltered employees and continually endeavours to improve their conditions of employment within the limits of available funds. Thus, whenever salary increases become effective in the Public Service the necessary steps are taken to have their wages adjusted

P J VAN DER MERWE  
Director General  
Department of Manpower  
Pretoria

# Manpower tug-of-war brings confusion

LABOUR WEEKS

BY STEVE FRIEDMAN



THE methods the Minister of Manpower is using to prevent cases coming to the industrial court grow more bizarre by the week. Now he has blocked an attempt by 11 Frame Group workers to have their retrenchment tested in the court as an alleged unfair labour practice — even though the court has already granted them temporary reinstatement.

He has also appointed a conciliation board to settle the dispute between these workers and Frame — but refused to do so for a twelfth worker fired in similar circumstances.

Some sources believe this confusion results from a tug-of-war inside the Manpower establishment.

They say the new Minister, Mr Pietie du Plessis

has allied himself with his department in attempts to curb the court.

But, they add, the department's director-general, Dr Piet van der Merwe, and reformists in the National Manpower Commission believe the court has a vital role as a channel for settling disputes and avoiding long strikes.

If they are right, the Minister and department are winning, for many key unfair labour practice cases are not getting to the court.

It would also mean that Dr Van der Merwe, who many identify with the department's more relaxed attitude to emerging unions over the past few years, would be at odds with both his superior and the officials under him.

Meanwhile, the court has handed down a ruling

which is a blow to emerging unions.

It has upheld the right of the Cape textile industrial council to prevent employers deducting stop orders for unions not on the council.

Stop orders — deductions of union dues by an employer — are an important source of union finance and being denied them hampers recruiting efforts.

Stop order bars like that in the textile industry are generally demanded by unions on industrial councils as a means of keeping rivals out.

The ruling means they will still be able to reserve for themselves the sole right to receive stop orders — whether they have majority support or not.



D. Disputes 165  
3/4/84

# Frame Group: court ruling sets precedent

JOHANNESBURG — In a key ruling, the Natal Supreme Court has rejected an application by the Frame Group of textile companies asking it to prevent a major union recognition dispute being considered by the Industrial Court.

This means the National Union of Textile Workers (NUTW) is now free to take court action against the company for allegedly refusing to recognise it and allegedly favouring Tucsa's Textile Workers Industrial Union.

In ruling against Frame, Mr Justice Booysen also gave a boost to the court's power in cases where "unfair labour practices" are alleged.

He endorsed a ruling by the court's deputy president, Dr D B Ehlers, who had found a labour practice could be "unfair" even if the par-

ty committing it had not violated a binding contract.

The Industrial Court has heard argument that its role in some "unfair practices" cases is limited to deciding if an employer honoured the provisions of a workers' contract and that it has no power to intervene if he did.

It is this view which has now been rejected by the Supreme Court.

The case was brought by Frame after the Minister of Manpower agreed to a request by NUTW that he appoint a conciliation board to consider the union's claim that the company is guilty of an "unfair labour practice".

NUTW alleges Frame undertook to recognise it at its Frametex mill if it represented a worker majority and also agreed not to favour either it or Tucsa's TWIU who were waging a recruiting bat-

tle in the plant. It charges that Frame broke this agreement.

An application for the extension of an interim order restraining frame from recognising the TWIU was settled out of court.

Frame agreed not to recognise TWIU until the Industrial Court case was settled and NUTW agreed not to regard the undertaking to recognise a majority union allegedly made by Frame as legally binding.

Frame then asked the minister to scrap the conciliation board. It said that, because the union had agreed that the company had not violated a binding contract, there was no longer a dispute between the two sides.

The minister refused and Frame then challenged his decision in court — DDC.

at

# Fired 300 seek help

*Senefan 4/4/84*

*(165)*

THE Metal and Allied Workers' Union (Mawu) has applied to the industrial court for the reinstatement of about 300 workers dismissed from Wrightech, a subsidiary of the giant Barlow Rand company in Boksburg three weeks ago.

The workers at the firm downed tools following the dismissal of three of their colleagues, including the chairman of the shop stewards committee at

Wrightech, Mr Steven Mbatha

After having been on strike for three days and failing to go back to work after the management had given them an ultimatum to do so or be dismissed, 296 of the workers were dismissed when they failed to return to work and only 29 others were not affected

Meanwhile, since last Wednesday the company has been recruiting new workers



RDM 514 184

# Union to challenge Minister

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By STEVEN FRIEDMAN  
Labour Correspondent

FOR the first time, a trade union is to challenge in the Supreme Court a decision by the Minister of Manpower, Mr Pietie du Plessis, preventing workers taking an alleged "unfair labour practice" case to the industrial court

The move will prompt intense interest from unions and employers as the Minister has used his powers to prevent "unfair labour practices" disputes being heard in the court increasingly since the beginning of this year

It comes at a time when the court has been under attack from employers who are angered by several key rulings which have favoured unions and workers

The Department of Man-

power is preparing legislation to curb the court's powers, and, at the same time the Minister has increasingly been refusing trade union requests for official conciliation boards to consider disputes as alleged "unfair labour practices"

This effectively prevents the cases being heard by the industrial court

The union which is challenging a decision by the Minister is the National Union of Textile Workers, an affiliate of the Federation of SA Trade Unions

Recently, Mr Du Plessis appointed a conciliation board to consider the retrenchment of 10 union members at a Frame Group textile mill near Durban

But he stipulated that the board could not consider the dispute as one involving an

"unfair practice", thus ensuring that the workers could not have their retrenchment tested in the court

He took this step even though the 10 had already asked the court for temporary reinstatement on the grounds that their sacking might have been unfair, and were granted it

The decision meant they could not apply to the court for permanent reinstatement

In the case of an eleventh worker, the Minister refused to appoint a board at all, although NUTW's lawyers allege that the circumstances in this case were "almost identical" to those in the cases where a board was appointed

A lawyer acting for the NUTW confirmed yesterday that the union was to ask the

Natal Supreme Court to review the Minister's decision in the Frame case

"We are asking the court to rule that the Minister acted unreasonably and that the dispute declared by the 10 should be regarded as one concerning an unfair labour practice. We are also asking it to overrule his decision not to grant a board in the eleventh case," he said

It was expected that papers launching the action would be served on the Minister today, he added

Although a ruling in the union's favour would not necessarily affect other similar cases, such a ruling would be almost certain to lead to a spate of similar cases brought by unions who have requests for "unfair practice" conciliation boards turned down

For more than a decade the National Union of Textile Workers has been locked in a recognition battle with the massive Frame textile group. Labour Reporter CAROLYN DEMPSTER reviews the epic struggle in the light of recent developments

## Textile union battle for recognition continues

Despite persistent opposition from the Frame Group, the battle for recognition in the group's complex of mills at New Germany, Natal, by the National Union of Textile Workers (NUTW) continues

In the Natal Supreme Court last week, Mr Justice Booysen opened the way for the NUTW to take its case to the Industrial Court — exactly a year after the Fosatu union first applied for a conciliation board in a move to resolve the recognition dispute with Consolidated Frame Cotton Corporation Ltd

But this is just the latest incident. The battle for recognition, and the Frame Group's response to NUTW's concerted organising efforts in the mills, have a long and complex history

This dates back to 1973 and the widespread strikes in the Durban area which radically changed the nature of labour legislation in South Africa

According to NUTW general secretary Mr John Copelyn, many of the workers involved in the strikes were Frame employees and one of the first factories targeted for organising by the then new union was Frametex — the largest of the five factories in the complex with 4 000 workers

To complicate matters, a Tucsa union — the Textile Workers' Industrial Union was also organising in the New Germany factories. Until 1979 this union was open only to Indians and worked closely with NUTW. With the change in legislation the relationship between the two unions changed

### DIFFERENCES

The major differences were that the older established Tucsa union had access to the New Germany factories while the NUTW did not. Frame had a relationship with the TWIU and was processing stop orders for their limited membership whereas the Fosatu union had no such relationship.

With its rapid growth in membership and other recognition successes in the textile industry, the NUTW was also variously regarded by employers as being the more militant of the two unions

In brief, the initial attempts at recognition at Frametex led to two strikes — in 1974 and 1980. On the one hand NUTW claimed Frame was frustrating the unions efforts by intimidating workers. On the other hand, Frame said it was not prepared to become involved in any way in the competition between the two trade unions

But, in April 1983, Frame told NUTW that it was prepared to recognise the Tucsa union because it had a majority in the Frametex Mill, even though the NUTW produced proof to the contrary

As a result the NUTW applied successfully for an interim court order preventing Frame from recognising the Tucsa union and from continuing to deduct union dues

### LEGAL ACTION

At the same time the Fosatu union embarked on a legal course in an attempt to win redress and appealed to the Minister of Manpower to appoint a conciliation board. At stake were five allegedly unfair labour practices linked to Frame's refusal to recognise a representative union and an agreement which the union claimed they had concluded with Frame on the issue

For exactly a year, the case has bounced from one civil court to another largely as a result of NUTW's determination to see the merits of the matter debated in the Industrial Court but, more precisely, because of Frame's persistent opposition. The corporation has refused a secret ballot as a test of representativeness, argues that Frametex forms a part of the complex which should be regarded as a whole for purposes of union recognition, and has three times tried to prevent the recognition dispute from reaching the Industrial Court

Mr Selwyn Lurie, joint managing director of Frame, confirmed that Frame would apply for leave to appeal against Mr Justice Booysen's judgment

But that is not the end of the story. The NUTW has also tackled Frame over retrenchments and is currently fighting for the reinstatement of about 25 workers who have been laid off since October last year



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**Dismissed  
workers  
each claim  
R35 000**  
<sup>9/4/84</sup>

By Carolyn Dempster,  
Labour Reporter

Some 300 of about 600 workers dismissed by African Cables, Vereeniging, in January this year are to make a bid for reinstatement in the Industrial Court tomorrow

An out-of-court settlement offer of R35 000 by African Cables was rejected by the dismissed workers last month on the ground that each would receive only about R150

The workers, members of the Engineering and Allied Workers' Union, have now demanded R35 000 each.

About 600 workers were fired after a stoppage in protest after the company announced in January that it would no longer be working short-time and employees were required to work on Fridays

A breakdown in communication led to only half of the shift turning up on the Friday

At the time the managing director, Mr P J Muller, said attempts to contact the union had failed and the workers by refusing to start the shift had dismissed themselves

Many of the fired workers have between 15 and 20 years' service with African Cables. Subsequently the company re-employed more than 200 of those dismissed

RDM 9/1/84 ~~CONFIDENTIAL~~

IT was only a matter of time before the Minister of Manpower's refusal to allow key unfair labour practice cases into the industrial court was challenged in the Supreme Court

Now Fosatu's National Union of Textile Workers (NUTW) has made the first move

It will ask the court to overrule the Minister's decision not to allow 10 retrenched Frame Group workers to take their case to the court — a move reported in this column last week

Even if NUTW wins, it would not set an automatic precedent for other cases blocked by the Minister

But, in considering the case, the Natal Supreme Court will presumably set down guidelines on whether certain types of retrenchment could be "unfair"

If NUTW wins, it is likely that unions will take other ministerial refusals to the court

In every case, the Supreme Court will have to rule on whether the practice at issue could be "unfair"

This could give it, not the industrial court, the key role in defining unfair practices

Meanwhile, the Natal Supreme Court has overruled an attempt by the Frame Group to keep a key union recognition case out of the industrial court — and in so doing has given the court its first boost for some time

It endorsed an industrial court finding that a practice can be unfair even if the law has not been broken — in this case the law of contract

This allows the court to rule practices "unfair" if it believes they harm labour relations, and not only on strict legal grounds

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Mercury 10/4/84

# Union

~~to fight~~

to fight

for its

dues

Mercury Correspondent

JOHANNESBURG—A key Industrial Court decision upholding the right of an official industrial council to bar unions who are not members of the council from having union dues deducted by employers is to be challenged in the Supreme Court

Mr John Copelyn acting general secretary of the National Union of Textile Workers yesterday confirmed that the union had launched an action asking the Supreme Court to review the Court's decision

This means the right of councils to bar unions from receiving automatic deductions — or 'stop orders' — will now be tested in the Supreme Court

## Stability

Its ruling will have implications for several industries in which councils have barred emerging unions who refuse to join them from receiving 'stop orders'

'Stop orders' are regarded by many unions as an important source of financial stability and they argue that 'stop order' bans hamper their recruiting efforts

The decision against which the NUTW is appealing was given in a case brought by it against the Cape textile industry's industrial council

A clause in the agreement negotiated at the council — which is binding in law — prevents the deduction of money from workers pay by employers except for purposes laid down by the council

RSM 10/4/84 (165)

# Union to appeal on dues decision

By **STEVEN FRIEDMAN**  
Labour Correspondent.

A KEY industrial court decision, upholding the right of an official industrial council to bar unions who are not members of the council from having union dues deducted by employers, is to be challenged in the Supreme Court.

Mr John Copelyn, acting general secretary of the National Union of Textile Workers (NUTW), yesterday confirmed that the union had launched this action which calls for testing of the right of councils to bar unions from receiving automatic deductions, or "stop orders".

Its ruling will have implications for several industries in which councils have barred emerging unions, which refuse to join them, from receiving "stop orders" which are regarded by many unions as an important source of financial stability.

The decision against which the NUTW is appealing was given in a case brought by it against the Cape textile industry's industrial council. A clause in the council's agreement prevents the deduction of money from workers' pay by employers, except for purposes laid down by it.

After applying unsuccessfully for an exemption allowing "stop orders" to be deducted on the union's behalf, the NUTW appealed to the industrial court, arguing that the clause in the agreement barring deductions was meant to protect workers from employers who deducted money from their pay against their will, and that this could not apply where workers had joined voluntarily.

The council argued, however, that the clause was specifically designed to protect the unions which belonged to it. The court refused to overrule the ban, which was a blow not only to NUTW, but also to other emerging unions as many industrial councils have imposed similar bans on "stop orders" for unions who resist joining councils.



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## 327 workers to ask court for jobs back

RDM Labour Correspondent 10/1/84

THE INDUSTRIAL COURT is to be asked today to order the temporary reinstatement of 327 workers fired during a dispute at African Cables's Meyerton plant earlier this year.

It is believed that this is the largest number of workers ever to have brought to court a joint request for reinstatement.

And it is understood that they have already turned down two out-of-court settlement offers by the company.

The workers, who are members of the Engineering and Allied Workers Union, were fired in January after a dispute about the introduction of a longer working week.

The company, which had been working a four-day week, told workers it was switching to a five-day week and that they would have to work on Fridays.

The workers allege the four-day week was negotiated with them but that the change was not. Its introduction without negotiation, they allege, is an "unfair labour practice".

African Cables has responded by arguing that management is entitled to introduce a longer working week on its own initiative.

KAM 10/14/84 (10/14/85)

# 300 'unfairly-fired' workers pack court

Labour Correspondent

MORE than 300 workers fired from the Meyerton Plant of African Cables in January packed a Johannesburg auditorium yesterday to hear their application for temporary reinstatement argued before the industrial court.

The workers, members of the Engineering and Allied Workers Union, allege their firing was "unfair".

In papers before the court, they allege they have been out of work for three months since their sacking, that some are starving and that others face eviction from their homes.

They have declared a dispute with the company and are asking the court to reinstate them temporarily until the dispute is settled.

The dispute which led to their firing was sparked by a

decision to change from a four-day to a five-day week.

This meant workers had to work on Fridays.

But 327 of the plant's 600 workers refused to work the Friday shift, charging they had not been consulted about the change. They were fired as a result.

Yesterday's hearing was taken up with argument by Mr M Brassey, who is appearing for the workers.

He told the court the company erred in firing the workers because it should first have held an inquiry into their refusal to work the shift rather than immediately dismissing them.

Mr R Harper, who is appearing for African Cables, is due to reply today.

The case is believed to be the biggest application for mass reinstatement the industrial court has seen.

# Crucial ruling on dismissals due on Monday

5 Feb  
12/4/84  
165  
1984  
187

By Carolyn Dempster,  
Labour Reporter

The Industrial Court is to hand down a decision on Monday regarding the 327 African Cable workers who were dismissed in January

This was the biggest single application by workers for reinstatement yet heard by the court and this week's hearing in Johannesburg took two days

The case is likely to point the way for the future course of applications to the court arising from mass dismissals

Evidence at the hearing outlined a mass dismissal which, say labour observers, should never have happened

On January 10 this year 590 semiskilled and skilled workers out of a workforce of 1200 were dismissed from the Meyerton plant of African Cables

The action followed a change in the work schedule from a four-day week (short-time) to a full week. The workers claimed management had not consulted them about the change, as they had promised, and as a result almost the entire shift failed to clock in on Friday January 6

Under the short-time system they would not normally have reported for work on the Friday but, according to management, they should have been at work after the change

On the following Monday the workers returned but stopped work mid-morning and asked for the managing director, Mr P Muller, to explain to them why neither the works council nor the workers had been consulted about the change

Mr Muller refused to

address the workers en masse but said he would speak to small groups or to the works council. This was not acceptable to the workforce

Next day it was announced by management that before Mr Muller would speak to any representatives workers would have to sign a letter, and the outcome of the Industrial Court hearing depends largely on the nature of that letter whose contents are not altogether clear

According to management their purpose was to get workers to agree to return to work under conditions already stipulated by the company

But many workers, suspicious of the motive behind the letter, refused to sign. Those who did sign were immediately taken back. The 590 who refused were dismissed on the Wednesday



# Industrial court <sup>RDSM</sup> <sup>12/4/84</sup> action under way <sup>(12)</sup> <sup>(165)</sup>

## Labour Correspondent

THE unregistered National General Workers Union is to launch Industrial Court action against a Pretoria firm, MM Steel, the union's general secretary, Mr Donsie Kumalo, said yesterday

He said the union had decided on court action after 19 members were allegedly fired for refusing to resign from the union

Mr Kumalo also charged that the company had not honoured a retrenchment agreement with the union whereby workers who had been laid-off were to be given first option on jobs when vacancies occurred

Mr Kumalo said the jobs of the 19 fired workers had not been offered to workers who were retrenched earlier

Comment from the company could not be obtained

The NGWU has repeatedly threatened court action against the company and has accused it of refusing to recognise the union and of attempting to force workers to resign from it

This has been denied by the company

Mr Kumalo said the union had also declared a dispute with another Pretoria company, Bold Stone

While he gave no details, the union has accused the company in the past of refusing to recognise it Bold Stone has denied this and, at the time the allegation was first made, said it was engaged in recognition talks with NGWU

# Decision on sacked 327

THE fate of the 327 African Cables workers dismissed in January this year is still to be decided by the Industrial Court, in the single biggest application by workers for reinstatement.

After the two-day hearing in Johannesburg this week, judgment is due to be handed down on Monday by the court.

Depending on the outcome, the case is likely to point the way for the future course of applications to the court arising from mass dismissals.

The evidence which emerged during the course of the two-day hearing outlines the anatomy of a mass dismissal, which, say labour observers, should never have happened.

Altogether 590 semi-skilled and skilled workers were fired from the Meyerton plant of African Cables on January 10 this year out of a workforce of 1 200.

The action followed a change in the work schedule from a four-day week (short-time) to a full week. The workers claimed management had

SOWETAN Reporter

not consulted them about the change as they had promised, and as a result virtually the entire shift failed to clock in on Friday, January 6.

Under the short-time system, they would not normally report for work on the Friday, but according to management they should have been at work following the change.

On Monday the workers returned, but ceased work mid-morning and asked for the managing director, Mr P Muller, to explain to them personally why neither the works council nor the workers had been consulted about the change.

Mr Muller refused to address the workers en masse but said he would speak to small groups or the works council. This was not acceptable to the workforce.

## Nafcoc blessing service

THE National African Federated Chamber of Commerce (Nafcoc) is to hold a thanksgiving and blessing service on Sunday at the Soshanguve Community Hall to mark the start of a project to build a R12-million conference centre in the area.

Mr Gabriel Mokgoko, Nafcoc national organiser, said they were inviting churches, businessmen and other community organisations to the service. It will be conducted by ministers of various denominations.

There will be a fund-raising during the service, where the community and businessmen will be asked to buy tickets for R20 each for the erection of the centre.

Two cows will be slaughtered on the site and their blood will flow in the traditional fashion, as was done in 1975 when Afribank was established in Ga-Rankuwa.

# NEW END

PARENTS of students boycotting schools in Pretoria and Bloemfontein have been invited to meetings on Sunday and Monday.

The chairman of the Flavius Mareka High School committee in Pretoria, Dr C P D Marivate,

## Sisters — and



WHO said beautiful ladies don't: Mothimonye sisters (From left), all the way from Soweto to Mamelodi Sundowns at

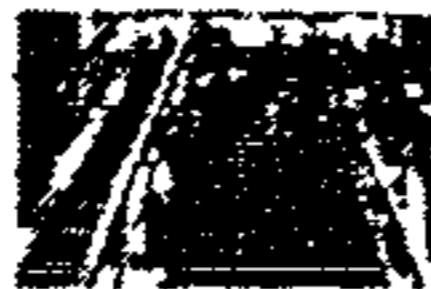
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- LATIMORE III — Latimore — Vocal — 4,99
- IN THE NEW YORK — Harold Land — 2,99

## WARNING ON :

EMBASSIES in Maputo have citizens not to use the road between the Mozambican capital, informed

The warnings follow an increase in an area south of Maputo, including power supplies to the capital. On T truck was destroyed by mortar fire Komatipoort.

# SNAPPE

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## UNION BATTLES

### Going to court

*165*  
*FM 13/4/84*

The struggle between the National Union of Textile Workers (NUTW) and the Garment Workers' Industrial Union (GWIU) at Pinetown protective clothing manufacturer James North Africa (JNA) has gone one step further — to the Industrial Court. The court hearing will be the culmination of a drawn-out battle between the unions which will reverberate through the Natal clothing industry

The GWIU, an affiliate of the Trade Union Council of SA, has a closed shop at JNA. The company is a member of the international Siebe Gorman Group, which operates in 25 countries. Standard Bank also has an interest.

Last year, the NUTW, an affiliate of the Federation of SA Trade Unions (Fosatu), signed up a number of Natal clothing workers, including some at JNA. It then applied to the Natal Clothing Industrial Council for exemption from the GWIU's closed shop.

The union also asked the council to sanction the deduction of union dues on its behalf at JNA. The council — which has the GWIU as its sole union member — rejected the application on the grounds that the NUTW did not have sufficient representation in the industry.

The GWIU responded to the NUTW threat by changing its constitution to enable it to expel any worker who joined another union. Because of the GWIU's closed shop, this meant that JNA, or any other employer who is a member of the Natal Clothing Manufacturers' Association, could be taken to court if it hired non-GWIU labour.

JNA took the initiative to settle the dispute when it arranged a ballot among its workers to determine which union had majority support. The NUTW won overwhelmingly by 219 votes to 43. It has taken the industrial council's rejection of its requests on appeal to the Industrial Court. The council has announced that it will oppose the union's action.

The closed-shop war has led to a legal battle between the GWIU and JNA. A company spokesman tells the FM that it has received a letter from lawyers acting for the GWIU, alleging a number of irregularities in the ballot. The GWIU is

- Claiming it was not given sufficient notice of the ballot,

- 165* *FM 13/4/84*
- Questioning the impartiality of JNA's auditors who were responsible for conducting the ballot; and
  - Alleging that the workers were intimidated into voting for the NUTW.

JNA's response to the allegations has been to write back stating:

- The GWIU had "ample notice" of its intention to hold the ballot,
- That "it was only the outcome of the ballot which perturbed" the union;
- The GWIU did not raise any objection to the ballot when it was held,
- It rejects the GWIU's allegation about the auditors, and
- JNA has not received any proof that intimidation occurred.

In addition, the company is unhappy about the GWIU's constitutional change because it believes it could result in unrest on the shop floor and in the Natal clothing industry in general.

In the meantime, the NUTW has recruited workers of two other Natal clothing factories, Park Lane Shirts and Natal Overall. The Industrial Court's eventual ruling will have profound implications for the NUTW's attempts to break the GWIU's hold in the province's clothing industry.



RDM 16/4/84 □□□ ~~165~~ 165

SLOWLY, unions affiliated to Fosatu, are showing growing willingness to join official industrial councils

The latest example is the Sweet, Food & Allied Workers' Union, which says it is considering joining the biscuit industry's council

Like other emerging unions, Fosatu once rejected joining councils entirely, but for some time Fosatu has argued that this is not a matter of principle — as it is for unions who see councils as part of the Government machinery — but of tactics

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But Mr Gqwetha and his allies appear to have the bulk of the support.

RAM 16/4/84 □ □ (165) (407) (133) (132)  
THE battle over the closed shop is set for an industrial court test. The case centres around attempts by Fosatu's National Union of Textile Workers to make gains in Natal clothing plants at the expense of Tucsa's Garment Workers' Industrial Union, which has dominated the industry through a closed-shop agreement by forcing workers to belong to it.

NUTW was recently recognised at the Pinetown clothing firm of James North after it won a company-run ballot in which workers chose between the two unions.

But clothing's industrial council turned down a request that workers there should be allowed to resign from the Tucsa union. It also refused to allow the company to deduct union dues for NUTW.

It said NUTW was not representative enough in the industry as a whole.

Now NUTW is to appeal to the court.

The case important to NUTW members at the firm who risk expulsion from the GWIU for joining a rival union. This would cost them their jobs.

RBM 17/4/84

# Cases loom over firings

## Labour Correspondent

THE Metal and Allied Workers Union (Mawu) has launched industrial court action against a Barlow Rand company, Wrightech, in an attempt to win reinstatement of workers fired during a dispute at the East Rand plant last month.

It has also launched an action against a metal firm Benbrew Steel, alleging it refused to recognise Mawu and it fired two workers for belonging to it.

Mawu served papers on Wrightech last week, asking the industrial court to grant workers fired during the dispute temporary reinstatement. It alleges the company is guilty of an "unfair labour practice".

The dispute follows the firing of three workers who, Mawu alleges, were denied an appeal against their sacking by the company.

According to the company, workers then struck and ignored an ultimatum to return to work or be fired. About 250 workers lost their jobs in the dispute.

Mawu alleges workers did not strike but gathered to discuss the sackings. It also charges that they obeyed the return-to-work deadline, but that Wrightech locked the factory gates and refused to allow them to return.

A Barlow Rand spokesman said yesterday the company knew of the action.

So far 63 workers are parties to the action against the company.

A Mawu spokesman said yesterday the union was also conducting a fund-raising drive for the fired workers. He said they risked losing their houses as they had no income with which to pay off housing loans.

Benbrew Steel is also alleged to have committed an "unfair labour practice". An action for a temporary order is due on May 3.

The union alleges the company refused to recognise it and instead urged workers to support a worker committee appointed by management. It claims Benbrew asked workers to elect a committee, but that they had refused.

Mawu alleges company officials warned workers against joining unions and that two workers, one a union shop steward, were fired shortly after the union's presence at the plant became known.



RJM 2014/184 (165) (116) (184)

# 324 are reinstated in key decision

By STEVEN FRIEDMAN  
Labour Correspondent

THE Industrial Court has ordered African Cables to temporarily reinstate 324 workers fired in a dispute in January — the biggest mass reinstatement ever ordered by the court

Labour lawyers see the decision as a key advance for worker rights, adding that arguments advanced in it could have implications for other cases

A total of 327 workers, all of whom belong to the Engineering and Allied Workers' Union, requested temporary reinstatement from the court, alleging that the company was guilty of an "unfair labour practice"

All but three have been granted reinstatement. The order instructing the company to re-hire them took effect on Wednesday and lasts for 90 days

Attempts to settle the dispute through the machinery in labour law will now continue and it could come before the court again for a final decision

Comment from African Cables could not be obtained yesterday but, in terms

of the order, it must now either pay the workers their wages for the next three months without re-hiring them, or allow them to return to their jobs

In argument before the court, the company said that re-hiring the workers would force it to fire other workers taken on to replace them.

The dispute which led to the sackings occurred in early January when the company, which had been working a four-day week, told workers they would have to work on Fridays

Workers charged that they had not been adequately consulted and many refused to work on the first Friday they were required to. They allege that the company responded by calling in police

The court was told that workers were then asked to sign a document agreeing to certain work conditions and were dismissed if they did not

In argument before the court, counsel for the workers alleged that African Cables acted "unfairly" by requiring workers to sign a form setting out new work conditions or face dismissal

Because the forms set out new conditions workers, by refusing to sign, were not refusing to honour their existing contracts but to agree to new ones

It was also alleged that management acted "unfairly" by not consulting workers about the change and not granting them an appeal against their sacking

Work contracts were commercial agreements, it was argued, and employers therefore had to have a commercial reason for ending them. No such reasons existed in the dispute, it was alleged

The company denied the forms set out new conditions and said they simply confirmed existing ones. It also denied that it had to negotiate the change with workers and said those fired could have requested the right to appeal

According to a statement by the union yesterday, 599 of more than 900 workers were fired. Of these, 195 were later re-employed

The union said it would press for the reinstatement of the three workers, who did not win reinstatement, when the dispute is finally settled



## BUS SERVICES <sup>(16)</sup> ~~135~~ Cape overtime ban ~~135~~

Travelling by bus in Cape Town has been disrupted as a result of a most unusual wrangle involving a Trade Union Council of SA (Tucsa) union ban on overtime

The ban, which is affecting City Tramways' services throughout the Cape Town metropolitan area, results from a dispute between the company and the Tramway and Omnibus Workers' Union (Towu)

The ban has been in operation since last Monday. It was imposed as a result of the failure of talks in the industry's industrial council for a new agreement on wages and working conditions.

Because bus transport is classified as an essential service, the dispute has been referred to the Minister of Manpower for compulsory arbitration.

In terms of the Labour Relations Act a refusal to work overtime can, in certain circumstances, constitute a strike — depending on the substance of work contracts. And strikes in essential industries are illegal. In this case, however, City Tramways tells the *FM* that its contracts of employ-

ment provide for voluntary, not compulsory, overtime. The drivers' refusal is therefore not regarded as a strike and the company is powerless to fire workers because of their attitude, or to force them to work overtime.

Towu general secretary Dirk Benade tells the *FM* that about 1 200 bus drivers are sticking to the ban. He claims the company has been abusing overtime provisions in the current agreement, due to expire on May 6, as well as provisions of the Basic Conditions of Employment Act.

Benade says the decision to impose the ban was taken at a union meeting last Sunday at which employer proposals for a new agreement were discussed and rejected. "The drivers are determined that they shall not be moved. It is creating unhappiness among Cape Town's commuters but the men are fully justified in taking this course of action," Benade says.

A City Tramways spokesman refused to discuss details of the dispute but confirmed that the ban was having a "significant" effect on services. However, schedules had been reorganised to create as normal a service as possible under the circumstances, he added.

One possible course of action for the company would be to appeal to the Industrial Court to declare the overtime ban an unfair labour practice. This would be on the grounds that the ban involves a change in work practice which is adversely affecting City Tramways' business interests. Should the court rule in its favour, the drivers could be forced to return to overtime work.

The arbitration process which is now beginning is compulsory in terms of the Labour Relations Act, and is essentially concerned with the deadlock in the wages and conditions talks. It is not clear at this stage whether the arbitrator's brief will, or can, be extended to cover the issue of the ban on overtime.

If not, the matter could yet end up in the Industrial Court. The union action has demonstrated that although it provides an essential service, City Tramways is still vulnerable to legal industrial action. The company may be anxious to close the loophole — or at least obtain clarity on whether the workers' action is, or is not, an unfair labour practice.



## INDUSTRIAL LAW

# The biggest reinstatement

In what is believed to be the largest reinstatement order yet issued, the Industrial Court has instructed Vereeniging cable manufacturer, African Cables, to temporarily reinstate 324 workers who were fired after a dispute in January.

The order, which remains valid for up to 90 days, came into effect on April 18. It requires that the company either pay the workers for the period of the order, without necessarily re-hiring them, or permit them to return to work.

A company spokesman told the *FM* that the workers have been paid for April 18-24. He would not comment further on the company's intentions regarding reinstatement. But a lawyer acting for the workers says he expects them to be back on the job by Monday.

The application for temporary reinstatement was brought by workers who are members of the Engineering and Allied Workers' Union. The background to the dispute is that the company cut its working week to four days in October 1983, because of depressed economic conditions. This year it returned to a five-day working week, beginning Monday January 9. Because Monday January 2 was a public holiday, Friday January 6 was meant to be a normal working day, so that the first week of the year would be a four-day one.

On the 6th some workers reported for work, while others did not. On the following Monday, the vast majority of workers reported for duty. They did not commence work, however, but demanded to speak to African Cables MD Peter Muller. According to a source close to the union, Muller refused to address them *en masse*. Later in the day, according to the same source, the police were called in and ordered the workers to disperse. The company disputes the details of this action.

## Document

The next day, Tuesday, management set up tables inside the factory area at which workers were told that they had to sign a document agreeing to certain work conditions before they would be allowed to work. These included undertakings not to participate in illegal work stoppages. While 195 agreed to sign, 404 refused and were later fired.

Of the 404, 327 made application to the Industrial Court for reinstatement. Last week the court ruled that all but three of them should be reinstated.

In court, counsel for the union members argued that they had not been adequately informed by management of the change back to the normal working week. Counsel

also alleged that the company had been "unfair" in requiring workers to sign a new contract of employment or face dismissal.

It was also argued that mass dismissals can only be justified in situations in which companies are experiencing economic problems and in which the dismissal of workers is part of a retrenchment exercise.

Counsel for the company countered that the undertaking the workers had been required to sign did not constitute a new contract of employment, but was rather a confirmation of existing work conditions. Company counsel also argued that if the workers were reinstated, African Cables would have to fire workers who had been hired to replace them and that this would cause unrest and dissatisfaction.

The court found that management had taken adequate steps to inform the workers of the change to the working week and that there could not have been confusion about January 6 being a normal working day. It also found there was an element of coercion involved in the workers' decision not

to sign.

However, mass dismissal was not regarded as the appropriate remedy in the circumstances.

The court also found that African Cables had acted "overhastily" in recruiting new workers as quickly as it had, especially when it knew that the fired workers had taken steps to obtain reinstatement.

## Labour law

Labour law requires that the dispute should now be discussed at the metal industry industrial council. If no resolution is reached, it could be referred back to the Industrial Court for a final decision. The decision to grant reinstatement could be indicative of the court's attitude towards the dispute.

Labour commentators say that even in a climate in which the Industrial Court is regarded as moving in a more conservative direction, this judgment indicates that it does not regard mass dismissal as the appropriate remedy to industrial unrest.



## THE PRESS Fight for freedom

The story so far Donald Trelford, editor of *The Observer*, flies from London to Zimbabwe on April 9 at PM Robert Mugabe's invitation. As a result of information he receives while in Harare, he proceeds to Bulawayo and writes a full-page report on "murder and torture" by the Fifth Brigade in southern Matabeleland.

"Tiny" Rowland, whose Lonrho company has an 80% stake in *The Observer*, explodes. He cables Mugabe a public apology and in a further letter to Trelford accuses him of dishonesty, discourtesy, professional incompetence and generally diminishing the journalistic standards of the newspaper. Rowland threatens either to sack Trelford or sell *The Observer*.

The case against Trelford, as presented by Rowland, is that Trelford's report was inaccurate. Trelford insists, however, that he saw affidavits and spoke to eye-witnesses and that he is entirely convinced that what he wrote was true.

And in fact Rowland is going to find it difficult to substantiate his charges. Too many reports have emanated from southern Matabeleland about atrocities to tilt the balance of probability in his favour. *The Observer's* rival, the *Sunday Times*, claims in fact that it "first revealed the murderous campaign of torture, rape, beatings and casual execution that is currently being inflicted on the people of Matabeleland." The evidence from missionaries, too, is overwhelming. Besides, if the



Rowland ... selling to 'a tougher man'

allegations are untrue why has the curfew area been sealed off to the press?

The question is not whether dissidents are active in southern Matabeleland — which is clearly the case — but whether the notorious Fifth Brigade have been up to their old excesses, in which case it is the proper duty of the press to report it. The point is clearly that a conflict of interests has arisen between Rowland's Lonrho interests and his ownership of *The Observer*.

Lonrho employs 16 000 people in Zimbabwe and earns R26,5m of its annual profits there, as well as having extensive interests in other African countries. Trelford's actions are perceived as being in direct conflict with these interests. This is exactly the situation envisaged by *The Observer* staff when Lonrho took over the influential paper in 1981. Trelford, in a memorandum to the Monopolies Commission, warned that a conflict of interests would arise and that Rowland would try to impose his will on the paper. It was a precise prophecy.

### Independence

On the issue of editorial independence, therefore, Trelford is on firm ground, and he will have the support of most of the British press and of many politicians. He also has the firm support of the five independent directors, who this week charged Rowland with "improper proprietorial interference." The independent directors issued this statement after meeting both Trelford and Rowland.

*The Observer* is an illustrious newspaper with 193 years of publication behind it and it will have powerful allies in its fight with Rowland. Rowland, for the moment, appears to be thrashing around. He has suggested several courses of action to close down *The Observer* while retaining its title; to sell it; to sack Trelford; to appoint an editor-in-chief over Trelford; or to persuade Trelford to return to Zimbabwe with a team of reporters to establish the facts of what is happening in Matabeleland and confront Mugabe with them.

Sacking Trelford would be hazardous. On the day before publication of Trelford's article, Terry Robinson, a Lonrho director charged with *The Observer's* affairs, reportedly telephoned Sir Derek Mitchell, convener of the five independent directors (appointed on the insistence of the government as a safeguard of *The Observer's* editorial integrity) and suggested that Trelford should be sacked and replaced by Charles Wilson of *The Times*. Sir Derek apparently dismissed the proposal.

For Trelford to agree to return to Zimbabwe would be an admission of guilt of a kind. Also, the team would not be able to conduct its investigations covertly in the way that Trelford did, speaking to fearful witnesses. On the other hand, a thorough investigation by trained journalists might not be a bad idea.

It is not clear how seriously Rowland's

threats should be taken. He warned that he might sell *The Observer* to the dreaded Robert Maxwell, whose very name sends a shiver up the spines of Fleet Street journalists. "He's a tougher man than I am," said Rowland. "He'd be able to deal with Trelford without any difficulty. He has the killer instinct which we unfortunately lack." This is crude stuff.

But the rebuff administered to Rowland by the independent directors may indeed lead to the sale of *The Observer* to Maxwell, whom he met over breakfast at Claridges this week. After the meeting, Maxwell indicated that he thought he and Rowland had the makings of a deal. But at the time of going to press, negotiations remained inconclusive while Trelford and the independent directors were debating strategies with the British National Union of Journalists.

Trelford is said to be delighted with the support of the independent directors, because it makes Rowland's proprietorship rather than Trelford's editorship untenable.

In the long run, however, whatever the ethical restraints might be, a proprietor (whether he is Rowland or Maxwell) has the whip hand, because he controls the budget. Harold Evans last year found himself squeezed out of the editorship of *The Times* by Rupert Murdoch, another rough customer. Similarly, Trelford's position could be made untenable by an assortment of financial and other pressures. He would have to be very thick-skinned indeed to survive a war of attrition against him by Rowland or Maxwell.

Meanwhile, he has clearly won a battle, if not the war.

## LITIGATION

### Employers hit back

Employers who have been taking a caning from unions through the courts are beginning to fight back — through the courts.

Last week, for instance, an interim order was granted in the Pietermaritzburg Supreme Court restraining the Sweet Food and Allied Workers Union (SFAWU) and its shop stewards from preventing a non-union member from resuming work at C G Smith's Noodsberg mill.

According to the company's personnel director, Barry Horlock, the matter involves important points of principle which the company feels obliged to defend. In its view SFAWU is attempting to prescribe who the company may employ.

At issue was one J Khumalo, a non-union employee, who allegedly assaulted a SFAWU member. The offence normally carries a dismissal. But in view of Khumalo's length of service, job performance and personal circumstances, mill manager Gladwyn Wardle decided that a written warning would suffice.

The union shop stewards, however, were

not satisfied They demanded that Wardle explain his decision Wardle was preparing a statement to be read to workers when there was a commotion at the factory gates Khumalo was being forcibly ejected from the premises by his co-workers

Says Horlock "We see this as an attempt by the union to influence who we can or cannot employ This is a right we will defend to the end"

The union, however, takes a different view. Jay Naidoo, SFAWU general secretary, says the union was not represented in court but intends to mount a vigorous argument against Khumalo's reinstatement before the order is made final on May 18

"We too regard it as an important matter of principle We can't have the company using this kind of order against union members in future," he says.

Though the order pertains only to Khumalo, Horlock says there are wider implications The company would like the court to rule that in future the union, shop stewards or union members be restrained from harassing any non-union employee

The issue of just where the bounds of company authority begins and ends is a tricky one about which Barlows, C G Smith's parent, is known to have strong views. Horlock concedes that the case could set an important precedent in SA labour law "If we lose, where does that leave employers in future?" he asks

Naidoo agrees. He says management has dominated this area of employee relations for too long and it is time that unions were given a bigger say. "This is an area which will become keenly contested in future," he predicts



KDM 30/4/84 (165)

UNION enthusiasm for the industrial court was given a boost recently when it granted temporary reinstatement to 324 workers fired during a dispute at Vereeniging firm, African Cables.

This is the biggest mass reinstatement ever ordered by the court.

The African Cables case comes at a time of growing pessimism among unions and labour lawyers about the court's role.

Legislation to curb its powers is planned for next year, the Minister of Manpower has been preventing many alleged "unfair la-

bour practice" cases coming before the court and several recent rulings by it have created the impression that it is taking a much less sympathetic view of worker rights.

Before the African Cables ruling, there were signs that unions might have to rethink their strategy of using the court to settle disputes.

These have obviously abated a little in the wake of the ruling

will decide this. But its ruling in the workers' earlier application may give some indication of its approach.

The court accepted that West Drie had not committed an unfair labour practice. It also held that it was not its job to set standards to which employers must comply before firing workers.

But it did grant the workers' request for temporary reinstatement because it said this would promote collective bargaining on an issue with implications for the entire mining industry.

So it stopped short of laying down criteria which would bar employers from firing workers in this situation — but did seem to endorse negotiation on safety issues.

RDM 2014/84 ~~168~~  
THE long-running safety dispute between Goldfields' West Driefontein mine and the National Union of Mineworkers reappeared in the industrial court last week, only to be postponed indefinitely. 168

Last year, the court temporarily reinstated 17 NUM members who were fired for refusing to work in an area of West Drie they considered unsafe. The case has now come before the court for a final verdict.

It tests whether workers can refuse to work in an area they consider unsafe even if, as in the West Drie case, an official inquiry has found it to be safe. This has implications for all industries.

It is unclear when the court



## Compulsion 'vital' for industrial relations

**THE ASSEMBLY** — The recognition of trade unions for bargaining purposes should be left to the dynamics of the labour relations system, says a National Manpower Commission report tabled in Parliament yesterday.

In the section of the report dealing with trade union registration, the commission said it believed this was a matter between employee and employer parties concerned.

The commission also said the existing definition of a trade union in the Labour Relations Act should be retained in the proposed system — namely that an organisation would not be able to operate as a trade union without clearly specifying its interests by undertaking, industry, trade or occupation and area.

"Despite the formidable arguments in favour of a voluntary system, it was concluded that a system incorporating some form of compulsion would be preferable, in that the protection of the interests of the members of the various organisations as well as those of the community at large, should be overriding."

### REQUIREMENTS

The Government should lay down certain "minimum requirements" for trade unions and employer organisation and the Industrial Registrar should be empowered to issue some form of acknowledgement or confirmation that these requirements had been met.

Race and representation should not be an issue when the Industrial Registrar considered a request for acknowledgement or confirmation or the withdrawal of it and in prosecution of the organisation in question.

"Only organisations complying with all requirements should be able to operate as trade unions or employers' organisations and participate in the process of collective bargaining at any level (within or outside the Labour Relations Act) and avail themselves of the dispute settlement mechanisms of the Act."

The Department of Manpower should take all the necessary steps to promote the new system if it was accepted.

The NMC concluded that any system of registration should be based on the dual principles of representation and acceptance of certain responsibilities towards that membership and the community — Sapa.

# Manpower Commission calls for Govt to

By Tos Wentzel, Political Staff

**THE ASSEMBLY** — Wide-ranging recommendations on adaptations to South Africa's trade union and collective bargaining systems are contained in a report of the National Manpower Commission, tabled yesterday.

The report — on collective bargaining and works councils, the registration of trade unions and employers' organisations and related matters — was released by the Minister of Manpower, Mr P T C du Plessis.

The Minister yesterday said that because of issues which deal with the workings of the Industrial Court, the report was being released for general information and comment at this stage.

Interested persons and bodies were invited to submit comment on the recommendations in the report for guidance in the drafting of a White Paper, which would give the Government's stand on the report.

In a foreword, the chairman of the National Manpower Commission, Dr Henne Reynders, said the field of labour relations was never static, and changing circumstances would have to be taken into account.

### COLLECTIVE BARGAINING

Developments in the labour field since black trade unions were recognised in 1979 showed that the majority of the newer trade unions attached great value to collective bargaining at local level instead of at centralised level, which had been the trend for many years.

A Government code laying down rights of employees and employers, and Government-aided advisory and mediation services in dispute settlement, were some of the requests submitted to the commission.

The scrapping of trade union registration for a new system of minimum standards for all trade union and collective bargaining bodies is recommended by the commission.

In place of the present registration system the commission recommends the issuing, by the Registrar of Industry, of acknowledgement or confirmation of compliance to a set of conditions to be made compulsory for all organisations involved in bargaining in the labour field.

The report also makes detailed recommen-

**THE ASSEMBLY** — Alleged shortcomings in present labour relations legislation were to some extent based on ignorance and misconceptions about the system, the National Manpower Commission has found.

Its 450-page report on an investigation into the levels of collective bargaining and works councils, the registration of trade unions and employers' organisations and other related matters was tabled in Parliament yesterday.

The commission found that, despite the misconceptions and ignorance, the statutory system which had served the country well over many years did not meet all the requirements of employers and employees in the labour relations system.

Adaptations were required to meet the demands of the system as it was unfolding in practice.

In its findings on levels of collective bargaining (including industrial councils and conciliation boards), the commission cautioned that the impact of certain developments which had taken place during the course of its inquiry should be awaited before further adaptations were made to the Labour Relations Act.

"The NMC believes that at this stage the situation is too fluid and that major changes in the current statutory provisions should not be recommended."

With regard to works councils, the NMC recommended that the Labour Relations Act be changed to provide for the establishment of workers' councils on which only employees would serve.

The NMC should take the initiative in drawing up a code of practice for works or workers'

# New trade system for

**THE ASSEMBLY** — Experience and Industrial Court judgments showed the present definition of an "unfair labour practice" lacked clarity and a more concise definition of the concept was needed, the National Manpower Commission (NMC) reported yesterday.

Defining specific unfair labour practices was, however, extremely difficult and the NMC has formulated a set of guidelines in a comprehensive labour relations report tabled in Parliament.

The argument that the present definition was satisfactory and that the Industrial Court would, through its decisions, gradually give content to the definition, was proving wrong, it said.

It would take many years before the court gave specific content to the definition and

dations on the establishment of an industrial court, to be known as the Labour Court, and for a Labour Appeal Court.

It states that although the unregistered unions — which constitute about 40 percent of the old black associates — often lack the established leadership and infrastructure of the traditional unions, they are a very active group, strongly asserting their presence and influence.

The Department of Manpower should continue its efforts, but more vigorously, to promote and

## Guidelines for 'unfair practices'

"South African labour relations delay and an approach."

"The practices should be defined as unfair practices is an one," the NMC

In considering it had formulated guidelines.

● The definition of labour practices new rights, ties to a definition able to negotiate an

# Tough new controls for

Current legislation does not meet requirements of the labour National Manpower Commission 450-page report. The commission recommends creation of workers' councils, trade union registration,

councils, in consultation with all interested parties, for the consideration of the Minister of Manpower.

Members of these councils should be afforded the same protection against victimisation as trade union members.

The NMC recommended that industrial councils "thoroughly review their present procedures and methods of operation" in an attempt to "adapt to current demands and circumstances without State intervention."

The industrial councils should make a greater effort to publicise their nature, functions and powers.



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practice dispute through machinery provided in the Labour Relations Act, the final interpretation of this concept should rest with the Industrial Court. The unfair labour practice should not give rise to a dispute of interests.

● The concept of the unfair labour practice should be designed to protect individuals as well as organisations.

● Although the definition of the unfair labour practice should create new rights, these would differ from rights ordinarily created by the statute. The concept of an unfair labour practice created rights of which the exact content still had to be determined by a judicial body, and the exact scope of these rights would depend largely on the evolution of labour relations' needs and practices as interpreted by the courts. — Sapa.



Mr P T C du Plessis . . . report released for general information and comment at this stage.



Dr Hennie Reynders . . . changing circumstances have to be taken into account.

## Big changes in union registration system urged

THE ASSEMBLY — The scrapping of trade union registration in favour of a system whereby minimum standards would be laid down for all trade union and collective bargaining bodies has been recommended by the National Manpower Commission

The commission has also recommended the removal of race and representativeness as criteria for trade union legality, minimal State interference and the establishment of a Labour Court and Labour Appeal Court to deal with labour disputes

These are the legislative changes proposed by the commission after an inquiry into the levels of collective bargaining and works councils, the registration of trade unions and employers' organisations and related matters

In its report, tabled in Parliament yesterday, the commission has recommended the repeal of the current provisions of the Labour Relations Act regarding union registration.

In its place, a system whereby the Registrar of Industry issues certificates of acknowledgement/confirmation of compliance with a set of conditions is to be made compulsory for all organisations involved in bargaining in the labour field

There were three separate minority reports — one supporting the retention of the present system, another recommending that the new system be made voluntary, while a solitary member recommended a compulsory system of registration/listing in the Act

The NMC's recommendations on a new system of minimum requirements for collective bargaining bodies centres on the basic requirements for registration currently applicable

The recommendations also seek to repeal the provision which allows an unregistered trade union access to a conciliation board

Registered unions would automatically be regarded as having met the minimum requirements for the new acknowledgement/confirmation certificate

Earlier, the Minister of Manpower, Mr Pietie du Plessis, said the report would be tabled for comment — Sapa.

explain the role and function of employee and employer bodies in the country's labour relations, as well as the State's role in the system

Employer and employee bodies should make similar efforts, while individual employers should take all the required steps to establish sound relations with their employees and their organisations

● The report is available from the Government Printer and a notice asking for comment will appear in the Government Gazette on Friday

## minimum requirements'

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be repealed, the NMC

they should be replaced with  
system in which all organisa-  
wishing to operate as trade  
or employers' organisa-  
and to take part in bar-  
at any level, inside or  
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certain minimum require-

ne commission, recommend  
further that the Industrial  
be given the task of  
some form of acknowl-  
or confirmation that

the requirements were complied with

The Registrar should apply the following norms in considering a request for such and acknowledgement:

● The main objective of the organisation should be to serve the interests of its members and their collective relationship with their employers/employees

● The organisation should have a proper constitution in which it sets out its goals, interests served, criteria for membership, procedure for winding up, election and dismissal of office bearers, provisions for proper accounting measures and termination of membership

● The organisation should be independent, unaffiliated to political parties and prohibited from receiving or giving funds to such parties

● The organisation should depend on the contributions of its own members and other funds from whatever sources should be disclosed in its annual audited statements

● The organisation should submit annual statements to the Registrar on its membership and finances

The commission recommended that organisations that met these requirements have the statutory rights of bargaining and dispute settling procedures provided by the Labour Relations Act, including lawful strikes and lock-outs.

They would also be entitled to negotiate check-off facilities for membership dues

Provision should be made for withdrawal of the Registrar's acknowledgement or confirmation once an organisation ceased to comply — Sapa.



Cape Times 1/5/84

# 'Change registration system'

By BARRY STREET

HOUSE OF ASSEMBLY — The system of registration for trade unions could be scrapped if the government accepts a recommendation of the National Manpower Commission

The commission wants the formal registration procedure replaced by a system where any organization wanting to operate as a trade union or as an employers' organization should comply with minimum legal requirements

This proposal was contained in the commission's report into levels of collective bargaining and works councils, registration of trade unions and employers' organizations and the industrial court.

## 'Catering for race'

The report, which was tabled in Parliament yesterday, urged the existing requirement that the race of union members is stipulated in the registration of unions "should not feature in the requirements, explicitly or otherwise, although organizations would indeed always retain the freedom to cater for only one race should they so wish"

It also said that existing provisions for objections for the registration of unions should not be retained and "no proof of representativeness would be required". However, requirements about constitutions, membership registers and financial statements should remain in force

The commission said it could be argued that the present system of registration should be retained as it had proved itself over a long period of time

But the events of recent times were making new demands on the system and many of the newer unions had registered "rather reluctantly"

A significant number of unions had also remained outside the statutory system and had indicated, mainly because of the issue of race and representativeness, "they will not, in the foreseeable future, seek registration and will, therefore, continue to operate outside the statutory framework" ; "Moreover, the potential for a substantial in-

crease in the number of unions and their membership is great, in that at most 16 percent of the relevant black labour force is at present organized in trade unions while black workers comprise by far the largest part of the total relevant work force

"It is an open question whether the existing system would meet with their requirements once they have become organized"

The majority of the commission felt that it would be more satisfactory if there was no formal "registration/certification/listing on the part of the State, but only statutory provision that any organization wishing to operate as a trade union/employers' organization, inter alia for purposes of collective bargaining, should meet certain minimum requirements, and which would at the same time simplify the current statutory and administrative procedures relating to registration"

It said the existing definition of a trade in the Labour Relations Act should be retained in the proposed system so that "an organization will not be able to operate as a trade union without clearly specifying its interests by undertaking, industry, trade or occupation and area".

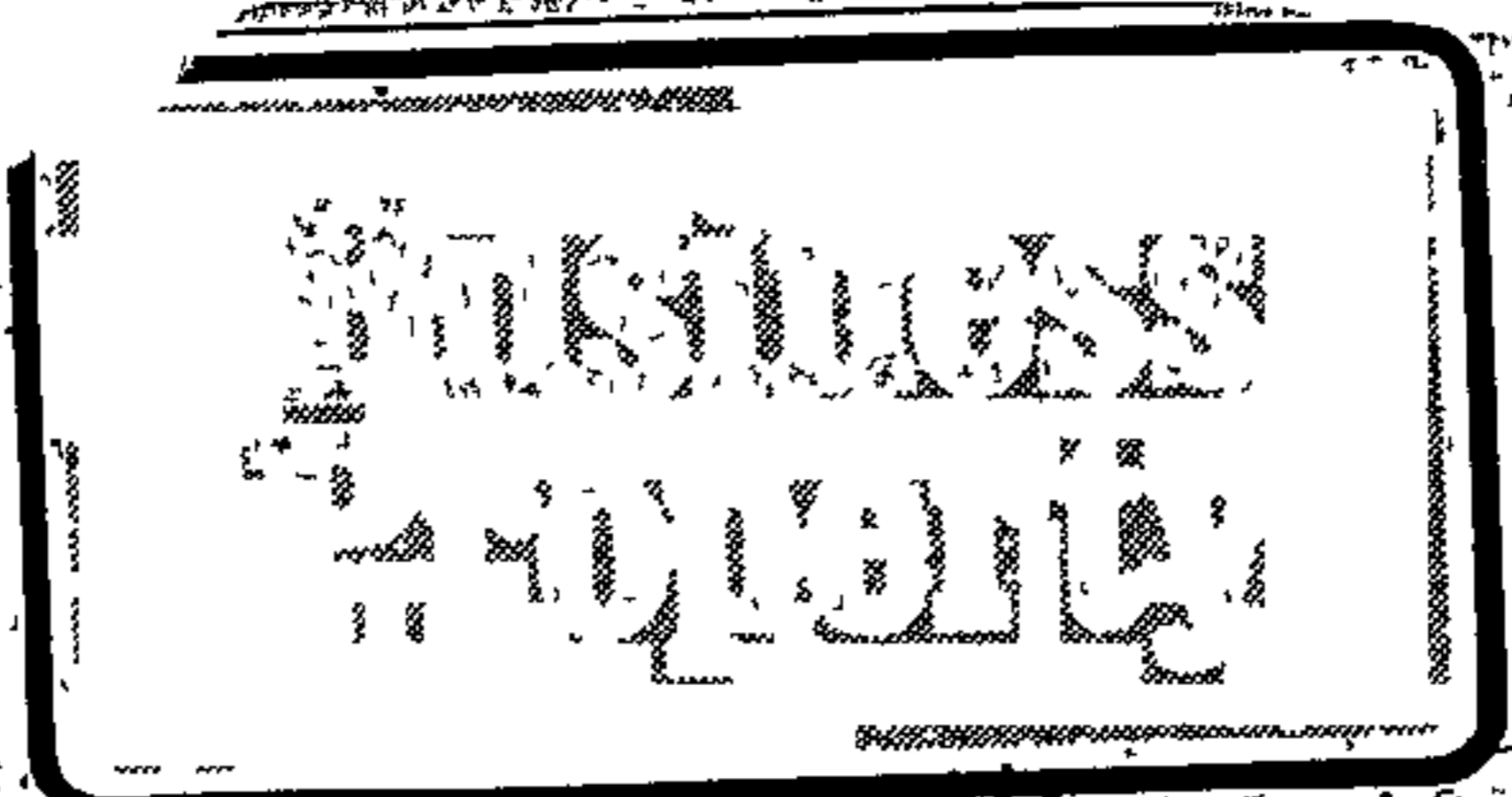
## Unitary system

It also felt "some form of compulsion" was preferable "in that the protection of the interests of the members of the various organizations as well as those of the community at large, should be overriding".

A unitary system of labour relations should be the aim and the statutory provisions "should at least lay the foundation for such a system".

For this purpose "a certain degree of State intervention is required in the initial stage of statutory recognition of the existence of such organizations"

However, the commission said, the existing requirement of linking the representativeness of a trade with registration "negates the principle of freedom of association, particularly where minority groups are concerned"



# Industrial Court bogy laid to rest

Finance Reporter

THE Industrial Court was cleared of being an ominous shadow over management's ability to execute its previously unchallenged 'basic business prerogatives' at a seminar held by the Institute of Personnel Management in Durban this week.

In five addresses from labour lawyers and management representatives, the seminar discussed the 'Challenge of the Courts', presenting a broad-based critical appraisal of attitudes towards the current standing of the Industrial Court.

Outlining management's prerogatives, Mrs Kate Jowell, of the Graduate School of Business, University of Cape Town, said that management does have a duty to protect the capital of a company for which it assumes responsibility.

## A duty

With this view labour has no right to try to get legislation passed to give them some control over the execution of this management duty.

There is the train of thought which says a manager has a duty to his shareholders above all others.

The owner or employer has an unwritten accountability to the Government for the safety and health of his employees which leads him to want full authority in his hands.

The final argument is that the main consideration is economic efficiency. Management may be responsible to shareholders but that does not preclude them from being constrained by society in how they handle their work force while exercising their responsibility to shareholders, she said.

She said in the past few

years there had been legal and environment changes that had influenced the upsurge in the power of the worker against the management on the shop floor.

The meaning of these changes was that black unions had been legitimised, that there was now a class of people in South Africa who perceive they have power they will use if they see fit.

Another speaker, Mr Bokkie Botha, group industrial relations manager for AECI, which recently fell foul of the Industrial Court over their firing of a two employees, outlined the lessons his company had learnt from their court appearance.

## Compromise

The essence of what we learnt and the warning that I give is that management does not show any weakness in compromise when it comes to talking to trade unions, he said.

He listed a number of things any management should take heed of in industrial relations.

● Respect employee dignity action should only be taken against an employee when it is conclusively prove that he or she had been wilfully negligent.

● Manage through consent accept conflict as a part of business and seek ways to avoid it.

● Put all correspondence or discussion about a case in writing.

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agements in their dealings with workers

A leading labour lawyer, Chris Albertyn, argues that since the IC is perceived as a symbol of social improvement, it is important that hard-won worker rights be furthered and upheld "Workers," he says, "do acquire a proprietary interest in their company's affairs — especially those with long service. It is important that this right be furthered by the courts and not eroded by an offensive by management."

Since there are far-reaching political overtones in IC findings, they "must not be seen in a micro manner — that is, looked at from the perspective of the firm. They should rather be seen in the context of changes taking place in society as a whole"

Building on the argument, Hylton Cheadle, deputy director of Wits University's Centre for Applied Legal Studies, maintains that employers have no need to fear the IC. Thus far, he notes, none of its decisions has been in conflict with the accepted practice of the more reputable employers "All the court is doing," he argues, "is legitimising these developments and leading to a coherent body of norms to govern industrial relations. In addition, it has brought rogue employers into line with accepted practice"

Cheadle contends that the court has an important role to play in heading off industrial action. Rather than constrain its activities, as some would have government do, more issues should be submitted to its jurisdiction "It should be allowed to expand on the task it has already started — that of establishing a coherent body of laws to regulate industrial relations"

Kate Jowell of UCT's Graduate Business School says that "management's prerogatives are under threat — and it's about time they were" This is a good thing, in her view, "simply because it is right and just. In the long term, pragmatic managers know that we need a new equilibrium"

## INDUSTRIAL RELATIONS <sup>S165</sup> Whose prerogative?

<sup>FM 415184</sup>  
The so-called "management prerogative" — which some unionists say gives management a mandate to hire and fire at will — is under increasing attack.

In essence, unionists argue that no area of management decision-making is sacrosanct. In their view, every presumed management right is counter-balanced by an equally clearly defined worker right

It is an area in which managements are obviously reluctant to concede ground. But an increasing number of managers now appear willing to grant that there is at least some validity in the workers' view. That seemed to be the consensus at a recent seminar specifically designed to look at management decisions in the light of Industrial Court (IC) rulings

There can be little doubt that the spate of IC rulings, particularly with regard to unfair labour practice, unfair dismissal and retrenchment, has severely limited man-

# Workers cry 'fowl' over farm rule

IS THE slaughter house at Rainbow Chickens  
a farm or a factory?

That's the question to be decided by the Industrial Court, and the outcome could vitally affect hundreds of workers.

The issue was raised this week when seven workers from Rainbow Chickens, sacked on February 6 when they refused to do overtime, applied to be re-instated.

Lawyers for the Chicken giant said the court had no jurisdiction over the seven men because they were farm workers and are therefore excluded from taking action through the court.

The seven want to be re-instated because they claim their dismissal was an unfair labour practice, and that they were given no hearing before being sacked.

Their lawyers, Durban's legal resources centre, argued that they were busy with industrial rather than farm work, and that the court could therefore rule that they be re-instated.

According to the lawyers:

The plant is in the Hammarsdale industrial



area. The land is zoned for industrial use.

The company pays rates on the plant land assessed as factory not farm land...

They argued that if relief was not granted to the seven, it would indicate to the workers that management was entitled to do what they liked.

Workers at the plant would know they had no rights and everyone would live in fear of being dismissed as the seven.

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# Employers slam role of the Industrial Court at seminar

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By BARNEY MTHOMBOTHI

THE role of the industrial court and the sometimes spectacular victories scored by trade unions there continues to be a source of disenchantment among employers

Sharp differences over the issue also emerged between labour law experts at a seminar in Johannesburg this week

Lawyers who had handled cases for trade unions felt the Industrial Court had made some strides while others felt the court's findings impinged on management's right to run their business

One lawyer even suggested employers "stay away" from the Industrial Court

And union victories in the court could increase if the Government accepts a recommendation, contained in the annual report of the National Manpower Commission tabled in Parliament this week, that easy access to the court be facilitated by removing a clause empowering the Minister of Manpower to prevent unions from taking "unfair labour practice" cases to it

Employer frustration with the court was neatly summed up by Maas van der Berg, a labour lawyer who has frequently represented employers before the Industrial Court

Addressing employer and union representatives at a one-day seminar on *Critical Issues in Labour Law*, organised by the Institute for Industrial Relations, at Sandton this week, Mr van der Berg accused the court of making its findings on the basis of suppositions

He told the seminar, which was also addressed by some of the country's top labour lawyers, he approached each case before the court with a feeling "of helpless paralysis"

A contentious clause is Section 43 of the Labour Relations Act, the status quo relief measure, which

compels an employer to temporarily re-instate a dismissed worker pending a hearing before the Industrial Court

"An employer feels he cannot conduct litigation with someone who remains in his employ. He faces the prospect of decisions affecting the running of his business imposed by the court"

He accused the court of taking an interventionist approach, of making itself part of management by imposing decisions which should be the prerogative of management, and of intervening between employers and their customers

"I find this disturbing" He said during times of economic boom, union

members went on strike "with a fair amount of alacrity" and only resorted to industrial court machinery during a recession

His advice to employers "Stay away from the Industrial Court"

Richard Schuster, Barlow Rand's Industrial Relations Advisor, said the concept "unfair labour practice" had left employers confused because it was too vague, wide and uncertain

In a highly heterogeneous country laced with inequalities like South Africa, there was no consensus on what was "fair" Employers were therefore in the dark as to when they should take unilateral decisions affecting their businesses

## CALL FOR CAREFUL STUDY OF LABOUR LAW REPORT

Tribune Reporter

A STELLENBOSCH academic this week called on employers and trade unions to give serious and careful study to the National Manpower Commission (NMC) report tabled in Parliament this week so all shades of opinion could be reflected in the legislation that would accrue from it

The Government has tabled the 450-page report, a result of detailed investigation by the NMC into the question of collective bargaining, the industrial court and trade unions, without comment and is inviting submissions from interested parties

Professor SP Cilliers, of Stellenbosch University and president of the Institute for Industrial Relations, said in Johannesburg this week the country had entered a new era in industrial relations and the course of events in this field would be determined by those involved in it

"We must bring to the attention of the legislature the kind of perspectives people involved in labour relations have," he said, concluding a one-day seminar organised by the institute

"Establishing rights through law is an on-going process and law is fundamental to this fabric of employer-employee relationship"

Also addressing the seminar on the report, labour lawyer Clive Thompson said the "best news" of the report was its recommendation regarding access to and the independence of the industrial court from Government influence

The report recommends steps be taken to improve the image and status of the court, particularly in regard to its "visible" independence from Governmental influence and control and the provision of adequate facilities, separate from any government department

Mr Thompson said it was also gratifying that the NMC had recommended that race and representativeness should be no basis of recognition

He was, however, disappointed with its recommendation that unions disclose their sources of funds other than those from their memberships

"This seems to be a precursor to other forms of control and is unlikely to be received with much acclaim by emerging unions," he said

"The current definition of an unfair labour practice and the wide discretion of the Industrial Court to make whatever order it thinks fit, renders the business environment unacceptably uncertain," Mr Schuster said

But Martin Brassey, an advocate attached to the Institute for Applied Legal Studies, urged employers to view the industrial court and its achievements in a more favourable light

"I will commend to you that the status quo relief has been properly applied by the court and is an asset to our industrial relations field," Mr Brassey said

He said unions had been winning most of the cases simply because in most cases they had been the applicants. Unions took those cases to the Industrial Court which they were confident of winning, he said



Kom 815/84 (165)

# Firing of 59 workers is 'unfair legal practice'

By STEVEN FRIEDMAN  
Labour Correspondent

MAJOR agricultural co-operative Vetsak committed an "unfair labour practice" by firing some workers who took part in a work stoppage at its Isando plant, and rehiring others, the Industrial Court heard yesterday.

Vetsak replied that, by stopping work, workers "repudiated" their work contracts and that the organisation was therefore free to fire all or some of them.

The court yesterday heard argument in a case brought by 59 former Vetsak workers who belong to the Metal and Allied Workers Union (Mawu).

They were fired after a stoppage on January 27 in which Vetsak fired its entire workforce and then rehired 71% of its workers. The 59 are asking the court to reinstate them temporarily until their dispute with Vetsak is settled.

Argument yesterday centred round charges by counsel for the workers, Mr Arthur Chaskelson of the Legal Resources Centre, that Vetsak's decision to selectively fire workers was "arbitrary" and thus "unfair".

The workers allege that those fired included 13 of Mawu's 17 shop stewards at the plant and that the sackings were a "purge" aimed at the union.

In two previous cases, the court has grant-

ed temporary reinstatement to workers whose lawyers argued that selectively rehiring workers who had stopped work was an "unfair labour practice".

Mr Chaskelson also argued that, by stopping work, the workers had not been taking part in an illegal strike because they had made no demands, but were merely seeking "explanations" from management.

The Vetsak stoppage flowed from demands by workers for recognition of Mawu, wage increases, and the granting of "stop orders" to the union.

Mr Chaskelson argued that management behaved unreasonably in rejecting all three demands and therefore caused the stoppage.

He charged that Vetsak had given no valid reasons why the 29% of workers who were fired were selected for dismissal and others were not. The firings were therefore "arbitrary" and an "unfair labour practice".

Mr J Hiemstra, for Vetsak, said they had chosen to strike and had therefore repudiated their contracts. Management, therefore, was not bound to rehire all or any of them.

Management, Mr Hiemstra said, had treated each case for rehiring "on its merits" and had not been "arbitrary".

Rehiring all workers would have reduced discipline in the plant, he added, and granting the order the workers sought would cost Vetsak R80 000 in wages.

Parliament and Politics

Parliament and Politics

Manpower report moots removal of discrimination

Cape Times 9/5/84 (165)

Political Staff
SWEEPING changes, including the removal of discrimination on the grounds of race, are suggested in a National Manpower Commission report tabled in Parliament yesterday.

The report covers the investigation into the small business sector in South Africa with specific reference to factors possibly retarding

growth and development. The Minister of Manpower, Mr Pietie du Plessis, said yesterday the broad guidelines of the report had been accepted by the government in principle "having regard to other goals and the provisions of over-arching legislation in respect of the geographical establishment of undertakings".

essentially involves the Group Areas Act. The report concludes that from the information collected the obvious way of alleviating legal restrictions would be the setting up of guidelines for government institutions. The guidelines, it states, should take into account.

The public sector, the report states, should care for the needs of small businesses in.

in getting a business licence. The report states that its investigations showed that small businesses were hampered by legislation and other factors. These included:

- The Group Areas Act
• The Liquor Act.
• Tax concessions that do not benefit the small businessman.
• Problems involved in getting a business licence.
• The complicated Companies Act
• Strict housing standards.
• Regulations in respect of business premises in terms of the Factories Act.
• Requirements in respect of street vendors and African entrepreneurs.

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# Chicken farm men reinstated by court

Mail Reporter

THE industrial court has ordered the reinstatement of six Rainbow Chicken employees after finding they were industrial and not agricultural workers

The case, brought by the Legal Resources Centre, followed the dismissal of the six workers from Rainbow's processing plant at the Hammarisdale industrial township in Natal for refusing to work overtime

Mr Arthur Chaskalson, SC, for the workers, charged that they had been unfairly dismissed because, in terms of the Basic Conditions of Employment Act, they had a right to refuse to work overtime.

Mr Roy Alloway, SC, for the company, said the Act excluded farm workers and domestic workers. In addition, such workers had no right of access to the industrial court.

Mr Chaskalson argued that workers in Rainbow's processing plant did work which was in essence no different from any other industrial operation.

Mr D B Ehlers found that the plant was an industrial and not a farming operation, that the workers were subject to the protective legislation and found their dismissal was an unfair labour practice

He ordered the company to reinstate the workers



## LABOUR NEWS

# North West 'Mine no longer to pay workers'

Mail Reporter

THE Industrial Court has refused to extend an order temporarily reinstating the 17 West Driefontein mine workers who have been at the centre of an eight-month legal row between Gold Fields of SA and the National Union of Mineworkers.

The court yesterday refused to extend the status quo order for the fourth time after an application calling for its extension was brought by the NUM's legal representatives.

The company has been paying the workers' wages though not employing them since last year when the NUM won the status quo order pending the outcome of the case.

The NUM has alleged that the company committed an unfair labour practice by firing the workers for refusing to work in an area of the mine which they considered to be unsafe.

However, the "unfair labour practice" case, which is regarded as a key test of workers' rights not to work in areas they consider to be unsafe, is still to be completed.

It was postponed indefinitely two weeks ago after the company claimed that the NUM legal representatives had changed their case and should reformulate it.

A statement from Gold Fields said the mine had been paying the men since September 22 in terms of the status quo order, but they had not been employed at the mine.

"Today's court order means that the mine no longer has to remunerate the men."

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development of the BLS economies — but he declined to elaborate

It has been clear for some time (*Currents*, December 10, 1982) that "closer economic co-operation" with the BLS is a key feature of Pretoria's plans for a new customs agreement — one that "satisfies the requirements of the Eighties," as Finance Minister, Owen Horwood, recently said

Horwood said in parliament last month that government "has been busy for some

time with an in-depth investigation into all aspects of the CU agreement" SA's probe went beyond mere financial arrangements and involved trade, agriculture and transport matters as well, he said, observing that with independence the TBVC states had obtained "*de facto* membership" of the CU

Although *de jure* recognition of the TBVC by the BLS seems far off, SA's new CU proposals seem designed to lay the ba-

sis for this, with the ultimate goal being Prime Minister P W Botha's proposed constellation of southern African states

Botha outlined SA's intentions at his summit with TBVC heads in 1982 when he explained "We see the Customs Union not in isolation as a revenue-sharing arrangement but as part of a comprehensive regional strategy"

The implications could be significant. For example, the African "counter-constel-

face to face

PIET VAN DER MERWE

# Directions in labour



Piet van der Merwe is Director General of the Department of Manpower. He spoke to the *FM* about recent developments in labour

**FM:** There has been a high incidence of strikes this year. To what do you attribute this?

Van der Merwe Compared with the corresponding period in 1983, strike activity has been higher this year. But most strikes have been of relatively short duration and there are good indications that greater use is being made of the Industrial Court and of conciliation boards to resolve disputes. That is encouraging. In most cases, strikes have been sparked by wage issues. Owing to the recession, the ability of employers to grant wage increases has declined and, in many instances, negotiations have been tougher than they were. Concern has been expressed about the Minister of Manpower excluding unfair labour (ULP) disputes from conciliation board terms of reference.

One must be very careful in judging that. There are built-in checks and balances for this process. The Department of Manpower (DoM) has to consider the merits of each application and act within the framework of the law in making recommendations to the Minister. The disputes machinery is voluntary and the DoM is always anxious that it be used. Very often there is a complex background to each situation and people must be in possession of all the facts before criticising. The DoM will never stand in the way of parties who would like to make use of the Labour Relations Act machinery, unless there are legal or other genuine reasons why particular applications cannot be favourably entertained.

Has the ULP provision been abused?

I don't think so. The definition of a ULP is very wide and it will be investigated in the light of the National Manpower Commission's (NMC) latest report. Originally it was made purposefully wide to enable the Industrial Court to gain more knowledge and insight through experience, so as to evolve a more precise definition. The DoM would not like to be accused of blocking the way to the Industrial Court or the disputes-settling machinery. Our object is precisely the opposite.

The Labour Relations Amendment Bill (LRAB) stipulates that trade union-employer agreements will not be enforceable in court if unions do not conform with certain minimum requirements. This has created fears that the next step will be for the DoM to decide whether or not agreements are acceptable.

The provision conforms with the majority recommendation on registration contained in the report of the NMC which the Minister of Manpower received in July-August last year.

The present minimum requirements in the Labour Relations Act are designed to protect union members, and the great majority of registered and unregistered unions have been complying with them. Only a very small number have not. Thus, most unions will not be affected by the provisions of the Bill. I really think there has been an over-reaction in some quarters. In the final analysis, a very small number of unions will be affected.

Fears that the DoM will make judgments on the acceptability of agreements are purely speculative.

What is your reaction to the latest NMC report?

There are two major issues involved: the recommendations which relate to the registration process and those relating to the functions of the Industrial Court.

As far as registration is concerned, it is very clear that there are wide differ-

ences of opinion in the NMC. There are at least three lines of thought on the issue and I think the same would apply in business and trade union circles. Registration is a sensitive issue. For that reason, the Minister has indicated that he will not take a decision one way or the other until all parties have had the opportunity to comment. Government will only respond in a White Paper once the comments have been studied.

The LRAB goes some way towards what the NMC had in mind. The NMC recommended that no union which does not comply with the minimum requirements would be able to operate as a trade union. The LRAB does not go that far. In fact, it falls short of the majority report. It says that if a union does not comply, it can still operate as a union and conclude agreements, but that these will not be enforceable in court.

I cannot see the sense of minimums if compliance is voluntary.

Are we to read the LRAB as preempting government's response to the NMC majority recommendation on registration?

No. I can't say what the parliamentary select committee will do with the Bill. The fact remains that a Bill has been put before Parliament — and we have received comment from various sources. The select committee should be allowed to come to a decision in the light of those comments.

What about the NMC's recommendations on the Industrial Court?

Two reports must be considered when we look at the Industrial Court: the Hoexter Commission and the NMC report. There is a strong feeling by both the NMC and the Hoexter Commission that all courts should fall under the Department of Justice. The NMC report also contains recommendations about ULPs trying to narrow them down to practices that can clearly be identified as unfair. We will have to decide on amendments in the light of comments we receive.

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# Spotlight falls on legal plight of farm workers

LABOUR WEEK  
by PHILLIP VAN NIEKERK

THE inadequate legal protection of farm workers was again highlighted last week by an industrial court finding that six Rainbow Chicken employees were industrial and not agricultural workers.

If the court had found otherwise, the six workers would have been excluded not only from the protection of the Basic Conditions of Employment Act but from access to the industrial court itself.

This situation is a direct result of a divided labour system which grants protection and rights to the bulk of the country's workforce while denying it to millions of farm workers and domestic workers as well as to State and semi-State employees.

The Rainbow Chickens dispute arose when the company fired the six workers for refusing to work overtime, a right guaranteed by the Basic Conditions of Employment Act.

The Legal Resources Centre took the case to the court, charging that it was an unfair labour practice and that the workers had been unfairly dismissed.

The key finding by Mr D B Ehlers was that the workers, who were employed at the company's processing plant at Hammarsdale, were industrial workers and therefore entitled to protection under the Act — as well as the right of access to the industrial court.

This technicality made the world of difference. It has altered their entire legal status, their right to belong to a trade union and their conditions of employment at the workplace.

The finding has important implications for other workers in the borderline industries such as abattoirs and sugar cane plantations. It would appear from Mr Ehlers' judgement that the nature of work done and not the type of operation determines whether the worker is an industrial worker.

The question of workplace rights for agricultural and domestic workers — who are probably more in need of legal protection than any other group of workers in the country — was placed on the National Manpower Commission's agenda more than two years ago

A report has still not seen the light of day, presumably because it is regarded as being less important than the NMC's controversial recommendations on registration and the industrial court and its report on small businesses.

□ □ □

TELEVISION viewers who saw the first episode of "1922", the story of the 1922 mineworkers' strike, on TV on Thursday night might be surprised to know that 60 years later white worker power still carries huge clout on the mines.

Last week the Mine Surface Officials' Association (MSOA) finalised a deal with the Chamber of Mines extending that union's closed shop.

The deal also re-affirmed the "better utilisation of labour" agreement which obliges the Chamber of Mines to consult

the MSOA before appointing blacks to jobs traditionally held by whites.

At the same time the chamber's attempts to scrap mining apartheid have come up against the hard-line stand of the Mine Workers' Union who are in no mood to bargain away the privileges of the white miner.

The chamber's deal with the MSOA came about after a lengthy dispute formally declared eight months ago but which in reality has been going on for longer than two years.

It is strange that at a time when the closed shop, forcing all employees in a particular area to belong to one union, is under fire in other industries the mining industry has entrenched it.

They have removed the right to freedom of association from all coloured people, Asiatics and blacks employed as senior officials on chamber mines after April 9.

The MSOA argues that the new agreement protects both white workers (from being undermined by blacks employed at lower salaries doing the same work) as well as black workers (from being paid lower salaries).

While there are probably few blacks in the higher officials grades now, the agreement effectively heads off the Black Mine Surface Officials Association formed by the National Union of Mineworkers' after their annual conference in November last year

With a likely increase of blacks in these occupations in future there could well be resentment that not only are black workers forced to belong to the MSOA but that a white-dominated union has such power over their appointments.

At the same time all attempts to scrap racial job reservation on the mines seem to be dependent on the sanction of the MWU, which says in the latest edition of the Mynwerker that it is not prepared to negotiate with the chamber and sees no need for the removal of these race barriers.

The statement by the union's general secretary, Mr Arrie Paulus, that they will consider proposals from the chamber if they guarantee the "future of the white miner" has been seen by some as a softening of attitude and a sign of hope that the talks between the Chamber and the mining unions will lead somewhere.

But there is little doubt that Mr Paulus wants to see a very good offer on the table before he even sniffs at it.

□ □ □

WAGE talks between the Chamber of Mines and the National Union of Mineworkers which will affect some 450 000 black mineworkers and which are becoming the most important annual industrial relations hurdle in the industry were due to start on Friday.

However, the talks got off to a bad start before they even started when the chamber postponed the first meeting for a week.

The NUM — highly sensitive to the timing of the talks after last year's debacle brought about by the short space of time allowed for a settlement, and committed to calling a special conference this year if there is no settlement soon — were none too happy about the postponement.



# LAWMEN LASH COURTS

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A JOHANNESBURG labour lawyer warned trade unionists at the weekend to use their labour power to settle their disputes instead of relying on the Government-created industrial courts.

Speaking during a four day labour seminar attended by over 100 trade union leaders in Hammanskraal, Mr Halton Cheadle, of the Centre for Applied Legal Studies, said the industrial court should be viewed with suspicion despite decisions it has

taken in favour of workers

He also said a stage might soon be reached when the industrial courts will do more to trim the rights of trade unions and increase those of the employers

He added that it was understandable that South African trade unions would resort more to the use of industrial courts because they did not have enough financial strength to use strikes to settle their disputes with managements

They were also not

sufficiently developed since only a small percentage of the work force is unionised.

Mr Cheadle said that trade unions in England do not use industrial courts because workers claim that industrial court judges view issues through the employers' point of view — and not that of workers

For that reason, added Mr Cheadle, they use their own labour power to settle disputes.

Another lawyer, Mr Charles Nupen, of the Legal Resources Centre, said many workers were using the migrant labour system to retrench workers by refusing to renew their contracts.

Mr Nupen said trade unions which have a recognition agreement with management should have a retrenchment clause in their agreement to protect migrant workers.

He also said that Section 10 (1) (a), (b) and (c) were not permanent rights, because they could be taken away any time. The rights remained in force for as long as a worker was employed and was residing in a prescribed area.

DISPUTES ~~186~~ ~~151~~ ~~165~~  
~~LRA~~  
Defining who's who

A judgment handed down by the Industrial Court last week could have far-reaching implications in defining the categories of worker who fall within the ambit of the Labour Relations Act (LRA) and other labour legislation. The court ruled that six workers employed by Rainbow Chickens in Natal are industrial, not agricultural workers.

Agricultural workers (along with domestics) are excluded from the provisions of the LRA and are among the least protected workers in SA. The judgment gives clearer definition to the somewhat blurred distinction between the two worker categories in agricultural processing industries.

It also opens the way for Rainbow, a major employer group, to become rapidly unionised. The Sweet Food and Allied Workers' Union (SFAWU), an affiliate of the Federation of SA Trade Unions, has already given notice that it intends to organise the plant.

The court was asked to decide the issue after the Legal Resources Centre took up the case of six men dismissed by Rainbow for refusing to work overtime. Centre attorney Richard Lyster contended that as the men were industrial workers, they had a right to refuse overtime in terms of the LRA and the Basic Conditions of Employment Act (BCEA). Consequently, he argued, their dismissal amounted to an unfair labour practice.

In reply, Rainbow argued that it had always regarded itself as an integrated farming operation and its employees as

~~186~~ ~~151~~ ~~165~~ ~~LRA~~ FM 18/5/84  
agricultural workers. Therefore, neither the provisions of the LRA nor the BCEA applied and the court had no jurisdiction in the matter.

#### Industrial undertaking

The court found that Rainbow's chicken processing operation was, by nature, an industrial undertaking. Therefore the court had jurisdiction, and it ruled that the applicants had been unjustifiably dismissed and granted a temporary reinstatement order.

Lyster says that although the company has given notice that it will comply with the order, it intends to take the matter on appeal to the Maritzburg Supreme Court.

In Lyster's view, the company was attempting to "perpetuate a fiction" by claiming that it was an agricultural operation. He says its processing plant at Hammarsdale is in an area zoned for light industry and is rated by the local authority on an industrial basis. In addition, he points out that other chicken producers have recognised their industrial status. One, Farm Fare Chickens, has signed a recognition agreement with the SFAWU.

The case has similar elements to the recent dispute in the sugar industry where SFAWU claimed that workers loading cane in the fields were industrial workers. In that case too, the court ruled in the union's favour.

The implication of the judgment is that henceforth Rainbow workers will enjoy the protection of all the statutes governing employment — particularly in relation to wages, conditions of employment, retrenchment procedures and overtime payment.

Says Lyster "We feel that it is desirable that conditions of employment be standardised throughout industry."

Parliament and Politics

Parliament and Politics

members in 1983

Unregistered unions had 140 004 members in 1983

Cape Times 19/5/84

By BARRY STREEK  
HOUSE OF ASSEMBLY.

The 59 known unregistered unions had 140 004 members, including 544 whites, last year, the Department of Manpower said in its annual report yesterday.

The report, which was tabled in Parliament, revealed that there were 194 registered trade unions last year with a total membership of 1 288 748, an increase of

63 294 or 5,2 percent.

The department said the amendment of the Labour Relations Act to incorporate workers of all races within the definition of "employee" had shown that a real need had been met by the reforms.

"This is clear not only from the positive reaction that resulted from the step, but also from the increasing use by the various population

groups of the opportunity to establish and register trade unions and to use the official bargaining and conciliation machinery."

This had been reflected by the new applications of 54 unions for registration since the introduction of the reforms in 1979.

One notable result had been the intensive campaign by existing and new trade unions to re-

cruit members from unorganized black workers.

"Although this had a positive result, it also gave rise to keen competition, particularly among the newly-established unions, to gain the support of the workers and in some cases this gave rise to labour unrest.

"This sometimes created high expectations among the workers as to the improvements in ser-



vice benefits that the trade unions would be able to obtain.

"However, many of these expectations cannot be realized because of their unrealistic nature."

It also said the increasing work load of the Industrial Court was "an indication that, in the view of both employer and employee parties, it has an important function to fulfil in the regu-

lation of orderly and stable labour relations".

The number of cases referred to the court had quadrupled: During 1983 a total of 190 cases had been reviewed by the court, compared to 49 in 1982.

The department also said that although a "significant part of the labour force" remained unorganized these workers were becoming increasingly aware of the

opportunities of being organized into unions.

"It appears that new black trade unions (registered and unregistered) are being formed in steadily growing numbers which, as may be expected, is resulting in greater competition in certain areas and industries.

"Some of these unions prefer not to make use of the existing statutory negotiating structures, and

are not prepared to avail themselves of the dispute-setting machinery that is provided for in the Labour Relations Act.

"During 1983 there were however indications that the so-called new trade unions were willing to make use of the existing labour relations systems, especially the conciliation board system and the Industrial Court."



