AFRICAN LABOUR REPRESENTATION

Dudley Horner

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AFRICAN LABOUR REPRESENTATION AND THE DRAFT BILL TO AMEND THE BANTU LABOUR RELATIONS REGULATION ACT (NO. 48 OF 1953)

INTRODUCTION
In South Africa the authorities have, for many decades, regarded the organisation of African workers in trade unions with suspicion. A wave of strikes by African workers principally in early 1973 but continuing into 1974 and 1975 brought this issue forcibly to the fore. Existing legislation was amended in 1973 and further changes are mooted for 1976. These are, perhaps, best considered in the light of past experience.

THE INDUSTRIAL LEGISLATION COMMISSION
In 1948 the Industrial Legislation Commission (commonly known as the Botha Commission) was appointed to report on:

(a) "the desirability or otherwise of having separate trade unions and employers' organisations for Europeans, Coloureds and Asiatics ...;

(b) "the functioning of existing trade unions or similar organisations composed of Natives, and the desirability, or otherwise of regulating such organisations ...;

(c) "the setting up of machinery for the prevention and settlement of industrial disputes involving Natives ..."

Recommendations
The Commission sat for some three years and presented its report in 1951. Among its more important recommendations were:

(a) existing trade unions and employers' associations with a mixed racial membership should be separated on a racial basis, and further, in the case of mixed trade unions, this division should be into separate unions or into separate branches with white executive committees; ¹

(b) African trade unions should be recognised in terms of separate legislation, subjected to a measure of reasonable control, and given sympathetic guidance.²

¹. In this respect the Commission itself noted: "The evidence presented to the Commission was overwhelmingly against the introduction of legislation compelling the segregation of the various races into separate unions, and the witnesses who advocated the retention of mixed unions included both employers and employees" (paragraph 1041 of the Commission's report).

². Here the Commission was of "the firm opinion (that) it would be in the general interests of South Africa as a whole to grant Native trade unions recognition under separate legislation..." (paragraph 1636).
2. The first recommendation was accepted by the Government of the day and was later incorporated in the revised Industrial Conciliation Act (No. 28 of 1956). This led to the break-up of many formerly mixed unions into separate white and coloured unions or into separate branches of the same union. However, a large number of trade unions with mixed membership continued to exist at the discretion of the Minister of Labour who was granted powers to exempt them from the provisions of the Act. At the end of 1973 for instance there were 41 unions of this sort with a combined membership of about 176 000 workers, of whom three-quarters were coloured.

The second recommendation was rejected by the Government which introduced alternative machinery in the guise of the Native (later Bantu) Labour (Settlement of Disputes) Bill which was presented to Parliament in 1953. The reason for rejecting the Commission's recommendation on African trade unions was plainly put by the Minister of Labour of the day when he commented that "whatever form of control is introduced you will not be able to prevent them being used as a political weapon." Another goal mentioned by the Minister was that if this system were "effective and successful, the Natives will have no interest in trade unions, and trade unions will probably die a natural death."

Clearly in the mid-fifties the National Party determined that labour relations in South Africa would be regulated by a dual system of control: trade unions engaged in collective bargaining through the industrial council system would be the proper instrument for white, coloured and Asian workers while African workers would be provided for in a different way. It should be noted, however, that African trade unions were never outlawed, the authorities taking a somewhat cynical stance in this connection. For example, even after the wave of strikes by African workers in 1973 the Minister of Labour, Mr. Marais Viljoen, addressed the House of Assembly in the following terms: "If we had wanted to prohibit these trade unions, Minister Schoeman would already have done so in 1953. This has never been done; we felt that they could simply struggle on like that. I think the establishment of these works committees will really deprive those Bantu trade unions of their life's blood and any necessity for existence. I therefore think that such a prohibition is unnecessary."

3. Mixed means with white, coloured and/or Asian members. Africans were excluded.
African Trade Unions

Official policy has obviously been directed at laying the spectre of an African labour movement, developing through organised trade unions, which would command considerable political as well as social and economic power. Nevertheless, in spite of great difficulties African unions continued to exist through the 'fifties and 'sixties. This is understandable since their struggle for recognition dates back to Clements Kadalie's Industrial Commercial Workers' Union (I.C.U.) which was founded in 1918.

By 1928 a Non-European Trade Union Federation claiming 10,000 members had been established. Towards the end of the second World War a Council of Non-European Trade Unions claimed 119 trade union affiliates with a combined membership of 158,000 workers. However, the Industrial Legislation Commission concluded later that in 1949 there were some 38,251 paid-up African members of trade unions although membership figures shown on registers were considerably higher. It is true that in the late 'forties and during the 'fifties there was a great deal of dissension and many difficulties which led to a decline in the African trade union movement. These difficulties were compounded by that official attitude which viewed African unions with stern disfavour. Numbers of leaders were either banned or prohibited from attending meetings under the Suppression of Communism Act.

