

76. of a union and one of an employers' organisation, having broken away from their respective bodies, could establish a separate industrial council on the ground that the original council was not representative of their interests.
77. We hold that the provision under discussion is, therefore, inconsistent with those of Section 29, which seeks to restrict the number of trade unions, and sub-section (4) of Section 43, which seeks to limit the number of industrial councils.
78. To give such autonomy to any division, branch or section would include the negotiation of agreements, even though the workers represented by such divisions, branches or sections must receive equitable representation on the governing body of a trade union in terms of paragraph (c) of the same sub-section, and would thus participate in the negotiations conducted by the trade union itself. This would be a farcical situation.
79. Each division, branch or section could apply for industrial boards, despite the operation of industrial council agreements - could declare disputes and apply for conciliation boards; could apply for registration of amendments to the union's constitution, cause the deregistration of itself and even of the union; conduct strikes and arbitrations - all these things and many more, if they have complete autonomy in respect of all matters under the Act.
80. Clearly we must strongly object to such a provision.
81. We wish to propose that paragraph (b) be amended so as to provide that, if a union does establish such separate division, branch or section of the union, the constitution of the union shall provide that each such division, branch or section shall have autonomy in respect of all matters within the jurisdiction of such division, branch or section in terms of the union's constitution.

82. We also suggest that paragraph (c) be amended so as to provide that each separate division, branch or section which may be established by a union shall have equitable representation on the governing body of the union, as also the different sections, categories or branches of employees and the skilled and minority interests. This would provide the necessary safeguards against any abuse by a trade union of its powers in relation to any separate division, branch or section.

83. Paragraph (c) could also retain the present provision for the equitable representation on the executive committee of any division, branch or section of the different sections, categories or branches of employees covered thereby, as also the skilled and minority interests.

In view of our representations we naturally do not agree that a division, branch or section should have a governing body with powers equal to that of the trade union itself.

We therefore use the term "executive committee" in place of "governing body" and request that the legislation also employs that term.

84. For the reasons stated above, we request the deletion of SUB-SECTION (6) OF SECTION 37. A trade union itself should be responsible for conveying information in regard to any of its affairs, including those of its divisions, branches or sections.

SECTION 35. ALTERATION OF CONSTITUTION AND NAME OF TRADE UNION OR EMPLOYERS' ORGANISATION.

85. While we applaud the proposed establishment of an industrial court and the provisions for appeals to that court on many matters, we suggest that in sub-section (4) of this Section AND IN SUB-SECTION (3) OF SECTION 43 (as also any other place

/where.....

85. where it may appear), the only appeal should be to the court.
86. There is an element of "public interest" in any matter that may be brought to appeal under this legislation. Likewise, "public interest" is so wide a term that it must include any of the grounds covered by paragraph (b) of the sub-section.
87. The fact that a decision of the registrar is based solely on "public interest" to the exclusion of any other ground does not, in our view, warrant any different procedure. We think it would be preferable to confine appeals to the court in all cases.

SECTION 37. REGISTERED TRADE UNIONS AND EMPLOYERS'
ORGANISATIONS TO FURNISH INFORMATION
TO THE REGISTRAR.

88. Without here repeating paragraphs 96 to 98 on page 30 of our Memoranda to the Select Committee, we urge the Honourable the Minister to examine and to accede to the representations made therein with regard to sub-section (5). (In paragraph 96, Sections 50 and 124 (c) now refer to Sections 41 and 119 (c).)

SECTION 38. APPEAL AGAINST REFUSAL OF OR EXPULSION FROM
MEMBERSHIP OF TRADE UNION OR EMPLOYERS'
ORGANISATION.

89. We are opposed to those provisions of this Section which allow an appeal to the registrar by any person in regard to refusal of or expulsion from membership.
90. Such refusal or expulsion by a union is done in terms of its constitution, the provisions of which must be approved by the registrar before he registers the union.
91. We would prefer that sub-section (1) of SECTION 34 should provide that the constitution of a union shall allow for an appeal to the general membership of the division, branch or section or of the union, as the case may be, which has

/so

91. so refused membership or expelled a member. Appeals could also be allowed under such a provision from a division, branch or section to the governing body of the union.
92. In addition to such appeals, Section 38 should provide for an appeal to the court, not only by any aggrieved person, but also by the trade union.
93. In paragraph 95 on page 30 of our Memoranda to the Select Committee we requested that, in all sections where there is provision for certain things to be done within a given period, that period should be thirty days. If our request for the deletion of sub-section (1) is not granted, the above request will apply to this sub-section. It should be stated that a person affected by this provision is less likely to know his rights under the law and would, therefore, probably need a longer period in which to make enquiries in regard thereto.