# Unfair labour practices: Fighter definition mooted

CAPE TOWN

April 1984

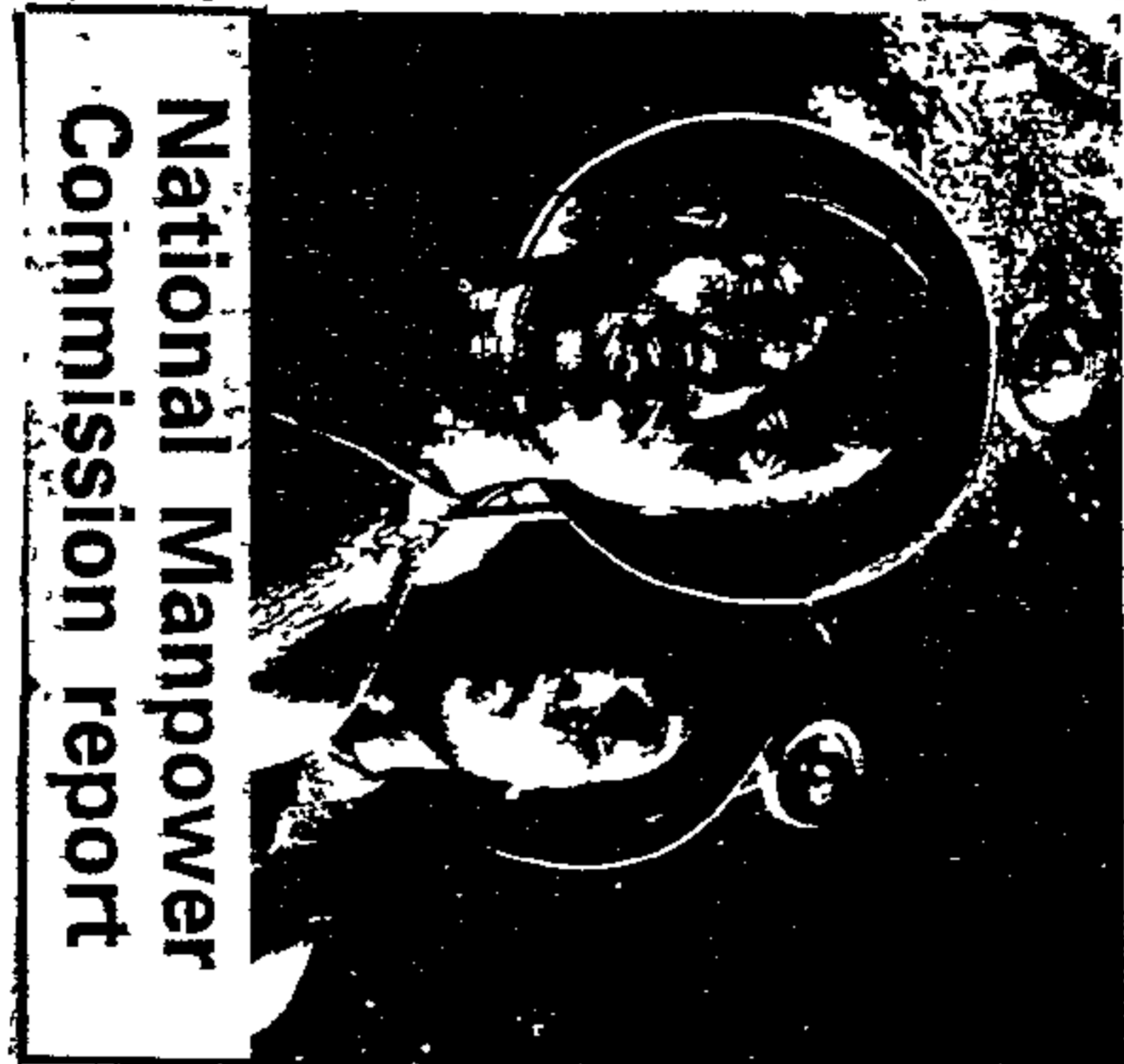
Political Staff

## HOUSE OF ASSEMBLY.

The National Manpower Commission has recommended a tighter definition of unfair labour practices including the outlawing of consumer boycotts by workers during disputes.

At present an unfair labour practice, a concept introduced after the report of the Wiehahn Commission of Inquiry in 1979, is undefined and this has caused some problems as it has been left to the Industrial Court to define it.

The National Manpower Commission, whose report into levels of collective bargaining and



National Manpower Commission report

works councils, the registration of trade unions and the Industrial Court was tabled in Parliament yesterday, said the definition of an unfair labour practice should create new rights.

However, some flexibility should be incorporated and the final authoritative interpretation of the concept should rest with the Industrial Court.

It said unfair labour practices should be designed to protect individuals as well as organizations and that there should be direct access to the court in cases of disputes involving unfair labour practices. It also said that al-

though a list of unfair practices should be given in the definition "this list must be capable of amendment as circumstances change".

It said the following practices should be included in the definition:

- "Employer interference in union affairs and union interference with employer affairs, such as an employer supporting, aiding or interfering in the establishment, management or administration of a union, or a union refusing to negotiate with management until a particular member of management is dismissed."
- "The victimization

of the members, officials and office-bearers of trade unions, works councils or other similar organizations of workers."

"The use of unconstitutional, unfair and misleading recruiting methods and arguments by a union or employers' organization."

- "The unjustifiable dismissal or termination of employment of workers and the replacement of employees with workers of another race group where the "ostensible purpose" is to provide less favourable terms and conditions of employment."
- "The unjustifiable refusal by a union or employers' organization to grant membership to a person who satisfies the criteria for membership of the organization concerned."
- "Secondary product boycotts by a trade union or employees resulting from a labour dispute."
- "The abuse of organizational or negotiating power by a trade union or a group of employees to the detriment of other groups or individuals, for example a union using its bargaining power to compel an employer to deal only with it and not to negotiate with a minority."
- "The blacklisting of employees and employers."

# Why not <sup>ARGUS</sup> 'Womanpower' <sup>22/5/84</sup> instead of <sup>(165)</sup> 'Manpower'?

**Parliamentary Staff**  
THE Department of Manpower has a manpower problem, statistics in its annual report show.

Various MPs expressed concern over the matter during the debate on the Manpower vote yesterday.

At the start of the debate, Mr P.T.C. du Plessis, the Minister of Manpower, said there was a "serious shortage" of experienced officials which had built up over years and which would take a long time to set right.

#### NOT SUITABLE

Although 83.8 percent of the posts were filled at the end of last year, 33 percent of them were not "suitably manned", he said.

At the end of last year 63 percent of the 2,354 employees of the department had less than five years' experience.

Dr Alex Boraine (PFP Pinelands) described the staff shortages as "disquieting" and suggested that as more than half the posts in the department were filled by

women, its name should be changed to "Womanpower".

Later, Mr Nic Olivier (PFP nominated) said the budget of this "absolutely key department" had to be increased in order to solve the manpower problems.

Replying, Mr du Plessis said that various steps had been taken to solve the department's manpower problems.

Job differentiation had been applied successfully and many former employees had returned to the department. People of colour had been appointed increasingly, especially as career counsellors.

#### STREAMLINED

In addition, labour-saving devices such as computers and word processors were being used and various procedures had been streamlined.

Mr du Plessis rejected the idea of changing the department's name to "womanpower", because, he said, it "might scare males".



## MANPOWER DEBATE

### Testing the Minister

After this week's low-key, almost irrelevant, Manpower vote debate in Parliament it is still not possible to say whether the new minister, Pietie du Plessis, is to continue the trend of reform instituted by his predecessor, Fanie Botha.

"I think we should give him the benefit of the doubt at this stage," Progressive Federal Party manpower spokesman Alex

#### TRIMMING THE NMC

Fm 25/5/84 (165)  
The National Manpower Commission (NMC) will probably be reduced in size after the terms of office of the present members end in May next year.

Indications of this were given by Manpower Minister Pietie du Plessis during the debate on his vote in Parliament. He also said he would take into account criticisms of the composition of the NMC when he appoints new members next year.

Du Plessis' statement came in response to comments from Alex Boraine, the Progressive Federal Party's chief manpower spokesman. Boraine had complained that it was neither helpful nor desirable that the recent NMC report should be so bulky and cover so many subjects. Boraine also charged that "there is criticism that the NMC is far too large and unwieldy and has too many civil servants and academics remote from industrial relations" serving on it.

Boraine said he believed the NMC was a vital body and urged it to give attention to these criticisms.

Du Plessis expressed appreciation for the work done by the NMC. He said he had asked both it and the Industrial Court to look into any criticisms. He then pledged to "look at the size of the NMC in May next year when it is reappointed."

Boraine says. But there was not much to reassure him during the two-day debate.

In welcoming the new minister, Boraine said Du Plessis faced major challenges — particularly as there are those who believe that the Manpower Department is getting cold feet in the light of rightwing opposition." Boraine asked for assurances that this was not the case.

Rightwing pressure certainly made itself felt in the debate. Both the Conservative Party manpower spokesman, Brakpan MP Frank le Roux, and the CP MP for Kuruman, Jan Hoon, virtually called for the reinstatement of job reservation by saying that white workers should be given preference in the "white homeland."

At the end of the debate, Du Plessis gave a long list of protections for white workers in which he basically provided an outline of labour law in SA.

Then, he added, significantly, "every one of these protections is available to all workers regardless of race and colour." It was this statement which enabled Boraine to give him the benefit of the doubt.

For the rest, Du Plessis was cautious, relying on general statements of government policy and pleading that no-one should exploit the labour situation for political gain. "We must be careful because when people get the feeling they are being discriminated against or their jobs are on the line for racial reasons, we are playing with fire."

He also pledged to protect the interests of all worker groups, including minority groups. "I will not leave any of these groups of workers in the lurch."

Du Plessis is now faced with some tough decisions. These will determine whether Boraine and others in the labour community will still be prepared to see him in a good, "reformist" light.

#### Controversial Bill

The controversial Labour Relations Amendment Bill, which Du Plessis tactfully allowed to go to a select committee before second reading — thus permitting discussion on the principles of the proposed amendments — will emerge shortly. It will give concrete indications of where government is moving in labour.

The Manpower Department has also called for comments on the National Manpower Commission (NMC) report on levels of collective bargaining and works councils, the registration of trade unions and employers' organisations, and the Industrial Court before it issues a White Paper on developments and policies. That, too, will give an indication of whether the momentum generated by the Fanie Botha-Wiehahn reforms will be maintained.

During the debate, Du Plessis ducked a Boraine challenge to root out racial discrimination in the mining industry. He argued that this matter should be raised in the Mineral and Energy Affairs vote. This is in spite of the fact that it was Fanie Botha and the Wiehahn Commission which

(16)  
recommended that the Chamber of Mines and the relevant mining unions should be given a reasonable amount of time to phase out the discriminatory whites-only definition of "scheduled person," replacing it with a nonracial category of "competent person."

Boraine warned that if the present position is maintained, there is a distinct possibility of a "head-on confrontation" between either the Chamber of Mines and the National Union of Mineworkers, or the Mineworkers Union and the NUM. This, he said, "could cause untold damage to a vital industry."

Whatever the technicalities of a bureaucratic division of government activities, it is the Department of Manpower which should be taking the lead in situations like this. However, Du Plessis showed little indication of doing so.

The new Minister may have had an easy time in Parliament this week. But his probationary period is over. The real test in what he himself has called "a very difficult and delicate portfolio" now faces him.



## LABOUR LAW

### A premature act?

A question which has been worrying many people about the Labour Relations Amendment Bill (LRAB) was raised in Parliament this week by the Progressive Federal Party's chief manpower spokesman, Alex Boraine

Speaking during the debate on the Department of Manpower's budget vote, Boraine highlighted the fact that a recent National Manpower Commission (NMC) report covers much the same ground — yet makes different recommendations — as one of the Bill's most contentious provisions

The LRAB, which is currently being considered by a Parliamentary select committee, states that if employers' organisations or unions do not comply with certain conditions laid down in the Labour Relations Act any agreements they reach will not be enforceable in any court, including the Industrial Court

The conditions include supplying the department with details of constitutions, head office addresses, names of office-bearers and officials, maintaining a register of members, keeping books of account, preparing annual financial statements, having books audited, and submitting annual financial statements to members

Furthermore, the LRAB says that if parties do not submit details of any agreements they reach to the Department of Manpower within 30 days of concluding them, they will be guilty of a criminal offence

The Bill was tabled during the first week of the current parliament sitting. These provisions in it have been interpreted unfavourably in many quarters — including some in the employer camp

#### Not consulted

Several members of the NMC, which is charged with making recommendations to government on labour matters, are known to be angry that the commission was not consulted about the Bill

The NMC's report — which the Minister of Manpower received in July-August last year — deals with the levels of collective bargaining and works councils, the registration of trade unions and employers' organisations and related matters, and the Industrial Court. It was tabled in Parliament earlier this month

Government is now awaiting comment on it before publishing its response in a White Paper

Regarding registration, the majority of NMC members recommended that the current provisions in the Labour Relations Act should be repealed and replaced by a system in terms of which all organisations wishing to operate as trade unions or employer organisations should comply with certain minimum requirements

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## SCHOOL OF BUSINESS LEADERSHIP

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(165) (166)

Fm 25/5/84

They said race and representativeness should not be included in these requirements. But trade unions or employer organisations should meet the following criteria.

- Their main objective should be to serve their members,
- They should have a proper constitution,
- They should be independent institutions and not affiliated to any political party;
- They should depend on contributions from their own members or income derived from their own sources, while any other funds should be disclosed in annual audited statements stating from which source they came and the purposes for which they were used, and
- They should submit audited statements

on their membership as well as financial statements annually to the Department of Manpower

The majority recommendation says only organisations complying with these criteria should have the right to make use of the collective bargaining and dispute settling procedures of the Labour Relations Act, the right to enter into agreements, and the right to negotiate check-off facilities. Organisations which do not comply should be guilty of an offence

A number of minority reports on the registration issue were submitted. Five NMC members recommended that the present registration system be retained. Four others, while agreeing with the recommendations, said registration should be a

voluntary procedure. One member agreed to the need for a new system, but recommended one of compulsory registration

The LRAB provisions and the NMC's registration recommendations, although different, will bring about far-reaching changes to the SA labour relations system if either is implemented in its present form

In Parliament this week, Boraine said that in light of the fact that government is awaiting responses to the NMC report, it would be premature, "unwise and even foolhardy" to proceed with any legislation relating to the report until after the White Paper has been published

It seems he has a point. Whether or not government will pay heed to what he has said is another matter

in my opinion

FANUEL TJINGAETE

# Land incentives needed

Fanuel Tjingaete, an exiled Namibian, is a Ph D student at the Free University in Berlin

Even a careless observer will have noticed today that the developing countries of Africa, Asia, and Latin America are littered with the debris of unsuccessful economic reforms. The reasons behind these failures and the lessons Namibia should learn from them are important

Many governments have experimented with a variety of political systems, ranging from imitations of Western democracies — in particular the Westminster type — to socialist orientated programmes

Because of dismal failure on the economic front, whatever may have been achieved through these experiments soon vanished in the quicksand of "lack of sound economic base". In many countries economic failure was followed by a succession of military coups

One can safely state that there has been a great deal of social disintegration as the socio-economic polarisation (rich versus poor) in many of these countries became a major trend

Fortunately, there appears to be a high degree of unanimity among scholars of modern economic development on the central cause of this state of affairs: a serious neglect of economic incentives in industry, agriculture, and other sectors of the economy

To be sure, there have also been external shocks which aggravated the situation in many countries

Of particular significance to this article is the question of incentives in agriculture, since the majority of people in most developing countries depend on

this sector

In agriculture, the question of incentives centres around the price policy. The major aims of a rational pricing policy should be to find a socio-economically "just" price that is fair to both producers and consumers. It should also influence production, guarantee consumption, stabilise agrarian prices and reduce the high risks prevalent in agrarian production

In retrospect, one discovers that the goal of self-sufficiency in food production has become a declared aim in many developing countries, some of which were previously self-sufficient

This is mainly because the entire agricultural sector is often relegated to a secondary sector through a low price policy. Farmers are often given so-called "moral incentives" as opposed to "material incentives."

## Underpaying

In an actual context, this means underpaying the farmers and exploiting them. This has happened in both so-called capitalist and so-called socialist developing countries

All this leads to a major divergence between the stated aims of development and its results. It ends in

- A progressive deterioration of the real level of return to producers,
- A serious deterioration of the agricultural sector; and
- An almost total paralysis of the entire economy — manifesting itself in low economic growth rates in the face of high population growth, inflation, and foreign indebtedness

The record holds important lessons for Namibia

As Namibia progresses towards poli-

tical independence, the question of economic dispensation becomes more and more relevant. We must ensure that immediately after independence there is a high degree of economic continuity and not a near to catastrophic decline

On the other hand, we must be aware that virtually all developing countries have what is called "structural-heterogeneity," that is, the existence of a pyramid-like socio-economic and socio-political structure which secures the exploitation of the peasants by the upper group consisting of an alliance between the local elites and multinational corporations

The challenge to all responsible Namibians is to find a formula which represents a healthy mixture of socialist principles (in particular the equitable distribution of wealth) and capitalist principles (managerial and technical efficiency, free enterprise and profit-making)

This search for a formula deserves special emphasis when one recalls the Ujamaa experiment in Tanzania which sought an equitable distribution of one of the major means of production (land). It ended up in complete failure because the Ujamaa peasants never got sufficient economic incentives to ensure a real rate of return on investment. The result was managerial and technical inefficiency, a misallocation of resources and a catastrophic decline in agricultural output

The list of developing countries which suffered similar fates is almost endless

Namibia, being the last colony on the African continent, has had ample time to observe developments in other former colonies and to learn from their mistakes

APK 105 28/3/84  
**Press barred  
from hearing  
on bus row**

(165)

Labour Reporter

**REPORTERS** were barred today from an Industrial Court hearing called to settle the dispute between City Tramways and their bus drivers, which has disrupted Cape Town's bus service for five weeks.

Mr M Soekor, chairman of the Tramways and Omnibus Workers' Union, to which the drivers belong, said the union was prepared to allow the Press into the hearing.

However, the company had refused the request, he said.

In terms of the Industrial Court rules the hearing is made public only if both parties agree to do so.



to appeal against his judgment. The appeal will be heard by a full bench of the Natal provincial court in September.

The March case, which was heard in the Durban and Coast Local Division of the Supreme Court, centred on an issue with a complicated history.

The NUTW has long been trying to gain recognition from CFCC at the Frametex mill of the company's New Germany complex. The union alleges that at a meeting with the company in October 1982 CFCC undertook to recognise it at the mill provided it represented the majority of the Frametex workers. The NUTW claims it later proved — although the company disputes this — that the majority of workers were indeed NUTW members but that the CFCC had decided to favour the Tucsa-affiliated Textile Workers Industrial Union (TWIU).

Whether CFCC agreed to recognise the NUTW at the October 1982 meeting and whether or not that agreement was enforceable by law later became hotly disputed. The union alleged that CFCC broke that undertaking by favouring the TWIU. The company contested it. In a Supreme Court case heard in September last year, the NUTW agreed that in any future proceedings it would not claim that any contractually binding agreement on recognition had been concluded by CFCC.

#### Unfair labour practice

In the same month, however, the Minister of Manpower appointed a conciliation board to establish whether CFCC had committed an unfair labour practice by refusing to give effect to the alleged agreement to recognise the union made in October 1982.

CFCC asked for the board to be scrapped because, as a result of the Supreme Court case, there was no longer a dispute. But the NUTW contested that, claiming that a breach of an agreement — even if it was not contractually binding — did constitute an unfair labour practice.

In March Mr Justice Booysen endorsed the union's contention. This opened the way for the NUTW to contest the main issue in its battle with CFCC: whether CFCC has committed an unfair labour practice by allegedly refusing to recognise the NUTW and favouring the TWIU. However, after the judgment was delivered, CFCC gave notice that it would contest the judge's findings.

This week Mr Justice Booysen said that it was very difficult for him to evaluate whether another judge would come to the same conclusions as he had in March. He therefore granted CFCC leave to appeal against the judgment, although he said the matter was not important enough to be heard by the Appellate Division.

According to a lawyer acting for the union, the judgment means that a possible hearing of the main case in the Industrial Court will be delayed yet again.

## INDUSTRIAL COURT

### A round to Frame

The laborious legal battle between the National Union of Textile Workers (NUTW) and Consolidated Frame Cotton Corporation (CFCC) seems set to become even more prolonged. This follows a judgment handed down in the Maritzburg Supreme Court this week.

Mr Justice Booysen, who in March rejected an application from CFCC to prevent the Industrial Court (IC) from considering the NUTW's recognition dispute with CFCC, has now granted the company leave

# Ill-fed children: No valid estimates

## PFP attacks 'big stick' labour bill

**Ill-fed children: No valid estimates**

**HOUSE OF ASSEMBLY** — The government has no "general and valid" estimate of the number of children in South Africa suffering from malnutrition, the Minister of Health and Welfare, Dr Nak van der Merwe, has said in a written reply to a parliamentary question.

Dr Van der Merwe told Dr Marius Barnard (PFP Parktown) that because the term "malnutrition" was ill-defined, and the standards used to assess it were not "universally applicable", there were "no general and valid estimates of the number of children suffering from malnutrition per population group" in South Africa — Sapa

**Political Staff**  
**HOUSE OF ASSEMBLY** — Apart from two minor amendments, a controversial new labour law has been left basically unchanged by a parliamentary select committee.

The Labour Relations Amendment Bill will make most agreements between unions and employers unenforceable in courts, including the industrial court, and it will make it a criminal offence for employers not to submit particulars of agreements to the Department of Manpower.

The bill was attacked by a number of unregistered unions when it was first introduced.

Yesterday, the Progressive Federal Party spokesman on manpower, Dr Alex Boraine, MP for Pinelands, said the decision to go ahead with the bill was "cynical in the extreme".

One of the changes proposed by the select committee is that "particulars" of agreements will have to be provided

to Department of Manpower inspectors instead of copies of agreements, as originally proposed.

The other change is that employers or employer groups will be responsible for forwarding these particulars and they will have 90 days to do so, instead of 30 days. In the original draft "parties" to the agree-

ment continually states it believes in freedom of association in labour matters."

He did, however, welcome the changes that had been proposed by the select committee.

In future, agreements, unless they complied with the regulations, would not be enforceable in any court, including

interests of employers or employees or in the public or national interest".

Dr Boraine said this gave the minister new powers, which were essentially political, and the select committee had refused to change this.

"In general, the big stick is still in the proposed law instead of the carrot."

"They are taking a strange step to deal with a small part of the labour movement, and it seems to me they are merely trying to please the right-wing trade unions."

"A large number of bodies, including the Federated Chamber of Industries, sent memoranda to the select committee, asking the government not to proceed with the measure."

"If the government is committed to industrial peace they are going about it in a very funny way and if they are to continue the enlightened approach of Wiehahn, they have a very remarkable way of showing it," Dr Boraine said.



ment had to forward copies of the agreements.

Dr Boraine said the government action was "bad planning" and a "stupid way" to deal with labour legislation.

"This can only antagonise workers, who will see it as an attack on them and as an attempt to control them, although the government

the industrial court

"I think that is pathetic and a cause of trouble," Dr Boraine said.

He was also strongly opposed to a provision in the bill which will enable the minister to order all or any of the provisions of agreements to be inoperative if he considers it to be "in the

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CAPC Times 8/6/84 (165) 166-1177-133-134

# Go-ahead for 'half-baked' bill

Political Staff

**HOUSE OF ASSEMBLY**  
 —The government yesterday pushed ahead with the controversial Labour Relations Amendment Bill, in spite of calls from two opposition parties and the Federated Chamber of Industries for it to delay the measure

The chief Opposition spokesman on manpower, Dr Alex Boraine (PFP Pinelands), said during the second reading debate of the bill that it was not only "premature and illogical" but also "potentially disruptive"

He also said it was "half-baked and quite out of step with the spirit of legislation which has been introduced into this House since the appointment of the Wiehahn Commission"

Dr Boraine called on the government to postpone consideration of the proposed legislation until after it had received representations on the 400-page National Manpower Commission report on trade union affairs

In his speech, he quoted telegrams from the Federated Chamber of Industries and the Transvaal Chamber of Industries also calling on the government to

defer the bill until after comments had been received on the Manpower Commission report.

The FCI had said it was "unwise" to proceed with the measure, particularly in view of the need to maintain labour peace in South Africa and the TCI had said it was "illogical" to proceed with a measure which could be changed

who said there was tangible evidence that it was premature to proceed with the bill until the commission report had been considered

Replying, the Minister of Manpower, Mr Pique du Plessis, said one of the basic issues was whether one wanted orderly coexistence in South Africa or not.

The vast majority of

must we comply with the regulations but you allow these unions to do what they want".

Mr Du Plessis accused Dr Boraine of pleading for organizations "which do not want to do anything at all to comply with the requirements of the law"

These unions wanted to sign agreements and enjoy the benefit of the law but they did not want to comply with the requirements of the law.

The government did not prohibit anyone from signing agreements but these agreements should be in accordance with the provisions of the law

Asked by Mr Miller what would happen if the new law led to illegal strikes, Mr Du Plessis replied "If they take part in illegal action they know they are heading for trouble"

He also said the cornerstone of the measure was that it was reasonable and in keeping with the feelings of the majority of people who wanted peace in the labour field. In particular, the bill was welcomed by established unions, Mr Du Plessis said

"If we just let this matter die, we are going to get chaos in the labour field"



after representations on the Manpower Commission report had been considered

Dr Boraine accused the government of using "the big stick of compulsion" instead of the "carrot of encouragement".

He was supported by the New Republic Party spokesman on manpower, Mr Ron Miller, MP,

unions in South Africa complied with the minimum requirements of the law but there were about six unions who refused to do so, Mr Du Plessis said

The government did not want to perpetuate permissiveness in the labour field and it wanted to establish order

The established unions had asked "why



# Labour Bill 'half baked' — opposition

ANGUS 8/6/84 165 166 167

## Parliamentary Staff

A BILL on labour relations has been attacked by opposition speakers in the Assembly as "half-baked", potentially disruptive and out of character with the Government's earlier labour reforms

Both the Progressive Federal Party and the New Republic Party opposed the second reading of the Labour Relations Amendment Bill. The Conservative Party supported the measure.

The proposed legislation, which has been under investigation by a parliamentary select committee, was introduced by the Minister of Manpower, Mr P T C du Plessis

The Bill provides among other matters for agreements between trade unions and employers, under certain circumstances, to be unenforceable in courts, including industrial courts

It makes it a criminal offence for employers not to submit particulars of agreements to the Department of Manpower.

A further contentious provision takes away from the industrial court appeals by persons who feel aggrieved by any decision of an industrial council and empowers the Minister to handle such appeals

Dr Alex Boraine (PFP Pinelands) said the Bill was not only premature and illogical, but was also potentially disruptive

Speaking in yesterday's second-reading debate, he said the Bill was also "half-baked" and out of step with the spirit of labour legislation introduced since the appointment of the Wiehahn Commission.

The Government's "stubborn determination" to proceed with the Bill at this stage was not helpful to the maintenance of labour peace in South Africa.

Dr Boraine said that although certain improvements had been made by the select committee, the Bill was being proceeded with in spite of the fact that important representations on a recent National Manpower Commission report about labour matters were still being awaited

The Government had also not yet tabled its White Paper on the matter

Dr Boraine said he would have

thought that if the Government wished to build on the success of recent labour legislation, it would proceed with discretion, sensitivity and patience. The Government's approach in this instance was a contradiction of all these qualities

"To rush this Bill through at this stage will help no one. It may indeed widen the already existing distrust between some labour unions and the Government and make the task of the employer even more difficult than it is"

The evidence called for by the select committee had been almost equally divided between those who supported, with qualifications, the legislation on those who opposed it. Major reservations had been expressed.

Dr Boraine moved an amendment declining to pass the second reading of the Bill until such time as the Government had published its White Paper on the report of the National Manpower Commission.

Mr Ron Miller (NRP Durban North) said the provision disallowing certain unions the right to take their disagreements to court was a drastic step to coerce a few unions

Mr Miller said he agreed with Dr Boraine that the matter should wait until all evidence had been received.

He warned that trade unions could resort to strike action if they were prevented from taking part in bargaining procedures

Speakers on the Government side defended the Bill and rejected the main opposition criticism.

Mr G C Ballot (NP Overvaal) said Dr Boraine had certain valid arguments

However, he could not agree with Dr Boraine's viewpoint that the Government was using "the big stick". The mere fact that the Government had referred the Bill to a select committee showed that it regarded labour matters as "sensitive" and was prepared to handle them accordingly

Mr Casper Uys (CP Barberton) said his party had serious misgivings about certain aspects of the Bill, but agreed with other aspects



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## MANPOWER REPORT

# Collective criticism

The National Manpower Commission (NMC) report on collective bargaining and related matters continues to arouse controversy

The report was tabled in Parliament a few weeks ago. It covers levels of collective bargaining and works councils, the registration of trade unions and employers' organisations, and the Industrial Court. At that stage government took the laudable step of announcing that it would not publish its response in a White Paper before it had received comment from labour circles. It is now becoming clear that at least some sectors have serious criticism of the recommendations.

Many of them were aired last week in a debate at the SA Institute of Race Relations. NMC chairman Hennie Reynders fielded questions on the report from labour lawyers, trade unionists, employer representatives and academics.

The questions centered mainly on the two most controversial aspects of the report: those relating to the registration of trade unions, and proposals to tighten up the definition of an unfair labour practice in the Labour Relations Act (LRA).

### Race out

The majority of the commissioners recommended that the Industrial Registrar should not take race and representativeness into account when considering applications for trade union registration. This is generally seen in a positive light. But it was also recommended that unions should not be able to operate and participate in collective bargaining unless they comply with certain minimum requirements. These include supplying the Department of Manpower with basic information about union constitutions, the scope and purposes of the organisation, office addresses, membership, and lists of office-bearers. Proper accounting procedures would also have to be complied with.

These requirements are essentially the same as those laid down in the LRA at present. Most unions comply with them. But the sting in the tail introduced in the NMC report is that the commission has recommended that unions which do not comply with them will be liable for prosecution. Despite denials, this has been widely interpreted as a move to clamp down on unregistered unions — some of which have a high profile outside the workplace in the political arena.

At present an unfair labour practice (ULP) is very loosely defined in the LRA. Unions have taken full advantage of this. Assessing allegations of ULPs has become a major part of the Industrial Court's work and unions have won significant victories through this mechanism. The NMC has

recommended that the definition should be narrowed and has listed a number of examples of what should in future be regarded as ULPs.

Legal Resources Centre attorney Geoff Budlender asked a number of key questions in the Race Relations session. He pointed out that since the publication of the Wiehahn commission's reports, and the subsequent changes to legislation, a new era of accommodation had come about in the SA labour field. Government appeared to be endorsing the view that there should not be



Reynders ... defending NMC report

State interference in union-management relationships. What had happened in that time, he asked, that influenced the NMC to propose making fundamental changes to the system by requiring a tightening-up on registration?

Reynders replied saying that in ideal free enterprise societies individual employees and employers should be allowed to negotiate work contracts between themselves. In line with this, he said that trade unions *per se* are inimical to free enterprise societies because — as they have scope to operate in specific areas or industries or for specific types of workers — they can create a monopsonistic situation. While the NMC accepted that they had a right to this, it felt that if unions wanted to participate in collective bargaining they should comply with the minimum conditions laid down in the report. The aim was primarily to protect union members as well as society in general.

Grinaker Holdings group manpower consultant, Theo Heffer, had strenuous objections to this view. Heffer argued that there are situations in which workers are happy to join unregistered unions voluntarily and

in which management is prepared to recognise such unions once their representivity has been tested. The NMC recommendations, he said, appeared to be designed to protect such union members from themselves. As such, he found it difficult to reconcile them with statements from the Director-General of Manpower that the age of paternalism in labour was dead.

### Objections

Other speakers raised numerous objections to the NMC's examples of proposed ULPs. A number of the labour lawyers objected to the fact that many of the instances of ULPs which have been upheld in the Industrial Court were not included in the NMC's list.

Attorney John Brand objected to one of the proposed ULPs. This proposal states that the unjustifiable dismissal with the replacement of an employee by an employee of another population group, where the ostensible purpose is to provide less favourable terms and conditions of employment, should be regarded as an ULP. Brand said he did not know of any cases in the Industrial Court regarding ULPs in which these particular points had been contested.

Objections were also raised to the NMC's proposal that "union interference with employer affairs" should be an ULP. In the debate, it became apparent that if unions take up any issue which management regards as its own prerogative, and which it has not agreed to negotiate with unions, this could be an ULP. Brand said union challenges of management prerogative are the essence of collective bargaining. If that was to be regarded as interference, there would be nothing left to negotiate, he argued.

Another NMC proposal debated was that "the abuse of its organisational or negotiating power by a trade union to the detriment of other groups" should be an ULP. The NMC qualified this proposal by stating that it should apply in situations of "unions using their bargaining power to compel an employer to deal with it only and not to negotiate with a minority union." Many emerging unions demand that employers negotiate only with majority unions. Brand said the proposal was intended to protect minority racial unions, without stating it openly.

Reynders conceded that the present wording of the ULP proposals created room for misunderstanding. But he stated the proposals were merely guidelines. If they were finally accepted by government legal experts would have a hand in drawing up and clarifying them. He appealed to the participants not to be too sceptical about them as faults would be ironed out in the drafting process.

## Bill encourages total registration

HOUSE OF ASSEMBLY.

The "ideal" of total registration of trade unions would be encouraged by the Labour Relations Amendment Bill, the Minister of Manpower, Mr Pietie du Plessis, said yesterday.

The bill, which went through its final stages in Parliament yesterday in spite of the opposition of the Progressive Federal Party and New Republic Party, will limit the power of unions which do not comply with the minimum requirements of the law to negotiate enforceable agreements with employers.

Mr Du Plessis said the bill would not take away the rights of anyone to act collectively "provided there is compliance with the minimum requirements, as laid down in this law".

Some unions did not want to comply with these requirements but wanted to take advantage of the system.

"The department, and in many case workers in particular factories, do not know the bona fides of those people, yet those people act on their behalf.

"They could be ordinary agitators or people

who have motives other than the advancement of the interests of the employers.

"They could be people with strange motives who want to slip in through the backdoor to achieve certain political objectives by making use



of the machinery which has been introduced into the labour market," Mr Du Plessis said.

The minimum requirements of unions included the duty to keep records and report back annually to their members on how their money was spent, and to spell out their aims in a constitution.

"If such an organization or trade union is restricted by its constitution, then its members will know if the organization is busy with other matters and is not serv-

ing their interests

"In other words there must be protection to the worker and members of trade unions, by ensuring that a discipline is imposed on the trade union," he said.

A principle which was important was certainty

and security and this would be brought about with the bill

The effect of the measure would be "the realization to a greater degree that we take trade unions and employers' bodies so far that they move closer to the ideal of total registration"

His predecessor had in the past followed a very reasonable path, particularly as both the Wiehahn Commission and the National Manpower Commission had recommended that registration be the absolute minimum condition for a

union to use the dispute-settlement procedure provided in the law.

What had happened, however, was that people who in no way complied with the requirements of the law were entering the collective bargaining terrain.

The bill would protect workers against trade unions which possibly wanted to exploit them and lead them on the wrong road, Mr Du Plessis said.

"Unions such as Tucsa were always in favour of extending rights to black workers and workers of other colours

"They are today in the kraal. They work within the system.

"Must I now ignore them because there are now a few organizations which say to Parliament they will not take any notice of its law and carry on as they like — to drive on the right-hand side of the road, and if necessary even upside down.

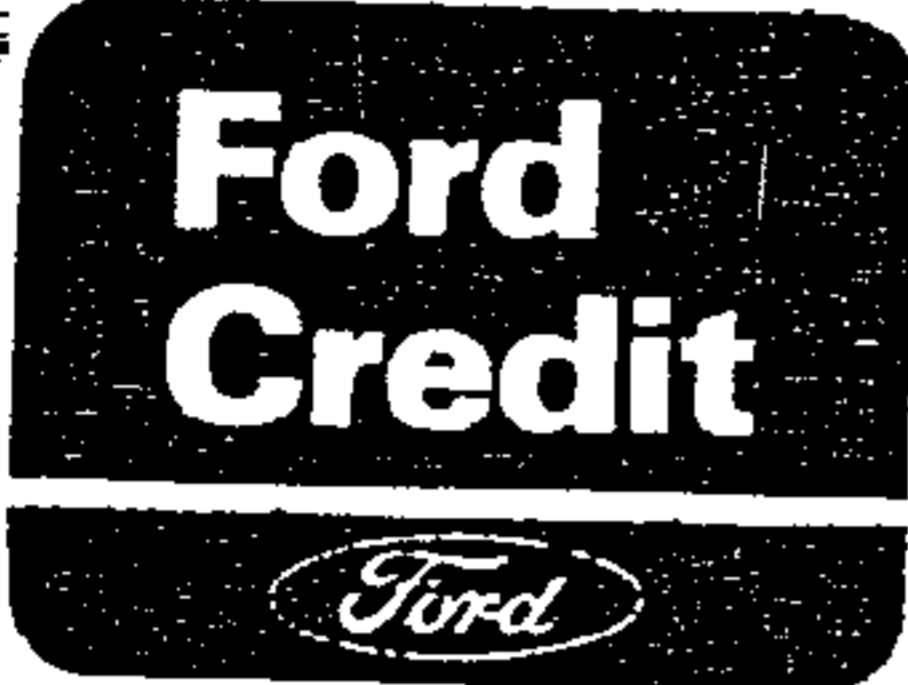
"We simply cannot allow it. The whole point of departure of this legislation is to bring about order and discipline and to bring security for everyone," Mr Du Plessis said.



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# 'Workers may beat up Tucsa unionists'

*C. Press*  
*17/6/84*  
*165*

HOSTILITY was growing among workers in the garment industry and it was likely that officials of the Tucsa-affiliated Garment Workers' Industrial Union may be assaulted if they went into factories, an Industrial Court in Durban was told this week.

**CP Reporter**

This was said by Fosatu-affiliated National Union of Textile Workers' general secretary Johnny Coplyn in support of an appeal by the union for membership to the Industrial Council, of which Gwnu is a party

Under cross-examination by NUTW's representative Heaton Cheadle, Mr Copelyn said 80 percent of the workers at James North had signed a petition stating that they did not wish to continue being members of Gwnu, but were bound in terms of the closed-shop agreement.

The union, which had earlier been refused membership to the council, is appealing to the court for an order to grant membership to the council or exempt its members from a closed-shop agreement reached between Gwnu and a Natal company, James North

Mr Copelyn alleged that Gwnu threatened workers that they might lose their jobs if they joined NUTW.

The hearing continues today

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## Crude sentence for gang member

GANG justice for a prisoner who disobeyed rules was a throat slashed by a sharpened spoon

Keith Beukes, member of the Mongrel gang, survived the attack to recover in hospital

But two of his fellow gang members in the Fort Glamorgan Prison, Johnny Corderay, 26, of Duncan Village, and Lawrence Windvogel 25, also did not go unpunished. They were convicted in the East London Regional Court for their

actions. Corbett was sentenced to 18 months plus further six months to run concurrently with the session of the

Magistrate sentenced him to 18 months plus that you can be a victim of violence

Windvogel was sentenced to 18 months for possession of a spoon before the hearing. Both had previous criminal charges

FM 29/6/84 (Saldm)

### COMPENSATION BIAS

The workmen's compensation system discriminates against the bulk of workers who are most likely to be injured at work, according to a study by University of Cape Town (UCT) researcher, Ighsan Schroeder.

Compensation is calculated on the basis of a percentage of an individual's wages. "Thus no fixed amount is paid to workers losing an arm, for example. Instead, compensation is determined by how much a particular worker earns. Thus all unskilled workers are, to some extent, discriminated against."

Schroeder adds that the granting of rebates to factories with low accident rates discouraged employers from reporting accidents

to punish him selectively for participating in a collective decision

Summing up the implications of the case, Siemens group industrial relations manager Bill Doyle told the FM: "This case shows that both parties are bound by the principle of fairness with regard to discipline and grievance procedures. If you have procedures, you must apply them. By applying them, you make sure that you eventually reach the best and fairest decision."

### DISMISSALS ~~165~~ 165

#### Following procedure

Anyone who fails to comply with negotiated grievance and disciplinary procedures in labour matters does so at his peril. This is clear from an Industrial Court judgment which strongly endorses the concept that the law will support those who comply with negotiated procedures against those who deviate from them.

The court refused to reinstate a Siemens worker who claimed he had been unfairly dismissed because he had been selectively punished for a group decision taken by a number of workers. The company argued that disciplinary and grievance procedures negotiated with the Metal and Allied Workers' Union (Mawu) had been ignored.

The worker was employed in the winding section of Siemens's Isando plant, which operates a system of production target times. He had been warned for failing to reach his targets. A Mawu shop steward said workers found it difficult to comply with the target times and this had been drawn to management's attention.

The worker claimed that, in accordance with a group decision by workers in his section by which he felt bound, he refused to go to the supervisor's office to be warned for working slowly. He was fired for refusing to obey orders. This led to a strike involving 350 workers which was eventually settled after management threatened to fire workers who failed to report for work.

The company argued that the worker had not been dismissed selectively, since he had been fired before the strike for refusing to obey an order and that the workers had failed to follow the prescribed grievance procedure.

The court found that because the worker had not obeyed an order, his dismissal was lawful in terms of common law. It also found that there was no factual evidence that Mabizela had been dismissed in order



## Union loses a case

Employers will be heartened, and trade unionists dismayed, by a new Industrial Court finding in a case involving the selective rehiring of workers fired during a strike. The case is fairly clearcut and its outcome could give important guidelines for future employer conduct in strike situations.

It evolved from the dismissal in January

Financial Mail June 29 1984

and reinstated. The company had reinstated two others before the court hearing.

The case arose out of demands, for a pay increase and union stop-order facilities, made by Mawu shop stewards during a meeting with Vetsak's personnel manager. At a subsequent meeting management refused the demands and the personnel manager undertook to convey this news to Vetsak workers the next day. However, he could not attend the meeting and sent an assistant in his place.

The workers were dissatisfied with this and insisted that the personnel manager should address them.

The personnel manager and another management representative then arrived and asked the workers to appoint shop stewards to represent them. The workers did so and then returned to work. The shop stewards were told of management's decision. This message was conveyed to the workers who decided that they would clock in the next morning but would not work until management explained its decision to them.

According to the workers' statement, they gathered in the factory yard the next morning. Vetsak's chief manager Piet de Jager arrived and asked why they were not working. After wrangling about which management representative should address the workers, De Jager told them a wage increase was out of the question.

#### Recognition

A discussion about recognition of the union followed. De Jager then said that if the workers did not return to work their action would be regarded as an illegal strike. Management finally said that if work did not resume by 3pm the workers should collect their wages. At 4 30pm the workers clocked out and left.

On January 30 the workers arrived and found the factory gates locked. They were told that management was seeking advice from the industrial council. Later they were told to return the next day to be re-employed. On the Tuesday the workers applied for re-employment and were told to return the next day to find out whether they had jobs.

(165) FM 29/6/84 (188)

court, counsel for the workers argued there was no reason why the 29% of workers who were not re-employed should have been treated more severely than the 71% who were. All the workers participated in the work stoppage.

Vetsak's legal representative argued that workers had participated in an illegal strike and had therefore been fired.

When weighing up the fairness of the dismissal, the court found that all the workers had been treated in the same way. There was no room, therefore, for a submission that some workers had been treated more favourably than others. The court also found that workers' refusal to return to work constituted a breach of their contract of

employment and that in view of management's attempts to explain why their requests had been turned down, their action was unreasonable.

#### Dismissal

The court said the workers' counsel had not attacked the reason for the dismissal, but the result of the re-employment. From this he had tried to infer that the dismissal was unfair. "The fallacy of the argument seems to lie in the fact that the unfairness of the dismissal is not sought in the reasons for the dismissal, but in the result of the conclusion of the contract of employment. These two concepts differ completely," the court ruled. As a result there was no onus on Vetsak to explain why it had re-em-

ployed some workers and not others.

The court's decision has led to union fears that employers may be deemed to be justified in dismissing any workers participating in a work stoppage no matter what circumstances led up to it.

If this is the case, some labour lawyers argue, the court will invalidate certain important sections of the unfair labour practice definition.

However, as the court's order is only temporary the matter is not yet settled. Some of the workers fall under the jurisdiction of industrial councils, although the majority do not. The majority have applied to the Minister of Manpower to appoint a conciliation board to hear the dispute. If the board fails to resolve it, the workers can apply for the court to hear the matter again.

But if the Minister refuses their request, or if he excludes the allegation of unfair dismissal from the conciliation board's terms of reference, they will have no further legal recourse.

The metal industry industrial council has failed to resolve the dispute and has been refused an extension to consider it. The 12 workers who fall under its jurisdiction may now apply to the Industrial Court for a final determination. The motor industry industrial council, which covers four of the workers, has been granted an extension to hear the matter. If it fails to settle the matter, those workers can also return to court.

### FOUNDATION'S CREED

The Urban Foundation — now seven years old — was established not only to eliminate injustice but to fight against institutionalised discrimination. Addressing the organisation's annual meeting its chief executive, Jan Steyn, said: "The foundation is — and has to be — as businesslike and efficient as possible in its activities, but the commitment with which it identifies and addresses its tasks comes from a desire to see a more just society in which the worth and dignity of every individual in SA is recognised and preserved."

The foundation, he added, should never forget that it is dealing with people, real individuals and families, with aspirations and emotions, with a desire to secure a better living for themselves and their families. It should continue to contribute to the reform of society and thus provide the avenues through which people can improve the quality of their own lives.

"Only thus can the reform process in SA achieve its objectives of a more just society without forfeiting stability and plunging into the abyss of violence, where the future of all our people, whatever their race, colour or creed, will be jeopardised for generations to come," he said.



Steyn ... staving off 'the abyss of violence'



BOBBY GODSELL

FM 6/7/84

# Enhancing the Industrial Court

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Bobby Godsell is the Anglo American Corporation's industrial relations consultant. He spoke to the FM about comments on the Industrial Court contained in

the corporation's annual report issued last week.

**FM:** Anglo's annual report says there is an urgent need to clarify the role of the Industrial Court (IC) and thus enhance its status. It also says that the court must be more fully integrated into the judicial system. What led to this?

**Godsell:** We are worried about confusion which has arisen about labour cases. There have been a number of occasions in which both the IC and the Supreme Court have had to consider whether they have jurisdiction to hear a case. An example of this cropped up in the appeal against the IC's finding in the case of the United African Motor and Allied Workers' Union vs Fodens (SA) Pty. The IC found that the company had committed 37 unfair labour practices but re-

fused to grant costs against Fodens on the grounds that there was no specific statutory provision for it to do so.

In the appeal hearing the Supreme Court found that the union did not have the right to appeal to it against the IC decision. The Supreme Court could not therefore make an order about costs. In weighing up the case, the Supreme Court was forced to analyse the role of the IC when it adjudicates in unfair labour practice disputes. It concluded that when the IC is exercising this function it is not exercising a judicial function and is not sitting as a court of law. There are other examples of confusion about the role of the courts.

We think that kind of confusion is not in the interest of management or unions. The role of the court should be made clear in respect of the Supreme Court, the Magistrate's Court system and the Appellate Division. The courts are created by statute and the statutes should specify which court has competence. Does Anglo feel the IC should not fall under the Department of Manpower?

Broadly speaking, yes. The IC should probably move from Manpower to the Justice department.

Who should make the decisions about that?

It is really an issue between the Department of Manpower and the Department of Justice. In this respect we were disappointed that the Hoexter Commission, which is the most comprehensive review of the legal system in SA to appear in years, devoted no more than two pages to the IC. The two departments should get together and talk about it. We certainly feel that the IC does have certain administrative functions. Arbitration does not belong to the Justice department. But in situations in which the IC is involved in adjudicating functions and where it is meant to be creating case law, it is highly desirable that it should be integrated within the normal court system.

Anglo stated that the IC's role in the settlement of disputes and collective bargaining should be clarified and that an important step in that process would be a clearer definition of the unfair labour practice (ULP) concept. The National Manpower Commission (NMC) has devoted attention to precisely this issue in a recent report. Anglo has offered comment on the report through the employ-

ers associations to which it belongs. What did Anglo say?

Government has called for comment on the NMC report before publishing a White Paper on it. It would therefore be unfair and unwise to state what Anglo's views are.

But in broad terms I must make it clear that we believe strongly in the function of the IC. There is a perception in some quarters that the employers want the court's wings clipped. That is certainly not Anglo's feeling. We believe the court has a very important role to play. But in order to play that role we think its own powers and status need to be clarified with regard to the other courts and that some content must be given to the ULP concept.

This is not to say that we feel this concept couldn't grow over time. Obviously we are living in a changing and evolving society and one wants room for flexibility. But at the moment we think the ULP is an empty concept which makes the creation of case law exceedingly difficult. We would like to strengthen the court, not weaken it.

We also do have a fear that because of the vagueness of the court's function and

the definition of the ULP, parties are seeking to achieve things through the IC which are achieved in a much better manner through the collective bargaining process.

The report posed the question of whether the IC should deal only with conflicts of rights or with conflicts of interest. What is Anglo's view?

Our view is that the IC's job is to deal with concepts of right. The collective bargaining process should deal with conflicts of interest. After all that is what collective bargaining is intended to do. The report also asked how the two important characteristics of justice — certainty and equity — could be reconciled by the IC with regard to ULPs. Please expand.

Defining the ULP will involve striking a balance between creating certainty on the one hand (for example, by spelling out each and every possible circumstance which would be regarded as an ULP) and equity (which would allow the IC some discretion to take account of particular circumstances of an alleged ULP). We say the ULP definition should have some content; but not necessarily that it should be precisely defined. The

legislators will have to strike a balance between these factors if they change the ULP definition.

Let's change the subject entirely. Please comment on the labour unrest and work stoppages which occurred at three Anglo collieries with black miners protesting against the wage and working conditions package which the Chamber of Mines implemented on July 1. This was done despite the fact that negotiations on the issue with the National Union of Mineworkers (NUM) deadlocked and the union has declared a dispute.

This is only the second year in which black unions have negotiated wages and conditions with the chamber. It would be very unrealistic to expect the advent of unionism among black miners and collective bargaining to come about without some turbulence. This is not to say that we should not do everything in our power to create constructive communication channels. It is also important to note that the dispute procedure involving the NUM and the chamber has not been exhausted. So on the one level it could be said that the miners' action was precipitous.

Financial Mail July 6 1984



# ~~Council~~ Council <sup>C. J. J. J.</sup> fosters <sup>(65)</sup> labour <sup>11/7/84</sup> unrest

Staff Reporter

THE Cape Town City Council's plans to pay members of the 11 000-strong Cape Town Municipal Workers' Association a unilateral wage increase this week was last night condemned as "encouraging industrial unrest".

This was contained in a resolution passed in the City Hall by more than 3 200 union members at the union's special general meeting.

All speakers condemned the council's stand in the midst of the Industrial Court battle to prevent the council from implementing its planned wage increases, the general secretary of the union, Mr John Ernstzen, said after the meeting.

"The unanimous feeling of the meeting was that the council is treating the workers with contempt and as if they were children. Many speakers wanted to know if the council would treat its white workers with the same contempt," he said.

## 'Living wage'

"A number of speakers from the floor suggested that if the council does not negotiate properly with the union then workers must take action themselves."

In the resolution, a previous decision taken by union members instructing their executive committee and general council, or shop stewards committee, to take the fight for a "living wage" to the Industrial Court for determination, was confirmed.

The meeting noted "with grave concern" the council's decisions to implement unilaterally its own proposals with regard to increased wages and without waiting for the Industrial Court to decide on the dispute. The council was also criticized for acting "unilaterally and in the face of the expressed wishes" of the union.

## 'Division'

It was further accused of trying to undermine the union and cause division among members, "thereby encouraging industrial unrest".

The meeting deplored the council's "delaying and obstructionist tactics" which were designed "to prevent the Industrial Court from hearing the dispute as soon as possible".

It was called upon to help bring the dispute before the Industrial court "as speedily as possible".

# Workers get increases against wishes

By RIAAN DE VILLIERS, Labour Reporter

CAPE TOWN City Council yesterday declared it was giving all its workers pay increases because it believed it would have been "discriminatory" to pay increases to members of a white trade union only.

This came after the Cape Town Municipal Workers' Association yesterday asked the Industrial Court to adjourn instead of hearing an urgent application for an order restraining the council from paying wage increases to its members today.

The association has been trying to prevent the council from paying any increases to its members before their wage dispute is settled.

It asked the court to adjourn yesterday because the Minister of Manpower has not yet declared a formal dispute in terms of the Labour Relations Act.

On Tuesday night, more than 3 200 union members met in the City Hall and condemned the council's plans to pay them increases against their wishes this week as

encouraging industrial unrest.

In its first statement on the dispute, the council said yesterday it had taken a "sincere decision" to pay all its employees a new wage or salary, in the conviction that the money was needed now because of inflation.

It also believed it must treat all its employees equally because it had always adopted the principle of equal pay for equal work: "To pay only the employees of the white trade union, some in some cases doing the same work, would in the council's view have been discriminatory."

It added the council wished to make it clear that employees who accepted the increased wages would not "in any way lose or prejudice any of their rights in respect of their demands made to the council for improvement of their conditions of service".

Mr John Ernstzen, secretary of the association, confirmed it had "very regrettably" been forced to ask the court to adjourn, but would pursue the matter further as soon as a dispute was declared.



ROM 12/784 (165/152)

# Progress of labour law is hampered

**Labour Correspondent**

**DURBAN** — Recent judgments by temporary members of the Industrial Court were hampering the developments of laws to protect workers from unfair dismissal, a leading labour lawyer told a labour law conference in Durban yesterday.

Mr. John Brand said that employer resistance to the court and attempts by the Department of Manpower to prevent alleged "unfair labour practices" cases coming before the court were also an obstacle.

The inevitable consequences of these developments are to return the conflict over dismissals to the shop floor," he said.

He added that common law protection for fired workers was inadequate and that additional safeguards through Industrial Court decisions were necessary to protect workers against unfair firing.

Mr. Brand also argued that recent developments had brought South Africa's law on dismissals into conflict with both conventions of the International Labour Organisation which were "universally accepted" as well as with recommendations of the Wiehahn Commission.

Mr. Brand said the growing trend for workers and unions to use the court had meant its permanent members could not handle the volume of cases, and temporary appointments had to be made.



**Cheadle ... emphasising the role of the court**

limits to the definition.

Although many criticisms of the IC were aired at the labour law conference, a number of speakers devoted time to defending the IC's functions — especially in relation to the ULP concept.

Halton Cheadle, assistant director of Wits University's Centre for Applied Legal Studies, pointed out that the primary function of the Labour Relations Act is to promote industrial peace. Collective bargaining is a key element in this process. According to Cheadle, the ULP concept helps to develop a set of rules for orderly collective bargaining.

Cheadle said the IC had already a number of determinations about what constitutes an ULP. One of these was that improper interference in trade union recruitment campaigns is a ULP. The precise ambit of improper interference will have to be defined in the future. But the IC also would have to decide on a number of other crucial issues in which allegations of ULPs formed the basis of the application. These included:

- Determining what the appropriate bargaining unit is in a factory when a union seeks recognition from a company. Should it be a factory department, the factory itself or the entire complex in situations in which the company operates more than one factory?;
- Determining whether an employer can unilaterally alter conditions of employment without consulting a trade union or its employees. This relates to situations in which employers implement pay increases when negotiations with unions are deadlocked.
- Making determinations in situations involving trade union rivalry. According to

Cheadle, this will become one of the major legal, social and political problems in the future as there are two union movements in SA with very different views of collective bargaining and organising, and

- Making determinations in disputes arising out of tension between plant and industry level bargaining.



**'oil bomb' backfired?**

dence that the IC has become a major factor in industrial relations. They also signal the success government has achieved in persuading reluctant unions to use the formal dispute settling procedures provided by the Labour Relations Act.

It is no coincidence that the giant leap in the number of cases heard occurred in the latter part of 1982 after the court's jurisdiction was extended to cover applications for temporary reinstatement, *status quo* orders, in terms of Section 43 of the Labour Relations Act. According to Parsons' figures, the IC has adjudicated 232 applications for *status quo* orders since then.

The other major function of the IC has been to preside over disputes involving allegations of unfair labour practice (ULPs). It has heard 74 such matters since 1980. The remainder of the court's work has largely been devoted to arbitrations (46) and demarcation disputes (25).

Applications for *status quo* orders can be made for:

- The suspension or termination of the employment of an employee (or employees) or a decision by an employer to fire workers;
- A change or proposed change in the terms or conditions of employment of an employee (or employees). This excludes action to give effect to any relevant law or major regulating measure; and
- An alleged ULP.

Allegations of ULPs have been the basis of most of the IC's work. Unions have won major legal victories through this mechanism. This phenomenon has caused alarm in some employer circles who have come to regard the functions of the court as being weighted in favour of unions.

The alarm is related mainly to the fact that an ULP is very widely defined in the Labour Relations Act and there have been growing calls from employers to introduce

## LABOUR LAW

### Scope of the court

When the Industrial Court (IC) was first established in October 1979, SA trade unions were not much interested. In 1980 only 15 disputes were referred to the court. But with each year that has passed it has adjudicated a growing number of cases and the last two years have seen its case load growing by leaps and bounds.

This emerged from figures supplied this week by the president of the court, B J Parsons. He was speaking at a conference on labour law in Durban organised jointly by the Centre for Applied Legal Studies and Natal University's Department of Public Law.

According to Parsons, the IC heard 30 cases in 1980, 41 in 1982 and in 1983 there was an enormous increase with the IC presiding over 168 cases. In the first six months of this year, 148 cases were referred.

The figures provide overwhelming evi-



DOM 16/7/84 □ □ □ (165)

DOES the Minister of Manpower have the power to prevent allegations of unfair labour practices from reaching the industrial court?

This year he has repeatedly barred official conciliation boards from considering key disputes as possible unfair practices. Anyone alleging an unfair practice must apply for a board before taking the case to court, so it has been assumed that this prevents cases reaching it.

At last week's conference however, a lawyer, Mr Maas van den Berg, argued that the court could still hear alleged unfair practices disputes even if the Minister refused to refer it to a board.

This seemed to take labour lawyers by surprise but, later, two senior members of the profession endorsed his view.

This could herald an attempt to have an unfair practices case heard by the court even

if the Minister refuses to appoint a board to settle it.

Call for big changes in councils

EMERGING unions — particularly in Fosatu — are increasingly joining official industrial councils but they have not abandoned demands for changes to them.

This was underlined at a conference of labour law in Durban at which Mr John Copely, of Fosatu's National Union of Textile Workers, called for a series of major changes.

His union has opted to join councils although in several cases its application to do so has been vetoed by established unions. He said the experience of emerging unions that joined councils had been largely negative. Councils were still "stacked in favour of established unions and still did not encourage active and democratic unionism".

In many cases key sections of industries were excluded from the ambit of councils and many employers escaped minimum-pay agreements.

Mr Copely went on to argue that the council system should, in its present form, be replaced by about 10 large councils.

These would set only minimum conditions and unions would be free to bargain actual wages with firms where they represented a majority — a union demand which is strongly resisted by many employers.

He charged that council agreements were never approved by workers covered by them and the law should prevent a Minister of Manpower from ratifying agreements, unless he was satisfied that unions on the council had put these to members and that they had been approved.

He also called for an end of the right of unions on councils to veto applications by rivals.

LABOUR WEEK



STEVEN FRIEDMAN

Finally, noting that unions on councils had used their positions to bar rivals from stop-order facilities — automatic deduction of union dues by employers — he called for control over stop-orders to be taken out of the hands of councils altogether.

NUTW and other Fosatu unions are likely to press for these changes, which would mean a major overhaul of the council system.



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RDM 17/1/84

# 100 workers wait for 'test' case verdict

**Labour Correspondent**  
MORE than 100 workers who were fired after a dispute in late 1982 at an East Rand metal company Screenex, and who brought a "test" case against their employer in the industrial court, are still awaiting the court's decision.

Yesterday their union, the Metal and Allied Workers' Union, criticised the delay and said the workers, who had suffered "considerable damage" because of being

sacked, were losing money as a result

Mawu said that, should the court order the reinstatement of the workers, it only had the power to backdate this for six months

Thus meant that the delay was increasing the period for which workers would not be compensated even if they won the case.

The court's president, Mr B J Parsons, yesterday defended the delay

He said the presiding offi-

cer in the case had almost completed his judgment and that it should be made known "in the near future"

He said the case had been a "long and complicated" one and that the presiding officer had had to give it considerable thought.

The Screenex dispute centres around the company's decision, in December 1982, not to renew the contracts of several migrant workers

Workers charged that this was a violation of an agree-

ment not to retrench without consulting worker representatives, and stopped work in protest.

They were then dismissed. They later applied to the court for an order permanently reinstating them and the case was seen as a key test of the rights of migrant workers whose contracts are not renewed by their employers

In a rare move, the court heard oral evidence from witnesses



# Judging the merits of of an activist court

By **STEVEN FRIEDMAN**  
Labour Editor

**DOES SA need an activist court to intervene in labour disputes?**

This issue dominated a key labour law conference in Durban recently.

Not surprisingly, for the court's future has been this year's key labour issue.

Employer resistance to the court grew after it handed down rulings expanding worker rights in key areas and the Government has moved to curb it.

Papers by Mr Andre Lamprecht, of Barlow Rand, and Mr Maas van den Berg, a company lawyer, gave some insight into employer views on the court.

Mr Lamprecht argued that two competing value systems had been set up by the Companies Act, which enshrined management's right to manage, and the Labour Relations Act, which demanded that managers share decision-making with unions.

The court played a key role in enforcing the latter.

He said the conflict between the two inevitably created confusion and he insisted that he was not endorsing either value system. He implied, however, that one would have to go

No prizes for guessing which one would be in danger.

Mr Van den Berg expressed a more prevalent view, when he backed the idea of a labour court, but said the rules governing this one favoured workers.

The definition of an unfair labour practice was, he charged, too vague. The law allowed the court to declare a practice unfair even if it might prompt unrest — it was not even necessary to prove it was likely to do so.

The law allowing the court to grant temporary orders reinstating the status quo at the time a dispute began, he charged, enabled workers to win orders, not on the merits of a case, but simply by showing they would suffer if one were refused.

While these orders were supposed to be temporary, they usually placed the employer at such a disadvantage that he was forced to settle the dispute.

The court's president, Mr B J Parsons, told the conference that 232 of the 402 cases heard by the court since 1980 centred around status quo orders and another 74

around alleged unfair labour practices, so Mr Van den Berg was attacking by far the bulk of the court's functions.

The counter-argument, presented mainly by union lawyers and academics, had two prongs: Establishing the need for an interventionist court and rebutting the argument that the present court was pro-worker.

Speakers stressed that neither the employment contract nor common law protected workers against arbitrary dismissal.

The common law, they noted, did not rule on the fairness of dismissals and the employment contract did not restrict an employer's right to fire workers.

All Western countries compensated for this inequality by enacting laws protecting workers against arbitrary employer action.

This was no act of charity but an attempt to prevent the conflict which would result if workers had no redress.

Here, the need for protection was increased by influx control, which meant workers lost their right to live in a city if they lost their jobs.

A court which offered workers protection enhanced the credibility of the legal system as a whole and was an incentive not to settle disputes by force.

But is the court the activist, pro-worker body many employers believe it to be? That view was also challenged by several speakers.

Mr Chiman Patel, an academic, argued that none of the court's judgments "have been in conflict with the accepted practices of more reputable firms".

This argument was fleshed out by Mr John Brand, a labour lawyer, who spelled out the protection against unfair dismissal in the conventions of the International Labour Organisation.

These, he noted, were merely a collection of the minimum standards in the labour laws enacted by the ILO's member governments.

None of the court's decisions go beyond the ILO criteria: in some respects our own precedents in unfair dismissal cases lag behind them.

Thus international standards place the onus of proof in unfair dismissal cases on the employer, which goes beyond our own status quo law.

The implication is that our own court is simply moving gradually towards implementing international standards here, not conducting an assault on management's right to fulfil its functions.

Mr Brand went on to argue that attempts to bring our own law in line with these standards was being obstructed, not only by employer and Government opposition, but by recent judgments of the court itself.

He said the court's workload forced it to appoint temporary members who were used to applying the common law, rather than labour law.

They had handed down rulings which conflicted, not only with international standards, but with earlier judgments by the court's permanent members.

Their effect had been to throw workers back on the protection of the common law — but it was precisely the inadequacy of this which had created the need for a labour court, he said.

His reservations about some court rulings were echoed by other speakers, thus highlighting perhaps the most important point made at the conference.

Dr Sheldon Leader, of Britain's Reading University, expressed this when he suggested that the issue was not whether there ought to be an activist court, but whether there ought to be machinery to establish fairness in labour relations in general, dismissals in particular.

After all, every employer would presumably support an activist court if it spent its time disciplining unions. Workers would want such a court to restrict itself to disciplining employers.

The rationale behind the court is that there is a need for machinery to protect workers against unfair dismissal and to establish ground rules for bargaining. Speakers at the conference argued persuasively that this remained necessary, in itself and to lessen conflict.

This could be achieved by writing these standards — the ILO conventions for example — into law, while giving the court flexibility in applying them.

This would go a long way towards achieving the aims of recent labour reforms while removing the uncertainties which now surround the court.

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Court Reporter

A PORT ELIZABETH property developer told the Port Elizabeth Magistrate's Court yesterday that he didn't know the building inspector who came to his site, and thought he was somebody who had tried to "smuggle" some of his workers away

The developer, Mr Andries Albertus Lategan, of Lorient Place, Lorraine, was charged with two counts of contravening the Labour Relations Act by not allowing a building inspector to conduct an inspection and by ordering him to leave his premises

The case was postponed to August 29

Mr Lategan allegedly obstructed Mr Theodorus du Plessis and Mr Gerhard Britz, from the Industrial Council for the Building Industry, from carrying out a routine inspection on March 26 and 27

# Man thought inspector was worker stealer

He pleaded not guilty to both charges

Mr Du Plessis told the court he had gone to the Raintree Village complex to carry out a routine inspection on March 26

He spoke to three contractors and a few tradesmen at the site and while he was talking to the third contractor, Mr Lategan arrived and said he should leave immediately and that he had no right to just arrive there. He had told him

to make an appointment

Mr Du Plessis said Mr Lategan gave him no chance to introduce himself

Mr Du Plessis went back to his office and reported the incident to Mr Britz, the senior agent at the Industrial Council

The following day, Mr Britz and Mr Du Plessis visited Mr Lategan and were again refused permission to inspect the site. They then reported the

matter to the police

Mr Britz said he told Mr Lategan he was breaking the law. Two policemen accompanied them to the site that afternoon

Mr Lategan again refused to allow them to carry out an inspection

Mr Lategan said he had told Mr Britz he was prepared to co-operate. He did not consider that his request for them to come back at another time was unreasonable. At the time he was busy working with concrete which, if it dried, could have caused him considerable financial losses

Mr Lategan said he had walked Mr Du Plessis to his car after he asked him to leave because he didn't know who he was and didn't want him to slip back behind his back and try to steal his workers away.

Mr J S van der Merwe was on the Bench. Mr F Wilke appeared for the State

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Monday 26/7/84

# Court told of dispute over unionist

165

## Labour Reporter

THE Industrial Council for the clothing industry came under attack at an Industrial Court hearing in Durban yesterday for allegedly failing to resolve a dispute over the sacking of a trade union activist.

comment on criticism levelled against the council, but urged the Court not to pass judgment on the application for reinstatement until the company had filed its responding affidavits

## 'Not neglect'

The presiding officer, Dr D B Elers, reserved judgment

He said the delay in submitting the papers was not through neglect. Miss Ntuli's refusal to cooperate by having the dispute resolved by the Industrial Council had led to the company delaying its reply

Mr Chris Albertyn, who appeared on behalf of Miss Florence Ntuli, who was dismissed by the Natal Overall Manufacturing Company, told the Court that the functions of the council were to endeavour by negotiation or otherwise to settle disputes

Mr Fobb said it was not sufficient to merely write a letter to the council. The council should have been placed in a position to hear the dispute

He said it had failed to do so in regard to the dismissal of Miss Ntuli — a member of the Garment Workers' Industrial Union, one of the parties which make up the Industrial Council

The company had agreed to abide by the decision of the council in the interest of good industrial relations, he said

Because of a closed shop agreement with the company, Miss Ntuli is compelled by law to be a member of the GWIU in spite of now having joined a rival trade union — the National Union of Textile Workers

Arguing for her reinstatement, Mr Albertyn told the hearing that a letter setting out her grievances had been sent to the council, but it had made no genuine attempt to have the dispute resolved

The matter now fell outside the jurisdiction of the council, he said

Mr Jeff Fobb, representing the company, said he was not in a position to





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**Department accused  
over minimum wage**

By STEVEN FRIEDMAN  
Labour Correspondent

A DURBAN stevedoring company, which faces worker unrest because it is paying below a legally binding minimum wage order, claims the Department of Manpower gave it permission to pay less than the law requires.

A spokesman for the General Workers Union made this charge yesterday, adding that, if the department had done this, it would be "making nonsense of the country's minimum wage machinery".

But a senior department official denied yesterday that the company, Keely Forwarding, had been given permission to ignore the order.

He said it had applied for an exemption from the order and had asked whether it was forced to pay the binding minimum wage while it waited for a decision.

"We said that, if they were taken to court, they might be able to argue that the matter was sub judice because they were waiting for a decision — but at no stage did we say they could pay less than the order," he said.

A Keely spokesman refused to comment, saying the dispute was "sub judice".

According to the GWU spokesman, Keeley, which employs about 200 workers, is one of several small companies which have entered the industry recently and which, he charges, are attempting to "undercut" the national wage agreement between the union and the national stevedores' employer association.

He said Keely had recognised the GWU after a brief strike in April. At the time, he said, the company was paying R39 a week, while other firms paid R93.

Keely, he said, was also paying less than

the minimum laid down in the industry's wage determination and, after the union threatened legal action, it agreed to pay workers R400 each as "lump sum" compensation for this.

Since then, however, a new wage order had come into effect and the company was also paying below this. While the order set the minimum wage at R18,65 a day, Keely was paying R10,50, he said.

"We challenged them on this and they said they had applied for an exemption from the Department of Manpower. We said we would oppose this, but that, in the meantime, they still had to pay the minimum laid down by law."

"They then said the department had given them permission to pay less than the minimum," the union's spokesman said.

According to the union, the company was also not obeying the overtime provisions in the order, but has since agreed to do this.

According to the union, the company's refusal to pay the minimum rate has prompted worker anger and led to a brief work stoppage last Friday. This ended after GWU officials intervened.

At several meetings, it says, the company has repeated its claim that the department has said it does not have to obey the order.

Both sides are now waiting for the department's decision on Keely's request for an exemption, but the GWU spokesman warned that "worker anger is continuing to grow because the company still refuses to obey the order".

The department's spokesman said yesterday the request for an exemption had not yet reached the Minister of Manpower, who must take a final decision on it.

# Retroactive pay rise for bus drivers

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7 times 9/8/84  
Staff Reporter.

AN Industrial Court has awarded bus drivers a retroactive 10 percent wage increase following a dispute earlier this year between the Tramway and Omnibus Workers' Union and City Tramways Limited.

Mr Dirk Benade, secretary for the union, yesterday confirmed that the award last week, retroactive to May 5, was 10 percent for drivers with less than four years of service, nine percent for those with more than four years of service, eight percent for shedmen not specified in the union's agreement with the company, and seven percent for those shedmen who are to benefit from the employers' training facilities.

However, the court rejected the union's demands for a 40-hour working week in place of the current 44-hour week, and a rand-for-rand company contribution towards the employees' sick fund. Presently,

the company matched seven percent of the employees' contribution, Mr Benade said.

"The whole thing is like a Chinese puzzle," he added. "A newcomer is better off than a person with 40 years' service, thanks to the award."

Officially, the company offered a four percent increase. However, at the height of the dispute which led to a "work to rule" decision by drivers in April/May, an unofficial offer of an eight percent wage increase was made, Mr Benade said.

The dispute seriously affected bus services in the Peninsula for a month and was finally referred to the Industrial Court when negotiations between the two parties ended in a deadlock.

The Department of Manpower spokesman said yesterday that that he could not confirm the award since it was subject to a "secrecy provision" which had to be cleared.



# Dock pay issue seen as urgent

By STEVEN FRIEDMAN  
Labour Correspondent

A REQUEST by a Durban stevedoring employer that it be allowed to pay less than the minimum wage required by law is being treated as a matter of urgency by the Department of Manpower.

The move could prompt unless and have "international implications", a department spokesman said yesterday.

A General Workers' Union (GWU) spokesman charged yesterday that the company, Keeley Forwarding, had again refused to pay the legal minimum wage despite a letter from the Department of Manpower's director-general saying it must do so.

He said the union was now considering legal action against the company and warned that anger among Keeley workers was rising. Keeley's refusal to pay the minimum sparked a brief strike last month.

The International Transport Workers' Federation, which represents transport unions throughout the West, is aware of the dispute and dockers in at least one country are known to have threatened action in support of Keeley workers.

Recently, the Rand Daily Mail reported that Keeley was paying its workers R10,20 a day instead of the R18,65 required by law. It has applied to the department for an exemption allowing it to continue doing so.

A company official told the union the department had given it permission to continue paying below the minimum while the application was considered, but the department has denied this. Since then, the Director-

General of Manpower, Dr Piët Van der Merwe, has confirmed in writing that Keeley is obliged to pay the minimum laid down by the order while the exemption application is considered.

A General Workers' Union spokesman charged yesterday that this letter had been shown to the company this week but that it had again refused to pay.

The company has refused to discuss the dispute with the Mail, but Sapa reports that Keeley says it cannot pay the minimum because it is "locked into" contracts based on its present wage rates until June 1985.

It says workers will be granted a 20% rise in June 1985 followed by a further 25% in June 1986.

A company spokesman added that, if Keeley failed to obtain an exemption, it "would have to look for ways of trimming the workforce".

The union rejects this and is demanding that Keeley pay the minimum.

Yesterday, a spokesman for the department said Keeley's application for exemption would be with the Minister of Manpower before the end of this week.

The department had already formulated a recommendation on the application to the Minister. It hoped a decision could be taken as soon as possible, he added.

Only the Minister had the power to grant exemptions from wage orders.

"We regard this as a matter of urgency. The dispute about wages at the firm has given rise to unpleasantness and also threatens to cause unrest.

"It is in everyone's interest to settle it as soon as possible," he said.

RD 110/8/184 165  
**Delay in court ruling**

Labour Correspondent

MORE than 100 workers fired by an East Rand metal company, who have been waiting since February for a key industrial court ruling on their attempt to win reinstatement, now face another delay before judgment is given.

The workers, who were fired by an Alrode company Screenex after stopping work when some migrant workers' contracts were not renewed, have been out of work since December 1982.

Their case is considered a key test of migrant worker rights.

The president of the court, Mr B. J. Parsons, said the court's ruling was nearing completion.

But it was learnt yesterday that the presiding officer in the Screenex case, Mr A. J. Erasmus, SC, has called for fresh evidence to be heard on August 18.

In criticising the delay, the worker's union, the Metal and Allied Worker's Union, noted that, if workers were to win their case, the court only had the power to backdate their reinstatement for six months, which meant that the workers would already only be compensated for six of the 18 months they have been unemployed.

The Screenex case, in which workers allege they are the victims of an "unfair labour practice", is unusual in that the court called for evidence to be heard. These cases are usually decided by legal argument only.

Evidence was first heard last September, but the case was postponed and evidence was completed in February.

In commenting on the delay, Mr Parsons said the case had been a complex one which had raised several issues requiring "careful consideration".



# Unionists barred from picketing

By Fiona Macleod

Members of the Steel Engineering and Allied Workers' Union were yesterday interdicted from picketing a Germiston steel factory in a successful application before the Rand Supreme Court.

In the application lodged by Trident Steel (Pty) Limited, it was claimed that union members were intimidating prospective employees.

The picketing followed an industrial dispute which led to the dismissal of most of the employees last month.

5/29

injured and unconscious, were found tied together with a rope on the Witbank-Johannesburg highway near Delmas at the weekend.

The men, who were badly beaten up all over their bodies, were found by passing motorists on Saturday afternoon. They were rushed to the Far East Rand Hospital in Springs where they were admitted to the intensive care unit. Their condition was yesterday said to be still very critical and the hospital spokesman said they were still battling for their lives.

## Why not attend our meeting?

THE SOWETAN Woman's Club meetings will be held at the Soweto Funda Centre and in Daveyton. Lionel Kente Hall on August 18 at 2 pm.

Guest speakers will talk on colds, flu and coughs as this is the season when most people suffer these ailments. In Soweto a guest speaker, Mrs Priscilla Nyelele with complement talks with a demonstration on how to arrange flowers for your dinner table; and Mrs Gladys Botha

for the East Rand police, said the men were found at about 3 pm on Saturday tied together with a rope not far from the highway just a few kilometers from the Delmas Station.

He said "The men were badly beaten up and were also unconscious when they were found by passing motorists. Their identity is not yet known and at the moment we do not know how and who beat them and dumped them where

said at the moment no arrest has been made and police are still investigating. Meanwhile, he said 10 people were killed in the East Rand at the weekend, 16 others were robbed, seven women raped and 37 cars were stolen in the area from Friday until Sunday night.

He said three people were killed in Katlehong, two in Tembisa, another two in Kwa-Thema, one each in Vosloorus, Duduza and Nigel.

## Azapo steps up campaign

THE Azanian People's Organisation (Azapo) has intensified its campaign against the forthcoming Indian and coloured elections under the new constitution.

The organisation's meeting held in Lenasia at the weekend, noted that the election will result in the "conscription of the oppressed to fight their fellow brothers and sisters, and therefore orchestrate this internicne slaughter".

The meeting, attended by over 800 people, resolved to "strive for the unity of all oppressed as one monolithic and undivided Azanian nation and to oppose all these divisive measures".

It also resolved to isolate all those standing for election in all possible spheres namely, social, economic, political and sporting.

Azapo's vice-president, Mr Saths Cooper, confirmed the organisation's willingness to forge working relationships with other opposing groups so as to resist, combat and nullify the new dispensation.

Another speaker, Mr Frank van der Horst, president of the South African Council of Sport, urged Indians and coloureds to resist the racial programmes of a government that was trying to break the strength of the working class.

The general secretary of the Council of Unions of

## 100 workers must get jobs back

THE Industrial Court has ordered the CHT manufacturing company in Rosslyn, Pretoria, to reinstate 100 members of the National Automobile and Allied Workers Union (Naawu).

The judgment was a sequel to an "unlawful lockout" of the workers by the company on February 24 this year.

The court hearing arose out of a refusal by workers to continue working overtime of up

to 34 hours a shift which, "aside from its basic inhumanities, is a clear breach of current legislation limiting overtime to a maximum of 10 hours a week".

When workers refused to do this, said Naawu in a statement, management subsequently dismissed the entire workforce.

"The dismissal took place while the workers were still at work and the committee negotiat-

ing There was clearly no stoppage by workers at the time they were dismissed."

The court held that the workers had a clear right to refuse to work such overtime and that the refusal did not constitute a strike. The court ordered that the workers were not required to work hours in excess of the normal hours per week as provided by the Industrial Council agreement.

Naawu invited all workers at CHT to a meeting today at the Roman Catholic Church Hall in Soshanguve, near Pretoria, at 11 am

## Nyerere makes plea to ANC

HARARE — Tanzanian president Julius Nyerere has urged the ANC of South Africa to discuss a "change of tactics" in the light of developments in southern Africa.

The President's appeal was contained in a lengthy interview with the Third World magazine, South

He commented that the ANC was at present "very worried" about the "understandings" which had been reached between Pretoria and some of its neighbours regarding the harbouring of ANC personnel.

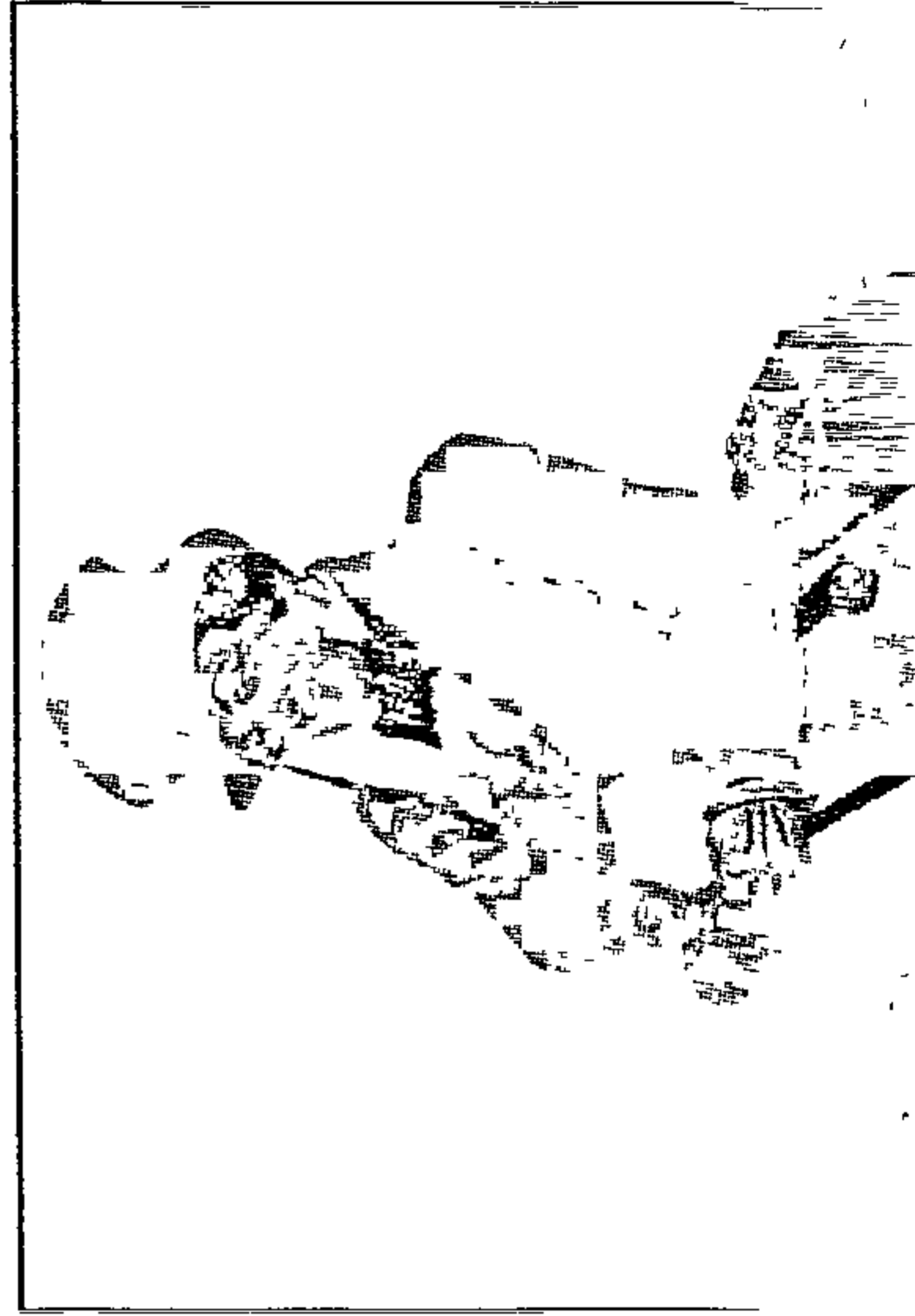
The ANC would have to sit down with the Frontline States and discuss changes of tactics to meet the new situation, said President Nyerere.

While saying that

who want to help us in our struggle against South Africa."

It would be failing the objectives of the SADC if member countries started to es-

tablish new economic links with South Africa, said the President, in an apparent reference to warming trade and other ties between South Africa and Mozambique.





RAM 14/8/84 (165)

# Pretoria firm ordered to reinstate 100 workers

By STEVEN FRIEDMAN  
Labour Correspondent

THE industrial court has ordered a Pretoria motor components company CHT Manufacturing to reinstate 100 members of the National Automobile and Allied Workers Union (Naawu) who were fired in late February.

In a statement Naawu, which belongs to the Federation of SA Trade Unions, welcomed the decision and said it highlighted the "unacceptable and dehumanising wages and conditions" in many components factories.

Naawu is conducting a major recruiting drive in components plants.

It has criticised conditions in these plants and vowed to campaign against them.

While welcoming the ruling, Naawu said it was disappointed that the court had reinstated the workers from August 7, not from the date they were fired.

The workers are to meet this morning to discuss whether to appeal against this aspect of the court's ruling.

However, a spokesman for CHT, Mr Lawrence Wilson, disputed the union's charges about conditions at the plant.

He noted that the court found that CHT and the union were equally to blame for the dispute. Had it endorsed Naawu's view of the dispute, it would have ordered that workers be reinstated from February.

Mr Wilson said his company accepted the ruling and would reinstate the workers.

In its statement, the union labelled the workers' firing as a "lockout".

It said it followed their refusal to work overtime in protest at the company's refusal to negotiate wages with Naawu.

It said the company then tried to get workers to sign a document agreeing to continue working overtime of up to 34 hours a shift.

These hours, it added, were "inhuman" and in breach of the law. When workers refused to sign, they were dismissed.

Naawu said the court held that workers had a "clear right to refuse to work such overtime" and their refusal to work was therefore not a strike.

It had also ruled that they were not compelled to work overtime at all.

Mr Wilson denied workers were locked out or forced to work 34 hours overtime.

He said the company offered the union a 15% pay rise, but Naawu had submitted a "ridiculous" wage demand, which would have raised minimum pay to R3,50 an hour for unskilled workers.

The document the company then asked them to sign simply asked them to agree to work overtime within the limits allowed by the law, Mr Wilson said.

He said as a result of the court order workers at CHT would no longer work overtime at all.

# Pay minimum wage, Govt tells stevedore firm

By STEVEN FRIEDMAN  
Labour Correspondent

A DURBAN stevedoring company Keeley Forwarding, which caused a major row by refusing to pay workers the legal minimum wage, has failed in an attempt to win a Government exemption allowing it to pay less than the minimum

A Department of Manpower spokesman confirmed yesterday that the Minister of Manpower, Mr Piet du Plessis, had turned down the company's request for an exemption from a legally binding wage order covering the docks

A spokesman for the General Workers Union (GWU), which represents most of Keeley's 200 workers, hailed the decision, saying it "vindicates the union's stance"

Comment could not be obtained from the company yesterday

Keeley's attempt to avoid paying the legal minimum sparked work stoppages by its workers and threats of action by dockers in one foreign country

The wage order lays down a minimum of R18,65 a day,

but Keeley has been paying workers R10,50

When it was challenged on this by the GWU, it said it had applied for an exemption from the order and had been told by the Department of Manpower that it did not have to pay the minimum while its application was under consideration

But the department denied this and the Director-General of Manpower, Dr Piet van der Merwe, confirmed in writing that Keeley had to pay the minimum while its application was processed

Despite this, Keeley continued to refuse to pay the minimum, according to the union

The GWU's spokesman noted yesterday that the minimum in the order was the same as the wage rate negotiated between the union and the national stevedores' employer association

By refusing to pay it, Keeley was seeking to evade a negotiated agreement between the GWU and employers, he said. He charged that other small companies which had recently entered the industry were trying to do the same.



## LABOUR NEWS

RDM 21/8/84  
Labour 165  
issues  
under  
spotlight

### Labour Correspondent

THREE key labour issues — bargaining between unions and employers, machinery for settling disputes and fair labour practices — are being investigated by the Government's National Manpower Commission (NMC)

A notice in last Friday's Government Gazette revealed that the NMC has drawn up a "working document" on these issues and is circulating this to employer associations, unions and other "interested parties"

According to the NMC's chairman, Dr Hennie Reynders, the investigation is a sequel to the commission's recent controversial report on union registration and other key issues

This report recommended key changes to the union registration system and called for unions to be outlawed if they do not receive Government approval

However, it did not make recommendations on several key issues, leaving these open for further investigation. Dr Reynders said yesterday that the inquiry would deal with these issues

The commission is expected to make recommendations on

- Whether the "closed shop", whereby workers are forced to join unions, should be regarded as an "unfair labour practice"

- Whether certain strikes and lock-outs should continue to be crimes in terms of labour law

Recognition agreements between employers and unions are also likely to form part of the inquiry

Mercury 24/8/84 (124) (125) (126) (165)

# Union threat to workers blocked

Mercury Correspondent

**JOHANNESBURG**—A threat by a Natal garment workers' union to expel workers who join rival unions — which would cost them their jobs — has been thwarted by Industrial Court action

The union is the Garment Workers' Industrial Union, a member of the Trade Union Council of S A, which has a closed-shop agreement in the industry, forcing workers to belong to it.

It faces competition from the National Union of Textile Workers, a Federation of S A Trade Unions member, which has recruited most workers at Pinetown clothing firm James North Africa and is recognised by the company

Workers at the plant must remain members of the GWIU unless they are exempted from the 'closed shop', but this has not prevented them from joining a rival union as well

The GWIU reacted to the NUTW's campaign at James North by changing its constitution to allow the expulsion of workers who joined a rival union. The 'closed shop' means expelled workers would also lose their jobs

It ordered workers who had joined the NUTW at James North to appear at an inquiry into whether they belonged to the rival union.