Nonetheless, in 1958 there were 20,075 African trade union members and this increased steadily to 59,952 organised in 63 unions by 1961. The 'sixties was a period of intense political turmoil with Africans confronting the dominant white group directly. It saw a grave decline in the numbers of African trade union members and by 1969 only 13 unions with 16,040 members were known to be in existence. However, there has been a renascence in the 'seventies and by 1975 some 24 unions with a claimed African membership of 59,440 were known to exist. At the present time the majority of these unions are small and weak.

7. I am indebted to a forthcoming essay by Dr. Sheila van der Horst for a number of the points made above.


What then of the alternative machinery provided by the State?

THE NATIVE LABOUR (SETTLEMENT OF DISPUTES) ACT (NO. 48 of 1953)
The Government having set its face resolutely against trade union rights for Africans, translated its policy into legislation in the form of the three-tier system contained in the Native Labour (Settlement of Disputes) Act. This re-defined the definition of 'employee' in the Industrial Conciliation Act, to exclude all African workers, and aimed to provide for the regulation of conditions of employment for African employees and the settlement of disputes between these workers and their employers. Previously, under legislation passed in 1924, only 'pass-bearing' or recruited African workers were excluded from the definition of 'employee'.

Essentially it provided for a works committee to be elected by the African employees of an establishment employing twenty or more workers; for regional Native Labour Committees appointed by the Minister of Labour from Africans (not necessarily workers) in the local community with a white Native Labour Officer in the chair; and a Central Native Labour Board consisting of white officials appointed by the Minister. The machinery thus created allowed a very limited measure of direct representation to African workers and a larger measure of indirect bureaucratic representation.

Works Committees
The works committee was intended to be a front-line communication channel between African workers on the one hand and their employer on the other. It would be the first recourse if a dispute arose. It seems clear that neither African workers, nor their employers, nor, perhaps, the labour authorities set any great store by this system of representation during the twenty years of its existence. For example, only seven such statutory committees had been established by the beginning of 1957, ten by May 1960, nineteen by 1961, twenty-four by 1969, and by January 1973 when a wave of industrial unrest broke out there were still only twenty-four of these committees in existence. At that time there were some 21 036 registered factories employing 818 012 Africans in the Republic. There were, it is true, a number of non-statutory workers' committees in existence as well, but numbers were few. The authorities then took steps to overhaul the legislation.

5.

Regional Bantu Labour Committees

The Regional Native Labour Committees constituted the second tier and consisted of Africans appointed by the Minister from the local community in each region sitting under the chairmanship of the white Native Labour Officer for that area. Among the duties of a committee were:

(a) to maintain contact with employees with a view to keeping itself informed of conditions of employment of employees in its area generally and in particular trades;

(b) to submit from time to time reports on any labour disputes which exist or are likely to arise; and

(c) to assist in the settlement of labour disputes.

A Regional Bantu* Labour Committee in any principal industrialised area was obviously burdened with a very onerous task.

Ten of these committees, namely those for Johannesburg, Benoni, Vereeniging, Krugersdorp, Germiston, Pretoria, Durban, East London, Port Elizabeth and Cape Town were established on 30th April 1954, while a further two, for Pietermaritzburg and Klerksdorp, were established on 25th April 1969.15

At the time of the 1973 strikes, the 12 committees then in existence consisted of three white and five African members in Johannesburg, Benoni, Vereeniging, Krugersdorp, Germiston and Klerksdorp, of two white and five African members in Pretoria, Durban, Pietermaritzburg, East London and Port. Elizabeth; and one white and five African members in Cape Town. In each case, the chairman of a committee was a white official on the fixed establishment of the Labour Department remunerated according to his rank in the public service. African members of regional committees were paid an allowance of R3.25 per meeting plus travelling costs and they were also reimbursed for the actual loss of wages incurred in attending to their duties.16 An aspect of these regional committees which seems astounding is that prior to mid-1973 a single divisional labour inspector presided over no fewer than six of the seven committees in the Transvaal, Pretoria being the exception. His duties covered African workers in the magisterial districts of Johannesburg, Heldelberg, Benoni, Boksburg, Brakpan, Springs, Nigel, Delmas, Vereeniging, Krugersdorp, Roodepoort, Randfontein,


* Official terminology used to describe the indigenous population changed from 'Native' to 'Bantu' in the 'fifties.
Oberholzer, Germiston, Klerksdorp and Potchefstroom. Although it is true that he would have been supported by six different committees, it would appear that to charge a single State official with the task of furthering the vital interests of the majority of African workers in 16 magisterial districts in the industrial hub of the country was to demand of him truly heroic efforts. 17

