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MEMORANDUM (SUPPLEMENTARY)

SUBMITTED

TO THE

SELECT COMMITTEE

APPOINTED TO ENQUIRE INTO

THE INDUSTRIAL CONCILIATION BILL
(A. B. 53 - '54)

BY THE

SOUTH AFRICAN TRADE UNION COUNCIL

15th FEBRUARY, 1955.

SOUTH AFRICAN TRADE UNION COUNCIL

MEMORANDUM (SUPPLEMENTARY)

on the subject of the
INDUSTRIAL CONCILIATION BILL

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INTRODUCTION

155. We regret having to submit our further representations in regard to the Industrial Conciliation Bill in a separate document. This, however, was unavoidable, due to the circumstances surrounding the establishment of our Council which are dealt with in our introduction to the first Memorandum.
156. This Supplementary Memorandum deals with items not covered by our first Memorandum, although there are references herein to Sections referred to in the first document.
157. It will be noted that the pages and paragraphs hereof are numbered consecutive to those of the first document in order to avoid confusion.
158. The membership of this Council has increased since the date of our first Memorandum. The revised list of affiliates appears in Annexure "A(1)" to this Memorandum (paragraph 10 of Annexure "A" first Memorandum refers).

DETAILED OBJECTIONS TO THE BILL (continued).

SECTION 21 - CONSTITUTIONS OF INDUSTRIAL COUNCILS

159. Sub-section (1)(j) stipulates that the constitution of an
/ industrial 47./.....

159. industrial council shall provide for the manner of investment of funds in excess of its requirements for expenses. Sub-section (3), however, stipulates the type of investment to which an industrial council is limited.
160. It is our opinion that sub-section (3) is quite unnecessary and we suggest its deletion. It should be remembered that an industrial council consists of both employers and employees. Certainly the employers' representatives should be credited with good business sense, and, therefore, reluctant to agree to unsafe investments. Furthermore we visualise the possibility that an industrial council may wish to invest funds in, for example, a holiday resort for employees in its particular industry or a home for aged retired workers. In any event the Registrar must see the constitution of an industrial council and since it must provide for the manner in which its funds can be invested he will certainly not approve of anything which seems to be unsafe or not in the interests of the parties to the council.

SECTION 23 - DUTIES OF INDUSTRIAL COUNCILS

161. It will no longer be the duty of an industrial council to "endeavour by the negotiation of agreements or otherwise to prevent disputes from arising, and to settle disputes that have arisen or may arise (or) between employers or employers' organisations and persons upon whom all or any of the provisions of any agreement or award have been made binding under sub-section (4) of section forty-eight or under that sub-section read with sub-section (3) of section forty-nine"
162. The effect of the omission from sub-section (1) of this Section of the Bill of the above underlined words, quoted from Section 23 of the 1937 Act, is that whilst an

162. industrial council has the responsibility of administering an agreement extended to natives, of ensuring that its terms are properly observed by employers and workers and has to meet the cost thereof, it will no longer be permitted to exercise the important function of endeavouring to prevent and settle disputes affecting native workers in the industry concerned. (The prevention and settlement of disputes is a fundamental principle of both the Act and the Bill; paragraph 14: first Memorandum refers).
163. The reason for this change is no doubt due to the passing of the Native Labour (Settlement of Disputes) Act. Certain contradictions and conflicts which arise as a result will be dealt with in our references to Sections 48 and 49 of the Bill.

SECTION 24 - MATTERS THAT MAY BE DEALT WITH BY
INDUSTRIAL COUNCIL AGREEMENTS

164. The omission of para. (q) of sub-section (1) of the 1937 Act from the Bill is remarked upon in paragraph 114, page 33 (first Memorandum).
165. Sub-section (1) para. (x) - the closed shop - is referred to in our comments on Section 50.
166. Para. (y) of sub-section (1) is new in this Section. We suggest that a similar paragraph be inserted in respect of the obligation upon employers to pay wages in lieu of notice.

SECTION 25 - ESTABLISHMENT AND FUNCTIONS OF COMMITTEES
OF INDUSTRIAL COUNCILS

167. The word "members" in line 31 (English version) should be "numbers".
168. We suggest an additional provision in sub-section (4) to the effect that if a local authority or other employer or employer's organisation party to an industrial council appoints a legally trained person as a representative on

168. that council, the trade union party or parties should also be entitled to appoint a legally trained person who shall be deemed to be an employee in the undertaking, industry, trade or occupation concerned.