The NUTW challenged this in the Industrial

Court, arguing that it was an 'unfair labour practice'

The latest issue of Fosatu Worker News reports that lawyers for the GWIU have conceded that the threat to expel members for joining a rival union 'would be seen as an unfair labour practice'

As a result, it says, the GWIU has abandoned attempts to expel NUTW members

Now the NUTW is pressing for James North workers to be exempted from the closed shop so they can resign from the GWIU, but the Tucsa union has the power to block this at the Natal garment industry's industrial council

Although the settlement of the case does not create a precedent for similar disputes, it is likely to allay fears that other unions with closed-shop agreements would move to expel those who joined rivals

Unions with closed-shop agreements covering black workers face competition from emerging unions in several industries and expelling workers who join these rivals would give them a powerful weapon



THE CONSTITUTION

# Revolt and reform

As Allan Hendrickse prepared to lead the Labour Party into the new coloured House of Representatives, the SA political scene reached fever pitch this week

At least 35 United Democratic Front (UDF) leaders and anti-constitution activists were detained nationwide on the eve of the historic coloured election. Paradoxically, the era of "healthy power sharing" signalled by the poll took place against a background of unrest at schools and universities.

Boycotts at black schools intensified and coloured and Indian pupils have been boycotting classes in recent weeks in protest against the elections. More than 600 000 pupils were absent this week. At least six schools have been closed and classes at six more were suspended. Violence erupted at several others. The universities affected are Wits, Fort Hare, Western Cape, Durban-Westville, and Turfloop.

At stake in the elections are the conflicting claims by the UDF and supporters of the new deal to speak on behalf of coloureds and Indians.

Constitutional Affairs Minister Chris Heunis says if coloured voters stay away it could be seen as a "rejection of the hand of friendship" extended by whites in last year's referendum. An effective boycott would not assist further constitutional change, he says.

The new constitution will be implemented, Heunis says, irrespective of the size of the poll. He concedes a low poll could harm the legitimacy of the new constitution. However, it would not necessarily reflect coloured opinion, because there has been a lot of intimidation, he says.

The reason for the police swoop on activists, according to Law and Order Minister Louis Le Grange, was because a "revolutionary climate and a situation of unrest in certain areas was being created, and needed to be defused."

### Arrests condemned

The UDF condemned the arrests and demanded the immediate release of the detainees. It claimed that government is "resorting to force" since it had failed in the SABC-led "propaganda war" to persuade Indians and coloureds to vote.

According to the UDF, government was pressing ahead with the elections despite features of a "state of emergency" and the "depth of feeling against the constitution" as demonstrated by more than 20 000 people from all sections of the population who attended UDF rallies last weekend (see Face to Face page 54).

The US State Department said the

Reagan administration was very concerned about the detentions

Le Grange had earlier warned the UDF against disrupting the embattled coloured election through "school boycotts, labour unrest, intimidation, and other acts of violence" which would not be tolerated by government.

Several of the major emerging unions have strongly condemned the election and



UDF's Molefe ... condemning arrests

have backed the boycott call. The 24 unions in the process of forming a new union federation called on workers throughout SA to demonstrate their rejection of the "fraudulent" elections by not going near polling booths on voting days. If workers were given time off, they should remain at home, they said.

UDF spokesman Popo Molefe disclaimed any link between UDF activities and those of the students. Molefe drew attention to last July's Azanian Students' Organisation (Azaso) congress at which the decision to oppose the new constitution was taken by 36 student bodies. The students' action "developed organically from the students themselves," says Molefe, who adds the UDF nevertheless "commends their gallant stand."

The UDF warned "collaborators" in the elections that they "are totally implicated in the attack on democratic organisations." It was confident "now more than ever, that our people will utterly reject these puppet elections."

The "brutal suppression" of its leadership, warned the UDF, amounted to the

gradual closing off of legitimate, open opposition. "God knows what is going to happen if the SA government pushes the UDF into a corner — as it did with organisations like the ANC," said Molefe.

Fears that the UDF will be banned outright increased with the level of government rhetoric linking it with the ANC. The UDF has consistently denied any such link.

The effect of the arrests on next Tuesday's turnout for the Indian House of Delegates poll is uncertain. A major Indian party contesting the elections, Solidarity, threatened to pull out of the election. In a telegram to the PM, Solidarity described the arrests on the eve of the poll as "completely unforgivable."

Official Opposition leader Frederik van Zyl Slabbert found it difficult to understand the timing of the arrests and suggested the action would benefit extra-parliamentary opposition.

Among the 16 leading UDF members held in pre-dawn arrests were UDF President Archie Gumede and the leaders of the Transvaal and Natal Indian Congress.

### Internal Security Act

Police spokesman Col Leon Mellet tells the FM the 16 leaders are being held in terms of Section 28 of the Internal Security Act and not under the Criminal Procedure Act as was thought. Also arrested were UDF publicity secretary Terror Lekota and Release Mandela Campaign chairman Curtis Nkondo.

As the FM went to press, three members of the Azanian People's Organisation (Azapo) and a community worker from Eldorado Park were also reportedly detained.

Meanwhile, SA Council of Churches (SACC) general secretary Bishop Desmond Tutu met Education Minister Gerrit Viljoen to discuss the situation in black schools.

According to a SACC spokesman, Viljoen urged church leaders to promote positive aspects of government education policy. The SACC said "unrest and disturbance will continue to be endemic" while the present policy of fragmentation of SA society persisted and separate black education was perceived to be inferior to that of whites.

### INDUSTRIAL COURT

## On legal strikes

In a landmark judgment, the Industrial Court has upheld a claim by the Chamber of Mines that it has the right to dismiss am-



(165) (152) (211) ~~173~~ (178)

ployees taking part in any strike, whether legal or illegal. But the court also found that it would, in certain circumstances, be possible for the lawful dismissal of an employee taking part in a legal strike to constitute an unfair labour practice.

The case involved the chamber and the Council of Mining Unions (CMU). Although SA has a long history of illegal strikes, in the past year or so a number of trade unions have opted to follow the procedures laid down in the Labour Relations Act which pave the way for a legal strike. However, even in legal strikes, employers can still dismiss workers in terms of the common-law contract of employment.

This factor has caused grave dissatisfaction among trade unionists, who have questioned whether it is worthwhile abiding by the law if the result of strikes — legal or illegal — can be the same.

The path to a legal strike is lengthy. Initially, a dispute has to be declared. In situations where industrial councils have jurisdiction, the dispute must be referred to them. Where this does not apply, the parties must apply to the Minister of Manpower to appoint a conciliation board. If councils or boards fail to settle the dispute, the union is entitled to conduct a strike ballot among the workers.

The CMU took up the issue of the dismissal of legally striking workers when it declared a dispute with the chamber last year. At issue was a clause in the chamber's contract of employment which states that workers who strike automatically repudiate their contract of employment. Besides losing a job, workers also lose numerous benefits. The CMU alleged that the wording of the clause constituted an unfair labour practice. At the heart of the case is the conflict between the common law and Industrial Court, which uses fairness as its criterion.

#### Strikers' job security

The CMU asked the court to determine:  
 That the job security of legally striking employees should be protected, and  
 That during a legal strike employees' employment contracts should be suspended and that employers should not have the option to dismiss them. However, it did not press this issue in the court hearing.



**White CMU miners ... no protection in legal strikes**

At a conciliation board meeting before the matter came to court, the chamber agreed to amend the wording of the clause. But its proposal that it should be changed to allow employers to have the choice to terminate the employment contract in the event of a legal strike was rejected by the CMU.

The court found that the stipulations of an employment contract are valid as far as the termination of employment is concerned. An employer is entitled to terminate service whether the worker has struck legally or not. It said the CMU had claimed that the chamber refused to amend the clause at the conciliation board. But evidence had clearly shown that the chamber was prepared to do so and had acknowledged that there was an element of unfairness so far as legal strikes were concerned. However, neither party's proposal was acceptable to the other.

The CMU had asked the court to establish a general principle. Such a determination would boil down to an abstract rule

which would be applicable to future action. It would be improper for the court to make such a determination. And although the CMU had not pressed the issue of the suspension of the employment contract, it was clear that that remedy would only apply to the future as well.

#### Some considerations

However, the court also stated that there may be certain circumstances in which the dismissal of a legally striking worker could be an unfair labour practice, even if employers act within their rights in terms of the employment contract. The court said some of the considerations might be the:  
 Cause, nature, size and purpose of the strike. Strikes can take many forms, and it does not follow that every legal striker should be protected,  
 Employee's circumstances,  
 Employer's circumstances,  
 Duration of the strike,  
 Consequences and results of the strike,  
 Purpose of the law and, in particular, the principle of collective bargaining;  
 Presence or absence of negotiation in good faith between the two parties during the strike,  
 Stipulations of the particular contract of employment, and especially any stipulation that has to do with the participation of an employee in a legal strike, and  
 Behaviour of the employee during the strike. An example would be whether the employee committed any acts which would have constituted a breach of contract in employment under normal circumstances.

The court also stated that it foresaw the possibility that selective dismissal of workers taking part in a legal strike could possibly constitute an unfair labour practice. The same could apply to selective re-employment of legally striking workers.

Commenting on the implications of the case, a chamber spokesman told the FM. "Employers have the common-law right to terminate an employee's service for not fulfilling contractual obligations. But if this is done in circumstances which it finds to be unfair, the employee is not deprived of his right (in terms of the Labour Relations Act) to approach the Industrial Court for reinstatement or an unfair labour practice determination."



REV 2/18/84  
**Case may curb right to fire strikers.**

EMPLOYERS' right to fire workers who strike legally may have been curbed by a key industrial court ruling.

The judgment came in a case brought by the white Council of Mining Unions. It charged that a clause in miners' contracts, saying they could be fired automatically if they struck legally or illegally, was unfair.

It lost the case because the court refused to rule that firing legal strikers was automatically unfair.

But it did add that there might be cases in which it would be unfair to fire legal strikers.

The fairness of these sackings, it said, could depend on the cause of the strike, how long it lasted, its consequences and whether the two sides had bargained "in good faith" after it began.

Other factors which could have a bearing were the circumstances of both sides, the behaviour of workers during the strike and the terms of their contracts.

So the court says it will judge on its merits each case in which legal strikers charge they are fired unfairly.

This fell short of what the CMU — and other unions — wanted. Many unionists believe employers should be barred from firing legal strikers. This, they say, is the only way to give workers an incentive to strike legally.

But it has been assumed up to now that employers have a blanket right to fire legal strikers and it is this that the ruling has questioned.

It is unclear how the court would apply its guidelines in practice. But an employer who fired legal strikers the moment they downed tools — or refused to bargain with them after they struck — could face action in the court.

An early test of the court's attitude may come soon: the Metal and Allied Workers Union says it will challenge the firing of strikers at Dunlop's Durban tyre plant last week, a move which Mawu says followed a vote by workers to turn their illegal strike into a legal one.

Meanwhile, union attempts to have the law changed to bar the firing of legal strikers will continue.

# Builder says ICBI 'not co-operative'

165 E. Post  
30/8/84

Court Reporter

A PROPERTY developer charged with obstructing a building inspector from inspecting his premises, told the Port Elizabeth Magistrate's Court yesterday that 99% of the employers in the building industry felt they did not receive any support or co-operation from the Industrial Council for the Building Industry.

Mr Andries Albertus Lategan, of Lorient Place, Lorraine, pleaded not guilty to two counts of contravening the Labour Relations Act by not allowing a building inspector to inspect the property and by ordering him to leave the premises.

He is alleged to have prevented Mr Theodorus du Plessis and Mr Gerhard Britz, from the Industrial Council for the Building Industry, from carrying out routine inspections on March 26 and 27.

Mr Lategan said very often builders had a problem and no aid was received from the council.

As an example, he said, he once telephoned the council to ask if they would speak to a drunk worker who would not

leave his premises, because the worker might have listened to the council. But no help was forthcoming.

Mr Lategan did not agree with the magistrate, Mr I S van der Merwe, who said the council was there to see to conditions and productivity in the building industry.

Mr Lategan said that if a mistake was made, the council gave no warning and "you were sent directly to court".

Mr Van der Merwe asked Mr Lategan if he thought Mr Britz and Mr Du Plessis, who gave evidence previously, would be prepared to commit perjury as their evidence conflicted directly with Mr Lategan's.

Mr Lategan said he felt they twisted their evidence but could not say why they gave false evidence against him.

Mr Lategan said under cross-examination that on March 26 he asked "a person" to leave his premises because he did not know who he was.

The case was postponed to September 6. Mr F Wilke appeared for the State.



course, building societies

Van Staden elaborates "I tried to take the shortest route to get there. One has to accommodate what one can, cater for a transition period, and hope to reach one piece of legislation as soon as practicable." In the meantime, many amendments can be expected during a period of education and diversification

The outcome is likely to be fewer institutions in the monetary system with building society parentage — and maybe with banking parentage, too. Any future all-embracing Act for the industry will accelerate the move towards one-stop financial service in-

stitutions that can offer cheques, debit cards, deposit facilities, insurance, mortgage bonds, participation bonds, and hire purchase — to name only a few services. Competition will see that they are further brought together under one roof

The big question remains will the societies meet the challenge? Some certainly will. But the writing is on the wall for the mutual society. In the end, this institution may have no option but to become a bank, or "get broken," in the words of one society spokesman. And the faster a society adapts to change, the better; since those in the lead will push for an all-embracing Act to ac-

commodate their further development

Meanwhile, Pretoria's door is open to suggestions — until September 10 1984. Societies wishing to remain structured on a mutual basis are likely to provide the greatest criticisms of the draft Bill. But they may as well face the fact that it is probably too late to change the proposed law. They won't be the only institutions in SA that will have to cope with confusing and restrictive legislation

The societies should turn the situation to their advantage. That, ultimately, is what free enterprise is all about — in the monetary sphere as well as any other

## UNFAIR DISMISSAL

# Employers on the line



Industrial relations in SA have undergone a revolution in the past five years. Labour legislation introduced in response to the Wiehahn Commission's recommendations has seen to that. In the process, a new and vigorous generation of trade unionists has emerged. Strikes are up — and escalating each year — and litigation reaching the Industrial Court is at an all-time high

One area of employer-employee relations that has been highlighted to an extent never seen in the past is that of dismissal. Specifically when is dismissal unfair? The matter has become highly sensitive, with newly-aware labour bodies challenging employers at every turn, and even the most sophisticated managements have floundered. This is unfortunate since, worldwide, it is accepted that unfair dismissal is sufficient cause for a strike

That fact is being felt at home. Statistics compiled by leading South African industri-

The new breed of union has begun to focus on the concept of unfair dismissal as one in which many employers have proved vulnerable. Many Industrial Court hearings have gone in their favour. Businessmen are learning that this is an area in which they have to act with great circumspection and sensitivity.

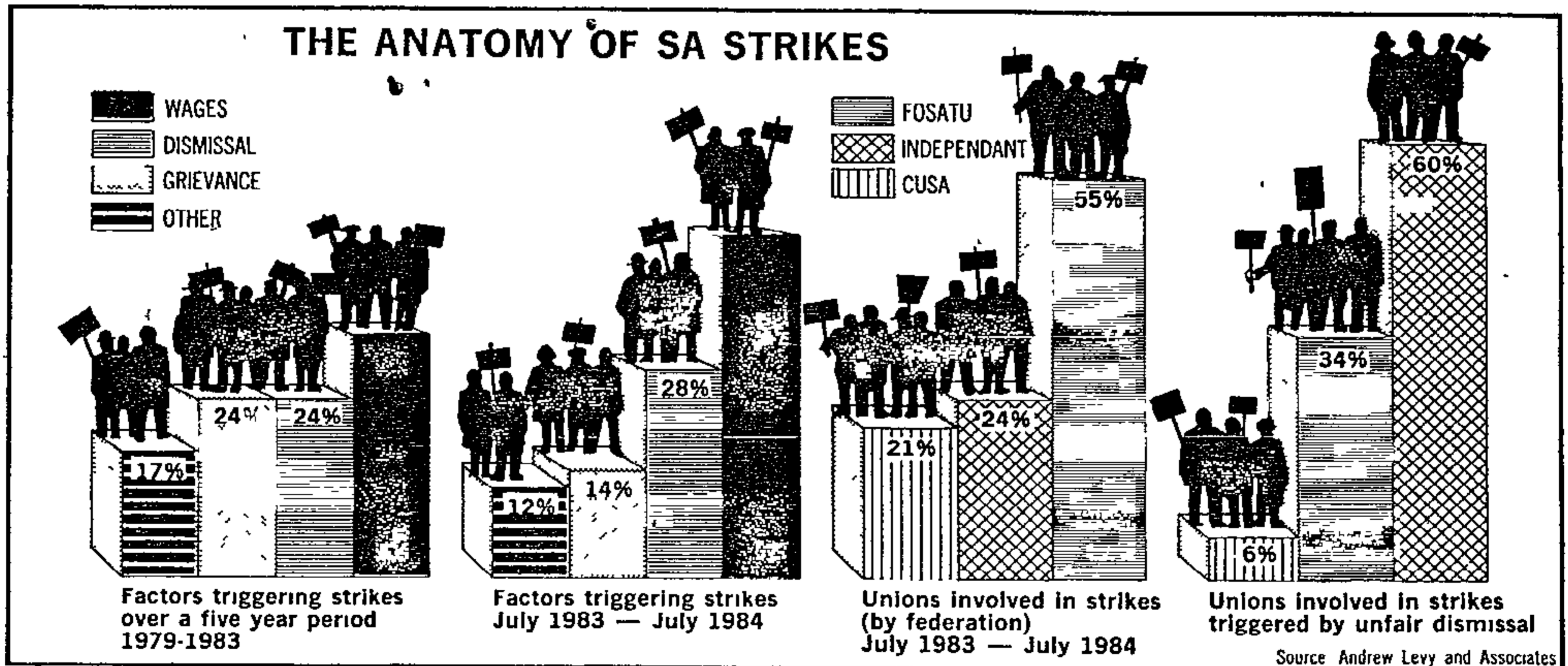
al relations consultant Andrew Levy show that, in 1979-1983, 34% of all strikes were triggered by wage disputes. But a high 24% were caused by dismissals which employees felt were unfair — and, in the last year, measured from July to July, strikes over dismissals increased to 28% of the total

These figures should be enough to set alarm bells ringing for employers. Traditionally, it is management's prerogative to dismiss. It is also commonly held that it is unnecessary to have strikes over dismissals, after all, management and workers have a common interest in uninterrupted production. Why, then, the rising trend of strikes over dismissals?

Obviously, not all strikes triggered by dismissals can be traced back to unwarranted and high-handed decisions. But even when dismissal is warranted, clumsy handling of this most sensitive of management functions is all too likely to lead to adverse worker reaction

Dismissal is one issue on which the emerging unions have proved deadly serious — perhaps naturally so. Organising largely among unskilled black workers, much of their strength lies in numbers, and they don't want to lose it

Underlying much of the debate about dismissal are two principal notions that the





relationship between employers and employees is not one of equals, and that the common law contract of employment (allowing either management or workers to terminate service, provided notice is given) does not offer workers sufficient protection

Employers are clearly in a more powerful position, and in most situations are able to replace workers fairly easily. But for many workers, loss of a job has far more serious consequences. In SA this situation is uniquely exacerbated in that the majority of dismissed workers also face the prospect of losing their urban residential rights — and stand little chance of finding work in the homelands if this happens

Most countries have introduced protective systems for workers. In some, legislation requires justification for dismissal. In others, like the US, considerable reliance has been placed on collective bargaining agreements which lay down the essential requirements. And in yet others, employers have introduced disciplinary procedures in terms of which they undertake not to dismiss without cause

Many countries use more than one device to ensure fair dismissal. It is acknowledged that the incidence of wildcat strikes has been reduced in those countries which have instituted such systems

#### Recognition agreements

SA labour law does not contain specific provisions against unfair dismissal. But many unions have signed recognition agreements with employers which stipulate procedures which must be followed when dismissal is being considered. And in a number of landmark judgments the Industrial Court — which uses fairness as its criterion for judging disputes — has ruled that unfair dismissal can constitute an unfair labour practice

The most commonly adopted line of action for unions in cases of alleged unfair dismissals has been to apply to the court for a *status quo* order. This means that affected employees are reinstated in terms of Section 43 of the Labour Relations Act, and they simultaneously apply to the Minister of Manpower to appoint a conciliation board to judge the merits of the dispute

*Status quo* orders are temporary — usually valid for 90 days unless they are extended. But while they are in force employers are obliged to either physically re-employ workers covered by the order, or pay their wages. Application for a conciliation board ensures that if the dispute is not settled within that forum it will go to the Industrial Court for final determination. Most applications in these situations allege that the dismissal was an unfair labour practice.

If in the course of a Section 43 application a union can show that, on balance, the dismissed workers suffer greater inconvenience than their employers, the court will generally grant the order if it finds the dis-

### RETRENCHMENT 'RULES'

Most countries acknowledge that employers may terminate employment for economic and technological reasons. But termination should occur with the least possible prejudice to the worker, it's argued. SA has not codified the criteria that should apply in these circumstances — but the Industrial Court has given some guidelines. Employers must have

- Notified a representative union at the earliest opportunity of the intention to retrench,
- Met a representative union or employee body before retrenching, to discuss possible alternatives — such as layoffs, short time and transfer — as well as to agree on selection criteria. If there is no consensus on the criteria, employers must adopt objective ones such as a last-in-first-out basis for retrenchment unless they can give good reasons for departing from them. The agreed criteria must be fairly applied

If a representative union is not involved, employers must have

- Considered possible ways to avoid retrenchment, such as transfers, eliminating overtime and working short time,
- Consulted with employee representatives on criteria to be applied in selecting employees for retrenchment,
- Ensured that the criteria, as far as possible, do not depend solely on the opinion of the person making the selection, but can be objectively checked against such factors as attendance records, job efficiency, experience or length of service,
- Given sufficient prior warning to employees who may be affected and their representatives,
- Ensured that selection is made fairly in accordance with the criteria adopted, and considered any representations employee representatives may make, and
- Consulted affected employees

missal was not justified. More than one employer has been known to settle out of court if the *status quo* order is used in tandem with an unfair labour practice allegation in a conciliation board application. Dismissals which occur while a *status quo* order is in force are prohibited by law

Victimisation for union membership, or participation in union activities, is the prime example of situations in which the law prohibits dismissal. The very fact that the law favours employees in these circumstances indicates how gravely victim-

isation is viewed. Such cases are heard in criminal courts, as the concept is entrenched in statute. The State usually brings the application — but instances of private prosecution have been recorded. If victimisation is proved the courts can rule that the dismissal is void. Reinstatement can be ordered

"Constructive dismissal," the term applied to employers who use tactics designed to coerce employees to resign, is closely linked to victimisation. Although no cases of this nature have come before the

### WATERY WOES

Black workers have been the main beneficiaries of Industrial Court rulings in cases involving allegations of unfair dismissal. But there are growing signs that white workers are also beginning to seize upon the protection offered by the court

Take the case of the female horticulturist dismissed by the Welkom municipality. The woman was responsible for a number of the city's parks. During the drought householders were prohibited from watering their gardens and the municipality itself made use of sewerage water

One day, according to evidence heard in the Industrial Court, she noticed a municipal hosepipe draped over the wall of a private home belonging to Welkom's director of parks. When she asked the black worker attending the hosepipe who had given him instructions to water the garden, he replied "The big baas". She ordered the pipe to be removed and reported the incident to her superior

When the director found out about the event, she alleged that he became most aggressive towards her and denied that

he had issued an order to water his garden. He claimed he had instructed the worker to water the pavement outside his home

However, soon thereafter the horticulturist said she found a private hosepipe attached to a municipal tap in the same park. She impounded it, established that it belonged to the director, and reported this to her superior. Later, after an inquiry held in terms of the municipal by-laws, she was dismissed on the grounds that she had failed to obey instructions

The woman consulted Johannesburg labour lawyers Cheadle, Haysom, Thompson. They took the matter to the Industrial Court alleging that the charges against her had been "trumped up"

The municipality did not defend the action and the court granted the woman temporary reinstatement in terms of Section 43 of the Labour Relations Act. The Minister of Manpower is currently considering establishing a conciliation board to hear the dispute



Pm 31/8/84 (165) (166) (167)

Industrial Court to date, there is little doubt that the allegation that it is an unfair labour practice to commit constructive dismissal is certain to surface at some stage

According to a leading labour lawyer, John Brand, who spoke at a recent conference on labour law, the SA legal system contains two major requirements for guaranteeing that dismissals are justified or fair. Firstly, employers must have a valid, substantive reason to dismiss. Secondly, there must be a procedure to ensure that an employer does have a valid reason.

Valid reasons cover three crucial areas: the worker's conduct, the worker's capacity, and the operational requirements of the undertaking. Besides victimisation, employers weighing up workers' conduct should bear in mind that:

- The law provides that an employee may not be disciplined if he has filed a complaint or is participating in proceedings against an employer involving alleged violation of laws or regulations,
- A worker's race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinions, national or social origins may not be used as a reason for dismissal, and
- Dismissal for absence from work during maternity leave is universally accepted as unfair.

Another requirement of fairness is that workers must know — or be presumed to know — the consequences of their misconduct. In cases where workers are fired for infringing company rules it would be necessary to establish that they knew the rules.

Generally speaking, it would be unwise for employers to dismiss a worker on the grounds of incapacity unless appropriate instructions have been issued, written warnings delivered, and the worker given both the opportunity and a reasonable time to improve.

These provisions apply unless the worker can be shown to be acting in a wilful manner. Then the reason for dismissal must be considered as misconduct.

As far as retrenchment is concerned, there is a growing body of criteria mainly arising out of Industrial Court rulings (see box). But in all cases of dismissal employ-



Levy ... some conflict is inevitable

ers should adopt the following procedures:

- Workers must be warned, except in situations involving incidents such as theft and violence — where summary dismissal is justified,
- The nature of what constitutes misconduct must be clearly spelled out so that workers can defend themselves adequately;
- An inquiry must be held within a reasonable time, under the auspices of a neutral management person. Workers must be present throughout such an inquiry, and must be able to request representation, be allowed to question witnesses, and make use of an interpreter if necessary.

In weighing up the facts the convener must consider whether the misconduct has been established by sufficient evidence. Only thereafter should decisions be made about appropriate punishment. Then factors which should be considered are the nature and severity of the misconduct, sanctions imposed on other employees for similar misconduct, and the service record and personal circumstances of the worker. Findings must be communicated to the worker in writing. Above all, workers must have the right to appeal against dismissal.

As Levy has stated in his book on the subject, even fair dismissal will not always give good results or be accepted by employees. "Ultimately," he notes, "an employer faces two tribunals: the Industrial Court and the populist court of the employees themselves. One of the greatest mistakes that many personnel managers make is to believe that (dismissal) procedures in themselves bring industrial peace. Perceptions and interpretations of facts and events differ, and some conflict is inevitable."

For those perturbed by union successes in the field of unfair dismissal, it is worth noting what another leading labour lawyer has to say: "The Industrial Court's decisions have influenced employers to negotiate their own disciplinary procedures and to voluntarily adopt safeguards against arbitrary dismissal, thereby removing such disputes from the street and the court. In addition the court has only given the judicial rubber stamp to practices which have long been accepted by enlightened employers."

In short, sensitivity is — and in many cases always has been — the watchword in industrial relations.

## REUNERT

# The high-tech glow

Prospects for companies listed in the JSE's electronics sector — the main route for an equity investment in high-technology — may be changing dramatically. Government recently decided to increase its support for local manufacturers of electronic equipment. And Reunert is accordingly developing as a major new force in the field.

As a whole, the sector has been knocked back since the market started sliding dur-

Government has given a far higher profile to the development of the local electronics industry. Reunert is likely to be a major beneficiary, backed as it is by Barlow, although it has yet to establish a firm earnings pattern after major restructuring.

ing May, and the electronics index is down by 28.5% from its peak of 694.7 on May 11. Established leaders in the sector fell markedly in the same period, with Altech down by 30% from R65 to 4 550c, Altron down by 26% from 2 550c to 1 900c, and Powertech down by 39% from 148c to 90c. Reunert fell by 23% from 1 500c to 1 150c. Despite the recent fall, however, Reunert has performed relatively better than the sector.

(701)

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# Hose row led to dismissal

7/9/84

Own Correspondent

BLOEMFONTEIN — A woman horticulturalist who felt she had been unfairly dismissed by the Welkom Municipality told an industrial court how she found a municipal hosepipe being used to water the private garden of Welkom's director of parks, Mr T L Steyn, at the height of the drought in January

Mrs Gesie Weingerl, of Virginia, whose claim of unfair dismissal was upheld, said she reported the matter to her immediate superior, Mr W P M Bester, after ordering the removal of the pipe

In February she found a private hosepipe attached to a municipal tap in a park next to Mr

Steyn's, Rosalind, Street home, the court heard. She confiscated it and reported the matter to Mr Bester

After an internal inquiry Mrs Weingerl was found to have contravened the municipality's conditions of service in that, among other things, she had failed to carry out written instructions to water trees on the pavement outside Mr Steyn's home

She was dismissed on May 10

The municipality did not defend the court action and Mrs Weingerl was granted temporary reinstatement. The Minister of Manpower is considering setting up a conciliation board to hear the dispute.



## LABOUR LEGISLATION

**A flawed Act**

Confusion, anxiety and a certain amount of cynical amusement have greeted Manpower Minister Pietie du Plessis's Labour Relations Amendment Act which came into effect on September 1. Employers and labour lawyers have pointed out a number of anomalies in the Act which contradict its original intentions. One labour specialist also believes that some of the provisions are likely to hinder rather than help stable industrial relations in SA.

The two most controversial provisions of the Act are that

□ Any agreements reached between unions and employers or employer organisations will not be enforceable in court if either party fails to comply with certain requirements. These consist of supplying the Department of Manpower with details of their constitutions, membership, office addresses, names of office-bearers, and maintaining their financial affairs in good order; and

□ A requirement that employers must submit details of agreements they have concluded with unions to the department.

The Act states that details of all agreements will have to be furnished to the department. In theory this covers even minor agreements such as those relating to the quality of food in a company canteen. The FM understands, though, that the department "will not be too petty".

This assurance is bound to temper employer anxiety about complying with the Act. Initially it was feared that the department would be swamped with information. As one employer put it: "(The department) will have to take over a hangar at Jan Smuts airport to store all the agreements it receives."

**Employer obligations**

The publication of the regulations of the Act has further clarified employer obligations. In terms of the regulations, employers are merely required to complete a form providing the following details: the nature of the agreement, the nature of the business, names and addresses of the parties to the agreement, the job categories and number of employees affected, the magisterial districts covered by the agreement, the wage regulating measures, if any, applicable to the business, the date on which the agreement was concluded, and its period of operation.

But even if this uncertainty has been removed, intense confusion reigns about Section 3(2) of the Act. Its present wording states that only details of *unenforceable* agreements need be submitted to the department. A departmental source tells the



Manpower's Du Plessis ... back to the drawing board?

FM that this was certainly not intended. It appears that this gremlin, as well as others, crept into the original Bill when it was referred to a parliamentary select committee earlier this year.

Aside from this, other criticism has been levelled at this section of the Act. Chairman of the Associated Commercial Employers of SA, Michael Wright, says employers will submit information to the department — but he questions whether this will be of any inherent benefit to employers or unions.

Another labour relations specialist argues that Section 3(2) will discourage many recently-established unions, which are extremely hostile to the State, from entering into formal relationships with employers. They will be reluctant, he says, to conclude agreements if they know that employers will be obliged to divulge details about them to the department. This will not apply to the longer-established emerging unions. Although they, too, are critical of this requirement, they have developed a familiarity with the way the State operates and will continue to negotiate agreements.

Reunert's industrial relations adviser Richard Schuster has drawn attention to another anomaly in the Act. He says a loophole would theoretically allow a union to deliberately fail to supply the department with required information if it was unhappy with an agreement (*Current Affairs* September 14). This would remove a company's right to take legal action in the

event of a breach of the agreement. One industrial relations manager has described this situation as "absurd." Wright says it puts the employer at a disadvantage and a number of employer organisations are looking into the matter with a view to having it corrected.

A department spokesman confirms this interpretation of the Act, but says it "didn't enter the minds" of its architects. Parliamentary debate at the time indicated that the motive for the section was to penalise those unions which fail to submit to requirements of the law.

Labour adviser to the Johannesburg Chamber of Commerce André Malherbe says the Act is premature and poorly conceptualised. "One would have expected (the department) to have waited for reactions to the National Manpower Commission's report which deals with union registration before pushing the Act through."

Malherbe says the Act has now created three types of unions: registered unions, unregistered unions which comply with the Act's requirements, and unregistered non-complying unions. He points out that if employers sign a non-statutory agreement with the third type of union, they have no legal remedy in the event of the union's non-compliance. The union, however, would retain the strike weapon if the employer fails to comply.

Despite these anomalies, there is no indication as yet that the offending sections will be taken back to the drawing boards.

Departmental action may well depend on  
how soon employers and unions begin to  
take advantage of them



Slur files  
union <sup>165</sup>  
leaders <sup>7579/84</sup>

Labour Reporter

The president of the 22 000-member, all-white Motor Industry Employees Union of South Africa, Mr Willem de Klerk, has reacted angrily to a television broadcast by the Minister of Manpower who attacked workers for "throwing stones and burning places down"

Mr de Klerk said yesterday that it was appalling that Mr Pietie du Plessis had accused all workers and had not directed his remarks at those responsible

"He pleaded with the workers of South Africa not to throw stones and burn, but to negotiate instead," said Mr de Klerk

"The white workers of this country have got a lot to throw stones about — but we don't As taxpayers, we are getting sick and tired of this kind of action — and then we are blamed for it," he added.

Mr de Klerk said he would be taking up the matter with the Director-General of Manpower, Dr Piet van der Merwe, and would demand an explanation for the broadcast

## LABOUR LEGISLATION Homeland tangles

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The methodical progress being made towards realisation of the Verwoerdian dream of independent homelands for SA's blacks is beginning to play havoc in the labour arena. Confusion about the state of labour legislation in SA and the homelands (independent and self-governing) is endemic and is creating major problems for government officials responsible for implementing the laws as well as for industrialists, workers and trade unionists.

An investigation conducted by Alan Whiteside of Natal University's Economics Research Unit reveals that in many instances the homelands have adopted labour legislation dating back to the Forties and long considered archaic. In other cases they are assiduously implementing labour legislation repealed by SA and no longer applicable to them. Even more disturbing is Whiteside's finding that some have no labour legislation on their statute books at all.

The problem of the disparity between SA's labour laws and those of the homelands was first identified by the Riekert Commission which recommended that the

National Manpower Commission should be kept informed about the situation. Whiteside's research, which is being conducted under the auspices of the Human Sciences Research Council (HSRC), is aimed at doing just that. Whiteside has already examined the differences in labour legislation and is in the process of looking at the difficulties arising from them. He intends meeting with homeland ministers and labour officers to get their views.

According to Whiteside, some homeland administrations, like the KwaZulu government, have taken active steps to update their legislation.

### Employment and safety

In SA, for example, the Basic Conditions of Employment Act and the Machinery and Occupational Safety Act cover matters relating to employment and occupational safety. Both were enacted in 1983. But neither is applicable in any of the homelands. KwaZulu, for example, is still implementing the Factory, Machinery and Building Work Act of 1944 and the Shops and Offices Act of 1964.

Says Whiteside: "An industrialist locating in Isithebe would therefore be governed by these two acts and the regulations that go with them. Yet an industrialist locating at Mandim a few kilometres away is governed by the SA statutes."

The differences are significant. In terms of the Basic Conditions of Employment Act (BCEA), casual workers are entitled to work a maximum of nine hours 15 minutes a day. Under the Shops and Offices Act they may work only eight hours 30 minutes. The Shops and Offices Act also states that females may not work later than 1pm on more than five days a week, whereas the BCEA contains no restriction for this type of work.

"Industrialists would like to obey the law," says Whiteside, "but they are confused by the fact that they are governed by different acts and varying regulations in the two territories. It is confusing too for the factory inspectorate, which, under law has jurisdiction in SA and the black states."

Labour relations is another confused area. In SA they are governed by the Labour Relations Act of 1956 — the old Industrial Conciliation Act. Transkei has its own Industrial Conciliation Act, which makes no provision for trade unions or employer organisations. Bophuthatswana also has its own act. Although it does provide for trade unions, it requires them to be registered and headquartered in the territory. Venda's act, passed in 1982, also does not provide for trade unions.

KwaZulu's affairs are even more tangled. In 1981 it passed the Industrial Conciliation Amendment Act, a derivative of the former SA legislation. But a 1970 SA proclamation had already declared that the Industrial Conciliation Act, in its own or revised form, would not be applicable in any of the black states. "Hence the KwaZulu government has perpetuated an act

- The homelands can draft their own legislation, but this is an expensive and complex business.
- They could adopt SA's legislation, but this would mean inheriting all the possible problems.
- States that have not yet accepted independence could hand all matters pertaining to labour back to SA to administer or they could make an attempt to straighten out their labour laws and tackle the problems as they arise.

the law just does not provide for them. This could well be a source of potential conflict."

Whiteside also believes that in many instances SA is "over regulated" and "over legislated" and that many of its laws are inappropriate for Third World homeland economies.

How can the problems, and contradictions, be overcome? According to Whiteside, there are several options, each with its own disadvantages.

which does not legally apply in the black states," says Whiteside.

All other national states are governed by the Black Labour Relations Regulation Act of 1953, widely regarded as a completely outdated piece of legislation.

Whiteside sees real problems emerging as SA intensifies its decentralisation policies. "These new industries are going to attract an increasingly sophisticated, urbanised workforce who are going to want trade unions. And in many instances



# Unions ready to go illegal again

30/9/84 S. Times (165)

TRADE unionists' honeymoon with the new labour laws is over.

Some are threatening to discard the legal process, the consequences of which could be disastrous for commerce and industry.

Illegal strikes look set to increase sharply. Disillusionment with the legal process has become rife in union ranks following, in particular, police action on legal strikes.

"If workers can secure no advantage from legal strikes there is every possibility they will resort to illegal strike action," says a leading labour lawyer who may not be named for professional reasons.

"Workers have resorted to legal strike action to avoid prosecution, and to seek protection against claims of damages and court interdicts. Recent strike activity has, however, shown that the

By Amrit Manga

Labour Relations Act has been unable to provide this protection.

"Unless the Act is geared to encourage legal strikes by guaranteeing protection, the future for industrial relations looks ominous," he adds.

The major reason for this abrupt change in attitude was the authorities' reaction to the "legal" strike by the National Union of Mineworkers a fortnight ago.

## Wildcat

General Secretary Cyril Ramaphosa says "Workers no longer feel committed to legal dispute regulating avenues and there is no guarantee that they will not in future opt for wildcat strikes instead."

"Having examined the Labour Relations Act it is clear that it neutralises the work-

ers' most effective weapon — the surprise element of a strike.

"Our experience during the recent wage dispute proves that co-operating with the State by following procedures laid down in its labour laws does not serve our purpose," says Ramaphosa.

High on the agenda of the NUM annual congress in December this year is a review of the legal dispute-settling procedures.

The widespread dissatisfaction with existing industrial relations legislation does not end with the mineworkers.

## Rulings

The National Union of Textile Workers recently charged that Industrial Court rulings have provided little protection for dismissed workers.

"There is growing dissatisfaction in union circles with the Industrial Court," the NUTW says.

"Recent judgments have shown that the court will not consider reinstating strikers even if they were provoked by an unfair labour practice."

"This clearly alters the balance of power in favour of employers and gives workers little choice but to continue their strike action," it adds.

Union sources say that the only alternative open to workers in cases like this is a lengthy strike. The Industrial Court has failed to provide equal and fair rights for both employers and unions. This will prevent it from becoming an important means of peacefully settling labour disputes, the union adds.

In another dispute over the

dismissal of five workers, a "legal" strike by 2 000 members of the Metal and Allied Workers Union has been declared illegal in terms of a temporary interdict granted by the Natal Supreme Court.

The interdict was granted although the union had followed all the procedures laid down in the Labour Relations Act.

"This included applying for a conciliation board, allowing a 30-day grace period and conducting a strike ballot before opting for a legal strike," says Geoff Schreiner, a Metal and Allied Workers Union official.

But the company involved, Dunlop, says a multiplicity of factors influenced the strike decision and that the reinstatement of the five workers was not the only motive.

## Peace

Dr Piet van der Merwe, Director of the Department of Manpower, says the controversial Act is geared to ensuring industrial peace. But if aspects of the Act present problems, these will be examined and reviewed if necessary.

Andre Malherbe, labour relations adviser to the Johannesburg Chamber of Commerce, says that it is grossly unfair to legally compel companies to retain striking workers.

While he agrees that lawfully striking workers should be afforded some degree of protection, "the right to dismiss workers cannot be denied to management".

"However, the Act should make provision for a notice of dismissal rather than allowing summary termination of the employment contract," says Mr Malherbe.

# INDUSTRIAL COURT Closed shop goes

In the first successful legal challenge of the closed shop, the Industrial Court has upheld an appeal by the National Union of Textile Workers (NUTW) against the Industrial Council for the Clothing Industry (Natal)

The judgment means that workers at Pinetown protective clothing manufacturer James North (Africa) who had joined the Fosatu union but were obliged to remain members of the Trade Union Council of SA-affiliated Garment Workers' Industrial Union (GWIU) are now free to resign from the GWIU without being dismissed. It also allows James North to deduct union dues for NUTW members by stop-order and legitimises bargaining at plant level within an industrial council structure. One of the arguments put forward in the case was that bargaining at plant level complements industry-level bargaining.

### Legal battle

James North is a subsidiary of the multinational Siebe Gorman group. The court's highly significant decision is the outcome of a hard-fought legal battle between the two unions. It began last year when NUTW applied to the industrial council for membership, claiming it had organised the majority of James North's workers. The workers fell under GWIU's closed shop. The council, on which GWIU is the employee party and the Natal Clothing Manufacturers' Association (NCMA) the employer body, refused. It did so on the grounds that the NUTW was not sufficiently representative of workers in the clothing industry.

But NUTW's action prompted GWIU to take protective steps. Late last year the Tucsa union changed its constitution to empower it to expel any of its members who

became a member of another union. Because GWIU had a closed shop, this meant that workers who did so, risked losing their jobs with the company.

Meanwhile, tensions were rising in the factory. In February this year, James North held a secret ballot to determine which union had majority support. NUTW received 219 votes against GWIU's 43. Immediately after this, James North and NUTW signed a recognition agreement in which the company agreed to grant NUTW stop-order facilities for union dues and to support the union's application to the industrial council for an exemption from the NCMA's closed shop agreement with GWIU. The council rejected the application.

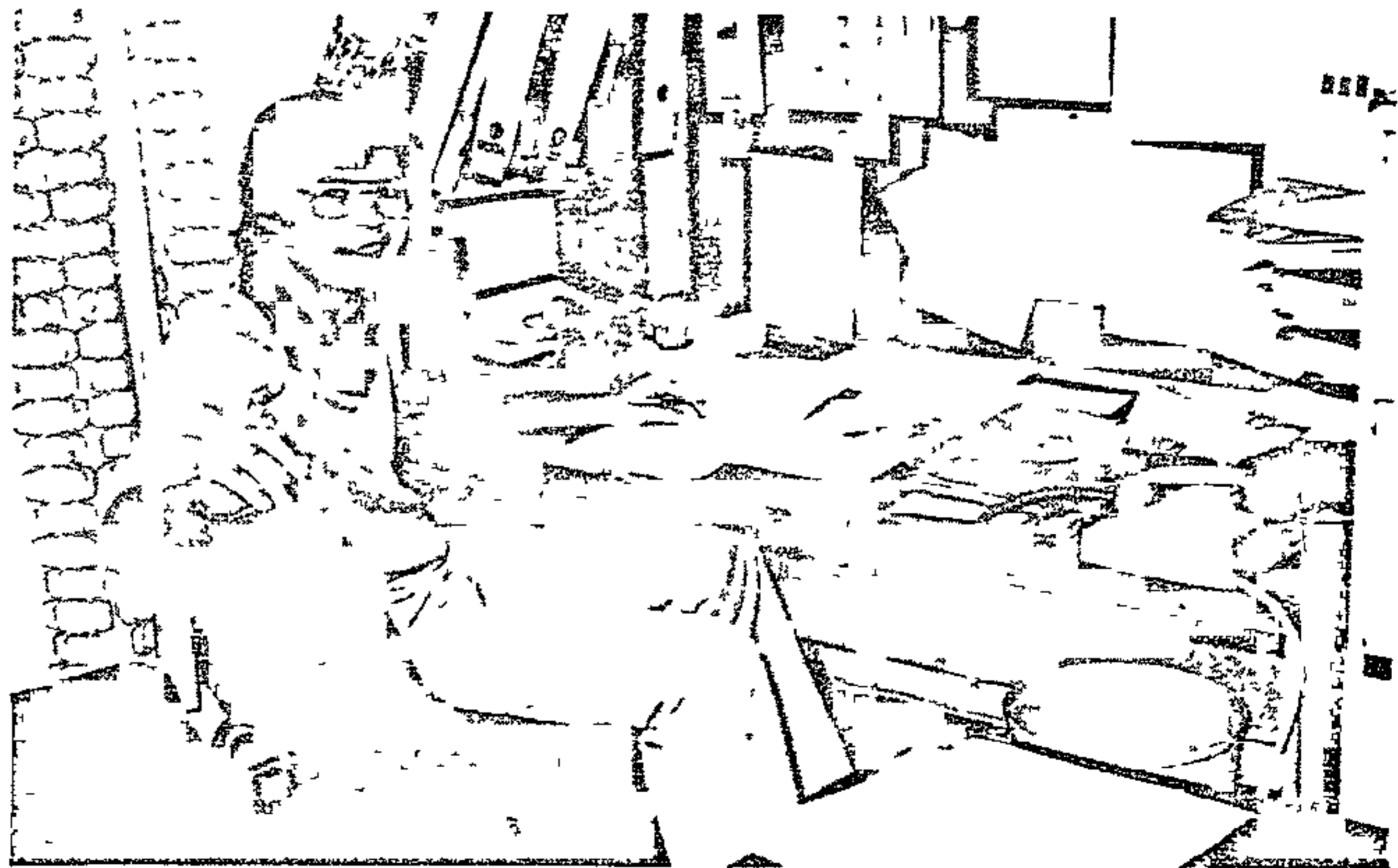
This led NUTW to challenge the rejection in the Industrial Court. GWIU's legal representatives gave the following reasons for opposing NUTW's application.

- GWIU had been in existence for 50 years and had effectively represented the best interests of clothing industry workers in Durban and Pinetown,
- NUTW was registered for the textile industry, which was quite separate from the clothing industry, and was not registered for the clothing industry in Durban and Pinetown,
- The Labour Relations Act discourages the proliferation of unions in an industry by refusing registration to unions where others that are sufficiently representative exist,
- The interests that NUTW intended to represent had been adequately represented by GWIU for 50 years,
- NUTW's claimed membership was insufficient to form a union likely to have any effect on collective bargaining within the industry; and
- For the above reasons and because the Industrial Registrar would be obliged to



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NUTW's Copelyn ... challenging 'restrictive practices'



disregard any GWIU members who were also NUTW members if he was satisfied that they would have resigned from GWIU had it not been for the closed shop, NUTW was unlikely to obtain registration in the industry.

The NCMA made these points in supporting NUTW's application

- It believed in freedom of association, which has the natural corollary that workers should be allowed to belong to a union of their choice,
- NUTW was a growing force in the Natal clothing industry;
- If the exemptions were not granted, NCMA members could find themselves in the invidious position of having to resign from the NCMA and thereby also from the industrial council as a result of being faced with two alternatives either ignoring the wishes of their employees by refusing to recognise NUTW and risking industrial strife, or to breach the council agreement by employing non-GWIU people,
- The refusal of the application could lead to the ultimate collapse of the NCMA and thereby the council, and
- It was important to maintain the industrial council system in the clothing industry

#### Industrial peace

Legal representatives for NUTW argued in the interests of industrial peace and to ensure that the closed shop was not used as a restrictive practice, the court should recognise that special circumstances existed for the council to grant the exemption

The court found that the company faced a dilemma NUTW was representative of the majority of its workers, yet because of the closed-shop provision in the industrial council agreement, it could not grant the union stop order facilities

Workers who were GWIU members by

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virtue of the closed shop were aggrieved at having to pay dues to a union they did not wish to belong to. However, if workers resigned from GWIU, the company would not be entitled to continue employing them. The council had also refused NUTW's application for exemptions for other agreements it had reached with James North about retrenchments and working short time.

In its judgment, the court noted. "From the above circumstances, the inference can be drawn that the refusal of the (industrial council) exemptions may jeopardise the formal relationship in existence between NUTW and the company, which in turn can lead to a stalemate position at the company's premises, thereby frustrating the objects of the (Labour Relations) Act." This, it said, was industrial peace.

NUTW general secretary John Copelyn tells the FM the union has already applied to the industrial council again for membership. Applications for exemptions from the closed shop for several other factories have also been lodged.

# 'Unclear' labour laws irk Seifsa

By **DAVID FURLONGER**  
Industrial Editor

**UNCERTAINTY** over the legal definition of unfair labour practices is hampering the development of industrial relations, it was claimed yesterday.

Mr J W Nelson, president of the Steel and Engineering Industries Federation of SA (Seifsa), said that although the new industrial council procedure encouraged unions to resolve differences through agreed procedures rather than strike action, there were still serious problems

The Industrial Court was causing widespread debate with its increasingly prominent role in the industrial relations field, while there remained widespread ignorance of what constituted an unfair labour practice

"The uncertainty arising out of the current definition of an unfair labour practice is inhibiting employers in the conduct of their industrial relations

"It is important that a formula be found whereby the court can assist in ensuring fair employment practices without becoming directly involved in both the structure and practice of collective bargaining"

Mr Nelson was addressing Seifsa's annual meeting in Johannesburg

He said increasing fragmentation of the trade union movement through breakaway groups made it difficult for employers to maintain stable bargaining and consultation arrangements

He rejected claims that this could be overcome by fragmenting existing collective bargaining arrangements within industrial councils

"It is difficult to see how this could function on a practical basis. This would, in fact, lead to a highly unstable business environment which would make long-term investment in the metal industries unattractive."

Mr Nelson said metal industry employers had experienced a difficult year in the labour relations field

He criticised the rejection by the Metal and Allied Workers' Union and SA Boilermakers' Society of wage rise offers ranging from 9,1% and 13,1%. He said they rejected the deal because of the minimum wage for lower-paid employees

"The severe recessionary conditions

limited the ability of the employers to meet the aspirations of the trade unions. Employers face a serious dilemma in that major increases in wages in this area must lead to further reduction in employment levels at a time when unemployment is already high"

Mr Nelson expressed concern at the declining number of apprentices entering the metal industries. The 1983 apprentice intake was 35% down on 1982, confirming the inadequacy of a system in which on-the-job training played so important a role.

Even the establishment of a Metal Industry Training Centre had earned little support from employers

"The continuing imbalance in the supply and demand for artisans constitutes a serious limitation, not only on the development of the industry, but also on the wage structure, because it inhibits the attainment of a more equitable distribution of income between skilled and unskilled employees"

Mr Nelson said engineering industry activity continued at depressed levels last year, although the steep decline from 1982 to mid-1983 appeared to have been halted

After falling 13% in 1983, steel production in the first seven months of this year had risen 15,8%. Ferrous casting, after a 20% slump in 1983, was up 2,3% so far this year.

The exception to last year's decline was ferro-alloy. The industry increased production by 12% in 1983, and prospects this year remained strong in anticipation of continuing growth in demand and improved prices from Europe and the US

Mr Nelson predicted a continued cutback in economic activity in the immediate future and said Government expenditure must be curtailed

Recent "corrective action", such as increases in GST and company tax, curtailment of tax allowances and high interest rates, were all inevitable. But the extent of the economic problem had led to unwelcome side-effects

"The economy is clearly in an extremely serious situation and the recent social unrest, while possibly sparked by other factors, is not unrelated to the very difficult economic conditions and unemployment levels pertaining"



# Closed shop may be on the way out

By Carolyn Dempster,  
Labour Reporter

A crucial Industrial Court ruling which could herald the beginning of the end of the closed-shop stranglehold on employees wishing to join the union of their

choice was handed down last week in the textile industry

The provisions of the closed shop determine that employees who join a particular company are required to be members of the union recognised by the company

Similarly, if an employee decides to resign from the union in order to join another he immediately loses his job

This clause has led to heightened tensions between established unions who have added to their membership figures by virtue of the closed shop arrangement, and emergent unions who are militantly active in the same industries

Last week, the closed shop hold on employees at James North Africa Pty Ltd who are members of the Garment Workers' Industrial Union (GWIU) was broken

## EXEMPTION

Mr DR van Schalkwyk of the Industrial Court upheld an appeal by the National Union of Textile Workers (NUTW) — a rival union — for exemption from the provisions of the closed shop arrangement at the Isando factory

The NUTW initially applied to the Industrial Council for the Knitting Industry for exemption, but the application was turned down, and was then taken on appeal to the Industrial Court

The court found that James North had been placed in an invidious position. Virtually the entire workforce signed a petition indicating they would not be members of the GWIU were it not for the closed shop clause

The company was faced with the dilemma of either dismissing its whole workforce or resigning from the Natal Clothing Manufacturers' Association (NCMA) — the key employer association on the Industrial Council — to escape the closed shop clause

At the same time, the GWIU threatened its members with expulsion if they did not give up their dual union membership, and this in turn would have meant the loss of jobs

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**INDUSTRIAL COURT**

**Unions take a loss**

165 Oct. 1984

Trade unionists are wondering whether their recent successes in the Industrial Court set the true pattern for future decisions — or whether the parameters are changing. Two recent decisions that went against them in Natal have raised doubts.

In the case of the Paper Wood and Allied Workers' Union (PWAU) v Uniply, the union sought the reinstatement of two shop stewards who it alleged had been unfairly dismissed. In a separate action, it applied for the reinstatement of the entire workforce, which had been dismissed following a strike over earlier dismissals.

The court found that the shop stewards had not been unfairly dismissed. There was sufficient evidence to justify dismissal. In the case of the remainder of the workforce, it found that they had precipitated their own dismissal by walking off the job and not following strictly the procedures laid down in the Labour Relations Act.

A similar judgment was handed down in the case of the National Union of Textile Workers (NUTW) v Lanatex. In this instance, two workers were allegedly unfairly dismissed. The firing was followed by the dismissal of two shop stewards who protested on their behalf and, finally, the entire workforce, who had come out in support. Here the court found that the workers

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labour

and the two shop stewards had, in fact, been unfairly dismissed and ordered their reinstatement.

But it did not reinstate the other workers because they had acted unilaterally and, in so doing, had placed themselves outside of the law.

Both judgments, says labour lawyer Chris Albertyn, create serious problems for trade unionists. "It appears," says Albertyn, "that the courts are not coming to the assistance of workers facing mass dismissal where the proper procedures have not been followed."



# INDUSTRIAL COURT Ministerial exclusion zone

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Is the Industrial Court being edged aside in labour disputes? It seems a harsh question to ask of an institution designed as an integral component of Nic Wiehahn's brave new labour world. Yet recent events indicate that Manpower Minister Pietie du Plessis has decided to severely curtail the court's power to investigate union allegations of unfair labour practices. And that, until now, was its most important function.

Du Plessis is increasingly using his discretion to prevent conciliation boards — the route to the court, which is bound by the same terms of reference — from finding certain labour practices to be unfair. The process is that the notion of an unfair labour practice is excluded from the board's terms of reference; and this has happened most often in cases involving alleged unfair dismissal.

According to two leading labour lawyers, this has been the case with "almost every conciliation board application in the last four to six weeks."

Three examples come to mind. The National Union of Textile Workers applied for the establishment of a conciliation board to consider whether the Frame Group's re-trenchment policy was fair. In terms of that policy, several long-serving employees had been laid off. The Minister unilaterally decided it was not unfair — since the policy was the company's customary practice.

The Minister blocked another unfair labour practice hearing involving the dismissal of a Welkom municipality

horticulturist.

Yet again, the Minister intervened in a dispute involving Dunlop and the Metal and Allied Workers' Union over the dismissal of five workers.

In at least one of these cases the Supreme Court has been asked to decide whether the Minister is competent to intervene. But whatever the legalities, the Minister is being short-sighted in limiting the powers of conciliation boards and the Industrial Court.

He is intruding into the sphere of employer/employee relations and contradicting the Manpower Department's frequently stated aim that industrial relations are best served if labour and management are left to govern their own affairs.

The Industrial Court has built up a substantial file of such case law. Many of its decisions have gone against employers and this has resulted in pressure on the Minister to clip the court's wings. It appears he is doing so. But while some disgruntled employers may derive satisfaction from this, the possibility that the Minister's interference may lead to a substantial increase in the number of strikes cannot be ruled out.

The role of the State in industrial relations is to facilitate the resolution of disputes — to provide channels through which settlements can be reached with the least possible disruption to the economy. The Minister's recent actions are not helping to lay the basis for this

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Current Programme: Wage and Profit Analysis in the Construction, Food and Textile Industries of Natal.

# Key Industrial Court ruling will affect <sup>span</sup>rights of migrant workers

by  
Carolyn Dempster,  
Labour Reporter

A key ruling which has wide ramifications for the employment status and rights of migrant labourers was handed down by the Industrial Court this week, nearly two years after the dispute was declared.

The judgment, by Mr J A Erasmus, additional member of the Industrial Court in the dispute between the Metal and Allied Workers' Union (Mawu) and Screenex Wire Weaving Manufacturing, comes eight months after the court hearing.

Ten migrant workers, who lost their employment on December 9 1982 when their contracts were not renewed, were not "retrenched", the court found.

Mr Erasmus ruled that the workers should not be reinstated on the basis of an unfair labour practice. But because the company had not given the migrant workers due warning, they should be awarded back pay.

On this basis, the court determined that five of

## Union attacks 'ineffective' Industrial Court

Workers are losing "all faith" in the Industrial Court as a means of fighting wrongful actions by their employers and are likely to turn increasingly to other means.

This is the warning issued by the Metal and Allied Workers' Union (Mawu), who this week hit out at the court's judgment on the Screenex Wire Weaving Manufacturing case as "disappointing and dissatisfying".

Nearly two years after the dispute, and eight months after the end of the trial, the court had issued a judgment which contained inaccuracies and seemed to remove from migrant workers "much of the meagre protection they enjoyed from the law", said the union.

The most worrying aspect of this was that the rights of migrant workers to be represented in negotiations by their trade unions had been removed at a stroke.

In effect, the judgment placed migrant workers outside the protection of the law and denied them

the applicants be awarded three months' salary, three of the applicants should be given two months' salary, and the two remaining applicants the equivalent of one month's salary.

Mawu originally charged that the Alrode company had committed a series of unfair labour practices in

- Failing to meet and negotiate with a representative trade union
- Retrenching 10 employees on December 9

1982 contrary to established practices and procedures, and in an unfair manner in that the retrenchments were unnecessary

- Retrenching the same employees contrary to the provisions of the main agreement for the Iron, Steel, Engineering and Metallurgical Industry
- Dismissing two employees in circumstances which the company was not entitled by law to do

During the course of

the hearing, it was determined that the affected workers had been employed by the Alrode company for periods ranging from two to 12 years.

Screenex admitted that on December 9 1982 the 10 employees had been informed that their migrant labour contracts would not be renewed and their reference books were signed off — resulting in immediate retrenchment.

The company also admitted to the allegations that it had not applied fair retrenchment procedures in that it failed to give proper prior warning of the retrenchments, failed to consult a representative trade union or worker representatives, failed to afford the retrenched adequate opportunity to find alternate employment, did not apply the principle of Last In First Out (LIFO) and did not offer any alternatives to retrenchment.

Secondly, the employers could not have contravened the provisions of the main agreement if the employees were not retrenched.

However, Mr Erasmus did find that, where annual migrant labour contracts were not going to be renewed after the first renewal, "there rests an obligation on the employer to give the employee reasonable notice that it is not going to renew the contract".

The court found that the expiry of the contracts through the natural passage of time did not constitute retrenchment. Because the employees had not been retrenched *per se*, the loss of employment could not be said to be an unfair labour practice, said Mr Erasmus.

"There can only be a question of retrenchment when a valid contract exists and the worker is perforce retrenched due to the fact that his job has either become redundant, or there is insufficient work to warrant his further employment," he added.



RAM 15/10/84 165

# Screenex ruling angers black union

THE Metal and Allied Workers' Union's angry response, to the Industrial Court's judgement last week in the Screenex case, is a further sign of emerging unions' growing disenchantment with the official labour system.

The Industrial Court is the carrot that was until recently enticing mainly black unions into making use of the system. It was also criticised by employers as being too pro-union.

Now it's looking less attractive.

In the Screenex case Mr J A Erasmus found, in a dispute over the dismissal of 10 migrant workers, that the question of lay-offs did not arise for them because their contracts had expired.

Thus, if this ruling is accepted, a migrant worker, who is always on a fixed-term contract, is not subject to the same criteria of "fair retrench-

ment" as other workers. He is effectively denied the same security of employment.

Mawu attacked the judgement because, it alleged, it contained factual errors, placed migrants outside the protection of the law and denied them full trade union rights.

Mawu said "The court's decision emphasises that migrant labour contracts are purely an instrument of repression of workers and give them no legal rights or protection. Mawu believes that unions will have to re-evaluate their entire attitude to the Industrial Court in the light of recent judgements."

In fact, the union claimed, the Unemployment Insurance Commissioner had prejudged the outcome of this case a few months ago by including a provision in the UIF contributors card for "ending of contract" as a different reason for ter-

mination of employment than "retrenchment"

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AN UNDERLYING issue of the Screenex case is the credibility of the Government's official labour relations system.

In a country where most representative black organisations refuse to have anything to do with the system, labour relations is one small island of participation. Some of the most fiercely independent unions have registered and joined industrial councils and routinely make use of the industrial court.

The rewards of the system are, however, being increasingly questioned.

Last month the National Union of Mineworkers (NUM), after the country's first legal black miners' strike, questioned the value of going through all the legal channels.

The strike also brought to the fore the continuing contradiction between reform to labour relations — allowing unions to join trade unions and bargain wages — and other elements of the labour system, such as migrant labour.

Unions have also questioned the Minister of Manpower's decision to exclude from the terms of reference of conciliation boards the consideration of unfair labour practices.

Other recent decisions of the court, the Labour Relations Amendment Act of 1984, the National Manpower Commission's report on registration and a host of other events, have led many unions to believe that a new wind of change is blowing.

All of this coincides with turmoil in the black townships and a militant political climate.

Soweto 15/10/84

# Union disappointed by court decision

MAWU is deeply disappointed and dissatisfied with the judgment from the Industrial Court in the Screenex case.

After a delay of nearly 2 years after the event, and 8 months after the end of the trial, the court has issued a judgment which contains several errors of fact. The judgment also seems to remove from migrant workers much

of the meagre protection they enjoyed from the law.

At the same time, the Minister of Manpower has refused to appoint a conciliation board in the Vetsak case. This will now result in the anomalous situation of 45 workers dismissed by Vetsak being blocked from the industrial court, while others who are covered by the jurisdiction of the industrial councils of the metal and motor industries will be able to take their cases to the court.

## Clear

Taken together with other recent judgments of the Industrial Court, particularly in the Transvaal, it is clear that the court has drawn back from the progressive role it played in establishing some rights for workers. It appears that the minister concurs with the recommendations of the NMC that unfair dismissals would be unfair labour practices only if they concerned the replacement of white workers by black workers.

Mawu believes that unions will have to re-evaluate their entire at-

titude to the Industrial Court in the light of recent judgments and of the minister's refusal to appoint conciliation boards in dismissal disputes.

## Judgment

The Screenex judgment, delayed by more than 8 months after the trial, contains a number of factual errors, among which are the following:

1 The court states at p 13 that the 1981 amendment to the Labour Relations Act had the consequence that migrant workers now had a right to acquire rights in terms of the Section 10(1)(B) of the Urban Areas Act.

2 The court refers to a non-existent act, the '(Black) Workers Areas Act' at p 20.

3 The court refers incorrectly to benefits which workers acquire if their employers are affiliated to Seifsa. Workers do not automatically acquire all these benefits, such as medical aid.

The court unfortunately failed to give any judgment as to whether the company's refusal to

negotiate with the union was an unfair labour practice.

It is also disappointing that the court stated that it could not investigate whether or not the employer-employee relationship was continuous, as 'all the relevant parties to such an enquiry are not before the court'.

It is also disappointing that the court distinguished the Screenex case from that of Mawu versus Mauchle, on the grounds inter alia that the Mauchle case did not "have to deal with a migrant labour contract but with an 'employment relationship that goes beyond the statutory requirement'".

It is clear that this judgment places migrant workers outside the protection of the law and refuses them full trade union rights. It also makes them second class members of the Industrial Council.

Don't miss

NEWSPAPER SUNDAY  
**MIRROR**

The paper you can trust



# New strategies needed to beat unemployment

Star 17/10/84

165

By Carolyn Dempster, Labour Reporter

A slowdown in economic activity, declining production and a "considerable increase in unemployment" characterised the manpower scene in 1983, according to the National Manpower Commission's annual report released in Pretoria yesterday.

Recessionary conditions during the year had a negative effect on unemployment which peaked in June 1983, says NMC chairman Dr Hennie Reynders in the report.

## 'Dynamism that is found in few other countries'

Labour relations in South Africa are currently exhibiting a dynamism found in few other countries, the chairman of the National Manpower Commission, Dr H J J Reynders, said in Pretoria yesterday after releasing the NMC's 1983 annual report.

While the report records that the number of strikes dropped by about 15 percent, and the country experienced relative industrial calm during 1983 in comparison to 1982, membership of registered trade unions rose by 62 294.

Dr Reynders ascribed the decrease in strikes to the recession and rising unemployment.

But viewed over the past few years there had been an upward trend in the number and intensity of strikes, with an accompanying consolidation in the labour arena.

Other factors which contributed to a greater degree of industrial

peace were

● The development of effective channels of communication between the parties concerned

● The greater expertise, knowledge, discipline and control shown by the emerging unions

● The better understanding and greater expertise of employers regarding labour relations

● The increased use of the statutory dispute-settlement machinery

Dr Reynders said it was important to note the Department of Manpower had continued with its policy of non-intervention.

However it must watch over the public interest and the legislation had been amended to meet this need.

"It appears to me the time is becoming opportune to rewrite and revise the Act in its entirety with a view to consolidation and rationalisation, and greater clarity," added Dr Reynders.

According to the Current Population Survey (CPS) more than half a million blacks, coloureds and Indians were unemployed in September 1983, and the number of registered unemployed whites rose by 25 percent in the year October 1982 to 1983.

About 86 000 fewer people were employed in non-agricultural sectors in comparison to 1982.

The problem was "particularly serious" in the Eastern Cape, Natal, Western Cape and the Northern Transvaal areas, states the report.

Dr Reynders also draws attention to the "structural phenomenon" of the unemployment problem.

"This means that unemployment in the long term can only be overcome through structural adjustments to the South African economy," he warns.

Strategies had been developed by the NMC together with the Economic Advisory Council to alleviate unemployment, and 15 000 people in the self-governing states had already been provided with employment in drought relief assistance programmes, he said.

## Black education growth rate rises

This year will be the first time that the number of black matriculants outstrips white Std 10 students if the growth rate shown in 1983 is maintained, according to Dr Hennie Reynders, chairman of the National Manpower Commission.

The commission's 1983 annual report shows that the number of black matriculants increased by 28 percent in 1983 and the number of students at tertiary institutions rose by 27 percent. He said this was an important development

in the provision of skilled manpower.

The number of black students at residential universities increased by 46 percent and students interested in technical education rose from 4 308 in 1982 to 4 974 in 1983.

About 5,5 percent of the total workforce registered for in-service training courses in the year. Investment in training facilities and equipment totalled about R2 500 million.

Sowetan 17/10/84

# Decline in trade unions

**THE NUMBER of registered trade unions decreased from 199 in 1982 to 194 last year, but total membership increased by 62 294 to 1 288 748, according to the latest annual report of the national Manpower Commission (NMC).**

There were 80 registered mixed trade unions at the end of 1983 — the year under review — NMC chairman, Dr H J J Reynders writes in the report, released in Pretoria yesterday

"In all, black membership of registered trade unions amounted to 484 118, which is 38 percent of the total membership of registered trade unions, compared with 32 percent in 1982 "

Membership of registered unions amounted to roughly 14,4 percent of the total 1983 labour force and about 24,2 percent of workers in agriculture, forestry, fisheries and the central Government, the provincial administrations, domestic servants, self-employed workers and unspecified employees were excluded from the

estimated workforce

The whites, coloured and Asians who belonged to registered unions constituted about 36,3 percent of the relevant 1983 workforce, taking the same exclusions into account

In the case of blacks the figure was a about 15,6 percent, but this increases to 20,4 percent if the estimated 150 000 paid up membership of the 59 unregistered unions is taken into account

"The degree of unionisation of the workforce in developed countries such as the United States, the

United Kingdom, Japan, Sweden and Germany was 24, 50, 39, 83 and 38 percent respectively," Dr Reynders compares

At the end of last year, 33 of the registered unions with black members were members of industrial councils, while the total number of these councils remained at 104 as in 1982

— Sapa



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*Sweden* *17/10/84* *165*  
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— Sapa



ant **Taxi...**

# Workers seen as 'HP people'

165 Times  
19/10/84

By RIAAN DE VILLIERS  
Labour Reporter

THE majority of over 6 000 Cape Town City Council workers interviewed in a major union investigation lived "from hand to mouth", the Industrial Court was told this week.

Mr John Ernstzen, secretary of the Cape Town Municipal Workers' Association, described them as "hire-purchase people" who

spent their pay packets before they received them and had to borrow money for necessities — including food

He was giving evidence in an industrial court hearing which started on Wednesday to arbitrate in the pay dispute between the CTMWA and the council

Sketching the findings of an eight-month-long union investigation into circumstances among its

11 000 members, he said families attending cinemas were "unheard of" and visits to the beach were "annual occurrences"

Low pay levels led to conflict within homes, resulting in separations and broken marriages

There was a "scramble for overtime" and many council workers undertook after-hours casual labour to make ends meet. Workers were often forced to take young children out of school to help pay off loans

Because rentals were difficult to meet, council workers lived under conditions of "abject overcrowding" leading to "tragic human conditions", he said

When wage negotiations started earlier this year, the union demanded that minimum wages of R59 in the lowest category be increased to R116 — an increase of nearly 100 percent. The council offered R75

When negotiations deadlocked, the parties agreed to arbitration in terms of the Labour Relations Act

Sketching the background to the dispute, Mr Ernstzen said from 1974 to 1979, the position of the bulk of the union's membership had worsened relative to the cost of living

## Pay levels

From 1980 workers had also felt increasingly unhappy about their pay

Members resolved last year that a special committee be appointed to evaluate pay levels and formulate a "comprehensive set" of pay demands

The hearing was adjourned yesterday for discussions between legal representatives on the council's grading system

Mr Denis Kuy, SC, instructed by Cheadle, Thompson and Haysom, is appearing for the claimants Mr Harry Snitcher, QC, instructed by Silberbauers, is appearing for the respondents

The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors



# Pay-row peace in sight — court officer

Labour Reporter

AGREEMENT in the long-standing pay dispute involving the city's municipal workers can be reached, according to the court officer presiding in the arbitration case.

Mr J J Human, presiding officer of the Industrial Court, told the two sides in the dispute there was a possibility of "curtailing the proceedings and bridging the gap"

The court was told that wage demands put to the City Council by the Cape Town Municipal Workers' Association were based on an evaluation of the work done by union members and on calculations of a minimum living wage

The secretary of the 11 000-strong CTMWA, Mr John Ernstzen, was answering questions by Mr H Snitcher QC, for the council

## Comparative

The union has asked for a 100 percent increase in the lower grades to bring a labourer's minimum wage to R116 a week. The council has offered and already implemented wage increases ranging from 12 percent on the higher to 27 percent on the lower grades

Mr Snitcher asked Mr Ernstzen whether the union had collected comparative data on wage rates in other municipalities

Mr Ernstzen said that except for traffic officers, whose wages compared unfavourably with traffic officers in other areas, it had been "very difficult" to get information from other municipalities

Mr Snitcher "You are unable to tell me of a single comparison of wages for labourers, other than traffic officers. I suggest you are not interested in comparative figures for the purpose of this inquiry"

Mr Ernstzen "I deny that"

## Orchestra

There was laughter when Mr Snitcher asked Mr Ernstzen on what the union had based the wage demand for a "rank-and-file tutti" — a category applying to orchestra members

"It is very like the name of the man recently awarded the Nobel Prize. Perhaps you and I will both be awarded Nobel Prizes when we are through here," Mr Snitcher told Mr Ernstzen

Mr Ernstzen said the union had only one orchestra member and, to determine her salary, it had asked the advice of the father of a "prominent orchestra member"

Answering questions, Mr Ernstzen said the council did not discriminate racially "on paper" but in practice it did

Union members were often doing more skilled work than that for which they were being paid, he said.

Mr Ernstzen denied a suggestion by Mr Snitcher that his union was "following a line put by a group of unions to get a minimum wage accepted in this country".

He said "It is totally untrue that we have been involved with any other union in trying to set minimum levels"

The hearing was adjourned until today to allow the council's legal representatives to study union documents

C. 7ms  
23/10/84  
4th day  
of pay  
dispute  
hearing

Staff Reporter (65)

CITY Council labourers had little chance of promotion and had to wait for "dead men's shoes" before there was a chance of promotion, the Industrial Court was told yesterday

Mr John Ernstzen, secretary of the Cape Town Municipal Workers' Association (CTMWA), said this under questioning by Mr Harry Snitcher, QC, representing the council, on the fourth day of the arbitration hearing on the pay dispute between the CTMWA and the council

Mr Snitcher said a CTMWA poster informing its members of their dispute with the council "was redolent of the black power salute, engendering into the dispute an element of emotion"

There was laughter from a large section of the public in court.

Mr Snitcher said the council provided a very important source of income for workers

Mr Ernstzen said that while this was so in theory, it was not always so in practice. He provided evidence of the low number of labourers who had been promoted

The City Council had been "disrespectful" of the wishes of the union which had demanded that the offered increase not be applied until the dispute was arbitrated. The council had, however, increased wages and in doing so had weakened the collective bargaining power of the union

Mr Snitcher said the council had increased the wages "without prejudicing the union's right to arbitration".

The hearing continues



argus 23/10/84

CITY/NATIONAL

165

# Council, union settle 3 points

Labour Reporter

THE CITY Council and the Cape Town Municipal Workers' Association today settled three major points of dispute being aired in an Industrial Court.

The disputes relate to anomalies in the grading schedule for municipal workers, to job classification and to the union's request for financial reward on promotion

However, the pay row between the council and the union has not been settled and the court will continue its arbitration

## "Lengthy discussions"

Counsel for the City Council, Mr H Snitcher, QC, told the court today that after "lengthy discussions" with the union's legal representatives, "all elements relating to rationalisation within the grading schedule have been removed from the arbitration"

The question of job designation and reclassification will now be negotiated by the union and the council.

After today's hearing, city administrator Mr Joe Adams said a document on job rationalisation,

drawn up by the union, would be submitted to the council for consideration

During the hearing Mr Snitcher said the council had acceded to the union's demand for financial reward on promotion.

"I am in the happy position to announce that the matter is now out of the arbitration"

Agreement between the union and the council was reached today during a lengthy adjournment

## R116 a week

The union's fight for wage increases — it has asked for a minimum of R116 a week for labourers — will now be the sole issue before the court

The court's presiding officer, Mr J J Human, said he was happy to see that the adjournments had been "productive".

The hearing continues tomorrow.

Mr Human is assisted by assessors Mr H Powell and Mr A Erwin Mr D Kony, SC, assisted by Mr A Omar and instructed by Cheadle, Thompson and Haysom, appears for the union Mr H Snitcher, QC, assisted by Mr J J Gauntlett and instructed by Silberbauers, appears for the council

Answers 25/10/84 (165) (165)

# Judgment reserved in Textile Workers' Union case

Supreme Court Reporter

JUDGMENT has been reserved in an application for review of an Industrial Court decision relating to stop-order facilities for trade union subscriptions

The application was made by the National Union of Textile Workers (NUTW) and opposed by the Industrial Council for the Cotton Manufacturing Industry (Cape)

The Industrial Court dismissed an appeal by the NUTW against a refusal by the Industrial Council to grant Table Bay Spinners an exemption

from the agreement which would allow the company to make stop-order deductions from wages of the NUTW's members

Mr M Brassey, for the NUTW, told the Supreme Court, Cape Town, that the Industrial Council had refused the exemption to protect the council and its members, which included the Textile Workers' Industrial Union but not the NUTW

Mr Justice Vos was sitting with Mr Acting-Justice Berman. Mr Brassey was assisted by Miss M A Barker and instructed by Cheadle, Thomson and Haysom. Mr J J Gauntlett, instructed by Silberbauers, appeared for the Industrial Council



24/10/84  
165  
C. T. W. A.

# Dispute centres on wages claim

Staff Reporter

THE CITY Council and the Cape Town Municipal Workers' Association yesterday agreed to settle some major aspects of their industrial dispute out of court

At an industrial court hearing both parties agreed that the court would arbitrate only on the key issue concerning the CTMWA's demand for a basic living wage

Mr Joe Adams, Deputy City Administrator and acting Town Clerk, yesterday confirmed that some issues under dispute had been removed from arbitration

The council will now, in consultation with the union, negotiate all elements of rationalization within the grading system, and the regrouping and evaluation of all jobs raised in the dispute

The council has agreed to accede to the union's demand for reward on promotion. An employee promoted to a scale with a higher maximum will now also be given an extra notch on promotion

The decision to settle these issues out of court will substantially reduce the length of the hearing

Counsel for the council asked for the adjournment because the documentation had to be revamped after the focus of the arbitration had changed

Mr Denis Kuy, SC, instructed by Cheadle, Thompson and Hayson is appearing for the claimants. Mr Harry Snitcher, QC, instructed by Silberbauers, is appearing for the respondents. The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors

Argus 24/6/84 (165)

# Few qualify for council house subsidy, court told

Labour Reporter

ONLY eight percent of members of the Cape Town Municipal Workers' Association, which represents mainly black workers, received City Council housing subsidies, compared to 36 percent of members of the white municipal workers union, an Industrial Court heard today

Mr John Ernstzen, secretary of the CTWA, was answering questions put by counsel for the City Council, Mr H Snitcher SC, in an arbitration to determine a pay dispute.

In reply to questions about allowances other than wages paid by the City Council, Mr

Ernstzen said most of his union's members did not qualify for the council's housing subsidy as their income was too low

Of a total housing subsidy of about R293 600, members of the white SA Association of Municipal Employees (SAAME) received R239 695

"I am not making a submission that denies SAAME's members the subsidy, but this portrays a picture of the inability of our members to own houses," he said.

Questioned by Mr A Omar, for the union, Mr Ernstzen said all major decisions taken in the union had to be referred to the

rank-and-file membership through a shop stewards' council

Referring to submissions by Mr Snitcher this week that council workers may have been "incited", Mr Omar asked Mr Ernstzen whether he had "created industrial unrest"

Mr Ernstzen replied "On the contrary It is quite a task to explain to workers what the legal provisions are (of the Act forbidding them to strike as they perform an essential service), but it is my duty as general secretary to advise them on industrial law"

Mr J J Human is the presiding officer, assisted by assessors Mr H Powell and Mr A Erwin



# Workers earn too little for house subsidy

Staff Reporter 25/10/84

MEMBERS of the Cape Town Municipal Workers' Association would stop "moonlighting" if their demand for a basic living wage was met, an Industrial Court was told yesterday

Mr John Ernstzen, CTMWA secretary, said during cross-examination in the hearing of a wage dispute between the CTMWA and the City Council, that CTMWA members did not gain the same benefits as other council employees

He said only 8,2 percent of CTMWA members qualified for a share in the council's monthly housing subsidy of R293 698. The workers' share was equivalent to 18,39 percent or R54 003

On the other hand, 36,6 percent of the membership of the white South African Association of Municipal Employees (SAAME) qualified for the subsidy. This was equivalent to 81,61 percent or R239 695

Most CTMWA members were disadvantaged because of their low incomes and did not qualify for this subsidy because not more than 25 percent of a salary could be used for bond repayments

Questioned Mr A Omar, for the union, Mr Ernstzen denied that his union was responsible for incitement or creating unrest among workers, as suggested by counsel for the City Council, Mr Harry Snitcher, QC

Giving evidence on behalf of the CTMWA, Mr S Daantjies, employed by the council for 24 years, said he earned a gross income of R97 a week

"I'm like a prisoner on weekends because I cannot afford any form of recreation," he said

Another witness, Mr John Abrahams, a father of five and employed by the council for 21 years, told the court he earned a gross sum of R97 per week which, after deductions, came to R81

"I live from hand to mouth," he said, adding that several applications for promotion and better pay had been turned down

The hearing continues

Mr Denis Kuny, SC, assisted by Mr Omar, both instructed by Cheadle, Thompson and Haysom, are appearing for the CTMWA. Mr Harry Snitcher, QC, instructed by Silberbauers, is appearing for the council. The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell

argus 26/10/84 (165)

# Living wage formula 'is inadequate'

Labour Reporter

COLOURED families in Cape Town living on the breadline are cutting down on food, clothing, transport, medical expenses and recreation to spend more on personal hygiene, housing and insurance, an expert witness told an Industrial Court

Miss Debbie Budlender, a researcher at the South African Labour and Development Research Unit, gave evidence in an arbitration case which concerns a wage dispute between the 11 000-strong Cape Town Municipal Workers' Association and the City Council

Miss Budlender said that poverty datum lines — including the Supplemented Living Level (SLL) of R338,65 a month for a family of five, which were often used to set wages — were not adequate guides

to a "living wage"

Calculated by the Bureau of Market Research at Unisa, the SLL specified theoretical amounts that a family spends on food, clothing, rent, medical expenses, transport and other individual items

The SLL was a measure of day-to-day survival that did not cater for contingencies or long-term survival. Among the items it allowed were

- Two pairs of panties a year and three pairs of stockings for adult women

- One toothbrush a person a year, one medium-sized tube of toothpaste for six people a month and deodorant for adult women only

- Rental of R30,05 a month. Most rents in Cape Town, particu-

larly in newer areas such as Mitchell's Plain, were substantially higher than this

- One cinema show a month for all people over six, two soccer or rugby matches a month, four litres of wine, 200 grams of tobacco and 10 boxes of matches for men over 18, a toy allowance for children, one magazine a month and radio batteries

Recreation was so narrowly defined in the SLL that "even enjoying yourself is a pretty serious matter", Miss Budlender said

- There was no provision for education, child care or creches in the SLL

The hearing is proceeding

The presiding officer is Mr J J Human with Mr H Powell and Mr A Erwin as assessors



"The bottom line of national strength is that the president must be in command, he must lead

"When a president doesn't know that submarine missiles aren't recallable, says that 70% of our forces are conventional, discovers three years into his administration that our arms-control efforts have failed, because he didn't know that most Soviet missiles were on land — these are things a president must know to command"

Unfortunately for Mondale, the pointed attacks on President Reagan's competency backfired in what was the only light-hearted moment in an otherwise extremely dry debate. When asked by one of the panel members whether or not his age — 73 years — would make it difficult for him to function under trying national security circumstances, such as the Cuban missile crisis, Reagan met the challenge head on. "Not at all," said a grinning Reagan. "And I want you to know that also I will not make age an issue of this campaign. I am not going to exploit for political purposes my opponent's youth and inexperience."

Even Mondale joined in the laughter. The Democrat should have cried though, for from that point on, the tables turned. Gone was the stuttering, defensive president and instead, the 100m American citizens tuned into the debate saw vintage Reagan.

The president defended his actions in Lebanon, Central America, and most importantly, in an ironic twist painted the "star wars" weapons build-up programme as a measure for peace.

#### Nuclear war

"A nuclear war cannot be won and must never be fought," said the president. "And that is why we are maintaining a deterrent and trying to achieve a deterrent capacity to where no one would believe that they could start such a war and escape with limited damage."

All in all, it was a surprisingly flat debate that ended in what appeared to be a draw. Early polls conducted by the nation's networks and newspapers indicated that most of the American viewing audience gave a slight edge to the president. A CBS poll showed that 36% of the viewers thought Reagan had won, 32% gave the advantage to Mondale, and 26% were undecided.

Finally, we come back to the apparent fact that while millions of Americans sat glued in front of their television sets for the debate, the confrontation probably did not change their minds appreciably.

## DISPUTES

### No joy at Triomf

Manpower Minister Pietie du Plessis has rejected an application by the SA Chemical Workers' Union (Sacwu) for the establishment of a conciliation board to consider the

reinstatement of 440 workers dismissed for striking at Triomf Fertilizer's Potchefstroom plant.

The strike occurred when Triomf dismissed nine employees who were accused of refusing to undergo breathalyser tests. Last month Du Plessis approved the establishment of a board to consider the original nine dismissals, although he barred it from viewing the dismissals as an unfair labour practice (ULP). Dates for the board's meetings are still to be set.

Sacwu, an affiliate of the Council of Unions of SA, has attacked the Minister's refusal to appoint a board to consider the mass dismissals, accusing him of showing "no concern for the interests of workers."

The department's acting director general, Skippie Scheepers, describes the accusation as "totally incorrect." He also calls the union's statement "unfortunate." He says such statements are "not conducive to dispute settling and are bad for the image of the official system."

Scheepers declined to tell the *FM* why the Minister had decided not to appoint a conciliation board. He also declined to give reasons why the Minister had not included the possibility of an ULP in the board con-



**Manpower's Du Plessis ... no need to give any reasons**

sidering the nine dismissals.

Scheepers says that when the Minister considers such matters he canvasses the views of all concerned and bases his decision on the available evidence and in terms of the framework of the Labour Relations Act. It could "create problems to open discussions on the reasons for these decisions," Scheepers told the *FM*. He points out that

the Act stipulates that the Minister is not bound to make the reasons for his decisions public.

Several unions and labour lawyers have in recent weeks criticised other ministerial decisions to block the consideration of ULPs by conciliation boards, and therefore by implication the Industrial Court. They argue that these decisions render the official dispute-settling procedures unworkable and that the court should be left to decide on these issues without ministerial interference.

## LABOUR RELATIONS Caught in the middle

Black personnel or industrial relations (IR) managers were a rare breed in the days when black workers did as they were told and few grievances were articulated. Today they are valued members of many personnel teams.

The rationale is that because their cultural background is similar to the workers they manage, they provide a more reliable communications conduit between management and the workforce than their white counterparts. Their ability to speak workers' home tongue is an important factor.

But is it? Checkers IR consultant Humphrey Olphant doubts that the matter is as simple as that. How, he asks, can anyone on the management side of the fence claim to "understand" the black worker?

To illustrate the problem Olphant cites an early experience he had with an employee who was about to be dismissed for stealing. The worker had professed his innocence to management. However, in the privacy of Olphant's office he admitted his guilt in the expectation that his "black brother" would protect him.

Another top black IR man believes that black personnel officers are themselves responsible for legitimising the perception that they would act as "buffers" between white executives and the workforce. Some black managers were happy to see themselves as "linkmen."

But this led to confusion about their roles. Did they represent workers or management? This particular individual says he represents neither, but rather has a duty to "maintain industrial justice in an abnormal society."

Olphant's potential as an IR man was recognised when he served as a member of the liaison committee at the retail company where he worked. He says that the traditional white management concept of black personnel management is merely the logical extension of the induna system.

According to Olphant, black personnel managers are often appointed simply because they can communicate management's instructions down to workers. Their ability to communicate upwards is limited because many feel they can only say what

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# 'Unacceptably high' wages put jobs at risk

Staff Reporter

If wage demands were made "unacceptably high" it could result in unemployment, an Industrial Court was told on Friday

Mr Harry Snitcher, QC, representing the City Council in its wage dispute with the Cape Town Municipal Workers' Association said this during questioning of Ms Debbie Budlender, a researcher at the University of Cape Town-based South African Labour Development and Research Unit and an expert witness for the CTMWA

"Unions' demands for unreasonably high wages often end in more money for some, and no jobs for many," he said

The 11 000-strong CTMWA is demanding a minimum living wage of R116 a week and rejects the council's unilateral 12 percent increase in July

In evidence to the

court, Ms Budlender pointed out that the accepted poverty levels on which wages were based were inadequate measures for a living wage

Mr Snitcher said Ms Budlender attempted to "torpedo" or "modify" these accepted poverty standards in her critique of the Supplemented Living Level (SLL) and the Minimum Living Level (MLL) of the University of South Africa (Unisa)

He said her statistics—based on a 1980 survey of Unisa's Market Research Bureau which showed that coloured families of five with an average annual income of R2 500 to R2 999 overspent on insurance by 124 percent—were "a distortion of real life"

"This is the data the SLL is based on and if it is a distortion, then this proves that there is something wrong with the SLL," Ms Budlender replied

Responding to her cri-

tique of the poverty levels which made no provision of post-secondary education, Mr Snitcher said. "One of the problems we have in South Africa is that we are spending on universities for those who can most afford it"

The now-scrapped coloured labour preference policy in the Western Cape and the influx control laws prevented a "depressive effect" on wage structures in the Western Cape, he added. Ms Budlender replied that such a conclusion could not be prejudged

Another witness and a CTMWA projects organizer, Miss Alison Curry, in papers to the court, said 52,5 percent of her union's employees earned below the requirements of the Supplemented Living Level. The council's unilateral 12 percent wage increase in July did not improve CTMWA members' income patterns, she said



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# Unions see industrial court balance teetering

**PHILLIP VAN NIEKERK**

THE credibility of one of South Africa's most innovative and progressive social reforms — the industrial court — is at risk as emerging unions increasingly question the court's value as a defence against unfair employment practices.