SECTION 39. CANCELLATION OF REGISTRATION OF TRADE UNION OR
EMPLOYERS' ORGANISATION IN CERTAIN CIRCUMSTANCES.

94. We again request the deletion of paragraph (e) from sub-section (1) of this Section and repeat our assertion to the Select Committee that paragraphs (b), (c), (d) and (f) of the sub-section, if they applied to a union at a particular time, would indicate that the union was no longer a responsible body.
95. We note that the Select Committee has not acted on our suggestion that the provisions applicable in the case of an industrial council under Section 58 (1) to the effect that, in certain described circumstances, the registrar may send a registered letter to the council should also apply to the trade union under Section 39, instead of the provision that he shall send such a letter to the union.
96. The proviso to sub-section(2) of Section 58 ensures that the

/provisions

96.

provisions of an agreement shall remain binding, despite the cancellation of the registration of an industrial council, until the expiration of the period for which the agreement was made binding and, further, that the powers and functions of the council shall be exercised by such person or persons as the Minister may designate. Assuming that there are two or more trade unions party to an industrial council and one of them suffers cancellation of its registration under Section 39, that union may be one of the parties referred to as having withdrawn from the council under paragraph (d) of sub-section (1) of Section 58 as a result of which the Council may no longer be sufficiently representative.

97.

On the other hand, if that did not happen to be the position in a particular case, the employees covered by the agreement would no longer be represented on the Council and could then invoke the provisions of paragraph (c) of sub-section (1) of Section 6 in regard to industrial boards, as also those of sub-section (2) of Section 44.

98.

We most strongly urge the Honourable the Minister to grant the request contained in paragraph 94 above. Furthermore, even if the Minister does grant that request, we would still be most concerned that the registrar will be permitted to act in such summary fashion as provided in Section 39. The results of the cancellation of the registration of a trade union are far too serious to permit of the registrar, or anyone else for that matter, having power, in the short period of twenty-eight days, to notify a union that its registration is about to be cancelled. In this connection, also, we direct attention to the different treatment which will be meted out in similar circumstances to an industrial council under Section 58.

/99. We

99. We note that in Section 26 (2) - which was Section 38 (2) in the first Bill - a similar provision has been changed to thirty days. We again request such a change in both sub-sections (1) and (2) of Section 39.
100. We approve whole-heartedly of the appeal to the court allowed in terms of sub-section (5). However, we suggest that where an appeal is lodged before the registrar acts under sub-section (3) he should be required to refrain from so acting pending the decision of the court.
101. We note that there is still no provision requiring the registrar to issue a certificate of registration to a union when it first becomes registered, as in the case of industrial councils - (sub-section (7) of Section 43). Such a provision should appear in Section 25.

P A R T III.

INDUSTRIAL COUNCILS, CONCILIATION BOARDS,
MEDIATION AND ARBITRATION.

102. We direct attention to the deletion of the words "undertaking" and "trade or occupation", respectively, before and after the word "industry", in Sections 42 to 46. Only the word "industry" is used. If there is a reason for this we would appreciate being informed thereof, particularly in view of the fact that there is nothing in Section 2 to indicate that the use of the one term includes all the terms. As far as we can see, from Section 48 onwards there is a return to the use of the whole term "undertaking, industry, trade or occupation".
103. The implications, if only the word "industry" is used in the stated Sections, are obvious. We, naturally, desire that the whole term be included.

/SECTION 44. VARIATION.....

SECTION 44. VARIATION OF SCOPE OF REGISTRATION OF
INDUSTRIAL COUNCIL.

104. Consistent with our comments in connection with Section 26 (paragraphs 37 to 39, at page 12), we object to the power given to one person, employer or employee, to initiate any variation in the scope of registration of a council, and to the registrar having power to act on the application of such person.

SECTION 46. MATTERS RELATING TO THE CONSTITUTION OF
AN INDUSTRIAL COUNCIL.