SECTION 27 - MEETINGS OF INDUSTRIAL COUNCILS

169. We suggest that sub-sections (1) to (4) and sub-section (7) in the amended form proposed below, are more proper to Section 21 - CONSTITUTIONS OF INDUSTRIAL COUNCILS
170. Regarding sub-section (7) we request that it be changed to provide that industrial council constitutions shall state their voting arrangements. Some councils provide that decisions must have the support of two-thirds of those present at meetings, others provide for a simple majority. Sub-section (10) allows for this difference. If our suggestion is adopted in respect of sub-section (7) and the **first** four sub-sections, then sub-section (10) becomes redundant.
171. Similarly sub-sections (5), (6), (8), (9) and (11) should be included in Section 28 which could be described as "Meetings and minutes of proceedings of industrial councils".
172. Sub-section (9) should be amended so as to provide that inspectors shall only attend "negotiation" meetings when invited. We assume that this provision, as was clearly stated in the 1937 Act, is to protect the interests of non-parties. We are of the opinion that their interests are adequately safeguarded by the fact that an inspector will have the right to attend the meeting of the Council at which an agreement is finalised. Furthermore, no agreement can be published in the Gazette without the Minister's approval.

SECTION 28 - MINUTES OF PROCEEDINGS OF INDUSTRIAL COUNCILS

173. Although sub-sections (1) and (3) are substantially the same as in the 1937 Act, we suggest that only the confirmed or certified minutes be sent to the inspector as provided in sub-section (3). This will avoid unnecessary duplication and perhaps needless action on the part of an inspector arising from an error in the unconfirmed minutes.
174. We suggest that sub-section (2) be amended to provide that the signed minutes be retained in safe custody for the period of the current agreement, but for not less than 3 years whichever is the longer period.

SECTION 30 - SUBPOENAING AND EXAMINATION OF WITNESSES
BY INDUSTRIAL COUNCIL OR COMMITTEE

175. In lines 43 and 46 (English version) the word "thirteen" should read "twelve" in each case. Similarly in the Afrikaans version in lines 46 and 49 "dertien" should read "twaalf".

SECTION 32 - ANNUAL ACCOUNTS OF INDUSTRIAL COUNCIL

176. In sub-section (4) we suggest the period be the same as the current agreement or 3 years, whichever is longer.

SECTION 34 - CANCELLATION OF REGISTRATION OF INDUSTRIAL
COUNCILS

177. It is our opinion that the extensive powers operative under this Section should not be vested in the Registrar, a civil servant, but should, as in the 1937 Act, remain with the Minister who is answerable to Parliament.
178. The Registrar will continue, in terms of the Bill, to exercise the powers vested in him under the 1937 Act in respect of the cancellation of registration of a trade union or employers' organisation. We would prefer that

178. the Minister should be vested with those powers as well. The cancellation of the registration of an industrial council is, however, an even more serious matter because such a council regulates the whole of an industry and has, accordingly, tremendous responsibilities. The whole of the conditions of an industry could be jeopardised by the cancellation of registration of the council which governs it, this despite the references in sub-section (1) to the conditions under which the Registrar may act.
179. It is the Minister who exercises the powers referred to in Section 35 and that supports our representations in regard to this Section. As we have previously indicated, it is our considered opinion that the Bill generally vests far too much power in the Registrar.
180. The word "industry" has been omitted between the words "undertaking" and "trade" in lines 36/37 page 65 - sub-section (4)(e) of this Section.

SECTION 35 - ESTABLISHMENT OF CONCILIATION BOARD
AND ISSUE OF ORDERS BY THE MINISTER

181. Sub-section (5)(a). Our comments on "reserved occupation" appear under sub-section (17).
182. We request the deletion from sub-section (6) of the words "by or" in line 14. Individuals should be permitted to apply for conciliation boards as provided in sub-section (5), only when they are in a reserved occupation, subject to our comments on "reserved occupation".
183. Sub-section (8). We desire that sub-section (5) of Section 35 of the 1937 Act be retained in place of par. (a) of this sub-section in the Bill. Experience has proved that the present provision in the 1937 Act is adequate and has worked, as far as we are concerned, satisfactorily. There is no reason why the terms of reference of a conciliation board

183.

should contain either more or less than the matters in dispute, which would be clearly shown in the Minister's "statement" referred to in sub-section (5) in the 1937 Act. Should there be any desire or necessity to alter or extend the terms of reference, the parties and the Minister are adequately considered by the proviso to that sub-section. We further direct attention to sub-section (12) par. (i) of Section 45, where the parties to voluntary arbitration are allowed full scope in determining the terms of reference regarding any dispute.