In recent weeks labour lawyers and unions have viewed with alarm the court's marked shift away from what they see as its previous role of developing fair labour standards in South Africa.

Several court findings such as the Screenex judgement — which held migrant workers to have less job security than other workers — and decisions by the Department of Manpower to prevent unfair labour practice cases coming to court have been severely criticised.

The new direction of the court and of the department follows closely strong pressure from some employers and labour academics who believed that the court was becoming too pro-union.

Now the Metal and Allied Workers' Union (Mawu), one of the trend-setters within the emerging union movement, has threatened

to stop using the court altogether.

One of the strongest criticisms was made last week by Johannesburg attorney, Mr John Brand, who warned that the collapse of the court would lead to an inevitable increase in industrial unrest.

At stake is whether emerging unions will continue to use statutory channels to sort out their differences with employers or whether this conflict will surface in greater unrest on the shopfloor.

The court, a creation of legislation which flowed from the Wiehahn Commission, was an attempt to apply international standards of fairness.

With the introduction of the court five years ago came the introduction of a concept new to South African law the unfair labour

practice.

The aim of introducing this concept, as expressed by the Wiehahn commission, was to ensure the six basic rights of labour law.

The commission found "Unfairness in employment can be related to the right to work, to associate, to bargain collectively, to withhold labour, to protection and to training and development."

In law the "unfair labour practice" concept was left vague — a fact which was high among criticisms of the court by employers, who felt the legal definition should have been tightened up.

But Mr Brand pointed out last week that the Wiehahn Commission had deliberately left the concept vague, letting the court be guided by international standards in developing fair labour

standards.

Mr Brand said that whereas the unfair labour practice concept was new to South African law, it was very well established internationally.

"It is a concept which has been used in many countries for many years as a means primarily of compelling effective collective bargaining," he said.

"There were two major reasons for countries wanting to compel effective collective bargaining and the attendant right to associate and withhold labour.

"The first reason was to reduce the incidence of industrial disruption caused by labour/management disputes and the second was to give workers more economic leverage to counteract the power of collective capital."

As Mr Brand pointed out, one of the most fundamental objects of labour law has always been to counteract the imbalance of power between an individual worker on the one hand, and collective capital on the other.

Apart from the industrialised countries such as Japan, Canada and the United States who have the concept in their law, there are a host of third world countries with unfair labour practice legislation.

Apart from a few early hiccoughs, the industrial court set about developing these standards in an innovative manner which stunned many who believed such reform was not really possible.

Thus a landmark case such as United African Motor and Allied Workers Union versus Fodens found

it an unfair labour practice to fail to negotiate with a representative trade union or to retrench workers without consulting a trade union.

The direction of the court has had a telling effect. In the first eight months of this year, 123 applications were made to settle disputes with official conciliation boards and 175 industrial court cases were launched.

This was more than the whole of the previous year, which had been a record year for use of the official machinery. Many of these disputes would otherwise have ended up as strikes.

The criticism of the direction the court had taken was entirely predictable, said Mr Brand.

"It was consistent with that of many employers and lawyers in all countries where fair labour standards have been introduced.

"However, unlike other countries, where fair labour standards have been introduced, the criticisms and resistance appears to be having a significant negative effect on the developing patterns of fair labour practices."

The most dramatic example of the new trend was the Screenex judgement several weeks ago which followed a wait of nearly eight months from the end of the trial.

Mr Brand warned that the collapse of the court could be avoided if employers changed their attitude to the court and learnt from the experience of other countries who had found the channelling of conflict to be in their long-term interests.

# CTMWA

## evidence fabricated

Times 31/10/84

Staff Reporter Miss Alison Curry, were evidence of the "false and fabricated" Cape Town Municipal Workers' Association's organizer for the chief witness was "misleading" and "fabricated", it was alleged in the Industrial Court yesterday.

Mr J J Gauntlett, appearing for the City Council in its wage dispute with the CTMWA, told the court that documents submitted to the court by the witness, Mr Gauntlett told Miss Curry during cross-examination that she had lied in her evidence on Monday and yesterday after she had admitted that she did not submit all the source documents relating to her testimony, as she had claimed earlier.

Counsel for the council said only 73 survey questionnaires relating to living conditions of labourers were received, as opposed to the 178 the witness reported. Another 14 survey questionnaires submitted yesterday were "fabricated" by Miss Curry, Mr Gauntlett told the court.

The 73 questionnaires submitted to the court were "riddled with lunacies", Mr Gauntlett said.

Miss Curry replied that some questionnaires were lost during their return from a computer data-processing firm.

She told the court it was a "grave error" on her part to have submitted the evidence in the first instance.

Her survey was "illustrious" and not a "descriptive" one, she reportedly told the court.

Mr Gauntlett told Miss Curry that she could not

repudiate her in-depth survey with such "alacrity". As far as the CTMWA was concerned it was "a normative moralistic approach", he added.

Mr Denis Kuny, SC, for the CTMWA, told the court that his client's wage demand was not based on Miss Curry's survey on workers' conditions, but was based on the justification of a basic living wage.

The 11 000-strong CTMWA is demanding a

minimum living wage of R116 a week — an increase of nearly 100 per cent. The council offered R75.

Mr Kuny, SC, assisted by Mr A Omar, both instructed by Cheadle, Thompson and Hayson, is appearing for the CTMWA. Mr Harry Snitcher, QC, assisted by Mr J J Gauntlett, both instructed by Silberbauers, is appearing for the City Council.

The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors.



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COURTS

# Municipal union official admits she misled court

Labour Reporter

A CAPE Town Municipal Workers' Association official has admitted misleading an Industrial Court arbitration to determine a wage dispute

Mr J J Gauntlett, appearing for the City Council, yesterday told Miss Alison Curry, projects organiser for the union, that survey questionnaire forms on which her evidence about municipal labourers' living conditions was based, were "manufactured" and "fabricated".

During cross-examination, Miss Curry admitted that questionnaires handed into the court at the request of the council's legal team were drawn up by her last Friday, based on data on a computer print-out compiled earlier

Apologising to the court, Miss Curry said she could not

find the original questionnaires, completed by 60 labourers, which formed the basis of her survey. She reconstructed the originals from the completed results

"I made a grave error. No one else in the union is to blame for it"

She said neither the secretary of the CTMWA, Mr John Ernztzen, nor the union's legal team was aware that she had lost the original forms

"I was in such a state of mind that I did not think of it," she said

## "Brutal truth"

Mr Gauntlett replied "To tell you the frank and brutal truth, we are not concerned with your state of mind"

Miss Curry said she should have handed in the original computer print-out containing data on the household budgets of 60 labourers and said no

original forms were available

"But you produced the forms and knew that we would look at them and see that they were bright and white and shiny. You knew that we would see a liberal use of Tippex. You knew that we would find part of each form completed and the rest blank," Mr Gauntlett said

"I honestly don't know where the original forms are. I was so scared of the court thinking that the survey was fictitious that I produced those," Miss Curry said

Describing a report by Miss Curry on labourers' living standards as "intellectually dishonest", Mr Gauntlett said the "living wage" it recommended of R505,27 a month was calculated after an "emotional" mass meeting of council workers had demanded R2,53 an hour — equivalent to a monthly wage of R505,27

GAVIN BROWN

# The NMC doesn't work

Gavin Brown is an industrial relations consultant.

The latest report of the National Manpower Commission (NMC) seems to focus attention on precisely the role the commission has to play in SA labour relations.

The NMC was born out of Nic Wiehahn's 1979 belief that labour relations would be so dynamic a field in the next few decades that a permanent commission was required to monitor developments and make recommendations to government on navigational corrections. Instead, it seems to have become a bureaucratic and unwieldy think-tank whose published thoughts are often outdated, and without credibility in any of the diverse political constituencies amongst whom it seeks consensus.

Clearly from the government point of view, the deliberations of the NMC are of limited value. How else could the recent controversial amendments to section 31 of the Labour Relations Act be published for comment apparently without any reference to the commission and to its considerable embarrassment?

The late Arthur Grobbelaar of the Trade Union Council of SA (Tucsa) whose influence on the Wiehahn Commission and the NMC was important, issued a few months before his untimely death, a critical appraisal of the NMC. He said it was dominated by academics with little practical experience of industrial relations at the workplace.

Privately, some of these academics have retorted that the commission is in fact dominated by "established" right-

of-centre unionists who sabotage any creative initiative that disturbs their already shaky status in the real world.

The emergent union movement has consistently refused invitations to permanent representation on the NMC. This has been largely because of its proximity to government influence but also — and more importantly — because it is not seen as particularly efficacious.

The functions of the NMC often seem to overlap those of other quasi-government bodies and rumours abound of friction between the commission and officials in the Department of Manpower. Chairman Hennie Reynders says in the latest report that there is a "healthy understanding" between the NMC and the department that the role of the commission is limited to "reinforcement, support and completion rather than intervention." If that is taken to mean that the department rules and the NMC follows, then we can assume that while the NMC cannot be faulted for its honesty, it can at least be asked whether it is fulfilling its intended purpose.

The latest report seems to be at pains to stress that the NMC is doing fine work in the area of *inter alia*, training and productivity. Yet this is surely more properly the province of the National Productivity Institute or the National Training Board.

Voluminous reports from the NMC on various issues patently show its inability to establish meaningful consensus among its members. This is not surprising given the diversity of views represented, but it should not justify the muddy compromises which have emerged from many of its recommendations in the labour relations sphere. Examples are its recommendations relating to proposed changes in the system of union registration and those affecting the structure and function of the Industrial Court.

The momentum for change established by the Wiehahn Commission seems to have dissipated entirely in the NMC. In fairness, the body is operating in a political and economic climate far removed from that which prevailed in 1979. In addition, it is responsible to a new minister whose authority in the Cabinet and whose knowledge of labour matters pales in comparison to that enjoyed by his predecessor.

Also, while Wiehahn had some 13 members among whom to establish consensus, Reynders has over 60 people to steer toward agreement not to mention the numerous *ad hoc* sub-committees.

An important criticism to be levelled at the latest NMC report is that it is issued 10 months into 1984 but deals entirely with the events of 1983. Such is the dynamism of SA labour relations that analyses of 1983 may be of little practical relevance to anyone but labour historians.

The report notes with some pleasure that 1983 strike figures indicate a decline in labour unrest compared to 1982. But is this really of any significance given that most labour observers agree that with two months of 1984 still to go, 1984 is already sure to be the most strike prone in SA labour history?

There are many whispers in labour circles that a new and smaller NMC is envisaged by Minister Pietie du Plessis for 1985. It remains to be seen whether this is a result of budget cuts or a new strategy for the commission.

One would hope that the latter is the case. If not, it may be better to face up to deciding exactly what role the NMC should play in future. If it is to be an academic forum in which diverse views are aired and conveyed to government then the importance of consensus recedes in proportion to its ability to attract, for public airing, the widest diversity of views in the labour arena.



RDM 2/11/84 (115) 128 137 143

# Union starts legal action

DURBAN — Representatives of workers at Allied Publishing have started formal proceedings to bring the company before the Industrial Court, or to pave the way for a legal strike because they allege management has breached an agreement to negotiate.

The Commercial, Catering and Allied Workers' Union of South Africa (CCAWUSA) has applied to the Minister of Manpower, Mr P du Plessis, to set up a conciliation board to resolve the dispute which involves 250 workers.

Mr Kevin McCullough, personnel manager of Allied, confirmed the firm had received the application for a conciliation board, and had handed it to attorneys.

In September about 100 workers went on strike over pay and the recognition of their trade union, but returned to work after

three hours of negotiation.

At the time, Mr C Eyles, provincial director of Allied, said "The workers returned to work after we agreed to discuss the resolution of (their) grievances with the trade union."

Mr Important Mkhize, local organiser of CCAWUSA, said the workers agreed to return to work on condition that their union and the company held wage talks, and the parties also agreed to negotiate and sign a formal recognition agreement.

"However, when we met management refused to negotiate wages and said increases would only be considered in April, 1985."

The Minister has 30 days in which to appoint a conciliation board. If he fails to do so, or if no agreement can be reached, the union has the legal right to call for strike action. — Sapa

# Witness lied to CTMWA inquiry court

Staff Reporter  
A WITNESS for the Cape Town Municipal Workers Association this week told an industrial court that she repudiated part of her testimony after admitting that it was "not scientific".

Miss Alison Curry, a CTMWA projects organizer and witness, also said that she had lied, misled the court, and fabricated some of the documents which were part of her testimony on the living conditions of City Council labourers.

Under re-examination by Mr Denis Kuny for the CTMWA, Miss Curry told the court that her association was not equipped to perform a detailed and scientific survey of living conditions of labourers and that she repudiated the whole of her survey submitted to the court.

The 11 000-strong CTMWA and the council are in a wage dispute. The CTMWA is demanding a minimum living wage of R116 a week—an increase of nearly 100 percent.

Earlier this week under cross examination by Mr J J Gauntlett for the council, Miss Curry admitted that she had lied and had misled the court by giving an impression that all the original

source material relating to the survey was submitted to the court.

Counsel for the council said only 73 survey questionnaires were received and not 178 as Miss Curry claimed. The other 105 had disappeared, she told the court.

Another 14 questionnaires submitted to the court by Miss Curry were "fabricated" from computer processed data, Mr Gauntlett told the court.

However, under re-examination by Mr Kuny for the CTMWA, Miss

Curry denied that she "deliberately excluded" information regarding bonus payments from her testimony, as it was put to her under cross-examination by Mr Gauntlett.

"I was scared and under pressure during cross-examination and take full responsibility for what I have done," she said.

The hearing continues on December 3.

Mr Kuny, SC, assisted by Mr A Omar both instructed by Cheadle, Thompson and Haysom is appearing for the CTMWA. Mr Harry Snitcher, QC, assisted by Mr Gauntlett and instructed by Silberbauers, is appearing for the City Council. The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors.





# Faith in labour court ebbs

By Carolyn Dempster,  
Labour Reporter

The decisions of the Industrial Court since its inception in 1979 reflect the uncertainty created by post-Wiehahn labour legislation.

But the court, despite some employer concern about the substantial gains which unions have achieved through its forum, has in practice applied only the fundamental principles of equity and fair play.

This is the finding of University of Cape Town MBA student and attorney Mr R Huntley in a comprehensive business report comprising the

major decisions of the Industrial Court from 1980 to June 1983.

The study sets out the history and functions of the court, 11 key cases adjudicated by it, and conclusions as to its role in the new era of labour relations.

Its publication comes at a time when the Industrial Court is increasingly coming under fire from emergent unions. Recent rulings have roused the ire of the unions, who are losing faith in the court's ability to establish firm guidelines on the murky issue of unfair labour practices.

Several unions have stated that there seems little point in using the

statutory machinery if the trend continues. The danger now is that workers will resort to other means of righting the "wrongful actions of employers", which may lead to increased unrest at shop floor level.

In his review, Mr Huntley says that it is uncertain whether clear employment principles can be distilled from the judgments handed down by the court thus far.

But guidelines that have emerged include

- Employers should ensure they have disciplinary, dismissal and retrenchment procedures which are fair and consistently adhered to
- The disciplinary proce-

dure should provide for all warnings to the employee to be recorded in writing. The employee must also be made aware of such action and be given the opportunity to state his case.

● Victimization of union members will be ruled an unfair labour practice

● The use of retrenchment as a disguise to remove union activists will be regarded as an unfair labour practice

● Failure by employers to negotiate in good faith with a representative union may be deemed an unfair labour practice.

● The use of derogatory terms to refer to employees constitutes an unfair labour practice

● Unfair dismissals can

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be seen as unfair labour practices and will result in the reinstatement of the workers

● Employer deviation from established custom and practice with its employees may be rectified with the granting of a temporary status quo order

Up until 1984, the Industrial Court ruled predominantly in favour of the trade unions

But recently this direction has changed to favour employers. A number of unfair labour practice cases have also been prevented from reaching the court through the decision of the Minister of Manpower to limit the ambit of conciliation boards.



7/11/84 (70) 165  
**Probe on  
'official' document**

By RIAAN DE VILLIERS  
Labour Reporter

THE Department of Manpower has launched an investigation into "collaboration" between a senior official and a private company which is producing printed items alleged to be required by all South African employers in terms of new labour legislation

The investigation forms part of a burgeoning controversy about a direct-mail advertisement, said to resemble an official document, produced by a company called "South African Regulations" with a despatch address in Randburg

#### Pamphlet

Dr P J van der Merwe, director-general of the department, said yesterday that the conduct of a department official, and the "nature of the advertisement itself" were being investigated

The pamphlet advertises two printed items it indicates are required by all employers in terms of the new Machinery and Occupational Safety Act, and a third required by all employers with more than 20 employees

Prices for the items range from R4 per item for bulk orders to R6,80 for single copies of another.

Mr Charles Groenewald, a director of South African Regulations, said yesterday the advertisement had been mailed to 200 000 employers

Spokesmen for industry and commerce said this week the advertisement resembled an official document and created the impression that

all employers had to order the items from the company concerned to comply with the law.

The advertisement also states twice that the items were produced "in consultation with the Department of Manpower"

In an interview earlier this week, Mr Groenewald, until recently the managing director of a large stationery firm, said the wording of the pamphlet had been approved by Mr Manie Mulder, director of occupational safety for the department.

Yesterday, Mr A A Weich, chief director of occupational safety, said he viewed the advertisement as "gross misuse of the department's name" — but acknowledged that there had been "collaboration" between Mr Mulder and Mr Groenewald

● Meanwhile, the Federated Chamber of Industries has written to the department asking for an explanation of the advertisement.

Mrs Friede Dowie, secretary of the FCI manpower committee, said this week that it created the impression that it enjoyed the support of the department. If this were the case, the FCI objected "in the strongest possible terms"

Yesterday, Mr Groenewald said: "I talked to other officials besides Mr Mulder." He added that the wording of the pamphlet had been checked by his attorneys

#### 'No obligation'

Mr Weich said yesterday employers were under no obligation to buy any printed items from the company

Mr Weich said it was correct that employers had to keep a copy of the Act and regulations. However, these were available from the government printer and from a number of authorized private companies

Employers could prepare the other forms themselves

The format of the record of incidents had been prescribed in a Government Gazette, but employers could type out the forms and duplicate them

FM.

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face to face

PIETIE DU PLESSIS

16/11/84

# The view from Pretoria



Pietie du Plessis is the Minister of Manpower. He spoke to the FM about the stayaway.

which is hearing evidence from black leaders and other interested parties. In these circumstances, it is desirable to allow the committee full opportunity to consider the matter with due regard to all relevant factors.

pute-settling machinery of our labour legislation becomes an issue. In this regard, for example, I may mention that the department has already had more than 200 applications for the establishment of conciliation boards for the settlement of labour disputes this year where, in almost all instances, officials of the department preside as impartial chairmen.

**FM:** What is government's view of the role of unions in politics?

**Du Plessis:** The legislator's intentions are clearly outlined. In this regard, the Act stipulates that no trade union shall affiliate with any political party nor shall it grant financial or other assistance or endeavour to influence its members with the object of assisting any political party. From the foregoing, it is clear that the obligation rests with trade unions to further the interests of their members as far as conditions of employment, safety at work and related matters are concerned.

For the present, blacks have the opportunity, through the governments of national states and black local authorities, to participate in the decision-making process in so far as it relates to matters affecting their interests. I should like to emphasise that, apart from the legal position as already outlined, I do not regard it desirable for trade unions to involve themselves in political matters. To encourage and participate in stayaways could in the long run only serve to destabilise labour relations, with all its concomitant effects for the workers and the community at large.

If unions continue to involve themselves in political affairs, would government consider taking action against them, such as bannings or other measures? If so, please specify. The FM notes that several people involved in organising the stayaway have been detained by the security police. Could you comment?

Given that blacks have no representation in central government, is it not inevitable that unions will become involved in politics and that stayaways become a legitimate form of protest?

Does the Department of Manpower approve of the restraint most employers have displayed in not taking action against workers who failed to report for duty during the stayaway?

The government is responsible for the maintenance of law and order, and although trade union personalities are not singled out in terms of the security legislation of our country, there should be no doubt that trade union personalities who become involved in actions where the security of the State is threatened would equally be dealt with in terms of the relevant legislation.

As you are aware, the political dispensation of urban blacks is presently the subject of an investigation by a special Cabinet committee which is giving priority attention to the matter and

The department has always maintained the principle of non-interference in the private relationships of employers and employees. This attitude is emphasised by the impartial role the department is often called upon to play in cases where the utilisation of the dis-

There should be no illusion in this regard, as the government has made it clear on a number of occasions that it would not tolerate destabilising activity in any sphere, including that of labour relations.



Row 20/11/74 □ □ ~~165~~  
RECENT labour talks between South Africa and Mozambique have underlined a growing belief that greater numbers of Mozambican workers could be employed on South African mines

The suspicion that some mining employers actually prefer Mozambican labour was underlined last week in the National Union of Mineworkers' case against Johannesburg Consolidated Investments' Tavistock collieries

The NUM has brought an application to the Industrial Court for the temporary reinstatement of 42 workers dismissed from the mine and repatriated to Lesotho and various homelands

Among a long list of alleged unfair labour practices, the NUM claims that the workers were selectively dismissed on the grounds of being union members and their ethnicity.

"The applicants claim the major criteria for dismissal was whether they were Sotho or members of the union. They know of no Mozambicans not re-employed," according to the NUM.

The mine is also charged with refusing to deal with the union during the strike, teargassing the hostel without reason and illegally detaining workers in the hostel dining room for a day.

The company says it will contest the charges

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the report early next year The majority of the commissioners recommended that race and representativeness should not be taken into account when registration is considered, but that certain minimum requirements be met. These are similar to the provisions now in the LRA However, the NMC majority recommendation was that if unions do not comply with them, they should be prevented from operating

Van der Merwe said his department had received comments on the NMC report from 41 organisations At least five lines of thought are discernible from these comments

- That the *status quo* obtained before September 1 be retained,
- That the present position be retained,
- That registration in accordance with the existing statutory provisions should be compulsory,
- That the present system should be replaced with the majority recommendation of the NMC, and
- That compliance with the minimum prescribed requirements should be voluntary.

Another highly contentious issue, Van der Merwe said, is the definition of the unfair labour practice in the LRA The only thing that labour commentators agree on is that the definition is very wide, he said. Many say there is nothing wrong with it, while others say it should be changed as the broadness of the definition is making industrial relations impossible to manage

### Legal strikes

Legal strikes have also become a contentious point. Said Van der Merwe "Trade unions in general appear to favour a greater degree of protection for workers involved in legal strikes It has been suggested that employers should be statutorily prohibited from terminating the contracts (of employment) of such workers or from requiring them to vacate the accommodation provided them The suspension of contracts and chargers for accommodation are suggested instead Employers, on the other hand, argue that this would place them in an untenable position in so far as the conduct and continuation of their business activities are concerned"

The way strikes — and more particularly illegal strikes — should be handled is another point of debate, Van der Merwe said. One lobby argues that strikes should be decriminalised Another says that the present provisions in the LRA should be more rigorously enforced by the Manpower Department As for actually handling strikes, the major challenge facing union leaders and employers is how to prevent them from spilling over into violence and damage to property, which necessitates police involvement to restore order, he said.

Van der Merwe said the Manpower Department finds itself in a difficult position when it is asked to comment or advise on a particular line of action taken by either union leaders or employers in strike situa-

## LABOUR RELATIONS Future challenges

Much of the debate about labour has now shifted from considerations of overall policy to questions of technical and administrative detail — about which there are wide differences of opinion in employer and trade union circles

This was said by Director General of Manpower Piet van der Merwe in his speech on *The Manpower Scene. Developments and Challenges* at the FM's annual Investment Conference last week. Van der Merwe said the major challenge which lies ahead is to achieve the greatest possible measure of consensus on the way these technical problems should be handled

One of the major areas of contention is the question of the registration of trade unions This issue was addressed in an amendment to the Labour Relations Act (LRA) which came into effect on September 1 The LRA now states that any agreements reached between unions and employers will not be enforceable in court unless unions comply with certain requirements Among them is the provision that unions must supply the Department of Manpower with details of their constitutions, membership, office addresses, names of office-bearers and that they must maintain their financial affairs in good order

The National Manpower Commission (NMC) also raised the question of registration in a recent report which was released for comment. The Manpower Department is expected to react to the issues raised in

torpedoed a feasibility study for the Highlands Project for damming the upper reaches of the Orange River. Avenues of political co-operation such as the Nkomati Accord and an agreement with Swaziland on the development and sharing of water resources are, however, an important start.

Midgley believes another source of water to service the Pretoria-Witwatersrand-Ver-eeniging complex could be the Zambezi River But that could also succumb to similar political vicissitudes as Lesotho

To implement such a scheme would involve high-level negotiations with Zambia, Zimbabwe, Botswana, Malawi, Mozambique and possibly Namibia as well "In the present political climate that seems an impossible task," says Midgley

Over the next two decades SA's power needs are expected to triple from the current installed capacity of 20 000 mW "And yet," says Midgley, "more than 50 000 mW is being dissipated in turbulence by the rivers of neighbouring countries to the north as they flow uselessly to the sea" Midgley believes it would be possible to harness about 40 000 mW at a single site on the Congo river Inga in Zaïre

Currently Escom feeds the grid at about 1,6c/kWh. Hydro-power tapped from the Inga input alone would cost 0,2c/kWh — by far the cheapest in the world The financial benefits to be derived by participating states are enormous Midgley says that in some cases revenues through co-shared power and water schemes could match the gnp's of some states

## LOCAL AUTHORITIES

### Another casualty

FM 23/11/84

A fourth black mayor has quit his post This reinforces speculation that councils established late last year under the Black Local Authorities Act seem doomed as a result of pressure from residents on councillors to resign

Veteran Pretoria civic leader Z Z Mashao, chairman of Atteridgeville/Saulsville Council and the latest man to quit, gives as reason for his resignation "pressure from members of his family"

They apparently believe his continued participation in the council poses a threat to his life.

Mashao, who resigned last week, is the fourth council chairman in the PWV area to quit Others are Kebane Moloi of Duduza (Nigel), Maluka Mohlomi of Ratanda (Heidelberg) and S B Masilo at Tsakane in Boksburg

Moloi resigned with seven members of his council, leaving behind only one man

Three councillors in Tembisa (Kempton Park) also quit during the recent two-day work stoppage Four councillors were murdered in the Vaal Triangle and four others resigned when the unrest first erupted at the beginning of September



Manpower's Van der Merwe ... looking for consensus



(32) ~~132~~ FM 23/11/84

tions "The department can and is prepared to explain the provisions of the LRA to any party that approaches it but cannot advise on actions or purported actions by individual parties. Actions by individual parties may at any time result in a dispute being declared. (and) prior comment or opinion would put the department and the Minister (of Manpower) in an invidious position should this occur," he said

Strike ballots and ballots to determine the support for a closed shop agreement among union members are yet another problem. According to Van der Merwe, there is a strong feeling in some employer quarters that ballots should be secret, that they should be officially supervised and that statutory provision should be made for this. In union quarters it is generally argued that unions are autonomous bodies and that there should be a minimum amount of outside interference in the management of their affairs. A third school of thought suggests that the supervision of ballots should be a matter entirely for regulation between management and unions.

Van der Merwe also answered critics who claim that the Manpower Department has been blocking conciliation boards from considering allegations of unfair labour practices (ULPs). This means that the Industrial Court is also prevented from considering ULP allegations if a board fails to resolve the dispute referred to it.

"Both the Minister and the department are required to act within the framework of the LRA, which lays down the criteria (for the appointment of conciliation boards). The department is anxious that the widest possible voluntary use should be made of the conciliation machinery provided for in labour legislation and would do nothing toward to inhibit its use," he said

## CRIME Statistical evidence

A special study for the London *Daily Telegraph* by Gallup International indicates that SA is the third most crime-ridden country in the world after Colombia and Brazil. The study was restricted to SA whites and experts agree that if blacks were included, the picture would even be bleaker.

The 1984 annual report of the Commissioner of Police gives a statistical breakdown of crime for the year to June 1983. During this period, 1 210 178 "offences" were reported — a 4% increase on the previous year. "Offences" consist of murder, robbery, rape and other serious crimes.

Figures for the 12 months to June 1984 will not be available until the next parliamentary session in January. However a spokesman for the SA Police tells the FM that the pattern for 1983-1984 remains virtually unchanged from the previous year.

There has been a marginal increase in

the number of murders (see chart). Robbery figures appear to have remained virtually static since 1980, as have those for rape. The number of burglaries has increased dramatically and car theft is also on the increase. Serious assault has declined slightly from the previous year under review. The statistics show only the number of cases reported to the police.

The rape figure, in particular, is subject to wide interpretation since many cases go unreported. Of the 15 535 rapes reported in the 1982-1983 period, nearly 9 000 prosecutions were instituted — about 1 000 less than the previous year.

Police statistics divide crime into "offences" and "infringements of the law". According to Mana Slabbert, of the Department of Criminology at the University of Cape Town, 40% of infringements consist of "apartheid law" contraventions, such as pass offences. If these were to be decriminalised, the figures would slump radically.

The number of cases in this category has increased dramatically, from 612 576 in 1981-1982 to 782 470 in 1982-1983.

Police statistics have come under increasing criticism for their lack of information. Progressive Federal Party spokesman Helen Suzman said in Parliament that the report is "getting more slen-

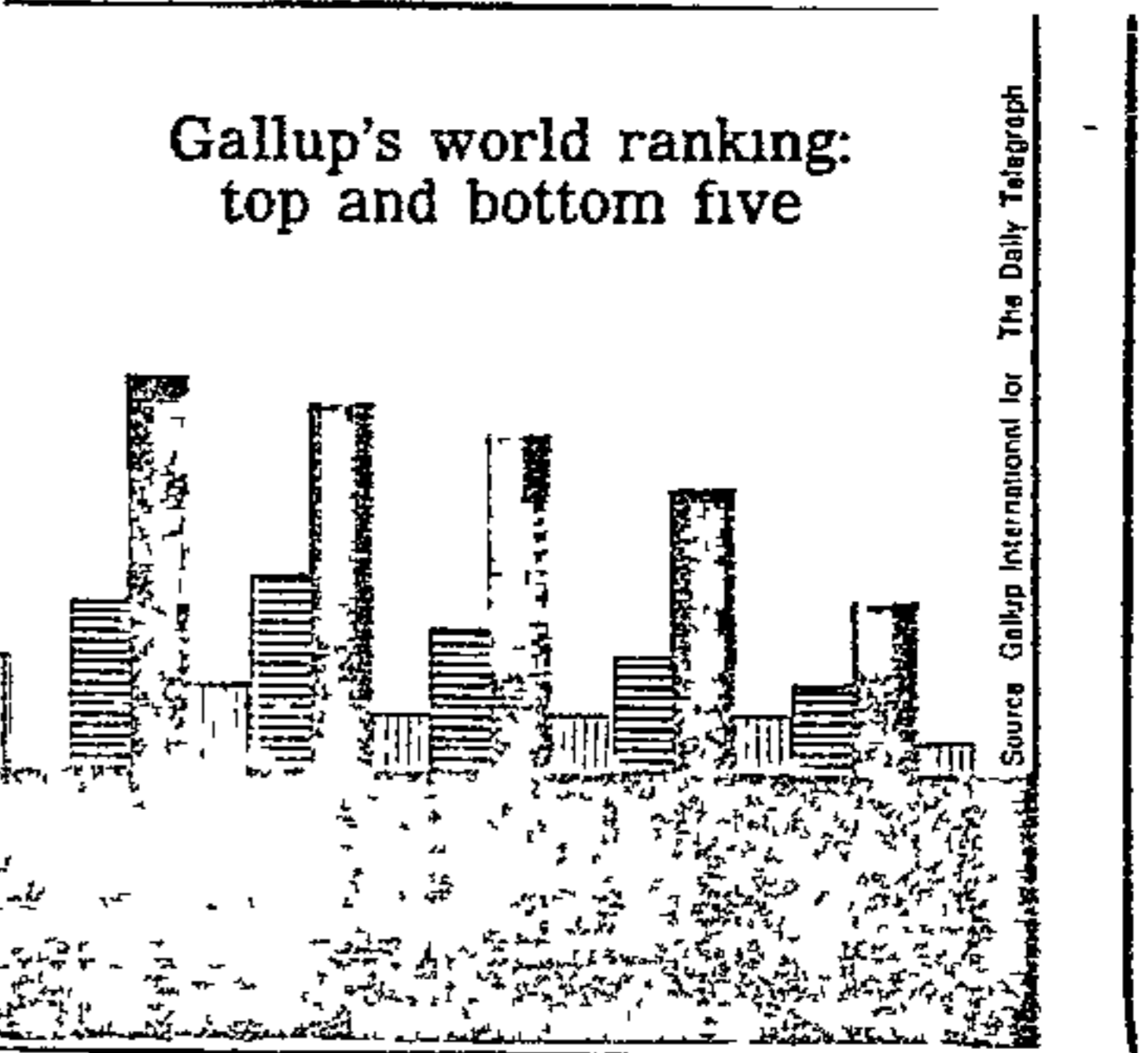
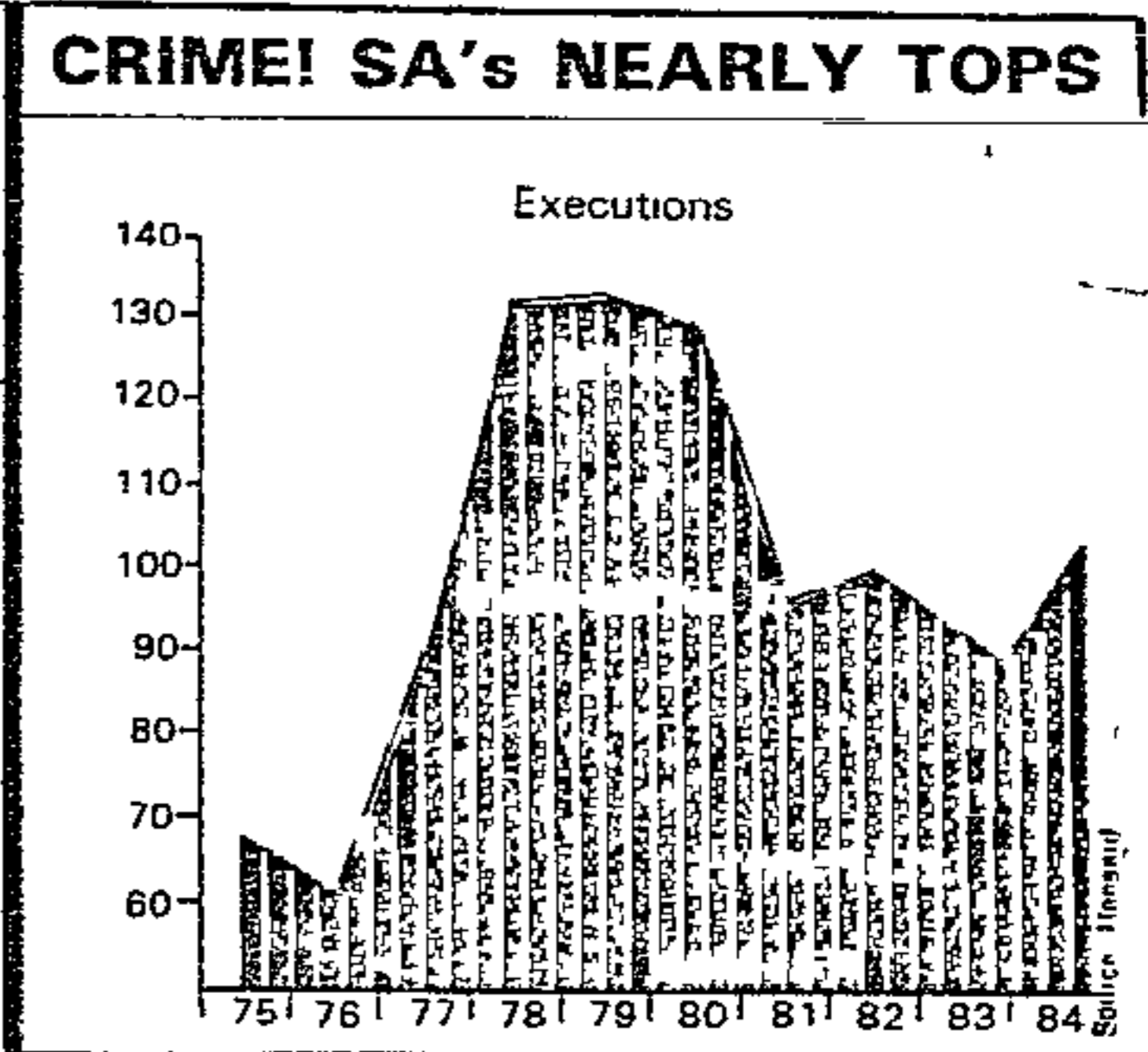
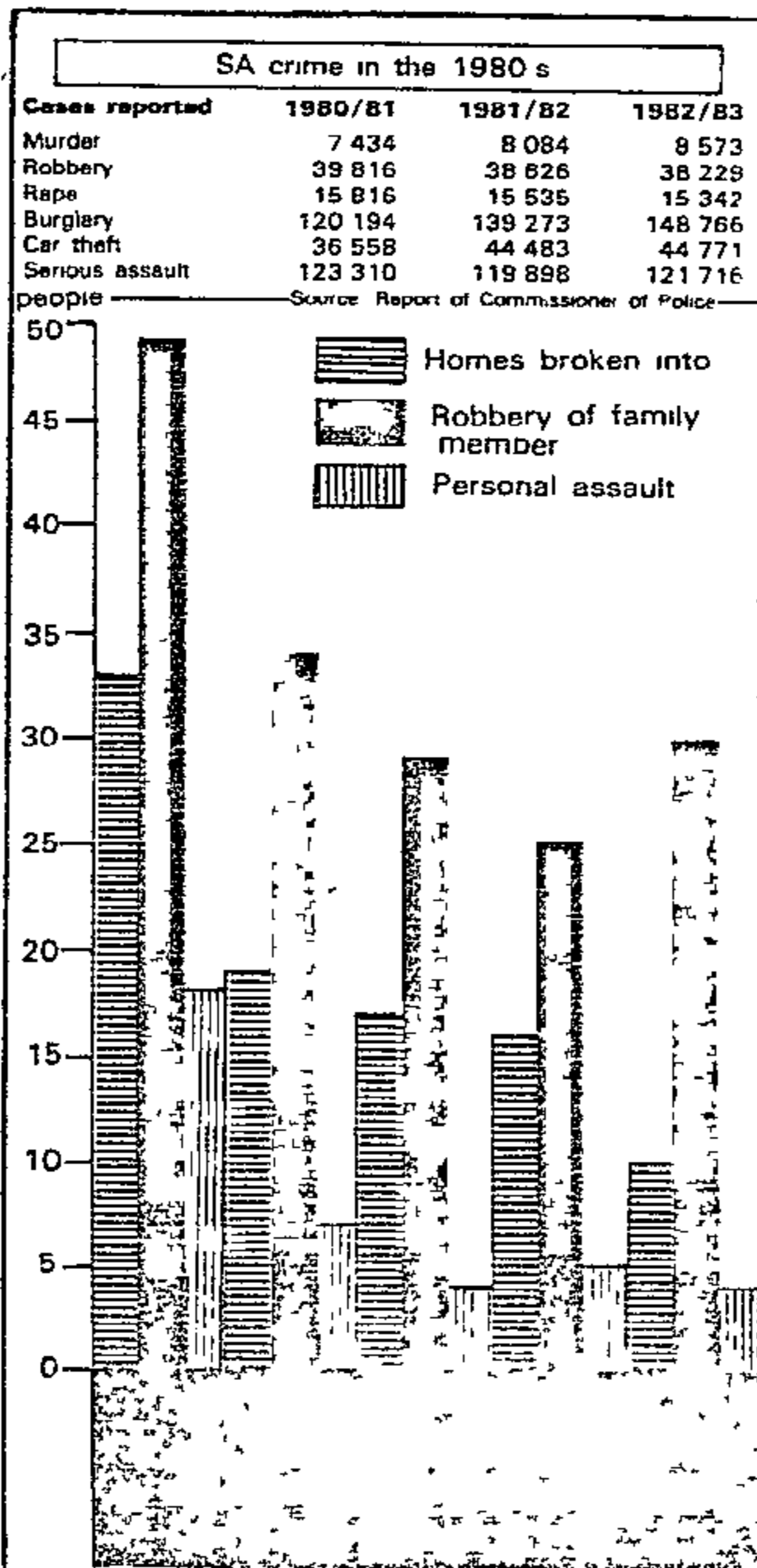
der as the years go by." The number of categories has diminished drastically over the last 10 years and there is now no racial breakdown.

SA not only has one of the world's highest crime rates, but also one of the highest rates of judicial executions. Between 1978 and 1980, executions peaked at around 130 a year, after declining markedly in the mid-Seventies. Since 1980, the numbers have levelled off to around 95 a year.

According to the Prisons Department, 97 people have been hanged in Pretoria's Central Prison this year, with 175 in death row. Statistics show the reprieve power is being used less now than in the early Sixties and mid-Seventies.

The high proportion of black executions does not appear to be simply a question of demographics and the notorious murder rate in the black community. Says John Dugard, director of applied legal studies at Wits University: "I do not believe judges pass the death penalty more readily on blacks than whites, but subconsciously this happens. Studies in the US have shown this to be the case and there is no reason to think SA to be any different."

A contentious issue is legal representation for capital offences. The majority of blacks, because they cannot afford their own attorneys and advocates, are assigned



# NUM applies for reinstatement of 42

By JOSHUA RABOROKO

THE NATIONAL Union of Mineworkers is awaiting the outcome of an Industrial Court ruling for the reinstatement of 42 workers dismissed from Tavistock Collieries, owned by Johannesburg Investments.

The NUM's assistant general secretary, Mr Mokheseng Maloka, told The SOWETAN that the dismissed workers have been repatriated to Lesotho and

to homelands

A long list of alleged unfair labour practices was filed in court. The union claims the workers were selectively dismissed on the grounds of being union members and their ethnicity.

The union said that Sothos were dismissed, while all the Mozambicans were re-employed

## Tearsmoke

The union has charged the mine company with refusing to deal with them during the strike, using tear-smoke at the workers' hostel without provocation and "illegally detaining workers in the hostel's dining room for a day"

A company spokes-

man said that they will contest the charges

Mr Maloka said that their application was raised in the light of recent labour talks between South Africa and Mozambique, which underlined a growing belief that greater numbers of Mozambicans could be employed on South African mines

"We brought this application because apparently some mining employers seem to prefer Mozambican workers. We are keen to hear the outcome of this case," he added

The ruling of the case will be made as soon as all merits have been weighed, a government spokesman said

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23/11/84



CHARLES NUPEN

# Labour power and procedure



Charles Nupen is an attorney at the Legal Resources Centre.

The policy underlying the Labour Relations Act (LRA) is to avoid disruption of the economy. It sets out to promote collective bargaining and to provide machinery to resolve disputes as an alternative to industrial force. In this grand social plan the Industrial Court (IC) has a central role. The whole idea underlying the establishment of the IC is to deflect certain kinds of disputes from a definite end in industrial conflict, and to provide a less disruptive and more rational resolution before a court of equity.

Yet there are two problems. Can you get to the IC? What happens when you do? The first indicts the Minister, the second the IC. For the State, employers and trade unions, these two problems are of pressing concern. I intend to deal with the former.

A compelling part of the State's strategy to institutionalise industrial conflict was to incorporate African workers and their unions into the machinery of the LRA. The thrust of the Wiehahn Commission, however flawed, was to open up the formal collective bargaining system to African workers and to grant them access to statutory procedures for the resolution of disputes.

As such it marked a radical departure from the traditional policy of exclusion and patronage which still exists in other facets of our society. In order to attract participation from African workers and their unions, the established machinery had to be made credible and effective — especially in view of the distrust engendered by 50 years of exclusion from the LRA. Unimpeded access to the collective bargaining institutions, statutory procedures and the IC were thus crucial to the success of the new dispensation.

The early signs were favourable. Unions representing African workers tested the new dispensation. Largely by their use of the IC, a coherent jurisprudence on individual unfair dismissals has emerged giving vital guidance to unions and employers.

The initial success has, however, palled. Inexplicably the Minister of

Manpower, who has the power to invoke the conciliation machinery of the LRA, has of late refused to establish conciliation boards and has thereby prevented disputes from being settled through collective bargaining or by the IC.

At a time when labour relations are in desperate need of a coherent set of ground rules, the IC is being prevented from giving guidance on what constitutes fair and acceptable conduct in the employment relationship.

Take the case of *Tlhapi v Lufurn Holdings*. Tlhapi, a pregnant employee, was dismissed when she was required by law to absent herself from work due to the imminent birth of her child. Relying on universally accepted grounds for fair termination — grounds which the IC itself has identified — she applied to the Minister for the appointment of a conciliation board to settle her dispute and to the IC for interim reinstatement. The employer consented to the interim reinstatement but opposed the appointment of the board.

The Minister refused to appoint the board. No explanation was provided, but the effect of the refusal was to deny the IC an opportunity to pronounce upon fair conduct to pregnant employees. As a result this issue has been left open even though the majority of employers will at some stage have to confront it.

This is one case where considered determination by the IC, had it been given that opportunity, would have eliminated conflict because many employers would have tailored their conduct accordingly. The Minister's action has left the issue unresolved with the attendant formula that if the court is not to define fair conduct, then force will.

As serious are the instances where the Minister has established conciliation boards but has sought to close off an alternative avenue of resolving disputes through the IC. This has been effected by the Minister limiting the terms of reference of boards to exclude consideration of the disputes as unfair labour practices. This limitation has damaged the delicate fabric of industrial relations.

In the case of *Shezi and Others v Consolidated Frame Cotton Corporation*, the IC had, in an application for a *status quo* order, the opportunity to assess the fairness of the Frame Group's retrenchment policies. It found them wanting. The Minister subsequently established a conciliation board to consider the dispute but did so in a way as to prevent the board and the court from

finally determining whether the retrenchment policies constituted an unfair labour practice.

The reasoned decision of the court stands against the unexplained decision of the Minister. Instead of permitting the dispute to be resolved by the IC, the Minister by his action has simply displaced the matter to the Supreme Court. Both he and the IC are presently on review. In sum, more litigation and less certainty for employers and trade unions — and that in an economic climate in which retrenchment is a major issue and industrial peace at a premium.

This apparent contradiction between the decisions of the Minister and those of the IC is further exacerbated by the anomaly that certain employees have access to the IC while the Minister may prevent others from having such access. There is no better illustration than the matter of *Ngobeni and Others v Vetsak*. Of the 61 applicants, 12 fell within the jurisdiction of the metal industry industrial council, four under the motor industry industrial council and the balance within the jurisdiction of the Minister.

Those covered by the councils did not have to refer the dispute to the Minister. Their route to the court was via the councils. The metal industry council was unable to settle the dispute within the statutory 30-day period. Although the council applied for an extension of time within which to attempt to settle the dispute, the Minister refused. The motor industry council, inexplicably, was granted such an extension.

As it happened neither council was able to settle the dispute. The 16 applicants involved were therefore entitled in terms of the LRA to refer the dispute to the IC for final determination. The chances of the rest depended on whether the Minister appointed a board. They waited nearly seven months for his decision and then the board was refused (except in the case of two applicants who had long since been reinstated by the company). These employees have, without reviewing the Minister's decision, no recourse to court. Their 16 colleagues, whose conduct in the dispute was no different from theirs have, by simple accident of jurisdiction, at least the opportunity to be heard by court.

Is it surprising then that there is a growing alienation from the statutory system? Only a system which persuades unions and their members that access to it will give them a fair deal will promote the cause of labour peace.

KOM 1/12/84

# Union to sue for unfair practice

By JEANETTE MINNIE

THE Food, Beverage Workers Union of South Africa has instituted legal proceedings against the Dairy Maid ice cream company in a dispute involving 70 cases of unfair labour practices — and the matter is likely to proceed to the Industrial Court

Dairy Maid is a subsidiary of Imperial Cold Storage which in turn is a member of the Barlows Group. Barlows is a signatory to the Sacola Code and has a published industrial relations policy.

The union said in a statement issued in Johannesburg yesterday that the case is "expected to be one of the largest labour cases ever seen in South Africa"

In addition to the unfair labour practice charges against the company, the union's legal advisors are also bringing in charges of alleged unfair mass dismissals and subsequent selective re-employment.

The alleged unfair labour practices include unlawful deductions from wages, assaults on workers, insults by members of management and unsafe working conditions

Resolutions calling for the boycott of Dairy Maid products are to be submitted to the union's annual conference



# Badge-wearer puts case

CLAIRE PICKARD-CAMBRIDGE

A WORKER at Atlantis Diesel Engines in Cape Town, who was fired after refusing to remove a United Democratic Front (UDF) badge from his overall, is fighting for re-instatement in the Industrial Court

Isaac Phooko, a member of the Engineering Industrial Workers Union, has applied for permanent re-instatement in terms of Section 46 of the Labour Relations Act (LRA) on grounds that he was unfairly dismissed.

Phooko was ordered by a supervisor to take off his badge on April 30. The supervisor said he should do so for his own safety because this could cause "friction" in the work-place. Phooko refused and received a written order saying he was abusing company property by putting the badge pin into his overall.

The company introduced a new rule on May 1 outlawing the promotion of any political cause or organisation on company property. He was ordered again to

remove his badge and was fired on May 3 after further warnings which he refused to comply with.

Phooko has argued in court that disciplinary proceedings began against him before the company had introduced any rule which effectively prohibited him wearing his badge. He also maintains the company did not consult with the union or any of the workers before introducing the new rule.

Phooko applied for temporary re-instatement in terms of section 43 of the LRA in August. But this was not granted because the Industrial Court found then that the dispute had not been properly referred to the Industrial Council.

Sapa reports that Phooko told the court yesterday that the foreman who ordered him to take off the badge was "opposed to organisations like the UDF"

CAPE TOWN 6/12/80

# Living wage 'not defined'

Staff Reporter

EVIDENCE put forward by the Cape Town Municipal Workers' Association (CTMWA) had failed to establish what a "living wage" was, Mr Harry Snitcher, QC, told an Industrial Court hearing yesterday.

Mr Snitcher was opening the case for Cape Town City Council in the Industrial Court hearing to arbitrate in the wage dispute between the council and the CTMWA.

## 'Not proper'

The 11 000-member CTMWA has demanded an increase that would represent a 100 percent increase in minimum wages on the grounds that this would be a "basic living wage".

Mr Snitcher said he would lead evidence to show that the "so-called living wage formula" put forward by the CTMWA was "not a proper formula to be used to formulate wages".

The CTMWA's emphasis on an employer's duty to pay a "socially responsible wage" was designed to create an atmosphere which detracted from the proper function of wage determination which was the duty of the court, he said.

The first witness called by Mr Snitcher, Mr Abraham Martinus Brand, a senior lecturer in Manpower Management at the University of

Stellenbosch, presented a lengthy document to the court, arguing against points raised in evidence presented by the CTMWA.

Mr Brand contended that the approach of the CTMWA in calculating a living wage was flawed because the union had seized upon "arbitrary figures" in respect of the cost of rent and education.

Figures calculated by the CTMWA for these costs were "contrived, unrepresentative and without adequate factual foundation", he said.

Mr Brand said the union had seized upon the figure of a five-member household upon which to base its calculations, while there was clear evidence that the average household size among CTMWA members employed in the J903 and J904 categories was 2.4 members.

## 'Benefits'

Calculations by previous witnesses called by the union had not taken into consideration benefits of up to 30 percent of the cash wage that municipal workers received.

Mr Denis Kuy, SC, assisted by Mr A Omar, both instructed by Cheadle, Thompson and Haysom, is appearing for the CTMWA. Mr Snitcher, assisted by Mr J Gauntlett, both instructed by Silberbauers, is appearing for the City Council. The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors.



CAPE TOWN 7/12/86

# Evidence on City labourers' wages

By MARTINE BARKER

THE basic wage paid by the Cape Town Municipality to its labourers compared "well" with market rates, Mr A Brand, lecturer in Manpower Management at the University of Stellenbosch, told an Industrial Court hearing yesterday.

Mr Brand was giving evidence for the second day in the hearing to arbitrate in the pay dispute between the 11 000-member Cape Town Municipal Workers Association (CTMWA) and the municipality.

Mr Brand contended that although the average wage paid to municipal workers was below the market rate it did not follow "that this justifies a general wage increase" for labourers.

A problem in structure of wage scales in the municipality meant that individuals might be kept at the top of one job category and be unable to be promoted to the

next, said Mr Brand.

This problem could not be resolved by "piece-meal tinkering" with the structure but by a "pending job evaluation exercise".

Mr Brand said any meaningful assessment of wages received by employees had to include fringe benefits.

A 13th cheque added 8,33 percent to yearly wage earnings. If this was taken with such benefits as two weeks annual leave, pension fund and medical aid contributions, labourers added 30,83 percent to their earnings.

Mr Denis Kuny SC, assisted by Mr A Omar, both instructed by Cheadle, Thompson and Haysom, is appearing for the CTMWA. Mr Harry Snitcher, QC, assisted by Mr J Gauntlett, both instructed by Silberbauers, is appearing for the City Council.

The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors.

7/12/84 (264) 115

# Settlement over sacked worker

Labour Reporter

AN URGENT application to the Supreme Court, Durban, for an order against the Stanger Town Council to reinstate one of its sacked employees, was settled out of court yesterday

In terms of the settlement, Mr Shaun Chetty would be reinstated to his post as protection officer in the Borough of Stanger, but would be suspended from duty pending the outcome of an appeal

His lawyer, Mr Praveen Sham, told the Mercury that Mr Chetty was dismissed at the end of last month. Mr Chetty lodged an appeal against the dismissal, but his services were terminated in spite of the fact that the appeal had not been heard, Mr Sham said

The council would have to pay the costs of the application and the staff

committee had been requested to furnish full details of its findings

'We have reserved the right to challenge the constitution of the appeal board,' he said, adding that as the council had taken a decision to terminate Mr Chetty's services, it might be prejudicial for the same council to hear the appeal

Mr Chetty had been employed by the council since January, 1982, in the council's Protection Services Department, which handles traffic control and fire-fighting duties

Durban Advocate, Mr Zac Yacoob, instructed by Sham and Meer, was briefed to appear for Mr Chetty and Mr M J D Wallis, instructed by Shepstone and Wylie, for the town council. The matter was to have been heard in the Motion Court yesterday morning



CAPE Times 8/12/84

# Facts not checked — expert

Staff Reporter

MR A M BRAND, senior lecturer in Manpower Management at the University of Stellenbosch, yesterday told an industrial court hearing that he had not checked the accuracy of the material on which he based calculations presented to the court as evidence

Mr Brand, giving evidence in the hearing to arbitrate in the wage dispute between the Cape Town Municipal Workers Association (CTMWA) and the Cape Town City Council, acknowledged this during cross examination by Mr Dennis Kuny, appearing for the CTMWA

He said there had not been enough time to do full investigations for his evidence which showed that the average household size of municipal labourers was 2,4 Mr Brand has argued that the figure of a 5-member household on which the CTMWA based its demand for a "living wage" is not representative of the real size of workers' households

## Tax forms

Mr Kuny argued that Mr Brand had no grounds for claiming he had "clear evidence" for saying that the average household size of CTMWA workers was 2,4 He asked Mr Brand if he had checked whether the information he based his calculations on — taken from tax forms filled in by workers when they began working for the municipality — had ever been updated

Mr Brand said he did not know Mr Harry Snitcher, appearing for the Cape Town City Council, interjected that he had told the court earlier the forms were updated "from time to time".

documents were available they would show a different picture to the one arrived at by Mr Brand

In further cross-examination Mr Kuny quoted from a document presented to the court in which Mr Brand criticised a survey conducted for the CTMWA and set out criteria for assessing the credibility of research Among these Mr Brand said the question should be asked "Does the design answer the research question?"

## 'Best material'

Mr Kuny argued the tax forms on which Mr Brand based his calculations of household size were not designed to show the household size of employees The questions did not show if a worker was living with a woman without being married to her, he said Such information could alter calculations

Mr Brand acknowledged this but added the tax forms were the best material available on which to make calculations

## Training

Mr Brand's document had also stressed the importance of the proper training of research interviewers so as to ensure that all questions were properly understood, said Mr Kuny He submitted it was not known whether the details of questions on the forms had ever been explained to employees filling them in and it was also not known whether all questions had been answered by all employees

Mr Brand said the guidelines he had set out were for the purpose of scientific research To apply them stringently in business situations would be "unrealistic" The hearing continues next week.

Mr Denis Kuny SC, assisted by Mr A Omar, both instructed by Cheadle, Thompson and Haysom, is appearing for the CTMWA Mr Harry Snitcher QC, assisted by Mr J Gauntlett, both instructed by Silberbauers, is appearing for the City Council

The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors

## Too little

Mr Kuny said he was dubious about this since workers in the categories being discussed were earning too little to pay tax Changes in family size would make no difference to the workers tax obligations He asked for the original documents to be made available for him to study.

Mr Kuny said he suspected that if updated

warns

CAPE Times  
12/12/84  
165  
763  
764

# On Wages

Staff Reporter

THE migrant labour system, as well as influx control and the coloured labour preference policy in the Western Cape, had kept wages for unskilled labourers artificially high, Professor J L Sadie, a professor of economics, told an industrial court hearing yesterday.

He was giving evidence in the hearing to arbitrate on the wage dispute between the Cape Town Municipal Workers Association and the Cape Town Municipality, in which the 11 000-member association is demanding a "living wage".

## Euphemism

Professor Sadie, a former director of the Bureau for Economic Research, told the court that additional forces which caused the "contrived scarcity" of unskilled labour and higher wages in the Western Cape were trade unions who catered for the interests of their members only.

He said it made "absolute economic nonsense" to raise wages according to increases in the cost of living. This would perpetuate the spiral of "senseless inflation".

To raise municipal rates in order to pay a big increase would be "unjust to others", he said. If a living wage was defined as being what people needed to survive, it had to be noted that needs for different employees would be different according to their circumstances and their frugality.

## 'Contrived scarcity'

The term "living" in the demand for a "living wage" could easily become a euphemism for middle-class comfort.

Professor Sadie warned that paying workers wages that were not determined by the free market would mean that South Africa would "price itself out of the international market".

The hearing continues. Mr Denis Kuny, SC, assisted by Mr A Omar, both instructed by Cheadle, Thompson and Haysom, is appearing for the CTMWA. Mr Harry Snitcher, QC, assisted by Mr J Gauntlett, both instructed by Silberbauers, is appearing for the City Council. The presiding officer is Mr J J Human, with Mr Alec Erwin and Mr G Powell acting as assessors.



Cape Times 13/12/86

# Sadie opposes 'living wage'

Staff Reporter

THE number of unskilled workers without full employment in South Africa would grow to more than five million by the end of the century if present labour practices continued, Professor Jan Sadie, emeritus professor of economics at the University of Stellenbosch, told an Industrial Court hearing yesterday.

Arguing against paying workers a "living wage", Professor Sadie said a "living wage" which caused labour to be overpriced meant a "no-wage situation for millions".

Giving evidence in the hearing to arbitrate on the wage dispute between the 11 000-member Cape Town Municipal Workers Association and Cape Town Municipality, Professor Sadie said there would be less capital available for the creation of jobs the more the country's national in-

come growth was absorbed by wage rises.

A policy of paying a "living wage" had to be weighed up against the "poverty and squalor" of those whose chances of employment were lessened by such wage practices.

He argued that the ripple effect of a "disproportionate rise in wages" of employees of Cape Town Municipality would mean there was a danger that the Western Cape would become an economic backwater, and that the action of the municipality in respect of wage policy could be emulated by others.

The hearing continues. Mr Denis Kuy, SC assisted by Mr A Omar, both instructed by Cheadle, Thompson and Haysom, is appearing for the CTMWA. Mr Harry Snitcher, QC, assisted by Mr J Gauntlett, both instructed by Silberbauers, is appearing for the City Council. The presiding officer is Mr J J Human, with Alec Erwin and Mr G Powell, acting as assessors.

13/12/54  
Textile  
dispute to  
go to court  
VS

Labour Correspondent

A LONG-RUNNING recognition dispute between Fossati's National Union of Textile Workers (NUTW) and the Frame Group of textile companies will come to a head in the industrial court early next year.

This means that several attempts by the Frame group to prevent the dispute from being decided in court have now failed.

The dispute centres around the company's New Germany mills, where NUTW claims to represent a worker majority.

It charges that Frame has refused to recognise it despite this and that the company has attempted to keep NUTW out of the mills, by recognising Tussa's Textile Workers Industrial Union.

This is an "unfair labour practice", says NUTW, which sought an order preventing Frame from recognising the rival union.

The company denies that NUTW represents most workers at the mill complex.

The case could have a crucial bearing on NUTW's 11-year battle to win recognition at the New Germany mills.



Govt made them wait

two years

# Workers stand up for their rights

16/12/84

C. Peris

165  
~~159~~  
~~154~~  
~~153~~

ABOUT 12 domestic workers and representatives of domestic workers' organisations visited Pretoria last week — determined to speak to Department of Manpower officials.

They went to ask how much longer it was going to take be-

fore the special commission of inquiry into the working conditions of domestic workers and farm labourers gave its report

More than two years ago, domestic workers' organisations from all over South Africa made their recommendations to the commission, but

they claim they have heard nothing since

One of Durban's representatives on the delegation, Mary Mkhwanazi, said they had been able to see a member of the commission, who said there would still be a delay before the results would be released

"But I believe the trip was definitely worthwhile. We were able to make sure that our views on the issue were well-discussed with the official, and were to be conveyed to the Minister

"I am sure that no one in Pretoria ever dreamed that domestic workers would dare to go to Pretoria to try to see

officials

"It has done us a lot of good to discover that we could do it"

## 'We want the best'

IN A BID to make the taxi trade more professional, the SA Black Taxi Association has set up a disciplinary committee to help maintain good working relations between taxi drivers and traffic cops

New drivers will be screened before they take to the road and Sabta is also trying to organise a free towing service for its members

KOM 19117184 (15) (155)

## R5 500 for sacked dairy employees

DURBAN — Three former employees of Clover Dairies in Durban were paid out a total of R5 500 in an out-of-court settlement following a dispute over their sacking.

Their lawyer, Mr Chris Albertyn, confirmed on Monday that the dispute had been settled shortly before the matter was to have been heard in the Industrial Court. The settlement had been reached with the

other party conceding defeat.

The dispute involved Mr Ndoda Dlamini, Mr William Msomi and Mr John Dhlomo, who are members of the Sweet, Food and Allied Workers' Union. The company also undertook to find them other work.

The three were dismissed in March after refusing to carry out a managerial instruction, following work stoppages at the plant.

— Sapa



# 2 fired workers may be rehired

By STEVEN FRIEDMAN  
Labour Correspondent

TWO workers fired by Iscor at its Newcastle works may be reinstated soon after an Industrial Court action by their union, the SA Allied Workers' Union.

The action was the latest move in Saawu's attempt to win recognition at the Newcastle works where it claims to represent 4 000 workers — most of the workforce. It claims the two were fired because they are its members and that Iscor is resisting Saawu.

But Iscor yesterday denied it was against recognising unions. It said Saawu had so far not submitted proof of its membership at the works and said it could not discuss recognition with it until it did so.

There is also a conflict between the two sides over whether the two workers have been granted full reinstatement.

A Saawu spokesman said the two, Mr Philip Ngwenya — a union shop steward — and Mr Goodman Nkosi, were granted temporary reinstatement by the court.

He said they would be given jobs for which the pay and conditions would be no less favourable than those they enjoyed before they were fired. They would also receive back pay for the period since they were sacked.

Mr Nkosi was fired in August and Mr Ngwenya in November.

He said the two had been fired "unfairly" because Iscor was resisting Saawu's fight for recognition at the plant. "They were made scapegoats because they belonged to the union," he said.

But an Iscor spokesman said the company merely agreed in an out-of-court settlement to reinstate the workers when vacancies arose. They would not be rehired immediately as there were no jobs available during the festive season.

"There is also no question of their receiving back pay," he added.

According to Iscor, Saawu brought six cases against it alleging that workers had been unfairly dismissed.

Four of these cases had been withdrawn and those of Mr Ngwenya and Mr Nkosi had been settled, he said.

Major industrial court ruling

# Trident workers unfairly sacked

THE Industrial Court has ruled that 35 former employees at Trident Steel in Johannesburg were unfairly dismissed, after taking part in an overtime ban, and has ordered the company to pay them six months' wages and benefits.

The case is significant because it is one of the few major matters to have reached the Industrial Court as an application for permanent re-instatement under Section 46 (9) of the Labour Relations Act.

The workforce originally placed a ban on overtime in July last year, when the company refused to grant workers the hourly increase they were demanding. Trident argued it dismissed workers because it had been unable to continue operating without regular overtime.

The court found that the dismissal in August last year was unfair because Trident's order to resume work under its overtime system was unlawful for two reasons:

- ☐ Overtime called for sometimes exceeded the maximum prescribed in the industrial council agreement. The overtime called for "contained a significant unlawful element" and it was unfair to dismiss workers for refusing to comply with this instruction.
- ☐ Secondly, workers were not given the

CLAIRE PICKARD-CAMBRIDGE

chance to defend themselves before being dismissed.

The matter between the Steel, Engineering and Allied Workers' Union of SA and others and Trident Steel is significant because workers lost their case when applying for temporary re-instatement under Section 43 of the Act.

But their partial success when they applied for permanent re-instatement has illustrated that giving full evidence can change a situation considerably.

The court did not find the dismissals to be selective or discriminatory.

In his judgment Mr D G John, an advocate, said that to order re-instatement 15 months after the rest of the workforce was re-employed would disrupt Trident's business and distress those in positions previously occupied by the 35 workers.

To order payment of wages as an alternative without some time limit would also place the 35 workers in an unrealistically favourable position.

He said the workers were not blameless. They had participated in the overtime ban before negotiations had commenced properly and declined to follow the advice of the union to return to work pending attempts to resolve the overtime issue.



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165 PAGES DAY 20/12/85

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20/12/85

The security assurance was conveyed by means of pamphlets — issued on behalf of a group apparently representing the Pretoria business community — dropped by helicopter over Mamelodi last week

The boycotts, in protest against the State of Emergency, the presence of troops in the townships and detentions under the emergency, began on December 2 in Pretoria and a week later on the Reef. They are due to end on December 31, unless they go the way of the eastern Cape consumer boycott which overran its deadline due to negotiation problems. The Port Elizabeth consumer boycott, which crippled many businesses in the city, was due to last for two months but ran for nearly five after boycott leaders were detained. The four-month-old consumer boycotts in Queenstown and Uitenhage have also continued longer than originally planned. A PE Chamber of Commerce spokesman said most small businesses which survived the boycott there had done so only by changing marketing tactics so as to reduce their reliance on black custom. In the two weeks since the boycott was suspended,



**Black Sash's Duncan . . . not the end of the boycott weapon**

the swing seemed to be back to white traders, he said, mostly because of higher prices in the townships.

Boycott committees have prohibited any celebration during the boycott, including weddings, parties, home improvements and even the wearing of new clothes. There have been reports of women being undressed and searched by youths in the Soweto streets and of groceries destroyed by random groups of youths.

The Pretoria Consumer Boycott Committee (PCBC) has made urgent appeals to township youths not to harass shoppers after being inundated with complaints from black consumers. It has appointed "area committees" to ensure that people defying the boycott are not harassed; their wish is that the boycott be observed voluntarily. Marshals appointed by the committee are the only

people authorised to check if people are breaking the boycott and they had instructions not to destroy confiscated goods, the PCBC has said

But Black Sash president, Sheena Duncan, says it would be a mistake to put the success of the boycott down to intimidation as it seemed to be a much more deeply based and popularly supported action than some reports implied. "Whether or not this boycott is successful, I don't think it's the last time this powerful political weapon will be used," she said

INDUSTRIAL COURT 165

### More NUM victories

Four more cases arising from the dismissal of members of the National Union of Mineworkers (NUM) for participating in the lawful September wage strike at Gencor mines have been heard in the Industrial Court recently

This follows the court's decision that several hundred strikers had been unfairly dismissed by the Marievale goldmine (*Current Affairs* November 22). In the latest hearings, 74 workers at four mines have been reinstated

After a hearing on November 29, the court granted an order temporarily reinstating Emmanuel Mpetha, the chief NUM shaft steward at the Unisel goldmine. He had been dismissed for distributing leaflets detailing the union's "strike rules". The order was backdated to November 1.

On December 10, after the union had closed its case, Matla Collieries agreed to a consent order in terms of which 11 miners should be reinstated. The order gives them 21 days in which to return to work.

The following day the court heard an application for the reinstatement of 10 strikers at Transvaal Navigation Collieries (TNC). The company contested the case and on Tuesday this week the court ordered their reinstatement under similar conditions as in the Matla case.

A further case heard on December 12 has led to the reinstatement of 52 Beatrix goldmine workers dismissed for "participation in events surrounding the strike." At negotiations between the NUM and the company at the court hearing, agreement was reached that the miners be reinstated subject to the right of the company to conduct disciplinary hearings into the conduct of the miners "if they still believe it to be necessary." The union will then be entitled to challenge any adverse findings in the Industrial Court. The 52 Beatrix workers (who include six of the seven union shaft stewards at the mine) are to receive three-and-a-half months' back pay.

Meanwhile, a secondary dispute is brewing over the future of about 50 Marievale workers who returned to the mine after the Industrial Court's 21-day deadline. Marievale is refusing to re-employ them. But the

union claims the mine failed to give timely notice to The Employment Bureau of Africa (Teba) of the miners' impending return. Without documentary clearance from Teba it is difficult for foreign workers to return to SA. About 400 others have been reinstated at Marievale so far.

The Manpower Department, too, is responsible for a delay in the final resolution of this dispute. It is now three-and-a-half months since the NUM applied for the establishment of a conciliation board to consider the case, and no decision has yet been made — an unusually long delay.

The Marievale case is one of the most crucial and controversial that the court has considered in its seven-year existence, and there is speculation that the department is thinking long and hard over its next move. A decision not to appoint the board would mean that the case could not be referred back to the court for a final order. This would doubtless unleash a stream of protest from some members of the industrial relations community, while the wisdom of the court's ruling has already been questioned by others.

□ Another case arising from dismissals during the September wage strike, this time involving Anglovaal's Hartebeestfontein goldmine, is to be the subject of a test case on a vital point of industrial law.

The company, the NUM and 23 of its members (the applicants), have agreed to apply for a final Industrial Court order for reinstatement in terms of section 46 of the Labour Relations Act. The case will then be postponed pending an Appellate Division hearing over whether the Industrial Court is entitled to rule in favour of the reinstatement of workers on the grounds of equity, when dismissal is justified in terms of common law.

The Industrial Court has, on a number of occasions, ruled that it is entitled to do so, including in the Marievale case. Marievale has disputed this ruling and has taken the case on review to the Supreme Court over this issue, among others. A similar case involving the NUM and Vaal Reefs is also pending in the Supreme Court.

### MULTIRACIAL BEACHES

### Durban leaps in

Race barriers came down on four of Durban's beaches last week. As expected, the sight of multiracial crowds sunning themselves on Durban's Golden Mile stopped few people in their tracks.

After three days of rain, the sun peeped out on Monday. Durbanites made the most of their public holiday and headed for the sea. At the newly enclosed paddling pool children of all complexions gaily splashed one another, a coloured man dozed belly-up in the sun, lovers promenaded and an African family, a little self-consciously, built a sand castle at the water's edge.



Sewetau 20/12/84

# More labour disputes referred to court

By JOSHUA RASOROKO

ABOUT 326 industrial relations cases, involving labour disputes, were heard in Industrial Courts in the country until November this year, according to an official of the Department of Manpower.

The director-general of the Department, Dr Piet van der Merwe, said yesterday that this figure indicated that the court was playing an increasingly important role in dispute settlements.

The following give an indication of the number of cases which were adjudicated by the court in 1980 there were 15, in 1981 there were 30, in 1982 there were 49, in 1983 there were 168 and up until November 1984 there were 326.

He said that most of the cases centred around the "unfair labour practice" (ULP) where there were major differences on matters of principle and on detail.

However, he added, the general opinion appears to be that the present definition of the ULP was too wide and that it should be reformulated.

Meanwhile, trade unionists and industrial relations consultants have predicted that next year, unions will become more political and rely less on the courts and agreements with employers and more on their numerical powers.

However, Dr van der Merwe adds that actions by individual parties might at anytime, result in a dispute being declared, in which event the matter could be referred to an industrial council, conciliation board or the court.

Referring to criticism that the Department of Manpower has been purposefully sifting the unfair labour practices which are referred to the IC and that it influences the court's decision, he said that neither the Minister, nor the Department have any powers legally or otherwise over the functions of the court.

"In so far as conciliation boards are concerned, both the Minister and the Department are required to act within the framework of the Labour Relations Act which lays down the criteria for the appointment of conciliation boards.

A further important development which he indicated, was the increased use of the statutory conciliation machinery.

22/12/84  
15

# Court to get new chief

By STEVEN FRIEDMAN  
Labour Correspondent

THE industrial court is to get a new president from the beginning of next year — and the change could have an important effect on its role in labour relations.

A statement by the Minister of Manpower, Mr. Pietie du Plessis, announced yesterday that the court's president, Mr. Benjamin Parsons, retires at the end of this month.

Dr Daniel Ehlers, the court's deputy president, will replace him.

The court has played a key role in labour relations and, in 1983, several of its judgments significantly extended worker and union rights. It has since been under pressure from employers and there have been moves to curb its powers.

Over the past few months, however, several key judgments by the court have been seen by unions as sharp blows to their rights.

This has prompted union disenchantment with the court and some that have used it most frequently, in particular the Metal and Allied Workers Union, have suggested they may not do so in future.

Dr Ehlers's appointment could, however, have an important impact on these developments. As deputy president of the court, he has been responsible for most of its judgments extending worker rights.

ANC, OAU blame SA for attacks

BUS DAY  
23/12/85

# De Cuellar slams Maseru killings

NEW YORK — United Nations Secretary-General Javier Perez de Cuellar has condemned Friday's Lesotho attacks as "brutal"

A UN statement said the Secretary-General "strongly condemns the brutal attacks which were carried out against the homes of Lesotho nationals and SA refugees in Maseru" early on Friday, resulting in the deaths of four women and five men

Sapa-Reuter quotes the African National Congress as saying at the weekend that the raid, which it blamed on SA, "will spur us to fight even more resolutely to destroy the Pretoria regime of terror".

The ANC said in a message from its Lusaka office that six of its members were slain, along with three Lesotho citizens, in attacks on two homes in the Lesotho capital

The Organisation of African Unity (OAU), from its headquarters in Addis Ababa, has strongly condemned SA, which it said staged the armed raid

SA repeated its denial of involvement at the weekend. A rebel Lesotho group claimed in an anonymous call to a news

RICHARD WALKER

agency that its forces carried out the raid

But Lesotho Interior Minister Desmond Sixshe said witnesses had seen white SA troops among the attackers. He dismissed the suggestion that Lesotho rebels would strike at what he said were SA refugees living in Lesotho

Witnesses said seven blacks, including at least four South Africans, were slain at a party when gunmen burst into a Lesotho home near the SA border and opened fire

One survivor, 18-year-old Richard Macaskill, said six people burst into the house where a party was under way and started firing pistols with silencers.

He said the raiders' faces had been painted black but their arms, showing through short sleeves, were white.

"Even as they broke through the doors, they were already firing their pistols," he said

An SA couple — Jackie Quin and her husband Joe — died in an attack on their home in a wealthier suburb in Maseru about the same time. A neighbour said silencers were also used in that attack



Cape Times 24/12/84 165

# Industrial Court sees changes

Own Correspondent

JOHANNESBURG — The Industrial Court is to have a new president from the beginning of next year — and the change could have an important effect on the court's role in labour relations

A statement by the Minister of Manpower, Mr Pietie du Plessis, last week announced that the court's present president, Mr Benjamin Parsons, was to retire at the end of this month

Dr Daniels Ehlers, the court's deputy president, would replace him, Mr du Plessis announced

The court has played a key role in labour relations and in 1983 several of its judgments significantly extended worker and union rights. Since then it has been under intense pressure from employers and there have been moves to curb its powers

Over the past few months, however, several key judgments by the court have been seen by unions as sharp blows to their rights and those of their members

This has prompted increasing union disenchantment with the court and some of the unions who have used it most frequently, in particular the Metal and Allied Workers' Union, have suggested that they may not do so in future

The appointment of Dr Ehlers, however, could have an important impact on these developments

As deputy president of the court, he has been responsible for most of its judgments extending worker rights

## Entitled to act against employers

In his judgments, he has for example argued that the court is entitled to act against employers if it believes they acted unfairly, even if they have observed all the provisions of common law.

He has also played a key role in rulings which established a duty on the part of employers to negotiate with unions who represent a majority of workers in their plants

Dr Ehlers enjoys wide respect among labour lawyers and his appointment is certain to be welcomed by them.

He is also the member of the court with most direct experience in labour relations, having worked in the field before his appointment to the court

# Escom official alleges unfair dismissal

BUS DAY 27/12/85

ESCOM, whose financial affairs have been under scrutiny since "Dr" Gert Rademeyer stole R8m from the organisation, is faced with another controversy

This time it involves the dismissal of former chief financial planner Dr Jacob de Bruyn.

He has lodged papers in the Jo-

hannesburg industrial court claiming unfair labour practices and unfair dismissal.

The papers say that he was not given a fair warning nor was he given reasons for the termination of his employment.

Escom has seven days in which to reply to the allegations

An application has also been lodged with the Minister of Manpower requesting a conciliation board to settle the dispute.

De Bruyn was appointed chief financial planner in November 1984

He was dismissed on December



(167) 27/12/95 BUS DAY

# UN to hear complaint on 'SA aggression'

NEW YORK — The United Nations Security Council would meet on Monday to hear a complaint by Lesotho charging South Africa with "unprovoked armed aggression", in killing nine people last Thursday in Maseru, a UN spokesman has said.

Lesotho called for the meeting on Tuesday.

SA has denied any responsibility for the incident.

In a letter to the council's president, Leandre Bassole, of Burkina Faso, Lesotho's UN ambassador Thabo Makeka requested the council meet on Monday morning.

A spokesman for the Lesotho mission said Foreign Minister Vincent Makhele was expected in New York over the weekend to take part in the meeting.

Council members would hold private consultations today on the Lesotho request, a UN spokesman said.

In his letter, Makeka said that early on the morning of December 19, members of the SADF had "invaded the capital city of Lesotho, Maseru, and murdered nine people in cold blood".

He said four were registered refugees, two were South Africans and three were nationals of Lesotho.

"It is worth noting that in this coward-

ly attack, the victims were clearly South African refugees with ANC affiliation, surreptitiously lured into a would-be party only to be slaughtered."

Makeka said "For all these barbaric acts we hold the government of South Africa fully responsible. Even after these murders South Africa has threatened to perpetrate its acts of aggression against my country and other neighbouring countries."

"It is clear therefore that the situation clearly constitutes a very serious threat to international peace and security, making it imperative that the Security Council be seized with the matter" — Sapa

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Sm 28/12/86

It permitted managerial employees to refer to black workers as "kaffirs" and "bobbejane", and

It refuses to confirm that it will negotiate in good faith with the union.

Van Rhyn says the company was surprised to hear the first two additional allegations as they were made in October and November, several months after incidents were alleged to have occurred. In addition, the union failed to supply full details. Nevertheless, he says, "the allegations were investigated by the company and found to be groundless."

He adds that the company has obviously negotiated in good faith. It has been present at several meetings of the Industrial Council for the dairy industry where the dispute has been discussed.

In response to the company's threat of legal action, the union says the boycott was not called by Cusa but by the Dairymaid Workers' Committee. The committee will continue with its efforts to promote the boycott, it says.

The union's statement claims that legal proceedings against the boycott will help to diminish "one of the few human rights left in SA."

Following the effective boycott of Simba earlier this year it appears that consumer boycotts are again finding favour among unions as a strategy for winning disputes. The Dairymaid dispute may help whether companies will be able to look to the courts for protection against boycotts.



## POLITICS

# A year that turned sour

~~23/11~~ PM 28/12/84

For the first seven months, 1984 looked as if it was going to be a golden year for SA. A year of peace and reform. Then suddenly it all turned ugly, and 1984 ended on a note of near desperation, with indications that 1985 would be even worse.

The year started with the euphoria of the November referendum result still in the air. Early in January came the SA troop withdrawal from Angola after Operation Askari and the acceptance by President Jose Eduardo dos Santos of a surprise 30-day truce offer made by Pretoria. Also in January, senior representatives of SA and its Marxist neighbour Mozambique met for peace talks.

February saw SA-Angolan ministerial talks in Lusaka and, on February 17, the signing of the Lusaka Agreement. This made provision for a Joint Monitoring Commission (JMC) to monitor SA's total withdrawal from southern Angola after years of occupation.

In a colourful ceremony on March 16 that surprised the world, SA PM P W Botha and Mozambique President Samora Machel shook hands cordially and signed the historic Nkomati Accord. In the same month, SA released the "father of Namibian liberation," Swapo founder member Herman Toivo ja Toivo, after 16 years on Robben Island. This was followed by the release of several other Swapo detainees and was accepted as a sign of SA's sincerity in looking for a Namibian solution.

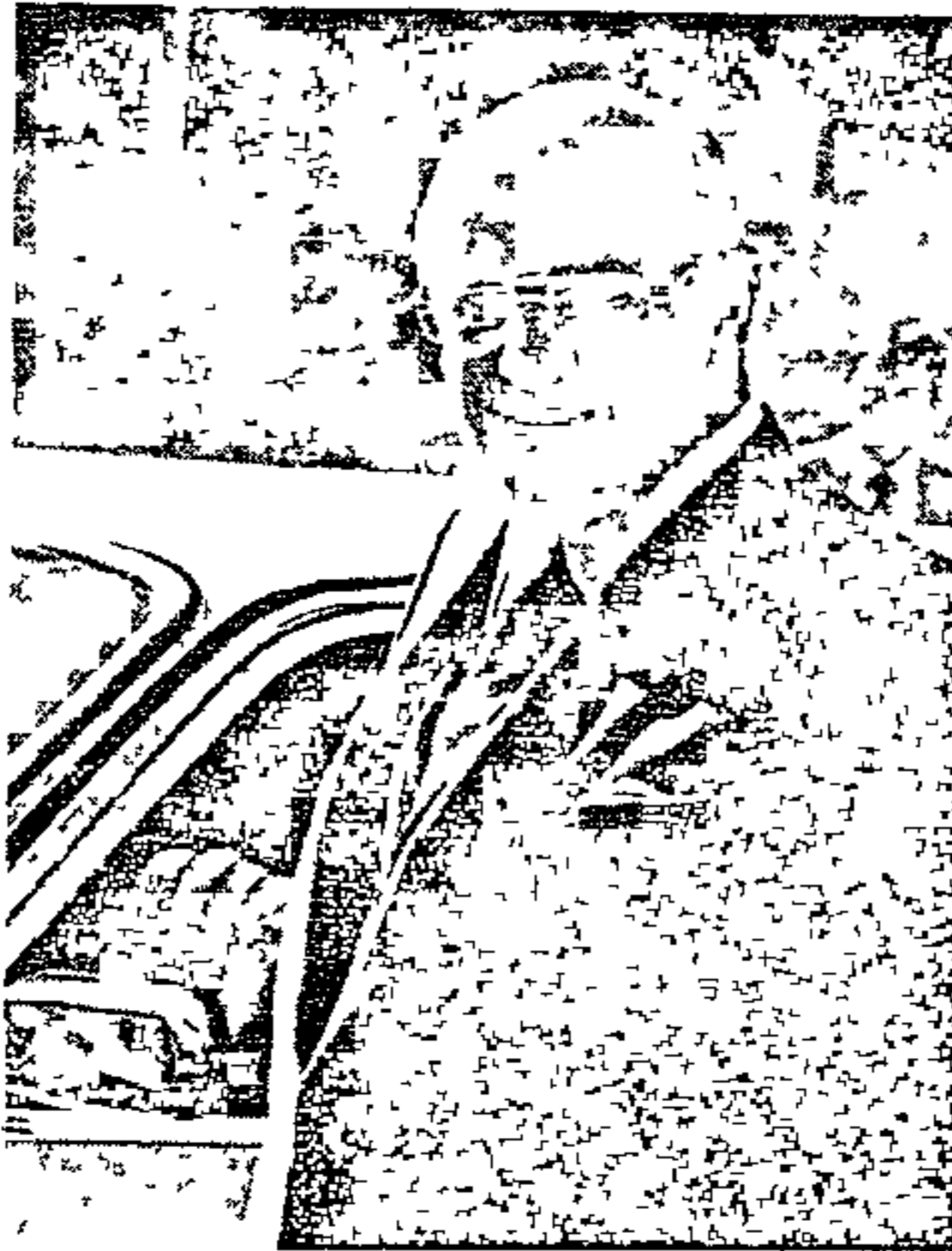
In April, SA and Swaziland announced that they had earlier signed a pact similar to Nkomati. In May, the Administrator General of Namibia, the Multi-Party Conference of internal parties, and Swapo met in Lusaka. Peace was breaking out all over the region; P W Botha the Hawk became P W the Dove.

In June, the Dove further added to his achievements with a highly successful seven-nation tour of Europe. "Botha leads SA out of isolation," screamed the headlines.

July saw more progress on the Namibian/Angolan front with a Lusaka meeting between Foreign Minister P W Botha and Angolan Interior Minister Kito Rodrigues; and Cape Verde talks between Namibian AG Willie van Niekerk and Swapo leader Sam Nujoma.

That was the end of the good news. For seven months, Law and Order Minister Louis le Grange stayed in the background. But, in the last five months of the year, he came to the fore with detentions, bannings and bans on meetings. In August, scores of activists campaigning against the new constitution elections, mostly from the United Democratic Front (UDF), were detained.

The coloured and Indian elections for the new tricameral Parliament were disasters, with a percentage poll of around 20%. The elections themselves were marred by violence and tough police action at the polls. September was the most traumatic



P W Botha ... a year that turned sour

month of all. Violence erupted in Sharpeville and other townships in the Vaal Triangle and soon spread to the East Rand, Soweto and other areas. The unrest lasted well into November, with scores of black schools closed and many people shot dead by police.

P W Botha's inauguration as first Executive State President, and the opening of the first tricameral Parliament, was therefore overshadowed by the township unrest and countrywide detentions.

September was also the month of the worst government bungling. It started with the six UDF leaders who sought refuge in the British Consulate in Durban to escape detention orders. Foreign Minister Botha reacted with near hysteria — on TV almost every night — and ended up by abrogating an undertaking to a British court to send back four South Africans to stand trial on arms smuggling charges.

Botha further stunned SA with his daily media encounters with publicity-seeking British MP Donald Anderson. His and President Botha's total silence when Bishop Desmond Tutu was awarded the Nobel Peace Prize was also not regarded as the height of diplomacy.

Much more seriously, September and October were the months in which government sent thousands of soldiers into the townships to help police quell the unrest. This was one of the factors in the Progressive Federal Party's controversial decision to call for an end to military conscription.

SA saw the potential power of its black labour force in a successful two-day stayaway in November. It was accompanied by more township violence and, predictably, a wave of new detentions. Organised business and industry strongly criticised the detention of trade union leaders, but Le Grange's only reaction was one of indignation.

The ailing economic climate was one of the factors that nearly lost the government the important parliamentary by-election in Primrose. Political analysts believe the Conservative Party's near miss in an urban constituency shows that up to 50 other National Party seats could be in danger.