During this period of labour unrest, the only African member of the Johannesburg Regional Bantu Labour Committee who was an employee, rather than a self-employed or retired person, seriously questioned the efficacy of the system when he stated: "very few workers know of the existence of the regional committees and fewer know that they have the right to form works committees. The only time we come in contact with workers is when there is already a dispute at a particular firm". 18

By June 1975, however, the number of these committees had been increased from 12 to 17 by the addition of the following areas: Bloemfontein; O.F.S. Goldfields (Welkom, Virginia, Odendaalsrus, Kroonstad); Witbank (Witbank, Middelburg); Ladysmith (Klip River, Estcourt, Mooi River), and Newcastle (Newcastle, Vryheid, Utrecht). 19

The Central Bantu Labour Board
The upper tier provided by the machinery was the Central Native (later Bantu) Labour Board, consisting of white members appointed by the Minister of Labour after consultation with the regional committees. In early 1973 the Board was comprised of four white members, one of whom was the chairman, an official on the fixed establishment of the Department of Labour. The other members were appointed on a contractual basis at an annual salary of R5 100. As a full-time body the Board met daily. 20

The Board was to attempt to resolve disputes which had been unsuccessfully dealt with by regional Bantu Labour Committees, but if it, too, was unsuccessful it had to report to the Minister of Labour stating whether it considered such a dispute should be referred to the Wage Board.

17. Ibid, pp.274-5.
7.

Bantu Labour Officers

The Act also provided for white Native (later Bantu) Labour Officers whose duties were:

(a) to acquaint themselves with the wishes, aspirations and requirements of African employees in their areas;

(b) to maintain close contact with the Native (Bantu) Commissioners and Inspectors of Labour;

(c) in collaboration with the Native (Bantu) Commissioners, to act as intermediaries between employers and African workers;

(d) to keep the Inspector of Labour and the Regional Native (Bantu) Labour Committees (and, where appropriate, industrial councils) informed of any labour disputes;

(e) in collaboration with the Inspectors of Labour, to try to settle any such disputes, with the assistance of the Regional Native (Bantu) Labour Committees; and

(f) to chair such committees.21

In 1972 there were only seven white Bantu Labour Officers throughout the whole country but by 1975 this had increased to thirty and they were located in the following areas:

<table>
<thead>
<tr>
<th>Location of Bantu Labour Officers</th>
<th>1972</th>
<th>1975</th>
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<tbody>
<tr>
<td>Transvaal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pretoria</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Johannesburg</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Witbank</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>O.F.S.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bloemfontein</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Natal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durban</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Pietermaritzburg</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Ladysmith</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Newcastle</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Cape</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cape Town</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Port Elizabeth</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>East London</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Kimberley</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>George</td>
<td>-</td>
<td>1</td>
</tr>
</tbody>
</table>


It is hardly necessary to labour the point that until 1972 too much was expected of the seven Bantu Labour Officers. For their duties were not confined only to those described earlier, but they also attended, upon the instructions of the Central Bantu Labour Board, Industrial Council meetings and public sittings of the wage board. Since 1973 there has been an improvement and, as we have shown, the numbers of Bantu Labour Officers have increased four-fold.

Minimum Wage Regulation
A member of the Central Bantu Labour Board or a designated Bantu Labour Officer was entitled to attend any meeting of an industrial council where conditions of employment which could affect African employees were to be determined. This they have done consistently over the years. The issues at stake are often complicated and these Officers have, of necessity, to familiarise themselves with the structures of a wide variety of industries, trades and occupations, all of which imposes a yet heavier burden upon them. For example, in 1973 the Board and/or its Officers attended 188 industrial council meetings and also scrutinised 106 industrial council agreements and one conciliation board agreement. Approximately 407 000 Africans were affected by industrial council wage agreements published during that year and it was estimated that they benefited collectively by R60 million over a period of twelve months.22 This would mean, on average, a weekly increase of R2.84 per African worker.

Moreover, the Board and/or its Officers also submitted written representations in connection with 13 investigations by the Wage Board and attended 44 of its public sittings in that year.

Disputes and Strikes
Finally, one of the principal objectives of the Act was to settle disputes between African workers and their employers. Until 1973 all strikes by, or lock-outs of, African employees were prohibited as were the instigation or incitement of such strikes or lock-outs as well as sympathetic strikes or lock-outs. The maximum penalties for a contravention were severe and comprised a fine of R1 000 or three years' imprisonment, or three years' without the option of a fine, or a combination of both fine and imprisonment.