184.

Sub-section (14) is apparently designed to overcome the position which exists as a result of the case of Miss Boocock, who was Matron of a Hospital in Port Elizabeth (S.A.Law Reports 1951, page 418 and Appeal Court's decision S.A.Law Reports 1952, page 522, Vol II). We object to the provisions of sub-section (14), particularly as the decision to impose the status quo rests entirely with the Minister, who has to satisfy himself as to the facts before making such a decision. Our experience has shown that the Minister has been very reluctant to apply the status quo and has exercised his powers in this connection on rare occasions only. That being so, it seems extremely unfair that in the event that the Minister's decision is overruled the employee concerned should be liable to make any refund of remuneration.

185.

Sub-section (16). We consider the Minister's power to cancel his approval of the establishment of a conciliation board at any time as entirely unnecessary. In this connection we draw attention to Section 43 (1), which deals with the discharge of a conciliation board in the same manner as Section 43 of the 1937 Act. If, however, sub-section (16) of this Section means that the Minister may cancel his

185. approval before a conciliation board is actually established and functioning, this should be clearly stated. In the event that this sub-section is retained we request the insertion after the words "at any time" of the following words: "with the agreement of the parties"; and the deletion of the words "in his opinion" before the words "fall away". (Note: in sub-section (4)(g) page 67 line 50 there is an "a" too many in the word "application".)
186. Sub-section (17). We understand that this sub-section arises from a discussion on the Ministerial Committee, which dealt with the recommendations of the Industrial Legislation Commission, regarding the position of heads of departments of local authorities. The sub-section as presently worded, however, goes much further than that.
187. Par. (a) will interfere drastically with the "closed shop" of a number of unions who have members employed by local authorities, including even those employed in such humble occupations as parks assistants, etc. We strongly object to the present provisions of this sub-section.
188. If it is intended to cover the position of heads of departments, however, there is no reason why this cannot be clearly stated. We suggest that par. (a) read as follows:
- "If the registrar is satisfied that an employee of
"a local authority is, by reason of the nature of his
"duties, i.e., the head of a department of a local
"authority, precluded from becoming a member of any
"of the trade unions which are registered in respect
"of employees of one or more local authorities in the
"area in which he is employed, he may issue a certificate
"declaring the said employee to be employed in a reserved
"occupation; and he may at any time withdraw or vary any
"such certificate."

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189. Par. (b) should be altered by the deletion of the words "any of" in line 20 and in the same line change the word "categories" to "category". This would confine the Registrar's power in declaring an employee in a reserved occupation to such heads of departments.
190. Pars. (d) and (e) would be acceptable if the above alterations are made to pars. (a) and (b)
191. Par. (e) supports our contention that the whole sub-section was intended to apply only to heads of departments, otherwise it is a complete contradiction to pars. (a) and (b). We shall make further reference to the effect of this sub-section on the "closed shop" in our remarks under Section 50.

SECTION 36 - FUNCTIONS OF CONCILIATION BOARD
AND CONTENTS OF AGREEMENT.

192. In relation to sub-section (1) we direct attention to our remarks regarding Section 35 (8)(a) - paragraph 183 pages 51/2 hereof - and to our paragraphs 164 - 6, page 48, relative to Section 24.

SECTION 37 - COMPOSITION OF CONCILIATION BOARD.

193. We are opposed to the provision in sub-section (2) and in sub-section (4)(b) and (d) allowing for the representation of non-trade union members on conciliation boards. Only registered employers' organisations and registered trade unions are allowed representation on an industrial council. To allow non-trade union representatives on a conciliation board will tend to nullify the purpose of the Act. Non-members of either the employers' organisations or the trade unions concerned have only to join the appropriate body in order to have their views represented on a conciliation board as is the case in respect of an industrial council.

194. The terms of sub-section (5) of Section 35 support our representations in this matter - subject to our objections in regard to "reserved occupation". If our proposals regarding sub-section (2) of this Section and Section 35 are accepted, then sub-section (4) (b)(c)(d) and (e)(i)(ii) should fall away.
195. Sub-section (4)(f). We would direct attention to paragraph 168 hereof. This sub-section seems to support the representations we make under the quoted paragraph.

SECTION 39 - PROCEDURE OF CONCILIATION BOARDS.