On the regional front, the Mozambique National Resistance (MNR) movement stepped up its guerrilla war, and the Nkomati Accord came under severe strain. The MNR walked out of peace talks with SA and Mozambique early in November, and the talks have not been resumed. Angolan President Dos Santos's proposals for a Cuban withdrawal coupled with Namibian independence were made public, and P W Botha made it clear the proposals could be devil future negotiations.

Nothing came of the proposed ministerial meetings with Angola or of the final withdrawal of SA troops from Angola predicted by Botha.

Then, in December, there was sudden US public interest in SA, with Bishop Tutu meeting President Ronald Reagan. Scores of public figures were arrested while picketing SA diplomatic missions, the pressure for disinvestment increased and Reagan "turned up the volume" of his criticism of SA's apartheid policies. Next year could see more stick in the carrot-and-stick approach to "constructive engagement."

## CONSUMER BOYCOTTS 165 Union faces action 152

The Industrial Court may soon be asked to determine whether a consumer boycott constitutes an unfair labour practice. The Dairymaid Ice-cream Corporation is considering taking legal action against the Council of Unions of SA (Cusa), and possibly the Food and Beverage Workers' Union (FBWU), as a result of a call to boycott the



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company's products

André van Rhyn, group personnel manager of the parent company, Imperial Cold Storage, says that apart from considering approaching the Industrial Court, other legal steps may also be taken. He declines to elaborate.

The boycott call was made about two weeks ago after the dismissal of 283 em-

ployees in February who struck in support of a demand for the dismissal of a supervisor who was accused of assaulting a worker in Pretoria. According to Van Rhyn, the strikers were invited to reapply for employment soon after the strike. All except 106 did and were rehired.

Van Rhyn says that the company investigated the allegation of assault and the su-

ervisor concerned was given a final written warning. He says the supervisor was later charged with assault and was acquitted.

However, in a press statement issued this week, the union has made further allegations against the company. It says

□ It allowed workers to be assaulted on 13 occasions by managerial employees.

face to face

BILLY NAIR

# Committed to freedom



Billy Nair is a veteran trade unionist who was released from Robben Island in February after serving a 20-year sentence under the security laws. He was one

of the six, later three, dissidents who spent 90 days in the British consulate.

FM: What did the sit-in achieve?

Nair: It focused attention, both here and internationally, on detention without trial in SA. Even the most conservative news media supported our stand. In Britain, for example, newspapers on the Right came out in sympathy with us and castigated their government for wanting to eject us. By the authorities' own admission, never before was such publicity given to the iniquity of these detentions. What also accrued to us are the sit-in demonstrations at SA missions around America. Other governments condemned the detentions but took no action.

What about Britain's role in the affair?

Our intention was to get the UK government to translate into action an EEC resolution (on human rights) taken two days before our sit-in began. We decided to call their bluff. However, far from taking a stand against the SA government, Great Britain actually insisted on our immediate departure from its consulate. This was of course mitigated by saying we would not be forced out, but tolerated on humanitarian grounds. But the British also refused to act as intermediaries on our behalf. Later, they took high-handed action in depriving us of little "privileges" like sending out letters. All this proved that the British government really only pays lip-service to the idea of human rights.

Some quarters have tried to create the impression that we were trying to solicit the help of imperialists to come and rescue us. This smacks of amateurism and political naivety, not appreciating the whole saga as an attempt by us to use one of the few avenues of protest

at our disposal. The sit-in was something new. The important thing is that we achieved our primary intention to focus attention on detention without trial. We did not for a moment think that Britain would come and rescue us. That can only come through our own efforts.

You have said the charges now facing your colleagues in the sit-in and others who were detained amount to "political kite-flying?"

I am convinced that the State has no case to prove against them — especially in relation to treason. No doubt the Internal Security Act is so wide that they could fall foul of its provisions. The State is trying to get its own back for the sit-in, the rejection of the tricameral constitution at the August elections, and the Vaal Triangle upheavals. They're out to prove that something sinister is afoot in SA, when nothing of the sort is true.

Why were you, unlike your sit-in colleagues, not charged when it ended?

From the State's indictments it would appear that the charges against them go back over a period of four years. I was on the Island until February 27.

You spent 20 years there, but you were back in the thick of things soon afterwards. What drives you?

As long as there is oppression and exploitation of man by man there can be no peace for anyone. So I had to play my part. I regard myself as only a cog in a big wheel — the national liberation movement. Those 20 years were not going to deter me. The State should not get the idea that imprisonment and torture would deter me. The new constitution, for example, is entrenching apartheid and increasing polarisation between black and white.

If there was peace I would be making a contribution to a better society for all, but the destruction of apartheid and its iniquities is a primary motivation, even if it means death.

Do you welcome the recent release of certain detainees?

The release of some of the detainees is purely tentative, they have been re-

leased only to be tried for subversion and other allegations. It therefore means release into a mighty big prison. In a way, there's no difference between being inside prison or outside as long as detention without trial obtains.

The fact is that over 100 people are still in detention in terms of Section 29 of the Internal Security Act. The few releases are only token gestures. All should not only be released but the Act should be scrapped, and the principle of *habeus corpus* and the rule of law re-introduced. As long as this is not so, the releases are nothing to shout about.

How do you see conflict being resolved in SA?

I am convinced more than ever that it is not institutionalised violence — as demonstrated by the elaborate defence machinery, billions being spent militarily in Namibia, on bantustans, on policing apartheid — that is the answer. Nor is it through dismemberment of SA into bantustans and tricameral divisions. The solution lies in a unified body politic — because we're one economic entity.

The Nationalist government must no longer prescribe solutions because theirs have always been to perpetuate separation along racial and ethnic lines. The need, therefore, is for black and white to come together to resolve SA's problems. To begin with, there has to be a *rapprochement* between the State and the liberation forces — even Afrikaans media have started calling for dialogue between Pretoria and the ANC. Those in prison and in exile should be brought into the consultations. Treason trials and so on must be immediately halted and dialogue entered into with the very people so charged.

In this context, there is always the fear that one-man-one-vote will submerge the whites. But I envisage a SA where a Beyers Naudé would stand for election in, say, Soweto, or Archie Gumede in Hillbrow, Mandela in Chatsworth, Goldberg in Kwamashu, and so forth. That is, there should be leaders elected on merit alone and not representing any particular groups.



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28/12/84

- It permitted managerial employees to refer to black workers as "kaffirs" and "bobbejane", and
- It refuses to confirm that it will negotiate in good faith with the union

Van Rhyn says the company was surprised to hear the first two additional allegations as they were made in October and November, several months after incidents were alleged to have occurred. In addition, the union failed to supply full details. Nevertheless, he says, "the allegations were investigated by the company and found to be groundless."

He adds that the company has obviously negotiated in good faith. It has been present at several meetings of the Industrial Council for the dairy industry where the dispute has been discussed.

In response to the company's threat of legal action, the union says the boycott was not called by Cusa but by the Dairymaid Workers' Committee. The committee will continue with its efforts to promote the boycott, it says.

The union's statement claims that legal proceedings against the boycott will help to diminish "one of the few human rights left in SA."

Following the effective boycott of Simba earlier this year it appears that consumer boycotts are again finding favour among unions as a strategy for winning disputes. The Dairymaid dispute may help whether companies will be able to look to the courts for protection against boycotts.

## COLOURED HOUSING Cape sales flop

The planned sale of 10 500 houses to tenants in coloured communities around Cape Town has flopped. Only a handful have been sold and interest is flagging in the face of the economic crunch, a weak sales drive and opposition from civic organisations.

Figures from the Divisional Council of the Cape (Divco), which is handling the project in terms of the Department of Community Development's housing sales campaign, show that only 55 houses were sold in June this year, 20 in August and 25 in September — despite a fairly high level of initial interest. The inability of many tenants to raise the required R300 deposit is regarded as the major factor, and Divco is now seeking permission from the National Housing Fund to allow prospective buyers to spread deposit payments over two years.

The campaign was announced at the beginning of the year when some 10 500 of the 24 500 houses built by Divco were identified as suitable for sale, and tenants were invited to buy them. Plans for a public relations campaign never came about (although tenders were called), apparently because of political differences between councillors. An advertising campaign was run on the



did you hear

down on their electricity bills could take a leaf out of novelist Aldous Huxley's book? Although he was not blind Huxley had failing sight so he learnt Braille to rest his eyes. One of the compensations, Huxley said, was the pleasure of reading in bed in the dark with book and hands snugly under the bedclothes

?

That at least one Ford Motor Company director believes his company should leave SA? Clifton R Wharton, black chancellor of New York State University, told the *Japan Times* recently that all US corporations should quit SA as fast as possible

?

That accuracy might be desirable in the business world but in literature it can be taken too far? After reading Lord Tennyson's famous line "Every moment dies a man, every moment one is born" accuracy-obsessed Charles Babbage wrote to the poet saying "It must be manifest that if this were true, the population of the world would be at a standstill" Babbage's version was "Every moment dies a man, every moment 1<sup>1</sup>/<sub>16</sub> is born"

That anyone looking for a way to cut

That newspaper editors are fallible after all? Before firing one of his reporters the editor of the *San Francisco Examiner* told the man. "I'm sorry, but you just don't know how to use the English language. This isn't a kindergarten for amateur writers" The reporter was Rudyard Kipling

?

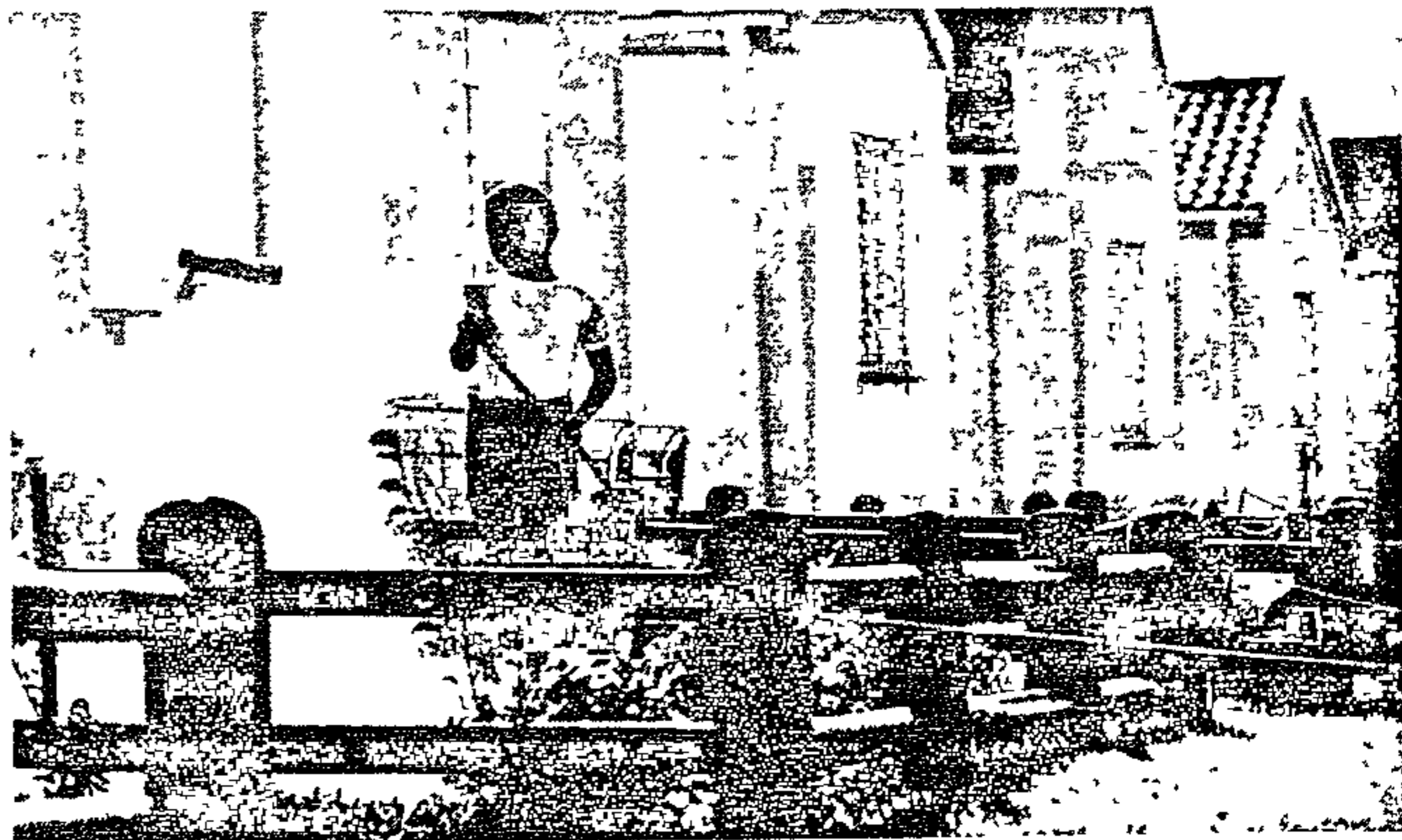
That lower taxes do not always bring joy? An accounting firm tax partner was faced by a belligerent black staff member after the unitary tax system was launched earlier this year. The staffer said his tax payment on the new system was lower than before. Puzzled, the partner remarked that this should bring a smile, not a frown. This earned the retort. "But this means I have been paying too much tax for ten years! I want the government to give it all back!"

local radio station.

Prospective buyers earning more than R450/month are told to seek private finance through banks and building societies, while Community Development loans are available to buyers earning less. Interest rates are subsidised by the National Housing Fund — 11.25% for buyers earning more than R650/month and 9% for those

earning R450-R650/month. Areas in which houses are available include Atlantis, Elsies River, Grassy Park and Ocean View.

The campaign is opposed by community organisations who say that while they do not object to the principle of home ownership, they regard the plan as a ploy by the authorities to shirk their responsibility to provide housing.



Coloured housing ... too few buyers

LABOUR DEPT.

1985

Footnotes Tobacco Industry Oudtshoorn

1. Separate wages for Callitzdorp and all areas outside the municipal area of Oudtshoorn were gazetted in the agreement of 1/76. These fell away with the agreement of 11/78.

2. Qualifying periods:

- Clerical Employee: 4 years
- Examiner: 6 months
- Hand twister: 6 months
- Tobacco packer: 1 year
- Cigar maker: 2 years
- Cigar bunch maker: 1 year
- Cigar packer: 1 year
- Cigar box maker, Class A: 6 months
- Cigar box maker, Class B: 6 months
- Grade I employee: 2 years
- Grade II employee: 1 year
- Grade IV employee: 6 months

3. Prior to the agreement of 1/85, there were separate wages for female clerical employee and hand twisters. The wages listed here are for male clerical employees & hand twisters.

**TOBACCO MANUFACTURING INDUSTRY, OUDTSHOORN. Conciliation Board.**

**Parties:** Employer Organisations: Barron's Tobacco Co. (pty). Ltd. and H.S. Spies Broers (Edms.) Bpk.  
Trade Unions: National Union of Cigarette and Tobacco Workers, Oudtshoorn Branch.

Area: Magisterial district of Oudtshoorn.



DAAN EHLERS

# 165 Reviewing the Industrial Court



Daan Ehlers recently succeeded Benjamin Parsons as president of the Industrial Court. A former general secretary of the Industrial Council for the Building Industry (Transvaal), Ehlers has a doctorate in labour law from Unisa.

**FM:** The workload of the Industrial Court (IC) has increased dramatically in the past few years, and especially since the court received the right to order temporary interdicts to maintain the status quo in labour conflicts. Please comment.

**Ehlers:** The court is being used to a much larger extent than ever before. I don't have exact figures, but last year over 400 matters were referred to us. This was more than double the number of matters referred in 1983 which in turn was a fourfold increase on the caseload for 1982. The vast majority of cases are applications for status quo orders in terms of Section 43 of the Labour Relations Act. During 1984 the court also handled a number of cases in which it had to make unfair labour practice determinations. It also conducted some arbitrations and demarcations.

**What is the court's staffing position?** The **FM** understands that there are only two full-time IC members now that Parsons has resigned. We also understand that there are massive delays because of a shortage of administrative staff and that there is only one court registrar to serve the whole country.

We should have the results of an investigation the Commission for Administration has been conducting into the conditions of employment of all employees of statutory bodies in the very near future. Thereafter, it is hoped the court will be able to attract more full-time members. Indeed, the Minister of Manpower has already agreed in principle that the court should employ five full-time members. However, because of uncertainty regarding the conditions of employment we have not been in a position to make appointments. We hope the extra people will be appointed this year.

The court is completely dependent on the Department of Manpower to supply administrative staff. There have been improvements in this area. Our assistant registrar was off for most of last year due to illness. He is back now and

other extra staff have been appointed. The IC makes considerable use of *ad hoc* members to preside over cases. Labour lawyers complain that there are inconsistencies in the judgements which have been delivered by the IC's permanent members and those by *ad hoc* members. Is there sufficient consultation?

The IC has five *ad hoc* members, most of whom have some experience of labour matters. They carry most of the workload at present. We do normally try to consult with each other on judgements, although this is not always possible. The IC sits in different places and sometimes instantaneous decisions have to be made. It is possible that there may be inconsistencies between the judgements of all our members — whether or not they are permanent or *ad hoc*. However, it is difficult to say whether these will be ironed out. It is impossible to decide whether a particular decision is justified unless one has full particulars and was present at the hearing.

*Ad hoc* members of the IC have primarily been Pretoria-based Afrikaans speakers. SA has a fair sprinkling of black and English-speaking lawyers who have excellent groundings in labour law, yet they have not been used by the court. Why?

The fact is that the Pretoria people indicated they were interested in assisting with IC work. We have approached blacks and English-speakers at times but, due to a variety of circumstances, they have been unable to accept. However, if they indicate that they are prepared to accept appointments as *ad hoc* members of the court, we would be very happy to avail ourselves of their services.

The definition of an unfair labour practice (ULP) in the Labour Relations Act continues to create controversy. Although unions want to retain the present very wide definition, there is a strong lobby which wants it to be more proscribed. Do you think it is the task of the IC to establish what is fair in the relationship between employers and employees or should it be left to the legislature?

It is virtually impossible to say in advance exactly what will constitute an ULP. Each case has to be judged in the light of its unique circumstances. The idea of the Wiehahn Commission was that by making ULP determinations the court would build up a body of case law from which all parties would be able to

draw conclusions. Unfortunately, the IC has not really made very many ULP determinations to establish guidelines, mainly because many cases do not get that far.

But certainly it is not the court's role to say whether the definition should be amended.

To what extent do you think the IC should apply International Labour Organisation conventions and international labour law to its work?

It seems to me that we have so little local material to go by that we should take cognisance of international labour law and the laws of other countries as a guide. Of course we cannot copy others but I don't think one should close one's eyes to what happens elsewhere. That at least enables one to obtain some authority.

I think one would be very bold to take a decision without any authority. The Minister of Manpower has the right to prescribe the terms of reference of conciliation boards. In some situations in which the IC has granted a status quo order this has meant that parties cannot come back to the IC for a final determination. Doesn't this undermine the IC's power?

Normally a Section 43 status quo application will be decided by the IC before the Minister makes a decision about the terms of reference of the conciliation board which will consider the dispute.

So one cannot really say the IC is really handicapped by the Minister.

On the other hand, a status quo order is only granted on the *prima facie* evidence so it is not possible to say whether the IC will definitely rule that an ULP has been committed in all cases in which status quo orders are granted. It seems to me that most parties accept the Section 43 finding and settle. They don't take the matter further unless there are exceptional circumstances.

I don't see anything wrong with that as the purpose of the legislation is to try to get people to settle their differences. It has been said that Section 43 hearings tend to favour workers. Do you think this is valid criticism?

Perhaps. We have to a very large extent accepted the UK's approach in which it is statutorily provided that the onus of proof is on the employer. Even in some Supreme Court judgements the onus has been placed on the employer to prove that he has been reasonable and fair.

## INDUSTRIAL COURT

### Vetsak revisited

The effects of a large strike at Vetsak, the agricultural implements manufacturer, at the beginning of last year are still being felt

Last week the Industrial Court ordered Vetsak to reinstate eight workers it dismissed last August. Six were dismissed for allegedly intimidating employees who had refused to contribute to a fund for 61 strikers who were not re-employed after the strike. The other two were dismissed for "poor work performance." The court's finding is a new development in the battle between the Metal and Allied Workers' Union (Mawu) and Vetsak.

Financial Mail January 18 1985



(165) (b) (b)

## INDUSTRIAL COURT Fair retrenchment

Employers contemplating retrenchment would be well advised to consult workers and trade unions before doing so. That is the message of a recent Industrial Court judgment.

In the case of the *General Workers' Union (GWU) and Cedric Petersen v Dorbyl Marine* in Cape Town, the court ordered the temporary reinstatement of Petersen pending a final hearing.

Petersen had been employed by Dorbyl Marine since February 1978 and, on August 2 last year, he and four other welders were told they were being retrenched the next day.

GWU did not challenge Dorbyl Marine's selection criteria or the company's right to use skill as a criterion for retrenchment, but argued that

- The workers had only received one day's notice that they would be retrenched,
- The information was conveyed as a *fait accompli*, and neither the union nor the workers were invited to discuss or make representations on the matter;
- Dorbyl had not consulted the unions prior to the retrenchments,
- Fair retrenchment can only be achieved if there is meaningful consultation between the company and the worker and the company and the union, and
- Petersen had been denied the opportunity to show why he should not be retrenched or that an alternative method of retrenchment should have been explored.

In response, Dorbyl Marine argued that

- Management considered that the various agreements it had concluded with GWU referred only to labourers, not artisans or artisan apprentices, and therefore they did not apply to Petersen,
- On August 2, Dorbyl Marine had informed the industry's industrial council that the retrenchments would take place the next day;
- The workers were also told on August 2 that they would be retrenched. None had asked to be represented by the union,
- Morning shift workers had staged a work stoppage on August 8 demanding that management discuss two of the retrenchments with the shop stewards committee,
- After four meetings, the parties could not reach agreement or compromise, and
- Economic conditions made it essential for retrenchment to be conducted on a skills basis and not on the last-in-first-out principle.

The court found that management's claim that GWU had the right to represent labourers only was not valid. The company had negotiated on retrenchments with GWU before and had been prepared to discuss the cases of Petersen and others once they had been carried out. Notice to the industrial council did not constitute notice to the unions operating in the plant.



Black schoolchildren ... millions more this century

It added that even if Dorbyl had applied the correct criteria when Petersen had been chosen for retrenchment, it had not been established that the selections were made objectively, because there had not been sufficient prior warning and consultation. "Failure to allow due prior representation is that equity and fairness in making the selection should not only be applied but also manifestly appear to have been applied," it said.



1735 FM 15/2/85

Between 1980 and 1983 the total population of SA and the TBVC states rose by 2,5% a year, the bureau found. Relocations and boundary changes were primarily responsible for QwaQwa and KwaNdebele experiencing the highest growth rates of that time — 24,6% and 12,9% respectively

The black population of the Bloemfontein region also rose dramatically — by 14,4% a year in the period — mainly as a result of the concentration of blacks at Botshabelo. The Cape Peninsula's black population rose at a rate of 7,1% a year

White population growth continued at a slow pace. There were 4,6m whites in 1980 and 4,8m in 1983 — an increase of 1,5% a year. Immigrants accounted for 45,8% of the increase. Coloured and Asian population growth occurred at a rate of 1,9% a year while for blacks it was 2,8% a year

The bureau found that the majority of whites lived in the Transvaal — 53,6% of the total. Coloureds dominated in the Cape (84,1% of all people in the province) and Asians in Natal (80,7%). The biggest percentage increase in the white population (4,5% a year) occurred in the south-eastern Transvaal, while the Pretoria-Wonderboom region experienced annual increases of 8,9% and 7,1% in its coloured and Asian populations respectively between 1980 and 1983.

KwaZulu, with a population of 3,8m, was the most populated homeland

### INDUSTRIAL COURT <sup>165</sup> Making doubly sure

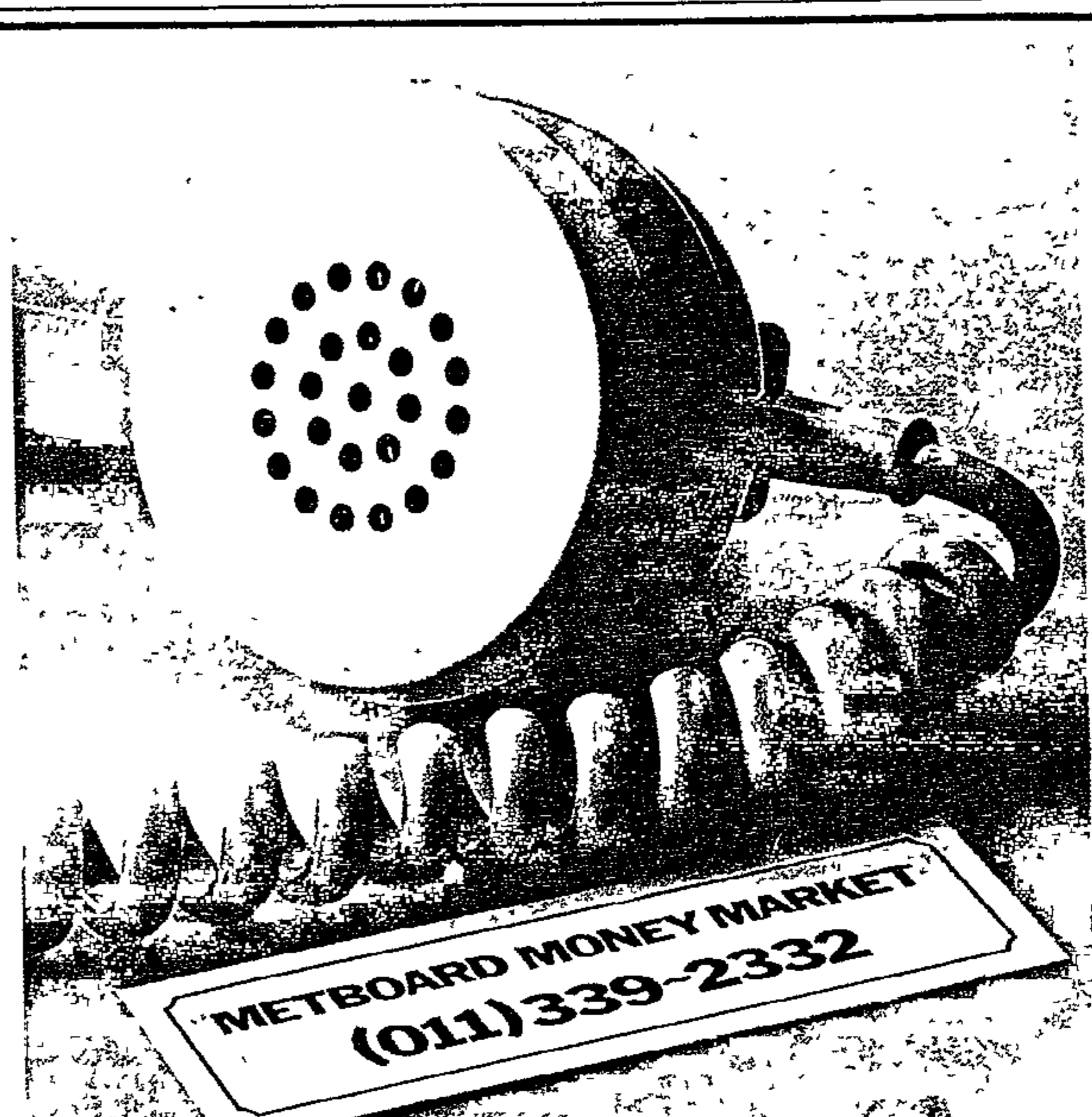
A recent Industrial Court ruling is likely to result in significant changes in the way labour lawyers make applications to the court.

In a departure from normal practice, the court has turned down an application for the temporary reinstatement of workers who had allegedly been unfairly retrenched because, it said, too much time had elapsed between the event and the court hearing. The court stated it would have preferred to have made a final judgment but could not because the appropriate application had not been made.

The case, which was heard in Durban, involves the Metal and Allied Workers' Union (Mawu) and Pineware, the kitchen utensil manufacturers. It went to court when the metal industry industrial council failed to settle the matter.

The implications are profound. In future, labour lawyers would be wise to ensure that in contesting cases which are preceded by (usually drawn-out) industrial council hearings, applications for both temporary and final determinations — in terms of Sections 43 and 46(9) of the Labour Relations Act, respectively — should be made simultaneously. This does not apply when the route to the court is through a conciliation board.

Financial Mail February 15 1985



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~~145~~ (145) ~~145~~ FM 15/2/85

Until now it has been common practice for parties to approach the court for temporary relief before they make application for the final determination of a matter. Many labour cases do not get past the Section 43 stage, as these judgments normally give the litigants a good idea of which way the final decision will go and they often settle on that basis. The Section 43 hearing takes up less time and is, therefore, cheaper for the parties.

The court also appears to have adopted the view that it will not grant temporary reinstatement if the final order is unlikely to go in favour of reinstatement. This could occur if the court, for example, believes that a financial settlement would be more appropriate in situations in which mass reinstatement threatens a company's financial survival.

The issues in the Pineware case are also of interest. The company did retrench workers in terms of the generally accepted system of last-in first-out (lifo). However, the factory is divided into a large number of small departments and the system was applied departmentally rather than in the factory as a whole. This resulted in a number of long-serving employees — who had previously been transferred from one department to another — being retrenched.

Mawu, which has pledged to take the case back to the Industrial Court, argues that because Pineware was able to effec-

tively bypass the lifo principle, the company's action constitutes an unfair labour practice. The union also argues that when retrenchments occur companies should be obliged, where possible, to retrain and re-deploy workers in order to protect long-serving and senior employees.

The matter will be heard in the next few months after the union's legal team has submitted papers for a final hearing.

## LOCAL GOVERNMENT ~~145~~ Tricameral hiccups

The Durban Corporation is getting a taste of tricameral-style consensus government.

Last week, two council decisions which affect the Indian community were held in abeyance because the Minister of Local Government and Housing in the House of Delegates, Baldeo Dookie, wanted first to consult with council representatives.

The resolutions concerned the granting of a tender to Checkers for the establishment of a supermarket in the Indian area of Phoenix, and the resuscitation of a long-dormant plan for an Oriental plaza.

Both issues are controversial. Indian business interests charge that they — and not Checkers — should be allowed to build the Phoenix supermarket. On the Oriental plaza issue, private entrepreneurs are in

conflict with the State over who should provide the amenity.

City officials admit they were a little taken aback when Dookie suddenly sent a telegram forbidding the council from taking a decision until he had held discussions on the issues. The council is apprehensive about the extent to which its powers may be inhibited by the authority of an "own affairs" Minister.

However, by last weekend a clearer picture was beginning to emerge. Town clerk Gordon Haygarth admits that Dookie and his department are probably the ultimate "approving authority." But he notes that the new tricameral Parliament is a "new ball game." There are, he says, "bound to be a few hiccups" until the ground rules are established. Previously, Haygarth says, Durban would have consulted only with the Department of Community Development which has a "co-ordinating role."

Durban has, however, dutifully played it down the middle. Haygarth, councillor Sybil Hotz and mayor Niel MacLennan flew to Cape Town on Monday, at the Indian ministry's expense, to place the decision in Dookie's hands.

Later, in a manner which indicated a new understanding, Haygarth said "We recognise that 'own affairs' involves talking with people and not making decisions for them as in the past. That's what true consensus government is all about."

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THE industrial court has found that the British-owned company Johnson Tiles acted in breach of an agreement with the Building Construction and Allied Workers' Union in unfairly retrenching a number of workers. It ordered their reinstatement.

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TIM TROLLIP

# Without teeth or status

165

Tim Trollip, an authority on labour law, argues that the Industrial Court is basically a toothless government agency whose status must be upgraded.

In Hans Anderson's fairy-tale, it took a naive little child to notice that the emperor was naked. The Appellate Division of the Supreme Court, with equal honesty, has now pointed out that the Industrial Court (IC) is not robed with the authority of a court.

In the recent decision of the *The South African Technical Officials' Association v The President of the Industrial Court and others*, the Appellate Division held that the IC is not a court but merely a government agency. This has major implications for the debate about the status of the IC and for labour relations.

Judge S Miller of the Appellate Division noted that

- The IC is not required to keep a record of its proceedings,
- Unlike other courts, the IC can be required to perform an investigatory administrative role,
- The IC may consult, and take into consideration, any relevant information furnished by specified boards "or any department of state or similar authority." This, Judge Miller held, is irreconcilable with the principles which govern the Supreme Court in the performance of its judicial functions,
- The Minister of Manpower has the power to change the findings of the IC. This was held by Judge Miller to be "stridently incompatible with the protected authority of decisions reached and orders made by the Supreme Court",
- The uncertain tenure of the people appointed as officers of the court is incompatible with the judicial independence derived from the conditions of

appointment of judges to the Supreme Court, and

In contrast to past laws governing the old Industrial Tribunal, existing legislation does not require the court's officials to have an understanding of labour relations or of labour law.

These facts must be weighed against the Wiehahn Commission's reports which led to the creation of the IC. The commission's first report, released in 1979, stated that the need for labour law specialists had grown tremendously since 1954 when the Botha Commission of Inquiry into Industrial Legislation had recommended that a special labour court should be established as a *division of the Supreme Court* (my italics).

Furthermore, the Wiehahn Commission recommended that "the right of appeal against a decision of the IC shall lie to the Supreme Court of South Africa" and that "access to the IC be open to all persons, groups and organisations."

Government's White Paper on Wiehahn implicitly approved the commission's recommendations. But it ominously recorded "the government's decision that the IC shall fall under the Department of Labour" and not the Department of Justice.

The result is that IC is not a division of the Supreme Court or even a court. It is merely a government agency from which there is no meaningful right of appeal.

There is furthermore no adequate way of enforcing IC judgments. One can act in contempt of a "court" but not in contempt of an agency.

Several points need to be made

- The IC is merely a statutory creation with powers scantily and inadequately provided for in the Labour Relations Act. In its present form it does not have

the power and authority which the Supreme Court automatically enjoys,

Access to the IC is severely and artificially restricted (see Charles Nupen *Labour Power and Procedure*, FM November 30), and

It is no secret that in addition to the above problems, IC officials operate under impoverished circumstances without adequate facilities or suitable premises and are not paid enough for the responsibilities they bear.

Those who presently advocate that the definition of an unfair labour practice should be given greater clarity might better advance the cause of sound industrial relations in SA if they confronted the issue of the IC's status. That would facilitate an organic evolution of industrial relations and labour law by means of appropriate judicial precedents. It would be far better than resorting to an institution whose authority is in question.

The point must also be made that handling labour relations legislatively in SA is seriously complicated by the fact that the majority of this country's workforce has almost no say or part to play in the legislative process.

A considerable body of reputable international research suggests that control of labour relations through either direct legislation or codes of employment only succeeds in those circumstances where the legislation evolves from consensus between labour and management. One cannot realistically expect either side to place their faith in a toothless agency (which is not seen to have the independence of a court) to institutionalise the conflict inherent in the relationship between labour and management.

A society which fails to recognise this is as misguided and dishonest as the people in Hans Anderson's tale.

Industrial <sup>165</sup>  
~~Star~~ court backlog  
<sup>Star</sup> blamed on ~~Star~~  
<sup>6/3/85</sup> black unions

Black mining trade unions were to blame for the backlog of cases before the Industrial Court, the secretary-general of the white Mineworker's Union (MWU), Mr Arrie Paulus, told the union's annual congress in Johannesburg recently.

Mr Paulus' report was reproduced in the February issue of the MWU's official organ, *The Mineworker The Star*, which was unable to cover the congress because its labour reporter was barred from the meeting.

"Most cases deal with problems caused by black unions striking illegally. The moment the employers sack them, they run to the industrial court," said Mr Paulus.

The court was so loaded with work it took six months to get a case on the roll, he said.

Mr Paulus criticised the use of temporary staff at the court, saying this was wrong "because it may happen that a legal man today acts as chairman, and the next day is representing a client in the court".

The MWU rejected a proposal from the Government Mining Engineer that certain mines in self-governing Lebowa and Gazankulu be granted exemptions enabling black workers to do the jobs of scheduled workers.

The matter was referred back to the union after talks with the Minister of Energy and Mineral Affairs.



with any future problems

For employers a resolution of the dispute cannot come too soon. The temporary transport service they are providing is costly and they have appealed to commuters to resume using the buses pending the resolution of the dispute. A spokesman for the local branch of the Natal Chamber of Industries says companies made individual recommendations to Nisch but he declined to elaborate on their contents.

Some employers remain sympathetic to the boycotters. A spokesman for Mondi, which employs 450 workers at Richards Bay, says "We are not in favour of the monopolistic transport situation and for the time being will continue to transport our employees at any cost, until the matter is satisfactorily resolved." He adds that Mondi is against the setting of a deadline for a return to the buses, as proposed by some employers, as this would heighten tension.

**LABOUR LAW**

**Court's about face**

There is consternation among labour lawyers over a recent Industrial Court judgment which appears to overturn a key principle established in some of the court's earlier judgments. The case, involving the Building, Construction and Allied Workers' Union (BCAWU) and Johnson Tiles, involves the question whether the court can order employers and trade unions to negotiate in good faith. Johnson is a subsidiary of Norcross International in the UK.

The union approached the court on behalf of two shop stewards who were dismissed early last year and five others who were retrenched on February 24 1984. All alleged they were unfairly dealt with and, among other requests, asked the court for orders to

- Reinstate them on terms no less favourable than those applying before they were dismissed or retrenched, and
- Compel the company to negotiate in good faith with the union

Two previous Industrial Court judgments have been widely interpreted as imposing an obligation on parties to negotiate in good faith.

In weighing up the union's request in this case, J A Erasmus, an *ad hoc* member of the court, said "It is difficult to see where the duty to negotiate in good faith is derived from." He held that the Industrial Court cannot be expected to make an order that parties must negotiate in good faith.

The court did order Johnson to reinstate the five workers who had been retrenched. The union alleged that Johnson had not abided by the retrenchment agreement it had concluded with the company. Johnson claimed that it had in fact followed its provisions as far as it was able.

The court found that the union had been

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informed beforehand that Johnson intended to retrench but had not taken any steps about the proposed retrenchments until the company informed the workers that they would be retrenched four days later. "It seems, *prima facie*, that (the union) shirked its duty towards its members in not taking up the matter timeously by never responding to (Johnson's) letter," the court stated. However, in terms of the retrenchment agreement, Johnson had undertaken to give a minimum of two weeks' notice that it intended to retrench. "In this sense it breached its agreement with (the union)."

The full implications of the court's finding with regard to negotiating in good faith will only become apparent in future Industrial Court cases. For the present, however, confusion reigns in both union and employer sectors about their obligations to each other.

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## LITIGATION IC overturned

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The Cape Town Supreme Court has overturned an Industrial Court (IC) ruling. The IC had upheld an industrial council ruling which refused to allow the National Union of Textile Workers (NUTW) to deduct union dues by stop order at factory level. The dispute now returns to the IC for fresh consideration.

NUTW, an affiliate of the Federation of SA Trade Unions, is trying to gain a foothold in the Cape textile industry where it has a strong rival — the Trade Union Council of SA-affiliated Textile Workers' Industrial Union (TWIU).

Last year NUTW applied to the Industrial Council for the Cotton Textile Manufacturing Industry (Cape) for an exemption so that union dues could be deducted from its members at Table Bay Spinners.

The council, of which TWIU is a member, refused the application. NUTW then took the matter to the Industrial Court where it lost. The union then appealed to the Supreme Court to review the IC decision.

In the Supreme Court, Mr Justice Wesley Vos considered the provisions in the Labour Relations Act (LRA) for exemptions from industrial council agreements. The Act says exemptions may be granted if the

Financial Mail March 15 1985

terms and conditions of employment of persons affected will not be less favourable than under the agreement. or if special circumstances exist which justify an exemption.

The IC had held that NUTW had "failed to prove that the averred special circumstances do in fact constitute special circumstances." Judge Vos, however, said it appeared from the Industrial Court's files that the proceedings before it had been confined to oral argument. NUTW had in fact also submitted written reasons in which it argued that the terms and conditions of employment at the company would not be substantially less favourable than those prescribed in the industrial council agreement because

The industrial council agreement made provision for the deduction of trade union subscriptions,

NUTW's subscriptions would only be deducted with the written authorisation of the employees concerned, and

NUTW's subscriptions are 30c a week which is less than that prescribed by the TWIU.

The judge said "In my opinion it appears from the proceedings that the written averments in regard to 'not less favourable' were not contested. Therefore the Industrial Court should have considered them as possibly amounting to good grounds. However, I can find no such consideration and (the industrial council's counsel) could refer me to none. Hence the Industrial Court has in my view overlooked facts which could have secured a verdict in favour of (NUTW) before it. Hence, in concluding that it had to find 'special circumstances' the Industrial Court unduly fettered its discretion and therefore failed

to appreciate the nature of the discretion conferred on it by the (Labour Relations) Act, that is also to consider the ground 'not less favourable'."

The industrial council contended that there was no point in sending the matter back to the IC as its decision would be a foregone conclusion.

The judge disagreed, saying "The Industrial Court may decide in (NUTW's) favour — in fact I rather think it will — but it may not. I cannot say that (NUTW) has an answerable case, and therefore I do not propose to give a decision on the merits. Hence the matter must be remitted to the Industrial Court."

The Supreme Court ordered the industrial council to pay NUTW's costs.

NUTW was, however, ordered to pay its own wasted costs from the Industrial Court hearing.



We have no problem with radio competition, in fact, we encourage it as a healthy manifestation of the free market. On popular appeal, Radio 702 continues to make inroads into the audiences of the SABC's Radio 5 and Highveld. And if — in free competition — the SABC can persuade local racing authorities to exclude 702 in favour of Highveld, then good luck to it.

But the key is free competition. If, as is apparent, the

SABC is using the threat that its monopoly — its publicly funded monopoly — of television will be withdrawn from the tracks if they give facilities to 702, then this is an unacceptable abuse of the corporation's powers.

And those racing authorities who bow to the threat are lacking in their obligations to their members and to the racing public. Congratulations to the Turffontein authorities for standing fast.

## ESTATE DUTY

### The second tax death

Estate duty, that curious quasi-wealth tax, should have been buried with the dodo. To cover his estimated estate duty liability, anyone who makes a lot of money has but one choice. He must cover the potential liability by investing in near-liquid, or non-productive, assets — bank deposits and life insurance.

Only this exercise can avert further heartbreak after his death. For the Estate Duty Act freezes a deceased's estate, which then takes an average of 18 months to wind-up — often leading to severe liquidity problems for the heirs. And this after a lifetime of paying punitive personal income tax rates.

Estate duty's cost:yield ratio is probably the poorest of all imposts. It is paid by a smaller percentage of people than any other tax; it collects less money than any other tax; and those deceased estates which do pay it are often mauled by the antiquated principle of taking cash from an asset-bound estate.

Banks and trust companies probably generate annual fees of R20m for estate planning, the professions some

R5m, while Pretoria's receipt is a mere R70m — equal to less than 1% of personal income tax collections. Seen as a social tax, it is effectively paid for by the heirs of an estate — on money which is theirs though it has not been earned by them.

Thanks to the complexities of the Estate Duty Act of 1955, mingled with the application of common law, dodges abound. A vast number of planning vehicles — such as *inter vivo* trusts and usufructs — are commonly employed.

For people who are too busy making money to worry about dying, the penalties for starting an estate plan too late can be horrific. A surviving spouse whose husband was more interested in working hard than in avoiding tax from his grave will often find that family assets have to be summarily liquidated to pay the bill.

Judge Cecil Margo, chairman of the tax commission, recently suggested that estate duty might need to be refined, simplified or simply abolished. We would prefer the latter.

## THE INDUSTRIAL COURT

### A toothless watchdog

What should have been a highly useful legal institution has been so distorted by Pretoria that the Industrial Court's credibility has been completely destroyed.

As things stand, neither business nor trade unions can be sure of the court's powers and status. What they do know is that the Supreme Court says the Industrial Court (IC) is not a court at all, merely a government agency. In addition, the IC itself seems to have developed an unfortunate habit of ignoring its own precedents.

Sometimes it seems that the court's rulings depend upon which *ad hoc* member happens to be presiding. So, in some cases, the IC has held that there is an obligation on management to bargain in good faith with representative trade unions; and in others that there is no such obligation.

Granted, circumstances differ for every case. But now even labour lawyers are being confused by conflicting rulings. Some even hold that as the court is only an agency, its decisions cannot be enforced.

The confusion is entirely government's fault. The original concept of the court was that it should be a division of the Supreme Court. The Wiehahn Commission in 1979, whose recommendations led to the establishment of the IC, did not go that far. But it did recommend that the IC should

fall under the Department of Justice and that appeals from it should be to the Supreme Court.

Government thought otherwise. Although calling the IC a "court," it placed it under the jurisdiction of the Department of Manpower (DoM), gave it a catch-all bag of investigatory and administrative functions and did not even require its officials to have an understanding of labour law.

The result was predictable. Immediately the Appellate Division of the Supreme Court was faced with a decision on the IC's powers (the SA Technical Officials Association vs the President of the IC), it ruled that the IC was no court. It went further, saying that the Minister's power to change IC findings was "stridently incompatible" with the authority of a court.

Government's decision to place the IC under the DoM and to have reserved Ministerial powers was blatantly political.

It is surely time for a rethink. Perhaps ordinary courts should decide disputes over labour law; or the IC could be restructured as a truly independent court administered by the Department of Justice. The current situation is untenable.

(165) Fm

# Demand for living wage

Staff Reporter

CAPE Town City Council's efforts to meet the needs of its workforce, particularly at the lower levels of pay, had fallen short and required revision and up-scaling, the Industrial Court heard today

Mr Denis Kuny SC was presenting union argument in the arbitration of a wage dispute between the Cape Town Municipal Workers' Association and the council

Evidence in the six-month hearing ended yesterday

Mr Kuny said the union had chosen to describe its demand as a demand for a living wage which emphasised that the demand was primarily related to the needs of the workers and their living standards. This was especially for the lowest paid workers who comprised about 5 000 of the union's 11 000 members

## FIXING WAGES

It regarded wages as payment for services rendered, but also as the means to enable employees to survive

The union accepted that need did not constitute the sole criterion in fixing wages and that other criteria such as wage comparisons, the ability to pay, productivity, cost of living and minimum budget had to be taken into account



INDUSTRIAL COURT

# In a judicial limbo

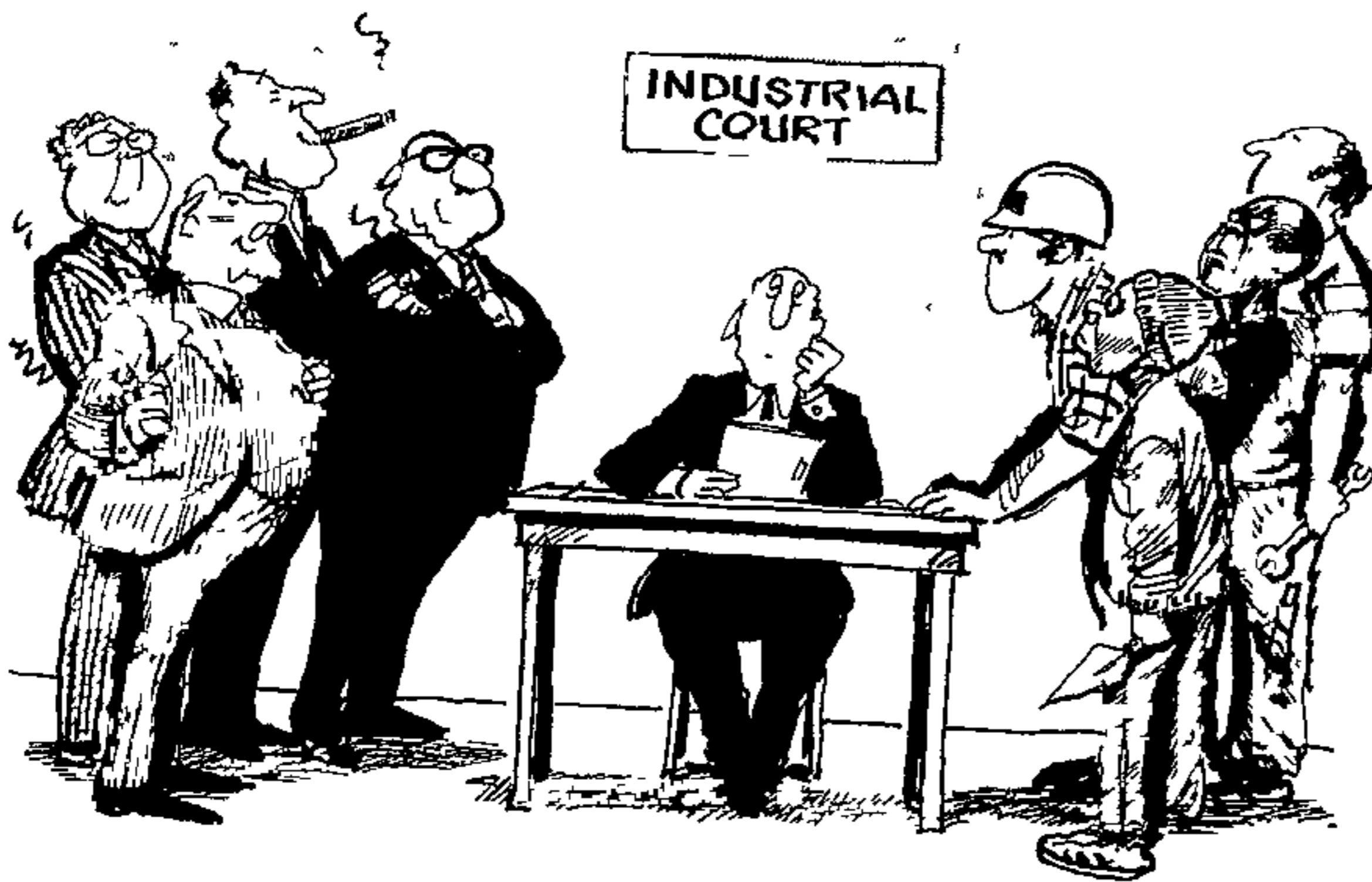
The Wiehahn Commission knew exactly what it was doing, back in '79, when it recommended that black workers should enjoy the same statutory protection as any others. In so doing it initiated a process from which there could be no turning back.

The cutting edge was Wiehahn's recommendation that the definition of "employee" in the Industrial Conciliation Act (now the Labour Relations Act) be extended to cover blacks. This would have the effect not only of giving legitimacy to the black trade unions which existed at the time — but would also boost unionisation. To resolve conflict the old Industrial Tribunal was to be upgraded into a body with sufficient power and authority to adjudicate labour disputes. Therein lay the origins of our current Industrial Court (IC). Wiehahn wanted the right of appeal

**Born out of the Wiehahn reforms, the Industrial Court has reached the stage where its authority and powers need tighter definition. Without this employers and employees will be left to find their way through a maze of often contradictory judgments.**

against any decision of the new IC to be to the Supreme Court. However, in its responding White Paper, government did not give unqualified support to this. The unfortunate upshot is that instead of falling under the Department of Justice, the labour court falls under Manpower.

For a few years after its inauguration in



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October 1979 the court had a quiet time. It was seldom used by either labour or management. But since September 1 1982 — when the IC's powers were expanded to allow it to grant *status quo* orders providing temporary relief to aggrieved parties — its caseload has increased each year. In 1982 49 matters were referred to it. In 1983 this figure leapt to 190, and last year an all-time high of 475 matters came before it.

On the surface, therefore, it would seem that the IC has come into its own. But there is a fatal flaw: a number of judgments make it clear that the court is not really a court at all, and the problem of the IC's status has become acute.

Two cases illustrate this. In *United African Motor and Allied Workers' Union (Uamawu) v Fodens (SA) Pty* the union won its claim that the company had committed 37 unfair labour practices, but could not claim costs as the IC ruled it did not have the power to make such awards. Uamawu appealed to the Supreme Court — which ruled that the union couldn't do so because the IC does not sit as a court of law when it adjudicates unfair labour practice disputes.

If *Fodens* raised uncomfortable questions about the IC's status, the case of the *SA Technical Officials Association (Satoa) v The President of the Industrial Court and others* proved even more disquieting.

### Government agency

After complicated arguments in the IC and the Supreme Court, the Appellate Division ruled that the IC is *not* a court — merely a government agency.

One advocate concluded that the case has placed the whole authority of the IC in question. "It is merely a government agency from which there is no meaningful right of appeal. There is furthermore no adequate



FM 12/4/85

way of enforcing IC judgments One can act in contempt of "court" but not in contempt of an agency"

This highlights another problem The IC does not have the power to hear cases arising out of contraventions of its orders This must be done by the criminal courts and some lawyers see this as a further failing, arguing that it diminishes the IC's status

But others see it differently "The debate is meaningless The court has image problems — not power problems," says a Johannesburg attorney However, he does acknowledge that because the IC's image has taken a knock employers could be inclined to dismiss it This undermines the IC's credibility — a serious matter

**Criminal prosecution**

Furthermore, there seems to be uncertainty about whether the Labour Relations Act as it stands makes provision for criminal prosecution for violations of *status quo* orders Since such orders form the bulk of the IC's work this is little short of alarming A top labour lawyer tells the FM the whole question of criminal sanctions for *status quo* orders is a "fairly murky area There are provisions which say failure to abide by IC awards is a criminal offence But they are not very tight and it is possible that there may have been a legislative oversight" But he adds "This is the sort of point that only rogue employers will seize upon"

There are several other serious criticisms of the IC They concern the court's staffing position, and pay levels of IC staff Perhaps most disquieting of all is that IC officials do not necessarily have to have any knowledge of labour law or industrial relations

One of the IC's basic problems is that it cannot find the right people to fill its posts Salaries offered to members are hardly what could be called realistic These have been increased of late, though officials say they cannot reveal the actual sums Nevertheless, the FM understands they are still paltry compared to what advocates earn in the private sector

The result is that the IC relies heavily on *ad hoc* members to deal with its increasingly heavy caseload Labour lawyers complain that sometimes these people do not have sufficient background in labour law and industrial relations to perform their function effectively They charge that this factor underlies the contradictory judgments which have come out of the IC

It would be impossible to expect consensus on labour issues But have the contradictions that have arisen been more confusing than those from other courts? A prominent labour law academic thinks so "Overall the need for guidelines is probably more urgent for this court Employers must be able to plan what they can do"

André Lamprecht, Barlow Rand's group industrial relations legal adviser, has also commented on the contradictions "When the court hands down differing decisions, not only does development of a coherent labour

**POINTING THE FINGER**

The prime target of the criticism of *ad hoc* members overturning principles in Industrial Court judgments is JA "Nolhe" Erasmus, an advocate at the Pretoria bar

Labour lawyers point to comments contained in an Anglo American handbook on labour law for managers about one of the cases he adjudicated — *Mawu v Vetsak* "This case attracted serious criticism from labour lawyers and the press, mainly because it seems to condone selective re-employment. What the court in effect did was to undermine the whole purpose of Section 43, which is to restore the *status quo ante* in order to allow for settlement of a dispute by collective bargaining By refusing interim relief, the court prejudged the position Should collective bargaining have failed the matter would have gone back to the court for a final determination of an alleged unfair labour practice Although the court is perfectly entitled to exercise its discretion in any way it sees fit, it would be advisable for managers not to throw their hats in the air because of this decision Sound industrial relations principles call for greater circumspection"

Labour lawyers also quote Erasmus's statement in the judgment in *Mawu v Screenex Wire Weaving Manufacturers* "As neither the two directors of the respondent in this case, nor the white employees, gave evidence, it is difficult to assess the situation properly in this case" An attorney comments "The impression one gets from this statement is that fuller facts would have been put before the court had white employees given evidence"

The FM understands that the General Bar Council has had meetings to consider the fact that Erasmus has appeared before the Industrial Court on at least one occasion — despite the fact that he also sits on it.

Erasmus told the FM it was "highly improper" to approach him

jurisprudence suffer as a result, but it produces uncertainty about the law Businessmen require certainty to run their affairs properly Industrial relations is a very important area and uncertainty about the law is not only uncomfortable to employers, their employees and unions, but introduces unnecessary conflict into an already volatile area"

One of the problems, as Lamprecht sees it, is that the law the court has to adjudicate on is vague and unspecific, as with the current definition of an unfair labour practice The law should be more defined, he says, and this would create less risk of conflicting judgments Barlow Rand holds that the court's status would be best secured if it becomes

part of the Supreme Court

Daan Ehlers took over as IC president from Benjamin Parsons at the beginning of the year His former post of deputy president, as well as three other permanent positions for IC members are vacant Ehlers is widely respected for the role he plays in the court — and so is the other permanent member But complaints about the *ad hoc* members have reached fever pitch (see box)

A leading labour lawyer comments "A court has the status of its officers The real failing of the IC is the quality of the people manning it" He charges that the authorities have "studiously avoided" inviting anybody who knows anything about labour law to act as *ad hoc* members "We need a separate court with people who understand the rationale behind collective rights and duties The IC won't attract the right people unless they are paid as well as Supreme Court judges," he says He claims matters have got so bad that he generally advises people to avoid the court "They would be wasting their time and money"

Unions are also fed up A spokesman for the Metal and Allied Workers' Union told the FM "Mawu has made a decision to avoid the IC as much as possible — particularly in the Transvaal — because of the record of judgments against us when *ad hoc* members have sat in the court We may, however, be prepared to take things up in Natal or the other divisions of the court"

**Own building**

The FM understands that moves are being made to improve some of the court's functions Already it seems that administration has been jacked up considerably It also appears that the IC will be moving into its own building in Pretoria on June 1 and that it will soon be deciding *status quo* applications on papers before it instead of travelling round the country to hear these matters This should speed up its processes

This is welcome news but does not get away from the fact that the IC faces a crisis of confidence Government should show good faith by responding to this criticism by taking the IC out of the Department of Manpower and putting it under Justice But whether the court should become part of the Supreme Court or not is moot As one lawyer points out "It seems to me to be very important that workers and unions as well as employers have access to the court without necessarily having legal representation It is important that the court should not develop too formally But you do want sound judgments with sound principles"

Perhaps the solution will be found somewhere between the extremes of a popular — and clearly fallible — tribunal and a body with Supreme Court status What is certain is that Government should not leave the protagonists in the labour arena languishing in uncertainty The IC has demonstrated that it has a valuable role to play in conflict resolution But its authority and powers clearly require closer definition



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# 'Govt placed over 400 000 unemployed'

ABOUT 400 000 work-seekers and school leavers, of all races had been placed through the Department of Manpower last year, the Minister, Mr Pietie du Plessis, said in the House of Representatives this week.

Of these, 15 574 — or 1 300 a month — were coloured, he told the House of Representa-

tives at the start of the Budget Debate on his vote.

This placement was one of the four major areas in which the department played a role in tackling the unemployment problem in South Africa

"But there is unfortunately no instant solution to unemployment, and

the creation of jobs is not only the task of the Government or that of a single department — it is a task for all of us," Mr du Plessis said.

Economic growth and its promotion, as well as a population development programme remained, for South Africa, the most important methods of relieving the unemployment situation.

APR 24 8/5/85

# Hearing to settle union battle

Labour Reporter

A CRUCIAL hearing in the Cape battle for membership between two textile unions will be held in Pretoria this month.

The National Union of Textile Workers (NUTW) is trying to get stop-order rights for members at Table Bay Spinners, from which it is barred because of a closed-shop agreement within the industry, which grants stop-order rights only to the Textile Workers' Industrial Union (TWIU)

NUTW is affiliated to the Federation of South African Trade Unions and TWIU is a member of the Trade Union Council of South Africa

Last year the NUTW applied to the industrial council for exemption from this agreement. When this was refused the union took the issue to the Industrial Court, which ruled in favour of the TWIU

But the Cape Supreme Court set aside the Industrial Court ruling and referred the matter back for fresh hearing

## BREAKTHROUGH

This hearing will be held in Pretoria on May 28

A legal representative for the NUTW said it would be an entirely new hearing except that the Industrial Court would now have to heed the Supreme Court ruling and consider factors not considered at the first hearing

● In Natal the NUTW has achieved a breakthrough in its bid to break the closed-shop agreement exercised by the Tucs-a-affiliated Garment Workers' Industrial Union there

An Industrial Court ruling by Mr Y Bulbulia has ordered a Pinetown firm, Natal Overall Manufacturers, to settle a dispute with the NUTW by holding a ballot to determine whether workers support the NUTW or the GWIU

In terms of the court order, if the NUTW wins the ballot the company must negotiate with it in future retrenchments, must negotiate a recognition agreement with the union and must provide it with stop-order rights



## CLOSED SHOP

### NUTW's challenge

The Industrial Court has ordered a Natal clothing manufacturer, Natal Overall Manufacturers, to hold a secret ballot to determine whether the Garment Workers' Industrial Union (GWIU) or the National Union of Textile Workers (NUTW) has majority support among workers at its Pinetown factory. This is a new and highly significant

#### QUOTABLE

**US Ambassador to SA Herman Nickel at a conference on the social responsibility of business:**

The striking feature of the rhetoric of the disinvestors is its elitism. To facts about job loss in a potential disinvestment situation, they reply that blacks in the Republic are willing to suffer economic hardship in the name of liberty. Whether true or not, the phrase rings strangely in the mouths of those who would not suffer by such hardship.

development in the closed shop war between the Fosatu-affiliated NUTW, and GWIU, an affiliate of Tucsa.

GWIU enjoys the benefits of a closed shop in the areas of Natal covered by the province's industrial council in which the Natal Clothing Manufacturers' Association (NCMA) is the employer party. But it is having to fight off a challenge from NUTW. One step GWIU has taken to protect its position has been to amend its constitution to empower it to expel any of its members who join any other union. This has the effect that workers employed by members of the NCMA risk losing their jobs if they join NUTW.

Despite this step, NUTW last year success-

fully broke GWIU's closed shop at James North (Africa) in Pinetown, after a series of complex court cases. At the time when NUTW's victory was announced, there was speculation that the Fosatu union would continue its battle to gain supremacy in the Natal clothing industry. Developments at Natal Overall appear to bear this out.

According to NUTW general secretary John Copelyn, his union started organising at Natal Overall at the beginning of last year. A dispute between NUTW and the company arose later, he says, because several of its members were retrenched without prior consultation. As a result, NUTW brought an unfair labour practice claim.

Natal Overall defended its action, Copelyn says, claiming that GWIU, which has a closed shop at the factory, was consulted and agreed to the retrenchments. NUTW's argument against this was that the company's workers are unwilling members of GWIU and only remain so because Natal Overall is an NCMA member.

In terms of a settlement reached between NUTW and the company, Natal Overall has undertaken to pay R2 500 in a lump sum to seven of the retrenched workers and the court has ordered that

- Natal Overall must hold a secret ballot on or before May 22 to determine whether the workers support NUTW or GWIU,
- Each union will nominate a person to observe the ballot, to scrutinise ballot papers, and have equal time to meet with workers beforehand.

Furthermore, if NUTW wins, the company shall

- Consult with NUTW prior to any planned retrenchments of its members,
- Deduct union dues from NUTW members' pay packets (This means that NUTW will not have to apply to the Natal clothing industrial council for an exemption for the company to make the deductions), and
- Negotiate in good faith with NUTW or reach a recognition agreement with it.

On the other hand, if the ballot shows NUTW does not have majority support, the Fosatu union shall desist from requiring or compelling Natal Overall to deal with it on any matter for at least a year after the ballot.

Says Copelyn, "We have not got past the closed shop. But what is significant about this order is that it means that NUTW will have to defend its claim to representivity and employers will have to deal with us on that basis rather than hiding behind GWIU's closed shop."

Commenting on the order, Geoff Heald, senior researcher at Stellenbosch University's Graduate School of Business, who advised the company, says "The process of challenging the closed shop, which is allegedly not endorsed by a large proportion of workers, is now greatly simplified. I believe this represents a significant stabilising feature in the Natal clothing industry."

If NUTW wins the ballot, it is likely that several other manufacturers in Natal will face the same problem.

# The man who can't be seen

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Star 13/5/85

Dr Daan Ehlers is in a difficult position as president of the Industrial Court.

He can't be seen to punt for policy or policy changes, but he has ideas on the court, its procedures and possible improvements.

**QUESTION:** What are the most important issues facing the court at this time?

**ANSWER:** Work load. Status quo orders are our main concern. It is unfortunate that processing these applications takes too much time.

There are delays by applicants who take a long time to launch applications.

Applications have to be launched within 30 days and some wait until the last minute.

Then there are requests for extensions by respondents and applicants which the court cannot really refuse.

The second important issue concerns insufficient members of the court to hear the case load as speedily as we would like.

**QUESTION:** The definition of an unfair labour practice is very vague in the Labour Relations Act.

Would you recommend clarification or a more precise set of details of what constitutes an unfair labour practice?

**ANSWER:** I would say the court would be unduly restricted if the definition were made more detailed.

On the other hand the court would be glad to have guidelines and it may be an idea for the National Manpower Commission to issue guidelines from time to time.

To amend the Act too often would not seem to be the right approach.

Dr Daan Ehlers became president of the Industrial Court on January 1. The court has played an increasingly important role in labour relations in the past five years. Sheryl Raine spoke to Dr Ehlers ...

I must admit the current definition is wide but on the other being that wide, the court is unrestricted.

**QUESTION:** The credibility of the court has taken a beating recent Supreme Court and Appellate Division decisions.

Some critics are calling for inclusion of the industrial court in the Department of Justice.

Has the time not come to clarify the status of the court?

**ANSWER:** I don't think the status of the court is clear enough but I don't think the court should be placed under the Department of Justice where they have very fixed concepts and rules regarding courts.

This court should be allowed to develop its own status.

Under the Department of Manpower we are fairly independent.

We have never been told by anybody what to do.

Our administrative personnel are supplied by the Department

of Manpower and I don't think changing from Manpower to

Justice would make much difference.

**QUESTION:** How could the status of the court be enhanced?

**ANSWER:** A possibility that could be considered is that



# en trying to make changes

of the Minister of Manpower appointing the members of the court they could be appointed by the State President This would confirm the idea of independence.

**QUESTION:** What about the decisions of the Supreme Court and Appellate Division on the Industrial Court?

**ANSWER:** The Appellate Division gave its reasons for its conclusions regarding the Industrial Court and I think it is possible to have a good look at these reasons and also to look at the Labour Relations Act to remove certain problems. A number of the issues raised in the Appellate Division's decision have already been attended to by the National Manpower Commission such as the problem of permanent staff. There are moves afoot to give the court a permanent staff contingent.

There are still a number of grey areas. There are some areas in the Labour Relations Act not in accordance with the remainder of the Act. The National Manpower Commission has recommended that there perhaps be a separate Act for the court or a separate chapter within the current Labour Relations Act referring to all the court's functions and procedures. This would make matters easier for litigants. Some of the court's procedures are already spelled out in the Labour Relations Act and the Rules Board has helped too. But I think in future in the light of the experience gained to date and the court's increasing workload the rules could be tidied up and procedures improved upon. The Rules Board meets in July and I think changes may come about in the next few months.



Dr Ehlers . . . in a difficult position.

## A vital cog . . . but at first no one used it

The Industrial Court, born in October 1979 as a result of recommendations by the Wiehahn Commission, was hailed as a vital cog in labour reform.

It had a slow start. Few unions or employers used it in its first years.

In 1980 it heard 18 cases, in 1981 it heard 30.

On September 1 1982 the court's powers expanded.

It was entitled to grant status quo orders to provide interim relief to aggrieved parties.

The number of cases heard increased to 41.

In 1983 it heard 168.

Last year it heard a record 400 cases, mostly status quo applications.

Despite its obvious usefulness the court has been severely criticised almost since birth.

In recent months criticism has reached fever pitch.

Prickly issues include

- Accusations of contradictory, inconsistent judgments
- The court's lack of permanent staff and its use of ad hoc members not necessarily having knowledge of labour law or industrial relations
- Vagueness concerning definition of an unfair labour practice in the Labour Relations Act and the court's in-

terpretation of what constitutes one

- The question of the court's status and calls for it to be put under the auspices of the Department of Justice rather than Manpower

There have been two damaging precedents.

The first involved a decision by the Supreme Court that the Industrial Court did not constitute a court when deciding unfair labour practice disputes.

The second involved an important decision by the Appellate Division last November which sent ripples of doubt through unions, employers and labour lawyers.

The Appellate Division ruled that the Industrial Court was not a division of the Supreme Court, nor an inferior court and not really a court at all.

It is more like a government agency.

Factors noted by the Appellate Division contrary to the spirit of independent justice embodied in the Supreme Court are

- The uncertain tenure of Industrial Court office-bearers
- The fact that they are appointed by the Minister of Manpower
- The fact that the Minister may approve of any correction of omissions or errors to Industrial Court decisions

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# Workers bitter over pay award

Staff Reporter

THE executive committee of the Cape Town Municipal Workers Association yesterday dismissed the long-awaited Industrial Court arbitration award on wage increases for lower-paid municipal workers as "most unsatisfactory"

The award was made by the court on Friday after a year-long dispute between the association and the council in which the CTMWA was demanding a "living wage" for all workers

Yesterday the CTMWA executive committee said it would take the issue further and would now fight the ruling that municipal workers performed an "essential service" — which denies

them the right to strike. This robs workers of their most powerful weapon, the right to take industrial action, it said

The award, which is binding on all parties for 15 months, granted an increase of about R4,50 a week to labourers earning between R73,20 and R87,92 a week. It also brought pay scales for domestics, launderesses and children's help into line with the labourers' scale

In a statement yesterday, the CTMWA executive committee said a large number of its lower-paid members, about 4 500 people, would derive some benefit, but on the whole they regarded the award as "most unsatisfactory".



Cape Times 21/5/85. (171) (165) (171)

# Workers reinstated

Staff Reporter

THE Industrial Court has ordered Boland Hout Nywerhede to reinstate 11 workers who were dismissed in December

The order, which was made on Friday, came after the workers argued

that their dismissal constituted an unfair labour practice because they had been dismissed for union activities

A spokesman for the attorneys acting for the workers said yesterday that applications had been made in respect of 13 workers. No reason had yet been given for the court's refusal to order the reinstatement of the other two workers.

The order, issued in terms of Section 43 of the Industrial Conciliation Act, is a temporary interim interdict that will remain in force until the dispute is resolved between the parties.

Mr Pierre Roux, SC, was on the bench. Mr Joel Krige was instructed by Mallinck, Röss, Richman and Cloenberg for the applicants. Boland Hout were represented by Mr J Gauntlett, instructed by Silberbauers.

# Cape workers prepare talks

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By JOSHUA  
RABOROKO

higher-paid workers  
"We regard the drawn-

out procedure which the  
law forced us to follow  
as "totally inadequate,"  
the committee said in a  
statement

THE Cape Town Municipal Workers' Association is to hold a protest meeting on June 4 against the Industrial Court's arbitration award, announced more than a year ago after the union demanded wage increases.

In a statement the association has criticised cumbersome wage-dispute procedure forced on trade unions as "inadequate and farcical". The committee said the award was "most unsatisfactory".

About 4 500 members of the CMTWA will benefit from the award, made retrospective to January. Workers earning from R73,20 to R87,92 a week will receive a one-month notch increase — about R4,50 a week.

The award will also raise the pay of workers earning less than labourers to the level of labourers. This will affect about 100 workers, including domestic and laundry workers.

The union has demanded increases for all employees, from a minimum weekly of R16 to a 15 percent raise for



# Metal firm's hearing on dispute adjourned

Labour Reporter

THE Industrial Court hearing into a dispute between the Metal and Allied Workers' Union and a Durban metal company over union bargaining rights at plant level has been adjourned to July 12 for legal argument

The dispute arises from a refusal by Hart Limited, manufacturers of cooking utensils, to negotiate wages and certain other matters at plant level directly with the union

The company argued that it was not obliged to negotiate wages with the union other than at Industrial Council level

Mr Geoff Schreiner,

general secretary of the union, told the Court considerable industrial unrest could be avoided if the union were allowed to 'collectively bargain wages and a funeral benefit scheme directly with the company'

## Acceded

He emphasised the union saw 'plant bargaining' as supplementary to industrial bargaining through the National Industrial Council for the Iron, Steel, Engineering and Metallurgical Industry

Eighteen local companies covered by the national council main agreement had acceded

to such supplementary bargaining whereas there were only between six and eight companies who were refusing bargaining rights, he said

Mr Sam van Coller, director of the employers' association — Steel Engineering Industries Federation of South Africa — told the hearing that if employers were to accede to 'plant-level bargaining' on wages it could lead to the disintegration of the Industrial Council system

Dr D B Elhers and Mr Mohamed Ameen Bulbulia presided at the three-day hearing at the Ecumenical Centre in Durban

# Defeat for union in Pinetown factory poll

## Labour Reporter

THE National Union of Textile Workers' battle for recognition at a Pinetown clothing factory ended in defeat yesterday when a majority of the workers voted in favour of a rival union — the Garment Workers' Industrial Union

The 864 workers at Natal Overall Manufacturers were asked to vote following the intervention of the Industrial Court to settle the long-standing recognition dispute with the company

The dispute posed serious threats to the GWIU, which has guarded its membership at several clothing factories, mainly in the Pinetown industrial complex, by entering into a 'closed shop' agreement with the companies

The agreement effectively barred other unions from being

recognised at the plants

After the NUTW took the latest matter to the Industrial Court, the company was ordered to hold the ballot to determine whether its workers supported the NUTW or the GWIU

The dispute arose from lay-offs at the factory which NUTW claimed took place without the union being consulted. However, the company maintained that it was not obliged to consult the NUTW because of the closed shop agreement with GWIU

Results of the ballot released yesterday showed that 533 workers voted in favour of GWIU and 321 for NUTW. There were 10 spoilt papers

Approached for comment yesterday, Mr Trevor Aron, managing director of the company, said 'The wishes of the

workers were expressed loud and clear'

GWIU's general secretary, Mr Frankie Hansa, said he was delighted with the results of the ballot. Mr Jabulani Gwela, NUTW's Pinetown branch organiser, could not be reached for comment yesterday

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# 'SEE YOU IN COURT'

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26/5/85  
By MARTIN NTSOELNGOE

AN INDUSTRIAL court case is looming between the Paper, Wood and Allied Workers' Union and C & C Radio Cabinets in Brits

The union issued this warning after six of its members were retrenched on an hour's notice.

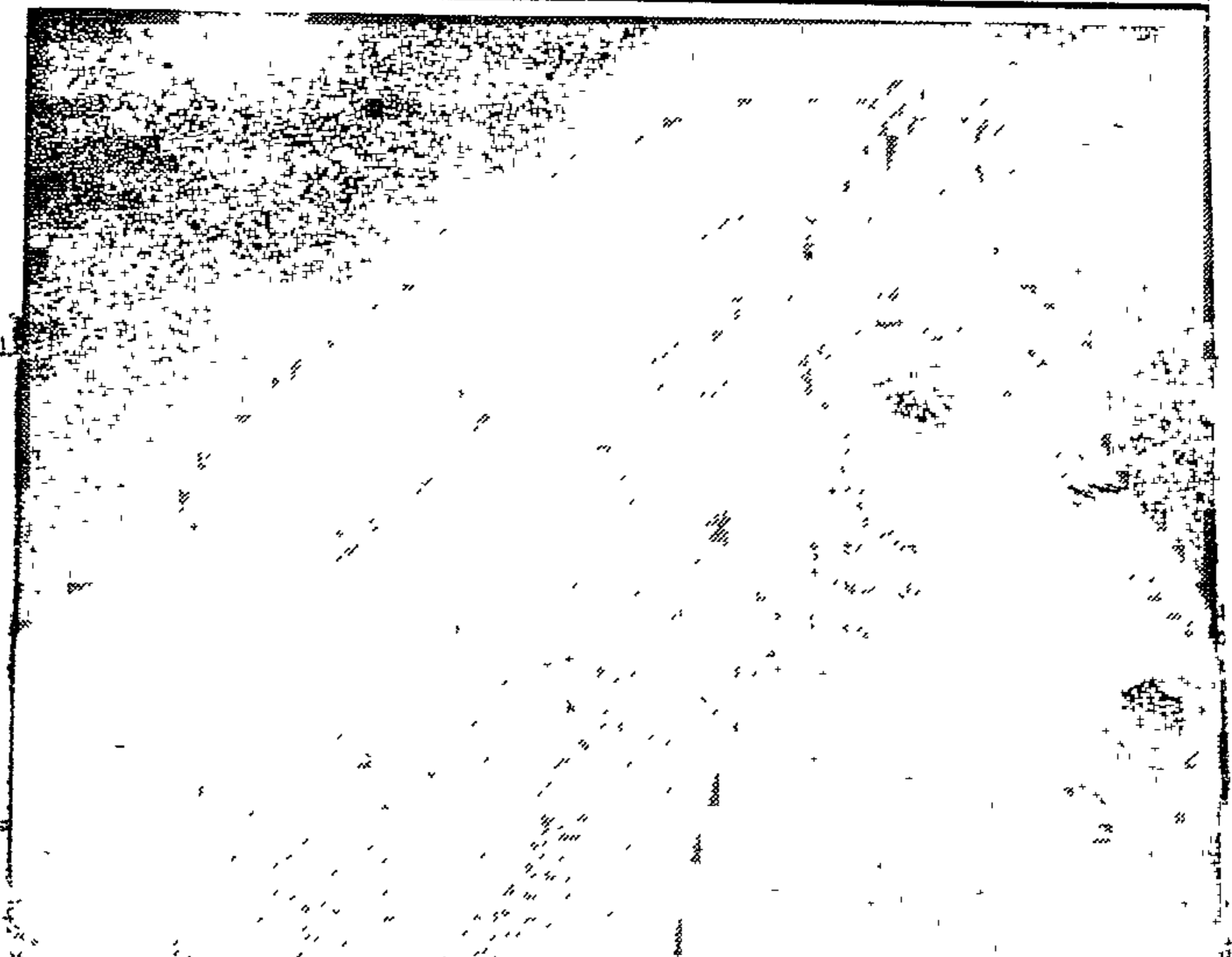
Other workers fear they will be retrenched in the same way

A Pwawu spokesman said the retrenched six have worked for the company for 14 years. And he said management had never discussed retrenchment with the workers of Pwawu - a Fosatu affiliate.

Management was also

accused of retrenching workers according to their ages, or employers' feelings about them

Workers feel management is victimising them - over the years the company has refused to negotiate with a union of the workers' choice, but favours closed-shop furniture unions.



UNITED DE ALIANCE

## Textile industry: New hearing on union rights

ARGUS 27/5/85 (165) Labour Reporter

THE Industrial Court will hold a fresh hearing tomorrow into stop-order rights in the textile industry for the National Union of Textile Workers

The NUTW is trying to get stop-order rights for members at Table Bay Spinners, from which it is barred because of a 'closed-shop' agreement in the industry. This grants stop-order rights only to the Textile Workers' Industrial Union.

The TWIU is affiliated to the Trade Union Council of South Africa.

Last year the NUTW, an affiliate of the Federation of South African Trade Unions, applied to the Industrial Council for exemption from the agreement.

When this was refused the union took the issue to the Industrial Court, which ruled in favour of the TWIU. But the Supreme Court, Cape Town, set aside this ruling and referred the matter back for a fresh hearing.



# KwaZulu legislation 'out of step' with law

**African Affairs  
Correspondent**

ULUNDI—A four-man commission of inquiry investigating labour legislation in KwaZulu has found some it is out of step with South African law and discriminatory

This was revealed in the Legislative Assembly yesterday by the Minister of the Interior, Dr Dennis Madide, during the second reading stage of a new 'labour package' for KwaZulu

He was explaining the KwaZulu Machinery and

Occupational Safety Bill, the KwaZulu Wage and Basic Conditions of Employment Bill and the KwaZulu Labour Relations Bill

Dr Madide said the KwaZulu Cabinet had decided that KwaZulu should, in future, adopt all South African labour legislation as soon as it was passed, with the exception of those laws which were discriminatory or racist.

He said the commission had found that labour legislation in the region was

far from satisfactory and many people were uncertain about which regulations applied in KwaZulu

It appeared that, rather than providing a framework within which employers and employees could function and interact, this legislation was actually hindering them

The KwaZulu Administration had been denigrated in the Press as falling into the spectrum of a homeland government whose legislation was out of touch with modern labour practices

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*D. Dispatch*  
**Labour stability is the key: Reynders**  
*29/5/85* *165*

PORT ELIZABETH — Labour stability was a precondition to achieving "our national economic goals," Dr Hennie Reynders, chairman of the National Manpower Commission, told the AHI congress here yesterday

Terms of reference of the NMC were to advise the Minister of Labour on labour matters and policy, which implied on-going research in these fields

The contribution by the NMC to the promotion of labour stability was evident in its various reports, and these included studies on job-creation and the promotion of formal and informal small business sector

The NMC was also currently researching rural development, methods of containing cyclical unemployment, and the role of the government institutions in labour-intensive production techniques

In the field of labour relations the NMC had already submitted numerous reports on the questions of closed-shops, trade union subscriptions, the autonomy

of trade unions, the position of workers prepared to work but prevented by strikes, and aspects of collective bargaining

"A report on further aspects of closed shops will shortly be submitted to the minister, and a study on strikes over the past decade is being prepared," said Dr Reynders

Dr Reynders added that the emphasis in studies on labour affairs internationally had shifted to co-operative potential and away from conflict potential

"In this context we shall have to consider carefully whether the time has arrived for the introduction in the Republic of South Africa of further refined systems

"It will in any event become necessary within the foreseeable future to give attention to this issue, including the relationships between labour affairs and the political situation, technological development, the increasing level of education among black workers, and the increasing aspirations of black workers

Labour stability in

South Africa compared favourably with certain other countries, the Director-General of the Department of Manpower, Dr P J van der Merwe, told the congress

He said there were 87 strikes in the first quarter of 1985 compared with 132 in the same period last year

However, many more workers had been involved in strikes this year than last, due to strikes by about 52 000 mineworkers

What was important was that strikes in South Africa were of relatively short duration compared with various Western countries

"In 1984 the average was only 2,1 days, and almost 50 per cent of the strikes ended within one day, while 80 per cent ended within three days

"This comes down to the loss of 40 man-days per 1 000 economically active people, compared with 255 in the United States, 205 in the United Kingdom and 52 in Sweden over the period 1981 to 1983"

Reasons for South Afri-

ca's good record included the increasing willingness of trade unions to make use of the conciliation machinery in the Labour Relations Act, and that, generally, unions and their leaders acted very responsibly

Unions and employers were also becoming more experienced in the art of negotiation, and common ground was being found more readily

Dr Van der Merwe said the definition of an unfair labour practices, the status and functions of the industrial court, and the right to strike were matters which still would have to be given careful attention — SAPA



CAPE TOWN 6/6/85

# City municipal workers angry

Staff Reporter

MEMBERS of the Cape Town Municipal Workers' Association (CTMWA) have rejected the Industrial Court pay award which grants the Cape Town City Council's lowest-paid workers a five percent increase on their wages

The award, which was made last month, grants the increase to about 4 000 of the association's 11 000 members. The other workers will get no increase.

A meeting held in the City this week resolved to call on the union's executive immediately to prepare fresh wage demands.

The meeting also decided to fight for the scrapping of the provision of the Labour Relations Amendment Act which classifies local authorities as essential services.

This provision prohibits municipal workers from ever taking strike action.

Workers at the meeting held in the City Hall on Tuesday night criticized the council for proposing to spend millions on attracting tourists to Cape Town by creating a pedestrian area in St George's Street while paying the workers who service the City "poverty wages".

Prison at noon on Tues.

12/6/85  
Union wants fired  
workers reinstated

Labour Reporter

THE General Workers' Union has applied to the Industrial Court for the temporary reinstatement of about 140 workers fired from African Spun Concrete after a two-week strike last month.

A union spokesman said today papers had been filed with the registrar of the Industrial Court. The union was waiting for a hearing date to be set.

The strike, which involved about 150 workers, began late in April when the GWU and the company failed to reach agreement on an effective date for payment of back wages.



(165)  
INDUSTRIAL COURT

## Gearing up

The Industrial Court is in the process of acquiring new permanent members to help it cope with its increasing caseload. The move could not be better timed — trade unions are submitting cases at an unprecedented rate.

At present, the court has only two permanent members — the president, Daan Ehlers, and Deon van Schalkwyk. There are four vacancies for full-time members, including the post of deputy court president. Without its seven *ad hoc* members the court would simply not be able to cope.

But there is keen recognition that more full-time members are badly needed. At last some movement has occurred.

According to court sources, some of the *ad hoc* members are interested in full-time appointments. Ameen Bulbulia, who was recently appointed as an *ad hoc* member, has applied for a full-time post. Adolf Landman, senior lecturer in mercantile law at Unisa's business school, has also displayed interest.

The sources say it is more or less a formality for them to be appointed. In addition, Advocate Pierre Roux — a Cape Town-based *ad hoc* member — is known to be thinking about moving to Pretoria. If he does, he will probably become deputy president.

By far the majority of the matters brought before the Industrial Court this year have been applications for *status quo* orders, involving allegations of unfair dismissal linked to retrenchment. This is seen as the inevitable outcome of the unions' battle to retain members in the recession.

Some 119 *status quo* applications — which are made in terms of Section 43 of the Labour Relations Act (LRA) — were referred to the court up to the end of May. The 1985 figure compares with 90 such applica-

Financial Mail June 14 1985

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14/6/85  
tions referred in the same period last year. Final unfair labour practice hearings — conducted in terms of Section 46 (9) of the LRA after a *status quo* order has been granted — are also on the increase. Last year 18 such matters were referred to the court between January 1 and May 15. This year, 52 such applications have been received by the court.

The court granted 41 *status quo* orders last year and refused 22. Of those granted, 36 covered all the applicants involved, while orders covering some applicants, but not all, were made in a further five cases.

While the established unions make good use of the court, it is the emerging unions which use it most frequently. Indeed, the majority of cases referred to the court are brought by SA Allied Workers' Union (Saawu) and Black Allied Workers' Union (Bawu).

Saawu's Newcastle branch is very active in this respect, and the fact that Bawu is also based in Newcastle makes the tiny Natal town the main centre for Industrial Court hearings. This is surprising as both unions are unregistered and generally reject the institutions of "the system".

But the court rejects quite a number of cases — largely because the applicants do not comply with the requirements of the LRA. Court sources say the majority of Saawu's cases are thrown out for this reason

and that Bawu is in very much the same position. Says a court official: "There is a lack of knowledgeable leadership in some trade unions. But the court is going out of its way to assist them."

Changes to the court's mode of operation could come about when its Rules Board meets at the end of the

month. It is expected that the prospect of the court deciding on Section 43 applications on papers, instead of travelling around the country, will be discussed. With possible changes coming here — and the court moving into a new building in Pretoria on June 14 — unions and managements can look for increased efficiency in a vital institution. ■



Ehlers

## AECI STRIKE

### Legal blessing

The first SA workers ever to be granted the right to resume a strike continued their legal wage strike at AECI's Ballengeich plant in Newcastle this week with the Supreme Court's blessing

At the time of going to press, some 600 members of Cusa's SA Chemical Workers' Union (Sacwu), who resumed their strike on June 3, were still out. This was despite the company's announcement on Monday that four chemical plants within the Ballengeich complex, owned by AECI subsidiary AECI Chlor-Alkali Plastics, will be closed down by the end of August, affecting 120 jobs.

Sacwu has been demanding a R100 across-the-board increase, a leave allowance and a standby allowance. Management, which has repeatedly pointed to Ballengeich's poor financial position, has been offering a 9,5% package increase.

Says AECI group personnel manager "Bokkie" Botha on the closures, "This is not a gesture to break the union. The closure of the plants has always been on the cards. But we hope the fact that we are closing will bring home the message that the plant is in a bad way." Botha says seven strikes by Sacwu members at Ballengeich in the past 16 months has "influenced" AECI's view. He

also says AECI has managed to keep the plant going by employing temporary labour.

Even though the Ballengeich strike is legal, management still has the right in common law to dismiss the strikers. This factor — and the prospect of the closures — will place great pressure on Sacwu to settle the dispute because, if AECI does dismiss, at least some of the strikers are likely to lose retrenchment benefits.

Sacwu members first went on strike in April, but returned to work after six days when AECI threatened to hire new workers. At the time, however, the union stated that it did not regard the dispute as settled.

Two weeks ago, when it became apparent that the workers intended to resume the strike, AECI applied for an urgent interdict to stop the Ballengeich strike, and threatened sympathy strikes at four other AECI plants.