105. Our comments on sub-section (3) of Section 46 have been made on pages 14 and 15.

106. The provisos to the said sub-section illustrate the unfairness of the restrictions on trade union officials who are resident outside the Colony. Such an official will be prevented from being a member of an industrial council. On the other hand, where there is no employers' organisation party to a council an employer in the industry will be eligible for membership even though he may be resident outside the Colony. There could be three or four employers, but if they did not form an organisation, they could all be members of the council even if they were all resident outside the Colony.

107. Sub-section (4) of Section 58 of the first Bill does not appear in Section 46 of this Bill. The effect of the deletion of that sub-section is that a person may be employed as secretary of more than one industrial council and as secretary of both an industrial council and a trade union or a council and an employers' organisation. This is not consistent with the provisions regarding the secretary of a trade union and an employers' organisation. What special circumstances, so different from those affecting unions and employers' organisations, require the opposite provisions in the law in regard to council secretaries?

/SECTION 49. MATTERS.....

SECTION 49. MATTERS THAT MAY BE DEALT WITH BY INDUSTRIAL
COUNCIL AGREEMENT.

108. Under sub-sections (1) and (2) the forms of discrimination to which we have already stated our objection are to be permitted. Our representations thereon apply.

SECTION 53. MEETINGS OF INDUSTRIAL COUNCILS.

109. In sub-section (1) we think the power given to the Minister to direct a council to meet is not consistent with the principle of collective bargaining and self-government in industry.
110. We assume that the provision in sub-section (3) for giving notification of a meeting as prescribed by regulation (in contrast to that in sub-section (1) which refers to notification as prescribed by a council's constitution) is to cover cases where there is no relevant provision in the constitution of a council. If that is so, we suggest that a maximum period within which a meeting shall be held should also be stipulated, e.g., not more than fourteen days.
111. The proviso to sub-section (3) is somewhat absurd and also not clear. If two representatives of one side - say the trade union - form a quorum in the circumstances described, they can clearly take evidence and report thereon. That requires that they make a decision as to the nature of such report. A decision requires a vote. Can they take decisions also on the other matters that may be on the agenda for the meeting? In terms of sub-sections (5) and (6) they have no vote.
112. A council is a negotiating body representing parties which on certain important matters have opposing interests. If representatives of only one side can form a quorum, as in terms of the proviso, how can they negotiate with themselves?
113. We ask that these provisions receive further consideration and be amended.

/SECTION 58. CANCELLATION....

SECTION 58. CANCELLATION OF REGISTRATION OF INDUSTRIAL
COUNCIL.

114. We request that paragraph (b) of sub-section (5) be amended so as to provide that the one-third of a council's funds held in trust by the Treasury be divided between the parties to the defunct council after two years, if there is no new council, and NOT to the Consolidated Revenue Fund. Payment of such monies to the latter Fund would amount to nothing less than confiscation of contributions paid by workers and employers.

TEMPORARY INDUSTRIAL COUNCILS.

115. We have just been informed that a further revision to the Bill has appeared and that the provisions for temporary industrial councils are to be retained. If that is so, and subject to any comments we may have to make as to any amendments to the existing Act, we approve thereof.
116. In the event that our information is not correct, we wish to make the following observations and suggestion :-
117. It may be that some temporary industrial councils have not always operated very satisfactorily, but it is always possible for the Minister to have power to wind up a temporary industrial council in such circumstances. One such council which has operated very effectively since its inception some eight years ago is the temporary industrial council for the banking industry and satisfaction with its affairs has been expressed by employers and employees alike. But the banks have always been opposed to a full industrial council and, if the present council is to be abolished, it simply means that the parties in the banking industry will have to resort to an industrial board, which seems a retrogressive step if, as we believe, the Government

/encourage.....

117.

encourage self-government in industry.

118.

We suggest that provision could be made in the appropriate place for the automatic conversion of existing temporary industrial councils.

SECTION 69. COMPULSORY ARBITRATION.

119.

We note that in paragraph (a) of sub-section (1) the provisions of compulsory arbitration will apply to a statutory commission and its employees. After consultation with our Southern Rhodesian representatives we may wish to make representations in regard thereto.

120.

We also note and approve the new provisions in sub-sections (3) and (5) which, in the first case, allow for a dispute to be referred to the court and, in the second, that, under certain circumstances, a dispute shall be referred to the court for determination.