196. The reference in this Section to "Section twenty-six sub-section (1) to (7)" is incorrect, as indeed it was in the 1937 Act, since there are and were only four sub-sections in Section 26.
197. In the 2nd line of Section 39 the word "sub-section" should be "sub-sections" before "(9) and (11)".
198. If our representations in respect of Section 27 and Section 28 (paragraphs 169 - 174, pages 49/50) are accepted, there will have to be consequential changes in this Section.

SECTION 42 - REPORT BY CONCILIATION BOARD.

199. Par. (b) of Section 42 of the 1937 Act appears in amended form in sub-section (9) of Section 48 of the Bill. Any comments thereon will, therefore, appear under the latter Section.

SECTION 45 - VOLUNTARY ARBITRATION.

200. In view of our opposition to the Tribunal (paragraphs 99 - 108, pages 27/31, First Memorandum) we must request that sub-section (7) of Section 45 of the 1937 Act be retained in place of sub-section (8) of this Section of the Bill, i.e., that the Minister appoints an Arbitrator where the

200. parties fail to do so. Should our representations regarding the Tribunal be accepted, however, we would be agreeable to the retention of this sub-section (8).
201. Since sub-section (12) par. (ii) refers to the "closed shop" our comments will be found in Section 50.

SECTION 46 - COMPULSORY ARBITRATION

202. Our main comments on this Section appear in our First Memorandum, paragraphs 110 - 113, pages 31/32. However, sub-section (5) of this Section applies certain provisions of Section 45 in the case of compulsory arbitration. We must, therefore, direct attention to our comments relating to Section 45 (9)(c) and (12)(ii), which, as indicated above, appear under Section 50.
203. Regarding par. (c) of sub-section (5), our comments relating to sub-section (8) of Section 35 apply (paragraph 183, pages 51/52 herein).

SECTION 47 - COSTS OF ARBITRATION

204. We are opposed to the industrial council in sub-section (2) and the employees and employers in sub-section (3)(d) being required to pay the prescribed fees in cases where they are compelled, in terms of the Bill, to submit the dispute to the Tribunal. In our opinion there is no more justification for charging fees in such cases than there is in respect of investigations and determinations made by the Wage Board. (In sub-section (3)(f), line 37, the reference to "section sixty-four" is incorrect. It appears that this arises from the fourth draft of the Bill wherein the section dealing with the establishment of the Tribunal was number 64. It should now read "section seventeen").

SECTION 48 - PUTTING INTO FORCE OF AGREEMENT.

205. Sub-section (3)(a) We request that, in addition to the initiative which the Minister may use in terms of this sub-section, the initiative of an industrial council, as in sub-section (4) Section 48 of the 1937 Act, to report to the Minister that any object of an agreement is being or will probably be defeated by the employment of natives in any area, should remain.
206. With reference to sub-sections (3), (4), (6) and (9) we are obliged to direct attention to the provisions of the Native Labour (Settlement of Disputes) Act, which, if applied in respect of any industry in which an industrial council operates, can totally nullify any attempt by such council in terms of this Section of the Bill to protect the agreement operating in the industry concerned. Likewise, the extension of the provisions of an order under Section 14 (2) of the above stated Act, to persons other than natives governed by a "wage regulating measure" which includes a wage board determination, conciliation board agreement, arbitration award as well as an industrial council agreement, can nullify the provisions of the 1937 Industrial Conciliation Act and the provisions of the Bill (paragraphs 161-163, pages 47/48 hereof, also refer).
207. Sub-section (8) deals with the "closed shop" and, as with other such references, our comments are to be found under Section 50.
208. Sub-section (9). The provisions of par. (b) of Section 42 of the 1937 Act have been included in this sub-section, but there is no provision for the conciliation board to indicate its desire as to the persons upon whom and the area in which an agreement shall be binding. We request that this provision of the 1937 Act be retained. Our comments relative to sub-section (8) of Section 35 also

208. apply (paragraph 183, pages 51/2 hereof).
209. Sub-section (10)(a). We request that this sub-section be amended to provide that the Minister, when he has reached the opinion that the accumulated funds of an industrial council exceed the amount necessary to provide for the administration expenses of such council, shall direct the attention of the council thereto and, with the agreement of the council, amend the relative section of the agreement so as to reduce the amounts payable by the parties.
210. Sub-section (12) We request that no differentiation or discrimination based on sex should be permitted in respect of remuneration for work of equal value. It follows that this request applies also in respect of Sections 24 (2), 51 (9) and 77 (12) where similar references appear.