The Act defined a labour dispute as one between an employer and two or more of his African employees in connection with employment, conditions of employment or

9.

a refusal to re-employ an African. In other words, a rather narrow definition. However, where the African workers involved were covered either by an industrial council agreement, or an arbitration award, or a conciliation board agreement which was still in force, the machinery which the Industrial Conciliation Act provided would be preferred to settle a dispute provided the Central Bantu Labour Board had reported on the dispute to the Minister who was empowered thereafter to refer it to the Wage Board. In the case of a wage determination the conciliation machinery applicable to other racial groups would be used if the determination had been in operation for less than two years.

In 1973 there were 47 labour disputes with no stoppage of work involving 3,846 African workers. These were usually settled by Bantu Labour Officers. A further 115 disputes, where work stopped, but which could not be regarded as strikes occurred and these involved 22,744 Africans. There were also 246 strikes in which 67,338 Africans took part.

It would not be unfair to infer that the alternative system of labour relations imposed upon Africans by the State was inadequate and that when it was subjected to stress it cracked. African workers eschewed it, employers showed a marked reluctance to use it in a meaningful way, and even the State implemented it without vitality.

THE BANTU LABOUR RELATIONS REGULATION ACT (NO. 70 OF 1973)

During the 1973 labour unrest the Government moved quickly to overhaul the system and published a draft Bill embodying its aims in this regard. Its proposals, in the words of the Minister of Labour "... evoked wide interest, and comment as well as proposals for its improvement were received from most of the major employers' organisations, from trade unions, individual employers and other bodies". As a result the authorities altered the original Bill and later introduced the Bantu Labour Relations Regulation Amendment Bill.

The new machinery retained the three-tier system, which had operated for twenty years, with certain important differences.

23. Ibid.
Liaison and Works Committees

Instead of simply providing for the in-plant works committees at the lower end of the pyramid, a dual system of works and liaison committees was introduced. A liaison committee in any establishment consists of some members appointed by the employer and others elected from the ranks of his African employees. At least half the members of a liaison committee must be elected by the African employees but the chairman may be designated by the employer and need not be a member of the liaison committee, or may be appointed in a manner determined by the committee itself. As we shall see, employers have preferred the liaison committee and it is true that it takes precedence over the works committee in the Act. The functions of a liaison committee are very simply defined. Its task is "to consider matters which are of mutual interest to the employer and his employees and to make to the employer such recommendations concerning conditions of employment of such employees or any other matter affecting their interests ..." The law does not limit the period of office of a liaison committee which would presumably be bound by the terms of its constitution.

The works committee, on the other hand, is a wholly elected body. In any establishment employing more than twenty African workers, where no liaison committee exists, such workers may elect a works committee consisting of no fewer than three or more than twenty persons. However, representation is limited to a quarter of the total number of African workers in the establishment or section of the establishment at the time of the election. The Bill extended representation in the sense that it allowed for more than one works committee in an establishment and in larger firms, therefore, sections of the African labour force can now elect their own works committees.

A meeting convened to elect a works committee is held under the chairmanship of the employer concerned or his authorised representative. Obviously where the employees and their employer enjoy a reasonably harmonious relationship dissension on this score is unlikely. However, where relations are cool or even hostile, where distrust exists on one or both sides, this particular arrangement is inadequate for resolving what may be a fundamental conflict of interests. While the present definition of a labour dispute is far wider than that contained in the 1953 legislation, and a Bantu Labour Officer and/or Inspector, with or without the assistance of the Regional Bantu Labour Committee concerned, should intervene in an attempt to effect settlement there does seem to be a remarkable shortcoming in this connection. The Act
presumes that labour disputes are very largely concerned with wages and working conditions. This may be true in most instances but not in all.

For example in an establishment employing, let us say, 100 African workers, if the employer were to be inflexibly resolved upon the introduction of a liaison committee while perhaps 80 per cent of his employees were resolutely committed to a works committee, there is no simple mechanism to break the impasse. Again, if the employer at an election meeting were to insist from the chair upon a secret ballot in the face of a decided worker preference for voting by a show of hands, there is no quick, effective instrument for reconciling so deep-rooted a difference.

Functions of Committees
A further difference between the liaison and the works committee is that the function of the former is "to consider ... and to make ... recommendations", while that of the latter is "to communicate the wishes, aspirations and requirements of the employees in the establishment or section of an establishment in respect of which it has been elected, to their employer and to represent the said employees in any negotiations with their employer concerning their conditions of employment or any other matter affecting their interests". Evidently the legislature envisaged the liaison committee as a consultative body while the works committee was to enjoy negotiating rights limited to in-plant bargaining and thus falling short of collective bargaining as it is generally understood. The chairman of the works committee was to be the intermediary between the workers' elected representatives and the employer.