PART IV.

INDUSTRIAL COURT.

121.

The proposed establishment of an industrial court is, in our view, one of the most important new provisions made in the Bill. The few suggestions we offer in regard to this Section in no way lessen our sincere approval of the principle and of most of the provisions of this part of the Bill.

122.

Sub-section (4) of Section 73 implies that the two other members of the court will not be permanent members, but will be appointed and will sit to deal with particular matters. This, however, is not clear and we suggest that the sub-section be amended so as to clarify the Government's intention.

123.

There is also no provision as to how the Minister will obtain the list of persons from which the president of

/the

123. the court will choose the two other members; nor is it clear whether such a list will be a permanent one to which additional nominees may or may not be added, or whether the list is to be a new one every time two other members have to be appointed to deal with a particular matter - if that is the procedure which is to apply. We suggest that these matters also be clarified in the provisions of this Section.
124. We would request that in preparing the list of his nominees the Minister be required to obtain nominations from trade unions and employers' organisations and that, when finally submitting the list of his chosen nominees, a minimum number of the nominees of the trade unions and employers' organisations shall have to be included in such list.
125. In view of the rights given to individuals to appeal to the courts on certain matters, we must point out that very often such individuals, especially if they are workers, cannot afford to employ lawyers or meet the costs of any court action. We, therefore, request that the usual provisions in the High Court Procedure Act relating to in forma pauperis proceedings should apply to proceedings before this court.
126. We also suggest that an official of a trade union or employers' organisation be permitted to appear before the court as if he were an officer of the court, on behalf of any person who has appealed to the court or who is giving evidence in any matter before the court, as well as on behalf of the union or organisation itself. Such a provision will be especially necessary if our suggestion regarding in forma pauperis proceedings is not accepted.
127. It appears to us that in paragraph (c) of Section 74 the reference to "section sixty-three" should read "section sixty-seven". (It has no doubt been noted that the word "sixty-" is either incomplete or should perhaps read "sixty-five".

/Similarly

127. Similarly, in sub-section (1) of Section 84, the reference to "section eighty-four" should read "section eighty-five".)

PART V.

PUBLICATION OF AGREEMENTS.

SECTION 88. OBJECTIONS TO AGREEMENTS

128. We note that there has been no change to this Section as requested in our Select Committee memoranda in paragraphs 168 to 170 at page 39.

SECTION 90. AMENDMENT OF AGREEMENTS AT INSTANCE OF MINISTER.

129. We refer to our comments in paragraphs 172 to 174 at page 40 of our memoranda to the Select Committee. In addition, we must state that we consider the provisions of this Section, as a whole, as an interference with the principle of collective bargaining.

130. In paragraphs 85 to 87 of this memorandum we deal with provisions in other Sections which are somewhat similar to those of paragraph (a) of sub-section (4) of Section 90. We wish those representations to apply also in the case of this sub-section.

131. In Section 92 - Exclusion of part of area from operation of agreement - the word "binding" should appear after the word "declared" in the first line.

SECTION 95. REGISTRATION OF EMPLOYERS.

132. We note with approval the inclusion of a new sub-section (10) requiring an industrial officer to send to an industrial council copies of certificates of registration issued to employers and to inform such councils of cancellations, etc., of such certificates.

P A R T VI.

GENERAL AND MISCELLANEOUS

133. In a number of Sections under this heading there is reference to the procedure to be adopted by "the court" in regard to certain matters. This raises the question in view of the proposed establishment of the industrial court and the new interpretation of the term "court" contained in Section 2 as to whether it is intended that the industrial court shall deal with all offences and prosecutions, etc., which arise under this legislation. The only reference in the Bill so far as we can see to any other court is that contained in Section 85 to the "High Court".
134. If it is intended that the industrial court shall deal with these matters, then we must ask that the court procedure applicable in terms of legislation governing High Court procedure shall apply in all matters other than those referred to in Section 74.
135. If it is not possible for a court to have two different kinds of procedure as we suggest, then we naturally prefer that the established High Court procedure be adopted in all matters.
136. In any event, if it is not intended that the industrial court shall deal with offences, prosecutions, etc., some provision to that effect will have to be inserted in the Bill, otherwise the interpretation of the term "court" will mean that the industrial court will deal with such matters.
137. Again, if the industrial court is to deal with all matters arising under the Act, the provisions relating to the composition of the court when dealing with offences, prosecutions, and when passing judgment, may require clarification or revision. For example, is it within the
/power

137.

power of the Minister of Labour to appoint the members of a court which will deal with the last-mentioned matters?