SECTION 49 - EFFECT OF ARBITRATION AWARDS.

211. Our comments on the proviso to sub-section (1) in respect of the "closed shop" appear under Section 50.
212. Sub-section (5). We assume that the intention herein is that an agreement or determination which provides conditions not less favourable than those of an award made binding after the commencement of the Act, should supersede such an award and we therefore request that this be made clear in the sub-section by the inclusion of a proviso containing the above underlined words.
213. Sub-section (6). In par. (b) we request that the period of 15 months be changed to 12 months as we are of opinion, in the light of our experience, that the latter period is a reasonable time within which the parties are precluded from giving the notice referred to in the said paragraph.
214. Par. (h). We request the deletion of all words from "but" in line 27 to the end of the paragraph. All parties should

214. at all times be entitled to receive copies of relevant documents. The Minister can set a time within which all documents must be submitted. (paragraph 57, page 16 of our first Memorandum also refers).

215. In this Section and wherever else they may appear references to the Tribunal are subject to our objections under Section 17.

(The word "to" has been omitted after the word "entitled" at the end of the first line par. (h), page 97).

SECTION 50 - MISCELLANEOUS PROVISIONS IN REGARD TO AGREEMENTS AND AWARDS

216. The provisions of this Section are entirely new. We suggest that sub-section (2) would be more appropriate as part of Section 45.

217. In regard to sub-section (1) we request the deletion of the first proviso. This brings us to the matter of the "closed shop" which is described in Section 24 (1)(x), page 55. Reference thereto and provisions which affect the "closed shop" are to be found in the following Sections of the Bill

<u>SECTION</u>	<u>SUB-SECTION</u>	<u>PAGE</u>	<u>SECTION</u>	<u>SUB-SECTION</u>	<u>PAGE</u>
6	(1)(b)	21	46	(5)	85
6	(5)	23	48	(8)	91
35	(8)(a)	69	49	(1)	93
35	(17)	73	50	(1)	99
45	(12)(ii)	83	51	(6)	101
			51	(10)	103

218. In our Memoranda references occur in the following paragraphs and pages prior to this Section

<u>MEMO.</u>	<u>PARS.</u>	<u>PAGE</u>	<u>MEMO.</u>	<u>PARS.</u>	<u>PAGE</u>
First	30	8	Supp.	165	48
"	61/63(a)	17	"	187	53
"	64	18	"	191	54
"	69/70	19	"	201/202	56
			"	207	57
			"	211	58

.....

219. The "closed shop" was adopted many years ago by organised workers as a method of resisting the opposition of employers to the establishment of trade unions. It helped to build up the strength required to combat the many and varied means by which employers intimidated and victimised workers to prevent trade union organisation. The purpose of the "closed shop" in some industries is still the same, but in many others, where employers have also become organised, its main purpose is to ensure industrial peace. Some of the most extensive strikes have occurred because of the employment of non-unionists in shops where the other employees were trade unionists.
220. The inclusion of the "closed shop" provision in industrial council agreements has materially assisted in bringing about and maintaining the comparative industrial peace which South Africa has enjoyed over the past 25 years. The value of the "closed shop" in its contribution to the industrial progress of South Africa should therefore be fully recognised. Our comments on the various references in the Bill to the "closed shop" will show the degree to which its value will be nullified.
221. Amongst all the other matters specifically mentioned with which an industrial council agreement may deal, Section 24(1)(x) allows for the inclusion of the "closed shop", and thus establishes the right of employers and employees to enter into such an agreement.
222. Section 6 (5) automatically grants the "closed shop" to a break-away union if the original union operates under a "closed shop" in terms of an agreement which that original union has negotiated. The break-away union is not obliged, as is the original union, to have a membership in good financial standing of two-thirds of the total number of employees employed in the occupations and area, by employers which the