While the period of office of a liaison committee was not limited by statute, that of a works committee was limited to "not more than two years".

Co-ordinating Committees
As the new system permitted the election of more than one works committee in an establishment, provision was made for a co-ordinating works committee consisting of the chairmen and secretaries of each works committee where two or more such committees had been elected. The appointment of a co-ordinating committee was to be made after consultation with the employer concerned, and its duties were roughly the same as those of a single works committee.
The Liaison Committee in Practice

There can be no doubt that generally employers have shown a marked preference for the liaison committee rather than the works committee. According to the Financial Mail there were 118 liaison committees in existence at the end of 1972. In effect these were non-statutory works committees which were covered later, by the new definition of 'liaison committee'. By the end of 1973 this had increased to 773 while at the end of 1974 the number had reached 1,482. Of these liaison committees, 750 were located in the Transvaal (50.6%), 376 in Natal (25.4%), 298 in the Cape (20.1%), and 58 in the Orange Free State (3.9%). By May 1975, 1,751 liaison committees had been registered. This fifteen-fold increase does appear remarkable.

In mid-1974, Ryno Verster, of the Personnel Research Division within the Department of Industrial Psychology at the University of the Orange Free State, conducted an investigation into the constitution and functioning of liaison and works committees. His survey included questionnaires addressed to 1,064 organisations on the subject of liaison committees and he received a suitable response from 326 (roughly 30%) employing 164,995 African workers covered by 437 liaison committees. The organisations which participated in the investigation were grouped in the following industrial sectors:

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of Organisations</th>
<th>%</th>
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<tbody>
<tr>
<td>Manufacturing</td>
<td>257</td>
<td>79.0</td>
</tr>
<tr>
<td>Mining</td>
<td>9</td>
<td>3.0</td>
</tr>
<tr>
<td>Construction</td>
<td>9</td>
<td>3.0</td>
</tr>
<tr>
<td>Commerce</td>
<td>13</td>
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<tr>
<td>Services</td>
<td>27</td>
<td>8.0</td>
</tr>
<tr>
<td>Local authorities</td>
<td>11</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td>326</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Among the most significant findings of the investigation were that in approximately 91% of the sample the initiative for establishing the liaison committee had been taken by management. In about 9% of the sample the initiative had been taken by management and its African employees together. Rarely had the employees taken the initiative on their own. In fact from Verster's data it would appear that in only 2 of 326 organisations had this occurred. Moreover, in determining African workers' needs for a liaison committee nearly 37% of the sample attributed the main factor to management's 'foresight', while some 24% had discussed the matter with African supervisors and obtained their views, and about 18% had held general meetings of all their African employees. In only some 4% of the organisations had African employees themselves brought the question of the establishment of a liaison committee to management's attention.

Rather surprisingly, African members of the liaison committee did not participate in selecting the chairman of their committee in 81.9% of the participating organisations. On the other hand, 79.1% of the respondents reported that African members of the liaison committee were elected rather than appointed by management. However, in only 16.6% of the firms could candidates be nominated without any restriction, for example, as to age or seniority. A representational spread from different departments was required by 78.1% of the respondents, while 46.2% required service (seniority) qualifications and 27.3% required a certain age limit. Voting was usually by means of ballot papers (57.1% of the respondents) or by a show of hands (33.4% of the respondents).

About 63% of the respondents reported that their liaison committees were elected for a period of one year while nearly 28% recorded a two-year period of office. In most instances, 72%, regular monthly committee meetings were held, but a further 12% met every two months and 5% quarterly.

There were 284 organisations which responded to a question as to why they had preferred a liaison to a works committee. The majority of 147 (nearly 52%) gave as their reason that the liaison committee was an 'anti-polarisation' device conferring benefits such as better guidance by management and prompt solution of problems, thus serving both parties' interests and improving two-way communication. In a further 38 instances (about 13%) either the liaison committee

32. Ibid, p.20.
had existed before the Act was passed, or it was company policy to have one, or the firm was too small to qualify for a works committee. About 26 (9%) gave reasons connected with the low level of education among their African workers and their lack of experience with a system of negotiation, while a further 12 (4%) had established such committees on the advice of outside agencies such as the Department of Labour or the Steel and Engineering Industries Federation of S.A. One respondent advanced the reason that works committees resemble trade unions too closely. This is not quite correct for the differences between an in-plant committee and a trade union are more marked than the similarities. Nevertheless, it does encapsulate the fear of collective bargaining which exists perhaps more widely than the Verster survey indicates. Yet another respondent stated bluntly that liaison committees are consultative rather than negotiating bodies. This is, I believe, the crux of the matter. The disparity in the numbers of the liaison and works committees established since the 1973 labour unrest seems to indicate that management perceives its interests to be best served by a system of control through consultation. Whether this is the case remains to be seen.