Furthermore, is it competent for the "two other members" of the court to hear and sit in judgment on such matters since they will not necessarily be trained lawyers?

There are doubtless many other matters which will have to be taken into account.

SECTION 102. VICTIMISATION FORBIDDEN.

138.

We request that sub-section 2 of this Section be amended so as to provide that in assessing damages the court shall take into consideration, among other matters, loss of earnings, loss of benefits such as pension monies, medical aid, unemployment insurance, etc. Since such losses could well exceed the amount of £50 referred to in the sub-section, we request the deletion of the words "not exceeding £50".

139.

We consider it unreasonable that the payment of damages to an employee who has been victimised should be limited to £50 when his actual losses could be considerably more than that amount.

140.

Our request, on the other hand, does not seem to be unreasonable in view of the fact that the employee would still be required to prove the extent of his damages, and if these were £50 or less, the court would certainly not award any more than was proved.

SECTION 105. DISCLOSURE OF CERTAIN INFORMATION.

141.

We refer the Honourable the Minister to paragraphs 179 and 180 on page 41 of our Select Committee memoranda and request amendments to this Section in accordance therewith.

SECTION 108. IN CERTAIN CIRCUMSTANCES FUNCTIONS OF CERTAIN EMPLOYERS MAY BE ASSUMED BY MINISTER OR AUTHORISED PERSON.

142.

We may wish to discuss with the Honourable the Minister

/the addition,

142. the addition, in sub-section (4), of "any statutory commission generating or supplying light or power" and "any colliery".

SECTION 119. PENALTIES.

143. We again request that the fines and terms of imprisonment which may be imposed, especially under paragraph (a), be modified. The penalties in South Africa relating to offences mentioned in that paragraph are £300 and 2 years.

144. Before leaving this Part of the Bill, and with reference to our paragraphs 102 and 103 on page 29 hereof, we direct attention to the omission from the following Sections of the words "undertaking" and "trade or occupation" :
Sub-sections (1) and (2) of Section 87; sub-section (2) of Section 91; sub-sections (1) and (3) of Section 100.

P A R T VII.

REPEALS AND SAVINGS.

SECTION 124. SAVINGS: TRADE UNIONS AND EMPLOYERS' ORGANISATIONS REGISTERED UNDER ACT NO.21 of 1945; and

SECTION 125. SAVINGS: INDUSTRIAL COUNCILS REGISTERED UNDER ACT NO.21 of 1945.

145. Since no change was made by the Select Committee to sub-section (3) of each of the above-stated Sections, we must repeat our view that we consider the provisions therein to be extremely drastic. The summary cancellation of registration, even in the serious circumstances described in the Section, are not warranted because of the dire results on the conditions of the workers affected by any agreement which may be binding. We ask that at least such an agreement should continue to be binding until the end of the period for which it has been published and that an appeal to the industrial court be allowed.

146. It will be impossible for us to examine the whole of the later Bill (which we are informed has been published) in

/relation....

146.

relation to this one before our interview with the Honourable the Minister. We crave his indulgence if, as is possible, any of our comments and proposals are no longer applicable.

147.

We express our appreciation for the opportunity given us to submit our representations and to discuss them with the Minister. These courtesies imply that our motives have been accepted as being sincerely in the interests of the people and for the welfare of Southern Rhodesia - for this we are also grateful.

SIGNED ON BEHALF OF THE UNIONS AS INDICATED.

AMALGAMATED SOCIETY OF WOODWORKERS

H. F. TYLER,
GENERAL SECRETARY.

S. A. BOILERMAKERS', IRON & STEEL
WORKERS' & SHIPBUILDERS' SOCIETY

T. P. MURRAY,
GENERAL SECRETARY.

S. A. SOCIETY OF BANK OFFICIALS

R. M. HALDANE,
GENERAL SECRETARY.

S. A. TYPOGRAPHICAL UNION

T. C. RUTHERFORD,
GENERAL SECRETARY.

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