222. agreement covers - Section 35 (8)(a) and Section 49 (1).
The other provisions of the agreement concerned will not automatically apply to the break-away union.
223. If the break-away union is not a party to the industrial council agreement then the provisions of Section 50 (1)(i) will not apply to such union. This means that a member who resigns from a break-away union, to which the "closed shop" has been automatically applied in terms of Section 6 (5), is still subject to the "closed shop" provision of the agreement and therefore cannot continue his employment in any establishment covered by such provision.
224. In terms of Section 6 (1)(b) the original union will suffer the loss of part of its assets and the discrimination imposed by the various provisions referred to, whilst the break-away union will gain a portion of the original union's assets and the automatic application of the "closed shop", without all the restrictions regarding representativeness which are imposed in respect of the "closed shop" on the original union.
225. Section 35 (8)(a) contains a proviso to the effect that the "closed shop" may be excluded from the terms of reference of a conciliation board unless the Minister is satisfied that the number of members in good financial standing of a trade union party to the dispute is not less than two-thirds of the total number of employees, in the occupations and area concerned, employed by the employer parties to the dispute.
226. Section 48 (8) provides that the Minister shall not declare binding a "closed shop" provision in an industrial council or conciliation board agreement unless the number of members of the unions concerned in good financial standing is not less than two-thirds as described above.
227. Before an arbitration award can contain a "closed shop"

227. provision the arbitrators must be satisfied that it is the unanimous wish of the parties to the dispute that such a provision be so contained.
228. Section 49 (1) contains a provision similar to Section 48 (8) in regard to the effect of arbitration awards.
229. A trade union could well represent 90% of all the employees covered by its registration certificate, but the possibility of its obtaining a "closed shop" through a conciliation board agreement or an arbitration award which covers only a portion of its membership is made extremely doubtful by these provisions.
230. After a trade union succeeds in obtaining a "closed shop" provision in an industrial council or conciliation board agreement the provisions of Section 48 (8) come into operation. After succeeding in obtaining a "closed shop" provision in an arbitration award, Section 49 (1) becomes operative. In both instances the Minister may refuse or withhold the putting into effect of such provisions of the agreement or award.
231. A trade union
- (a) which is sufficiently representative to obtain registration;
 - (b) which is sufficiently representative to qualify for the establishment of an industrial council,
 - (c) which is sufficiently representative to allow the Minister to publish an agreement entered into by an industrial council, a conciliation board, or an arbitration award,
- would nevertheless not necessarily be sufficiently representative - even although agreement on such a matter is obtained with the employers on an industrial council and even although a conciliation board agreement or an

231. arbitration award contains such a provision - to have a "closed shop" provision in the agreement or award put into force.
232. Assuming that a trade union succeeds in overcoming all these hurdles and a "closed shop" provision is declared binding, the provisions of Sections 50 (1) and 51 (6) and (10) then come into operation.
233. The first proviso to sub-section (1) of Section 50 completely nullifies all the provisions of the Bill with regard to the establishment of a "closed shop". The proviso means simply this: any member of a trade union has merely to resign and then the "closed shop" provisions of the agreement to which he has been party no longer apply, although all other provisions of the agreement will remain binding upon him.
234. If a sufficient number of members of a trade union can be persuaded by some recalcitrant or inspired member to resign from the union, it would upset the representativeness of the union in respect of the "closed shop" provision in the agreement.
235. The proviso to Section 51 (6)(a) is an absolute contradiction to Section 50 (1)(i); the first automatically releases a member of a trade union from the "closed shop" provision of an agreement, whereas the second implies that he must apply to the industrial council for exemption and as a party to the council this is the only matter on which he can appeal to the Minister. In our first Memorandum we refer to this matter in paragraph 114 on page 33. In addition to the objection therein stated we object most strongly to an individual having the right of appeal to the Minister in a matter concerning the "closed shop". A member of a trade union party to an agreement has the right of appeal within his union in terms of its registered constitution; in terms

235. of the Act he has a similar right of appeal to the industrial council. If such a person is still not satisfied with the decision of either the union or the industrial council he has the usual recourse to the courts.
236. We have made our representations in respect of Section 35 (17) in paragraphs 186-191, pages 53/4 hereof. In relation to that sub-section it remains for us to show its effect on the "closed shop" should it be retained in its present form. In addition to numerous other means of overcoming or side-tracking the "closed shop" provision of an agreement as described above, the Registrar is, in this sub-section given extremely wide powers in relation to employees of local authorities. We need cite but one example to show the effect of this sub-section. Suppose a member of the Amalgamated Engineering Union, employed in a municipal workshop, is expelled from that union for very good reasons - the Registrar, unlike the Minister, does not have to be satisfied that such a member was unreasonably expelled, he has merely to issue a certificate **declaring** that person in a "reserved occupation". What is then the efficacy of the "closed shop"?
237. These remarks apply in respect of sub-section (10) of Section 51. It will readily be seen from the above that we are opposed to the provisions in respect of the "closed shop" referred to in all the Sections as listed above except Section 24 (1)(x) and request their deletion from the Bill.
238. Apart from our objection as outlined above, Section 24 (1)(x) establishes a principle and we contend that the other provisions which, as we have shown, nullify, contradict or detract from that principle must be deleted.