The Works Committee in Practice
We turn now to a consideration of works committees. In January 1973 there were only 24 statutorily-constituted works committees throughout the Republic but by the end of March of that year these had increased to 31. At the end of 1974 the number of these committees had reached 207 and of these, 98 (47%) were located in the Transvaal, 61 (30%) in the Cape, 45 (22%) in Natal, and 3 (1%) in the O.F.S. Later information put the number at 239 in May 1975, a ten-fold increase in a little over two years.

The Verster investigation collected less satisfactory data on these committees than it had on liaison committees. This was due in part to the fact that management is not represented on a works committee and in many instances was not able, therefore, to complete the questionnaire satisfactorily. In some cases, apparently, the works committee members viewed the questionnaire and its purpose with suspicion. In June 1974 questionnaires were sent to 124 organisations of whom only 34 responded. These 34 had established 41 works

35. Hansard 10 column 691, 15 April 1975.
committees and were employing 16,625 African workers. They were located in
the following sectors of the economy: 37

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of Organisations</th>
<th>Per centage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>25</td>
<td>73,0</td>
</tr>
<tr>
<td>Services</td>
<td>6</td>
<td>18,0</td>
</tr>
<tr>
<td>Commerce</td>
<td>3</td>
<td>9,0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>34</strong></td>
<td><strong>100,0</strong></td>
</tr>
</tbody>
</table>

In fifteen organisations (44%) management had taken the initiative for
establishing the committee, while African employees had done this in five
(15%), and management and employees together had taken the decision in fourteen
(41%).

There was a tendency for older workers and those with longer service to be
elected to these committees: in 80% of the organisations there were no
restrictions whatsoever on the nomination of candidates, while in 20% there
were certain requirements, mainly to achieve equal departmental representation. 38

82% of the respondents reported that their works committees were elected for a
period of one year. In most instances, 68%, regular monthly committee
meetings were held, while a further 9% met weekly and 6% met at fortnightly
intervals.

The most frequently mentioned reasons for choosing a works committee were that
they were more effective than liaison committees, that they were more represen-
tative and acceptable to African workers, and that the workers preferred them.

In 1973 only three co-ordinating works committees 39 had been established.

Recognition of African Trade Unions
The Verster investigation indicated that while the majority of participating
organisations with liaison committees (56%) were opposed to the recognition of
African trade unions, the majority of those with works committees (68%) were in
favour of recognising them. 40

Regional Bantu Labour Committees
The second tier of the system, as we have seen, consists of the Regional Bantu Labour Committees. The 1973 Act empowered the Minister of Labour to appoint to the regional committees members selected from liaison, co-ordinating works or works committees in their areas of jurisdiction. It also made it obligatory for a regional committee dealing with a dispute in any trade to co-opt one or more African members from these subordinate committees in the relevant trade. Clearly, the 1973 legislation made a modest advance at this level towards more direct participation by African workers in labour relations. However, the chairman of these committees remain white officials.

Participation at Industrial Council Meetings
The chairman of a regional committee was always entitled to attend any meeting of an industrial council where conditions of work affecting African employees were to be determined. The 1973 legislation enabled African members of his committee to accompany him and this included members of any liaison, co-ordinating or works committee in the trade co-opted for this purpose. However, while these representatives of African workers may participate in the deliberations of the industrial council concerned, they have no voting rights. Their last resort if they have serious objections to proposals affecting their material interests is an appeal to the Minister of Labour. The latter is empowered to refuse his sanction to an industrial council agreement.

Wage Orders
The 1973 Act introduced, too, a new method of minimum wage fixing aimed at accelerating the regulation of minimum wages for African workers. The Minister was empowered, after consultation with the Wage Board and the Central Bantu Labour Board, to accept, at any time, proposals concerning African wages or other conditions of employment in their trade and area from a sufficiently representative group or association of employers and to make an Order embodying such proposals binding upon all employers and employees in the trade and area concerned. He was also entitled to extend the provisions of a wage determination or an order beyond the trade and area for which it was originally intended to other trades and/or areas. This approach clearly rests upon employer initiative and Ministerial discretion. African workers do not participate in the process. Its only advantage for African employees is that laggardly employers can be induced by their confrères to increase minimum wages at fairly regular intervals.
Legalisation of Strikes

Whereas the 1953 legislation had outlawed all strikes, the 1973 Act legalised strikes in certain circumstances. In effect, the definition of a strike in the Industrial Conciliation Act was adopted for the Bantu Labour Relations Regulation Act and the prohibition of certain strikes, too, was grafted onto the latter. This ignores the obvious difference between the two instruments: the former embracing the concept of collective bargaining as it is generally understood, the latter providing grievance procedures, largely consultative machinery, and a method of settling disputes.