In the urgent application, AECI argued that the Ballengeich workers could not rely on the fact that they had exhausted the Labour Relations Act's conciliation procedures for the original legal strike to legitimise its resumption. Sacwu argued that because a conciliation board had failed to resolve the dispute and strike ballots had been conducted, both the Ballengeich strike and the sympathy strikes would be legal.

Judge Brian O'Donovan established a precedent in labour law when he rejected AECI's contentions. In his endorsement of the legality of this intermittent strike, the judge cited the following factors:

- The original wage dispute remained unresolved,
- Viewed in context, the delay between the strike and its resumption was "not so excessive as to amount to abandonment by the union of the strike called in March," and
- The union had reserved the right to resume strike action in a letter to the company.

Despite the fact that the Ballengeich strike continues, the union has not called out its members at the other AECI plants. But confusion about the implications of the court's ruling on sympathy strikes remains. At issue is a concession made by AECI that if the Ballengeich strike was declared lawful, it would not contest the issue of the sympathy strikes. Because this happened, the judge did not make a ruling on the validity of the sympathy strikes.

The union's lawyers tell the *FM* they are "mystified" about the concession. They say they are unaware that it was made in open court and have asked AECI's lawyers for precise details of what was conceded. Botha refused to be drawn on the question, saying simply "the company did make that concession."

The issue of sympathy strikes thus remains unresolved. But both parties insist that their interpretation of the law is correct. The company insists that they are illegal, while a union lawyer says "The real guts of the question of secondary strikes turns on one point: AECI is a corporate entity. The issue in dispute is whether Ballengeich wages

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should be brought in line with other AECI plants. This leaves us with the question of to what extent workers at associated companies should be able to use their collective muscle. It seems to me that the answer is that it is permissible to the extent that the associated companies are bolstering the primary company."

Given the highly volatile nature of SA industrial relations, the issue of sympathy strikes is sure to arise again. Perhaps only then will the legal complexities of the issue be sorted out.



Argus, Thursday July 4 1985

NATIONAL

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# Unions hail court ruling on fired worker

Argus Correspondent  
**JOHANNESBURG** — In a judgment that unionists say will entrench workers' right to be given a fair hearing before being dismissed by employers, the Industrial Court has ruled that a worker who was fired without a hearing be reinstated.

The court found that the company, Pretoria Precision Castings (PPC), had justifiably fired Mr Thomas Mabena for carrying out a dangerous occupational practice.

But, it ruled, the company's failure to convene a fair disciplinary hearing, in which Mr Mabena's side of the story could be heard, was in itself an unfair practice.

Mr Mabena had been found cooking water on

a furnace at the factory, a practice the company considered dangerous and against which workers had been repeatedly warned.

The court ordered his reinstatement to be back-dated for six months.

It ruled that "fairness" was a vital element in labour relations and that "doing what is right may still result in unfairness if it is done in an inequitable manner." After the hearing, the National Automobile and Allied Workers Union (Naawu) said it was the first time an Industrial Court had held that any dismissal required a fair hearing, before it could be effected. The judgment provides an important protection for workers.



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5/7/75

# Industrial Court 'not meeting needs'

By CLAIRE PICKARD-CAMBRIDGE

THE Industrial Court was not meeting the needs of management and labour in providing a suitable means for resolving disputes, according to advocate Tim Trolip. Speaking at a Johannesburg Chamber of Commerce seminar on the Industrial Court, Trolip said yesterday an appropriate industrial court still had to be established. The existing one was not a court, he said, but a government agency and as such might bring industrial relations and the law into disrepute. He called for a Labour Court division of the Supreme Court, saying special supreme courts for income tax, admiralty, patents, trademarks and water already existed. Because the Industrial Court had no inherent jurisdiction like the supreme courts, Trolip said, it

could claim no authority outside the Labour Relations Act and sometimes declined to judge on urgent matters. Richard Shuster, industrial relations advisor to Reunert Limited, said the Industrial Court had partially succeeded in establishing guidelines on acceptable labour practices and that both employers and trade unions had followed most of its decisions. However, he said, it had been less successful in resolving conflict between management and labour because it had not been prepared to rule on areas where there might be broader ramifications. He said the clearest guideline the Industrial Court had created was on termination of employment.

However, he said, there was less clarity in the court's rulings on mass dismissals, although it had been fairly consistent in refusing re-instatement in cases of illegal industrial action. The questions of selective dismissal and selective re-employment were also still grey areas while the position of legal strikers was extremely uncertain. Areas in which clear guidelines had not been established included union recognition as well as unilateral implementation of wage increases. Nevertheless, he said, some advantages to the Industrial Court were its informality, its assistance to unions lacking legal expertise and establishment of onus on employers to prove a dismissal was fair.

(Incorporated in the ... Ordinary ...)



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CITY NATIONAL

# Vigil to mark funeral of UDF victims

Staff Reporter

A VIGIL organised by the Mowbray Inter Racial Group (MIRG) will be held in St George's Cathedral on Saturday to mark the funeral in Craddock of four murdered United Democratic Front leaders, Mr Matthew Goniwe, Mr Fort Calata, Mr Sparrow Mkhonto and Mr Sicele Mhlawu.

Starting at 9.30am, the 2 1/2 hour vigil will be to express sympathy with the bereaved and all victims of the unrest, concern about escalating violence and commitment towards achieving justice, reconciliation and peace in South Africa, according to Mrs Daphne Wilson of MIRG.

Archbishop Stephen Naidoo will open the service and members of the Langa Adult Choir and the Princess Square African Choir will lead the singing of hymns.

# Treason trial: 'Bail notes valid'

Argus Correspondent

PRETORIA — The State has set about trying to prove to a Pretoria magistrate that the Attorney-General's certificates denying bail to the 22 Vaal Triangle treason accused are valid.

Defence counsel Mr Ismail Mahomed had told the court at an earlier hearing that the documents were illegal because they were issued before the

men were formally arrested. This was a violation of Section 30 of the Internal Security Act, in terms of which the certificates were made.

The State submitted that a magistrate could not rule on the certificates' validity and a lengthy legal dispute ensued. However, magistrate Mr J B Koekemoer finally ruled yesterday that a lower court could decide if certain concrete

provisions in Section 30 had been complied with.

One of these, he said, was the provision that certificates must be issued after arrest.

Deputy Attorney-General Mr P B Jacobs, for the State, then argued the definition of the word "issued", saying a certificate could only be considered to have been issued once it had been handed into court.

# UDF badge hearing postponed

Labour Reporter

AN INDUSTRIAL Court hearing on an allegation of unfair labour practice by a man fired for wearing a United Democratic Front badge at work was postponed for a ruling on the court's competence to hear the complaint.

The case arose out of the dismissal of Mr Isaac Phooko from Atlantis Diesel Engines in May.

After lengthy legal argument in which Mr F Erasmus, for ADE, claimed that the hearing could not be held because the application had not fulfilled legal requirements, the presiding officer, Mr P E Roux SC, yesterday postponed the hearing.

It is alleged that after being given a written warning for refusing to obey an instruction and "abuse and misuse" of company property — the overall to which the badge was

pinned — the company introduced a new rule the following day prohibiting promotion of any political cause or organisation.

Mr Phooko was dismissed the following day.

He has applied for reinstatement in terms of Section 43 of the Industrial Relations Act. He is represented by Mr L J Bozalek of the Legal Resources Centre.

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INDUSTRIAL COURT

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Under fire

There is a lot of straight talking about the Industrial Court (IC) in employer circles these days. Criticism is being heaped on the court. But while much of it is negative, underlying it is a profound concern to strengthen the credibility of this vital institution.

This recently emerged clearly in a seminar organised by the Johannesburg Chamber of Commerce. The first point made came from Dick Sutton, a member of the Wiehahn Commission, who stated that in its present form the IC does not reflect the original concept and intentions of the commission. One of the key reasons for this, he said, is that it is part of the Department of Manpower — not the Justice Department as the commission recommended.

Advocate Tim Trollip was far harsher. He referred to the Appellate Division's finding that the IC is not a court at all, but merely a government agency. Said Trollip: "The Department of Manpower 'wants' a court, but one without the effect or consequences of a court. The result is a caricature."

He said attempts to dress up the IC as a court "will achieve little and will bring industrial relations and the law into disrepute." Trollip believes the IC should fall under the jurisdiction of the Department of Justice. "There exist special Supreme Courts for income tax, the admiralty, patents, trademarks and water. I see no reason for the absence of an appropriate Labour Court division," he said. Trollip also slated inconsistencies in IC judgments and long delays in delivery of IC judgments.

He strongly criticised judgments handed down by *ad hoc* IC member J A Erasmus. "The Screenex (*Metal and Allied Workers' Union v Screenex*) judgment is effectively that migrant labourers can be reinstated only if their contracts (of employment) are still in force. Soon after the Screenex case, Erasmus gave judgment after a long delay in the Johnson Tiles case. It, too, concerned migrant labourers, all but two of whose contracts were no longer in force. Erasmus reinstated them without referring to the Screenex case. So there you have two irreconcilable decisions from one person, with no attempt to justify the departure," he said.

Richard Schuster, industrial relations adviser to Barlow Rand subsidiary Reunert Ltd, cast doubt on the validity of Trollip's criticisms that the IC is not a court. Said Schuster: "What is important is not whether the rule or decisions of the IC are legally binding from a technical point of view, but whether or not it enjoys legitimacy in the eyes of those people whom it affects. Because the decisions of the IC, by and large, are intrinsically persuasive, employers and trade unions alike have been happy to follow them."

Schuster said the IC has been "partially successful" in establishing guidelines of fair

labour practice — particularly in the area of dismissal and retrenchment, but less successful in settling disputes between management and labour.

Some positive points about the IC he listed are that

- It is more informal than the Supreme Court or Magistrate's Court,
- It has clearly established that the onus is on employers — not employees — to prove that a dismissal is fair, and
- Generally litigation is cheaper in the IC than in other courts.

On the negative side, he said the most serious criticism of the IC is that its decisions are not predictable. He gave three main reasons for this:

- The law is still uncertain,
- Different IC members have different approaches to established law, and
- All IC members lack experience of either legal procedure or industrial relations practice.

Schuster hit out at labour law commentators who read "certain principles which are not there" into IC judgments. Issues around which this controversy revolves are:

- Whether the employer has to negotiate on the need to retrench. Some commentators have stated that this is indeed the case. But, he says, IC has stated only that the employer must negotiate a retrenchment procedure which makes provision only for communication — not negotiation;
- Whether employers need to apply the principle of "last-in-first-out" when they retrench. The IC, he contends, has merely said that criteria for the selection of employees for retrenchment must be objective. And it has named four factors to be taken into account: attendance record, job efficiency, experience and — only lastly — length of service;
- Whether the employers must hold a formal inquiry before dismissal, unless the worker has committed an offence which justifies summary dismissal. "The IC has quoted an International Labour Organisation recommendation that employees must be afforded an opportunity to answer allegations against them. However, this may be in the nature of an interview — not a formal inquiry, and
- Whether employers are obliged to recognise and negotiate with majority unions in their plants to the exclusion of all other unions. Said Schuster: "It is still open to an employer to recognise one or more unions in the same bargaining unit."

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Weekly Wage: R 16.58

Grade	Current Hours	Hourly Change 1975 to date
Grade 10	0.00	0.00
Grade 10	14.95	16.71
Grade 10	18.03	19.35
Grade 10	22.88	22.88
Grade 10	25.56	20.21
Grade 10	20.17	19.29
Grade 10	17.96	16.47
Grade 12	0.00	0.00
Grade 12	16.55	18.76
Grade 12	20.14	21.58
Grade 12	24.48	24.48
Grade 12	28.29	22.68
Grade 12	22.53	21.52
Grade 12	19.22	17.62
Grade 44	19.33	25.41
Grade 44	28.29	22.68
Grade 44	22.53	21.52
Grade 44	19.22	17.62

ARCus 23/7/85

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**Dismissal  
dispute  
resolved**

Labour Reporter

A DISPUTE referred to the Industrial Court involving the dismissal of seven workers from the Cape Times has been resolved.

In an agreement reached out of court yesterday it was agreed that the dismissal of three of the workers — D Bestman, W P Barnes and W H Blommetjie — would be confirmed and that they would receive three months' wages.

The other four — G A Swartz, A Jacobs, M A Ganief and R M Fredericks — were reinstated with effect from August 1, although they were regarded as having been suspended with pay between February 7 and April 23 and as having been suspended without pay between April 23 and July 31.

The dispute arose when the workers were dismissed by the newspaper for failing to comply with an instruction and to attend a later disciplinary hearing.

# Jobless: Call on companies

Chief Reporter

PRIVATE companies in all fields in the Western Cape are being called on to take part in a major government-sponsored scheme to provide training for unemployed people

Contracts have already been signed with firms for the training, at government expense, of about 10 000 jobless people in the area, and it is hoped to boost this figure appreciably in the next few months

Against the background of a down-turn in the economy and increasing unemployment, the government decided recently to allocate R100-million for job creation and training, and R20-million of this has been made immediately available for the training of the unemployed

The scheme, in which the costs to private companies of training workless people are paid by the Department of Manpower, started in mid-June and will continue until March next year, by which time it is hoped that up to 85 000 people will have been given training in a wide variety of skills

Mr W H de Swardt, the department's senior training adviser in the Western Cape, and Mr W H Sceales, former rector of the Cape Technikon and now regional training-project leader, emphasized yesterday that the scheme had no racial or other restrictions

Mr Sceales said "We aim to get as many firms as possible, in rural as well as urban areas, to avail themselves of this scheme, and we hope those companies with existing training facilities will expand them to provide training for as many unemployed people as they can possibly handle"

## 'Morale'

He added "The main benefits of this scheme are that the country will have a substantial reservoir of trained or re-trained labour to draw from when the economy improves — and that the motivation provided by such a scheme will also act as a morale booster for those under training"

The requirements with which unemployed people must comply, to be considered for training in the State-sponsored scheme, are

- Their employability must be increased by the training

- They must be trainable and able to benefit from the training

- They must be motivated and willing to learn

Further details of the training scheme are obtainable from Mr De Swardt (Department of Manpower, PO Box 872, Cape Town 8000, or ☎ 45-7110) or from Mr Sceales, ☎ 46-7340 (office hours) or ☎ 23-1946 (after hours).



# White miners allege snub

WHITE miners will strike if the Minister of Manpower, Pietie du Plessis, discriminates against their union during the appointment of conciliation boards

The threat follows an alleged delay by Mr du Plessis in appointing a board to consider the white miners' wage dispute earlier this year

Council of Mining Unions president Arrie Paulus says "The board was set up only after we threatened to strike

By Amrit Manga

"In the case of the black miners, Mr du Plessis acted almost immediately, appointing a conciliation board three days after deadlock was declared"

## Reluctant

The Mineworkers Union says it will not tolerate unnecessary delays in future disputes

The threat comes two months after the white union signed a wage agreement with the Chamber of Mines and as tens of thousands of black miners draw up strike plans

Although the white miners reluctantly accepted the wage offer, this is the first time they have voiced their discontent about conduct of negotiations.

Mr Paulus accused Mr du Plessis of practising double standards and discriminating against his union

"We have a sneaking suspicion that the Minister's haste in appointing a board was prompted by fears that black miners would not hesitate to repeat the 1984 work stoppage which cost millions

"We must accept that he was prepared to take short cuts to resolve the black dispute"

A spokesman for the white union says "This can be interpreted only as an underestimation of our union's potential to take stronger industrial action

"We will demonstrate our strength by taking stronger action next time"

## East Drie row

Another mining dispute is brewing. It is between the white union and the management of East Driefontein mine and concerns longer working hours.

Mr Paulus has rejected a scheme which proposes to extend working hours to include

days off granted once every two weeks

The scheme, according to the union, offers prizes to teams that achieve the lowest accident rate

But the prizes can be won only if miners work every Saturday. They would thus have to forego free Saturdays

Longer working hours would be a breach of the 11-shift fortnight agreement, says the union

A miner may, however, volunteer to work but will not be entitled to union protection in the event of injury or infringement of regulations.

## Damage

Negotiations with black miners are in deadlock. Sources say that talks at Teba, the Chamber's recruiting agent, will end in deadlock as well and a dispute could be declared this week.

Neither the Chamber nor its affiliates will speculate on the consequences of a strike

But Mr Paulus says damage could run into millions "Major damage has already been caused at Gencor's Evander and Beatrix mines and at Western Platinum near Rustenburg"

The need for NUM members to plan tactics is given as the main reason for the two-week delay in action after the strike ballot.

A NUM spokesman says a decision to strike if wage talks failed was taken in January. The strike ballot simply reaffirmed the January resolution.

NR445 5/8/84

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~~153~~

# 'Social tensions likely if ambitions are not met'

Staff Reporter

IF people's aspirations, heightened by the increasing rate of education and employment, were not met "all manner of social tensions" could result, the National Manpower Commission has found

such as high unemployment still exist

A cause for concern was the wide cyclical fluctuation in economic activity over the past two years, from negative to highly positive to negative.

## Unemployment

The commission's report for 1984 says that although many positive developments have taken place, negative forces

Although there was a fairly sharp upswing in the economy during the second half of 1983 and the first half of 1984, unem-

ployment — particularly among blacks and coloured — began to increase again.

The report said there was also an imbalance between the supply and the demand for unskilled and skilled workers. Labour shortages in skilled occupations continued in spite of an oversupply in semi-skilled and unskilled occupations

It seemed a greater degree of order was developing in the labour-relations system. More workers were involved in the collective bargaining process. The newer trade unions displayed a greater willingness to use the statutory dispute settlement machinery.

There were indications that

some trade unions which had not wanted to be registered were starting to see registration in a more favourable light.

Employers continued to develop their understanding of the importance of labour relations

Although increasing use was made of statutory means to settle labour disputes, there were also differences of opinion among some employee and employer groups about the effectiveness of the mechanisms

The degree of support given to the general stayaway campaign indicated that this type of action could spill over into labour relations.

## 0 for running brothel

Trade's Court

Mulder, 20, and Zoe Louis, both of Ladbroke Street, and Michelle Fourie, 19, Silva Street, Ysterplaat, jointly in Wynberg Magis-

It was found that the women operated the brothel between May 30 and July 4 in Ladbroke Street.

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# Industrial Court 'no longer favours' unions

## Labour Reporter

THE Industrial Court at first appeared to favour unions and workers in its decisions but there had recently been a reversal in favour of employers, a University of Cape Town Commerce Week focus seminar on trade unions was told.

Professor Denis Davis, associate professor in the department of commercial law and a labour legislation specialist, said yesterday the reversal was the result of certain appointments to the court

## FEDERATION

The courts had also tended to be far less sympathetic to strikes

There was a strange anomaly in South African labour law in that if certain procedures were followed, workers were guaranteed immunity from prosecution for striking, but employers could still dismiss them

Mr Johan Maree, a lecturer in industrial sociology, said the significance of moves to form a super federation of emergent

unions was that for the first time it would unite a number of national unions in key industries — mining, metal, motor, transport, food, chemicals and textiles — which would negotiate on a national level

Member unions would be tied together on the national level and would have considerable muscle if they decided to act together, he said

An industrial relations consultant, Mr Ernest Harvey, said management attitudes to unions had initially been concerned that management prerogatives would be challenged and there had been a great deal of hesitancy in dealings with unions.

But now that management had passed through that phase, which had been one of rapid learning, there had been many instances where top management had over-ruled shopfloor management decisions

The next phase would be one of joint problem solving

The focus continues today with a seminar on trade unions in the retailing industry



# Press barred from hearing on Moira Tuck

STAR

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Pretoria Bureau

12/8/85

The Press was barred from today's industrial court hearing in which former Prime Time producer Moira Tuck is understood to be seeking temporary relief following her axing by the SABC.

Court officials said they believed it was the first time that such a hearing had been held in camera.

The SABC requested the matter be determined behind closed doors. Court president Dr D B Ehlers ruled in the corporation's favour.

The reasons for his decision were not known.

Freelancer Ms Tuck was dismissed earlier this year, because the SABC said it had a full-time staffer who could produce Prime Time.

But the talented producer said she believed there had been a campaign by senior officials to oust her and said she had a 12-month verbal contract starting in May.

## FELL OUT

She apparently fell out with Prime Time presenters Martin Locke and Dorianne Berry because they wanted more say in programme content. Ms Berry's husband, Robin Knox-Grant, who is also head of English TV1, then became involved in the dispute.

The court this morning heard lengthy argument on the definition of the word "employee" before getting down to Ms Tuck's application.

The hearing was attended by Prime Time manager Mr Mark Lloyd, who is said to have made an affidavit supporting Ms Tuck's case.

He has said in the past that he feels she has the right to be heard.

# Court 165 stops w. mail Gencor 12/9/85 evicting miners

By SEFAKO NYAKA

MARIEVALE Consolidated Mines was yesterday ordered by a Rand Supreme Court judge to provide accommodation for miners it had evicted in contravention of an earlier court order.

The urgent application was brought by the National Union of Mineworkers, whose members were among those evicted.

Justice O'Donovan ruled that Marievale, a member of the Gencor group, must provide accommodation pending the lodging of a counter-application.

He also ordered Marievale to take all reasonable steps to inform workers who have left for the homelands of his ruling and to give NUM attorneys the names of miners who have been bused home.

On Wednesday, Justice H C J Fleming granted a temporary order against Marievale, restraining them from forcibly evicting miners from mine accommodation.

The order brought yesterday also sought to have the Marievale mine management jailed for contempt of court and to reinstate miners who had been evicted. NUM also demanded the mine bus back the miners who have already been evicted and supply a list of miners who had been dismissed.

NUM members on the mine, who claimed they were being compelled to leave the mine despite the court order, packed the gallery long before the hearing.

# Employers win case on plant bargaining

By Amrit Manga

THE Industrial Court has ruled in one of its most important judgments that a refusal to negotiate at plant level does not necessarily constitute an unfair labour practice

Although the ruling does not necessarily set a precedent, it will have far-reaching implications for wage negotiations involving hundreds of thousands of workers

The implication for the metal industry, which employs more than 400 000 black workers, is particularly important

## Justified

Plant-level bargaining to secure higher wages than industrial council rates is at the centre of a major dispute involving 40 000 metal workers and nearly 100 factories

The Industrial Court heard an action in which the Metal and Allied Workers Union claimed that Hart's refusal to negotiate wages above the industrial council rate was an unfair labour practice

Hart is a Metkor subsidiary and is involved in metal-goods manufacture and plastics. The dispute concerned its Durban plant.

The court said "the employers' failure or refusal to negotiate with the union at plant level appears reason-

ably justified, and under the circumstances, does not constitute an unfair labour practice"

Several industrial councils have experienced major setbacks recently as trade unions have withdrawn to continue negotiations at factory level

The Steel and Engineering Industries Federation of SA argues that shop-floor bargaining will lead to disorder if the same issues are negotiated at two levels

Seifsa director Sam Van Collier says "It appears that our argument against one party simply having to go to court to compel another to negotiate on any matter has been upheld"

Labour consultant Andrew Levy says the ruling is not necessarily a total denial of plant-bargaining rights

The court said in its judgment that although plant bargaining ought to be encouraged, negotiations should also assume a voluntary character to be effective

"If the court had to proffer an opinion as to which of the two systems, plant- or industry-level bargaining, was a better one it would find itself hard put to make up its mind"

Mr Levy said Seifsa's argument against compulsive bargaining ignored the public interest

"It has been viewed in a narrow private law context which ignores the implications of a refusal to negotiate with majority membership unions

"Industrial conflict in the metal industry, which employs more than 400 000 workers, could have both an economic and political impact

"Employers should be compelled to negotiate at plant level if the majority of workers wish to

## Resistance

"It is clear that the union will eventually win the fight over plant-level bargaining. But it will be at the cost of thousands in lost manhours and a bitter struggle resulting in widespread labour unrest"

Employers who interpret the ruling as not compelling them to negotiate at plant level could meet strong resistance from Mawu. The union plans strikes at nearly 100 factories that have been challenged on the issue.

In another important labour test case, the National Union of Mineworkers' application to declare evictions from hostels illegal has been postponed indefinitely

A resumption of strike action on the mines therefore seems unlikely, at least until the Rand Supreme Court hands down a judgment.



Industrial Court rules ...

# Refusal to bargain at plant level 'not unfair'

THE Industrial Court has made one of its most significant judgments by ruling that a refusal to bargain at plant level is not necessarily an unfair labour practice.

The outcome is expected to have an important influence on the response of employers to rising union demands for plant-level bargaining.

The ruling is of vital importance in the metal industry where the Metal and Allied Workers' Union (Mawu) is threatening strikes at more than 100 companies in a demand for plant-level bargaining.

The court had to decide in the case of Mawu vs Hart Ltd whether it should compel the employer to bargain with the union at plant level on effective wages and the introduction of a funeral benefit allowance.

Hart in Durban is a member of an employer association which is party to the Industrial Council where min-

CLAIRE PICKARD-CAMBRIDGE

imum wages and conditions of employment are negotiated. It is also affiliated to the Steel and Engineering Industries Federation of South Africa (Sefisa) which advises members not to negotiate fundamental issues at plant level.

In its judgment, the court said it did not find the two systems of collective bargaining to be incompatible. It said that with regard to current trends, bargaining at plant level ought to be encouraged as much as possible.

But the court said it had to be borne in mind that negotiations should always be voluntary to be effective. The union argued that Hart's refusal to negotiate on wages and the funeral benefit allowance was an unfair labour practice because it unfairly affected employees and prejudiced their economic welfare. The union said plant-level bargain-

ing was supplementary to industrial-level bargaining because minimum wage rates fixed by the Industrial Council protected employees. But the Industrial Council could not fix a reasonable wage and there was a wide disparity in the profits earned by different companies.

Hart's reasons for refusing to negotiate at plant level included the claim that bargaining on the two issues had taken place at the Industrial Council. Additional bargaining on these matters should be voluntary without legal compulsion.

Sefisa intervened as an interested party and said Mawu was one of 15 trade unions party to the Industrial Council. Inter-union rivalry would be worsened if employers had to deal with competitive bargaining units in separate forums.

The dispute was initially referred to the Industrial Council and when it was not resolved Mawu initiated actions at the Industrial Court.

CLAIRE PICKARD-CAMBRIDGE

AN Industrial Court key ruling that Hart Ltd's refusal to bargain at plant level was not an unfair labour practice, has drawn angry response from the Metal and Allied Workers' Union (Mawu).

The applicant Mawu said the judgment was "pointing unions in the direction of more industrial action".

All unions in the Metal Industrial Council had called for the right of plant-level bargaining and this would now be refused, it said.

Sam van Coller, executive director of the Steel and Engineering Industries Federation of South Africa (Sefisa) — which represents employers — said Sefisa was pleased with the judgment, particularly as it appeared to support the notion of voluntary collective bargaining rather than legal compulsion.

"We are studying the judgment and it will influence what we do. We are also committed to restructuring the collective bargaining process and are still awaiting suggestions from unions affiliated to the local co-ordinating council of the International Metalworkers' Federation," he said.

Mawu is urging workers in the metal industry to join unions and unite to match Sefisa's power. "Only in this way will the employers' power to dictate the conditions of employment be

## Mawu says Hart ruling will lead to strikes

smashed once and for all," it said. It said the court's ruling had destroyed reforms proposed by the Wehahn Commission and re-introduced the discredited liaison committee system in which worker representatives could only consult and not negotiate on plant-level issues.

The court had also chosen to ignore overseas precedent on labour law and unfair labour practices. This confirmed the trend by the court to take a very parochial and narrow view of its jurisdiction, Mawu said.

"It is now clear the court is only prepared to establish rights for individuals and that it is not prepared at all to establish collective rights."

Mawu said it still believed collective bargaining at industry level should be supplemented by bargaining based on ability to pay.



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such negotiations. Some employers see this as part of growing union militancy in response to the political situation.

In the eagerly-awaited judgment, the court has rejected Mawu's contention that Hart committed an unfair labour practice by refusing to negotiate on effective wages above the rates negotiated in the main agreement of the metal industry industrial council and the introduction of a funeral benefit scheme.

From the start, the dispute had implications which extended beyond the differences between the two parties. The underlying issue is one of the major unresolved debates in SA industrial relations: the thorny question of the relationship between industry-level bargaining at industrial councils and bargaining at plant level.

Differences on the issue have been a major point of friction between Mawu and the metal industry's employer federation, the Steel and Engineering Industries Federation of SA (Seifsa). Seifsa is opposed to plant-level bargaining on any matters covered by the main industrial council agreement. Despite this, many metal companies have chosen to defy Seifsa's guidelines.

Against this background, the Hart matter was seen as the test case to determine whether the union could win concessions in the court that it has not been able to wring out of Seifsa. The fact that the court granted a Seifsa application for leave to intervene in the case as an interested party and that the sole witness for Hart was Seifsa director Sam van Coller, points to the nature of the stakes in the case.

One of Van Coller's principal arguments was that if the court upheld the notion of compelling parties to bargain, it would undermine the voluntarism which characterises industrial relations in the industry and bargaining in good faith at industrial council level.

The court found that "under the circumstances" Hart had not committed an unfair labour practice. It said "Although it would seem that some of the results of the refusal to negotiate at plant level could be comparable with those in the definition of 'unfair labour practice' one should not overlook the justification which might exist for such refusal."

Despite this finding, the court has failed to make a coherent statement on the issue of what constitutes an appropriate bargaining level: plant- or industry-wide. Indeed, the judgement reads "If this court had to proffer opinion as to which of the two systems was the better one, it would find itself hard put to make up its mind."

Comments Van Coller on the outcome: "We are pleased that the judgment appears to support the need for voluntarism in collective bargaining." But other labour observers have criticised the court for failing to address the fundamentals of the debate.

Says one labour lawyer, "The court had the opportunity to create a procedure for plant-level bargaining other than industrial

strife. The judgment will undermine the court's image and means that unions will be forced to rely on industrial action rather than the courts."

Mawu has slated the judgment, but it also says it is not surprised by it as the court called the parties together before the case was heard and stated that the time "was not right" to grant an order requiring an employer to bargain at plant level.

While the core issue of voluntarism versus compulsion raised in the Hart case has



Van Coller ... supporting voluntarism

been resolved, the practical question of what constitutes an appropriate bargaining level has not. The latest metal industry agreement, which Mawu has not signed, contains a commitment by the metal employers and unions to examine the industry's collective bargaining structure.

Seifsa states, however, that the unions falling under the SA Co-ordinating Council of the International Metalworkers Federation (which includes Mawu) have not yet put forward any proposals. The coming weeks and months will determine whether industrial action or debate will clarify the controversy over plant- and industry-level bargaining.

(165) (140A) (189) (346) FM METAL INDUSTRY

### Recipe for conflict

The attempt by the Metal and Allied Workers' Union (Mawu) to use the Industrial Court to compel Hart Ltd to negotiate with it at plant level has failed. But the full ramifications of this landmark judgment have yet to be felt.

Mawu says the Hart judgment will "encourage chaos" in the metal industry. The union has canvassed some 100 companies about their attitude to plant-level bargaining and is threatening to declare disputes with any that refuse to accede to its demand for

FM 20/9/85

~~165~~ (165) (165)  
SABC weighs  
20/9/85-12 Day  
Tuck ruling!

PETER WALLINGTON (165)

THE SABC might appeal against the Industrial Court decision allowing TV producer Moira Tuck to apply for a conciliation board hearing of her dismissal case.

Ex-Prime Time producer Tuck, seeking reinstatement at the SABC after being dismissed earlier this year, was yesterday granted the right to apply to the Minister of Manpower for a conciliation board hearing.

Her contract was withdrawn in March as she was to begin a year's contract as producer of *Prime Time*.

An SABC spokesman told *Business Day* the court's judgment was being studied.

But at this stage, the SABC would like to point out that its involvement in the case is not against Moira Tuck as a person.

"It is important for the SABC to obtain clarity about certain legal principles affecting the position of its 50 000 freelance contractors."

Therefore, the SABC was considering whether to appeal or approach the Supreme Court for a review.



# Major ruling on labour practice <sup>26/9/85</sup> *weekly mail*

THE Industrial Court has made a far-reaching ruling that a refusal to bargain at plant level is not necessarily an unfair labour practice

However, the outcome of the case between the Metal and Allied Workers Union (Mawu) and Hart Ltd in Durban has drawn the wrath of union leaders, who believe the judgment is going to "point unions in the direction" of more strike action

The judgment is likely to have an important influence on employers, particularly in the metal industry, where the employer body, the Steel and Engineering Industries Federation of SA (Seifsa), advises members not to grant increasing union demands for plant-level

bargaining.

The hearing was regarded as an important test case because unions argue that plant level bargaining — based on an employer's ability to pay — is needed to supplement Industrial Council negotiations where only minimum wages and certain conditions of employment are set.

Mawu said afterwards it was not surprised at the judgment "Before the case was heard, the court called the lawyers and the parties together and stated that the time was wrong for such a case to have been brought and

that the time was not right for such an order to be granted."

It said the outcome confirmed Mawu's view that the Industrial Court took a very parochial and narrow view of its jurisdiction

Seifsa, in turn, said it was pleased with the judgment because it supported the notion of voluntarism in collective bargaining, rather than legal compulsion

In its judgment, the court said it did not find the two systems of collective bargaining to be incompatible. It said bargaining at plant level ought to be encouraged as much as possible, but the court had taken into account that negotiations should always be voluntary in order to be effective.

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By WEEKLY MAIL  
REPORTER

at 165  
26/9/87

# Marievale evictions lawful

GAVIN EVANS

MARIEVALE Consolidated Mines lawfully evicted 42 National Union of Mineworkers' members who took part in a legal strike last month, the Rand Supreme Court found yesterday

Mr Justice E Stafford ruled that Marievale, a member of the Gen-cor group, could evict the workers from its hostels. The rest of the 62 workers involved in the action will be entitled to remain in the hostels pending a court case on October 15

Counsel for the union, Arthur Chaskelson, QC, indicated the NUM intended to apply for leave to appeal

Marievale, which brought the urgent application for the evictions on September 13, agreed to take no action until the appeal application had been filed

The workers were fired after a legal strike at the end of August and were staying in the hostel as a result of an interim Rand Supreme Court order made on September 4 pending an Industrial Court hearing on September 30. The Industrial Court will be asked to decide whether the workers were legally dismissed

165 (24) (23) FM 11/10/85

**MINING LABOUR**

**NUM loses out**

The Supreme Court has dealt a severe blow to the bid by the National Union of Mineworkers (NUM) to challenge employers' right to dismiss workers who participate in legal strikes. The case was one of many that have been launched in the wake of the mine strike in early September. But the issues raised in it are still to be tested in the Industrial Court.

Last week Mr Justice J Stafford rejected an application by the NUM for leave to appeal against his judgement in a case involving the union and Gencor's Marievale mine. The judge said the union had no reasonable prospect of persuading another court that he was wrong.

Marievale had filed an urgent application requesting the court to uphold its common law right to dismiss 73 workers who participated in the legal strike, and to evict them from the mine hostels. The mine argued that it had the right to dismiss even though the strike was lawful, because the workers had

breached their employment contracts

Marievale's action was brought after the NUM had twice succeeded in obtaining orders from the court interdicting the mine from unlawfully evicting workers who were dismissed during the strike. In its papers, the NUM alleged that its members were being evicted by force and without due process of law. The NUM brought the first action on September 4 — just after the strike. The second was brought the next day when the union alleged that the mine was disobeying the terms of the first order. The union has started contempt of court proceedings against Marievale's management.

Judge Stafford upheld Marievale's claim that the dismissal of the 73 was lawful because they had breached the terms of their employment contracts. In doing so he rejected the arguments brought by the NUM's legal representatives. These were that

- The workers were covered by a recognition agreement concluded between the NUM and the Chamber of Mines which acknowledges the right to strike,
- The workers had been victimised, and
- The Supreme Court should postpone

hearing the case as the union had applied to the Industrial Court to have the workers reinstated on the grounds that their dismissal constitutes an unfair labour practice.

The judge found that the workers were not entitled to withhold their services without committing a breach of their employment contracts and that the NUM-Chamber recognition agreement did not confer any additional rights on them. He also found that the workers had not made out a case for victimisation. As for the argument about the Industrial Court, Judge Stafford said that there was no judicial basis for considering a stay or postponement of the case.

The ruling applies to 43 of the workers who were represented by the NUM's lawyers. The other 30, who were not represented, have been given until October 15 to show cause why the court should not make the same ruling against them.

The fact that employers are entitled to dismiss legally striking workers is one of the most controversial aspects of South African labour law. Critics have pointed out that it is contrary to the situation in other countries where strikers have legal protection against

~~(165) (24) (23)~~

dismissal

FM 11/10/85

The Supreme Court has made its position on the question clear. The NUM will be bringing the matter up again later this month when it asks the Industrial Court to re-instate the Marievale workers contending that their dismissal is an unfair labour practice. Several more cases involving workers dismissed from other mines during the strike are also pending. Whether the Industrial Court — which uses fairness as its chief criterion — will make a different ruling to the Supreme Court is something all concerned with industrial relations in SA will be watching very closely.



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24/161  
**Asserting its rights**

The Industrial Court (IC) has affirmed its right to hear a case in which workers have asked for reinstatement, notwithstanding the fact that the dispute which gave rise to the application is also the subject of a Supreme Court case

This is a new and major development in the debate which has been raging about the IC's powers of jurisdiction and the position it occupies in legal structures

At the heart of the matter is a dispute between the National Union of Mineworkers (NUM) and Anglo American's Vaal Reefs

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mine over the dismissal of four workers  
Earlier this year, Vaal Reefs lodged an urgent application in the Supreme Court to have the four evicted from its hostels on the grounds that their dismissals were lawful because the workers had breached the terms of their common law employment contracts. The Supreme Court granted a *rule nisi* but is yet to hear the full argument in the case. The FM understand it will probably not be heard until March next year.  
In the interim, the workers brought an

application in the IC asking to be reinstated in terms of Section 43 of the Labour Relations Act (LRA) on the grounds that their dismissal constitutes an unfair labour practice. But Vaal Reef's legal representatives opposed the application arguing that the IC did not have the right to hear the matter. This left the IC in a position where it had to rule on whether it could exercise its jurisdiction.  
The principle arguments put forward by Vaal Reefs were

- The IC is entirely subordinate to the Supreme Court and cannot issue orders which would subvert, undermine or contradict the terms of the Supreme Court order,
  - Issues of common law do not fall within the scope of Section 43 hearings, and
  - The IC should not hear the matter because the Supreme Court is hearing the case and it would be undesirable for two tribunals to deal with the same matter for different purposes.
- The IC rejected Vaal Reef's contentions.

It held that the Supreme Court is an institution which cannot consider fairness and equity, interim reinstatements, or the existence of unfair labour practices. The IC said it was not valid to argue that any ruling it might make would amount to a direct challenge to the Supreme Court order or its authority.

cy and that its status needs to be upgraded. Vaal Reefs has been granted the right to take the IC's judgment on review to the Supreme Court. The Supreme's Court's decision will go a long way towards clarifying the IC's status. ■

The IC said "The legislature has deemed it fit to legislate the provisions of Section 43 of the LRA. If an applicant has established certain jurisdictional facts he is entitled to be heard in terms of the relevant provisions, and the IC is obliged to grant such an order." The mere fact that any order it would make would possibly "conflict" with a Supreme Court order, should not influence the IC to refuse to hear the matter. And, if it is perceived that such a conflict subverts the proper administration of justice, it is the task the legislature — and not the IC — to deal with the matter.

The issues raised in the case are of critical importance to labour relations in SA. Some labour observers believe that this case represents part of a concerted attempt to emasculate the IC's Section 43 powers. Since the IC was established, trade unions have achieved major victories over employers in Section 43 applications. These observers say employers are now attempting to get the IC to endorse their efforts to re-assert managerial prerogatives. Others, however, argue that the case merely highlights the fact that the IC is not really a court but merely a government agen-

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# Conciliation board row brewing

THE S.A. Chemical Workers Union (Sacwu) has accused the Department of Manpower of non-compliance with the Labour Relations Act in not responding to four applications for the establishment of conciliation boards.

Manpower Department Director-General P.J. van der Merwe could not give any explanation to *Business Day*, saying he was going to consult with officials of his department.

Sacwu spokesman Manene Samela said the first application for the establishment of a conciliation board, over dismissals at chemical company Pharmatura, was made on May 18.

"We expected the Department of Manpower to reply within 30 days, as laid down in the Labour Relations Act. When we made inquiries by phone, one official said the department was too short-staffed to attend to our demands. This is a clear indication the department does not want to comply with the law."

Samela said the other three applications for conciliation boards were made on August 28, September 13 and September 18 and involved disputes at Karbochem, Fedmis Phalaborwa and Air Products. The department had not responded to any of these applications.

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# Gencor miners reinstated

JOHANNESBURG — In one of its most significant rulings to date, the Industrial Court yesterday ordered Gencor's Marievale Gold Mine to reinstate black miners dismissed during a legal strike at the mine in September this year.

Dr Daan Ehlers, president of the court, said in an order that the mine was required to reinstate the dismissed miners and that the number of miners qualifying for reinstatement had to be agreed upon between the employers and the National Union of Mineworkers (NUM).

The NUM originally applied to the court for the reinstatement of about 1 000 miners. The mine claimed not all the workers were union members, had been fired by the mine or employed by the mine.

The mine indicated during the hearing of the case that if it lost, it would prefer to pay the miners involved rather than re-employ them. The mine had already filled vacant jobs with new recruits. Workers now have 21 days in which to report for duty.

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## Significant court ruling

# Mine must reinst<sup>few</sup> dismissed workers

By Sheryl Raine

In a significant ruling the Industrial Court yesterday ordered Gencor's Marievale Gold Mine to reinstate black miners dismissed during a legal strike at the mine in September this year

Dr Daan Ehlers, president of the court who heard the case with Mr D van Schalkwyk, ordered that the mine reinstate the dismissed miners and that the number of miners qualifying for reinstatement be agreed upon between the employers and the National Union of Mineworkers (NUM). The identity of the workers must be submitted to the court within 30 days.

The NUM originally applied to the court for the reinstatement of about 1 000 miners fired after a two-day strike at the Marievale mine near Nigel on September 3. The strike followed months of wage negotiations with the Chamber of Mines and the failure of a conciliation board to resolve the wage dispute.

### DEMANDING INCREASE

The NUM was demanding a 22 percent increase. Gencor implemented Chamber increases ranging from 14 to 19 percent on July 1.

In court the mine claimed that only 389 of the dismissed workers were union members, that 217 did not belong to the union, 178 had left the employment of the mine prior to the strike, 88 were never employed by the mine, 17 had never left the mine and 112 names had been duplicated by the union on its list of dismissed workers.

During the hearing which lasted two days, Marievale agreed to negotiate with the union on the number of miners involved. The mine indicated that if it lost its case, it would prefer to pay the miners involved rather than re-employ them because the mine had already filled vacant jobs with new recruits.

### MIGRANT WORKERS

The Industrial Court order becomes operative on November 1, but workers have 21 days in which to report for duty. As migrant workers, they were bussed back to their homes immediately after their dismissal and the union will have to contact them and inform them of the outcome of the case.

The NUM said two things had become clear from the judgment — that it was able to bring applications to court on behalf of workers and that legally striking workers ought not to be dismissed.

"The judgment has restored the union's confidence in the Industrial Court," said a NUM statement.

Lawyers for the NUM said the order would mean that at least 500 miners would be granted relief.

At present the Labour Relations Act makes provision for a legal strike but workers who strike legally have no protection from dismissal in the law.

The Industrial court, however, is empowered to decide whether such dismissals are fair and whether workers deserve to be reinstated.



## On the firing line

Should workers who participate in legal strikes be protected against dismissal? This crucial issue in South African industrial relations is the point the Industrial Court has been asked to rule on in a case between the National Union of Mineworkers (NUM) and Marievale Consolidated Mines Ltd, which was heard over two days last week.

At the heart of the case is one of the main anomalies of South African labour law: that even if workers follow all the procedures laid down for legal strikes in the Labour Relations Act (LRA), employers nevertheless have the right to dismiss them for breaching their common law contracts of employment.

The case, in which the NUM has requested the court to temporarily reinstate several hundred union members dismissed from Marievale, arises from the strike at the mine — and several others — in early September. The workers struck after wage negotiations at the Chamber of Mines resulted in split offers from the various mining houses. The NUM reached accord with Anglo American and Rand Mines but deadlocked with Gencor (a Marievale shareholder), Gold Fields of SA and Anglovaal.

In court last week the NUM's counsel argued that a negative decision in the case would demonstrate to unions and their members that there is no protection for lawful strikers. This, he said, would encourage unions to ignore the LRA's conciliation procedures and would result in a tendency towards wildcat strike action. Marievale's counsel countered that a decision in favour of the union, limiting employers' rights to dismiss strikers, would give the NUM — and other unions — the licence to strike without fear of dismissal as long as they follow the conciliation procedures.

But before Industrial Court President Daan Ehlers will be able to consider the merits of the case, he will have to deal with two technical points raised by Marievale's counsel.

□ That the Industrial Court does not have the authority to deal with the matter because the Supreme Court has already ruled that the dismissals were lawful. The Supreme Court made this ruling when it granted eviction orders against some of the Marievale miners recently (*Current Affairs* October 11). In fact, Marievale's counsel said, all previous Industrial Court rulings that lawful dismissals were unfair — of which there are numerous examples — are incorrect. (The

NUM argued that the court is entitled to decide whether Marievale's action was fair — and that whether the dismissals were judged to be lawful is irrelevant), and

That the NUM has no *locus standi* to act on behalf of the dismissed workers. The NUM disputed this contention.

In arguing the merits of the case, the NUM relied on comments by court member Adolf Landman in the case *Council of Mining Unions vs the Chamber of Mines*. Landman observed that it is possible that the dismissal of lawful strikers could be unfair in certain circumstances. He said it would be necessary to take into account

- The cause, nature, size, duration, consequences, results and purpose of the strike,
- The circumstances of the employer and the employee,
- The presence or absence of good faith between the two parties during the strike,
- Stipulations of contracts of employment, especially any to do with participation in legal strike action, and
- The behaviour of employees during the strike.

These points were covered in

**BRIEF TO MARIEVALE WORKERS**

Management has heard that a strike will take place in some gold mines.

Now management would like to notify you that if you involve yourselves in the strike your contracts will be terminated. The other thing that will lead you into problems is the fact that you will be discharged.

You must think carefully about what will happen if you go on strike. If you lose your job and your family will suffer a lot.

When there is a strike management will protect all workers who want to go to work. Do not allow other workers to stop you when you want to go to work.

Management will get all the workers who stop others from going to work, those will be dealt with accordingly.

Even if there is a strike, the salaries won't change.

Whether you have joined the Union (NUM) management will not be stopped by this from dismissing when you are on strike.

**Anti-strike pamphlet . . . management's threat**

considerable detail. Counsel for the NUM argued that the union's wage demands were reasonable, particularly when noting that it had reached agreement with other mining houses. He said the union had behaved with utmost responsibility and restraint throughout the dispute and during the strike. The union's actions had been positive in terms of all these criteria, he added. Counsel for Marievale however, questioned the union's motives for striking. The NUM, he said, struck in order to provoke conflict. It wished to hold an entire industry to ransom. Its true purpose was "to flex its muscles and show the world how powerful it is, whether to impress its members or to gain new ones." Marievale's counsel also said the NUM had not exhausted all avenues of conciliation during the wage dispute. It could, for example, have proposed mediation, arbitration or referral to the Industrial Court, he said. But the NUM's counsel produced conciliation board minutes showing that the union had, in fact, proposed mediation or arbitration which was rejected by the chamber.

Marievale counsel argued further that an order for reinstatement would not resolve the dispute. Employees would return to work at the same wage they had struck over. This would simply lead to further strike action, and a repeat of September's events.

These, in a nutshell, are the issues over which Ehlers must ponder. Given that both sides are anxiously awaiting judgment, he has undertaken to make his decision known as soon as possible and will deliver reasons later.

J-M 1/11/85

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# Historic ruling strips bosses of right to fire strikers

# Court tames employers

**A HISTORIC judgment by the Industrial Court has deprived employers of their most potent weapon in dealing with legal strikers — mass firing.**

The Industrial Court this week ordered the reinstatement of workers dismissed by Gencor's Marievale gold mine for taking part in the September wage strike.

The ruling cuts right across a judgment by the Supreme Court, which held that the dismissal was lawful. The dismissal may have been lawful, but the Industrial Court ruling makes it an unfair labour practice.

## Powerful

The court's ruling in favour of the National Union of Mineworkers means that provided a strike is legal, employers cannot dismiss workers for striking.

The ruling could prompt similar actions by workers in the Industrial Court.

In an economy where hundreds of thousands are out of work, instant dismissal of large numbers of workers has been a powerful weapon in the hands of employers. Many have not hesitated to use it.

The ruling is the first of its kind in which workers asked for protection against dismissals because of their participation in a legal strike. In future, employers wishing to fire workers will have to make sure their action is not only legal but fair in the eyes of the Industrial Court.

Unless it appeals success-

fully against the order, Gencor will have to re-employ the fired workers.

Gencor spokesman Harry Hill says he cannot comment until the judgment has been studied.

The Industrial Court granted the interim order in terms of Section 43 of the Labour Relations Act (LRA). The ruling means negotiations over wages terminated by the dismissals can be resumed.

The Industrial Court's contradiction of a Supreme Court finding once again raises the question of its jurisdiction. At issue is whether the Industrial Court has the right to hear the same matter as the Supreme Court even if

the judgment is likely to differ.

Daan Ehlers, president of the Industrial Court, says Section 53 of the LRA provides for criminal proceedings against any party which disobeys an order of his court.

Dr Ehlers says that in the interim, however, parties can continue negotiating the issues in dispute — wages and now, mass dismissals.

## More to come

Labour consultant Andrew Levy believes there will be a lot of litigation after this decision.

"Gencor is unlikely to ac-

cept the ruling lying down," he says.

The miners' union says the judgment will ensure legally striking workers of protection. It will also encourage the use of the industrial dispute-resolving machinery.

Loet Douwes-Dekker, of the Wits University Business School industrial relations department, says, "Parties should take heed of the direction the court has given and incorporate rules that govern strikes in their agreements."

Johan Piron, head of the University of South Africa's department of industrial relations, says, "The judgment will also defuse the ideological problems surrounding strikes."

By Amrit Manga

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S. Times

3/11/85



Three judgments

by the Industrial Court have deprived employers of their most potent weapon in dealing with black workers — mass dismissals

The Industrial Court has ordered the reinstatement of 1 000 black mine workers fired by Gencor's Mavale gold mine for taking part in the legal wage strike in September

This ruling cuts right across a judgment by the Supreme Court, which held that the dismissal was lawful. The dismissal may have been lawful, but the Industrial Court ruling makes it an unfair labour practice

In another Industrial Court hearing, which might set a precedent, the court has ordered the reinstatement of two workers who were sacked after taking lie-detector tests

Mr Aaron Mahlangu and Mr Ashley

# Losses

## WORKERS' DIARY — BY JOSHUA RABOROKO

Gallant were dismissed in May by CIM-Deltak (Pty) Ltd after being subjected to lie-detector tests. The tests followed the misappropriation of company funds amounting to R15 000 last year

After police investigations had failed to find the culprits the company engaged an expert in lie detector tests

The two men were dismissed on the basis of the results

In the third Industrial Court judgment, the court has reinstated workers employed by DHL, a British multinational, dismissed for being members of the South

# LOSE WEAPON

turn 65 years, are urged to please come to the union to apply for a fully paid up policy of the Group Funeral Scheme

Many members still do not do so because they do not want their employers to know their age. When you apply for a fully paid policy at 65 the union will not tell the employer to stop deductions, so he will not know your age

The first step in their campaign was the recent temporary order granted by the Port Elizabeth Supreme Court on September 25

The OK objected to the longer hours because of the social consequences for staff who would now have to work an effective

# USE WEAPON

union firm next to Sarmcol, has agreed to negotiate a recognition agreement and to pay Mawu R1 400

Members of the Chemical Workers' Industrial Union decided to go on short-time on their own, after management's refusal. The company was furious when the workers did so, but subsequently management changed its original plan

Thirteen disputes declared by the Metal and Allied Workers' Union (Mawu) against Pinetown Engineering Company have been settled out of court

After lengthy negotiations the company, which was regarded by unionists as "undoubtedly the most anti-

union firm next to Sarmcol, has agreed to negotiate a recognition agreement and to pay Mawu R1 400

Workers at P O Glass near Germiston, have cleverly blocked management's attempts to retrench 22 workers — and in the end only two were laid off

Members of the Chemical Workers' Industrial Union decided to go on short-time on their own, after management's refusal. The company was furious when the workers did so, but subsequently management changed its original plan

All the workers dismissed from the CDA motor plant in East London last month when they went on a work stoppage in protest against management's insensitivity to conditions in the protest-torn townships have been taken back

## Fosatu

Last year was the "most difficult year" the National Union of Textile Workers faced since 1976, according to a report. More than 200 union members lost their jobs through retrenchments and closures

The South African Chemical Workers Union has criticised the Minister of Manpower for failing to appoint conciliation boards to resolve disputes it has with three companies — Fedimis, Karbochem and Air Products

The union has warned that more than 1 000 of its members at these firms might go on strike over the delay in the appointment of the boards

Fosatu has called on the Government to abandon its apartheid laws

In a report the federation says foreign investments must assist this process. It also welcomes all forms of pressure against the apartheid state

The Unemployment Insurance Fund (UIF) will seek private-sector loans to cope with increasing demands on its lean reserves

Demand for benefits forced the fund to raise investments at short notices and at loss on three occasions this year. How much the fund lost is not known

Mr Jack Scheepers, commissioner for the fund, says losses were not near the interest of more than R100 million earned on investments in the past five years

Two black consciousness-orientated trade unions have formed a sub-committee to explore the future of the working class in South Africa

They are Council of Unions of South Africa (Cusa) and the Azanian Confederation of Trade Unions (Azactu)

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SOWETAN 6/11/85



INDUSTRIAL COURT

# Victory to the workers

The Industrial Court's decision to order the temporary reinstatement of several hundred National Union of Mineworkers (NUM) members dismissed from Marievale mine during the September wage strike is seen as an important milestone in the development of South African labour law. The judgment is likely to lay down important guidelines for management conduct during lawful strikes.

The precise implications of the judgment, however, will not be known until the court hands down its reasons, in about two weeks' time.

The court has clearly dismissed two technical points raised by Marievale's counsel during the hearing (*Current Affairs* November 1). As in the recent case between the NUM and Anglo American's Vaal Reefs mine, it has again upheld its right to rule on the fairness of an action despite a Supreme Court decision that the dismissals were lawful. (The Supreme Court made this finding in its ruling on the legality of the eviction of strikers from mine hostels.) And the Industrial Court has also upheld the right of the NUM to take court action on behalf of its members.

Wisely, the NUM has decided not to draw too many conclusions until the Marievale judgment is out. "We view the court's decision favourably, but our central committee wants to study the reasons before making any general statements," says a union spokesman.

Gencor, the mining house which administers Marievale, is also showing caution. But the judgment has placed the company in a position where it must make some important decisions.

In terms of the court's ruling, the workers have until November 21 to report for duty. There is some disagreement over the precise number of miners involved, and the court has ordered the two parties to settle the matter between themselves.

But the problem for the mine is that it took on new workers after the strike. The mine will thus soon find itself with too many workers. A Gencor spokesman says the judgment will be obeyed to the letter. Given that the court has ordered a return to the *status quo* before the strike, all the returning workers will have to be re-employed in their previous positions, he says.

By Tuesday, only a trickle of the workers had reapplied for their jobs. The company plans to wait to see how many eventually return before deciding how to deal with the surplus manpower. It appears that if a sizeable number return — as is likely — Gencor's only option would be to dismiss the new workers or relocate them to other mines in

the group

Gencor is also considering whether to take the case on review to the Supreme Court, on the grounds that the Industrial Court did not have the right to make a ruling in view of the Supreme Court's earlier finding. The arguments that Marievale's counsel presented to the Industrial Court makes this a strong possibility.

Manpower Minister Pietie du Plessis also has an important role to play in the case. The Industrial Court's temporary order is designed to ensure that further negotiations in the dispute take place at conciliation board level. If these fail, the union is entitled to approach the court to make a final order in terms of Section 46 of the Labour Relations Act. But, if the Minister decides not to appoint a board, the possibility of a Section 46 action falls away.

Immediately after the strike, the NUM asked the Minister to appoint a conciliation board to consider the dispute. Two months have passed since then without a board being appointed. A Manpower Department spokesman said the application has not yet been passed on to the Minister because of the vast amount of paperwork involved. The spokesman expects the Minister to begin considering the application later this week. This seems odd, seeing that Du Plessis appointed a board within two working days when the NUM originally declared its wage dispute with the Chamber of Mines.

Whatever the outcome of this case, the original wage dispute that caused the strike is not yet dead. The NUM has emphasised that it intends to continue fighting for a wage settlement with Gencor and with two other mining groups — Anglovaal and Gold Fields — with which it failed to reach agreement in August. And NUM legal advisers are busy considering whether to take court action against Anglovaal and Gold Fields over other workers also allegedly dismissed during the strike.

## NAMIBIA

### Let the people go

All the Namibian political prisoners who were held on Robben Island or in other South African jails have been transferred to the Windhoek Prison and a decision on their release will be made this week by the Cabinet of the Transitional government.

Most prominent of the 21 men is Elhaseb Tuhadalen, one of the earliest nationalists arrested and tried with the now secretary-general of Swapo, Andimba Toivo ja Toivo,

in 1967 Tuhadalen was held on Robben Island until he was moved to a Cape prison recently for health reasons. The other 20 were all imprisoned on Robben Island.

Ja Toivo was released last year. After living in Windhoek for a while, he left the country on several tours around the world. He was still abroad when his passport expired in September, and he is expected to remain in exile.

The National Assembly decided on July 4 this year to request the government to transfer the prisoners to Namibia and to consider their release.

The release of five other political prisoners who were always kept in Namibian jails will also be considered. All 26 prisoners are members of Swapo who were convicted on charges related to terrorism legislation.

The transfer and possible release of the prisoners is seen as an effort by the Transitional Government to demonstrate their independence of the South African government and to gain some desperately needed credibility in black nationalist circles. Some members of the Cabinet, such as Swapo-D's Andreas Shipanga, himself a co-founder and early leader of Swapo, and Swanu's Moses Katjuongua, have pushed for Tuhadalen's release for some time now. The Minister of Justice, Jariretundu Kozonguizi, was also a militant nationalist in those early days and while he was the president of Swanu, had



Swapo's Ja Toivo — his old cellmates may soon be released

# Conciliation boards can't cope with applications

By Mike Siluma

Staff shortages in the Department of Manpower are leading to delays in the processing of applications for conciliation boards to resolve a number of labour disputes.

Now about 500 members of the South African Chemical Workers' Union (Sacwu) at Fedmis in Phalaborwa are poised to go on a legal strike after applying for a board on September 23.

In terms of the Labour Relations Act workers can go on a legal strike if the Minister fails to appoint a board within 30 days of applying for one.

Sacwu's general secretary, Mr Mike Tsotetsi, said 423 out of 531 members had recently voted in favour of industrial action to resolve their nine-month long dispute with the company.

He said the union would set a strike date shortly.

## PROCESSING SLOW

The Department's chief director of labour relations, Mr J D Fourie, said applications could not be processed quickly enough because of a shortage of staff. Another reason was the increase in applications — from 123 for the whole of 1980 to 279 from January to September this year.

The dispute at Fedmis, a division of Centrachem, centred on the company's failure to reinstate some workers dismissed after a strike in February.

Mr Tsotetsi said when the union approached the Department of Manpower, more than three weeks ago, officials promised that a board would be appointed within "a couple of days".

He blamed the Minister for the delay in resolving the dispute because, he said, even Fedmis had agreed to the appointment of a board.

The decision to hold a ballot followed Sacwu's criticism last week of the Minister's delay in appointing conciliation boards to resolve the Fedmis dispute and two others at Karbochem and Air Products.



(165) (107)  
INDUSTRIAL COURT

## Detecting lies

The Industrial Court has decided to order the temporary reinstatement of two workers allegedly dismissed solely on the evidence of the results of lie detector tests. While court member Ameen Bulbulia has not yet handed down reasons for his judgment, his finding has been widely interpreted as a warning to employers not to rely too heavily on the device for disciplinary purposes.

The case arose out of a dispute between Aaron Mahlangu and Ashley Gallant and their employer, CIM-Deltak.

The applicants argued that they had been dismissed on suspicion of theft after undergoing lie detector tests which supposedly measure deception by analysing emotional stress in a subject's voice. The court was presented with a vast amount of expert opinion on the reliability of the test.

The company told the court that there had been several instances in which cheque books and credit cards belonging to its employees had been stolen and used fraudulently. It appeared that the thefts had been carried out by other employees. While admitting that its evidence was not conclusive, CIM-Deltak denied that the results of the lie detector tests were the only basis for the dismissals. It said it had also taken into account the access Mahlangu and Gallant had to the stolen items.

It said it was obliged to take action over the thefts.

The use of lie detectors has been a source of friction between employers and unions for many years. This case is likely to set down at least some of the ground rules for determining the acceptability of lie detector tests. ■

Financial Mail November 8 1985

Dr Piet <sup>12/11/85</sup> 165  
puts labour  
lawyers ~~in~~  
in the dock

Using lawyers in labour disputes incurred high costs, going against the original intention of keeping down legal expenses in union-employer disagreements, according to Dr Piet van der Merwe, Director-General of Manpower

He was addressing a Johannesburg Chamber of Commerce weekend business forum on "The Industrial Court — Quo Vadis?" and said the Wiehahn Commission had proposed that access to the Industrial Court should follow a less formal procedure and be open to interested parties at as low a cost as possible

"Although the Act provides for parties to put and argue their own cases before the court, the legal fraternity has entered the field in force and litigation has become as expensive as in other courts," Dr van der Merwe said

"All sorts of gimmicks are invented to circumvent the Act, such as the appointment of a lawyer as a temporary member of a trade union. Employers have also employed lawyers full-time"

He said he was looking into the matter and the necessary steps would be taken by the Government

Dr van der Merwe said using lawyers had led to delays in hearing cases as the court often had difficulty finding a suitable date for each party's legal representatives

On suggestions that the court should form part of the Supreme Court or be placed under the auspices of the Department of Justice, Dr van der Merwe said this was not feasible as the court was "a court of equity, not a court of law".

He warned that because equity was decided on the merits of each case, it was dangerous to compare decisions

Even the various divisions of the Supreme Court often differed in their decisions, he pointed out

The trust that the court enjoyed, Dr van der Merwe said, was illustrated by the increase in cases — from 15 in 1980 to 555 as at October this year

All the court's decisions could be reviewed by the Supreme Court and local divisions of the court were being considered

INDUSTRIAL COURT

(165) ~~12~~  
**Polygraph slammed**

Reasons handed down by the Industrial Court in the widely-publicised case of Mahlangu and Gallant vs CIM Deltak (*Current Affairs* November 8) confirm that employers who rely on the results of lie detector or polygraph tests as evidence of wrongdoing on the part of workers cannot expect protection from it.

The court has ordered that the two applicants, who had been dismissed on suspicion

Financial Mail November 15 1985



(165) ~~12~~  
of theft, be temporarily reinstated. Their counsel had argued that the company had relied solely or substantially on the evidence of lie detector tests in dismissing them.

In making his decision, court member Ameen Bulbulia considered reams of expert opinion on the validity of lie detector tests. He found that "from the point of view of the law of evidence, the court cannot ignore an expert opinion which holds that the use of a lie detector machine, for the purpose of establishing a person's guilt or innocence, is reprehensible on scientific, psychological and ethical grounds."

Bulbulia also took note of a great deal of Canadian, US and British case law and statute which has explicitly or implicitly questioned the validity of the device. In his judgment, he says that in the absence of any relevant SA case law, "the decisions of foreign jurisdictions ought to have a strong persuasive influence on the Industrial Court's decision and serve as guidelines."

Bulbulia thus discarded the company's lie detector evidence, and found that other factors the company had taken into account were insufficiently strong to infer that the two men had been implicated in the thefts. ■



## Mwasa lays charges over firm workers

NOV. 1985

The Association of South Africa (Mwasa) has laid criminal charges against an employer who allegedly failed to reinstate or pay dismissed workers after the Industrial Court ruled in the workers' favour.

The case will be heard early next year at the Johannesburg Magistrate's Court.

Mwasa is also considering taking legal action over a decision by the Minister of Manpower not to establish a conciliation board to settle the dispute.

Trouble started on December 14, 1984 when seven workers were dismissed by Mr Taco Kuiper of Facts Investors Guide and Facts Investors Services.

### DISCUSSIONS

The employer claimed the workers had gone on strike. The workers claimed they were not on strike, but merely wished to discuss certain aspects of their employment with Mr Kuiper. They had stopped work for about 30 minutes.

Even after the Industrial Court ruled in the workers' favour, the Minister of Manpower declined to appoint a conciliation board to settle the dispute. Although the union's legal representatives have asked for reasons from the Minister for his refusal, none have been given so far.



## Ruling shows distinction between

By Sheryl Raine

A clear distinction between the lawfulness and fairness of dismissing strikers emerged in a significant Industrial Court ruling this week.

The Industrial Court also indicated it would jealously guard its right to judge the fairness of dismissals despite recent employer attempts to apply to the Supreme Court to support the lawfulness of their actions in dismissing strikers.

This week Dr Daan Ehlers, president of the Industrial Court, spelt out reasons why the court earlier ordered the reinstatement of black miners fired for striking from Gencor's Marievale gold mine on September 3.

Dr Ehlers dismissed arguments by the employers that because the Supreme Court had earlier ruled the dismissal and eviction of Marievale's striking miners

was lawful, their dismissal was also fair. Dr Ehlers pointed out that no jurisdiction had been given to the Supreme Court to determine unfair labour practices. That was the job of the Industrial Court under the country's labour laws.

Although the Supreme Court had decided in terms of common law that the dismissals were lawful, the Industrial Court still had every right to order their reinstatement after considering the fairness of the dismissals.

The Industrial Court had harsh words for Marievale Consolidated Mines Ltd.

By rejecting arbitration or mediation as means to settle its wage dispute with the National Union of Mineworkers, the company had shown "an adamant attitude," the court found.

Adopting "an adamant, negative or uninspired approach" during negotiations resulted in the spirit of

the Labour Relations Act being defeated. "From the papers before court, it appears the company made unilateral wage increases followed by notices on more than one occasion to employees, to the effect that should they strike they ran the risk of being dismissed. Video films to the same effect were also shown to them (the employees)."

"It would appear that the company adopted what could justifiably be termed a paternalistic attitude towards its employees."

The court said the union must have realised no other options apart from striking were available to it in order to resolve the dispute.

The company appeared to be solely concerned with the lawfulness of its actions and paid little or no heed to the fairness of its decision.

Failure to attend to the fairness of dismissing the strikers was not conducive to generating conciliatory

or sound industrial relations.

"Although other mining houses gave reconsideration to wage increases and with the exception of two of them, reached a settlement with the union, Marievale refrained from giving reconsideration to wage increases. This was despite the fact that the company possessed the financial means to meet the wage increases required of it."

Two other Gencor mines hit by the miners' strike, Matla Coal Ltd and the Transvaal Navigation Collieries, reinstated dismissed employees.

Although Marievale was aware of an agreement with the union not to evict employees from the mine hostels, it continued evicting employees and then told the Industrial Court that "no worker was removed from the premises against his will".

"The manner in which the company repeatedly issued warnings to employees of the risk of dismissal if

they participated in the strike could hardly be described in the circumstances as evidencing a placable intent to diffuse the dispute," the court said.

The court noted Marievale had even dismissed a worker who had been on leave and was not involved in the strike. The court regarded this act as a further "show of unilateral high-handedness".

Instead of embarking on a wildcat strike, the union had given consideration to the dispute-settling machinery provided for by law. When these means failed, the union acted responsibly by holding a strike ballot, a national conference and issuing strike rules.

The two-day strike resulted in no damage to property and was conducted in an orderly manner.

With the union's behaviour in mind, the court declared the dismissals unfair.



# Genoor to ask for review on court

21/11/88  
rulings

CLARE PICKARD-CAMBRIDGE

The judgement is a complex one and I fear employees may perceive that they cannot be dismissed.

He said that the judgement did not make any blanket rules, but concerned an alleged unfair labour practice in a particular case.

It showed that the court would look at circumstances and conduct in every case and that if an employer were to act unfairly, the workers could be re-instated.

He said the rationale behind the judgement was consistent with widely supported beliefs concerning the position of legal strikers.

But he believed it was an overstatement to believe large inroads had been made into managerial prerogative.

The principles applied in the case had not dramatically changed the current position.

They were an application of the rules of equity laid down by the industrial court in a particular set of circumstances.

Unions would be encouraged to follow legal channels and recognition agreements — which set down mutually acceptable procedures — would regulate the position of legal strikers more comprehensively.

The National Union of Mineworkers (NUM) said yesterday the court's ruling meant workers could see a legal strike as being legally permissible without fear of being necessarily liable to dismissal.

The NUM said it proved that unbending attitudes — sometimes governed by "exploitative motives" — could be met by the collective power of legal strikers.

GENCOR is to ask for a review of an industrial court ruling ordering the Marlevale mine temporarily to reinstate workers fired after a legal strike.

Gencor yesterday declined to comment on the Marlevale case, but said it would take it on review to the supreme court.

A leading industrial relations expert, Professor Johan Piron of Unisa's School of Business, Leadership and Strategy, said the temporary reinstatement order did not place a blanket ban on the dismissal of legal strikers.



THE PRESIDENT'S COUNCIL

# Deracialising the economy

Yet another committee of the President's Council (PC) has come out strongly in favour of scrapping key aspects of apartheid. The report of the committee for economic affairs tabled at the council's plenary session in Cape Town this week says no one should be restricted from participating in the economy on racial grounds.

It proposes the scrapping or amendment of all apartheid measures preventing blacks, coloureds and Asians achieving full "equivalence" with whites in business. If accepted by government and implemented, the report could mean an end to apartheid in business. All business and industrial areas would be open to entrepreneurs of all races and they would be subject to the same standards and regulations.

The committee had been asked by President P W Botha to investigate a strategy for small business development and for deregulation.

Apart from slamming apartheid, the committee also makes sweeping suggestions to cut red tape in the small and informal business sectors (see *Business*).

The report follows a call in September by the PC's constitutional committee — later backed by the majority of the full council — to scrap influx control. The suggestion is being studied by government.

The economic affairs committee, under chairmanship of Francois Jacobsz, found that the Group Areas Act (GAA) as it affects the economic activities of Asian, black and coloured entrepreneurs "is in direct conflict with the objective of increasing the participation of economically less developed communities in the economy and of improving their perception of the merits of the free-market system."

Privileged access for white businessmen could not be reconciled with the nature of the market, which recognises only the ability to pay and the ability to supply, the committee said.

It recommends "That discriminating legislation applicable to businessmen of the Asian, black and coloured population groups be repealed or amended insofar as may be necessary to achieve a situation where all businessmen in South Africa operate their businesses in terms of procedures and subject to standards which are in all respects equivalent, providing that existing alternative standards which are less costly and more simple should be retained without distinction on the basis of race to take into account the needs of developing communities in South Africa."

The committee suggested the establishment of a technical committee with private-

sector representation under the Department of Constitutional Development and Planning to urgently investigate apartheid laws affecting business.

It lists seven apartheid measures which it said should be immediately investigated. These are:

- The Black Administration Act,
- The Black (Urban) Areas Consolidation Act,
- The Group Areas Act,
- The Community Development Act,
- Influx control,
- Real rights for blacks to own land, and
- Land use and (black) township establishment.

The committee effectively urges government to open all business and industrial areas and not just CBDs to trading by all races. It also rejects the "local option" concept being applied at present to applications for open CBDs. "This 'local option' as it exists in practice, although not on the statute book, could work against the participation of Asian, black and coloured business communities in those towns and cities where attitudes are not sympathetic to the accommodation in business of these communities," the report says.

It points out that in an economically integrated society, the economy is indivisible and group restrictions on access to business could hardly be regarded as being in the best interests of society as a whole and of the developing communities in particular.

It suggests that participants in the informal business sector (mainly in black communities), which provides employment for an estimated 2m people, be "nurtured" rather than "persecuted".

In particular, the committee recommended that "pirate taxis" be encouraged as a valuable means of transport and that regulations be eased to make licences and permits more readily available to operators.

Black, coloured and Asian residential areas should also be more carefully planned to make provision for properly structured trading areas in the same way that white areas are structured according to strictly enforced town planning schemes. ■

X FM 22/11/85  
INDUSTRIAL COURT

## The right to strike

The Industrial Court has handed down the long-awaited reasons for its decision to order the reinstatement of several hundred miners dismissed from the Gencor-managed Marievale mine during the legal wage strike in

September

The judgment does not lay down any specific guidelines which employers should follow in the case of a lawful strike. But it strongly criticises a number of actions taken by Marievale management and gives some idea of the general view the court is likely to take in similar circumstances.

On the merits of the case, the judgment rejects Marievale's argument that a reinstatement order would amount to giving employees a licence to strike. In fact, it contends that a reinstatement order may well convince



Miners ... rights reinforced

other employees who may be planning to strike illegally to rather use the conciliation procedures in the Labour Relations Act. It "may thus serve as a useful example to other employees on the mines."

In rejecting Marievale's contention that the National Union of Mineworkers (NUM) had failed to exhaust conciliation procedures before striking, the court points to conciliation board minutes showing that the union supported mediation and arbitration, while employers — through the Chamber of Mines — rejected the idea.

The court also rejects Marievale's allegation that the union had deliberately embarked on a process of confrontation "to show its members and the world it could bring the mining industry to its knees." This is "inconceivable," says the court, given that the union used all available dispute-settling mechanisms. In addition, the union did not call a strike at mines where a wage settlement had been reached. "This can hardly be said to be reconcilable with bringing employ-



ers to their knees," says the court

Observing that "there appears to be an obligation on parties to a dispute to adopt a *bona fide*, objective and flexible attitude," it describes Marievale's approach as "adamant, negative and uninspired"

The court also accuses the mine of adopting a paternalistic attitude towards its employees by unilaterally implementing wage increases and notifying workers that they faced dismissal should they strike

On the NUM's decision to strike, the court says the union "must have realised that no other options were available to it (and) subsequently resorted to strike action"

The judgment concludes by noting that

□ Marievale paid little or no heed to the fairness of its actions,

□ This is not conducive to generating conciliatory or sound industrial relations,

□ The company did not reconsider the wage increases it implemented unilaterally, despite the fact that other members of the chamber did and although it had the financial means to do so,

□ Two other Gencor mines reinstated dismissed workers but Marievale did not,

□ Despite awareness of an agreement to the contrary between the union and other Gencor mines, Marievale continued evicting employees from its premises soon after the strike,

□ The company breached the recognition agreement between the chamber and the NUM to which it is a party,

□ The mine displayed an implacable attitude by its statement in court that no prospect for conciliation existed,

□ Although the NUM branch chairman on the mine was on leave during the strike, he was dismissed, "a further show of unilateral high-handedness on the part of the company," and

□ The union conducted a ballot and issued rules prior to the strike. The strike was conducted in an orderly manner

The judgment dismisses contentions made by Marievale that the NUM had no *locus standi* to act on behalf of its members in the case. It also rules against Marievale's claim that the Industrial Court did not have jurisdiction over the case because the Supreme Court had previously decided the dismissals were lawful. The function of the Industrial Court, it says, is to consider matters on the basis of fairness and equity, and it is the only South African court able to do this. Marievale has announced its plans to challenge this ruling in the Supreme Court

## MINISTERIAL SACKING

### Boetie bites back

Ebrahim "Boetie" Abramjee, the sacked former Budget Minister in the Indian House of Delegates (HoD), is threatening to pull the whole house down, and with it the credibility and workings of the tricameral system itself, if he is not given satisfaction over his ministerial demise

He believes that if his National People's Party (NPP), led by HoD leader and minister without portfolio Amichand Rajbansi, feels that he was right over his debacle with the State President, then it should, at the least, "prorogue the HoD until a satisfactory response is received"

Another tactic, he believes, is for the HoD to block all legislation or refuse to pass the Budget, thus bringing the system to a halt — if only temporarily, since the President is entitled to rule without the other Houses

"This would be political suicide for the country's image abroad if the State President is seen to have these arbitrary powers in a so-called democracy," he explained

If this does not happen, one option open to him, he tells the *FM*, is to switch his membership — and that of a handful of other NPP MPs who support him — to the opposition Solidarity Party led by Jayaram Reddy. This would immediately make Solidarity the majority party in the HoD and neatly shaft Rajbansi and the NPP out of office. According to Abramjee, Solidarity have already offered him the chairmanship (*sic*) of the Indian Ministers' Council (Rajbansi's post) or "any post" he wants, if he joins them

That would really place State President P W Botha in a quandary. Would the President then simply side-step the Indian House, as he is entitled to do? And if so, what would remain of the already battered credibility of the tricameral constitution?

Abramjee, who says there has been an "elaborate and orchestrated plot" against him, further tells the *FM* he plans to make certain "political dynamite" revelations about government workings whose "constitutional repercussions could leave the whole tricameral system in chaos"

All this comes in the wake of Botha's dismissal of Abramjee, apparently for breaching Cabinet confidentiality by pre-empting Botha's announcement of the go-ahead on the R3,5 billion Mossel Bay gas extraction scheme which was known to be on the cards for at least a year — and which is set to be a boon to the depressed eastern Cape

The swiftness of Botha's boot (he telephoned Abramjee at his Port Elizabeth hotel at 8 15 am last Thursday to demand his resignation after Abramjee's remarks had appeared in the *EP Herald*) surprised most people and reinforced the notion that the President was gunning for the minister

The punishment seemed out of all proportion to the crime, which Abramjee rejects having committed. He was fired on the basis of "conjecture and conclusions" made by journalists

Rajbansi called it "a technical transgression rather than an act of dishonesty". It is the first time an SA minister of whatever description has been fired. Many have pointed out that Cabinet ministers have in the past committed breaches of form at least as serious, without being fired

Indeed Abramjee, the controversial MP for Laudium who was elected on the strength of an uncommonly high percentage of so-called special votes in August 1984, tells the *FM* that Botha's action shows a "double standard" at least — and perhaps even a racial one

He asks why Information Minister Louis Nel, for example, was not sacked after his secret visit to Renamo bases in Mozambique

Abramjee, who is determined to remain an MP, was due to meet with Rajbansi as the *FM* went to Press, in order to decide his future with the National People's Party (NPP) which holds, only just, the majority in the HoD

HOUSING

### Mixing it, slowly

A residential property development at the Strand (Cape), which will arise on white land re-proclaimed for coloured occupation, appears to be a significant softening of government's attitude towards providing areas for coloured housing and could be an indirect step towards non-racial suburbs

Although speculation that the development, to be called Southfork, would get the official go-ahead to be an "open" area has been disproved, it is understood that this is more because of the critical shortage of land in the area for coloured housing than due to political disapproval

Southfork is the first land provided for coloured housing in the Strand area for at least 15 years

The developer, Doug Harrowsmith of Cape Town, believes government's willingness to re-proclaim white land for sale to other groups opens the way for similar moves in other, as yet undeveloped, white areas

This would not only ease the shortage of land for coloured and Indian (and even black) housing, but also offer more wealthy people in those communities higher quality housing and a better environment than they have to put up with in many of the townships where they are now forced to live

Perhaps significantly, the development is located within Constitutional Development and Planning Minister Chris Heunis's Helderberg constituency. Heunis, probably the most reform-minded man in the Cabinet, has the odious task of administering the Group Areas Act (GAA), but he is understood to be taking keen interest in its modification. Coloured Local Government, Housing and Agriculture Minister, David Curry, is believed to be watching the development with equal interest

Southfork provides for about 300 plots. The development is aimed at buyers with R45 000 or more to spend. It is situated on the Gordons Bay side of the Strand in what is considered to be a good position close to the beach, shops and transport.

The land is zoned a white group area. Harrowsmith applied to sell to coloureds and

27.1.77 / 35  
Legal strikes  
(165) B. Day  
'come of age'

CLAIRE PICKARD-CAMBRIDGE

THE Industrial Court has laid a new emphasis on the necessity of using all means of conciliation during disputes and strikes, says industrial relations consultant Andrew Levv.

Levv said yesterday the Marievale judgment — which ordered the mine to temporarily reinstate legal strikers — indicated the court was being more sympathetic to a party which had been thwarted in its attempt to use conciliatory channels.

"The ruling is the first step towards the 'coming of age' of legal strikes as a legitimate worker action," he said.

The lesson was that the decision to dismiss legal strikers would no longer be simple.

It indicated that many traditional responses employed by managements in a strike, such as by-passing unions or refusing to talk to representatives, were no longer going to hold in the eyes of the Industrial Court.

The importance of 'reasonableness' had been highlighted in the judgment and managers should issue invitations to negotiate before delivering ultimatums, he said.



# Marievale dispute see-saws back to court

By SEFAKO NYAKA

LAWYERS acting on behalf of Gencor's Marievale Consolidated Mines gave notice this week they would bring an urgent application in the Transvaal Supreme Court in Pretoria today, asking that an Industrial Court (IC) order reinstating miners dismissed during a strike in September be set aside.

On October 31, an IC granted an order reinstating NUM members dismissed at Marievale during a legal strike.

The IC order became operative on November 1 and workers were to report at the mines by today.

According to papers before the court, 232 former Marievale employees have returned to work, and the number is expected to increase substantially.

Among the arguments they cite for the setting aside of the IC order are the danger of faction fights erupting on the mines, and severe losses in after-tax profits.

The respondents are the president of the IC, Dr D B Ehlers, a member of the IC, Adv D R van Schalkwyk, and the National Union of Mineworkers (NUM).

If as many as 500 employees are reinstated, the additional wages would

amount to R210 000 per month. Thereafter, the cost will be R42 600 per 100 employees.

"This in effect means that by complying with the court order, the applicant is forfeiting a very substantial percentage of its profits."

Marievale claims that because it had recruited other workers before the outcome of the IC case, it can only take back 350 former employees

"As soon as more employees have to be reinstated, it will be necessary for the applicant to reopen a hostel which has been in disuse for many years"

The cost of placing the hostel in an acceptable hygienic and habitable

condition will amount to about R230 000, resulting in further loss in profits, Gencor claims.

The alternative would be to house the workers in the hostels that are in use, but this would lead to overcrowding, resulting in friction among the occupants, and faction fights may ensue, and injuries to persons and property may result.

Marievale also claims if more workers are taken on, then the production bonus would have to be shared among a larger team, thus causing a rift between the workers.

This is also likely to lead to faction fights.

The applicants contend they were lawfully entitled to dismiss the

workers and terminate their contracts.

At all times during the wage dispute, Marievale says it made it clear to NUM that it would not pay higher wages and therefore contends that reinstatement would serve no purpose whatsoever.

It also submits that once the Supreme Court had decided that workers had been lawfully dismissed, it was not open to the IC to override that decision by reinstating such employees, even on an interim basis.

In an earlier hearing in the Rand Supreme Court more than a month ago it was ruled that Marievale had legally dismissed the workers.

The NUM then appealed to the IC, which ruled in the union's favour



NUM

### The Minister's veto

The Industrial Court has ruled that there is a difference between a strike and a work stoppage. The court drew this distinction in ordering Facts Investors' Guide and Facts Investors' Services to reinstate temporarily nine members of the Media Workers' Association of SA (Mwasa).

The workers' efforts to obtain permanent reinstatement have been foiled, however, by the decision of Manpower Minister Pietie du Plessis not to appoint a conciliation board to consider the matter further. This means the union cannot unilaterally refer the case to the court for a final ruling.

The workers alleged they had been unfairly dismissed after they had stopped working for about half an hour in an attempt to meet with the MD of the two companies to discuss grievances arising out of a memorandum relating to annual bonus and leave.

After analysing the relevant provisions of the Labour Relations Act, the court found that "a mere cessation of work" is not, in itself, a strike. There must, it said, be a demand related to a concerted refusal to work, and such a refusal must be shown to be intended to persist until the demand is met.

The court stated that, in these terms, the workers' request to meet the MD did not constitute a demand. "It can only be such if it was clear that the employees would not have been effectively rejected."

30

# Retrenched 15 get jobs back after court order

ARGUS 2/12/85 Labour Reporter

FIFTEEN employees of the United South African Brush Manufacturing Company, retrenched in September, have been reinstated after an Industrial Court action

Settlement was reached without a hearing

The company agreed to reinstatement on terms "no less favourable" than those before their retrenchment to pay year-end bonuses and to treat their employment as not having been interrupted, but only two will receive back-pay

The workers, all members of the Plastics and Allied Workers' Union, were part of a group of about 60 who were retrenched

Both parties agreed to start negotiations in January to draw up retrenchment procedures and the company has agreed that no retrenchment of union members will be sought before February 15

If retrenchments appeared necessary the company agreed these would be in accordance with industrial law principles



# Society to seek further redress

STAR 3/12/85  
165

The SA Boilermakers' Society is to meet management at Ferralloys in Machadodorp tonight and tomorrow to discuss the permanent reinstatement of 21 of its members

The industrial court last week granted them temporary reinstatement after the union said they had been forced to strike on July 18 by members of the Metal and Allied Workers' Union (Mawu)

All workers who went on strike were re-employed by the company but lost valuable service benefits

The society claimed its members had been intimidated into taking part in the strike and should not be deprived of their benefits. The strike led to considerable tension between the society and Mawu

A spokesman for the society said yesterday it was confident that Ferralloys would grant the 21 permanent reinstatement

## LABOUR RELATIONS

### Marievale's lessons

The implications of the Industrial Court's decision to order the reinstatement of several hundred workers dismissed at Marievale mine during the legal wage strike in September are still being weighed up

Marievale has taken the case which was initiated by the National Union of Mine-workers (NUM), on review to the Supreme Court (*Current Affairs* November 22) But pending a possible reversal of the Industrial Court's decision, there are lessons to be learnt from the dispute and its aftermath

Last week industrial relations consultant Andrew Levy threw some light on the complex judgment at a seminar attended by industrial relations practitioners

Levy observed that the NUM had carefully planned its strategy and tactics in advance to achieve legal protection for the strikers Throughout the dispute the union built a picture of positive and reasonable behaviour This pattern seemed to prevail in court, rather than the other side's reliance on individual common law principles

Levy warned that other unions are likely to draw on the NUM's example "The court is clearly saying that the party which can demonstrate that it made serious attempts at conciliation in a dispute will receive its sympathy," he said

According to Levy, the judgment teaches the following lessons

- The decision does not entail a general prohibition on the right to dismiss lawfully striking workers Each case will be judged on its individual merits Nevertheless, the judgment is a major step toward providing some protection for strikers,
- The legality of the strike is important The court is unlikely to give protection to unlawful strikers,
- A lawful response by management is not enough Management conduct must also be fair,
- The way in which a dispute is handled is a crucial determinant It is important to be able to show that any breakdown in communication was due to the other side's intransigence,
- Mediation and arbitration must be seriously considered as a means of breaking a deadlock Many managements now use mediation as a tactic But the question of arbitration is a worrying one, says Levy Few companies would like to leave it to an outsider to decide how much it can afford to pay,
- Paternalism is a risky style of management Management must accept that a union

is a legitimate representative of the workforce and has an important role to play Attempts to bypass the union are inadvisable.

Care should be taken in making press statements These may be used against the interviewee in court later.

It is important to comply with the word and *spirit* of recognition agreements Most agreements have clauses containing sentiments about building up a constructive relationship between management and the union These are often included at the behest of management It must be remembered that the sentiment applies equally to both sides Most agreements also contain a so-called "peace clause" in which unions undertake not to strike until they have exhausted various conciliation procedures Where these clauses exist, they should be carefully re-examined because inherent in such clauses is the implication that once the procedures have been exhausted a strike will be countenanced, and

Managements should not take the attitude that strikes are over once strikers are dismissed Marievale was criticised for not responding positively to the suspension of the strike

Levy says the judgment indicates that the strike, as a legitimate worker response to a deadlocked dispute, is coming of age He advises managements to begin seeing industrial action in that light — as a legitimate part of the collective bargaining process

Marievale's urgent action to challenge the Industrial Court ruling in the Supreme Court has been postponed to January next year The company is asking that the Industrial Court's decision be set aside on the following grounds

- The NUM had no *locus standi* to act on behalf of its members in the Industrial Court,
- The court's decision was based on a misapplication of the law and gross unreasonableness, and
- The Supreme Court had previously decided the dismissals were lawful and the Industrial Court had no authority to override that decision

Respondents in the case are the President of the Industrial Court, court member D R van Schalkwyk and the NUM

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STAR  
12/12/85  
165  
Sackings:  
union goes  
to court

The South African Allied Workers' Union has applied to the Industrial Court and for the establishment of a conciliation board to discuss grievances at Metal Box near Ga-Rankuwa

A Saawu spokesman in Pretoria, Mr. Chim Mulondo, said they expected an answer in about two weeks.