SECTION 51 - EXEMPTIONS AND THE EXCLUSION OF NATIVE AREA.

239. In addition to our representations in paragraph 114, page 33, of our first Memorandum and those dealing with the "closed shop" above, we have to deal with sub-section (9) of this Section.
240. In paragraph 210, page 56 hereof our representations regarding differentiation on the basis of sex in respect of remuneration for work of equal value are made . They apply to this sub-section.
241. The proviso which bars discrimination on the basis of race or colour in Section 24 (2) and 48 (12) is omitted from this sub-section. This is clearly a contradiction to the two Sections mentioned, in terms of which an industrial council may not differentiate or discriminate in its agreement - Section 24 (2), nor may the Minister in publishing a notice putting into force an agreement so discriminate - Section 48 (12).
242. The value of the proviso in those two Sections is nullified by the lack of such a proviso in sub-section (9) of Section 51, for clearly the Minister, an officer, an industrial council or a committee of a council in granting any exemption will have the power to discriminate on the basis of race or colour.
243. It is significant that in Section 77, sub-section (12) par. (c) "classes of persons" is defined by a reference to Section 51 (9), which omits the proviso prohibiting discrimination on grounds of race or colour, and not to either of the other Sections which contain that prohibition.
244. In sub-section (1) page 99, line 46 the word "is" should appear after Minister. On page 101 in lines 49 and 51 the word "deemd" should read "deemed".

245. As we have come across them in the various sections we have drawn attention to certain errors, not in any spirit of carping criticism, but with a desire to be helpful. Errors which occur from this point onwards are listed in Annexure B. hereto.

SECTION 57 - RECORDS TO BE KEPT BY EMPLOYERS, PRINCIPALS AND CONTRACTORS

246. In sub-section (3) employers, principals and contractors are required to retain certain records for a period of 3 years. We draw attention to this in support of our representations in respect of the keeping of records of industrial councils and trade unions in respect of which we propose a similar period.

SECTION 59 - REGISTRATION OF EMPLOYERS.

247. The following words appear in sub-section (3) of this Section in the 1937 Act:

"After such a notice has been so delivered or

"posted, the employer shall be deemed not to be

"the holder of a current certificate of registration"

We request that this be retained in sub-section (4) of this Section in the Bill. The effect thereof is to make the position perfectly clear, where, for the reasons stated, an employers' certificate of registration has been cancelled.

SECTION 63 - REGISTRATION AND REGULATION OF PRIVATE REGISTRY OFFICE

248. In sub-section (4) we request that the period of two years be changed to three years. This is in conformity with our proposals under other Sections referring to the keeping of records. There is no reason why the keeper of a private registry office should be required to retain records for

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two years, when employers, councils and unions, have to keep them for longer periods.

SECTION 64 - MINISTER MAY STATE SPECIAL CASE TO APPELLATE DIVISION

249. We note this provision and we suggest that, unless our representations regarding the Tribunal as contained in paragraphs 99, page 27, and 108, page 31 - first Memorandum are accepted, the trade unions and employers' organisations shall have the right to appeal from the lower courts to the Appellate Division of the Supreme Court.

250. This is especially necessary to avoid any confusion which may arise as a result of varying decisions on similar matters in the Provincial and Local Divisions of the Supreme Court. Such may arise not only on a question of interpretation of the Act, but also on questions of interpretation of agreements, awards, etc. Even on a question of interpretation of the Act, a trade union or employers' organisation should have the right of such appeal.

SECTION 66 - VICTIMISATION FORBIDDEN.

251. The following words which were a part of this Section in the 1937 Act do not appear in the Bill after the words "trade union" in line 18, sub-section (1)(c).

"..the object of which is or was to protect or further the "interests of employees in relation to their employers..."

In paragraph 33, page 10 of our first Memorandum, we draw attention to a similar omission from the definition of "trade union". If our representations in regard thereto are granted, it would not be necessary to include the above-quoted words in this sub-section of Section 66.

252. We request the deletion from this sub-section of the words "or any other like association of employees". The Bill

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deals with trade unions and not other associations of employees, which may include, e.g., a sports club.