The following prohibitions on strikes and lock-outs of African workers remain (as they do in most respects for other workers covered by the I.C. Act).

(a) where a wage regulating measure or order is binding and where it has been in operation for less than one year;

(b) during the period of currency of any agreement, award or determination made under the Industrial Conciliation Act, 1956;

(c) where the African workers are employed by a local authority;

(d) where the African workers are employed in essential services providing light, power, water, sanitation, passenger transportation or a fire extinguishing service, within the area of a local authority;

(e) where they are employed in the supply, distribution and canning of perishable foodstuffs, or the supply and distribution of petrol and other fuels to local authorities or others engaged in providing essential services, if the Minister has extended the prohibition on strikes to such industries;

(f) where the Central Bantu Labour Board has referred a proposed industrial council agreement which it finds unsatisfactory to the Minister for a Wage Board recommendation;

(g) where the Central Bantu Labour Board has reported an unresolved dispute to the Minister for a Wage Board recommendation.

In all other instances a dispute must be referred to the liaison committee, co-ordinating works committee or works committee, as the case may be, which exists in the plant concerned. If the committee is unable to settle the dispute, or where no committee exists, a report must be made to the Bantu Labour Officer for the area concerned. After thirty days from the date of such a report have elapsed a strike or lock-out may legally take place.
Finally, in 1973 a stronger provision prohibiting the victimization of African workers participating in the establishment, election or activities of liaison committees, co-ordinating works committees, or works committees was included.

The Verster investigation to which we have referred in this paper indicated that the majority of employers felt that the committee system was working well and was a useful means of communication in both directions.

Strikes in 1974 and 1975
Nevertheless in 1974 there were 374 instances involving 57,656 African workers when work stopped. Of these 189 could be defined as strikes, and in 1975 there were a further 119 strikes.

Towards the end of 1975 the authorities published a Draft Bill incorporating their proposals for amending this legislation still further.

THE BANTU LABOUR RELATIONS REGULATION AMENDMENT BILL, 1976
This Bill envisages certain fundamental changes, both in principle and practice, in the existing legislation.

Definitions and African Membership of Certain Bodies
If enacted the legislation would remove the definition of 'European' from the Act and this, together with several related amendments, means that Africans may be permitted to serve on the Central Bantu Labour Board (the chairmanship included), and as Bantu Labour Officers. Appointment to the ranks of the latter would permit them to be appointed chairmen of Regional Bantu Labour Committees as well.

Further, where earlier legislation had provided for consultation or negotiation in regard to "any other matters affecting their interests" the new proposals limit this function to matters concerning their conditions of employment.

41. Hansard 1 column 50, 7 February 1975.
42. Hansard 6 columns 385-400, 9 September 1974 and Hansard 3 columns 204-5, 21 February 1975.
43. Hansard 1 column 18, 29 January 1976.
Liaison and Works Committees
The Bill also presages the removal of the presumption favouring liaison committees over works committees and provides that a works committee may be elected irrespective of whether a liaison committee already exists. The Verster investigation had shown that some organisations were employing both forms of committee and that others felt that this was desirable. This would constitute modest progress from the African workers point of view.

Liaison Committees
Insofar as liaison committees are concerned the intention is to extend their functions beyond consultation to a limited form of in-plant negotiation. A new provision would also allow any employer with more than one establishment in an area to provide a single liaison committee for all the workers in his various establishments provided that at least one employee member from each establishment were elected.

Works Committees
The Bill would remove the lower limit of more than twenty employees for establishments entitled to elect works committees. This would allow smaller firms to introduce some system of representation.

Industry Committees
The most important change envisaged by the legislation would be the introduction of industry committees. A group of liaison, works or co-ordinating works committees in any trade or area would be entitled to apply to the Minister of Labour for the establishment of an industry committee. If the Minister deemed them sufficiently representative of the African employees in the trade and area he could sanction the application. The relevant inspector or Bantu Labour Officer in the area would preside over a meeting called to elect the members of the industry committee and would determine the number of members of the various committees allowed to attend. This obviously provides this State official with broad discretionary powers. Membership of the industry committee would be limited to no fewer than five or more than ten persons with an equal number of alternates. Their period of office would be limited to three years.