The application follows the dismissal of about 500 workers at Metal Box's Rosslyn Plant, following a dispute over the retrenchment of 22 workers and the appointment of three non-union men to higher posts.

The spokesman added that the workers would continue with a boycott of all Metal Box products

The 500 workers were dismissed last month — Sapa



# Row brews between Escom and ex-manager

Star 20/12/88

By Sheryl Maine  
165

A major row is brewing between Escom and one of its former top managers after his dismissal earlier this month.

Legal representatives of Escom's former internal audit manager, Dr Jacob de Bruyn (36), yesterday filed papers in the industrial court alleging unfair labour practices and unfair dismissal. They say he was not given an adequate hearing prior to his dismissal nor was he supplied with detailed reasons for the termination of his services. He is also demanding reinstatement.

The court's registrar confirmed that papers had been filed and said the case would be heard early next year. Escom said today it would file its reply within seven days.

The De Bruyn case is believed to focus on security clearance for staff members, serious and substantially-documented criticism of the accounting and financial controls at Escom and employment conditions.

An application has also been lodged with the Minister of Manpower requesting a conciliation board to settle the dispute.

Disclosures made to the court could put Escom back in the limelight at a time when it has acquired a new management team and is working on improving its image and restructuring its operations.

Escom has suffered bad publicity over several issues recently including high tariff increases, excessive expenditure and the "Dr" Gert Rademeyer affair in which more than R8 million of Escom funds were misappropriated.

The implications of the case and its outcome could be far-reaching. Dr de Bruyn, who holds a doctorate in auditing from the University of South Africa, joined Escom in November 1984 as chief financial planner. He was extremely highly-regarded and was promoted on October 1 to internal audit manager.

His post was specially created and the internal audit department upgraded after the Rademeyer debacle.

Dr de Bruyn was dismissed on December 3 after a brief final interview with Escom top brass. He left Megawatt Park within 30 minutes. So far he has not been able to find other employment.

AR 605 17/12/85 (165)

# Clothing federation chief sees State rethink on industrial council system

**TOM HOOD**

THE resources of the clothing industry were strained this year to accommodate a number of business failures which left many workers unpaid, says Mr Mike Getz, president of the National Clothing Federation

In almost every case the industrial council system was effective in ensuring that employees suffered no loss, he says in his annual report

"We noted again the sometimes unthinking approach of the Government when the Department of Manpower decided that the time had come to threaten the existence of the industrial council system

"Widespread concern led to consultations, resulting in some indications that there have been second thoughts"

Unions in the industry were using their muscle to ensure that grievances and retrenchments were dealt with in the spirit and the letter of required procedures

"Emerging and rival factions have tried to establish themselves at the expense of existing unions. On the whole this has failed

"In some cases union members did not attach credibility to the newcomers and in others it was not really more effective trade unionism that was the issue"

The clothing industry

shrunk considerably with thousands of jobs lost and a growing number of factories shutting. Employment fell to 110 000, well below that of 1980 and output declined to near-1978 levels

## SERVICES LEVY

The Government appeared to have a genius for doing the things most likely to reduce jobs

The controversial regional services levy was particularly designed to hit the employers of labour hardest and no amount of debate could persuade those concerned to think again

The Government did not appear to be able to re-access priorities under conditions of change and re-allocate priorities

"It seems unable to make appropriate decisions and impose the necessary discipline but chooses rather to tax more and more jobs out of existence

## WEAK DEMAND

"Under such conditions it is clear that any kind of political reform will be economically toothless. It is a danger we must avoid"

Referring to wage negotiations due to take place next year, Mr Getz said these would occur under conditions

of continuing inflation and weak demand

"It is to be hoped that considerations of common interest, sensitive to difficult prevailing circumstances will not escape the negotiators"

Wage negotiations would be held in a climate of inflation and flat demand. The cries and cries of sanctions and disinvestment were destroying jobs

Prospects for 1986 depended on confidence and demand, which were linked to a return of more stable political and economic conditions

## HIGHER COSTS

Domestic growth was likely to be modest and episodic. Difficult as things were, exports must receive particular priority and considerable unutilised capacity could be kept busy with exports

Intending exporters, however, needed Government encouragement through immediate consideration to the problems of raw material costs to South African manufacturers

For at least 10 years this had led to minimal growth domestically and only a token penetration of foreign markets

A harsh year of recession had been made worse by soaring raw material prices and inopportune Government levies

# Workers get pay award over firings

The Industrial Court has ordered Trident Steel, a steel product manufacturing company, to pay six months' salary to 35 workers dismissed last year for refusing to work overtime.

Members of the Steel Engineering and Allied Workers Union had banned overtime after a wage dispute last July in which they had demanded an hourly rise of R1.

When this was declined they refused to work overtime. They were dismissed after several union-management meetings failed to end the dispute.

Declaring the dismissals unfair, presiding officer Mr D.G. Johns said that for the court to order reinstatement 15 months after the rest of the workforce had been reinstated would cause much disruption to the company's business.

Instead, he ordered the payment of six months' salary.



LABOUR Dept - 1986

JAN - Dec

## Escom case due in Feb

By Sheryl Raine  
The first round in the row between Escom and one of its former top managers is likely to take place in the Industrial Court in February.

According to the registrar of the court, Escom has filed an answering affidavit in reply to allegations of unfair dismissal filed last month by Dr Jacob de Bruyn.

"We are now awaiting Dr de Bruyn's reply and once pleadings have closed, a date for the case will be set. The case should be heard some time in February," said

the registrar, Mr Henrie Coetzee.

Dr de Bruyn (36) was internal audit manager at Escom before being dismissed on December 3. He has a doctorate from the University of South Africa.

In papers before the court Dr de Bruyn alleges unfair labour practices and dismissal. He is asking for reinstatement.

The case centres on issues of security clearance, allegations of shortcomings in Escom's accounting, financial controls and employment conditions.

## Labour laws clarified in important decision

# Gencor told to reinstate hundreds of black miners

By Sheryl Raine and Jenni Tennant

Gencor's Marievale Consolidated Mines Ltd suffered a serious legal blow in the Pretoria Supreme Court yesterday when a judge upheld an Industrial Court decision ordering the reinstatement of hundreds of dismissed black miners who went on a legal strike.

Mr Justice R J Goldstone was asked by Marievale to review a decision given by the Industrial Court in October last year. Mr Goldstone dismissed the application with costs.

The Industrial Court found that the Marievale Gold Mine had unfairly dismissed several hundred black miners, who went on strike on September 1 last year in support of wage demands. The strike had been con-

ducted according to all the provisions in the Labour Relations Act and as such was legal.

Originally the National Union of Mineworkers (NUM) applied for reinstatement of about 1 000 miners but later Marievale agreed to negotiate on the number to be reinstated.

At the time of the Industrial Court hearing Marievale indicated that it had already replaced the dismissed miners and would prefer to pay out those who qualified for reinstatement.

### FAIRNESS

In spite of an earlier Rand Supreme Court ruling in Marievale's favour that the dismissal of members of the NUM was legal, the Industrial Court stated in its decision that it had jurisdiction to rule on the fair-

ness of the dismissals. Mr Carl Neutcher, director of precious metals of Gencor Mining said "We have not been informed by counsel of the reasons for the judgment given yesterday and are not in a position to comment."

The Pretoria Supreme Court decision has important implications for industrial relations.

Leading labour lawyers commented that the ruling had obtained an important clarification of labour law.

It was now clear that the Industrial Court, in terms of the Labour Relations Act, was entitled to rule on the principle of fairness and that its jurisdiction was not limited in this regard.

On the other hand, the Supreme Court was entitled to rule on the legality of dismissals. Dismiss-

als proclaimed lawful by the Supreme Court could nevertheless be proclaimed unfair in the eyes of the Industrial Court which was entitled to grant relief to dismissed workers.

### PURPOSELESS ANTICS

In recent months there have been several occasions when employers and unions have rushed to the Supreme and Industrial courts respectively, in efforts to secure the best possible benefits. Yesterday's ruling would put an end to such purposeless antics.

The ruling demonstrated that a mass dismissal of strikers could be considered an unfair labour practice, one lawyer said.

Employers would have to think carefully before firing legal strikers en masse.

STAR 15/1/86

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BUS DAY 16/11/86

~~165~~ (165)

# Mawu files for reinstatement of 13

THE Metal and Allied Workers' Union (Mawu) has filed an Industrial Court application for the reinstatement of 13 workers fired from Siemens for alleged acts of intimidation and violence during a strike in July last year.

The union argues there is insufficient proof concerning intimidation and the dismissals were procedurally unfair because the company did not grant the workers proper hearings.

The dismissals took place after both parties submitted to mediation in August.

Labour lawyers hope the case

## CLAIRE PICKARD-CAMBRIDGE

will resolve some conflicting legal decisions on the question of procedural fairness. They also believe that clearer rules may emerge on the conduct of employees during strikes.

The Industrial Council was unable to settle the dispute — which concerns an alleged unfair labour practice — and referred it to the Industrial Court in terms of section 46(9) of the Labour Relations Act.

The hearing will begin on Monday.

The workers were dismissed, but the company agreed to re-employ all the workers dismissed on July 16 provided they return to work by July 29.

But 36 workers were refused access to company premises because management believed they had committed acts of intimidation and violence.

Siemens is a multi-national electrical and engineering firm, and the 13 dismissed workers were employed at the company's Waltloo factory in Pretoria, its Isando factory and its distribution centre at Isando.

Mwasa 17/1/86  
STAR  
ruling: 155  
director  
in court

A Johannesburg director, Mr. Taco Kuiper, appeared in a Johannesburg Magistrate's Court yesterday for failing to reinstate or pay dismissed workers after the Industrial Court ruled in their favour.

Following a successful application by the Media Workers' Association of South Africa (Mwasa) against Mr Kuiper, the Industrial Court ruled that Mr Kuiper reinstate seven employees dismissed by him or pay salaries owed to them.

Mr. Kuiper asked for the hearing to be postponed. He said he was not aware the issue of compensation was going to be included in the charge against him.

A settlement will allegedly include R5,865 in salaries due from the date of the employees' dismissal from Facts Investors Guide and/or Facts Investors Services.

The Industrial Court order provides for a settlement of 120 days' salary, including 90 days' salary owing to the employees before December 13 and 30 days thereafter. Mwasa is demanding R24,146 for costs after their application. Mr. Kuiper was warned to appear in court on February 27.

stolen"

AKG 17/1/85  
**2 workers  
get R1 080**

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**Labour Reporter**

TWO contract workers have accepted out-of-court settlements after bringing Industrial Court actions against a construction company for unfair dismissal

Mr Leonard Mbolambi and Mr Morero Kose, both from Transkei and formerly employed by Asla Construction of the Strand, each accepted a R1 080 cash settlement

The presiding officer, Mr P Roux, said the parties were wise to settle and he congratulated them on a settlement which appeared equitable and just



## MARIEVALE LOSES

The Pretoria Supreme Court has dismissed with costs an application by Gencon Marievale gold mine to overturn a landmark Industrial Court (IC) judgment.

Marievale launched the application after the IC ordered it to temporarily reinstate several hundred miners dismissed during a legal wage strike by the National Union of Mineworkers (NUM) last September. It was the first time that legal strikers have had the backing of the law against dismissal.

Marievale challenged the IC ruling on three grounds. That the NUM had no *locus standi* to act on behalf of its members in the IC, that the IC's decision was based on a misapplication of the law and that it was unreasonable, and that the IC had no right to overrule a previous Supreme Court finding that the dismissal was lawful.

Mr Justice Gubbins found that the Labour Relations Act permits a union to represent its members in court. He said he was satisfied that the dismissals may have constituted an unfair labour practice and the IC had acted correctly. And he ruled that the IC is entitled to order reinstatement on the basis of equity, even if the dismissals are lawful.

Even LP leader, Allan Hendrickse, seems to realise this. In an interview after Ebrahim's congress speech he said the party would not use "*kragdadigheid*" to confront the problem. "We are moving away from police action and police presence at schools. We are seeking the co-operation and understanding of people who do have power in the school situation," he said.

But just how the LP plans to tackle what has become the major crisis in Cape Town's coloured community remains unclear. ■

# 'Take back fired men'

By HERMAN LETSIE

THE National Union of Mineworkers this week welcomed a Supreme Court decision which upheld an Industrial Court judgment ordering Gencor to temporarily reinstate more than 300 workers fired from its Marievale mine last year after a legal strike.

Judge Richard Goldstone said the Industrial Court had been correct in ruling it was an unfair practice to dismiss legally striking workers.

Gencor also argued that the NUM should not have represented the workers in the Industrial Court, but Judge Goldstone supported the Industrial Court's view that the union could represent its members in collective legal action.

NUM said it considered the decision a major victory for the labour movement.

"It must now be clear to management that unions have the right to take legal action on behalf of their members," said a NUM spokesman.

"This is a clear indictment of Gencor's verkrampte labour practices and union-bashing tactics. It is hoped that Gencor's attitude of hiding behind the issue of lawfulness without considering the issue of fairness will now end."

Gencor has also been severely criticised by trade unions and community organisations after its recent dismissal of 20 000 striking workers at the Impala Platinum Mines.

The Congress of South African Trade Unions, to which NUM is affiliated, this week warned it would act against Gencor and its subsidiaries if the miners were not reinstated.

A meeting of Cosatu's Transvaal affiliates early this week decided to call on all the federation's affiliates to consider taking concerted action against the mining house.

folo DIA. 25/11/76  
 Court ruling  
 significant  
 for unions

*Business Day labour reporter CLAIRE PICKARD-CAMBRIDGE looks at topical issues in a weekly round-up of events on the labour front*

LABOUR lawyers believe that recent court decisions hold a strong message for workers concerning the collective protection they can experience as union members

This follows the Supreme Court's recent decision to uphold an Industrial Court ruling ordering the temporary reinstatement of more than 300 workers fired from Gencor's Marlevale mine after a legal strike in September last year

The Supreme Court dismissed Gencor's argument that the National Union of Mineworkers (NUM) had no *locus standi* to represent the fired workers and lawyers believe this has great organisational significance for unions

It has profound practical implications for unions, because it was previously assumed that unions had to obtain affidavits from each individual member saying they wanted their jobs back.

In the Marlevale case, the union did not have affidavits from individuals and the court accepted that the NUM could bring about a representative action on behalf of its members.

The ruling is also expected to discourage a trend whereby various parties had been rushing to both the Supreme Court and the Industrial Court respectively in an attempt to secure the best advantage

Gencor dismissed more than 1 050 Marlevale workers and the NUM is expected to initiate final proceedings to have about 600 to 700 permanently reinstated in terms of section 48 of the Labour Relations Act.

□ □ □

AN unusual Industrial Court application has been filed by a fired receptionist, who is suing her former employers (36 advocates) for allegedly committing an unfair labour practice.

The employers are a prominent association of Johannesburg advocates, Group 1 200, which includes several labour lawyers.

The receptionist says she had no warning of her pending dismissal in December, except that two advocates advised her in September she laughed too loudly, walked barefoot in the office and sat with her feet on the desk.

She said she was not counselled or given a chance to present her case.

□ □ □

PRESS focus on Impala Platinum's mass sackings two weeks ago obscured news of industrial action at three Amcoal collieries north-east of Johannesburg.

An Amcoal spokesman said there had been short work stoppages at three collieries, but refused to disclose details.

NUM organiser in the Witbank region, Boycott Mashigo, said strikes had occurred at SA Coal Estates and Goede Hoop collieries near Witbank and at Bank colliery near Middelburg.

Mashigo said the SA Coal Estates strike involved about 2 800 workers on January 8, 8 and 9. Employees wanted 11 workers disciplined for allegedly attempting to kill the NUM chairman of the mine's shop stewards' committee. The matter was settled when the 11 resigned after a disciplinary hearing.

He said the Goede Hoop strike involved the entire workforce of about 2 400, who believed an NUM shaft steward had been unfairly dismissed. Agreement was reached when management offered to transfer him.

The Bank colliery strike involved about 1 600 workers on January 12. Workers were demanding the release of a colleague arrested after allegedly preventing people from entering a nearby shop, which workers were boycotting.



# Pietie praises Industrial Court's role and rulings

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BUS DAY 22/11/86

THE Industrial Court played an increasingly important role in labour relations, Director-General of Manpower Pietie van der Merwe told *Business Day* yesterday.

This was clear from the increased use being made of the court in the settlement of disputes and the avoidance of work stoppages, he said.

In its first functioning year — 1979 — four cases were submitted to the court, Van der Merwe said. This gradually increased from 15 in 1980 to 41 in 1982. The number then increased dramatically to 168 in 1983, to 400 in 1984 and to 800 last year.

The Industrial Court's credibility was further enhanced by a recent

GERALD REILLY

Supreme Court judgment that upheld its landmark decision ordering Gencor to reinstate temporarily more than 300 workers fired from Marievale mine after a legal strike.

Gencor had taken the Industrial Court judgment on review to the Supreme Court.

The Industrial Court's reputation for impartiality and fairness was reinforced by the judgment, Van der Merwe said.

"The court is gaining a wider acceptance by employers and trade unions. It is materially assisting in resolving disputes and in reducing strike action."

## Hope for calmer labour relations

# Moves being made to decriminalise strikes in SA

By Sheryl Raine

Moves are afoot to decriminalise strike action in South Africa. The National Manpower Commission (NMC) hopes to release a report containing suggested changes to the strike laws within the next few months.

Mr Joel Fourie, chief director of labour relations in the Department of Manpower, told a labour seminar of the Afrikaanse Handelsinstituut in Vanderbijlpark yesterday that the NMC was investigating changes to section 65 of the Labour Relations Act, which makes strike action under certain circumstances a criminal offence.

The section has been a bone of contention for years.

### DISMISSALS

In terms of the law, workers and employers must exhaust all the dispute-settling machinery laid down in the Act before a strike or lock-out can be regarded as legal. The law, however, does not protect legal strikers from dismissal. Workers who strike legally are just as likely to lose their jobs as those who strike illegally.

Most strikes in South Africa during the past six years have been illegal. Though the law allows for the prosecution of illegal strikers, in practice it has been largely impossible and undesirable to apply the law.

Rulings by the Industrial Court have led to the reinstatement of legal and illegal strikers whom the court believed had been unfairly dismissed.

"We recognise that the time has come to re-examine the law," said Mr Fourie.

Labour lobbyists have repeatedly called for the decriminalising of strike action, saying any statute which makes

the withholding of labour a criminal offence interferes with a workers' basic right of freedom of association.

Professor Nic Wiehahn, author of South Africa's labour reforms and director of the Unisa School of Business Leadership, welcomes the move.

He said that at present employers were inclined to hide behind section 65.

"It is fundamentally wrong for the State to be involved with criminal sanctions in disputes between employers and employees," said Professor Wiehahn.

"The criminalising of strikes gave the State a bad image in the eyes of workers. It also brought the police into the relationship between workers and employers, to the detriment of the relationship. By decriminalising unlawful strikes, police presence will become completely unnecessary, except when life and property are threatened."

"The removal of the relevant clauses in the act will put trade unions and employers in a better position for bargaining. It will force them to negotiate more effectively to resolve their disputes."

### CIVIL LAW

"What is necessary in the law now is a distinction between lawful and unlawful strikes, with an emphasis on civil law. In cases of lawful strikes, an employer should not have the right to dismiss strikers as easily as in the case of unlawful strikes. This would provide an incentive for workers to use the dispute-settling machinery contained in the act and not strike impulsively."

In recent years unions have argued that there is no incentive to use all dispute-settling procedures in order to stage a legal strike if employers, anyway, respond by dismissing workers.

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STRIKE 22/1/86



# SABC to face hearing on lay-offs

By Sheryl Raine

25/2/86  
The SABC is facing as many as 30 applications to the Industrial Court by workers who have been retrenched and are demanding reinstatement.

Two unions have applied to the court for relief under section 43 of the Labour Relations Act on behalf of members who were laid off. The SABC has replied to papers served by the unions but a date for the court hearing has yet to be set.

The SA Black Municipal and Allied Workers' Union (SABMawu) is acting on behalf of one member while the Media Workers' Association of SA (Mwasa)

could bring between 17 and 30 applications to court.

The unions are requesting that their members be reinstated, claiming the SABC did not explore alternative options before retrenching.

Their applications follow the controversial case of former "Prime Time" producer Miss Moira Tuck who claimed she was unfairly dismissed and won temporary relief from the Industrial Court.

In its preliminary ruling in the Tuck case, the Industrial Court set a precedent by stating that the SABC was not a State employer and therefore its employees were entitled to protection under the Labour Relations Act.



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BUS DAY 27/1/88

# UDF badge: worker reinstated

MOST SA companies overlook the bright political badges and sloganed helmets which black workers sport in the workplace

But the Industrial Court recently ordered Atlantis Diesel Engines in Cape Town to reinstate Isaac Phooko, an employee who was fired for refusing to remove a United Democratic Front badge from his overall.

The ruling was made on condition that Phooko refrain from displaying any political badges or slogans on the premises

Lawyers believe the case did not revolve around whether workers could wear politically-orientated clothing to work, but whether petty infringements could warrant dismissal

Phooko, who was represented by the Legal Resources Centre, resumed work at Atlantis Diesel Engines last week

An intriguing precedent to this incident was a decision by Barclays Bank in Durban to dismiss an employee in 1982 for wearing an Azanian Peoples' Organisation (Azapo) T-shirt to work

However, Barclays reinstated

*Business Day reporter CLAIRES PICKARD-CAMBRIDGE looks at topical issues in a weekly round-up of events on the labour front*

him after an uproar from both Azapo and the the SA Society of Bank Officials

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A SETTLEMENT was reached between striking employees and management at Chesebrough-Ponds in Wadeville, Germiston, late on Friday after workers staged a "sit in" at the factory for two days and three nights

The strike began last Wednesday when 250 Chesebrough Ponds workers downed tools following a deadlock in wage negotiations

After meetings with the the Chemical Workers Industrial Union (CWIU), management agreed to May Day as a paid holiday, a one month annual bonus and an increase in the hourly wage from R2,70 to R3,25

Working hours were reduced to 44 hours a week and demands for extended compassionate

leave and changes in other service conditions were dropped

The factory came to a standstill during the strike and relatives of workers brought food and clothing to them on a daily basis

The union said it had provided meat for a braai after the second night workers had spent at the factory

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AFTER an unusually long delay, Manpower Minister Pietie du Plessis appointed a conciliation board last week to deal with an alleged unfair labour practice by Gencor's Marievale mine

The National Union of Mineworkers applied for the board on September 9, 1985, after the company dismissed nearly 1 000 legally-striking workers on September 3

The appointment of a board is significant because a party cannot apply for a final determination in the Industrial Court before conciliation board proceedings have been exhausted

The union was previously able

to apply for only temporary reinstatement for the workers, which was granted by the Industrial Court in November on grounds that the dismissals were unfair

Manpower Director-General P J van der Merwe denied on Friday that the minister had been waiting for the outcome of a Supreme Court review of the Industrial Court's order.

He said there had been "no purposeful delay", and timing of the board's appointment was coincidental

The minister had needed to consult with his department and study the application carefully because it concerned an alleged unfair labour practice

He said care was required because the decision to appoint a conciliation board could be taken on appeal to the Supreme Court

"We get a large number of conciliation board applications and process them in the order we receive them. The minister was also on an overseas visit and there was the normal Christmas delay," Van der Merwe said.

# Mawu welcomes ruling on firings

5/2/88. STAR

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By Sheryl Raine

The Metal and Allied Workers' Union (Mawu) has welcomed an important Industrial Court ruling which has ordered the reinstatement of about 120 union members who were fired by Natal Die Castings (NDC) in Pinetown for striking.

The union and labour lawyers believe the ruling could have significant implications for the metal industry and plant-level bargaining.

In particular, Mawu believes the ruling has strongly challenged the validity of a recommendation by the Steel, Engineering Industries Federation of SA (Seifsa) to refuse to bargain outside the central bargaining forum of the industrial council.

Mawu has been fighting to establish the right to bargain at plant level on substantive matters.

NDC has indicated that it is considering taking the ruling on review to the Supreme Court and a final decision will be taken next week.

The 120 NDC workers were dismissed last May by the company after two days of lawful striking over production, long-service bonuses and travel allowances.

Their reinstatement was made retrospective by six months from February 21 1986 and commits the company to paying 26 weeks in back pay to each worker.

The presiding officer of the court, Mr H J Fabricius, found that the dismissal of the strikers and the refusal and/or failure of the company to negotiate in good faith both before and during the strike, constituted unfair labour practices in terms of the Labour Relations Act. He will sup-

ply detailed reasons for this decision later. "This finding that the company's refusal to bargain at plant level on substantive matters constitutes an unfair labour practice appears to overturn the Hart judgment given last year," said Mawu.

The Hart judgment stated that Hart Limited's refusal to negotiate with Mawu at plant level on the introduction of a funeral benefit allowance and effective wages, was justified under the circumstances and did not constitute an unfair labour practice.

## Questioned judgment

Labour lawyers would not go as far as the union in saying that the ruling had overturned the Hart decision, but most lawyers approached by *The Star* said the ruling certainly questioned the Hart judgment and indicated that Industrial Court thinking on the issue of workers' rights to plant-level bargaining and a company's obligation to negotiate, had undergone some change.

Mawu believes the order has major implications for disputes which it has declared with more than 80 factories in the Transvaal. These factories have allegedly been refusing to negotiate with Mawu on substantive matters at plant level.

Mawu said that what was particularly significant about the NDC order and where it differed from the recent Marievale ruling, was that the case was fought under Section 46 (9) of the Labour Relations Act and the order made was therefore final and the reinstatement of the lawful strikers was accordingly, unequivocal.







Southern 5/2/86 (11/6/86)

**T**HE Government has announced that the long-awaited legislation on domestic and farm workers is unlikely to be introduced at the current session of Parliament

Dr Piet van der Merwe, director-general of the Department of Manpower, said a report from the National Manpower Commission (NMC) had been completed and was under consideration but "we do not envisage legislation this year"

The news has disappointed the Domestic Workers Association, the Black Domestic Workers Association, the South African Domestic Workers Union and the Domestic Workers Employment Project. The organisations have been pressing for years to get legal provisions covering employment of domestic workers.

The NMC was instructed in 1982 to begin an inquiry into employment conditions for the two groups and the long delay in proclaiming legislation has been strongly criticised and several questions have been asked in Parliament

**Strike Ballot**

• The Black Allied Mining and Construction Workers Union (Bamcwu) is to hold strike ballot at Samcor plants following the failure by the Minister to appoint a conciliation board to resolve the wage dispute with the company. The ballot is to be held today

• Changes to unemployment insurance

# Legislation on domestics not on the cards

## WORKERS' DIARY — By JOSHUA RABOROKO

legislation are expected to be introduced before Parliament early in the session, Dr van der Merwe announced this week

Trade unions and other labour experts have been lobbying for changes to the fund for sometime

• Negotiations between Matthey Rustenburg Refiners in Wadeville and the Chemical Workers Industrial Union (CWIU) are continuing in an effort to solve a wage dispute

**Agreement**

• The Transport and General Workers' Union (TGWU) and the General Workers Union (GWU) have signed an agreement with the Renfreight group which will raise the group's wage bill by more than 12 per cent

This was confirmed by the unions and management

• The Trade Union Council of SA (Tucsa) has appointed eight specialists to deal with various interests of the federation and its members. Unions are urged to contact them about matters which concern them

Any information, evidence, or suggestion that unions may wish to have taken up may be sent to the secretary of Tucsa for submission to the committee concerned

• A new trade union, the National Union of Forestry and Allied Workers which has won increasing support in the Eastern Transvaal, has joined Tucsa

• The most authoritative and complete annual trade union directory is now available. The 1985-86 edition of Tucsa's trade union directory is being sent to all affiliated unions. All interested parties may contact Tucsa at (011) 838-3824

• Hard Labour — a pictorial survey of labour relations in SA since 1979, by Gavin Brown, has been published. The book concentrates exclusively on newer emerging unions and does not cover the activities of Tucsa or unaffiliated unions

It is published by IR Date Publication of Box 52711, Saxonwold, 2132

• A spokesman of the Oranje-Vaal Development Board indicated the existence of a misconception among employers in its area, to the effect that the Act of contributions in respect of Black Labour (Act 29 of 1972) has been abolished

• The process of bringing to justice those responsible for

the murder of two white policemen in Bekkersdal township is underway, while from the industrial relations viewpoint, the focus now centres on the dismissal of over 500 workers from Randfontein Estates Gold Mine

• The Black Allied Mining and Construction Workers Union holds its annual national council in Soweto on March 7/8/9 in Soweto

• The Bamcwu has applied for a conciliation board and an industrial court action against Triting Plant Rentals and Stocks and Stocks Construction respectively over unfair dismissal of workers

• The Congress of South African Trade Unions is to hold a meeting on Friday to discuss various issues, including the action which will be taken against Gencor for firing over 20 000 miners at Impala Platinum mines in Bophuthatswana

• Moves are afoot to decriminalise strike action in South Africa. The National Manpower Commission hopes to release a report containing suggested changes to the strike laws within the next few weeks

Mr Joel Fonne, director of Labour Relations in the Department of Manpower, said the NMC was investigating the changes to Section 65 of the Labour Relations Act which makes strike action under certain circumstances a criminal offence

• The Black Domestic Workers Association is going ahead with plans to take over 100 employers to court following their unfair dismissal of domestics. The first of these will face prosecution next week

• The South African Allied Workers Union (Saawu) has applied for a conciliation board to resolve their dispute with Metal Box, Rosslyn plant, near Pretoria

The union is fighting the retrenchment of 25 workers and the employment of three whites at the plant. It contends that management was acting in a discriminatory fashion by retrenching blacks and hiring whites

The dispute resulted in a strike by about 500 workers who were later dismissed. Workers have since launched a boycott of the company's products in an attempt to have their colleagues reinstated. However the company has sort an urgent Supreme Court action restraining the workers from continuing the boycott

• The Azaman Confederation of Trade Unions (Azactu) and

the Council of Unions of South Africa (Cusa) held an urgent meeting in Johannesburg last week to discuss various ways and means of working together

The talks have been going on for a long time after the two pulled out of the trade union unity talks aimed at forming Cosatu last December. Sources close to the unions said another giant federation might be formed by the two federations

Another meeting of the two unions will take place late this month

• The Media Workers Association of SA (Mwasa) is to hold a meeting with management of Perskor in Johannesburg on Friday to explore various means of having a recognition agreement with the newspaper company

• South Africa faces a future of escalating unrest with business and labour becoming more hardline in their dealings with each other, says Prof P L Bonner, Professor of African History at Wits University

Professor Bonner predicts an increased strike action and demands for greater say in management by trade unions. This tougher trade union action will come about as a result of threats to neutralise the industrial court's powers and a hardening of big business attitude towards labour

# Court orders back-pay former jobs for strikers

*BUS DAY 5/2/86*  
THE Industrial Court has found a Pinetown company, Natal Die Casting, guilty of an unfair labour practice for firing legal strikers and refusing to negotiate in good faith.

The court has ordered the company to reinstate permanently the 112 Metal and Allied Workers' Union (Mawu) members, fired after going on strike in May, and to back-pay workers for the past six months.

## Implications

The order is expected to have important implications for about 70 disputes Mawu has declared with Transvaal factories refusing to negotiate on substantive matters at plant level.

Reasons for the order have not been handed down and it cannot yet be established whether it is a precedent-setting judgment.

Mawu believes the policy of the employer body, Seifsa — which recommends that substantive negotiations be held through the Industrial Council — has now been seriously challenged because Natal Die Casting is a Seifsa member and covered by the main industrial council agreement.

The court's finding that Natal Die Casting committed an unfair labour practice, by refusing to bargain at plant level, appears to run counter to the Hart judgment last year.

CLAUDE PICKARD-CAMBRIDGE

That judgment, which dealt with Hart's refusal to negotiate substantive issues at plant level, did not compel the company to bargain at plant level. The court said then that it wished to uphold the notion of voluntarism in collective bargaining.

Natal Die Casting could not be contacted for comment yesterday.

The ruling differs from the Marievale judgment which found Gencor guilty of an unfair labour practice and ordered the temporary reinstatement of workers fired after a legal strike.

## Reinstatement

In the current case the court has ordered permanent reinstatement of legal strikers after receiving an application under section 46 (9) of the Labour Relations Act.

The reinstatement order is effective from February 21. However, the court has warned that applicants who do not indicate by February 7 that they intend reporting for work will be excluded from the terms of the order.

The workers went on strike in May over the company's refusal to negotiate in good faith on a production bonus, travel allowance and long-service bonus.

(165) 7/2/88

**LABOUR LAWS FM**

Notwithstanding internal opposition and international condemnation, the homelands system — long the backbone of grand apartheid — apparently becomes more entrenched by the day. The fact that KwaNdebele will become the fifth "independent national state" sometime this year seems proof enough of this.

The result, as time passes, is that the legislation applying in the various homelands is significantly different to that in SA itself. But keeping track of what has happened is no easy task. That is why employers and trade unionists alike will find a comprehensive new study which analyses the labour agreements and laws in the homelands and SA an invaluable guide.

The report, "Some aspects of labour relationships between the Republic of SA and Neighbouring States" is by Alan Whiteside of Natal University's Economics Research Unit. It was commissioned by the Human Sciences Research Council (HSRC) and is the first in a series on manpower issues. A second report by Whiteside will look at the problems arising from these differences.

Inquiries should be directed to the HSRC in Pretoria.





### Pass raids ... have now been scaled down, says government

to be dismantled and of how the new mechanism for "orderly urbanisation" will work, have not been announced. Clarity will certainly emerge during the present parliamentary session. Progressive Federal Party (PFP) leader Frederik van Zyl Slabbert has pointed out that any attempt to classify people by race or ethnicity in the new identity books would be unacceptable.

Government sources have, somewhat confusingly, also stated that it could take anything from 10 to 20 years to implement the new ID system; and it is possible that blacks will continue to use their pass books as IDs until the new deal is implemented.

However, Deputy Information Minister Louis Nel has stated that the new uniform identity document "will not in any way replace the pass system and will not control the movements of any people."

According to Black Sash president Sheena Duncan, it appears that the new ID system could introduce the problem of fingerprinting: "The extension of fingerprinting to other races will do nothing to satisfy blacks who have long resented that as being one of the worst aspects of the present pass laws."

A Department of Home Affairs spokesman says that although the law (since 1981) provides for fingerprinting, no decision has been made on this yet.

Despite the fact that the development boards, administrative arms of the pass laws, will be phased out by the July 1 deadline, prosecutions of pass law offenders are continuing in many courts around the country and pass raids have not stopped. They may, however, have been scaled down.

Although there has been a drop in the number of pass law prosecutions in recent months (in Johannesburg the number fell from 37 in December to 23 last month), the number of arrests under the trespassing laws rose dramatically over the last few years, Duncan points out. It is to be hoped, she adds, that this is not a new mechanism of control by the authorities.

A West Rand Development Board spokesman says that while they are keeping a "low profile" on arrests and raids, the pass laws are still on the statute book and officials are still obliged to respond to complaints. "But we are acting in accordance with the general feeling about the laws," he adds.

While the number of pass law arrests

have dropped from 665 in July last year to 139 in December and 75 in January, it seems that the number of white householders being prosecuted for employing "illegals" has risen.

WRAB's response is that it made more sense to prosecute those who were expected to know the laws but disobeyed them, instead

UFAKALO-NGCOMBOLO/TNDORSEMENTI

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### The vital stamp ... becoming obsolete?

of the person who may be ignorant of them, that is, the black employee.

The dropping of the pass laws, which are central to government's influx control policy, was announced in conjunction with the total scrapping of influx control which will lead, according to statements so far, to the unimpeded movement of blacks, more land for building and the legalisation of squatter settlements.

### SADCC IN HARARE

### Politics dominates

Such are the ironies of southern African politics today, that one of the region's chief aid donors — the US — came in for the harshest criticism at last week's two-day annual meeting of the Southern African Development Co-ordination Conference (SADCC). Its chairman, Peter Mmusi, Vice-President of Botswana, accused the US of co-operating with Pretoria to foment instability in the region.

The SADCC's leaders had been angered by two recent developments — the Lesotho coup and Washington's promised aid to Jonas Savimbi's Angolan rebels. But it was significant that political issues should have dominated what set out to be a developmental conference. The Harare summit was never intended to be an aid-pledging session; only small amounts of new assistance were promised, totalling less than US\$50m.

The most important new pledge was the British commitment to provide £10m for the Nacala rail corridor in Mozambique. The US, shrugging off the criticism, is providing \$5.5m to help improve the Beira railway line and reduce SADCC dependence on the South African railways and ports.

More important, perhaps, were the indications of a shift in SADCC's political links. Significantly, three southern African liberation movements — Swapo, the African National Congress and the Pan African Congress — were fully represented for the

first time. This underscored the SADCC's intention of one day drawing SA into the regional organisation.

Possibly still more important was the presence — again for the first time — of delegates from the Soviet bloc. The SADCC secretary general is to lead a team to visit Russia later in the year, amid speculation from Western diplomats that Eastern bloc aid was more likely to be military than economic in content. Mused one Western delegate: "The SADCC lost its way and has become a security organisation rather than an economic union."

It is hardly surprising that the SADCC should now be looking eastwards given the West's repeated refusal to offer economic and military assistance in the region's confrontation with Pretoria. Whether history will show that the Harare summit marked a decisive shift in the SADCC's long-run strategy remains to be seen. But from the strictly developmental viewpoint, Western diplomats are expressing 'he gravest reservations over the benefits of bringing Comecon countries into the region in this way.

The frequently expressed support for comprehensive mandatory economic sanctions against SA also underscores the meeting's pre-occupation with political rather than economic issues. As one delegate put it: "We all know what such sanctions would do to our economies, but there is no alternative."

At the same time, Western delegates were uncomfortable with the US stance over Angola. "It's madness to be supporting rebels who are blowing up railway lines on one side of the region while repairing them on the other," complained a Nordic delegate.

The issues may not be quite so simple, but even so, there is little doubt that Western countries along with the US State Department and aid agencies are unhappy to see Washington supporting Unita.

The overriding impression of the summit is that it is unlikely to mean much in economic terms. Indeed some diplomats at the conference warned of a downturn in aid inflows to the region in the late Eighties. The reality is that political developments in the region are going to determine economic progress or otherwise, and perhaps the SADCC has got it right in accentuating the political aspect at this juncture.

### INDUSTRIAL COURT

### Legal strikers win

A landmark Industrial Court decision has unequivocally affirmed the right of legal strikers to be protected against dismissal.

The decision, in a case involving the Metal and Allied Workers' Union (Mawu) and Pinetown company Natal Die Castings, is a significant victory for the trade union movement. Unlike the court's order of temporary reinstatement of workers who struck legally at Marievale mine last year, this order was made in terms of Section 46 (9) of the



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Labour Relations Act; it is therefore final. It is retrospective for six months from February 21 this year.

The strike that precipitated the hearing occurred on May 1 last year when workers downed tools over the company's refusal to bargain in good faith over a travel allowance, production and long-service bonuses. Some 120 workers were dismissed on May 3.

Details of the court's judgment were not available when the FM went to press. However, the order clearly states that Natal Die Castings committed unfair labour practices by: dismissing the workers; and refusing, or failing, to negotiate in good faith with Mawu before and after the strike.

Mawu is crowing over its victory. Aside from the reinstatement of the workers, the union claims that the order has major implications for its continuing battle with the Steel and Engineering Industries Federation of SA (Seifsa) over company-level bargaining.

#### Major implications

Seifsa is opposed to its members (including Natal Die Castings) bargaining at company level with unions on any issues covered by the metal industrial council's main agreement. The union says the order seriously challenges this policy. Mawu also says the order appears to overturn the court's finding in the test case it fought last year against Hart Ltd. In it the court rejected Mawu's argument. This was that Hart's refusal to bargain on effective wages, above the industrial council minima, and the introduction of a funeral benefit scheme, constituted an unfair labour practice. The union claims that the Natal Die Castings order has "major implications" for the disputes it has declared with metal companies in the Transvaal which, in line with Seifsa policy, have refused to negotiate at company level.

Mawu further claims that the order also affects its pending case against British multinational BTR Sarmcol, in which it will be contesting the dismissal of "lawful strikers." The union predicts this case will be heard in the next few months following the recent decision by the Minister of Manpower to appoint a conciliation board.

Legal sources question Mawu's claim that the Natal Die Castings order overturns the Hart judgment. Clarity will have to await the full Natal Die Castings judgment. ■

#### AIDS

### A viral time-bomb

Recent deaths in Britain — and one in Cape Town — suggest that the virus responsible for Acquired Immune Deficiency Syndrome (Aids) is even more deadly and widespread than previously thought. Infection with the Aids virus can be lethal without the person ever developing Aids, says a leading British authority on the disease.

Evidence is mounting that the Aids virus

### SA MEDIA COUNCIL

The South African Media Council is an independent body established to deal with various matters affecting media reporting and comment.

One of the council's functions is to receive and act upon complaints from members of the public who have not been able to get satisfaction by approaching a newspaper or other news medium directly. Complaints must relate to published editorial matter and should normally be lodged within 10 days of publication.

The address is: the Conciliator/Registrar, SA Media Council, P O Box 5222, Cape Town, 8000. Telephone: (021) 46-7317. Inquiries are welcomed

not only disrupts the body's immune system, but can have many other serious effects. There is increasing evidence that the virus, itself, can penetrate the brain, resulting in brain damage.

Yet these other effects are not acknowledged in statistics about the spread of the Aids virus. The problem is the narrow US definition of the disease. This definition, also used in SA, diagnoses a patient as having Aids only once opportunistic diseases — diseases which take advantage of the body's weakened state — take hold.

According to the Department of Health and Population Development's National Advisory Group on Aids, only 26 people in SA have contracted Aids (19 of whom have died). But, in Johannesburg alone, over 200 people are confirmed as having Aids antibodies in their blood. They probably still have the virus as well and could be spreading it without many being aware of it. It is generally accepted that once infected with the Aids virus, a person remains infected and infectious for life.

The figure 200 may itself be a drop in the ocean as it consists only of those who were referred or volunteered for testing. In Johannesburg and countrywide, the figure is bound to be much higher. The Medical Research Council has now called for a study to determine the spread in SA.

A number of research studies in the UK have shown up the inadequacy of the rigid way the US Centres for Disease Control (CDC) defines the disease.

The CDC defines Aids as the occurrence of an "opportunistic infection," or certain specified malignancies, in a patient who has been infected with the Aids virus and is immune deficient. Not only Aids victims get opportunistic diseases. Other victims are those born with a deficient immune system and transplant recipients who must take drugs to prevent rejection of the new organ. The most common opportunistic diseases are *pneumocystis carinii* pneumonia (PCP) — a parasitic infection of the lungs uncommon among healthy individuals, and *Kaposi's sar-*

coma — a type of cancer mainly of the skin.

The American definition of the disease has its roots in the way the disease was discovered. In the space of a few months, in 1981, a Californian doctor identified several previously healthy young men with PCP. He informed the CDC of his unusual findings and, when other doctors reported similar cases, the CDC declared it had a new kind of disease on its hands. It then agreed on this narrow definition for the purpose of gathering information. At the time, it had no idea what was causing the immune deficiency. The virus was only discovered in 1983 and its wider implications were recognised. But the original definition of the disease was never substantially reviewed.

Cape hospitals representative on the Aids National Advisory Group, Dr Frank Spracklen says he recently had a patient who died without evidence of an opportunistic disease or malignancy. "By definition, this man did not die of Aids — but he *did* die because he was infected with the virus. People can die from gross viral debilitation and severe wasting without their immune system even being affected.

Spracklen adds: "At the moment I have a homosexual patient with a severe chest infection. He could die, but we could not classify the disease as Aids because we have not isolated any organism that falls within the CDC definition."

British venereologist Dr John Seale, among others, discovered that the spectrum of diseases caused by the virus is much greater than that covered by the CDC definition. One of the previously masked conditions doctors found was that, shortly after infection, patients become severely ill with an attack similar to glandular fever or influenza. They may then have no symptoms for months or even years. Later, there may be persistent loss of weight, chronic diarrhoea, fevers, military tuberculosis, malaria, bacterial pneumonia and septicaemia — quite apart from the complex opportunistic infections of CDC-defined Aids.

A result of the virus invading the brain is Aids encephalopathy, which can lead to progressive dementia, lack of concentration, depression, memory loss and loss of the use of a patient's limbs. "Infection with the Aids virus can be lethal without the person ever developing Aids," says Seale.

Spracklen says he is seeing more and more manifestations of the syndrome that falls outside the CDC definition. "The CDC definition needs to be looked at in the light of the new clinical evidence we are gathering" ■

#### LABOUR PARTY

### In PW's shadow

The coloured Labour Party (LP) has decided to accept government's reform plan and make the most of it.

This much was clear from leader Allan Hendrickse's favourable reaction to P W



11/2/86

# Complaint against Koeberg contractors

Staff Reporter

THE Industrial Court is to hear a complaint of unfair labour practice against a French sub-contractor at the Koeberg nuclear power station following the removal of a Cape Town trade union leader's security permit.

The site permit of Mr Cecil Theys, chairman of the Electrical and Allied Trades Union of South Africa (Eatusa), was withdrawn by Escom officials on December 12.

Union officials allege this was after a meeting between Escom, the security police and a representative of C Gee Alsthom, the French electrical sub-contractor employing Mr Theys

They have accused the company of "victimising" Mr Theys and of "an unfair labour practice".

## HEAD OFFICE

The company denies attending the meeting and claims it had no say in the issue of security permits, which was done by Escom

A representative of the International Metal Federation (IMF), Mr Brian Fredericks, said details of the matter had been referred to the head office in Geneva, who would liaise with French union affiliates

These included FLM, a major metal union at car manufacturers Renault. He could not "give detail" of possible strategies "at this stage", but did not rule out union action

Mr Theys is still employed by C Gee Alsthom, but cannot work as he is unable to enter Koeberg power station. Officials claim he has not been paid since the end of December

## FULL COMPENSATION

Eatusa has demanded that C Gee Alsthom ensure the "physical reinstatement" of Mr Theys or pay him full compensation to the end of the company's contract at Koeberg.

Mr M Janot, deputy-site manager for C Gee Alsthom, refused to comment on any of the points raised, saying it was a "company matter". He confirmed that Mr Theys was still employed by C Gee Alsthom

In a prepared statement Escom said: "Mr Theys's permit was withdrawn in accordance with Escom's responsibility in terms of the National Keypoints Act."

The matter was heard by the Industrial Council for the Electrical Contracting and Servicing Industry (Cape) last week and has been referred to the Industrial Court



# Natal company to fight landmark labour ruling

12/2/88

By Sheryl Raine

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STAR

Natal Die Castings (NDC) has decided to take on review to the Natal Supreme Court an important Industrial Court ruling which ordered the company to reinstate more than 100 strikers

NDC will not reinstate workers until the Supreme Court gives a decision, which may take months.

Reasons for the Industrial Court ruling of January 23 have still to be supplied. The court ordered that about 120 workers should be reinstated and paid 26 weeks' back pay.

Labour lawyers and the Steel Engineering Industries Federation of SA (Seifsa) are anxious to receive the reasons for the ruling because the case has important implications for company-level bargaining in the metal industry.

The Metal and Allied Workers' Union, which represented the NDC workers, has been fighting a recommendation by Seifsa to its members not to bargain on substantive issues outside the industrial council.

Seifsa believed the NDC judgment did not appear to compel companies to bargain.

# Farm workers 'defenceless'

**Political Reporter**  
**HOUSE OF REPRESENTATIVES** — Seven million South African farm workers had no legal protection against unfair labour practices, exploitation and victimization, the House of Representatives was told yesterday

A private member's motion tabled by Mr Edward Poole (LP Belhar) proposed that a parliamentary select committee be appointed to form a joint committee in a bid to ensure that farm workers were governed by existing labour laws

### Strike

He said farmers were the most protected entrepreneurs in the country but their workers were defenceless against exploitation

Mr Poole said existing labour laws did not protect farm workers

against victimization nor were they allowed to participate in a legal strike

Although there was no prohibition against farm labourers from forming trade unions the necessary components for union activities in terms of law were absent specifically because of victimization

Farm workers daily faced the harsh consequences of unfair labour practices against which they had no legal redress

Mr Poole proposed amendments to the Wage Act, Labour Relations Act, Unemployment Insurance Act and the Basic Conditions of Employment Act so that it included farm workers

The absence of legislation that protected farm workers resulted in "legalized exploitation", Mr Poole said

### Conventions

He stated that the International Labour Organization (ILO), from which South Africa had been suspended, prescribed conventions providing certain special guarantees for the protection of farm workers

Several LP and opposition MPs directed an urgent plea to the government to make the

necessary amendments

Mr Yusuf Rhoda Democratic Workers Party (DWP), said that there were hundreds of cases of farm workers who after years of service were ordered by farmers to leave the farms with no pension or unemployment benefit when they could no longer work because of age

Replying to the motion, Mr Pietie du Plessis, Minister of Manpower, was repeatedly booed, heckled and jeered as Labour Party MPs accused him of not answering their questions and evading the issue

### Contract

Mr Du Plessis said farm labourers could enter into a contract with farmers under existing common-law provisions

He referred to a government White Paper which acknowledged that certain agricultural unions had to be involved with regard to farm labour legislation.

Mr Du Plessis said the government recognized that a large number of factors were involved in the formulation of a system regulating farm labourers and that very few countries had one

The motion was carried by a majority vote

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CAPC TAFS 13/2/85

# Dispute over Koeberg permit

Staff Reporter

THE case of a worker claiming he was prevented from working at the Koeberg nuclear power station on the advice of security police, and that his employer did little to protect his interests, is to come before the Industrial Court.

The dispute is between the French company C Gee Alsthom, which employs electrician Mr Cecil Theys, and is a sub-contractor at Koeberg, and Mr Theys's legal representatives, the Legal Resources Centre.

Mr Theys contends that the withdrawal of his security clearance effectively cost him his job and constituted an unfair labour practice. The hearing, scheduled for next month, is believed to be the first of its kind involving a French company operating in South Africa.

A spokesman for Mr Theys's trade union, the Electrical and Allied Trades Union, said the case had been brought to the attention of the European Parliament, the European Economic Community and French labour unions.

An Escom legal adviser confirmed that Mr Theys had first been told by Escom that the permit withdrawal had been on the advice of the police, but said "it was later found that the police were not involved".

The police have also rejected Mr Theys's allegation, and have said: "It is the right of any employer to decide on termination of any employee's employment."

Mr Theys said that in December last year his Koeberg work permit had been withdrawn. He believed this was related to his detention last November after allegedly taking part in a candlelight procession.

The assistant legal manager of Escom, Mr B F Rheeder, said he had told Mr Theys that the security police had recommended the withdrawal of his permit.

"But I found that I had been mistaken," he said. "After further investigation, I found that Koeberg security had actually wanted the withdrawal of the permit. For reasons of security I cannot disclose the reason for this."



Natal Die Casting workers in limbo

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# Seifsa plays down strike precedent

**THE** Industrial Court judgment finding Natal Die Casting guilty of an unfair labour practice does not appear to have set a precedent compelling bargaining at company level, according to a Seifsa statement.

The Metal and Allied Workers' Union (Mawu) said last week that the order overturned the Hart judgment which did not compel an employer to bargain at company level on substantive issues covered by an industrial council agreement.

Natal Die Casting, of Durban, has been ordered by the Industrial Court to reinstate about 112 workers after failing to negotiate in good faith during a legal strike.

Seifsa said yesterday there was confusion about the implications of the judgment and Seifsa wished to make a preliminary comment on the order even though the court's reasons for it had not yet been made public.

Seifsa said the issue between Mawu and Natal Die Casting was not a matter covered by an industrial council

CLAIRE PICKARD-CAMBRIDGE

agreement and the judgment did not, therefore, appear to conflict with the Hart case

Natal Die Casting had also conveyed its willingness to the union to bargain on the matter in dispute.

Instead the Natal Die Casting judgment appeared to follow the line used in the National Union of Mineworkers versus Marievale judgment regarding the need to bargain in good faith after a legal strike had begun, Seifsa said.

It added that its statement should not be taken to indicate acceptance of the judgment because it was understood Natal Die Casting was taking the case on review to the Supreme Court.

A Natal Die Casting spokesman said yesterday that application papers would be served this week and the company would not reinstate workers pending the Supreme Court's decision.

Mawu said yesterday it did not have an available spokesman who could comment on Seifsa's statement

PETER LE ROUX

# Defending the Industrial Court

IN MY  
OPINION



Peter le Roux, a professor of mercantile law at Unisa, is an acknowledged authority on labour law.

It seems that recent decisions of the Industrial Court (IC) have re-awakened the doubts felt among certain employers towards the court. It appears that some employers feel that "something should be done" about the IC. How strong this feeling is, how much support it enjoys, and what actions are proposed is not clear.

During the last few years the IC has revolutionised many aspects of industrial relations in SA. This has resulted in the erosion of managerial prerogative — especially in the field of the dismissal of workers. These changes have often left employers bewildered and uncertain as to how they can act. It is, therefore, not surprising, and perhaps understandable, that the IC should be viewed with some suspicion. However, care should be taken not to overreact when any re-assessment of the role and function of the IC takes place.

By far the majority of IC decisions have dealt with three general categories: unfair dismissal of individual workers; retrenchments; and the dismissal of striking workers. In my experience (and in the experience of many senior industrial relations practitioners I have spoken to) most employers have adjusted to the principles formulated by the IC in connection with the first two categories. In any event, to a large extent these principles reflect sound industrial relations

practices.

One suspects, however, that most of the employer disquiet concerns the court's decisions dealing with the dismissal of striking workers. If this leads to employers arguing that the IC should not have the right to adjudicate on the fairness or otherwise of the dismissal of striking workers, I would disagree. Potentially the IC could play an important role in encouraging the resolution of disputes through negotiation and could help maintain social order in bitter labour-management disputes. It should also be recognised that employee resistance to mass dismissals has increased dramatically during recent months.

However, if the argument is that the IC is not fulfilling this function effectively, or that it is not providing clear enough guidelines as to when such dismissals shall be regarded as fair, I would agree to some extent. The drafting of the Labour Relations Act provides the IC with little flexibility as to how it can remedy an unfair labour practice. The statutory procedures to be followed are also less than expeditious. In addition, some of the IC's decisions in connection with the dismissal of striking workers can be criticised in that they have been inconsistent, poorly formulated, and have provided little guidance to employers and employees alike. However, recent decisions seem to indicate a greater willingness on the part of the IC to provide guidelines.

Notwithstanding these criticisms, however, and bearing in mind the difficulties with which it has been faced, the IC has done surprisingly well. It should also be remembered that the IC has had to operate in the same new and unfamiliar environment as employers and unions. If it can be said that the IC has made some mistakes during the

last few years, the same can be said in equal measure of employers. All the parties active in the industrial relations environment have had a lot to learn.

The argument has been raised that SA cannot afford an IC because it forces employment costs up. I would argue, however, that South Africans cannot afford *not* to have an efficient, powerful IC. The emerging South African industrial relations system has proved surprisingly resilient to the blows inflicted upon it by the recession and the recent unrest.

Nevertheless, it is still a fragile system and we should be very careful not to destroy or undermine institutions which can play a role in resolving labour conflict.

The IC is one such body. It is also one of the few official bodies involved in labour relations which enjoys at least some credibility among black workers and their unions. If the IC is undermined or destroyed there will be one less body which can be utilised for the peaceful resolution of labour disputes, thereby increasing the likelihood of strikes and other forms of industrial conflict.

Employers should therefore concentrate their efforts on devising ways of making the IC a more efficient and effective body for the resolution of disputes. This would include: upgrading the status of the IC; providing security of tenure for its members and improved employment conditions to enable it to attract and retain presiding officers of a high calibre; devising more effective procedures for the expeditious settlement of disputes; and providing the IC with the necessary powers to enable it to function properly. Any successful attempt to lessen the influence of the IC could, I fear, be counter-productive and something that employers could come to regret in later years.





# Industrial Court rules against union

Staff Reporter

THE South African Allied Workers' Union (Saawu) has been found by the Industrial Court to have committed an unfair labour practice — the first time this has happened in South Africa.

The judgment was handed down in Pretoria on February 7 by the president of the Industrial Court, Dr D B Ehlers.

Evidence was that on August 12 last year shortly after Saawu began mobilizing support among Murray and Roberts workers, more than 1 250 employees went on strike.

When workers struck again on August 26 the company ordered them to return to work next day or face dismissal. When they failed to do this they were dismissed and told to collect their money and leave the hostels in Guguletu on September 1.

The company was granted an interim interdict in the Supreme Court on August 30 restraining Saawu from organizing, inciting, directing any acts of

violence, strike action, picketing or impeding access to or egress from any Murray and Roberts premises, hostel or construction site.

It was also restrained from holding any meeting at any company hostel and union officials were barred from company property.

In papers before the court Saawu denied responsibility for the strike or that its actions were a direct threat to Murray and Roberts fulfilling its contracts.

Saawu's organizing secretary, Mr Zolile Mtshelwane, said the union did not encourage illegal strikes.

In his judgment, Dr Ehlers said it seemed evident from affidavits by employees who attended meetings, that Saawu's representatives intended to instigate and induce strike action.

It appeared likely that union officials intervened in the relationship between the company and its employees.

It was also probable that as a result of such conduct, which the union apparently did not prevent or discourage, Murray and Roberts employees were unfairly affected. Their job opportunities, work security and physical, economical, moral and social welfare were prejudiced and jeopardized.

The company's business was unfairly affected and disrupted; labour unrest was created and promoted and the company's relationship with its workers detrimentally affected.

Mr J J Gauntlett, assisted by Mr J A Short-Smith, instructed by Marais Muller appeared for Murray and Roberts. Mr L J Krige, instructed by E Moosa and Associates appeared for Saawu.

CARE TIMES 22/2/86

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# President to be given wider powers

## Political Staff

**THE** State President, Mr PW Botha, is to be given wider powers enabling him to by-pass Parliament to suspend laws and cut through red tape impacting on business and impeding economic development in South Africa.

In terms of the Temporary Removal of Restrictions on Economic Activities Bill tabled in the House of Assembly on Thursday, Mr Botha will, by proclamation, be able to suspend any legislation which in his opinion impedes economic pro-

gress or competition in commerce

These extraordinary powers are to be granted for three years, but may be extended by an Act of Parliament if the need exists.

The primary purpose of the new draft legislation is to facilitate and speed up the participation of the small entrepreneur and the informal sector in the economy

Areas over which Mr Botha may exercise this executive power include.

● Requirements for

the registration and licensing of businesses, undertakings, industries, trades and occupations, and the employment and use of land and premises.

● Registration of employees.

● Payment of contributions to the Unemployment Insurance Fund and the Workmen's Compensation Fund

● Registration of and control over factories.

● Regulations of conditions of service and working hours and the days on which and times when business may be

done.

● Supervision of and use of machines.

● Protection of the health and safety of employees

● Health requirements for premises and buildings where activities are carried out.

● The prohibition, or regulation of, or restriction on, the erection of dwellings, buildings and other structures.

● The conveyance of persons and goods within, from and to a specific area.

● The establishment of towns and town planning.

Industrial Court's powers examined

STAR (165)  
24/2/85  
Appeal Court to rule on labour law

**BLOEMFONTEIN** — The Appeal Court in Bloemfontein is to consider a question of law reserved by the Industrial Court on its powers to reinstate employees whose employment has been terminated.

It is also to consider whether the act of an employer in dismissing workers engaged in a strike is an "unfair labour practice".

The question of law was reserved by Mr Justice Mostert in the Industrial Court last December in a dispute between the National Union of Mineworkers (an unregistered trade union), several individual workers and the Hartebeesfontein Gold Mining Company Limited.

The points to be resolved are

- Whether the Industrial Court has the power to reinstate an employee, notwithstanding the valid termination of the employee's common-law contract of employment.
- Can the dismissal of workers engaged in a strike constitute an "unfair labour practice"?
- Can an employer's dismissal of employees engaged in a strike, or his refusal, consequent on dismissal, to con-

tinue to employ them and to accord them the benefits of employment, constitute an unfair labour practice or a change in labour practice within the meaning of those words as defined in the Labour Relations Act?

- Whether the dismissal of the workers in this case would constitute an unfair labour practice when the facts of the case were taken into consideration.

The case before the Industrial Court arose from the dismissal of workers at the mine after the union had conveyed to the Chamber of Mines its rejection of an offer by the mine's holding company, Anglovaal, to increase the holiday allowance of employees by 10 per cent.

A number of mine employees went on strike on September 1 1985 and were dismissed on September 2 and 3. The strike was suspended by the union on September 3.

The company disputed that the workers were dismissed for taking part in a legal strike. It contended they had been dismissed for other reasons, including resignation, desertion or gross misconduct arising from their intimidation of other employees.



ARG. 25/2/86

## City clothing firm wants ruling on workers set aside

Supreme Court Reporter

A CITY clothing manufacturer has asked the Supreme Court, Cape Town, to overturn a judgment by the Industrial Court in a dispute concerning seven dismissed workers.

Towles Edgar Jacobs (Tej) has asked the Supreme Court to revise and set aside an Industrial Court judgment which linked the dismissal of seven clothing workers to an unfair labour practice

The workers were told last April that they were being made redundant at the end of May.

They allege their dismissal was unfair as they were longstanding employees and allege that the company did not follow recognised practices in making them redundant.

Tej denied unfair dismissal or unfair labour practice and claimed it offered the workers alternative jobs

The Industrial Court found the dispute concerned dismissal as

well as unfair labour practice and both were integrally linked

In an affidavit supporting the Supreme Court application Mr D C Anderson, the production manager at the Tej factory in Steenberg, said the Industrial Court judgment was wrong and submitted that it did not have the jurisdiction to hear the matter.

This was because it concerned the termination of employment (as set out in Section 43(1) a of the Labour Relations Act) and not an unfair labour practice or unfair dismissal.

The company also seeks a declaration from the Supreme Court that the Industrial Court is not empowered to grant the reinstatement of retrenched employees in terms of Section 46(9) of the Act.

The co-respondents, Jeffrey October, David Sylvester, Noel Arendse, Kenneth Dearham, Priscilla Cotton, Barbara Mansingh and George Langehoven are seeking reinstatement.

(Proceeding)

**HANS EKANGALA TOWNSHIP**  
 26/2/86  
 15 Mr P G SOAL asked the Minister of Constitutional Development and Planning:

- (1) (a) When was Ekangala Township established, (b) from which townships and/or areas did the residents of this township move and (c)(i) when and (ii) why did they move there;
- (2) whether this township is to be incorporated into KwaNdebele; if so, when,
- (3) whether persons encouraged to move to Ekangala were informed, before they moved, that the township was due for incorporation into KwaNdebele, if not, (a) why not and (b) when were they first informed, if so, (i) in what manner were they informed of the incorporation and (ii) what was their response,
- (4) whether any persons were moved to Ekangala from Black spots by Government officials, if so, (a) from which Black spots and (b) when were they moved to Ekangala;
- (5) whether any discussions concerning the incorporation of Ekangala into KwaNdebele have taken place between Government officials and the residents of Ekangala; if not, why not, if so, (a) on what dates, (b) what are the names of the officials who took part in these discussions and (c) what matters were discussed on each occasion;
- (6) whether any member of his Department has received requests from any residents of Ekangala to be accommodated in townships which are not due to be incorporated into any national state; if so, (a) when, (b) who received these requests and (c)(i) what was the purport of and (ii) response to these requests;
- (7) whether residents of Ekangala who wish to move will be accommodated in other townships; if not, why not; if so, (a) where and (b) when;

(8) whether he will make a statement on the matter?

**THE DEPUTY MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING:**

- (1) (a) The decision in principle was announced through a press statement issued on 20 May 1980.
- (b) From the East Rand Black townships and also from Pretoria townships.
- (c) (i) Since houses were made available in 1982.
- (ii) As a result of the availability of houses in Ekangala and the over-congestion in the existing Black townships in the PWV area
- (2) Incorporation in the near future is not under consideration.
- (3) No persons were encouraged to move to Ekangala. Movement took place voluntarily. On 11 February 1985 a press statement was issued by the Minister of the former Department of Co-operation and Development in which he announced that incorporation was being considered.
- (a) Not applicable.
- (b) 11 February 1985.
- (i) Press statement
- (ii) The majority of residents had no objection.
- (4) No persons were moved by Government officials
- (a) Not applicable
- (b) Not applicable
- (5) Possible incorporation has not been finalised and no discussions have taken place too date

(6) Yes.

(a) October 1985.

(b) The East Rand Development Board

(c) (i) Resistance to incorporation.

(ii) That incorporation will not take place within the foreseeable future

(7) No, the Government will not resettle residents, but residents are free to transfer of their own accord and may voluntarily settle elsewhere provided that it is in a recognised Black township where housing is available

(8) An announcement will be made in due course after further consideration and consultation

Mr P G SOAL, Mr Chairman, arising out of the reply of the hon the Deputy Minister of Constitutional Development and Planning, is it not true to say that the people in question went to Ekangala simply because there was no accommodation available in the townships on the East Rand? For him to say that they should now go to townships . . .

**THE CHAIRMAN OF THE HOUSE ORDER:** The hon member may ask a question, not make statements. A question may be asked

Mr P G SOAL: Is it not correct that they went to Ekangala because housing was not available in townships on the East Rand, and where does he expect them to go to now?

**THE DEPUTY MINISTER:** Mr Chairman, it is so that they went to Ekangala voluntarily and that housing was provided for them there. It is also true that there is housing in which the people can live. I cannot understand what more the hon member wants to know

**Office accommodation in London**

\*16. Mr G B D McINTOSH asked the Minister of Transport Affairs:

(1) Whether the South African Airways has office accommodation in London, if so, where is it situated;

(2) whether any tickets for South African Airways flights from Europe to Johannesburg were sold at this office in (a) 1984 and (b) 1985; if so, how many in each such calendar year?

**THE MINISTER OF NATIONAL EDUCATION (for the Minister of Transport Affairs):**

(1) Yes. 251/9 Regent Street, Oxford Circus, London W1

(2) Yes. The number of tickets sold by SAA offices and agents in the United Kingdom during 1984 and 1985 totals 76 909 and 69 725 respectively. Separate figures are not readily available.

**Toilet/ablation facilities**

\*17. Mr F J LE BAILLARD asked the Minister of Manpower:

(1) Whether the Department's policy regarding the opening of toilet and ablation facilities for workers of other races in work situations was changed recently, if so, (a) when and (b) what was the nature of the change;

(2) whether he will make a statement on the matter?

**THE MINISTER OF MANPOWER:**

(1) (a) and (b) No. The policy remains as contained in section 35(3) of the Machinery and Occupational Safety Act, 1983, which was unanimously agreed to by the erstwhile House of Assembly. The Industrial Court decided that the regulations made under the repealed Factories, Machinery and Building Work Act, 1941, in connection with facilities were no longer



compatible with the said provisions of the first-mentioned Act.

(2) No

Reserve Bank: money advanced/debts paid  
 \*18. Mr S P BARNARD asked the Minister of Finance:†

Whether the South African Reserve Bank recently (a) advanced money to and/or (b) paid certain debts or met obligations on behalf of banking institutions in the Republic; if so, (i) in respect of which banking institutions, (ii) what amount was involved, (iii) what was the rate of interest, (iv) to whom was the amount paid and (v) how is the amount going to be repaid to the Reserve Bank?

The MINISTER OF FINANCE.

The South African Reserve Bank regularly provides financial accommodation to banking institutions by rediscounting Treasury bills, Land Bank bills, bankers' acceptances, government stock and other similar financial assets for them or by extending loans to them against the security of such assets. The Reserve Bank does this as part of its policy of controlling the money supply and in the performance of its traditional function as "lender of last resort". The amounts and interest rates involved in these transactions fluctuate daily in accordance with changes in conditions in the financial markets.

In terms of the South African Reserve Bank Act (No 29 of 1944) the Reserve Bank is required to submit a monthly statement of assets and liabilities in a prescribed form to the Treasury for publication in the *Government Gazette*. This monthly statement is also published by the Reserve Bank itself within one week after the end of each month. The Reserve Bank's discounts, loans and investments are shown in this monthly statement. In accordance with normal banking practice and the accepted rules of confidentiality regarding banker/client relationships, no details are divulged regarding transactions between the Reserve Bank and individual

HOA

banks, which operate in normal competition with one another.

Mr H H SCHWARZ. Mr Chairman, arising out of the reply of the hon the Minister of Finance, it is obvious that *confor* letters do not appear in the statements to which he referred. Were any further *confor* letters issued other than the one that was publicly announced?

The MINISTER. Mr Chairman, if the hon member will table that question, I will provide him with the proper reply.

Lesotho: citizens working in Republic  
 \*19. Mr H D K VAN DER MERWE asked the Minister of Constitutional Development and Planning †

(a) How many citizens of the state Lesotho were working in the Republic at the latest specified date for which figures are available and (b) what is the position in respect of residential rights for such citizens?

The DEPUTY MINISTER OF CONSTITUTIONAL DEVELOPMENT AND PLANNING.

(a) 139 827 registered in employment as at 30 June 1985

(b) All these Lesotho Citizens are contract workers and in accordance with the Labour agreement with Lesotho are allowed in the Republic for a maximum period of two years whereafter a new contract must be attested in Lesotho.

East London Prison: certain person  
 \*20. Mr A SAVVAGE asked the Minister of Justice.

(1) Whether a certain person from Pearson, whose name has been furnished to the Minister's Department for the purpose of his reply, was held at East London Prison in 1985; if so, (a) on what date was he imprisoned there and (b) what was his age;

HOA

(2) whether this person had been convicted; if so, (a) of what offence and (b) what sentence was he serving; if not, on what charges was he held;

(3) whether this person died while he was in this prison; if so, (a) when and (b) what was the cause of death;

(4) whether an inquest has been held in this regard; if not, (a) why not and (b) when will it be held; if so, (i) when and (ii) what were the findings;

(5) whether the family of this person was informed of (a) his death and (b) the outcome of the inquest, if not, why not, if so, when;

(6) whether any action has been or is to be taken as a result of the (a) death of this person and (b) findings of the inquest; if so, what action;

(7) whether he will make a statement on the matter?

The MINISTER OF MINERAL AND ENERGY AFFAIRS (for the Minister of Justice):

(1) Yes.

(a) 2 August 1985

(b) 22 Years

(2) Yes

(a) Public violence.

(b) Eight (8) years imprisonment of which two (2) years were conditionally suspended for five (5) years.

(3) Yes

(a) He died on 21 September 1985 in the intensive care unit of the Frere Hospital where he was admitted on 13 September 1985.

(b) According to the abridged certificate of registration of death

issued by a medical practitioner of the Frere Hospital, the cause is: "Adult respiratory distress syndrome".

(4) No.

(a) The prisoner died of natural causes

(b) Falls away.

(i) and (ii) Fall away.

(5) (a) Yes, on 21 September 1985.

(b) Falls away.

(6) (a) No.

(b) Falls away.

(7) No

St Albans Prison: certain person  
 \*21. Mr A SAVVAGE asked the Minister of Justice:

(1) Whether a certain person, whose name has been furnished to the Minister's Department for the purpose of his reply, was held in St Albans Prison in 1985; if so, (a) on what date was he imprisoned there and (b) what was his age;

(2) whether this person had been convicted; if so, (a) of what offence and (b) what sentence was he serving; if not, on what charge was he held,

(3) whether this person died while he was in this prison; if so, (a) when and (b) what was the cause of death;

(4) whether an inquest has been held in this regard, if not, (a) why not and (b) when will it be held; if so, (i) when and (ii) what were the findings;

(5) whether the family of this person was informed of (a) his death and (b) the outcome of the inquest; if not, why not; if so, when;

HOA



STAR  
26/2/86  
Director warned  
on fired workers

Director Mr Taco Kuiper was warned in the Johannesburg Magistrate's Court yesterday to appear in court in April for failing to heed an Industrial Court ruling to reinstate or pay dismissed workers.

The court appearance, postponed to April 24, is a sequel to a successful application by the Media Workers' Association of South Africa (Mwasa) in the Industrial Court. The court ruled Facts Investors and/or Facts Investors Services reinstate or pay seven workers dismissed last year.

# Mawu to go to court over BTR dispute

By Mike Siluma

The Metal and Allied Workers Union (Mawu) is to take its protracted dispute with BTR Sarmcol to the Industrial Court.

This follows the failure last week of a conciliation board to resolve the dispute, caused by the dismissal of almost 1000 workers last April for striking in support of a demand for the recognition of Mawu.

The workers were fired by the company's factory in Howick, Natal.

A Mawu spokesman said the union would meet early this week to assess its local and international campaigns against BTR.

Actions taken by the union since the dismissals included calling on British unions to pressure the BTR and calling stayaways in the black townships around Howick and Maritzburg.

Several people have died in clashes between strikers and their replacements at Sarmcol.

Repeated attempts to resolve the dispute through negotiation have failed.

# 'Govt must tell public about fuel

A PFP spokesman has urged the Government to explain to the public how the petrol industry in South Africa functions.

"People are confused and angry that a major chainstore cannot sell petrol at a discount."

"Although the Minister has adopted a reasonable attitude to informing the public on the distribution of petrol, I urge him to spell out how the petrol industry in South Africa functions," said Mr Brian Goodall, PFP spokesman on mineral and energy affairs.

"The PFP has made its attitude towards petrol distribution clear on many occasions. We believe that petrol prices should be determined by market forces and not by controls."

"I urge the Government to commit itself to a system whereby petrol prices will eventually be determined not by regulation, but by market forces."

"In the interim I would ask the Minister of Mineral and Energy Affairs to set both a minimum and a maximum price for petrol so that those who wish to sell cheaper petrol can."

## Industrial council proposed to resolve dissatisfaction

STAR  
5/3/85  
Political Staff

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PARLIAMENT — The State President has been asked to establish a national industrial council to help quell the dissatisfaction among SA Transport Services employees.

Major Reuben Sive (PFP, Bezuidenhout) moved the motion in Parliament during the SATS budget debate.

He said the problem of SATS employees was that, unlike other public servants, they had unions registered under the Labour Relations Act, but their negotiations on work conditions were governed by another Act — the Conditions of Employment (SATS) Act.

This prohibited strikes and defined other dispute-settling procedures which were different from those governing other workers.

A SATS national industrial council would enable Sats employees to operate under the established labour relations procedure.



CML TIMES 165  
7/3/82

## Koeberg man re-hired

Staff Reporter

A LABOUR dispute has been settled between a French sub-contractor at Koeberg and a worker of the Electrical and Allied Trades Union.

Mr Cecil Theys, an electrician and an employee of the French firm, C Gee Alstom, had his permit to work at Koeberg withdrawn by Escom on December 12.

The union, claiming unfair labour practice, took the matter before the Industrial Council last month. The case was then referred to the Industrial Court.

A spokesman for the union, Mr Brian Williams, said yesterday that the dispute would not come before the court, as it had been settled "satisfactorily".

"He has received full physical reinstatement from C Gee Alstom and has been paid for every day he did not work," said Mr Williams.

5. L) The epic battle between the Metal and Allied Workers' Union (Mawu) and British subsidiary BTR Sarmcol appears likely to continue — and the next round of the fight will take place in the Industrial Court.

6. S) Mawu says it is taking the dispute to the court under section 16(9) of the Labour Relations Act. It will ask the court to find Sarmcol guilty of unfair labour practice.

The dispute began last April after the dismissal of 1 000 workers who went on strike, demanding the recognition of the union.

At the time, the union had been fighting for more than eight years for recognition at Sarmcol, and the dispute erupted just when it looked as if an agreement was about to be reached.

Sarmcol claimed then that the strike was illegal and that it had acted correctly in firing the workers — a claim rejected by Mawu.

The company then replaced the strikers with workers from nearby townships around Howick and Maritzburg. It declared that it would no longer negotiate the matter with

# Epic Mawu-Sarmcol fight heads for court

STP 18/3/86 165

The long-standing dispute between the Metal and Allied Workers' Union and BTR Sarmcol has raged for so long that some of the issues may have become blurred in the public mind. MIKE SILUMA takes a look at the background to the dispute which is now being referred to the Industrial Court.

Mawu because the union did not represent its new workforce.

However, negotiations for the reinstatement of the fired workers — which repeatedly broke down — continued between the parties.

At the same time, the issue overflowed into the local communities of Howick and Maritzburg, drawing in virtually all sectors of the local population.

Over the past few months, actions taken by Mawu in an effort to win reinstatement of the workers included:

- Appealing for help from international worker organisations such as the Metalworkers' Federation

- Calling for a work stayaway in Howick and Maritzburg

- Raising the matter with the European Parliament.

However, the struggle has not all been peaceful.

Numerous clashes, which claimed several lives, occurred between strikers and their replacements, leading to the arrest of some workers. The houses of some of Sarmcol's new workers were burnt.

Mawu said it saw the arrest of the strikers as harassment by the State.

The decision by the union to take the dispute to the Industrial Court came only days after a conciliation board called by the Minister of Manpower had failed to resolve the case.

Mawu said it would evaluate past strategies to conduct its campaign.

40t  
30t  
FIR  
20t  
10t  
Bot

~~FINANCIAL~~

**COLLECTIVE BARGAINING** | 3 | 7/8

**65** **65** **65** **65**

**Court casts the die**

The Industrial Court has delivered its full judgment in the reinstatement case against Pinetown company Natal Die Casting (NDC). The company was ordered to reinstate permanently over 100 legal strikers dismissed last year.

87  
85  
82  
81  
69  
51

Total

When the court's reinstatement order was handed down in early February, NDC quickly announced that it would take the case on review to the Supreme Court. The workers would not be reinstated until this process was complete, said NDC. Now that the reasons are available, NDC must have even greater motivation, for the Industrial Court makes some highly critical observations about its conduct in the dispute.

The strike occurred on May 1 last year after drawn-out negotiations with the Metal and Allied Workers' Union (Mawu). It was called over the NDC's refusal to bargain in good faith over production and long-service bonuses and a travel allowance. The court ruled that NDC committed unfair labour practices by dismissing the workers; and refusing, or failing, to negotiate in good faith with Mawu before and after the strike.

The court found that while the evidence presented by most of the witnesses was acceptable, NDC MD Graham Wilson did not make a favourable impression "His whole attitude and appearance was one of insincerity," it said.

Further, said the court, Mawu had not breached the provisions on strike balloting set out in the Labour Relations Act, as alleged by NDC. The strike was therefore legal

According to the court, NDC had agreed in principle to implement a productivity bonus. But, while "purporting to negotiate," it "merely went through the motions without any real intent to arrive at an agreement" Certain conditions imposed by the company were "so unreasonable that it could scarcely be said that they were made in the genuine belief that they would result in agreement." For example, a proposed production target set by NDC exceeded anything that had been achieved between August 1980 and February 1984. NDC also refused to furnish a Mawu-appointed accountant with realistic financial information.

Dealing with whether the company was justified in sacking the workers or not, the court referred to the well-known case between the Council of Mining Unions and the Chamber of Mines This held that dismissals could, in certain circumstances, constitute an unfair labour practice even if sackings are lawful

What carried most weight with the court

Continued on page 62

in this regard was whether NDC had tried to enter into bona fide negotiations. Further, it notes that NDC had refused to refer the dispute to an independent arbitrator. The union's conduct during and after the strike, said the court, "was not such as would infringe the rules of 'fair fight'." Cumulatively, these factors led the court to conclude that the manner in which the dismissals were effected amounted to an unfair labour practice.

The Supreme Court will now have to decide on the merits of the Industrial Court's judgment when it comes up for review.

Meanwhile, it is clear that the NDC case does not overturn a previous judgment in a case between Mawu and another Natal company, Hart Ltd. In it, Mawu tried unsuccessfully to get the court to rule that Hart's refusal to bargain on wages above the metal industry industrial council minimums and a funeral benefit scheme was an unfair labour practice.

According to a leading labour lawyer, the court has been consistent in the two judgments. In the Hart case, he says, there was no agreement between the company and union to negotiate on matters covered by the industrial council agreement. The court held that it would not compel Hart to bargain in the particular circumstances. In the NDC case, there was agreement to bargain, the court therefore could rule that the company had deviated from its commitment



# Dismissed workers to get their jobs back

By Mike Siluma

In a settlement regarded as a victory in the struggle for the rights of municipal workers, the Orange Vaal General Workers' Union (OVGWU) and the Welkom Town Council have agreed on the reinstatement of 13 workers dismissed following a strike last December.

The workers had gone on strike to demand the return of union documents confiscated by a council official. They also wanted the official dismissed.

In terms of the settlement, reached in the Industrial Court, the reinstatement of the 13 would be retrospective to January 2. The period between December 20, when they were fired, and January 2 would be regarded as unpaid leave.

SPAR  
B-DAY  
24/3/86 (165)

It was agreed that the union would be granted de facto recognition while its membership was being verified. Both parties undertook not to involve police in attempts to resolve any future disputes. During the December strike, six workers were briefly held by police and released without being charged.

Settlement was reached after the OVGWU agreed to withdraw its application for an interim reinstatement order under section 43 of the Labour Relations Act.

A spokesman for the OVGWU said the union viewed the settlement as a victory in its struggle for the recognition of municipal workers' rights. He said the agreement was a precedent which he hoped would be followed by other local authorities.

# Appeal affects future of Industrial Court

By Sheryl Raine

The powers of the Industrial Court are expected to come under the spotlight in an important appeal to the Appellate Division in Bloemfontein today.

The outcome is being eagerly awaited by employers and trade unions and could have far-reaching effects on Industrial Court cases in future.

The ruling of the Appeal Court could overturn or confirm precedent-setting decisions made by the Industrial Court.

Labour lawyers are hoping that the Appellate Division's ruling will clarify the ambit of the unfair labour practice definition in the Labour Relations Act, the power of the Industrial Court, and strike law.

Certain questions of law were reserved in the Industrial Court last December in a dispute between the National Union of Mineworkers (NUM) and Anglovaal's Hartebeestfontein Gold Mining Company Ltd.

The dispute arose out of the dismissal of Harties workers during a legal wage strike last September.

The questions were referred

to the Appeal Court as a matter of urgency on February 14 and include

- Whether the Industrial Court has the power to reinstate an employee, notwithstanding the valid termination of the employee's common-law contract of employment.

There have been cases recently in which the Supreme Court has ruled that an employer's dismissal of workers is lawful while the Industrial Court has ruled that these lawful dismissals were nevertheless unfair and the workers concerned should be reinstated.

## DISSATISFACTION

These Industrial Court rulings have caused much dissatisfaction among employers.

- Can the single act of an employer, consisting of the dismissal of workers engaged in a strike, constitute an unfair labour practice?

- Can an employer's dismissal of employees engaged in a strike, or his failure or refusal, consequent on dismissal, to continue to employ them constitute an unfair labour practice, or a change in labour practice as de-

defined in the Labour Relations Act?

- Whether the dismissal of certain NUM members from Hartebeestfontein gold mine during a legal wage strike in September last year, constitutes an unfair labour practice.

In the original case before the Industrial Court, Hartebeestfontein disputed that the workers were dismissed for taking part in a legal strike.

The company contended that they had been dismissed for other reasons, including resignation, desertion or gross misconduct arising from intimidation.

The appeal is important because up until now it has been accepted that the Industrial Court has the power to reinstate dismissed workers and that a dismissal can constitute an unfair labour practice.

These basic assumptions are now being challenged. If they are confirmed by the Appellate Division, the position of the Industrial Court will be significantly strengthened, ensuring that it has the power to make final reinstatements and play a decisive role in settling future labour disputes.

# Appeal Court reserves judgment

BLOEMFONTEIN — Judgment was yesterday reserved by the Appeal Court in Bloemfontein on whether the court has the power to consider a point of law reserved by the Industrial Court.

The question of law was reserved by Mr Justice Mostert in the Industrial Court in December last year in a dispute between the National Union of Mine-workers (NUM), several individual workers and the Hartebeesfontein Gold Mining Co Ltd.

The question of law was reserved under section 17 (21) of the Labour Relations Act, No 28 of 1956. The points for resolution are:

- Can the Industrial Court reinstate an employee even though the employee's common law contract of employment has been validly terminated?
- Can an employer's dismissal of workers engaged in a strike or failure to re-employ them after dismissal constitute an unfair labour practice?
- Does the dismissal of the workers in this particular case constitute an unfair labour practice?

The case came before the Industrial Court when workers were dismissed at the mine after the union had told the Chamber of Mines it rejected an offer by the mine's holding company, Anglo Vaal, to increase the holiday allowance of employees by 10 percent.

A number of employees at Hartebeesfontein went on strike on September 1 1985. There were dismissals on September 2 and 3. The strike was suspended by the union on September 3 — Sapa



BILL DAY  
27/3/86

165

# Closed-shop safeguards mooted

**THE** National Manpower Commission has recommended that all closed-shop agreements be made subject to a set of safeguards, to be incorporated in the Labour Relations Act by statutory amendments.

In a report on the closed shop in SA, tabled in Parliament yesterday, the commission recommended that any arrangement which specifies trade union membership as a requirement for employment be made subject to the following conditions

Compulsory membership may be enforced only if an agreement exists between the employer and a

trade union, and a 90-day period has elapsed since the employment of the individual or of the conclusion of any agreement with a union (excluding the re-negotiation of existing agreements);

When a closed-shop agreement is to be instituted, more than half the affected employees must be members of the trade union involved in the arrangement;

Suitable arrangements must be introduced to determine the support for such agreements or provisions in certain circumstances,

No closed-shop agreement will be valid if it has the effect of denying access to work to people who cannot obtain union membership,

A closed-shop agreement should provide for the exemption of people who object to joining a trade union on grounds of deep personal conviction,

If a person is refused membership, or has his membership terminated on unreasonable grounds, he should be exempt from the terms of any closed-shop agreement, and such refusal or termination of membership should constitute an unfair labour practice.

The report recommended that procedures in the Labour Relations Act to determine support for closed-shop agreements among employees be extended to cover the possibility of a secret ballot —  
sapa.

# Appeal Court refers back labour queries

By Sheryl Rame

The Appeal Court in Bloemfontein has found that questions of law and proceedings referred to it by the Industrial Court were "fatally defective", and it has invited the parties concerned to refer the matter back to the Industrial Court.

Labour lawyers, employers and trade unions were hoping that the Appeal Court would make a ruling to clarify important aspects of labour law including, among others

## WAGE STRIKE

● Whether the Industrial Court has the power to reinstate an employee who has had his common-law contract of employment lawfully terminated

● Whether the single act of an employer in dismissing a worker engaged in a strike constitutes unfair labour practice

● Whether an employer's dismissal of striking employees, and his refusal to re-employ them, constitute an unfair labour practice or change in labour practice in terms of the Labour Relations Act

The Appeal Court was also asked to decide whether the dismissal of certain employees from Hartebeestfontein Gold Mine during a legal wage strike last September constituted unfair labour practice

The questions were reserved in a dispute between the National Union of Mineworkers (NUM), several workers, and Anglovaal's Hartebeestfontein Gold Mining Co Ltd

The dispute centred on the dismissal of several black workers

The questions were reserved under section 17(21) of the Labour Relations Act No 28 of 1956

When the matter came before the Appeal Court last week, the court raised two preliminary points

Was "the document" in the form of a special case, and did it contain all that a case stated under section 17(21)(a) should contain?

The court found that the document was not in the form of a special case

Further, it did not appear that questions of law referred to the Appeal Court arose in the proceedings before the Industrial Court, and the questions reserved, as framed, were abstract questions of a kind upon which the Appeal Court did not pronounce

This was the view of Mr Justice Nicholas (Acting Judge of Appeal), with the concurrence of Chief Justice Mr Justice Rabie, Mr Justice Jansen, Mr Justice Hoexter and Mr Justice Galgut (Acting Judge of Appeal), on questions reserved by Mr Justice Mostert in the Industrial Court in December

## NO ORDER

The Appeal Court made no order on the questions reserved, nor for costs. Mr Justice Nicholas said that it was open to the parties to approach the Industrial Court again in order that appropriate questions of law may be reserved in due form



and stationery and (b) was paid out in general sales tax by the State on purchases of school (i) books and (ii) stationery during the latest specified financial year for which information is available?