If similar protection is to be extended to such bodies it should be done through other legislation.

SECTION 70 - ASSUMPTION BY MINISTER OF FUNCTIONS OF LOCAL AUTHORITY IN CERTAIN CIRCUMSTANCES.

253. Sub-section (4) applies the other provisions of this Section to the activities referred to in sub-section (7) of Section 46.

Our objections in regard to the latter sub-section appear in paragraphs 110-113, pages 31/32, first Memorandum.

Since we are opposed to the Minister's powers to extend the compulsory arbitration provisions of Section 46 to certain additional activities, we must oppose the application of the provisions of Section 70 to those activities.

SECTION 74 - EVIDENCE.

254. Sub-section (1). A number of Sections are listed in this sub-section, some of them being new as compared with the 1937 Act, but Section 45 is not included therein. We are unable to find why this is so, since the Minister may publish awards under this Section and presumably he may publish certain notices also.

255. Sub-section (10). We direct attention to our objections as they appear in paragraphs 115-126, pages 33-36, first Memorandum, to certain provisions in Section 65. In view thereof, we are opposed to the inclusion in this sub-section of the penalties for instigating and inciting to strike.

256. Sub-section (12). In relation to the reference to Section 66 (1)(c) our remarks in paragraphs 251-252 above apply.

257. Sub-section (13). In view of our paragraph 92, page 25, first Memorandum, we request that the onus of proof in such cases should lie with the prosecution.

SECTION 78 - FREEDOM OF ASSOCIATION OF EMPLOYEES.

258. We request that the words "or other like association of employees" be deleted from sub-section (1).
259. We request that sub-section (2) as in the 1937 Act replace sub-section (2) in the Bill.
260. We have already pointed out, in respect of Section 66 (1)(c), that the Bill specifically deals with trade unions and not with other "associations of employees".
261. We are opposed to the provisions of Section 35 (17) and others indicated in our comments under Section 50, and inasmuch as the words "subject to the provisions of this Act" affect our objections regarding employees becoming members of trade unions, we must oppose the inclusion of the quoted words in this sub-section.
262. We are also opposed to the powers vested in the Minister of Justice to order the resignation of trade union members under the Suppression of Communism Act and, therefore, request the deletion of the reference to that Act in the sub-section under comment.

SECTION 79 - PROTECTION OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS IN RESPECT OF CERTAIN WRONGFUL ACTS IN FURTHERANCE OF LAWFUL STRIKE OR LOCK-OUT.

263. We request that the words "civil legal" before "proceedings" be deleted, as also the word "registered" before "trade unions" in the first two lines of this Section.
264. We submit that the provision in the 1937 Act requires no alteration. The effect of the change in this Section of the Bill is that criminal proceedings may be brought against trade unions or employers' organisations, whereas previously that could not occur. Our request for the deletion of the word "registered" would bring this Section into line with the 1937 Act, and give the protection, as it should do, to all trade unions.

SECTION 80 - FEDERATIONS OF EMPLOYERS' ORGANISATIONS
OR TRADE UNIONS

265. We direct attention to the last three lines of this sub-section which provide that the objects of such a trade union federation must include "the promotion of the interests of employees". Our representations regarding the definition of "trade union" paragraph 33, page 10, first Memorandum, and Section 66 (1)(c) paragraphs 251/2, pages 67/8 hereof, are supported by the quoted reference in the sub-section under comment.

SECTION 81 - REGULATIONS.

266. We are opposed to the provisions of sub-sections (2) and (3). The principles of justice require that all shall be equal in the sight of the law.
267. Since the Governor General is empowered by sub-section (2) to make different regulations for different classes of persons in respect of the same matters, sub-section (3) empowers him to prescribe different penalties for different classes of persons also in respect of the same matters.
268. No person charged with an offence under any law can plead ignorance of the law. It is the more important, therefore, that the law should clearly state the penalties for any contraventions. These should be stated in the law itself and not in the regulations made under that law, nor should any individual have the power to prescribe penalties for any such contraventions.

SECTION 85 - REPEAL OF LAWS.

- 269 The reference in this Section to the Native Labour (Settlement of Disputes) Act 1953, is in connection with the exclusion from the definition of "employee" of all natives. We reserve the right to make whatever representations we deem

Collection Number: AD1715

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (SAIRR), 1892-1974

PUBLISHER:

Collection Funder:- Atlantic Philanthropies Foundation

Publisher:- Historical Papers Research Archive

Location:- Johannesburg

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