It is obvious that this provision would provide for a larger measure of African participation in industrial relations and at a higher level than
It may further be inferred that it also constitutes a serious attempt to forestall the further development of the African trade union movement in line with the policy enunciated so decisively over the past quarter-of-a-century. While any extension, however cautious, of the attenuated rights of African workers to participate in industrial bargaining is welcome, certain problems may be foreseen in advance. For example, in those industries where collective bargaining is centralised at the national level, it seems extremely doubtful that ten men, however good and true, would be able to reflect the mood and needs of the industry's African workers adequately. In modern industry, issues are often very complicated and agreements which emerge after collective bargaining are sophisticated instruments.

A worker elected to an industry committee would in the first instance be a working man earning a daily living and travelling what are often long distances between his home and work; secondly, it is likely that he would be a member of the works or liaison committee in his own firm; and finally, he would be expected to carry out his duties as a member of an industry committee thus representing his confrères on an industrial basis. His life would assuredly be heavily burdened.

The draft Bill makes no real provision for an industry-based secretariat to process data and formulate proposals for these industry committees. Neither executive nor administrative officers seem to have been considered. This inevitably places a question-mark against the potential usefulness of these committees.

Industrial Council Meetings
The members of an industry committee would, in terms of the new Bill, participate in the negotiation of wages and working conditions of African workers leading to an agreement. However, they enjoy no voting rights. Industrial councils must notify the Central Bantu Labour Board and the relevant Regional Committee timeously of any meetings which could affect African interests and the Board must designate one or more members of the industry committee to attend such meeting.

Agreements and Orders
Where no industrial council is registered, an industry committee is to be empowered, in collaboration with the Regional Bantu Labour Committee concerned, to enter into an agreement on the minimum wages and working conditions of their African workers with a group or association of employers.
In the 1973 legislation the Minister was empowered to make an Order incorporating the proposals of a sufficiently representative group of employers with respect to the wages and working conditions of their African workers. The Bill envisages the repeal of this provision. Instead a group or association of employers may enter into an agreement with an industry committee or, where no such committee exists, with a Regional Bantu Labour Committee. The Agreement, if sanctioned by the Minister, would then be published as a binding instrument.

Agreements and Strikes
We have shown that the 1973 legislation introduced a limited right to strike in certain instances after the completion of rather complicated procedures. The 1976 proposal is that the provisions of an Agreement would remain in force until superseded by a new wage regulating measure. If this were to be enacted, it would effectively re-introduce the prohibition on strikes in any trade or area where an Agreement had been concluded and published in the Government Gazette.

In short, if African workers in a trade where strikes can occur legally at present were to establish an industry committee and enter into an agreement, they would have signed away their admittedly circumscribed rights to a legal strike.

Administration of Orders
Previously Africans were barred from serving on a body appointed by the Minister to administer an Order. The 1976 Bill would remove this restriction.

Victimization
The prohibition on victimization by employers of employees carrying out their lawful functions in connection with committees would be extended to industry committees. Employers would be required, too, to afford such representatives reasonable facilities for performing their duties.

CONCLUSION
If the draft Bill is enacted in its present form it will eliminate certain of the more overtly racial aspects of the present law, it will extend a limited form of bargaining on an industrial rather than a plant basis to African workers, and it will be likely to reinforce the industrial bureaucracy while admitting Africans to that bureaucracy. Obviously the admission of
Africans to higher levels of influence in the system of industrial relations constitutes a form of progress. The tacit admission of collective bargaining rights on an industrial basis, albeit circumscribed, likewise, shows a modest advance. However, the changes mooted for 1976 re-affirm the restrictions on freedom of association which have for so long been a prominent feature of labour policy in the Republic. Dualism in the marketplace will be retained in spite of changes in occupational mobility which are undoubtedly taking place and despite the more militant mood shown by African workers in recent times.

It is true that in Europe systems of workers committees or councils have been devised and are being implemented. The proposed South African legislation has adopted certain features of these systems while denying their context and real content. Trade union rights to organise, bargain and strike are fully recognised there and committee systems complement these rights. In other words, trade unions like other institutions in modern society are capable of distancing themselves from grassroots support and conducting their business at levels which workers on the shopfloor find unsatisfactory. European experiments are aimed at re-introducing direct participation by democratic methods and circumventing the delay, obstruction and misunderstandings attendant upon bureaucratic sclerosis. The South African effort is aimed in the opposite direction.

The dilemma confronting the authorities is that in a period of marked instability in Southern Africa their dual system of labour relations, its proposed changes not excepted, is overtly discriminatory. It depends ultimately for its effective implementation on acceptance by the African workers upon whom it is imposed. Whether an extensive committee system spread throughout thousands of factories, shops and offices will prove a successful technique for restoring industrial 'peace' seems doubtful.

DUDLEY HORNAR
Cape Town
April 1976