The MINISTER OF FINANCE

(a) The total sum collected from sales tax levied in respect of the sale of (i) books and stationery during the 1984/85 financial year was R98 457 463. (ii) No separate statistics are maintained in relation to sales of school books and stationery.

(b) The Department of Finance is not responsible for making purchases of school books and stationery. Such purchases would normally be made by central government and provincial education departments and it is doubtful if figures relating to the amount of sales tax paid out in respect of those purchases are readily available.

ANSWERS  
453. Mr P H P GASTROW asked the Minister of Manpower:

(1) What was the balance in the Unemployment Insurance Fund at the end of 1985,

(2) (a) what was the amount (i) paid into the Fund and (ii) paid out in benefits in that year and (b) to how many (i) White, (ii) Coloured, (iii) Indian and (iv) Black applicants were benefits paid?

The MINISTER OF MANPOWER

(1) R149 766 002

(2) (a) (i) R196 507 492

(ii) R325 133 883.

(b) (i)-(iv) 426 136. Separate particulars on the number of Whites, Coloureds, Indians and members of the Black popu-

lation groups who were paid benefits are not readily available

Work-seekers

ANSWERS  
460. Mr P H P GASTROW asked the Minister of Manpower.

How many Black males and females, respectively, were registered as work-seekers in the White areas of the Republic in each month of 1985?

The MINISTER OF MANPOWER.

Members of the Black population groups registered as work-seekers in the White areas of the RSA in 1985

Month	Male	Female	Total
January	34 889	18 185	53 074
February	66 572	34 213	100 785
March	55 040	28 018	83 058
April	51 432	24 440	75 872
May	55 451	28 793	84 244
June	51 063	24 288	75 351
July	51 594	22 369	73 963
August	57 433	25 772	83 205
September	55 574	25 962	81 536
October	51 536	24 776	76 312
November	57 179	26 263	83 442
December	43 804	19 578	63 382
Total	631 567	302 657	934 224

ANSWERS  
463. Mr P H P GASTROW asked the Minister of Manpower

(1) How many new apprenticeship contracts were registered in each trade in 1985 in respect of (a) White, (b) Coloured, (c) Asian and (d) Black persons,

(2) what total number of apprenticeship contracts were in operation in 1985?

The MINISTER OF MANPOWER.

(1)

Industry

Industry	(a) Whites	(b) Coloureds	(c) Asians	(d) Members of the Black Population groups
Aerospace	129	2	1	2
Automobile Manufacturing	56	22	43	43
Building	447	442	75	76
Coal Mining	101	—	11	5
Diamond Cutting	—	—	—	—
Electricity Supply Undertaking	340	15	—	—
Explosives and Allied Industries	92	3	2	11
Furniture	28	20	7	1
Government Undertakings	364	40	—	1
Hard Dressing	514	21	9	14
Jewellers and Goldsmiths	36	—	1	—
Local Authority Undertakings (Northern Transvaal)	27	—	—	—
Metal (Engineering)	2 840	316	278	331
Mining and Building-Mines	1 560	23	5	112
Motor	1 124	156	84	53
Printing	306	73	28	6
South African Transport Services	1 253	—	3	—
Sugar Manufacturing and Refining	13	4	9	9
Tyre and Rubber Manufacturing (Port Elizabeth, Uitenhage and Brits)	16	11	—	2
Totals	9 246	1 148	513	666

ANSWERS  
473. Mr P H P GASTROW asked the Minister of Manpower:

(2)

(1) How many (a) industrial council agreements, (b) conciliation board agreements, (c) arbitration awards, (d) Wage Board determinations and (e) orders in terms of the Labour Relations Act, No 28 of 1965, were in force as at the latest specified date for which figures are available;

The MINISTER OF MANPOWER:

(1) (a) 164.

(b) 1

(c) Nil.

(d) 51.

(e) 5.

(2)

(a) Industrial Council Agreements

Whites

Coloureds

Asians

Members of the Black Population Groups

156 162

245 301

79 241

603 574



# Top union groups back workers' bid to regain jobs

STAR

165

12/4/86

By Mike Silberman



Major trade-union groups have rallied behind workers who have been dismissed because of a recent 10-day stayaway at Warmbaths in the Northern Transvaal

One union federation, the Azanian Confederation of Trade Unions, filed papers in the industrial court, Pretoria, this week on behalf of 36 workers who want their jobs back. The workers, of Bela Bela township, also demand that their former employers pay them for the period they have been unemployed since the dismissals

The Warmbaths Town Council and several employers of domestic workers are cited as respondents

Another union group, the Council of Unions of South Africa, has also offered to provide legal assistance to the workers. A union spokesman said employers who fired workers because of stayaways could be acting unfairly in terms of the Labour Relations Act.

Expressing solidarity with the dismissed workers, a spokesman for the 600 000-strong Congress of South African Trade Unions blamed the Government for the township stayaways

"The Government has left few avenues for people to express their grievances in a democratic manner," he said. "Stayaways should be seen as an expression of the people's anger and frustration

"Employers who victimise workers, while being aware of the situation in this country, must know that we will view this as an attack, not only on the affected workers, but on the workers' movement and the democratic forces as a whole," he said

Such dismissals would only aggravate a tense situation

Relations between employers and employees have been strained in areas where stayaways have been called recently.

It is estimated that about 50 percent of Warmbaths' black workforce was dismissed for taking part in the stayaway, called to back

a demand for the release of Bela Bela residents arrested during unrest in the township

At Nelspruit and White River, also recent stayaway flash-points, employers hirt by a black work boycott threatened to leave the area unless the labour situation returned to normal

Employer bodies in the area said that workers who stayed away during future work boycotts would be dismissed

The stayaway had been called after youth were allegedly shot by police outside a magistrate's court

File DAI 15/4/76  
 (165)

# Secret ballot under the union spotlight

USE of a secret ballot to test support for closed-shop agreements between unions and employers has proved the most controversial of the recent National Manpower Commission report's recommendations.

The NMC examined closed-shop arrangements — which make union membership a condition of employment — and recommended that certain restrictions and safeguards should be implemented.

Congress of SA Trade Unions (Cosatu) general secretary Jay Naidoo says Cosatu's position is that there have never been enough safeguards to protect workers covered by a closed shop.

Many Cosatu affiliates have fought bitter battles against closed-shop agreements that favoured established unions in the garment, textile and paper industries.

Although Cosatu does not yet have a conclusive position on the closed shop, Naidoo said he believed it was "consistent for undemocratic unions to oppose secret ballots".

The established unions represented on the NMC strongly opposed the recommendation that a secret ballot should be held to test support for a closed-shop agreement if at least 20% of employees petitioned the Minister of Manpower.

They argued that sufficiently democratic arrangements existed to ratify or reject closed-shop agreements.

Norman Daniels, general secretary of the Textile Workers' Industrial Union (TWIU) — an affiliate of the middle-of-the-road Trade Union Council of SA (Tucsa) — was an NMC member who opposed introducing secret ballots.

Daniels said a closed-shop agreement could be negotiated only if a union had the support of a great majority of the affected workers.

"Once the agreement has been negotiated it becomes damaging to have a small number of people trying to break up the union and the agreement."

Daniels conceded that support for the closed shop was now tested only when the agreement was negotiated between

*Claire Pickard-Cambridge reports on attitudes towards a recent recommendation that secret ballots should be used to test closed-shop agreements*

parties. But he believed this shortcoming was outweighed by the fact that "closed-shop unions have done a lot towards gaining benefits for workers and maintaining labour stability".

Professor Nic Wiehahn, pioneer of many labour reforms, said he opposed the closed shop because it prevented freedom of association and could be used in a discriminatory fashion.

"I cannot agree that there are sufficient mechanisms to test support for the closed shop. We live in a time where there is a lot of intimidation and discrimination and I believe the secret ballot should be granted."

In the past courts have provided one of the few ways for an outside union to break a closed shop.

The National Union of Textile Workers (NUTW) broke in this way the closed shop between the then Tucsa-affiliated Garment Workers Industrial Union and James North clothing manufacturers in Durban in 1984.

Labour consultant Andrew Levy said closed-shop agreements could be beneficial for unions, provided there were a secret ballot to test support.

But he believed that, while Cosatu unions denigrated the closed shop, most unions would accept this agreement if it benefited them.

Closed-shop arrangements can serve to build stronger unions which are able to bargain from a position of greater strength. But this appears to be only in the interests of employees if the union operates democratically.

The NMC's recommendation on secret ballots is likely to involve employees to a greater extent in determining collective bargaining arrangements, and could prove a constructive reform if the Department of Manpower is prepared to implement it.

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# May Day: NUM entitled to strike

THE 250 000-strong National Union of Mineworkers (NUM) is now legally entitled to strike over its demand for May Day as a paid holiday, legal sources say.

This follows an Industrial Court decision on Friday not to grant an application by the Chamber of Mines for a "status quo order" requiring the union to abandon its demand.

The Manpower Minister failed to appoint a conciliation board to deal with the matter within 30 days of the dispute

CLAIRE PICKARD-CAMBRIDGE

being declared on February 26. In this event, workers are entitled to strike.

However, he appointed a conciliation board on April 1 and the union has undertaken not to advocate strike action until these negotiations have been completed.

The Chamber and the NUM are expected to meet on the May Day issue this week.



Bill on  
IC this  
session

A PROPOSAL that the Industrial Court be upgraded from its existing administrative tribunal status to a judicial court is likely to be contained in draft legislation to be tabled in Parliament this session.

This was confirmed yesterday by sources within the Department of Manpower.

Placing the IC on the status of a superior court was first mooted by the Wiehahn Commission, but turned down by government on the grounds that it was necessary first to gain some experience at adjudicating labour disputes at a lower level.

The changes apparently envisaged now flow from a report by the National Manpower Commission (NMC) on levels of collective bargaining, which was published to solicit comment last year.

The Manpower Director General, Mr Piet van der Merwe, said in an interview yesterday that most of this comment has been collected and legislation amending the Labour Relations Act is now being framed.

He said a bill covering these amendments is to be tabled in Parliament towards the end of May for further comment.

Legislation is, therefore, only likely to be passed during the 1987 parliamentary session.

Labour lawyers yesterday welcomed the possibility of the IC being upgraded to judicial level.

It would have important implications for the status of decisions taken by the IC.

Current decisions can now be used only as guidelines for considering future disputes of a similar nature.

## Two injured as bombs hit youth leader's home

Pretoria Bureau

Two men were injured when a made explosive device a petrol bomb hit the home the president of the Saulsville Atteridgeville Youth Organisation, Mr Sam Morotoba, yesterday morning.

A police spokesman, Colonel Hector Haynes, confirmed the at 47 Mokolobotlo Street said that two men were in the attack.

Mr Morotoba was not at home his brother, Harry, who was living with his cousin, Eric Makhala (21), a visitor from Sanda, in the front room said heavy explosion rocked their at 2.10 am, ripping open roof and shattering all the windows.

Mr Makhala, who suffered on the right arm and on left side of the body was taken to Kalafong Hospital discharged.

## BTR Dunlop makes court bid to end work stoppage

By Mike Siluma

BTR Dunlop, plagued by strikes at four Natal and Transvaal plants for more than a week, has asked for an urgent Industrial Court interdict to end the stoppage at its Sydney Road, Durban, factory

A Metal and Allied Workers' Union (Mawu) spokesman, Mr Bobby Marie, said the company had made the application yesterday Proceedings had to be adjourned to give the union leadership, who were in meetings with workers at the time, a chance to respond

About 1 000 workers have been on strike at Sydney Road since last Tuesday to demand the reinstatement of two colleagues fired for alleged violent behaviour An equal number of workers have also been on a solidarity strike at Dunlop plants in Ladysmith, Durban and Benoni

### UNSUCCESSFUL MEETINGS

Several unsuccessful meetings have been held between Mawu and Dunlop, the last on Monday

Mr Marie said the case would come before the court tomorrow morning The union was consulting its membership and lawyers. He said the workers were annoyed and surprised at the company's decision to go to court because negotiations with the company were still in progress

The dispute broke out after management issued workers with warnings following recent wildcat strikes against the company's alleged refusal to talk to unions about the 1 000 sacked at Dunlop's Howick plant last April

The first round of annual wage negotiations affecting about 350 000 metalworkers was adjourned in Alberton yesterday, according to union sources The talks will resume on April 25

## Police shoot terror suspect in Transkei

UMTATA Transkei police have shot and killed a suspected terrorist and detained two others at a roadblock, according to Prime Minister Chief George Matanzima

Chief Matanzima, who is also the Minister of Police and Defence, said yesterday police had been manning roadblocks throughout Transkei during the past three days, but did not say when or where the incident occurred.

He said after the driver of the car carrying the suspected terrorists turned and drove from the roadblock, police gave chase. As they closed in the vehicle stopped and the occupants attempted to flee on foot.

The police arrested a woman and a man, but the third occupant ran to a ditch and opened fire on the police. They returned the fire and the man was killed Sapa.

# 1 700 'bitter' strikers return to Dunlop

STAR 18/4/83

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By Sheryl Raine

The 1 700 workers at four BTR Dunlop plants on strike for more than a week returned to work yesterday.

This was because the employers were about to seek an interdict from the Industrial Court declaring the strike illegal, according to Mr Bobbie Marie, branch secretary of Mawu (Metal and Allied Workers Union). No agreement had been reached. "Workers have returned to work extremely bitter but determined to continue their fight."

Plants affected by the strike, co-ordinated by Mawu and the Chemical Workers Industrial Union, included Benoni, Ladysmith, Mobeni and Durban.

The strike started when about 1 000 workers downed tools at the company's Sydney Road plant in Durban, demanding the reinstatement of colleagues fired for alleged violent behaviour. More workers went on strike in solidarity at Dunlop plants in Ladysmith, Mobeni and Benoni.

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## A FUN DAY ON OUR ACE STEAM TRAIN

fish shops  
help you to



By BARRY STREEK  
Political Staff

HOUSE OF ASSEMBLY.  
— Two key affiliates of the Congress of South African Trade Unions (Cosatu) — the National Union of Mineworkers (NUM) and the General Workers Union (GWU) — have applied for registration with the government as unions

This was revealed in the Department of Manpower's 1985 report, which was tabled in Parliament yesterday

After the introduction of the Wiehahn labour reforms in 1979, many black-dominated trade unions refused to apply for registration because they feared being co-opted by government

But the decision of the NUM and GWU to apply for registration indicates these unions believe there are advantages in being registered

The department said, however, that to its knowledge there were still 68 unregistered unions at the end of 1985

"There was an increase in the number of

# NUM, GWU apply for registration

*Case Trans 25/4/86*  
*165*



trade unions which applied for registration in 1985 compared with the previous year's figure"

The report estimated 582 154 people belonged to unregistered unions at the end of 1985

NUM's application for registration "has been opposed by a number of other registered trade unions who consider their interests are af-

ected by the application

"Following negotiation between the respective parties, the stage has been reached where all the objections have been withdrawn"

The report did not say which unions had objected to the application but said NUM would "probably" be granted

registration

It said GWU's application was being processed for publication in the Government Gazette for objections.

The report said that at the end of 1985 there were 196 registered trade unions with a total of 1 391 423 members

With 1 973 577 workers as members of unions, 20,9 percent of the economically active population had now joined a trade union

The report said the formation of Cosatu was "important even in the sphere of labour relations"

It said that trade union federations did not normally play an active role in the regulation of labour relations as their affiliated bodies but they did have an important influence in determining overall policy guidelines

"The government subscribes to the principle of freedom of association also in respect of federations and therefore does not interfere with the establishment of federations," the report said.

**Apartheid**  
sign action  
6/5/86  
unsuccessful

The Industrial Court case in which white workers at the AECI plant near Newcastle in Natal are attempting to retain racially segregated facilities, was yesterday partly abandoned

The all-white Mine Workers Union (MWU) has claimed the taking down of the "whites only" signs at the Chlor Alkali plant at Ballengeich in Natal was an unfair labour practice

The MWU applied to the Industrial Court in terms of section 43 of the Labour Relations Act after a conciliation board failed to resolve the dispute. The court found it did not have jurisdiction to hear the section 43 application for interim relief.

The MWU is considering bringing another application later.

Mr Arrie Paulus, general secretary of MWU, yesterday said his union had taken up the fight on behalf of all white workers — Pretoria Bureau.

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# Union membership can still be a risky business for workers

8/5/86

STAR

165

The Industrial Court has ordered that four Electrical and Allied Trades Union members unfairly dismissed from Sinesonics Pty Ltd in Edenvale be reinstated

The court's presiding officer, Dr D G John, found that Mr Meshack Motloun, Mr Joseph Mokabane, Mr Alex Mathaba and Mr Philemon Mwelil had been unfairly dismissed last September for being active union members

Trouble started at Sinesonics when a director of the company, and the main shareholder, Mr A J Synesiou, discovered that 12 of his 16 black workers had joined the union

Mr Synesiou did not take kindly to the idea that his employees in the workshop had joined a union because he was "virulently" opposed to unions, the court found

Workers claimed he told them that those who remained union members would have to leave the company

Mr Motloun said he was dismissed and while he was being escorted from the premises, the other union members-downed tools and walked out

Labour relations have come a long way in the last six years, but being a member of a trade union is still cause for victimisation, as this industrial court case illustrates. SHERYL RAINE reports.

Mr Synesiou denied telling workers he would dismiss them if they belonged to a trade union. He said he questioned the benefits of union membership and put it to his workers that it was a matter of courtesy that he should have been informed of their intention to join it

Dr John said "It appears to the court, however, that there is no obligation on an employee to inform his employer that he has joined a union"

After discussions with the union's assistant general secretary, Mr Tommy Oliphant, Mr Synesiou agreed to take back all the employees who had walked out except four

He claimed the four were "intimidators and instigators" who had persuaded other em-

ployees to join the union. Workers said, however, they joined the union voluntarily

Although Mr Synesiou claimed the four's work had deteriorated, the court found that the only reasonable conclusion for his refusal to accept them back into his employment was that they belonged to a union and had taken a leading role in union matters

Although Mr Synesiou argued that the four had spent "too much time" on union matters during working hours, that was denied by the men and was not borne out by the supervisor's evidence

Dr John said "The picture which the evidence presents is of an autocratic employer who nevertheless treated his employees generously and encouraged them to undergo training to improve their skills and prospects. He was angered by their joining a trade union and by the ingratitude which this step seemed to indicate"

The court found that the four had been unfairly dismissed and that failure to re-employ them constituted an unfair labour practice



## Milestone Industrial Court ruling

### The Argus Correspondent

DURBAN — A three-year wrangle between the Electrical Contractors' Association and a break-away Natal organisation has ended with an unusual Industrial Court decision.

For possibly the first time in its history, the court has adjudicated between two employer organisations — it usually intervenes in arguments between employers and trade unions.

The Natal Electrical Installation Engineers' Association was formed in 1983 when a few ECA members broke away from the Natal branch of the organisation. The rebel body was allowed to register by the Industrial Registrar in Durban, Lower Tugela, Newcastle, Port Shepstone and Vryheid — in spite of objections from the ECA.

When the ECA made objections to the NEIEA application for representation on the Electrical Industrial Council (Natal) as an employer organisation, the rebels took their complaint to the Industrial Court.

The court's April ruling rejects the application.

Its reasons are that the Natal rebels do not have a valid, adopted constitution, they do not represent separate or special industrial interests justifying a presence on the industrial council, and their inclusion in the council would prejudice other employer parties.

The NEIEA's registration as an employer organisation could also be cancelled if the court has asked for a copy of its judgment to be sent to the Industrial Registrar.

Chris Greager, Natal director of the ECA, said since the ruling he had recruited five NEIEA members to the ECA leaving the Natal body with only eight members.

The organisation broke away with 28 members of a possible 200, while the ECA had 76 members in the same area.

Mr Greager said the NCA now represented 268 of 476 electrical contracting firms — or 56 percent — in the province.

**Changes in labour laws expected soon**

Labour Reporter *AKC/5* *19/5/36* *166*

IMPORTANT changes to labour law are expected in a draft Bill to be published soon

The director-general of the Department of Manpower, Dr Piet van der Merwe, said the Bill would deal with the registration of trade unions, unfair labour practices and industrial councils

He hoped the Bill would be published for information and comment within weeks

# Union turns to Industrial Court

1/11/2018

**Labour Reporter**  
THE dismissal of about 350 farm workers in the Mposa District near Lower Umfolosi is to be challenged by the Black Allied Workers' Union (Bawu) in the Industrial Court in Durban on May 30.

Mr Bheki Khumalo, general secretary of the union, said yesterday the union would also make an application to the Court to reinstate the former employees of Zululand Creosoting Company (Pty) Ltd.

He said the dispute arose after they went on strike in protest at the retrenchment of some workers on April 19.

Last week a Supreme Court judge in Durban granted a temporary order restraining a group of retrenched workers from the farm from assaulting or intimidating and interfering with other workers still employed.



10/16 ARK 48  
24/5/86

## No bar to joining a union

LABOUR  
AFFAIRS  
DICK  
USHER



STRANGE though it may seem, there are still employers who think they can decide on their employees' right to associate in trade unions.

In a recent case in Johannesburg, the Industrial Court ordered the reinstatement of four employees, members of the Electrical and Allied Workers' Trade Union of South Africa, unfairly dismissed from Sinesonics in Edenvale.

Trouble started at Sinesonics when a director and main shareholder of the company, Mr A J Synesiou, discovered that 12 of his 16 black workers had joined the union.

Workers claimed he told them that those who remained members of the union would have to leave the company.

Mr Meshack Motloung, one of the applicants, said he was dismissed and while being escorted from the premises all other union members downed tools and walked out.

Mr Synesiou denied telling workers he would dismiss them if they belonged to a union. He said he had questioned the benefits of trade union membership and put it to the workers that as a matter of courtesy he should have been told of their intention to join a union.

"It appears to the court, however, that there is no obligation on an employee to inform his employer that he has joined a union," said the presiding officer, Dr D.G. John.

After discussions with the union, Mr Synesiou agreed to take back all employees who had walked out except four he claimed were "intimidators and agitators".

Although Mr Synesiou said the work of the four had deteriorated, the court found the only reasonable conclusion was that he had refused to take them back because they belonged to a union and had taken a leading role in union affairs.

"The picture which the evidence presents is of an autocratic employer who nevertheless treated his employees generously and encouraged them to undergo training to improve their skills and prospects.

"He was angered by their joining a trade union and by the ingratitude which this step seemed to him to indicate," said Dr John, finding that the four had been unfairly dismissed and failure to re-employ them was an unfair labour practice.

# Sackings and the law: video

w/E Post 3/5/86  
165

INDUSTRIAL relations in the Eastern Cape has pioneered another breakthrough — the launch of a comprehensive video programme on the complicated question of Industrial Courts and unfair labour practices

It will be the first programme of its type produced in South Africa and is the result of thousands of hours of work in script-writing, rehearsal and filming with a professional and semi-professional cast of more than 60.

The concept of producing the R90 000 series of three videos — with a total viewing time of 105 minutes — is that of University of Port Elizabeth industrial training consultant Bruce Bishop

Production has taken place on location at factories and offices in the

Eastern Cape and at Port Elizabeth's Emthonjeni Training Centre, under the direction of the training centre's audio-visual manager Bata Paschier

Financial backing has been provided by local industry and the project has the full support of UPE

"Over the years since the Wiehahn Commission [on industrial relations], much theoretical training has been directed at senior management," said the head of the university's Industrial Relations Unit, Prof Roux van der Merwe

"But the vital areas of middle management — and especially shopfloor training — has received very little appropriate attention"

Prof Van der Merwe said the training programme had been researched and

developed to address these shortcomings and to switch the emphasis to a straightforward and practical approach to that "crucial interface where the majority of disciplinary problems arise"

"That's the shopfloor," said Mr Bishop, who first realised the shortcomings of current training three years ago while himself working in industry

"What we want to do is to make it as easy as possible for line management — who have lots of other things to do — to understand the law and regulations covering dismissals and to prevent time and money being wasted"

Mr Bishop added that the course would also be available to trade unions

"After thinking about it and discussing it, I thought the best method would be to

produce an 'action drama' on video as a service to industry throughout South Africa"

Turning the idea into action produced an immediate shock for Mr Bishop — the initial quote for filming by a Transvaal company was R250 000

But Emthonjeni — which has full professional-level equipment and staff — was anxious to undertake the project at a reduced cost and filming began late last year

Borrowing props from local shops and companies and using their premises — "The level of co-operation was fantastic," said Mr Bishop — filming often took place after hours and over weekends

"There were many times when we worked into the early hours of the morning

to get everything just right as it was essential the programmes were totally realistic," said Mr Bishop

Result of the months of work is the series, which is broken into three parts

The first deals with 10 key aspects of unfair dismissal actually dealt with by the Industrial Court and contained in five dramatically produced case studies

The second deals with the "real life" consequences of these, from the highly emotional reaction of management through to large amounts of time, production and cost being lost through preparing for and appearing before the Industrial Court

The final part shows how the cases should have been handled properly and fairly

### Solving insolvencies

The Industrial Court has ordered a company in liquidation — SA Cutlery Industries — to reinstate temporarily 39 members of the SA Boilermakers' Society who were dismissed in a dispute over union stop order facilities

The *FM* understands that this is at least the second time that the court has made an order of this nature

The background to the SA Cutlery dispute is that workers had repeatedly asked the company to arrange for union dues to be deducted from their weekly pay packets. The company, however, repeatedly delayed. On January 30 a confrontation occurred when workers demanded an explanation. The company responded by dismissing some of them.

In turn, the Boilermakers declared a dispute and lodged an application for reinstatement with the Industrial Court. In line with labour law, the dispute was also referred to the metal industrial council where the parties agreed to submit to mediation. However, at the second mediation meeting, the company announced that it has been placed in provisional liquidation.

Notwithstanding the company's financial position, the court found that the dismissals had been unfair and that the way the company's MD had handled the dispute was "appalling". It ordered that the workers be reinstated with effect from February 24, and also extended the order for 30 days from May 22.

The court rejected arguments put forward by the lawyer acting for the liquidators that it did not have the power to order the reinstatements. The kernel of the lawyer's argument was that Section 359 of the Companies Act states that when a company is in liquidation, all *civil* proceedings against it should be suspended. The lawyer also argued that, in terms of Section 38 of the Insolvency Act, workers' service contracts are automatically terminated when a company is sequestered.

The court held that applications for temporary reinstatement cannot be regarded as *civil* proceedings. Before the Labour Relations Act (LRA) was amended in 1982, empowering the Industrial Court to grant reinstatements, this power was vested with the Minister of Manpower. "The transfer of this discretion did not acquire a different

character when transferred to the Industrial Court in the sense that it now became a *civil* proceeding," it said.

The court also referred to a Supreme Court judgment which held that the Industrial Court is not a court of law in the ordinary sense of the word. This meant its cases cannot be regarded as *civil* cases.

The court also stated that even if the conclusions it had drawn about *civil* proceedings were incorrect, Section 43 (6) of the LRA states that Industrial Court reinstatement orders shall "prevail over any contrary provisions in any law."

The points raised about the Insolvency Act were also rejected. The court's attitude was that, even if the Act held that the dismissals were effected when the company was sequestered, the Industrial Court does not concern itself solely with the question of whether dismissals are lawful but, rather, with whether they were justified.

Reinstatement orders give companies the option of either reinstating workers, or paying them for the period stipulated. In this case, since the company is in liquidation, it is the liquidators who will have to deal with the issue. According to a leading labour lawyer, it is likely that the workers will be regarded as preferential creditors.

In a separate but related development, the Appeal Court has confirmed the right of the Industrial Court to order the reinstatement of retrenched workers. The court last week rejected an appeal by two Frame Group companies against a Supreme Court judgment handed down last year. In that case, the companies made an unsuccessful attempt to get the Supreme Court to interdict the Industrial Court from hearing a Section 43 application to reinstate retrenched workers. The companies had argued that the workers could not be reinstated because their jobs no longer existed.

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# Court slams door on liquidation as escape hatch for leaky businesses

Sheryl Raine

The Industrial Court has ordered the reinstatement of 39 dismissed employees even though the company they worked for is under provisional liquidation

The order made clear the court's attitude towards employers who may try to use liquidation to either escape the ramifications of proper staff retrenchment procedures and compensation, or who may avoid implementing reinstatement orders following an unfair labour practice

In his ruling in the matter between the South African Boilermakers Society and South African Cutlery Industries (Pty) Ltd, the deputy president of the court, Mr P E Roux (SC) ordered the reinstatement of 39 employees at the West Rand company

Even if the company is finally wound up, the ruling gives these employees the right to become preferential creditors

According to court documents, problems began when a Mr Courten, in charge of staff at SA Cutlery, refused to, delayed or avoided the implementation of stop-order facilities for union dues, leading to a confrontation between management and the workforce at the factory on January 30

Workers sought an explanation for this but instead of getting one, they were fired a few days later

## BAD TRACK RECORD

"Whether in fact this was a disguised retrenchment exercise is not known," said Mr Roux

"It is clear however, that the company was probably in financial difficulties and that Mr Courten probably used the opportunity to reduce his workforce

"Whatever the case, his handling of the situation since August 1985 until January 30 was appalling, as far as maintaining good labour relations with his workforce

is concerned and the final termination of employees services was, in the circumstances, also unfair"

After ordering the reinstatement of the 39 workers, the company's provisional liquidators challenged the ruling on the grounds that the Industrial Court was not competent to entertain the application for reinstatement because employees had had their employment effectively terminated in terms of the Insolvency Act. Furthermore, the provisional liquidators argued, the Companies Act stipulated that all civil proceedings against the company should be suspended until the appointment of a liquidator

The Industrial Court noted that in terms of a past ruling by the Appellate Division, the court was regarded as an administrative tribunal and not a court of law. Furthermore, applications for reinstatement in terms of the Labour Relations Act were not regarded as civil proceedings

# SABC ordered to reinstate workers

By Sheryl Raine

The SABC has been ordered to temporarily reinstate 13 black employees which, the Industrial Court has found, were unfairly retrenched or dismissed

The order follows an application to the court by the Media Workers Association of SA (Mwasa) and individual employees

Dr D G John, the presiding officer of the court, found that in the case of 10 retrenched employees, the SABC had failed in at least two respects to attain the degree of fairness which a reasonable employer, properly informed of the standards of conduct currently expected of employers, would have deemed necessary

He found the SABC failed to give adequate warning to individuals of the likelihood of retrenchment

## VACANCIES

In papers before the court, the employees said that immediately after they received their retrenchment notices in September and October last year, the SABC advertised vacancies

They complained that the SABC had not explored ways to avoid or minimise retrenchment, no proper selection criteria for retrenchment were applied

The SABC referred to a number

of public and private announcements of its need to slim down operations and reduce staff which did not satisfy the court that individuals had actually been formally consulted about being retrenched

The SABC also said it had told employees that the most unproductive would have their services terminated first. The employees denied all knowledge of this retrenchment principle

In the case of three employees who were dismissed, allegedly for poor work, the court found there was no adequate inquiry prior to dismissal. The workers said they were never charged with misconduct, given any warnings or the opportunity to defend themselves against allegations of misconduct. They claimed they were in fact retrenched

"It is not sufficient answer for the SABC to say that it gave two months' notice of retrenchment with pay or one month's notice of dismissal as required by its personnel regulations," said Dr John

He ordered the 13 to be reinstated with effect from February 20. The employees have the right to return to the Industrial Court for a final settlement if a conciliation board does not succeed in settling the matter to their satisfaction

Mr P Pauw instructed by Mr H B Roode of van Wyk and de Vries appeared for the SABC, Mr A T Trollip, instructed by Moshidi, Kunene and Makume appeared for Mwasa and others

Southern 11/6/86

# COURT RULES AGAINST SABC

By **LEN MASEKO**

**THE Industrial Court has ordered the reinstatement of 14 employees of the South African Broadcasting Corporation who were retrenched at the end of last year.**

The 14 workers, all of them members of the Media Workers' Association of South Africa (Mwasa), are to be reinstated on the same terms and conditions which applied before their retrenchment in November and December.

In launching the case against the SABC, Mwasa said the retrenchment of its members was unfair in that

- The SABC advertised vacancies after the retrenchment;
- The accepted principles of retrenchment were not followed;
- The SABC failed to consider ways and means of avoiding or minimising retrenchment,
- Insufficient prior warning was given to workers on pending retrenchment;

• The SABC did not apply a fair selection to workers to be retrenched; and

• There was no proper consultation before a final decision was taken on retrenchment.

The SABC's argument that the Industrial Court had no jurisdiction over it because the retrenched workers were State employees was rejected by the court

• The Pretoria Supreme Court yesterday granted a temporary order evicting 270 dismissed strikers at the Sasko Flour Milling Company at Bon Accord, Pretoria West, where they have been sleeping in since last Friday

Mr Tom Duff, Sasko's manpower relations manager, yesterday confirmed the ruling and said the company filed an urgent application after the dismissed workers — all members of the Cosatu-affiliated Food and Allied

Workers' Union — refused to leave the premises.

The application was not contested by the union following an agreement that the order, if granted, would not affect 42 shift workers who were presently staying in the company's hostel, Mr Duff said

The union has been given two weeks by the Supreme Court to show cause why the order should not be made final, Mr Duff added.

A spokesman for the union yesterday said they were receiving national support on the strike and were now going to consult the executive committee of Cosatu to decide what the next step should be.

The workers went on strike since last Friday in protest against the company's plans to retrench 40 of their colleagues. Mr Duff said the retrenchment followed the closure of one of the three mills



CAPL Times 14/6/66  
Labour  
bill  
changed

PARLIAMENT — The bill which will allow the State President to temporarily suspend regulations governing economic activity has been amended following complaints from trade unions that the measure would interfere with "sound labour practices and relations"

The amended bill, published here yesterday, requires that the Minister of Manpower be consulted before the issue of any proclamations that affect conditions of service and working hours, the registration of employees, the supervision and use of machines and the health and safety of employees

The amendment was proposed by the Standing Committee on Home Affairs

W/L-AR603 2/6/86  
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# Union gives way on registration

IN the labyrinth of mining politics a new development has emerged — the registration of the National Union of Mineworkers (NUM) was gazetted this week.

Many of the emergent unions argued long and hard against registration, and differences of opinion on the issue was one of the problems which had to be resolved by the unions which eventually formed the Congress of South African Trade Unions (Cosatu).

The arguments against registration were mostly on the level of resisting State control of voluntary associations of workers.

Unregistered unions are not bodies corporate (they cannot sue or be sued), but amendments to the LRA have largely eliminated other differences between registered and unregistered unions so that they now have to comply, to a large extent, with the regulations that used to apply only to registered unions.

One major difference still exists.

An unregistered union cannot form part of an industrial council and is denied access to some other industrial relations machinery set up in terms of the Act.

NUM spokesmen were not available this week to comment on the union's registration, but observers were wondering whether it was not a step on the road to the formation of an industrial council for the mining industry.

Great changes are

ahead in the industry, mainly connected with the long-promised changes in definitions of scheduled persons, but there is no joint employer/employee body to monitor and enforce agreements.

Without registration, the 125 000-member NUM would effectively

LABOUR  
AFFAIRS  
DICK  
USHER



be barred from an industrial council — if such a long-discussed idea came to fruition.

# 30 of sacked George workers get jobs back

CMT Times 28/6/86 (15) (16) (17) (18)

Staff Reporter

SETTLEMENT has been reached in a dispute between the George Municipality and 172 employees fired after what the municipality said was an illegal strike.

In terms of the settlement the municipality will pay the dismissed workers four weeks' wages and will reinstate 30 of the 172 who applied for reinstatement.

The municipality also undertook to give priority to the sacked employees over other persons when job vacancies arose.

Informing the Industrial Court in George that a settlement had been reached, counsel for the employees, Mr L Rose-Innes, said his

clients were not happy with the settlement but had no alternative under the circumstances but to agree.

According to affidavits filed by the workers, all of whom live in Lawaakamp outside George, they returned home from work on April 3 to find that some of their houses had been demolished without warning.

## 'Secret'

The next day they asked the foreman, Mr J M Lamprecht, why they had not been warned. He allegedly told them that this was the municipality's "secret".

Workers asked whether others could expect to return from work to find their homes demolished

as well.

Mr Lamprecht told them, using obscene language, that if they did not want to work they should leave. The workers claim he then ordered them off the premises. When they returned to collect their wages, Mr Lamprecht told them they were no longer employed.

Mr Lamprecht denied these allegations, saying the men walked out after he explained that he had orders to demolish the houses of illegal squatters.

Mr D van Schalkwyk presided. Mr Rose-Innes was instructed by Mr Basheer Waglay of E Moosa and Associates. Mr J J Gauntlett, instructed by Stander and Swart, appeared for the municipality.



# Bid for 'healthy climate' for small businesses

AKG  
2/7/86  
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PRETORIA. — The Government is to de-regulate small business to create a "healthy climate" for this sector of the economy.

The Minister of Trade and Industry, Dr Dawie de Villiers, said in a statement that the Government had, in the main, accepted the recommendations of the President's Council's committee for economic affairs for developing and de-regulating small businesses

He said the committee sought to promote a healthy climate for the small business sector, in view of its important economic role.

The committee concentrated on the establishment of a framework for a more effective policy of small business development and de-regulation.

Dr de Villiers said the Gov-

ernment was convinced the recommendations, which it had accepted and was implementing, would contribute towards expediting de-regulation and promoting the economic development of small business and the developing communities.

The Small Business Development Council has welcomed the Government's moves.

In a statement the council said the stimulation of entrepreneurship, especially in neglected areas, was now a responsibility of all Government departments and authorities

"We hope that Government departments and other authorities will single-mindedly pursue de-regulation as a most important means of stimulating entrepreneurship," said Dr Ben Vosloo, managing director of the SBDC

"Small business can only make a meaningful contribution to the economy and to job-creation in an environment of minimum Government control"

The chairman of the committee for economic matters of the President's Council, Dr Francois Jacobsz, said he was "particularly pleased" with the Government's reaction to his committee's report on de-regulation and small business development.

The Government had accepted all but one of its recommendations, he said

"Even the recommendation that was not accepted has been amended in such a manner that it can still achieve the goals we set in the report."

He foresaw no problem in implementing the recommendations — Sapa

11/6/46 23/7/86  
**Crossroads man  
appeals against  
'unfair dismissal'**

Labour Reporter

165  
A MAN who left work at the height of the Crossroads violence and was dismissed when he returned is claiming unfair dismissal

A mediation board appointed by the Industrial Council sits today to try to resolve the issue.

Mr M Jezile, a member of the Industrial Engineering Workers' Union, was telephoned at work on June 9 and told his Crossroads home was being burnt down.

**"DANGEROUS"**

According to a letter from the union to the Industrial Council, Mr Jezile was given permission to leave immediately.

He was away for five working days and was unable to get back to work because of the "extremely dangerous and hostile" situation

His brother, who was employed by the same company and who left at the same time, went to work on June 11 and gave the employers a message that Mr Jezile could not come to work because he was protecting their home

When he returned to work his foreman questioned him about his absence and the following day he was given a letter terminating his services

# Workers protected in legal strike action?

Cape Times 25/7/66 (16/1/66)  
Labour Reporter

WORKERS who take part in legal strikes may be protected from summary dismissal for breach of contract following a recommendation from the National Manpower Commission to the Department of Manpower.

The recommendation to "decriminalize" strikes was leaked this week to the Financial Mail, which speculated that the distinction between legal and illegal strikes could fall away and that workers may no longer be prosecuted for wildcat strikes. It implied that the proposal could lead to the exemption from prosecution of both legal and illegal strikers.

A labour-relations consultant in Cape Town, Mr Steve Woods, has dismissed this interpretation, saying it was more likely that the commission was trying to scrap a legal contradiction which enabled employers to fire workers even if they had followed the correct procedure for a legal strike.

"As I see it, the commission is more likely to have made a recommendation which would give workers an incentive to follow the procedure laid down for a legal strike.

"In terms of current legislation, employers can fire workers for breach of contract for refusing to work, even if their strike is legal."



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171/16  
171/16  
171/16

# Unfair labour practice ruling

Supreme Court Reporter

AN application by a Steenberg knitwear firm for an order setting aside an Industrial Court ruling in a dispute with seven former employees has failed in the Supreme Court.

A temporary interdict granted to Towles Edgar Jacobs Ltd (TEJ) was discharged yesterday and they were ordered to pay the costs of the respondents — the president of the Industrial Court and the seven workers.

TEJ had applied for an order setting aside the ruling on November 15, 1985, that the dispute concerned an alleged unfair labour practice.

TEJ also sought an interdict restraining the Industrial Court president from hearing an application for reinstatement of the workers.

The seven were among 350 workers retrenched last year. They claim TEJ made no attempt to consider ways of avoiding retrenchment, failed to consult with employees, gave them insufficient warning and provided no retrenchment benefits or severance payments.

The Supreme Court found that the dispute was one involving an unfair labour practice and was properly referred to the Industrial Court.

An Industrial Court hearing will therefore proceed at a date to be arranged.

Mr Acting Justice Conradie and Mr Justice Nel presided. Mr A Oosthuizen, instructed by Sonnenberg Hoffmann and Galombik, appeared for TEJ. Mr P Hodes SC, with Mr F Brand and instructed by the State Attorney's Office, appeared for the Industrial Court president Mr J Krige, instructed by E Moosa and Associates, appeared for the workers.

# *Court rules that six be reinstated*

## **Labour Reporter**

THE Industrial Court, sitting in Durban, yesterday ordered a South Coast liquor store owner to reinstate six of his employees who were summarily dismissed on July 9

Mr M A E Bulbulia, the presiding officer, also ordered Fairyglen Off-Sales at Margate to reinstate them with effect from the date of their dismissal

The application, in terms of the Labour Relations Act, was made by Mr Anand Nepaul, who appeared for the Natal Liquor and Catering Trades Employees' Union

The union alleged that the dismissals were unfair in that the company did not hold an inquiry before terminating their services

The workers reported for duty as normal on July 9 when they were told by the management that there was no more work for them because the business could not continue operating at a loss

Later, new staff was recruited

Mr Colin Breeds, the employer's legal representative, said a formal inquiry into the conduct of the workers would be held on Friday

Transport

firm in

15

settlement

with union

Labour Reporter

AN APPLICATION by a sugar transport company for an interdict against shop stewards of the Transport and General Workers' Union preventing them from encouraging workers to take industrial action, was adjourned sine die in the Industrial Court in Durban yesterday

The applicant, Sugar Transport Services, agreed to the adjournment as part of an out-of-court settlement following lengthy talks in chambers between Mr Chris Albertyn, who appeared for the union, and Mr Malcolm Wallis, SC, who appeared for the company

A spokesman for the Cosatu-affiliated TGWU, said yesterday that in terms of the agreement, the dispute over whether or not employees should be paid an allowance for driving trucks interlinked to trailers — which triggered industrial action — would be referred to arbitration

The workers had also undertaken to resume full production. The dispute involves about 200 workers

The company had alleged in papers that their employees were engaged in a go slow in support of their demand for payment of an allowance for driving trucks interlinked to trailers.

The company had also agreed as part of the settlement to endeavour to do its best to secure the safety of the drivers, following allegations by the union that two of its members had been assaulted by cane farmers

Mr Wallis was instructed by Shepstone and Wylie



## NO HEADS IN THE SAND

Oudtshoorn, already the international ostrich leather capital, is to build the biggest ostrich abattoir in the world to cater for the growing demand for ostrich meat.

Commissioned by the Klein-Karoo Landboukorporasie it will be able to process 700 birds a day. Capital cost is said to be in the order of R9m.

Dave Marais, MD of Grinaker Projects (GP), says design is well under way and construction should start early in 1987. GP, he adds, negotiated the contract on a build-and-construct offer, but the building contract will be put out to tender. "If we had the tender to any Grinaker company, we would have had to have been involved in competition."

The plant will be a major step forward in the ostrich industry in Oudtshoorn, which is probably the only town in the world where ostriches are raised on a commercial basis. And the Oudtshoorn people which the new plant will replace is hardly hi-tech.

The plant will be built to cope with a growing demand for ostrich meat at home and abroad which the existing facility could not fully service.

"Ostriches are well known for feathers and leather, but their meat is becoming increasingly important," says Marais.

"Being red meat and coming from poultry, which is what ostriches are, it offers red meat lovers the best of both worlds, in that it has the flavour of red meat, but very little cellular fat. Health food people prize it all over the world."

neural advice. Second where Retco does its own thing on adventurous developments. And third, a far more conservative, asset management operation intended to serve essentially as a pension fund to provide a back-up for the higher-risk activities.

Two key projects are under consideration for the first option.

One is a proposed resort development on the shores of the Langebaan lagoon just south of the Panorama hotel. Rabinowitz says Retco has an option, with a partner, on 250 ha which could be subdivided into about 1 500 plots, now in the course of proclamation.

Eventually he foresees Langebaan becoming hotter property than Hermanus, reasoning that for the young at least it is definitely more user-friendly.

Another project is still in the formative stages, but Rabinowitz maintains it involves a stake in the biggest land assembly ever undertaken in the Transvaal, only seven minutes from Johannesburg City Hall.

Just in case neither proves fulfilling enough, or they don't come off, he is also

looking at prospects in black areas of the Cape peninsula and up-country.

Yet another possibility would be the utilisation of Retco's substantial unissued capital to acquire further assets which, together with the group's Poyntons Building in Pretoria and Salmon Grove in Durban, could be used to form the basis of a new property trust.

FINMAIL

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## INDUSTRIAL AGREEMENTS

### End of the line?

The Bloemfontein Master Builders Association (MBA) has got the best of three falls in a tussle with the all-white Building Workers' Union (BWU) over the employers' withdrawal from the industrial council agreement (*Property* June 27).

With the MBA's position now vindicated, pressure is mounting for changes to the agreements in other areas. The *FM* understands there is similar dissatisfaction in Maritzburg and northern Natal — although it seems the parties favour negotiated changes rather than drastic Bloemfontein-style walkout action.

Industrial council agreements in the building industry have long been a source of contention. Employers claim the closed shop arrangements operated by some unions and minimum wage structures do not serve the interests of the industry — in particular, black artisans who are excluded.

Matters came to a head in April this year when the Bloemfontein MBA summarily withdrew from the agreement, claiming it was outdated.

Incensed, the BWU applied to the Supreme Court for an interdict to force the MBA back in. But the court found that the Labour Relations Act conferred on the MBA the right to withdraw and dismissed the union's application with costs.

Next the BWU appealed to the Industrial Court on the grounds that the MBA's action constituted an unfair labour practice. Again the court ruled that the MBA had not acted unfairly by pulling out of the agreement.

It did, however, find that its refusal to attend industrial council meetings was unfair and it appealed to the MBA to reconsider its position — though it issued no binding order.

MBA director Barney Bester says the Department of Manpower has agreed that no new agreement will come into being after February next year. The Basic Conditions of Employment Act will govern employment in the industry and market forces will determine wage rates. Meanwhile the department will stand ready to act in cases of exploitation and employers will lay down basic minimum wages merely as a guide.

Commenting on the outcome, Bester says it is clear unions will in future have to adopt a softer line. "It's no good them adhering to principles that are completely outdated. If they are not prepared to adapt, more agree-



Bloom revolution ... starting to spread

ments will fold."

Long term, however, he says employees will find the new arrangement fairer all round. The labour force, he adds, is the industry's most productive resource and employers would not willingly do anything to jeopardise the existing relationship.

## GUIDELINES

Old Mutual Properties (OMP) has bought the 10-year-old Nedbank Gardens building in Rosebank from Bath Avenue Properties, a Nedbank subsidiary, for R13m. This boosts OMP's investment in Rosebank to R70m.

The building, on a 1,39 ha site, between Bath and Sturdee avenues, has a total rentable area of 10 726 m<sup>2</sup> — a ground floor banking hall and eight floors of office. There are also 441 parking bays on the site, 240 of which are under cover.

Mike Raggett, OMP's property investment manager, says yield will be 11% if the entire building is let at R8 77/m<sup>2</sup> net.

OMP has also leased 4 230 m<sup>2</sup> to G. G. G. Removals in its 4th street, Wynberg, complex for five years at R4/m<sup>2</sup> net, including at 10% per year.

Diners Club has renewed its lease with Sanlam Properties' (SP) Sanlam Centre in Johannesburg, for five years. It has also taken another quarter-floor of 543 m<sup>2</sup> and now occupies 2 493 m<sup>2</sup>, for which it will pay R2,6m over the period of the lease.

SP has also let 670 m<sup>2</sup> factory in F. Wadepoort's Robertville to RSK Industrial for 2 1/2 years, for a total of R87 600. The going rate in the complex is R2 50/m<sup>2</sup>-R4/m<sup>2</sup>.

In another deal worth a total of R52 000 it has let a 265 m<sup>2</sup> factory to Auto CE in its Wadeville Industrial Park for three years. The going rate for space in that complex is R3/m<sup>2</sup>.

Landmark has let 300 m<sup>2</sup> of office space in Palm Grove, the Torch Group development in Randburg, to Unicorn Lines at R9/m<sup>2</sup> net for three years escalating at 9% a year.

## Striking nuance

Until now, the industrial court has, with few exceptions, taken a dim view of applications for reinstatement from workers dismissed in illegal strike action. This attitude prevailed even in cases where the court accepted that the strike was provoked by management. But, in a judgment just handed down, the court's attitude appears to be softening.

The case involved an application for permanent reinstatement by 40 members of the SA Chemical Workers' Union.

The workers were dismissed by Pharma Natura last year when they staged an illegal two-hour strike over the recognition of shop stewards.

The court rejected the workers' application. But, at the same time, it indicated there may well be circumstances in which it could take a different view on workers who strike without following the conciliation procedures laid down in the Labour Relations Act.

Explains ad hoc member H J Fabricius: "I do not believe it is correct to say this court will never grant relief to employees who participate in an illegal strike. Before it does so, however, there must in my view be a very strong case made out in explaining why the conciliation machinery of the Act was not followed. It seems to me that if a proper basis is laid, almost as it were, on the ground of *necessity*, circumstances could well be such that the court could come to the assistance of such applicants."

Fabricius further explained that "necessity" would have at least the following elements: the circumstances giving rise to the illegal strike must not have been created by employees, the employees must have been faced with conditions which made striking their only reasonable option; and all other reasonable avenues must have been closed to them.

The judgment does not endorse illegal striking. But this is the first time the court has systematically spelt out circumstances in which illegal strikers' actions may be condoned.

It will give both management and unions food for thought.



# Minister warns against politicisation of unions

Pretoria Bureau

The Government will soon publish amendments to the Labour Relations Act which will raise the status of the Industrial Court, extend its functions and define the terms "unfair labour practice" and "unfair dismissal" more clearly

Speaking at the 50th anniversary celebration of the Iron, Steel and Allied Workers Union in Pretoria last night, Manpower Minister Mr Pietie du Plessis said his department believed legislation and policy should keep pace with the times.

## POLITICAL GOALS

Draft amendments to the Labour Relations Act would be published soon and unions would be asked to comment

Mr du Plessis took the opportunity to issue another warning that unions should not be used "for attaining political goals

"But the Government is not unaware that this is a reality and if it should appear that sections of the union movement are involving themselves solely

in politics or that they have dark political aims, steps will be taken to prevent this."

The Minister said it was unfortunate that good labour relations on the shop floor were not the priority of all unions and employers

"In the past couple of years particularly there has been a move towards the intimidation of workers, stayaway actions, boycotts and illegal strikes I would plead for the continued building of effective communication, positive leadership, the training and retraining of leaders in the latest negotiation techniques and the maintenance of healthy inter-personal relationships with all parties."

Mr du Plessis gave the assurance that the Government was doing all it could to help the unemployed, saying unemployment benefits amounting to R130 million had been paid out between January and June this year

An average of more than 80 000 people were receiving payments every month, he said He reminded delegates that the Government had also made R600 million available for job creation and training programmes

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SMA  
4/9/75



# 'Union bashing': Action planned

By LEN MASEKO

THE Electrical and Allied Workers' Trade Union (Eawtu) is to take a Cape Town electronics firm to the Industrial Court over allegations of "union bashing" at the company.

Management at Laingsdale Engineering, where Eawtu had a majority membership, allegedly told its black workforce that the union was part of the African National Congress, the union alleged.

This action had resulted in 70 of 127 members at Laingsdale quitting the union, the union said.

A spokesman for the union said they had

briefed attorneys and would take Industrial Court action

According to the union, senior management had made threats at a meeting with workers and had repeated them later in meetings with small groups.

## Claim

Laingsdale is a subsidiary of the British multinational, Plessey.

The Eawtu spokesman said the resignation of about 70 members had halted recognition negotiations at Laingsdale as the union could no longer claim majority membership there.



*Spokesman 9/9/86*

# Fired driver asks court for lawyer

Staff Reporter  
AKLus 12/9/86 (165)

A FORMER truck driver has asked the Supreme Court, Cape Town, to review an Industrial Court decision refusing him permission to be represented by an attorney in a dispute.

An order was granted yesterday calling on the Industrial Court and Ellerine Holdings (Pty) Ltd to show before September 17 why the decision should not be overturned.

According to papers before the court, Mr Vincent Mrali applied to the Industrial Court for relief after being dismissed in March from his position as driver for

Town Talk Furnishers, owned by Ellerine Holdings.

Management representatives alleged that on numerous occasions Mr Mrali reported late for duty and was absent without reasonable excuse.

Mr Mrali claimed that the "abnormal and chaotic" situation caused by unrest in Guguletu made it necessary for him to take alternative routes to work and on other occasions public transport disruptions made him late.

On March 3 he could not go to work because Guguletu was sealed off.

According to the rules of the

Industrial Court, if one party in a dispute objects to the other party having legal representation, permission for representation must be refused.

Mr Mrali's attorney, Mr J Sandler, submitted in papers that the Industrial Court had a discretion to allow representation and Mr Mrali should have been permitted representation.

Mr Sandler argued that Mr Mrali, who has a Standard 8 education and cannot speak English or Afrikaans fluently, was unable to conduct the proceedings without an attorney's assistance.

The application was unopposed.

Case No. 12/1986  
Court  
bid  
over  
lawyer

**Labour Reporter**

A DISMISSED worker with a Std 8 education, who was refused permission to be represented by an attorney at an Industrial Court hearing earlier this year, is opposing the decision on the grounds that he is not qualified to conduct his own defence

The Supreme Court heard yesterday that truck driver Mr Vincent Mrali's former employer, Ellerines Holdings (Pty) Ltd, trading as Town Talk Furnishers, and the Industrial Court would not oppose his application to have the decision overturned

According to papers before the court, Mr Mrali was dismissed by Ellerines in March after allegedly being frequently absent or late for work without reason

He took the matter to the Industrial Court, claiming he had been unfairly dismissed

The Industrial Court ruled that Mr Mrali's lawyer could not argue on his behalf because Ellerines objected

Ellerines told the Industrial Court that it had not engaged an attorney because it did not want to incur legal expenses

The Supreme Court will rule on the matter on September 17

Mr Justice H C Nel presided. Mr Les Rose-Innes, instructed by Bernadt, Vukic and Potash, appeared for Mr Mrali



National Union of Mineworkers' (NUM) shaft stewards' committee at the Gold Fields of South Africa (GFSA) mine

Theko was dismissed on the recommendation of a mine disciplinary committee which investigated a complaint lodged against him by one of his fellow workers, Themba Kotyana, which arose from a disagreement between the two over participating in a legal strike the union was planning

Kotyana alleged that Theko accused him of being a management informer and threatened to kill him and other Pondo workers on the day of the strike. Theko, who apologised when Kotyana challenged him to a fight, denied issuing a death threat

Theko's dismissal prompted NUM to declare a dispute and it took the matter to the IC. Late last year the court ordered Kloof to temporarily reinstate Theko, pending the establishment of a conciliation board for the dispute by the Minister of Manpower

In ordering the temporary reinstatement, the IC found fault with Kloof's disciplinary code. A primary reason for this was the fact that Theko was not afforded the right to be represented at the inquiry. Because the Kloof code is similar to that used on all GFSA mines, the case was seen to have important implications for the mining group's handling of disciplinary issues

Kloof subsequently applied to the Supreme Court for a review of the IC judgment. Kloof counsel's main argument was

FINAL 19/9/86  
MINE LABOUR

## Court thwarts Kloof

Kloof mine's attempt to overturn an Industrial Court (IC) judgment which went against it has been rejected by the Supreme Court

The case concerned the dismissal last year of David Theko Theko, chairman of the

that when the IC ordered Theko's temporary reinstatement, its presiding officer failed to appreciate the nature of the discretion conferred upon him by the Labour Relations Act (LRA) because he based his decision on his finding that Kloof had not discharged the onus of proving that the dismissal had been fair and reasonable. Thus, it was argued, the presiding officer had not exercised his discretion in the proper manner.

In terms of the LRA, all applications by mineworkers to the IC for temporary reinstatement must be accompanied by a request to the Minister of Manpower to appoint a conciliation board

Part of Kloof's argument was based on the LRA's requirements for the establishment of

conciliation boards in situations involving individual workers who have been dismissed. In these circumstances, the LRA states that a conciliation board should not be established if the dismissal is due to misconduct on the part of the employee

The Supreme Court held that in cases where individual workers apply for reinstatement the IC "must ultimately consider and weigh objectively the prospects for the establishment of a (conciliation) board by the minister". Although the IC had not expressly referred to the requirements for the establishment of a board, the Supreme Court said it was satisfied that the IC had found that Theko's dismissal was not due to his own misconduct. Therefore, prospects for the es-

tablishment of a conciliation board were good

It was plain, the Supreme Court said, that the IC was satisfied that there was reason to believe that the inquiry which led to Theko's dismissal was not conducted in an objective manner and that his dismissal was influenced "by ulterior considerations unconnected with the alleged transgression"

The Supreme Court concluded "It has (not) been shown that the IC failed to appreciate the nature of the discretion conferred upon it by the (LRA)"

The dispute over Theko's dismissal will now return to the IC, where NUM's application for his permanent reinstatement will be argued

## New union legislation planned for next year

New legislation to define an "unfair labour practice" more clearly was being planned for next year, the Minister of Manpower, Mr. Pietie du Plessis, said in Pretoria at the weekend. He told the Transvaal National Party congress that draft legislation, based on investigations and the rulings of the industrial courts, would be published for comment within a month.

The Minister was reacting to two resolutions calling for a fuller definition of an unfair labour practice and to define the responsibilities and accountability of a union for actions of its members.

Referred to intimidation by certain unions he said that it appeared that union rights were being extended endlessly.

Black trade unions came into being as recently as 1979 and the concept of an unfair labour practice was a new one.

"The concepts of unfair labour practice and unfair dismissal have been used by the trade unions but they are meant for employers as well," he said.

"It is only recently that employers have started to take actions against the unions for unfair practices."

As far as holding unions accountable for actions of members, the applicable criteria was the established connection between individual and union. "If the individual and his actions cannot be connected to the union, then action will have to be taken against the individual alone," the Minister said — Sapa

## Police to get baby Casspir

Political Correspondent

The police are developing a small new armoured vehicle similar to the Casspir to protect personnel from increasing attacks by small-arms fire, the Minister of Law and Order, Mr. Louis le Grange, told the Transvaal National Party congress at the weekend.

He said the police had good access to overseas police forces and there was an exchange of ideas.

The force was now developing a small new vehicle based on the design of the Casspir "to protect our people from being fired upon".

He said it was not easy to suppress intimidation, especially as the most effective intimidation was a box of matches.

"I don't want to give an assurance that we have everything absolutely under control, but, in general, I think we are on top of intimidation."

Case 7015 23/9/86

# Industrial Court ruling set aside

By HILARY VENABLES  
Labour Reporter

THE law did not intend that an ignorant worker should have to argue his case without a lawyer against a huge, conglomerate master "like David without his sling against a well-armed Goliath", Mr Justice H Berman said in the Supreme Court yesterday.

In a landmark decision, the judge set aside an Industrial Court ruling which denied a worker with a Std 8 education a lawyer in his dispute with his employer.

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According to papers, the worker, Mr Vincent Mrali, cannot speak English or Afrikaans fluently and is "somewhat overwhelmed" by court proceedings.

He was fired in April this year by Ellerines Holdings (Pty) Ltd, trading as Town Talk Furnishers, and took the matter to the Industrial Court, claiming unfair dismissal.

The Industrial Court ruled that Mr Mrali could not be represented by an attorney because Ellerines, represented by a director, objected.

Mr Mrali applied to the Supreme Court for relief, claiming he was not qualified to conduct his own case.

Mr Justice Berman said the Industrial Court had the discretion to allow a party a lawyer, even if the other party objected.

Ellerines did not oppose the application.

The Industrial Court will reconsider Mr Mrali's position on Friday.

Mr Justice H C Nel sat with Justice H Berman. Mr Les Rose-Innes, instructed by Bernadt, Vukic and Potash, appeared for Mr Mrali.



# Court ruling hailed as major breakthrough

CAPE TOWN — A Supreme Court ruling that the Industrial Court has the discretion to permit a party in a dispute to have legal representation even if another party objects, has been hailed as a major breakthrough for workers involved in a dispute.

Mr Justice H Berman, with Mr Justice Nel, yesterday upheld an application by Mr Vincent Mrali for an Industrial Court decision refusing him permission to be represented by an attorney in a dispute to be set aside.

The judge ruled that the matter should be referred back to the Industrial Court for question of legal representation to be determined afresh.

According to papers before the court, Mr Mrali applied to the Industrial Court for relief after being dismissed in March from his position as truck driver for Town Talk Furnishers, owned by Ellerines Holdings.

## LIKE DAVID WITHOUT A SLINGSHOT

The Industrial Court refused him permission to be represented by an attorney during the hearing on September 26, on the grounds that if one party in a dispute objects to another having representation, permission must be refused.

The judge said it was regrettable that the respondents, Ellerine Holdings, and the president and additional member of the Industrial Court had not opposed the application because the court was deprived of argument.

He said the Industrial Court erred in adopting the approach that if one party objected to another being represented by an advocate or attorney, the court did not have the discretion to permit representation.

Mr Mrali, who had a Std 8 education, was challenging a company represented by a director who had legal experience.

It could not have been intended that illiterate workers should have to challenge multinational conglomerates without legal representation "like David without a slingshot against a well-armed Goliath." — Sapa

# OK Bazaars in R6 000 settlement

CAE 1/10/66 Labour Reporter

OK BAZAARS has paid a former employee R6 000 in an out-of-court settlement rather than fight a charge of unfair dismissal in the Industrial Court

The dismissed man, Mr S Moosa, a former carpet salesman, was dismissed after the OK claimed it had received "numerous complaints" from customers about the installation of the carpets he sold

According to Mr Moosa's legal representative, who did not wish to be named, Mr Moosa was not responsible for the laying of carpets as this was done by a sub-contractor

## Final warning

He also said his client had been fired after a final warning, although no further complaints had been received after the warning was given

The managing director for OK in the Western Cape, Mr Aubrey Coppin, said Mr Moosa had been receiving commission for every carpet sold and it was his responsibility to make sure his customers were satisfied

Although the company "had no doubt" that it would win the Industrial Court case, it had decided to settle out of court because this was the cheaper option

## OK Bazaars in R6 000 settlement

*OK Bazaars*  
OK Bazaars Labour Reporter

OK BAZAARS has paid a former employee R6 000 in an out-of-court settlement rather than fight a charge of unfair dismissal in the Industrial Court.

The dismissed man, Mr S Moosa, a former carpet salesman, was dismissed after the OK claimed it had received "numerous complaints" from customers about the installation of the carpets he sold.

According to Mr Moosa's legal representative, who did not wish to be named, Mr Moosa was not responsible for the laying of carpets as this was done by a sub-contractor.

### Final warning

He also said his client had been fired after a final warning, although no further complaints had been received after the warning was given.

The managing director for OK in the Western Cape, Mr Aubrey Coppin, said Mr Moosa had been receiving commission for every carpet sold and it was his responsibility to make sure his customers were satisfied.

Although the company "had no doubt" that it would win the Industrial Court case, it had decided to settle out of court because this was the cheaper option.



W. K. A. G. S. 11/10/86 165

## Industrial Court under fire

LABOUR  
AFFAIRS  
DICK  
USHER



A LEADING labour lawyer claims that several recent cases brought before the Industrial Court were attempts to severely curtail its jurisdiction and powers

Mr Paul Pretorius, an advocate with the Legal Resources Centre in Johannesburg, argued in a recent paper that if these cases had succeeded industrial disputes ultimately would be determined by common law and the unilateral power of management

This would have had seriously damaging effects on labour relations, the development of a civilised and progressive labour law system, our society in general and its legal system in particular

Labour legislation had ensured minimum employment standards and created the dispute resolution machinery of the Labour Relations Act, the primary intention of which was the maintenance of industrial peace and the prevention of social disruption, said Pretorius

The Industrial Court had made its greatest impact on labour relations in establishing guidelines for the conduct of the employer-employee relationship based on fairness and related considerations

Ordinary workers knew that labour law in general and the Industrial Court in particular could and would provide redress based on notions of fairness, influencing the perceptions of South African workers towards the legal system and its accessibility and responsiveness to their legitimate aspirations — a vital factor in the determination of the future of the legal system

### POWERFUL CORPORATIONS

But common law was blind to the powerlessness of the individual employee acting alone to affect the general employment policies of most employers and was not concerned with notions such as job security, fairness or the social consequences of any act done in the formation of a contract

If the arguments — advanced by "some of the largest and most powerful corporations in the country" that have often advanced views in favour of labour reform — had succeeded, it would have meant "the system of labour law that has been developed in contradistinction to the common law would therefore be largely undone", said Pretorius

"One example of the state of affairs that would result is that in mass dismissal situations, the Industrial Court would be all but powerless to protect striking workers"

As a consequence it would discourage the use by trade unions of a reasonably stable industrial relations system because the incentive to bargain before a strike would disappear

It would also have some effect on the growth of disciplined and democratic trade unions because, inevitably, their power to afford redress to members would be reduced

From the point of view of the individual worker, yet another avenue of legal redress would be closed off

## Ex-MD v Sterns

The Industrial Court (IC) has ruled that Sterns, the jewellery chain, is not entitled to legal representation in a dispute in which a former MD of the company is seeking reinstatement

This is the latest development in the dispute between Barry Stevenson and Sterns, and is one of a growing number of examples of senior managers turning to the Industrial

FINANCIAL MAIL OCTOBER 24 1986

Court to resolve employment disputes

Stevenson was dismissed by Sterns chairman Syd Barnett in September last year, three weeks after he had taken up the post as MD. Stevenson says Barnett told him it would be best for him to resign because he had upset certain people at Sterns. Determined to challenge his dismissal, Stevenson applied to the IC for temporary reinstatement.

The case was heard in January, but when the court handed down its judgment in March, the application was rejected. "Life at the top may often involve quick decisions that may be deemed to be harsh. Should they under all circumstances be fair, however, this court will not normally substitute its decisions for that of management," the court ruled.

Unhappy with this, Stevenson resolved to fight the matter to the bitter end. He applied to the IC for a final determination. All along both Stevenson and Sterns had made use of legal representation. However, once the papers for the final determination had been filed, Stevenson gave notice that in terms of Section 45(9) of the Labour Relations Act (LRA) he would not consent to Sterns being legally represented at the hearing.

Sterns would not take this lying down. It applied to the IC for a hearing to determine whether Stevenson was, indeed, entitled to refuse it representation. The hearing involved complex legal argument on what interpretation to place on Section 45(9). Counsel for Sterns argued that the company had an absolute right to representation.

In their findings, IC president Daan Ehlers and ad hoc member W S le Roux noted, "It is conceivable that this court has a discretion to allow legal representation where parties have not objected to such representation, but it appears questionable whether it could have been intended by the legislature that this court should be empowered to overrule parties who have refused to consent to such representation."

The court's officers held that even if they were wrong and the IC had discretion which could be exercised in Sterns' favour, they were not convinced that it should be so in this matter. "It is not a case in which the one party is an uneducated and unskilled employee, while the other is a well educated or professional person. The possibility of imbalance might, therefore, be ignored," they said.

The court's finding means that Stevenson's application for a final determination can now go ahead. The judgment is, however, sure to be the subject of considerable controversy following a recent Cape Town Supreme Court ruling involving a black worker, Vincent Mrali.

Mrali, a truck driver, was dismissed by Town Talk Furnishers, owned by Ellerne Holdings, in March. When he applied to the IC for temporary reinstatement, the court upheld the right of the company to refuse him legal representation. Mrali responded by taking the matter to the Supreme Court.

The judges ruled that the IC had erred.

The LRA, they said, stipulated that a party had a right to legal representation if another party consented, but did not stipulate that if one party objected, permission for representation should be refused. Mrali had a Standard Eight education and was challenging a company represented by a director with legal experience. It could not have been intended, the judges said, that illiterate workers should have to challenge their dismissal without legal representation like "David without a slingshot against a well-armed Goliath." The judges ruled that the matter should be referred back to the IC for the question of legal representation to be determined afresh. Labour lawyers will be watching with interest to see whether the IC makes a different ruling to the Stevenson case when the Mrali matter is heard.

APR 29 1986

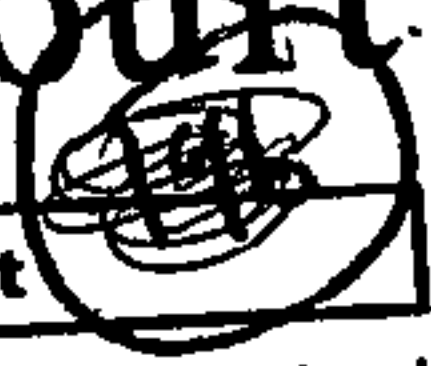
**Retrenchment settled**

TEJ Knitwear yesterday agreed to pay seven retrenched workers a total of R36 250 in an out-of-court settlement after an 18-month legal wrangle over the fairness of their dismissal. The workers were among 350 TEJ employees retrenched in May last year, according to the company's managing director, Mr Ian Anderson. The seven took the matter to the Industrial Court, claiming an unfair labour practice.



# BTR dispute for industrial court

Own Correspondent

20/10/86  
FRIDAY  
165  


THE dispute over the sacking of more than 1 000 striking workers last year from BTR Sarmcol, a Howick rubber company, will come before the Industrial Court in Maritzburg on Tuesday.

The workers were sacked in May last year after striking in support of their demand for recognition of the Metal and Allied Workers' Union. The move triggered mass stayaways in the area.

A spokesman for the Metal and Allied

Workers Union (Mawu) which is contesting the dismissals, yesterday confirmed that the court would sit at the Ecumenical Centre in Edendale, Maritzburg.

The workers were sacked in May last year following a strike in support of their demand for the recognition of Mawu, an affiliate of the Congress of South African Trade Unions, Cosatu.

# SARMCOL

## Mawu dispute set for month-long hearing in court

By S'BU NNGADI

A DRAWN-OUT dispute between the Metal and Allied Workers' Union and the British multinational BTR Sarmcol is set for an unprecedented month-long industrial court hearing, starting next Tuesday

The hearing will centre around the "legality" of a strike by almost 1 000 Sarmcol workers and their subsequent "unfair dismissal" by management

BTR Sarmcol has since merged with Dunlop - another British multinational - to form BTR Dunlop.

Mawu applied for a court order to have its dismissed members reinstated and that the union be recognised as the collective bargaining representative of Sarmcol's manual employees

The hearing will sit at

Maritzburg's Edendale Lay Centre from Tuesday to November 28

The day before, the same case will be heard by the International Socialist Court in Brussels

In papers presented to the Industrial Court, Mawu said the workers almost unanimously voted in favour of a strike on February 4 last year and, after negotiations between Mawu and Sarmcol through a conciliation board failed, factory staff called a "legal strike" on May 1

Mawu alleges that management said, without giving reasons, that the strike was illegal and summarily terminated the employment of the strikers

In an answering affidavit, Sarmcol said the strike action was "unnecessary and unjustifiable, because factory management had accorded and in fact extended recognition to the union"

Sarmcol alleges that it engaged in negotiations with Mawu - particularly from February to April last year - and that by the end of April only a "limited number" of issues had not been settled

The company further alleged that the strike action was "disruptive of the orderly continuation of those negotiations" and resulted in "disorderly, aggressive, violence and intimidatory industrial actions"

Sarmcol's activity in SA is governed by two international codes of conduct - the European Economic Community Code and the Tripartite Declaration of Principles concerning multinational and social policy

Mawu said the company contravened these codes on numerous counts - including wages, migrant labour, job security and fair employment practices

The British Trade Union Congress and the International Metal Workers' Federation have called on British Prime Minister Margaret Thatcher to put pressure on Sarmcol to settle the dispute. And the International Confederation of Free Trade Unions has started a campaign against Sarmcol

The issue which brought violence into the conflict was Sarmcol's hiring "scab" labour to replace the striking workers

Almost 800 workers have been employed - mostly from townships and rural areas far away from Howick. Violence between "scabs" and strikers and their supporters escalated. Workers were beaten up, some killed, houses burnt down and buses transporting "scab" labour attacked.

● The Home Affairs Department this week refused passports to six BTR Sarmcol shop stewards who were to travel to Brussels to give evidence before the International Socialist Court on the dispute.

Mawu said the six received letters from the department saying "I wish to advise that after consideration of the particulars furnished on your application I do not see my way clear to authorise the issue of a passport to you".

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3:15 PM 4/11/75  
165 JED

## Court halts wages talks

ALAN FINE

THE Industrial Court has ordered Mondi and the Paper, Wood and Allied Workers' Union (PWAU) to halt negotiations over the wages and working conditions of certain workers at Mondi's plant at Merebank, Natal.

This is believed to be the first case of its kind.

The applicant is the SA Boilermakers' Society, which is contesting a decision to allow it only observer rights at the negotiations.

The vast majority of unskilled and semi-skilled workers at the plant are members of PWAU, while a minority belong to the Boilermakers. The Boilermakers contend that they are, nevertheless, entitled to full representation at the talks.

The order was granted after a late-night *ex parte* application last Friday, and the return date is November 7. A labour lawyer describes the case as substantively and procedurally significant.

Firstly, it may decide on the principle of majority unionism, which has become an issue with mass, black, industrial unions coming into conflict with the older, established, craft-based unions.

Secondly, the *ex parte* nature of the case — whereby an order is made without the respondents having been called to testify — is seen as unusual.



2 BUSINESS DAY, Monday, November 10, 1986

THE closely watched Industrial Court case between the Metal and Allied Workers' Union (Mawu) and BTR Sarmcol — which became part of Dunlop SA earlier this year — enters its second week in Pietermaritzburg today.

Mawu has alleged that BTR's actions related to the dismissal of nearly 1 000 striking workers from the Howick plant on May 2, 1985, constituted a number of unfair labour

practices, and is seeking the workers' reinstatement. The strike arose from a dispute in negotiations between the two for a recognition agreement.

Counsel for Mawu, Martin Brassey, told Pierre Roux, SC, and two assessors in his opening address last week of a history of conflict between

## Mawu-BTR case is closely watched

there was no point in meeting as there were no additional matters to discuss. It said as Mawu members were no longer employed by the company there was no point in continuing to correspond.

Keith McCall, SC, for BTR, rejected Mawu's allegations as "absurd". He said labour relations at BTR

### ALAN FINE

Mawu and BTR, and an unwillingness by the company to bargain in good faith. He described several attempts by the union to resume negotiations following the workers' dismissal.

But the company had replied that

Sarmcol in the 1970s were enlightened for the time, and allegations made by the union were neither accurate nor correct.

The company had concluded a preliminary recognition agreement with Mawu in 1983, before it had achieved majority representation at the plant. It had also granted workers half a day off for May Day in 1985, when this was probably unique.

116

# Court dismisses recognition bid

## Dispatch Reporter

**EAST LONDON** — An application by the South African Allied Workers' Union (Saawu) for an order directing Border Boxes (Pty) Limited to commit itself to a recognition agreement with the union has been dismissed by the Industrial Court

Saawu and a number of employees of Border Boxes applied for the order directing the company to restore the terms and conditions of employment, alternatively to restore the labour practice which existed before July 21 this year when the company had undertaken and committed itself to negotiate in good faith towards the conclusion of a recognition agreement.

Border Boxes opposed the application on the grounds that the court was not empowered to grant the relief sought by Saawu in terms of Section 43 of the Labour Relations Act

In addition, Border Boxes contended that Saawu had intimidated

the company's employees and that the employees had joined Saawu as members only as a result of this

Border Boxes further contended that Saawu did not have valid representation and that because of this the company was not prepared to negotiate recognition or deal with Saawu.

The court upheld the argument submitted by Border Boxes' legal advisors that it was not empowered to grant the relief sought in terms of the Labour Relations Act

The court furthermore held that it would not be fair and equitable to order Border Boxes to negotiate and that no established practice had been in existence which was to be restored

The court made no finding on the question of the alleged intimidation

Saawu was represented by Bell, Dewar and Hall of Johannesburg and Border Boxes by Abdo and Abdo of East London

LABOUR  
AFFAIRS  
DICK  
USHER



W/E ARWAS 15/11/86

## Mixed reaction to proposed changes

PROPOSED changes to industrial legislation have received a lukewarm reception from Cape labour lawyers and academics

Dr Piet van der Merwe, director general of Manpower, spelt out the changes in Johannesburg this week concerning the Industrial Court, conciliation boards and the definitions of an unfair labour practice and unfair dismissal

He said the role of the Industrial Court would be enhanced and parties given the right to appeal directly to the Supreme Court.

At present parties only have the right to have an Industrial Court case reviewed by the Supreme Court in very limited circumstances.

Although many labour lawyers have called for a full right of appeal, especially in the light of some contradictory industrial court rulings, an attorney with the Legal Resources Centre, Mr Lee Bozalek, said an unqualified or automatic right of appeal could mean prolonged and expensive litigation over Industrial Court rulings

"This would be a blow to one of

the Industrial Court's chief strengths, being a direct and quick route for the remedy of industrial problems," he said

Experts forecast problems with making legal definitions of unfairness in dismissals and labour practices and said attempts to do this would probably create loopholes

Professor Willie Bendix, of the Stellenbosch Business School, said the exercise would be useful if it separated unfair labour practice and unfair dismissal, but apart from that making definitions looked impossible in technical terms

The abolition of ministerial discretion in the appointment of conciliation boards was well-received

Dr van der Merwe said parties would choose their own board chairmen and if no settlement was reached the dispute would go to the Industrial Court. The court would decide whether or not the parties had made an effort to resolve their differences. If not, it would order them back to the negotiating table

Experts said this would eliminate delays and the "untenable" situation in which refusal to appoint a board blocked access to the Industrial Court



# Thumbs down

23/11/16  
165  
CP Correspondent

AN application by the Border branch of the SA Allied Workers' Union for an order directing Border Boxes to commit itself to a recognition agreement with the union, has been dismissed by the Border Industrial Court.

Border Boxes argued that the court was not empowered to grant relief forced by Saawu in terms of Section 43 of the Labour Relation Act and that Saawu did not have valid representation.

● Meanwhile Saawu has again signed a recognition and procedural agreement with Border Metal Box.

Saawu Border secretary Boyce Melitafa said the agreement covered disciplinary action, grievances, maternity, retrenchment, dispute and industrial health and safety.

CITY PRESS 20/11/86 (165)

# NEW LAWS TO 'PRIVATISE' LABOUR

FAR-REACHING amendments to SA's labour laws to reduce State intervention in labour disputes and force trade unions and employers to resolve their differences is being planned for Parliament next year.

Manpower Director-General Dr CJ van der Merwe describes them as "privatising" the labour situation.

Van der Merwe told the SA-German Chamber of Trade that the Labour Relations Act would be amended to increase the status and broaden the functions of the Industrial Court - adding a right of appeal to the Supreme

Court against its decisions.

Another amendment concerns the contentious issue of deciding what constitutes an unfair labour practice and unfair dismissal - both of which, it was felt, were on occasion arbitrarily decided by the Industrial Court.

Industry would also be given greater responsibility for training and setting the standards for qualification

in the industry.

A major amendment will eliminate the Manpower Minister's discretion on how labour disputes should be dealt with.

Methods of settling disputes would be decided by the two sides involved with reference to the Industrial Court if they failed.

Another amendment would enable disputing parties to take Industrial Court

decisions to the Supreme Court.

Van der Merwe said the labour scene could be a model for the country.

"This area, despite all the defects is one of relative stability and peace in a sea of unrest and turmoil."

Structures had emerged freely from the trade unions and the worker movements and had not been designed by the government, and this

was the strength of the labour sphere, he said.

"These structures have credibility because the important fundamental principle of freedom of association is involved. Leadership with credibility has emerged from the grassroots themselves, the grassroots worker movements," he said.

"The leadership has 'clout' and could exercise bargaining power. The

leaders are not 'puppets'."

He said effective channels of communication had also been set up partly due to major companies, in particular the multinationals.

"There has been the absolute minimum amount of government involvement between employers and employees. We purposely withdrew - and we will continue to do so," said Van der Merwe.

In 1979, when the new labour legislation was enacted, there were 164 trade unions, today there are 267.

The Industrial Court heard four cases in 1979. This year just under 2 000 were expected and over 75% of cases were settled before coming before the court.

Conflict was unavoidable between trade unions and employers, said Van der Merwe, but it had to be

managed and resolved and this was being done. The conciliation machinery had credibility and was being used.

He felt there was a danger that the trade union movement would become increasingly politicised. Union leadership would look for political goals unless developments in other fields such as politics were also allowed to take place

Arbours 3/12/86

# Labour dispute at feed plant settled

Labour Reporter  
BOSSIE Clarke Feeds and 17 members of the Food and Allied Workers' Union reached settlement in the Industrial Court in a case in which the workers were claiming unfair dismissal and reinstatement

Presiding officer Mr Pierre Roux ordered that, as agreed by both parties, the terms of the settlement be confidential

The action arose from an incident in October at the plant in Klipheuwel Workers were told they had all been retrenched and

should not return to work the next day

Alleging that this was unfair because no grounds had been given for their dismissal and accepted procedures had not been followed, they sought temporary reinstatement by the Industrial Court pending a final settlement

After negotiation between the parties yesterday, a settlement was reached which was made an order of the court

Mr J Sandler of Bernard, Vucic and Potash appeared for the ap-

plicants Mr W J Pretorius instructed by Smit, Nel, Kruger and Potgieter appeared for Bossie Clarke Feeds

● Workers at scores of Western Cape factories organised by unions affiliated to the Congress of South African Trade Unions held work stoppages on Monday

The action was in response to a call from the Metal and Allied Workers Union — a Cosatu affiliate — for stoppages over the death of one of their members in police action at a union rally in Durban last month



19/12/86

# Draft Bill streamlines Labour Relations Act

The Argus Correspondent

PRETORIA — Draft amendments to the Labour Relations Act published in the Government Gazette today outlaw certain forms of boycotts and restructure the definition of an "unfair labour practice"

The draft Bill provides for

- The establishment of a special labour court to hear appeals from the Industrial Court
- The streamlining of the appointment of conciliation boards
- The introduction of a definition of an "unfair dismissal"

The Director-General of the Department of Manpower, Dr Piet van der Merwe, said yesterday that the envisaged amendments would streamline the Labour Relations Act and keep pace with latest developments

The use made by various trade unions and employer bodies of the dispute settlement machinery had increased dramatically since their in-

roduction in 1979

One change to speed up the settlement of disputes centred on new rules in the appointment of conciliation boards, Dr van der Merwe said. Until now conciliation boards were appointed and their terms of reference set by the Minister of Manpower

If the draft Bill was accepted the discretion of the Minister would be removed and parties would accept more responsibility for reaching settlements quickly

The Bill inserts a definition of the term, "unfair dismissal". In terms of this employers will be obliged to give valid reasons for any dismissal, negotiate retrenchments and give employees an opportunity to be heard

The Bill also provides for the establishment of a special labour court as a fully-fledged division of the Supreme Court

Dr van der Merwe said he hoped the Bill would be ready for submission to Parliament in 1987.

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19/12/86

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## Special courts for labour

Own Correspondent

PRETORIA — Major amendments to the Labour Relations Act, aimed at extending and simplifying South Africa's official dispute-settling machinery were published yesterday.

The bill provides for the establishment of a special labour court to consider appeals from the Industrial Court, allows access to the Appellate Division for appeals against some special court decisions, sets out new definitions on what constitutes an unfair labour practice and an unfair dismissal and deregulates the establishment of conciliation boards.

It also contains various other minor amendments.

The new definitions of unfair labour practices and unfair dismissals are based largely on previous Industrial Court judgments.

Mr Clive Thompson of the Centre for Applied Legal Studies at Wits University described the bill as "mostly an advance".

However, he said some aspects should be carefully reconsidered to iron out certain perversions and anomalies.

2/12/86

# Industrial <sup>15</sup> rows to hit 2 000 mark

## CP Reporter

THE number of industrial disputes referred to the Industrial Court this year is likely to exceed 2 000.

This is revealed in the current issue of the attorney's journal *De Rebus*, in an interview with Industrial Court president D B Ehlers.

Ehlers was asked whether the Manpower Minister could not inhibit access to the court by powers to appoint conciliation boards where no competent industrial council exists.

He said two clauses of the Act permit direct access to the court.

Only where it concerns the determination of an alleged-unfair labour practice can the Minister's decline to appoint a conciliation board prevent such a determination by the Industrial Court.

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# Industrial cases: law on publication may change

24/12/87 5:00 PM (165)

By Sheryl Raine

The President of the Industrial Court will be given new powers to prevent publication of details of industrial court cases if proposed changes to the labour laws are enacted.

Recommended changes to the Labour Relations Act (LRA) were published last week for comment. The recommendations have been widely welcomed by labour experts, but some have expressed reservations about certain aspects of the proposals.

A leading labour lawyer said changes regarding publication of industrial court cases could have serious implications, not only for the media but for law journals as well.

In the past, cases were not automatically made public. After 30 days, if the parties were deemed to be unreasonably preventing publication, the president of the court could authorise disclosure.

"Now it has been proposed the president may indicate which information about proceedings he considers may be disclosed for general information," said the lawyer.

In addition, a copy of any judgment or decision indicated by the president will have to be referred back to the parties concerned for their written consent for publication within 30 days. Parties will have the right to decide in what form in-

formation will be disclosed.

If parties do not respond within 30 days, the president can decide in what form the information will be released.

The new proposals state that any person who "discloses any information regarding any judgment, decision, determination, award or information pertaining to the industrial court without the authorization of the president is guilty of an offence."

## GUIDELINES

Professor Nic Wiehahn, head of the Unisa School of Business Leadership and one of the architects of labour reform, said some companies did not want details of their internal matters published.

"In the original recommendations proposed by my commission, it was felt that industrial court rulings should develop into a volume of legal precedents which would serve as labour relations guidelines. While one has respect for the secrecy which many companies would like to maintain, I would like to see as much publicity as possible given in law reports on these cases so that public awareness on industrial relations can grow."

Professor Wiehahn welcomed the establishment of a special labour appeal court headed by a judge and forming part of the Supreme Court, but he wished to make one impor-

tant observation.

He noted that the original intention in setting up a separate industrial court was to take the highly dynamic field of industrial relations out of the normal court system.

"I have the greatest respect for South African judges. While I welcome the new status given to disputes in the labour field, one must realise that South Africa does not have a 'normal society'."

"The courts have a more comprehensive role to play than in normal societies. I feel that judges will often have to look beyond legal principles and concepts to give way to many relevant considerations in the field of industrial relations."

BTE

Argus 29/12/86 (165)

# Industrial Court to get new powers

## The Argus Correspondent

JOHANNESBURG — The president of the Industrial Court will be given new powers to prevent publication of details of cases if proposed changes to the labour laws are enacted

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### Referred back

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"Now it has been proposed that the president may indicate which information about proceedings may be disclosed for general information," said the lawyer

A copy of any judgment or decision indicated by the president will also have to be referred back to the parties concerned for their written consent for publication within 30 days. Parties will have the right to decide in what form information will be disclosed

If parties do not respond within 30 days, the president can decide how the information will be released

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Professor Nic Wiehahn, head of the School of Business Leadership at the University of South Africa and one of the architects of labour reform, said some companies did not want details of their internal matters published

### Reservation

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Professor Wiehahn welcomed the establishment of a special labour appeal court headed by a judge and forming part of the Supreme Court. But, he said, the intention in setting up a separate industrial court had been to take industrial relations out of the normal court system

"I have the greatest respect for South African judges. While I welcome the new status given to disputes in the labour field one must realise that South Africa does not have a 'normal society'

"There are many imbalances in our system which give the courts a special responsibility. I feel that, often, judges will have to look beyond legal principles and concepts to give way to many relevant considerations in the field of industrial relations"